

Noon

DOL	Seth Harris (can do 12 or 2)	219-6181
	M Stacey Grundman	219-6197
HHS	John Monahan — Bourdette <u>Katie Steele</u>	401-5180
	M (assistant Shannon Rudisill is <u>401-6944</u>)	
Treasury	Karl Scholz	622-0120
	Paul Crispino	
OMB	Larry Matlack	5-3262
NEC	M Emil Parker	6-2809
Intergovernmental	Emily Bromberg (optional)	6-2896
	(can ask for assistant Sky Gallegos)	
DPC	Cynthia Rice	
	Diana Fortuna	

12:15 - 1:15 pm 456-6755 or
456-6766
code ~~at~~ *9967 = code

THE WHITE HOUSE
WASHINGTON

Unions

Not a compromise

Abx exemptions

- designed to
allow UE

John Teaner

- Ek has fax

→ John Watson, GC, SSA

~~Carolyn Foley finish matrix~~

~~Judy - fax note, res to her~~

~~eterna f pb, affid.~~

Q's

1. How?
2. Grad/net - all/none
3. Define w/fin law
4. Section of law

~~Conf Rpt:~~

"no inference intended"
on FICA, & tax

welcs - etc

Scholz - Don't fix it

- let WISCO

From HHS? No, IRS

→ if 100% subsgovt, then no FICA + etc
→ inconsistent w/ DOL, but OK

job all or none
non-subsid.

Shaw leaves open -
IRS would treat all/none

TO:

CYNTHIA RICE
DIANA FORTUNA
EMIL PARKER
JOHN MONAHAN
BARRY WHITE

622-
0605

FROM:

SETH HARRIS 

DATE:

SEPTEMBER 15, 1997

SUBJECT: ATTACHED DRAFT COMMENTS ON THE SHAW PROPOSAL

As promised, attached is a draft preliminary set of comments on the Shaw welfare reform proposal.

We still have some discomfort about our suggested language changes in #1 (specifically, the use of the phrase "unsubsidized employment") and #4 (specifically, whether adding "cash" is sufficient). Accordingly, please use these suggestions for illustrative purposes only. We need to think about them and talk to HHS.

Please let us know if you need any additional information.

Attachment

cc: Internal Distribution List

5 page fax
To Karl Scholz
Fr Diana Fortuna

September 15, 1997 p.m.
DRAFT

SIHAW DISCUSSION DRAFT

****1. Definition of Work:** Page 2 (lines 12-19), new Section 407(j)(1)(A): First, the definition of work experience permits positions with private, for profit employers. Second, it might be read by a court to mean that work experience by definition is not "employment" for purposes of other laws. Suggested fix:

"(j)(1)(A) WORK EXPERIENCE PROGRAM. -- The term 'work experience program' means a program which is designed to --

"(i) provide experience or training for individuals not able to obtain unsubsidized employment; and

"(ii) improve the future employability of program participants through actual work experience with public agencies or private, non-profit organizations.

****2. Definition of Community Service:** Page 2 (line 20) to page 3 (line 2), new Section 407(j)(1)(B): First, the definition of community service permits positions with private, for profit employers for the purposes cited. Second, the broad reference at the end of the definition (page 3, line 2) to "other purposes identified by the State" would allow any purpose without limitation. Suggested fix:

"(B) COMMUNITY SERVICE PROGRAM -- The term 'community service program' means a program which is limited to projects with public agencies or private, non-profit organization which serve a useful public purpose in fields such as..., and other fields identified by the State as serving a useful public purpose."

3. Work Requirements by Third Parties

****A.** Page 3 (lines 4-9), new Section 407(j)(2)(A): This arguably could allow an employer other than the State to require the recipient to work additional hours, as long as the State program did not have that requirement. Furthermore, the FLSA requires payment of the minimum wage for all hours an employee is suffered or permitted to work. A State or other employer apparently could knowingly permit an employee to work additional hours without additional payment. A great deal of off-the-clock work could be performed and, under (3)(B)(i) (pages 5-6), it might be deemed to be compliance with the minimum wage so long as it is not "required by the State."

Alternative possible fixes:

(1) Eliminate paragraph (3)(B)(i) on pages 5-6. The effect would be that there would be a statutory maximum number of hours under the formula. The benefits would count towards

FLSA wages without being passed through the private employer, as DOL would currently require.

(2) Amend 407(j)(2)(A) on page 3 to not permit a participant to work more than the maximum number of hours, and at the same time to provide that additional hours may be worked if the participant is compensated in accordance with the FLSA:

"(A) MONTHLY LIMIT. -- A State that elects to establish a work experience or community service program shall operate the program so that the maximum hours which any individual participates in the program in any month does not exceed the number computed in accordance with this subparagraph, provided that the individual may work additional hours if, in addition to the amounts provided in clause (i), the individual is paid at least the minimum wage required under Section 6 of the Fair Labor Standards Act of 1938 for all such additional hours worked."

****B.** Page 4 (lines 7-11), new Section 407(j)(2)(B): Similarly, a participant can be required by a private employer to work more than 40 hours, or the State could suffer or permit more than 40 hours, and it arguably would be compliance with this provision. Possible fix:

"(B) WEEKLY LIMIT. -- A State that elects to establish a work experience or community service program shall operate the program so that each individual who participates in the program participates for a maximum of 40 hours per week."

4. Limiting Assistance to TANF cash grant: Page 3 (line 10), new Section 407(j)(2)(A)(i)(I): "Assistance" could be broadly read to include other TANF benefits, such as child care and transportation assistance. Suggested fix: Insert the word "cash" before "assistance" on line 10.

5. Families/Households with Multiple Welfare Recipients: Page 3 (lines 10-12), new Section 407(j)(2)(A)(i)(I), and page 3 (lines 16-17), Section 407(j)(2)(A)(i)(II): Where more than one person in a family/household is separately eligible for and collects TANF benefits for herself/himself and dependents, it appears that the total would be added together to determine the hours of work permitted, rather than only counting the benefits received by the individual and his or her dependents. For example, two siblings may have babies, or a mother and her daughter might both have dependent children and separately be eligible for and receiving benefits. The language could also result in the technical problem that two individuals in the family might be in work experience, and they could both have to work the number of hours under the formula, rather than dividing the total hours by two. Suggested fix:

"(2)(A)(i)(II) the amount of cash assistance provided during the month to the participant and the participant's dependent(s); plus

"(II) the dollar value equivalent of any benefits provided during the month to the participant and the participant's dependent(s) under the food stamp program under the Food Stamp Act of 1977; minus"

6. **Child Support:** Page 4 (line 2), new Section 407(j)(2)(A)(i)(III): In order to clarify that this section will exclude the child support payments to the family that are made in the form of the welfare benefit, the clause "not paid to the family" should be replaced with "retained by the State".

