NLWJC - Kagan
DPC - Box 061 - Folder-003

Welfare - FLSA etc [6]

WR FLSA

Fax to Elena
Final version

For Illustrative Purposes Only

TABLE TWO: FAMILY OF TWO

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

State	Maximum Monthly AFDC Benefit July 1996 For a family of 2	Maximum Monthly Food Stamps Benefit July 1996	Combined AFDC and Food Stamps Benefits	Effective Hourly Wage Rate of Combined Benefits for 20 hrs/wk/mo	Additional Monthly Cost/Case of Minimum Wage for 20 hours/week for 4.3 weeks/mo.
Alaska	$821	$231	$1,052	$12.23	$0
Hawaii	$565	$357	$922	$10.72	$0
Vermont	$533	$172	$705	$8.20	$0
Connecticut	$513	$178	$691	$8.03	$0
New York	$468	$203	$671	$7.80	$0
New Hampshire	$481	$188	$669	$7.78	$0
California	$479	$188	$667	$7.76	$0
Rhode Island	$449	$218	$667	$7.76	$0
Massachusetts	$474	$190	$664	$7.72	$0
Washington	$440	$218	$658	$7.65	$0
Wisconsin	$440	$200	$640	$7.44	$0
Minnesota	$437	$201	$638	$7.42	$0
Oregon	$395	$218	$613	$7.13	$0
South Dakota	$380	$218	$598	$6.95	$0
Michigan	$371	$218	$589	$6.85	$0
Iowa	$361	$218	$579	$6.73	$0
Kansas	$352	$218	$570	$6.63	$0
Montana	$349	$218	$567	$6.59	$0
Utah	$342	$218	$560	$6.51	$0
North Dakota	$333	$218	$551	$6.41	$0
Pennsylvania	$330	$218	$548	$6.37	$0
Dist. of Columbia	$326	$218	$544	$6.33	$0
New Jersey	$322	$218	$540	$6.28	$0
Wyoming	$320	$218	$538	$6.26	$0
Maine	$312	$218	$530	$6.16	$0
New Mexico	$310	$218	$528	$6.14	$0
Virginia	$294	$218	$512	$5.95	$0
Nebraska	$293	$218	$511	$5.94	$0
Maryland	$292	$218	$510	$5.93	$0
Nevada	$289	$218	$507	$5.90	$0
Colorado	$280	$218	$498	$5.79	$0
Ohio	$279	$218	$497	$5.78	$0
Illinois	$278	$218	$496	$5.77	$0
Arizona	$275	$218	$493	$5.73	$0
Delaware	$270	$218	$488	$5.67	$0
Idaho	$251	$218	$469	$5.45	$0
Virgin Islands	$180	$281	$461	$5.36	$0
Florida	$241	$218	$459	$5.34	$0

For Illustrative Purposes Only

TABLE TWO: FAMILY OF TWO

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

State	Maximum Monthly AFDC Benefit July 1996 For a family of 2	Maximum Monthly Food Stamps Benefit July 1996	Combined AFDC and Food Stamps Benefits	Effective Hourly Wage Rate of Combined Benefits for 20 hrs/wk/mo	Additional Monthly Cost/Case of Minimum Wage for 20 hours/week for 4.3 weeks/mo.
Oklahoma	$238	$218	$456	$5.30	$0
North Carolina	$236	$218	$454	$5.28	$0
Georgia	$235	$218	$453	$5.27	$0
Missouri	$234	$218	$452	$5.26	$0
Indiana	$229	$218	$447	$5.20	$0
Kentucky	$225	$218	$443	$5.15	$0
West Virginia	$201	$218	$419	$4.87	$24
Texas	$163	$218	$381	$4.43	$62
Arkansas	$162	$218	$380	$4.42	$63
South Carolina	$159	$218	$377	$4.38	$66
Tennessee	$142	$218	$360	$4.19	$83
Louisiana	$138	$218	$356	$4.14	$87
Alabama	$137	$218	$355	$4.13	$88
Mississippi	$96	$218	$314	$3.65	$129

Notes:

1. This table uses the maximum monthly AFDC benefits as of July 1996. States have more flexibility under TANF to determine benefit levels and may choose to provide higher or lower benefits than suggested in this table. Food Stamp benefits have increased slightly since 7/96 ($2 for a family of 3).
2. The maximum food stamp benefit assumes 100% excess shelter, no child support, no medical deductions etc.
3. The min. wage is currently $4.75 an hour but will increase to $5.15 on 9/1/97. The tables use $5.15 as the wage
4. While the number of hours required for single parent participation does not increase to 30 until FY 2000, only 20 of those hours must be within the activities described in Sec. 407. As a result states could place recipients in training for 10 of the 30 hours and not be required to pay the minimum wage for the 10 hours of training.
5. Families may receive less than the maximum benefit for several reasons. While the table lists no additional costs for many states, it is likely that each state will have some cases in which food stamp benefits combined with TANF benefits would not meet the minimum wage.
6. AFDC benefits are calculated by the Congressional Research Service.

For Illustrative Purposes Only

TABLE ONE: FAMILY OF THREE

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

State	Maximum Monthly AFDC Benefit July 1996 for a family of 3	Maximum Monthly Food Stamps Benefit July 1996	Combined AFDC and Food Stamps Benefits	Effective Hourly Wage Rate of Combined Benefits for 20 hrs/wk/mo	Additional Monthly Cost/Case of Minimum Wage for 20 hours/week for 4.3 weeks/mo.
Alaska	$923	$321	$1,244	$14.47	$0
Hawaii	$712	$471	$1,183	$13.76	$0
Connecticut	$636	$236	$872	$10.14	$0
Vermont	$633	$237	$870	$10.12	$0
Rhode Island	$554	$299	$853	$9.92	$0
New York	$577	$270	$847	$9.85	$0
California	$596	$248	$844	$9.81	$0
Washington	$546	$289	$835	$9.71	$0
Massachusetts	$565	$257	$822	$9.56	$0
New Hampshire	$550	$262	$812	$9.44	$0
Minnesota	$532	$267	$799	$9.29	$0
Wisconsin	$517	$272	$789	$9.17	$0
Oregon	$460	$313	$773	$8.99	$0
Michigan	$459	$300	$759	$8.83	$0
Kansas	$429	$313	$742	$8.63	$0
Montana	$438	$295	$733	$8.52	$0
New Jersey	$424	$307	$731	$8.50	$0
North Dakota	$431	$298	$729	$8.48	$0
South Dakota	$430	$298	$728	$8.47	$0
Utah	$426	$299	$725	$8.43	$0
Iowa	$426	$299	$725	$8.43	$0
Pennsylvania	$421	$301	$722	$8.40	$0
Maine	$416	$301	$719	$8.36	$0
Dist. of Columbia	$415	$302	$717	$8.34	$0
New Mexico	$389	$310	$699	$8.13	$0
Illinois	$377	$313	$690	$8.02	$0
Maryland	$373	$313	$686	$7.98	$0
Nebraska	$364	$313	$677	$7.87	$0
Wyoming	$360	$313	$673	$7.83	$0
Colorado	$356	$313	$669	$7.78	$0
Virginia	$354	$313	$667	$7.76	$0
Nevada	$348	$313	$661	$7.69	$0
Arizona	$347	$313	$660	$7.67	$0
Ohio	$341	$313	$654	$7.60	$0
Delaware	$338	$313	$651	$7.57	$0
Virgin Islands	$240	$402	$642	$7.47	$0
Idaho	$317	$313	$630	$7.33	$0
Oklahoma	$307	$313	$620	$7.21	$0

For Illustrative Purposes Only

TABLE THREE: FAMILY OF FOUR

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

State	Maximum Monthly AFDC Benefit July 1996 For a family of 4	Maximum Monthly Food Stamps Benefit July 1996	Combined AFDC and Food Stamps Benefits	Effective Hourly Wage Rate of Combined Benefits for 20 hrs/wk/mo	Additional Monthly Cost/Case of Minimum Wage for 20 hours/week for 4.3 weeks/mo.
Hawaii	859	567	$1,426	$16.58	$0
Alaska	1,025	399	$1,424	$16.56	$0
Connecticut	741	289	$1,030	$11.98	$0
New York	687	325	$1,012	$11.77	$0
Vermont	711	298	$1,009	$11.73	$0
California	707	299	$1,006	$11.70	$0
Rhode Island	632	365	$997	$11.59	$0
Washington	642	349	$991	$11.52	$0
Massachusetts	651	316	$967	$11.24	$0
Minnesota	621	325	$946	$11.00	$0
Wisconsin	617	326	$943	$10.97	$0
Oregon	565	377	$942	$10.95	$0
New Hampshire	613	327	$940	$10.93	$0
Michigan	563	352	$915	$10.64	$0
Kansas	497	383	$880	$10.23	$0
Montana	527	353	$880	$10.23	$0
Maine	526	353	$879	$10.22	$0
North Dakota	517	356	$873	$10.15	$0
Pennsylvania	514	357	$871	$10.13	$0
Dist. of Columbia	507	359	$866	$10.07	$0
New Jersey	488	373	$861	$10.01	$0
Utah	498	361	$859	$9.99	$0
Iowa	495	362	$857	$9.97	$0
South Dakota	478	367	$845	$9.83	$0
Maryland	450	391	$841	$9.78	$0
New Mexico	469	370	$839	$9.76	$0
Nebraska	435	380	$815	$9.48	$0
Colorado	432	381	$813	$9.45	$0
Virgin Islands	300	511	$811	$9.43	$0
Ohio	421	385	$806	$9.37	$0
Illinois	414	392	$806	$9.37	$0
Arizona	418	385	$803	$9.34	$0
Virginia	410	388	$798	$9.28	$0
Nevada	408	388	$796	$9.26	$0
Delaware	407	389	$796	$9.26	$0
Wyoming	390	394	$784	$9.12	$0
Idaho	382	396	$778	$9.05	$0

For Illustrative Purposes Only

TABLE THREE: FAMILY OF FOUR

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

State	Maximum Monthly AFDC Benefit July 1996 For a family of 4	Maximum Monthly Food Stamps Benefit July 1996	Combined AFDC and Food Stamps Benefits	Effective Hourly Wage Rate of Combined Benefits for 20 hrs/wk/mo	Additional Monthly Cost/Case of Minimum Wage for 20 hours/week for 4.3 weeks/mo.
Hawaii	859	567	$1,426	$16.58	$0
Alaska	1,025	399	$1,424	$16.56	$0
Connecticut	741	289	$1,030	$11.98	$0
New York	687	325	$1,012	$11.77	$0
Vermont	711	298	$1,009	$11.73	$0
California	707	299	$1,006	$11.70	$0
Rhode Island	632	365	$997	$11.59	$0
Washington	642	349	$991	$11.52	$0
Massachusetts	651	316	$967	$11.24	$0
Minnesota	621	325	$946	$11.00	$0
Wisconsin	617	326	$943	$10.97	$0
Oregon	565	377	$942	$10.95	$0
New Hampshire	613	327	$940	$10.93	$0
Michigan	563	352	$915	$10.64	$0
Kansas	497	383	$880	$10.23	$0
Montana	527	353	$880	$10.23	$0
Maine	526	353	$879	$10.22	$0
North Dakota	517	356	$873	$10.15	$0
Pennsylvania	514	357	$871	$10.13	$0
Dist. of Columbia	507	359	$866	$10.07	$0
New Jersey	488	373	$861	$10.01	$0
Utah	498	361	$859	$9.99	$0
Iowa	495	362	$857	$9.97	$0
South Dakota	478	367	$845	$9.83	$0
Maryland	450	391	$841	$9.78	$0
New Mexico	469	370	$839	$9.76	$0
Nebraska	435	380	$815	$9.48	$0
Colorado	432	381	$813	$9.45	$0
Virgin Islands	300	511	$811	$9.43	$0
Ohio	421	385	$806	$9.37	$0
Illinois	414	392	$806	$9.37	$0
Arizona	418	385	$803	$9.34	$0
Virginia	410	388	$798	$9.28	$0
Nevada	408	388	$796	$9.26	$0
Delaware	407	389	$796	$9.26	$0
Wyoming	390	394	$784	$9.12	$0
Idaho	382	396	$778	$9.05	$0

For Illustrative Purposes Only

TABLE THREE: FAMILY OF FOUR

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

State	Maximum Monthly AFDC Benefit July 1996 For a family of 4	Maximum Monthly Food Stamps Benefit July 1996	Combined AFDC and Food Stamps Benefits	Effective Hourly Wage Rate of Combined Benefits for 20 hrs/wk/mo	Additional Monthly Cost/Case of Minimum Wage for 20 hours/week for 4.3 weeks/mo.
Oklahoma	380	397	$777	$9.03	$0
Florida	364	397	$761	$8.85	$0
Indiana	346	397	$743	$8.64	$0
Missouri	342	397	$739	$8.59	$0
Georgia	330	397	$727	$8.45	$0
Kentucky	328	397	$725	$8.43	$0
West Virginia	312	397	$709	$8.24	$0
North Carolina	297	397	$694	$8.07	$0
Arkansas	247	397	$644	$7.49	$0
South Carolina	241	397	$638	$7.42	$0
Louisiana	234	397	$631	$7.34	$0
Tennessee	226	397	$623	$7.24	$0
Texas	226	397	$623	$7.24	$0
Alabama	$194	397	$591	$6.87	$0
Mississippi	144	397	$541	$6.29	$0

Notes:

1. This table uses the maximum monthly AFDC benefits as of July 1996. States have more flexibility under TANF to determine benefit levels and may choose to provide higher or lower benefits than suggested in this table. Food Stamp benefits have increased slightly since 7/96 ($2 for a family of 3).
2. The maximum food stamp benefit assumes 100% excess shelter, no child support, no medical deductions etc.
3. The min. wage is currently $4.75 an hour but will increase to $5.15 on 9/1/97. The tables use $5.15 as the wage
4. While the number of hours required for single parent participation does not increase to 30 until FY 2000, only 20 of those hours must be within the activities described in Sec. 407. As a result states could place recipients in training for 10 of the 30 hours and not be required to pay the minimum wage for the 10 hours of training.
5. Families may receive less than the maximum benefit for several reasons. While the table lists no additional costs for many states, it is likely that each state will have some cases in which food stamp benefits combined with TANF benefits would not meet the minimum wage.

For Illustrative Purposes Only

TABLE THREE: FAMILY OF FOUR

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

State	Maximum Monthly AFDC Benefit July 1996 For a family of 4	Maximum Monthly Food Stamps Benefit July 1996	Combined AFDC and Food Stamps Benefits	Effective Hourly Wage Rate of Combined Benefits for 20 hrs/wk/mo	Additional Monthly Cost/Case of Minimum Wage for 20 hours/week for 4.3 weeks/mo.
Oklahoma	380	397	$777	$9.03	$0
Florida	364	397	$761	$8.85	$0
Indiana	346	397	$743	$8.64	$0
Missouri	342	397	$739	$8.59	$0
Georgia	330	397	$727	$8.45	$0
Kentucky	328	397	$725	$8.43	$0
West Virginia	312	397	$709	$8.24	$0
North Carolina	297	397	$694	$8.07	$0
Arkansas	247	397	$644	$7.49	$0
South Carolina	241	397	$638	$7.42	$0
Louisiana	234	397	$631	$7.34	$0
Tennessee	226	397	$623	$7.24	$0
Texas	226	397	$623	$7.24	$0
Alabama	$194	397	$591	$6.87	$0
Mississippi	144	397	$541	$6.29	$0

Notes:

1. This table uses the maximum monthly AFDC benefits as of July 1996. States have more flexibility under TANF to determine benefit levels and may choose to provide higher or lower benefits than suggested in this table. Food Stamp benefits have increased slightly since 7/96 ($2 for a family of 3).
2. The maximum food stamp benefit assumes 100% excess shelter, no child support, no medical deductions etc.
3. The min. wage is currently $4.75 an hour but will increase to $5.15 on 9/1/97. The tables use $5.15 as the wage
4. While the number of hours required for single parent participation does not increase to 30 until FY 2000, only 20 of those hours must be within the activities described in Sec. 407. As a result states could place recipients in training for 10 of the 30 hours and not be required to pay the minimum wage for the 10 hours of training.
5. Families may receive less than the maximum benefit for several reasons. While the table lists no additional costs for many states, it is likely that each state will have some cases in which food stamp benefits combined with TANF benefits would not meet the minimum wage.

For Illustrative Purposes Only

TABLE ONE: FAMILY OF THREE

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

State	Maximum Monthly AFDC Benefit July 1996 for a family of 3	Maximum Monthly Food Stamps Benefit July 1996	Combined AFDC and Food Stamps Benefits	Effective Hourly Wage Rate of Combined Benefits for 20 hrs/wk/mo	Additional Monthly Cost/Case of Minimum Wage for 20 hours/week for 4.3 weeks/mo.
Florida	$303	$313	$616	$7.16	$0
Missouri	$292	$313	$605	$7.03	$0
Indiana	$288	$313	$601	$6.99	$0
Georgia	$280	$313	$593	$6.90	$0
North Carolina	$272	$313	$585	$6.80	$0
Kentucky	$262	$313	$575	$6.69	$0
West Virginia	$253	$313	$566	$6.58	$0
Arkansas	$204	$313	$517	$6.01	$0
South Carolina	$200	$313	$513	$5.97	$0
Louisiana	$190	$313	$503	$5.85	$0
Texas	$188	$313	$501	$6.83	$0
Tennessee	$185	$313	$498	$5.79	$0
Alabama	$164	$313	$477	$5.55	$0
Mississippi	$120	$313	$433	$5.03	$10
Puerto Rico	$180	NA	NA	$0.00	NA

otes:

This table uses the maximum monthly AFDC benefits as of July 1996. States have more flexibility under TANF to determine benefit levels and may choose to provide higher or lower benefits than suggested in this table.

Food Stamp benefits have increased slightly since 7/96 ($2 for a family of 3).

The maximum food stamp benefit assumes 100% excess shelter, no child support, no medical deductions etc.

The min. wage is currently $4.75 an hour but will increase to $5.15 on 9/1/97. The tables use $5.15 as the wage

While the number of hours required for single parent participation does not increase to 30 until FY 2000, only 20 of those hours must be within the activities described in Sec. 407. As a result states could place recipients in training for 10 of the 30 hours and not be required to pay the minimum wage for the 10 hours of training.

Families may receive less than the maximum benefit for several reasons. While the table lists no additional costs for many states, it is likely that each state will have some cases in which food stamp benefits combined with TANF benefits would not meet the minimum wage.

AFDC benefits are calculated by the Congressional Research Service.

WR-FLSA

Cynthia A. Rice 06/04/97 02:57:56 PM

Record Type: Record

To: Carole Kitti/OMB/EOP

cc: See the distribution list at the bottom of this message
Subject: Question on the Ways and Means mark re: minimum wage

Hi Carole -- I understand you're in charge while Larry Matlack is away.
I'm sure you all are looking at the Ways and Means language. The way I read "Section 9004 Required Hours of Work" a state could:

First subtract from the required hours of work the number of hours a recipient was in job search, vocational education, job skills, and high school; and

Then, second, require only as many additional hours as needed for the recipient to work off the value of their TANF, food stamps, Medicaid, child care, and housing grant.

This seems to me to be a serious undermining of the work requirement. Am I reading this correctly?

Message Copied To:

Bruce N. Reed/OPD/EOP
Elena Kagan/OPD/EOP
Diana Fortuna/OPD/EOP
Emil E. Parker/OPD/EOP
Keith J. Fontenot/OMB/EOP
Jeffrey A. Farkas/OMB/EOP
Kenneth S. Apfel/OMB/EOP

WR - FLSA

OPTIONS

- Exempt from FLSA and/or related labor protection laws (doesn't help states meet minimum wage)
- Allow states to count other benefits toward the minimum wage:
  - Medicaid
  - child care
  - housing
  - transportation
- Weaken work requirements by allowing states to meet more of the work requirements through education or training
- Exempt workfare from FICA/EITC, if necessary
- Other options?

Related Questions to answer:

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

FLSA

Diana Fortuna
06/04/97 05:34:16 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Bruce N. Reed/OPD/EOP, Cynthia A. Rice/OPD/EOP
Subject: Draft language for Raines letter on FLSA

Here is a shot at striking the right balance on FLSA language for the letter to the Hill. Please give both me and Cynthia any comments.

