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Handy Reference Guide to the Fair Labor Standards Act.

Handy Reference Guide to the Fair Labor Standards Act



U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

WH Publication 1282
Revised October 1996

FAX COVER



Income Maintenance Branch

Office of Management and Budget
Executive Office of the President
Washington, D.C. 20503

To:

Diana Fortuna

Organization:

Fax Number:

x 6-7431

From:

Jeff Farvas

Date/Time:

Number of Pages: Cover +

2

Notes:

Comments on labor price

Income Maintenance Fax Number: (202) 395-0851
Voice Confirmation: (202) 395-4686

What has changed is the language in the welfare law. The PR-TANF JOBS program, community work experience programs (i.e. "workfare") were specifically exempted from labor laws, while under TANF there are no such exemptions.

Background on Labor Issues in Welfare Reform

Minimum Wage and Other Labor Protections

As states begin to put welfare recipients to work, a key question for the labor movement and for the states is whether welfare recipients who take part in workfare or subsidized employment programs are protected by labor laws such as the Fair Labor Standards Act. The most obvious protection this law offers is payment of the minimum wage, but there are a host of other protections (and costs to employers) that are connected: collective bargaining rights, taxation, unemployment insurance, and workers' compensation.

We are in general agreement that these workers should be paid the minimum wage, but two major issues remain:

- What streams of benefits should count toward the minimum wage?
- Have we thought through the consequences of other rights and costs that appear to come along with the minimum wage, and how they would affect the success of welfare reform?

The Department of Labor and HHS believe that, as a legal matter, it is quite clear that the Fair Labor Standards Act does apply to people in workfare and wage supplementation programs -- that essentially they are employees, with limited exceptions for "trainees." Labor and HHS argue that this is not really a change in Federal policy, since they would argue that these rules have always applied to welfare waiver programs. However, the scale of the coming welfare-to-work effort is so much larger than the waivers that these requirements may still come as a shock to the states, and will raise affordability questions that didn't exist in those smaller programs. Also, the focus on enforcement of these laws will inevitably be much greater now than in the past.

Minimum Wage: One problem in requiring the minimum wage is that the existing welfare grant in many states is too low to convert it into a minimum wage salary, even if the recipient is only working 20 or 25 hours a week. Therefore, the question is whether to include in that calculation a variety of other government benefits, such as food stamps, child care, housing assistance, and transportation.

Legally, there is a strong argument that food stamps can be added to the basic welfare grant to help support a minimum wage. However, even if the two grants are combined, several Southern states will probably still come up short, especially for smaller families. The problem gets worse as the minimum wage and the work requirements increase over time.

We would make it easier for states if we permitted them to count the value of other benefits, like child care or transportation, toward the minimum wage. However, DOI believes the law does not permit this, unless those benefits are offered to all employees, not only those on welfare. States may be motivated to segregate workfare recipients in an effort to get around this requirement.

It continues to be allowed for wage exp. The Dept. believes it can be combined as income for the purpose of calculating TANF, food stamps, SS and other public assistance towards wages opening the door to counting these benefits.

Other Labor Protections: We are still in the process of sorting out what other requirements states and employers would face if participants in workfare and subsidized employment programs are considered employees under labor law. DOI's opinion is that most other standard labor protections would apply, including OSHA, unemployment insurance, and anti-discrimination laws.

The thorniest outstanding questions have to do with taxes and collective bargaining rights. We have yet to hear from Treasury as to whether wages would be subject to FICA and other taxes, as well as eligible for the EITC. On collective bargaining, the National Labor Relations Board will have to rule on the facts in individual situations, but it is likely they would rule that these workers are eligible to unionize. There has been some recent media attention on efforts to unionize workfare recipients in New York City, and there certainly would be more attention if the ruling were made that these workers had the right to unionize.

We are working to resolve these issues in the next week or two. In addition, we are thinking through our strategy on the Hill, given the likelihood of a backlash there once these interpretations are known.

Privatization

A second issue concerns efforts by some states to privatize their welfare operations. Texas has had a request pending at USDA and HHS for months that would ~~privatize eligibility~~ determinations for food stamps and Medicaid. Wisconsin has a ~~similar~~ waiver request pending. Current law requires these programs to use "merit systems" employees -- essentially government workers. However, it appears we ~~can~~ waive this requirement if we want to. This is a major issue for unions with a large number of public sector employees (AFSCME and SEIU) since it would lead to a direct loss of membership. Our analysis is not as far along here. The unions are not pressing us for a decision, since they fear we will not rule entirely in their favor. However, we can expect increasing pressure from Govs. Bush and Thompson.

may be able to

good benefits paid under workfare and benefits paid under welfare

known to outsource

may be wanted

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Office of Management and Budget
Executive Office of the President
Washington, D.C. 20503

To: Diana Fortuna

Organization: _____

Fax Number: X 6-7341

From: Jeff Farhas

Date/Time: _____

Number of Pages: Cover + 2

Notes: Larry Matlack had some additional comments.
I've circled them so you can make them out.
Plz call if you have any questions.

Income Maintenance Fax Number: (202) 395-0851
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Work?

Generally

What Benefits to Include

for wage supp + some workfare

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workfare will be limited

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With regard to the collective bargaining question, there is no case law on point, and it is unclear we will have a definite understanding of the situation. It will be a by-case determination based on the facts of the situation.

may be able to

Time not clear if possible the terms could be negotiated.

THE WHITE HOUSE
WASHINGTON

February 17, 1997

87 FEB 17 10:01

MEMORANDUM FOR THE VICE PRESIDENT

FROM: BRUCE REED *BR/eh*
ELENA KAGANEK

SUBJECT: LABOR ISSUES IN WELFARE REFORM

You may be asked at the AFL-CIO meeting about two welfare reform implementation issues of importance to the labor movement. This memorandum provides you with some background on these issues, which the Administration is now in the process of resolving. Two q&a, which reflect a consensus view on how to address these issues, are attached to this memo. We recommend that you not discuss these issues unless asked to do so.

1. Application of worker protection laws to working welfare recipients

As the work requirements of the new welfare law begin to go into effect, a critical question for both the labor movement and the states is whether worker protection laws -- particularly the minimum wage law (Fair Labor Standards Act) -- protect welfare recipients who take part in workfare or subsidized employment programs. The DPC and OMB have been running an interagency process (involving DOL, HHS, USDA, and others) to hammer out an answer to this question. We expect to have a detailed recommendation for the President within the next few weeks, as well as a strategy for rolling out this controversial Administration policy.

There is general agreement among the agencies, as a matter of both law and policy, that the Fair Labor Standards Act should be read to require payment of at least the minimum wage to most people in workfare and wage supplementation programs. On this reading, participants in such programs would count as "employees" under the Act, thus qualifying for minimum wage protection -- except for a few who would count as "trainees" instead. Bruce has given the AFL private assurances that the Administration will adopt this basic position.

Requiring the minimum wage for workfare recipients, however, will raise obvious difficulties for the states, in light of the new welfare law's work provisions. Even if a recipient is working only 20 hours each week, the existing welfare grant in many states will fall short of a minimum wage salary. As the work requirement in the law increases to 25 and then to 30 hours, and as the minimum wage also increases, more and more states will discover that their welfare grants are insufficient.

One way to mitigate this new burden on the states is to count benefits other than cash assistance toward the minimum wage. There is a very strong legal argument, based on

provisions in the food stamp law, that states may add the value of food stamps to the basic welfare grant for purposes of complying with the minimum wage. Even if both these streams of benefits are counted, however, a number of Southern states will immediately come up short, and as the minimum wage increases and the work requirements become more severe, other states will join them over time. Allowing states to count the value of other benefits -- child care, housing, or transportation -- toward the minimum wage would remove this problem, but this proposal raises a number of legal and policy questions. DPC and OMB are currently working through these and similar issues with the affected agencies in an effort to apply the minimum wage law to working welfare recipients without imposing large new costs on states.

The interagency group also is reviewing what other labor protections apply to welfare recipients in workfare or subsidized employment programs. The consensus view is that OSHA, unemployment insurance, and anti-discrimination laws will apply in the same way they do for other workers. We have yet to get a firm opinion from Treasury as to whether the monies paid to these welfare recipients will be subject to FICA and other taxes, as well as eligible for the EITC, but we believe they will not. Finally, these workers may well become eligible to unionize. Recent newspaper articles have suggested that some unions will undertake large-scale organizing efforts targeting welfare recipients, and we probably should expect some of these efforts to succeed.

Recommendation: As the President has agreed, you should not raise the minimum wage issue at the AFL meeting. Announcing a position favorable to the unions in this context would make the decision look entirely political and increase the risk of a negative reaction from the governors and Congress. When asked about the issue, you should make a strong statement of principle that workers shouldn't be paid a subminimum wage, whether or not they come off the welfare rolls. But you should also be careful to note that the Administration is still in the process of developing its final positions on the complex issues arising from the intersection of the labor laws and the new welfare law.

2. Privatization of welfare functions

Another issue that may arise at the AFL meeting concerns efforts by some states to privatize their welfare operations. Texas has had a waiver request pending at HHS and USDA for months that would allow it to contract with private parties to do all eligibility determinations for food stamps and Medicaid. (The new welfare law specifically grants states the right to privatize TANF operations.) Wisconsin has a more limited waiver request pending. We probably have legal authority to grant such waivers.

This issue is of obvious importance for unions with large numbers of public sector employees, because a waiver means a loss of jobs for their members. As of now, however, the unions are not pressing us for a decision, perhaps because they expect us to allow at least some privatization. We have been getting pressure from Governors Bush and Thompson, but the interagency group is still not ready to make a recommendation.

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**Lyn*

NOTE TO ELENA KAGAN

FROM: SETH HARRIS
DATE: FEBRUARY 10, 1997
SUBJECT: MATERIALS YOU REQUESTED

**Coll bang?*
**Do scenarios by state, year*
**Ck w/ HHS / Lyn#*
on whether this
wld hurt existing
with prog
**Conversation w/ symp*
(CB?)

Attached are two draft documents we have prepared as part of our internal discussions regarding welfare reform and worker protections:

- (1) "Key DOL Questions for Welfare Reform Implementation" which provides a preliminary and general legal analysis of several issues that we expect to arise. This document does not reflect all of our latest thinking, but it is a reasonable starting place.
- (2) "FLSA and Welfare Reform" which addresses the question of who is a "trainee" (and therefore not an "employee") for FLSA purposes.

**Training - fake*
make it
easier for
states?
(Stacy)

Call me if you need any additional information.

Tax implics - BR
EITC
Waiver precedent - Stacy
[TH 1130]

Stenholm pushing TX
in real way

**check this*
we've allowed
more private
55730

KC
wages
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7-578-5544
How comm? WST

Privatiz;

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KA - can't do all

Texas 12/16 privat, under bound - R, appeal, state care
DOL: ES no way to stop

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ADMINISTRATIVE MARKINGINITIALS: By DATE: 4/12/2018
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KEY DOL QUESTIONS FOR WELFARE REFORM
IMPLEMENTATION

The following questions and answers are intended to provide a general overview of issues relating to the applicability of Department of Labor administered labor protection laws to work activities provided under the welfare reform law.

(1) Would welfare recipients participating in work activities under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) be considered "employees" for purposes of the FLSA or would they be considered "volunteers" or "trainees" and exempt from such coverage?

The FLSA has a broad definition of employee that focuses on the economic realities of the relationship between the parties carrying out an activity. As with all workers, this standard FLSA test would be utilized to determine if the minimum wage and overtime requirements apply to individuals engaged in activities covered under the Act. Participation in most of the 12 work activities described in the Act would probably result in the participant being considered an employee for purposes of the FLSA (the primary exceptions are nonemployment activities such as

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vocational education, job search assistance, and secondary school attendance). While there is a recognized exception under the FLSA for bona fide "volunteers," it is unlikely that participants under PRWORA would meet the criteria for this exception. In addition, while some activities may meet the six criteria necessary for a recipient to be deemed a bona fide "trainee" not subject to the FLSA requirements, this exception generally will not apply.

(2) Are those "workfare" arrangements under which a recipient is required to participate in work activities as a condition for receiving cash assistance (without cash wages in addition to welfare benefits) permissible under the FLSA?

Yes, as long as those participants who are employees for purposes of the FLSA are paid minimum wage and overtime. Using traditional "economic realities" analysis, it appears that most of the required work activities would constitute employment under the FLSA (i.e., participants would be "employees") and thus participants would have to be paid wages at a rate not less than the Federal minimum wage. States employing participants could meet FLSA requirements by paying wages of at least the minimum wage and then offsetting the amount paid from the participant's cash benefits. States employing participants may also consider all or a portion of the cash benefits as wages where the payment

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clearly is identified as and is understood to be wages, and certain other criteria (e.g. recordkeeping) are met.

[Note: There is a 1995 10th Circuit Court of Appeals case that held that an SSI "workfare" program was not covered by the FLSA. The decision in this case may not stand further scrutiny; it could be distinguished from the PRWORA; and it is not binding on other Circuits. However, it is the only Court of Appeals decision directly relating to a workfare program.]

(3) Could States that operated Community Work Experience Programs (CWEP) for welfare recipients under the predecessor JOBS program, where the cash benefits divided by the hours worked by the recipient were to equal or exceed the minimum wage, continue to operate such programs in the same manner under the PRWORA?

Some modifications might be required, depending on the state's implementation. While previous law specifically stated that a CWEP participant was not entitled to a salary or any other work or training expense under any other provision of law, this provision was not included in PRWORA.

The modification necessary for FLSA compliance could include payment of wages to the participant for the hours of work and

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offsetting reductions in the cash benefits paid to such participant or considering all or a portion of the cash benefits as bona fide wages as described above.

(4) May noncash benefits provided to participants in work activities (e.g. child care services) be credited toward meeting FLSA minimum wage requirements?

Only if such benefits are provided by the employer and meet other traditional FLSA criteria for crediting of non-cash benefits, including (1) that acceptance of such benefits is voluntary, (2) it is customarily furnished to employees in the same position, and (3) they are primarily for the benefit of the employee. The FLSA also specifically prohibits certain employer payments from being credited towards the minimum wage and overtime obligations, including payments for pensions and health insurance (such as Medicaid).

(5) May deductions from a participant's wages be made by an employer, with the effect of reducing the wage to an amount less than the minimum wage, to repay the state for benefits provided to the participant?

