Dispel, Nickles

1 - Drop Flsa
2 - ??? prices
3 - Dist / Gains
4

Dispel

Under the new House minimum wage proposal, nearly 6 percent of those required to work could work less than 20 hours per week.

	Families whose TANF and Food Stamp Grant Won't Pay for 20 Hours a Week of Work at the Minimum Wage	Number of Families who could Potentially Work Less than 20 Hours a Week**
Mississippi	All families	38,411
West Virginia	Two person families*	13,000
Texas	Two person families*	87,877
Arkansas	Two person families*	7,881
South Carolina	Two person families*	12,655
Tennessee	Two person families*	26,329
Louisiana	Two person families*	28,294
Alabama	Two person families*	12,864
Total Number of Families with Benefits Too Low to Pay Minimum Wage for 20 Hours per Week		227,311
With 25% Participation Rate, Total Number of Families Who Could Potentially Work Less than 20 Hours per Week		56,827
U.S. Caseload Subject to 25% Participation Rate		1,004,250
Total who Could Potentially Work Less than 20 Hours Compared to Total Required to Work		5.6%

#hrs short

* Nationally, 40% of welfare families have two persons (i.e., one adult and one child). This analysis assumes that that 40% ratio applies to each of these states.

** Latest state data in hand (March 1997) is for recipients. These family numbers were derived from the state recipient numbers by assuming that each state follows national average of having 11.156/4.017 or 2.77 people per family.

When the work requirement rises to 30 hours per week, the benefits in all states except Alaska, HA, VT, CT, NY, NH, CA, RI, MA will fall below the minimum wage for a family of two. For families of three, benefits in 21 states will fall below the minimum wage.

- Where
- how

1) P Rt of A + some gr proc.
2) Grievance plus Secy
3) House gr
4) ALJ
5) Use ADR or other - appeal > griev

KEY ELEMENTS OF HOUSE FLSA PLAN

I. Enforcement of the Minimum Wage

Current Law	House Proposal	Options (Weakest to strongest)
1. Wage & Hour Division can take action 2. Private right of action	No enforcement mechanism	1. State grievance procedure 2. HHS/TANF penalty (how would Secy. determine?) 3. CWEP: State hearing; can appeal to DOL 4. Allow Wage and Hour to enforce and/or private right of action 5. Establish as employees

6. Indep grievance bd
7. DOL/DHHS joint regs
8. Pr Rt of A — s of — no: Seminole
9. Trigger — if viol, then FLSA
10. DOL ALJ, not Secy
11. State DOL
12. Alt Disp Reso process

DOL ALJ - now Davis-Bacon

Seminole decision! State ees can't sue in Fed ct

Tilley - some count OK
- DOL no

out/Byrd - only worse next time around

1 set of that applies to all

Emph grievance process over rts?

Palast raises Coll barg(!)

II. Worker Protections

	Current Law	House Proposal	Options
Health and Safety	a. OSHA standard b. Duty clause, whistleblower protection c. Enforcement by OSHA inspectors	a. OSHA standard b. No But same as 1385 c. Enforcement unclear — maybe OSHA Ask Stacey — fall back to grievance??	1. CWEP standard that assignment must consider health and safety — worse than House? 2. Full OSHA protection
Discrimination	a. Employment-based rights enforced by EEOC and private right of action --Title VII --ADA b. Federal funding-based rights attached to TANF --Title VI --ADA - not employee --Section 504 --Age Disc Act No gender or religion c. Enforced by EEOC, private right of action, or withdrawal of Fed $	a. No, because presumably not employees b. Same as TANF, plus prohibits gender discrimination (Note no underlying law with enforcement mechanism attached) Would <u>not</u> apply to non-profits not receiving federal funds c. State process, hearing; Shall be remedies which <u>may</u> include: --no more placements --get job/wages back --equitable relief	1. CWEP standard: no discrimination and participants have such rights as are available under any applicable Federal, state, or local law 2. ~~Pick among~~ employment-~~based~~ rights? 3. Coverage by employment-based rights even though not employees 4. Establish as employees 5. Establish that federal funding-based rights apply to non-profits 6. penalty to state Indep review process

7. Olivia — time limit workfare (like CWEP?) to ~~[illegible]~~ make gp smaller
— what trying to accomplish?
— DOC: helps w/ displacement

Olive - no; but entitled to MA + AFDC

Workers' Compensation	Full coverage?	Nothing HHS-Algo impt.	1. CWEP standard: protection on same basis as others in state in similar employment 2. Full coverage

Not just workfare – be careful – HHS should look at

III. Displacement

Can a participant in the program cause...	HR1385/ House Ed & Workforce	JTPA	TANF	House (applies to TANF)	Senate (applies to $3b)
the replacement of a worker who is fired or laid off?	No	No	No	No	No
1 reduced hours, wages, or benefits to a currently employed worker? (Partial displacement) ft → pt	No	No	Yes	Yes	No
violation of a collective bargaining agreement? Not clear	No	No	Yes	No	No
impairment of a collective bargaining agreement or contracts for services? overlap	No	No	Yes	Yes	No
inconsistency with a collective bargaining agreement?	No	Yes	Yes	Yes	No
2 infringement on promotional opportunities?	No	No	Yes	Yes	No

hire into vacant union job?? 3

NO? just above you or also spent all yr $

Options:
- o Partial displacement
- o Strengthen House to include "impair" collective bargaining agreement DOL dsnt seem to want
- o Full HR 1385

How linked to prev wg?? Palast

inclg state emp.

Displacement Grievance Procedures

	TANF	HR1385, Ed/Wkforce, Senate	House	Options
Process	Undefined state process	a. Opportunity for a state hearing within 60 days b. Can appeal negative decision or inaction to DOL c. DOL action within 120 days	a. State process b. Hearing	1. Action by a time certain 2. Lose TANF \$ 3. DOL appeal (like CWEP) 4. HR 1385
Remedies	None	a. Lose TANF \$ b. No more placements c. get job/wages back d. equitable relief	Shall be remedies, which <u>may</u> include: a. no more placements b. get job/wages back c. equitable relief	

Section 1085 of the tax bill:

(C)Workfare Payments Not Included in Earned Income.--Section 32(c)(2)(B) is amended by striking "and" at the end of clause (iii), by striking the period at the end of clause (iv) and inserting ", and", and by adding at the end the following new clause:

"(v) no amount described in subparagraph (A) received for service performed in work activities as defined in section 407(d) of the Social Security Act to which the taxpayer is assigned under any State program under part A of title IV of such Act, but only to the extent such amount is subsidized under such State program.".

5-4532

No presumption

re payroll taxes

H.L.C.

F:\SBG\SBG.916

401-4678

105TH CONGRESS
1ST SESSION

H. CON. RES. ___

IN THE HOUSE OF REPRESENTATIVES

M . ________ submitted the following concurrent resolution; which was referred to the Committee on ________________________

CONCURRENT RESOLUTION

To correct technical errors in the enrollment of the bill H.R. 2014.

Resolved by the House of Representatives (the Senate concurring), That, in the enrollment of the bill (H.R. 2014), to provide for reconciliation pursuant to subsections (b)(2) and (d) of section 105 of the concurrent resolution on the budget for fiscal year 1998, the Clerk of the House of Representatives shall make the following corrections:

(1) In the amendment proposed to be added by section 1085(c), strike "section 407(d)" and insert "paragraph (4) or (7) of section 407(d)".

(2) Strike subparagraph (B) of section 1031(e)(2) and insert the following:

"(B) TREATMENT OF AMOUNTS PAID FOR TICKETS PURCHASED BEFORE OCTOBER 1, 1997.—The amendments made by subsection (c) shall not apply to amounts paid before October 1, 1997; except that—

"(i) the amendment made to section 4261(c) of the Internal Revenue Code of 1986 shall apply to amounts paid more than 7 days after the date of the enactment of this Act for transportation beginning on or after October 1, 1997, and

"(ii) the amendment made to section 4263(c) of such Code shall apply to the extent related to taxes imposed under the amendment made to such section 4261(c) on the amounts described in clause (i).".

FACSIMILE TRANSMISSION

ADMINISTRATION FOR CHILDREN AND FAMILIES
OFFICE OF THE ASSISTANT SECRETARY
370 L'ENFANT PROMENADE, S.W.
WASHINGTON, D.C. 20447

DATE: 7/23/97

Name: Diana Fortuna

Telephone: 456-5570

Fax: 456-7431

Number of Pages (excluding cover): 15

fax to Yvette Jackson USDA

ph 703-305-2026

from Diana

FYI

FROM: JOHN MONAHAN
Office of the Assistant Secretary

Telephone: (202) 401-5180
Fax: (202) 401-4678

MESSAGE:

703 305-2454

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BACKGROUND INFORMATION NOTE
(PAGE 1)

Case Name: Food Stamp Payments

Control Number: RR-110113-97 **Branch Symbols:** CC:DOM:IT&A:2

Call Cynthia

RECORD OF CLEARANCE

Initiator: Edwin B. Cleverdon **Phone:** 622-4920

Branch Reviewer: Michael J. Montemurro **Phone:** 622-7269

DOMESTIC COORDINATION		**OTHER COORDINATION**	
ACC(FS) Reviewer	**Date:**	**Name (Symbols)**	**Date:**
____________	/ /	____________	/ /
Other Reviewer (Symbols)	**Date:**	**Name (Symbols)**	**Date:**
____________	/ /	____________	/ /

ASSISTANT CHIEF COUNSEL

Date Submitted: / / **Date Cleared:** / /

Other Contact Person (Phone): ____________ (-)

ASSOCIATE CHIEF COUNSEL

Date Submitted: / / **Date Cleared:** / /

CHIEF COUNSEL

Date Submitted: / / **Date Cleared:** / /

COMMISSIONER

Date Submitted: / / **Date Cleared:** / /

TREASURY

Date Submitted: / / **Date Cleared:** / /

Macro Form Revised 01/95

DETERMINED TO BE AN ADMINISTRATIVE MARKING
INITIALS: Py DATE: 4/2/2018
2018-0525-5

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Background Information Note

HOLDINGS: The proposed revenue ruling holds as follows:

1. Cash payments made to an individual participating in a work supplementation or support program described in § 16(b) of the Food Stamp Act of 1977, 7 U.S.C. § 2025(b), as amended by § 849 of the Personal Responsibility and Work Opportunity Reconciliation Act (the "work supplementation payments") that are funded by an employer contribution are included in gross income as compensation for services under § 61(a)(1). Work supplementation cash payments funded under the Food Stamp Program that are equal in value to and in lieu of food stamp coupon payments are excluded from income under § 8(b) of the Food Stamp Act, 7 U.S.C. § 2017. Work supplementation payments funded under a state public assistance program are excluded from gross income as payments in the nature of general welfare payments if certain conditions are met.

2. [HOLDING 2 REGARDING THE TAX TREATMENT UNDER § 32 OF THE PORTIONS OF THE PAYMENTS FUNDED BY THE EMPLOYER, THE FOOD STAMP PROGRAM, AND THE STATE PUBLIC ASSISTANCE PROGRAM TO BE PROVIDED BY CC:EBEO.]

3. [HOLDING 3 REGARDING THE TAX TREATMENT UNDER §§ 3121, 3306, AND 3401 OF THE PORTIONS OF THE PAYMENTS FUNDED BY THE EMPLOYER, THE FOOD STAMP PROGRAM, AND THE STATE PUBLIC ASSISTANCE PROGRAM TO BE PROVIDED BY CC:EBEO.]

A companion revenue ruling, Welfare to Work (RR-109108-97) addresses the income tax treatment of cash allowances to individuals receiving public assistance that are funded under § 403 of the Social Security Act (Temporary Assistance for Needy Families), 42 U.S.C. § 603, as amended by § 103 of the Personal Responsibility and Work Opportunity Reconciliation Act ("PRWORA").

SOURCE: This revenue ruling was established at the direction of the Associate Chief Counsel (Domestic).

REASON FOR PUBLICATION: The United States Department of Agriculture (USDA) has inquired whether payments made under § 16(b) of the Food Stamp Act are excluded from the income of public assistance recipients. USDA expects many states to establish work supplementation or support programs under § 16(b) of the Food Stamp Act as they redesign public assistance programs in response to the major overhaul of federally funded welfare programs under PRWORA.

PENDING REGULATIONS: USDA has informed us that they intend to publish regulations stating that payments made under § 16(b) of the Food Stamp Act that are funded by the Food Stamp Program are not income for federal income tax purposes.

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CONTRA ARGUMENTS: Work supplementation payments that are funded by the Food Stamp Program do not qualify for exclusion from income under § 8(b) because they are commingled with payments funded from other sources, such as the contribution made by an employer who hires a public assistance recipient into a wage subsidized job authorized under § 16(b). Work supplementation payments funded under a state public assistance program are included in gross income because the aggregate payments received by the individual under the program exceed (due to the employer contribution) the amount the individual would have received as food stamps and welfare benefits were the individual not participating in the program. See Legal Memo for additional discussion.

RESEARCH STATEMENT: Research has been completed by the initiator through July 9, 1997.

