

**NLWJC - Kagan**

**DPC - Box 061 - Folder-001**

**Welfare - FLSA etc [4]**

WP-FLTA

THE WHITE HOUSE  
WASHINGTON

FLSA  
Shea: legislative

A. | Shaw bill vains all sorts of issues  
in definition -- don't like it.

B. | exemption from FICA/FUTA -  
in "work relief" situations

Tanner

John Watson - FSA

C. | Privatization -

Briefing Information  
September 18, 1997

### **Welfare Reform and Fair Labor Standards Act/Minimum Wage**

Background: As you know, this summer we worked with the labor unions in a successful effort to defeat Republican legislation that would have weakened labor protections for welfare recipients in workfare programs. The dispute began in May when the Department of Labor issued its legal opinion that labor protections in current law -- including the minimum wage, health and safety laws, and anti-discrimination protections. Governors of both parties argued strongly that this would make workfare prohibitively expensive and create excessive administrative burdens on states. They worked with Republicans on proposals to limit the application of labor laws, as well as to reduce the welfare law's work requirements to make it easier for states to comply.

Governors also objected loudly to having to pay payroll taxes for those on workfare, even though the Treasury Department has not yet ruled on whether FICA and FUTA taxes apply. (The Balanced Budget Act made them ineligible for the EITC, with our support.) The FICA/FUTA exemption is the only issue where we have indicated any willingness to compromise. In fact, we agreed to such an exemption as part of a last-minute compromise that fell apart for other reasons.

Since the signing of the Balanced Budget Act, the Republican leadership has called this a top priority for the remaining weeks of the session. In August, Speaker Gingrich said "the Clinton Administration, working with the unions and the bureaucrats, is trying to undermine and destroy welfare reform." Many Governors, including Carper and Chiles, remain very unhappy about our position on this issue.

Current Status: House Ways and Means Human Resources Subcommittee Chairman Clay Shaw is quietly trying to garner bipartisan support among Governors and House members for a bill to address state concerns. The Administration has taken no position on it yet, but the confidential draft we have seen has two major problems. First, it appears to weaken labor protections. Although Shaw has stated that it is not his intention to weaken labor protections, other Republicans may insist that these provisions remain in the bill. Indeed, we have heard that some Republicans will try to strengthen these anti-union provisions. Our preliminary understanding is that the unions very much dislike the draft bill.

Second, Shaw's draft bill significantly weakens the welfare law's work requirements. It requires states to pay the minimum wage for work experience and community service programs, but it limits the number of work hours to what states can afford to pay, based on the amount of their welfare grant plus food stamps. The balance of a recipients' time could be spent on job search and education activities. Thus, a welfare recipient could work 10 hours a week and do 10 hours of job search. Also, there is a concern that the legislation's definition of "work experience" and "community service" may be so broad that nearly all subsidized work could be defined as such, allowing low benefit states to require less than 20 hours of work from nearly all their "working" recipients. The bill would also exempt workfare positions from FICA and unemployment taxes,

which we indicated during the balanced budget negotiations that we were willing to do.

Shaw originally planned to unveil this legislation this week, but problems with the Republican caucus have pushed it back at least to next week. He apparently plans to move the measure as a separate piece of legislation.

### **Privatization of Welfare Programs**

Background: Labor unions, particularly AFSCME and SEIU, have waged a major fight against state efforts to privatize their welfare, food stamp, and Medicaid functions. Last year's welfare law allowed states to privatize the TANF welfare program without federal approval, and some are moving to do so (Wisconsin, for example). However, states can privatize food stamps and Medicaid only with permission from the federal government.

After the Administration denied the state of Texas' request to privatize food stamp and Medicaid earlier this year, the Republicans launched an effort to overturn this decision through legislation. As part of negotiations for the balanced budget agreement, we agreed to a provision allowing Texas to privatize its Medicaid and food stamp provisions in part of the state. In the end, however, Governor Bush rejected this compromise approach, and the legislation did not allow for any privatization.

Current Status: In contrast to the workfare fight, the Republicans have not resurrected the privatization issue so far this fall.

The Administration has requests pending from Arizona and Wisconsin to privatize food stamp and Medicaid functions. The Department of Agriculture is required by law to take some action by October 3 on the Arizona request, which affects only 20% of the state. We are discussing how to respond. There is no such deadline for Wisconsin.

WR - FLSA



Cynthia A. Rice

09/17/97 12:00:56 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Diana Fortuna/OPD/EOP, Emily Bromberg/WHO/EOP  
cc:  
Subject: Wire story on FLSA

Key sentence:

``Everything we work out that attracts Democrats loses Republicans," the House aide said.

Legislation will not be introduced until next week at the earliest, as negotiators see if there is a compromise. But for the moment, the rhetoric on all sides is quieter.

----- Forwarded by Cynthia A. Rice/OPD/EOP on 09/17/97 12:02 PM -----



dcolarulli @ acf.dhhs.gov  
09/17/97 11:36:00 AM

Record Type: Record

To: Cynthia A. Rice  
cc:  
Subject: fwd:

Cynthia -- fyi...drc

\*\*\*\*\*

Mr. Dana Colarulli  
Administration for Children and Families  
dcolarulli@acf.dhhs.gov  
202-401-6951 (phone)  
202-205-9688 (fax)

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Original Text

From: Melissa Skolfield@ASPA@OS.DC, on 9/17/97 11:13 AM:  
To: John Monahan@OAS@ACF.WDC, Michael Kharfen@OPA@ACF.WDC

Wanted to be sure you saw this. please pass on to Olivia and Cynthia.

M.

GOP leaders looking for middle ground on workfare debate

WASHINGTON (AP) Republicans on Capitol Hill have backed away from a veto dare and now say they want to compromise with the

Clinton administration over which labor laws should apply to welfare recipients on work assignments.

“We don't want to fight with the administration on this,” Rep. Clay Shaw, R-Fla., chairman of the House subcommittee that handles welfare, said Tuesday. “We don't want to face a veto and try to override the veto.”

But that may not be easy, as the GOP's most conservative leaders argue that people collecting welfare benefits should be exempted from all labor laws—a position untenable to the administration.

Congressional Republicans, along with many governors, have argued that people in “workfare” slots are essentially still training for work, not actually working, and should not enjoy the full protection of federal labor laws.

President Clinton, with strong backing from labor unions, has said the government should do all it can to make the world of welfare resemble the world of work.

There's no question that a welfare recipient who gets hired for a regular private sector job is entitled to all labor protections.

At issue is work either created by the government for those who cannot find work on their own or special “workfare” slots offered by community service groups and private employers for people still collecting welfare. It's not clear which of these workers would retain the labor protections under a compromise plan.

In budget negotiations over the summer, House Republicans tried to exempt most welfare recipients from labor laws, saying they are not employees. But the administration threatened to veto the balanced budget bill unless the provision was removed, and the GOP backed down.

Still, leaders vowed to continue the fight, and House Speaker Newt Gingrich charged that Clinton was “trying to undermine and destroy welfare reform.” He and others threatened to pass a bill on that issue alone and dare him to veto it.

But Shaw said Tuesday that Republicans are now focusing on finding a solution the administration can support.

There is room for compromise, according to congressional and administration officials. For instance, states might be satisfied if they didn't have to pay Social Security and unemployment compensation taxes on behalf of workfare participants.

The minimum wage, which is where the fight began, is not much of an issue anymore. Congress and the administration agree that people on work assignments should be paid the equivalent of the minimum wage, including the value of cash welfare payments and food stamps.

But the administration will insist there is no broad statement that welfare recipients are not real employees. But that could be a stumbling block for conservative House Republicans who won't be satisfied unless the law makes it explicitly clear that workfare workers are not employees, said a senior Republican House aide who spoke on condition of anonymity.

Some state officials and their GOP allies fear community service groups and private employers will not hire welfare recipients if they fear being sued under any of two dozen labor laws.

“Everything we work out that attracts Democrats loses Republicans,” the House aide said.

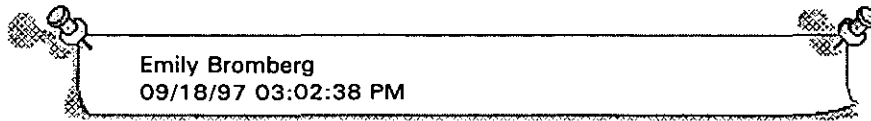
Legislation will not be introduced until next week at the

earliest, as negotiators see if there is a compromise. But for the moment, the rhetoric on all sides is quieter.

``We obviously want people to spend time in training," Donna Shalala, the secretary of Health and Human Services, said Tuesday at a news conference with Shaw on an unrelated matter. ``We also believe they should have a fair and living wage."

APWR-09-16-97 1719EDT

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Received by NewsEDGE/LAN: 9/16/97 5:19 PM



Record Type: Record

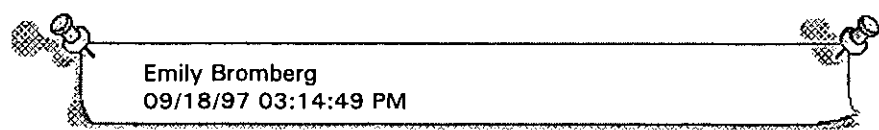
To: Cynthia A. Rice/OPD/EOP

cc: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Diana Fortuna/OPD/EOP, Emil E. Parker/OPD/EOP

Subject: Re: FLSA Update 

i talked to several govs staff--and according to them, haskins is only calling a meeting if he has paper and a deal to offer and as of an hour ago, no meeting with dem govs had been scheduled. haskins told chiles staff that he was close to having sign-off on the original proposal.






Record Type: Record

To: Cynthia A. Rice/OPD/EOP

cc: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Diana Fortuna/OPD/EOP, Emil E. Parker/OPD/EOP

Subject: Re: FLSA Update 

latest news: meeting with dem govs tomorrow at 1:30 with haskins. carper and chiles staff told him that they will not support a bill with those additions (no unionization, etc.). They have no idea what haskins will come in with tomorrow.

fyi, nga exec committee meeting is 9/23. carper has been assured by voinivich that he will not force a vote on flsa. however, i could see a meting with govs and shaw or a press conference if there is a bill.

W2-PLM



Cynthia A. Rice

09/18/97 01:49:46 PM

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Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: FLSA Update

The word is that the Republican leadership thought the idea on the table (amending the Shaw plan to allow no prevailing wage, union organizing, or punitive damage awards) does not go far enough. They want to either:

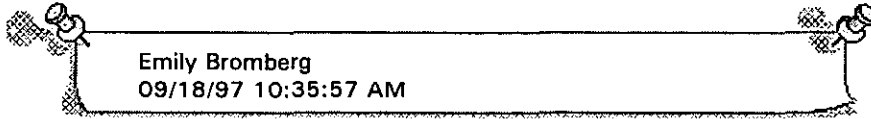
- 1) Start anew; or
- 2) Add a new title defining a type of community work experience that is training and would not be subject to FLSA

Haskins is apparently meeting with governors staffs tomorrow to discuss.

Message Sent To:

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Bruce N. Reed/OPD/EOP  
Elena Kagan/OPD/EOP  
Diana Fortuna/OPD/EOP  
Emily Bromberg/WHO/EOP  
Emil E. Parker/OPD/EOP



Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Cynthia A. Rice/OPD/EOP

cc:

Subject: flsa

At this morning's senior staff meeting, Mickey asked Podesta and Erskine to call an FLSA meeting today or tomorrow. Apparently, Mickey told them that we don't have a position or a message. I tried explaining to him that the agencies were looking at the Shaw proposal, that the issues were complicated, and that we were meeting at a staff level to work on the issues. I also attempted to explain the strategy options, and that the Shaw proposal may just explode. I was not successful. Sorry.

