EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

LABOR BRANCH FAX SHEET

DATE: 6/25

TO: 6-7431 Diana Fortune / 6 2878 Elena Kagan

FROM: Janet Himler

COMMENTS: Based on last night's mgr's amendment.

DOL's ~~revised~~ even more revised version — incase Hilley gives the go ahead.

Per Diana's e-mail.

Comments?

NUMBER OF PAGES 4
(INCLUDING COVER)

CONFIRMATION: (202) 395-3262
FAX NUMBER: (202) 395-1596

DRAFT: June 25, 1997: 11:15 AM

House Reconciliation Bill: Majority Staff Discussion Proposal

Employment Status: This draft eliminates the language that specifically states that welfare recipients in work experience and community service are not employees. However, the "Purpose" section and language throughout the proposal (particularly the Rule of Interpretation section[1]) suggest that these welfare recipients are in these activities to gain experience or training and are not in "regular employment." Although this may be subject to interpretation by the courts (and any legislative history on this report could be critical), the result would likely be that participants in these activities would not be considered employees for purposes of employment protection laws.

Noncash Benefits: Provides that the maximum hours that a welfare recipient can participate in community service or work experience be determined by the sum of the TANF benefit and food stamps minus child support divided by the minimum wage. It does not allow states to require welfare recipients to "work off" other benefits such as Medicaid, child care or housing.

Work Activities and Minimum Wage Equivalency: Limits the number of hours that a welfare recipient can work in community service or work experience to the sum of the cash welfare benefit and food stamps minus child support divided by the minimum wage and creates a cap of 40 hours. This is similar to the calculation used for CWEP under the JOBS program.[2] (It is also the first welfare reform proposal that addresses the child support issue with regard to the payment of the minimum wage.) If this calculation falls short of the hours required to count towards participation rates (e.g., 20 hours per week in 1997), any other work activity (including training) can be used for the remaining hours -- notwithstanding the limits on training in the TANF law. ?

Enforcement of Minimum Wage Equivalency and Hours Limitation: This proposal does not provide for coverage of welfare recipients in community service or work experience by the Fair Labor Standards Act. Nor does it provide any other mechanism for enforcing the minimum wage requirement for these recipients. In addition, there is no provision for overtime or the other protections provided by the FLSA. bec not e'es?

Why needed?

Compensation: This proposal does not include language that was included in the Education and Workforce bill that required welfare recipients working in unsubsidized employment, subsidized

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[1] This language, which states that cash assistance is not to be considered a salary or compensation for the purpose of other laws, may also clarify issues regarding the tax treatment of the cash welfare benefit. *

[2] There are two principal differences from CWEP. First, CWEP only used the AFDC cash benefit in its calculation of hours. Second, it divided the AFDC benefit by the higher of the state or federal minimum wage or the wage rates for similarly situated workers.

1

private sector employment or subsidized public sector employment to be compensated "at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience and skills."

Workers' Compensation: This proposal does not include the language that was contained in both committees' reconciliation bills that applied state workers' compensation laws to welfare recipients on the same basis as the protection is provided to other individuals in the State in similar employment. As a result, welfare recipients in community service and work experience who are not considered employees may lose workers' compensation coverage. The absence of workers' compensation coverage could expose states to tort liability.

This proposal would apply the following worker protections to all welfare recipients in work activities under TANF -- not just those under the Welfare-to-Work program.

Health and Safety: This is the same language that was used in H.R. 1385, the House-passed job training reform bill and in JTPA. OK ?

Discrimination: Welfare recipients in work experience or community service will only be covered by employment based anti-discrimination laws (like Title VII) if they are considered employees. However, as stated above, they may not be found to have employment status under this proposal.

In addition, the gender discrimination prohibition in the proposal does not provide for a neutral third-party remedy. Only the state grievance procedure in the proposal would be available for welfare recipients in community service or work experience subjected to gender discrimination or sexual harassment.

Nondisplacement: This proposal retains most of the current TANF provisions. However, it is narrower than the provisions contained in the Education and Workforce Committee bill.

- It drops the general prohibition against displacing (including partial displacement) a current employee and replaces the provision with the current TANF provision that specifically permits a participant to fill a vacant employment position.
- It narrows the prohibition relating to collective bargaining agreements and contracts for services. The Education and Workforce provision prohibits "impairment" of such agreements and prohibits work activities that are inconsistent with such agreements. This proposal simply prohibits the violation of such agreements.
- It drops the prohibition against placing the participant in a job that infringes upon the promotional opportunities of current employees.

Grievance Procedure: The proposal only provides for filing of grievances with the state. It does not allow for a neutral third party appeal. Consequently, a welfare recipient with a discrimination, displacement or health and safety complaint against the state would have to file a grievance with the state. (If, however, they were considered employees, they could file a discrimination complaint with the EEOC under Title VII.)

Pls check

Weekly Report
Cynthia Rice -- 6/26/97

Welfare – Congressional Action: Several improvements to key welfare provisions made by the House and Senate this week should strengthen our hand in conference.

Legal Immigrants. The Senate adopted a legal immigrants proposal incorporating both the House position (providing SSI and Medicaid to legal immigrants who were receiving benefits on August 22, 1996) and the bipartisan budget agreement (assisting those in the U.S. as of last August who are or become disabled). Covering both these populations costs more, of course ($11.4 billion vs. the $9.7 billion in the budget agreement), but Senator Domenici accepted the amendment saying "taking it to conference" would be the best way to resolve theses issues.

The Senate also opted to help two additional populations of immigrants not included in the budget agreement. The Senate adopted a Graham amendment to provide Medicaid to legal immigrant children who are not disabled no matter when they arrived in the U.S. A Kennedy proposal to provide SSI and Medicaid to immigrants who arrive in the U.S. after August 1996 but are too disabled to naturalize (i.e., who apply for citizenship but cannot take the oath due to their disabilities) was also added. The conference prospects for these provisions are uncertain.

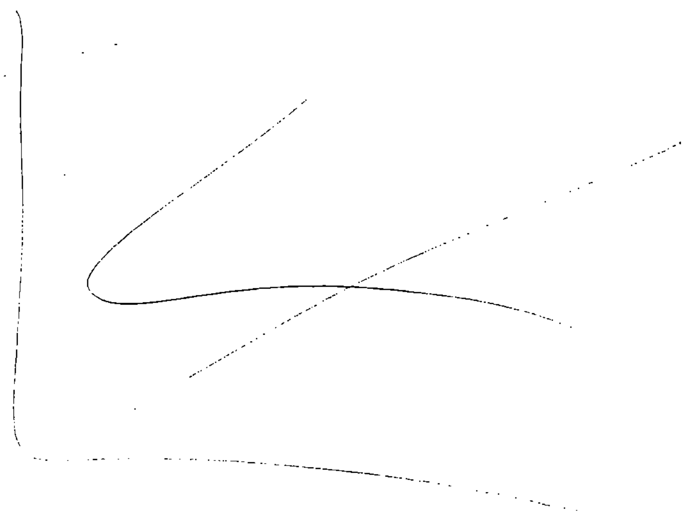
Privatization. Also in the Senate, Democrats used a procedural motion to strip the bill of the provision allowing Texas to privatize its food stamp and Medicaid operations. (The Byrd rule, which applies only in the Senate, allows a minority of 40 to strike provisions extraneous to the budget, i.e., ones with no savings or costs.) The House bill allows all 50 states to privatize. We expect a big fight in conference over this issue, but if we can hold 40 votes in the Senate, we should be able to strike any provision which comes out of conference.

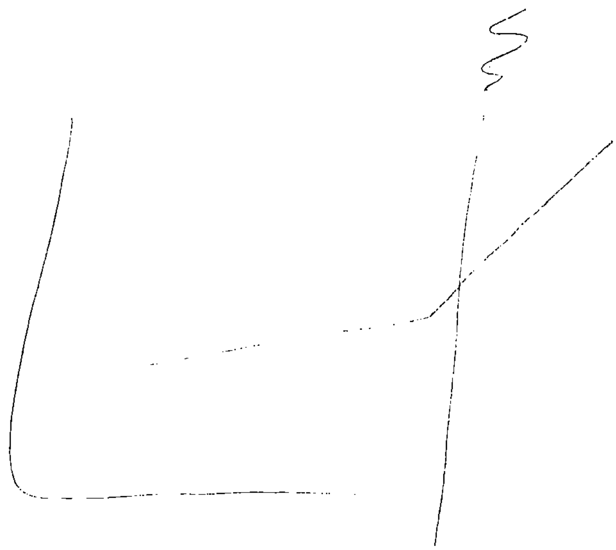
softened

Minimum Wage and Worker Protections. In the meantime, the House Republican leadership modified its proposal weakening the minimum wage and other protections for welfare recipients in workfare positions. We have vigorously opposed any changes which would exempt welfare recipients who meet the Fair Labor Standards Act definition of a worker from the employee protections that other workers receive. This issue is completely outside the budget agreement, of course, and would also be subject to the Byrd rule in the Senate. However, we are frankly unsure if we would have the 40 votes in the Senate to strike the latest House proposal because it appeals to an odd-bedfellows coalition of conservative Republicans, Govs and liberal Democrats. The revised proposal adopted by the House: 1) requires that workfare pay the minimum wage but eliminates the enforcement mechanisms available to other workers (i.e., complaints to the Dept. of Labor, lawsuits); 2) allows states to count job search and training as work if the TANF and food stamp grant are not enough to pay the minimum wage for the required hours per week of work; 3) declares that those performing workfare are not "employees" making them ineligible for the protections of laws enforced by the EEOC, such as Title VII, the Equal Pay Act, and the Americans with Disabilities Act. **[NOTE: SHOULD WE ASK FOR SPECIFIC GUIDANCE HERE?]**

Welfare -- Federal Reserve Bank Study of Labor Force Participation: As you know, Monday's San Francisco Chronicle had a front page story saying Federal Reserve Bank economists believe that the welfare law is the main reason why an unexpectedly high number of single mothers -- half a million -- have entered the job market since August. The actual analysis, published in a Federal Reserve Bank of San Francisco economic newsletter, simply chronicles the increase in labor force participation during this time period and hypothesizes that it is due to the welfare law. The numbers are rather startling: while the percentage of single women entering the workforce grew by 2.4 percent between July 1995 and July 1996, the increase from August 1996 to March 1997, when annualized, would equal 6.5 percent. The chart, reproduced below, shows the sharp increase in the number of single mothers working.

[paste chart here?]





U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

June 19, 1997

TO: Dianna Fortuna

FROM: Ellen Vargyas Ellen Vargyas
Legal Counsel

SUBJECT: Ramifications for Civil Rights Enforcement If Welfare Work Participants Are Not Considered To Be Employees

As we discussed yesterday, we are quite concerned about pending legislative proposals which would provide that welfare work participants are not "employees" if they are assigned to public agencies or non-profit organizations. This would effectively remove the protections of the laws enforced by the EEOC from these individuals, including Title VII, the Equal Pay Act, the Age Discrimination in Employment Act and the employment title of the Americans With Disabilities Act, since all of these laws are predicated on the existence of an employment relationship. These questions are by no means theoretical. We expect that numerous discrimination issues will be raised in connection with these programs including, for example:

- Harassment on the basis of sex, race and other prohibited bases.
- Discrimination in assignments between men and women and whites, blacks and Hispanics.
- Disability related issues including failure to provide reasonable accommodations and failure to provide any work opportunities to people with disabilities.

There are certainly important civil rights protections available through the federal funding civil rights statutes, including Title VI, Section 504, the Age Discrimination Act and Title IX, which would still be available. However, the coverage provided by these statutes is incomplete in important respects.

- Title VI prohibits discrimination on the basis of race and national origin by recipients of federal funds. However, since Title VI coverage follows the federal funds, there may not be coverage in programs funded exclusively through state or local and not

~~may not be coverage in programs funded exclusively through state or local and not~~ federal funds. Moreover, questions are raised regarding whether agencies or non-profit organizations to which welfare recipients are assigned would be covered under Title VI if the recipient continues to receive her grant, child care funds, etc. from the state agency and no actual funds go to the "employer."

7

- The same questions are raised regarding disability under Section 504 and age under the Age Discrimination Act.

- There would be no coverage of discrimination on the basis of religion since it is not addressed in any of the funding statutes.

- Coverage of sex discrimination would be extremely limited. Title IX only applies to educational programs and activities that receive federal funds. As a result, welfare participants in any other type of program or activity would receive no protection at all from sex discrimination, including harassment. The proposal to include gender in some sort of state administrative grievance procedure is totally inadequate since there are no standards, there is no meaningful enforcement mechanism and no remedies are specified. Under Title IX, the administrative remedy is defunding (of all federal funds) and judicial remedies, available through a private right of action, include uncapped damages for intentional discrimination. The bottom line is that sex discrimination would be treated completely differently -- and far less favorably than -- discrimination on the basis of race, national origin and disability.

Coverage by Title VII, the EPA, the ADEA, and the ADA would fill most of these gaps. Accordingly, it is our view that in order to adequately safeguard the civil rights of welfare recipients participating in work programs, it is essential to secure the coverage of both the federal funding civil rights statutes and the statutes enforced by the EEOC. I would be more than happy to be of any further assistance on any of these questions. Feel free to call me at 663-4637.

Larry R. Matlack 06/18/97 06:06:28 PM

Record Type: Record

To: Diana Fortuna/OPD/EOP

cc: Barry White/OMB/EOP, Cynthia A. Rice/OPD/EOP, Maureen H. Walsh/OMB/EOP, Jeffrey A. Farkas/OMB/EOP

Subject: Re: We and HHS are looking at this, but wondered if you have come to any conclusions yet

I know that Ray Uhalde has done some materials for you on wage rates and the like that you raised in your earlier e-mail, so I assume that question is satisfied. However, I take from today's e-mail about the Washington Times and USA Today articles that you also may be concerned about the "labor standards"/"worker displacement" issues Shapiro raises. I don't know if this will help, but here's my quick read on that issue.

JTPA Provisions

The current JTPA "Labor Standards" provisions are at section 143. Shapiro refers to them in today's article. The JTPA provisions prohibit:

House

violating

- replacing any currently employed worker with a JTPA participant; like TANF
- reducing the hours of any currently employed worker so a JTPA participant can work; partial
- impairing existing contracts for services;
- impairing existing collective bargaining agreements without written concurrence of management and labor;
- filling a job with a JTPA participant when someone is on layoff from such a job or an equivalent job; and, like TANF
- creating jobs in promotional lines that will infringe in any way upon the promotional opportunities of currently employed individuals.

JTPA also provides for a grievance procedure in section 144.

HR 1385

HR 1385 is not unlike JTPA. Section 123 of HR 1385 (page 77 of the bill) amends JTPA section 143. The amendment adds a "displacement" section at 143(b). The HR 1385 amended section 143(b)(1) essentially repeats the terms of the first two bullets above. It's not new. It's section 143(b)(2) that I suspect Shapiro opposes given the example he uses at the end of his article. This section follows. (The term "specified activity" below means programs undertaken to serve low-income adults and youth through grants and the Job Corps.)

> (2) Prohibition on Impairment of Contracts.-- A specified activity shall not impair an existing contract for services or collective bargaining agreement, *and no such activity that would be inconsistent with the terms of a collective bargaining agreement shall be undertaken* without the written concurrence of the labor organization and employer concerned. (Emphasis added.)

This is similar to, but not identical to, the JTPA language. The general intent is the same as the JTPA, but the *italicized phrase* above is new and has not even been alluded to before in JTPA as far as I know.

HR 1385 also includes amendments to JTPA section 144 establishing a grievance procedure.

Education and Workforce Welfare-to-Work Provisions

The non-displacement language in the E&W bill is virtually word-for-word from HR 1385, modified to fit the drafting conventions of the bill.

The langauge of HR 1385 is very broad and wide open to interpretation. I don't think we know how it would be applied. We do have experience under JTPA, and I think it would be useful, if you haven't already, to get the DOL's read of what the consequences of the HR 1385 provisions may be (and not be) based on nearly a decade and a half under JTPA. With the exception of the italicized phrase above, they're dealing with known language.

I have spoken to Ray about this, and know that he has his staff working on assessing the two articles Bruce cited. I suggested he be sure to focus on the worker displacement issue as part of that assessment.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

June 24, 1997

The Honorable Gerald R. Solomon
Chairman
Committee on Rules
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

As you consider this year's budget reconciliation bill, I am writing to transmit the views of the Administration on the Budget Committee reported legislation on the spending provisions. The Administration's views on the tax provisions of the legislation will be transmitted separately.

Many provisions of the reported bill are consistent with the Bipartisan Budget Agreement. We are pleased that, consistent with the Budget Agreement, the House is preparing to consider two separate reconciliation bills, the first for spending and the second for taxes. We expect that this consideration will continue throughout the process. However, there are a number of important areas where the legislation is not consistent with the Agreement. As you know, there are ongoing efforts to resolve a number of issues through an amendment at the Rules Committee. The Administration intends to continue working closely with the leadership on remedial amendments.