The Administration strongly opposes the House Ways and Means Subcommittee proposal on the minimum wage and welfare work requirements. First, this proposal is beyond the scope of the budget agreement. This proposal was not included in the budget agreement between the White House and Congress and should therefore not be included in the reconciliation bill.

Second, the Ways and Means Subcommittee proposal would undermine the fundamental goals of welfare reform. The Administration believes strongly that everyone who can work, must work -- and that those who work must be paid the minimum wage, whether they are coming off of welfare or not. The House Ways and Means Subcommittee proposal does not meet this test. The Administration stands ready to work with Congress and states to discuss alternative proposals that do not undermine the minimum wage or weaken the law's work requirements.

Diana Fortuna
06/03/97 05:23:23 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Laura Emmett/WHO/EOP
Subject: state charts on flsa min wage by tanf plus food stamps

I sent you paper late yesterday that HHS wants to release showing how each state would fare in hitting the minimum wage,and Mary Bourdette is really pressing me to get this out. Have you had a chance to look at it?

One incredibly major thing I left out: the brackets around certain text in the summary page shows text that DOL recommends dropping, and HHS has agreed we should drop.

DRAFT: June 3, 1997, 11:00

Labor Protections and Welfare Reform
Ways and Means Subcommittee on Human Resources
Majority Proposal

The House Ways & Means Committee's Subcommittee on Human Resources will mark up its portion of the reconciliation bill this Friday, June 6. Subcommittee Chairman Clay Shaw (R-FL) will include in his chairman's mark a provision that would: (1) declare that welfare recipients engaged in "workfare" "are not employees for purposes of the Fair Labor Standards Act or any other federal law"; (2) require that they receive the minimum wage, although permit states to include the TANF grant, Food Stamp benefits and, most importantly, noncash benefits including child care, housing and Medicaid in their calculation of the minimum wage; and (3) if welfare recipients cannot satisfy their work requirements because the minimum wage applies even including all the benefits listed in #2, permit the states to count hours engaged in job search, job readiness activities, basic skills education, vocational education training, job skills training, high school or GED completion to satisfy a welfare recipient's 20-hour work requirement.

The Administration strongly opposes this proposal.

The proposal is beyond the scope of the budget agreement: This proposal was not included in the budget agreement between the White House and Congress. Inclusion in reconciliation would violate the terms of the agreement

The proposal denies welfare recipients who work the fundamental protection of laws created by Congress to protect workers. The proposal specifies that welfare recipients working in public and nonprofit sectors are not employees for purposes of the FLSA and other federal laws.

- Under this proposal working welfare recipients will be deprived of the protection of laws addressing, among other things:
  - race, gender, and national origin discrimination;
  - discrimination on the basis of disability;
  - unsafe and unhealthy workplaces;
  - the minimum wage and child labor;
  - overtime; and
  - family and medical leave.

No? focus on min wage (+ education?)

- Congress would give states approval to segregate welfare recipients creating a supply of second class workers who could be subjected to unfair wages, unsafe workplaces, and discriminatory treatment.

- Inequitable treatment undermines the basic goal and principle of welfare reform -- moving individuals from welfare to real jobs that will allow them to break their cycle of dependence and support their families. Failure to protect working welfare recipients from substandard working conditions, discrimination, and subminimum wages places obstacles in the path to self-sufficiency.

Proposal does not include a mechanism for enforcing the minimum wage. While a similar provision was used under the previous welfare law to ensure that working welfare recipients were paid the equivalent of the minimum wage, changes in the welfare law increase the likelihood of enforcement problems.

- Under the previous law, states could adjust a welfare recipient's work requirement to ensure that their welfare benefits paid the minimum wage for the number of hours worked. Under the current law, federal participation rates and work requirements reduce states' ability to make a similar adjustment in order to meet the minimum wage.

- The tremendous increase in the number of welfare recipients that must be placed in work activities under the new law also increases pressure that could lead to compliance difficulties.

Counting noncash benefits undermines the minimum wage: The proposal allows States to count Medicaid, child care and housing benefits towards the minimum wage.

- Noncash benefits are not substitutes for the minimum wage. They can not be used to cover living expenses. Instead they are provided to enable welfare recipients and low wage workers retain jobs that will lead to self sufficiency. Making welfare recipients choose between targeted benefits that enable them to continue to work and cash benefits to cover basic necessities is incompatible with the fundamental goals of welfare reform.

- Including the value of noncash benefits towards payment of the minimum wage for welfare recipients lowers the cost of hiring welfare recipients relative to the cost of other low wage workers -- exacerbating the potential for displacement.

- States will face a strong incentive to reduce the value of their TANF benefits and their Food Stamp benefits since they can substitute dollar-for-dollar with Medicaid, housing, and child care for welfare recipients who work.

Forcing States to count noncash benefits is a huge administrative burden. Under this proposal states will be required to quantify and track the value of Medicaid, child care, and housing assistance (in addition to the cash welfare grant and food stamps) provided to each working welfare recipient for the duration of the period that the benefits are received.

cc: Bruce Reed
Cynthia
Diana
+ return

DEPARTMENT OF THE TREASURY
WASHINGTON

ASSISTANT SECRETARY

MEMORANDUM FOR ELENA KAGAN
DEPUTY ASSISTANT TO THE PRESIDENT
FOR DOMESTIC POLICY

FROM: DONALD C. LUBICK
ACTING ASSISTANT SECRETARY (TAX POLICY)

SUBJECT: Taxation of Welfare-to-Work Programs

DATE: May 28, 1997

At a recent meeting regarding the Administration's efforts to address the issues raised by welfare-to-work programs, you raised the prospect of legislation that would exempt all welfare payments from federal taxation. This memorandum provides a status report on the Internal Revenue Service's (IRS) progress in analyzing the taxability of welfare-to-work payments. It also discusses certain issues that need to be considered regarding the proposed legislative solution.

Status Report

The IRS has adopted a two-pronged approach to determine the federal tax treatment of government assistance payments in the welfare-to-work context. First, the IRS is presently analyzing whether food stamp wage supplementation payments are exempt from tax under the Food Stamp Act of 1977. We understand that the IRS expects to reach a preliminary conclusion with respect to this issue very soon.

Second, the IRS is analyzing the taxable nature of all other welfare-to-work payments under applicable sections of the Internal Revenue Code and the general welfare doctrine. Under the general welfare doctrine, government-paid benefits to welfare recipients are excludable from the recipient's income if the benefits are intended to promote the general welfare and are not compensation for services performed. We understand that the IRS expects to generate two examples that would demonstrate the application of the legal principles embodied in the general welfare doctrine to specific facts and circumstances. These examples would be shared with all interested agencies. Moreover, as always, the IRS is willing to address particular issues that States or local governments have in the private ruling context.

Proposed Legislation

The legislative proposal to exempt welfare-to-work payments from federal tax raises certain tax policy and administrative concerns. The benefit of certainty provided to States by the proposal must be weighed against these concerns.

In particular, because welfare-to-work programs may operate differently from earlier forms of governmental assistance programs, a tax exemption of the former may have interactions with other tax and non-tax laws that did not arise under prior law and have yet to be fully considered. For example, in evaluating the proposal, one should carefully consider whether taxing welfare-to-work payments, and thus treating such payments as earned income for earned income tax credit (EITC) purposes, would provide an overall benefit to States and welfare-to-work recipients. Treating welfare-to-work payments as earned income for EITC purposes would provide a federally funded wage subsidy to welfare recipients that would more than offset the additional employment tax burden imposed on employers. Under the EITC, eligible workers effectively receive a wage subsidy equal to 36% (if they have one qualifying child) or 40% (if they have two or more qualifying children) of their wages. States could use this wage subsidy to reduce the benefits they pay welfare recipients and/or provide greater assistance to recipients so that they can become financially independent. Of course, the proposal could be modified so that welfare-to-work payments would be exempt from tax but would nonetheless be treated as earned income for EITC purposes. Such a proposal, however, would be costly.

Tentative Minimum Wage Provision
May 27, 1997

1. Clarify that workfare participants in the public and nonprofit sectors are not employees for purposes of the Fair Labor Standards Act or any other federal law.

2. However, states may not require recipients to participate in workfare for a number of hours greater than the welfare benefits package divided by the appropriate minimum wage.

- In conducting the hours-of-work computation, states must count cash and other benefits under Title IV-A and food stamps.

- States may count Medicaid, child care, and housing benefits (for the purpose of valuing Medicaid, the Secretary of HHS must publish an annual table of the insurance value of Medicaid coverage for families of various sizes. The Secretary may include geographical variations in her table).

- States may (in addition to the step above) satisfy any remaining hours of the work requirement by counting job search, job readiness activities, basic skills education, vocational education training, job skills training, high school or GED completion. None of these additional activities would be subject to the Fair Labor Standards Act.

Example: The State of Freedonia has a minimum wage of $6 per hour, and a typical family receives $400 in cash welfare and $200 in food stamps per month. The current work requirement is 30 hours per week or 120 hours per month. Because the value of the welfare benefit package ($600 in cash plus food stamps) is not enough to cover the minimum wage ($6 times 120 hours, meaning the package "pays" $5 per hour), the State has three choices: (1) count other benefits (such as child care, housing, or Medicaid) in calculating the total welfare benefits package; (2) satisfy the remaining 5 hours of work required per week* through education and training activities listed above; or (3) some combination of (1) and (2).

*$600 in basic benefits divided by the minimum wage of $6 equals 100 hours of work per month payable at the minimum wage, leaving a remainder of 20 hours per month or 5 hours per week.

THE WHITE HOUSE
WASHINGTON

5-30

cc: Bruce
+ return

Elena,

I finally found a copy of the 1994 Clinton welfare bill. As you can see, the post-time limit public jobs were covered by FICA. The legislation included exemptions for EITC, TJTC, FUTA and income tax, but not FICA.

There were (and are) strong policy reasons for making FICA applicable to workfare and workfare-type positions. Women who spend long periods out of the workforce or working off the books can have difficulty accumulating the 40 quarters of work needed to qualify for Social Security.

Applying FICA to workfare could, by increasing their quarters of work, be quite helpful to some recipients in the long run.

Emil

(b) WORK registrants and their families would be treated as AFDC recipients with respect to Medicaid eligibility, i.e., they would be categorically eligible for Medicaid (pending implementation of the Health Security Act). Persons who left the WORK program for unsubsidized employment would, as with former AFDC recipients, be eligible for transitional Medicaid.

(c) Persons in WORK assignments would be subject to FICA taxes. States would be required to ensure that the corresponding employer contribution for OASDI and HI was made, either by the employer or by the entity administering the WORK program (or through another method).

(d) Earnings from WORK positions would not be subject to tax, would not be treated as earned income or included in adjusted gross income for purposes of calculating the Earned Income Tax Credit, and would not be treated as qualified wages for purposes of the Targeted Jobs Tax Credit.

(e) The employment of participants under the WORK program would not be subject to the provisions of any Federal or State unemployment compensation law.

(f) To the extent that a State workers' compensation law were applicable, workers' compensation in accordance with such law would be available with respect to WORK participants. To the extent that such law were not applicable, WORK participants would be provided with medical and accident protection for on-site injury at the same level and to the same extent as that required under the relevant State workers' compensation statute.

(g) WORK program funds would not be available for contributions to a retirement plan on behalf of any participant.

(h) With respect to the distribution of child support, WORK participants would be treated exactly as individuals who had reached the time limit and were working in unsubsidized jobs meeting the minimum work standard. In instances in which the WORK participant were receiving AFDC benefits in addition to WORK wages, child support would be treated just as it would for any other family receiving AFDC benefits (generally, a $50 pass-through, with the IV-A agency retaining the remainder to offset the cost of the supplemental AFDC benefits).

34. SUPPORTIVE SERVICES/WORKER SUPPORT

Specifications

(a) States would be required to guarantee child care for any person in a WORK assignment, as with JOBS program participants under current law (Section 402(g)(1), Social Security Act). Similarly, States would be mandated to provide other work-related supportive services as needed for participation in the WORK program (as with JOBS participants, Section 402(g)(2), Social Security Act).

(b) States would be permitted to make supportive services available to WORK participants who were engaged in approved education and training activities *in addition to* a WORK assignment or other WORK program activity. In other words, a State could, but would not be required to, provide child care or other supportive services to enable a WORK participant to, for example, also take a vocational education course at a community college.

(f) In localities in which the WORK program was administered by an entity other than the IV-A agency, the IV-A agency would still be responsible for AFDC benefits to families described in 10(d). States would not be permitted to distinguish between such families and other AFDC recipients with respect to the determination of eligibility and calculation of benefits–States could not apply a stricter standard or provide a lower level of benefits to persons on the waiting list.

31. HOURS OF WORK

Specifications

(a) States would have the flexibility to determine the number of hours for each WORK assignment. The number of hours for a WORK assignment could vary depending on the nature of the position. WORK assignments would have to be for at least an average of 15 hours per week during a month and for no more than an average of 40 hours per week during a month.

Each State would be required, to the extent possible, to set the hours and wage rates for WORK assignments such that the wages from a WORK assignment represented at least 75 percent of the total of the wages and AFDC benefits received by a WORK participant. This would be a State plan requirement.

32. EARNINGS SUPPLEMENTATION

Specifications

(a) In instances in which the family income of an individual who had reached the time limit and was working in either a WORK assignment or an unsubsidized job that met the minimum work standard was not equal to the AFDC benefit for a family of that size, the individual and his/her family would receive an AFDC benefit sufficient to leave the family no worse off than a family of the same size that was on AFDC and had no earned income.

(b) With respect to eligibility and benefit determination, AFDC benefits for families described in (a) above would be identical to AFDC benefits for persons who had not reached the two-year time limit, except that the supplemental AFDC benefit would not be adjusted up due to failure to work the set number of hours for a WORK assignment.

(c) The work expense disregard for the purpose of calculating any supplemental AFDC benefit would be set at the same level as the standard $120 work expense disregard. States which opted for more generous earnings disregard policies would be permitted but not required to apply these policies to WORK wages.

33. TREATMENT OF WORK WAGES WITH RESPECT TO BENEFITS AND TAXES

Specifications

(a) Except as otherwise provided in these specifications, wages from WORK assignments would treated as earned income with respect to Federal and Federal-State assistance programs other than AFDC (e.g., food stamps, SSI, Medicaid, public and Section 8 housing).

101

ity to participate in the program

.

y shall assure that wages will be
the participant and may provide
g stipends.
ency shall garnish subsidized
id in connection with a non-
pation in the program under this
to the State agency administering
der part D for distribution as a
n accordance with the provisions

rovide, if, with respect to an
in the program under this
ction over the child support
that hours of participation in
a reasonable basis, be credited
-due child support owed to such
idual.
n an application approved under
for carrying out the program
tion in any fiscal year, up to 10
amounts available to it for such
ion (k)(2) and (l)(2) of section

102

403. The State shall be entitled to so much of such amount as equals the percentage specified in section 403(k)(1)(A) multiplied by its expenditures necessary to carry out its approved application.

"(B) A State may include, as expenditures necessary to carry out its approved application, amounts expended for stipends, wage subsidies, supportive services, training, and administrative costs of the State agency directly related to the program under this subsection.".

SEC. 207. FEDERAL TAX TREATMENT OF WORK REMUNERATION.

(a) Work Remuneration 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 position to which the taxpayer was assigned under Part G of title IV of the Social Security Act shall be taken into account.".

(b) WORK Remuneration Ineligible for Targeted Jobs Tax Credit.--Section 51(b) (defining qualified wages for purposes of the Targeted Jobs Tax Credit) of the Internal Revenue Code of

1986 is amended by inserting after paragraph (3) the following new paragraph (4):

"(4) Special Rules for WORK Positions.--

"(A) Qualified Wages.--No amount of remuneration received for services provided in a WORK position to which an employee was assigned under Part G 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 (2) is determined without regard to the period in which the employee provided services in a WORK position to which the employee was assigned under Part G of title IV of the Social Security Act.".

(c) WORK Remuneration 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 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 position to which the employee was assigned under Part G of title IV of the Social Security Act.".

(d) WORK Remuneration 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. WORK Program Remuneration.-- Gross income shall not include any remuneration received for services provided in a WORK position to which the individual was assigned under Part G of title IV of the Social Security Act.".

TITLE III - CHILD CARE

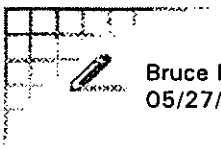
SEC. 301. CHILD CARE FOR JOBS AND WORK PROGRAM PARTICIPANTS AND AT-RISK FAMILIES.

(a) Guarantee While in WORK or JOBS Program.-- (1) Section 402(g)(1)(A)(i)(I) of the Act is amended by striking out the semicolon and inserting in lieu thereof "(including employment under part G, or other required activities under such part);".

(2) Section 402(g)(1)(A)(i) of the Act is amended--

(A) by striking out "(including participation in a program that meets the requirements of subsection (a)(19) and part (F))", and

(B) by striking out "approves the activity" and inserting in lieu thereof "approves the activity as part of the individual's employability plan under part F (regardless of whether resources are available to provide other services or pay for other activities to carry out such plan)".



Bruce N. Reed
05/27/97 10:00:51 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc:
Subject: Re: proper taxation of workfare benefits

I don't want expectations to get out of hand on this. If the workgroup (what work group?) wants to study it, fine. But in the meantime we should make our policy very clear, I think. Don't you?

THE WHITE HOUSE

WASHINGTON

May 30, 1997

TO: GENE SPERLING

FROM: EMIL PARKER EP

SUBJECT: FLSA meeting

At the 4:00 FLSA meeting there was a strong consensus that the Administration should take a firm line regarding the application of the minimum wage to workfare participants (welfare recipients required to work in exchange for their grants). John Podesta was especially animated on the point; he was convinced that the governors' position was untenable and tantamount to reintroducing indentured servitude.

Republican proposal

Ron Haskins has circulated a draft of the minimum wage "fix" (see attached) to be included in Shaw's Human Resources reconciliation Chairman's mark next week. The proposal is actually more problematic than anticipated.

Part one would exempt workfare participants in the public and nonprofit sectors from not only the FLSA but also all other Federal laws, including the Occupational Safety and Health Act and antidiscrimination legislation. Denying OSH Act protection to workfare participants does not appear to be defensible from either a policy or a political standpoint. It is not clear if this provision would repeal the section of the welfare bill that explicitly applies a number of antidiscrimination laws to welfare work programs. To the extent it does, it will provoke the ire of an entirely different constituency.

Part two of the proposal purports to apply the minimum wage to workfare programs (although not the enforcement provisions of the FLSA). This minimum wage requirement is, however, wholly bogus. States would be allowed to count not only food stamps (which is allowable under current law; see attached USDA guidance) but also other noncash benefits, including Medicaid, child care and housing assistance. It is difficult to imagine many cases in which the combined total of all means-tested benefits (e.g., WIC or even Head Start could conceivably be included) divided by the number of hours of participation--20 per week--would not equal the minimum wage. This provision raises serious equity considerations. Private or public employers who offer health insurance are not permitted to count this toward the minimum wage and, generally speaking, child care and other benefits also cannot be included in compensation for purposes of the minimum wage. Apart from the policy concerns, the provision would also be an administrative ordeal for HHS, which would be forced to calculate the insurance value of Medicaid for families of various sizes (and possibly the value of on-site child care and other services as well).

The final aspect of provision two, allowing States to count more hours of job search, education or training toward the work requirement, is not as troubling as the rest of the proposal and might form the basis of a fallback position (Elena objected to any weakening of the work requirements, but no one else shared her view).

The 4:00 group was in agreement that the Republican approach as a whole was unacceptable and that the Administration should not, at this point, signal any willingness to negotiate--"people working should be treated as workers, and that means the minimum wage."

Offering a compromise on FLSA at this point would be especially premature, given that 1) some moderate House Republicans are apparently eager to avoid a minimum wage battle; 2) the extent of Senate Republican interest in unclear; and 3) an FLSA provision might well be subject to a Byrd rule challenge in the Senate on the grounds that it has no effect on mandatory spending.