**Fred Duval** 09/09/97 10:07:06 AM

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Record Type: Record

To: John Podesta/WHO/EOP

cc: See the distribution list at the bottom of this message

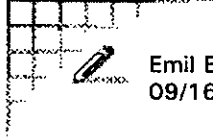
Subject:

Gov Carper has pulled back - for now - on NGA policy on FLSA. There will be no proposed policy reviewed by the staff coordinating committee meeting today in advance of the NGA Executive Committee meeting on the 22d. The Governors are, however, reviewing with Clay Shaw a three part package they will each be **individually** asked to support. There will be fairly broad bi-partisan support for it. DPC is reviewing.

Message Copied To:

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Elena Kagan/OPD/EOP  
Cynthia A. Rice/OPD/EOP  
Emily Bromberg/WHO/EOP  
Mickey Ibarra/WHO/EOP  
Karen Tramontano/WHO/EOP



Emil E. Parker  
09/16/97 03:17:59 PM

Record Type: Record

To: Diana Fortuna/OPD/EOP, Cynthia A. Rice/OPD/EOP  
cc: Elena Kagan/OPD/EOP, Gene B. Sperling/OPD/EOP, Russell W. Horwitz/OPD/EOP  
Subject: FLSA

NEC and Treasury are both very concerned about the overly broad definitions of work experience and community service in the draft Shaw legislation. This vagueness, in conjunction with the FICA and FUTA exemptions for these activities, creates a strong incentive for States to label subsidized public or private sector employment as work experience or community service. Participants in subsidized employment could consequently be denied the EITC.

As you know, the Administration went to extraordinary lengths to fix, at the eleventh hour, a provision of the 1997 tax bill that could also have made recipients in subsidized employment ineligible for the EITC. The Shaw legislation would essentially negate that effort.

Potential fixes include 1) prohibiting workfare in the private for-profit sector; 2) limiting the FICA and FUTA exemptions to workfare in the public or private non-profit sectors (although a FUTA exemption may not be necessary outside the private for-profit sector); and 3) tightening the definition of work experience and community service (e.g., positions in these categories must be 100 percent subsidized with TANF and food stamp funds).

I appreciate your past and present efforts to include the NEC in the FLSA policy development process. Due to the tax implications, Gene would like the opportunity to review any suggested fixes (or freestanding Administration proposals) before they are shared with Haskins or the governors on even an informal basis.

Thank you very much.

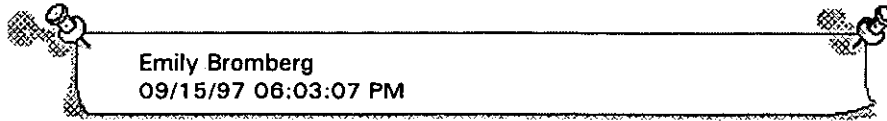
▶ **Diana Fortuna**  
09/16/97 06:10:59 PM  
.....

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP  
cc: Cynthia A. Rice/OPD/EOP  
Subject: Question for you on FLSA strategy

At today's weekly welfare meeting, DOL argued rather effectively that we should make an immediate, concerted effort to alert Democratic Governor staffs to the fact that, as written, Shaw's draft appears to undermine the employee status of those on workfare, even though Shaw says that that was not his goal. Emily has chatted with Carper and Chiles staff, but she hadn't yet reached Miller and Dean. I know we don't want to get drawn into discussing how to fix Shaw's draft. But if we avoid that, it would certainly be helpful to scare them out of signing on. If we want to limit it, we could talk only to Miller and Dean and ask them to pass the word. (We would presumably also say we continue to oppose weakening the work requirements.)

Cynthia and I think this is a good idea. What do you think?



Record Type: Record

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

cc:

Subject: flsa

I talked to Chiles and Carper's staff. Both are totally behind the Shaw bill as it is currently and will likely come to DC and stand behind Shaw at a press conference. Carper/Chiles claim to have 5 more D Govs--but not Dean or Romer. In addition, they heard that there might be some additions to the bill--like no prevailing wage/minimum wage has to be the max; no punitive damages if somebody takes the state to court; and something about nothing in the bill should be interpreted as pro-unionization. It sounded like Shaw's caucus was starting to add a whole bunch of stuff.

Cynthia and I agree that it will be very difficult to get the Dem Govs to sign onto compromise language , because this bill is evrything they ever wanted. However,they are ready to hear what will are willing to accept. Perhaps your Tanner/Stenholm call tomorrow will help on strategy.

▶ Diana Fortuna  
09/15/97 05:31:50 PM

.....

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP  
cc: Cynthia A. Rice/OPD/EOP, Cathy R. Mays/OPD/EOP, Laura Emmett/WHO/EOP  
Subject: FLSA Materials for your review asap before conference call Tuesday at 11 am

Attached is Cynthia's and my best effort to make sense of where we are on Shaw's new workfare compromise. Since there are major choices to be made and we are tentatively scheduled to talk with Tanner/Stenholm tomorrow at 11, it would be very helpful if you could either read this tonight or if we get a chance to talk before the meeting. (There's always the staff meeting at 9:15 as a fallback.)

We got the agencies' reactions this morning. The main news items are: (1) Haskins' draft legislation raises concerns on labor protections, but they seem to be fixable IF Haskins is sincere in wanting to fix them; (2) the FICA/FUTA exemption includes "private sector workfare", a concept we are afraid will blossom if employers can avoid those taxes, to the detriment of private sector jobs; and (3) the definition of community service is so broad that employers may have an incentive to call everything community service to get around FICA.

Elena, DOL says that the draft manages to allow the checks to come from welfare offices rather than from the employer, without doing violence to the person's employee status. (Employers would still be required to keep records of hours worked.)

We pushed HHS to quantify how much these provisions would weaken the work requirements, an assignment they were singularly unenthusiastic about. They claim they will get us something by COB today. DOL is quietly checking with the labor unions to see what they think of all this. Emily is checking with Democratic Governors to see if any of them are already committed to Shaw's proposal.



work0915.wp



## Options for Reaction to Shaw Minimum Wage/Workfare Proposal

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

not a technical  
fix.

### Description of W&M compromise:

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

### Four Possible Alternatives

#### Alternative 1:

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

#### Alternative 2:

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

OK

**Alternative 3:**

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

OK  
 more like than 0.2?  
 Only some states?

**Alternative 4:**

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

NOT OK.

**Other Possible Things to Demand in Exchange**

**Waivers:**

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

what doing now?

]?? In most of above, we'd be getting rid of 6-week limit, no?



STATE OF DELAWARE

WASHINGTON OFFICE

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Thomas E. Carper  
Governor


J. Janathon Jones  
Director

Maura J. Callen  
Deputy Director

Fax Memorandum

To: NGA Executive Committee Democratic Staff  
Bob Rogan  
Alan Salazar  
Debby Kilmer  
Nicole Lamboley

cc: Katie Whelan

From: JJJ 

Re: FLSA

Date: August 26, 1997

Bruce -  
This is what Carper  
wants to do on FLSA -  
type issues. We never  
participated in a  
conference call. Fred  
D. did hold one, but tells  
me that he did not discuss  
policy. (He just urged  
them to hold off for  
political reasons.) We  
should engage soon.

Elena

Attached is a description of issues that I propose we raise with the White House tomorrow on our conference call. I have formatted this so that we can easily review each point with the WH staff in order to get their response. This document is in no way meant to imply that any individual governor or the DGA or the NGA has signed off on any of the attached points. It is simply a discussion piece.

attachment

AUG. 27, 1997 9:47 AM  
AUG-28-97 TUE 01:43 PM

1. Support the Department of Labor's finding with respect to the application of the minimum wage to work experience placements. States would not be allowed to require work experience participants to "work" beyond the hours determined by the minimum wage calculation. Specify that the maximum hours of participation in work experience and community service will be determined by dividing benefits by the minimum wage. The benefit calculation will include cash assistance and food stamps. Note: under this proposal all food stamp programs would be eligible not just simplified food stamp programs as under the Labor Department ruling.
2. Allow states to combine activities to meet the hourly participation requirements. States would be allowed to combine hours from job search and job readiness activities, basic skills education, vocational educational training, job skills training, and high school or GED completion to meet the work requirement.
3. Clarify that payment to individuals engaged in work experience programs is not compensation for services performed. This approach would exempt those individuals from FICA and FUTA. Note: This proposal assumes that all community work experience placements are covered including those in the private sector.
4. Clarify that individuals engaged in work experience programs are not employees and therefore are not covered by a host of labor laws, including prevailing wage, OSHA, and others.

TO: Bruce  
Elena

FROM: Diana

CC: Cynthia

DATE: September 18, 1997

SUBJECT: Arizona Privatization

We are planning to meet tomorrow with USDA and HHS on Arizona's proposal to privatize food stamps, Medicaid, child care, and other programs. Attached is a matrix that lays out the elements of Arizona's proposal, and compares them with Wisconsin's. USDA's deadline for action is October 3; it has to approve, deny, or request more information by then. USDA's inclination is to request more information (not surprisingly). HHS is not under any deadline, and so they are lumbering along at their usual pace.

If we were seeking a middle ground on this (and I don't mean to imply that we are), USDA offered an additional idea, in lieu of approving one or both of these proposals. They could ask states for demonstration proposals via a Federal Register notice. However, I noted to them that that would raise the question of why neither Arizona nor Wisconsin are good enough for them, especially since USDA has never sat down and engaged either state in a substantive discussion or negotiation to see what they would agree to.

Key things about Arizona: it's a pretty broad privatization of functions, including the whole certification process. It only includes about 13% of the caseload. They would like to have the authority to go state-wide two years later, but this is probably negotiable. It wouldn't start till January 1999. Since the impetus for this came from the state legislature, the change in Governor may not affect this much.

Wisconsin would also privatize all certification decisions, although they would allow counties to compete against private entities for the business. They would like to go state-wide immediately, minus the 25% of the caseload that is elderly/disabled. They already privatized TANF. However, since many counties competed successfully against private firms in the bidding for this work, the current extent of true privatization is probably much less.

Finally, we have often noted how quiet Wisconsin has been on this matter. They may have their hands full on TANF and have adjusted for the time being to the current mixed privatization situation. A more ominous possibility is that they have figured out that the new food stamp simplification option would arguably allow them to privatize; USDA says they have been inquiring about the simplification option. USDA lawyers are looking quietly at whether a state really could privatize just by exercising this option.

DRAFT

Features	Arizona	Wisconsin
Programs Privatized	TANF Food Stamps Medicaid Child Care State General Assistance Job Placement of TANF/FS recip.	TANF Food Stamps Medicaid
Functions Privatized	All certification decisions (includes benefit level and eligibility) Fair Hearing decisions (negotiable)  <u>State continues to do:</u> Program Policy Quality control reviews	All certification decisions  <u>State continues to do:</u> Fair Hearing decisions Program policy Quality control reviews
Portion of State Affected	Eastern Maricopa County -- 13% of caseload starting 1/99  12 months later, can expand to rural site	Statewide, except for 25% of caseload that is elderly or disabled (already did TANF state-wide)  But counties are winning bids, so true privatization is much less at the moment
State Legis	Plan passed by state legislature	Plan passed by state legislature
Evaluation	Intent appears good	Proposed evaluation doesn't assess effect of privatization on certification process
Progress to state-wide?	After 18 mos, board appointed by Governor would determine whether to expand state-wide. State wants 2-year federal demo, with authority to go statewide after that.	Intent is to do state-wide immediately, but probably open to negotiation
Opposition	Two state legislators opposed in 7/97 letter to HHS largely because demo also includes tougher TANF rules unrelated to privatization (lower benefits in demo area; minimum wage questions; fewer protections for disabled and domestic violence victims)	1,000 letters from state employees/AFSCME on potential for reduced services and job security issue

<b>Features</b>	<b>Arizona</b>	<b>Wisconsin</b>
Deadline for action	Friday, October 3 (by law, USDA must approve, deny, or request more information)	None



# WR - privatization

ArizWorks - received in July

FS, Medicaid, jobs, child care - want to privatize all as integrated unit.  
certificati- + eligibility process  
also appeals.