In order for such deductions to be made, under traditional FLSA standards, the employer may not benefit directly or indirectly

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from the deduction, and one of three criteria would have to be met: (1) The employer is legally required to make payments to a third party by court order, statute, etc.; (2) the employee voluntarily assigns a portion of the wages to a third party; or (3) the deduction repays a bona fide cash advance of wages by the employer.

(6) Who is considered the employer of welfare recipients participating in work activities for purposes of the FLSA and OSHA -- the public agency, or the recipient of a wage subsidy or contract, or is there a joint employer relationship?

As with such determinations for any employee, private or public, the determination of who is the employer is fact sensitive and therefore would be determined on a case-by-case basis. The more involved the State is in the placement and control of the work activities of a participant, the greater the possibility that the State would be found to be a joint employer. In these cases, the State could be jointly liable for FLSA, OSHA (under State OSHA plans) and other labor standards violations even where private sector placements are involved. However, the mere payment of a subsidy to an employer would not, in and of itself, be sufficient to create a joint employment relationship.

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(7) Would there be any special exceptions to OSHA coverage of welfare recipients carrying out work activities for private sector employers?

OSHA generally applies to private sector employment. While there is no categorical exception under OSHA applicable to PRWORA participants in the private sector, there may be some complicated determinations to be made on a case-by-case basis as to whether participants are "employees", and who is the responsible "employer", under OSHA. In particular, where some work activities are administered as part of a public-private partnership, it is critical for purposes of OSHA coverage whether the relevant employer is a private sector entity or the State. Generally, case law under OSHA tends to place compliance responsibility on the party most directly in control of the physical conditions at a worksite. (Note: the criteria for such determinations are set forth in 29 CFR Part 1975).

(8) Are there any health and safety standards applicable to welfare recipients participating in work activities for public sector employers?

OSHA does not have jurisdiction over public sector employers. However, if a State has an OSHA-approved State plan, the State is required to extend health and safety coverage to employees of

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State and local governments. Therefore, the 23 States and two territories with OSHA-approved State plans would have applicable health and safety standards to the extent participants would be deemed "employees" of public agencies. In the other States and territories, there would be no coverage of public sector employment.

(9) Are welfare recipients participating in work activities for public and nonprofit agencies required to be covered under the unemployment compensation program, or do they meet the general exception to such coverage provided to participants in publicly-funded "work relief" or "work training" programs?

Federal UI law requires States to extend UI coverage to services performed for State governments and non-profit employers unless the service is performed for those entities as part of a work-relief employment or work training program. A number of community service-related activities under PRWORA could fall within the work-relief exception to UI coverage of services performed for State and local agencies or nonprofit organizations. An Unemployment Insurance Program Letter (UIPL 30-96) issued in early August clarified the criteria applicable to the work-relief and work training exceptions and generally

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focused on whether the purpose of the activity is to primarily benefit community and participant needs (versus normal economic considerations) and whether the services are otherwise normally provided by other employees. If such activities do not meet the criteria for the exception, participants providing services for these entities would likely be covered by the UI program.

(10) Are there any other special exceptions to UI coverage that could be applicable to welfare recipients?

The "work relief" and "work training" exceptions do not apply with respect to services performed for private sector employers. Therefore, in the private sector the issues of whether a participant is an "employee" and which entity is the "employer" will also be critical to determining whether participants are covered by UI. The tests for making these determinations is similar to the common law and other tests used under many other laws, with the right to direct and control work activities being the primary factor for determining who is the employer.

(11) Would Federal non-discrimination laws apply to complaints of welfare recipients relating to the administration of work activities under the PRWORA?

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Yes, non-discrimination issues could arise -- primarily under titles VI and VII of the Civil Rights Act, the ADA, section 504 of the Rehabilitation Act, and the ADEA. Furthermore, if participants work for employers who are also Federal contractors, discrimination complaints could be filed under Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, or the Vietnam Era Readjustment Assistance Act.

(12) Are there other Acts administered by the Department that are relevant to the implementation of work activities under the PRWORA?

For participants meeting the FLSA definition of "employees", protections under the FLSA Child Labor provisions (for example, restrictions in Hazardous Occupation Orders) would apply. In the somewhat unlikely event that such participants meet the time-in-service and other eligibility requirements of the Family and Medical Leave Act, the protections of that Act would apply as well. In addition, if the work activities relate to Federally-assisted construction, Davis-Bacon Act requirements are likely to be applicable. We are also considering whether participants would be deemed "employees" for purposes of determining compliance with ERISA's minimum participation and nondiscrimination rules.

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There are also a number of employment and training programs administered by the Department under JTPA that could serve welfare recipients and count as work activities under the PRWORA. However, the JTPA labor protections would be applicable to such activities.

It should also be noted that under certain circumstances, the addition of participants to an employer's workforce could trigger coverage of labor protections for all of the employer's workers. For example, if an employer has 48 regular employees and adds 2 participants who meet the FLSA definition of "employees" the employer would reach the 50 employee threshold that could trigger coverage under the FMLA if other criteria are met. Similar results could occur with respect to the triggering of reporting requirements under OSHA and OFCCP and other program areas.

In addition, the number of employees could affect a small employer's eligibility for penalty reductions under programs required to be established pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) for small businesses for violations of certain laws (e.g. OSHA).

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FLSA AND WELFARE REFORM

The Fair Labor Standards Act (FLSA) provides minimum wage and overtime protections for covered employees. The FLSA definitions of the terms "employ," "employee" and "employer" are broader than the common law definitions. The FLSA defines "employ" as to "suffer or permit to work." 29 U.S.C. 203(g). "An entity 'suffers or permits' an individual to work if, as a matter of economic reality, the individual is dependent on the entity." Antenor v. D&S Farms, ___ F.2d ___ (11th Cir. 1996). This is a fact-intensive inquiry. Rutherford Food Corp. v. McComb, 331 U.S. 722 (1947).

The welfare reform law ("TANF") permits 12 categories of "work activities." However, whether someone is an employee protected by the FLSA does not turn on the welfare law's title of the activity. The law contains no definition of those activities or detailed description of how they will be structured. Therefore, we can make no across-the-board judgments regarding whether a person performing in any one of the twelve categories of "work activities" would be an employee under the FLSA.

An employment relationship may exist under the FLSA even where the parties properly label the program as "training" for purposes of the TANF. Where the training is not connected with any employment and is provided in a school setting, the trainee likely is not even engaged in "work" and thus probably is not covered by the FLSA. On the other hand, where the training is provided in a work-based setting, "work" is being performed and an employment relationship may exist. Walling v. Portland Terminal Co., 330 U.S. 148 (1947). The standard FLSA test provides that an employment relationship does not exist in that situation if:

- (1) the training is similar to that which would be given in a vocational school;
- (2) the training is for the benefit of the trainee;
- (3) the trainee does not displace a regular employee;
- (4) the employer derives no immediate advantage from the trainee's activities;
- (5) the trainee is not entitled to a job after the training is completed; and
- (6) the employer and the trainee understand that the

employer will not pay the trainee wages or other compensation.

For example, a trainee may learn to weld by working beside and under the supervision of an experienced welder at a manufacturing plant, without expecting any compensation. If the employer gets no benefit from the trainee's activities, because the time and effort the welder spends in closely observing the trainee outweighs any usefulness, and there is no guarantee that the employer will hire the trainee after the training, the test for employee status probably would not be met.

Even where an individual is an employee, not all training time is compensable hours of work. An employer is not required to compensate an employee for training time if: (1) attendance is outside of the employee's regular working hours; (2) attendance is voluntary; (3) the training is not directly related to the employee's job; and (4) the employee does not perform any productive work during such time. 29 CFR 785.27. For example, if a State, in its capacity as the provider of welfare benefits requires attendance at training that is not job-related, such as training in parenting skills or GED training, such time is not compensable hours worked.

The fact that an employer need not compensate an employee for such training time (or the fact that some people receiving training are not employees at all) does not mean that the activity does not count as a "work activity" for purposes of the TANF.

~~Basic question: Is saying FLSA/min wage~~

~~applies to workfare just an
administrative interpretation
of existing law? or a~~

~~Legislative proposal~~ 2/13

What: Workfare vs. work supp (to ex) - statute allows
→ what is this?

Rep say FLSA

20% trg (teen mothers)

Ed hasn't spoken - most covered by state law
in NY don't GA in NY hr to mt

→ AWER didn't pay min wage

→ Wed

Qs:
- Tax g
- NCRA (4/1?)

- TANF + FS OK (DOL sez yes); others (DOL sez no legally)
- Endgame if pushed on Hill

or if covered for others
"customarily furnished"
EX - segregate

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*Takes - don't know
Wet
+ EITC*

Application of Workplace Laws to Welfare Recipients in Work Activities

- The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) does not exempt welfare recipients from coverage of federal employment laws such as the Fair Labor Standards Act (FLSA), the Occupational Safety and Health Act (OSHA), Unemployment Insurance and anti-discrimination laws. Therefore, the laws will apply to welfare recipients engaged in work activities in the same way they apply to other workers.

The Fair Labor Standards Act

- **Coverage:** The minimum wage and other FLSA requirements apply to welfare recipients engaged in work activities under PRWORA as they apply to all other workers. If welfare recipients are engaged in work activities that are considered "work" and they are classified as "employees" under the FLSA's broad definition, they must be compensated at the applicable minimum wage.
 - The FLSA definition of "employee" focuses on the economic realities of the workplace relationship. Welfare recipients typically would be considered employees in most of the 12 work activities described in the PRWORA. The only exceptions are likely to be activities such as vocational education, job search assistance, and secondary school attendance which are not considered employment under the FLSA.
- **Training Programs:** Under the FLSA, "bona fide trainees" are not considered to be "employees" and thus are **not** required to be paid the minimum wage. However, in order to be considered a "bona fide trainee" a welfare recipient must be engaged in an activity that meets all six criteria specified in the FLSA. Under PRWORA, it is unlikely that participants would be engaged in activities that these requirements. The six criteria are:
 - Training is similar to that given in a vocational school;
 - Training is for the benefit of the trainee;
 - Trainees do not displace regular employees;
 - Employer derives no immediate advantage from trainees' activities;
 - Trainees are not entitled to a job after training is completed; and
 - Employer and trainee understand that trainee is not paid.
- **Workfare:** Welfare recipients in "workfare" arrangements (that require welfare recipients to participate in work activities as a condition for receiving cash assistance) must be paid minimum wage if their workfare assignment is considered employment under the FLSA. In the context of PWORA, it appears that most "workfare" activities

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would constitute employment under the FLSA and that most participants would be considered to be "employees." Therefore, it is likely that the FLSA will require welfare recipients in workfare arrangements to be compensated for their work at the minimum wage.

- States may consider all or a portion of such benefits as wages so long as the payment is clearly identified and treated as wages (and is understood by all parties to be wages) and all applicable record keeping criteria are met.
- **CWEP:** Previously, states could operate Community Work Experience Programs (CWEP) for welfare recipients under the JOBS program. Under CWEP the welfare grant divided by the hours worked was required to meet or exceed the minimum wage. The old welfare law specifically stated that a CWEP participant was not entitled to a salary or any other work or training expense provided under any other law. The CWEP provision was not included in PRWORA.
- Consequently, participants in a CWEP-like activity now must be treated and compensated in the same way as other welfare recipients in work activities. If they are engaged in work activities that are considered "work" and they are classified as "employees" under the FLSA's broad definition, they must be compensated at the minimum wage.
- **Food Stamps:** In certain circumstances, it seems that Food Stamps benefits (in coupons or cash value) can contribute towards meeting minimum wage requirements for TANF recipients in work activities.
- Under the **Food Stamps work supplementation program**, employers can receive the value of the food stamp allotment as a wage subsidy for new employees hired as part of the work supplementation program. In effect, the program allows Food Stamps benefits (converted to a cash wage subsidy) to be counted towards the minimum wage. This program is restricted to recipients of TANF or other public assistance and contains specific worker protections and non-displacement provisions.
- Under the **Food Stamps workfare program**, participants "work off" the value of their food stamps (coupons). The maximum hours that a food stamp recipient can be required to work is determined by dividing the value of the food stamp allotment by the minimum wage. Participation in Food Stamps workfare programs can be counted towards TANF participation requirements. Consequently it seems that states can operate programs in which part of a TANF

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recipient's required work hours could be performed in return for food stamp benefits and part for TANF benefits.

Occupational Safety and Health Act

- PRWORA does not exempt employers hiring welfare recipient from meeting Occupational Safety and Health (OSH) Act requirements. Therefore, OSH Act coverage applies to welfare recipients in the same way that it applies to all other workers.
- However, the Occupational Safety and Health Administration (OSHA) does not have direct jurisdiction over public sector employers in many states. In cases where there is an OSHA-approved state plan, the state is required to extend health and safety coverage to employees of state and local governments. There are 23 States and two territories with OSHA-approved state plans. To the extent participants are deemed "employees" of public agencies, they would have applicable health and safety standards. In the other states and territories, there would be no OSHA coverage of participants deemed to be public sector employees.
- Consequently, the question of who is the responsible "employer" is an important one. This is particularly true in cases where work activities are administered as part of a public-private partnership. In these situations, the determination of whether the employee is in the public or private sector will be made on a case-by-case basis by OSHA.

Unemployment Insurance

- Generally, unemployment insurance laws apply to welfare recipients in work activities in the same way that they apply to all other workers. Under the unemployment system, coverage extends only to workers who are considered "employees" according to definitions provided by state UI laws. Consequently, if welfare recipients are in work activities where they would be classified as employees they will be covered by the UI system.
- However, there are some exceptions. While federal law requires states to extend UI coverage to services performed for state governments and non-profit employers, services performed as part of a publicly-funded "work-relief" employment or a "work training" program are not covered. A number of community service-related activities under PRWORA could fall within the "work-relief" exception to UI coverage of services performed for state and local agencies or nonprofit organizations.

CONFIDENTIAL DRAFT INFORMATION--NOT FOR PUBLIC DISCLOSURE

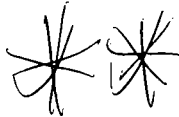
February 13, 1997

- Criteria used to determine whether an activity fall within the "work-relief" and "work training" exceptions focus on whether the purpose of the activity is primarily to benefit community and participant needs (versus normal economic considerations) and whether the services are otherwise normally provided by other employees. If such activities do not meet the criteria for the exception, participants providing services for these entities would likely be covered by the UI program.
- The "work relief" and "work training" exceptions for UI do not apply to the private sector. As stated above, for private employers the question of UI coverage will hinge on whether a participant is deemed an "employee" under state UI laws.

