Community Service or Work Experience:

The participant must be participating in a program with the following characteristics: (1) the compensation is paid by the TANF agency (the agency writes the check) OR an entity with which the TANF agency contracts to pay the compensation on behalf of the TANF agency; (2) the compensation is entirely in the form of welfare benefits and paid in the form of the TANF check and/or food stamps coupon, PROVIDED that at the discretion of the state the TANF check or food stamp coupons may be paid either prospectively (i.e., before work is done) or retroactively (i.e., after work is done) and payment may occur on a monthly, bi-weekly, or weekly basis; and (3) the hours of work performed are governed by welfare rules or the size of the check. If all three of those conditions hold, the activity is community service / work experience (workfare) and FICA, FUTA, and EITC would not apply. If any of those conditions do not hold, it is an employer subsidy or something other than Community Service or Work Experience and FICA, FUTA, and EITC would apply.

This proposal solves several practical problems by allowing disbursement of TANF grants by contractors. This approach also lets states create more work-like "workfare" situations, i.e., they can have folks work first and get paid later and they can pay on a basis other than monthly.

In all cases, EITC should be available when FICA and FUTA are paid.

Colton + Gould — Levin

BR note

- why not insist in statute?

Process bad

Wendell - yes, as is
- fix in reg

payment for service performed

Htd to trad cs & we jobs, so don't create improper incentives to put more in these categs

Do it in Q tax reg?

Yes support want to work w/ folks to define 2 80 [illegible]

don't improper incentives

-create incentives put todo

Many B- Htd to instances when

But this is the limit

Original

Section 1085 of the tax bill:

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

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

No presumption

re payroll taxes

H.L.C.

F:\SBG\SBG.916

401-4678

105TH CONGRESS
1ST SESSION

H. CON. RES. __

IN THE HOUSE OF REPRESENTATIVES

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

CONCURRENT RESOLUTION

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

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

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

AMENDMENT TO H.R. ___

OFFERED BY MR. SHAW

Page 51, after line 4 insert the following new subsection (and redesignate the succeeding subsections accordingly):

(k) ADDITIONAL AMENDMENT RELATING TO SECTION 1085.—

(1)(A) Subsection (a) of section 3121 of the 1986 Code (defining wages for Federal Insurance Contributions Act) is amended by striking "or" at the end of paragraph (20), by striking the period at the end of paragraph (21) and inserting "; or", and by inserting after paragraph (21) the following new paragraph:

for svc performed

"(22) any payment under any State program funded under part A of title IV of the Social Security Act, to a participant in a work activity which is described in paragraph (4) or (7) of section 407(d) of such Act and which is assigned under such program.".

(B) Subsection (a) of section 209 of the Social Security Act is amended by striking "or" at the end of paragraph (17), by striking the period at the end of paragraph (18) and inserting "; or", and by inserting after paragraph (18) the following new paragraph:

"(19) Any payment, under any State program funded under part A of title IV of this Act, to a participant in a work activity which is described in paragraph (4) or (7) of section 407(d) of this Act and which is assigned under such program.".

(2) Subsection (b) of section 3306 of the 1986 Code (defining wages for Federal Unemployment Tax Act) is amended by striking "or" at the end of paragraph (16), by striking the period at the end of paragraph (17) and inserting "; or", and by inserting after paragraph (17) the following new paragraph:

"(18) any payment, under any State program funded under part A of title IV of the Social Security Act, to a participant in a work activity which is described in paragraph (4) or (7) of section 407(d) of such Act and which is assigned under such program.".

(3) The amendments made by this subsection shall apply to amounts paid after August 22, 1996.

F:\MH\SHAW\SHAW.062

H.L.C.

ASAP To Karen F
~~To Mary B~~

To Larry Matlock
Barry White 6.5160
Jack Smalligan

Fr Diana F

2 page fax

690-8425

6-1121

AMENDMENT TO H.R. ___

OFFERED BY MR. SHAW

Page 51, after line 4 insert the following new subsection (and redesignate the succeeding subsections accordingly):

(k) ADDITIONAL AMENDMENT RELATING TO SECTION 1085.—

(1)(A) Subsection (a) of section 3121 of the 1986 Code (defining wages for Federal Insurance Contributions Act) is amended by striking "or" at the end of paragraph (20), by striking the period at the end of paragraph (21) and inserting "; or", and by inserting after paragraph (21) the following new paragraph:

"(22) any payment, under any State program funded under part A of title IV of the Social Security Act, to a participant in a work activity which is described in paragraph (4) or (7) of section 407(d) of such Act and which is assigned under such program.".

(B) Subsection (a) of section 209 of the Social Security Act is amended by striking "or" at the end of paragraph (17), by striking the period at the end of paragraph (18) and inserting "; or", and by inserting after paragraph (18) the following new paragraph:

"(19) Any payment, under any State program funded under part A of title IV of this Act, to a participant in a work activity which is described in paragraph (4) or (7) of section 407(d) of this Act and which is assigned under such program.".

(2) Subsection (b) of section 3306 of the 1986 Code (defining wages for Federal Unemployment Tax Act) is amended by striking "or" at the end of paragraph (16), by striking the period at the end of paragraph (17) and inserting "; or", and by inserting after paragraph (17) the following new paragraph:

"(18) any payment, under any State program funded under part A of title IV of the Social Security Act, to a participant in a work activity which is described in paragraph (4) or (7) of section 407(d) of such Act and which is assigned under such program.".

(3) The amendments made by this subsection shall apply to amounts paid after August 22, 1996.

Service Employees International Union
1313 L Street, N.W.
Washington, D.C. 20005
(202) 898-3200
Fax: (202) 898-3323

fax

cc Cynthia Rice
Emil Parker
Larry Matlack
Jack Smalligan
FYI from unions on FICA exemption. They found some IRS rulings, but none shed much light.
— Diana

to:	Diana Fortuna
fax:	202-456-7431
from:	Carol R. Golubock
date:	October 3, 1997
re:	Workfare participants, FICA, and FUTA
pages:	5, including cover sheet.

NOTES: Attached is a draft memo which describes the FICA and FUTA exemptions which we discussed. The memo references the IRS rulings. We are following up with the IRS to determine the current status of their review of the FICA coverage issues.

EXCLUSION OF SERVICES PERFORMED BY WORKFARE PARTICIPANTS FROM FEDERAL INSURANCE CONTRIBUTIONS ACT ("FICA") AND FEDERAL UNEMPLOYMENT TAX ACT ("FUTA") COVERAGE

FICA taxes are paid to cover old-age, survivors and disability insurance ("OASDI" or social security) and hospital insurance (Medicare) benefits. Social security and Medicare eligibility determinations are made by the Social Security Administration ("SSA"). FICA tax liability and withholding requirements are determined by the Internal Revenue Service ("IRS"). FUTA taxes are paid to cover the costs of unemployment insurance programs. This memorandum describes the framework for determining whether services performed by workfare participants will be excluded from coverage by FICA and FUTA even where such participants are considered employees. It does not discuss the criteria for determining whether there is an employee-employer relationship covered by FICA and FUTA.