Oct 4: Deadline

|| must notify cong if denial.

Request further info?

lack of info on nature of evaluation

Florida is coming.

\* | legal opinion re  
| notificati- how long  
| stop clock for?

Privatization - Three simplified program  
might be possible!!

Charg - relying on transfer of auth  
to OPM. Tennants

~~was~~ - long time ago, we were recommending WI. Quieted down.

May not be ideal demo - because they are asking to privatize a little  
kind of program - so 2 variables.

If we were interested in pursuing demo, above would be a real problem.



Cynthia A. Rice

09/12/97 11:43:35 AM

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Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Diana Fortuna/OPD/EOP

cc:

Subject: Rep. Levin's staff on workfare

I spoke to Eric Gould this morning. He and his boss are also concerned about the proposal weakening the work requirements, and want to work with us in deciding whether this is a battle to fight.

Eric pointed out something I think is important that connects with some of the questions, Diana, that we discussed earlier -- that the legislation's definition of work experience and community service programs is so broad that nearly all work could be defined as such (particularly since the private sector is included). Thus this is a weakening of the work requirements that could apply to all work. Could you get HHS' feedback on that interpretation of the language?

Diana -- I also left on your chair a handwritten note of additional questions that occurred to me while reading the legislation.



Cynthia A. Rice

09/08/97 07:38:13 PM

Record Type: Record

To: See the distribution list at the bottom of this message  
cc:  
Subject: FLSA News

A House Democrat told me Shaw's staff thinks they can get bipartisan support from governors on a proposal that:

- 1) The workfare paycheck would come not from the employer but from the welfare agency. (Diana's asking DOL if this is a problem. Without the language, which we do not have, we may not be able to tell.)
- 2) The work rates would be weakened. Low benefit states could require fewer than 20 hours of real work (people would have to work only as many hours as benefits divided by the minimum wage) and job search, etc. could be used to fill the gap. Also, a state "retaining" child support payments could not require a parent to work for those benefits, thus allowing states to lower work rates below the currently required 20 hours for those families.
- 3) FICA and FUTA would not apply.

They expect to hear back from the governors on Wednesday.

If they get bipartisan support, they plan to have a full celebration (committee hearing, press conference, subcommittee and full committee markups) and have it pass on the suspension calendar in the House.

Message Sent To:

Bruce N. Reed/OPD/EOP  
Elena Kagan/OPD/EOP  
Diana Fortuna/OPD/EOP  
Emily Bromberg/WHO/EOP  
Fred DuVal/WHO/EOP  
Sky Gallegos/WHO/EOP  
Karen Tramontano/WHO/EOP  
Emil E. Parker/OPD/EOP  
Barry White/OMB/EOP  
Larry R. Matlack/OMB/EOP  
Keith J. Fontenot/OMB/EOP


WR-FLSA



Cynthia A. Rice

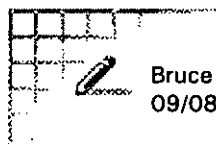
09/08/97 01:43:42 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP  
cc: Diana Fortuna/OPD/EOP, Elena Kagan/OPD/EOP  
bcc:  
Subject: Re: Podesta-Carper conversation on FLSA 


Diana did some great analysis on current law and the prior Hill proposal on work issues and child support -- it was next on my list of things to give you this morning! Let us take that and put a list of options on top and give it to you then.

Bruce N. Reed



Bruce N. Reed  
09/08/97 11:30:36 AM

Record Type: Record

To: Diana Fortuna/OPD/EOP  
cc: Elena Kagan/OPD/EOP, Cynthia A. Rice/OPD/EOP  
Subject: Re: Podesta-Carper conversation on FLSA 

I talked to Carper Friday, and told him not to push this, but I don't think Podesta or I convinced him.

We still need to work out a clear position on the hours/fill-in-the-gap/how-to-count-child-support issues that we dodged last time. They're not going away, but we should find a way that works for us.

▶ **Diana Fortuna**  
09/05/97 05:17:01 PM  
.....

Record Type: Record

To: Bruce N. Reed/OPD/EOP  
cc: Elena Kagan/OPD/EOP, Cynthia A. Rice/OPD/EOP  
Subject: Podesta-Carper conversation on FLSA

FYI, Podesta talked to Carper to reiterate the party line on FLSA. But Fred Duval reports that Podesta seems to have said something positive to Carper about the issue of what counts as work in going from 20 to 30 hours, which was certainly not in the script. We are trying to figure out what happened.

Also FYI, we are hearing that there is an outstanding call to the President from Gov. Thompson on FLSA and that Erskine is planning to return that call on Monday. We expect to review his talking points.

----- Forwarded by Diana Fortuna/OPD/EOP on 09/05/97 05:13 PM -----

**Fred Duval** 09/05/97 04:48:49 PM

---

Record Type: Record

To: Sky Gallegos/WHO/EOP, Mickey Ibarra/WHO/EOP, Diana Fortuna/OPD/EOP  
cc:  
Subject: conf call

Dem Govs on the NGA Exec. Comm. had a conf call today on which Carper described his conversation with Podesta. As you know, while he reiterated our general opposition to the Carper approach, he was a bit more encouraging on the workforce requirements than we were on the staff conf call yesterday. I believe Carper is prepared to freeze the proposed NGA policy but is going to ask the WH to ask Treasury to accelerate the FICA decision. I will call Carper and reiterate that this is not appropriate.

UR-FLSA

▶ **Diana Fortuna**  
09/11/97 07:25:40 PM  
.....

Record Type: Record

To: Elena Kagan/OPD/EOP  
cc: Cynthia A. Rice/OPD/EOP, Laura Emmett/WHO/EOP  
Subject: FLSA language from Haskins

We now have legislative language from Haskins on his proposed "compromise" on FLSA. DOL is looking at it. It appears to say what we expected -- workfare only has to be as many hours as the state can afford, and the balance of the hours can be filled with job search and education; FICA/FUTA don't apply to workfare; checks can still come from the welfare office. The key unknown is whether they have weakened labor protections at all, and it's hard to tell. I'm faxing it to you in case you want to look at it personally.

W2-FLA



Diana Fortuna

09/04/97 12:48:34 PM

.....

Record Type: Record

To: Bruce N. Reed/OPD/EOP

cc: Elena Kagan/OPD/EOP, Cynthia A. Rice/OPD/EOP

Subject: conf call on FLSA we just had

Cynthia and I just did a conference call with Democratic Governors' staff (Carper, Romer, Dean, Chiles). It seemed to go well. The purpose was to put more pressure on Carper to drop the draft NGA resolution he has been circulating among Democratic Governors, in preparation for an NGA meeting next week. Carper's resolution would weaken the work requirements in a number of ways and say that workfare wasn't employment. We made the point strongly that this was not acceptable to us. Carper has come under a lot of pressure from Dean and Romer too, and he seems to be weakening. Carper's guy said his real bottom line was the FICA/FUTA exemption. We stressed it would be a strategic mistake for the Dem Govs to put this on the table with the NGA next week and that, while we got close to a deal on this in the negotiations before, that was in a specific context with specific trades. But we stressed we would keep talking to them about it. It is possible Carper will want to talk to you to confirm what he is hearing from us.

By the way, a new notion is popping up: that there may be such a thing as private sector workfare. Apparently Voinovich is doing it. One issue is that, if we exempt workfare from FICA, we might create an incentive to expand this significantly, since the private sector would then prefer workfare to real or subsidized jobs. We are looking into this more.





the daily report to POTUS  
through COS office. Chie  
has a copy and he will  
need to work with  
correspondence to  
answer when he returns.

Thanks  
Zing

THE WHITE HOUSE

8/19/97

Elena -

Attached is a copy of  
the letter Carper is  
sending to all dem  
govs. I think we need  
to see what happens and  
not intervene - unless you  
think Bruce is  
misrepresented here re:  
his intentions. Let me  
know.

Also - FYI - is a copy  
of a letter from Pataski  
to POTUS on my  
Medicaid veto. We  
are putting this in



STATE OF DELAWARE  
OFFICE OF THE GOVERNOR

THOMAS R. CARPER  
GOVERNOR

8/18/97

*Keelissa / Emily  
Sample letter sent*

*Dem*

*Emily B. -  
waiting is  
fine with me.  
(Price is not  
misrepresented.)  
Elean*

*COUS -  
Pls call  
me -  
also  
- Katzwhdian*

August 13, 1997

The Honorable Pedro J. Rossello  
La Fortaleza, Box 82  
Governor' Office.  
San Juan, Puerto Rico 00901

*Cynthia/Diana -*

*FYI. How are we doing on figuring  
out what we think should count  
e.g. what non-work activities we  
would allow and when; whether to*

Dear Governor Rossello:

*Pedro*

As you may be aware, a handful of individual governors, including Governor Chiles and myself, pushed hard last month for targeted relief from the application of certain labor and tax laws to our state-run community work experience programs. While we agree with the President that people in these positions should be paid the minimum wage, we are very concerned about the possible application of payroll taxes and the impact the minimum wage calculation will have on our ability to meet federally mandated work requirements. Despite our intensive efforts, we were unable to broker a last minute deal between conferees before the budget negotiations were finalized.

*Elean  
cc: Bruce*

For many states with community work experience programs, having to apply payroll taxes to the welfare benefit will pose a financial burden, as well as an administrative burden, on those states and on nonprofits that offer work experience positions. In Delaware, for example, we estimate that the cost to the state for FICA and payroll tax contributions alone would be \$1.7 million annually with full implementation of our workfare program. In addition, many states will find it difficult to meet the federally mandated work requirements if they are not permitted to count other activities. It should be noted that states that are sanctioned not only will lose a percentage of their TANF grant, but will be required to make up the difference with state funds. In Delaware, state law requires that we pay community work experience participants the minimum wage; however, we are fortunate to have a waiver - along with several other states - that allows work experience participants to engage in job search to meet work requirements. This is an option that should be afforded to all states.

At our recent NGA meeting, we had the opportunity to address the broader issue in two forums: in a governors-only work session on Tuesday, and at the closing Executive Committee meeting. In addition, I personally raised this issue there with the President, as I know others did, and received an indication that there might be room for a remedy, particularly in the area of the application of tax laws to work experience programs. In subsequent telephone discussions with Bruce Reed, White House domestic policy adviser, and key conferees Representatives E. Clay Shaw and Sandy Levin, we came very close to reaching agreement on a targeted exemption that would have provided states with relief from FICA, FUTA, and EITC for work experience placements. However, those last minute negotiations ultimately failed because of concerns that the Republican leadership raised over one of two additional provisions that Democratic conferees wanted included in exchange for the tax law exemptions. A provision, acceptable to the Republicans, would have capped at 25 percent the amount of the new \$3 billion welfare-to-work grant that could be used for workfare placements. A second unacceptable provision called for specific legal remedies for gender discrimination to all TANF and welfare-to-work grant recipients. Although we ultimately were unable to get a remedy, reflective of the concerns of most governors, included in the budget reconciliation bill, we did receive assurances from Representative Shaw and Bruce Reed to address the issue again when Congress returns in September.