Anti-Discrimination Laws

- Federal anti-discrimination laws will apply to complaints of welfare recipients who participate in work activities under PRWORA. Anti-discrimination issues are most likely to arise under titles VI and VII of the Civil Rights Act, the Americans with Disabilities Act, section 504 of the Rehabilitation Act, and the Age Discrimination in Employment Act. Furthermore, if participants work for employers who are also Federal contractors, discrimination complaints could be filed under Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, or the Vietnam Era Readjustment Assistance Act.

WAIVERS THAT INCLUDED CHANGES TO THESE PROGRAMS OR HAD INTERACTIVE EFFECTS.



36.2.7

ALLOW GREATER FLEXIBILITY IN THE WORK REQUIREMENT. THE GOVERNORS ARE COMMITTED TO A "WORK FIRST" APPROACH THAT WILL QUICKLY MOVE RECIPIENTS INTO EMPLOYMENT WHILE PROVIDING THEM WITH OPPORTUNITIES TO DEVELOP THE SKILLS THAT WILL LEAD TO BETTER PAYING JOBS. EMPLOYERS HAVE INDICATED THAT THEY ARE WILLING TO HIRE WELFARE RECIPIENTS IF THEY ARE "JOB READY"—THAT IS, IF THEY ARE LITERATE, HAVE GOOD COMMUNICATIONS SKILLS, AND UNDERSTAND THE REQUIREMENTS OF THE WORKPLACE.

THE GOVERNORS BELIEVE THAT GREATER FLEXIBILITY WITHIN THE WORK REQUIREMENT WOULD ENABLE STATES TO BETTER MEET THE NEEDS OF RECIPIENTS AND EMPLOYERS. THE GOVERNORS RECOMMEND PERMITTING JOB SEARCH AND JOB READINESS TO COUNT TOWARD THE WORK PARTICIPATION RATE FOR AT LEAST TWELVE WEEKS EACH YEAR, ALLOWING GREATER FLEXIBILITY TO COUNT BASIC EDUCATIONAL ACTIVITIES TOWARD THE WORK REQUIREMENT, REMOVING TEEN PARENTS FROM THE 20 PERCENT VOCATIONAL EDUCATION LIMIT, AND PERMITTING DRUG AND ALCOHOL TREATMENT TO COUNT TOWARD THE WORK REQUIREMENT. *Flexibility is recommended because some Governors do not believe that the definition of work should include all of these options.* THE CALCULATION OF PARTICIPATION RATES SHOULD INCLUDE ALL HOURS OF WORK ACTIVITY FOR ALL ACTIVE PARTICIPANTS DURING THE REPORTING MONTH.

36.2.8

PROVIDE SUITABLE CHILD CARE AND RETAIN FULL FUNDING. AN ADEQUATE SUPPLY OF SAFE, AFFORDABLE, AND ACCESSIBLE CHILD CARE IS ONE OF THE ESSENTIAL COMPONENTS OF SUCCESSFUL WELFARE REFORM. SUITABLE CHILD CARE IS NECESSARY IF PARENTS ARE TO WORK. CONGRESS AND THE ADMINISTRATION MUST HONOR THEIR COMMITMENT TO FUND CHILD CARE AT THE LEVELS PROVIDED FOR IN P.L. 104-193.

36.2.9

ADDRESS INFORMATION SYSTEM REQUIREMENTS. THE LAW CREATES EXTENSIVE NEW DATA COLLECTION, REPORTING, TRACKING, AND MONITORING REQUIREMENTS UNDER THE TANF, CHILD CARE, CHILD SUPPORT ENFORCEMENT, AND FOOD STAMP PROGRAMS THAT WILL BE COSTLY AND DIFFICULT FOR STATES TO MEET. STATES DO NOT CURRENTLY HAVE THE CAPACITY TO MEET THE NEW SYSTEM REQUIREMENTS. THEREFORE, THE GOVERNORS MAKE THE FOLLOWING RECOMMENDATIONS.

- CONGRESS SHOULD STREAMLINE AND REDUCE THE REPORTING REQUIREMENTS IN THE TANF, CHILD CARE, CHILD SUPPORT ENFORCEMENT, AND FOOD STAMP PROGRAMS.



1997 Winter Meeting

COMMITTEE ON HUMAN RESOURCES

Governor Tom Carper, Chair
Governor Tom Ridge, Vice Chair
Nolan E. Jones, Group Director

Proposed Changes in Policy

* HR-2	Immigration and Refugee Policy	Page 3
HR-15	Emergency Management Assistance Compact	Page 16
HR-22	Child Care	Page 17
* HR-36	Implementation of Welfare Reform	Page 22
HR-37	Private Sector Health Care Reform	Page 33
HR-38	HIV/AIDS	Page 42
HR-39	Encouraging Mentoring	Page 49

Reaffirmation of Existing Policy

HR-1	Governors' Principles to Ensure Workforce Excellence	Page 50
HR-6	Army and Air National Guard	Page 52

New language is typed double-spaced and in ALL CAPS, with deleted material lined-throughout (—).

* Note: Changes adopted by the Committee on February 2 (marked by a slash on the cover) are in *italics* and deleted material is double-lined throughout (====). See pages 3, 4, 12, 23, 24, 25, 26, and 30.

(ii) The Secretary may suspend the termination of payments under subparagraph (C)(i) for such period as the Secretary determines appropriate, and instead withhold payments provided for under subsection (a), in whole or in part, until the Secretary is satisfied that there will no longer be any failure to comply with the requirements of subparagraphs (A) and (B) and subsection (b)(1)(A), at which time such withheld payments shall be paid.

(iii) Upon a finding under subparagraph (C)(i) of a substantial failure to comply with any of the requirements of subparagraphs (A) and (B) and subsection (b)(1)(A), the Secretary may, in addition to or in lieu of any action taken under subparagraphs (C)(i) and (C)(ii), refer the matter to the Attorney General with a request that injunctive relief be sought to require compliance by the Commonwealth of Puerto Rico, and upon suit by the Attorney General in an appropriate district court of the United States and a showing that noncompliance has occurred, appropriate injunctive relief shall issue.

(c)(1) The Secretary shall provide for the review of the programs for the provision of the assistance described in subsection (a)(1)(A) for which payments are made under this Act.

(2) The Secretary is authorized as the Secretary deems practicable to provide technical assistance with respect to the programs for the provision of the assistance described in subsection (a)(1)(A).

(d) Whoever knowingly and willfully embezzles, misapplies, steals, or obtains by fraud, false statement, or forgery, any funds, assets, or property provided or financed under this section shall be fined not more than \$10,000 or imprisoned for not more than five years, or both, but if the value of the funds, assets or property involved is not over \$200, the penalty shall be a fine of not more than \$1,000 or imprisonment for not more than one year, or both.

WORKFARE

SEC. 20. [2029] (a)(1) The Secretary shall permit any political subdivision, in any State, that applies and submits a plan to the Secretary in compliance with guidelines promulgated by the Secretary to operate a workfare program pursuant to which every member of a household participating in the food stamp program who is not exempt by virtue of the provisions of subsection (b) of this section shall accept an offer from such subdivision to perform work on its behalf, or may seek an offer to perform work, in return for compensation consisting of the allotment to which the household is entitled under section 8(a) of this Act, with each hour of such work entitling that household to a portion of its allotment equal in value to 100 per centum of the higher of the applicable State minimum wage or the Federal minimum hourly rate under the Fair Labor Standards Act of 1938 [(29 U.S.C. 201 et seq.)].

(2)(A) The Secretary shall promulgate guidelines pursuant to paragraph (1) which, to the maximum extent practicable, enable a political subdivision to design and operate a workfare program under this section which is compatible and consistent with similar workfare programs operated by the subdivision.

(B) A political subdivision may comply with the requirements of this section by operating—

(i) a workfare program pursuant to title IV of the Social Security Act (42 U.S.C. 601 et seq.); or

(ii) ~~any other operating~~ ^{any}²⁰⁻¹ workfare program which the Secretary determines meets the provisions and protections provided under this section.

~~(b)(1) A household~~ ^{(b) A household}²⁰⁻² member shall be exempt from workfare requirements imposed under this section if such member is—

~~(A)~~²⁰⁻³ (1) exempt from section 6(d)(1) as the result of clause (B), (C), (D), (E), or (F) of section 6(d)(2);

~~(B)~~ (2) at the option of the operating agency, subject to and currently actively and satisfactorily participating at least 20 hours a week in a work training program ^{activity}²⁰⁻⁴ required under title IV of the Social Security Act (42 U.S.C. 601 et seq.);

~~(C)~~ (3) mentally or physically unfit;

~~(D)~~ (4) under sixteen years of age;

~~(E)~~ (5) sixty years of age or older; or

~~(F)~~ (6) a parent or other caretaker of a child in a household in which another member is subject to the requirements of this section or is employed fulltime.

~~(2)~~²⁰⁻⁵~~(A)~~ Subject to subparagraphs ~~(B)~~ and ~~(C)~~, in the case of a household that is exempt from work requirements imposed under this Act as the result of participation in a community work experience program established under section 409 of the Social Security Act (42 U.S.C. 609), the maximum number of hours in a month for which all members of such household may be required to participate in such program shall equal the result obtained by dividing—

(i) the amount of assistance paid to such household for such month under title IV of such Act, together with the value of the food stamp allotment of such household for such month; by

(ii) the higher of the Federal or State minimum wage in effect for such month.

~~(B)~~ In no event may any such member be required to participate in such program more than 120 hours per month.

~~(C)~~ For the purpose of subparagraph ~~(A)(i)~~, the value of the food stamp allotment of a household for a month shall be determined in accordance with regulations governing the issuance of an allotment to a household that contains more members than the number of members in an assistance unit established under title IV of such Act.

(c) No operating agency shall require any participating member to work in any workfare position to the extent that such work exceeds in value the allotment to which the household is otherwise entitled or that such work, when added to any other hours worked during such week by such member for compensation (in cash or in kind) in any other capacity, exceeds thirty hours a week.

(d) The operating agency shall—

²⁰⁻¹ Effective July 1, 1997, section 109(e)(1) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) amends subpara. (B) by striking "operating—" and all that follows through "(ii) any other" and inserting "operating any".

²⁰⁻² Effective July 1, 1997, section 109(e)(2)(A)(i) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) amends para. (1) by striking "(b)(1) A household" and inserting "(b) A household".

²⁰⁻³ Effective July 1, 1997, section 109(e)(2)(C) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) redesignates subparas. (A) through (F) as paras. (1) through (6), respectively.

²⁰⁻⁴ Effective July 1, 1997, section 109(e)(2)(A)(ii) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) amends subpara. (B) by striking "training program" and inserting "activity".

²⁰⁻⁵ Effective July 1, 1997, section 109(e)(2)(B) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) strikes para. (2).

(1) not provide any work that has the effect of replacing or preventing the employment of an individual not participating in the workfare program;

(2) provide the same benefits and working conditions that are provided at the job site to employees performing comparable work for comparable hours; and

(3) reimburse participants for actual costs of transportation and other actual costs all of which are reasonably necessary and directly related to participation in the program but not to exceed \$25 in the aggregate per month.

(e) The operating agency may allow a job search period, prior to making workfare assignments, of up to thirty days following a determination of eligibility.

(f) **DISQUALIFICATION.**—An individual or a household may become ineligible under section 6(d)(1) to participate in the food stamp program for failing to comply with this section.

(g)(1) The Secretary shall pay to each operating agency 50 per centum of all administrative expenses incurred by such agency in operating a workfare program, including reimbursements to participants for work-related expenses as described in subsection (d)(3) of this section.

(2)(A) From 50 per centum of the funds saved from employment related to a workfare program operated under this section, the Secretary shall pay to each operating agency an amount not to exceed the administrative expenses described in paragraph (1) for which no reimbursement is provided under such paragraph.

(B) For purposes of subparagraph (A), the term "funds saved from employment related to a workfare program operated under this section" means an amount equal to three times the dollar value of the decrease in allotments issued to households, to the extent that such decrease results from wages received by members of such households for the first month of employment beginning after the date such members commence such employment if such employment commences—

(i) while such members are participating for the first time in a workfare program operated under this section; or

(ii) in the thirty-day period beginning on the date such first participation is terminated.

(3) The Secretary may suspend or cancel some or all of these payments, or may withdraw approval from a political subdivision to operate a workfare program, upon a finding that the subdivision has failed to comply with the workfare requirements.

SEC. 21. [2030] DEMONSTRATION OF FAMILY INDEPENDENCE PROGRAM.

(a) **IN GENERAL.**—Upon written application of the State of Washington (in this section referred to as the "State") and after the approval of such application by the Secretary, the State may conduct a Family Independence Demonstration Project (in this section referred to as the "Project") in all or in part of the State in accordance with this section to determine whether the Project, as an alternative to providing benefits under the food stamp program, would more effectively break the cycle of poverty and would provide families with opportunities for economic independence and strengthened family functioning.

(b) **NATURE OF PROJECT.**—In an application submitted under subsection (a), the State shall provide the following:

agency shall perform onsite reviews of each workfare program once within six months of the program's implementation and then in accordance with the Management Evaluation review schedule for that program area.

(e) *Household responsibilities*—(1) *Persons subject to workfare.* Household members subject to the work registration requirements as provided in § 273.7(a) shall also be subject to the workfare requirements. In addition:

(i) Those recipients exempt from work registration requirements due to being subject to the work incentive program (WIN) under title IV of the Social Security Act shall be subject to workfare if they are currently involved less than 20 hours a week in WIN. Those recipients involved 20 hours a week or more may be subject to workfare at the option of the political subdivision.

(ii) Those recipients exempt from work registration requirements due to the application for or receipt of unemployment compensation shall be subject to workfare requirements; and

(iii) Those recipients exempt from work registration requirements due to being a parent or other household member responsible for the care of a dependent child between the ages of six and twelve shall be subject to workfare requirements. If the child has its sixth birthday within a certification period, the individual responsible for the care of the child shall be subject to the workfare requirement as part of the next scheduled recertification process, unless the individual qualifies for another exemption.

(2) *Household obligation.* The maximum total number of hours of work required of a household each month shall be determined by dividing the household's coupon allotment by the Federal or State minimum wage, whichever is higher. Fractions of hours of obligation may be rounded down. The household's hours of obligation for any given month may not be carried over into another month except when the household wishes to end a disqualification due to noncompliance with workfare in accordance with paragraph (f)(8) of this section.