****7. Grievance Procedures/Enforcement:** Page 4 (lines 12-16), new Section 407(j)(2)(C): These grievance procedures have no substantive requirements and therefore the protection and remedies provided may be completely inadequate. In addition, it is arguable that the provision would supersede FLSA remedies. Suggested fix would add the following sentence to the end of the paragraph:

"These procedures shall be in addition to any procedures which may be available under the Fair Labor Standards Act or any other Federal or State law."

In addition, a cross reference incorporating the procedures in the Welfare to Work program would ensure that the State provides meaningful procedures and remedies for those workers not protected by FLSA.

8. Implications of Tax Provision for DOL Programs

A. Unemployment Insurance: Page 5 (lines 8-12), new Section 407(j)(3)(A)(i)(III): To exclude wages paid to these individuals by private/for-profit employers from FUTA as provided in this bill would not directly affect State UI taxes or coverage under State laws. It would simply give these employers a Federal tax break they don't now have.

Services performed by and wages paid to individuals in work-relief or work-training programs are currently excluded from FUTA and from State UI taxes when performed for State and local government and nonprofit organizations defined in 501(c)(3) of the IRC. Such services performed for private/for-profit employers are not excluded from either FUTA or State UI taxes and the services are covered.

****B. Determination of Benefits Under Federal Law:** Page 5 (line 14), new Section 407(j)(3)(A)(ii): The phrase "any benefit under Federal law" is ambiguous. We cannot suggest a clarification without understanding the provision's intended effect.

****9. Satisfaction of Minimum Wage Rule as Compliance with FLSA "and all other Federal Laws":** Pages 5 (line 22) to page 6 (line 6), new Section 407(j)(3)(B)(i): **This provision is unnecessary and could be eliminated.** If it is retained, we have 2 concerns.

First, the explanation of this bill provides that it will not address other laws, including specifically the Davis-Bacon and Service Contract Acts. The phrase "or any other Federal law" (page 6, line 3) would seem to apply to those statutes and should be eliminated.

Second, it is also not clear whether the effect of this paragraph is to treat compliance with paragraph (2) as compliance with all requirements of the FLSA, or only the minimum wage requirements of the FLSA (see especially, page 6, lines 2-5).

If the provision is retained, a suggested fix would be:

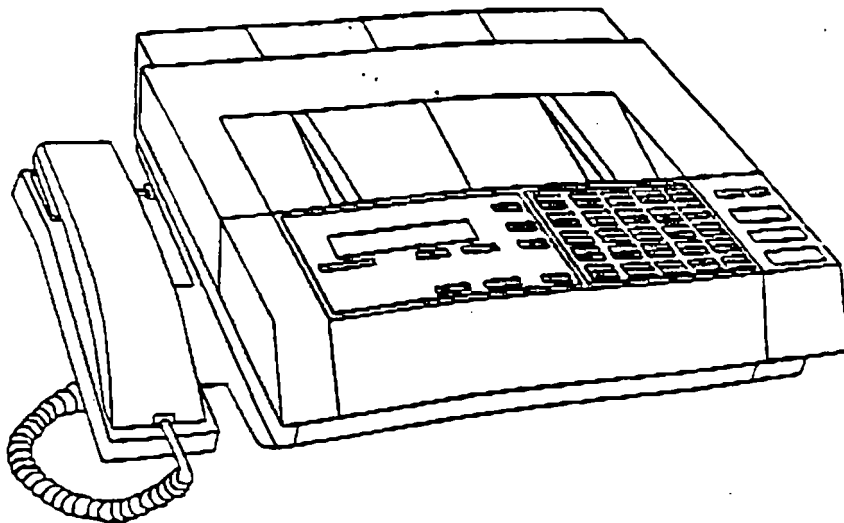
"(3)(B)(i) SATISFACTION OF MINIMUM WAGE RULES. -- Compliance with paragraph (2)(A) with respect to a participant in a work experience or community service program shall be treated as compliance with Section 6 of the Fair Labor Standards Act."

10. Inclusion of Food Stamps in the "Manner of Payment" Provision: Page 6 (lines 7-16), new Section 407(j)(3)(B)(ii): This provision would supersede DOL's guidance that wages must be paid by the employer -- i.e., the benefit check must be passed through from the State to the employer (where the State is not the employer). It would avoid a few of the hoops which must be followed under the Food Stamps Act and other potential problems which have come to our attention under that Act if it also referenced food stamps. Possible fix:

"(ii) SATISFACTION OF RULES AS TO MANNER OF PAYMENT OF WAGES. -- The provision of a benefit check under this part and the provision of food stamps under the Food Stamp Act of 1977 to a participant in a work experience or community service program shall be treated as compliance with any requirement of the Fair Labor Standards Act or any other Federal law relating to manner of payment of wages that applies to the participant in respect to participation in the program."



FAX COVER SHEET



DATE:

9/15/97TO: C. Rice / D. FortunaCOMPANY: DPCFROM: SETH HARRISFAX NO: 456-7431PHONE NO: 456-5570PHONE NO: 219-6181

FAX NO: (202) 219-6924

NUMBER OF PAGES INCLUDING COVER: 6MESSAGE:

Q&A on Washington Post 2-parent article

Q. Today's Washington Post reports that many states may not meet the 2-parent family participation rates and that HHS has not gotten guidance to the states on how it will assess penalties. How do you respond?

A. It is very clear that the intent of this new law was to move all families -- single and two-parent families -- into work and self-sufficiency. States received flexibility to design their welfare-to-work programs that will be most effective for their families. While in return, the federal government expects results in reducing welfare dependency. States have been on notice for more than a year that they were required to move families into work and work activities.

HHS has been working diligently to prepare and issue guidance to the states on the many provisions of the welfare law. Since the passage of the new welfare law, HHS has answered numerous questions from states, provided interim informational guidance, and engaged in an extensive consultations with states and interested groups before drafting regulations. In addition, Congress recently passed the balanced budget agreement which included changes and technical corrections to the new welfare law. We are now incorporating those changes into the draft regulations which we expect to issue next month.