Given this potential opportunity, Governor Voinovich and I suggested at the Executive Committee meeting on July 30, that NGA go to work now to develop a consensus and attempt to adopt an interim policy on this issue. As a starting point, I suggest that we try to reach consensus on the following points as a basis for such a policy:

- Support the Department of Labor's finding with respect to the application of the minimum wage to work experience placements. States would not be allowed to require work experience participants to "work" beyond the hours determined by the minimum wage calculation. This was the policy under the Community Work Experience Program (JOBS Title) of the Family Support Act. Specify that the maximum hours of participation in work experience and community service will be determined by dividing benefits by the minimum wage. The benefit calculation will include cash assistance and food stamps. *Currently, only states that operate a simplified food stamp program can count food stamps as part of the calculation.*
- Allow states to combine activities to meet the hourly participation requirements. States would be allowed to combine hours from job search and job readiness activities, basic skills education, vocational educational training, job skills training, and high school or GED completion to meet the work requirement.

- Clarify that individuals engaged in work experience and community service are not employees and payment is not compensation for services performed. This was the policy under the Community Work Experience Program (JOBS Title) of the Family Support Act. This approach would exempt individuals engaged in work experience from FICA and FUTA. *The budget reconciliation tax bill made work experience participants ineligible to receive the EITC.*

I realize that this is a tough, potentially divisive issue. It is nonetheless one that we need to work hard to resolve in order to maximize the number of welfare recipients who will be able to participate in community work programs, while reducing the likelihood that states will be penalized for failing to meet work participation requirements. I need your help to develop an approach that will address the concerns of all states. I will phone you by August 22 to ask you whether the three broad points outlined above are acceptable to you and your state. In the interim, I encourage you to discuss the implications for your state of this new federal policy, as well as the alternative outlined above, so that our conversation will be most productive.

*Pedro, I need your help in figuring out a solution here. Thanks!*

Sincerely,

*Tom*

Thomas R. Carper  
Governor

*Scott Michael*

cc: Paula

*229286*



STATE OF NEW JERSEY  
OFFICE OF THE GOVERNOR  
CN-001  
TRENTON  
08625  
(609) 882-6000



*cc Cynthia*

CHRISTINE TODD WHITMAN  
GOVERNOR

July 28, 1997

The Honorable William J. Clinton  
The White House  
1600 Pennsylvania Avenue  
Washington, DC 20500

Dear Mr. President:

I realize that you are making decisions regarding the application of the Fair Labor Standards Act to Community Work Experience enrollees assigned to work by state agencies implementing the nation's reform of its welfare programs. I previously have expressed my support for proposals made by the House of Representatives to ensure a minimum wage for welfare recipients enrolled in workfare projects, as well as time and one-half for overtime beyond forty hours. New Jersey's recently-enacted welfare reform statutes include several other worker protections negotiated with our statewide AFL-CIO, including worker safety, family leave, and anti-discrimination provisions.

I am concerned about the full application of the FLSA to workfare participants, which would seem to require that these welfare recipients become the employees of their public or private, non-profit sponsoring agency. The administrative burden imposed by the FLSA would result in a drastic reduction in work opportunities for welfare recipients in New Jersey, according to a recent survey of workfare sponsors undertaken by our Department of Human Services.

As many as five thousand jobs in our Community Work Experience program may be jeopardized as a result of the application of the FLSA to these welfare recipients. I am concerned that over a five year period, up to 25,000 welfare recipients will therefore not have the opportunity to get the necessary work experience to successfully enter the job market before their five year time limit is reached.

The application of the Fair Labor Standards Act to workfare participants will significantly weaken work opportunities in our welfare reform effort. Minimum wage and overtime protections can certainly be legislated without the onerous administrative burden required to transform welfare recipients into employees as required by the Fair Labor Standards Act.

Yours sincerely,


Christine Todd Whitman  
Governor

*Jul 29 1997*

FLSA

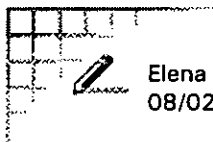
▶ **Diana Fortuna**  
08/04/97 09:31:07 AM  
.....

Record Type: Record


To: Elena Kagan/OPD/EOP  
cc:  
bcc:  
Subject: Re: Latest latest on EITC and subsidized jobs/workfare 

We "fixed" it in the sense that workfare is not eligible for the EITC, but subsidized jobs still are. (Actually Center on Budget fixed it with help from NEC.) But if you've seen Bruce's latest email on this, it's not clear he agrees with this!

Elena Kagan

 Elena Kagan  
08/02/97 03:32:24 PM

Record Type: Record

To: Diana Fortuna/OPD/EOP  
cc:  
Subject: Re: Latest latest on EITC and subsidized jobs/workfare 

I'm confused; did we fix this?

FLSA



Cynthia A. Rice

07/30/97 05:59:17 PM

Record Type: Record

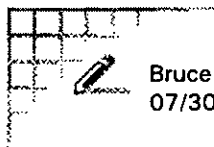
To: Elena Kagan/OPD/EOP, Emily Bromberg/WHO/EOP, Diana Fortuna/OPD/EOP

cc:

Subject: Re: What can we say re: FICA/EITC discussions

fyi

----- Forwarded by Cynthia A. Rice/OPD/EOP on 07/30/97 05:59 PM -----




Bruce N. Reed

07/30/97 05:31:19 PM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP

cc:

Subject: Re: What can we say re: FICA/EITC discussions 

Let's go ahead and say that while we'll continue to stand firm on FLSA, we're planning to work together in a bipartisan manner to deal with FICA, FUTA, and EITC. (We shouldn't say for certain what the vehicle will be or when, but I assume it will be an approps bill.)



Cynthia A. Rice

07/30/97 05:17:22 PM

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Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Diana Fortuna/OPD/EOP

cc:

Subject: What can we say re: FICA/EITC discussions

As you probably know, word is floating around town that the FICA/EITC issue will be "renegotiated" in September. Haskins told a large group of House staffers, the Governors are blabbing, and the Post called ACF. What should we be saying in response to questions? Emily Bromberg, for example, wants to know.



FLSA



Cynthia A. Rice

07/22/97 09:01:34 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:

Subject: Byrd rule update

Tonight, Joan Huffer of Senator Dachle's staff gave me an update of their discussions with Senate Parliamentarian Bob Dove (I believe she'd already filled you in, Barbara).

1) Dove says he believes FLSA violates the Byrd rule and does not expect to see anything that would change his mind.

2) Dove believes the new version of the privatization provision does not violate the Byrd rule. He told this directly to Senator Phil Gramm based on the fact that the new provision had a cost and covers all states. Huffer thinks there are still grounds on which the provision violates the Byrd rule, and will try to argue them tomorrow, but believes Dove won't want to reverse himself on a statement he made directly to Senator Gramm.

3) Huffer spoke to one of Dove's assistants on the House vocational education provision. The assistant will recommend to Dove that he rule it violates the Byrd rule.

4) SSI State Supplement. When Huffer told Dove that CBO couldn't decide if the provision had a small cost or a small savings, Dove told Huffer he thinks it violates the Byrd rule. Now CBO has apparently changed its mind and plans to assign a small cost. Huffer will go back to Dove with this new news tomorrow and try to persuade him it shouldn't matter.

Message Sent To:

Bruce N. Reed/OPD/EOP  
Elena Kagan/OPD/EOP  
Kenneth S. Apfel/OMB/EOP  
FOLEY\_M @ A1 @ CD @ LNGTWY  
Janet Murguia/WHO/EOP  
Barbara Chow/WHO/EOP  
Barry White/OMB/EOP  
Keith J. Fontenot/OMB/EOP  
Lisa M. Kountoupes/OMB/EOP  
Diana Fortuna/OPD/EOP  
Emil E. Parker/OPD/EOP  
Charles Konigsberg/OMB/EOP



**Diana Fortuna**

08/01/97 12:29:05 PM

.....

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP

cc: Cynthia A. Rice/OPD/EOP, Laura Emmett/WHO/EOP


Subject: Latest latest on EITC and subsidized jobs/workfare

You probably already know this and were involved in it, but yesterday the subsidized jobs problem with the EITC workfare exemption got fixed, through an enrolling resolution. The word I got was that Center on Budget apparently pushed it very hard, and Gene got involved, as did Karl Scholtz at Treasury. The Republicans got some minor airlines thing in exchange.

FL 1A

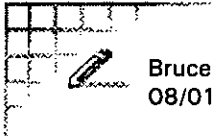

▶ **Diana Fortuna**  
08/01/97 05:43:00 PM  
.....

Record Type: Record


To: Bruce N. Reed/OPD/EOP  
cc: Elena Kagan/OPD/EOP, Cynthia A. Rice/OPD/EOP  
bcc:  
Subject: Re: Latest latest on EITC and subsidized jobs/workfare 

I don't have the language yet, but Ellen Nissenbaum and Emil Parker both say it accomplishes the goal -- makes the EITC exclusion for workfare only, and not for subsidized public/private sector jobs.

Bruce N. Reed

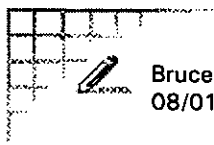
  Bruce N. Reed  
08/01/97 05:36:24 PM

Record Type: Record

To: Diana Fortuna/OPD/EOP  
cc:  
Subject: Re: Latest latest on EITC and subsidized jobs/workfare 

what did they end up with?

FLM



Bruce N. Reed  
08/01/97 06:05:13 PM

Record Type: Record

To: Diana Fortuna/OPD/EOP

cc: Elena Kagan/OPD/EOP, Cynthia A. Rice/OPD/EOP

Subject: Re: Latest latest on EITC and subsidized jobs/workfare

It's no big deal, but I'm not sure that's the right policy.

Can someone please explain to me the following: if workfare is employment and requires the state to pay at least the minimum wage, what is the difference between a workfare job and a subsidized public job?

Draft letter from President Clinton to Speaker Gingrich and Leader Lott

After extensive discussion between you and various members of my staff, I wanted to confirm in writing the essential elements of the agreements reached on the application of federal labor legislation to work experience or community service with state or local governments or private, nonprofit entities (commonly known as "workfare") under the new welfare-to-work grant.

First, no Department of my Administration [will enforce] any provisions of federal law that relate to worker protections or employment taxes with regard to participants in workfare programs under the new welfare-to-work grant except the following:

- Fair Labor Standards Act, if applicable; as
- Title VI of the Civil Rights Act of 1964;
- the Americans with Disabilities Act of 1990;
- Section 504 of the Rehabilitation Act of 1973;
- the Age Discrimination Act of 1975;
- other federal anti-discrimination laws as applicable;
- the Occupational Safety and Health Act, as applicable, and all other applicable health and safety laws;
- displacement as provided for in existing law and the Balanced Budget Act of 1997.

This moratorium on enforcement will last until May 1, 1998. During this period, my Administration will work with the Congress and others on a bipartisan basis to agree on a permanent solution to the issue of what protections should apply to workfare participants.

The Balanced Budget Act of 1997 will contain a provision that applies a moratorium on private rights of action against state and local government for federal laws related to workfare except on private rights of action if applicable under the laws listed above.

as

Nothing in this letter shall be construed to indicate that any participant in a workfare program is or is not an employee for purposes of any law, or is or is not otherwise entitled to protections provided to employees under any law.

take any discretionary action

Draft letter from President Clinton to Speaker Gingrich and Leader Lott

After extensive discussion between you and various members of my staff, I wanted to confirm in writing the essential elements of the agreements reached on the application of federal labor legislation to work experience or community service with state or local governments or private, nonprofit entities (commonly known as "workfare") under the new welfare-to-work grant.