(f) *Other program requirements*—(1) *Priority placements.* The State agency

or political subdivision submitting the plan shall indicate in the plan how it will determine priority for placement at job sites when the number of eligible participants is greater than the number of available positions at job sites.

(2) *Conditions of employment.* (i) Recipients may be required to work up to, but not to exceed, 30 hours per week. In addition, the total number of hours worked by a recipient under workfare together with any other hours worked in any other compensated capacity, including hours of participation in a WIN training program, by such recipient on a regular or predictable part-time basis, shall not exceed thirty hours a week. With the recipient's consent, the hours to be worked may be scheduled in such a manner that more than thirty hours are worked in one week, as long as the total for that month does not exceed the weekly average of thirty hours a week.

(ii) No participant shall be required to work more than eight hours on any given day, except that with the recipient's consent, more than eight hours may be scheduled.

(iii) No participant shall be required to accept an offer of workfare employment if such employment fails to meet the criteria established in § 273.7(i)(1) (iii) and (iv); and § 273.7(i)(2) (i), (ii), (iv), and (v).

(iv) If the workfare participant is unable to report for job scheduling, to appear for scheduled workfare employment, or to complete the entire workfare obligation due to compliance with Unemployment Insurance requirements, the additional work requirements established in § 273.7(e) (1), (2), (3), or (4), or the job search requirements established in § 273.7(f), such inability shall not be considered a refusal to accept workfare employment. If the workfare participant informs the operating agency of the time conflict, the operating agency shall, if possible, reschedule the missed activity. If such rescheduling cannot be completed before the end of the month, this shall not be cause for disqualification.

(v) The operating agency shall assure that all persons employed in

workfare jobs receive job-related benefits at the same levels and to the same extent as similar non-workfare employees. These shall be benefits related to the actual work being performed, such as workers' compensation, and not to the employment by a particular agency, such as health benefits. Of those benefits required to be offered, any elective benefit which requires a cash contribution by the participant shall be optional at the discretion of the participant.

(vi) All persons employed in workfare jobs shall be assured by the operating agency of working conditions provided other employees similarly employed.

(vii) The provisions of section 2(a)(3) of the Service Contract Act of 1965 (Pub. L. 89-286), relating to health and safety conditions, shall apply to the workfare program.

(viii) Operating agencies shall not provide work to a workfare participant which has the effect of replacing or preventing the employment of an individual not participating in the workfare program. Vacancies, due to hiring freezes, terminations, or lay-offs, shall not be filled by a workfare participant unless it can be demonstrated that such vacancies are a result of insufficient funds to sustain former staff levels.

(ix) The workfare jobs shall in no way infringe upon the promotional opportunities which would otherwise be available to regular employees.

(x) Workfare jobs shall not be related in any way to political or partisan activities.

(xi) Workfare assignments should, to the greatest extent possible, take into consideration previous training, experience, and skills of a participant.

(xii) The cost of workers' compensation or comparable protection provided to workfare participants by the State agency, political subdivision, or operating agency is a matchable cost under paragraph (g) of this section. Whether or not this coverage is provided, in no case is the Federal government the employer in these workfare programs (unless a Federal agency is the job site), and therefore, USDA does not assume liability for any

injury to or death of a workfare participant while on the job.

(xiii) The nondiscrimination requirement provided in § 272.6(a) shall apply to all agencies involved in the workfare program.

(3) *Job search period.* The operating agency may establish a job search period of up to 30 days following certification prior to making a workfare assignment during which the potential participant is expected to look for a job. This period may only be established at household certification, not at recertification. The potential participant would not be subject to any job search requirements beyond those required under § 273.7 during this time.

(4) *Participant reimbursement.* Participants shall be reimbursed by the operating agency for transportation and other costs that are reasonably necessary and directly related to participation in the program. These other costs may include the cost of child care, or the cost of personal safety items or equipment required for performance of work if these items are also purchased by regular employees. These other costs shall not include the cost of meals away from home. No participant cost which has been reimbursed under a workfare program operated under Title IV of the Social Security Act or any other workfare program shall be reimbursed under the food stamp workfare program. Only reimbursement of participant costs which are up to but not in excess of \$25 per month for any participant will be subject to Federal cost sharing as provided in paragraph (g)(1) of this section. Child care costs which are reimbursed may not be claimed as expenses and used in calculating the child care deduction for determining household benefits. Pursuant to paragraph (d)(1) of this section, a State agency may decide what its reimbursement policy shall be.

(5) *Good cause.* For the purpose of this section, unless a State agency has determined its good cause policy pursuant to paragraph (d)(1) of this section, good cause shall include:

(i) Circumstances beyond a household member's control, such as, but not limited to: Illness; the illness or incapacitation of another household



FEB 10 1997

United States
Department of
Agriculture

Food and
Consumer
Service

SUBJECT: Food Stamp Program Guidance for Self-Initiated Workfare Programs

3101 Park
Center Drive

TO: All Regional Administrators
Food and Consumer Service

Alexandria, VA
22302-1500

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) established a new work requirement under which non-exempt, able-bodied adults without dependents (ABAWDs) will become ineligible if, in the preceding 36-month period, they receive food stamps for three months during which they do not work at least 20 hours per week, participate in and comply with the requirements of a work program for at least 20 hours per week, or participate in and comply with the requirements of a workfare or comparable program.

Several States, including Kentucky, Michigan, Oregon, and Washington, are currently operating—or have expressed an interest in operating—"self-initiated" community service programs. The programs are comparable to workfare and are designed to assist ABAWDs fulfill their work requirement. In these self-initiated programs, ABAWDs voluntarily participate and find their own public service placements. They are also responsible for arranging to have their participation reported to their caseworkers, and for verifying their service hours. Participation requirements range from three hours per week to 25 hours per month. One State plans to use a range of food stamp allotments and corresponding fixed participation hours for ease in administering and verifying compliance in its program.

We fully support the States' goal of keeping people who are willing to work but cannot find jobs eligible for food stamps. However, the law makes a distinction between work (paid or unpaid volunteer work) at 20 hours per week and workfare. The key distinction is that workfare is a mandatory obligation and noncompliance subjects an individual to disqualification. Failure to work 20 hours a week, averaged monthly, means that the ABAWD loses eligibility for only the month.

Please notify the States in your Regions that these self-initiated programs must conform to the requirements established for workfare in section 20 of the Food Stamp Act and in food stamp regulations at 7 CFR 273.22. These requirements include imposing sanctions for noncompliance, restricting the nature and amount of work performed, and providing work benefits. (Regional Offices may approve plans that do not offer reimbursement for participation expenses, so long as the program serves only people who would otherwise lose eligibility). Note also that, while States may encourage participation for a fixed number of hours, they are prohibited from requiring recipients to work hours that exceed their obligated hours (their allotment divided by the higher of the Federal or State minimum wage). Additionally, States may impose sanctions for noncompliance only for obligated hours—not fixed hours in excess of the participant's obligation.

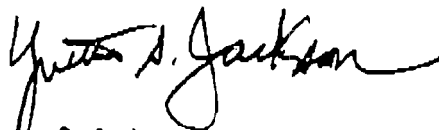
273.22(f)

All Regional Administrators

2

If a State intends to operate a self-initiated community service workfare component as part of its employment and training (E&T) program, it must submit an E&T plan modification to the Food and Consumer Service (FCS) for review and approval. If a State intends to operate an independent community service program, it must submit a workfare plan to FCS for review and approval.

If you have any further questions or comments concerning these community service programs, or other workfare programs, contact Micheal Atwell, of the Program Design Branch, Program Development Division, at (703) 305-2449.



Yvette S. Jackson
Deputy Administrator
Food Stamp Program

each workfare program once within six months of the program's implementation and then in accordance with the Management Evaluation review schedule for that program area.

(e) *Household responsibilities*—(1) *Persons subject to workfare.* Household members subject to the work registration requirements as provided in § 273.7(a) shall also be subject to the workfare requirements. In addition:

(i) Those recipients exempt from work registration requirements due to being subject to the work incentive program (WIN) under title IV of the Social Security Act shall be subject to workfare if they are currently involved less than 20 hours a week in WIN. Those recipients involved 20 hours a week or more may be subject to workfare at the option of the political subdivision.

(ii) Those recipients exempt from work registration requirements due to the application for or receipt of unemployment compensation shall be subject to workfare requirements; and

(iii) Those recipients exempt from work registration requirements due to being a parent or other household member responsible for the care of a dependent child between the ages of six and twelve shall be subject to workfare requirements. If the child has its sixth birthday within a certification period, the individual responsible for the care of the child shall be subject to the workfare requirement as part of the next scheduled recertification process, unless the individual qualifies for another exemption.

(2) *Household obligation.* The maximum total number of hours of work required of a household each month shall be determined by dividing the household's coupon allotment by the Federal or State minimum wage, whichever is higher. Fractions of hours of obligation may be rounded down. The household's hours of obligation for any given month may not be carried over into another month except when the household wishes to end a disqualification due to noncompliance with workfare in accordance with paragraph (f)(8) of this section.

(f) *Other program requirements*—(1) *Priority placements.* The State agency

plan shall indicate in the plan how it will determine priority for placement at job sites when the number of eligible participants is greater than the number of available positions at job sites.

(2) *Conditions of employment.* (i) Recipients may be required to work up to, but not to exceed, 30 hours per week. In addition, the total number of hours worked by a recipient under workfare together with any other hours worked in any other compensated capacity, including hours of participation in a WIN training program, by such recipient on a regular or predictable part-time basis, shall not exceed thirty hours a week. With the recipient's consent, the hours to be worked may be scheduled in such a manner that more than thirty hours are worked in one week, as long as the total for that month does not exceed the weekly average of thirty hours a week.

(ii) No participant shall be required to work more than eight hours on any given day, except that with the recipient's consent, more than eight hours may be scheduled.

(iii) No participant shall be required to accept an offer of workfare employment if such employment fails to meet the criteria established in § 273.7(i)(1) (iii) and (iv); and § 273.7(i)(2) (i), (ii), (iv), and (v).

(iv) If the workfare participant is unable to report for job scheduling, to appear for scheduled workfare employment, or to complete the entire workfare obligation due to compliance with Unemployment Insurance requirements, the additional work requirements established in § 273.7(e) (1), (2), (3), or (4), or the job search requirements established in § 273.7(f), such inability shall not be considered a refusal to accept workfare employment. If the workfare participant informs the operating agency of the time conflict, the operating agency shall, if possible, reschedule the missed activity. If such rescheduling cannot be completed before the end of the month, this shall not be cause for disqualification.

(v) The operating agency shall assure that all persons employed in

workfare jobs receive job-related benefits at the same levels and to the same extent as similar non-workfare employees. These shall be benefits related to the actual work being performed, such as workers' compensation, and not to the employment by a particular agency, such as health benefits. Of those benefits required to be offered, any elective benefit which requires a cash contribution by the participant shall be optional at the discretion of the participant.

(vi) All persons employed in workfare jobs shall be assured by the operating agency of working conditions provided other employees similarly employed.

(vii) The provisions of section 2(a)(3) of the Service Contract Act of 1965 (Pub. L. 89-286), relating to health and safety conditions, shall apply to the workfare program.

(viii) Operating agencies shall not provide work to a workfare participant which has the effect of replacing or preventing the employment of an individual not participating in the workfare program. Vacancies, due to hiring freezes, terminations, or lay-offs, shall not be filled by a workfare participant unless it can be demonstrated that such vacancies are a result of insufficient funds to sustain former staff levels.

(ix) The workfare jobs shall in no way infringe upon the promotional opportunities which would otherwise be available to regular employees.

(x) Workfare jobs shall not be related in any way to political or partisan activities.

(xi) Workfare assignments should, to the greatest extent possible, take into consideration previous training, experience, and skills of a participant.

(xii) The cost of workers' compensation or comparable protection provided to workfare participants by the State agency, political subdivision, or operating agency is a matchable cost under paragraph (g) of this section. Whether or not this coverage is provided, in no case is the Federal government the employer in these workfare programs (unless a Federal agency is the job site), and therefore, USDA does not assume liability for any

injury to or death of a workfare participant while on the job.

(xiii) The nondiscrimination requirement provided in § 272.6(a) shall apply to all agencies involved in the workfare program.

(3) *Job search period.* The operating agency may establish a job search period of up to 30 days following certification prior to making a workfare assignment during which the potential participant is expected to look for a job. This period may only be established at household certification, not at recertification. The potential participant would not be subject to any job search requirements beyond those required under § 273.7 during this time.

(4) *Participant reimbursement.* Participants shall be reimbursed by the operating agency for transportation and other costs that are reasonably necessary and directly related to participation in the program. These other costs may include the cost of child care, or the cost of personal safety items or equipment required for performance of work if these items are also purchased by regular employees. These other costs shall not include the cost of meals away from home. No participant cost which has been reimbursed under a workfare program operated under Title IV of the Social Security Act or any other workfare program shall be reimbursed under the food stamp workfare program. Only reimbursement of participant costs which are up to but not in excess of \$25 per month for any participant will be subject to Federal cost sharing as provided in paragraph (g)(1) of this section. Child care costs which are reimbursed may not be claimed as expenses and used in calculating the child care deduction for determining household benefits. Pursuant to paragraph (d)(1) of this section, a State agency may decide what its reimbursement policy shall be.

(5) *Good cause.* For the purpose of this section, unless a State agency has determined its good cause policy pursuant to paragraph (d)(1) of this section, good cause shall include:

(i) Circumstances beyond a household member's control, such as, but not limited to: Illness; the illness or incapacitation of another household

cost of (1) the certification of applicant households, (2) the acceptance, storage, protection, control, and accounting of coupons after their delivery to receiving points within the State, (3) the issuance of coupons to all eligible households, (4) food stamp informational activities, including those undertaken under section 11(e)(1)(A), but not including recruitment activities, (5) fair hearings, (6) automated data processing and information retrieval systems subject to the conditions set forth in subsection (g), (7) food stamp program investigations and prosecutions, and (8) implementing and operating the immigration status verification system established under section 1137(d) of the Social Security Act (42 U.S.C. 1320b-7(d)): *Provided*, That the Secretary is authorized at the Secretary's discretion to pay any State agency administering the food stamp program on all or part of an Indian reservation under section 11(d) of this Act such amounts for administrative costs as the Secretary determines to be necessary for effective operation of the food stamp program, as well as to permit each State to retain 35 percent of the value of all funds or allotments recovered or collected pursuant to sections 6(b) and 13(c) and 20 percent of the value of any other funds or allotments recovered or collected, except the value of funds or allotments recovered or collected that arise from an error of a State agency. The officials responsible for making determinations of ineligibility under this Act shall not receive or benefit from revenues retained by the State under the provisions of this subsection.