Q. Are you concerned about states not meeting the 2-parent rates and will you impose penalties even when states meet the overall all family participation rate?

A. We are concerned about states not meeting an important requirement for the states. The purpose of this new law is to help families achieve self-sufficiency. The President and HHS have strongly encouraged states to ensure that all families receive the attention and support needed to transition from welfare to work. Congress reasonably set a higher expectation on 2-parent families, with built-in ability to share child care, to move into work or work activities. States are subject to the statutory penalty provisions, including the participation requirements for 2-parent families, with even in the absence of regulations. We will assess each state individually.

[Background: States are required to meet the minimum participation rates on an average monthly basis for the fiscal year, not just by October 1 which could have been implied by the Post article. Not all states will be subject to the penalties for the last quarter of fiscal year 1997. States implementing their TANF program prior to January 1, 1996 will be required to report on how they are meeting the participation rates for the last 3 months of FY97 after October 1 (states have up to 45 days to report). About 30 states are in this category. The remaining states, implementing after January 1, have 6 months after their implementation date to report.]

Q. How will HHS penalize states exactly? What does the law say?

A. The new welfare law has a penalty for states that fail to meet the minimum participation rate for families engaged in work or work activities. The law is not clear on how that penalty applies to 2-parent families. States have known prior to

Back-ground

and since the new law was enacted of the minimum participation rates for both all families and 2-parent families. The administration has urged states to ensure that they are working with all families to move more than the minimum percentage into work or work activities and achieve self-sufficiency.

The new law does provide for options for states that risk a penalty. The Secretary of HHS has a good cause exception authority to not impose a penalty if the state submits a compelling reason for failing to meet the particular requirement. Also, before imposing a penalty, the state can submit a corrective compliance plan for the Secretary's approval that will outline the actions the state will take to correct the deficiency and a timeframe for completion.

Q. Can you penalize states for not meeting the October 1 deadline when you don't have the regulations done?

A. Yes. The penalty provisions apply and will be levied if a state fails to meet the new welfare law's requirements. States provide the necessary information to determine compliance with the work participation rates in a report due at the end of each quarter of the federal fiscal year. The states have up to 45 days to submit that report, which in this first year's case, is the middle of November, not October 1. The effective date of the data reporting and most penalty provisions is July 1, 1997 for States that implemented their TANF programs on or before January 1, 1997. States that implemented their TANF (Temporary Assistance for Needy Families) programs after January 1 have until 6 months after the effective date to submit their reports. All of this means that not all states will be reviewed this fall.

Q. How many states do we expect to miss the requirement?

A. We don't know. States know the consequences of failing to meet the requirements. One is a penalty. Another is the disappointment of families who don't get the opportunity to achieve self-sufficiency.

9/17/97 11:00 am

THE WHITE HOUSE
WASHINGTON

9/16

1. Prev wage

2. Nada in bill reqs/permits
welf recip to org

3. can sue if sanctioned
but ~~not~~ can't seek
punitive damages

Mt w/ Shaw Wed-Tanner
-not pushing; so can delay
to next wk

Summary of Compromise Welfare-to-Work Transition Bill September 1997

1. The compromise bill does not determine the employee status of workfare participants; however, it does specify that if workfare participants are determined to be "employees" and otherwise covered by these laws, then FICA (requiring Social Security taxes) and FUTA (requiring unemployment insurance taxes) do not apply to them. In addition, if workfare participants are determined to be employees otherwise covered by FLSA, the obligations of that Act may be met by benefit checks and determination of maximum hours of work in keeping with the minimum wage as described in #1. These terms apply to workfare positions in the public, nonprofit, and private sectors.

2. The bill does not address other labor laws. If workfare participants are determined to be employees then these laws¹ apply to the same extent as they do to any other employee. Workers' compensation would remain a State issue.

3. All workfare participants are guaranteed the minimum wage. In calculating the number of hours a participant may spend in workfare activities:

- Food stamps and cash benefits are considered wages;
- Child support collections are to be subtracted, and States may anticipate future child support collections based on any reasonable methods (subject to the approval of the Secretary, if necessary), such as recent collections (but not arrearages); and
- The federal minimum wage is to be used.

$$\frac{(\text{food stamps} + \text{cash}) - \text{expected child support}}{\text{federal minimum wage}} = \text{maximum hours in workfare activity}$$

4. If the above formula does not yield enough hours to allow States to count workfare participants towards work participation rates, participants can complete remaining hours in education activities and job search.

5. Grievance procedures and nondisplacement provisions included in the 1996 welfare reform law and the 1997 Balanced Budget Act would apply to workfare participants and those affected by workfare placements, depending on how the position was funded.

¹Including the Davis-Bacon and Service Contract Acts requiring prevailing wages, Employee Retirement Income Security Act (affecting employee benefits including health, retirement, and vacation), group health plan continuation coverage under COBRA, Family and Medical Leave Act, Title VII of the Civil Rights Act (including compensatory and punitive damages), Executive Order 11246 (affirmative action for all government contractors), Age Discrimination in Employment Act, Americans with Disabilities Act (including compensatory and punitive damages), Occupational Safety and Health Act, Drug-Free Workplace Act, National Labor Relations Act (providing for collective bargaining and other union activities), Worker Adjustment and Retraining Notification Act, Child Support Enforcement Reporting, Wage Garnishment Requirements, and many State laws, including common laws regarding wrongful discharge and payment of State payroll and income taxes.

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H.L.C.

[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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Workfare Implementa-
5 tion Act of 1997".

1 SEC. 2. RULES GOVERNING WORK EXPERIENCE AND COM-
2 MUNITY SERVICE PROGRAMS.

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

6 “(j) RULES GOVERNING WORK EXPERIENCE AND
7 COMMUNITY SERVICE PROGRAMS.—

8 “(1) DEFINITIONS.—As used in this section:

9 “(A) WORK EXPERIENCE PROGRAM.—The
10 term ‘work experience program’ means a pro-
11 gram which is designed to—

12 “(i) provide experience or training for
13 individuals not able to obtain employment
14 in order to assist them to move to employ-
15 ment; and

16 “(ii) improve the employability of pro-
17 gram participants through actual work ex-
18 perience to enable such individuals to move
19 promptly to employment.