Key areas where the bill is inconsistent with the Budget Agreement include: failure to fully restore Supplemental Security Income (SSI) and Medicaid benefits for all disabled legal immigrants who are or become disabled and who entered the U.S. prior to August 23, 1996; assist low-income Medicare beneficiaries in paying additional premium amounts related to the home health reallocation; provide Medicaid benefits for disabled children; implement important Medicaid investments; properly implement the home health reallocation; create additional work slots for individuals subject to the Food Stamp time limits; fully provide for savings from spectrum auctions; and ensure that a substantial share of welfare-to-work funds go to cities and counties with large poverty populations.

The Bipartisan Budget Agreement is good for America, its people, and its future, and we are fully committed to working with Congress to see all of its provisions enacted into law by the August recess.

Items Contrary to the Bipartisan Budget Agreement

Assistance for Low-Income Medicare Beneficiaries -- Recognizing that premiums represent a significant burden on low-income beneficiaries, the Budget Agreement allocated $1.5 billion to ease the impact of higher premiums on this population. The reported bill falls short of this, including only $0.5 billion for this purpose. Additionally, the approach in the bill is too administratively complex for the value of the benefit provided.

Continued SSI and Medicaid Benefits for Legal Immigrants -- The President stated in his June 20 letter to Budget Committee Chairman Kasich and Ranking Member Spratt that he will be unable to sign legislation that does not include the agreement's policy protecting disabled immigrants. The Budget Agreement explicitly states: "Restore SSI and Medicaid eligibility for all disabled legal immigrants who are or become disabled and who enter the U.S. prior to August 23, 1996." The reported bill fails to reflect the Agreement. As a result, in 2002 it would protect 75,000 fewer immigrants than called for in the Budget Agreement. In addition, the President's strong preference is to cover both elderly and disabled immigrants. We will work with you to identify the necessary resources to do so.

Medicaid Benefits for Disabled Children -- The Budget Agreement clearly includes the proposal to restore Medicaid for current disabled children losing SSI because of the new, more strict definition of childhood eligibility. The reported bill fails to include this proposal. We strongly urge the House to include this provision and retain Medicaid benefits for approximately 30,000 children who could lose their health care coverage in FY 1998.

Medicaid Investments -- After extended negotiations that preceded the Bipartisan Budget Agreement, the Administration and the Congressional leadership agreed to specified savings and investments in the Medicaid program over five years. Specifically, the Agreement calls for a higher Federal matching payment for the Medicaid program in the District of Columbia and adjustments for the Medicaid programs in Puerto Rico and the territories. The reported bill fails to include these provisions.

Home Health Reallocation -- The home health reallocation in the Budget Agreement is not properly reflected in the reported bill. During the negotiations, we discussed at great length the shift of home health expenditures to Part B, and it was always understood to be immediate. We agreed to phase in the increased Part B premium, but not to postpone the reallocation of home health spending. The Ways and Means Committee's phase-in of the reallocation means a loss of two years of solvency in the Part A trust fund, two years which we can ill afford to lose. We urge the House to incorporate the provision included in the Commerce Committee reported title.

Additional Work Slots for Individuals Subject to the Food Stamp Time Limits -- The Bipartisan Budget Agreement includes $1.5 billion in additional funding for the Food Stamp Program to increase support for work and provide States with flexibility to exempt individuals from the Food Stamp time limits due to hardship. While we appreciate that the Committee reported bill implements the 15 percent hardship exemption consistent with the Agreement, the bill's approach for employment and training (E&T) funds for able-bodied childless adults aged 18-50 falls short of creating the maximum level of work slots. The Agreement specifically states that existing Food Stamp E&T funds will be redirected and new capped mandatory funding added "to create additional work slots for individuals subject to the time limits." The Agreement provides $1 billion for this purpose. The approach in the Committee bill would create more than 100,000 fewer work slots than the Administration's legislative proposal and approximately 60,000 fewer than the approach taken by the Senate bill. Specifically, the bill lacks performance standards and accountability to ensure that the new Federal funding creates additional work slots that meet the welfare reform statute's tough work requirements for Food Stamp recipients, particularly by allowing 100 percent of the money to be spent on job search activities.

Spectrum -- The bill needs to be modified to achieve the full $26.3 billion in savings and policies described in the Balanced Budget Agreement. At a minimum, we urge the Rules Committee to meet the target savings number in the year 2002. It is our understanding that current attempts to redraft the bill still fall over $8 billion short of target levels. The reported bill does not include two of the proposals included in the Budget Agreement, the auction of "vanity" toll free telephone numbers and the spectrum penalty fee. The bill does not include reimbursement authority for Federal users that are required to relocate to new spectrum bands. Reimbursement of Federal agencies, such as the Department of Defense, is critical in order to avoid demands for increased discretionary spending (which could total several billion dollars) under the agreed upon discretionary spending caps. Additionally, the bill does not provide a firm date for the termination of analog broadcasting, thus causing significant savings reductions.

Additional concerns include the lack of authority for the FCC: (1) to retain a portion of auction receipts to cover the expense of administering auctions that would require additional discretionary appropriations to cover these costs; (2) to use economic mechanisms other than auctions where appropriate (i.e., user fees to create incentives for efficient spectrum management); and (3) to revoke and reauction licenses when an entity declares bankruptcy, which is essential to preserving licenses awarded in previous auctions.

The reported bill also includes an expansive definition of public safety that would create loopholes permitting far too many entities to be exempted from auctions and language that would protect spectrum for use by specific Federal users, which is contrary to the Administration's policy to manage spectrum across the Federal government through a process administered by the National Telecommunications and Information Administration. The Administration also has concerns with the non-germane language that eliminates the Duopoly and Newspaper Broadcast Cross-Ownership Rules. The reported bill language could short-change our Nation's long-standing commitment to fostering a diverse marketplace of ideas and ignores potential telecommunications policy and revenue gains that may be achieved if the FCC were to repack this spectrum for alternative uses.

Targeting Welfare-to-Work Funding to Cities and Counties with Large Poverty Populations -- The Administration strongly believes that a substantial amount of all welfare-to-work funds should be managed by cities and other local areas. The welfare-to-work structure crafted by the Ways and Means Committee accomplishes this goal through its division of funds between formula (50 percent) and competitive (50 percent) grants; its formula grant sub-States allocation factors and method of administration; and its reservation of 65 percent of competitive grants for cities with large poverty populations. The Education and Workforce Committee proposal would reduce the competitive funding share from 50 percent to 5 percent, thus severely restricting the amount for which cities can apply directly. The Ways and Means proposal accurately reflects the Agreement.

Additional Concerns

Although the Budget Agreement did not specifically address the following items, the Administration has significant concerns about them. The Administration urges the Rules Committee to address these concerns.

Medicare

Medical Savings Accounts (MSAs) -- The reported bill provides for a demonstration with 500,000 participants, costing $2 billion, which is many times larger than any other Medicare demonstration. Moreover, the demonstration exposes beneficiaries to any additional charges providers choose to levy without limitation. We strongly believe that the current law limits on balanced billing should be applied to this demonstration. We commend the Senate Finance Committee for limiting this demonstration to 100,000 participants, but still prefer a demonstration limited geographically for a trial period.

Medical Malpractice -- We believe that the malpractice provisions in the reported bill are extraneous to the Bipartisan Budget Agreement. As you know, the Administration opposed the malpractice provisions in the vetoed Balanced Budget bill, as well as those adopted in the House version of the Health Insurance Portability and Accountability Act. We find these provisions highly objectionable, and we oppose them.

Preventive Benefits -- While the preventive benefits in the reported bill are largely the same as those advanced in the President's Budget, we bring to your attention the failure to waive coinsurance for mammograms. As you know, mammography saves lives, yet many Medicare beneficiaries fail to use this benefit. Research has found that copayments hinder women from fully taking advantage of this benefit. Thus, we continue to support waiving copayments for mammograms.

Medical Education/Disproportionate Share (DSH) Carve-out -- The Administration's budget would move the medical education (indirect and direct) and DSH adjustments out of managed care payment rates and redirect these funds to eligible hospitals that provide services to Medicare managed care enrollees. This is an important proposal designed to ensure that the Nation's teaching hospitals and those that serve low-income populations receive the Medicare payments to which they are entitled. We urge the House to include the Ways and Means proposal.

MedicarePlus -- The bill permits beneficiaries to be locked into a MedicarePlus plan for as long as nine months, after a lengthy transition period. We continue to support the monthly disenrollment option as an important safety valve for managed care enrollees who are dissatisfied with their managed care plan. Moreover, we would support the ability of these enrollees to opt to purchase any Medigap plan of their choice upon disenrollment.

We have expressed concerns about balanced billing limits in MedicarePlus plans and anticipate a resolution of this issue such that MedicarePlus beneficiaries maintain their current law managed care protections against excessive cost-sharing (including those prohibiting balanced billing).

Prudent Purchasing -- We are pleased that the House included our proposal to expand the "Centers of Excellence" program and included a limited demonstration of durable medical equipment competitive bidding in the reported bill. However, we urge the House to take advantage of all of our prudent purchasing proposals. The Medicare program is governed by a strict set of provider payment rules that have the effect of limiting the ability of the Federal government to secure the most competitive terms available to other payers in the marketplace. We have advanced a set of proposals to allow Medicare, the Nation's largest health insurer, to also take advantage of lower rates providers offer to other payers.

Medicare Commission -- The reported bill would establish a Medicare commission. Establishing a bipartisan process that is mutually agreeable is essential to successfully address the challenges facing Medicare. We look forward to working with you on the development of the best possible bipartisan process to address the long-term financing challenges facing Medicare while simultaneously ensuring the sound restructuring of the program to provide high-quality care for our Nation's senior citizens.

Hospital Outpatient Department (OPD) Coinsurance Waiver -- While we support the policy in the reported bill that allows hospitals to reduce coinsurance for beneficiaries without being charged with a kickback violation, we would urge the House to include language barring such hospitals from charging the Medicare program for bad debt for such waived coinsurance. We suggest that hospitals make an election with the Secretary where they choose on an across-the-board basis for all beneficiaries to waive coinsurance and consequently do not bill Medicare for the waived coinsurance. Such a policy will permit proper monitoring of bad debt.

Medicaid

<u>Disproportionate Share Hospitals</u> -- We have concerns about the allocation of the disproportionate share hospital (DSH) payment reductions among States included in the reported bill. Although we agree that there have been abuses of this program in the past, taking such large reductions in certain States whose Medicaid programs are particularly dependent on DSH spending will likely affect their ability to cover services. We urge the House to revisit the FY 1998 President's Budget proposal, which ensures that States with the highest DSH spending are not bearing most of the impact of the savings policy.

We are very concerned that the reported bill does not include any retargeting of DSH funds. As the Administration has stated previously, we believe that significant savings from DSH payments should be linked to an appropriate targeting mechanism. We support proposals that ensure DSH funds are better targeted to needy hospitals.

Children's Health

We believe that the $16 billion Children's Health investment should be used for health insurance coverage. The Administration does not support the direct services option in the reported bill. We are concerned that a State could spend all of its money on one benefit or to offset the effects of the DSH cuts on certain hospitals, and that children would not necessarily get meaningful coverage.

We are also concerned that the reported bill may not be the most cost-effective manner possible to expand coverage to children, as required by the Agreement. The reported bill includes both a Medicaid and a grant option; however, the incentives in the reported bill could discourage States from choosing the Medicaid option. We believe that Medicaid is a cost-effective approach to covering low-income children, and would like to work with you on strengthening this option. We also believe that the grant program should be designed to be as efficient as possible. The provision that allows States to use funds for "other methods specified under the plan" with no details on what this means implies that States may use funds for purposes other than the intent of the Agreement (e.g., to offset States' share of Medicaid). We oppose this.

We are encouraged that the Senate-reported bill includes notable improvements. Specifically, we commend the decision not to allow use of the $16 billion investment in areas other than insurance coverage and the improved definition of benefits relative to the House Commerce Committee provisions. We are also extremely concerned about the inadequacy of the bill's benefits definition and the lack of low-income protections.

As the Administration has stated many times, we do not support limiting access to medically necessary benefits, including abortion services. We would like to work with the Congress to resolve this issue.

Minimum Wage and Workfare

The Administration strongly opposes the proposals in the reported bill on the minimum wage and welfare work requirements. The proposals in the reported bill are not part of the Budget Agreement and, had they been raised during negotiations, we would have strongly opposed them. These proposals would undermine the fundamental goals of welfare reform. The Administration believes strongly that everyone who can work must work, and those who work should earn at least the minimum wage and receive the protections of existing employment laws -- whether they are coming off welfare or not. These proposals do not meet this test.

Welfare-to-Work

We are pleased that the reported bill includes provisions that would address priorities, including: the provision of formula grant funds to States based on poverty, unemployment, and adult welfare recipients; a sub-State allocation of the formula grant to ensure targeting to areas of greatest need; targeting of at least 90 percent of formula funds to individuals in greatest need; appropriate flexibility for grantees to use the funds for a broad array of activities that offer promise of permanent placement in unsubsidized jobs; funds awarded on a competitive basis; and a substantial set-aside for evaluation. We look forward to working with the Congress to refine these provisions.

Welfare-to-Work Performance Fund -- The reported bill does not include a performance fund. It is essential that welfare-to-work funds generate greater levels of placement in unsubsidized jobs than States will achieve with TANF and other funds. We hope the House will consider a mechanism to provide needed incentives and rewards for placing more of the hardest-to-serve in lasting, unsubsidized jobs that promote self-sufficiency. We look forward to working with the Congress during conference to refine these provisions.

Worker Displacement -- We strongly urge the House to adopt, at a minimum, the provisions on worker displacement included in H.R. 1385, the House-passed job training reform bill which were included in the Education and the Workforce Committee reported bill and apply both to activities under the new welfare-to-work grants and TANF.

Distribution of Funds by Year -- It does not appear that the bill's allocation of $3 billion in budget authority over fiscal years 1998-2000 would, when combined with the program structure, result in an outlay pattern consistent with an estimate of zero outlays in FY 2002, as provided in the Budget Agreement. The Department of Labor is available to help craft language that satisfies the Agreement.

Repeal of Maintenance of Effort Requirement on State Supplementation of SSI Benefits

The Administration strongly opposes the repeal of the maintenance-of-effort requirement because it would let States significantly cut, or even eliminate, benefits to nearly 2.8 million poor elderly, disabled, and blind persons. Congress instituted the maintenance-of-effort requirement in the early 1970s to prevent States from effectively transferring Federal benefit increases from SSI recipients to State treasuries. The proposal also could put at risk low-income elderly and disabled individuals who could lose SSI entirely and possibly then lose Medicaid coverage as well. The Administration opposed this proposal during last year's welfare reform debate.

Student Loans

The Administration opposes the provision regarding administrative cost allowances (ACAs) to guaranty agencies in the Federal Family Education Loan Program (FFELP). The provision would mandate ACAs to be paid at a rate of 0.85 percent of new loan volume from mandatory funding authorized under Section 458 of the Higher Education Act of 1965 (HEA), up to a cap of $170 million in FY 1998 and 1999 and $150 million in FY 2000-2002. It would represent a new entitlement to these agencies not included in the Budget Agreement. Moreover, any allowance to these agencies should bear some relationship to the costs these agencies incur and not be based on an arbitrary formula. This is an issue for the upcoming HEA reauthorization.

MEWAs

The reported bill includes language from H.R. 1515, the "Expansion of Portability and Health Insurance Coverage Act of 1997," in the budget reconciliation legislation. We believe that the bill as currently drafted has inadequate consumer protections and has the potential to result in premium increases for small businesses and employees who may bear the burden of adverse selection. H.R. 1515 would transfer the regulation of a large health insurance market away from the States through the preemption of State laws under the Employee Retirement Income Security Act ("ERISA").

Although there currently is strong bipartisan interest in strengthening consumer protections in health plans governed solely by ERISA, the current protections in ERISA are weak and inadequate. Any legislation like the current bill that expands ERISA's scope must be accompanied by an expansion of consumer protections. The Administration opposed these MEWA provisions when they were considered last year, and we believe it would be unfortunate and unwise to introduce this level of controversy into the budget reconciliation process. This far-reaching proposal should receive much greater analysis and discussion before consideration for enactment.

Privatization

The reported bill would allow the eligibility and enrollment determination functions of Federal and State health and human services benefits programs, including Medicaid and Food Stamps, to be privatized. While certain program functions, such as computer systems, can currently be contracted out to private entities, the certification of eligibility for benefits and related operations (such as obtaining and verifying information about income and other eligibility factors) should remain public functions. The Administration believes that changes to current law would not be in the best interest of program beneficiaries and strongly opposes this provision.

Debt Limit Extension

The Administration strongly urges the House to include the debt limit extension contained in the Bipartisan Budget Agreement in the first reconciliation bill, the spending bill.

Vocational Education in TANF and Transfers to Title XX

The Administration opposes provisions in the reported bill that alter the TANF work requirements regarding vocational education and educational services for teen parents. In particular, the Administration opposes the provision allowing States to divert TANF funds away from welfare-to-work efforts to other Title XX social service activities.

Other Provisions That May Be Added at the Rules Committee

We are also concerned by reports that the Rules Committee may consider provisions that add further restrictions to immigrants' access to public benefits. Many of the potential provisions were considered during last year's immigration reform debate and were removed from the final legislation after negotiations between Congress and the Administration because they were unacceptable to the Administration. The Administration strongly opposes these punitive provisions, which would introduce known controversies into the budget reconciliation process.