Social Security

In addition to other employment taxes,[1] an employee is required to pay, and an employer is required to withhold, taxes for OASDI (social security) as a percentage (currently 6.2) of an individual's wages[2] received with respect to employment. 26 U.S.C. §§3101(a), 3111(a). For purposes of determining social security eligibility and FICA social security tax liability, the term "employment" means "any service, of whatever nature, performed (A) by an employee[3] for the person employing him . . ." 26 U.S.C. § 3121(b), 42 U.S.C. § 410(a). "Employment" generally does not include "services performed in the employ of a State, or any political subdivision thereof, or any instrumentality . . . " 26 U.S.C. § 3121(b)(7), 42 U.S.C. § 410(a)(7). However, employees of state and local governments who are not members of a state or local retirement system are covered. 26 U.S.C. § 3121(b)(7)(F), 42 U.S.C. § 410(a)(7)(F). There are several exceptions to such coverage, including one for an individual who is employed by a state or local government "to relieve such individual from unemployment." Such an individual is not covered by FICA even though she is not covered by the state or local government's retirement system. 26 U.S.C. § 3121(b)(7)(F)(i), 42 U.S.C. § 410(a)(7)(F)(i).

Section 218 of the Social Security Act governs voluntary agreements to extend the FICA

---

[1]This memorandum covers social security, Medicare and unemployment taxes; it does not address federal income tax liability.

[2]Defined as "all remuneration for employment; including the cash value of all remuneration (including benefits) paid in any medium other than cash," with several exceptions. 26 U.S. C. §3121(a).

[3]With respect to both Social Security and Medicare FICA, an "employee" is any officer of a corporation; or any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee; or certain individuals employed as agent-drivers or commission-drivers, full-time life insurance salesmen, home workers or traveling or city salesmen.; or any individual who performs services that are included under an agreement entered into pursuant to section 218 of the Social Security Act. 26 U.S.C. §3121(d), 42 U.S.C. §410(j). For purposes of FUTA, the term "employee" has the same meaning as that given in 26 U.S.C. §3121(d) except that individuals covered by section 218 agreements, full-time insurance salesman, and home workers are not included. §3306(i).

insurance system to allow coverage of state and local government employees. 42 U.S.C. § 418. Employees who are employed to perform services included under a Section 218 agreement are covered by the social security portion of FICA. 26 U.S.C. § 3121(b)(7)(E), 42 U.S.C. § 410(a)(7)(A) However, 42 U.S.C. 418(c)(6)(A) specifically excludes "service performed by an individual who is employed to relieve him from unemployment" from the coverage of a §418 agreement. Thus, individuals who are employed by state or local governments to relieve them from unemployment are excluded from regular FICA coverage and coverage by a voluntary state plan.

Medicare

In addition to OASDI taxes, an employee is also required to pay, and an employer is required to withhold, a percentage of an individual's wages (currently 1.45) for Medicare. 26 U.S.C. §§ 3101(b), 3111(b). Almost all current services as an employee of a state or local government are treated as "employment" for purposes of the Medicare portion of FICA taxes. 26 U.S.C. § 3121(u). However, service is not to be treated as employment if the service is performed by an individual who is employed by a State or political subdivision to relieve him from unemployment. 26 U.S.C. § 3121(u)(2)(b)(i) and 3121(u)(2)(b)(ii)(I). Therefore, while most state/local government employees are eligible, and must pay taxes, for Medicare, individuals employed to relieve them from unemployment are not.

Interpretation of FICA Exemption

There is very little authority with respect to determining whether one is "employed to relieve him from unemployment." However, a SSA State & Local Coverage Handbook (SSA Pub. No. 16-055) states that "generally it is the intent of the program which establishes whether it is one designed to relieve from unemployment."

The handbook gives examples of the applicability of the coverage exception. It states that "services of welfare recipients performed in return for assistance payments are excluded from coverage because the primary intent of such work-relief programs is to provide assistance to needy individuals and their families." Id. However, "services performed by individuals under work-training or work-study programs which are designed to provide work experience and training to increase the employability of the individual are not excluded from coverage because the primary intent of the programs is not to relieve from unemployment." Id. In addition, "classroom activities under the Summer Youths Programs of the Job Training Partnership Act are not covered because such activity is not employment, i.e., no product or service is provided by the participants, and there is no employer-employee relationship involved with respect to such activities." Id.

In a 1975 revenue ruling, the IRS analyzed three examples of whether CETA employees were covered by FICA and FUTA. 1975-1 C.B. 24; 1975 IRB LEXIS 500; REV. RUL. 75-246. At the time this ruling was written, only § 418 of the Social Security Act contained the "employed to relieve from unemployment" exemption, and the IRS ruling does not address the exemption.

In a July 31, 1991 private letter ruling, the IRS stated that the services of a worker who was referred by a job referral service of the unemployment compensation office to work for a local governmental unit did not constitute "employment" for either Medicare or social security purposes since the worker was employed to relieve him from unemployment. PRIVATE RULING 9143075; 1991 PRL LEXIS 1631. However, in a July 10, 1992 private letter ruling to the same employer, the IRS stated that the issue of liability for FICA taxes for services performed to relieve the worker from unemployment was under study and therefore the previous private letter ruling was withdrawn for further consideration. PRIVATE RULING 9241028; 1992 PRL LEXIS 1482.

In the only case found which even tangentially addresses the issue of FICA coverage, the court stated that a worker who was paid under a federally-funded public works program would not qualify for Social Security coverage under a voluntary agreement because of the exclusion of work performed to relieve an individual of unemployment. 42 U.S.C. § 418(c)(6)(A). Martinetti v. Califano, 1978 U.S. Dist. LEXIS 14916 (S.D.N.Y. 1978). There was no discussion in the opinion of the type of program under which the worker was employed.

FUTA

FUTA taxes are paid as a percentage (currently 6.2 minus state credit) of total wages paid by an employer during the calendar year with respect to employment.[4] 26 U.S.C. §3301. For FUTA purposes, the term "employment" is defined in 26 U.S.C. § 3306(c). Sections 3306(c)(7) and 3306(c)(8) except from the definition of "employment" services performed in the employ of a State or political subdivision thereof and services performed in the employ of 501(c)(3) organizations. However, in order for a state unemployment insurance plan to be approved by the Secretary of Labor, unemployment compensation must be paid for services excluded from the definition of "employment" by section 3306(c)(7) and (c)(8)(government and non-profit). 26 U.S.C. §§ 3304(a)(6)(A),3309(a)(1). Governmental entities and certain non-profits are allowed to reimburse the state unemployment fund for actual unemployment compensation paid in lieu of making contributions. 26 U.S.C. § 3309(a)(2).

Regardless, section 3309(b)(5) provides an option for exclusion of services provided as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a State, or political subdivision thereof, by an

[4] An employer is defined as any person who during any calendar quarter in the calendar year or the preceding calendar year paid wages of $1500 or more, or on each of some 20 days during the calendar year, each day being in a different calendar week, employed at least one individual in employment for some portion of the day. 26 U.S.C. § 3306(a). Wages include all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash. 26 U.S.C. § 3306(b) (see exceptions).

individual receiving such work relief or work training. States are not precluded from covering such services; they simply are not required to provide such coverage in their laws as condition for conformity with section 3304(a)(6)(A).[5]

The requirements for qualification as an exempt work-relief or work-training program have evolved through several DOL/ETA Unemployment Insurance Program Letters ("UIPLs"). In the most recent UIPL, dated August 8, 1996 (No. 30-96), the DOL/ETA stated that both work-relief and work training must have the following characteristics:

(1) the employer-employee relationship is based more on the participants' and communities' needs than normal economic considerations such as increased demand or the filling of a bona fide job vacancy; and

(2) the products or services are secondary to providing financial assistance, training, or work-experience to individuals to relieve them of their unemployment or poverty or to reduce their dependence upon various measures of relief, even though the work may be meaningful or serve a useful public purpose.