20 “(B) COMMUNITY SERVICE PROGRAM.—

21 The term ‘community service program’ means a
22 program which is limited to projects which
23 serve a useful public purpose in fields such as
24 health, social service, environmental protection,
25 education, urban and rural development and re-
26 development, welfare, recreation, public facili-

1 tics, public safety, and day care, and other pur-
2 poses identified by the State.

3 “(2) MAXIMUM HOURS OF PARTICIPATION.—

4 “(A) MONTHLY LIMIT.—A State that
5 elects to establish a work experience or commu-
6 nity service program may not require any indi-
7 vidual to participate in any such program for a
8 combined total number of hours per month that
9 exceeds—

10 “(i)(I) the amount of assistance pro-
11 vided during the month to the family of —
12 which the individual is a member under the
13 State programs funded under this part;
14 plus

15 “(II) the dollar value equivalent of
16 any benefits provided during the month to
17 the household of which the individual is a
18 member under the food stamp program
19 under the Food Stamp Act of 1977; minus

20 “(III) any amount that is collected (or
21 reasonably expected to be collected, as de-
22 termined in accordance with methods ap-
23 proved by the Secretary, which may take
24 account of recent collections but not ar-
25 rearages) by the State as child support on

just TANF

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H.L.C.

4

1 behalf of the family of which the individual
2 is a member that is not paid to the family;
3 divided by

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

7 “(B) WEEKLY LIMIT.—A State that elects
8 to establish a work experience or community
9 service program may not require any individual
10 to participate in any such program for a com-
11 bined total of more than 40 hours per week.

12 “(C) PROCEDURE FOR ADDRESSING ER-
13 RORS.—A State that elects to establish a work
14 experience or community service program shall
15 establish procedures to address errors in the
16 application of this paragraph.

17 “(3) SPECIAL RULES.—

18 “(A) EXEMPTIONS FROM FICA AND
19 FUTA.—Amounts paid by reason of participa-
20 tion in a work experience or community service
21 program—

22 “(i) shall not be taken into account—

23 “(I) as wages (as defined in sec-
24 tion 3121(a) of the Internal Revenue
25 Code of 1986 (relating to Federal In-

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H.L.C

5

1 surance Contributions Act)) for pur-
2 poses of chapter 21 of such Code;

3 "(II) as compensation (as defined
4 in section 3231(e) of such Code for
5 purposes of sections 3201(a) and
6 3221(a) of such Code (relating to tier
7 1 railroad retirement taxes); or

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

13 "(ii) shall not be taken into account in
14 determining any benefit under Federal law
15 to which the individual would otherwise be
16 entitled on account of the payment of such
17 amounts (other than a tier 2 railroad retire-
18 ment benefit).

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

22 "(i) SATISFACTION OF MINIMUM
23 WAGE RULES.—Compliance with para-
24 graph (2) with respect to a participant in
25 a work experience or community service

Clarify

1 program shall be treated as compliance
2 with any requirement of the Fair Labor
3 Standards Act or any other Federal law
4 relating to the amount or payment of mini-
5 mum wages that applies to the participant
6 in respect of participation in the program.

7 "(ii) SATISFACTION OF RULES AS TO
8 MANNER OF PAYMENT OF WAGES.—The
9 provision of a benefit check to a partici-
10 pant in a work experience or community
11 service program shall be treated as compli-
12 ance with any requirement of the Fair
13 Labor Standards Act or any other Federal
14 law relating to manner of payment of
15 wages that applies to the participant in re-
16 spect of participation in the program."

17 (b) CONFORMING AMENDMENT.—Section
18 403(a)(5)(C)(i)(I) of such Act (42 U.S.C.
19 603(a)(5)(C)(i)(I)) is amended by inserting "(as defined
20 in section 407(j)(1))" before the period.

21 (c) RETROACTIVITY.—The amendments made by this
22 section shall take effect as if included in the enactment
23 of section 103(a) of the Personal Responsibility and Work
24 Opportunity Reconciliation Act of 1996.

1 SEC. 3. STATE OPTION TO TAKE ACCOUNT OF CERTAIN
2 WORK ACTIVITIES OF RECIPIENTS WITH SUFFICIENT PARTICIPATION IN WORK EXPERIENCE OR COMMUNITY SERVICE PROGRAMS.

3
4
5 (a) IN GENERAL.—Section 407(c) of the Social Security Act (42 U.S.C. 607(c)) is amended by adding at the
6
7 end the following:

8 “(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 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.”

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1 (b) RETROACTIVITY.—The amendment made by sub-
2 section (a) of this section shall take effect as if included
3 in the enactment of section 103(a) of the Personal Re-
4 sponsibility and Work Opportunity Reconciliation Act of
5 1996.

Options for Reaction to Shaw Minimum Wage/Workfare Proposal

1. Oppose proposal without offering an alternative:
 - Stress weakening of work requirements, with examples
 - Point out that proposal raises serious questions about labor protections (without offering potential fixes)
 - Continue to state our openness to FICA/FUTA exemption
2. Oppose proposal; offer an alternative
 - 4 alternatives (see below)
 - Call Democratic Governors asap to try to prevent defections to Shaw
3. Support or do not object to proposal; offer a number of technical suggestions ASAP via Tanner
 - Offer DOL fixes to ensure no negative implications for labor protections
 - Ensure narrow definition of community service; rule out private sector workfare
 - Other technical fixes

Tanner/Stenholm
- Split job search + readiness
- job sks by DRE - candidate
- TN - only if on a list?
- Time limit private work exp.

- Fix wk reqs from Stenholm
- plus 5 yr time limit
(No prev wg)
- OK
- Tell Govs reserve right to hit R's in case poison pills

Description of W&M compromise:

1. Defines maximum hours of work experience/community services, including private sector workfare (TANF + food stamps - child support collected).
2. If maximum hours calculation above falls short of law's work requirements, allows states to use any other work activity to reach work requirements -- job search, vocational education, training directly related to employment, and education for those without a high school diploma. The current 6-week limit on job search and 12-month limit on vocational education would be lifted for this purpose.
3. Exempts work experience and community service from FICA and FUTA. (Defines those two work activities so broadly that it raises concern that it could encompass unsubsidized or subsidized jobs.)
4. Stated intent is to preserve employee status, but DOL feels legislative language does not make this clear. They are drafting potential fixes to these problems in case we want them. Allows payment for work experience/community service to be paid by welfare office instead of "employer."