The Bipartisan Budget Agreement reflects compromise on many important and controversial issues, and challenges the leaders on both sides of the aisle to achieve consensus under difficult circumstances. It is critical that we do so on a bipartisan basis.

I look forward to working with you to implement this historic agreement.

Sincerely,

Franklin D. Raines
Director

Identical letter sent to The Honorable Joseph Moakley, The Honorable John R. Kasich, and The Honorable John Spratt described in paragraph (1), (2), (3), (4), (5), or (7) of subsection (d).

"(2) LIMITATIONS AND SPECIAL RULES.—

"(A) NUMBER OF WEEKS FOR WHICH JOB SEARCH COUNTS AS WORK.—

"(i) LIMITATION.—Notwithstanding paragraph (1) of this subsection, an individual shall not be considered to be engaged in work by virtue of participation in an activity described in subsection (d)(6) of a State program funded under this part, after the individual has participated in such an activity for 6 weeks (or, if the unemployment rate of the State is at least 50 percent greater than the unemployment rate of the United States, 12 weeks), or if the participation is for a week that immediately follows 4 consecutive weeks of such participation.

or state is needy state 403(b)(6)

"(ii) LIMITED AUTHORITY TO COUNT LESS THAN FULL WEEK OF PARTICIPATION.—For purposes of clause (i) of this subparagraph, on not more than 1 occasion per individual, the State shall consider participation of the individual in an activity described in subsection (d)(6) for 3 or 4 days during a week as a week of participation in the activity by the individual.

"(B) SINGLE PARENT WITH CHILD UNDER AGE 6 DEEMED TO BE MEETING WORK PARTICIPATION REQUIREMENTS IF PARENT IS ENGAGED IN WORK FOR 20 HOURS PER WEEK.—For purposes of determining monthly participation rates under subsection (b)(1)(B)(i), a recipient in a 1-parent family who is the parent of a child who has not attained 6 years of age is deemed to be engaged in work for a month if the recipient is engaged in work for an average of at least 20 hours per week during the month.

includes caretaker relative

"(C) TEEN HEAD OF HOUSEHOLD WHO MAINTAINS SATISFACTORY SCHOOL ATTENDANCE DEEMED TO BE MEETING WORK PARTICIPATION REQUIREMENTS.—For purposes of determining monthly participation rates under subsection (b)(1)(B)(i), a recipient who is a single head of household and has not attained 20 years of age is deemed, subject to subparagraph (D) of this paragraph, to be engaged in work for a month in a fiscal year if the recipient—

apply to married

"(i) maintains satisfactory attendance at secondary school or the equivalent during the month; or

"(ii) participates in education directly related to employment for at least the minimum average number of hours per week specified in the table set forth in paragraph (1)(A) of this subsection.

avg of 20 hpw during month

"(D) NUMBER OF PERSONS THAT MAY BE TREATED AS ENGAGED IN WORK BY VIRTUE OF PARTICIPATION IN VOCATIONAL EDUCATION ACTIVITIES OR BEING A TEEN HEAD OF HOUSEHOLD WHO MAINTAINS SATISFACTORY SCHOOL ATTENDANCE.—For purposes of determining monthly participation rates under paragraphs (1)(B)(i) and (2)(B) of subsection (b), not more than 20 percent of individuals in all families and in 2-parent families may be determined to be engaged in work in the State for a month by reason of participation

in vocational educational training or deemed to be engaged in work by reason of subparagraph (C) of this paragraph.

"(d) WORK ACTIVITIES DEFINED.—As used in this section, the term 'work activities' means—

"(1) unsubsidized employment;

"(2) subsidized private sector employment;

"(3) subsidized public sector employment;

"(4) work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available;

"(5) on-the-job training;

"(6) job search and job readiness assistance;

"(7) community service programs;

"(8) vocational educational training (not to exceed 12 months with respect to any individual);

"(9) job skills training directly related to employment;

"(10) education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency;

"(11) satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate; and

"(12) the provision of child care services to an individual who is participating in a community service program.

"(e) PENALTIES AGAINST INDIVIDUALS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), if an individual in a family receiving assistance under the State program funded under this part refuses to engage in work required in accordance with this section, the State shall—

"(A) reduce the amount of assistance otherwise payable to the family pro rata (or more, at the option of the State) with respect to any period during a month in which the individual so refuses; or

"(B) terminate such assistance,

subject to such good cause and other exceptions as the State may establish.

"(2) EXCEPTION.—Notwithstanding paragraph (1), a State may not reduce or terminate assistance under the State program funded under this part based on a refusal of an individual to work if the individual is a single custodial parent caring for a child who has not attained 6 years of age, and the individual proves that the individual has a demonstrated inability (as determined by the State) to obtain needed child care, for 1 or more of the following reasons:

engage in work as defin

"(A) Unavailability of appropriate child care within a reasonable distance from the individual's home or work site.

"(B) Unavailability or unsuitability of informal child care by a relative or under other arrangements.

"(C) Unavailability of appropriate and affordable formal child care arrangements.

"(f) NONDISPLACEMENT IN WORK ACTIVITIES.—

"(1) IN GENERAL.—Subject to paragraph (2), an adult in a family receiving assistance under a State program funded under this part attributable to funds provided by the Federal

Government may fill a vacant employment position in order to engage in a work activity described in subsection (d).

"(2) NO FILLING OF CERTAIN VACANCIES.—No adult in a work activity described in subsection (d) which is funded, in whole or in part, by funds provided by the Federal Government shall be employed or assigned—

"(A) when any other individual is on layoff from the same or any substantially equivalent job; or

"(B) if the employer has terminated the employment of any regular employee or otherwise caused an involuntary reduction of its workforce in order to fill the vacancy so created with an adult described in paragraph (1).

"(3) GRIEVANCE PROCEDURE.—A State with a program funded under this part shall establish and maintain a grievance procedure for resolving complaints of alleged violations of paragraph (2).

"(4) NO PREEMPTION.—Nothing in this subsection shall preempt or supersede any provision of State or local law that provides greater protection for employees from displacement.

"(g) SENSE OF THE CONGRESS.—It is the sense of the Congress that in complying with this section, each State that operates a program funded under this part is encouraged to assign the highest priority to requiring adults in 2-parent families and adults in single-parent families that include older preschool or school-age children to be engaged in work activities.

"(h) SENSE OF THE CONGRESS THAT STATES SHOULD IMPOSE CERTAIN REQUIREMENTS ON NONCUSTODIAL, NONSUPPORTING MINOR PARENTS.—It is the sense of the Congress that the States should require noncustodial, nonsupporting parents who have not attained 18 years of age to fulfill community work obligations and attend appropriate parenting or money management classes after school.

"(i) REVIEW OF IMPLEMENTATION OF STATE WORK PROGRAMS.—During fiscal year 1999, the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate shall hold hearings and engage in other appropriate activities to review the implementation of this section by the States, and shall invite the Governors of the States to testify before them regarding such implementation. Based on such hearings, such Committees may introduce such legislation as may be appropriate to remedy any problems with the State programs operated pursuant to this section.

42 USC 608.

"SEC. 408. PROHIBITIONS; REQUIREMENTS.

[redacted]

"(a) IN GENERAL.—

"(1) NO ASSISTANCE FOR FAMILIES WITHOUT A MINOR CHILD.—A State to which a grant is made under section 403 shall not use any part of the grant to provide assistance to a family—

"(A) unless the family includes—

"(i) a minor child who resides with a custodial parent or other adult caretaker relative of the child; or

"(ii) a pregnant individual; and

child must reside w/ adult getting grant

"(B) if the family includes an adult who has received assistance under any State program funded under this part attributable to funds provided by the Federal Government, for 60 months (whether or not consecutive) after

the date the State program funded under this part commences (unless an exception described in subparagraph (B), (C), or (D) of paragraph (7) applies).

"(2) REDUCTION OR ELIMINATION OF ASSISTANCE FOR NON-COOPERATION IN ESTABLISHING PATERNITY OR OBTAINING CHILD SUPPORT.—If the agency responsible for administering the State plan approved under part D determines that an individual is not cooperating with the State in establishing paternity or in establishing, modifying, or enforcing a support order with respect to a child of the individual, and the individual does not qualify for any good cause or other exception established by the State pursuant to section 454(29), then the State—

"(A) shall deduct from the assistance that would otherwise be provided to the family of the individual under the State program funded under this part an amount equal to not less than 25 percent of the amount of such assistance; and

"(B) may deny the family any assistance under the State program.

"(3) NO ASSISTANCE FOR FAMILIES NOT ASSIGNING CERTAIN SUPPORT RIGHTS TO THE STATE.—

"(A) IN GENERAL.—A State to which a grant is made under section 403 shall require, as a condition of providing assistance to a family under the State program funded under this part, that a member of the family assign to the State any rights the family member may have (on behalf of the family member or of any other person for whom the family member has applied for or is receiving such assistance) to support from any other person, not exceeding the total amount of assistance so provided to the family, which accrue (or have accrued) before the date the family ~~leaves~~ the program, which assignment, on and after the date the family ~~leaves~~ the program, shall not apply with respect to any support (other than support collected pursuant to section 464) which accrued before the family received such assistance and which the State has not collected by—

"(i) September 30, 2000, if the assignment is executed on or after October 1, 1997, and before October 1, 2000; or

"(ii) the date the family ~~leaves~~ the program, if the assignment is executed on or after October 1, 2000.

"(B) LIMITATION.—A State to which a grant is made under section 403 shall not require, as a condition of providing assistance to any family under the State program funded under this part, that a member of the family assign to the State any rights to support described in subparagraph (A) which accrue after the date the family leaves the program.

"(4) NO ASSISTANCE FOR TEENAGE PARENTS WHO DO NOT ATTEND HIGH SCHOOL OR OTHER EQUIVALENT TRAINING PROGRAM.—A State to which a grant is made under section 403 shall not use any part of the grant to provide assistance to an individual who has not attained 18 years of age, is not married, has a minor child at least 12 weeks of age in his or her care, and has not successfully completed a high-school

Whose edits? leg Aff

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

LABOR BRANCH FAX SHEET

DATE: 6/23

TO: Elena Kagen 62878

FROM: Janet Himler

COMMENTS: ~~DOL Review of~~
FLSA + ~~language~~

Elena - this is our first attempt at reviewing language from DOL. This has not been sent to anyone outside the Division (HRD)

NUMBER OF PAGES ~~3~~ 4
(INCLUDING COVER)

CONFIRMATION: (202) 395-3262
FAX NUMBER: (202) 395-1596

PRELIMINARY DRAFT FOR DISCUSSION ONLY: June 23, 1997: 8:45 PM

House Reconciliation Bill: Majority Staff Discussion Proposal

Employment Status: This draft eliminates the language that specifically states that welfare recipients in work experience and community service are not employees. However, the "Purpose" section and language throughout the proposal (particularly the Rule of Interpretation section) suggest that these welfare recipients are in these activities to gain experience or training and are not in "regular employment." Although this may be subject to interpretation by the courts (and any legislative history on this report could be critical), the result would likely be that participants in these activities would not be considered employees for purposes of employment protection laws -- regardless of the absence of an explicit statement that they are not employees.

Noncash Benefits: ~~Does not provide for the inclusion of noncash benefits other than food stamps in calculating the minimum wage. The current House proposals would also allow inclusion of Medicaid, child care, and housing.~~ Provides that the hours-of-work requirement be determined using the sum of the value of food stamps and TANF assistance, divided by the minimum wage

Work Activities and Minimum Wage Equivalency: Limits the number of hours that a welfare recipient can work in community service or workfare to the sum of the cash welfare benefit and food stamps minus child support divided by the minimum wage. (This is the first welfare-to work proposal that addresses the child support issue; this proposal is the same as the calculation used in CWEP under the JOBS program.) If this calculation falls short of the hours required to count towards participation rates (e.g., 20 hours per week in 1997), any other work activity (including training) can be used for the remaining hours -- notwithstanding the limits on training in the TANF law.

Enforcement of Minimum Wage Equivalency and Hours Limitation: This proposal does not provide for coverage of welfare recipients in community service or work experience by the Fair Labor Standards Act. Nor does it provide any other mechanism for enforcing the minimum wage requirement for these recipients. ~~As a result, there is no means of ensuring that the minimum wage equivalency will be paid.~~ In addition, there is no provision for overtime or the other protections provided by the FLSA. (Note that there ~~are some~~ may be at least two states where the cash welfare grant plus food stamps would allow states to require more than 40 hours of work in a week.)

This proposal would apply the following worker protections to all welfare recipients in work activities under TANF -- not just those under the Welfare-to-Work program.

Health and Safety: This is the same language that was used ~~in the~~ H.R. 1385, the House-passed Job ~~Consolidation~~ training reform bill and in JTPA. ~~It applies federal and state OSHA standards but other provisions of the OSH Act arguably would not apply.~~ drop

Discrimination: Welfare recipients in work experience or community service will only be covered by employment based anti-discrimination laws (like Title VII) if they are considered employees. However, as stated above, they may not be found to have employment status under this proposal despite the fact that the language does not explicitly state that they are not employees.

neutral third-party

In addition, the gender discrimination prohibition in the proposal does not provide for a ~~federal~~ remedy. Only the state grievance procedure in the proposal would be available for welfare recipients in community service or work experience subjected to gender discrimination or sexual harassment. ~~There is no provision for an appeal to the federal government or judicial system.~~

Nondisplacement: This proposal retains most of the current TANF ~~prohibitions~~ provisions. However, it is narrower than the provisions contained in the Education and Workforce Committee bill.

- It drops the general prohibition against displacing (including partial displacement) a current employee and replaces the provision with the current TANF provision that specifically permits a participant to fill a vacant employment position.
- It narrows the prohibition relating to collective bargaining agreements in contracts for services. The Education and Workforce provision prohibits "impairment" of such agreements and prohibits work activities that are inconsistent with such agreements. This proposal simply prohibits the violation of such agreements.
- It drops the prohibition against placing the participant in a job that infringes upon the promotional opportunities of current employees.
- It drops the provision in the TANF statute which provides that these prohibitions do not preempt or supersede provisions of state or local law that provide greater protection for employees from displacement.

Grievance Procedure: The proposal only provides for filing of grievances with the state. It does not allow for ~~any federal~~ appeal. Consequently, a welfare recipient with a discrimination, displacement or health and safety complaint against the state would have to file a grievance with the state. (If, however, they were considered employees, they could file a health and safety complaint with OSHA or a discrimination complaint with the EEOC under Title VII.)

a neutral third-party

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

June 17, 1997

The Honorable William V. Roth, Jr.
Chairman
Committee on Finance
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

As you know, the Administration and the bipartisan Congressional leadership recently reached agreement on a historic plan to balance the budget by 2002 while investing in the future. The plan is good for America, its people, and its future, and we are committed to working with Congress to see it enacted.

With regard to welfare, the budget agreement called for restoring Supplemental Security Income (SSI) and Medicaid benefits for immigrants who are disabled or become disabled and who entered the country before August 23, 1996, and making other important changes. The Senate Finance Committee mark for inclusion in the reconciliation legislation is, however, inconsistent with the budget agreement in this key area. Consequently, if the Committee were to proceed with its legislation in this form, we would be compelled to invoke the provisions of the agreement that call upon the Administration and the bipartisan leadership to undertake remedial efforts to ensure that reconciliation legislation is consistent with the agreement.

Continued SSI and Medicaid Benefits for Legal Immigrants

While the Committee's provision to provide benefits for new applicants for a very limited time is better than the House Ways and Means Committee proposal, it still fails to provide sufficient assistance for the most vulnerable individuals. The budget agreement explicitly states, "Restore SSI and Medicaid eligibility for all disabled legal immigrants who are or become disabled and who enter the U.S. prior to August 23, 1996." The Chairman's mark fails to reflect the agreement. As a result, it would protect as many as 75,000 fewer immigrants than the budget agreement in the year 2002.

In addition, it is unclear whether the Chairman's mark explicitly guarantees Medicaid coverage to disabled legal immigrants in all states. We strongly urge the Committee to include this protection.

The Administration is sympathetic to the goal of covering the elderly non-disabled, and will work with you to address this issue. However, as is the case with all of the provisions in the agreement, any new policies that require additional resources must be mutually agreeable.

In addition to our concerns with provisions that are inconsistent with the agreement, the Administration urges the Committee to address two technical issues. First, we urge the adoption of a provision to protect the benefits of those who have been on the SSI rolls since before 1979. Generally these are elderly citizens over the age of 90 who do not possess the required birth certificates or other documents necessary to establish eligibility. Second, we urge the adoption of a provision that would provide the same exemption period for Amerasian immigrants as refugees are provided. Amerasian immigrants share many of the problems and barriers of refugees and have the same level of need as refugees. Neither of these provisions will change the spending estimates associated with the Committee's mark.

The Committee mark also includes a number of provisions that were not specifically addressed in the budget agreement, and about which the Administration has serious concerns:

Welfare to Work

Local Program Administration. The challenge of welfare reform -- moving welfare recipients into permanent, unsubsidized employment -- will be greatest in our Nation's large urban centers, especially those with the highest number of adults in poverty. Mayors and other chief local elected officials, working with private industry councils, have been entrusted by Congress with the responsibility for administration of other Federal job training funds. The Administration strongly believes that a substantial amount of all Welfare to Work funds should be managed by these entities, which have the experience to address most effectively the challenge of moving long-term welfare recipients into lasting, unsubsidized employment that reduces or eliminates dependency.