In addition, the DOL/ETA stated that both work-relief and work training must have one or more of the following characteristics:

(1) the wages, hours, and conditions of work are not commensurate with those prevailing in the locality for similar work;

(2) the jobs did not, or rarely did, exist before the program began (other than under similar programs) and there is little likelihood they will be continued when the program is discontinued;

(3) the services furnished, if any, are in the public interest and are not contracts for services; and

(4) the jobs do not displace regularly employed workers or impair existing contracts for services.

For work-relief only, the DOL/ETA stated that the qualifications for the jobs must take into account as indispensable factors the economic status, i.e., the standing conferred by income and assets, of the applicants.

---

[5] Neither section 3304(a)(6)(A) nor section 3309(b)(5) have any bearing upon UI coverage of employees of private, for-profit employers. 51 FR 8046 (March 7, 1986).

American Federation of Labor and Congress of Industrial Organizations

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

Date: ____________

Larry Inglestein

TO: Diana Fortuna

622-9260

FAX Number: 456-7431

FROM: Lynn Rinehart

Carol Golubok
SEIU
898-3454

COMMENTS: Here is the Social Security material we discussed.

There is/are ____ page(s) following this cover sheet.

This telecopy material has been sent via Xerox 7033. Please call 202-637-5341 if you have any questions. We can automatically receive transmissions 24 hours a day.

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Our FAX Number is: 202-637-5323.

can't work it out –
then AG

SSA – letter
– concrete situation
– or manual – Handbook
– or reg – add to it

Prepare draft, show to IRS,
if they concur, OK

Pretty cooperative
Some deference →

FACSIMILE TRANSMISSION
ROOM 613 ALTMEYER BUILDING

TELEFAX: (410) 965-3213

SOCIAL SECURITY ADMINISTRATION
OFFICE OF THE GENERAL COUNSEL

Diana Fortuna
456 7431
FAX
Elena Kagan
456 2878

TO : Lynn Rheinhart

OFFICE PHONE NO.: 202-637-5155

TELEFAX NO. : 202-637-5323

FROM : John Watson SSA-OGC

OFFICE PHONE NO.: 410-965-3137

DATE : 9-19-97

TOTAL NUMBER OF PAGES: 25 **(INCLUDING FAX COVER SHEET)**

Welfare to Work

COMMENTS: Probably more than you wanted, but here are the pertinent materials we discussed.

Solvency?

Paul Crispino

1950 origin - states into FICA

8/17/50
Senate Rpt 1669
leg history

"any services perf'd by ind in a work relief or other prog de to relieve him from VE

Current § 210(a)(7)(F)(i) of the Social Security Act

42 USC 410(a)(7)(F)(i)

ployees of hospitals of the District of Columbia Government), other than as a medical or dental intern or as a medical or dental resident in training;

(iii) by any individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency; or

(iv) by a member of a board, committee, or council of the District of Columbia, paid on a per diem, meeting, or other fee basis,

(E) service performed in the employ of the Government of Guam (or any instrumentality which is wholly owned by such Government) by an employee properly classified as a temporary or intermittent employee, if such service is not covered by a retirement system established by a law of Guam; except that (i) the provisions of this subparagraph shall not be applicable to services performed by an elected official or a member of the legislature or in a hospital or penal institution by a patient or inmate thereof, and (ii) for purposes of this subparagraph, clauses (i) and (ii) of subparagraph (C) shall apply, or

(F) service in the employ of a State (other than the District of Columbia, Guam, or American Samoa), of any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, by an individual who is not a member of a retirement system of such State, political subdivision, or instrumentality, except that the provisions of this subparagraph shall not be applicable to service performed—

* [(i) by an individual who is employed to relieve such individual from unemployment;

(ii) in a hospital, home, or other institution by a patient or inmate thereof;

(iii) by any individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency;

(iv) by an election official or election worker if the remuneration paid in a calendar year for such service is less than $1,000 with respect to service performed during any calendar year commencing on or after January 1, 1995, ending on or before December 31, 1999, and the adjusted amount determined under section 218(c)(8)(B) for any calendar year commencing on or after January 1, 2000, with respect to service performed during such calendar year[133]; or

(v) by an employee in a position compensated solely on a fee basis which is treated pursuant to section 211(c)(2)(E) as a trade or business for purposes of inclusion of such fees in net earnings from self employment;

for purposes of this subparagraph, except as provided in regulations prescribed by the Secretary of the Treasury, the

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[133] P.L. 103-296, §303(a)(1), struck out "$100" and substituted "$1,000 with respect to service performed during any calendar year commencing on or after January 1, 1995, ending on or before December 31, 1999, and the adjusted amount determined under section 218(c)(8)(B) for any calendar year commencing on or after January 1, 2000, with respect to service performed during such calendar year", applicable to service performed on or after January 1, 1995.

Current § 218(c)(6)(A) of the Social Security Act

42 USC 418(c)(6)(A

(4) The Commissioner of Social Security[illegible] shall, at the request of any State, modify the agreement with such State so as to (A) include any coverage group to which the agreement did not previously apply, or (B) include, in the case of any coverage group to which the agreement applies, services previously excluded from the agreement; but the agreement as so modified may not be inconsistent with the provisions of this section applicable in the case of an original agreement with a State. A modification of an agreement pursuant to clause (B) of the preceding sentence may apply to individuals to whom paragraph (3)(B) is applicable (whether or not the previous exclusion of the service of such individuals was pursuant to such paragraph), but only if such individuals are, on the effective date specified in such modification, ineligible to be members of any retirement system or if the modification with respect to such individuals is pursuant to subsection (d)(3).

(5) Such agreement shall, if the State requests it, exclude (in the case of any coverage group) any agricultural labor, or service performed by a student, designated by the State. This paragraph shall apply only with respect to service which is excluded from employment by any provision of section 210(a) other than paragraph (7) of such section and service the remuneration for which is excluded from wages by subparagraph (B) of section 209(a)(7).

(6) Such agreement shall exclude—

(A) service performed by an individual who is employed to relieve him from unemployment,

(B) service performed in a hospital, home, or other institution by a patient or inmate thereof,

(C) covered transportation service (as determined under section 210(k)),

(D) service (other than agricultural labor or service performed by a student) which is excluded from employment by any provision of section 210(a) other than paragraph (7) of such section,

(E) service performed by an individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency, and

(F) service described in section 210(a)(7)(F) which is included as "employment" under section 210(a).[illegible]

(7) No agreement may be made applicable (either in the original agreement or by any modification thereof) to service performed by any individual to whom paragraph (3)(B) is applicable unless such agreement provides (in the case of each coverage group involved) either that the service of any individual to whom such paragraph is applicable and who is a member of such coverage group shall continue to be covered by such agreement in case he thereafter becomes eligible to be a member of a retirement system, or that such service shall cease to be so covered when he becomes eligible to be a member of such a system (but only if the agreement is not already applicable to such system pursuant to subsection (d)(3)), whichever may be desired by the State.