_______________________________ _______________
Senior Technician Reviewer, Branch 2 Date
CC:DOM:IT&A:2

Attachments:
Legal Memo [to be supplied].
H.R. Conf. Rep. No. 725, 104th Cong., 2d Sess 478 (1996).
Rev. Rul. 67-144.
Rev. Rul. 71-425.
Rev. Rul. 73-87.
Rev. Rul. 75-246.

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For Official Use Only

Draft Date: July 9, 1997 Control No. RR-110113-97

Part I

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

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Section 61.--Gross Income

26 CFR 1.61-1: Gross Income.
(Also §§ 32, 3121, 3306, 3401; 1.32-2; 31-3121(a)-1; 31.3306(b)-1; 31.3401(a)-1.)

Rev. Rul.

ISSUES

1. Are all or a part of cash payments received by an individual participating in a work supplementation or support program under § 16(b) of the Food Stamp Act of 1977, 7 U.S.C. § 2025(b), as amended by § 849 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104-193, 110 Stat. 2105 (1996)) (PRWORA) excluded from the individual's gross income?

2. Are all or a part of the cash payments received by the individual "earned income" under of § 32 of the Internal Revenue Code?

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3. Are all or a part of the cash payments received by the individual "wages" under § 3121 (Federal Insurance Contributions Act (FICA)), § 3306 (Federal Unemployment Tax Act (FUTA)) and § 3401 (federal income tax withholding)?

FACTS

State ST's public assistance program implements the provisions of Title I of PRWORA, relating to the Federal Block Grants for Temporary Assistance to Needy Families, by requiring welfare recipients to participate in work activities, including subsidized private employment. In addition, in 1997, ST elected under § 16(b)(2) of the Food Stamp Act of 1977 (the "Food Stamp Act") to use an amount equal to the allotment that would be issued to a household under the food stamp program to subsidize employment under a work supplementation or support program ("work supplementation program") established by ST. Pursuant to § 16(b)(3) of the Food Stamp Act, ST identified each household participating in the food stamp program containing an individual participating in the work supplementation program.

Under its work supplementation program, ST encourages nongovernmental employers to hire individuals on public assistance by transferring an amount equal to a public assistance recipient's monthly food stamp allotment and cash allowance to an employer for use as a wage subsidy. ST also provided to the United States Department of Agriculture a description of how public assistance recipients participating in the program would,

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within a specified period of time, be moved from supplemented or supported employment to employment that is not supplemented or supported. The public assistance recipients that ST places in supplemented or supported employment generally are individuals who lack sufficient self-confidence, education, experience, or work skills to compete in the labor market.

A household does not receive an allotment from ST for the period during which a household member participates in the work supplementation program. If a public assistance recipient fails to show up at work, then ST may [**TERMINATE ALL ASSISTANCE PROVIDED TO THAT HOUSEHOLD THAT IS FUNDED THROUGH THE FOOD STAMP PROGRAM AND ST'S PUBLIC ASSISTANCE PROGRAM?**] In addition, if a public assistance recipient ceases participating in the work supplementation program, the employer must return any undistributed amounts to ST; the employer may not use such funds for any other public assistance recipient participating in the work supplementation program.

A, an individual, receives public assistance payments each month from ST consisting of a $277 allotment of food stamps under the Food Stamp Act and a cash allowance of $350. Pursuant to the ST program, A was placed with private non-profit hospital H as a dietician's aide. A performs the same duties as other dietician's aides who are employed by H. H pays A $713 per month [**ARE OTHER H EMPLOYEES PAID ON A MONTHLY BASIS? IS THE AMOUNT THAT A RECEIVES PAID FOR PRIOR WORK DONE OR IS IT PAID IN ADVANCE OF THE WORK DONE?**] Of this amount, $627 is the wage subsidy paid

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by ST to H and consists of A's $277 monthly food stamp allotment and $350 monthly cash allowance. H contributes the remaining $86 to the monthly payment received by A. **[IS A's PUBLIC ASSISTANCE OR FOOD STAMP AMOUNT REDUCED DUE TO THE CONTRIBUTION TO RESOURCES MADE BY THE EMPLOYER?]**

LAW AND ANALYSIS

Law -- Issue 1

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

Section 8(b) of the Food Stamp Act, 7 U.S.C. § 2017, provides that the value of benefits provided under the food stamp program, whether through coupons, access devices, or otherwise shall not be considered income or resources for any purpose under any federal, state, or local laws including, but not limited to, laws relating to taxation, welfare, and public assistance programs.

Under § 16(b)(1) of the Food Stamp Act, 7 U.S.C. § 2025(b)(1) a work supplementation or support program is a program under which, as determined by the Secretary of Agriculture, public assistance (including any benefits provided under a program by the State and the food stamp program) is provided to an employer to be used for hiring a public assistance recipient who was not employed at the time the public assistance recipient entered the program.

Section 16(b)(2) of the Food Stamp Act, 7 U.S.C.

§ 2025(b)(2), provides that a State may elect to use an amount equal to the allotment that would otherwise be issued to a household under the food stamp program, but for the operation of § 16(b), for the purpose of subsidizing or supporting a job under a work supplementation or support program established by the State.

Section 16(b)(3) of the Food Stamp Act, 7 U.S.C. § 2025(b)(3), provides that if the State makes an election under § 16(b)(2) and identifies each household that participates in the food stamp program that contains an individual who is participating in the work supplementation or support program --

(A) the Secretary of Agriculture shall pay to the State agency the value of the allotment that the household would be eligible to receive but for § 16(b)(2);

(B) the State agency shall expend the amount received under § 16(b)(3)(A) in accordance with the work supplementation or support program in lieu of providing the allotment that the household would receive but for the operation of § 16(b);

(C) for purposes of --

(i) §§ 5 and 8(a), the amount received under § 16(b) shall be excluded from household income and resources; and

(ii) § 8(b), the amount received under § 16(b) shall be considered to be the value of the allotment provided to the household; and

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(D) the household shall not receive an allotment from the State agency for the period during which the member continues to participate in the work supplementation or support program.

The Conference Report explanation of § 849 of PRWORA, which amended § 16(b) of the Food Stamp Act, states that the provision

> establishes a new option for States to operate work supplementation or support programs under which the value of public assistance benefits are provided to employers who hire recipients and, in turn, use the benefits to supplement the wages paid the recipient.... **The food stamp value of the benefit could not be considered income for other purposes.** [Emphasis added.] H.R. Conf. Rep. No. 725, 104th Cong., 2d Sess. 478 (1996).

In addition, the Internal Revenue Service has consistently held that disbursements by a governmental unit that are made to individuals in the interest of the general welfare where services are not rendered are excludable from the gross income of the recipient. Whether payments under work-training programs are includible in a participant's gross income rests on whether the activity for which the payments are received is basically the performance of services or is only participation in a training program that promotes the general welfare. If the activity engaged in is basically the performance of services, the payments are compensation for services rendered, and are includible in the gross income of the recipient. Conversely, if the activity amounts only to participation in a training program, the payments are in the nature of relief payments made for the promotion of the general welfare and are excludable from the gross income of the recipient. See Rev. Rul. 75-246, 1975-1 C.B. 24, holding

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that payments received by a trainee under the Comprehensive Employment and Training Act are excluded from gross income if the trainee receives merely training in a classroom setting and are included in income if the trainee performs services during on-the-job training for a private construction company or for work experience in a city medical clinic.

The Internal Revenue Service has also held that disbursements by a governmental unit from a general welfare fund to an individual who is required to participate in a work relief or work-training program as a condition of receiving welfare benefits are not included in income if (1) participation in the program is arranged and funded by the governmental unit from which the participant was receiving public assistance benefits based upon personal or family assistance requirements and (2) the payments received under the work relief or work-training program are based on need and do not exceed the amount the individual would have received were the individual not participating in the program (exclusive of any extra allowance that may be provided for transportation or other costs related to participation). Rev. Rul 71-425, 1971-2 C.B. 76; Rev. Rul. 67-144, 1967-1 C.B. 12, as modified by Rev. Rul 71-425.

Rev. Rul. 73-87, 1973-1 C.B. 39, holds that welfare benefits paid under an experimental welfare program are excludable from gross income even though the aggregate of the welfare payments and earnings from employment exceed the amount recipient would have received had he or she not obtained employment. The program

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was designed to provide poor and near poor families with incentives to seek gainful employment by reducing welfare benefits by less than a dollar for each dollar earned. Under the program, a minimum income level for a family is established and a rate of reduction for payments is set. As the family's income level rises, the welfare payments are reduced by this rate until the minimum income level is reached. The ruling states that the welfare benefits are in the nature of general welfare payments and are intended to aid poor families without destroying their incentive to improve their living standards.

Law -- Issue 2

[LAW UNDER § 32 TO BE SUPPLIED BY CC:EBEO.]

Law -- Issue 3

[LAW UNDER § 3121, § 3306 AND § 3401 TO BE SUPPLIED BY CC:EBEO.]

Tax Treatment of Payments funded by the Employer. The $86 that A receives from E representing E's contribution to payments made under ST's work supplementation program are includible in gross income under § 61(a)(1) as compensation for services.

[TREATMENT OF THE EMPLOYER FUNDED PORTION OF THE WORK SUPPLEMENTATION PAYMENT UNDER §§ 32, 3121, 3306 AND 3401 TO BE SUPPLIED BY CC:EBEO.]

Tax Treatment of Payments funded under § 16(b) of the Food Stamp Act. Under § 8(b) of the Food Stamp Act, benefits received under the Food Stamp Program are not income for federal income

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tax purposes whether the benefits are received as coupons, access devices, or otherwise. Section 16(b) of the Food Stamp Act treats as a food stamp benefit the $277 monthly cash payment that is equal to the food stamp allotment that A would have received were A not participating in the ST work supplementation program. Because the portion of the cash payments A receives from E that are funded under § 16(b) of the Food Stamp Act are benefits under the food stamp program, they are excluded from gross income for federal income tax purposes pursuant to § 8(b).

[TREATMENT OF THE FOOD STAMP PORTION OF THE WORK SUPPLEMENTATION PAYMENT UNDER §§ 32, 3121, 3306 AND 3401 TO BE SUPPLIED BY CC:EBEO.]

Tax Treatment of ST's Public Assistance Payments. The $250 portion of the payment that A receives from E that is funded by the ST public assistance program is (1) paid under a work supplementation program arranged by ST, the governmental unit from which A was receiving public assistance benefits based upon personal or family assistance requirements and (2) is based on need and does not exceed the amount A would have received from ST were A not participating in the program. See Rev. Rul. 71-425 and Rev. Rul. 67-144 as modified by Rev. Rul. 71-425.

Further, like Rev. Rul. 73-87, the fact that the aggregate payments that A receives from the ST public assistance program, the Food Stamp Program, and E's contribution exceed the amount A would have received (due to the employer contribution of $86 per month) were A not participating in the ST work supplementation

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program does not change the character of the ST public assistance payments as payments in the nature of general welfare payments. Like the situation described in Rev. Rul. 73-87, the payments the ST public assistance payments made under the work supplementation program are intended to aid needy families without destroying their incentive to improve their living standards by obtaining gainful employment. Thus, the $250 portion of the payment that A receives from E that is funded by the ST public assistance program is excludable from A's gross income

[TREATMENT OF THE ST PUBLIC ASSISTANCE PORTION OF THE WORK SUPPLEMENTATION PAYMENT UNDER §§ 32, 3121, 3306 AND 3401 TO BE SUPPLIED BY CC:EBEO.]

HOLDINGS

1. Cash payments made under § 16(b) of the Food Stamp Act, 7 U.S.C. § 2025(b), as amended by § 849 of PRWORA (the "cash payments"), to an individual receiving public assistance that are funded by an employer contribution are included in gross income as compensation for services under § 61(a)(1). Cash payments funded under the Food Stamp Program that are equal in value to and in lieu of food stamp coupon payments are excluded from income under § 8(b) of the Food Stamp Act, 7 U.S.C. § 2017. Cash payments funded under a state public assistance program are excluded from gross income as payments in the nature of a general welfare payments if (1) the work supplementation or support

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program is arranged by the governmental unit from which the participant was receiving public assistance benefits based upon personal or family assistance requirements and (2) such payments are based on need and do not exceed the amount the individual would have received from the state welfare agency were the individual not participating in the work supplementation or support program.

2. [HOLDING 2 REGARDING THE TAX TREATMENT UNDER § 32 OF PORTION OF THE PAYMENTS FUNDED BY THE EMPLOYER, THE FOOD STAMP PROGRAM, AND THE STATE PUBLIC ASSISTANCE PROGRAM TO BE PROVIDED BY CC:EBEO.]

3. [HOLDING 3 REGARDING THE TAX TREATMENT UNDER §§ 3121, 3306, AND 3401 OF PORTION OF THE PAYMENTS FUNDED BY THE EMPLOYER, THE FOOD STAMP PROGRAM, AND THE STATE PUBLIC ASSISTANCE PROGRAM TO BE PROVIDED BY CC:EBEO.]