The Chairman's mark, however, would provide for local administration of formula grant funds only through the Temporary Assistance for Needy Families (TANF) agency. The mark's competitive grant structure would not ensure that an appropriate portion of funds outside rural areas will be administered by cities with high concentrations of adults in poverty. In addition, the competitive grant portion would be only 25 percent of the total funds available, still further limiting the resources for cities with the greatest need. The Administration strongly urges the Committee to increase the share of competitively awarded funds to 50 percent, the approach taken by the House Ways and Means Committee.

Close coordination of Welfare to Work activity with the State TANF agency and State TANF strategy is clearly essential. The Administration urges the Committee to incorporate provisions for management of Welfare to Work funds by cities and other local areas, as has been urged by the Chairman of the Senate Labor and Human Resources Committee, and incorporated into Welfare to Work programs passed by two House committees.

Federal Administering Agency. The Chairman's mark would place the program under the authority of the Secretary of Health and Human Services. While consistency with Federal TANF strategies is essential, to be successful, Welfare to Work program activities must be closely aligned with the workforce development system overseen by the Secretary of Labor.

Thus, the Administration believes that the Secretary of Labor should administer this program in consultation with the Secretaries of HHS and HUD. This is also the approach taken in the bills passed by the House Ways and Means and Education and Workforce Committees.

Non-displacement. We remain deeply disappointed in the lack of adequate non-displacement provisions in the Chairman's mark. We strongly urge the Committee to adopt, at a minimum, the provisions included in H.R. 1385, the House-passed job training reform bill.

Performance Bonus. The Administration applauds the inclusion in the Chairman's mark of a performance bonus fund focused on increased earnings. The Administration urges the Committee to provide the strongest possible incentives and rewards for placing the hardest-to-serve in lasting, unsubsidized jobs that promote self-sufficiency by holding States accountable for the success of their programs and rewarding States with demonstrated success over and above what they achieve with their TANF and other funds.

Distribution of Funds by Year. It does not appear that the mark's allocation of $3 billion in budget authority across FYs 1998-2000 would, when combined with the program structure, result in an outlay pattern consistent with an estimate of zero outlays in FY 2002, as provided in the budget agreement. The Department of Labor is available to work with the Committee to craft provisions that satisfy this outlay goal.

Work Opportunity Tax Credit. The Ways and Means mark included changes to the Work Opportunity Tax Credit (WOTC) that would, in effect, re-establish several of the provisions of the expired predecessor program, the Targeted Jobs Tax Credit. Our position on these changes may not have been clear at the markup. We oppose any changes that weaken the improvements made to the jobs tax credit by the enactment of WOTC, and strongly support our current proposal to extend and enrich the WOTC to help long term welfare recipients get and keep private sector jobs.

Privatization of Welfare Programs

The Chairman's mark would allow the eligibility and enrollment determination functions of Federal and State health and human services benefits programs – including Medicaid, WIC, and Food Stamps – in ten states to be privatized and deems approved such a proposal for the State of Texas. While certain program functions, such as computer systems, can currently be contracted out to private entities, the certification of eligibility for benefits and related operations (such as obtaining and verifying information about income and other eligibility factors) should remain public functions. The Administration believes that changes to current law would not be in the best interest of program beneficiaries and strongly opposes this provision.

Vocational Education and TANF

The Administration is concerned with provisions that are not in the budget agreement. We understand that an amendment may be offered to modify TANF rules dealing with vocational education. The budget agreement did not address making changes to TANF.

Unemployment Insurance Integrity

The Chairman's mark does not include the provision of the budget agreement that achieves $763 million in mandatory savings over five years through an increase in discretionary spending for Unemployment Insurance program integrity activities of $89 million in 1998 and $467 million over five years. These savings are a key component of the budget agreement. The discretionary spending that the agreement assumes, and would be subject to appropriation, would support the necessary additional eligibility reviews, tax audits, and other integrity activities that, the evidence demonstrates, will yield the savings. We urge the Committee to adopt this provision to achieve the specified savings. The Administration has separately transmitted draft legislative language on June 6th that reflects the budget agreement's provisions on this provision.

State SSI Administrative Fees

It does not appear that the Committee intends to include a provision, comparable to that included in the House Ways and Means Committee mark and consistent with the budget agreement, to increase the administrative fees that the Federal Government charges States for administering their State supplemental SSI payments and to make the increase available, subject to appropriations, for Social Security Administration (SSA) administrative expenses. The Administration encourages the Committee to do so.

Cost Allocation Language

We understand that amendments may be offered during Committee consideration to prevent costs from increasing in Food Stamps and Medicaid due to cost-shifting for common functions from the TANF block grant, which places a cap on TANF administrative costs. We understand that the CBO baseline includes costs of over $5 billion in FYs 98-02 because CBO assumes administrative cost-shifting from TANF to Food Stamps and Medicaid. This proposal seeks to reduce the extent of the cost-shift to Food Stamps and Medicaid, which could yield substantial savings against CBO's baseline.

While the Administration is generally supportive of this effort -- to prevent States from changing cost allocation plans in order to shift greater administrative costs from the capped TANF block grant to open-ended Food Stamp and Medicaid administrative costs that are matched by the Federal government -- we would need to carefully review the specific mechanism proposed. Furthermore, we would have very serious reservations about proposals that would cap Food Stamps and Medicaid administrative costs and would oppose a cap that would limit the ability of a State to manage its programs.

The budget negotiators discussed changes to the Food Stamp and Medicaid programs at considerable length. Any further savings in this area would require mutual agreement, as would the allocation of those savings either to deficit reduction or to new spending.

We appreciate the Committee's inclusion of several provisions of the budget agreement that are priorities for the Administration, such as refugee and asylee eligibility, welfare to work, and Earned Income Tax Credit (EITC) compliance:

Refugee and Asylee Eligibility -- The agreement would extend the exemption period from five to seven years for refugees, asylees, and those who are not deported because they would likely face persecution back home. The Administration supports the Chairman's mark, which implements this policy and also extends the exemption to Cuban and Haitian entrants.

Welfare to Work -- We are pleased that the Chairman's mark includes a number of provisions that would address the Administration's priorities, including: the provision of formula grant funds to States based on poverty, unemployment, and adult welfare recipients; a sub-state allocation of the formula grant that appears similar to the formula passed by two House Committees, to ensure targeting on areas of greatest need; appropriate flexibility for grantees to use the funds for a broad array of activities that give promise of resulting in permanent placement in unsubsidized jobs; some funds awarded on a competitive basis; a substantial set-aside for evaluation; and a performance fund to reward States that are successful in placing long-term welfare recipients. We look forward to working with the Committee to refine these concepts. However, a number of other provisions, discussed above, raise serious concerns.

Minimum Wage and Workfare -- The Chairman's mark appropriately refrains from modifying current law with respect to the application of the minimum wage and other worker protections for working welfare recipients under TANF. The Administration believes strongly that everyone who can work must work, and everyone who works should earn at least the minimum wage and receive the protections of existing employment laws -- whether or not they are coming off welfare.

Earned Income Tax Credit (EITC) -- The Chairman's mark includes three proposals made by Treasury to improve EITC compliance. The mark would deny EITC for ten years for those who fraudulently claim the EITC; toughen recertification requirements for those denied the EITC as a result of deficiency procedures; and impose due diligence requirements for paid preparers. Treasury has proposed three other legislative compliance measures that we hope the Committee will also consider.

The budget agreement reflects compromise on many important and controversial issues, and challenges the leaders on both sides of the aisle to achieve consensus under difficult circumstances. We must do so on a bipartisan basis.

I look forward to working with you to implement the historic budget agreement.

Sincerely,

Franklin D. Raines
Director

Identical letter sent to the Honorable Daniel Patrick Moynihan

OPTIONS

- Exempt from FLSA and/or related labor protection laws (doesn't help states meet minimum wage)

- Allow states to count other benefits toward the minimum wage:

    - Medicaid
    - child care
    - housing
    - transportation

- Weaken work requirements by allowing states to meet more of the work requirements through education or training

- Exempt workfare from FICA/EITC, if necessary

- Other options?

Related Questions to answer:

- Does the Ways and Means proposal permit states to count training toward the minimum wage only after they have exhausted the other device for meeting the minimum wage (counting other benefits)?
- Does the Ways and Means proposal remove protections for race, gender, disability discrimination?
- How easy is it for states to meet the 30 hour work requirement via training?

46. FICA w UI - 75% wa vc ≈ 2%
Stacey - no FUTA for states
OG - Govs lot bec also good ossite
Emil + Treas - 6-8 Q SSDI mk diff?
BR - UI more val. - No - no def way to qual.

VI - No prot - gov't + nonTT no FUTA; self-ins

Seth - Trades - stronger - non-displ, - think re this
- Emil? Phil?

Seth - wst comm st?
CC: John P.
Hom mtg early next wk

1. Count other: MA, cc, hsg, transp
2. CWEP - no FLSA + mw
3. Wk reqs
4. Other - FICA, EITC, FUTA
5. No change

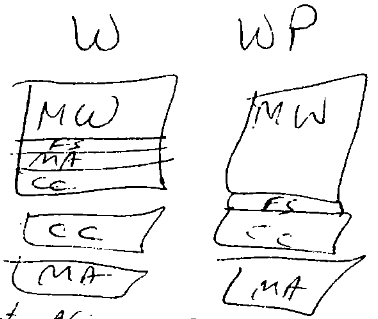
Lose pr r of a
Enforcemt
Seth - min wg req + recordkpg
- nd sm enf - cwep not ?
- FLSA 6+7 don't apply if mw
y not yes, pr of a
- Don't make it ok like wage
Now no pr r of act ag st even if yes
yes cities
Treas - no view

PR of A	W+H
No	Yes

- cont to labor
- DOL not sure

1 - HHS no on all, espec (MA) - vs other wkrs; dis ⇒ wk more
DOL agrees but hard to argue
Emil - HSG - hard to value, hv higher value
Mary - precedent for other low-wg wkrs
Emily - don't satisfy Gov's
Paul - valuation - no mkt rent; sec 8 mkt rent less contrib, but better

DF - lesser value to reflect - set



of count, Nicer WP > W

3. Wk reqs
OG - cld be done; perc nk - tracking in reqs,
- hrs or activs (not rates) - cld be reqs st.
- MS: education
BR - <20 an issue FLSA + this: R's wld love to cut.
- Southern states of hk
Seth - opp on deal, R's given us cover

96 - didn't address - check

4.a FICA/EITC - 94 law - had no EITC but yes FICA; but OG sez pub jobs program - not wkfare
Treas - same - gives them $'s for SSDI
OG - neg implics for st GA
Why no EITC - Kitty? BR → wk fare = prect job - no incentive priv sector job
Polit - EITC polit vuln, brings mod more bys
DOL - higher min wg + fs + eitc needed for pov - helpful in min wg deb
BR pt → OK to be in pov
OG - people lv pov w/ priv sector + gen. disreg
BR - too much - EITC ≠ welf prog.

Paul Offner

The Minimum Wage Debacle

6/16/97

Liberals are hailing the White House announcement that states must pay workfare participants the minimum wage, but they shouldn't be. The ruling may be good for organized labor, but it's bad news for welfare recipients and a raw deal for states.

It all goes back to a year ago when critics were screaming that the welfare bill then being debated by Congress was weak on work. Rather than deal with the problem, the president agreed to language mandating that half of all recipients be working within six years.

The Congressional Budget Office said at the time that most states wouldn't make it because no additional funding was provided, but no one paid much attention. Now, under pressure from organized labor, the president has agreed to a wage rule that all but guarantees they won't make it. Caught in the middle are the nation's governors who opposed both the requirement and the rule, but who now are stuck with both.

The administration's rule isn't a problem right now, but within a year the minimum wage goes to $5.15, and a couple of years after that the work requirement increases to 30 hours a week, at which point almost every state will be in trouble. Then all bets are off. As states must put more and more recipients to work, and as the cost of doing so goes higher and higher, they will either have to come up with additional welfare funding or cut recipients from the rolls. In the current environment, it's not hard to imagine how that choice will come out.

The argument that all workfare jobs should pay the minimum wage is appealing but also weak. For many young mothers who have never held a job, workfare can provide the experience they need before they seek private employment. In effect, it's part work, part training. Wages should be low so there's an incentive to find a real job. Moreover, workfare differs from private employment. If you miss work but have a valid excuse (the baby sitter didn't show up, or the car broke down), you're not sanctioned in most places. If you have no excuse, you still get the children's portion of the grant.

Partly it's a desire not to hurt the children, and partly it's a recognition that many welfare mothers have serious problems—low IQ, substance abuse, little discipline—that make it difficult for them to hold regular jobs. They still should be required to work, but they need special help, which is what they get in workfare (in this respect, it's like sheltered workshops for the disabled). There's no reason why every rule designed for regular employment should apply.

The administration says the minimum-wage rule is needed to protect the low-wage market. "Current workers were at risk of being replaced by lower-paid welfare recipients in both the public and the private sectors," writes Mary Jo Bane, former assistant secretary of Health and Human Services.

It's a fair point. Forcing several million welfare mothers to work clearly will put downward wage pressure on the job market. But that's a consequence of the welfare bill the president signed, and it's a problem however we come out on the wage issue. The way to deal with it is through policies that supplement wages, such as the earned income tax credit. The new wage policy may help, but it could also make matters worse, because more families will be kicked off the welfare rolls, thus adding to the competition for low-wage jobs and further depressing wages at the low end of the market.

For President Clinton, it's another case of trying to have it both ways. Having earlier endorsed an unrealistic vision of welfare-to-work, he now agrees to a proposal that undermines that vision. Having sought to appease the supporters of the work strategy, he now seeks to placate its hard-line opponents.

Faced with such criticisms, presidential assistant Bruce Reed argues that the states shouldn't be focusing on workfare anyway. "Our first preference has always been for states to place people in private-sector jobs," he says. If only it were that easy. The Clinton people never have been willing to acknowledge the fact that their welfare reform strategy depends heavily on public employment. Sooner or later they'll have to.

As the more employable recipients get jobs and leave the rolls, states will be left with the more difficult cases, the long-term recipients who have severe barriers to employment and for whom workfare is the only real alternative. That's who is likely to be hurt by the new policy.

The writer is commissioner of health care finance for the District of Columbia.

Matt McKearn
5-0851
Lisa Crowskie
5-1150
Larry Matlack
5-1596

MANAGER'S AMENDMENT TO BE SELF-EXECUTED IN THE RULE ON RECONCILIATION

24 June 1997

This manager's amendment consists of *changes* from reconciliation legislation reported to the Committee on the Budget that will be self-executed in the rule on reconciliation at the request of the Chairman of the Committee on the Budget. The manager's amendment makes the following changes from the reported legislation:

- **LOW-INCOME MEDICARE PREMIUM PROTECTIONS.** Provides an additional $1 billion for low-income Medicare premium protections, bringing the total to $1.5 billion over 5 years. The provision covers the full Medicare Part B premium for seniors with incomes up to 135 percent of poverty. For seniors with incomes between 135 percent and 175 percent of poverty, the assistance covers that portion of the Medicare Part B premium increase attributable to the home health spending transfer.

- **MINIMUM WAGE/WELFARE-TO-WORK PARTICIPANT PROTECTIONS.** Contains the following changes from the reported legislation:

  - Limits to no more than 40 hours per week the number of hours participants in public sector or nonprofit workfare activities can be required to work.

  - Counts only Temporary Assistance for Needy Families [TANF] and food stamp benefits as compensation under the minimum wage for workfare participants.

  - Adopts the AFDC JOBS criteria for defining work experience and community service jobs when States use workfare in the public ~~or nonprofit~~ sector to meet State work participation requirements, and uses the same criteria for determining whether participants are "employees" under the terms of the Fair Labor Standards Act.

  - Adopts worker protection and nondiscrimination provisions (preventing discrimination based on age, race, gender, and disability), but provides for an independent nonFederal grievance resolution procedure.

  - Incorporates worker displacement language, which applies to all workfare participants and which does not preempt stronger State displacement laws.

- **FOOD STAMP WORK SLOTS.** Eliminates "job search" as a qualified activity for additional food stamp work slot funds, and raises to 80 percent (from 75 percent) the earmarked funds for people between 18 and 50 years old who may lose food stamp benefits due to new work requirements.

- **MEDICAID.** Drops language in Medicaid section that allows only physicians to decide appropriate hospital stays. This language was added to bring the Committee on Commerce closer to compliance with its reconciliation directives.

- **CHILDREN'S HEALTH CARE.** Modifies the children's health care block grant to ensure that it complies with the Bipartisan Budget Agreement's proposed spending $16 billion over the next 5 years.

- **MEDICAID COVERAGE FOR SSI CHILDREN.** Provides $100 million to allow States the option of maintaining Medicaid benefits for children currently on the Medicaid rolls who would otherwise lose Medicaid eligibility because of stricter SSI eligibility standards.