Treatment under tax laws

According to IRS staff, under current tax law, if income is subject to income tax, it is also, generally speaking, subject to FICA and FUTA tax and qualifies as earned income for purposes of the EITC. The Internal Revenue Service is currently working on a revenue ruling which will consist of two realistic examples of work activities under TANF (based on information provided by HHS and DOL). Under one example the payments to the participant would be considered taxable income; under the other they would not. The examples should be ready for review internally within two weeks. Both examples may address workfare-type activity, since earnings from subsidized private and public sector employment should fairly clearly be considered taxable income.

There was also some discussion of the treatment of workfare under other laws, notably FICA, FUTA and EITC. Governors have expressed concern about the potential fiscal burden of FICA taxes. Both the employee and employer share of FICA could, however, be effectively deducted from the welfare benefit in many cases; there would still be the added administrative responsibility.

Elena Kagan had earlier proposed making a compromise offer to Democratic governors--FLSA would apply but FICA and EITC would not. Elena has repeatedly attempted to concede on the FICA issue, in part because she believes, mistakenly, that under the 1994 Administration welfare bill public jobs would not have been covered by FICA (see attached).

There is a fairly strong policy argument for applying FICA to workfare activities. Women who spend long periods out of the workforce and/or working off the books (e.g., as domestics) can have difficulty accumulating the 40 quarters of work needed to qualify for Social Security. Treating workfare participation as covered employment for purposes of Social Security could be quite advantageous in the long term to some recipients, even if it reduced their current income.

On the other hand, a good case can be made for a FUTA exemption; it is not clear that time in required activity should allow a participant to accrue unemployment benefits. Current law in fact includes a FUTA exemption for "work-relief" and "work training" programs; a legislative change might not be necessary.

While State preferences concerning FICA (and FUTA) are clear, the same cannot be said for the EITC. Making the earned income credit available to workfare participants would generally increase their standard of living but might reduce the incentive to move into unsubsidized employment. Indeed, this was the rationale under the Administration's 1994 welfare bill for denying the EITC to persons in public jobs. There was, however, no time limit on subsidized employment in that legislation, whereas the 1996 welfare law sets a five-year time limit on assistance, and States are permitted to set shorter limits on assistance in general and on subsidized employment in particular. For example, a State could limit participation in subsidized jobs to 6 months at a time and 12 months in a lifetime. Availability of the EITC would allow a State to reduce benefits and still leave the family of a workfare participant better off than the family of a recipient who was not working. Enhanced Federal spending would seem to be the other major countervailing consideration.

Administration strategy re: tax treatment

The IRS may well determine that workfare activities that are virtually indistinguishable from standard paid employment (e.g., no training component, substantial benefits accruing to employer) are subject to all Federal tax laws, while workfare activities that are a blend of training and work might be exempt. ***At the very least, it is advisable to wait for IRS to arrive at a position before announcing an Administration stance on the matter.*** This is particularly true because it is unclear whether announcing a FICA exemption would generate much goodwill among Democratic governors. Emily Bromberg of Intergovernmental Affairs thought it would not (since the governors are primarily concerned about FLSA). A bipartisan letter from the NGA Executive Committee on the FLSA (and perhaps related) issues may be forthcoming. ***In any event, the decision on tax laws should be the product of considered thought.*** Mark Mazur suggested to Elena that a joint NEC/DPC process be initiated to resolve the workfare/tax question; she has not responded (to my knowledge).

cc: AL, MM, KW

exempt from FLSA

counting job search/training as wh

counting benefits toward min wage.

White House News Report

Exemptions
-1 Any public/priv non-profits
-1 community service
-1 90 day - submission.

Opening up
debt wk

Benefits
childcare
Medicaid
—
Transp
Housing

FLSA Conf Call
1. FL - starting tech assis now
—
incentive to those off rolls / create 6-mo lifetime limits, etc.
—
Dems push for delay - mtg next week -
problem to do letter
DE/FL/KY - letter expressing concern - nice things abt min wage
but saying there should be distinc btw wk + training

alt
less than min wage non - but better chance of getting
Give in on ___ - work something out

Elena Kagan
~~2FL WW~~

Wednesday, May 28, 1997
Produced by the Office of News Analysis
Room 161 OEOB (Ext. 6-5694)

DRAFT

no ent. mech - Wage other than Priv sector
no recordkeeping

Tentative Minimum Wage Provision
May 27, 1997

1. Clarify that workfare participants in the public and nonprofit sectors are not employees for purposes of the Fair Labor Standards Act or any other federal law.

2. However, states may not require recipients to participate in workfare for a number of hours greater than the welfare benefits package divided by the appropriate minimum wage.

- In conducting the hours-of-work computation, states must count cash and other benefits under Title IV-A and food stamps.

- States may count Medicaid, child care, and housing benefits (for the purpose of valuing Medicaid, the Secretary of HHS must publish an annual table of the insurance value of Medicaid coverage for families of various sizes. The Secretary may include geographical variations in her table).

- States may (in addition to the step above) satisfy any remaining hours of the work requirement by counting job search, job readiness activities, basic skills education, vocational education training, job skills training, high school or GED completion. None of these additional activities would be subject to the Fair Labor Standards Act.

Example: The State of Freedonia has a minimum wage of $6 per hour, and a typical family receives $400 in cash welfare and $200 in food stamps per month. The current work requirement is 30 hours per week or 120 hours per month. Because the value of the welfare benefit package ($600 in cash plus food stamps) is not enough to cover the minimum wage ($6 times 120 hours, meaning the package "pays" $5 per hour), the State has three choices: (1) count other benefits (such as child care, housing, or Medicaid) in calculating the total welfare benefits package; (2) satisfy the remaining 5 hours of work required per week* through education and training activities listed above; or (3) some combination of (1) and (2).

*$600 in basic benefits divided by the minimum wage of $6 equals 100 hours of work per month payable at the minimum wage, leaving a remainder of 20 hours per month or 5 hours per week.

r\tentminimumwage.wpd

5-25-97 FLSA Conf Call

1. Legis status report
Same timeframe as other WR provision
Markup week from tomorrow. W+M subcom Fri
Full com Mon.
Republican - Haskins - draft.

2 Communications w/ governors
Things gotten worse
NGA pushing Dems to act quickly.
Options in Exec Cmte - start w/ Haskins piece.
Dems fractured →
Chiles + Carper inclined to sign on to letter close to Haskins
Try to do a letter before Friday.
→ Who to call Chiles + Carper?

RT: Have to decide ↗
Hold firm/rally troops mode — No changes
or
Let's make a deal mode — ~~consistent w/~~ [OR] proposals consistent w/ principle That...

HHS/DOL: OK to allow states to use training stuff to count Their hours

Higgins - have to be realistic
Lose Demo govs → lose moderates
Anything ? → maybe count some other Things.

End pt - CWEP + some out + some nondisplacement // only some other laws apply

Making Workfare Work

The Clinton Administration has ruled that Federal law requires states to pay welfare enrollees in workfare slots benefits at least equal to the minimum wage. The ruling is correct legally. But it also threatens states by raising the cost of each workfare slot and by making workfare an attractive alternative to private-sector jobs. The danger is that some states will cut families off welfare rather than pay out higher benefits. Unless Congress makes imaginative adjustments, the decision could do many welfare enrollees more harm than good.

Under the 1996 welfare law, states must put a rising percentage of welfare enrollees to work, first for at least 20 hours a week and eventually for 30 hours a week. The states will place as many enrollees as possible in private-sector jobs, which are already required to pay at least the minimum wage. But states will also create workfare slots for enrollees who cannot find other work. These are likely to be odd jobs, like cleaning parks or monitoring school playgrounds, that welfare enrollees would perform in exchange for benefits.

Once states are required to put at least half of their enrollees to work at a "wage" of at least $5.15 an hour, the costs will rise above today's outlays for welfare. Cash-starved states may decide to save money by raising eligibility standards, in effect booting families off welfare, rather than finding them work. Another danger is that workfare at minimum wage will prove an attractive alternative to private employment.

Most states would solve the problem by paying workfare participants less than the minimum wage. But the Administration appears on sound legal ground in concluding that government-required work that provides no important training is a job, for the purposes of the Federal labor laws, and thus eligible for the minimum wage. It also cites a good policy reason — making work attractive, which is the purpose of welfare reform.

One way out of this problem is to borrow an idea from President Clinton's 1994 welfare proposal. He urged Congress to make workfare ineligible for the earned income tax credit, which adds as much as 40 cents to the paychecks of low-paid workers for every dollar they are paid by employers. If workfare offers no tax credit, it would be less attractive than private minimum-wage jobs.

In practice, a 40 percent gap may be more than is needed. Congress might better permit states to pay workfare participants somewhat less than minimum wage but keep them eligible for the tax credit. Workfare would pay less than private-sector jobs, but not 40 percent less.

The Administration raised suspicions of political meddling when it blocked a welfare-reform proposal by the Governor of Texas for no apparent reason other than to aid organized labor's effort to scuttle the reform. Critics attribute the same political motive to its workfare ruling. But whatever the motive, Mr. Clinton's decision about workfare appears legally sound. It is up to Congress to rewrite the laws so that states can offer a combination of wages, other benefits and tax credits that make workfare an adequate temporary refuge without making it a permanent way of life.

Tentative Minimum Wage Provision
May 27, 1997

1. Clarify that workfare participants in the public and nonprofit sectors are not employees for purposes of the Fair Labor Standards Act or any other federal law.

2. However, states may not require recipients to participate in workfare for a number of hours greater than the welfare benefits package divided by the appropriate minimum wage.

- In conducting the hours-of-work computation, states must count cash and other benefits under Title IV-A and food stamps.

- States may count Medicaid, child care, and housing benefits (for the purpose of valuing Medicaid, the Secretary of HHS must publish an annual table of the insurance value of Medicaid coverage for families of various sizes. The Secretary may include geographical variations in her table).

- States may (in addition to the step above) satisfy any remaining hours of the work requirement by counting job search, job readiness activities, basic skills education, vocational education training, job skills training, high school or GED completion. None of these additional activities would be subject to the Fair Labor Standards Act.

Example: The State of Freedonia has a minimum wage of $6 per hour, and a typical family receives $400 in cash welfare and $200 in food stamps per month. The current work requirement is 30 hours per week or 120 hours per month. Because the value of the welfare benefit package ($600 in cash plus food stamps) is not enough to cover the minimum wage ($6 times 120 hours, meaning the package "pays" $5 per hour), the State has three choices: (1) count other benefits (such as child care, housing, or Medicaid) in calculating the total welfare benefits package; (2) satisfy the remaining 5 hours of work required per week* through education and training activities listed above; or (3) some combination of (1) and (2).

*$600 in basic benefits divided by the minimum wage of $6 equals 100 hours of work per month payable at the minimum wage, leaving a remainder of 20 hours per month or 5 hours per week.

r\tentminimumwage.wpd

FS, Medicaid + WIC.

today they will not receive $1.5 billion in US assistance unless they implement a law requiring a balanced budget. Albright also told NATO ministers today that the threat of war remains and that NATO's task in Bosnia is far from completed.

Meanwhile, international envoy to Bosnia Carl Bildt said today that the Western allies should keep a peacekeeping force in Bosnia beyond the June 1998 deadline for withdrawal. Speaking to reporters at the NATO meeting in Portugal, the outgoing envoy did not say how large the force should be or how much longer it should stay. Some NATO ministers have suggested the possibility of extending the deadline, but US officials have not expressed support for the idea. Bildt also told reporters a firm declaration would be adopted by the NATO ministers after meeting with Bosnian leaders. Bildt said the declaration will be "a very strong message to the Bosnian parties that they have to do more."

Also, diplomats are saying today that the US, Britain, France, Germany and Russia have agreed on a successor to Bilt: Spanish Ambassador to the UN Carlos Westendorp. An announcement was expected later today.

o **GOP To Join Governors In Fighting Wage Requirement For Workfare.** Republicans are planning a move aimed at superseding a Clinton Administration decision that minimum wage should be required for welfare-to-work programs. As lawmakers prepare to craft reconciliation language based on the budget resolutions and the balanced budget agreement with the White House, GOP sources on both sides of Capitol Hill said lawmakers will seek to reverse the Clinton directive on paying minimum wage for workfare. Characterizing the Clinton decision as "the Administration's payoff to big labor," a Senate GOP leadership source said the requirement "has been met with a chilly reception on the Hill and out in the states. It is a mandate that is simply unaffordable, and it torpedoes efforts to get people off the welfare rolls and into work." The source said Senate Republicans plan to work with Rep. Clay Shaw, whose House Ways and Means labor subcommittee will be drafting reconciliation language on the issue. In addition, the source said, "we believe that in working with the governors bipartisanly -- along with Republican governors, [Gov.] Lawton Chiles (D-FL) is one of the most prominent opponents of this interpretation -- we will be able to create a structure that would get us past this" minimum wage requirement.

An aide to Shaw added: "This is something where we are hearing from governors on all sides. It's something where states feel very strongly and they're coming to us and saying, 'We really have made some successful programs work, and this could just ruin everything by forcing us to shut down a lot of programs because we have to spend more money on paying these folks'" who participate in workfare. The source said Shaw disagrees with the Administration's directive because, "if you're getting a benefit," such as cash assistance, food stamps or Medicaid coverage, "that should be counted as part of your wage. The counter-argument would, of course, be that these people are working, so they should be getting the minimum wage. Well, the reality is that many of them are going to be making more than the minimum wage, when you calculate in all of these benefits. And we really don't want to make these community service projects -- or these welfare-supported jobs -- better-paying than the real world." Therefore, the aide said, Shaw's "most likely" move will be to draft reconciliation language "allowing states to calculate all the benefits in determining the minimum wage." The aide said Shaw remains undecided on which benefits should be counted, and how much weight each should carry, but benefits like food stamps and Medicaid should count as part of welfare-to-work income.

Although the reconciliation markup schedule remains in flux -- likely to be determined early next week by House leaders -- the aide predicted a partisan committee discussion when the issue is considered. Said the aide: "Among Republicans on the committee, we have a lot of support. With Democrats, I don't think so."

o **Mixture Of Banking Concerns Remain Unresolved As Committee Prepares For Action.** The House Banking Committee is expected to hear from Treasury Secretary Robert Rubin next Monday on the topic of financial services reform. As the industry and legislators move toward allowing banking, securities, and insurance firms to compete with each other, still unresolved is the issue of whether to allow affiliations between banking and commercial firms. In announcing its financial services modernization

Diana –
Have you seen this? It looks to me as it I be only have part of it. Could you find a way of getting the whole? (Sorry – I don't know where it came from initially.) Thanks.
Elena

American Law Division
Congressional Research Service • The Library of Congress • Washington, D.C. 20540-7410

MEMORANDUM April 16, 1997

SUBJECT: Fair Labor Standards Act Coverage of Workfare Participants

AUTHOR: Vince Treacy
Legislative Attorney

Introduction

The imposition of mandatory work requirements by the 1996 Welfare Reform Act has presented a question concerning the applicability of wage and hour standards to individuals receiving assistance. The Act replaces the aid for families with dependent children (AFDC) program with a new system of block grants to states for Temporary Assistance for Needy Families (TANF). Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, §103, 110 Stat. 2105, Aug. 22, 1996.

The new program requires states to place some recipients in work activities. To be counted as engaged in work, the recipient must engage in unsubsidized employment, subsidized public or private employment, work experience, on-the-job training, job search and job readiness assistance, community service programs, vocational educational training, job skills training or education directly related to employment, satisfactory attendance at secondary school, or provision of child care services to an individual who is participating in a community service program. 42 U.S.C. § 407(d)(Supp.1997). In general, recipients who are required to engage in work activities in exchange for benefits are often called workfare participants.

With the new TANF program slated to go into mandatory effect on July 1, 1997, the question of application of the Fair Labor Standards Act (FLSA) to workfare participants has arisen. The Clinton administration has indicated that welfare recipients who must participate in local workfare programs to receive benefits should be covered by the FLSA. Administration advisor Gene Sperling said on March 17, 1997, that the White House is continuing to review federal labor law to determine whether welfare recipients who must work for their benefits are covered by the law. *Daily Labor Report*, Mar. 18, 1997.

Employees under FLSA

The Fair Labor Standards Act requires all covered employers to pay covered employees the requisite minimum wage, as well as one-and-one-half times their regular rate of pay for overtime hours in excess of 40 in a workweek. The Act also prohibits oppressive child labor, requires equal pay for equal work by men and women, prohibits retaliation against employees for filing complaints, and requires all covered employers to maintain employment records. 29 U.S.C. §§ 201-219.

Under the FLSA, the term "employee" is expressly defined as "any individual employed by an employer." 29 U.S.C. § 203(e)(1). The term "employ" means "to suffer or permit to work." 29 U.S.C. § 203(g). An "employer" includes "any person acting directly or indirectly in the interest of an employer in relation to an employee and includes *a public agency*. . . ." 29 U.S.C. § 203(d)(emphasis supplied). The statutory definition is "broad and comprehensive in order to accomplish the remedial purposes of the Act." *Secretary of Labor v. Lauritzen*, 835 F.2d 1529, 1534 (7th Cir. 1987).

The Supreme Court has held that, in defining the term "employee," Congress ordinarily means an agency law definition unless it clearly states otherwise. In the FLSA, however, Congress defined the term "employ" as "to suffer or permit to work." The Court found that the "striking breadth" of this definition has stretched the meaning of "employee" under the FLSA to cover some parties who might not qualify as employees under many other statutes by virtue of the strict application of agency law principles. *Nationwide Mutual Insurance Co. v. Darden*, 501 U.S. 318 (1992).

Moreover, under the *Chevron* doctrine of judicial deferral to an agency's interpretation of a statute which it administers and enforces, the courts have given great weight to Department of Labor interpretations under the FLSA. *Auer v. Robbins*, 117 S. Ct. 905, *citing Chevron U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837, 842-43 (1984). The Department of Labor may provide guidance to employers and employees concerning application of FLSA standards to workfare programs, but Congress has not *required* it to provide guidance for the TANF program. In 1985, by contrast, Congress directed the Department to issue regulations covering public sector volunteers within four months. Pub. L. No. 99-150, § 4(b), 29 U.S.C. § 203 note, 99 Stat. 790, Nov. 19, 1985.

As interpreted by the Department of Labor and the courts, the word "employee" is not defined in terms of conventional dictionary definitions, nor in terms of the common law concept of employee, but rather on the basis of the underlying economic realities of the relationship between the individual and the employer. *Goldberg v. Whitaker House Coop.*, 366 U.S. 28 (1961). The Department therefore determines employee status not upon isolated factors, or upon single characteristics or technical concepts, but under the circumstances of the whole activity, including the economic reality. An employee generally is one who "follows the usual path of an employee" and is dependent on the

business which he serves. U.S. Dep't of Labor, *Employment Relationship Under the Fair Labor Standards Act*, Wage and Hour (WH) Division Publication No. 1297 at 3 (1980) [*hereinafter* "WH Pub. 1297"].

In the Department's view, the FLSA applies if (1) an employment relationship exists and (2) the employer or the employee is covered under the FLSA. "As a general rule of thumb, if you pay wages or compensation, you create an employment relationship." An employment relationship "does not depend on the level of performance or whether the work is of some educational and/or therapeutic benefit." U.S. Dep't of Labor, *School-to-Work [STW] Opportunities and the Fair Labor Standards Act: Work-Based Learning and the Fair Labor Standards Act* at 5 (1995) [*hereinafter* "STW Guide"].

The performance of work is one factor in establishing an employment relationship. In addition, there must be compensation, benefit to the employer, duration, and stability of relationship. Employment thus occurs when the employer (1) has power to hire and fire the employees; (2) supervises and controls employee work schedules or conditions of employment; (3) determines the rate and method of employment; and, (4) maintains employment records. *Henthorn v. Department of Navy*, 29 F.3d 682, 684 (D.C. Cir. 1994); *Bonnette v. California Health & Welfare Agency*, 704 F.2d 1465, 1470 (9th Cir. 1983). The factors should not be "blindly applied" since this is not a "mechanical determination." The factors provide a "useful framework" but are not "etched in stone." The ultimate determination must be based on "the circumstances of the whole activity." 704 F.2d at 1470.