[illegible] P.L. 103-296, §107(a)(4), struck out "Secretary" and substituted "Commissioner of Social Security", effective March 31, 1995.

[illegible] P.L. 103-296, §321(a)(18), adjusted the left-hand margination thereof so as to align with subparagraph (E). See Vol. II, P.L. 103-296, §321(d), for rules of construction.

STATE & LOCAL COVERAGE HANDBOOK

for the
Social Security Administration
& State Social Security
Administrators

SOCIAL SECURITY ADMINISTRATION
Office of Program Benefits Policy
Division of Coverage
SSA Pub. No. 16-055
I.C.N. Nonstock

1/5

Handbook 2/5

Exclusions--Mandatory and Optional

Social Security Act Sections 218(c)(3), 218(c)(5), 218(c)(6), 218(c)(8), 218(d)(5), 218(m)

431. Effect of Exclusions

When an absolute or retirement system coverage group is included under an agreement, the services of all employees who are members of the coverage group are covered unless they are mandatorily or optionally excluded.

432. Mandatory Exclusions

The Federal law requires the exclusion of the following types of services.

(a) *Services of Employees Who Are Hired To Relieve Them From Unemployment*

This generally excludes the services performed by employees in work relief programs (other than the supervisory or administrative employees for projects). Generally it is the intent of the program which establishes whether it is one designed to relieve from unemployment. This can usually be determined from the statutes or other authorities under which the program is established.

Example 1:
Services of welfare recipients performed in return for assistance payments are excluded from coverage because the primary intent of such work-relief programs is to provide assistance to needy individuals and their families.

Example 2:
Services performed by individuals under work-training or work-study programs which are designed to provide work experience and training to increase the employability of the individual are not excluded from coverage because the primary intent of the programs is not to relieve from unemployment.

Example 3:
Classroom activities under the Summer Youth Programs of the Job Training Partnership Act are not covered because such activity is not employment, i.e., no product or service is provided by the participants, and there is no employer-employee relationship involved with respect to such activities. (See SLCH 643.)

(b) *Services Performed In a Hospital, Home or Other Institution by a Patient or Inmate*

A "patient" is someone undergoing treatment or receiving care in the institution. An "inmate" is someone who lives in the institution either because he was committed or chose to enter voluntarily.

Mental hospitals, homes for alcoholics, veterans' homes, and correctional institutions are examples of the institutions ordinarily involved in this exclusion.

Services performed outside the institution for the same unit of government which operates it are considered performed "in the institution." Further, services performed as part of the rehabilitative and therapeutic program of the institution are not covered if performed in the institution by a patient or an inmate thereof.

Utter

Handbook 3/5

Prior to 1995, the Social Security Act did not exempt these services from Social Security coverage.

Miscellaneous Federal Legislation Affecting State and Political Subdivision Coverage

640. Introduction

Over the years, Federal programs have been enacted to deal with almost every category of economic and social problems. Numerous Federal programs are administered by Federal departments, independent agencies, commissions, and councils designed to provide economic opportunity, social services or cash assistance to people with a variety of needs.

Sometimes, services performed under Federally enacted economic and human development programs do not constitute covered employment under the Social Security Act. However, in some instances, the services are, by statute, designated as being performed in the employ of the United States for purposes of title II of the Social Security Act. Pursuant to section 205(p) of the Social Security Act, the Social Security Administration will decide whether an individual has performed services in covered employment, the periods of such service, and whether remuneration paid for such employment constitutes wages. The head of the government agency designated to administer a particular program will determine the amount of remuneration paid and the periods for which it was paid. The wage payments may include both cash and in-kind remuneration. In some situations, the existence of coverage depends on the status of the employing entity.

These instructions relate mainly to those provisions under the enacting legislation which state that certain services shall be covered employment under the Social Security Act, or, if the legislation does not specifically so state, those services which are covered employment because of the type of services rendered and the entity for which performed.

641. Economic Opportunity Act of 1964

The Economic Opportunity Act of 1964 (referred to as the EO Act) was enacted August 20, 1964. Its major purpose was stated as a mobilization of human and financial resources of the nation to combat poverty in the United States.

Many of the programs which originated under the EO Act are now authorized under separate legislation. Among them is the Job Training Partnership Act which, on October 1, 1983, superseded the Comprehensive Employment and Training Act of 1973. Some other programs that were created as a result of the EO Act and amendments to that Act, were Job Corps, Community Action Program, Headstart, Legal Services and Native American Programs.

642. Job Training Partnership Act - P.L. 97-300

The Job Training Partnership Act (JTPA) superseded the Comprehensive Employment and Training Act (CETA) effective October 1, 1983.

As under the CETA program, services performed under JTPA programs generally are not excluded from the definition of covered employment as activity to relieve from unemployment.

Handbook 4/5

The status of any activity under the JTPA is determined under the usual common-law rules. There is no employer-employee relationship with respect to classroom training activities where the JTPA participant is attending classroom training, lectures, or demonstrations, because no employment services with respect to such JTPA activities are provided by the participant.

If it is determined that the activity is employment, the Federal-State agreement and the mandatory coverage provision of OBRA, will determine the coverage status of the employment if the employer is a State or political subdivision.

If the employment services are performed in a State or political subdivision position which is not covered under the State's agreement for full Social Security coverage, the services performed after April 1, 1986 by individuals newly hired after that date would be subject to mandatory HI-only coverage. See SLCH 210. (Also, such employment services performed after July 1, 1991 in noncovered positions of a State or political subdivision may be subject to mandatory Social Security coverage. See SLCH 215 regarding mandatory Social Security coverage.)

Under the JTPA, which is a Federally funded program, States and political subdivisions organized in service delivery areas, administer jointly with private industry a job training program in the area.

See SLCH chapter 700 for information on what constitutes wages under the JTPA.

643. Work-Study Programs

(a) *General*

The most frequently encountered work-study programs are the type of programs formerly under title I of the Equal Opportunity Act and currently administered by the Department of Education and by participating colleges and universities.

The purpose of the work-study programs is to stimulate and promote part-time employment of students who are from low-income families and who are in need of earnings if they are to continue their course of study.

The Department of Education enters into agreements with eligible institutions (colleges, universities, and vocational schools) under which the Secretary of Education will make grants to such institutions to assist in the operation of the work-study programs. In brief, Federal funds are allocated in accordance with a prescribed formula, among all States. Grants will then be made of those funds to individual colleges and universities on the basis of the institution's requirements for an expanded work-study program.

(b) *Composition of the Work-Study Programs*

Participation under these programs shall be available only to a student: (a) who is from a low-income family, (b) is in need of earnings from such employment to pursue a course of study, (c) shows evidence of being able to maintain academic proficiency while employed, and (d) has been accepted as a full-time student or, if already enrolled and attending the institution, is in good standing

Hand book 5/5

Social Security purposes. From 1988 through June 30, 1992, employer-paid premiums for group legal assistance up to $70 per employee could qualify for an exclusion from wages. Prior to 1988, there was no $70 limit on the exclusion.