First, no Department of my Administration will enforce any provisions of federal law that relate to worker protections or employment taxes with regard to participants in workfare programs under the new welfare-to-work grant except the following:

- Fair Labor Standards Act, if applicable;
  - Title VI of the Civil Rights Act of 1964;
  - the Americans with Disabilities Act of 1990;
  - Section 504 of the Rehabilitation Act of 1973;
  - the Age Discrimination Act of 1975;
  - other federal anti-discrimination laws as applicable;
  - the Occupational Safety and Health Act, as applicable, and all other applicable health and safety laws;
- 
- displacement as provided for in existing law and the reconciliation bill.

*as otherwise*

*as I  
all way  
down*

This moratorium on enforcement would last until May 1, 1998. During this period, my Administration will work with the Congress and others on a bipartisan basis to agree on a permanent solution to the issue of what protections should apply to workfare participants. *THEY SHOULD BE CONSIDERED AS EMPLOYEES. + WHETHER*

The reconciliation bill will contain a provision that applies a moratorium on private rights of action against state and local government for federal laws related to workfare except on private rights of action if applicable under the laws listed above.

Nothing in this letter shall be construed to indicate that any participant in a workfare program is or is not an employee for purposes of any law, or is or is not otherwise entitled to protections provided to employees under any law.

*to the extent permissible*

*Dawn Johnson -  
Dept - indep ag??*

*Smith checking on NLRB  
"not enforce"*

*For to check w/ Blavin -  
concept (consume protection)  
workfare as allowable  
use*

"(2) Taxpayers making improper prior claims.--In the case of a taxpayer who is denied credit under this section for any taxable year as a result of the deficiency procedures under subchapter B of chapter 63, no credit shall be allowed under this section for any subsequent taxable year unless the taxpayer provides such information as the Secretary may require to demonstrate eligibility for such credit."

(2) Due diligence requirement on income tax return preparers.--Section 6695 is amended by adding at the end the following new subsection:

"(g) Failure To Be Diligent in Determining Eligibility for Earned Income Credit.--Any person who is an income tax return preparer with respect to any return or claim for refund who fails to comply with due diligence requirements imposed by the Secretary by regulations with respect to determining eligibility for, or the amount of, the credit allowable by section 32 shall pay a penalty of \$100 for each such failure."

(3) Extension procedures applicable to mathematical or clerical errors.--Paragraph (2) of section 6213(g) (relating to the definition of mathematical or clerical errors) is amended by striking "and" at the end of subparagraph (H), by striking the period at the end of subparagraph (I) and inserting ", and", and by inserting after subparagraph (I) the following new subparagraph:

"(J) an omission of information required by section 32(k)(2) (relating to taxpayers making improper prior claims of earned income credit)."

(b) Increase in Net Loss Disregarded for Modified Adjusted gross Income.--Section 32(c)(5)(B)(iv) is amended by striking "50 percent" and inserting "75 percent".

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

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

(d) Certain Nontaxable Income Included in Modified Adjusted Gross Income.--Section 32(c)(5)(B) is amended--

(1) by striking "and" at the end of clause (iii),

(2) by striking the period at the end of clause (iv)(III),

(3) by inserting after clause (iv)(III) the following new clauses:

"(v) interest received or accrued during the taxable year which is exempt from tax imposed by this chapter, and

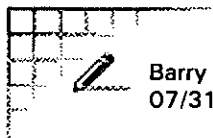
"(vi) amounts received as a pension or annuity, and any distributions or payments received from an individual retirement plan, by the taxpayer during the taxable year to the extent not included in gross income.", and

(4) by adding at the end the following new sentence: "Clause (vi) shall not include any amount which is not includible in gross income by reason of section 402(c), 403(a)(4), 403(b), 408(d) (3), (4), or (5), or 457(e)(10)."

(e) Effective Dates.--

(1) The amendments made by subsection (a) shall apply to taxable years beginning after December 31, 1996.





Barry White  
07/31/97 09:20:31 AM

Record Type: Record

To: Elena Kagan/OPD/EOP, Cynthia A. Rice/OPD/EOP  
cc: Larry R. Matlack/OMB/EOP, Keith J. Fontenot/OMB/EOP  
Subject: Workfare, the Govs, and Employment Taxes

See the remarks attributed to Bruce re hanging FICA, FUTA, etc on to an approps bill. True that the White House supports this? on Labor/HHS/ED?

----- Forwarded by Barry White/OMB/EOP on 07/31/97 09:19 AM -----

Larry R. Matlack 07/31/97 08:56:00 AM

Record Type: Record

To: See the distribution list at the bottom of this message  
cc:  
Subject: Workfare, the Govs, and Employment Taxes

----- Forwarded by Larry R. Matlack/OMB/EOP on 07/31/97 08:53 AM -----

BNA

## Daily Report for Executives

No. 147  
Thursday July 31, 1997

### Tax, Budget & Accounting

#### Employment Taxes Governors Will Push Congress to Enact Tax Exemptions for Workfare Employers

LAS VEGAS, Nev.--The nation's governors said July 30 they hope to use their united influence to urge Congress to append the budget deal to include exemptions for employers who hire workfare participants.

"We're going to continue to work [with Congress] on part of it, the only part that still gives us a problem," said Nevada Gov. Bob Miller (D), who stepped down as chair of the National Governors' Association.

"Most of use have no objection to the minimum wage part of it, and that's a big part," Miller said. He passed the chairmanship of the organization on to Ohio Gov. George Voinovich (R).

The governors do have a problem with employers who hire workfare recipients being subject to "some of

the onerous aspects" of the Fair Labor Standards Act, Voinovich said.

During the 89th annual meeting of the NGA in Las Vegas, the governors reached a consensus on their own differences on workfare exemptions. Delaware Gov. Thomas R. Carper (D), new vice chair of the organization, said he regretted that the governors forged an agreement too late in the budget negotiation process to have an impact.

He said governors hope to wield their influence in the remaining days of the current congressional session.

### **Workfare Recipients Not Like Regular Employees**

Carper spelled out the governors consensus, saying the states agreed workfare recipients should be paid the minimum wage. However, he said, governors felt workfare recipients should not be treated as regular employees with respect to Federal Insurance Contributions Act withholding taxes, unemployment taxes.

Also, he said, "they should not be eligible for the earned income tax credit." Coupled with the minimum wage, extending the earned income tax credit to workfare workers would mean employers would be paying them as much as \$7 an hour, Carper said.

Carper told BNA a consensus is emerging among the governors on how workfare recipients meet the minimum requirement of 25 hours worked a week in the second year of work and 30 hours of work in the third year.

The governors also discussed whether job search time and vocational training could be credited toward the minimum, Carper said.

Carper said Bruce Reid, adviser to President Bill Clinton on domestic policy, was hopeful the states could append the governor's concerns in the appropriations bill.

Voinovich said the White House and Congress are aware of the governors' concerns and "will be responsive to our suggestions on how to fix the problem."

"Perhaps some of the members of Congress don't realize how important this is to us," he said. "We are real concerned about truly reforming our welfare system from a way of life to a way of work."

Miller stressed that governors' concerns about FLSA exemptions should be weighed against the fact that states came out well in the budget agreement.

"This agreement contains an enormous amount of suggestions of the governors," he said. He noted that governors had unusual access to the process, a few of them having met with the budget conferees last week in Washington, D.C.

"The deal is overwhelmingly positive for the states," he added.



*By Tripp Baltz*

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Message Sent To: \_\_\_\_\_



Cynthia A. Rice

07/31/97 12:02:16 PM

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Record Type: Record

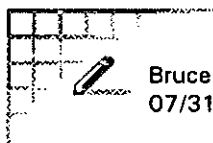
To: Elena Kagan/OPD/EOP

cc:

Subject: Re: Workfare, the Govs, and Employment Taxes

fyi

----- Forwarded by Cynthia A. Rice/OPD/EOP on 07/31/97 12:02 PM -----




Bruce N. Reed

07/31/97 10:58:45 AM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP

cc: Diana Fortuna/OPD/EOP

Subject: Re: Workfare, the Govs, and Employment Taxes 

The part that's true is that I told them we'd help them on FICA, FUTA, and EITC. I told them we'd never give way on FLSA.

I'm glad to see Voinovich say the WH is sympathetic while some members of Congress just don't understand.

▶ **Diana Fortuna**  
07/31/97 12:00:50 PM  
.....

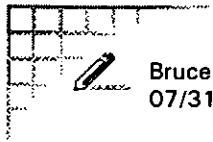
Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP  
cc: Cynthia A. Rice/OPD/EOP  
Subject: Tax bill appears to ban EITC for workfare

We are double checking, but here is part of Section 1085 of the tax bill:

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

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




Bruce N. Reed  
07/31/97 09:08:16 AM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Cynthia A. Rice/OPD/EOP, Diana Fortuna/OPD/EOP

Subject: Re: What can we say re: FICA/EITC discussions 

We should lean forward. The President told me last night he was fine with giving that up. (In fact, if it weren't for our other commitments, he would be fine with the exemption from the 1988 law.)



**Diana Fortuna**


07/31/97 02:21:17 PM

.....

Record Type: Record



To: Bruce N. Reed/OPD/EOP

cc: Elena Kagan/OPD/EOP, Cynthia A. Rice/OPD/EOP

Subject: Re: Tax bill appears to ban EITC for workfare 

Unfortunately it appears to apply to subsidized employment as well as workfare. OMB staff says they spotted this a day or two ago, and gave OMB higher-ups and Treasury a cleaned-up version that made it clear this should only apply to workfare, but they don't know what happened after that.

FLSA

  Barry White  
07/24/97 10:55:07 PM

Record Type: Record

To: Jacob J. Lew/OMB/EOP  
cc: See the distribution list at the bottom of this message  
Subject: Welfare to Work Options

Attached are two one-pagers with the options discussed tonight:

Welfare to Work Program Structure Option  
FLSA Options

Please e-mail questions or corrections to both Larry and me in the morning, or call whichever you can find in.

   
wtwadmin.wp flsa\_opt.72

Message Copied To:

- Lisa M. Kountoupes/OMB/EOP
- Janet Himler/OMB/EOP
- Kenneth S. Apfel/OMB/EOP
- Joshua Gotbaum/OMB/EOP
- Elena Kagan/OPD/EOP
- Cynthia A. Rice/OPD/EOP
- Diana Fortuna/OPD/EOP
- Larry R. Matlack/OMB/EOP
- Maureen H. Walsh/OMB/EOP
- Keith J. Fontenot/OMB/EOP
- Jeffrey A. Farkas/OMB/EOP
- Charles Konigsberg/OMB/EOP

## WELFARE TO WORK PROGRAM STRUCTURE OPTION

- **Formula vs. Competitive share.**

The House-passed bill included two differing provisions, which also differed from the Senate passed bill:

House Ways and Means: 50% formula; 50% competitive.

House Education and Workforce: 95% formula; 5% competitive

Senate: 75% formula; 25% competitive

**OPTION:** 70% formula; 30% competitive

All provisions of the July 24th Conference bill draft with respect to allocating funds from the Federal to the State level, and from the State level to sub-state areas apply.

- **Federal/State administration:**

The two House-passed bills provide for administration of the formula and the competitive parts by the Department of Labor and, for the formula part within States, administration by the State and local Private Industry Council system under JTPA.

The Senate-passed bill provides for administration of both parts through the Department of Health and Human Services and, for the formula part within States, administration by the State TANF system.

I:\data\wtwadmin

**OPTION:** Administration through the Department of Labor and the JTPA/PIC system, except that all competitive grants in the second year of the program must be awarded by the end of the 2d quarter of the fiscal year (March 31, 1999).

The provision of the Ways and Means bill requiring Welfare to Work funds to be spent in accord with an agreement between the PIC and the TANF agency apply.