See Rev. Rul. 97-XX, page XX of this Bulletin for the federal tax treatment of cash allowances to individuals receiving public assistance that are funded under § 403 of the Social Security Act (Temporary Assistance for Needy Families), 42 U.S.C. § 603, as amended by § 103 of PRWORA.

DRAFTING INFORMATION

The principal authors of this revenue ruling are Edwin B. Cleverdon and Sheldon A. Iskow of the Office of Assistant Chief Counsel (Income Tax and Accounting) and Karin Loverud of the Office of Associate Chief Counsel (Employee Benefits and Exempt

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organizations). For further information, contact Mr. Cleverdon or Mr. Iskow on (202) 622-4920 regarding Issue 1 of this revenue ruling and Ms. Loverud at (202) 622-6060 regarding Issues 2 and 3 of this revenue ruling (not toll free calls).

Balanced-budget, tax-cut agreement is a good start

The balanced-budget package is not perfect, but it is a massive step in the right direction. Your editorial criticizes it for failing to address tough entitlement issues, but let's recall that Republicans tried to take on these issues after the 1994 elections ("Bowing to tax cuts, plan delays balancing budget," Our View, Debate, Wednesday).

Tax breaks are not giveaways to taxpayers; the money is ours. If the government would work at cleaning up inefficiency, it could give bigger tax breaks.

The assault on the "rich" for estate taxes is the most unfair of all taxes; the assets and money in an estate have been taxed, in most cases twice, yet the government feels it should take more than half of what people have worked to build as a family legacy. The media and liberals play this tax up as a "giveaway" to further the legacy of class warfare in this nation.

This country was built and is continuing its growth through individuals who are willing to take chances and build companies that employ thousands of people. For every success, most people fail many times first. When they finally succeed, the government wants to take more and more. Unlike politicians and editorial pundits, they build things that employ people, build technology and allow us to explore new frontiers such as Mars.

Steve Schoeman
Leawood, Kan.

By William Philpott, AP

Finally: Republican leaders celebrate House and Senate approval of the balanced-budget, tax-cut bill sent to the White House. Seated are Sen. Strom Thurmond, S.C., left, and Speaker Newt Gingrich, Ga. Looking on is Senate Majority Leader Trent Lott, Miss., right.

Agreement is a fraud

The budget agreement is a complete fraud. It reduces some taxes, notably capital gains and estate taxes, but spending has not really been touched. There were no hard decisions made on Medicare, Medicaid or Social Security. A commission was appointed to study the situation and report in December 1998, just after the 1998 congressional elections. What a coincidence. The bill puts dessert first — tax cuts now — and spending cuts later.

I'll bet the cuts never will be made. In theory, the budget will be balanced in 2002, after Clinton and many in Congress no longer will be in office. But the budget will not be balanced in 2002, or any time after, as long as we have politicians who put their re-election ahead of the country's welfare and are not willing to tell people that they must give up something in order to balance the budget.

George Hawthorne
Bossier City, La.

Spending cuts and increases

The utter irrationality of your editorial on the budget agreement cannot be better demonstrated than by contrasting two quotes from it.

You correctly point out the need to reduce government's drag on the economy: "The middle class would benefit more by Congress and Clinton further reducing government's share of the nation's income, rather than by stimulating a healthy economy with tax cuts and higher deficits."

Then you turn about and point out what you consider to be the only positive aspects of the agreement, each of which involve spending more money and increasing the government's share of the nation's income to pay for them: "There are some useful elements. The $24 billion for child health

'Workfare' is for transition, not full-time job

I would like to correct the inaccuracies in the story about the welfare-related provisions in our historic balanced-budget agreement ("Governors: Deal will hurt welfare reform," News, Wednesday). Specifically, the concerns expressed by the governors about programs that help move people from welfare to work — "workfare" — and how labor laws should be interpreted to apply to them.

Your article states that the landmark budget agreement reached by Congress and the White House "requires" workfare participants be given all the benefits mandated under existing labor regulations; for example, minimum wage, retirement benefits and unemployment compensation. This is not true.

Here are the facts:

Absolutely nowhere in our budget plan is there legislative language requiring labor regulations to be applied to workfare participants.

The Clinton administration's Labor Department has issued guidelines classifying workfare participants as "employees," thus covering them under more than 25 labor laws.

As the governors know, programs that have a proven record of helping those on welfare have featured transitional workfare placements that help welfare recipients learn to work. The Labor Department wants to treat workfare participants as if they are regularly employed in the workforce.

Republicans tried to stop them from doing that. House Republicans have worked continuously throughout the budget debate to overturn the department's interpretation.

Unfortunately, the administration has threatened to veto the entire balanced-budget bill over this issue. Rather than having the administration veto the first balanced budget in a generation — which also gives the American people their first real tax cut in 16 years and saves the Medicare program from impending bankruptcy — we have decided to try to resolve this as a priority issue in the fall, and we will act to reverse the Labor Department's poor judgment on this matter.

Newt Gingrich, R-Ga.
Speaker of the House
Washington, D.C.

gress to stand up to the industry and raise tobacco taxes by at least $1 a pack.

Karen H. Lewis, associate director
Tobacco Project, Advocacy Institute
Washington, D.C.

Passengers pay ticket tax

"Ticket tax: A bittersweet victory for big airlines" says airlines will pay $3 billion more in taxes over the next five years (Money, Thursday). This is incorrect.

some of their Social Security taxes, and their employers' match, into individual, self-managed retirement funds in exchange for reduced benefits from the government when they retire.

Instead of giveaway tax breaks now, let's start the process that is needed, not for our fiscal health in 2002, but for 2022.

Robert E. Chew
Indianapolis, Ind.

Complicates tax system

USA TODAY, MONDAY, AUGUST 4, 1997

APWA

AMERICAN PUBLIC WELFARE ASSOCIATION

Cornelius D. Hogan, President
A. Sidney Johnson III, Executive Director

cc Cynthia
~~Emily~~ Bromberg
Keith Fontenot

July 10, 1997

To: Diana Fortuna, The White House

Fr: Elaine Ryan, APWA

Re: FLSA, TANF and Child Care Draw down and APWA Child Care Survey

Fair Labor Standards Act Follow-up

Many thanks for taking the time to talk with me last evening. As we discussed, our members will be meeting in Washington from July 20-22 and I would like to give them the latest information on compliance with the FLSA under the new welfare reform law. The Department of Labor has not produced any additional materials or guides for states, nor have letters been sent to Commissioners on this important issue. I would like to be prepared to respond to our member's questions during our meeting to the fullest extent possible.

When the School to Work law passed, the Department of Labor produced a "how to" implementation guide for states to design programs such that the FLSA would not be "triggered." Could a similar document be produced to guide the state implementation of the new welfare law? Needless to say, it would be a critically important document. Without federal clarification, I fear states will face costly litigation and perhaps retroactive tax payments each of which would be paid out of the TANF block grant—resources that should serve vulnerable children and families. I also fear that long-term welfare clients with little or no work histories, will be denied an opportunity at work experience because these programs are just to risky and costly to administer.

In short, HELP! Any assistance you can give would be greatly appreciated.

APWA

AMERICAN PUBLIC WELFARE ASSOCIATION

Cornelius D. Hogan, President
A. Sidney Johnson III, Executive Director

cc Cynthia
cc DOL
HHS
OMB

PLEASE DELIVER IMMEDIATELY

Stacey –
see p. 2.
Also note her school to work argument

June 9, 1997

To: Diana Fortuna, The White House

Fr: Elaine M. Ryan, APWA

Re: Fair Labor Standards Act

Thank you for taking the time Friday to discuss various issues related to the application of the Fair Labor Standards Act to the work provisions of the Personal Responsibility and Work Opportunity Act of 1996. As I mentioned on the phone, the Department of Labor guidelines related to the School to Work statute may prove to be a useful in defining community service and work experience as training activities.

I have attached the School to Work Opportunities brief prepared by the DOL Wage and Hour division and the CRS brief excerpt for your information. Here is a possible simple resolution to this issue in legislation and in statute:

Legislative Clarification

- Under the work definition work experience and community service activities would need to meet the 6 point test whether the position was employment or training. If the position is considered to be training, then the FLSA would not apply. We would enact this 6 point test in law.

- We need to develop a definition of the characteristics of a training experience under the community service and work experience activities under the welfare law. This definition was created for school to work.

810 First Street, NE, Suite 500, Washington, DC 20002-4267 (202) 682-0100 FAX: (202) 289-6555

- This language would be consistent with the School to Work law. For example, a teen mom in a school to work program (considered to be training) is not subject to the FLSA and not paid the minimum wage.

- If the community service or community work experience slot was considered to be a "job," then the FLSA would apply.

- If the FLSA applies, then the minimum wage could be calculated by adding TANF and Food Stamps. The remaining hours could be met by engaging the client in other activities such as unlimited job search, job training or education.

- In regulation, the HHS Secretary could grant states a good cause exemption for failure to meet the work rates, if the state paid the minimum wage up to the benefit levels but could not meet the hours of work requirement.

Technical Assistance

- To date, Governors and state welfare commissioners have not received an official letter from the DOL stating their interpretation of the application of FLSA to state welfare to work plans. They could use a letter to clear up the confusion and to answer some unresolved questions such as:

  1. How does tax law apply to these positions? — Treasury

  2. Does the state need to transfer the client benefit to the non-profit or for profit placement and require the "employer" to issue a paycheck. DOL said this during our briefing but it would be a major change in the way CWEP was administered. *

  3. Who is the employer?

  4. Is this earned or unearned income for the purpose of calculating the food stamp benefit?

  5. Does the child support collection need to be subtracted from the client benefit when calculating the minimum wage? *

  6. How do the restrictions under the food stamp work provisions apply to the TANF work rates, when merging benefits together?

- States would like these issues clarified as soon as possible so that they may comply with the law.

- Any technical assistance given to one state should be shared with other states to guide their program design and administration.

- HHS and DOL need to work as a team in forming and disseminating this critical technical assistance to states.

Diana, thank you again for your help. I am anxious to help in any way I can. If you need to reach me please call 202-682-0100 or eryan@apwa.org.

a. What are the elements of a learning experience at an employer's worksite?

There are four elements that constitute a learning experience under STW. Specifically, a learning experience:

Elements of a Learning Experience

(1) is a planned program of job training and work experience for the student, appropriate to the student's abilities, which includes training related to preemployment and employment skills to be mastered at progressively higher levels that are coordinated with learning in the school-based learning component and lead to the awarding of a skill certificate;

(2) encompasses a sequence of activities that build upon one another, increasing in complexity and promoting mastery of basic skills;

(3) has been structured to expose the student to all aspects of an industry and promotes the development of broad, transferable skills; and

(4) provides for real or simulated tasks or assignments which push students to develop higher-order critical thinking and problem-solving skills.

If only some of these elements are met, it is possible that an STW student would be an employee under FLSA; however, all of the facts and circumstances of the situation would have to be considered to decide if an employment relationship exists and whether the student or enterprise is covered by the FLSA. The Wage-Hour Offices listed on Page 19 can help you make the correct determination.

b. When is a learning experience not employment, as defined by FLSA?

Student Criteria

A student enrolled in an STW learning experience as described above would ***not*** be considered an employee within the meaning of FLSA if ***all*** of the following criteria are met:

(1) the student receives ongoing instruction at the employer's worksite and receives close on-site supervision throughout the learning experience, with the result that any productive work that the student would perform would be offset by the burden to the employer from the training and supervision provided; and

★★★

Fair Labor Standards Act

Student Criteria (cont.)

(2) the placement of the student at a worksite during the learning experience does not result in the displacement of any regular employee — i.e., the presence of the student at the worksite cannot result in an employee being laid off, cannot result in the employer not hiring an employee it would otherwise hire, and cannot result in an employee working fewer hours than he or she would otherwise work; and

(3) the student is not entitled to a job at the completion of the learning experience — but this does not mean that employers are to be discouraged from offering employment to students who successfully complete the training; and

(4) the employer, student, and parent or guardian understand that the student is not entitled to wages or other compensation for the time spent in the learning experience — although the student may be paid a stipend for expenses such as books or tools.

When ***all four*** of the above student criteria are met, an employer would not be required to pay wages to a student enrolled in an STW learning experience.

c. What does it mean if a learning experience is not subject to FLSA?

It means that a student is not an employee, wages are not paid, and Federal child labor laws do not apply. Payment of a stipend is optional. However, a stipend may not be used as a substitute for wages. A stipend is generally limited to reimbursement for expenses such as books, tuition, or tools. There are no specific stipulations for the length of a learning experience, as long as the four criteria listed above apply throughout the period of the student's participation.

While child labor laws do not apply if there is not an employment relationship, STW systems are encouraged to adhere to child labor laws with regard to hazardous working conditions. Instruction and training in occupations that involve the use of machinery such as slicing machines, trash compactors, and bread dough kneading machines have been known to cause serious injuries. Child labor laws provide guidance that can assist STW participants in determining hazardous jobs or working conditions for students. (See Exhibits in Part II.)

★★★

School-to-Work Opportunities

1st Edition **June 1995**

Work-Based Learning and the Fair Labor Standards Act

This guide on work-based learning and the Fair Labor Standards Act is designed to serve employers, educators, agency placement staff, labor organizations and all those involved in School-to-Work initiatives by helping them to understand a variety of issues related to students in the workplace.