741. Group-Term Life Insurance

Effective January 1, 1988, employer-paid premiums for group-term life insurance in excess of $50,000 for an employee (including any former employee who separated from employment after 1988) no longer qualify for an exclusion from wages. Amounts not in excess of $50,000 continue to qualify for exclusion. *(P.L. 100-203)*

Employer-paid premiums for former employees who separated from employment before 1989 continue to be excluded from wages if the employee was not reemployed by the same employer after the termination date. *(P.L. 100-647)*

Former employees who separated from employment after 1988 are required to pay the employee portion of the Social Security and Medicare taxes on IRS Form 1040. The employer reports the uncollected tax amounts on the Form W-2. *(P.L. 101-508)*

742. Job Training Partnership Act

Section 142(a) of the Job Training Partnership Act (JTPA) provides that individuals employed in activities, or engaged in on-the-job training authorized under JTPA, be paid wages not less than the highest of:

-- the minimum wage under section 6(a)(1) of the Fair Labor Standards Act of 1938;

-- the minimum wage under the applicable State or local minimum wage law; or

-- the prevailing rates of pay for individuals employed in similar occupations by the same employer.

Section 142(b) of the JTPA refers to "allowances, earnings, and payments." Allowances and payments which are not intended as compensation for employment services are not wages for Social Security purposes. (See SLCH 642 for information on whether services performed under JTPA are covered employment.) The proper classification of any payment for Social Security coverage purposes depends on the circumstances under which the payment is made. It is possible for an individual to receive both wages and a needs-based allowance. The allowance is not part of the salary structure, but is a needs-based payment made by the local agency in addition to any wages paid which are based on services performed by the individual participating in the JTPA program.

If payments under the JTPA program are based on services covered under the Social Security Act, the payments are wages as defined in section 209 of the Act, unless specifically excluded from coverage.

743. Jury Duty

Employer payments to an employee, absent from work on account of jury duty, that represent the difference between the employee's regular wages and the amount received for jury duty are wages.

JBW

1995

SOCIAL SECURITY ADMINISTRATION USA

SOCIAL SECURITY HANDBOOK

12th Edition

Page 1 of 2

Social Security Handbook, page 2/2

1003. GOVERNMENTAL FUNCTIONS include legislative, executive, and judicial activities; e.g., prevention of crimes; acting for the general welfare and providing for the public safety. Also known as "nonproprietary" functions..

A proprietary function is generally a business engaged in by a State or political subdivision similar to one a private enterprise would engage in for profit. For example, a State or local government may be engaged in a proprietary function when it operates a liquor store, public amusement park, or public utility.

What may be a proprietary function under the laws of one State may not be classified as such in another. The provisions of State law govern in determining whether a function is governmental or proprietary.

*

1004. THE FOLLOWING KINDS OF WORK CANNOT BE COVERED under a Federal-State agreement:

A. Work devised to relieve employees from unemployment. This does not include many programs financed from Federal funds where the primary purpose is to give the employee work experience or training.

B. Work in a hospital, home, or other institution by a patient or resident thereof.

C. Work by transportation system employees who are covered compulsorily by Social Security (see §1005).

D. Work which would be excluded from Social Security if performed for a private employer, except certain agricultural labor and work by students.

E. Services performed by an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency.

For coverage of services in firefighters' and police officers' positions under a retirement system, see §§1011 and 1012. Services of police officers and firefighters whose positions are not under a retirement system of the State or political subdivision are covered when coverage is obtained for the coverage group.

20 CFR 404.1020 SSA Reg on Employment

§ 404.1020 Work for States and their political subdivisions and instrumentalities.

(a) *General.* If you work as an employee of a State, a political subdivision of a State, or any wholly owned instrumentality of one or more of these, your work is excluded from employment unless—

(1) The work is covered under an agreement under section 218 of the Act (see subpart M of this part); or

(2) The work is covered *transportation service* as defined in section 210(k) of the Act (see paragraph (c) of this section).

(3) You perform services after July 1, 1991, as an employee of a State (other than the District of Columbia, Guam, or American Samoa), a political subdivision of a State, or any wholly owned instrumentality of one or more of the foregoing and you are not a member of a retirement system of such State, political subdivision, or instrumentality. Retirement system has the meaning given that term in section 218(b)(4) of the Act, except as provided in regulations prescribed by the Secretary of the Treasury. This paragraph does not apply to services performed—

(i) As an employee employed to relieve you from unemployment;

(ii) In a hospital, home, or other institution where you are a patient or inmate thereof;

(iii) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency;

(iv) As an election official or election worker if the remuneration paid in a calendar year for such service prior to 1995 is less than $100, or less than $1000 for service performed in any calendar year after 1994 and before 2000, or, for service performed in any calendar year after 1999, less than the $1000 base amount, as adjusted pursuant to section 218(c)(8)(B) of the Social Security Act to reflect changes in wages in the economy. We will publish this adjustment of the $1000 base amount in the FEDERAL REGISTER on or before November 1 preceding the year for which the adjustment is made.

(v) As an employee in a position compensated solely on a fee basis which is treated, pursuant to section 211(c)(2)(E) of the Act, as a trade or business for purposes of inclusion of the fees in net earnings from self-employment; or

(4) The work is covered under § 404.1021 or § 404.1022.

(b) *Medicare qualified government employment.* Notwithstanding the provisions of paragraph (a) of this section, your work may be covered as Medicare qualified government employment (see § 404.1018b(c) of this subpart).

(c) *Covered transportation service*—(1) *Work for a public transportation system.* If you work for a public transportation system of a State or political subdivision of a State, your work may be covered transportation service if all or part of the system was acquired from private ownership. You must work as an employee of the State or political subdivision in connection with its operation of a public transportation system for your work to be covered transportation service. This paragraph sets out additional conditions that must be met for your work to be covered transportation service. If you work for a public transportation system but your work is not covered transportation service, your work may be covered for social security purposes under an agreement under section 218 of the Act (see subpart M of this part).

(2) *Transportation system acquired in whole or in part after 1936 and before 1951.* All work after 1950 for a public transportation system is covered transportation service if—

(i) Any part of the transportation system was acquired from private ownership after 1936 and before 1951; and

(ii) No general retirement system covering substantially all work in connection with the operation of the transportation system and guaranteed by the State constitution was in effect on December 31, 1950.

(3) *Transportation system operated on December 31, 1950, no part of which was acquired after 1936 and before 1951.* If no part of a transportation system operated by a State or political subdivision on December 31, 1950, was acquired from private ownership after 1936 and before 1951, work for that public transportation system is not covered transportation service unless performed under conditions described in paragraph (b)(4) of this section.

SSA Reg on State + Local Coverage - 1/2

section 218(g)(2) of the Act all interstate instrumentalities may divide a retirement system based on whether the employees in positions under that system want coverage. The States having this authority are Alaska, California, Connecticut, Florida, Georgia, Hawaii, Illinois, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, New York, North Dakota, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Washington, and Wisconsin.