Four Possible Alternatives

Alternative 1:

- Agree only to FICA/FUTA exemption and allowing welfare office to make payment instead of employer (close to our July offer).

Alternative 2:

- No agreement to maximum hours calculation.
- Give all states more flexibility in work activities over 20 hours per week (30 hours for two parent families). Current law already allows greater flexibility over 20 hours (30 hours) by permitting job skills training directly related to employment and education for those without a high school diploma. We would go beyond that by permitting job search/job readiness beyond the 6 weeks currently allowed.
- Exempt work experience/community service from FICA/FUTA, but stipulate that this does not apply to private sector workfare and that private sector employers must pay FICA/FUTA on portion of wages they pay.
- Do not weaken May Department of Labor ruling on employee status/worker protections; make it an option for wage to continue to come from welfare office, not employer.

Alternative 3:

- Similar to Alternative 2, but work off of Ways and Means “maximum hours” structure. (This approach was suggested by Stenholm.) No change below 20 hours (or 30 for two parent families), but for those states whose benefits can’t support the required number of hours above 20 (or 30) hours, permit job search/job placement with no 6 week limit. This alternative would not permit vocational education in excess of 12 months above 20 (or 30) hours per week as would the Ways and Means proposal.
- Exempt work experience/community service from FICA/FUTA, but stipulate that this does not apply to private sector workfare and that private sector employers must pay FICA/FUTA on portion of wages they pay.
- Do not weaken May Department of Labor ruling on employee status/worker protections; make it an option for wage to continue to come from welfare office, not employer.

Alternative 4:

- Ways and Means “maximum hours” structure for hours above and below 20 hours, but permit only two additional work activities: (1) job search/job placement in excess of 6 weeks; and (2) job skills training directly related to employment. This alternative would not permit vocational education in excess of 12 months above 20 (or 30) hours per week as would the Ways and Means proposal.
- Exempt work experience/community service from FICA/FUTA, but stipulate that this does not apply to private sector workfare and that private sector employers must pay FICA/FUTA on portion of wages they pay.
- Do not weaken May Department of Labor ruling on employee status/worker protections; make it an option for wage to continue to come from welfare office, not employer.

Other Possible Things to Demand in Exchange

- Waivers:
 - Do not allow prior law waiver exemptions to count as work in the numerator (i.e., drug treatment, education, job search) even if a state continues its waiver. (Alternatively: do not count as work unless a state is continuing research group policies in order to complete an impact evaluation of a waiver demonstration.)
 - The five year time limit starts when state joins TANF, not at the end of the waiver period, as even if the state previously had a time limit of a different length under a waiver.
- Bifurcation -- clarify that state programs must meet same work requirements as federal dollars (this is a very big item)
- Job search limit of 6 weeks is lifetime, not annual (HHS draft reg calls it annual).

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

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

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

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

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

What Counts as Work

The following are the work activities always permitted under the welfare law:

1. Unsubsidized employment
2. Subsidized private sector employment
3. Subsidized public sector employment
4. Work experience
5. On-the-job training
6. The first 6 weeks of job search and job readiness assistance
7. Community service programs (how different from #4?)
8. The first 12 months of vocational educational training
9. Providing child care for someone in a community service program

The following are additional work activities that can be counted from 20 to 30 hours a week:

1. Job skills training directly related to employment;
2. For those with no high school diploma, high school attendance, GED study, or education directly related to employment

Child Support and Work Requirements Issue

There are three ways in which child support payments affect or potentially affect the TANF work requirements:

Inequity In the Context of a “Maximum Hours” Approach -- One potential change to TANF that the Administration opposes would establish “a maximum number of hours” that a welfare recipient could work, even if that amount is less than the current law’s requirements. Under this approach, the TANF benefit plus food stamps is divided by the minimum wage to produce the maximum number of hours of work.

If one takes this approach, the following inequity pops up: Two identical women in two states would be required to work a different number of hours based on whether or not the state retains child support payments:

Calculation of maximum hours of work for two identical women receiving \$50/month in child support payments	State Retains Child Support Payments	State Passes through Child Support Payments, but reduces benefit
Monthly TANF benefit	\$300	\$300
Adjustment for child support	-	(50)
Net Benefit	300	250
Food Stamps	200	200
Total	500	450
Divided by minimum wage	\$5.15	\$5.15
Maximum number of hours per month	97 hours	87 hours

This inequity disappears if you require states to deduct child support payments it retains in the calculation above. This solution reduces the amount of hours these women would otherwise be required to work.

This inequity is not an issue for us unless we agree to a maximum hours approach.

Inequity Between “Retain” and “Pass-through” Approaches under Current Law -- Even under current law, the state’s decision to retain vs. pass through child support payments may affect the number of hours worked, the hourly wage paid, and/or state costs.

- In a low benefit state (one whose welfare benefits are too low to support the minimum wage), a policy of retaining child support payments is cheaper for the state than a policy of passing them through to the woman.
- In a high benefit state, a policy of retaining child support payments allows the state to pay a higher hourly wage or require more hours of work -- again, giving such a state an incentive to choose a “retain” policy over a “pass-through” policy.
- However, it is not clear that these different scenarios affect recipients in terms of either cash they receive or hours they work.

The example below compares both high and low benefit states and whether a state retains child support payments or passes them through.

High Benefit State			Low Benefit State	
Amount Available to Support Minimum Wage	State Retains	State Passes through & reduces benefit	State Retains	State Passes through & reduces benefit
TANF	\$400	\$400	\$150	\$150
Child support	-	50	-	50
Net benefit	400	350	150	100
Food Stamps	200	200	200	200
Net available	600	550	350	300
Divided by 80 hour monthly work requirement	\$7.50/hr	\$6.89/hr	\$4.38/hr	\$3.75/hr
Consequence	Higher hourly wage, or state could choose to increase her hours of work	Lower hourly wage	State must find \$0.77/hr to pay minimum wage	State must find \$1.40/hr to pay minimum wage

	High Benefit State		Low Benefit State	
<u>Recipients' Perspective:</u>				
Cash	600	600	350	350
Hours of work	80+	80+	80	 80

Inequity Between Women With and Without Child Support Payments under Current Law

-- Some would argue that this is also an inequity, particularly in the case of a woman whose child support payments reimburse the state for most of the costs of her welfare benefit. This problem does not vary depending upon whether a state retains or passes through child support payments.