(b) WORK SUPPLEMENTATION OR SUPPORT PROGRAM.—

(1) **DEFINITION OF WORK SUPPLEMENTATION OR SUPPORT PROGRAM.**—In this subsection, the term "work supplementation or support program" means a program under which, as determined by the Secretary, public assistance (including any benefits provided under a program established by the State and the food stamp program) is provided to an employer to be used for hiring and employing a public assistance recipient who was not employed by the employer at the time the public assistance recipient entered the program.

(2) **PROGRAM.**—A State agency may elect to use an amount equal to the allotment that would otherwise be issued to a household under the food stamp program, but for the operation of this subsection, for the purpose of subsidizing or supporting a job under a work supplementation or support program established by the State.

(3) **PROCEDURE.**—If a State agency makes an election under paragraph (2) and identifies each household that participates in the food stamp program that contains an individual who is participating in the work supplementation or support program—

(A) the Secretary shall pay to the State agency an amount equal to the value of the allotment that the household would be eligible to receive but for the operation of this subsection;

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

(C) for purposes of—

(i) sections 5 and 8(a), the amount received under this subsection shall be excluded from household income and resources; and

(ii) section 8(b), the amount received under this subsection shall be considered to be the value of an allotment provided to the household; and

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

(4) OTHER WORK REQUIREMENTS.—No individual shall be excused, by reason of the fact that a State has a work supplementation or support program, from any work requirement under section 6(d), except during the periods in which the individual is employed under the work supplementation or support program.

(5) LENGTH OF PARTICIPATION.—A State agency shall provide a description of how the public assistance recipients in the program shall, within a specific period of time, be moved from supplemented or supported employment to employment that is not supplemented or supported.

(6) DISPLACEMENT.—A work supplementation or support program shall not displace the employment of individuals who are not supplemented or supported.

(c)(1) The program authorized under this Act shall include a system that enhances payment accuracy by establishing fiscal incentives that require State agencies with high error rates to share in the cost of payment error and provide enhanced administrative funding to States with the lowest error rates. Under such system—

(A) the Secretary shall adjust a State agency's federally funded share of administrative costs pursuant to subsection (a), other than the costs already shared in excess of 50 percent under the proviso in the first sentence of subsection (a) or under subsection (g), by increasing such share of all such administrative costs by one percentage point to a maximum of 60 percent of all such administrative costs for each full one-tenth of a percentage point by which the payment error rate is less than 6 percent, except that only States whose rate of invalid decisions in denying eligibility is less than a nationwide percentage that the Secretary determines to be reasonable shall be entitled to the adjustment prescribed in this subsection;

(B) the Secretary shall foster management improvements by the States by requiring State agencies other than those receiving adjustments under subparagraph (A) to develop and implement corrective action plans to reduce payment errors; and

(C) for any fiscal year in which a State agency's payment error rate exceeds the national performance measure for payment error rates announced under paragraph (6), other than for good cause shown, the State agency shall pay to the Secretary an amount equal to—

(i) the product of—

(I) the value of all allotments issued by the State agency in the fiscal year; times

(II) the lesser of—

(aa) the ratio of—

For Illustrative Purposes Only

TABLE ONE: FAMILY OF THREE

The Difference Between the Minimum Wage and the
July 1996 Monthly Maximum Benefits for a family of three

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State	Maximum Monthly AFDC Benefit July 1996 for a family of 3	Maximum Monthly Food Stamps Benefit July 1996	Combined AFDC and Food Stamps Benefits	Effective Hourly Wage Rate of Combined Benefits for 20 hrs/wk/mo	Additional Monthly Cost/Case of Minimum Wage for 20 hours/week for 4.3 weeks/mo.	Effective Hourly Wage Rate of Combined Benefits for 30 hrs/wk/mo (See Footnote 4)	Additional Monthly Cost/Case of Minimum Wage for 30 hours/week for 4.3 weeks/mo. (See Footnote 4)
Alaska	\$923	\$321	\$1,244	\$14.47	(\$801)	\$9.64	(\$580)
Hawaii	\$712	\$471	\$1,183	\$13.76	(\$740)	\$9.17	(\$519)
Connecticut	\$636	\$236	\$872	\$10.14	(\$429)	\$6.76	(\$208)
Vermont	\$633	\$237	\$870	\$10.12	(\$427)	\$6.74	(\$206)
Rhode Island	\$554	\$299	\$853	\$9.92	(\$410)	\$6.61	(\$189)
New York	\$577	\$270	\$847	\$9.85	(\$404)	\$6.57	(\$183)
California	\$596	\$248	\$844	\$9.81	(\$401)	\$6.54	(\$180)
Washington	\$546	\$289	\$835	\$9.71	(\$392)	\$6.47	(\$171)
Massachusetts	\$565	\$257	\$822	\$9.56	(\$379)	\$6.37	(\$158)
New Hampshire	\$550	\$262	\$812	\$9.44	(\$369)	\$6.29	(\$148)
Minnesota	\$532	\$267	\$799	\$9.29	(\$356)	\$6.19	(\$135)
Wisconsin	\$517	\$272	\$789	\$9.17	(\$346)	\$6.12	(\$125)
Oregon	\$460	\$313	\$773	\$8.99	(\$330)	\$5.99	(\$109)
Michigan	\$459	\$300	\$759	\$8.83	(\$316)	\$5.88	(\$95)
Kansas	\$429	\$313	\$742	\$8.63	(\$299)	\$5.75	(\$78)
Montana	\$438	\$295	\$733	\$8.52	(\$290)	\$5.68	(\$69)
New Jersey	\$424	\$307	\$731	\$8.50	(\$288)	\$5.67	(\$67)
North Dakota	\$431	\$298	\$729	\$8.48	(\$286)	\$5.65	(\$65)
South Dakota	\$430	\$298	\$728	\$8.47	(\$285)	\$5.64	(\$64)
Utah	\$426	\$299	\$725	\$8.43	(\$282)	\$5.62	(\$61)
Iowa	\$426	\$299	\$725	\$8.43	(\$282)	\$5.62	(\$61)
Pennsylvania	\$421	\$301	\$722	\$8.40	(\$279)	\$5.60	(\$58)
Maine	\$418	\$301	\$719	\$8.36	(\$276)	\$5.57	(\$55)
Dist. of Columbia	\$415	\$302	\$717	\$8.34	(\$274)	\$5.56	(\$53)

For Illustrative Purposes Only

TABLE ONE: FAMILY OF THREE

The Difference Between the Minimum Wage and the
July 1996 Monthly Maximum Benefits for a family of three

State	Maximum Monthly AFDC Benefit July 1996 for a family of 3	Maximum Monthly Food Stamps Benefit July 1996	Combined AFDC and Food Stamps Benefits	Effective Hourly Wage Rate of Combined Benefits for 20 hrs/wk/mo	Additional Monthly Cost/Case of Minimum Wage for 20 hours/week for 4.3 weeks/mo.	Effective Hourly Wage Rate of Combined Benefits for 30 hrs/wk/mo (See Footnote 4)	Additional Monthly Cost/Case of Minimum Wage for 30 hours/week for 4.3 weeks/mo. (See Footnote 4)
New Mexico	\$389	\$310	\$699	\$8.13	(\$256)	\$5.42	(\$35)
Illinois	\$377	\$313	\$690	\$8.02	(\$247)	\$5.35	(\$26)
Maryland	\$373	\$313	\$686	\$7.98	(\$243)	\$5.32	(\$22)
Nebraska	\$364	\$313	\$677	\$7.87	(\$234)	\$5.25	(\$13)
Wyoming	\$360	\$313	\$673	\$7.83	(\$230)	\$5.22	(\$9)
Colorado	\$356	\$313	\$669	\$7.78	(\$226)	\$5.19	(\$5)
Virginia	\$354	\$313	\$667	\$7.76	(\$224)	\$5.17	(\$3)
Nevada	\$348	\$313	\$661	\$7.69	(\$218)	\$5.12	\$3
Arizona	\$347	\$313	\$660	\$7.67	(\$217)	\$5.12	\$4
Ohio	\$341	\$313	\$654	\$7.60	(\$211)	\$5.07	\$10
Delaware	\$338	\$313	\$651	\$7.57	(\$208)	\$5.05	\$13
Virgin Islands	\$240	\$402	\$642	\$7.47	(\$199)	\$4.98	\$22
Idaho	\$317	\$313	\$630	\$7.33	(\$187)	\$4.88	\$34
Oklahoma	\$307	\$313	\$620	\$7.21	(\$177)	\$4.81	\$44
Florida	\$303	\$313	\$616	\$7.16	(\$173)	\$4.78	\$48
Missouri	\$292	\$313	\$605	\$7.03	(\$162)	\$4.69	\$59
Indiana	\$288	\$313	\$601	\$6.99	(\$158)	\$4.66	\$63
Georgia	\$280	\$313	\$593	\$6.90	(\$150)	\$4.60	\$71
North Carolina	\$272	\$313	\$585	\$6.80	(\$142)	\$4.53	\$79
Kentucky	\$262	\$313	\$575	\$6.69	(\$132)	\$4.46	\$89
West Virginia	\$253	\$313	\$566	\$6.58	(\$123)	\$4.39	\$98
Arkansas	\$204	\$313	\$517	\$6.01	(\$74)	\$4.01	\$147
South Carolina	\$200	\$313	\$513	\$5.97	(\$70)	\$3.98	\$151
Louisiana	\$190	\$313	\$503	\$5.85	(\$60)	\$3.90	\$161

For Illustrative Purposes Only

TABLE ONE: FAMILY OF THREE

**The Difference Between the Minimum Wage and the
July 1996 Monthly Maximum Benefits for a family of three**

State	Maximum Monthly AFDC Benefit July 1996 for a family of 3	Maximum Monthly Food Stamps Benefit July 1996	Combined AFDC and Food Stamps Benefits	Effective Hourly Wage Rate of Combined Benefits for 20 hrs/wk/mo	Additional Monthly Cost/Case of Minimum Wage for 20 hours/week for 4.3 weeks/mo.	Effective Hourly Wage Rate of Combined Benefits for 30 hrs/wk/mo (See Footnote 4)	Additional Monthly Cost/Case of Minimum Wage for 30 hours/week for 4.3 weeks/mo. (See Footnote 4)
Texas	\$188	\$313	\$501	\$5.83	(\$58)	\$3.88	\$163
Tennessee	\$185	\$313	\$498	\$5.79	(\$55)	\$3.86	\$166
Alabama	\$164	\$313	\$477	\$5.55	(\$34)	\$3.70	\$187
Mississippi	\$120	\$313	\$433	\$5.03	\$10	\$3.36	\$231
Puerto Rico	\$180	NA	NA	\$0.00	NA	\$0.00	NA

Notes:

1. This table uses the maximum monthly AFDC benefits as of July 1996. States have more flexibility under TANF to determine benefit levels and may choose to provide higher or lower benefits than suggested in this table. Food Stamp benefits have increased slightly since 7/96 (\$2 for a family of 3).
2. The maximum food stamp benefit assumes 100% excess shelter deduction, no child support deduction, no medical deductions etc.
3. The minimum wage is currently \$4.75 an hour but will increase to \$5.15 on 9/1/97. The tables use \$5.15 as the minimum wage
4. While the number of hours required for participation increases to 30 per week in FY 2000, only 20 of those hours must be within the activities described in Sec. 407. As a result states could place recipients in training for 10 of the 30 and not be required to pay the minimum wage for the 10 hours of training.
5. Although including food stamps as a wage reduces state costs, there are other unquantifiable policy implications that should be considered.
6. AFDC benefits are calculated by the Congressional Research Service
7. Bolded states are those whose AFDC benefit alone is greater than the minimum wage for 20 hrs. for 4.3 weeks.

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TABLE TWO: FAMILY OF TWO

The Difference Between the Minimum Wage and the
July 1996 Monthly Maximum Benefits for a family of two

State	Maximum Monthly AFDC Benefit July 1996 For a family of 2	Maximum Monthly Food Stamps Benefit July 1996	Combined AFDC and Food Stamps Benefits	Effective Hourly Wage Rate of Combined Benefits for 20 hrs/wk/mo	Additional Monthly Cost/Case of Minimum Wage for 20 hours/week for 4.3 weeks/mo.	Effective Hourly Wage Rate of Combined Benefits for 30 hrs/wk/mo (See Footnote 4)	Additional Monthly Cost/Case of Minimum Wage for 30 hours/week for 4.3 weeks/mo. (See Footnote 4)
Alaska	821	231	\$1,052	\$12.23	(\$639)	\$8.16	(\$388)
Hawaii	565	357	\$922	\$10.72	(\$479)	\$7.15	(\$258)
Vermont	533	172	\$705	\$8.20	(\$252)	\$5.47	(\$41)
Connecticut	513	178	\$691	\$8.03	(\$248)	\$5.36	(\$27)
New York	468	203	\$671	\$7.80	(\$228)	\$5.20	(\$7)
New Hampshire	481	188	\$669	\$7.78	(\$226)	\$5.19	(\$5)
California	479	188	\$667	\$7.76	(\$224)	\$5.17	(\$3)
Rhode Island	449	218	\$667	\$7.76	(\$224)	\$5.17	(\$3)
Massachusetts	474	190	\$664	\$7.72	(\$221)	\$5.15	\$0
Washington	440	218	\$658	\$7.65	(\$215)	\$5.10	\$34
Wisconsin	440	200	\$640	\$7.44	(\$197)	\$4.96	\$52
Minnesota	437	201	\$638	\$7.42	(\$195)	\$4.95	\$54
Oregon	395	218	\$613	\$7.13	(\$170)	\$4.75	\$79
South Dakota	380	218	\$598	\$6.95	(\$155)	\$4.64	\$94
Michigan	371	218	\$589	\$6.85	(\$146)	\$4.57	\$103
Iowa	361	218	\$579	\$6.73	(\$136)	\$4.49	\$113
Kansas	352	218	\$570	\$6.63	(\$127)	\$4.42	\$122
Montana	349	218	\$567	\$6.59	(\$124)	\$4.40	\$125
Utah	342	218	\$560	\$6.51	(\$117)	\$4.34	\$132
North Dakota	333	218	\$551	\$6.41	(\$108)	\$4.27	\$141
Pennsylvania	330	218	\$548	\$6.37	(\$105)	\$4.25	\$144
Dist. of Columbia	326	218	\$544	\$6.33	(\$101)	\$4.22	\$148
New Jersey	322	218	\$540	\$6.28	(\$97)	\$4.19	\$152
Wyoming	320	218	\$538	\$6.26	(\$95)	\$4.17	\$154