This guide was produced by the U.S. Departments of Education and Labor's Office of School-to-Work Opportunities in support of the School-to-Work Opportunities Act (P.L. 103-239). Prepared in collaboration with the Office of the Solicitor and the Employment Standards Administration of the Labor Department, this guide is designed as an introductory overview of FLSA and is not intended to be used as an official interpretive document.

For more specific information and technical assistance on FLSA, please call the Department of Labor's Wage-Hour Division, listed on Page 19. For general information regarding School-to-Work Opportunities, call the School-to-Work Offices at (202) 401-6222.

Photocopying and wide dissemination of this guide is encouraged.

Guidelines developed by the Labor Department have long excluded student trainees from FLSA coverage. The six requirements must all be present: (1) training is similar to that given in a vocational school; (2) training is for the benefit of the trainees or students; (3) trainees or students do not displace regular employees, but work under their close supervision; (4) the employer derives no immediate advantage, and its operations on occasion may actually be impeded; (5) trainees or students are not necessarily entitled to a job at the conclusion of training; and (6) trainees and students understand they are not entitled to wages for their time in training. WH Pub. 1297 at 4-5.

School-to-Work. The School-to-Work Opportunities Act of 1994 (STW) established a program for work-based learning experiences for students. In its guidance under that Act, the Labor Department provided that a student is *not* to be considered an employee if *all* four of the following criteria are met:

> (1) the student receives ongoing instruction at the employer's worksite and receives close on-site supervision throughout the learning experience, with the result that any productive work that the student would perform would be offset by the burden to the employer from the training and supervision provided; and,
>
> (2) the placement of the student at a worksite during the learning experience does not result in the displacement of any regular employee--i.e., the presence of the student at the worksite cannot result in an employee being laid off, cannot result in the employer not hiring an employee it would otherwise hire, and cannot result in an employee working fewer hours that he or she would otherwise work; and,
>
> (3) the student is not entitled to a job at the completion of the learning experience--but this does not mean that employers are to be discouraged from offering employment to students who successfully complete the training; and
>
> (4) the employer, student, and parent or guardian understand that the student is not entitled to wages or other compensation for the time spent in the learning experience--although the student may be paid a stipend for expenses such as books or tools. STW Guide at 3-4.

Volunteer. The term employee does not include a volunteer. In the public sector, a volunteer is an individual who performs a service for a public agency for civic, charitable, or humanitarian reasons, without promise, expectation or receipt of compensation. 29 C.F.R. § 553.101(a). In the private sector, individuals who volunteer or donate their services, usually on a part-time basis, for public service, religious, or humanitarian objectives, not as employees and without contemplation of pay, are not considered employees of the religious, charitable and similar nonprofit corporations which receive their services. WH Pub. 1297 at 6-7; *Tony and Susan Alamo Foundation v. Secretary of Labor,* 471 U.S. 290 (1985).

DEPARTMENT OF THE TREASURY
WASHINGTON

ASSISTANT SECRETARY

MEMORANDUM

TO: Stacey Grundman
Department of Labor

FROM: Donald C. Lubick
Acting Assistant Secretary (Tax Policy)

SUBJECT: Federal Tax Treatment of Government Assistance Payments

DATE: February 18, 1997

This memorandum discusses generally the federal tax treatment of government assistance payments in the context of the recently enacted welfare reform law. As discussed below, existing tax guidance provides general principles that may be applied to situations arising under the new welfare law. It should be noted, however, that although the Office of Tax Policy reviews guidance issued by the Internal Revenue Service (IRS) to ensure that appropriate attention is paid to tax policy considerations, the IRS, and not the Office of Tax Policy, is charged with administering the Nation's tax laws. Accordingly, only the IRS can provide specific guidance with respect to the federal tax consequences of programs operated under the new welfare law.

I. Background

In 1996, Congress reformed the Nation's welfare system through the enactment of The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (the "Act"). Under the Act, Aid to Families with Dependent Children (AFDC) was replaced with Temporary Assistance for Needy Families (TANF). Under TANF, states are given greater flexibility to determine basic eligibility rules and benefit amounts. While AFDC required some work activities, TANF extends these requirements and expands the penalties for non-compliance. By 2002, TANF will require that 50 percent of single parents with children over the age of one and 90 percent of two-parent families be engaged in work activities (initially, these requirements are 25 and 50 percent, respectively). These requirements will be effective for families who have received assistance for at least two years. Moreover, failure to meet these requirements may result in penalties for both the individual and the state.

In 2002, the Act generally requires welfare recipients to engage in 30 hours a week (20 in 1997) of qualifying activity in order to continue to receive public assistance. The Act defines qualifying activities to include unsubsidized employment, subsidized public sector employment, work experience if sufficient private sector employment is not available, on-the-job training, job search and job readiness assistance, community service programs, vocational educational training, jobs skill training directly related to employment, education related to employment, education directly related to employment in the case of a recipient who lacks a high school diploma or equivalency, and satisfactory attendance at secondary school for a recipient who has not completed high school.

Further, the Act also allows states to operate work supplementation or support programs under which the value of public assistance benefits (including both TANF and food stamp benefits) are provided to employers who hire recipients and, in turn, use the benefits to supplement the wages paid the recipient. Work supplementation or support programs would be available to new employees only and could not displace the employment of those who are not in the programs. States and localities may also operate workfare programs under which certain food stamp recipients may be required to perform work in return for the minimum wage equivalent of their household's monthly food stamp allotment. To a limited extent, both work supplementation and workfare programs could exist under prior law.

According to the Department of Labor (DOL), the Act does not exempt welfare recipients from coverage under the federal employment laws, such as the Fair Labor Standards Act (FLSA). These laws apply to welfare recipients engaged in employment activities in the same manner as they apply to other workers. Thus, for example, TANF recipients must be paid at the minimum wage for any activities that constitute employment for FLSA purposes.

While this memorandum generally summarizes existing federal tax guidance as it relates to government assistance payments, it is not a substitute for specific guidance that may be issued by the IRS. In addition, the Office of Tax Policy is concerned by the tax policy issues raised by the Act. On equity grounds, employees should be treated in the same fashion for tax purposes, regardless of whether or not amounts received from their employers may be subsidized by TANF, food stamp benefits, or other state-provided funds. Under this view, TANF participants' wages should be subject to income, FICA, and FUTA taxes, and be treated as "earned income" for purposes of the earned income tax credit (EITC). From an administrative perspective, this approach is also more efficient. It would be burdensome for both employers and the IRS if TANF-subsidized wages were treated differently than other wage income. For example, employers could not easily adjust income tax withholding on their workers' wages to reflect TANF or food stamp subsidies.

On the other hand, we recognize that an argument could be made that the employer is simply acting as an agent of the state to the extent of the TANF subsidy received by an individual, and that such a subsidy represents a non-taxable general welfare payment and should not be characterized as compensation for services. Under this latter view, it would be inappropriate for the TANF-subsidized payments to increase the number of low-income individuals subject to federal income and social security taxes. Subjecting payments to such individuals to federal tax could also lead to an increase in budgetary costs since it is likely that the resulting EITC payments would exceed the additional amount of revenue which would be raised. States could be expected to push this view, in that transforming limited TANF funds into wage subsidies would increase the income of welfare recipients by making them eligible for the EITC. From a state's perspective, this would be advantageous since the EITC -- unlike TANF -- is 100 percent federally funded.

As described below, current IRS guidance would appear to limit states' abilities to characterize welfare benefits as wages when no services are actually performed. However, both welfare and tax practices are evolving in this area, and the Office of Tax Policy will continue to monitor both state actions and IRS interpretations in order to determine if more statutory guidance is needed.

II. Existing Federal Tax Guidance Relating to Government Assistance Payments

A. General Welfare Doctrine In General.

In general, all income from whatever source derived is subject to taxation unless excluded by law. Section 61(a)[1]; Commissioner v. Glenshaw Glass Co., 348 U.S. 426 (1955). Compensation for services is specifically included within the statutory definition of gross income. Section 61(a)(1). Although there is no statutory exclusion for government assistance payments, under an administrative rule of the IRS that has been approved by some courts, many types of government assistance payments are excludable from the recipient's income if they are in the nature of general welfare payments -- the so-called "general welfare doctrine."

Under the general welfare doctrine, government assistance payments that are intended to promote the general welfare, and are not in exchange for services rendered, are not includible in the recipient's income. See Bannon v. Commissioner, 99 T.C. 59, 62-63 (1992); Bailey v. Commissioner, 88 T.C. 1293, 1299-1301 (1987).[2] For example, the IRS has ruled that (i) government payments to assist low-income persons with utility costs are in the nature of relief payments made for the promotion of the general welfare and are excludable from recipient's income[3]; (ii) government payments made to the blind from a general welfare fund or to crime victims are excludable from the recipient's income (unless such payments are fraudulently

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1. All "Section" references are to sections of the Internal Revenue Code of 1986, as amended.

2. See also United Housing Foundation, Inc. v. Forman, 421 U.S. 837, 855 (1975) ("In a real sense, [the New York State low-income housing subsidy] no more embodies the attributes of income or profits than do welfare benefits, food stamps, or other government subsidies."); Graff v. Commissioner, 673 F.2d 784, 785 (5th Cir. 1982) ("general welfare benefits [are] not taxable").

3. Rev. Rul. 78-170, 1978-1 C.B. 24.

received)[4]; (iii) government payments to assist low-income city inhabitants in refurbishing their homes are excludable from the recipient's income[5]; and (iv) payments under an experimental anti-poverty program funded by the government that is intended to aid poor families without destroying their incentive to improve their living standards are excludable from the recipient's income.[6]

The general welfare doctrine applies only if the government payment program is a need-based program. Bailey, 88 T.C. at 1300. Thus, payments are includible in income when they are received under social welfare programs that are not based on need. Id. at 1301 (government payments to restore the facade of recipient's building not excludable under the general welfare doctrine because the payments were made without regard to the recipient's need); Rev. Rul. 76-131, 1976-1 C.B. 16 (recipients required to include in income payments made under Alaska's Longevity Bonus Act because such payments were based on the recipient's age and length of residency and not on financial status, health, education background, or employment status); Rev. Rul. 76-75, 1976-1 C.B. 14 (interest reduction payments made to mortgagee on behalf of a limited-profit corporation formed to acquire and lease apartments in a low-income housing project are includible in the corporation's income because such payments are a substitute for rent).

Further, only the ultimate intended beneficiaries of the welfare payments are entitled to exclude the payments from income. Thus, government payments to persons who provide care to disabled persons are includible in the recipients's income as compensation for services; the disabled persons, and not the recipients of the payments, are the ultimate intended beneficiaries of the government payments. Bannon, 99 T.C. at 63-66 (noting that "in every sense the payments [to the care giver] were treated by the [government agency] as compensation for services"; care giver required to submit time records to agency and agency issued IRS Form W-2 to care giver).

B. Application of General Welfare Doctrine to Work-Training Programs.

The general welfare doctrine applies only if the government assistance payments are not

4. Rev. Rul. 57-102, 1957-1 C.B. 26 (payments to blind persons); Rev. Rul. 74-74, 1974-1 C.B. 18 (payments to crime victims).

5. Rev. Rul. 76-395, 1976-2 C.B. 16, 17 ("The Internal Revenue Service has consistently held that payments made under legislatively provided social benefit programs for promotion of general welfare are not includible in an individual's gross income.")

6. Rev. Rul. 73-87, 1973-1 C.B. 39 ("[D]isbursements from a general welfare fund in the interest of the general public which are not made for services rendered are not includible in gross income.").

compensation for services. Thus, for example, government benefit payments that are made directly by government agencies to persons who are undergoing training or retraining (including on-the-job training) are excludable from the recipient's income because the payments are intended to promote the general welfare and are not compensation for services. Rev. Rul. 63-136, 1963-2 C.B. 19 (payments that are made to individuals to aid them in their efforts to acquire new skills that will enable them to obtain better employment opportunities)[7]; see also Rev. Rul. 72-340, 1972-2 C.B. 31 (city-paid stipends that are paid to unemployed or underemployed probationers, including some who are placed with private employers, are excludable from the recipient's income, and are not wages for income tax withholding or FICA tax purposes, because the stipends are intended to aid the recipients in acquiring training in skills that will afford them opportunities for gainful employment). ?

To determine whether payments under work-training programs are includible in a participant's income, one must determine whether the activity for which the payments are received is basically for the performance of services or is for participation in a training program that promotes the general welfare. Rev. Rul. 75-246, 1975-1 C.B. 24. If a participant engages in an activity that is basically the performance of services, the payments he receives are includible in income as compensation for services; otherwise the payments are considered relief payments made for the promotion of general welfare and are excludable from income. Id. at 24-25.[8] The IRS recognizes that this determination can be extremely difficult in certain situations. Rev. Rul. 71-425, 1971-2 C.B. 76, 77.

The following sections discuss existing federal tax guidance relating to this inquiry. Due to the inherently factual nature of the inquiry, the federal tax consequences arising in any case will depend on the facts and circumstances of such case.