	Woman 1: Father pays no child support	Woman 2: Father pays \$350/month; state retains	Woman 3: Father pays \$350 per month; state passes through and reduces benefit
Monthly TANF benefit plus food stamps	\$600	\$600	\$600
Net Cost to state of benefit	600	\$250	\$250
Work Requirement	80 hrs/month	80 hrs/month	80 hrs/month
Effective Hourly Wage for Net Benefit	\$7.50/hr	\$3.13/hr	\$3.13/hr

Some would argue that the two women receiving child support should not have to work so many hours for a small net benefit -- in this case less than minimum wage. This is essentially the same problem as the "definition of assistance" question in TANF: if someone gets even a very small amount of TANF aid, they are subject to all its requirements. The example above is probably at one extreme, since most women get little or no child support.

Possible solutions:

- Reduce the work requirements below 20 or 30 hours in those states where the net TANF benefit (after deducting child support) does not support the payment of the minimum wage. This would only correct the inequity in low benefit states.
- Reduce the work requirements below 20 or 30 hours in all states for the amount of child support collected divided by the minimum wage. However, this would reduce the work requirements below 20 hours even for a woman with a small amount of collections in a

high benefit state -- i.e., whose net benefit is high enough to “justify” working 20 hours a week.

List 3 options

① your suggestion
(see edits)

② Stenholm/Tanner #1

Like Waypt Means

but 20 hours of net work
must apply as currently
defined: above 20 h pw

additional job search/
job placement and job
skills training directly
related to employment will apply

③ Stenholm/Tanner #2

Like Waypt and Means but
only

Narrow comm svc -
if clk from well
office
??

Question:
what to do in
chall support for
#2 + #3

House Ways and Means Welfare Proposal
(based on 9/8 verbal reports)

Talking Points

- The proposal would undermine welfare reform by weakening the welfare law's work requirements.
- Welfare recipients could work as little as 10-15 hours a week, instead of the tough rules now in place (recipients must now work 20 hours a week, rising to 30 in the year 2000).
- The proposal would create a loophole making publicly-run workfare programs more attractive than private jobs. Welfare recipients in workfare wouldn't have to do real work for 20 or 30 hours a week -- many of those hours could be filled with non-work activities such as job search, job readiness, and vocation education.
- Welfare recipients receiving child support payments would be able to work even fewer hours, because those support payments retained by the state to repay taxpayers for the costs of welfare could not be used for salaries for workfare participants. A \$100 child support payment retained by the state would lower the work requirement by nearly 20 hours per month.
- States say they need flexibility to make welfare reform work. We say they already have it. Because they receive a welfare block grant with few restrictions, states can shift the \$3 to \$4 billion a year savings from falling welfare caseloads into workfare programs and still come out ahead. At the same time, states can count both TANF and food stamp benefits as wages. With this flexibility, states that choose to put people in workfare rather than private sector jobs will be able pay the minimum wage for 20 to 30 hours a week.

Options

Option #1: Retain the tough but fair work rates in current law.

Option #2: Retain the tough but fair work rates in current law, but do not allow states to use child support they retain as payment for wages (states would have to fill the gap with other funds).

Option #3: Retain current law for work up to 20 hours a week (only a minimum of 20 hours of work as now defined would count); allow additional job search, etc. for hours of work above 20 hours per week. States could count child support payments to pay wages for up to 20 hours per week.

What Counts as Work

Current Law

The following are the work activities always permitted under the welfare law:

1. Unsubsidized employment
2. Subsidized private sector employment
3. Subsidized public sector employment
4. Work experience
5. On-the-job training
6. The first 6 weeks of job search and job readiness assistance
7. Community service programs (how different from #4?)
8. The first 12 months of vocational educational training
9. Providing child care for someone in a community service program

The following are additional work activities that can be counted from 20 to 30 hours a week:

1. Job skills training directly related to employment;
2. For those with no high school diploma, high school attendance, GED study, or education directly related to employment

Child Support Enforcement

As the attached charts show, the proposed child support provision coupled with the proposal's ■maximum hours■ provision would weaken the welfare law's work rates even further.

For example, let's consider a welfare recipient receiving \$300 a month in TANF, \$100 a month in food stamps, and \$50 a month in child support which the state ■retains■ to offset some of its welfare costs.

Under current law that welfare recipient would have to work the minimum 80 hours a month. If the state put that person in workfare slot at the minimum wage, the state would have to contribute an additional \$12 a month in welfare funds to pay the minimum wage for those 80 hours.

Under the proposed provision requiring only as much work as the benefit level divided by the minimum wage, the person would have to work only 78 hours a month. And if, in addition, the state was required to subtract retained child support payments from that calculation, the welfare recipient would have to work only 68 hours a month.

If state retains \$50 child support payments	Current Law	Maximum Hours Policy but no Child Support Change	Maximum Hours Policy and Child Support Change
Monthly TANF benefit	\$300	\$300	\$300
Adjustment for Child Support	\$0	\$0	\$0
Net Benefit Counted for Work	\$300	\$300	\$250
Food Stamps	\$100	\$100	\$100
Total	\$400	\$400	\$350
Hours per month of work	80 hours (State must pay \$5.15 x 80 or \$412)	78 hours (\$400/ \$5.15)	68 hours (\$350/ \$5.15)

**Current Law--20 hours Per Week Requirement in Workfare
for parents receiving \$50/ month in child support payments**

	State Retains Child Support Payments	State Retains, adds to Benefit	State Passes through Child Support Payments but reduces benefit	State Passes Through
Monthly TANF benefit	\$300	\$300	\$300	\$300
Adjustment for Child Support	\$0	\$50	\$(50)	\$50
Net Benefit Counted for Work	\$300	\$350	\$250	\$300
Food Stamps	\$100	\$100	\$100	\$100
Total	\$400	\$450	\$350	\$400
Amount Needed to Pay \$5.15/hour for 80 hours/month	\$412	\$412	\$412	\$412
Excess amount (Shortfall)	(12)	38	(62)	(12)
Hours per month of work required	80	80	80	80

**If "Maximum Hours" of Work Required in Workfare Depends on
Benefit/Minimum Wage and No Child Support Change
for parents receiving \$50/month in child support payments**