Non-employees under FLSA

The FLSA definition of "employee" is broad, but its scope is limited by several exceptions and exemptions. In general, the courts have found that non-employment relationships, in which work is performed by an individual for an entity, can be exempt from the FLSA where the individual rendering the services has the status of trainee, School-to-Work participant, volunteer, patient worker, recipient of rehabilitation services, workfare benefit recipient, independent contractor, prisoner, or religious person. WH Pub. 1297 (1980). In many of the recognized non-employment relationships, the lesser benefit to the employing entity is incidental to the *primary benefit* to the alleged employee.

Trainees. In *Walling v. Portland Terminal*, several trainees had worked for a railroad employer for one week in a brakeman training program which benefitted their own interests. The Supreme Court held that they were not employees under the FLSA, ruling that an individual who, without promise or expectation of compensation, but solely for his personal purpose or pleasure, worked on activities carried on by other persons either for their pleasure or profit, is not an employee. *Walling v. Portland Terminal* 330 U.S. 148, 151 (1947).

Guidelines developed by the Labor Department have long excluded student trainees from FLSA coverage. The six requirements must all be present: (1) training is similar to that given in a vocational school; (2) training is for the benefit of the trainees or students; (3) trainees or students do not displace regular employees, but work under their close supervision; (4) the employer derives no immediate advantage, and its operations on occasion may actually be impeded; (5) trainees or students are not necessarily entitled to a job at the conclusion of training; and (6) trainees and students understand they are not entitled to wages for their time in training. WH Pub. 1297 at 4-5.

School-to-Work. The School-to-Work (STW) Opportunities Act of 1994 established a program for work-based learning experiences for students. In its guidance under that Act, the Labor Department provided that a student is *not* to be considered an employee if *all* four of the following criteria are met:

> (1) the student receives ongoing instruction at the employer's worksite and receives close on-site supervision throughout the learning experience, with the result that any productive work that the student would perform would be offset by the burden to the employer from the training and supervision provided; and,
>
> (2) the placement of the student at a worksite during the learning experience does not result in the displacement of any regular employee--i.e., the presence of the student at the worksite cannot result in an employee being laid off, cannot result in the employer not hiring an employee it would otherwise hire, and cannot result in an employee working fewer hours that he or she would otherwise work; and,
>
> (3) the student is not entitled to a job at the completion of the learning experience--but this does not mean that employers are to be discouraged from offering employment to students who successfully complete the training; and
>
> (4) the employer, student, and parent or guardian understand that the student is not entitled to wages or other compensation for the time spent in the learning experience--although the student may be paid a stipend for expenses such as books or tools. STW Guide at 3-4.

Volunteer. The term "employee" does not include a volunteer. In the public sector, a volunteer is an individual who performs a service for a public agency for civic, charitable, or humanitarian reasons, without promise, expectation or receipt of compensation. 29 C.F.R. § 553.101(a)(1996). In the private sector, individuals who volunteer or donate their services, usually on a part-time basis, for public service, religious, or humanitarian objectives, not as employees and without contemplation of pay, are not considered employees of the religious, charitable and similar nonprofit corporations which receive their services. WH Pub. 1297 at 6-7; *Tony and Susan Alamo Foundation v. Secretary of Labor*, 471 U.S. 290, 303 n.25 (1985).

Patient worker. Under Labor Department regulations, a patient worker is a worker with a disability who is employed by a hospital or institution providing residential care. There is an employment relationship if the work performed is of any consequential economic benefit to the institution. Consequential economic benefit means work of the type normally performed by workers without disabilities. A patient does not become an employee if he or she merely performs personal housekeeping chores, such as maintaining his or her quarters, and receives a token remuneration for those services. 29 C.F.R. § 525.4 (1996).

Recipient of rehabilitation services. In *Williams v. Strickland*, 87 F.3d 1064 (9th Cir. 1996), the court held that a participant in a Salvation Army rehabilitation program was not an "employee" under the FLSA because he "had neither an express nor an implied agreement for compensation with the Salvation Army. The participant had entered a six-month program offering room, board, work therapy, and counseling. The admission statement stipulated that he was "a beneficiary not an employee" of the program. He engaged in work therapy on a full-time basis in exchange for food, clothing, shelter, and a small stipend. The court found that under the economic realities of the situation, the claimant was not an employee, since he did not have an express agreement for compensation, and he did not apply to the personnel department but rather was admitted to the rehabilitation program. His "relationship with the Salvation Army was solely rehabilitative." 87 F.3d at 1067.

The dissenting opinion maintained that the rehabilitative motive did not preclude an employment relationship, since the participant argued that his work significantly improved the value of repaired furniture, resulting in profits to the employer. The dissent found a material dispute of fact over the question whether his labor was purely rehabilitative and served only his own interest, and produced no economic benefit to the Salvation Army. 87 F.3d at 1069.

Workfare benefit recipients. At least one court decision, *Johns v. Stewart*, 578 F.3d 1544 (10th Cir. 1995), has denied coverage of workfare benefit recipients under the FLSA. In Utah, the State had voluntarily established a program to help tide over individuals who were waiting for approval of their applications for Supplemental Social Security (SSI) benefits for blind, disabled, or elderly persons with very low income. The two emergency assistance programs provided temporary cash assistance for the basic needs of applicants awaiting qualification for SSI. Participants completed a self-sufficiency plan with a case worker. The plans included rehabilitative activities as well as job search and job training activities. Participants received a monthly stipend, but were required to reimburse the state from their retroactive SSI benefits. In a lawsuit, the participants raised the charge, among others, that their benefits were less than required by the minimum wage requirement of the FLSA.

The Tenth Circuit held that workfare recipients were not covered by FLSA. In the court's view, the narrow focus on the work component of the program failed to take into consideration the circumstances of the whole activity, since the work component was just one requirement of the comprehensive assistance programs. Recipients were also required to meet a needs test; be unemployable,

marginally employable, or 60 years of age or older; have no dependent children and be able to perform a work project; and agree to participate in adult education, training, skills development, and job search activities. The court found that participation in work projects was simply one component of the comprehensive assistance plans, and that the overall relationship was one of assistance, not employment.

The court further found that participants were completely unlike state employees in every respect, since they applied for assistance, not for jobs; they received financial assistance checks, not state payroll checks; state and federal taxes were not withheld; and no sick or annual leave was accrued. While participants performed the same functions as some regular employees, they did not receive the same salary, safe working conditions, job security, career development, social security, pension, collective bargaining, or grievance procedures as regular employees. Focusing on the circumstances of the whole activity and applying the economic reality test, the court held the participants were not employees of the State Department of Human Services for purposes of the FLSA. 57 F.3d at 1558-59.

Independent contractor. As interpreted by the Labor Department, an independent contractor is one "who is engaged in a business of his own." Six factors are considered significant, although no single one is regarded as controlling:

(1) the extent to which the services in question are an integral part of the employer's business;
(2) the permanency of the relationship;
(3) the amount of investment in facilities and equipment by the alleged independent contractor;
(4) the nature and degree of control by the principal;
(5) the alleged contractor's opportunity for profit or loss; and
(6) the amount of initiative, judgment, or foresight in open market competition with others required for success by the claimed independent contractor. WH Pub. 1297 at 9.

Prisoners. Prisoners, under rulings by the federal courts of appeal, are not employees under the FLSA. *See, e.g., Henthorn v. Dep't of Navy*, 29 F.3d 682 (D.C. Cir. 1994).

Religious persons. "Persons such as nuns, monks, priests, lay brothers, ministers, deacons, and other members of religious orders who serve pursuant to their religious obligations in schools, hospitals and other institutions operated by the church or religions order are not considered to be 'employees' within the meaning of the Act." WH Pub. 1297 at 6-7. This does not prevent the establishment of an employer-employee relationship between the religious, charitable or nonprofit agency and the persons who perform work for it. *Dole v. Shenandoah Baptist Church*, 899 F.2d 1389 (4th Cir. 1990), *cert. denied*, 498 U.S. 846; *accord, DeArment v. Harvey*, 932 F.2d 721 (8th Cir. 1991).

Analysis

The statutory definition of "employee" is basically circular: an employee is any individual employed by an employer, and to employ is to suffer or permit to work. Administrative and judicial determinations down through the years have expanded upon the statutory definition. In addition, several general rules of construction and principles of interpretation have guided the Department and the courts in applying the statute.

- ¶ The FLSA is to be construed broadly in order to effectuate its remedial purpose.
- ¶ The FLSA definition of "employee" is one of the broadest in the law, and its breadth covers some individuals who might not qualify as such under a strict application of traditional agency law principles. *Nationwide Mutual Ins. Co v. Darden*, 501 U.S. 318 (1992).
- ¶ Exemptions and exceptions are to be construed narrowly in keeping with the remedial purpose of the Act.
- ¶ Individuals and employers may not waive FLSA protections by express or implied agreement. *Tony and Susan Alamo Foundation v. Secretary of Labor*, 471 U.S. 290, 302 (1985).
- ¶ Courts must assign weight to Department of Labor interpretations under the *Chevron* doctrine of judicial deferral to an agency's interpretation of a statute which it administers and enforces.

In the absence of an amendment to the law, state agencies must structure work activity programs in light of existing FLSA coverage. At the outset, programs should be designated as employment-based or non-employment-based. Employment based programs must comply with all FLSA requirements, unless the Department of Labor rules otherwise. Non-employment programs should be structured to meet existing FLSA exemptions.

Many of the "work activities" mandated under TANF may well fall within existing exceptions to the FLSA. Section 407(d) lists several activities which seem clearly outside the concept of "employment relationship" under the FLSA. These would include job search and job readiness assistance, vocational educational training for up to 12 months, job skills training directly related to employment, education directly related to employment, and satisfactory attendance at secondary school or course of study leading to an equivalency certificate. 42 U.S.C. § 407(d)(6),(8),(9),(10), & (11). None of these educational or training activities would ordinarily involve performance of services for compensation.

Some activities, such as work experience and on-the-job training, could be considered to be either training or employment, depending on the circumstances. 42 U.S.C. § 407(d)(4)&(5). In these activities, the participants and employers would need to meet *all* the criteria established for trainees and student learners. Job training programs, for example, should adhere to the guidance for the exemption of training and School-to-Work programs.

DEPARTMENT OF THE TREASURY
WASHINGTON

ASSISTANT SECRETARY

MEMORANDUM

TO: Stacey Grundman
Department of Labor

FROM: Donald C. Lubick
Acting Assistant Secretary (Tax Policy)

SUBJECT: Federal Tax Treatment of Government Assistance Payments

DATE: February 18, 1997

This memorandum discusses generally the federal tax treatment of government assistance payments in the context of the recently enacted welfare reform law. As discussed below, existing tax guidance provides general principles that may be applied to situations arising under the new welfare law. It should be noted, however, that although the Office of Tax Policy reviews guidance issued by the Internal Revenue Service (IRS) to ensure that appropriate attention is paid to tax policy considerations, the IRS, and not the Office of Tax Policy, is charged with administering the Nation's tax laws. Accordingly, only the IRS can provide specific guidance with respect to the federal tax consequences of programs operated under the new welfare law.

I. Background

In 1996, Congress reformed the Nation's welfare system through the enactment of The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (the "Act"). Under the Act, Aid to Families with Dependent Children (AFDC) was replaced with Temporary Assistance for Needy Families (TANF). Under TANF, states are given greater flexibility to determine basic eligibility rules and benefit amounts. While AFDC required some work activities, TANF extends these requirements and expands the penalties for non-compliance. By 2002, TANF will require that 50 percent of single parents with children over the age of one and 90 percent of two-parent families be engaged in work activities (initially, these requirements are 25 and 50 percent, respectively). These requirements will be effective for families who have received assistance for at least two years. Moreover, failure to meet these requirements may result in penalties for both the individual and the state.

In 2002, the Act generally requires welfare recipients to engage in 30 hours a week (20 in 1997) of qualifying activity in order to continue to receive public assistance. The Act defines qualifying activities to include unsubsidized employment, subsidized public sector employment, work experience if sufficient private sector employment is not available, on-the-job training, job search and job readiness assistance, community service programs, vocational

educational training, jobs skill training directly related to employment, education related to employment, education directly related to employment in the case of a recipient who lacks a high school diploma or equivalency, and satisfactory attendance at secondary school for a recipient who has not completed high school.

Further, the Act also allows states to operate work supplementation or support programs under which the value of public assistance benefits (including both TANF and food stamp benefits) are provided to employers who hire recipients and, in turn, use the benefits to supplement the wages paid the recipient. Work supplementation or support programs would be available to new employees only and could not displace the employment of those who are not in the programs. States and localities may also operate workfare programs under which certain food stamp recipients may be required to perform work in return for the minimum wage equivalent of their household's monthly food stamp allotment. To a limited extent, both work supplementation and workfare programs could exist under prior law.

According to the Department of Labor (DOL), the Act does not exempt welfare recipients from coverage under the federal employment laws, such as the Fair Labor Standards Act (FLSA). These laws apply to welfare recipients engaged in employment activities in the same manner as they apply to other workers. Thus, for example, TANF recipients must be paid at the minimum wage for any activities that constitute employment for FLSA purposes.

While this memorandum generally summarizes existing federal tax guidance as it relates to government assistance payments, it is not a substitute for specific guidance that may be issued by the IRS. In addition, the Office of Tax Policy is concerned by the tax policy issues raised by the Act. On equity grounds, employees should be treated in the same fashion for tax purposes, regardless of whether or not amounts received from their employers may be subsidized by TANF, food stamp benefits, or other state-provided funds. Under this view, TANF participants' wages should be subject to income, FICA, and FUTA taxes, and be treated as "earned income" for purposes of the earned income tax credit (EITC). From an administrative perspective, this approach is also more efficient. It would be burdensome for both employers and the IRS if TANF-subsidized wages were treated differently than other wage income. For example, employers could not easily adjust income tax withholding on their workers' wages to reflect TANF or food stamp subsidies.

On the other hand, we recognize that an argument could be made that the employer is simply acting as an agent of the state to the extent of the TANF subsidy received by an individual, and that such a subsidy represents a non-taxable general welfare payment and should not be characterized as compensation for services. Under this latter view, it would be inappropriate for the TANF-subsidized payments to increase the number of low-income individuals subject to federal income and social security taxes. Subjecting payments to such individuals to federal tax could also lead to an increase in budgetary costs since it is likely that the resulting EITC payments would exceed the additional amount of revenue which would be raised. States could be expected to push this view, in that transforming limited TANF funds into

wage subsidies would increase the income of welfare recipients by making them eligible for the EITC. From a state's perspective, this would be advantageous since the EITC -- unlike TANF -- is 100 percent federally funded.

As described below, current IRS guidance would appear to limit states' abilities to characterize welfare benefits as wages when no services are actually performed. However, both welfare and tax practices are evolving in this area, and the Office of Tax Policy will continue to monitor both state actions and IRS interpretations in order to determine if more statutory guidance is needed.

II. Existing Federal Tax Guidance Relating to Government Assistance Payments

A. General Welfare Doctrine In General.

In general, all income from whatever source derived is subject to taxation unless excluded by law. Section 61(a)[1]; Commissioner v. Glenshaw Glass Co., 348 U.S. 426 (1955). Compensation for services is specifically included within the statutory definition of gross income. Section 61(a)(1). Although there is no statutory exclusion for government assistance payments, under an administrative rule of the IRS that has been approved by some courts, many types of government assistance payments are excludable from the recipient's income if they are in the nature of general welfare payments -- the so-called "general welfare doctrine."

Under the general welfare doctrine, government assistance payments that are intended to promote the general welfare, and are not in exchange for services rendered, are not includible in the recipient's income. See Bannon v. Commissioner, 99 T.C. 59, 62-63 (1992); Bailey v. Commissioner, 88 T.C. 1293, 1299-1301 (1987).[2] For example, the IRS has ruled that (i) government payments to assist low-income persons with utility costs are in the nature of relief payments made for the promotion of the general welfare and are excludable from recipient's income[3]; (ii) government payments made to the blind from a general welfare fund or to crime victims are excludable from the recipient's income (unless such payments are fraudulently

1. All "Section" references are to sections of the Internal Revenue Code of 1986, as amended.

2. See also United Housing Foundation, Inc. v. Forman, 421 U.S. 837, 855 (1975) ("In a real sense, [the New York State low-income housing subsidy] no more embodies the attributes of income or profits than do welfare benefits, food stamps, or other government subsidies."); Graff v. Commissioner, 673 F.2d 784, 785 (5th Cir. 1982) ("general welfare benefits [are] not taxable").

3. Rev. Rul. 78-170, 1978-1 C.B. 24.

received)[4]; (iii) government payments to assist low-income city inhabitants in refurbishing their homes are excludable from the recipient's income[5]; and (iv) payments under an experimental anti-poverty program funded by the government that is intended to aid poor families without destroying their incentive to improve their living standards are excludable from the recipient's income.[6]

The general welfare doctrine applies only if the government payment program is a need-based program. Bailey, 88 T.C. at 1300. Thus, payments are includible in income when they are received under social welfare programs that are not based on need. Id. at 1301 (government payments to restore the facade of recipient's building not excludable under the general welfare doctrine because the payments were made without regard to the recipient's need); Rev. Rul. 76-131, 1976-1 C.B. 16 (recipients required to include in income payments made under Alaska's Longevity Bonus Act because such payments were based on the recipient's age and length of residency and not on financial status, health, education background, or employment status); Rev. Rul. 76-75, 1976-1 C.B. 14 (interest reduction payments made to mortgagee on behalf of a limited-profit corporation formed to acquire and lease apartments in a low-income housing project are includible in the corporation's income because such payments are a substitute for rent).

Further, only the ultimate intended beneficiaries of the welfare payments are entitled to exclude the payments from income. Thus, government payments to persons who provide care to disabled persons are includible in the recipients's income as compensation for services; the disabled persons, and not the recipients of the payments, are the ultimate intended beneficiaries of the government payments. Bannon, 99 T.C. at 63-66 (noting that "in every sense the payments [to the care giver] were treated by the [government agency] as compensation for services"; care giver required to submit time records to agency and agency issued IRS Form W-2 to care giver).

B. Application of General Welfare Doctrine to Work-Training Programs.

The general welfare doctrine applies only if the government assistance payments are not

---

4. Rev. Rul. 57-102, 1957-1 C.B. 26 (payments to blind persons); Rev. Rul. 74-74, 1974-1 C.B. 18 (payments to crime victims).

5. Rev. Rul. 76-395, 1976-2 C.B. 16, 17 ("The Internal Revenue Service has consistently held that payments made under legislatively provided social benefit programs for promotion of general welfare are not includible in an individual's gross income.").

6. Rev. Rul. 73-87, 1973-1 C.B. 39 ("[D]isbursements from a general welfare fund in the interest of the general public which are not made for services rendered are not includible in gross income.").

compensation for services. Thus, for example, government benefit payments that are made directly by government agencies to persons who are undergoing training or retraining (including on-the-job training) are excludable from the recipient's income because the payments are intended to promote the general welfare and are not compensation for services. Rev. Rul. 63-136, 1963-2 C.B. 19 (payments that are made to individuals to aid them in their efforts to acquire new skills that will enable them to obtain better employment opportunities)[7]; see also Rev. Rul. 72-340, 1972-2 C.B. 31 (city-paid stipends that are paid to unemployed or underemployed probationers, including some who are placed with private employers, are excludable from the recipient's income, and are not wages for income tax withholding or FICA tax purposes, because the stipends are intended to aid the recipients in acquiring training in skills that will afford them opportunities for gainful employment).

To determine whether payments under work-training programs are includible in a participant's income, one must determine whether the activity for which the payments are received is basically for the performance of services or is for participation in a training program that promotes the general welfare. Rev. Rul. 75-246, 1975-1 C.B. 24. If a participant engages in an activity that is basically the performance of services, the payments he receives are includible in income as compensation for services; otherwise the payments are considered relief payments made for the promotion of general welfare and are excludable from income. Id. at 24-25.[8] The IRS recognizes that this determination can be extremely difficult in certain situations. Rev. Rul. 71-425, 1971-2 C.B. 76, 77.

The following sections discuss existing federal tax guidance relating to this inquiry. Due to the inherently factual nature of the inquiry, the federal tax consequences arising in any case will depend on the facts and circumstances of such case.