# Bid to apply labor laws to workfare hit

By Cheryl Weitzstein  
THE WASHINGTON TIMES

## Democrats echo GOP cost warning

Congressional Republicans, aided by some Democratic governors, are warning that if full federal job protections are extended to welfare-to-work programs, states will be hit with extra costs and poor people will be taxed on their benefits.

"This could be expensive," Florida Gov. Lawton Chiles, a Democrat, said yesterday, explaining that Florida would have to pay an extra \$13.3 million over five years just in Social Security payroll taxes if its welfare-to-work programs had to abide by all the federal labor rules.

"If you treat people as full employees, they are going to be taxed as full employees, and I'm not sure the administration has really thought about that," said Rep. E. Clay Shaw Jr., Florida Republican.

Mr. Shaw and Mr. Chiles made their remarks in a conference call

yesterday on the drawbacks of a White House request that welfare-to-work programs be covered by the Fair Labor Standards Act and other labor laws.

Mr. Shaw also said that GOP budget negotiators had tentatively reached compromises on welfare for noncitizens and allowing states such as Texas to privatize their welfare services.

On the workfare debate, GOP negotiators have agreed that welfare recipients should be paid the minimum wage, with states using combinations of cash, welfare checks and food stamps.

But Republicans and some governors have denounced a White House request that workfare recipients be covered by all federal labor rules, presumably including overtime, back pay and payroll deductions for Social Security, Medicare and unemployment and work-

ers' compensation insurance.

If those rules were applied to workfare, they would reduce the size of payments for workfare recipients, make welfare-to-work more costly and drive private employers away from hiring unskilled welfare recipients, Mr. Shaw and Mr. Chiles said.

Delaware Gov. Thomas R. Carper, a Democrat, argued similar points in a letter to congressional leaders last week. In Delaware, he said, welfare recipients' benefits could be reduced by 6.2 percent for the Social Security tax and 1.45 percent for Medicare while the state's cost to run these programs would increase by \$145,000 a month.

The White House has received support on its position from some Democratic governors, such as Maryland Gov. Parris N. Glendening, and is likely to hear more Mon-

day when President Clinton addresses the nation's governors at their meeting in Las Vegas.

Regarding welfare for non-citizens, Mr. Shaw said that a compromise had been reached that would allow noncitizens who were in the United States and enrolled in the Supplemental Security Income (SSI) program for the blind, elderly and disabled as of Aug. 22, 1996, to remain on it.

Noncitizens who were in the United States on that date and who become disabled in the next seven years may also apply for SSI.

On the privatization provision, Sen. Phil Gramm, Texas Republican, has been leading an effort to include a provision to allow all states to contract out welfare services. Unions have vigorously opposed such a move and have appealed to the White House for help in thwarting Republican Texas Gov. George W. Bush's efforts to contract out thousands of Texas welfare jobs to private and non-union companies.

## ty's deluge causes derailment, 2 deaths

N.C. (AP) —  
ed out a railroad  
y, sending five  
1 creek, and res-  
ed for a child  
10-inch rainfall  
arolina.

leaths yesterday  
the remnants of  
; which rumbled  
east.

oman died after  
by floodwaters  
1 Charlotte. In  
ar-old man was  
r skidded into an

## 10 inches soak N. Carolina; girl missing

oncoming vehicle.

A CSX coal train went into Little Sugar Creek in Charlotte after the trestle gave way.

The crew abandoned the train before the bridge collapsed, and five cars went into the creek, spilling about 2,500 gallons of diesel fuel. A public housing project nearby was evacuated because of the fuel spill.

Searchers looked for a 5-year-old girl reported missing after fall-

ing in a Charlotte creek. Four companions were found safe.

Emergency crews used rubber boats to rescue 22 persons from flooded homes along Sugar Creek overnight, fire department Capt. Tim Rogers said.

"Everyone in these homes was in peril at one point," Capt. Rogers said. "The water started to come up real fast, but fortunately we were ahead of the game."

The heavy rains flooded creeks

and underpasses in Charlotte, where a record 6.14 inches fell between midnight at 2 p.m. and about 500 people were evacuated. Stalled cars and tractor-trailers were scattered throughout the city. Up to 10 inches fell in other parts of south-central North Carolina.

Northwest of Atlanta, the storm uprooted and split at least 15 oak trees, some of them 75 feet tall, at Kennesaw State University.

In Canton, Ga., 12 persons in two families were evacuated from their apartments because of flooding.

Davis Bacon - diff definition - laborers & mechanics

Service Contract Act -  
prevailing wage for low-skilled worker } only if working for private con. or fed. contract

ERISA - no pensions  
COBRA - trans. Medicaid } not welfare

Contract work hour - no wage reqts. overtime

Migrant workers - no wage reqt. Pay what they say will.

FMLA - only if 50+ employees, 1250 hours.  
Covered under any public employer - 50 employees  
- no benefits. Benefits are function of TANF law.

Civ Pro Act - similar defin. 15 employees.

AGE DISCRIM. " "

ADA - already in TANF covered by states, not fed.

OSHA - 23 fed. floor states / Fed OSHA not apply to state & local in 27 states, but private.

Dry-Free - no pts.  
NLRB - about the same defin. Depends on bargaining unit, doesn't apply to state & local, only to private

IRCA - employer sanctions. N/A  
- anti discrim on basis of nat. origin & citizenship  
- diff. threshold of. - pre-screened

WORKERS COMP - state law, entity to apply unless prisoners or longshoremen  
- no intention. CWBP  
State laws on wages, etc. - state option



**Diana Fortuna**

07/29/97 02:12:07 PM



Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP

cc: Laura Emmett/WHO/EOP, Cynthia A. Rice/OPD/EOP

Subject: NGA speech and EITC

You almost certainly already know this, but at the NGA the President said people moving from welfare to work should be eligible for the EITC.

Janet Himler

07/25/97 02:55:51 PM

Record Type: Record

To: Robert G. Damus/OMB/EOP, Elena Kagan/OPD/EOP, Laura Emmett/WHO/EOP, Cynthia A. Rice/OPD/EOP

cc: See the distribution list at the bottom of this message

Subject: URGENT -- Draft legislative language for FLSA Option 2

Jack called earlier this afternoon to ask for draft language for option 2 -- the in-between compromise to place a moratorium on regulations and legislative riders. See option 2 in attached (sent earlier today).



FLSA\_OPT.7

There has been **NO** agency review (in particular the GCs from SSA, Treasury and DOL have not seen the language) -- agencies do not know that these options are being discussed.

Elena and Bob -- I need your keen eye on this. I will be paging Jack momentarily to get his guidance on this. I will follow-up, but in the meantime your review is appreciated.

Here is the draft language:



OPT2.72

Thanks for your help.

Message Copied To:

- Barry White/OMB/EOP
- Larry R. Matlack/OMB/EOP
- Maureen H. Walsh/OMB/EOP
- Jeffrey A. Farkas/OMB/EOP
- Jill M. Blickstein/OMB/EOP
- Joshua Gotbaum/OMB/EOP

4 6 b

“( \_ ) APPLICABILITY OF THE FAIR LABOR STANDARDS ACT. --

“( \_ ) IN GENERAL. -- Guidance issued by the Department of Labor in May 1997 on applicability of the Fair Labor Standards Act to individuals in community service or work experience programs shall remain unchanged through September 30, 1999.

“( I ) The Secretary of Labor shall not issue any other regulations, interpretations, or guidance on this matter prior to September 30, 1999.

“(ii) During the period from enactment of these amendments through September 30, 1999, the Congress shall not enact amendments to current law, adopt legislative riders, or provide further guidance or interpretation on the applicability of the Fair Labor Standards Act to participants in community service or work experience programs.

“(iii) APPLICATION OF EMPLOYEE PROTECTION LAWS. -- Individuals in community service or work experience programs who, under the guidance issued by the Department of Labor in May 1997 are not employees, shall be covered by employee protection standards established under State and Federal law that are otherwise applicable to the working conditions of employees.

( \_ ) WORKER PROTECTIONS --

“( 1 ) NONDISPLACEMENT IN WORK ACTIVITIES. --

“( i ) PROHIBITIONS. --

“(I) GENERAL PROHIBITION. -- A participant in a work activity under the TANF or Welfare-to-Work grants program shall not displace (including a partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits) any individual who, as of the date of the participation, is an employee.

“(II) PROHIBITION ON IMPAIRMENT OF CONTRACTS. -- A work activity under the TANF or Welfare-to-Work grants program shall not impair an existing contract for services or collective bargaining agreement, and a work activity that would be inconsistent with the terms of a collective bargaining agreement shall not be undertaken without the written concurrence of the labor organization and employer concerned.

“(III) OTHER PROHIBITIONS. -- A participant in a work activity under the TANF or Welfare-to-Work grant program shall not be employed in a job --

“(aa) when any other individual is on layoff from the same or any substantially equivalent

job;

“(bb) when the employer has terminated the employment of any regular employee or otherwise reduced the workforce of the employer with the intention of filling the vacancy so created with the participant; or

“(cc) which is created in a promotional line that will infringe in any way upon the promotional opportunities of employed individuals.

“(ii) HEALTH AND SAFETY. -- Health and safety standards established under Federal and State law otherwise applicable to working conditions of employees shall be equally applicable to working conditions of participants engaged in a work activity under the TANF or Welfare-to-Work grants program. To the extent that a State workers’ compensation law applies, workers’ compensation shall be provided to participants on the same basis as the compensation is provided to other individuals in the State in similar employment.

“(iii) GRIEVANCE PROCEDURE. --

“(I) IN GENERAL. -- Each State to which a grant is made under the TANF or Welfare-to-Work grants program shall establish and maintain a procedure for grievances or complaints alleging violations of clause ( i) or (ii) from participants and other interested or affected parties. The procedure shall include an opportunity for a hearing and be completed within 60 days after the grievance or complaint is filed.

“(II) INVESTIGATION. --

“(aa) IN GENERAL. -- The Governor shall designate an appropriate impartial entity that is not responsible for the administration of funds under this part to investigate an allegation of a violation of clause ( i) or (ii) if a decision relating to the violation is not reached within 60 days after the date of filing the grievance or complaint, and either party appeals to the Governor, or a decision relating to the violation is reached within the 60-day period, and the party to which the decision is adverse appeals the decision to the Governor.

“(bb) ADDITIONAL REQUIREMENT. -- The impartial entity appointed by the Governor in item (aa) shall make a final determination relating to an appeal made under item (aa) not later than 120 days after receiving the appeal.

Sec. \_\_\_\_ FEDERAL TAX TREATMENT OF REMUNERATION FOR PARTICIPATION  
IN WORK EXPERIENCE OR COMMUNITY SERVICE PROGRAMS

(a) Remuneration for Participation in Work Experience or Community Service Programs Ineligible for Earned Income Tax Credit.-- Subparagraph (B) of section 32(c)(2) (defining earned income for purposes of the Earned Income Tax Credit) of the Internal Revenue Code of 1986 is amended by striking “and” at the end of clause (ii), by striking the period at the end of clause (iii)

and inserting in lieu thereof “, and”, and by inserting after clause (iii) the following clause:

“(iv) no amount of remuneration received for services provided in a work experience or community service position to which the taxpayer was assigned under any State program under Part A of Title IV of the Social Security Act shall be taken into account.”.

(b) Remuneration for Participation in Work Experience or Community Service Programs Not Subject To FICA.--Section 3121(a) (defining wages for purposes of the federal insurance contributions act employment tax) of the Internal Revenue Code of 1986 is amended by striking “or” at the end of paragraph (20), striking the period at the end of paragraph (21), and inserting in lieu thereof “,or”, and by inserting after paragraph (21) the following paragraph:

“(22) remuneration paid for services provided in a work experience or community service position to which the employee was assigned under any State program under Part A of Title IV of the Social Security Act.”.