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7. The ruling refers to an earlier ruling in which the IRS held that unemployment compensation payments were excludable from income because such payments are made for the promotion of the general welfare. Rev. Rul. 55-652, 1955-2 C.B. 21. This ruling has been overturned by statute. Section 85 (unemployment compensation is specifically includible in income). Congress enacted Section 85 in 1978 because unemployment compensation payments made under government programs are, in substance, a substitute for taxable wages. H.R. 1445, 95th Cong. 2d Sess. 47, reprinted in 1978-3 C.B. 221.

8. Compare Rev. Rul. 63-136, supra (overriding purpose to aid recipient in acquiring new skills to obtain better employment opportunities), and Rev. Rul. 68-38, 1968-1 C.B. 446 (same), with Rev. Rul. 74-413, 1974-2 C.B. 333 (overriding purpose of state program established to provide short-term employment in disaster relief activities for unemployed individuals is to provide participants with compensation for services), and Rev. Rul. 65-139, 1965-1 C.B. 31 (payments made to enrollees in work-training program established under the Economic Opportunity Act of 1964 are includible in income because the enrollees are being compensated for services performed even though such services embody some degree of training). *

1. <u>Work-Training Programs Where Government Makes Payments to Participants</u>.

In Rev. Rul. 71-425, the IRS ruled that payments received under government sponsored work-training programs are <u>excludable</u> from the recipient's income, and are <u>not</u> considered wages for income tax withholding and FICA tax purposes, if the following conditions are satisfied:

- participation in the work-training program is arranged and financed by a public agency from which the participant is receiving public welfare benefits based upon personal or family subsistence requirements; and

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

✓ interaction w/FLSA wage!

If the amount received under the work-training program (exclusive of allowances) is greater than the amount that would have been received by the participant had there been no work-training program, the entire amount received is considered as taxable gross income and wages for withholding and FICA tax purposes, except to the extent that it can be demonstrated that the amount received exceeds the fair market value of the services performed under the program. ?

In this ruling, a state welfare agency requires able-bodied individuals on welfare to participate in work experience projects that it sponsors or administers under federal law (Title V of the Economic Opportunity Act of 1964). The agency makes the work assignments and makes the only payments the participants receive in connection with the work.[9] <u>Participants receive payments at a rate equal to the prevailing hourly rate for similar work in the community or the minimum rate established under state law for such work, whichever is higher. They work only the number of hours that produce a payment equal to the relief allowance they would otherwise receive in any one month period. If additional costs, such as transportation, are incurred, the participant works sufficient additional hours to cover such costs.</u> In the ruling, the IRS recognizes that work-training programs include elements of both work and training, and thus, it is extremely difficult to characterize any program as primarily involving one or the other and not practical to bifurcate a program into the relative proportions of work and training. In addition to the holdings set forth above, the ruling also holds that <u>where the primary measure of the amount a participant receives under a program is based on personal or family need of the recipient rather than the value of any services performed, the payments received are more in the nature of a</u>

9. Examples of work activities included in the federal program pursuant to which the work-training programs are operated include simple maintenance of public roads; routine and general office clerical work; untrained aides and assistance in institutions, such as bus boys and kitchen workers; and trained laboratory assistants.

welfare payment in connection with the recipient's participation in a training program than a payment for services rendered.[10]

2. Payments to Trainees Under Government Training Programs.

The IRS has illustrated the federal income and employment tax treatment of payments made and received under titles I and II of the Comprehensive Employment and Training Act of 1973 (CETA)[11] in various factual situations. Rev. Rul. 75-246, supra. These situations are as follows:

- Training with Private Sector Employers. A trainee is given on-the-job training by a privately owned company selected by the state sponsor. The company has and exercises the degree of control over the trainee to establish an employment relationship between the trainee and the company.[12] The company receives the trainee's services and compensates him at the usual entry wage for the position for which training is being given. The company's training expenses are reimbursed in part by the state.
    - Conclusion. The payments the trainee receives from the company are includible in income because the trainee is basically engaged in the performance of services, even though the services embody some degree of training. Accordingly, the company, as the employer, is required to withhold income and FICA tax, and pay FUTA tax, with respect to the payments made to the trainee.
- Training with Public Sector Employers. A trainee is given work experience in the public sector, in this case a medical clinic owned and operated by a city. The

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10. The IRS bases this conclusion on the fact that in many cases the payments received under a work-training program are received in lieu of, and in amounts no greater than, payments that the participant was receiving based upon personal and family subsistence requirements from a public welfare agency prior to his participation in the work-training program.

11. The stated purpose of CETA is to provide job training and employment opportunities for economically disadvantaged, unemployed, and underemployed persons and to assure that training and other services lead to maximum employment opportunities and enhance self-sufficiency by establishing a flexible and decentralized system of federal, state, and local programs. Rev. Rul. 75-246, 1975-1 C.B. 24.

12. The determination of whether a person is an employee or independent contractor for federal tax law purposes is based on common law factors. See, e.g., Rev Rul. 87-41, 1987-1 C.B. 296, which sets forth twenty factors to be considered for this purpose.

facts establish that the city is the employer of the trainee. In addition to the work experience, the trainee is given a small amount of counseling and classroom training. One fourth of the amount the city pays the trainee for his services and participation in the training activities is reimbursed by the state sponsor. The trainee may also receive an allowance, determined on the basis of need, to cover certain expenses incident to the work-training experience, such as transportation expenses.

- Conclusion. The payments the trainee receives from the city are includible in income because the trainee is basically engaged in the performance of services. Accordingly, as to such payments, the city is required to withhold income tax.[13] Any allowance, however, is excludable from income, and is not subject to income tax withholding, FICA tax or FUTA tax. Such payment is made for the promotion of the general welfare because it is paid only to make the trainees participation in the training possible.

- Training Without the Performance of Services. A trainee is given vocational, occupational, and educational training designed to upgrade basic skills, in a classroom or institutional setting. The training is provided by both public and private agencies. The trainee, who performs no services for the training agency, receives from the state an allowance for his participation in the training activity. If the trainee is not a recipient of public assistance, the trainee receives an amount equal to the minimum wage under FLSA, increased for the number of the trainee's dependents and for certain other expenses. Trainees who receive public assistance are paid an incentive allowance of $30 per week.

    - Conclusion. Allowances paid to the trainees are excludable from their income because such payments are in the nature of relief payments made for the promotion of the general welfare and are not compensation for services rendered. Further, because trainees perform no services for the training agency and the allowances paid are not directly related to any services performed, there is no employment relationship between the trainee and the training agency. Thus, the state payor of the allowance is not obliged to withhold income tax or FICA taxes, nor to pay FUTA tax, with respect to the allowance.

---

13. The ruling holds that the city is not required to withhold FICA tax, or pay FUTA tax, because state and local employees are not covered under such programs. Under current law, however, state and local employees may be subject to FICA. In such event, the state or local government would be required to withhold FICA tax.

III. Application of Existing Guidance

Existing federal tax guidance provides general principles that may be applied to situations arising under the Act. While the application of these principles may be clear in some cases, specific guidance should be sought from the IRS in the majority of cases. The following two scenarios illustrate the potential application of existing tax law to extreme examples that may arise under the Act.

First, welfare recipients who are engaged solely in training activities, and who do not perform any services for the training agency, would not have to include any of the payments received in income. Further, the payments would not constitute wages for income tax withholding, and FICA and FUTA tax purposes.

Second, welfare recipients who perform services as an employee (determined under tax principles) for an employer, whether public or private, and who receive payments from the employer would have to include the payments in income as compensation for services, even if the services performed involved some measure of training. In addition, the payments would constitute wages for income tax withholding, and, if applicable, FICA and FUTA tax purposes. This conclusion would not change even if a government agency reimburses the employer for a portion of the amounts paid to the recipient.

AFSCME®
American Federation of State, County and Municipal Employees, AFL-CIO
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August 1, 1997

The President William Jefferson Clinton
The White House
Washington, DC 20500

Dear Mr. President:

On behalf of the 1.3 million members of the American Federation of State, County and Municipal Employees (AFSCME), I want to express our gratitude to you and your administration for defending the principles of fairness for workfare workers and public accountability in the administration of the Medicaid and Food Stamp programs during negotiations on the spending provisions of the budget agreement.

We are extremely pleased that the final budget agreement retained basic labor rights for workfare workers and that you were able to prevail on public administration of the Medicaid and Food Stamp programs. There is no doubt that, without your steadfast efforts on both of these issues, the outcome would have been very different and we deeply appreciate your help and support.

Not surprisingly, Republican congressional leaders already have indicated that they will try again this fall to overturn your administration's policies on these two issues. We look forward to your continuing support in our efforts to protect the rights of workfare workers and retain public administration of these two crucial federal benefit systems in the coming months.

Sincerely yours,

Gerald W. McEntee
International President

GWMcE:nmr

AUG - 8 1997

in the public service

What about what Bruce said yesterday at the briefing!!

(Not that I'm suggesting you raise it now)

Do you

Fair Labor Standards Act (FLSA) Options

Option 1:

- If an individual participating in a work experience or community service program is an employee (as determined by current law), the Fair Labor Standards Act (FLSA) applies.

  -- Participants who are employees are covered by employee protection laws such as the FLSA, safety and health, and anti-discrimination laws.

  -- Participants who are not employees (e.g., trainees) under the FLSA, will be covered by other employee protection laws such as safety and health and anti-discrimination laws.

    o In addition, they will be covered by a grievance procedure that includes the right to a hearing within a specified time period and appeal of an adverse finding to a neutral State agency selected by the Governor.

- Participants in activities funded by welfare-to-work funds or TANF cannot displace current employees (including a reduction in hours, wages, or benefits) or be employed in a job resulting from a layoff or a workforce reduction to create the vacancy or in a job that impairs promotional opportunities for current employees. (Senate provision)

- Regardless of "employee" status, participants in programs financed with welfare-to-work or TANF funds, and their employers, shall not be covered by unemployment compensation and FICA taxes. Such individuals shall not be eligible for the EITC.

- Community service employment and work experience would not be listed as allowable activities under Welfare-to-Work.

Option 2:

- Guidance on the determination of the applicability of the FLSA to participants in community service or work experience programs, issued by the Department of Labor (DOL) in May 1997, shall remain unchanged through September 30, 1999. The DOL shall not issue any other regulations, interpretations, or guidance on this matter prior to September 30, 1999.

  -- Participants who are not employees shall be treated as in Option 1.

- No further legislative riders to determine of the applicability of the FLSA to participants in community service or work experience programs would be permitted in either appropriations or authorizing language until after September 30, 1999.

- Anti-displacement provisions same as Option 1.

- Coverage of and eligibility for unemployment compensation, FICA, and the EITC same as Option 1.

Option 3:

- House provision, but sunset on September 30, 1999. Participants in work experience and community service programs during this period are not considered to be receiving compensation for work and are not entitled to a salary or work or training expenses.

- Unemployment compensation, FICA, and the EITC same as Option 1.

Fair Labor Standards Act (FLSA) Options

Option 1:

- If an individual participating in a work experience or community service program is an employee (as determined by current law), the Fair Labor Standards Act (FLSA) applies.

  -- Participants who are employees are covered by employee protection laws such as the FLSA, the OSH Act, and anti-discrimination laws.

  -- Participants who are not employees (e.g., trainees) under the FLSA, will be covered by other employee protection laws such as the OSH Act and anti-discrimination laws.

  o In addition, they will be covered by a grievance procedure that includes the right to a hearing within a specified time period and appeal of an adverse finding to a neutral State agency selected by the Governor.

- Participants in activities funded by welfare-to-work funds or TANF cannot displace current employees (including a reduction in hours, wages, or benefits) or be employed in a job resulting from a layoff or a workforce reduction to create the vacancy or in a job that impairs promotional opportunities for current employees. (Senate provision)

- Regardless of "employee" status, participants in programs financed with welfare-to-work or TANF funds, and their employers, shall not be covered by unemployment compensation and FICA taxes. Such individuals shall not be eligible for the EITC.

Option 2:

- The determination of the applicability of the FLSA to participants in community service or work experience programs published in the Federal Register by the Department of Labor (DOL) on May 16, 1997 shall remain unchanged through September 30, 2000. The DOL shall not issue any other regulations, interpretations, or guidance on this matter prior to September 30, 2000.

  -- Participants who are not employees shall be treated as in Option 1.

- Anti-displacement provisions same as Option 1.

- Coverage of and eligibility for unemployment compensation, FICA, and the EITC same as Option 1.

Option 3:

- House provision, but sunset on September 30, 2000. Participants in work experience and community service programs during this period are not considered to be receiving compensation for work and are not entitled to a salary or work or training expenses.

- Unemployment compensation, FICA, and the EITC same as Option 1.

AmeriCorps members serve in clinics, VA hospitals, and other health facilities, focusing primarily on children and youth. For instance, AmeriCorps members were able to immunize over 30,000 children last year.

cc Cynthia

The Nickles Sanction Amendment

The Nickles amendment to the Senate Reconciliation bill amends the welfare reform law to provide that application of the Federal minimum wage under the Fair Labor Standards Act shall not prohibit States from imposing any penalties for failure to comply with TANF. Presumably, the intent of this language is to allow States to impose monetary sanctions on working welfare participants even if doing so would mean they receive less than the minimum wage for their work.