---

7. The ruling refers to an earlier ruling in which the IRS held that unemployment compensation payments were excludable from income because such payments are made for the promotion of the general welfare. Rev. Rul. 55-652, 1955-2 C.B. 21. This ruling has been overturned by statute. Section 85 (unemployment compensation is specifically includible in income). Congress enacted Section 85 in 1978 because unemployment compensation payments made under government programs are, in substance, a substitute for taxable wages. H.R. 1445, 95th Cong. 2d Sess. 47, reprinted in 1978-3 C.B. 221.

8. Compare Rev. Rul. 63-136, supra (overriding purpose to aid recipient in acquiring new skills to obtain better employment opportunities), and Rev. Rul. 68-38, 1968-1 C.B. 446 (same), with Rev. Rul. 74-413, 1974-2 C.B. 333 (overriding purpose of state program established to provide short-term employment in disaster relief activities for unemployed individuals is to provide participants with compensation for services), and Rev. Rul. 65-139, 1965-1 C.B. 31 (payments made to enrollees in work-training program established under the Economic Opportunity Act of 1964 are includible in income because the enrollees are being compensated for services performed even though such services embody some degree of training).

1. Work-Training Programs Where Government Makes Payments to Participants.

In Rev. Rul. 71-425, the IRS ruled that payments received under government sponsored work-training programs are excludable from the recipient's income, and are not considered wages for income tax withholding and FICA tax purposes, if the following conditions are satisfied:

- participation in the work-training program is arranged and financed by a public agency from which the participant is receiving public welfare benefits based upon personal or family subsistence requirements; and

- the payments received under the work-training program (exclusive of any extra allowance that may be provided for transportation or other costs related to participation) are not greater than the amount of such public welfare benefits that he would have been receiving.

& if we insist on min wage, we lose on this!

If the amount received under the work-training program (exclusive of allowances) is greater than the amount that would have been received by the participant had there been no work-training program, the entire amount received is considered as taxable gross income and wages for withholding and FICA tax purposes, except to the extent that it can be demonstrated that the amount received exceeds the fair market value of the services performed under the program.

In this ruling, a state welfare agency requires able-bodied individuals on welfare to participate in work experience projects that it sponsors or administers under federal law (Title V of the Economic Opportunity Act of 1964). The agency makes the work assignments and makes the only payments the participants receive in connection with the work.[9] Participants receive payments at a rate equal to the prevailing hourly rate for similar work in the community or the minimum rate established under state law for such work, whichever is higher. They work only the number of hours that produce a payment equal to the relief allowance they would otherwise receive in any one month period. If additional costs, such as transportation, are incurred, the participant works sufficient additional hours to cover such costs. In the ruling, the IRS recognizes that work-training programs include elements of both work and training, and thus, it is extremely difficult to characterize any program as primarily involving one or the other and not practical to bifurcate a program into the relative proportions of work and training. In addition to the holdings set forth above, the ruling also holds that where the primary measure of the amount a participant receives under a program is based on personal or family need of the recipient rather than the value of any services performed, the payments received are more in the nature of a

Diff from 2nd bullet Ah

NOT our situation- req'd #'s hrs resulting in greater payment (in many states)

fit above

9. Examples of work activities included in the federal program pursuant to which the work-training programs are operated include simple maintenance of public roads; routine and general office clerical work; untrained aides and assistance in institutions, such as bus boys and kitchen workers; and trained laboratory assistants.

welfare payment in connection with the recipient's participation in a training program than a payment for services rendered.[10]

2. Payments to Trainees Under Government Training Programs.

The IRS has illustrated the federal income and employment tax treatment of payments made and received under titles I and II of the Comprehensive Employment and Training Act of 1973 (CETA)[11] in various factual situations. Rev. Rul. 75-246, supra. These situations are as follows:

- Training with Private Sector Employers. A trainee is given on-the-job training by a privately owned company selected by the state sponsor. The company has and exercises the degree of control over the trainee to establish an employment relationship between the trainee and the company.[12] The company receives the trainee's services and compensates him at the usual entry wage for the position for which training is being given. The company's training expenses are reimbursed in part by the state.

  - Conclusion. The payments the trainee receives from the company are includible in income because the trainee is basically engaged in the performance of services, even though the services embody some degree of training. Accordingly, the company, as the employer, is required to withhold income and FICA tax, and pay FUTA tax, with respect to the payments made to the trainee.

- Training with Public Sector Employers. A trainee is given work experience in the public sector, in this case a medical clinic owned and operated by a city. The

---

10. The IRS bases this conclusion on the fact that in many cases the payments received under a work-training program are received in lieu of, and in amounts no greater than, payments that the participant was receiving based upon personal and family subsistence requirements from a public welfare agency prior to his participation in the work-training program.

11. The stated purpose of CETA is to provide job training and employment opportunities for economically disadvantaged, unemployed, and underemployed persons and to assure that training and other services lead to maximum employment opportunities and enhance self-sufficiency by establishing a flexible and decentralized system of federal, state, and local programs. Rev. Rul. 75-246, 1975-1 C.B. 24.

12. The determination of whether a person is an employee or independent contractor for federal tax law purposes is based on common law factors. See, e.g., Rev. Rul. 87-41, 1987-1 C.B. 296, which sets forth twenty factors to be considered for this purpose.

facts establish that the city is the employer of the trainee. In addition to the work experience, the trainee is given a small amount of counseling and classroom training. One fourth of the amount the city pays the trainee for his services and participation in the training activities is reimbursed by the state sponsor. The trainee may also receive an allowance, determined on the basis of need, to cover certain expenses incident to the work-training experience, such as transportation expenses.

- Conclusion. The payments the trainee receives from the city are includible in income because the trainee is basically engaged in the performance of services. Accordingly, as to such payments, the city is required to withhold income tax.[13] Any allowance, however, is excludable from income, and is not subject to income tax withholding, FICA tax or FUTA tax. Such payment is made for the promotion of the general welfare because it is paid only to make the trainees participation in the training possible.

- Training Without the Performance of Services. A trainee is given vocational, occupational, and educational training designed to upgrade basic skills, in a classroom or institutional setting. The training is provided by both public and private agencies. The trainee, who performs no services for the training agency, receives from the state an allowance for his participation in the training activity. If the trainee is not a recipient of public assistance, the trainee receives an amount equal to the minimum wage under FLSA, increased for the number of the trainee's dependents and for certain other expenses. Trainees who receive public assistance are paid an incentive allowance of $30 per week.

  - Conclusion. Allowances paid to the trainees are excludable from their income because such payments are in the nature of relief payments made for the promotion of the general welfare and are not compensation for services rendered. Further, because trainees perform no services for the training agency and the allowances paid are not directly related to any services performed, there is no employment relationship between the trainee and the training agency. Thus, the state payor of the allowance is not obliged to withhold income tax or FICA taxes, nor to pay FUTA tax, with respect to the allowance.

---

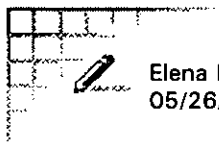
13. The ruling holds that the city is not required to withhold FICA tax. or pay FUTA tax, because state and local employees are not covered under such programs. Under current law, however, state and local employees may be subject to FICA. In such event, the state or local government would be required to withhold FICA tax.

III. Application of Existing Guidance

Existing federal tax guidance provides general principles that may be applied to situations arising under the Act. While the application of these principles may be clear in some cases, specific guidance should be sought from the IRS in the majority of cases. The following two scenarios illustrate the potential application of existing tax law to extreme examples that may arise under the Act.

First, welfare recipients who are engaged solely in training activities, and who do not perform any services for the training agency, would not have to include any of the payments received in income. Further, the payments would not constitute wages for income tax withholding, and FICA and FUTA tax purposes.

Second, welfare recipients who perform services as an employee (determined under tax principles) for an employer, whether public or private, and who receive payments from the employer would have to include the payments in income as compensation for services, even if the services performed involved some measure of training. In addition, the payments would constitute wages for income tax withholding, and, if applicable, FICA and FUTA tax purposes. This conclusion would not change even if a government agency reimburses the employer for a portion of the amounts paid to the recipient.

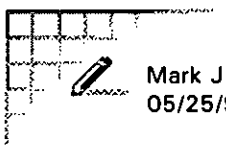


Elena Kagan
05/26/97 10:25:35 AM

Record Type: Record

To: Mark J. Mazur/CEA/EOP
cc: Cynthia A. Rice/OPD/EOP, Bruce N. Reed/OPD/EOP, Diana Fortuna/OPD/EOP
bcc:
Subject: Re: proper taxation of workfare benefits

Yes, but only if the understanding is that we will seek a legislative fix (if needed), consistent with our position since 1994, that workfare benefits are not subject to FICA and do not qualify for EITC. This is what we are going to tell the governors starting this week, in an attempt to dissuade them from attacking our decision on FLSA. The function of a working group is only to work out the details. Does everyone agree?
Mark J. Mazur



Mark J. Mazur
05/25/97 03:12:27 PM

Record Type: Record

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

cc:
Subject: proper taxation of workfare benefits

Folks,
I brought up the idea of a joint DPC/NEC decision process with Gene Sperling at the NEC staff meeting on Friday and he said we should go ahead and get this started so we can come to an agreement in relatively short order.

My thinking on this is that we should let the current process involving IRS, Labor, and HHS and focussing on administrative solutions chug along to determine the appropriate interpretation of current law. But we should set up a parallel process with these agencies (and any other interested ones) to develop a legislative solution to this issue. There is a chance that such a legislative fix can be added to whatever tax bill will be constructed this summer. I suggest that we try to convene a group from Labor, HHS, Treasury, DPC, NEC, OMB, and CEA this coming week to get this process started. What do you think?

Mark

WR-FLSA

Diana Fortuna
05/22/97 02:15:43 PM

Record Type: Record

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

cc:
Subject: flsa distribution

The guidance is going tonight to House and Senate leadership, so people will be opening their envelopes tonight and tomorrow, in terms of the cat being out of the bag. People seem to think this won't be interesting to the press. We are briefing Dem Govs on Tuesday a.m.

Talking Points on FLSA
5/16/97; 2:20 p.m.

- The Labor Department has concluded that the Fair Labor Standards Act (FLSA) applies to welfare recipients in workfare or other subsidized employment programs in the same way as that law applies to all other employees.

- This means that many, if not most, welfare recipients in these programs will receive at least the minimum wage for their work activities.

- Welfare recipients in these programs will not have to be paid the minimum wage if they fall within the FLSA's exception for "trainees." Some states will probably try to structure their workfare programs so that recipients fall within the "trainee" exception.

- In most cases in which the minimum wage is required, both cash assistance and food stamps will count toward the minimum wage. The Department of Agriculture will take necessary administrative action to ensure that food stamps can be counted to the greatest degree possible.

- This will not affect the work requirements of the welfare law. States will still be able to meet those requirements, by placing people in private sector jobs (where the minimum wage already applies) and in workfare programs. With both cash assistance and food stamps counting toward the minimum wage, very few states will have to increase their assistance payments. In fact, every state but one (Mississippi) can comply with the welfare law's current work requirements (now 20 hours per week for a welfare recipient) and pay minimum wage without increasing their current benefit level.

- Far from undermining the welfare law, paying welfare recipients the minimum wage required by the law promotes the goals of welfare reform by giving people the ability to support their families and break the cycle of dependency.

- The Labor Department will provide guidance within the next week or two on the specifics of this policy and will engage in extensive consultation with states on how to apply this policy with the least disruption.

- The Treasury Department is still exploring how the tax laws apply to welfare recipients in workfare programs. We hope to be able to give states an answer to that question very shortly.

Q&A

Question: Won't this end welfare reform as we know it by making work more expensive?

Answer: Not at all. With both TANF and food stamps counting toward the minimum wage, every state except Mississippi will be able to give welfare recipients workfare slots for 20 hours each week (the welfare law's current work requirement) without raising their benefit levels. And of course states should be trying to place welfare recipients in private sector jobs where the minimum wage already applies.

Question: Are most welfare recipients who are working going to be considered "employees"?

Answer: Most welfare recipients participating in the work activities described in the new welfare law probably will count as "employees," entitled to the minimum wage, under the FLSA. But some individuals, engaged in such activities as job search, vocational education, and secondary school, may count as "trainees" instead. The Labor Department will advise states on how the FLSA applies to particular programs and individuals engaged in them.

Question: What's the difference between a trainee and a worker under FLSA?

Answer: An individual is in training if:

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

Question: Can Food Stamps count as wages?

Answer: We believe that through waivers or other mechanisms such as the Simplified Food Program option now in law, states will be able to count food stamps toward the minimum wage for all those required to work under the new welfare law.

Question: Does this mean welfare recipients in workfare and other subsidized employment programs can unionize?

Answer: No -- that is a different question entirely. Whether and when workers can unionize is a function of the National Labor Relations Act. The National Labor Relations Board, an independent entity that administers that Act, has not ruled on the unionization question.

Question: Would the Administration support or oppose legislation to exempt welfare recipients from the minimum wage laws?

Answer: We would oppose legislation that flatly exempts welfare recipients from the minimum wage law. The Administration believes that people who work should be paid at least the minimum wage.

Question: Would you oppose <u>any</u> legislation addressing this issue?

Answer: Not necessarily, but any legislation would have to be consistent with our support for the minimum wage. In determining how the minimum wage law applies to workfare, the Administration has had to address a host of technical issues that Congress did not deal with in passing the welfare law. If Congress wants to address these issues, the Administration will consider the proposals carefully. But any legislation must reflect the Administration's position that people who work should be paid at least the minimum wage.

Talking Points on FLSA
5/22/97

- The Labor Department has concluded that the Fair Labor Standards Act (FLSA) applies to welfare recipients in workfare or other subsidized employment programs in the same way as that law applies to all other employees.

- This means that many, if not most, welfare recipients in these programs will receive at least the minimum wage for their work activities.

- Welfare recipients in these programs will not have to be paid the minimum wage if they fall within the FLSA's exception for "trainees." Some states will probably try to structure their workfare programs so that recipients fall within the "trainee" exception.

- In most cases in which the minimum wage is required, both cash assistance and food stamps will count toward the minimum wage. The Department of Agriculture will take necessary administrative action to ensure that food stamps can be counted to the greatest degree possible.

- This will not affect the work requirements of the welfare law. States will still be able to meet those requirements, not only by putting recipients in workfare, but by placing people in private sector jobs (where the minimum wage already applies). With both cash assistance and food stamps counting toward the minimum wage, very few states will have to increase their assistance payments. In fact every state but one (Mississippi) can comply with the welfare law's current work requirements (now 20 hours per week for a welfare recipient) and pay minimum wage without increasing their current benefit level.

- The Labor Department will provide guidance within the next week or two on the specifics of this interpretation and will engage in extensive consultation with states on how to apply the law with the least disruption.

- The Treasury Department is still exploring how the tax laws apply to welfare recipients in workfare programs. We hope to be able to give states an answer to that question very shortly.

Q&A

Question: Won't this end welfare reform as we know it by making work more expensive?

Answer: Not at all. With both TANF and food stamps counting toward the minimum wage, every state except Mississippi will be able to give welfare recipients workfare slots for 20 hours each week (the welfare law's current work requirement) without raising their benefit levels. And of course states should be trying to place welfare recipients in private sector jobs where the minimum wage already applies.

Question: Are most welfare recipients who are working going to be considered "employees"?

Answer: Most welfare recipients participating in the work activities described in the new welfare law probably will count as "employees," entitled to the minimum wage, under the FLSA. But some individuals, engaged in such activities as job search, vocational education, and secondary school, may count as "trainees" instead. The Labor Department will advise states on how the FLSA applies to particular programs and individuals engaged in them.

Question: What's the difference between a trainee and a worker under FLSA?

Answer: An individual is in training if:

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

Question: Can Food Stamps count as wages?

Answer: We believe that through waivers or other mechanisms such as the Simplified Food Program option now in law, states will be able to count food stamps toward the minimum wage for all those required to work under the new welfare law.

Question: Does this mean welfare recipients in workfare and other subsidized employment programs can unionize?

Answer: No -- that is a different question entirely. Whether and when workers can unionize is a function of the National Labor Relations Act. The National Labor Relations Board, an independent entity that administers that Act, has not ruled on the unionization question.

Question: Would the Administration support or oppose legislation to exempt welfare recipients from the minimum wage law?

Answer: We would oppose legislation that flatly exempts welfare recipients from the minimum wage law. The Administration believes that people who work should be paid at least the minimum wage.

Question: Would you oppose <u>any</u> legislation addressing this issue?

Answer: Not necessarily, but any legislation would have to be consistent with our support for the minimum wage. In determining how the minimum wage law applies to workfare, the Administration has had to address a host of technical issues that Congress did not deal with in passing the welfare law. If Congress wants to address these issues, the Administration will consider the proposals carefully. But any legislation must reflect the Administration's position that people who work should be paid at least the minimum wage.

Discussion Draft
December 16, 1996

COVERAGE OF WELFARE-TO-WORK PARTICIPANTS UNDER THE FAIR LABOR STANDARDS ACT

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 replaced the Aid to Families with Dependent Children program with a new "Temporary Assistance for Needy Families" (TANF) block grant program to the states, and imposed strict requirements that TANF recipients work as a condition of receiving TANF funds. Under the new law, states must demonstrate that 25 percent of TANF recipients are engaged in work for at least 20 hours per week, or 35 hours in two-parent households.[1] Permissible "work activities" include: (1) unsubsizided employment; (2) subsidized private sector employment; (3) subsidized public sector employment; (4) work experience; (5) on-the-job training; (6) job search and job readiness assistance; (7) community service programs; (8) vocational educational training; (9) job skills training directly related to employment; (10) education directly related to employment; (11) attendance at secondary school or GED program; and (12) provision of child care to an individual participating in a community service program.

A number of the above-listed "work activities" contemplated by TANF are just that – work. Others are more education or training oriented. However, because many of the categories of "work activities" permitted under TANF are vague and undefined, evaluation of Fair Labor Standards Act coverage cannot be done on a categorical basis, but rather will depend on the substance of the "work activities" being performed, analyzed under DOL's traditional tests. The TANF law does not exempt TANF recipients performing work from FLSA coverage. Exemptions by implication are disfavored under the FLSA. Thus, when TANF recipients engage in "work activities" that meet the traditional tests for FLSA coverage, they will be entitled to the FLSA's protection.

Our experience to date with workfare programs makes clear that the activities to which workfare participants typically are assigned (e.g., cleaning parks, janitorial services, clerical work) are jobs that unquestionably qualify as work under the FLSA. We believe, therefore, that substantial numbers of TANF recipients will be performing work, and will be entitled to the Fair Labor Standards Act's minimum wage and other protections.

---

[1] The percentage of TANF recipients who must be engaged in work increases by 5 percent each year until it reaches 50 percent in the year 2002. In addition, the number of required work hours increases to 25 in fiscal year 1999 and 30 hours in fiscal year 2000.

The FLSA's Purposes and Coverage

The Fair Labor Standards Act was enacted to eliminate "labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers" and the unfair competition caused by such practices. 29 U.S.C. § 202(a). The Act's coverage is extremely broad, and protects all workers whom an employer "suffer[s] or permit[s] to work." 29 U.S.C. § 203(g). As the Supreme Court has observed, "a broader or more comprehensive coverage of employees within the stated categories would be difficult to frame." U.S. v. Rosenwasser, 323 U.S. 360, 362 (1945). Senator Hugo Black, the FLSA's principal sponsor, characterized the FLSA's term as "the broadest definition that has ever been included in any one act." Id., citing 81 Cong. Rec. 7657 (1937).

Unlike other statutes, where common law tests of employment are utilized, the "economic realities" of a situation govern whether an employment relationship exists for purposes of coverage under the FLSA. This bedrock principle was set forth by the U.S. Supreme Court in Goldberg v. Whitaker House Cooperative, Inc., 366 U.S. 28 (1961), and has been consistently utilized since.[2] Under social welfare legislation such as the FLSA, "employees are those who as a matter of economic reality are dependent upon the business to which they render service." Bartles v. Birmingham, 332 U.S. 126, 130 (1947). The determination depends "upon the circumstances of the whole activity." Rutherford Food Corp. v. McComb, 331 U.S. 722 (1947). Relevant factors include, but are not limited to: "whether the alleged employer (1) had the power to hire and fire the employees, (2) supervised and controlled employee work schedules or conditions of employment, (3) determined the rate and method of payment, and (4) maintained employment records." Bonnette v. California Health and Welfare Agency, 704 F.2d 1465, 1470 (9th Cir. 1983).