(c) Remuneration for Participation in Work Experience or Community Service Programs Not Subject to FUTA.-- Section 3306(b) (defining wages for purposes of the federal unemployment tax) of the Internal Revenue Code of 1986 is amended by striking “or” at the end of paragraph (15), by striking the period at the end of paragraph 16 and inserting in lieu thereof “, or”, and by inserting after paragraph (16) the following paragraph:

“(17) remuneration paid for services provided in a work experience or community service position to which the employee was assigned under any State program under Part A of Title IV of the Social Security Act.”.

(d) Remuneration for Participation in Work Experience or Community Service Programs Excluded From Gross Income. -- The Internal Revenue Code of 1986 is amended by redesignating section 137 (containing certain cross references) as section 138, and by inserting after section 136 the following section:

“Section 137. Remuneration for Participation in Work Experience or Community Service Programs.-- Gross income shall not include any remuneration received for services provided in a work experience or community service position to which the individual was assigned under any State program under Part A of Title IV of the Social Security Act.”.

[The following language is based on earlier references to the TJTC. Modification are needed to update for WOTC.]

(e) Remuneration for Participation in Work Experience or Community Service Programs Ineligible for Work Opportunity Tax Credit. Section \_\_\_ (defining qualified wages for purposes of the Work Opportunity Tax Credit) of the Internal Revenue Code of 1986 is amended by inserting after paragraph (\_\_\_) the following new paragraph (\_\_\_):

(\_\_\_) Special Rules for Work Experience or Community Service Positions.--

“(A) Qualified Wages.--No amount of remuneration received for services provided in a work experience or community service position to which the individual was assigned under any State program under Part A of Title IV of the Social Security Act

shall be treated as qualified wages.

“(B) Qualified First-Year Wages.-- The 1-year period described in paragraph ( ) is determined without regard to the period in which the employee provided services in a work experience or community service position to which the individual was assigned under any State program under Part A of Title IV of the Social Security Act.”.

I:\data\98bud\reconc\opt2.725



## Fair Labor Standards Act (FLSA) Options

### Option 1:

- If an individual participating in a work experience or community service program is an employee (as determined by current law), the Fair Labor Standards Act (FLSA) applies.
  - Participants who are employees are covered by employee protection laws such as the FLSA, safety and health, and anti-discrimination laws.
  - Participants who are not employees (e.g., trainees) under the FLSA, will be covered by other employee protection laws such as safety and health and anti-discrimination laws.
    - o In addition, they will be covered by a grievance procedure that includes the right to a hearing within a specified time period and appeal of an adverse finding to a neutral State agency selected by the Governor.
- Participants in activities funded by welfare-to-work funds or TANF cannot displace current employees (including a reduction in hours, wages, or benefits) or be employed in a job resulting from a layoff or a workforce reduction to create the vacancy or in a job that impairs promotional opportunities for current employees. (Senate provision)
- Regardless of "employee" status, participants in programs financed with welfare-to-work or TANF funds, and their employers, shall not be covered by unemployment compensation and FICA taxes. Such individuals shall not be eligible for the EITC.
- Community service employment and work experience would not be listed as allowable activities under Welfare-to-Work.

### Option 2:

- Guidance on the determination of the applicability of the FLSA to participants in community service or work experience programs, issued by the Department of Labor (DOL) in May 1997, shall remain unchanged through September 30, 1999. The DOL shall not issue any other regulations, interpretations, or guidance on this matter prior to September 30, 1999.
  - Participants who are not employees shall be treated as in Option 1.
- No further legislative riders to determine the applicability of the FLSA to participants in community service or work experience programs would be permitted in either appropriations or authorizing language until after September 30, 1999.
- Anti-displacement provisions same as Option 1.
- Coverage of and eligibility for unemployment compensation, FICA, and the EITC same as Option 1.

Option 3:

- House provision, but sunset on September 30, 1999. Participants in work experience and community service programs during this period are not considered to be receiving compensation for work and are not entitled to a salary or work or training expenses.
- Unemployment compensation, FICA, and the EITC same as Option 1.

wh law -   
 us to wh? //

- 1) Adverse action problem
- 2) "no dep't" - EEOC/NRA

not enforce everything except -

fed laws - health + safety  
fed antidiscrim laws - ADA/ADEA  
Title VI / gender  
Sec 504

only on  
§ 3b -  
New will  
give in

house lang on displacement -  
remedies - (inv. p't time  
(cont.) partial (included)

exec. br.  
aps

- 3) Pinder v. NFB

understanding -  
allow further legislation  
on TANF

Questions -  
FLRA?  
3L or WTW?  
Anti-take laws?  
lang on displace-  
ment.

laws on  
T.VII / ADEA  
etc.

An antidiscrim laws!

leg lang - Inact termination -  
mechanism on priv. rt of  
act - outside of listed laws

held on leg lang.

*Reed Eyr-DC*

*Reed  
C05  
apical*

# Welfare Incentive to Keep Teenage Parents in School Shows Some Success

By Barbara Vobejda  
Washington Post Staff Writer

An Ohio program that boosts the welfare checks of teenage parents who stay in school and cuts benefits if they drop out has had some success in increasing classroom attendance and reducing welfare dependence, according to a study released yesterday. But the program failed to induce teenagers to return to school if they had already dropped out.

The program, known as Learning, Earning and Parenting, or LEAP, has been cited as a model by President Clinton and has become the focus of national attention since passage of the federal welfare law last year. The federal law also sanctions high school dropouts by denying welfare payments to teenage parents who are not in school. Changing the behavior of teenage parents also is considered critical to reducing welfare caseloads because half of

long-term recipients had their first child as a teenager.

The study, conducted by the Manpower Demonstration Research Corp., a New York organization that designs and evaluates welfare programs, followed more than 4,000 teenagers in 12 counties for four years after they entered the program.

While it found that financial incentives can change some behavior, it also underscores the difficulty of improving the lives of those who need help the most: high school dropouts. Three years after entering the program, for example, two-thirds of the teenage parents had not completed high school.

And while the proportion of the teenagers on welfare decreased over time, more than 60 percent were still on the rolls four years after joining LEAP.

The study, said Judith Gueron, president of the group that conducted it, "reminds us that

there are no easy answers. . . . Overall, too many teenagers returned to school only to leave again without getting a diploma. And too many remained on welfare and not employed."

LEAP, begun in 1989, pays teenage parents an extra \$62 a month if they attend school regularly. Their checks—\$274 a month for a teenage mother with one child—are cut by \$62 if they drop out or are absent frequently. LEAP also provides child care, transportation and counseling for the teenagers.

In tracking the effect of the program, the researchers found that it helped the young parents progress from one grade to the next. It did not, however, end up raising graduation rates, although the teenagers who were in school when they enrolled in LEAP were more likely to go on to receive high school equivalency certificates. The program also raised employment rates for the teenagers in school.

But for teenagers who had already dropped out of school when they were enrolled, employment rates did not increase, nor did graduation rates or receipt of equivalency certificates.

Phyllis Brown, who oversees the LEAP program in Hamilton County, Ohio, said many young mothers do not return to school, even if their welfare benefits are reduced, because their families or boyfriends make up that lost money. "A \$62 decrease in their check does not make that much difference to them," she said.

Also, many of the teenagers found entry-level jobs without finishing high school. But after several years at these jobs, she said, many young mothers contacted the LEAP counselors seeking help in completing high school diplomas because they eventually decided they wanted to improve career options.

Leonard Tetlak, who runs the program in

Cuyahoga County, said the state's experience has shown that "it is really important to do things to get to teens as soon as possible after they have a child to help them avoid dropping out of school." That means identifying poor teenage parents, offering them child care assistance and other services and monitoring their progress, he said.

Another recent study by the same group highlighted the difficulty of changing teenagers' behavior. Researchers found that a program that spent \$9,000 per teenager trying to improve self-sufficiency had little effect. The mothers who received the money were no more likely to find a job or leave welfare.

"In general, we don't have examples of success working with teen parents who have dropped out," Gueron said. "That's troubling, because when every state has to deal with that population, you like to have models of success, and there aren't any of those out there."

**The Washington Post**  
THURSDAY, JULY 24, 1997

~~FCRA, OSHA~~  
min wage, similar - ac (discrim)  
health + safety  
rap/disabil/hab + injury

Call Harris - letter <sup>to</sup> retraining  
no other laws

reference specific laws  
applying city to whole  
no mention  
incl. anything that may be implicated by guidelines.

H. dis. placement plus part-time hours.

exchange for laws under its purview

statement on the side

someone to come + write this in next hr

Sanborn Co's office  
Pack's demand  
Re: the hiring.



# CALIFORNIA LEGISLATURE

STATE CAPITOL  
SACRAMENTO, CALIFORNIA  
95814

June 30, 1997

## Members of the Budget Conference Committee:

We are writing to respectfully request the members of the Budget Conference Committee to adopt the Family Violence Option (FVO) provision contained in the Senate version of the Budget Reconciliation bill. As California finalizes its welfare reform package, we need to know whether we can offer temporary waivers to battered women without incurring federal monetary penalties. With the adoption of this provision, it will be explicitly clear that the waivers issued under the FVO and the 20% hardship exemption granted to the states are two very distinct categories.

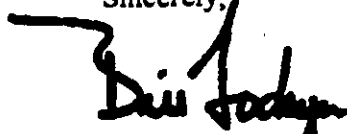
As you know, the Family Violence Option gives states the flexibility to issue temporary waivers from various requirements for victims of domestic violence. In order to give states the maximum authority over their welfare plans, the Family Violence Option allows states to define what constitutes domestic violence and who shall receive these temporary waivers.

Recently, California's 18 member, bipartisan Legislative Welfare Conference Committee voted to adopt the Family Violence Option contained in Senate Bill 1185 authored by State Senator Hilda L. Solis. They did stipulate, however, that their support was on the condition that the temporary waivers of the FVO would not count as part of the state's 20% hardship exemption. The Conference committee also wanted assurance that California would not be penalized if it failed to meet federal work participation requirements due to the granting of the temporary waivers. Thus, it is of great importance to our state that the federal government clarify this issue by adopting the FVO provision of the Senate Budget Reconciliation bill.

Members of the California Legislature want to achieve both safety and self-sufficiency for abused women and their families on welfare. The process of moving from welfare to work may take some of these women longer because of the difficult economic and emotional problems they must face. We urge you to help us accomplish this goal by adopting the Family Violence Option provision contained in the Senate version of the Budget Reconciliation bill.

Your attention to this important matter is sincerely appreciated.

Sincerely,



**BILL LOCKYER**  
Senate President pro Tempore



**CRUZ M. BUSTAMANTE**  
Assembly Speaker

C A L I F O R N I A L E G I S L A T U R E



SENATE OFFICE OF RESEARCH



Elisabeth K. Kersten, Director

July 24, 1997

Elena Kagaan  
FAX #202 456-2878

FYI. Just wanted you to know that elected officials in California are in strong support of the Senate version clarifying the Family Violence Option in the welfare reform provisions. (See attached)

Sincerely,

A handwritten signature in cursive script that reads "Elisabeth".

ELISABETH KERSTEN

EK:ls

cc: Giannina Perez, Senator Solis  
Janet Gregor, David Vienna & Assoc.

**U.S. Department of Labor****- May 1997 -**

## **How Workplace Laws Apply to Welfare Recipients**

The passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) in August 1996 increased emphasis on the need to move welfare recipients from welfare to work. Under the Act, the Aid to Families with Dependent Children (AFDC) program was replaced with the Temporary Assistance for Needy Families (TANF) program. The new welfare law gives state and tribal governments broad latitude to meet specified work requirements.<sup>1</sup> However, requirements of other laws affecting workers and the workplace also must be met.