- **SPECTRUM AUCTIONS.** Increases from $9.7 billion to $20.3 billion over 5 years the receipts due to spectrum auctions. Drops or relaxes numerous conditions specified in the Commerce Committee's reported legislation that restricted the Federal Communication Commission's ability to auction spectrum. Also specifies additional spectrum to be made available for auction.

- **WELFARE TO WORK.** Requires that all of $3 billion in welfare-to-work funds be obligated by fiscal year 1999.

- **MULTIPLE EMPLOYER WELFARE ARRANGEMENTS.** Modifies language on Multiple Employer Welfare Arrangements to overcome jurisdictional issue between the Committees on Education and the Workforce and Ways and Means.

- **VETERANS' MEDICAL CARE.** Allow veterans hospitals to retain, subject to appropriations, medical care cost recovery receipts, so that veterans' medical care remains a discretionary program.

- **BUDGET ENFORCEMENT.** Budget process changes that are consistent with the Bipartisan Budget Agreement (see attached summary).

Budget Enforcement Provisions

The manager's amendment self-executed in the rule also adds the following budget enforcement provisions to the base reconciliation bill:

SUBTITLE A — AMENDMENTS TO THE CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT OF 1974

- Permanently extends the requirement that a budget resolution cover a 5-year period.
- Extends indefinitely the enforcement, through points of order, of the 5-year spending and revenue levels set forth in budget resolutions.
- Simplifies and updates points of order that are used to enforce the spending and revenue levels in budget resolutions.
- Provides for adjustments in the budget resolution levels for legislation appropriating funds for designated emergencies, arrearages, and the International Monetary Fund.
- Eliminates the need to waive the Budget Act for a reported bill that violates the Act but is cured by a self-executing rule. In such cases, the point of order no longer lies against the bill.

SUBTITLE B — AMENDMENTS TO THE BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985

- Adjusts and extends statutory discretionary spending limits, which are enforced through sequestration, through fiscal year 2002.
- Provides for adjustments in the discretionary spending limits for appropriations for emergencies, arrearages, and the International Monetary Fund.
- Extends pay-as-you-go [PAYGO] requirements, which provide that entitlement and tax legislation must be fully offset, through fiscal year 2002.
- Modifies the baseline that is used to "score" legislation so that committees get credit for eliminating entitlement programs.
- Eliminates accrued PAYGO balances and savings from reconciliation to ensure that all savings are used for deficit reduction.

NEW A

~~**AMENDMENT TO H.R. ____, AS REPORTED**~~

chanc

In section 5302(a), strike subsection (c) of section 809 of the new part 8 being inserted thereby.

paste

In section 403(a)(5)(B)(i) of the Social Security Act, as proposed to be added by section 9001(a), strike "2000" and insert "1999".

Strike subparagraphs (H) and (I) of section 403(a)(5) of the Social Security Act, as proposed to be added by section 9001(a), and insert the following:

"(H) FUNDING.—The amount specified in this subparagraph is $1,500,000,000 for each of fiscal years 1998 and 1999.

Redesignate subparagraph (J) of section 403(a)(5) of the Social Security Act, as proposed to be added by section 9001(a), as subparagraph (I).

Welfare to Work #2

Strike subparagraph (K) of section 403(a)(5) of the Social Security Act, as proposed to be added by section 9001(a).

Strike section 9004, redesignate section 9005 as section 9007, and insert after section 9003 the following (and amend the table of contents of title IX accordingly):

SEC. 9004. RULES GOVERNING EXPENDITURE OF FUNDS FOR WORK EXPERIENCE AND COMMUNITY SERVICE PROGRAMS.

(a) IN GENERAL.—Section 407 of the Social Security Act (42 U.S.C. 607) is amended by adding at the end the following:

"(j) RULES GOVERNING EXPENDITURE OF FUNDS FOR WORK EXPERIENCE AND COMMUNITY SERVICE PROGRAMS.—

"(1) IN GENERAL.—To the extent that a State to which a grant is made under section 403(a)(5) or any other provision of section 403 uses the grant to establish or operate a work experience or community service program, the State may establish and operate the program in accordance with this subsection.

"(2) PURPOSE.—The purpose of a work experience or community experience program is to provide experience or training for individuals not able to obtain employment in order to assist them to move to regular employment. Such a program shall be designed to improve the employability of participants through actual work experience to enable individuals participating in the program to move promptly into regular public or private employment. Such a program shall not place individuals in private, for-profit entities.

"(3) LIMITATION ON PROJECTS THAT MAY BE UNDERTAKEN.—A work experience or community service program shall be limited to projects which serve a useful public purpose in fields such as health, social service, environmental protection, education, urban and rural development and redevelopment, welfare, recreation, public facilities, public safety, and day care, and other purposes identified by the State.

"(4) MAXIMUM HOURS OF PARTICIPATION PER MONTH.—A State that elects to establish a work experience or community service program shall operate the program so that each participant participates in the program with the maximum number of hours that any such individual may be required to participate in any month being a number equal to—

"(A)(i) the amount of assistance provided during the month to the family of which the individual is a member under the State program funded under this part; plus

"(ii) the dollar value equivalent of any benefits provided during the month to the household of which the individual is a member under the food stamp program under the Food Stamp Act of 1977; minus

"(iii) any amount collected by the State as child support with respect to the family that is retained by the State; divided by

"(B) the greater of the Federal minimum wage or the applicable State minimum wage.

"(5) MAXIMUM HOURS OF PARTICIPATION PER WEEK.—A State that elects to establish a work experience or community service program may not require any participant in any such program to participate in any such program for a combined total of more than 40 hours per week.

"(6) RULE OF INTERPRETATION.—This subsection shall not be construed as authorizing the provision of assistance under a State program funded under this part as compensation for work performed, nor shall a participant be entitled to a sal-

JOBS ?

ary or to any other work or training expense provided under any other provision of law by reason of participation in a work experience or community service program described in this subsection.".

(b) RETROACTIVITY.—The amendment made by subsection (a) of this section shall take effect as if included in the enactment of section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

SEC. 9005. STATE OPTION TO TAKE ACCOUNT OF CERTAIN WORK ACTIVITIES OF RECIPIENTS WITH SUFFICIENT PARTICIPATION IN WORK EXPERIENCE OR COMMUNITY SERVICE PROGRAMS.

(a) IN GENERAL.—Section 407(c) of the Social Security Act (42 U.S.C. 607(c)) is amended by adding at the end the following:

"(3) STATE OPTION TO TAKE ACCOUNT OF CERTAIN WORK ACTIVITIES OF RECIPIENTS WITH SUFFICIENT PARTICIPATION IN WORK EXPERIENCE OR COMMUNITY SERVICE PROGRAMS.—Notwithstanding paragraphs (1) and (2) of this subsection and subsection (d)(8), for purposes of determining monthly participation rates under paragraphs (1)(B)(i) and (2)(B) of subsection (b), an individual who, during a month, has participated in a work experience or community service program operated in accordance with subsection (j), for the maximum number of hours that the individual may be required to participate in such a program during the month shall be treated as engaged in work for the month if, during the month, the individual has participated in any other work activity for a number of hours that is not less than the number of hours required by subsection (c)(1) for the month minus such maximum number of hours.".

12? then limited

(b) RETROACTIVITY.—The amendment made by subsection (a) of this section shall take effect as if included in the enactment of section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

SEC. 9006. WORKER PROTECTIONS.

Section 407(f) of the Social Security Act (42 U.S.C. 607(f)) is amended to read as follows:

"(f) WORKER PROTECTIONS.—

"(1) NONDISPLACEMENT IN WORK ACTIVITIES.—

"(A) GENERAL PROHIBITION.—Subject to this paragraph, an adult in a family receiving assistance under a State program funded under this part attributable to funds provided by the

Federal Government may fill a vacant employment position in order to engage in a work activity. 7

"(B) PROHIBITION AGAINST VIOLATION OF CONTRACTS.—A work activity shall not violate an existing contract for services or collective bargaining agreement.

not

"(C) OTHER PROHIBITIONS.—An adult participant in a work activity shall not be employed or assigned—

"(i) when any other individual is on layoff from the same or any substantially equivalent job; or

"(ii) if the employer has terminated the employment of any regular employee or otherwise caused an involuntary reduction if its workforce with the intention of filling the vacancy so created with the participant.

"(2) HEALTH AND SAFETY.—Health and safety standards established under Federal and State law otherwise applicable to working conditions of employees shall be equally applicable to working conditions of participants engaged in a work activity.

what? — Age Disc Act — Sec 504 — ADA — Title VI

"(3) NONDISCRIMINATION.—In addition to the protections provided under the provisions of law specified in section 408(c), an individual may not be discriminated against with respect to participation in work activities by reason of gender.

"(4) GRIEVANCE PROCEDURE.—

"(A) IN GENERAL.—Each State to which a grant is made under section 403 shall establish and maintain a procedure for grievances or complaints from employees alleging violations of paragraph (1) [nondiscpl] and participants in work activities alleging violations of paragraph (1), (2), or (3).

nondisp
OSHA
Nondiscrim

"(B) HEARING.—The procedure shall include an opportunity for a hearing.

"(C) REMEDIES.—The procedure shall include remedies for violation of paragraph (1), (2), or (3), which may include—

"(i) prohibition against placement of a participant with an employer that has violated paragraph (1), (2), or (3);

"(ii) where applicable, reinstatement of an employee, payment of lost wages and benefits, and reestablishment of other relevant terms, conditions and privileges of employment; and

"(iii) where appropriate, other equitable relief. 7

"(5) NONPREEMPTION OF STATE NONDISPLACEMENT LAWS.—The provisions of this subsection relating to nondisplacement of employees shall not be construed to preempt any provision of State law relating to nondisplacement of employees that affords greater protections to employees than is afforded by such provisions of this subsection.".

In section 10617(a)(2), in the subparagraph (T) inserted by such section—

(1) strike "(or under the supervision of a physician)" and insert "(or as prescribed by a physician)", and

(2) strike "immediately after, or at" in clause (i) and insert "at, or within 48 hours after".

Whole thing option - no; only min wg → Treas? → EEOC?

Emil
Mattack
Farkas
Grundman
Bardatte
Vargyas

I. ~~Protections~~/Enforcement of MW

	Now	House	Options
1. Min Wg/OT	Wage + Hr Pr Rt of A (F+S)	$\boxed{\text{Did CWEP}}$	Did CWEP?

Options - State Grievance
- HHS/TANF penalty - how seen det?
- ~~CWEP - must be triggered by complaint~~
- Wage + hour (+ prt of a?)
- make them ees

[Does not being ee solve IRS prob?]

II Wkr Protections

Wkr Prots

2. Health + Safety/OSHA - only thru ee? full??

But same as HR1385
- Invokes OSHA standard
- Not duty clause - all eers must protect ag known haz; whistleblower
- Enforcement unclear - inspectors vs state grievance

3. Discrimination	Now	House	Options
	- Fed fdg - Funda	Just fed $ plus gender	

Options
- Beef up state grievance proc.
- HHS penalty
- ~~[illegible]~~
- Pick + choose among ee ones
- All employee ones
- make them ee's

→ Non $\cancel{A}$'s - make subj to fed $?

- CWEP 5
- ~~[illegible]~~
- CWEP 1, 3, 6
- CWEP 3, 6
- CWEP 6

6. Wkrs Comp was in W+M + E+W

5 from 8

	Current	House	Sen
Grievance:	ee's	$\boxed{}$	No Prov [illegible]

Equal Pay Act?

	Fund Rt/Ee	Fed $
Race	Title VII	Title VI & religion
Gender	Title VII	~~Title IX~~ (just educ??)
Disab	ADA	sec 504
Age	Age Disc ?	Age Disc Act?
Relig??		

Partial Displacement
- dropped from Ed + W

4. Workers Comp - dropped - made

5. Displacement
≥ TANF - violation of cb agreements / contracts

< Ed + Wkfe - partial infringing

TANF: Tied to Fed $
- Can't be in a position where someone laid off
- State grievance proc.

E+W:

Anti-Displacement

	TANF	JTPA	HR1385/E+W	All TANF House	$36 Sen
Replace wkr -fire -layoff	~~No~~	~~No~~	~~No~~	No	No
Violate CB agreement	Yes	No	No	No	No
Reducing hours, wages, bens (Partial)	Yes	No	No	Yes	No
Impairment cb + contracts for svcs	Yes	No	No	Yes	No
Inconsist w/coll bg	Yes	Yes	No	Yes	No
Infringe on promot opps	Yes	No	No	Yes	No
Grievance	State Process		-opp hrg - w/in 60 days -appeal DOL secy reg. -silence -DOL w/in 120 days -Remedies: lose TANF $ no more pmts get job/wages back "equit relief"	State Process -hearing -Shall be remedies -may include: -no more pmts -get job/wages back -"equit relief"	Same as 1385/E+W

Options: 1) Partial
2) Violate → Impair/Inconsistent

Grievance Option: 1) HR1385
2) DOL appeal
3) lose TANF $
4) time certain

1. 20 → 30 vs < 20; ind Wk act caps

2. Partial displ (promot) (above or spent $) (Coll bg'g) } real world

1. ee's

Calls 3. Displacent:
Schwartz
→ Lyn
~~States~~
AFSCME
→ Elaine Ryan (+ Wkrs Comp)
→ Sherri Steisel (+ Wkrs Comp)

Priorities

1. rel strong enf mech mw
2. Enf - disc +
- displacemt } wkst → strongest
3. Partial displacement

? wkrs comp - will be added anyway?

OSHA - still a CWEP option worthit? on < House
- why is enf unclear

Wkrs Comp - history on Hill

June 13, 1997

To: Diana Fortuna, The White House

Fr: Elaine Ryan, APWA

Re: Workers Comp and Comparable Worth language

As we discussed, attached are the provisions in the House Ways and Means bill related to Workers Compensation and the Education and the Workforce bill related to Comparable Worth for your information. You will note that the Workers Comp provisions apply to all work activities under the TANF program. If you need to discuss this further, please feel free to call me at 682-0100 ext. 235. Thanks.

Pages #7

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO THE COMMITTEE PRINT OFFERED BY MR. ARCHER AND MR. SHAW

Strike title IX and insert the following:

TITLE IX—COMMITTEE ON WAYS AND MEANS-NONMEDICARE

SEC. 9000. TABLE OF CONTENTS.

The table of contents of this title is as follows:

Sec. 9000. Table of contents.

Subtitle A—TANF Block Grant

Sec. 9001. Welfare-to-work grants.
Sec. 9002. Limitation on amount of Federal funds transferable to title XX programs.
Sec. 9003. Clarification of limitation on number of persons who may be treated as engaged in work by reason of participation in educational activities.
Sec. 9004. Required hours of work; health and safety.
Sec. 9005. Penalty for failure of State to reduce assistance for recipients refusing without good cause to work.

Subtitle B—Supplemental Security Income

Sec. 9101. Requirement to perform childhood disability redeterminations in missed cases.
Sec. 9102. Repeal of maintenance of effort requirements applicable to optional State programs for supplementation of SSI benefits.
Sec. 9103. Fees for Federal administration of State supplementary payments.

Subtitle C—Child Support Enforcement

Sec. 9201. Clarification of authority to permit certain redisclosures of wage and claim information.

Subtitle D—Restricting Welfare and Public Benefits for Aliens

Sec. 9301. Extension of eligibility period for refugees and certain other qualified aliens from 5 to 7 years for SSI and medicaid.
Sec. 9302. SSI eligibility for aliens receiving SSI on August 22, 1996.
Sec. 9303. SSI eligibility for permanent resident aliens who are members of an Indian tribe.
Sec. 9304. Verification of eligibility for State and local public benefits.
Sec. 9305. Derivative eligibility for benefits.
Sec. 9306. Effective date.

"(D) at the option of the State, in the case of child care assistance, the dollar value of such assistance; and

"(E) at the option of the State, in the case of housing benefits, the dollar value of such benefits.

"(4) VALUATION OF MEDICAID BENEFITS.—Annually, the Secretary shall publish a table that specifies the dollar value of the insurance coverage provided under title XIX to a family of each size, which may take account of geographical variations or other factors identified by the Secretary.

"(5) TREATMENT OF RECIPIENTS ASSIGNED TO CERTAIN POSITIONS WITH A PUBLIC AGENCY OR NONPROFIT ORGANIZATION.—A recipient of assistance under a State program funded under this part who is engaged in work experience or community service with a public agency or nonprofit organization shall not be considered an employee of the public agency or the nonprofit organization.

"(k) HEALTH AND SAFETY.—Health and safety standards established under Federal and State law otherwise applicable to working conditions of employees shall be equally applicable to working conditions of participants engaged in a work activity. To the extent that a State and the dollar value equivalent of any benefits provided to the recipient during the month under the food stamp program under the Food Stamp Act of 1977; divided by

"(II) the minimum wage rate in effect during the month under section 6 of the Fair Labor Standards Act of 1938.

"(3) BENEFITS.—As used in paragraph (2)(A), the term 'value of the benefits' means—

"(A) in the case of assistance under the State program funded under this part, the dollar value of such assistance;

"(B) in the case of food stamp benefits under the food stamp program under the Food Stamp Act of 1977, the dollar value equivalent of such benefits;

"(C) at the option of the State, in the case of medical assistance benefits provided under the State plan approved under title XIX, the dollar value of such benefits, as determined in accordance with paragraph (4);

[COMMITTEE PRINT]

JUNE 10, 1997

[PROPOSED RECONCILIATION PROVISION]

TITLE V—COMMITTEE ON EDUCATION AND THE WORKFORCE

Subtitle A—TANF Block Grant

SEC. 5001. WELFARE-TO-WORK GRANTS.