Although broad, the FLSA's definition is not all-encompassing. "An individual who, 'without promise or expectation of compensation, but solely for his personal purpose or pleasure, worked in activities carried on by other persons either for their pleasure or profit," is not an employee. Walling v. Portland Terminal Co., 330 U.S. 148, 152 (1947). Still, the overriding consideration is the economic realities of the situation,

---

[2] Indeed, in Nationwide Mutual Insurance Co. v. Darden, 503 U.S. 318 (1992), although reverting to the common law test for interpreting the term "employee" for purposes of ERISA, the Supreme Court expressly distinguished the FLSA and noted that the FLSA's "striking breadth . . . stretches the meaning of 'employee' to cover some parties who might not qualify as such under a strict application of traditional agency law principles." 503 U.S. at 326.

under which an employment relationship may be found even where no cash payments are made and the participants themselves do not consider themselves employees. Tony and Susan Alamo Foundation v. Sec'y of Labor, 471 U.S. 290 (1985).

Proposed Guidance for Evaluating FLSA Coverage for TANF Recipients

Based on experience to date with workfare programs, and the strong emphasis in the new welfare law on work, we believe that substantial numbers of workfare participants under TANF will be employees performing work and will be entitled to coverage under the FLSA. A fact-based analysis of the "economic realities" of the situation will make the employment nature of the relationship clear. We suggest that the Department of Labor articulate guidance, based on existing tests, for determining FLSA coverage under TANF work programs, and that DOL include such guidance in its Field Operations Handbook and other appropriate sources. The following principles, gleaned from current law, should be included in DOL's guidance as to whether an employment relationship, and FLSA coverage, exists.

1. "Striking Breadth" of FLSA's Coverage. Congress intended the FLSA to have broad coverage in order to achieve its remedial purposes of protecting a minimum standard of living and eliminating unfair competition caused by sub-standard wages. Courts have consistently affirmed the FLSA's "striking breadth." See, e.g., Darden, 503 U.S. 318; Tony and Susan Alamo Foundation, 471 U.S. at 296. DOL should promote this principle of broad FLSA coverage in its analysis of welfare-to-work programs.

2. Economic Realities Test. DOL's guidance should emphasize the applicability of the "economic realities" test in analyzing FLSA coverage under workfare programs. The test is not mentioned in DOL's current guidance. Field Operations Handbook (Oct. 20, 1993) at 10b40(a). Inclusion of the "economic realities" test is important to reinforce the point that as in all FLSA cases, the economic realities of the workfare situation should be analyzed to determine whether an employment relationship exists. The absence of the economic realities test in DOL's guidance could result in a mistaken view that TANF work arrangements should follow a different analysis from other types of work.

We believe the economic realities test will be satisfied in the vast majority of cases, given that TANF recipients "as a matter of economic reality are dependent upon the business to which they render service" for their subsistence income. Bartles v. Birmingham, 332 U.S. 126, 130 (1947).

3. Employer as Beneficiary of Services. A relevant factor in determining whether an employment relationship exists is whether the services being performed primarily benefit the employer or the individual. Employers may argue that work being performed by workfare participants benefits the participant and not the employer, because the participant is performing the activity as a condition of receiving government benefits aimed at building economic self-sufficiency. They may also argue that workfare is akin to rehabilitation programs sponsored by the Salvation Army and others, which some courts have found to be "solely rehabilitative," and outside the purview of the FLSA. See Williams v. Strickland, 87 F.3d 1064 (9th Cir. 1996). However, a better approach is to focus on whether the employer is primarily benefitting from the work participant's activities. In this regard, a relevant consideration should be whether the employer has assigned the TANF recipient to perform work or produce products similar to the employer's other employees.

4. Expectation of Compensation. Courts have found the issue of whether the employee has an expectation of compensation for his/her services relevant to the question of FLSA coverage. TANF participants will fully expect compensation, i.e., at least their TANF payment, for the services they perform, providing strong evidence of their status as employees.

5. Tax Considerations. DOL should consider whether an employer has availed itself of the Targetted Jobs Tax Credit (or similar benefits) for the TANF recipient or similarly-situated workers. These programs typically reward employers for employing hard to place individuals, including, in the case of the federal law, welfare recipients. Employers should not be permitted to claim tax breaks based on employer status but avoid employer status for purposes of paying the minimum wage.

6. Functions vs. Labels. As previously noted, the "work activities" permitted under TANF are broad in scope, ranging from vocational education to community service and employment. The categories of work activities contained in the law are not defined and are not useful in distinguishing between activities that do and do not constitute work for purposes of the FLSA. Accordingly, the focus should be on the functions a TANF recipient performs, and not the label that the state or employer attaches to those activities.

7. Training vs. Work. The stated purpose of the new welfare law is to help individuals make the transition from government assistance to self-sufficiency. Equipping TANF recipients with the knowledge and skills needed for good jobs at good wages will in many cases require extensive training and education. To the extent TANF training programs meet DOL's traditional criteria for excluding such programs from

FLSA coverage, DOL's standard rules should govern. However, DOL should be vigilant in not permitting employers to use "training programs" as a subterfuge for engaging TANF recipients to perform work without the protections of the FLSA.

Under DOL's traditional test for distinguishing between training and employment, trainees are not employees if all six of the following factors are met:

1. The training, even though it includes actual operation of the facilities of the employer, is similar to that which would be given in a vocational school;
2. The training is for the benefit of the trainees;
3. The trainees do not displace regular employees, but work under close observation (Note: TANF does not permit employers to displace current employees with TANF recipients)
4. The employer that provides the training derives no immediate advantage from the activities of the trainees and on occasion his operations may actually be impeded;
5. The trainees are not necessarily entitled to a job at the completion of the training period; and
6. The employer and the trainees understand that the trainees are not entitled to wages for the time spent in training.[3]

When confronted with employer arguments that TANF recipients are trainees and not employees, DOL should review the nature of the activity being performed and consider whether such an activity typically is considered work. In addition, DOL should consider the typical duration of training for such work. Given past experience with workfare programs, it is likely that in most cases, TANF recipients will be placed in low-level, entry-level work, and training will be of a limited nature and duration. Thus, the nature and duration of TANF worker training will differ markedly from the training DOL has excluded from FLSA coverage.

8. Who is the Employer? The FLSA defines "employer" to include "any person acting directly or indirectly in the interest of an employer in relation to an employee." 29 U.S.C. § 203(d). In determining who is the TANF worker's employer, the traditional indicia of employer control should factor into the analysis, including:

---

[3] Similar criteria were recently set forth by DOL for purposes of distinguishing when activities under the recent School-to-Work Act count as work vs. schooling. Courts often utilize the above criteria as guidance, but do not necessarily find them determinative. Reich v. Parker Fire Protection District, 992 F.2d 1023 (10th Cir. 1993); McLaughlin v. Ensley, 877 F.2d 1207 (4th Cir. 1989).

a. Whether the employer has the ability to hire, discipline or fire the employee;

b. Whether the employer determines the rate or method of payment;

c. Whether the employer has the right to supervise and control the employees' work schedule, conditions of employment, or type or manner of work being performed;

d. Whether the employer maintains employment records for the employee

Bonnette, 704 F.2d at 1470.

In reviewing the above factors, DOL should bear in mind that in some cases, a joint employer relationship may exist between the state agency supplying TANF payments and the entity for which the participant is working. Under FLSA joint employer doctrine, a determination of whether a joint employer situation exists depends on "all the facts in the particular case." 29 CFR § 791.2(a). The joint employer analysis will obviously be influenced by how a state elects to structure its program. While we do not know a great deal at this point about how states will be structuring their workfare programs under TANF, e.g., will states utilize employment agencies to place workfare participants, will states divert TANF checks to an employer or continue to make TANF payments on their own, etc., it is quite possible that a joint employment situation will exist. The state agency will, at a minimum, be responsible for the payment of "wages" in the form of a TANF grant, and may in many cases have a level of involvement and control over a TANF work participants' assignment. The employing entity will have control over the work to be performed and the conditions under which it is performed. Thus, both the state and the other employer may be jointly and severally liable for payment of the minimum wage.

Conclusion

DOL should prepare and circulate guidance stating that the economic realities test will be used to determine whether a TANF recipient is engaged in a "work activity" that meets the definition of work under the FLSA. This guidance should be incorporated into the Field Operations Handbook and other appropriate sources.

"REGULAR" MINIMUM WAGE WORKER	WOULD MOST LIKELY QUALIFY FOR:	BECAUSE INCOME BELOW:
Single parent with 2 kids employed 40 hrs/wk at minimum wage makes income < 100% of poverty $5.15/hour x 40 hrs week x 52/wks = $10,712 100% of poverty in 1996 for family of 3 = $12,980	o Food Stamps	130% of poverty
	o Medicaid for: - kids under 6 - kids born after 9/1983	 133% of poverty 100% of poverty
	o Earned Income Tax Credit	$11,610/year
	o Some subsidized child care	State-set formulas
	o Free school lunches for kids	130% of poverty
	o WIC supplemental food for kids < 5	185% of poverty
	o Home heating aid	150% of poverty
	o Housing/rental assistance	50% of median income in metropolitan area
	o Job training thru JTPA Title II-A	100% of poverty or 70% of BLS living standard
	o Unemployment Insurance	Because wages and hours worked would qualify in most states
	o Workers Comp	Because an "employee"

Note: Since the automatic link between AFDC and Medicaid eligibility has been broken, Medicaid coverage could be available to the single working parent as well as the children if eligibility meets state-set standards that were in place 7/16/96. The median of all states in 1996 was gross income of $8,640 or less. Therefore, the single parent working 30 hours a week at minimum wage for 52 weeks a year ($8,034) would most likely qualify for coverage in most states, regardless of whether they receive TANF or not.

"TANF WORKER"	WOULD MOST LIKELY QUALIFY FOR:	IF GROSS INCOME BELOW:
Single parent with 2 kids employed in workfare situation Assuming income = < 100% poverty	o Food Stamps	130% of poverty
	o Medicaid for: - kids under 6 - kids born after 9/1983	 133% of poverty 100% of poverty
	o Earned Income Tax Credit	$11,610/year
	o Some subsidized child care	State-set formulas
	o Possibly transportation expenses	State-set formulas
	o Free school lunches for kids	130% of poverty
	o WIC supplemental food for kids < 5	185% of poverty
	o Home heating aid	150% of poverty
	o Housing/rental assistance	50% of median income in metropolitan area
	o Job training thru JTPA Title II-A	100% of poverty or 70% of BLS living standard
	o Unemployment Insurance	If wages and hours worked would qualify in most states
	o Workers Comp	Because an "employee"

Note: Since the automatic link between AFDC and Medicaid eligibility has been broken, Medicaid coverage could be available to the single working parent as well as the children if eligibility meets state-set standards that were in place 7/16/96. The median of all states in 1996 was gross income of $8,640 or less. Therefore, the single parent working 30 hours a week at minimum wage for 52 weeks a year ($8,034) would most likely qualify for coverage in most states, regardless of whether they receive TANF or not.

DRAFT DOCUMENT 5/27/97 @ 6PM
--FOR INTERNAL USE ONLY--

QUESTIONS & ANSWERS ON THE APPLICATION OF LABOR STANDARDS TO TANF PARTICIPANTS

1. Can you provide a list of the labor protections to which welfare recipients will be entitled?

Welfare recipients who are employees will be subject to the same federal labor protections as any other workers. Because of variations in state laws and the variations of labor standards among specific jobs and industries, it is not possible to prepare a complete list of labor standards that will apply to all such workers. (For example, there is no federal overtime requirement in agriculture. Employees engaged in door-to-door sales are not subject to the federal minimum wage. And newspaper delivery persons are exempt from the federal child labor rules.) In general, however, such participants are likely to be eligible for:

(1) Minimum wage;
(2) Overtime pay;
(3) Child labor protections;
(4) Unemployment insurance;
(5) Workers' compensation;
(6) Safety and health standards; and
(7) Equal employment opportunity protections.

2. Does the FLSA apply to welfare recipients who are required to work? How would the FLSA be enforced for TANF recipients?

The FLSA has a very broad definition of employment that applies to welfare recipients who are required to work just as it does to any other worker. Some TANF recipients will participate in work activities that would be considered training activities under the FLSA, such as GED classes. If a welfare recipient is considered a trainee (and not an employee) under the FLSA, the minimum wage would not apply. But in most cases, where welfare recipients in work activities will be performing some kind of work for a private company or a public agency, they will be entitled to the minimum wage, just like other workers are entitled to the minimum wage.

The goal of welfare reform is to move people from the dependency of welfare to productive employment that can raise American families and their children out of poverty. Assuring that welfare recipients who work receive the minimum wage complies with the law while advancing this goal.

Participants in work programs who believe that their employer is not complying with the law can, just like any other worker, file a complaint with the Department's Wage and Hour Division or file a private lawsuit in court.

3. What is an example of the type of work activity that would constitute training which would not be employment under the Fair Labor Standards Act?

TANF recipients can participate in work activities that constitute training which would not be employment under the FLSA. Where the training meets the FLSA criteria, participants are not required to be compensated at the minimum wage because they are not "employees." The standard FLSA test provides that an employment relationship does **NOT** exist in that situation if:

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

In situations where the training is not connected with any employment and is provided in a school setting, the trainee is likely to be classified as a "trainee" and not as an "employee." On the other hand, where the training is provided in a work-based setting, a determination of whether "work" is being performed and an employment relationship exists is more difficult. In either case, the FLSA test must be applied to the specific facts of the situation in order to make a determination.

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

4. Considering all of the valuable training and workforce experience they will be receiving in these welfare-to-work programs, why should welfare recipients be guaranteed a minimum wage?

As people move from welfare to work, one of the most important lessons they can learn is that work pays. Paying them less than the minimum wage defeats this purpose, because no one can achieve self-sufficiency and raise a family on less than the minimum wage. That's why Congress, at the President's behest, raised the minimum wage last year from $4.25 an hour -- a level at which, even with the Earned Income Tax Credit and food stamps, a single mother or father with two kids and a full-time minimum wage job did not make enough to rise above the poverty level.

Raising the minimum wage is a signal that the nation should reward -- and not hold back -- people who try their very best to make it on their own. Welfare recipients should not be excepted from that ideal. To do so would be to send the wrong message to Americans who are moving from welfare to work.

5. **If welfare recipients have to be paid the minimum wage, doesn't that undermine the President's Welfare-to-Work Challenge?**

No. The President's Welfare-to-Work Challenge is dedicated to moving welfare recipients into long-term private sector jobs by providing $3 billion in funding for job placement and job creation. States and cities can use these funds to provide subsidies and other incentives to encourage private businesses to hire welfare recipients. The requirement that welfare recipients who are required to work must be paid at least the minimum wage is entirely consistent with the goal of moving people into real jobs at fair wages.

6. **Does the decision in Johns v. Stewart mean that welfare recipients working under TANF are not entitled to the minimum wage for their hours of work?**

No. Johns, 57 F.3d 1544(10th Cir. 1995), did not arise under TANF, but under two Utah state general assistance programs under which recipients were required to participate in a variety of rehabilitative and self-sufficiency activities, including community work. ~~This case is distinguishable on that basis.~~ Moreover, the court only held that the general assistance recipients were not employees of the State, but did not examine the relationship between the recipients of the assistance and the entities (Weber County Division of Aging and Brigham City Corporation) for whom they actually performed work.

We also believe that the Johns court did not properly apply the principles of the FLSA. Johns recognizes that the FLSA has a very broad definition of the terms "employ" and "employee" and that the question of whether an individual is an employee turns on the "economic realities" of the situation. Nevertheless, the court incorrectly focused upon irrelevant factors (such as that there were rehabilitative aspects to the general assistance programs) and ignored the factors ordinarily examined by the courts to determine whether an employment

relationship exists. Therefore, we do not think that the Johns case is useful in analyzing whether individuals who participate in TANF work activities are employees entitled to the minimum wage.

7. Is the DOL only studying FLSA and its applicability to welfare recipients in work activities at the urging of the unions?

No. Whether someone is an employee entitled to the minimum wage has nothing to do with politics or unions. The law requires that the applicability of the minimum wage be determined regardless of whether an individual is on welfare or not.

The American people understand the need to be fair in this issue. We want welfare recipients to work and they need to be paid the minimum wage. We need to move people away from welfare dependency to work-- but we need to help them make enough to achieve self sufficiency.

8. Is it legal to pay welfare recipients a training wage? If so, is there a time limit?

There is no "training wage" provision in the Fair Labor Standards Act. Under some circumstances, individuals who are trainees are not employees under the FLSA rules and therefore don't have to be paid the minimum wage. There is no specific time limit on a program that qualifies as training under the FLSA. (See Question #3.)

The FLSA does allow the payment of a subminimum wage to newly hired employees under 20 years of age for a strictly limited period of time. The FLSA's youth subminimum wage provisions -- enacted with the 1996 minimum wage increase -- do not require any training. The President strongly opposed the subminimum wage when it was proposed last year.

The FLSA's subminimum wage -- $4.25 an hour -- may be paid only to an employee under 20 years of age during his/her first 90 consecutive calendar days of employment with an employer. Welfare recipients are treated the same as any other workers under these provisions. Consequently, as with any other worker, if a welfare recipient who is under age 20 performs work that is subject to the FLSA, he or she can be paid the subminimum wage for the first 90 consecutive calendar days of employment with an employer.

Employers are prohibited from displacing employees in order to hire youth at the subminimum wage. Also prohibited are "partial displacements" such as reducing other employees' hours, wages, or employment benefits.

9. **Why not permit a special, lower minimum wage for welfare recipients who are placed in work assignments? They are not going to be as productive as other workers. They are going to need a lot of training.**

The President strongly opposed the new subminimum wage for workers under age 20 when it was proposed last year. Welfare reform is supposed to move people from the dependency of welfare into real jobs, with real pay and real futures--jobs that lead to self sufficiency and independence. That means paying at least the minimum wage.

As President Clinton said in signing the new minimum wage into law last year:

> "If we want to really revolutionize America's welfare system and move people from welfare to work and reward work... the first, ultimate test we all have to meet [is]: If you get up every day and you go to work, and you put in your time and you have kids in your home, you and your children will not be in poverty".

To pay welfare recipients less than the minimum wage would undermine the goal of self sufficiency.

10. **While the government is out there taking care of TANF participants and ensuring them the minimum wage, what happens to low-wage workers in this country who aren't on welfare?**

The President has done a great deal to help low-wage workers. He has increased the minimum wage, expanded the EITC, increased access to pensions, signed the Family Medical Leave Act, and improved health insurance portability because of his concern for improving the economic condition of low and moderate income working Americans.

The President initiated welfare reform to remove the barriers to work that have kept many welfare recipients trapped in dependency. The goal of TANF is to move these individuals into the economic mainstream of working men and women. Enforcing labor laws so that welfare recipients are paid the minimum wage for their work will help achieve this goal.

Moreover, according to a recent study by the Urban Institute, paying TANF participants who work the minimum wage does not make them better off than other low-wage workers. The study finds that in low benefit states (such as Mississippi) and medium benefit states (such

as Illinois) a TANF participant who works 20 hours per week would have a lower income than a minimum wage worker working 20 hours a week in that state.[1]

11. What has the President said about the relationship between work, welfare reform and the minimum wage?

The President has consistently called for moving welfare recipients into real jobs at fair wages that offer real opportunities for independence and self sufficiency. For example:

(1) "Welfare reform should be about work. Welfare should provide people the opportunity to move from welfare to work as quickly as possible.

In return, people must take responsibility for supporting themselves and their families. All those who can work must go to work to support their families."

[**President Clinton**, "Rebuilding America For A New Era"]

(2) "Two days ago we signed a bill increasing the minimum wage here and making it easier for people in small businesses to get and keep pensions. Yesterday we signed the Kassebaum-Kennedy bill which makes health care more available to up to 25 million Americans, many of them in lower-income jobs where they're more vulnerable.

The bill I'm signing today preserves the increases in the earned income tax credit for working families. It is now clearly better to go to work than to stay on welfare -- clearly better. Because of actions taken by the Congress in this session, it is clearly better. And what we have to do now is to make that work a reality."