The sanctions provisions in welfare reform and the application of the Federal minimum wage law to working welfare recipients can and must work in harmony to achieve real and lasting welfare reform. Therefore, this provision is acceptable **provided** that no State would be allowed to impose a monetary sanction that reduced an individual's combined TANF cash benefit and food stamps benefit below the Federal minimum wage for the number of hours actually worked by the individual during the period covered by the payment.

1. Reasons to Oppose the Nickles Amendment

Violates Core Principle of Employee/Employer Relationship: A governmental entity has the power to take money from citizens - in the form of sanctions, fines, court orders or taxes, for example. But NO EMPLOYER has the right to take money from an employee as a punitive measure if that would bring the employee's earnings below the minimum wage. Even a governmental entity in its role as an employer would be prohibited from paying less than the minimum wage as a result of unilaterally withholding wages due an employee without a court order. The Nickles Amendment for the first time violates that principle by allowing a State, in its role as employer, to withhold from an employee the minimum wage that employee is legally -- and rightfully -- entitled to under the Fair Labor Standards Act.

Undermines the Minimum Wage: This provision would allow a sub-minimum wage for work *compelled* by the welfare reform law through the imposition of sanctions by the State. By forcing some welfare recipients to work for sub-minimum wages, this provision undermines the minimum wage and the basic premise that people should be paid for the work they perform.

Contrary to Goals of Welfare Reform: Allowing States to pay welfare recipients a sub-minimum wage undermines the central goal of welfare reform -- breaking the cycle of dependency by moving people from welfare to work. Welfare recipients earning less than the minimum wage will be unable to pay costs related to employment (travel, child care, clothing) or to support their families, sabotaging their attempt to achieve self-sufficiency and independence.

Leaves Subsidized Employees Vulnerable: Under prior welfare law, welfare recipients in *subsidized* employment - public or private - were treated like any other employees, with the same rights and protections. The Nickles Amendment would allow a State to make punitive deductions from the pay of a State employee on welfare, even if that would bring the employee's pay below the minimum wage - even though the State would be barred from doing the same to any of its other employees.

And courts might use Nickles to justify payment of less than the minimum wage to a subsidized employee - even in the private sector. If a State reduces the subsidy it pays to an employer as a means of sanctioning a person on welfare, the private employer could refuse to pay that employee the minimum wage as required by law, using the Nickles amendment as a defence ... and may find a court sympathetic to the argument.

States Benefit Directly by Getting Cheap Labor: The Nickles Amendment clearly creates a conflict of interest for States: the State imposes and collects the sanctions in its capacity as the welfare provider, resulting in a clear and direct benefit to itself when it is the employer of the recipient because it gains the free or reduced-cost labor of the welfare recipient/employee. This also exacerbates the potential displacement problem by creating a further incentive to replace current employees with lower-cost welfare recipients.

Allows Payment of a Sub-minimum Wage to Workers Even When They Have Done Nothing Wrong: States would be allowed to pay working welfare recipients less than the minimum wage through sanctions, even when the cause is behavior by someone else, *wholly unrelated* to the welfare participant's own compliance with TANF work requirements.

2. TANF Sanctions Are Permissible Without the Nickles Amendment

Nothing in the FLSA prohibits States from sanctioning welfare recipients. In the absence of the Nickles amendment, States may impose sanctions upon working TANF recipients by reducing their benefit and adjusting their hours worked as necessary. In addition, States could sanction recipients without implicating the FLSA in the following manner:

TANF recipient in private, unsubsidized employment - sanction by benefit deduction: When a TANF recipient finds private, unsubsidized employment and continues to receive TANF benefits, the State may sanction the recipient for violating TANF rules by reducing the TANF benefit. Because the recipient's employment is not subsidized by the TANF benefit, the sanction would have no effect on the recipient's wages and there would be no FLSA implications.

TANF recipient in subsidized employment or community service/work experience with an employer other than the State - - sanction by fine; recipient may choose method of payment, including deduction from pay: When a TANF recipient is in subsidized employment or community service/work experience with an employer other than the State, the State pays the cash value of the TANF benefit (and food stamps) to the employer. The TANF recipient receives only a wage from the employer.[1] The State may impose a TANF-related sanction upon the recipient as a fine, and let the recipient choose how to pay the fine. These choices may include a voluntary deduction from pay (the recipient voluntarily authorizes the employer to deduct the fine from wages and pay that amount to the State instead of the employee/recipient), a direct payment by the welfare recipient to the State (e.g., by check), or other methods.

The employer may not request or benefit from such a deduction. The employer is still obligated to pay the minimum wage for all hours worked, so the State may not cause the employer to reduce the recipient's wage by reducing the subsidy, and it may not unilaterally instruct the employer to withhold wages from the recipient as a penalty.

TANF recipient is employee of State, either in subsidized employment or community service/work experience - sanction by fine, payment may not be by deduction: In this case, the State is both the employer and the source of the TANF benefit. Under the FLSA, deductions from pay may be made only for payments to third parties - the employer may not benefit, directly or indirectly, from the deduction. The State may impose a TANF-related sanction upon the recipient as a fine but may not collect the fine as a deduction from pay.

diff agencies?

[1] It is possible, but unlikely, that the TANF recipient may receive a residual TANF benefit from the State, in addition to a wage from the private employer. If so, the State may sanction the recipient by reducing the residual benefit.

OPTIONS FOR AMENDMENTS TO NICKLES

1. State can sanction but recipients must receive minimum wage. [FLSA permits recipients who are not employees of States to voluntarily agree to deductions of sanctions, as in paragraph 2.]

2. Sanction that cuts into the minimum wage may be done through fines, with a choice of options for payment, including voluntary deductions from pay.

3. Sanction must be after TANF procedures conducted. Procedures may not be before agency employing participant.

4. State can sanction through fines (as in paragraph 2), with protections of requirement that TANF procedures not be before agency employing participant.

Section 5822(a)(2) is amended by changing the title to read "Application of Minimum Wage Requirements with Respect to Individual Sanctions," by changing the period at the end of the section to a comma, and by adding the following language to the end of new section 408(c):

"*provided* that nothing in this paragraph shall be construed to affect an employer's obligation to pay such individual at least the minimum wage for each hour worked."

Section 5822(a)(2) is amended by changing the title to "Payment of Sanctions by Individuals Covered by the Fair Labor Standards Act," by changing the period at the end of the section to a comma, and by adding the following to the end of new section 408(c):

> "provided that any penalty that would result in payment of less than the minimum wage for each hour worked is imposed by the State as a fine, which the participant may satisfy by choosing among different payment options offered by the State, including voluntary deduction from the participant's pay."

Section 5822(a)(2) is amended by changing the title to "Payment of Sanctions by Individuals Covered by the Fair Labor Standards Act," and by adding the following language to the end of new section 408(c):

> "Such a penalty may result in less than the payment of the minimum wage for each hour worked where the penalty is imposed by order of the State issued after a hearing, as required by section 402(a)(1)(B)(iii), which shall be before an officer who is not employed by an agency employing the participant."

Section 5822(a)(2) is amended by changing the title to "Payment of Sanctions by Individuals Covered by the Fair Labor Standards Act," by changing the period at the end of the section to a comma, and by adding the following to the end of new section 408(c):

> "*provided* that any penalty that would result in payment of less than the minimum wage for each hour worked is imposed by the State as a fine, which the participant may satisfy by choosing among different payment options offered by the State, including voluntary deduction from the participant's pay. Such a penalty shall be imposed by order of the State issued after a hearing, as required by section 402(a)(1)(B)(iii), which shall be before an officer who is not employed by an agency employing the participant."

REMEDIES FOR VIOLATIONS OF HEALTH AND SAFETY AND CERTAIN NONDISCRIMINATION PROTECTIONS FOR PARTICIPANTS

While it is essential that employee status be preserved for working welfare recipients under TANF to ensure employment laws are applicable, it is also essential that participants in work activities who may not be held to be employees under certain statutes also receive comparable protections. Under the House and Senate bills, such participants are to receive the protections of health and safety standards. However, the remedies specified in the bills do not specifically address abatement of substandard conditions that is an essential feature of the OSH Act. To ensure such a remedy is available, the current clause in both bills that authorizes the use of "other equitable relief" should be amended to add the phrase ", including abatement of unsafe or unhealthy conditions."

In addition, while TANF provides certain civil rights protections to non-employee participants, including title VI of the Civil Rights Act, it does not include provisions barring discrimination based on gender (including sexual harassment) or religion. The House bill does include a provision barring gender discrimination under TANF but does not include specific nondiscrimination remedies. We urge the House provision be incorporated and expanded to include religious discrimination, and that a clause be added in the remedies section providing that in cases where these nondiscrimination protections are violated, the remedies available under title VI of the Civil Rights Act shall be applicable.

Ask:
Elena Question
→ does JTPA
have this strong?
— CR

pls go
Cong mcl legalang

POSSIBLE ALTERNATIVE APPEALS OF STATE GRIEVANCE PROCEDURE DETERMINATIONS

One of the serious deficiencies in the House bill worker protections is the absence of an appeal from determinations of the State grievance procedure. Under JTPA and predecessor job training programs and the JOBS program, regular employees alleging violation of the nondisplacement provisions and participants alleging violations of specific worker protections had the right to appeal adverse decisions rendered under the State grievance procedures to the Secretary of Labor. To ensure impartiality and protect the rights of grievants, it is essential that there be an impartial review of the State grievance procedure decisions. Although Federal review remains the preference, there may be two alternatives at the State level for appeals that warrant consideration.

o First, the bill could require the State to provide grievants the right to appeal an adverse decision, or the right to appeal if a decision is not issued within a 60-day period, to an agency independent of the agency administering the TANF grant and the agency administering the grievance procedure. While such an agency could still be subject to the influence of the Governor it would at least be somewhat insulated from the administering agency. Examples of agencies that could be designated by the State include the State Labor Department or the Equal Opportunity Agency.

o Second, the bill could require that the State provide the grievant the right to appeal an adverse decision, or to appeal if a timely decision is not issued, to the "impartial tribunals" established to hear appeals relating to claims under the State unemployment compensation laws. Under the UI program appeal referees hear appeals from decisions of claims examiners. The referees' decision may be appealed to an Appeals Board established at the State level for such purposes. Finally, the Appeals Board decision may then be appealed to State court. One option is to incorporate one or more of these levels of review to worker protection claims under TANF. There could still be some question in certain States regarding the impartiality of these procedures since we understand in many cases Appeal Board members are political appointees. In addition, the deciding officials may not have significant expertise in some of the worker protection issues. However, this is an established procedure for reviewing claims from individuals regarding certain employment-related matters. To ensure that these responsibilities do not adversely affect processing of UI appeals, the costs attributable to review of the TANF worker protection claims should be paid by the TANF agency or other non-UI sources.

	H	S
1	Wkfare W S+H	
	Displ Gen Dis ✓	✓

2/8/

4/18

American Federation of Labor and Congress of Industrial Organizations

815 Sixteenth Street, N.W.
Washington, D.C. 20006
(202) 637-5000

Bruce/ Cynthia/
Diana
(+ return)

July 15, 1997

Memorandum for: John Podesta
Assistant to the President
and Deputy Chief of Staff for Policy and Political Affairs

From: Gerry Shea
Assistant to the President for Government Affairs

Peggy Taylor
Director, Legislation Department

Subject: Worker Protections in the Reconciliation Bills

As more details of the Republican reconciliation bills come to light, the extent of their attempt to roll-back Federal worker protections becomes alarmingly clear. While this poses a clear danger that decades of Federal labor standards could be undone, it also provides a strong basis for arguing against the provisions.

The latest item to surface is the exemption of bakery drivers. As reported in the July 7th edition of *Time*, all bakery drivers would be classified as independent contractors under the tax bill.

The bakery exclusion is separate from the broad language in the tax bill that would make it much easier for employers to reclassify workers as independent contractors, thereby denying them the benefits of Federal worker protections laws. While committee staff assumed a relatively small number of workers would be reclassified as independent contractors, outside estimates range in the millions.

Coupled with the wholesale change in the classification of workfare participants in the House Budget Bill, i.e., from workers entitled to Federal labor protections to "work experience" participants entitled to dramatically reduced protections, these provisions, if enacted, would exclude millions of workers from Federal labor protections.

We strongly urge that the Administration argue, first and foremost, that the President has no intention of creating a second tier of workers who are entitled to a lesser standard of protections. For a number of reasons, we think this is a stronger position for the coming days' debate than arguing the need for individual protections for workfare participants. While that argument should still be made – we would particularly urge you to highlight the lack of enforcement in the CWEP-like provisions in the House Bill -- we think you are on strongest ground in refusing to create a second tier of Federal labor standards.

Please let us know if any further information of argumentation will be helpful. Thank you for all your good works.