For Illustrative Purposes Only

TABLE TWO: FAMILY OF TWO

The Difference Between the Minimum Wage and the
July 1996 Monthly Maximum Benefits for a family of two

State	Maximum Monthly AFDC Benefit July 1996 For a family of 2	Maximum Monthly Food Stamps Benefit July 1996	Combined AFDC and Food Stamps Benefits	Effective Hourly Wage Rate of Combined Benefits for 20 hrs/wk/mo	Additional Monthly Cost/Case of Minimum Wage for 20 hours/week for 4.3 weeks/mo.	Effective Hourly Wage Rate of Combined Benefits for 30 hrs/wk/mo (See Footnote 4)	Additional Monthly Cost/Case of Minimum Wage for 30 hours/week for 4.3 weeks/mo. (See Footnote 4)
Maine	312	218	\$530	\$6.16	(\$87)	\$4.11	\$162
New Mexico	310	218	\$528	\$6.14	(\$85)	\$4.09	\$164
Virginia	294	218	\$512	\$5.95	(\$69)	\$3.97	\$180
Nebraska	293	218	\$511	\$5.94	(\$68)	\$3.96	\$181
Maryland	292	218	\$510	\$5.93	(\$67)	\$3.95	\$182
Nevada	289	218	\$507	\$5.90	(\$64)	\$3.93	\$185
Colorado	280	218	\$498	\$5.79	(\$55)	\$3.86	\$194
Ohio	279	218	\$497	\$5.78	(\$54)	\$3.85	\$195
Illinois	278	218	\$496	\$5.77	(\$53)	\$3.84	\$196
Arizona	275	218	\$493	\$5.73	(\$50)	\$3.82	\$199
Delaware	270	218	\$488	\$5.67	(\$45)	\$3.78	\$204
Idaho	251	218	\$469	\$5.45	(\$26)	\$3.64	\$223
Virgin Islands	180	281	\$461	\$5.36	(\$18)	\$3.57	\$231
Florida	241	218	\$459	\$5.34	(\$16)	\$3.56	\$233
Oklahoma	238	218	\$456	\$5.30	(\$13)	\$3.53	\$236
North Carolina	236	218	\$454	\$5.28	(\$11)	\$3.52	\$238
Georgia	235	218	\$453	\$5.27	(\$10)	\$3.51	\$239
Missouri	234	218	\$452	\$5.26	(\$9)	\$3.50	\$240
Indiana	229	218	\$447	\$5.20	(\$4)	\$3.47	\$245
Kentucky	225	218	\$443	\$5.15	(\$0)	\$3.43	\$249
West Virginia	201	218	\$419	\$4.87	\$24	\$3.25	\$273
Texas	163	218	\$381	\$4.43	\$62	\$2.95	\$311
Arkansas	162	218	\$380	\$4.42	\$63	\$2.95	\$312
South Carolina	159	218	\$377	\$4.38	\$66	\$2.92	\$315

For Illustrative Purposes Only

TABLE TWO: FAMILY OF TWO

The Difference Between the Minimum Wage and the
July 1996 Monthly Maximum Benefits for a family of two

State	Maximum Monthly AFDC Benefit July 1996 For a family of 2	Maximum Monthly Food Stamps Benefit July 1996	Combined AFDC and Food Stamps Benefits	Effective Hourly Wage Rate of Combined Benefits for 20 hrs/wk/mo	Additional Monthly Cost/Case of Minimum Wage for 20 hours/week for 4.3 weeks/mo.	Effective Hourly Wage Rate of Combined Benefits for 30 hrs/wk/mo (See Footnote 4)	Additional Monthly Cost/Case of Minimum Wage for 30 hours/week for 4.3 weeks/mo. (See Footnote 4)
Tennessee	142	218	\$360	\$4.19	\$83	\$2.79	\$332
Louisiana	138	218	\$355	\$4.14	\$87	\$2.76	\$336
Alabama	\$137	218	\$355	\$4.13	\$88	\$2.75	\$337
Mississippi	96	218	\$314	\$3.65	\$129	\$2.43	\$378

Notes:

1. This table uses the maximum monthly AFDC benefits as of July 1996. States have more flexibility under TANF to determine benefit levels and may choose to provide higher or lower benefits than suggested in this table. Food Stamp benefits have increased slightly since 7/96 (\$2 for a family of two).
2. The maximum food stamp benefit assumes 100% excess shelter deduction, no child support deduction, no medical deductions etc.
3. The minimum wage is currently \$4.75 an hour but will increase to \$5.15 on 9/1/97. The tables use \$5.15 as the minimum wage.
4. While the number of hours required for participation increases to 30 per week in FY 2000 only 20 of those hours must be within the activities described in Sec. 407. As a result states could place recipients in training for 10 of the 30 and not be required to pay the minimum wage for the 10 hours of training.
5. Although including food stamps as a wage reduces state costs, there are other unquantifiable policy implications that should be considered.
6. AFDC benefits are calculated by the Congressional Research Service.
7. Bolded states are those whose AFDC benefit alone is greater than the minimum wage for 20 hrs. for 4.3 weeks.

For Illustrative Purposes Only

TABLE THREE: FAMILY OF FOUR

The Difference Between the Minimum Wage and the
July 1996 Monthly Maximum Benefits for a family of four

State	Maximum Monthly AFDC Benefit July 1996 For a family of 4	Maximum Monthly Food Stamps Benefit July 1996	Combined AFDC and Food Stamps Benefits	Effective Hourly Wage Rate of Combined Benefits for 20 hrs/wk/mo	Additional Monthly Cost/Case of Minimum Wage for 20 hours/week for 4.3 weeks/mo.	Effective Hourly Wage Rate of Combined Benefits for 30 hrs/wk/mo	Additional Monthly Cost/Case of Minimum Wage for 30 hours/week for 4.3 weeks/mo.
Hawaii	859	567	\$1,426	\$16.58	(\$983)	\$11.05	(\$762)
Alaska	1,025	399	\$1,424	\$16.56	(\$981)	\$11.04	(\$760)
Connecticut	741	289	\$1,030	\$11.98	(\$587)	\$7.98	(\$386)
New York	687	325	\$1,012	\$11.77	(\$569)	\$7.84	(\$348)
Vermont	711	298	\$1,009	\$11.73	(\$566)	\$7.82	(\$345)
California	707	299	\$1,006	\$11.70	(\$563)	\$7.80	(\$342)
Rhode Island	632	365	\$997	\$11.59	(\$554)	\$7.73	(\$353)
Washington	642	349	\$991	\$11.52	(\$548)	\$7.68	(\$327)
Massachusetts	651	316	\$967	\$11.24	(\$524)	\$7.50	(\$303)
Minnesota	621	325	\$946	\$11.00	(\$503)	\$7.33	(\$282)
Wisconsin	617	326	\$943	\$10.97	(\$500)	\$7.31	(\$279)
Oregon	565	377	\$942	\$10.95	(\$499)	\$7.30	(\$278)
New Hampshire	613	327	\$940	\$10.93	(\$497)	\$7.29	(\$276)
Michigan	563	352	\$915	\$10.64	(\$472)	\$7.09	(\$251)
Kansas	497	383	\$880	\$10.23	(\$437)	\$6.82	(\$216)
Montana	527	353	\$880	\$10.23	(\$437)	\$6.82	(\$216)
Maine	526	353	\$879	\$10.22	(\$436)	\$6.81	(\$215)
North Dakota	517	356	\$873	\$10.15	(\$430)	\$6.77	(\$209)
Pennsylvania	514	357	\$871	\$10.13	(\$428)	\$6.75	(\$207)
Dist. of Columbia	507	359	\$866	\$10.07	(\$423)	\$6.71	(\$202)
New Jersey	488	373	\$861	\$10.01	(\$418)	\$6.67	(\$197)
Utah	498	361	\$859	\$9.99	(\$416)	\$6.66	(\$195)
Iowa	495	362	\$857	\$9.97	(\$414)	\$6.64	(\$193)

For Illustrative Purposes Only

TABLE THREE: FAMILY OF FOUR

The Difference Between the Minimum Wage and the
July 1996 Monthly Maximum Benefits for a family of four

State	Maximum Monthly AFDC Benefit July 1996 For a family of 4	Maximum Monthly Food Stamps Benefit July 1996	Combined AFDC and Food Stamps Benefits	Effective Hourly Wage Rate of Combined Benefits for 20 hrs/wk/mo	Additional Monthly Cost/Case of Minimum Wage for 20 hours/week for 4.3 weeks/mo.	Effective Hourly Wage Rate of Combined Benefits for 30 hrs/wk/mo	Additional Monthly Cost/Case of Minimum Wage for 30 hours/week for 4.3 weeks/mo.
South Dakota	478	367	\$845	\$9.83	(\$402)	\$6.55	(\$181)
Maryland	450	391	\$841	\$9.78	(\$398)	\$6.52	(\$177)
New Mexico	469	370	\$839	\$9.76	(\$396)	\$6.50	(\$175)
Nebraska	435	380	\$815	\$9.48	(\$372)	\$6.32	(\$151)
Colorado	432	381	\$813	\$9.45	(\$370)	\$6.30	(\$149)
Virgin Islands	300	511	\$811	\$9.43	(\$368)	\$6.29	(\$147)
Ohio	421	385	\$806	\$9.37	(\$363)	\$6.25	(\$142)
Illinois	414	392	\$806	\$9.37	(\$363)	\$6.25	(\$142)
Arizona	418	385	\$803	\$9.34	(\$360)	\$6.22	(\$139)
Virginia	410	388	\$798	\$9.28	(\$355)	\$6.19	(\$134)
Nevada	408	388	\$796	\$9.26	(\$353)	\$6.17	(\$132)
Delaware	407	389	\$796	\$9.26	(\$353)	\$6.17	(\$132)
Wyoming	390	394	\$784	\$9.12	(\$341)	\$6.08	(\$120)
Idaho	382	396	\$778	\$9.05	(\$335)	\$6.03	(\$114)
Oklahoma	380	397	\$777	\$9.03	(\$334)	\$6.02	(\$113)
Florida	364	397	\$761	\$8.85	(\$318)	\$5.90	(\$97)
Indiana	346	397	\$743	\$8.64	(\$300)	\$5.76	(\$79)
Missouri	342	397	\$739	\$8.59	(\$296)	\$5.73	(\$75)
Georgia	330	397	\$727	\$8.45	(\$284)	\$5.64	(\$63)
Kentucky	328	397	\$725	\$8.43	(\$282)	\$5.62	(\$61)
West Virginia	312	397	\$709	\$8.24	(\$266)	\$5.50	(\$45)
North Carolina	297	397	\$694	\$8.07	(\$251)	\$5.38	(\$30)
Arkansas	247	397	\$644	\$7.49	(\$201)	\$4.99	\$20

For Illustrative Purposes Only

TABLE THREE: FAMILY OF FOUR

The Difference Between the Minimum Wage and the
July 1996 Monthly Maximum Benefits for a family of four

State	Maximum Monthly AFDC Benefit July 1996 For a family of 4	Maximum Monthly Food Stamps Benefit July 1996	Combined AFDC and Food Stamps Benefits	Effective Hourly Wage Rate of Combined Benefits for 20 hrs/wk/mo	Additional Monthly Cost/Case of Minimum Wage for 20 hours/week for 4.3 weeks/mo.	Effective Hourly Wage Rate of Combined Benefits for 30 hrs/wk/mo	Additional Monthly Cost/Case of Minimum Wage for 30 hours/week for 4.3 weeks/mo.
South Carolina	241	397	\$638	\$7.42	(\$195)	\$4.95	\$26
Louisiana	234	397	\$631	\$7.34	(\$188)	\$4.89	\$33
Tennessee	226	397	\$623	\$7.24	(\$180)	\$4.83	\$41
Texas	226	397	\$623	\$7.24	(\$180)	\$4.83	\$41
Alabama	\$194	397	\$591	\$6.87	(\$148)	\$4.58	\$73
Mississippi	144	397	\$541	\$6.29	(\$98)	\$4.19	\$123

Notes:

1. This table uses the maximum monthly AFDC benefits as of July 1996. States have more flexibility under TANF to determine benefit levels and may choose to provide higher or lower benefits than suggested in this table. Food Stamp benefits have increased slightly since 7/96 (\$2 for a family of four).
2. The maximum food stamp benefit assumes 100% excess shelter deduction, no child support deduction, no medical deductions etc.
3. The minimum wage is currently \$4.75 an hour but will increase to \$5.15 on 9/1/97. The tables use \$5.15 as the minimum wage.
4. While the number of hours required for participation increases to 30 per week in FY 2000, only 20 of those hours must be within the activities described in Sec. 407. As a result states could place recipients in training for 10 of the 30 and not be required to pay the minimum wage for the 10 hours of training.
5. Although including food stamps as a wage reduces state costs, there are other unquantifiable policy implications that should be considered.
6. AFDC benefits are calculated by the Congressional Research Service.
7. Bolded states are those whose AFDC benefit alone is greater than the minimum wage for 20 hrs. for 4.3 weeks.

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EXECUTIVE OFFICE OF THE PRESIDE
EXECUTIVE OFFICE OF THE PRESIDE

16-Jan-1997 05:47pm

TO: Bruce N. Reed
TO: Elena Kagan

FROM: Diana M. Fortuna
Domestic Policy Council

SUBJECT: Privatization issue and meeting tomorrow

Tomorrow at 2:30 Ken Apfel is convening a meeting on the privatization issue with the agencies. Here is some background on it. There are still a lot of unanswered questions.

Pending State Requests: We have pending requests from Texas and Wisconsin. Texas wants to privatize food stamp and Medicaid eligibility state-wide. It is not seeking a waiver to do so, but simply arguing that current law allows this. If we say no, then they may fall back on a waiver request. Wisconsin is seeking a waiver in order to privatize.

Areas for Potential Privatization: States may seek to privatize eligibility services in 4 areas: TANF, Medicaid, food stamps, and some employment programs. I don't know much about the last one, but the unions are worried about it and the Dept. of Labor is coming tomorrow. *formally only USDA*

TANF: The new law explicitly allows privatization without Federal permission, and everyone agrees there is nothing to be done about this.

Medicaid: The law was not changed in this area. The relevant language that appears to preclude privatization is the requirement for "merit systems protections." This is waivable.