(b) *Divided retirement system coverage group.* A divided retirement system coverage group is a grouping under a retirement system of positions of members of the system who voted for coverage and positions of individuals who become members of the system (the "yes" group), and positions of members of the system who did not elect coverage (the "no" group) and ineligible employees (see § 404.1208). For purposes of this section for groups covered after 1959, the term "member" also includes individuals who have an option to become members of the retirement system but have not done so. The position of a member in the "no" group can be covered if, within two years after the agreement or modification extending coverage to the "yes" group is executed, the State provides an opportunity to transfer the position to the covered "yes" group and the individual occupying the position makes a written request for the transfer. The members of the "no" group can also be covered if, by referendum, a majority of them vote for coverage. If the majority votes for coverage, all positions of the members of the "no" group become covered. There is no further subdivision of the "no" group into those who voted for and those who voted against coverage. If the State requests, the ineligibles in the "no" group may become part of the "yes" group and have their services covered.

(c) *Referendum procedures.* To divide a retirement system, the State must conduct a referendum among the system's employees. If the system is to be divided, the governor or an individual named by him must certify to the Secretary that:

(1) The referendum was held by written ballot on the question of whether members of a retirement system wish coverage under an agreement;

(2) All members of the retirement system at the time the vote was held had the opportunity to vote;

(3) All members of the system on the date the notice of the referendum was issued were given at least 90 days' notice regarding the referendum;

(4) The referendum was conducted under the supervision of the governor or agency or person designated by him; and

(5) The retirement system was divided into two parts, one composed of positions of members of the system who voted for coverage and the other composed of the remaining positions under the retirement system.

After the referendum the State may include those members who chose coverage under its agreement as a retirement system coverage group. The State has two years from the date of the referendum to enter into an agreement or modification extending coverage to that group.

§ 404.1208 Ineligible employees.

(a) *Definition.* An ineligible is an employee who, on first occupying a position under a retirement system, is not eligible for membership in that system because of a personal disqualification like age, physical condition, or length of service.

(b) *Coverage of ineligible employees.* A State may, in its agreement or any modification to the agreement, provide coverage for the services of ineligible employees in one of three ways:

(1) As part of or as an addition to an absolute coverage group;

(2) As part of a retirement system coverage group covering all positions under the retirement system; or

(3) As part of or as an addition to a retirement system coverage group composed of those members in positions in a retirement system who chose coverage.

§ 404.1209 Mandatorily excluded services.

Some services are mandatorily excluded from coverage under a State's agreement. They are:

(a) Services hired to relieve ment;

(b) Services p tion by a patie stitution;

(c) Transporta the Federal In Act;

(d) Certain e case of fire, s earthquake, flo emergency; and

(e) Services o labor or student be excluded from for a private em

(f) Services c 210(a)(7)(F) of § 404.1200(b).)

[53 FR 32976, Aug. FR 50011, Dec. 17, 1

§ 404.1210 Optio ees.

Certain service the State request coverage. Th plied on a stat tively by coverag

(a) Services in elective positions

(b) Services in part-time positio

(c) Services in positions where basis;

(d) Any agricult services which wo if performed for and

(e) For modific 1994, services perf ficials or election ments for th year are less the years after 1994 ar calendar years aft the $1000 base am suant to section 2 to reflect changes omy. We will pub of the $1000 base ERAL REGISTER on preceding the yea justment is made.

[53 FR 32976, Aug. 29 FR 38997, July 26, 199

SSA reg on State + Local Coverage 3/2

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...ney are:

(a) Services of employees who are hired to relieve them from unemployment;

(b) Services performed in an institution by a patient or inmate of the institution;

(c) Transportation service subject to the Federal Insurance Contributions Act;

(d) Certain emergency services in case of fire, storm, snow, volcano, earthquake, flood or other similar emergency; and

(e) Services other than agricultural labor or student services which would be excluded from coverage if performed for a private employer.

(f) Services covered under section 210(a)(7)(F) of the Act. (See §404.1200(b).)

[53 FR 32976, Aug. 29, 1988, as amended at 57 FR 59911, Dec. 17, 1992]

§404.1210 Optionally excluded services.

Certain services and positions may, if the State requests it, be excluded from coverage. These exclusions may be applied on a statewide basis or selectively by coverage groups. They are:

(a) Services in any class or classes of elective positions;

(b) Services in any class or classes of part-time positions;

(c) Services in any class or classes of positions where the pay is on a fee basis;

(d) Any agricultural labor or student services which would also be excluded if performed for a private employer; and

(e) For modifications executed after 1994, services performed by election officials or election workers if the payments for those services in a calendar year are less than $1000 for calendar years after 1994 and before 2000, or, for calendar years after 1999, are less than the $1000 base amount as adjusted pursuant to section 218(c)(8)(B) of the Act to reflect changes in wages in the economy. We will publish this adjustment of the $1000 base amount in the FEDERAL REGISTER on or before November 1 preceding the year for which the adjustment is made.

[53 FR 32976, Aug. 29, 1988, as amended at 61 FR 38367, July 24, 1996]

§404.1211 Interstate instrumentalities.

For Social Security coverage purposes under section 218 of the Act, interstate instrumentalities are treated, to the extent practicable, as States, that is:

(a) They must be legally authorized to enter into an agreement with the Secretary;

(b) They are subject to the same rules that are applied to the States;

(c) They may divide retirement systems and cover only the positions of members who want coverage; and

(d) They may provide coverage for firefighters and police officers in positions under a retirement system.

[53 FR 32976, Aug. 29, 1988, as amended at 61 FR 38366, July 24, 1996]

§404.1212 Police officers and firefighters.

(a) *General.* For Social Security coverage purposes under section 218 of the Act, a police officer's or firefighter's position is any position so classified under State statutes or court decisions. Generally, these positions are in the organized police and fire departments of incorporated cities, towns, and villages. In most States, a police officer is a member of the "police" which is an organized civil force for maintaining order, preventing and detecting crimes, and enforcing laws. The terms "police officer" and "firefighter" do not include services in positions which, although connected with police and firefighting functions, are not police officer or firefighter positions.

(b) *Providing coverage.* A State may provide coverage of:

(1) Police officers' and firefighters' positions not under a retirement system as part of an absolute coverage group; or

(2) Police officers' or firefighters' positions, or both, as part of a retirement system coverage group.

(c) *Police officers and firefighters in positions under a retirement system.* All States and interstate instrumentalities may provide coverage for employees in police officers' or firefighters' positions, or both, which are under a retirement system by following the majority vote referendum procedures in

Internal Revenue Code

Section 3121 -- Definitions

(b) Employment. For purposes of this chapter, the term "employment" means any service, of whatever nature, perforemd by an employee for the person employing him...... except that such term shall not include --

(7) service performed in the employ of a State, or any political subdivision thereof.... except that this paragraph shall not apply in the case of --

(F) service in the employ of a State ... by an individual who is not a member of a retirement system of such State... except that the provisions of this subparagraph shall not be applicable to service performed --

(i) by an individual who is employed to relieve such individual from unemployment.

Department Of The Treasury
Office of Tax Legislative Counsel
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

September 25, 1997

To: Diana Fortuna

Fax: 456-7431

Number of pages (including this coversheet): 4

From: Paul Crispino

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Comments: Attached is a portion of IRS Publication 963. As I mentioned, the IRS is investigating whether it has ever interpreted section 3121(b)(7)(F)(i). The IRS Publication refers to sections 218(c)(6) and 210(a)(7)(F) of the Social Security Act, as interpreted in the Social Security Handbook (1993 edition). Hence, the Publication is providing an interpretation of the Social Security Act and not the Internal Revenue Code.