	State Retains Child Support Payments	State Retains, adds to Benefit	State Passes through Child Support Payments but reduces benefit	State Passes Through
Monthly TANF benefit	\$300	\$300	\$300	\$300
Adjustment for Child Support	\$0	\$50	(\$50)	\$50
Net Benefit Counted for Work	\$300	\$350	\$250	\$300
Food Stamps	\$100	\$100	\$100	\$100
Total	\$400	\$450	\$350	\$400
Divided by Minimum Wage	\$5.15	\$5.15	\$5.15	\$5.15
Maximum number of hours per month of work required	78 hours	87 hours	68 hours	78 hours

**If "Maximum Hours" of Work Required in Workfare Depends on
Benefit/Minimum Wage and Child Support Change
for parents receiving \$50/ month in child support payments**

	State Retains Child Support Payments	State Retains, adds to Benefit	State Passes through Child Support Payments but reduces benefit	State Passes Through
Monthly TANF benefit	\$300	\$300	\$300	\$300
Adjustment for Child Support	(\$50)	\$50	(\$50)	\$50
Net Benefit Counted for Work	\$250	\$350	\$250	\$300
Food Stamps	\$100	\$100	\$100	\$100
Total	\$350	\$450	\$350	\$400
Divided by Minimum Wage	\$5.15	\$5.15	\$5.15	\$5.15
Maximum number of hours per month required of work required	68 hours	87 hours	68 hours	78 hours

provisions at §272.6 of this chapter applies to this penalty.

Subpart F -- Waivers

§271.60 How do existing welfare waivers affect the participation rate?

(a) If a State is implementing policies in accordance with an approved waiver that meets the provisions of section 415(a)(1)(A) of the Act and the definition of a waiver at §270.30 of this chapter, the provisions of section 407 of the Act do not apply, to the extent that they are inconsistent with the waiver.

(b) We will recognize inconsistencies in the following areas:

(1) a waiver specifying work activities, including provisions of prior law, in which an individual may participate in order to be "engaged in work" and count toward the minimum participation rates (as specified at §271.30); and

(2) minimum average hours of work per week necessary to be "engaged in work" for a month (as specified at §§ 271.31 and 271.32).

(i) The waiver must specify that a State is to set an individual's mandated hours of participation in accordance

with his/her particular circumstances, either as specified by criteria described in the waiver or under an individualized plan or similar agreement for achieving self-sufficiency.

(ii) Prior law standards are not part of the waiver where the waiver was approved to increase the mandatory work hours for a class of recipients under the former JOBS program.

(c) Except as applicable to research cases in paragraph (d), we will not recognize any prior law exemptions as part of the waiver with respect to the denominator of the participation rates, found at §§ 271.21 and 271.23.

(d) If a State is continuing research group policies in order to complete an impact evaluation of a waiver demonstration, the demonstration's control group may be subject to prior law and its experimental treatment group may be also subject to prior law, except as modified by the waiver.

Subpart G -- Non-displacement

§271.70 What safeguards are there to ensure that participants in work activities do not displace other workers?

(a) An adult taking part in a work activity outlined



Debra J. Bond

09/12/97 05:50:06 PM

Record Type: Record

To: Barry White/OMB/EOP, Diana Fortuna/OPD/EOP, Cynthia A. Rice/OPD/EOP
cc: See the distribution list at the bottom of this message
Subject: Welfare-to-Work Compromise

As you know, we received a discussion draft bill on the Welfare-to-Work compromise this morning. Below is a list of issues we have targeted thus far and are exploring.

Note: DOL staff met with Seth Harris at 2:30 today to discuss many of these issues. They will not have answers to some of the questions below by the end of today. We assume that the Hill wants to take action on this legislation before the end of session.

Issues:

1. Private sector inclusion:

Question: Why does the bill apply to the private sector?

The draft bill includes the private for-profit sector in the work experience program and community service programs. Previous versions have only applied to public and private non-profit work experience and community service participants. However, existing TANF includes private for-profit. The draft bill would allow private for-profit to use the payment calculation below versus a flat minimum wage rate.

$$\frac{(\text{Food stamps} + \text{Cash}) - \text{child support (retained by State)}}{\text{Federal minimum wage}} = \text{Maximum hours in workfare activity}$$

2. Employee status:

Question: Does the draft bill define or interpret whether the participant is an employee? What are the implications on worker protections?

The draft bill no longer explicitly states that the participants are not employees. Instead it provides a definition of a work experience program. DOL staff preliminary read is that this definition could lead a court to believe that the participant is not "employed" (as defined in FLSA) and is therefore not an employee. If the worker is not an employee, the FLSA worker protections and grievance procedures would not apply. DOL is discussing this issue further internally.

3. Monthly limit on hours of work:

Question: Can the worker be required to work more than the calculation provides or more than 40 hours (which would be a violation of FLSA)?

The draft bill does not allow the State to require the participant to work more than the monthly limit (which is determined by the calculation above). However, DOL is looking into what may be a technical glitch (where the legislation is silent on whether a third party private employer could require the participant to

work longer).

4. Education and Job Search:

Question: Should participation in education activities and job search by participants count toward the cap?

The draft bill allows States to count education and job search toward the work participation rates if the calculation does not produce enough hours to include them as workfare participants. This provision appears to lessen the work requirements.

5. Grievance policy:

Question: Does FLSA grievance policy still apply? Who is covered? Do we agree with amending the grievance policies in the Welfare law and the B.B.A.? What is the workfare "error procedure"? Is it enforceable?

DOL is analyzing the law.

6. Exemptions from FICA and FUTA:

Question: Would the language in this section capture more than TANF? > ?

The lead-in language to the exemptions states "Amounts paid by reason of participation in a work experience or community service program." This is broad language that may or may not be intended to capture more programs.

Question: Is this the correct approach to amending the Internal Revenue Code?

The bill provides that amounts paid from participation shall not be treated as wages or compensation for tax purposes, thus waiving FICA, FUTA, and railroad retirement taxes. However, the bill is effectively amending the Internal Revenue Code by amending the Social Security Act in order to make this change, not directly amending the IRS code. We are raising this issue with Treasury.

7. Other Questions:

Is retroactivity to enactment of the Welfare law a concern?

What entity pays the participant? Would some workfare participants receive a pay check while others would receive a benefit check?

Will the inclusion of Child Support in the calculation impact child support collection? Do we agree with subtracting this obligation out?