Food Stamps: This is the most confusing and most active area. This is also covered by the "merit systems protections" language. Texas is arguing that, as long as the handful of people who design the computer program that determines eligibility are state employees, it can privatize many other parts of the operation. USDA and OPM disagree.

Unions' Argument: The unions gave Erskine a paper arguing that USDA and HCFA delegated their waiver authority on merit systems to OPM in 1979, and that OPM must do a reg with notice and comment, not a simple waiver, in order to allow this. But, if true, this really just delays action and doesn't really change

anything.

Options: I suspect that legally we can do this if we want to. State flexibility argues for saying yes, while the unions' concerns argue no. I'm not sure I detect a policy issue here, beyond perhaps a desire to see if the private sector could do this more efficiently than the public sector. Governors Thompson and Bush will presumably complain loudly. The departments will lean toward opposing this.

✓ Anne T - limits 1619c/A.19

1/17/97

FLSA/Mining - gets worse over time

- non-cash or wage? - HHS seizes no
- child care, fs

were some FLSA waivers

Some det'd complete - 2

Needs algo from us - where on up

TX, Co, Mont, Mass → DOR has requests in - OPM guidance

UI - most UI can't

ES - not clear - side by side public/private

"Inherently governmental" →

John M concedes may not need waiver

⇒ OMB Circular
Seems can't contract
= 1 of

Texas - expecting 1/13 - 30 days expedited

must do 2/13 - 60 days regular

Dismissing since May

state
leg -
Ballou
sharp spt

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

05-Dec-1996 11:11am

TO: FORTUNA_D
TO: BENAMI_J

FROM: Jeffrey A. Farkas

CC: Kenneth S. Apfel

SUBJECT: Privatization of TANF, Food Stamps, and Medicaid

Message Creation Date was at 5-DEC-1996 11:05:00

Attached is information on privatization. One note I would add on Food Stamps is that the provisions in the basic program relating to merit systems and State administration are waivable.

----- Forwarded by Jeffrey A. Farkas/OMB/EOP on 12/05/96 11:03 AM -----

Jeffrey A. Farkas
12/05/96 10:01:11 AM

Record Type: Record

To: See the distribution list at the bottom of this message
cc: See the distribution list at the bottom of this message
Subject: Privatization of TANF, Food Stamps, and Medicaid

Here is some information on privatization of three major public assistance programs:

TANF. Privatization/contracting out is clearly allowable. The bill removes merit systems protections and State administration requirements under AFDC and gives States complete flexibility to contract out TANF administration.

Medicaid. The State plan provisions in the Medicaid statute call for single State agency administration of the program and merit system protections. The State plan section, and hence single State agency and merit system protections, are waivable, however. According to the Health Division, there have been waivers to allow more than one State agency to administer the program (such as a Department of Mental Health in coordination with a Department of Health or Social Services), and there have been waivers of the merit system provisions in at least 3 States (Hawaii, Massachusetts, and Minnesota), although, based on an extremely quick reading, the full extent of the waivers is not completely clear to us. Health Division notes that the Administration's Medicaid reform bill would have modified the State plan administration provisions to no longer require merit systems protections, but would have given States authority to establish similar requirements at their own discretion. The Administration's bill did not change the single-State agency requirements.

Food Stamps. Current law is subject to interpretation. FCS, supported by OPM and USDA's OGC, reads the Food Stamps statute to say the State agency is

responsible for the certification of Food Stamp households, and that State agency personnel who conduct certification procedures must be covered by merit systems protections. Texas asserts that the Food Stamp Act allows for the State to conduct certifications by using State employees or by contracting out to private organizations. Texas has argued that since a computer makes the eligibility determination, computer programmers should be covered by merit systems protections, but not data entry operators, who are typically termed "eligibility workers." At issue is what constitutes a "certification" -- the work an eligibility worker does, or the work a computer does. (An OMB/WH reading will probably be necessary.) The new optional simplified program adds another dimension to the issue. The simplified program allows States to waive certain Food Stamp eligibility requirements for pure TANF households (i.e., households in which all individuals are on both TANF and Food Stamps) to conform with applicable State TANF rules. If a State chooses to contract out TANF, Food Stamp certification could also be contracted out without merit system protections. Non-PA Food Stamp households and households which contain both PA and non-PA individuals, however, would remain subject to regular program requirements, which, as noted above, FCS interprets to mean State administration and merit systems protections for State employees.

Please let me know if you have any questions.

Message Sent To:

Kenneth S. Apfel/OMB/EOP
Barry White/OMB/EOP
Cynthia M. Smith/OMB/EOP
Deborah F. Kramer/OMB/EOP
Keith J. Fontenot/OMB/EOP

Message Copied To:

Matthew McKearn/OMB/EOP
Stacy L. Dean/OMB/EOP
Lester D. Cash/OMB/EOP
Margaret A. Murray/OMB/EOP
Barbara E. Washington/OMB/EOP

farkas:

tanf no reqs for single state or merit

ma: same provisions as old afdc, nada changed: state plan reqs that single state agency; merit systems protection; but waivable; hasn't been waived for private co; but has been waived for 2 state agencies

fs: trickiest; subj to interpr; come up in TX; fcs wants to interpret statute to say state is respon for program certifs; essentially eligibility; tx arguing can do either, private co. can have merit system; technically a computer does it; so the programmer must be merit based, but private co.

new law gives state option for simplified admin; if hhold has tanf=fs, can use tanf rules; if fs only, or a mix, must be fs rules

bonny o'neal: old law except tanf=fs;

merit system req. that could be waived; but can only waive as part of demo

no single state agency

Wisc: ltd to a few counties; waiver request is in

TX: not a formal req; sw; won't buy their argument

-waiting to hear from us

-put out one rfp; waiting for us? is use of contractor; computer argument;
formally put q before you; 30 days ago

BRIEFING ON LABOR'S WELFARE REFORM CONCERNS

The following briefly summarizes the key issues related to welfare reform that organized labor has raised to us previously, their status, and our suggested response.

1. Privatization of Administrative Functions

Concern Allowing states to contract out the administration of Food Stamps, Medicaid, or welfare.

Problem The states have the legal authority to contract out administration of the welfare block grant. They need a waiver to do this for Food Stamps and approval for Medicaid. Both Texas and Wisconsin are well down the road in developing their plans to contract out.

Response Since (a) we do not have a definite position yet on this issue and (b) we don't have a legal basis to turn the states down, we should probably just listen.

2. Public Comment Period on State Welfare Plans

Concern Ensuring that HHS requires a 45 day public comment period before state welfare plans are certified as complete.

Response HHS will require comment periods, but they can take place after the plan is submitted to the federal government. Plans will be certified as completely only after the comment period has ended. Funding will be retroactive to plan submission.

3. Continued Medicaid Funding for Immigrants

Concern Ensuring that all immigrants will continue to get Medicaid even after losing their SSI.

Problem This is a budget issue. It may be possible to let states do this administratively, but the cost could be over \$1 billion over six years.

Response We share this concern. Need to look at it in the context of the budget.

4. Employment Rights for Welfare Recipients

Concern Providing greater labor protections for those in "workfare" programs -- working for their welfare.

Response We have pressed for greater protections in the past. We will work with them on this in the new Congress.

5. "Fix" Legislation

Concern They have a list of issues they would like a "fix" bill to address.

Status While we know we will be submitting a budget which would restore some of the cuts, we are not sure what we will do in terms of legislation on some of the other policy issues: labor protections, privatization, etc.

Response We should indicate openness to hearing their concerns, and express that we are still developing both our substantive ideas and our strategy.

6. Job Creation Legislation

Concern They have a series of concerns -- wanting more money (\$10 billion, not \$3 billion), preferring job creation to job referral, DOL administration, etc.

Status The details of the proposal are still being developed, but the broad outlines remain what they were in August. Development will continue into January.

Response We will continue to work closely with them on the development of this initiative and will try to incorporate some of their concerns.

THE WHITE HOUSE
WASHINGTON

October 30, 1996

MEMORANDUM FOR CAROL RASCO

BRUCE REED

JEREMY BENAMI

DIANA FORTUNA

EMILY BROMBERG

KEN APFEL

FROM: JENNIFER O'CONNOR

SUBJECT: WELFARE REFORM LEGAL ISSUES

My memory failed me miserably. The letter I'd seen is attached. It is from Morty Bahr to Harold and it describes a review process Morty believes is underway at the Department of Labor to review whether states can privatize job search and employment services. Morty says in his letter that the Secretary has said he won't authorize such privatization until after his Department finishes the review -- but I haven't seen any letter from the Secretary confirming this. As Morty notes, his concern is the Texas request to privatize these services.

not ent. clear

FS & MA - merit systems → waiver
w

Private can be involved, but single state only

ACFA: Texas

↓
waiver

Texas: engaged in process to not get all private. ph. 1. 2nd - 1st, HHS must run systems - not before

→ will approve → contractors

Communications
Workers of America
AFL-CIO, CLC

501 Third Street, N.W.
Washington, D.C. 20001-2797
202/434-1110 Fax 202/434-1139

Morton Bahr
President

10/30 copy
to Sen O'C

October 28, 1996

Mr. Harold Ickes, Assistant to the President
and Deputy Chief of Staff for Political Affairs
The White House
First Floor, West Wing
1600 Pennsylvania Ave., NW
Washington, D.C. 20500

Dear Mr. Ickes *Harold -*

I am writing to let you know how important I consider the outcome of a current review that is underway at the Department of Labor concerning whether or not states can deliver through private vendors job search and employment service authorized under the 1933 Wagner-Peyser Act.

The review was begun at our request in response to waivers requested by the State of Texas to operate its job search and employment service through private contractors. Currently, 4,000 public employees provide these functions. Secretary Reich has indicated that until the review is completed, the Department will not authorize the provision of these services through private vendors.

The outcome of the review has serious implications for the future of workforce development programs in every state. I anticipate that the review will conclude that contracting out of employment services authorized under the Wagner-Peyser Act is not only a violation of the law, it is also bad policy. Public administration is essential to ensure accountability, equity, and confidentiality of this most important and sensitive governmental function.

Thank you for your assistance in this matter.

Sincerely,

Morton Bahr
Morton Bahr
President

LABOR ISSUES

I. Administrative Issues

- Privatization of Food Stamps and Medicaid program administration
 - The welfare reform bill removes the merit system protections and State administration requirements under AFDC and gives States complete flexibility to contract out TANF administration. This degree of flexibility is not provided under Food Stamps.

II. Legislative Fixes

- Stronger anti-displacement protections and grievance procedures
 - Partial displacement and appeal rights
- Union comment or concurrence on work assignments (WRA of 1994)
 - Under WRA, labor organizations representing employees in work similar to WORK assignments must be allowed to comment on the WORK proposal, and must be notified 30 days in advance prior to when a participant is brought on.
- Strengthening employment rights for workfare participants
 - Under WRA, WORK participants would generally enjoy the same benefits, working conditions, and rights as other employees in the same type of work with similar tenure.

III. Welfare-To-Work Jobs Initiative

- Ensuring jobs are "new work"
- Placements should be treated under same terms and conditions as other employees
- Union comment or concurrence on work assignments

Will anyone do TANF w/ FS? Colocation - varies a lot

Reich letter on Texas to union

FS - state has ~~control~~
can waive admin
not merit systems

Texas
ALSC

MA - PRO's -
CR
(private sector runs MA)

Protections on own for 6/99

Principles only
C-T }?
C-Br }

LP - wk > next

American Federation of Labor and Congress of Industrial Organizations



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

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September 6, 1996

John Monahan
Director of Intergovernmental Affairs
Department of Health and Human Services
Office of the Deputy Secretary
600 E HHH
200 Independence Avenue, SW
Washington, DC 20201

*CC Reed
Ben Ami
Apfel
Fortuna*

Dear Mr. Monahan:

Thank you, again, for the excellent work assembling the welfare briefing yesterday. I think it set the stage very well for future conversations. We should discuss how to proceed with planning future briefings relative to timelines in the bill.

We all realize that this will be a protracted process, but that some aspects will be occurring very rapidly. I want to highlight some particular areas of concern based on yesterday's conversation. These include: treatment of existing waivers, employee status for workfare participants, provision of Medicaid services by alternate agencies, displacement enforcement, state plan approval, and data collection requirements in the bill.

I appreciate your appeal for specific language where that is appropriate. I'll follow up with affiliates in that regard. In general, we hope to see regulations with three components: (1) time frames and clear deadlines for responses, so advocates can demand timely action; (2) objective criteria to be met; (3) clear remedies for grievants. It has been our experience that these elements are crucial to our enforcement efforts.

We will be contributing suggestions in most areas, but I want to raise some issues before your briefings next week. As you know, one of the top issues for labor is the displacement effects of the work requirements. While we are sympathetic to the limits you face around administrative enforcement, we encourage the Department to take a strong stance around those protections which the bill does afford. Attached is language on grievance procedures from the National Service Program Assistance

Requirements. Clearly, the law in this example provides greater powers to the federal government than you will be able to assert in most of the welfare regulations. But I hope it proves useful as an example of the three principles outlined above. These grievance procedures would pertain to cases where displacement was alleged, though probably without the final federal arbiter which is required in the National Service Program. Although this language may not be directly useable, it is a good example of the definitive protections which people are hoping to achieve. We are also exploring useable models in other existing programs or previous programs, such as CETA. The CETA language on maintenance of effort is attached.

I also want to highlight some issues around state plan requirements, just to begin the dialogue. It is clear that the limited federal role will mean that state-level activity becomes even more important. We are paying particular attention to the data requirements which states face, knowing that this information will be vital to local activists. It is very important, in this regard, that the state plans disclose intended changes in service delivery systems, particularly toward private contracting. We intend to monitor the linkage between the nature of the new service delivery systems and the quality of services delivered. Even in a devolved system, these are federal dollars and need to be closely monitored. I hope to send you a more detailed communication on the data collection requirements.

I am happy to act as a conduit for distributing information. We should keep in touch regarding issues and events which warrant dialogue instead of just information distribution. As you have seen, we can pull together a broad range of union affiliates on short notice when that is appropriate.

Thanks again for your efforts.

Sincerely,



Marc Baldwin

cc: Union Welfare Staff
Jennifer O'Connor
Gerry Shea

c:\socwage\monahan.ltr

- (A) by striking "REPORT TO CONGRESS"; and inserting "REPORT TO CONGRESS BY CORPORATION"; and
 (B) in paragraph (1), by striking "this title" and inserting "the national service laws"; and
 (3) by adding at the end the following:

"(c) REPORT TO CONGRESS BY SECRETARY OF DEFENSE.—

"(1) STUDY.—The Secretary of Defense shall annually conduct a study of the effect of the programs carried out under this title on recruitment for the Armed Forces.