UNCLASSIFIED

P1

Tax Notes Today

OCTOBER 20, 1995 FRIDAY

IRS Publication 963

DEPARTMENT: Other IRS Documents (ODC)

CITE: 95 TNT 205-9

LENGTH: 72687 words

HEADLINE: 95 TNT 205-9 FULL TEXT: IRS REFERENCE GUIDE FOR GOVERNMENT EMPLOYERS. (Section 3121 -- Social Security Definitions) (Release Date: October 19, 1995) (Doc 95-9553 (188 pages))

CODE: Section 3121 -- Social Security Definitions

SUMMARY:

The Service has announced (IR-95-58) the release of Publication 963, "Federal-State Reference Guide," a source of information on social security and Medicare coverage and employer tax withholding requirements for government

P 2

- the entire system,
- the employees of the state,
- the employees of each political subdivision,
- the employees of the state and the employees of any one or more political subdivisions,
- the employees of any combination of political subdivisions,
- the employees of a hospital which is an integral part of a political subdivision,
- the employees of two or more hospitals, each of which is an integral part of the same political subdivision, and
- the employees of each institution of higher learning.

MANDATORY EXCLUSIONS

P J

Full Social Security coverage (mandatory or voluntary) is NOT possible for the following kinds of work, i.e., mandatory exclusions under the Social Security Act, section 218(c)(6) and section 210(a)(7)(F) (Source: Social Security Handbook, 1993, section 1018)

- Work to relieve employees from unemployment, such as services of welfare recipients performed in return for assistance payments because the primary intent of such programs is to provide assistance to needy individuals and their families.

Note: This exclusion does not include services performed by individuals under work-training or work-study programs which are designed to provide work experience and training to increase the employability of the person because the primary intent of such programs is not to relieve them from unemployment.

New Shaw Draft

Background: Rep. Shaw is trying to forge an alliance between Governors and Congressional Republicans on workfare and Fair Labor Standards Act requirements. Governors of both parties are concerned about the cost of compliance with FLSA and other labor laws, including payment of the minimum wage, and the cost of FICA taxes for welfare recipients on workfare. Shaw is trying to get Governors to endorse a new draft bill.

- Shaw's new draft tries to reclassify people in workfare programs as "trainees." This would deprive them of the protections of the FLSA, including the minimum wage, and other labor laws, including full health and safety protections and protection against discrimination.

- It would also significantly weaken the welfare law's tough work requirements for people on welfare who perform "community service." Instead of being required to work for 20 hours a week in 1998, someone doing community service would only have to work as many hours as the state could afford at the minimum wage. The balance of a recipients' time could be spent on job search and education activities.

  We are also concerned that the definition of community service is so broad that it could include nearly all subsidized work, allowing low benefit states to require less than 20 hours of work from nearly all their "working" recipients. DOL is also concerned that it would weaken labor protections for those performing community service.

- The bill would also exempt community service positions from FICA and unemployment taxes, which we indicated during the balanced budget negotiations that we were willing to do. In fact, we agreed to such an exemption as part of a last-minute compromise on the Balanced Budget Act that fell apart for other reasons.

Talking Points:

- Worker protection laws, such as the Fair Labor Standards Act, should apply to workfare participants in the same way they apply to other workers. No one doing real work should be paid a subminimum wage or should be subject to health and safety hazards.

- Rep. Shaw's latest proposal would deprive workfare participants of those protections, including payment of the minimum wage.

- It would also weaken the welfare law's tough work requirements -- requirements that were the result of protracted negotiations among many parties, and which have not yet been put to the test by states.

- Paying working welfare recipients the minimum wage and giving them other worker protections will promote the goals of welfare reform, because it will give them the ability to support their families and break the cycle of dependency.

- The Administration is prepared to work with states to ensure that they can comply with the law, without undue financial burden, and meet the welfare law's work requirements.

- New TP stronger on FICA
- Unleash DOL

[DISCUSSION DRAFT]

105TH CONGRESS
1ST SESSION

H.R. ____

IN THE HOUSE OF REPRESENTATIVES

Mr. SHAW introduced the following bill; which was referred to the Committee on ______________

A BILL

To provide rules governing the implementation of work experience and community service programs under the program of block grants to States for temporary assistance for needy families, and for other purposes.

Limits to comm svc

— max hrs
— FICA

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Workfare Implementation Act of 1997".

Lead w/ min wg, but other args too

JTPA- trainees
— work exp.

SEC. 2. RULES GOVERNING 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 WORK EXPERIENCE PROGRAMS.—

"(1) DEFINITION.—As used in this section, the term 'work experience program' means a short-term or part-time training assignment with a public or private organization for an individual who needs assistance in becoming accustomed to basic work requirements.

"(2) GOAL.—The assignment of an individual in a work experience program should be designed to promote the development of good work habits and basic work skills.

"(3) DURATION OF PARTICIPATION.—Participation in a work experience program shall be for a reasonable length of time, based on the needs of the participant.

"(k) RULES GOVERNING COMMUNITY SERVICE PROGRAMS.—

"(1) DEFINITION.—As used in this section, the term 'community service program' means a program which is limited to projects which serve a useful pub-

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lic 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.

"(2) MAXIMUM HOURS OF PARTICIPATION.—

"(A) MONTHLY LIMIT.—A State that elects to establish a community service program may not require any individual to participate in the program for a combined total number of hours per month that exceeds—

"(i)(I) the amount of assistance provided during the month to the family of which the individual is a member under the State programs 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 that is collected (or reasonably expected to be collected, as determined in accordance with methods approved by the Secretary, which may take account of recent collections but not arrearages) by the State as child support on behalf of the family of which the individual is a member that is not paid to the family; divided by

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

"(B) WEEKLY LIMIT.—A State that elects to establish a community service program may not require any individual to participate in the program for a combined total of more than 40 hours per week.

"(C) PROCEDURE FOR ADDRESSING ERRORS.—A State that elects to establish a community service program shall establish procedures to address errors in the application of this paragraph.

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"(3) SPECIAL RULES.—

"(A) EXEMPTIONS FROM FICA AND FUTA.—Amounts paid by reason of participation in a community service program—

work exp?

"(i) shall not be taken into account—

"(I) as wages (as defined in section 3121(a) of the Internal Revenue

Code of 1986 (relating to Federal Insurance Contributions Act)) for purposes of chapter 21 of such Code;

"(II) as compensation (as defined in section 3231(e) of such Code for purposes of sections 3201(a) and 3221(a) of such Code (relating to tier 1 railroad retirement taxes); or

"(III) as wages (as defined in section 3306(b) of such Code (relating to Federal Unemployment Tax Act)) for purposes of chapter 23 of such Code; and

"(ii) shall not be taken into account in determining any benefit under Federal law to which the individual would otherwise be entitled on account of the payment of such amounts (other than a tier 2 railrod retirement benefit).