(a) GRANTS TO STATES.—Section 403(a) of the Social Security Act (42 U.S.C. 603(a)) is amended by adding at the end the following:

"(5) WELFARE-TO-WORK GRANTS.—

"(A) FORMULA GRANTS.—

"(i) ENTITLEMENT.—A State shall be entitled to receive from the Secretary a grant for each fiscal year specified in subparagraph (H) of this paragraph for which the State is a welfare-to-work State, in an amount that does not exceed the lesser of—

"(I) 2 times the total of the expenditures by the State (excluding qualified State expenditures (as defined in section 409(a)(7)(B)(i)) and work for the month by reason of participation in vocational educational training, or deemed to be engaged in work for the month by reason of subparagraph (C) of this paragraph.".

(b) RETROACTIVITY.—The amendment made by subsection (a) of this section shall take effect as if included in the enactment of section 103(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

SEC. 5004. COMPENSATION; MAXIMUM REQUIRED HOURS OF WORK ACTIVITIES.

(a) IN GENERAL.—Section 407 of the Social Security Act (42 U.S.C. 607) is amended by adding at the end the following:

"(j) COMPENSATION.—A State to which a grant is made under section 403 may not require a recipient of assistance under the State program funded under this part to participate in a work activity described in paragraph (1), (2), or (3) of subsection (d) unless the recipient is compensated at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience and skills, and such rates shall be in accordance with applicable law.

"(k) LIMITATION ON NUMBER OF HOURS PER MONTH THAT A RECIPIENT OF ASSISTANCE MAY BE REQUIRED TO PARTICIPATE IN ON-THE-JOB TRAINING, AND WITH A PUBLIC AGENCY OR NONPROFIT ORGANIZATION.—

"(1) IN GENERAL.—A State to which a grant is made under section 403 may not require a recipient of assistance under the State program funded under this part to be assigned to on-the-job training, and to a work experience or community service position with a public agency or nonprofit organization during a month for more than the allowable number of hours determined for the month under paragraph (2).

"(2) ALLOWABLE NUMBER OF HOURS.—

"(A) IN GENERAL.—Subject to subparagraph (B), the allowable number of hours determined for a month under this paragraph is—

"(i) the value of the includible benefits provided by the State to the recipient during the month; divided by

"(ii) the minimum wage rate in effect during the month under section 6 of the Fair Labor Standards Act of 1938.

E - Can you type this?

DRAFT

Draft: 11:30 a.m. 6/25/97

DOL ISSUES TO BE INCLUDED IN SAP/LETTER ON HOUSE BILL

Minimum Wage and Worker Protections

The Administration strongly opposes the proposals in the reported bill on the minimum wage and welfare work requirements. The proposals in the reported bill are not part of the Budget Agreement and, had they been raised during negotiations, we would have strongly opposed them. These proposal would undermine the fundamental goals of welfare reform.

The Administration believes strongly that everyone who can work must work, and everyone who works should earn at least the minimum wage--whether they are coming off of welfare or not. While the House bill makes progress towards this objective, we believe the bill fails to provide an effective enforcement mechanism for ensuring that working welfare recipients receive at least the minimum wage for the hours they work.

In addition, the Administration believes strongly that working welfare recipients should be provided with the same rights and protections as regular employees. We continue to have serious concerns that certain welfare recipients would be denied the status of employees under this bill and thereby be deprived of worker protection under laws addressing matters such as employment discrimination, child labor, and family and medical leave. We also believe the limited grievance procedures provided in the bill are inadequate to ensure welfare recipients protection against health and safety violations and gender discrimination and to protect regular employees against displacement.

Worker Displacement

We are seriously concerned the House bill weakens the protections against the displacement of regular employees that are included in H.R. 1385, the House passed job training reform bill, and that had been included in the Education and Workforce Committee reported bill. We strongly urge the restoration of those provisions.

Bruce N. Reed
06/25/97 12:17:34 PM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP, Elena Kagan/OPD/EOP, Diana Fortuna/OPD/EOP

cc:

Subject: FLSA & displacement memo

Hilley has asked us to prepare options for conference on FLSA, displacement, privatization, and other welfare issues. We need to do some serious policy work on what we can live with, and we'll have to figure out the right way to involve DOL, HHS et al.

Let's talk about how we're going to do this.

Can States Afford to Pay the Minimum Wage to Welfare-to-Work Participants?

Some have argued that applying basic labor law protections to welfare-to-work recipients is too expensive. This argument is both false and misleading. First, the range of options available to the states and the current block grant levels combine to assure that every state can meet the laws' requirements. In fact, every state but Mississippi could afford to pay the minimum wage to all participants even if none of the education and training options, which because they are not work do not require the payment of wages, were used. Second, it is just plain wrong to argue that we can successfully encourage a transition from dependency to self-sufficiency if we do not afford program participants protections afforded to every other American worker.

STATES HAVE PROGRAM FLEXIBILITY AND BUDGET SURPLUSES

- States have 13 options for meeting work requirements, many of which are activities that would most likely NOT be covered by the FLSA coverage, such as job readiness training, or time in vocational-education, and fulfilling high school. Minimum wage standards will have no effect on the cost of these options and these programs will be more suited to the particular needs of many welfare recipients.

- Although federal requirements for hours-of-work increase over time, the range of options for meeting these work requirements also expand.

- States have significant flexibility about how to meet work requirements. They can limit the numbers of people in workfare without cutting off aid (e.g., by age of kids, opt-out of 2 month community service option, waiver from food stamp work requirement to relieve pressure of finding so many "slots").

- Some states are already very far along in meeting the initial work requirements (NY already relies heavily on vocational education; Illinois and Pennsylvania may already meet their first year work requirements without having to place more recipients).

WELFARE TO WORK CAN ONLY WORK WHEN WORK IS HONORED

- The most important goal of welfare-to-work policy -- placing former welfare recipients in unsubsidized, private sector jobs -- will be encouraged by increasing the standards required under other options. Employee protections are a positive incentive for states to pursue comprehensive reform.

- The whole point of welfare reform is reduced welfare dependency. The key to reduced dependency is living-wage work and skill development.

- Any Congressional action to reverse the Administration's position would run counter to every legislative effort to reform welfare by expanding work. Since the original Social Security Act, federal policy has acknowledged that pressure to enforce work must also include pressure to raise living standards through fair payment. Many federal programs (WPA, CWTP, CETA) required prevailing wage payments, not just minimum wage.

- If states cannot meet the competing demands of creating jobs, defending living standards, and protecting state budgets, the Department of Health and Human Services has the power to grant additional flexibility under "reasonable cause" exemptions.

BACKGROUND STATISTICS ON THE IMPACT OF MINIMUM WAGE REQUIREMENTS

- The new welfare law requires states to have 25 percent of their caseloads in work-related activities for 20 hours a week this year. Any estimates of the impact of minimum wage coverage must acknowledge that (1) not all work activities will be covered by the minimum wage, (2) not all welfare recipients have to be in work, and (3) not all recipients will be forced to work full time. These realities make detailed estimates difficult.

- The Center on Law and Social Policy has estimated that only one state (Mississippi) would be unable to conform with the welfare law's current work requirements without increasing benefit levels if food stamps are included in the calculation of earnings. This is already allowable under the Food Stamps Workfare program, a program which also includes minimum wage requirements.

- Minimum wage requirements could easily be met by employers involved in workfare programs. The median state grant of $383 means that in more than half of the states employers would only have to pay 70 cents an hour or less to meet FLSA requirements.

- State grants under the Temporary Assistance for Needy Families program (TANF) are set at 1994 levels, but caseloads have fallen. States receive funding for 5.0 million families, but current caseloads are only 4.1 million. The difference between funding and caseloads will make it easier for states to comply.

- The Urban Institute reports that even in 1994, before the welfare law passed, 23 percent of all adults receiving welfare were engaged in work activities or training that may be allowable under TANF work requirements.

WHAT THIS MEANS FOR EMPLOYEES

- Without FLSA coverage, workers sitting right next to each other doing exactly the same tasks will see that one is getting at least the minimum wage and the other is not. Acknowledging the employee status of workfare participants is key to promoting workplace acceptance.

- If the intent of welfare reform is to get welfare recipients into the real world of work, then they should experience the real world of work; if we want them to be able to support their own families off of welfare, they should be working at jobs that pay at least the minimum wage.

- Without FLSA coverage, employers will have incentives to fill positions with much cheaper welfare recipients rather than "regular" workers, degrading the entire lower end of the labor market in the process. In Mississippi, for example, a workfare worker working the required 20 hours a week would earn the equivalent of only $1.50 an hour for their grant.

WHAT THIS MEANS FOR EMPLOYERS

- Without FLSA coverage, employers could hire welfare recipients for free, even if their welfare grant divided by the hours worked were less than the minimum wage. With FLSA coverage, employers would have to at least chip in the extra on top of the grant subsidy to come up to the minimum wage (see estimate above).

- Employers will still enjoy heavily subsidized workers through workfare and tax breaks.

- When the public supported welfare reform, we don't believe they intended welfare reform to provide free labor for businesses.

- In some states, private businesses can get tax breaks on top of the subsidized labor so that they have heavy incentives to displace current workers or create short-term positions solely to take advantage of low-cost labor.

AFL-CIO Public Policy Department

j:\...\flsa2.txt

- self executing rule

MW solved Fri - decrease hours - knew we wld dislk

Use 1988 defs -

59's workers rights

No spill into publ sector

Ed/Wkfc title - conform, w/ prevailing wage Davis-Bacon

Colton / Haskins - thought OK - blew up

- polit: compromise betw them

- So Spratt pretty gd, let's vote - goal

- Sen ⇒ lev in conf

By late tom, Rules

R's won't drop

D's won wage issue

No FLSA, OT, ch labor → enforcemt, probs with

R's no - ui, eitc, fml then pulled back

R's sensitive re disc - ok + exempt vs. - yes OSHA

PW - JTPA - - narrows - mechs

-

Colton - drop FLSA - 1988 "wages"

1+3 - hlth + s etc.

disc. - existing laws

1) CWEP - fix theirs - can't be done

2) FLSA minus ------- 94 - FICA no, EITC yes - do tog now

3) Fix parall - no UI tax + bens

→ 1988 - OK w/ Treas, if only mirror CWEP - fml

→ OK but add health

Talk to Deb - w/ Tracy + ...

Drop: 2 - no travel - drop

4 - recs, incl cc

5 - cvd under #1

not reg OSHA

allows DOL appeal

So 1+3 plus OSHA + enf.

Def yes - OSHA

Anti-disc Title 7 + 6 CRA

Newt - ~~[illegible]~~ wk off '88

cc Emil Parker
Jeff Farkas 5.0851

DRAFT June 17, 1997

ANALYSIS OF COMPENSATION AMENDMENT TO TANF UNDER EDUCATION AND WORKFORCE COMMITTEE BUDGET RECONCILATION LEGISLATION

- Budget Reconciliation Legislation approved last week by the House Committee on Education and the Workforce amended TANF to include a requirement relating to compensation for certain work activities. (Section 5004 of the Act which amends Section 407 of the Social Security Act)

  -- The requirement only applies to three work activities: unsubsidized employment, subsidized private sector employment, and subsidized public sector employment. *It does not apply to the other TANF work activities.*

  -- A Democratic amendment that would have extended the requirement to work experience, on-the-job training, community service programs, and the provision of child care services was defeated on a party line vote.

  -- The provision states that a recipient may not be required to participate in the specified work activities unless the recipient is compensated at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer, and who have similar training, experience, and skills, and that such rates shall be in accordance with applicable law.

- This provision is very similar to a requirement included in the House-passed bipartisan job training reform legislation -- H.R. 1385, except in that Act the requirement would apply to individuals participating in on-the-job training or who are employed in any of the other activities under the Act.

- The provision also is similar to -- but narrower than -- provisions in JTPA and its predecessors. JTPA requires all individuals employed in activities under the Act to receive the same rates of pay as individuals employed in similar occupations by the same employer. In addition, JTPA requires all OJT participants to be compensated at the same rate as similarly situated employees. These provisions do not contain the additional factors of linking the wages to workers "who have similar training, experience, and skills."

  -- The JOBS regulations also required that participants in on-the-job training be paid at the same rates as similarly situated employees.

  -- The Administration's 1994 Work and Responsibility Act contained a provision similar to JTPA applying to all participants employed under the WORK program.

- These wage protections have historically accompanied Federal employment and training programs in order to ensure that participants are equitably compensated for the work performed and that the wages of currently employed workers are not undermined.

- As noted, the Education and Workforce provision is narrower in application than H.R. 1385 and current law, since it is limited to only three work activities and imposes an additional requirement not contained in current law that the similarly situated worker have similar experience, training, and skills.

- Therefore, the provision is quite limited in scope. Even if the requirement was extended to community service programs, interpretative questions could arise about whether there are any other regular employees who are similarly situated or who have similar experience, training, or skills.

s:\opr\wpdocs\welfare\400Stanf.617

Prevailing Wage Language

Description: The Ed/Workforce mark would amend TANF so that a recipient may not be required to participate in the following work activities:

- unsubsidized employment
- subsidized private sector employment
- subsidized public sector employment

4 v 3

"unless the recipient is compensated at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupatons by the same employer and who have similar training, experience and skills, and such rates shall be in accordance with applicable law."

Precedents

JTPA: Requires all individuals employed in activities under the Act to receive the same rates of pay as individuals employed in similar occupations by the same employer; requires OJT participants to be compensated at the same rate as similarly situated employees; does not link the wage to workers "who have similar training, experience, and skills"

higher of ...

HR1385: Similar to JTPA

Administration's 1994 bill: Persons in WORK assignments who are performing work equivalent to that done by others working for the same employer will be similarly compensated.

CWEP: After 9 months of CWEP, prevailing wage requirements kicked in

U.S. Department of Labor

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

FAX COVER SHEET

June 18, 1997

TO: Cynthia Rice
Dianna Fortuna

FAX: 456-7431

FROM: Stacey Grundman

MESSAGE: See attached -- per your request.

PAGES: 2+cover

Lyn:

– public-only now created jobs

– separate 936 vs TANF

6/94

DATE:

TO: Richard Roussel
Assistant Regional Administrator
Office of Family Security

FROM: Diann Dawson
Acting Director
Office of Family Assistance

SUBJECT: JOBS Alternative Work Experience

This response was prepared by staff in the Division of JOBS Program in consultation with the Office of General Counsel. We apologize for the delay in responding to your inquiry.

ISSUE:

The issue is whether private for profit employers can be used for Alternative Work Experience placements.

BACKGROUND:

A Tribal JOBS grantee has submitted an amendment to its JOBS plan in which the Tribe wants to implement an Alternative Work Experience program (AWE). As part of an AWE, the Tribe wants to place participants with private for profit employers in addition to public and private non-profit employers.

Section 482(d)(1)(A)(ii)(IV) of the Social Security Act (the Act), added by the Family Support Act of 1988, provides that as an optional component in their JOBS program, States and Tribal JOBS grantees may offer "community work experience programs as described in subsection (f) or any other work experience program approved by the Secretary." This is the only reference in the Act to an alternative program to the Community Work Experience Program (CWEP).

CWEP itself was an existing program at the time the Family Support Act was enacted, having been established by the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35). The purpose of CWEP is to provide training and work experience for AFDC recipients in order to assist them in moving into regular employment. The former CWEP regulations at 45 CFR part 238, which no longer apply to States (or

Tribes) with JOBS programs, limited CWEP sponsors to public agencies and non-profit organizations (45 CFR 238.50) and limited assignments to those that serve a useful public purpose (45 CFR 238.52(a)). 45 CFR 238.52(b) prohibited the use of CWEP participants to displace persons currently employed or to fill established unfilled position vacancies.

The preamble to the original final CWEP regulations indicates that private for profit entities were consciously excluded as CWEP sponsors (47 FR 5659 dated February 5, 1982). It was reasoned that there was a higher risk that CWEP participants would be used to displace regular employees because potentially less control could be exercised over private for profit entities. It was also felt that private for profit entities could gain an unfair advantage through the use of free labor. Despite a prohibition on private for profit CWEP placements, it was believed substantial employment opportunities would still result.

Currently, section 482(f) of the Social Security Act limits CWEP projects to those which serve a useful public purpose. In addition, section 484(c) of the Act prohibits the use of any work assignment under the JOBS program to displace any currently employed worker or position.

As mentioned above there was only a limited reference to alternative work experience in the Family Support Act and the accompanying Conference Report. Thus, it is not clear what Congress intended when authorizing an alternative to CWEP in the Family Support Act.

In looking to the preamble to the JOBS regulations for guidance on what features an AWE program might have, the only guidance found was at 54 FR 42192 which indicates that "an alternative work experience program could be modeled after the WIN work experience program." The Work Incentive Program (WIN) was established in 1967 by Public Law 90-246 and it was repealed by Public Law 100-485, the Family Support Act of 1988.