Bruce, Diana, Cynthia
+ return

July 10, 1997

Please Post

Get the Facts

Minimum Wage for All Workers -- No Exceptions

Most Americans believe that families who work hard and play by the rules should not be penalized. However, this is not always the case. While the new welfare law requires adult recipients to work, the House of Representatives voted to allow adult welfare recipients, 97 percent of whom are women, to be paid below the minimum wage in some welfare jobs.

- **Earning minimum wage does not lift women and their families out of poverty, but it is the first step towards enabling these women to earn a living wage.** Minimum wage produces positive work incentives to break the cycle of poverty and helps women move permanently from welfare to work.

- **The minimum wage seeks to ensure a decent standard of living for American workers and their families.** Paying workers below the minimum wage sinks women and their families deeper into poverty with no hope of economic self-sufficiency. Even at the current minimum wage level, the income for a family of three is 25% under the poverty level.

- **It is unfair to pay any worker less than the minimum wage.** Paying workers below the minimum wage could give employers incentive to fire low-wage workers, most of whom are women, and replace them with welfare recipients who can be paid less than minimum wage.

Here's What You Can Do!

☞ Help spread the word; work with friends to distribute this alert in your community.

☎ Call your senators and representative at 202/224-3121 and urge them to support minimum wage for all workers including women on welfare.

WOMEN'S NETWORK FOR CHANGE -- American Association of University Women -- Advocates for Youth -- American Jewish Congress -- American Medical Women's Association -- Business and Professional Women/USA -- Center for Ethics in Action -- Center for Policy Alternatives -- Coalition of Labor Union Women -- Federally Employed Women -- Feminist Majority -- Fifty plus One -- Girls Incorporated -- Gray Panthers -- Independent Federation of Flight Attendants -- MANA, A National Latina Organization -- Ms. Foundation for Women -- 9to5, National Association of Working Women -- National Abortion and Reproductive Rights Action League -- National Abortion Federation -- National Association of Social Workers -- National Center for the Early Childhood Work Force -- National Council of Jewish Women -- National Council of Negro Women -- National Organization for Women -- National Political Congress of Black Women, Inc. -- National Women's Law Center -- National Women's Political Caucus -- New Girl Times -- Older Women's League -- Planned Parenthood Federation of America -- ProChoice Resource Center -- Religious Coalition for Reproductive Choice -- United States Student Association -- Women Work! -- Women's Campaign Fund -- Women's Environment and Development Organization -- Women's International League for Peace and Freedom -- Women's Legal Defense Fund

FOR MORE INFORMATION ON THESE ALERTS, CALL 1-800-608-5286

Options

Employee | **Not Employee**

Sen but no eitc + FICA

Senate Provision Only

includes Nickles (fine vs. deduction) current law OK? will get back to us

Senate provision, <u>modified</u>

1. House provisions on minimum wage/maximum hours.
2. Strongest enforcement of minimum wage.
3. Specific language maintaining protection of WWRs in WE/CS under federal and state laws.

saving clause - prob needed

FMLA - wrote in prots of FLSA

Enf:

1) Repeat 3-4 pp of FLSA enf.

2) Declare viols of this = viol of FLSA + enf of FLSA apply

House provision, <u>plus</u>

1. Appeal from grievance process to Secretary of Labor;
2. Specific language giving all WWRs protection under state laws. - needed to clarify
3. Specific language giving WWRs outside WE/CS protection under federal and state laws. not needed?
4. Add protection against religion discrimination

apply to mw enf. CWEP did sec/ regs did ALJS

Senate has grievance for hlth + disc

House provisions, <u>plus</u>

1a. Appeal from grievance process to state court; or
1b. No grievance process, replaced with binding arbitration; least desir.
2. Specific language giving all WWRs protection under state laws.
3. Specific language giving WWRs outsides WE/CS protection under federal and state laws;
4. Add protection against religion discrimination

House Provision Only

Spectrum of Employment Protections: Explanation

Senate Minimum Wage Provisions. The Senate bill does not modify current law with respect to applying the minimum wage and other worker protections to working welfare recipients. Under this option, the House would conform to the Senate's position on this issue. As a result, working welfare recipients would be treated like other workers with regard to employment status. The Fair Labor Standards Act and other employment laws would apply as described in DOL's May guidelines.

Limit Effect of House Provisions Regarding Community Service and Work Experience to FLSA Applicability. Treat welfare recipients in community service and work experience like other workers except with respect to coverage of the Fair Labor Standards Act. Instead, the House maximum hours (minimum wage) provision would apply. While welfare recipients in community service and work experience would not be treated as employees for FLSA purposes they would not be precluded from employment status for other laws. As employees, they would be covered by employment protections like OSHA, employment discrimination laws, workers compensation, and collective bargaining laws. This option requires the addition of an enforcement mechanism for the maximum hours (minimum wage) provision which is not provided in the House bill.

House Version with Senate Grievance Procedure (Appeal to Secretary of Labor) to Enforce Minimum Wage and Other Labor Protections. Welfare recipients in community work would not be considered employees for federal laws. (However, additional language is added to prevent them from being denied employee status for state laws like workers compensation.) Uses minimum wage and labor protections enforcement model similar to that used under prior welfare law and included in the Senate bill. The Senate grievance procedure which provides for an appeal to the Secretary of Labor would be substituted for the House procedure (which does not provide for any appeal) and would also be applied to the minimum wage requirement. This option also adds protection against religion discrimination, which is not available to working welfare recipients who are not employees under the current House bill.

House Version with Appeal to State Court. This option is the same as above except that the appeal from the grievance procedure would be to State Court rather than to Secretary of Labor.

House Version with Arbitration Instead of Grievance Procedure. This option is the same as above except that it replaces the grievance procedure (and proposed appeal) with arbitration system.

1) H - no tax?

2) CC HHS + Legal + Emil

3) smooth J w/ Colton
- Monday paper

NONDISPLACEMENT RECOMMENDATIONS

Protections to be Added:

1. **General Prohibition Against Displacement:** The final House-passed language is seriously deficient in dropping the general prohibition against displacement (including partial displacement by reducing hours of work) of any individual who is an employee at the time the participant comes on board ("as of the date of employment"). At a minimum, the language from the Senate-passed version should be inserted in the conference agreement before the House-passed language allowing an adult recipient to fill a vacant employment position.
2. **Promotional Opportunities:** The conference agreement should include the Senate prohibition against creating a job in a promotional line infringing upon the promotional opportunities of regularly employed individuals. Welfare-to-work activities should not facilitate the creation of subsidized job positions at the expense of promotional opportunities for regular employees.
3. **Contracts for Services and Collective Bargaining Agreements:** The Senate language on existing contracts for services and collective bargaining agreements is preferable, because the terms "impair" and "inconsistent" connote situations where parties other than the direct parties to a contract or agreement may be trying to undertake an activity which modifies, whether directly or indirectly, the contract or agreement. Employer and labor consultation and concurrence in any such implicit modification should be required and will clearly be more conducive to better employer-employee relations.
4. **Comparable Wages:** The conference agreement should insert legislative language on comparable benefits, included in the workforce development legislation from the Education and Workforce Committee passed by the House. This language requires that individuals in on-the-job training or individuals employed in work activities shall be compensated at the same rates and provided benefits and working conditions, at the same level and to the same extent as other trainees or employees working a similar length of time and doing the same type of work, but in no event less than the higher of the Federal or State or local minimum wage.

SANCTION PROVISION IN THE SENATE BILL

ELIMINATE SECTION 5823 OF SENATE BILL. This language allows states to impose monetary sanctions on working welfare participants even if doing so would mean they receive less than the minimum wage for their work. It allows working welfare recipients to be paid a subminimum wage.. As a result, it undermines the minimum wage -- and the basic premise that people should get paid for work performed. Furthermore, the sanction can be imposed even if the sanction is for the behavior of another family member. We support both the sanctions provisions in welfare reform and the payment of the minimum wage to welfare recipients when they work -- but both must work in harmony if we are to achieve real and lasting welfare reform.

DRAFT: June 30, 1997

NONDISPLACEMENT PROVISIONS

House-passed H.R. 2015	Senate-passed H.R. 2015	TANF	JOBS
	Partial displacement: Prohibits displacement of current employed worker (including partial displacement).	1	**Partial displacement:** Prohibits displacement of current employed worker *or position* (including partial displacement).
***Violation* of collective bargaining agreement or contract:** Prohibits any assignment that *violates* an existing contract for services or collective bargaining agreement.	***Impairment* of collective bargaining agreement or contract:** Prohibits any assignment that *impairs* an existing contract for services or collective bargaining agreement *or would be inconsistent with such an agreement.*		***Impairment* of collective bargaining agreement or contract:** Prohibits any assignment that *impairs* an existing contract for services or collective bargaining agreement.
	Promotional Opportunities: Prohibits any infringement of the promotional opportunities of currently employed workers.	2	**Promotional Opportunities:** Prohibits any infringement of the promotional opportunities of currently employed workers.
			Unfilled Vacancies: Prohibits any assignment of a participant in CWEP or Work Supplementation to an unfilled position vacancy.
Layoffs: Prohibits the assignment of any participant in a position where any other individual is on layoff from the same or similar job.	**Layoffs:** Prohibits the assignment of any participant in a position where any other individual is on layoff from the same or similar job.	**Layoffs:** Prohibits the assignment of any participant in a position where any other individual is on layoff from the same or similar job.	**Layoffs:** Prohibits the assignment of any participant in a position where any other individual is on layoff from the same or similar job.
Terminations: Prohibits assignment where the employer has terminated the employment of any regular employee with the intention of filling the vacancy with a participant.	**Terminations:** Prohibits assignment where the employer has terminated the employment of any regular employee with the intention of filling the vacancy with a participant.	**Terminations:** Prohibits assignment where the employer has terminated the employment of any regular employee with the intention of filling the vacancy with a participant.	**Terminations:** Prohibits assignment where the employer has terminated the employment of any regular employee with the effect of filling the vacancy with a participant.
No Preemption: Nondisplacement provisions do not preempt any provision of State law that provides greater protection against displacement.	No Preemption. General TANF no preempt provision applies.	**No Preemption:** Nondisplacement provisions do not preempt any provision of State law that provides greater protection against displacement.	

Support Senate Nondisplacement provisions applied to all of TANF

Employee

1. Covered by federal worker protection laws (e.g., minimum wage, safety and health, employment discrimination)
2. Covered by state worker protection laws (e.g., workers' compensation)
3. Rights enforced through existing mechanisms in worker protection laws (e.g., federal or state agency investigation, private right of action)
4. Collective bargaining rights protected by federal (private sector) and state (state and local public sector) laws.

Not Employee

1. Not covered by federal worker protection laws.
2. May not be covered by state worker protection laws.
3. No enforcement mechanisms except those specifically provided in the bill.
4. No collective bargaining rights in the private sector.
5. May not have collective bargaining rights in state and local public sectors.

Cynthia-

Here are the relevant parts of our past welfare reform bills on EITC/FICA.

- 1994 is straightforward, as we thought: no EITC, but subject to FICA

- I'm still checking what 1996 had -- Farkas' recollection was that the bill didn't deal with this issue, but in a section on workfare on page 103 says that "wages paid under a workfare program shall not be considered to earned income for purposes of any provision of law." This sounds like it would rule out both EITC and FICA -- but it might also rule out other things. I'm checking with Jeff. I can check with Treasury if we need to, but will try not to alarm them.

Diana

Work + Responsibility Act of 1994

SEC. 207. FEDERAL TAX TREATMENT OF WORK REMUNERATION.

This section specifies the Federal tax treatment of remuneration paid to, or received by, an individual in a WORK position. Such remuneration would be excluded from income for purposes of the earned income tax credit and would not constitute "qualified wages" for purposes of the targeted jobs tax credit. Also, it would not be subject to Federal unemployment (i.e., FUTA) or included as part of gross income for Federal income tax purposes. (However, it would be subject to the employee and employer share of social security (i.e., FICA) taxes.)

TITLE III--CHILD CARE

SEC. 301. CHILD CARE FOR JOBS AND WORK PROGRAM PARTICIPANTS AND AT-RISK FAMILIES.

Subsection (a) extends the child care guarantee to participants in the WORK program. It also clarifies that child care is guaranteed for individuals who are participating in education and training activities as long as the State approves the activity as part of the individual's JOBS employability plan. Child care services would be guaranteed regardless of whether resources are available to provide other JOBS services.

Subsection (b) extends the guarantee for Transitional Child Care (TCC) to people leaving the WORK program for employment.

Subsection (c) addresses health and safety standards, parental choice and continuity of care for guaranteed (i.e., AFDC/JOBS/WORK and TCC) and then for At-Risk child care as follows:

All child care provided through these programs must meet all health and safety standards established by the State for the Child Care and Development Block Grant program (CCDBG). In addition, the State agency must establish immunization requirements and assure, consistent with regulations of the Secretary, that: 1) children whose child care is paid for under title IV-A would be required to have all immunizations, at the appropriate times, as currently recommended by the Advisory Committee on Immunization Practices; and 2) child care providers used would take steps to assure that certain hazardous items are secured and unobtainable.