"(B) RULES RELATING TO MINIMUM WAGES AND MANNER OF PAYMENT OF WAGES.—

"(i) SATISFACTION OF MINIMUM WAGE RULES.—Compliance with paragraph (2) with respect to a participant in a community service program shall be treated as compliance with any requirement of the Fair Labor Standards Act or any other Federal law relating to the amount or payment of minimum wages that applies to the participant in respect of participation in the program.

DOL

"(ii) SATISFACTION OF RULES AS TO MANNER OF PAYMENT OF WAGES.—The provision of assistance under a State program funded under this part to a participant in a community service program, in the form of a benefit check, shall be treated as compliance with any requirement of Federal law relating to manner of payment of wages that applies to the participant in respect of participation in the program.

ok?

"(l) 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 other participants engaged in a work experience or community service program pursuant to this section.".

not OSHA → stds vs. general duty + enforcement

DOL ?

no enforcement

(b) CONFORMING AMENDMENT.—Section 403(a)(5)(C)(i)(I) of such Act (42 U.S.C.

603(a)(5)(C)(i)(I)) is amended by inserting "(as such terms are defined in section 407)" before the period.

(c) RETROACTIVITY.—The amendments made by 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. 3. STATE OPTION TO TAKE ACCOUNT OF CERTAIN WORK ACTIVITIES OF RECIPIENTS WITH SUFFICIENT PARTICIPATION IN A COMMUNITY SERVICE PROGRAM.

(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 A COMMUNITY SERVICE PROGRAM.—Notwithstanding paragraphs (1) and (2) — work regs of this subsection and the durational limit of subsection (d)(8) 12 mo voc ed, 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 community service program 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.".

(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. 4. PROTECTION AGAINST GENDER DISCRIMINATION THROUGHOUT THE PROGRAM OF BLOCK GRANTS TO STATES FOR TEMPORARY ASSISTANCE TO NEEDY FAMILIES.

Section 408(d) of the Social Security Act (42 U.S.C. 608(d)) is amended to read as follows:

"(d) NONDISCRIMINATION PROVISIONS.—

"(1) The following provisions of law shall apply to any program or activity which receives funds provided under this part:

"(A) The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.).

"(B) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

Just adds gender?

"(C) The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

"(D) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

"(2) Education, training, job search, and job readiness assistance activities receiving Federal funds provided under this part shall be considered an education program or activity receiving Federal financial assistance for purposes of title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et. seq.).".

New Shaw Draft

- Revised definition of "work experience" (short-term training assignment with public or private organization, with goal of development of good work habits and basic work skills)

DOL

  - doesn't appear to imply directly that they're not employees, as old draft did
  - may be intended to make it more likely that they will be classified as trainees? (but does this have any effect on that?)

- Same definition of "community service" as last draft -- very broad (projects that serve a useful purpose)

- Places "maximum hours of participation" limit on community service <u>only</u> (not work experience) W

  - Same formula: TANF plus food stamps less child support collected

- Same FICA/FUTA exemption, but for community service <u>only</u> (not work experience) (Treasury should confirm if identical)

DOL

- Compliance with "maximum hours of participation" section shall be deemed to be compliance with FLSA and other laws with respect to minimum wage -- have they fixed dicey language of last draft?

- Same (apparently successful) language that check can continue to come from welfare office, not employer

DOL

- Health/safety standards of federal/state law "otherwise applicable to working conditions of *employees* shall be equally applicable to working conditions of other participants" in work experience or community service -- Any implication about employee status here?

- For those in community service who hit "maximum hours" limit, lets participants still hit the work requirements by lifting limits on voc ed, job search, and job training directly related to employment. W

- Adds gender discrimination protection (only?) to TANF

— SSA issue

Larry R. Matlack 09/24/97 10:19:13 PM

Record Type: Record

To: Diana Fortuna/OPD/EOP

cc: See the distribution list at the bottom of this message
Subject: Workfare Comments

Here are a few observations from the staff (from my shop Maureen Walsh and Debra Bond, and from Keith's Jeff Farkas and Anil Kakani). This is a quick read, and I think we come to the same conclusion as DOL -- this is not an improvement. DOL will, I'm sure, have many more and more detailed concerns.

Major Changes from previous draft:

1. Work experience programs (WEP) are not included in many of the provisions, including the wage calculation. Such a program now is defined as "a short-term or part-time training assignment with a public or private organization (as opposed to a "program designed to...provide experience and training").

2. New section of Health and Safety and Nondiscrimination (gender) provisions. If I'm correct, the latter is the issue we raised at the end of the welfare jobs discussion in the budget bill. Whether it's the exact language, I don't recall. DOL certainly will.

General concerns:

1. What effect does the exclusion of the WEP from many provisions have on workfare? Are the participants paid minimum wage? Are they considered employees? Does this move WEP outside of the workfare category? The earlier concern was that the work experience definition substantially weakened the TANF work requirements by allowing training to count when minimum wage requirements could not be met at minimum wage. This draft removes work experience from the "Maximum Hours of Participation" and "Exemptions from FICA and FUTA" provisions, though leaving unclear what impact these changes will have on the TANF work requirements as the key program definitions remain sufficiently vague.

It appears that the participant would be more likely to be considered an employee under FLSA, given language like "good work habits" and "basic work skills." On the other hand the section refers to short-term training which is very broad. Are they trainees? Is it like an apprenticeship or taking a class? Is this work under FLSA? If they are considered to be employees under FLSA then presumably they will be covered by all of the worker protections.

It appears that participants can use the WEP toward their TANF requirements, but it is questionable whether the states can use private or public sector experience to count toward their participation rates. If states can no longer use private or public sector experience toward their participation rates - - do we agree? ??

2. WEP section needs to be tightened. The draft uses vague phrases like "Participation in a work experience program shall be for a ***reasonable length of time, based on the needs*** of the participant". What does that mean? There is no mention of maximum hours required to be worked. Does it tie to benefits received or the 40 hour work week? Also it should include an explicit duration period, for example a 6 month on-the-job-training limit as stated in JTPA. ?

Previous Concerns:

- Page 3, section (2)(A)(i)(I): Previous concerns were raised over tightening this to cash benefits received under this program not child care or other benefits that States can offer under TANF. Furthermore, DOL raised concerns over the "family of which the individual is a member" when there may be two persons (mother and daughter) living in the same household with work requirements. DOL also suggested adding in a statement that the participant could work longer than their benefits mandate if paid under FLSA.

- Page 4, section 2(A)(i)(III)(ii): Suggest revising to include the "federal or state minimum wage, whichever is higher."

- Page 4, section 2(C): This section is very vague. It does not appear to give the participant a right of action if they are underpaid. Suggest revising the legislation to include FLSA grievance procedures.

- Page 5/6 section 3(B)(i): Two problems - - First, it still states that compliance with the wage calculation is compliance with any FLSA requirement. This should be revised to only be considered compliance with Section 6 of the FLSA. Second, the broad language which refers to compliance with other laws relating the wages needs to be deleted. It appears that it could be read to waive Davis-Bacon and the Service Contract Act.

- Retroactivity: We still do not understand whether this is a good or bad thing.

- It appears that the FICA exemption means workfare will not count toward Social Security quarters. Do we want to fix this? Can we?

- It appears that workfare is not excluded from Federal State income taxes.

Question: Did DOL check with organized labor for feedback?

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