Like CWEP, the purpose of WIN was the employability of AFDC recipients. It had several components, one of which was the work experience program. The principal feature of the WIN work experience program, authorized by section 432(b)(2) of the Social Security Act, allowed a participant to be assigned to a full-time, temporary position for a limited number of weeks. The regulation at 45 CFR 224.35(b) (which was unchanged from 1974 until the repeal of WIN) limited participation in WIN work experience to thirteen weeks for any one individual. Unlike CWEP, which limited the number of hours an individual could participate, WIN work experience allowed States to place participants in full-time positions. Another characteristic of WIN work experience was the prohibition against the displacement of employed workers. In addition, WIN work experience positions could only be with public and private non-profit entities per section 432(c) of the Social Security Act. This same section prohibited placements with private for profit entities.

RESPONSE:

The Social Security Act does not currently prohibit the use of private for profit employers as sponsors in Alternative Work Experience programs. For Tribes and Alaska Native organizations that operate JOBS programs, current regulation (45 CFR 250.94(e)(2)(v)(A)) states that "innovative approaches with the private sector are encouraged if they are consistent with the purpose of JOBS to assist AFDC recipients to avoid long-term dependency."

Therefore, current policy is to approve AWE programs that include private for profit entities as sponsors.

Although the statute does not exclude private for profit employers, States and Tribes must exercise great care if they choose private for profit employers. Assignments should be with a private for profit entity that functions like a public or nonprofit private agency and should be in areas that clearly serve a public service as described in the existing JOBS regulations. An example would be a private for profit hospital, such as Kentucky does. States and Tribes must also take care that any work assignment meets the requirements of section 484 of the Social Security Act.

To make the most of a limited placement period, a State or Tribe could set the number of hours participants could work and not use the formula mandated by CWEP. For example, all participants could be required to work twenty hours a week.

While a few assignments with private for profit enterprises that do not function like a public agency may be permissible, alternative work experience assignments should not result in or give the appearance of free labor. Nor should they give or appear to give an employer an unfair advantage over competitors. Thus, it seems reasonable that any AWE placements made with private for profit entities be limited in length. We recommend a placement of no more than thirteen weeks as a reasonable amount of time.

Additionally, it is expected that the President's welfare reform proposal to be announced soon. All phases of the JOBS program are being reviewed in the context of welfare reform. As a result there may be changes in various aspects of the current JOBS program.

We hope this information is helpful to you. Questions on Tribal JOBS policy may be directed to Anita Grandpre at 202-401-4638. Questions on JOBS policy may be directed to Ann Barbagallo at 202-401-5139.

cc: ACF Regional Administrators

Byrd rule – would take 60 votes to keep in reconciliation. Because of states concerns, and concerns that FLSA will encourage short time limits, may not be 40 ~~states~~ votes to stop it in Senate – Thus time to consider options

TO:

FROM:

SUBJECT: Options on Minimum Wage for Workfare Legislation

As you know, we have been steadfast in our position that welfare recipients engaged in workfare should receive the minimum wage. We oppose the current House proposal, arguing that it would undermine the fundamental goals of welfare reform. Since the House appears poised to pass a reconciliation bill contrary to our position, it is appropriate at this point for you/us to consider whether there are any modifications to current law that we would consider, or whether our opposition is so strong that you would veto any bill with a change to current law on this issue.

<u>Background:</u> In May, the Department of Labor issued a ruling that the Fair Labor Standards Act (FLSA) applies to welfare recipients in workfare programs, including payment of the minimum wage and labor protections such as occupational safety and anti-discrimination laws. There is an exclusion for trainees, but it is so narrowly drawn that states will probably find it difficult to meet its requirements and still count the activity toward the welfare law's work participation rates.

Initially, it should be comparatively easy for states to comply with the minimum wage requirement, particularly since we are allowing states to count food stamps as well. However, the requirement becomes more difficult over time as the work requirements increase from 20 to 30 hours a week. (Actually, the law allows states to keep the requirement at 20 hours indefinitely by using training to fill the hours from 20 to 30, but this is somewhat difficult from a practical standpoint, and some states have passed laws with tougher requirements.)

For example, only Mississippi's welfare grant is so low that it would have difficulty converting it into 20 hours of a minimum wage payment in 1998, in combination with food stamps, for the average family size of three. In that same year, eight states would fall short of this mark for families of only two. By the year 2000, the number of states with shortfalls grows to 21 for families of three, and to 41 states for families of two.

It is important to note that workfare is hardly the only tool available to states to move people from welfare to work. Workfare should have a limited, transitional role, since private sector jobs are the only way to ensure that those on welfare become truly independent.

<u>Congressional Proposals:</u> The House Republicans have language in their reconciliation bill that would exempt welfare recipients engaged in workfare from the Fair Labor Standards Act or any other federal law, except OSHA. It would ostensibly require payment of the minimum wage, but would render this meaningless by permitting states to count child care, Medicaid, and housing benefits toward that payment. (The Department of Labor's ruling does allow states to count food stamps, since this is permitted under current law.) We have stated our view that this essentially creates a subminimum wage for workfare participants. Finally, it would also allow states to count additional hours of job search, education, and training toward the welfare law's work requirements. This would be the first weakening of the law's hard-won work requirements, and it

would be a substantial weakening.

House Republicans and Democrats are now engaged in negotiations on this issue. They are considering dropping the Republican plan to count other benefits, relying instead on letting states count education and training as work where necessary. The Republicans also appear willing to compromise and extend anti-discrimination laws to those in workfare.

In contrast, the Senate has no FLSA language at this point, but they may simply be recognizing the likelihood that they would have difficulty with the issue on the floor, preferring to let it come up in conference.

If we decide to move from our current position, our alternatives would fall into four key areas.

Option 1: Count benefits other than food stamps toward the minimum wage: Counting Medicaid, child care, transportation, and/or housing benefits toward the payment of the minimum wage would make it far easier on states, but it would raise a number of other issues. First, since these benefits don't count toward the minimum wage for the working poor, it would effectively create a subminimum wage for those on welfare. Second, it could set a precedent for further erosion of the minimum wage by counting all kinds of other benefits for other low-wage workers. Third, it would make workers on workfare "cheaper" than those who are not, making displacement more likely. Finally, placing a value on these benefits is often very difficult to do, and requires recordkeeping and systems to keep them up-to-date that the states find burdensome.

Each agency offering a benefit feels strongly that that benefit should not count toward the minimum wage. HHS feels very strongly about Medicaid and, especially, child care. HUD argues vigorously against including housing benefits.

Option 2: Allow more activities to count toward the work requirements: This option is probably the one most attractive to the greatest number of parties, but it is a fundamental weakening of the hard-won work requirements in the law. Some may argue that we should embrace this proposal since the Republicans have given us political cover by proposing it themselves. However, to allow the states to throw the work requirements overboard at the first sign of difficulty is not an auspicious start to implementing this law. Spell List - what kind of activities would count; explain "6 month waiver" option which might look better but would still weaken work; remind him that caseload reduction makes work rates

HHS and Labor would not oppose changes in this area.

Option 3: Exempt workfare participants from other labor protections: Although this option does not help states find the money to meet the minimum wage, apparently much of the states' anxiety on this issue is actually focused on labor protections. There seems to be general agreement, even from the Republicans, that OSHA protection and race/sex anti-discrimination statutes should apply. The hazier issues are enforcement of the minimum wage and other labor protections. These include whether individuals should have a private right of action; whether the Labor Department's Wage and Hour Division can bring an action; and whether workfare participants are eligible for unemployment insurance and benefits, overtime, and family and medical leave (what about ADA?). Obviously, it is possible to pick and choose from this list, either by starting with existing law and specifying which protections are excluded, or by saying that existing law does not apply and adding back certain protections.

The Department of Labor feels most strongly that we should not consider changes in this area, particularly in the area of enforcement. — explain why (? precedent for min wage, etc.)

Option 4: Exempt workfare recipients from FICA and the EITC: Treasury still has not ruled whether current law requires payment of FICA taxes and EITC for workfare recipients. These two issues are linked legally so that either both or neither will apply. The IRS is developing two scenarios for release. One outlines what type of state work program would require FICA and EITC payments, while the other explains the type of work program that would not trigger these payments. It seems probable that most states' programs would fall into the first category, making the states extremely unhappy. The IRS is still probably a few weeks away from completing this analysis.

We could agree to legislation specifying that workfare participants are not required to contribute to FICA and are not eligible for the EITC. This would be partially consistent with our 1994 welfare reform bill, which allowed the EITC but did not apply FICA. The logic of doing so is that it keeps private sector jobs more attractive than workfare for individuals, which is a crucial policy goal for us. And not allowing the EITC avoids increasing its identity as a "welfare" program.

Treasury strongly prefers to avoid amending the EITC, because they fear opening the program up to change on the Hill at this time. Mention the downside for recipients of not contributing to FICA — i.e., need 40 quarters to get Social Security

6-13
2:00 p.m.

Diane,

Attached are some items from the MW campaign. Please let me know when you have a draft of the letter (I spoke to Gene; he's happy to be on the letter). Saul

Making Work Pay

The Case for Raising the Minimum Wage

Office of the Chief Economist *March 1996*

This document was prepared in early 1996 to outline the case for raising the minimum wage. It outlines who earns the minimum wage and answers questions about the likely impact of raising the minimum.

NOTE: The full report is also available in PDF format. In order to view PDF documents you must have a PDF viewer ((e.g., Amber or Acrobat Reader) available on your workstation.

Fact Sheet

Americans know a raise in the minimum wage is one way to help make work pay. For many working Americans an increase in the minimum wage will make the difference between living in poverty and not. Furthermore, a higher minimum wage -- a floor to ensure workers that they're getting a fair deal for their efforts -- provides a foothold into the middle class for many other families.

The Problem: The Minimum Wage is Worth Less Than It Used to Be

The Federal minimum wage is currently $4.25 per hour. Adjusted for inflation, the value of the minimum wage has fallen by nearly 50 cents since it was last increased in 1991, and is now 29% lower than it was in 1979. If left unchanged, its real value will be at a forty-year low by January 1997.

Raising the minimum wage is one way to make work pay. A recent study concluded that the decline in the real value of the minimum wage since 1979 accounts for 20% of the rise in wage inequality for men, and 30% for women (see DiNardo, Lemieux & Fortin). According to the Bureau of Labor Statistics, 3.66 million workers paid by the hour earn at or below the minimum wage. An increase in this living wage is a strong response to the stagnant incomes that many of these workers face.

Many Adults Rely on the Minimum Wage as a Living Wage

Contrary to popular opinion, the average worker affected by an increase in the minimum wage is not just a teenager flipping hamburgers. Only one in fourteen is a teenage student from a family with above average earnings.

The fact is, almost two-thirds of minimum wage workers are adults, and four in ten are the sole bread winner of their family.

Increasing the Minimum Wage Lifts Families out of Poverty

Twenty percent of those living on the minimum wage the last time it was raised in 1991 were in poverty, and an additional 13% were near poverty. In 1993, the President expanded the Earned Income Tax Credit and an additional 15% were near poverty. In 1993, the President expanded the Earned Income Tax Credit (EITC), which raised income for 15 million families, helping many working families move above the poverty line. Yet to complete the goal of insuring that full-time working families are out of poverty, we need to raise the minimum wage. Recent analysis by the Economic Policy Institute and preliminary work by the Department of Health and Human Services suggests that 300,000 people would be lifted out of poverty if the minimum wage was raised to $5.15 per hour. This figure includes 100,000 children who are currently living in poverty.

The current poverty line for a family of 4 is $15,600. A family of 4 with one worker earning $4.25 an hour and working full-time year round ($8,500) would receive a tax credit of $3,400 under the 1996 provisions of the EITC, will collect food stamps worth $3,516, and will pay $650 in payroll taxes. This family would end up $834 below the poverty line. On the other hand, for a family of 4 with one worker earning $10,300 (a full-time year round worker at $5.15 per hour), the EITC would provide the maximum tax credit ($3,560), food stamps would provide $2,876, and they would pay $788 in payroll taxes. The increase in the minimum wage -- along with EITC and food stamps -- would lift this family out of poverty.

What a Moderate Increase in the Minimum Wage Would Mean for Workers

The President's proposal to raise the minimum wage by $.90 would generate $1800 in potential income for minimum wage workers.

Based on expenditure patterns of an average family, $1800 would buy:

- Seven months of groceries
- One year of health care costs, including insurance premiums, prescription drugs, and out- of-pocket costs
- Nine months' worth of utility bills
- More than a full-year's tuition at a 2-year college
- Basic housing costs for almost 4 months

Many Working Women Depend upon the Minimum Wage

Fifty nine percent of workers earning from $4.25 to $5.14 per hour are women; of those, 72 percent are adults 20 years old or over. The President's proposal to increase the minimum wage would raise wages of more than 5.7 million working women. This includes more than 950,000 African-American women and 760,000 women of Hispanic origin. Single heads of households, who are often women, represent over one-fifth of all families who currently rely on the earnings of a worker making $4.25 to $5.14 per hour.

A Moderate Increase in the Minimum Wage Does Not Cost Jobs

The standard criticism of the minimum wage is that it raises employers' costs and reduces employment opportunities for teenagers and disadvantaged workers. However, several studies have found that the last two increases in the minimum wage had an insignificant effect on employment. Furthermore, an extension of the time-series studies that had previously been used to claim that raising the minimum wage decreases employment, no longer finds a significant impact.

In a recent review of the literature, Professor Richard Freeman of Harvard, a widely respected labor economist, wrote: "At the level of the minimum wage in the late 1980s, moderate legislated increases did not reduce employment and were, if anything, associated with higher employment in some locales."

In discussing the minimum wage, Robert M. Solow, a Nobel laureate in economics at the Massachusetts Institute of Technology, recently told the New York Times, "The main thing about (minimum wage) research is that the evidence of job loss is weak. And the fact that the evidence is weak suggests that the impact on jobs is small."

Americans Want an Increase in the Minimum Wage

The American public supports increasing the minimum wage by a solid margin. Nearly every survey finds overwhelming support for raising the minimum wage. For example, a national poll conducted in January 1995 for the Los Angeles Times found that 72% of Americans backed an increase in the wage, confirming a December 1994 Wall Street Journal/NBC News survey that found raising the minimum wage is favored by 75%.

Despite expected criticism in some corners, the minimum wage has traditionally had bipartisan support. In 1989, the minimum wage increase passed the House by a vote of 382 to 37 (with 135 Republicans voting for the bill), and 89 to 8 in the Senate (with the support of 36 Republicans).

Currently, ten states and the District of Columbia have minimum wages that exceed the Federal minimum wage (Alaska, Connecticut, Hawaii, Iowa, Massachusetts, New Jersey, Oregon, Rhode Island, Vermont and Washington). Delaware is expected to pass legislation that will raise its minimum wage on April 15, 1996. Hawaii's minimum wage is $5.25 an hour and Massachusetts will match this in January 1997; New Jersey's is $5.05.

The Minimum Wage

Myth and Reality

The federal minimum wage now stands at $4.25 per hour. A person who works full-time all year long at that wage earns only $8500 in a year. The buying power of the minimum wage is already 29 percent lower than in 1979 -- and if left unchanged, will be at its lowest point in 40 years by January 1997. To restore that buying power and to make work pay, the President has challenged Congress to raise the minimum wage.

But the debate has been muddied by several myths that anti-minimum wage forces repeat at every opportunity.

Myth: The only Americans working for the minimum wage are teenagers.

Reality: 63 percent of minimum-wage workers are adults age 20 or over. (Source: Bureau of Labor Statistics)

Myth: Minimum wage workers don't support families.

Reality: The last time the federal minimum wage was increased, the average minimum wage worker brought home 51 percent of his or her family's weekly earnings. (Source: Analysis of Census Bureau's Current Population Survey by Professors David Card and Alan Krueger)

Myth: Raising the minimum wage hurts the poor by causing job loss.

Reality: Nearly 10 million working Americans would get a pay raise if the minimum wage is increased to $5.15 per hour. As Nobel Prize-winning economist Robert Solow said, "[T]he evidence of job loss is weak. And the fact that the evidence is weak suggests that the impact on jobs is small." (Source: *New York Times,* January 12, 1995)

Myth: The only study showing that raising the minimum wage does not cost jobs was a study funded by the U.S. Labor Department.

Reality: One major study -- conducted in 1992 and financed by Princeton University and the University of Wisconsin -- was published by two Princeton University economists. One of those economists later joined the Labor Department. (Source: *Washington Post*, January 11, 1995) Furthermore, a similar conclusion has been reached by at least ten other independent studies.

Myth: Raising the minimum wage will have a negligible impact on people's lives.

Reality: A 90-cent per hour increase in the minimum wage means an additional $1,800 for a minimum wage earner who works full-time, year round -- as much as the average family spends on groceries in more than 7 months. (Source: Bureau of Labor Statistics)

Myth: Increasing the minimum wage has always been a bitter, partisan issue that only Democrats have supported.