[**President Clinton**, in his remarks at the signing of The Personal Responsibility And Work Opportunity Reconciliation Act, August 22, 1996]

---

[1] "Comparison of Wages and Benefits of TANF Workers and non-TANF Low-Wage Workers," by Pamela Loprest. The Urban Institute, April 14, 1997. Low and medium benefit states are likely to meet the minimum wage requirement for covered TANF participants by combining the TANF cash benefit and the cash value of the food stamps benefit (under applicable food stamps programs). Eligible low-wage workers are likely to receive food stamps on top of the minimum wage they earn at work.

(3) "This week I will sign into law an increase in the minimum wage. For those who work hard to stay off welfare, but can't live on $4.25 an hour, this is a very important act. It will truly honor work and family."

[**President Clinton**, Radio Address, August 17, 1996]

(4) "Together with our tax cut for working families, this [minimum wage] bill ensures that a parent working full-time at the minimum wage can lift himself or herself and their children out of poverty. Nobody who works full-time with kids in the home should be in poverty. If we want to really revolutionize America's welfare system and move people from welfare to work and reward work... the first, ultimate test we all have to meet [is]: If you get up every day and you go to work, and you put in your time and you have kids in your home, you and your children will not be in poverty.

At its heart, this bill does reaffirm our most profoundly American values, offering opportunity to all, demanding responsibility from all and coming together as a community to do the right thing."

[**President Clinton** in his remarks on signing the minimum wage bill, August 20, 1996]

(5) "Welfare as we knew it was a bad deal for everyone. We're determined to create a better deal. We want to say to every American, work pays. We raised the minimum wage; we expanded the earned income tax credit to allow the working poor to keep more of what they earn. Now we have to create a million jobs for people on welfare by giving businesses incentives to hire people off welfare and enlisting the private sector in a national effort to bring all Americans into the economic mainstream."

[**President Clinton**, Radio Address, December 7, 1996.]

(6) "We continue to take action to value work and to value families. I fought for and signed legislation that raises the minimum wage by 90 cents over two years. This action will significantly improve the lives of 10 million Americans by rewarding work and responsibility and ensuring that work pays."

[**President Clinton**, *Florida Times-Union*, September 22, 1996]

(7) "It's time to honor and reward people who work hard and play by the rules. That means ending welfare as we know it . . . .Empower people with the education, training, and child care they need for up to two years, so they can break the cycle of

dependency; expand programs to help people learn to read, get their high school diplomas or equivalency degrees, and acquire specific job skills; and ensure that their children are cared for while they learn. After two years, require those who can work to go to work, either in the private sector or in community service; provide placement assistance to help everyone find a job, and give the people who can't find one a dignified and meaningful community service job."

[Bill Clinton and Al Gore, *Putting People First*]

(8) "Under the increase which the Congress voted in 1993 in the earned income tax credit, 15 million working families have been given a tax cut -- it's worth about $1,000 in lower taxes to a family of four with an income of less than $28,000, and that's most Hispanic families in the United States. And that's one big reason that the welfare rolls are down, because we're making work pay. On October 1st, 10 million more Americans will get a pay raise when the minimum wage increase goes into effect."

[President Clinton, in his remarks at the Congressional Hispanic Caucus Institute Dinner, September 25, 1996]

(9) "On Tuesday, the Senate voted to pass a 90-cent increase in the minimum wage. It's about time. You can't raise a family on $4.25 an hour, and if we don't raise it, the minimum wage will fall to a 40-year low this year in terms of what it will buy. So I congratulate the Republican members of Congress who joined with the Democrats to honor work and family, opportunity and responsibility, by voting to give minimum wage workers a raise."

[President Clinton, Radio Address, July 13, 1996]

(10) "On this 4th of July weekend, I want to talk about one thing that is at the root of all of our independence – going to work. It makes you self-sufficient. It makes you and your family truly independent.

Unfortunately, millions of Americans are not independent because they are dependent on welfare. The vast majority of these Americans dream the same dreams most of us do. They want the same dignity that comes from going to work and the pride that comes from doing right by their children. They want to be independent.

Today I'm pleased to announce that Virginia will receive the newest waiver. Virginia's plan requires people on welfare to go to work. Like the states of Oregon,

Missouri and a few others, it also allows money now spent on welfare and food stamps to go to employers to supplement wages to help create jobs in the private sector. And it helps people get child care. It's a good plan, and I'm proud to be supporting it.."

[**President Clinton,** Radio Address, July 1, 1995]

(11) "Our job is to create opportunity for those who take responsibility to work hard and lift themselves up. Those are the values that have always sustained us and kept us a great nation. That's why we fought so hard for the earned income tax credit in 1993 -- a working family tax cut for 15 million families with incomes under $26,000. And that's why I now call on Congress to raise the minimum wage .90 to $5.15 an hour over the two years.

In terms of real buying power, the minimum wage will be at a 40-year low next year if we don't increase it above where it is now at $4.25 an hour. As I told the Congress, already just this year in one month of work, members of Congress have earned more than full-time minimum wage workers earn all year long. Nobody can live on $4.25 an hour and, yet, 2.5 million Americans are working for just that amount, and many of them have children to feed. Millions more are just above the minimum wage.

The only way to strengthen the middle class and shrink the underclass is to ensure that hard work pays. Increasing the minimum wage is an important part of our strategy to do that. Congress is considering other economic strategies now as well. The test for all of these ideas should be: Do they reward work? Do they grow the middle class and shrink the underclass? Do they build economic opportunity in America? I believe, for example, if we're really serious about welfare reform, increasing the minimum wage will plainly help.

More than anything, I want to give a genuine bipartisan welfare reform effort the best chance it can to produce a bill that we can all be proud of, a bill that will encourage work and responsible parenting and independence. But welfare reform can't possibly succeed unless the people we expect to leave welfare and go to work are rewarded for their labors."

[**President Clinton**, Radio Address, February 5, 1995]

12. Have states' welfare plans been approved by HHS already? Does this mean that states are in compliance with employment laws?

HHS does not approve state welfare plans -- it merely certifies that they are "complete". Most of the plans which have been submitted have already been certified as complete. A "complete" plan includes information addressing each of the areas laid out in the statute for State TANF plans, including establishment of goals and actions to prevent and reduce the incidence of out-of-wedlock pregnancies and ensuring that parents and caretakers receiving assistance under the program engage in work activities. HHS makes no substantive judgments about the contents of the plans, nor does it make any judgment about whether the plans or their implementation comply with federal employment laws.

13. **It appears the Federal and State governments will have to pay more than expected to move people off welfare. Where will the Governors and Mayors find resources to move people from welfare to work?**

New block grant rules and declining caseloads have resulted in many states having more flexible resources and additional funds available per welfare household this fiscal year. In addition, states may use their state-only welfare funds to serve a variety of needs and special populations. We are encouraging states and localities to maintain their investment in low-income families and use all resources to move people from welfare to work.

The President has proposed the Welfare-to-Work Jobs Challenge, which would make additional funding available to States and localities for the purpose of placing the hardest-to-serve recipients into lasting jobs. States and localities would be expected to coordinate these funds with private and other public sector resources, including TANF block grant dollars, JTPA funds and the Work Opportunity Tax Credit.

The President has also proposed a "super" Work Opportunity Tax Credit for long-term welfare recipients--employers could receive a credit equal to 50 percent of the first $10,000 in wages for each of two years, making for a maximum credit of $10,000, as opposed to $2,100 under the regular WOTC. In addition, the existing WOTC would be expanded to include able-bodied childless food stamps recipients aged 18-50. Creation of this targeted credit would further increase the resources available for welfare-to-work efforts.

14. **What is the history of federal jobs programs intended to move welfare participants into work activities? Have recipients been paid or exempt from the minimum wage?**

Federal jobs programs intended to move people out of poverty or unemployment over the last 60 years generally have required that participants receive at least the minimum wage, as illustrated in the following chart.

Program	Not less than MW or Equivalent	Compensation Standards
Works Progress Administration (1935 - 1943)	Yes	Prevailing wages[2]
Community Work and Training Program (1962 - 1967)	Yes	Hours set by grant divided by prevailing wages
Work Incentive Program (1967 - 1988)	Not Available[3]	AFDC grant only (no record of hours; included training)
Comprehensive Employment and Training Act (1973 - 1982)	Yes	Prevailing wages
Community Work Experience Programs (1981 - Present)	Yes	Hours set by grant divided by FLSA minimum wage
Alternative Work Experience Programs (1988 - Present)	Not Available[4]	AFDC grant only (no record of hours; may include training)

A brief description of each of these federal programs follows.

---

[2] The prevailing wage is the wage rate paid for comparable work in the locality. It is always at least the minimum wage, and usually higher.

[3] The WIN Program combined job readiness training, job search and other activities not considered work under the FLSA.

[4] Similar to WIN, AWEP is a variation of CWEP which provides increased flexibility to the States in structuring work and training programs with sponsors. State plans are approved by HHS as an alternative to CWEP.

WPA

The purpose of the Works Progress Administration (WPA) (1935 - 1943) was to move employable individuals from federal relief programs to a very wide variety of work projects.

WPA wages were paid at a level that was termed a "security" level, which was initially intended to be higher than the federal relief payments, but lower than prevailing wages. Many unions and others objected that the WPA's practice of paying security wages was lowering wages in the private sector. Consequently in its second year of operation, the wage rates paid under the WPA were raised to the prevailing hourly wages at the same time that the number of hours worked each month was reduced, so that the monthly amounts paid did not increase.

CWT

The first federal effort to require welfare recipients to work was the Community Work and Training Program (CWT) that accompanied the creation of the AFDC-U program in 1962. (The AFDC-U gave the states the option of providing assistance for children in two-parent households in which the father was unemployed.) States could require AFDC-U recipients to "work off" the amount of assistance they received at a community job, with the number of work hours determined by the prevailing community wage rate for comparable work.

Usage of this optional provision by the states was extremely limited.

WIN

In 1967, Congress created the Work Incentive Program (WIN), which added work requirements for able-bodied fathers, out of school youths aged 16 or older, and other adults receiving AFDC who were not themselves parents. The program provided that when an individual became employed, the first $30 of earnings per month plus one-third of the remainder would be excluded from income in calculating the welfare benefit.

The WIN program included training, education, and unpaid work experience, under which the participant received no remuneration other than the welfare benefits. The work experience lasted up to 13 weeks of unpaid work activities, with an allowance for work-related expenses.

In 1971 Congress amended the WIN program to include more emphasis on employment training and job search. Among those who participated in WIN, very few ever performed work in exchange for welfare.

CETA

The Comprehensive Employment and Training Act (CETA), enacted in 1973 and administered by DOL until its repeal in 1982, contained provisions for on-the-job training and public service employment targeted to areas of unemployment of 6.5 percent or more. Wages paid under either component were required to be the highest of: the FLSA minimum wage; the state minimum wage; the prevailing wage for persons similarly employed; the minimum entrance wage rate for inexperienced workers in the same occupation in the establishment; the wage rate required by an applicable collective bargaining agreement; or the prevailing wage rate under the Davis-Bacon Act, if applicable.

1981 Omnibus Budget Reconciliation Act

In 1981, Congress gave the states greater latitude in administering WIN and imposing work requirements. The states could run the following optional programs:[5]

(1) *WIN Demonstration Programs* - The states could administer WIN demonstration programs (as described above) with greater flexibility on the mix of services.

(2) *Community Work Experience Programs* - CWEP required that the hours worked by participants not exceed the amount they received in grants divided by the FLSA minimum wage.

(3) *Job Search Programs* (added in 1982) - The states could adopt mandatory job search activities or job referral programs for AFDC recipients.

(4) *Work Supplementation Programs* (added in 1984) - The states were permitted to use AFDC grants to subsidize on-the-job training for welfare recipients with a public or private employer.

JOBS

In 1988, Congress passed the Family Support Act, which included nearly $5 billion in initial funding to be spent between 1989 and 1995 on the Job Opportunities and Basic Skills Training Program (JOBS). JOBS remained in place until it was replaced by the recent TANF legislation.

---

[5] As indicated, CWEP had special pay provisions. Standard FLSA rules applied to participants in the other programs.

The JOBS program established participation standards for states for the first time: 7% of AFDC recipients had to participate by 1990, rising to 20% by 1995. JOBS encouraged activities such as education and training. In addition, the states had to offer at least two of the following: group and individual job search, on-the-job training, work supplementation, and CWEP or Alternative Work Experience.

Under the "on-the-job training" component, participants were hired by private or public employers and provided training in skills essential to the full and adequate performance of the job. These participants received wages and benefits commensurate with those for similarly situated employees as trainees, and in no event less than the amount required by the FLSA or State minimum wage law.

CWEP and Alternative Work Experience both involve the assignment of welfare recipients to work for no additional wages at public or private nonprofit agencies. In the case of CWEP, a participant's hours of work have been limited to the family's monthly AFDC grant divided by the federal minimum wage (or the state minimum wage, if higher) for a period up to nine months. Unlike CWEP, participants in Alternative Work Experience have not been limited in the number of hours they can work; instead, the work schedule has been worked out by the participant and the sponsoring public or private nonprofit entity.

Talking Points on FLSA
5/16/97

- The Labor Department has concluded that the Fair Labor Standards Act (FLSA) applies to welfare recipients in workfare or other subsidized employment programs in the same way as that law applies to all other employees.

- This means that many, if not most, welfare recipients in these programs will receive at least the minimum wage for their work activities.

- Welfare recipients in these programs will not have to be paid the minimum wage if they fall within the FLSA's exception for "trainees." Some states will probably try to structure their workfare programs so that recipients fall within the "trainee" exception.

- In most cases in which the minimum wage is required, both cash assistance and food stamps will count toward the minimum wage. The Department of Agriculture will take necessary administrative action to ensure that food stamps can be counted to the greatest degree possible.

- This will not affect the work requirements of the welfare law. States will still be able to meet those requirements, not only by putting recipients in workfare, but by placing people in private sector jobs (where the minimum wage already applies). With both cash assistance and food stamps counting toward the minimum wage, very few states will have to increase their assistance payments. In fact every state but one (Mississippi) can comply with the welfare law's current work requirements (now 20 hours per week for a welfare recipient) and pay minimum wage without increasing their current benefit level.

- The Labor Department will provide guidance within the next week or two on the specifics of this policy and will engage in extensive consultation with states on how to apply this policy with the least disruption.

- The Treasury Department is still exploring how the tax laws apply to welfare recipients in workfare programs. We hope to be able to give states an answer to that question very shortly.

Q&A

Question: Won't this end welfare reform as we know it by making work more expensive?

Answer: Not at all. With both TANF and food stamps counting toward the minimum wage, every state except Mississippi will be able to give welfare recipients workfare slots for 20 hours each week (the welfare law's current work requirement) without raising their benefit levels. And of course states should be trying to place welfare recipients in private sector jobs where the minimum wage already applies.

Question: Are most welfare recipients who are working going to be considered "employees"?

Answer: Most welfare recipients participating in the work activities described in the new welfare law probably will count as "employees," entitled to the minimum wage, under the FLSA. But some individuals, engaged in such activities as job search, vocational education, and secondary school, may count as "trainees" instead. The Labor Department will advise states on how the FLSA applies to particular programs and individuals engaged in them.

Question: What's the difference between a trainee and a worker under FLSA?

Answer: An individual is in training if:

- Training is similar to that given in a vocational school;
- Training is for the benefit of the trainee;
- Trainees do not displace regular workers;
- The employer derives no immediate advantage from the trainees' activites;
- Trainees are not entitled to a job after training is completed; or
- The employer and trainee understand that the trainee is not paid.

Question: Can Food Stamps count as wages?

Answer: We believe that through waivers or other mechanisms such as the Simplified Food Program option now in law, states will be able to count food stamps toward the minimum wage for all those required to work under the new welfare law.

Question: Does this mean welfare recipients in workfare and other subsidized employment programs can unionize?

Answer: No -- that is a different question entirely. Whether and when workers can unionize is a function of the National Labor Relations Act. The National Labor Relations Board, an independent entity that administers that Act, has not ruled on the unionization question.

Fair Pay for Workfare

By Mary Jo Bane

CAMBRIDGE, Mass.

Under the Clinton Administration's recent interpretation of labor law, states will be required to pay people who take part in workfare programs the minimum wage — $4.75 a hour this year, $5.15 next year.

Although this decision has drawn protests, the requirement is entirely consistent with welfare reform, and in the end, promises to ease some of the stickier problems connected to the competition between workfare participants and low-wage workers.

A goal of the welfare law is to move welfare recipients into jobs as quickly as possible. If regular jobs are not available, welfare recipients may be assigned to work in return for their benefits. These workfare assignments have two goals: to provide a transition for welfare recipients into the private labor market, and to reinforce the value of work. To achieve these goals, the workfare slots should resemble regular jobs in their expectations and their rewards.

But many governors are complaining that it will be financially impossible for their states to meet the work requirements of the new welfare law and still pay workfare participants the minimum wage. The law requires participants to work 20 hours a week in 1997; by 2000, they are to work 30 hours a week. Twenty hours a week of work at the minimum wage of $4.75 would bring in "wages" of $408 per month.

In 29 states last year, welfare benefits for a family of three were below this level, and these states will indeed have to pay more to workfare recipients. But suppose that participants were required to work 20 hours a week without an increase in benefits. Then Texas and Mississippi, which provide the lowest benefits, would effectively pay workfare participants $1.39 per hour. This is far from decent or fair.

States can afford to offer the minimum wage.

Most states can afford to pay workfare recipients minimum wage. The states with the largest welfare caseloads, California and New York, already give more than $408 a month in benefits to a family of three, as does Wisconsin, a pioneer of welfare reform. Indeed, New York and California could require recipients to work 25 hours a week at $5.15 an hour and still pay less than what a family of three currently receives in benefits.

Moreover, virtually all states have benefited financially from the new welfare law. Though caseloads have declined, the new Federal block grants are set at 1994 spending levels, when the number of caseloads was higher.

States are likely to have more money than they will need. This windfall should be used to help welfare recipients find jobs and to pay workfare participants a decent wage.

The minimum wage requirement will also ease the potentially destructive competition between workfare participants and other low-wage workers who are not on welfare. Current workers were at risk of being replaced by lower-paid welfare recipients in both the public and the private sectors. Communities might have been tempted, for example, to replace bus monitors and cafeteria aides with welfare recipients.

The minimum wage requirement does not solve the displacement problem, but it maintains some pay parity between low-wage workers and those on workfare. Undermining the minimum wage, which workfare could have done, would have sent exactly the wrong message to both workers and welfare recipients. They need to understand the principle of reciprocity: when we contribute our labor to society, we receive a fair benefit in return. □

Mary Jo Bane, a professor at Harvard's Kennedy School of Public Service, was an Assistant Secretary of Health and Human Services from 1993 to September 1996.

The New York Times
WEDNESDAY, MAY 21, 1997

Essay

WILLIAM SAFIRE

Defend Hillary's Rights

ST. LOUIS

Before rising to the defense of Hillary Clinton, let me do some scandal housekeeping.

On the investigation into espionage and bribery called the Asian Connection: A Justice Department source informs me that some "career professionals" in the Criminal Division have now joined F.B.I. Director Louis Freeh in urging Attorney General Janet Reno to seek the appointment of independent counsel.

She still refuses to act. That poses a clear challenge to "GROC" — the Government Reform and Oversight Committee of the House — to call key members of the Criminal Division. The purpose should not be to solicit evidence that the committee should develop on its own but to determine whether the Attorney General's refusal is still based, as she claims, on the professional opinion of career officials.

On another front in the same scandal, the House Rules Committee chairman, Gerald Solomon, has written President Clinton to ask Federal help in finding and getting testimony from the U.S. citizen Yah Lin (Charlie) Trie, the Little Rock Clinton benefactor who is presumed to be in Beijing.

That raises a few questions: Has the suspected Beijing-Washington go-between already been deposed by the F.B.I.? Is Trie's U.S. passport operative or is he a fugitive? Will the Chinese Government cooperate in returning him to face, if not a grand jury, at least the U.S. Congress?

Now to the Whitewater abuses of power:

But let's not create new ones.