The bill states that the calculation must use the Federal minimum wage. What if the State minimum wage is higher?

Message Copied To: _____

Weekly Report -- Rice/Fortuna
September 12, 1997

New Republican Proposal on Workfare and Minimum Wage -- House Ways and Means Human Resources Subcommittee Chairman Clay Shaw is trying to garner bipartisan support among Governors and House members for a bill that addresses state concerns about the cost of workfare programs. Unfortunately it does so by significantly weakening the welfare law's work requirements. The draft legislation requires states to pay the minimum wage for work experience and community service programs, but it limits the number of work hours to what states can afford to pay, based on the amount of their welfare grant plus food stamps. The balance of a recipients' time could be spent on job search and education activities. Thus, a welfare recipient could work 10 hours a week and do 10 hours of job search. There is a concern that the legislation's definition of "work experience" and "community service" may be so broad that nearly all subsidized work could be defined as such, allowing low benefit states to require less than 20 hours of work from nearly all their "working" recipients. The bill would also exempt workfare positions from FICA and unemployment taxes, something that we indicated during the balanced budget negotiations that we were willing to do.

Department of Labor lawyers are currently reviewing the legislative language to determine if the bill weakens worker protections or minimum wage enforcement. If it does not, then our grounds for opposition will rest solely on the weakening of the work requirements, an issue on which we may not have many allies. We hear Chairman Shaw may unveil this legislation at a press conference on Thursday, with a hearing and markup soon to follow. He apparently plans to move the measure as a separate piece of legislation. As you may recall, Speaker Gingrich told the Republican gathering in Indianapolis on August 22nd that enacting legislation in this area would be a key priority for the fall "because the Clinton Administration, working with the unions and the bureaucrats, is trying to undermine and destroy welfare reform."

BR - Hkg pts - 2 parent wk rates - HAS
- tough alt to W+M
- 20-30 only
- FICA/FUTA
- meet w/Tanner / Carper staff - Tues a.m.
→ - what else we want - waivers < Time Limit
- call OIRA, Em1
- disting among wk categ - OK job search, trg RTE (even 1/2 hr)
- not voc. ed

Questions

- 1) Do we want FUTA/FICA exemption for public, non-profit, and private sector work force?
- 2) Is the definition of a community work exposure program the same as the Family Support Act's?
~~It~~ Does it clearly say they're "employees"?
→ so liberal that all work?
- 3) What are the implications of child support "collected"?
- 4) "Procedure for Addressing Errors"
→ Does that undermine minimum wage enforcement?
- 5) Does p 5 (ii) ensure they'll still get Medicaid?
- 6) p 5-6 (B) (i) and (ii) → Does this mean the usual FLSA enforcement doesn't exist?

Questions, cont.

7) Sec 3 (p 7)

cannot allow any "work activity"
be ~~used~~ used to fill in hours.

→ which assumes means all

(12) activities listed in

Sec 407(d) of the law

→ do the limitations in the law,

i.e. no more than 6 weeks

of job search

→ still apply?



Cynthia A. Rice

09/10/97 11:42:27 AM

Record Type: Record

To: Diana Fortuna/OPD/EOP

cc:

Subject: To Do on FLSA

I haven't heard anything from Bruce or Elena yet, but at a minimum it seems to me we need track down answers to the questions you wrote up. Could you do that once your disability meeting is over? I think the goal would be decide how we would want to structure a FICA/FUTA exemption -- which categories of work would be exempted? And of course the question you pose, which is should we do anything about this in the regs.

Mary Waller of PPI put another issue on my radar screen: that any final proposal ensure that the option would still exist to have employer pay the paycheck instead of the welfare office and for the employer to choose to pay a wage through a wage subsidy. I assume everyone would want this -- but its something to watch for.

Also, could you do a weekly item on this? I am also planning to do items on child support enforcement and welfare to work transportation.

— Lang today
— Met w/Govs yest?

Questions on Workfare:

1. What is the practical difference between a subsidized public sector job and work experience? Between these and community service programs? Is there a grey area between them? What are some examples of subsidized public sector jobs?
2. Are any states creating "private sector work experience," or private workfare? We have heard reports that Ohio is doing so. How does money flow in such a situation? Who pays the worker? Whom does the state pay? Whom does the company pay?

How does this differ from subsidized private employment? Subsidized public employment?

If workfare is exempted from FICA, would that create an incentive for business to shift to private workfare instead of subsidized/unsubsidized jobs?

3. What is the difference between work experience and community service programs? What are real life examples of the differences?

4. Do some of these shifting realities make it advisable that we define some of these terms in the regulation? *Do we hv auth?*
5. Does HHS's draft reg address these questions in any way?

*To: Shannon
XOI-4678
Fr: Diana
1 page*

TO: Seth Harris, DOL
Geri Palast, DOL
Barry White, OMB
Keith Fontenot, OMB
Larry Matlack, OMB
Mary Bourdette, HHS
John Monahan, HHS
Emily Bromberg, IGA
Emil Parker, NEC

FROM: Diana Fortuna

√ cc: Cynthia Rice

Here is a piece of paper from House Ways and Means on the FLSA/workfare issue. We may get more details later today. Obviously this implications of this proposal won't be entirely clear until we have draft legislative language, but we should all try to scope out our concerns on this approach immediately.

House Ways & Means Subcommittee
(Haskins)

Proposal
Under discussion

* ELSA would apply to workfare positions

The proposal would contain the following provisions:

1. For those work experience and community service programs covered under the Fair Labor Standards Act, hours of participation would be limited to the combined value of food stamps, and assistance provided in the form of cash under Title IV-A divided by the federal minimum wage.
2. Individuals participating in these activities will be exempt from FICA and FUTA coverage.
3. Allow states to combine hours from unpaid "work" activities such as job search, vocational education, high school education or GED, job skills training (eliminating the current limitations that exist for these activities), so that an individual will be able to meet the work requirement by combining these with work experience. Existing limitations on these activities would not apply in these cases.
4. To the extent that workfare participants are determined to be employees under the FLSA, allow states the option of continuing to provide benefit check and food stamps.
5. States must subtract out child support collected and retained as an offset. States would be allowed to project or anticipate future child support collections based on any reasonable methods (such as recent/past collections). Clarify that the subtraction of child support from the benefit calculation would only apply to "current" child support retained by the state, not arrearages.

max hrs.
(wk)

Why
needed

work -