This subsection also requires that the State plan assure that child care provided would conform to all provisions related to parental choice, parental access, handling of parental complaints, consumer education and all other standards, criteria and requirements applicable to child care provided under CCDBG.

403. The State shall be entitled to so much of such amount as equals the percentage specified in section 403(k)(1)(A) multiplied by its expenditures necessary to carry out its approved application.

"(B) A State may include, as expenditures necessary to carry out its approved application, amounts expended for stipends, wage subsidies, supportive services, training, and administrative costs of the State agency directly related to the program under this subsection.".

SEC. 207. FEDERAL TAX TREATMENT OF WORK REMUNERATION.

(a) Work Remuneration Ineligible For Earned Income Tax Credit.-- Subparagraph (B) of section 32(c)(2) (defining earned income for purposes of the Earned Income Tax Credit) of the Internal Revenue Code of 1986 is amended by striking "and" at the end of clause (ii), by striking the period at the end of clause (iii) and inserting in lieu thereof ", and", and by inserting after clause (iii) the following clause:

"(iv) no amount of remuneration received for services provided in a WORK position to which the taxpayer was assigned under Part G of title IV of the Social Security Act shall be taken into account.".

(b) WORK Remuneration Ineligible for Targeted Jobs Tax Credit.--Section 51(b) (defining qualified wages for purposes of the Targeted Jobs Tax Credit) of the Internal Revenue Code of

1986 is amended by inserting after paragraph (3) the following new paragraph (4):

"(4) Special Rules for WORK Positions.--

"(A) Qualified Wages.--No amount of remuneration received for services provided in a WORK position to which an employee was assigned under Part G of title IV of the Social Security Act shall be treated as qualified wages.

"(B) Qualified First-Year Wages.--The 1-year period described in paragraph (2) is determined without regard to the period in which the employee provided services in a WORK position to which the employee was assigned under Part G of title IV of the Social Security Act.".

(c) WORK Remuneration Not Subject To FUTA.--Section 3306(b) (defining wages for purposes of the federal unemployment tax) of the Internal Revenue Code of 1986 is amended by striking "or" at the end paragraph (15), by striking the period at the end of paragraph 16 and inserting in lieu thereof ", or", and by inserting after paragraph (16) the following paragraph:

"(17) remuneration paid for services provided in a WORK position to which the employee was assigned under Part G of title IV of the Social Security Act.".

(d) WORK Remuneration Excluded From Gross Income.-- The Internal Revenue Code of 1986 is amended by redesignating section 137 (containing certain cross references) as section 138, and by inserting after section 136 the following section:

"Section 137. WORK Program Remuneration.-- Gross income shall not include any remuneration received for services provided in a WORK position to which the individual was assigned under Part G of title IV of the Social Security Act.".

TITLE III - CHILD CARE

SEC. 301. CHILD CARE FOR JOBS AND WORK PROGRAM PARTICIPANTS AND AT-RISK FAMILIES.

(a) Guarantee While in WORK or JOBS Program.-- (1) Section 402(g)(1)(A)(i)(I) of the Act is amended by striking out the semicolon and inserting in lieu thereof "(including employment under part G, or other required activities under such part);".

(2) Section 402(g)(1)(A)(i) of the Act is amended--

(A) by striking out "(including participation in a program that meets the requirements of subsection (a)(19) and part (F))", and

(B) by striking out "approves the activity" and inserting in lieu thereof "approves the activity as part of the individual's employability plan under part F (regardless of whether resources are available to provide other services or pay for other activities to carry out such plan)".

Title-by-Title Summary

"Work First and Personal Responsibility Act of 1996"

Title I — Work-Based Assistance

Title I repeals the Aid to Families with Dependent Children (AFDC) program and replaces it with a time-limited, work-based Temporary Employment Assistance (TEA) program. TEA continues open-ended Federal matching payments for State expenditures on welfare assistance. It also repeals the Job Opportunities and Basic Skills (JOBS) program and replaces it with a new Work First program. (Funding for JOBS, AFDC Administration, and Emergency Assistance is merged into Work First. Most activities under these programs remain allowable under Work First.) Title I requires welfare recipients to sign personal responsibility contracts and mandates that they work or engage in job training within two years of first receiving benefits.

Title I also requires States to meet welfare recipient work targets. It includes a five-year time limit on the receipt of cash benefits, but allows States to exempt a portion of the caseload from the time limits. Vouchers must be provided to children in families that lose assistance due to the time limit. In addition, Title I provides performance bonuses to States based on their job placement effectiveness. It also gives States the option to deny additional welfare benefits to families that have another child while receiving welfare benefits.

Title I mandates that States operate child abuse prevention and protection, child support enforcement, foster care, and adoption assistance programs as a condition of receiving the Federal match. States also must operate a child care program under the Child Care and Development Block Grant (CCDBG) Act of 1990. Title I amends the CCDBG Act and consolidates the three individual child care programs under current title IV-A of the Social Security Act into one program. Funding for child care is significantly increased. This title also continues the one-year entitlement to transitional Medicaid benefits for families losing welfare benefits due to employment or excess income. In addition, it allows States to enter into demonstration programs to make periodic advances of the earned income tax credit (EITC) to welfare recipients in jobs programs (as opposed to having workers file for the EITC themselves).

Title II — Child Support Enforcement

Title II proposes stringent child support enforcement measures including a State case registry of child support enforcement orders. It improves paternity establishment and requires employers to report new hires to a central State data base. Title II allows States to revoke drivers and professional licenses for parents who refuse to pay child support. It also established under this part and part G or H. The State may elect to follow such recommendations, and shall demonstrate to the Secretary how the State will achieve the required participation rates.

"(2) Second consecutive failure.—Notwithstanding paragraph (1), if a State fails to achieve the participation rate required by subsection (a) for 2 consecutive fiscal years, the Secretary may—

"(A) require the State to make changes in the State programs established under this part and part G or H; and

"(B) reduce by up to 5 percent the amount otherwise payable to the State under section 413(a)(1).

"SEC. 489. FEDERAL ROLE.

"(a) Approval of State Plans.—

"(1) In general.—Within 60 days after the date a State submits to the Secretary a plan that provides for the establishment and operation of a Work First program that meets the requirements of section 481, the Secretary shall approve the plan.

"(2) Authority to extend approval deadline.—The 60-day deadline established in paragraph (1) with respect to a State may be extended in accordance with an agreement between the Secretary and the State.

"Part G—Workfare Program

"SEC. 490. ESTABLISHMENT AND OPERATION OF PROGRAM.

"(a) In General.—A State that establishes a Work First program under part F shall establish and carry out either a workfare program that meets the requirements of this part or a job placement voucher program under part H.

"(b) Objective.—The objective of the workfare program is for each program participant to find and hold a full-time unsubsidized paid job, and for this goal to be achieved in a cost-effective fashion.

"(c) Case Management Teams.—The State shall assign to each program participant a case management team that shall meet with the participant and assist the participant to choose the most suitable workfare job under subsection (e), (f), or (g) and to eventually obtain a full-time unsubsidized paid job.

"(d) Provision of Jobs.—The State shall provide each participant in the program with a community service job that meets the requirements of subsection (e) or a subsidized job that meets the requirements of subsection (f) or (g).

"(e) Community Service Jobs.—

"(1) In general.—Except as provided in paragraphs (2) and (3) and section 481(a)(5)(B)(ii), each participant shall work for 20 hours per week during fiscal years 1997 and 1998, not fewer than 25 hours per week during fiscal year 1999, and not fewer than 30 hours thereafter in a community service job, and shall be paid at a rate which is 100 percent of the maximum amount of assistance that may be provided under the State plan approved under part A to a family of the same size and composition with no income.

"(2) Exception.—(A) If the participant has obtained unsubsidized part-time employment, the State shall provide the participant with a part-time community service job.

"(B) If the State provides a participant a part-time community service job under subparagraph (A), the State shall ensure that the participant works for not fewer than the number of hours specified in paragraph (1).

"(3) Wages not considered earned income.—Wages paid under a workfare program shall not be considered to be earned income for purposes of any provision of law.

"(4) Community service job defined.—For purposes of this section, the term 'community service job' means—

"(A) a job provided to a participant by the State administering the State plan under part A; or

"(B) a job provided to a participant by any other employer for which all or part of the wages are paid by the State.

"A State may provide or subsidize under the program any job which the State determines to be appropriate.

"(f) Temporary Subsidized Job Creation.—A State that establishes a workfare program under this part may establish a program under this Act similar to the program operated by the State of Oregon known as 'JOBS Plus'.

"(g) Work Supplementation Program.—

"(1) In general.—A State that establishes a workfare program under this part may institute a work supplementation program under which the State, to the extent it considers appropriate, may reserve the sums that would otherwise be payable to participants in the program as a community service minimum wage and use the sums instead for the purpose of providing and subsidizing private sector jobs for the participants.

"(2) Employer agreement.—An employer who provides a private sector job to a participant under paragraph (1) shall agree to provide to the participant an amount in wages equal to the poverty threshold for a family of three.

"(h) Job Search Requirement.—The State shall require each participant to spend a minimum of 5 hours per week on activities related to securing unsubsidized full-time employment in the private sector.

"(i) Use of Placement Companies.—A State that establishes a workfare program under this part may enter into contracts in accordance with section 483 with private companies (whether operated for profit or not for profit) for the placement of participants in the program in positions of full-time employment, preferably in the private sector, for wages sufficient to eliminate the need of such participants for cash assistance.

Today's debate: WELFARE REFORM

Rush to workfare costs jobs of working poor

OUR VIEW **Welfare laws need to be fine-tuned; they're hurting those most vulnerable to job loss.**

Schools in Baltimore are bringing in welfare recipients to do janitorial work at $1.50 an hour, less than one-third the minimum wage, rather than renew contracts with agencies that supplied custodians at $6 an hour. The new workers continue to receive federally financed welfare benefits, at no cost to the schools.

It's a sweet deal for the money-short schools and useful work experience for people who soon must get off welfare. But what about those janitors who were displaced? How many are unemployed and candidates for the welfare rolls?

As Washington and the states push welfare recipients to work, they've created a way for employers, public and private, to replace regular employees with cheaper labor. The losers are folks who had stayed off welfare with low-income work. They're vulnerable to reduced hours, disappearing jobs and lesser wages and benefits.

A Jersey City, N.J., hospital is cutting full-time aides while hiring people on welfare as "volunteers" to do the same work.

In Nassau County, N.Y., a custodian laid off in 1992 and ultimately forced onto welfare returned to the same job last year — but as a welfare "trainee" at lower pay, no benefits and no vacation.

No one has yet quantified the problem. But the vulnerable population is large: 38 million working poor who at $7.50 an hour or less often have no health insurance. And even with the economy thriving, most states are short of the low-wage, low-skill jobs that the working poor hold and welfare recipients need. Yet welfare reform requires that by the turn of the century, nearly 50% of all adults getting welfare assistance — 4 million people — must spend at least 30 hours a week in some sort of work.

The law bars employers from firing existing workers to hire welfare recipients whose compensation is subsidized by the state. But its intent can be defeated by reducing hours, wages or benefits for existing workers or terminating outside contracts; workfare recipients can then fill vacancies.

Backers of the 1996 welfare reform minimize the problem. They fear a backlash could reverse momentum running their way. On the other side, unions trumpet scare stores, not research. But anecdotal evidence is accumulating. In addition to subtle and overt job displacement, employers from Salt Lake City to Richmond, Va., report the flow of welfare recipients into the workforce is helping keep pay rates down.

And when the inevitable economic slowdown arrives, with shrinkage in low-income jobs, the situation is likely to resemble a nasty game of musical chairs with far more players than wage-paying seats.

Welfare reform was long overdue. But the 1996 law, driven by simplistic budget-cutting politics, did little to spur the job growth needed to deal with underlying poverty and lack of opportunity. President Clinton wants to spend $3 billion for job-training grants and tax breaks to employers who hire welfare recipients. First, some spadework is needed. Moving welfare recipients to work is a fine objective. But throwing the working poor out on the street is an unacceptable price.

Reform that risks throwing the working poor out of work and onto the welfare rolls is not worthy of the name.

The job gap

State studies document the challenge of placing welfare recipients in jobs:

California: More than 1 million people have to be moved into a job market where 2 million people not on welfare are already looking for work and another half-million part-timers want more work. State's economy is growing by only 300,000 jobs a year.

New York: 1.2 million potential job seekers, including adults on welfare, for 242,000 job openings.

Maryland: Of 44,000 new jobs created in 1994, more than 38,000 were high technology or professional work requiring college degree or better. Yet work must be found for 79,000 welfare recipients.

Minnesota: Ratio of job seekers to job openings is 2.7-1; for jobs with a "livable wage," 6-1.

THE PRESIDENT HAS SEEN
4-24-97

USA TODAY
WEDNESDAY, APRIL 23, 1997

Copied
Reed
COS Cynthia/Diana

Has Bruce sent you this already? We should answer it - in the weekly or, if too long for that, in a separate memo. This week would be great. Elena cc: Bruce

Bruce
what about this
I thought we were supposed
to have protections against
job displacement —