Reality: In 1989, the last time the minimum wage was increased, the House of Representatives vote in favor of the proposal was 382 to 37, and the Senate vote was 89 to 8. Indeed, Senator Dole said at the time, "[T]his is not an issue where we ought to be standing and holding up anybody's getting a 30 to 40 cents an hour pay increase, at the same time that we're talking about capital gains. I never thought the Republican Party should stand for squeezing every last nickel from the minimum wage." (Source: *Congressional Quarterly Almanac 1989)*

Making Work Pay

Questions and Answers on Raising the Minimum Wage

With unemployment at its lowest level in years, should we be tinkering with the minimum wage? Won't an increase in the minimum wage hinder the creation of new jobs?

The minimum wage is currently valued at 29% lower in real terms than it was in 1979.

A number of recent studies have found that a moderate rise in the minimum wage has little, if any, affect on job creation starting at such a low level. In fact, "The impact of a minimum wage rise on jobs is small," the New York Times quoted Nobel Laureate Robert Solow as saying. The Times also reported that economists agree that a minimum wage rise will lift the incomes of low wage workers.

Isn't the minimum wage poorly targeted to people in poverty? The Democratic Leadership Council reports that a number of minimum wage workers are in households with earnings higher than the median worker. Wouldn't a rise in the minimum wage just help middle class teenagers?

Although some people who earn the minimum wage are teenagers, almost two-thirds are adults age 20 and older. The average minimum wage worker brings home about half of his or her family's earnings. Increasing the minimum wage will help these workers to make up for lost ground due to inflation -- it will help make work pay.

The minimum wage provides a foothold into the middle class. A family with two full-time year round workers would earn $20,600 a year with a $5.15 minimum wage.

Wouldn't a rise in the minimum wage hurt minorities and the disadvantaged due to job loss?

As the New York Times reported, most economists agree that raising the minimum wage increases the incomes of low wage workers, which more than offsets any effect on jobs. Further, studies of minimum wage increases fail to show disproportionate impacts for minority youth.

Additionally, public support for a minimum wage increase is strong. A January 1995 Los Angeles Times poll found that 72% of Americans back an increase, confirming a December 1994 Wall Street Journal/NBC News poll that found that 75% of adults favored a rise in the minimum wage.

How many workers are affected by a rise in the minimum wage?

An estimated 10 million hourly paid workers earn between $4.25 and $5.14, and would directly benefit from the President's proposal to increase the minimum wage.

How can you contemplate a rise in the minimum wage with a new Congress intent on getting government off the backs of business?

The minimum wage has historically enjoyed bipartisan support. Sens. Dole and Kassenbaum, Speaker Gingrich and Rep. Goodling voted for the last minimum wage increase to $4.25 an hour in 1989.

Governors across the country are fighting against unfunded mandates. Isn't the minimum wage an unfunded mandate on businesses and states?

The minimum wage is not a new unfunded mandate. In fact, given the erosion of the value of the minimum wage over the last 15 years it is now much less of a mandate on businesses and the public sector than it used to be.

What do you say to all the businesses that say they will lose profit and possibly go bankrupt if the minimum wage is raised? Aren't you just antagonizing the business community by proposing a minimum wage increase?

Inflation has eroded the minimum wage so much that it is currently at its second lowest level since the 1950s. The economy has been very strong, but wages have not grown as much as they need to for the middle class to keep up.

The Clinton Administration has pursued economic policies to put our fiscal house in order, laying the foundation for the current economic expansion. But the problem is that low- wage and middle class workers have not shared fully in this recovery.

The Bottom Line

How many workers are getting a pay raise on October 1, 1996?

- The 2 million American workers who currently earn $4.25 per hour; and
- An additional 2.2 million American workers who currently earn from $4.26 to $4.74 an hour.

Thus, a total of **4.2 million** American workers (6% of all hourly-paid workers) will receive an immediate pay raise to $4.75 an hour on October 1, 1996.

How many more workers will get a pay raise on September 1, 1997?

- The 5.4 million American workers who currently earn from $4.75 to $5.14 an hour.

In all, how many workers will get a pay raise when the full effect is in place on September 1, 1997?

- A grand total of **9.7 million** American workers who currently earn $4.25 - $5.14 an hour (14% of all hourly-paid workers) will receive a pay raise to $5.15 an hour on or before September 1, 1997.[1]

How will minimum wage families benefit from the increase in the minimum wage?

By September 1, 1997, when the minimum wage will be raised to $5.15 an hour, and the **full** 90-cent increase goes into effect, minimum wage workers will see an additional $1800 per year in potential income.

Here's what the additional $1800 a year could mean to these workers:

- Seven months of groceries; or
- One year of health care costs, including insurance premiums, prescription drugs, and out-of-pocket costs; or
- Nine months' worth of utility bills; or
- More than a full-year's tuition at a 2-year college; or
- Basic housing costs for almost 4 months.

How many minimum wage families will be lifted above the poverty line?

- A recent analysis by the Economic Policy Institute and preliminary work by the Department of Health and Human Services suggests that 300,000 people will be lifted out of poverty as a result of the new law, once the minimum wage rises to $5.15 on September 1, 1997.
- This includes 100,000 children who are currently living in poverty.
- For a family of four with one worker earning $10,300 (a full-time year round worker at $5.15 per

hour), the Earned Income Tax Credit (EITC) provides the maximum tax credit ($3,560), food stamps provide $2,876, and the worker pays $788 in payroll taxes. The increase in the minimum wage to $5.15-- along with EITC and food stamps--will lift this family above the current poverty line of $15,600.

How many women will be helped by the increase in the minimum wage?

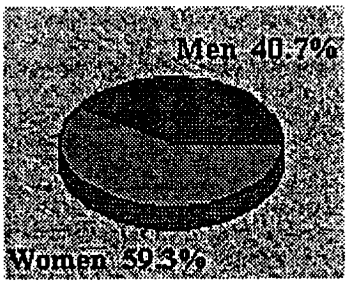
- 5.75 million women currently are paid wages of $4.25 - $5.14 per hour (17 percent of all hourly-paid female workers), compared with 3.94 million men (11 percent of all hourly-paid male workers).
- 3 million of these women are 25 years of age or older (52 percent of the women in this wage range).

Raising the minimum wage will provide a modest pay increase to the poorest American working women, many of whom are raising children.

Who are these workers that will be helped by the minimum wage increase?

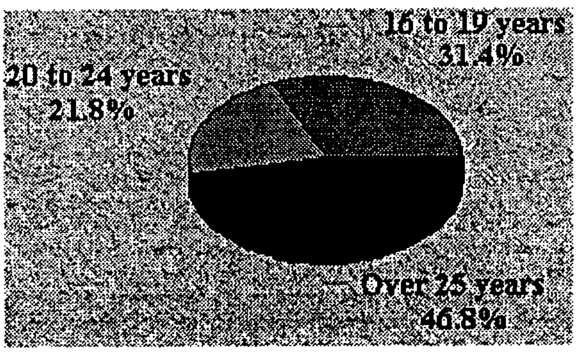
Wage Earners by Sex
from $4.25 to $5.14

Most are Women



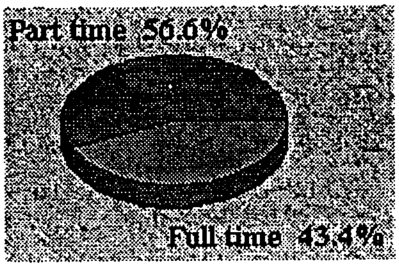
Wage Earners by Age
from $4.25 to $5.14

Most are Adults



Wage Earners by Employment
from $4.25 to $5.14

Many Work Full-time



[1] This is an estimate based on current data. The exact number of workers who will be affected can only be determined at that time.

DOL Home Page OASP Top of Document

HISTORY OF CHANGES TO THE FLSA

Adapted from *Minimum Wage and Maximum Hours Standards Under the Fair Labor Standards Act*, 1988 Report to the Congress under Section 4(d)(1) of the FLSA.

Early in the administration of the FLSA, it became apparent that application of the statutory minimum wage was likely to produce undesirable effects upon the economies of Puerto Rico and the Virgin Islands if applied to all of their covered industries. Consequently on June 26, 1940, an amendment was enacted prescribing the establishment of special industry committees to determine, and issue through wage orders, the minimum wage levels applicable in Puerto Rico and the Virgin Islands. The rates established by industry committees could be less than the statutory rates applicable elsewhere in the United States.

On May 14, 1947, the FLSA was amended by the Portal-to-Portal Act. This legislation was significant because it resolved some issues as to what constitutes compensable hours worked under FLSA. Matters involving underground travel in coal mines and make-ready practices in factories had been decided earlier in a number of U.S. Supreme Court decisions.

Subsequent amendments to the FLSA have extended the law's coverage to additional employees and raised the level of the minimum wage. In 1949, the minimum wage was raised from 40 cents an hour to 75 cents an hour for all workers and minimum wage coverage was expanded to include workers in the air transport industry. The 1949 amendments also eliminated industry committees except in Puerto Rico and the Virgin Islands. A specific section was added granting the Wage and Hour Administrator in the U.S. Department of Labor authorization to control the incidence of exploitative industrial homework. A 1955 amendment increased the minimum wage to $1.00 an hour with no changes in coverage.

The 1961 amendments greatly expanded the FLSA's scope in the retail trade sector and increased the minimum for previously covered workers to $1.15 an hour effective September 1961 and to $1.25 an hour in September 1963. The minimum for workers newly subject to the Act was set at $1.00 an hour effective September 1961, $1.15 an hour in September 1964, and $1.25 an hour in September 1965. Retail and service establishments were allowed to employ full-time students at wages of no more than 15 percent below the minimum with proper certification from the Department of Labor. The amendments extended coverage to employees of retail trade enterprises with sales exceeding $1 million annually, although individual establishments within those covered enterprises were exempt if their annual sales fell below $250,000. The concept of enterprise coverage was introduced by the 1961 amendments. Those amendments extended coverage in the retail trade industry from an established 250,000 workers to 2.2 million.

Congress further broadened coverage with amendments in 1966 by lowering the enterprise sales volume test to $500,000, effective February 1967, with a further cut to $250,000 effective February 1969. The 1966 amendments also extended coverage to public schools, nursing homes, laundries, and the entire construction industry. Farms were subject to coverage for the first time if their employment reached 500 or more man-days of labor in the previous year's peak quarter. The minimum wage went to $1.00 an hour effective February 1967 for newly covered non-farm workers, $1.15 in February 1968, $1.30 in February 1969, $1.45 in February 1970, and $1.60 in February 1971. Increases for newly subject farm workers stopped at $1.30. The 1966 amendments extended the full-time student certification program to covered agricultural employers and to institutions of higher learning.

In 1974, Congress included under the FLSA all nonsupervisory employees of Federal, State, and local governments and many domestic workers. (Subsequently, in 1976, in *National League of Cities* v. *Usery*, the Supreme Court held that the minimum wage and overtime provisions of the FLSA could not constitutionally apply to State and local government employees engaged in traditional government functions.) The minimum wage increased to $2.00 an hour in 1974, $2.10 in 1975, and $2.30 in 1976 for all except farm workers, whose minimum initially rose to $1.60. Parity with nonfarm workers was reached at $2.30 with the 1977 amendments.

The 1977 amendments, by eliminating the separate lower minimum for large agricultural employers (although retaining the over-time exemption), set a new uniform wage schedule for all covered workers. The minimum went to $2.65 an hour in January 1978, $2.90 in January 1979, $3.10 in January 1980, and $3.35 in January 1981. The amendments eased the provisions for establishments permitted to employ students at the lower wage rate and allowed special waivers for children 10-to-11 years old to work in agriculture. The overtime exemption for employees in hotels, motels, and restaurants was eliminated. To allow for the effects of inflation, the $250,000 dollar volume of sales coverage test for retail trade and service enterprises was increased in stages to $362,500 after December 31, 1981.

As a result of the Supreme Court's 1985 decision in *Garcia* v. *San Antonio Metropolitan Transit Authority et.al.*, Congress passed amendments changing the application of FLSA to public sector employees. Specifically, these amendments permit State and local governments to compensate their employees for overtime hours worked with compensatory time-off in lieu of overtime pay, at a rate of 1 1/2 hours for each hour of overtime worked.

Finally, the 1989 amendments established a single annual dollar volume test of $500,000 for enterprise coverage of both retail and non-retail businesses. At the same time, the amendments eliminated the minimum wage and overtime pay exemption for small retail firms. Thus, employees of small retail businesses became subject to minimum wage and overtime pay in any workweek in which they engage in commerce or the production of goods for commerce. The minimum wage was raised to $3.80 an hour beginning April 1, 1990, and to $4.25 an hour beginning April 1, 1991. The amendments also established a training wage provision (at 85% of the minimum wage, but not less than $3.35 an hour) for employees under the age of twenty, a provision that expired in 1993. Finally, the amendments established an overtime exception for time spent by employees in remedial education and civil money penalties for willful or repeated violations of the minimum wage or overtime pay requirements of the law[1].

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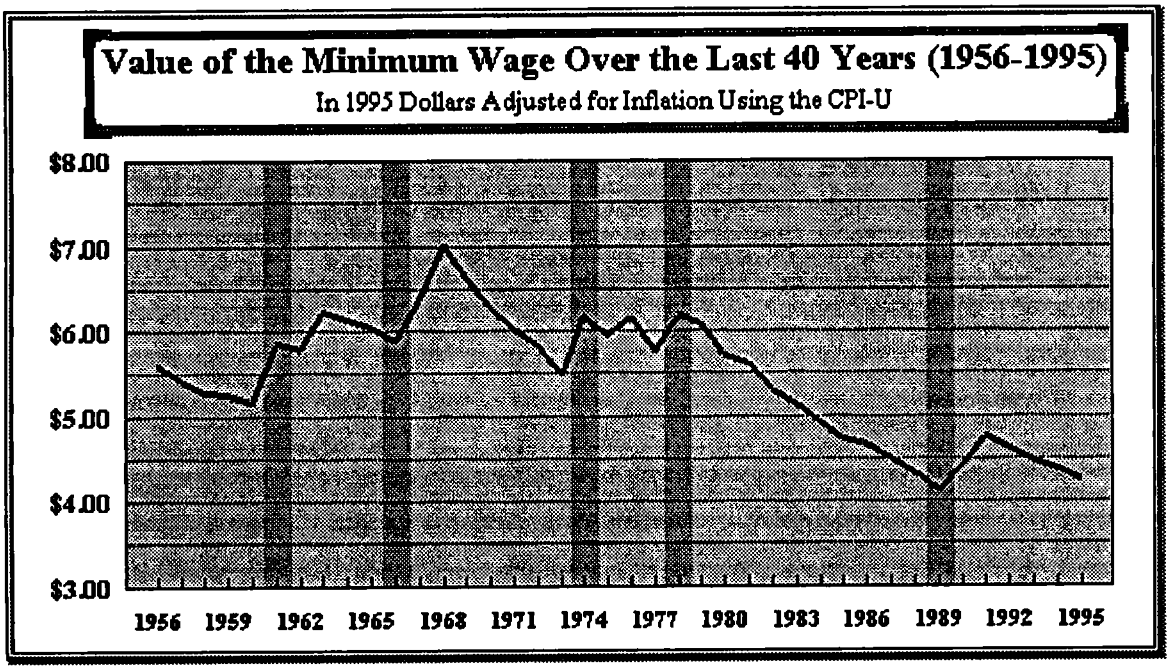
[1] In 1990, the Congress enacted legislation under which the Department of Labor issued regulations that provide a special overtime exemption for certain professionals in the computer field who receive not less than 6 and one-half times the applicable minimum wage.

DOL Home Page ESA Home Page Top of Document

Value of the Minimum Wage Over the Last 40 Years

The chart and table below are a representation of the minimum wage over the last 40 years in 1995 dollars adjusted for inflation using the CPI-U. The shaded blocks on the chart below represent years in which the Fair Labor Standards Act was amended to raise the minimum wage.



The table below shows the actual minimum wage (Nominal Dollars) and the relative value of the minimum age (1995 Dollars). The bolded rows represent years in which the Fair Labor Standards Act was amended to raise the minimum wage. This table is also available in PDF format. In order to view and/or print PDF documents you must have a PDF viewer (e.g., Amber or Acrobat Reader) available on your workstation.

Year	Value of the Minimum Wage	
	Nominal Dollars	1995 Dollars
1956	1.00	5.60
1957	1.00	5.42
1958	1.00	5.27
1959	1.00	5.24
1960	1.00	5.15
1961	**1.15**	**5.86**

1962	1.15	5.80
1963	1.25	6.23
1964	1.25	6.15
1965	1.25	6.05
1966	**1.25**	**5.88**
1967	1.40	6.39
1968	1.60	7.01
1969	1.60	6.64
1970	1.60	6.28
1971	1.60	6.02
1972	1.60	5.83
1973	1.60	5.49
1974	**2.00**	**6.18**
1975	2.10	5.95
1976	2.30	6.16
1977	2.30	5.78
1978	**2.65**	**6.19**
1979	2.90	6.09
1980	3.10	5.73
1981	3.35	5.62
1982	3.35	5.29
1983	3.35	5.13
1984	3.35	4.91
1985	3.35	4.74
1986	3.35	4.66
1987	3.35	4.49
1988	3.35	4.32
1989	**3.35**	**4.12**
1990	3.80	4.43
1991	4.25	4.76
1992	4.25	4.62
1993	4.25	4.48
1994	4.25	4.37
1995	4.25	4.25

Source: Bureau of Labor Statistics