"(2) REPORT.—The Secretary of Defense shall annually submit a report to the appropriate committees of Congress containing the findings of the study described in paragraph (1) and such recommendations for legislative and administrative reform as the Secretary may determine to be appropriate."

SEC. 115. NONDISCRIMINATION.

Section 175 of the National and Community Service Act of 1990 (42 U.S.C. 12635) is amended to read as follows:

"SEC. 175. NONDISCRIMINATION.

"(a) IN GENERAL.—

"(1) BASIS.—An individual with responsibility for the operation of a project that receives assistance under this title shall not discriminate against a participant in, or member of the staff of, such project on the basis of race, color, national origin, sex, age, or political affiliation of such participant or member, or on the basis of disability, if the participant or member is a qualified individual with a disability.

"(2) DEFINITION.—As used in paragraph (1), the term 'qualified individual with a disability' has the meaning given the term in section 101(8) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111(8)).

"(b) FEDERAL FINANCIAL ASSISTANCE.—Any assistance provided under this title shall constitute Federal financial assistance for purposes of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), and shall constitute Federal financial assistance to an education program or activity for purposes of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.).

"(c) RELIGIOUS DISCRIMINATION.—

"(1) IN GENERAL.—Except as provided in paragraph (2), an individual with responsibility for the operation of a project that receives assistance under this title shall not discriminate on the basis of religion against a participant in such project or a member of the staff of such project who is paid with funds received under this title.

"(2) EXCEPTION.—Paragraph (1) shall not apply to the employment, with assistance provided under this title, of any member of the staff, of a project that receives assistance under this title, who was employed with the organization operating the project on the date the grant under this title was awarded.

"(d) RULES AND REGULATIONS.—The Chief Executive Officer shall promulgate rules and regulations to provide for the enforcement of this section that shall include provisions for summary suspension of assistance for not more than 30 days, on an emergency basis, if the individual is found to be in violation of the provisions of this section.

SEC. 116. NOTICE, HEARING, AND GRIEVANCE PROCEDURES.

(a) DECERTIFICATION OF POSITIONS.—Section 176(a) of the National and Community Service Act of 1990 (42 U.S.C. 12636(a)) is amended—

(1) in paragraph (1), by inserting ", or revoke the designation of positions, related to the grant or contract, as approved national service positions," before "whenever the Commission"; and

(2) in paragraph (2)(B), by inserting "or revoked" after "terminated".

(b) CONSTRUCTION.—Section 176(e) of such Act (42 U.S.C. 12636(e)) is amended by adding before the period the following ", other than assistance provided pursuant to this Act".

(c) GRIEVANCE PROCEDURE.—Section 176(f) of such Act is amended to read as follows:

"(f) GRIEVANCE PROCEDURE.—

"(1) IN GENERAL.—A State or local applicant that receives assistance under this title shall establish and maintain a procedure for the filing and adjudication of grievances from participants, labor organizations, and other interested individuals concerning projects that receive assistance under this title, including grievances regarding proposed placements of such participants in such projects.

"(2) DEADLINE FOR GRIEVANCES.—Except for a grievance that alleges fraud or criminal activity, a grievance shall be made not later than 1 year after the date of the alleged occurrence of the event that is the subject of the grievance.

"(3) DEADLINE FOR HEARING AND DECISION.—

"(A) HEARING.—A hearing on any grievance conducted under this subsection shall be conducted not later than 30 days after the filing of such grievance.

"(B) DECISION.—A decision on any such grievance shall be made not later than 60 days after the filing of such grievance.

"(4) ARBITRATION.—

"(A) IN GENERAL.—

"(i) JOINTLY SELECTED ARBITRATOR.—In the event of a decision on a grievance that is adverse to the party who filed such grievance, or 60 days after the filing of such grievance if no decision has been reached, such party shall be permitted to submit such grievance to binding arbitration before a qualified arbitrator who is jointly selected and independent of the interested parties.

"(ii) APPOINTED ARBITRATOR.—If the parties cannot agree on an arbitrator, the Chief Executive Officer shall appoint an arbitrator from a list of qualified arbitrators within 15 days after receiving a request for such appointment from one of the parties to the grievance.

"(B) DEADLINE FOR PROCEEDING.—An arbitration proceeding shall be held not later than 45 days after the request for such arbitration proceeding, or, if the arbitrator is appointed by the Chief Executive Officer in accordance with subparagraph (A)(ii), not later than 30 days after the appointment of such arbitrator.

"(C) **DEADLINE FOR DECISION.**—A decision concerning a grievance shall be made not later than 30 days after the date such arbitration proceeding begins.

"(D) **COST.**—

"(i) **IN GENERAL.**—Except as provided in clause (ii), the cost of an arbitration proceeding shall be divided evenly between the parties to the arbitration.

"(ii) **EXCEPTION.**—If a participant, labor organization, or other interested individual described in paragraph (1) prevails under a binding arbitration proceeding, the State or local applicant described in paragraph (1) that is a party to such grievance shall pay the total cost of such proceeding and the attorneys' fees of such participant, labor organization, or individual, as the case may be.

"(5) **PROPOSED PLACEMENT.**—If a grievance is filed regarding a proposed placement of a participant in a project that receives assistance under this title, such placement shall not be made unless the placement is consistent with the resolution of the grievance pursuant to this subsection.

"(6) **REMEDIES.**—Remedies for a grievance filed under this subsection include—

"(A) suspension of payments for assistance under this title;

"(B) termination of such payments;

"(C) prohibition of the placement described in paragraph (5); and

"(D) in a case in which the grievance involves a violation of subsection (a) or (b) of section 177 and the employer of the displaced employee is the recipient of assistance under this title—

"(i) reinstatement of the displaced employee to the position held by such employee prior to displacement;

"(ii) payment of lost wages and benefits of the displaced employee;

"(iii) reestablishment of other relevant terms, conditions, and privileges of employment of the displaced employee; and

"(iv) such equitable relief as is necessary to correct any violation of subsection (a) or (b) of section 177 or to make the displaced employee whole.

"(7) **ENFORCEMENT.**—Suits to enforce arbitration awards under this section may be brought in any district court of the United States having jurisdiction of the parties, without regard to the amount in controversy and without regard to the citizenship of the parties."

SEC. 117. NONDISPLACEMENT.

Section 177(b)(3) of the National and Community Service Act of 1990 (42 U.S.C. 12637(b)(3)) is amended—

(1) in subparagraph (B), to read as follows:

"(B) **SUPPLANTATION OF HIRING.**—A participant in any program receiving assistance under this title shall not perform any services or duties, or engage in activities, that—

"(i) will supplant the hiring of employed workers;

or

"(ii) are services, duties, or activities with respect to which an individual has recall rights pursuant to a collective bargaining agreement or applicable personnel procedures"; and

(2) in subparagraph (C)(iii), to read as follows:

"(iii) employee who—

"(I) is subject to a reduction in force; or

"(II) has recall rights pursuant to a collective bargaining agreement or applicable personnel procedures";.

SEC. 118. EVALUATION.

Section 179 of the National and Community Service Act of 1990 (42 U.S.C. 12639) is amended—

(1) in subsection (a)(2)—

(A) in the matter preceding subparagraph (A), by striking "for purposes of the reports required by subsection (j)," and inserting "with respect to the programs authorized under subtitle C"; and

(B) in subparagraph (A), by striking "older American volunteer programs" and inserting "National Senior Volunteer Corps programs";

(2) in subsection (g)—

(A) in the matter preceding paragraph (1), by striking "subtitle D" and inserting "subtitle C"; and

(B) in paragraphs (3) and (9), by striking "older American volunteer programs" and inserting "National Senior Volunteer Corps programs";

(3) by striking subsections (i) and (j); and

(4) by adding at the end the following:

"(i) **INDEPENDENT EVALUATION AND REPORT OF DEMOGRAPHICS OF NATIONAL SERVICE PARTICIPANTS AND COMMUNITIES.**—

"(1) **INDEPENDENT EVALUATION.**—

"(A) **IN GENERAL.**—The Corporation shall, on an annual basis, arrange for an independent evaluation of the programs assisted under subtitle C.

"(B) **PARTICIPANTS.**—

"(i) **IN GENERAL.**—The entity conducting such evaluation shall determine the demographic characteristics of the participants in such programs.

"(ii) **CHARACTERISTICS.**—The entity shall determine, for the year covered by the evaluation, the total number of participants in the programs, and the number of participants within the programs in each State, by sex, age, economic background, education level, ethnic group, disability classification, and geographic region.

"(iii) **CATEGORIES.**—The Corporation shall determine appropriate categories for analysis of each of the characteristics referred to in clause (ii) for purposes of such an evaluation.

"(C) **COMMUNITIES.**—In conducting the evaluation, the entity shall determine the amount of assistance provided under section 121 during the year that has been expended for projects conducted under the programs in areas described in section 133(c)(6).

§ 676.72 Unionization and antiunionization activities/work stoppages.

(a) No funds under this Act shall be used in any way to either promote or oppose unionization (sec. 123(g)).

(b) No individual shall be required to join a union as a condition for enrollment in a program in which only institutional training is provided, unless such institutional training involves individuals employed under a collective bargaining agreement which contains a union security provision (sec. 121(n)(2)).

(c) No participant in work experience or public service employment may be placed into, or remain working in, any position which is affected by labor disputes involving a work stoppage. If such a work stoppage occurs during the grant period, participants in affected positions must (1) be relocated to positions not affected by the dispute; (2) be suspended through administrative leave; or (3) where participants belong to the labor union involved in the work stoppage, be treated in the same manner as any other union member except such members must not remain working in the effected position. The grantee shall make every effort to relocate participants, who wish to remain working, into suitable positions unaffected by the work stoppage.

(d) No person shall be referred to or placed in an on-the-job training position, affected by a labor dispute involving a work stoppage and no payments may be made to employers for the training and employment of participants in on-the-job training during the periods of work stoppage.

(e) Nothing in this section shall prevent an employer from checking off union dues or service fees pursuant to applicable collective bargaining agreements or State law.

*** § 676.73 Maintenance of effort.**

(a) To ensure maintenance of effort under all programs under the Act

(1) Recipients and subrecipients shall ensure that such programs:

(i) Result in an increase in employment and training opportunities over those which would otherwise be available (sec. 121(e)(1));

(ii) Do not result in the displacement of currently employed workers, including partial displacement, such as reduction in hours of nonovertime work, wages, or employment benefits (sec. 122(e)(2));

(iii) Do not impair existing contracts for services or result in the substitution of Federal funds for other funds in connection with work that would otherwise be performed (sec. 121(e)(3) and (g)(1)), including services normally

provided by temporary, part-time or seasonal workers or through contracting such services out; and

(iv) Result in the creation of jobs that are in addition to those that would be funded in the absence of assistance under the Act (sec. 121(g)(1)(B)).

(2) Funds under this Act shall supplement, and not supplant, the level of funds that would otherwise be made available from non-Federal sources for the planning and administration of programs (sec. 121(g)(1)(c)).

(b) In addition to the requirements of paragraph (a) of this section, for public service employment programs funded under this Act

(1) Recipients and subrecipients shall insure that such public service employment positions shall not

(i) Substitute for existing federally assisted jobs (sec. 122(e)); and

(ii) Be created in any promotional line that will infringe in any way upon promotional opportunities of persons currently in jobs not funded under the Act (sec. 122(f)).

(2) Whenever a promotional freeze affects non-CETA funded employees it shall apply to CETA participants similarly employed.

(3) No participant shall be hired into, or remain working in, any position when:

(i) The same or a substantially equivalent position is vacant due to a hiring freeze, unless the prime sponsor can demonstrate that the freeze resulted from lack of funds to sustain staff levels and was not established in anticipation of the availability of funds under the Act

(ii) Any other person not supported under the Act or by other Federal funds (other than general revenue sharing) is on lay-off from the same or any substantially equivalent job. The same or equivalent job means any job or position for which:

(A) Per a personnel code or practice or per a collective bargaining agreement, a recall list or other reemployment policy is in effect as to former employees, who have the first right to any job vacancies occurring within a specific period of time in the position.

(B) If there is no recall list, or any other reemployment policy, practice or contractual obligation, one or more employees have been laid off due to a lack of funds or work from a job in the type position anytime during the last operating year of the department or agency (sec. 122(c)(1)).

(4) When termination of CETA participants is imminent due to conditions noted in (3) above, the prime sponsor shall make every feasible

attempt to place such participants into other nonaffected positions or otherwise attempt placement into unsubsidized jobs or into another CETA program or activity.

(5) No former employees laid off or terminated in anticipation of CETA funding of a position may be rehired under CETA into such a position.

(6) A recipient or subrecipient shall not use CETA funds in any manner which results in a reduction of the customary level of public service provided by itself or another public entity in the area, by allowing PSE participants to be placed with or outstationed to private nonprofit organizations.

(c) Prime sponsors shall notify the RA in writing of any layoff or hiring freeze and of any recall rights of employees on lay off, in a department or agency where public service employment participants are employed. Prime sponsors shall, at the direction of the RA, submit documentation and budgetary expenditure records, revenue statements, and other available information relevant to a determination under this section. RA's shall not approve any plan unless prime sponsors have submitted, when directed by the RA, conclusive evidence that the proposed use of funds fully meets the requirements of this Section.

§ 676.74 Theft or embezzlement from employment and training funds; improper inducement; obstruction of investigations and other criminal provisions.

The criminal provision of 18 U.S.C. 665 states that:

(a) Whoever, being an officer, director, agent or employee of, or connected in any capacity with, any agency receiving financial assistance under the Comprehensive Employment and Training Act knowingly hires an ineligible individual or individuals; embezzles, willfully misapplies, steals, or obtains by fraud any of the moneys, funds, assets, or property which are the subject of a grant or contract of assistance pursuant to such Act shall be fined not more than \$10,000 or imprisoned for not more than 2 years, or both; but if the amount so embezzled, misapplied, stolen, or obtained by fraud does not exceed \$100, such person shall be fined not more than \$1,000 or imprisoned not more than 1 year, or both.

(b) Whoever, by threat of procuring dismissal of any person from employment, or of refusal to renew a contract of employment in connection with a grant or contract of assistance under the Comprehensive Employment