### **Work Activities and Requirements**

The new welfare law requires 25 percent of all TANF families and 75 percent of two-parent families to have an adult engaged in work activities in FY 1997 (families with no adults are exempted). States have the option of exempting single parents of children under one from the work requirement. The required participation rates increase each year, culminating at 50 percent for all families with an adult and 90 percent for two-parent families in FY 2002.

In order to be counted towards the work participation rate, a single parent is required to be engaged in a work activity, as defined by the law, for 20 hours per week in FY 1997. For an adult in a two-parent family, 35 hours of work are required. The mandated hours of work for single parents increase, to 25 hours in FY 1999 and 30 hours in FY 2000. Qualifying work activities include a range of subsidized and unsubsidized, private and public sector employment.

In addition, a limited number of TANF recipients can meet the work requirement by participating in vocational training and high school education programs.<sup>2</sup>

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<sup>1</sup> This guide refers only to state governments, although it is possible that county or local government entities will be responsible for implementing state and tribal welfare programs. Information in the guide concerning the role of a state agency in implementing the welfare program, paying out the benefits, and, where relevant, employing welfare recipients, would apply to a county or local government agency, where that agency, not the state, implements welfare, pays out the benefits and employs welfare recipients.

<sup>2</sup> Indian Tribes may choose to run their own Tribal TANF programs separate from the state. While these programs must incorporate time limits and work requirements, participation rates are determined on a case-by-case basis according to economic need.



## About This Guide

This guide contains general questions and answers on how workplace laws enforced by the Department of Labor apply to welfare recipients. It is an effort to answer fundamental questions about the relationship between welfare law and workplace laws such as the Fair Labor Standards Act (FLSA), the Occupational Safety and Health Act (OSHA), Unemployment Insurance (UI) and anti-discrimination laws. States should consider the applicability of these laws as they design and implement their work programs.

This guide is simply a starting point. It cannot provide the answers to the wide variety of inquiries that could be raised regarding specific work programs. The impact of these laws on work programs for welfare recipients and the answers to many questions will be determined by the specific facts of the particular situation. Many questions will have to be answered on a case-by-case basis.

### *Employment Laws*

1. **Do federal employment laws apply to welfare recipients participating in work activities under the new welfare law in the same manner they apply to other workers?**

Yes. Federal employment laws, such as the Fair Labor Standards Act (FLSA), the Occupational Safety and Health Act (OSHA), Unemployment Insurance (UI), and anti-discrimination laws, apply to welfare recipients as they apply to other workers. The new welfare law does not exempt welfare recipients from these laws.

### *The Fair Labor Standards Act*

2. **Does that mean that welfare recipients engaged in work activities under the new welfare law will have to be paid the minimum wage?**

The minimum wage and other FLSA requirements apply to welfare recipients as they apply to all other workers.<sup>3</sup> If welfare recipients are "employees" under the FLSA's broad definition, they must be compensated at the applicable minimum wage.

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<sup>3</sup> The FLSA establishes federal minimum wage, overtime pay (for hours worked over 40 in a workweek), child labor, and recordkeeping requirements. The law affects full-time and part-time workers in the private sector and in federal, state and local governments. For the FLSA to apply, there must be an employment relationship between an employer and an employee. To "employ" under the FLSA means to "suffer or permit to work." This is a broader definition of employment than exists under the traditional common law. To determine if there is an employment relationship for purposes of the FLSA, one must consider all the circumstances, including the economic realities of the workplace relationship.

Welfare recipients would probably be considered employees in <sup>many if not</sup> most of the work activities described in the new welfare law. Exceptions are most likely to include individuals engaged in activities such as vocational education, job search assistance, and secondary school attendance, because these programs are not ordinarily considered employment under the FLSA.

**3. Are welfare recipients who participate in job training exempt from the minimum wage laws?**

An individual in training that meets certain criteria under the FLSA and is not otherwise an employee, is considered a trainee and is not entitled to the minimum wage. Similarly, a welfare recipient engaged in training that meets those criteria would not be an employee covered by the minimum wage requirements of the FLSA. The relevant criteria for such training are:

- Training is similar to that given in a vocational school;
- Training is for the benefit of the trainees;
- Trainees do not displace regular employees;
- Employers derive no immediate advantage from trainees' activities;
- Trainees are not entitled to a job after training is completed; and
- Employers and trainees understand that trainee is not paid.

**4. How does the FLSA affect "workfare" arrangements that require welfare recipients to participate in work activities as a condition for receiving cash assistance from the state?**

Welfare recipients in "workfare" arrangements, which require recipients to work in return for their welfare benefits, must be compensated at the minimum wage if they are classified as "employees" under the FLSA's broad definition.

Where the state is the employer of a workfare participant who is an employee for FLSA purposes, the state may consider all or a portion of cash assistance as wages for meeting the minimum wage so long as the payment is clearly identified and treated as wages, the payment is understood by all parties to be wages, and all applicable FLSA record keeping criteria are met. Where a private company or local government agency is the employer of the workfare participant, the state welfare agency may use the recipient's welfare benefits to subsidize or reimburse that employer for some or all of the wages due.

5. **Could states that operated Community Work Experience Programs (CWEP) for welfare recipients under the predecessor JOBS program continue to operate such programs in the same manner under the new welfare law?**

The ability of states to operate programs like CWEP will depend on the details of their particular programs. 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. Under CWEP, the welfare grant divided by the hours worked was required to meet or exceed the minimum wage. The new welfare law eliminated CWEP and the entire JOBS program. As a result, welfare recipients must be compensated at the minimum wage if they are classified as "employees" under the FLSA's broad definition. However, if welfare recipients are participating in activities where they are not "employees" under the FLSA definition, they will not have to be compensated at the minimum wage. Thus, while states may be able to continue programs similar to those that existed under CWEP, they may need to modify the programs to reflect changes in the law.

6. **May food stamps be counted towards meeting minimum wage requirements?**

~~In certain circumstances,~~ Food Stamp benefits (coupons or their cash value) may contribute towards meeting minimum wage requirements for TANF recipients in work activities.

Under the Food Stamp work supplementation program, employers may receive the value of the food stamp allotment as a wage subsidy for new employees hired as part of the work supplementation program. As with other wage subsidy programs, the value of the Food Stamp benefit is converted to a cash wage subsidy paid by the employer as a wage and is 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.

The Food Stamp law specifically permits states to establish Workfare programs (to be approved by the U.S. Department of Agriculture) under which certain welfare recipients are required to perform work in return for compensation in the form of food stamps. In other words, participants may be required to "work off" the value of their food stamps. The state or other employers participating in the workfare program may then credit the value of the food stamps towards its minimum wage obligations. The number of hours that a food stamp recipient may be required to work is determined by dividing the value of the food stamp allotment by the state or federal minimum wage (whichever is higher), up to a maximum of 30 hours per week.

Participation in Food Stamp workfare programs may be counted towards TANF participation requirements, so that a participant who is employed by the state may receive food stamps as compensation for certain hours and receive welfare benefits as compensation for other hours of employment. In all cases, total compensation must equal or exceed the minimum wage for each hour worked. Additional guidance on the use of food stamps towards the minimum wage will be provided by the U.S. Department of Agriculture's Food Stamp Program Office.

**7. Aside from food stamps, may noncash benefits provided by the state, such as child care services or transportation, be credited toward meeting FLSA minimum wage requirements?**

Only under ~~extremely~~ limited circumstances. Such benefits may be credited as wages only when the state is the employer and all of the following criteria are met:

- Acceptance of noncash benefits must be voluntary;
- Noncash benefits must be customarily furnished by the employer to its employees, or by other employers to employees in similar occupations; and
- Noncash benefits must be primarily for the benefit and convenience of the employee.

~~Because these criteria are quite strict, it is likely that these benefits will not count as wages in most circumstances.~~

Credit may not be taken for pensions, health insurance (including Medicaid), or other benefit payments otherwise excluded under the FLSA.

*Occupational Safety and Health Act*

**8. How does the Occupational Safety and Health Act (OSHA) apply to welfare recipients participating in work activities under the new welfare law?**

The new welfare law does not exempt employers from meeting OSHA Act requirements. Therefore, OSHA Act coverage applies to welfare recipients in the same way that it applies to all other workers. However, because the OSHA does not have direct jurisdiction over public sector employees in many states, 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, OSHA will determine whether the employee is in the public or private sector on a case-by-case basis. Generally, case law under OSHA tends to place compliance responsibility on the party most directly controlling the physical conditions at a worksite.

**9. Does that mean that welfare recipients in work activities deemed to be public employees are exempt from health and safety regulations?**

It depends on the state. OSHA does not have direct jurisdiction over public sector employees in many states. Yet, in the 23 states and two territories where there are OSHA-approved state plans, the states are required to extend health and safety coverage to employees of state and local governments. To the extent participants in these states and territories are employees of public agencies, they would be protected by the applicable health and safety standards. In the other states and territories, there would be no OSHA coverage of participants who are public sector employees.

*Unemployment Insurance*

**10. Are welfare recipients participating in work activities covered by the Unemployment Insurance (UI) System ?**

Generally, unemployment insurance laws apply to welfare recipients in work activities in the same way that they apply to all other workers. Unemployment insurance 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.

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 publicly funded "work-relief" employment or "work training" programs may be excluded by states and, in fact, are excluded by all states except Hawaii. Under the new welfare law, a number of community service-related activities could fall within the "work-relief" exception to UI coverage.

An Unemployment Insurance Program Letter (UIPL 30-96) issued in August 1996 clarified the criteria applicable to the "work-relief" and "work training" exceptions. In order to fall within the exception, activities must primarily benefit community and participant needs (versus normal economic considerations) and services must not otherwise normally be provided by other employees. If such activities do not fall within the exception, participants providing services for these entities would likely be covered by the UI program.

11. **What about welfare recipients who are working for private sector employers? Will they be covered by the UI program?**

The "work relief" and "work training" exceptions for UI do not apply to the private sector. For private employers the question of UI coverage will hinge on whether a participant is deemed an "employee." The tests for making these determinations are made by the states and are generally similar to the common law test which is based on "the right to direct and control work activities."

*Anti-Discrimination Laws*

12. **Would federal anti-discrimination laws apply to welfare recipients who participate in work activities under the new welfare law?**

Yes. Anti-discrimination issues could arise -- primarily under titles VI and VII of the Civil Rights Act, the Americans with Disabilities Act, section 504 of the Rehabilitation Act, the Age Discrimination in Employment Act, and the Equal Pay 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. As with the other laws discussed above, these laws would apply to welfare recipients as they apply to other workers. Additional guidance on these laws, many of which are not within the jurisdiction of the Department of Labor, will be forthcoming.

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This guide is for general information and is not to be considered in the same light as statements of position contained in Interpretive Bulletins published in the Federal Register and the Code of Federal Regulations, or in official opinion letters of the Department of Labor.

▶ **Diana Fortuna**  
07/09/97 06:29:46 PM  
.....

Record Type: Record

To: Elena Kagan/OPD/EOP  
cc: Cynthia A. Rice/OPD/EOP  
Subject: Treasury and minimum wage

Cynthia says some Republican staff on the Hill were very concerned about when Treasury will be ready with their decision on EITC/FICA for workfare. She told them that we have been telling them to hurry up, but we don't know when they'll be done.

Michael Barr's theory is that there is no reason to push IRS to go any faster than their natural snail's pace, because it would be just as well if this came out after reconciliation is done. Let me know what you think. One thing I haven't double-checked with them is whether indeed the House approach definitely means no EITC or FICA -- it seems logical, but I haven't asked the IRS to make sure. I guess I should -- although I'm afraid an answer will take 6 months.

# Employee

# Not Employee

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

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