While professing "full cooperation" with investigators, the Clintons have been fighting a yearlong secret battle to keep from view notes taken by government lawyers. A Federal appeals court found that lawyers paid by the public do not share the same confidential privilege as personal lawyers, and ordered the notes be given to the Independent Counsel. The Clintons, having already turned over such notes affecting staff aides, resist — appealing to the Supreme Court to protect the First Lady.

Are they trying to hide a smoking gun? No; my guess is those notes contain some embarrassments, as well as clues to the Administration-wide cover-up that will help prosecutors proceed under RICO, the Racketeer Influenced and Corrupt Organizations Act. But Jane Sherburne is too experienced an attorney to jot down statements suggesting criminality, and she knows that all Federal officials — even lawyers — must report to Justice any crime they learn about.

Then why claim lawyer-client privilege? Answer: It bought 18 months' delay, and delay is their best defense.

Although Mrs. Clinton has no unique "privilege" to protect her and her alone from criminal investigation, she does have the same rights to defense enjoyed by every U.S. citizen.

Recently a prosecutor was surreptitiously taped in a secret court session telling judges that Mrs. Clinton was among those who could be indicted. ABC's breathless broadcast of the tape was an editorial mistake.

As the momentum of prosecution picks up in coming months, and as executive stonewalling becomes more infuriating, reporters will be tempted to penetrate judicial walls and intrude on grand jury secrecy. We should resist that.

Sound unduly pious? Pundits can predict Hillary's indictment and animadvert on her tendency to lie, as I have, and her husband can wish aloud, as the President has, that he could respond by punching me in the nose — that's all free speech. Certain judicial proceedings, however, are held in secret for the purpose of protecting the constitutional rights of potential defendants, or of guarding the privacy of witnesses and jurors; eavesdropping on them undermines a genuine privilege, and broadcasting the tape abuses free speech.

What about the tip from within Justice about the changed opinion of career professionals that leads today's essay? That's legit because it advances the story by lighting a fire under the A.G. without jeopardizing anybody's rights at trial.

But using the pilfered sounds of a prosecutor discussing the possibility of any individual's indictment is not legit. Hillary Clinton, who should get what she deserves, in this instance deserves an apology. □

No Trout on Everest

To the Editor:

"Climbing Mount Everest" (editorial, May 19) makes scaling the world's highest peak sound every bit as fun as using a Stairmaster in a walk-in freezer while wearing a plastic bag over your head.

Anyone who opts out of this trial is encouraged to consider one of the many fine backpacking trips in California's Sierra Nevada.

You say that climbers who have reached Mount Everest's summit "report that there is no there there — only exhaustion and the numbness of one's attenuated presence." But what hikers in the Sierra Nevada see are deer, bears, marmots and giant sequoias.

And there are trout in the Sierras. There very few trout on Mount Everest.

SAM MONTGOMERY
Los Angeles, May 19, 1997

Time to Get Big Sugar Off the Public Dole

To the Editor:

Alfonso Fanjul and J. Pepe Fanjul, owners of a Florida sugar company, claim that "there is no subsidy" for American sugar growers (letter, May 14). This may come as a surprise to American consumers, who are forced by our Government to pay the Fanjuls almost twice the world price for their sugar.

The program provides sugar processors with special loans, and limits fair competition with strict import quotas. The General Accounting Office says that as a result, the sugar program costs consumers $1.4 billion a year in higher food prices. Contrary to the Fanjuls' letter, the Department of Agriculture has endorsed the G.A.O. study, saying that it is "a reasonable report with no major data problems."

The Fanjuls' massive subsidies encourage and intensify production in South Florida, further degrading the Everglades and increasing the cost of restoration by $65 million to $120 million, according to the President's Council of Economic Advisers.

Congress has ended welfare as we know it for poor Americans. It's time to do the same for the Fanjuls and for other corporations on the public dole.

DAN MILLER
Member of Congress, 13th Dist., Fla.
Washington, May 15, 1997

'Seinfeld' and Guilt

To the Editor:

Re Maureen Dowd's "Yada Yada Yuppies" (column, May 14): Since when were a bunch of television comedians supposed to be standard-bearers for the revolution? Besides, maybe the actors on "Seinfeld" secretly feel the shame and self-loathing that Ms. Dowd apparently wants them to feel.

Even if they don't, she need not worry. Despite recent claims to the contrary, bourgeois guilt was not invented in the 1980's, nor did it expire then. The self-loathing of the privileged classes has a long history, and it thrives to this day. I do agree with Ms. Dowd that the show isn't as good as it used to be. Those were the days, weren't they?

CHRIS WOOD
Venice, Calif., May 14, 1997

Even Philanthropists Have Their Limits

To the Editor:

Re your May 15 news article on our having withdrawn a promised gift of $3 million to the Children's Zoo in Central Park: We feel the people of New York deserve a clearer account of why we revoked our offer.

The only reason we withdrew the promised gift was because the Wildlife Conservation Society, which runs the zoo, was unable to carry out the contract it had signed with us last Dec. 3.

When the society later realized that it had erred in signing an agreement that it could not fulfill, it released us from the contract and did not protest our withdrawal.

William Conway, president of the society, knew we had by that time endured a yearlong process of commission and community hearings, as well as a court case brought by a group that objected to building the zoo. Mr. Conway repeatedly remarked on what good sports we were and that others would have walked away in despair. But even good sports have their limits.

When Mr. Conway acknowledged the cancellation of the contract, he said he thought it was shameful that the unreasonable process to which the project had been subjected should have brought us to this regrettable situation. We feel that all parties to the process were inept.

Just one baffling example of this ineptitude is that when the New York City Arts Commission finally voted to approve a plan for the Children's Zoo, it was not the plan in our contract. In fact, it was one we had never seen.

At a time when private contributions are being sought to build cultural and educational institutions in New York, we hope that future donors are spared the abuse and the disillusionment we have experienced.

EDITH EVERETT
HENRY EVERETT
New York, May 19, 1997

Lincoln's Smooth Shave

To the Editor:

The photograph accompanying your article on the Lincoln-Douglas Debates competition for New York City high schools (Class Notes, May 14) included a photograph of the combatants from Midwood and Stuyvesant High Schools holding forth in front of a large banner that included drawings depicting Abraham Lincoln and Stephen A. Douglas.

In the interest of historical accuracy, it should be noted that during the 1858 debates the future President was clean shaven, not sporting the beard shown in the banner. Lincoln grew his beard after his election in 1860, possibly at the urging of a young girl who wrote him a letter suggesting that he might want to grow some whiskers.

JOHN J. TURNER JR.
South Bristol, Me., May 15, 1997

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

SUBCOMMITTEE ON HUMAN RESOURCES

May 16, 1997

The Honorable William Clinton
The White House
Washington, DC 20500

Dear Mr. President:

As the nation moves forward on implementing the new welfare reform law, I am writing to express my concerns about the position your Administration has taken on the minimum wage and work requirements for welfare recipients.

This interpretation, unless fixed, will result in many states taking part in the sort of "race to the bottom" we all oppose.

As my comments in this morning's New York Times reflect, the interpretation that most welfare recipients in work programs should be covered by minimum wage laws is a serious setback for state efforts to move recipients into jobs and eventually independence from welfare. In effect, this interpretation would force states to adopt methods—including shortening welfare time limits—that will cut the caseload and thus satisfy "work" participation requirements without helping families on welfare find and keep jobs.

The negative consequences of this decision will be especially severe in low-benefit states, which would have to choose between raising welfare benefits dramatically or limiting participation in work. Thus states could either spend far more state funds or be condemned to failing the welfare work requirements, resulting in the loss of millions of dollars in federal aid. As Governor Carper of Delaware stated, this is an untenable position for the states.

If your Administration thinks your hands are tied by the current labor laws and wants Congress to fix them, I stand ready to help. I have been impressed by the cooperation your Administration has shown to make welfare reform work. I trust you will be equally willing to assist in making it clear that states are not hindered by bureaucratic mandates from achieving the central goal of welfare reform—moving families into work.

I look forward to your response.

Sincerely,

Clay

E. Clay Shaw, Jr.
Chairman

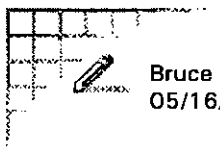
637-5237

EIRC etc.

labor union

other stuff next wk.

food stamps



Bruce N. Reed
05/16/97 06:28:40 PM

Record Type: Record

To: Barry J. Toiv/WHO/EOP

cc:
Subject: AP story on FLSA

The 5:30 AP story has you saying we would oppose any efforts in Congress to change its decision, which is not quite right. We've said we would oppose any flat-out exemption from the minimum wage, but we would not necessarily oppose other efforts by Congress to clarify its intent. (For example, we would support congressional efforts to allow states to count Food Stamps and to exempt recipients from FICA and EITC.)

This is such a confusing subject, reporters often get it wrong. Thanks.

Date: 05/16/97 Time: 17:30
WPaying minimum wage to working welfare recipients irks governors

WASHINGTON (AP) Governors in both parties are accusing the Clinton administration of making it harder for them to comply with last year's welfare reform law by requiring them to pay the federal minimum wage to aid recipients forced into public service jobs.

Florida Democratic Gov. Lawton Chiles said the administration's decision would ''essentially destroy the delicate blueprint'' his state has designed to move people off welfare rolls and into jobs.

''We have a program that's getting people from welfare to work and the president may be stepping in and upsetting the apple cart,'' echoed Pete McDonough, spokesman for New Jersey Republican Gov. Christie Whitman.

The White House this week endorsed a Labor Department conclusion that, like other workers, welfare recipients are covered by the Fair Labor Standards Act and are entitled to federal minimum wage of $4.75 per hour.

''Work should be rewarded,'' White House spokesman Mike McCurry said Friday. ''We don't believe this will be unduly burdensome on states, but it ... will give a living wage to people who we are trying to encourage to move out of welfare and into work.''

Previous welfare laws have exempted welfare recipients enrolled in such workfare programs from the minimum wage, but last's year measure did not address the issue. McCurry called the administration's decision this week ''an interpretation of law, not a matter of policy.'

But a key House Republican said Congress never intended the minimum wage to apply and indicated that he might introduce legislation exempting welfare workers from the Fair Labor Standards Act.

''If the president doesn't turn that interpretation around, we are going to have to address it,'' Rep. Clay Shaw, R-Fla., a chief author of the welfare reform law, said in an interview.

Shaw complained in a letter Friday to President Clinton that some states will be forced into paying significantly larger benefits or will lose federal money as a punishment for failing to enroll welfare recipients in work programs.

''If your administration thinks your hands are tied by the current labor laws and wants Congress to fix them, I stand ready to help,'' Shaw wrote.

Barry Toive, another White House spokesman, said the administration would oppose any efforts in Congress to change its decision.

Under the new welfare law, welfare recipients are required to work 20 hours per week after two years on the rolls. If they cannot find work in the private sector, states may place them into community service jobs.

States worry that they'll have to increase welfare payments if they are to enforce the 20-hour work rule and obey the minimum wage. A typical state's welfare check for a three-person family is now less than someone would earn working 20 hours per week at minimum wage.

McCurry said he expected food stamp payments to be calculated into a recipient's wages. The combination of food stamps and cash benefits now exceeds a 20-hour week minimum wage check in every state but Mississippi, he said.

However, the pressure on states will intensify in 2000, when welfare recipients are required to work 30 hours a week. And

two-parent families are required to log 35 hours of work per week.

''I feel certain that the Congress did not intend the welfare reform law to be interpreted like this,'' Democratic Gov. Tom Carper of Delaware said Friday. ''Both Democrat and Republican governors and an independent or two are on the same page on this one.''

Don Winstead, Florida's welfare administrator, noted that his state now provide a family of three a welfare check of $303 per month, or just 16 hours worth of work under the minimum wage. ''We could be stuck between two federal laws,'' he said.

''This is a White House that has said repeatedly we will let states run themselves,'' Republic Gov. George W. Bush of Texas complained Friday. ''And yet here is another example of the Clinton administration not letting Texas run Texas, interfering with our ability to move people from welfare to work.''

Bush noted that this is the second time in a month the Clinton administration sided against his state in a welfare dispute. To the applause of labor unions, the Department of Health and Human Services said two weeks ago that Texas could not let private companies run the state's Medicaid and food stamp programs.

APNP-05-16-97 1744EDT

5-16 Dem Govs - FLPA.

→ Tasker etc showing it doesn't mkt much

Worst possible timing??

Who was who

least skeptical ⟷ most skeptical

Ky (Dave H) — Bob Rojas-VT Jonathan Jones (DE) Debbie — (FL) — NV Karen —

↓ labor issues?

↓ genuine worries

Labor

Ky

WA & H

THE WHITE HOUSE

WASHINGTON

March 27, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED
ELENA KAGAN

SUBJECT: WELFARE REFORM -- PRIVATIZATION AND MINIMUM WAGE

We must soon provide guidance on two welfare reform issues of importance both to States and labor unions: (1) whether states can privatize certain administrative functions of the Food Stamp and Medicaid programs and (2) whether worker protection laws -- particularly the minimum wage (Fair Labor Standards Act) -- apply to work programs under the new welfare law. This memorandum outlines recommended approaches to dealing with these issues. The recommendation on privatization will give states part of what they want while angering unions; the recommendation on worker protection laws will please the unions while angering states.

Privatizing Food Stamp and Medicaid Administration

The new welfare law explicitly allows states to contract with private entities to administer Temporary Assistance to Needy Families (TANF). The Administration now must decide how to respond to two requests to privatize administration of other federally funded benefit programs. Texas wants to contract out, on a statewide basis, administration of both the Food Stamps and Medicaid programs; Wisconsin wants to privatize administration of the Food Stamps program in a number of counties, though the need for an administrative decision on this plan is not as pressing. Federal approval of these requests will establish a policy for other states as well.

States that want to privatize believe that a competitive contracting process will result in greater program efficiencies while adequately protecting program recipients. (Because Medicaid and Food Stamps remain federal entitlements, private contractors determining eligibility for the programs would have to follow federal eligibility rules.) Organized labor is concerned that privatizing government functions will displace state and local government workers (with a resulting loss of union membership). They also charge that privatization will harm recipients because contractors will "cut corners" in determining eligibility for benefits.

All the relevant agencies and White House offices (HHS, USDA, OMB, DPC, and NEC) believe that allowing some privatization makes sense: the question is how much. Below, after some additional background information, we outline a consensus recommendation.

Background

Federal agencies and the state of Texas have been negotiating since June 1996 over the

state's proposal to privatize the administration of TANF, Medicaid, Food Stamps, and certain other federally-funded nutrition programs. The state legislature passed the plan with bipartisan support, with endorsements from Lt. Gov. Bob Bullock and other leading Democrats. Under the Texas plan, private contractors would collect information about applicants (including by conducting interviews) and make eligibility determinations. The State would retain control over the appeals and quality control processes. An estimated 15,000 state jobs would be eliminated or transferred to the private sector. The state would require bidders to comment on whether they plan to hire displaced government workers. Such companies as Lockheed, EDS, and Arthur Anderson have indicated an interest in bidding.

Texas has argued that it cannot proceed with plans to contract out TANF (as allowed by the welfare law) unless the Administration allows private contracting for Food Stamps and Medicaid, because maintaining separate eligibility systems for these programs creates administrative difficulties. To take the most obvious problem, a dual system would require many individuals to go to one location to apply for TANF and another location to apply for Food Stamps and Medicaid. Texas wants a one-stop eligibility center.

Texas state officials are becoming increasingly impatient with HHS and USDA for not having ruled on their proposal. In a recent letter to HHS, state officials threatened to proceed with the project without Federal approval. State officials also point out that they have pledged to reinvest the savings from their plan in additional health and human services programs, and that these savings could provide health coverage for 150,000 Texas children. Rep. Charlie Stenholm, one of the Administration's strongest welfare reform allies, complained about the delay to Frank Raines in a February 24th letter, saying the state of Texas is "willing to make accommodations to address administration concerns." Secretary Shalala has promised Texas an answer by early April. Most recently, we heard from Rep. Stenholm's office and from Gary Mauro that Texas would accept modifications of its proposal as long as we allow the State to go forward with releasing a "request for offers" ("RFO") to potential bidders.

Labor leaders would like us to refuse the Texas request entirely. They see even limited privatization as a dangerous precedent and have made clear that they view this decision as critically important to public employee unions.

Recommendation

All the relevant agencies and White House offices agree that the Administration should draw the line on the basis of our existing Medicaid policy, which allows privatization of some but not all administrative functions. Under this approach, the application, interview, and other information-gathering can be done by private employees; the eligibility determination itself, as well as appeals and quality control, must remain in the hands of public employees. In addition, the Administration should ensure that contracts protect against the possibility that private firms will use procedures that lead to inappropriate denials -- or, as OMB notes, inappropriate grants -- of program benefits.

This general approach has both strong precedent and good sense behind it. The Medicaid program already allows private hospital workers to do intake and eligibility work, up to the point

of actually determining eligibility. Allowing privatization of these functions, conditioned on appropriate contract incentives and safeguards, strikes the right balance between allowing states to explore innovative ways to deliver public services and ensuring that beneficiaries' rights are protected. There is little doubt that this approach will displace some state workers and displease public employee unions. But we have crossed this bridge already in Medicaid and other contexts; for example, the Department of Labor has granted a waiver to Massachusetts to contract out all employment services and is prepared to do the same for other states as well.

In line with this view, we recommend that we inform Texas of the principles we will apply in reviewing any privatization scheme and give formal permission to the State to issue its RFO. Once the State accepts a bid, we will review whether the contract appropriately accords with our principles. This approach gives Texas less than it asked for, but allows the State to proceed with some reforms. It preserves a role for public employees, but will still anger the unions.

II. Application of Labor Laws

As states begin to redesign their work programs to meet the work participation rates in the new welfare law, a critical question for both the labor movement and the states is whether worker protection laws -- particularly the minimum wage law (Fair Labor Standards Act) -- protect welfare recipients who take part in workfare or subsidized employment programs. The answer the Administration is ready to announce on this issue -- that as a matter of law, worker protections apply to welfare recipients as they do to other employees -- will mostly please the unions and displease the States.

Recommended Administration Position

A review conducted by the White House and relevant agencies has concluded that current law requires applying the minimum wage law and other worker protections to welfare recipients engaged in work activities. The new welfare law contains no exemptions from worker protection statutes for these individuals, leaving these protective statutes to operate as they would for any other worker. States therefore cannot, as they partly could before, set up and run work programs independent of labor laws. (The Family Support Act exempted workfare programs from the FLSA, but required work hours to be based on the minimum wage.)

The FLSA, when applied to people in workfare and wage supplementation programs, usually will require payment of the minimum wage. As long as participants in such programs count as "employees" under the Act, they will qualify for the minimum wage. A State could try to structure its program so that participants will count instead as "trainees" under the Act, because "trainees" are not entitled to the minimum wage. It will be extremely difficult, however, for states to construct programs in which participants will count as "trainees" under the FLSA and also count as performing work activities (and therefore counting toward work participation rates) under the new welfare law. As a result, application of the FLSA will usually mean that the State must pay the minimum wage to individuals in workfare programs.

The food stamp law gives states the ability to count food stamps as part of the minimum wage for some individuals engaged in workfare programs. Specifically, the state can count food stamps toward the minimum wage for welfare recipients without a child under the age of six, but not for welfare recipients with such a child. (We are checking now whether there is a legal way to allow states to count food stamps toward the minimum wage in all cases, but suspect we will not find any.) The state will be able to count the value of other benefits (child care, housing, or transportation) toward the minimum wage only when the FLSA allows the counting of such benefits for workers generally -- which is only in unusual circumstances.

In addition to the minimum wage law, the Occupational Safety and Health Act, unemployment insurance laws, and anti-discrimination laws usually will protect welfare workers; in addition, the NLRA usually will give them organizing rights. More uncertain is how the tax code will apply to individuals in workfare and wage supplementation programs. The Treasury Department is still considering whether monies paid to welfare recipients will be subject to FICA and other taxes or would qualify for the EITC. Our 1994 and 1996 welfare bills prohibited recipients from receiving the EITC or being subject to FICA.

Anticipated State and Congressional Response

We should expect the announcement of Administration policy to provoke strong criticism from the states and Congress. On March 3rd, Governor Whitman wrote in a letter to you that applying minimum wage laws to workfare participants would "end welfare reform as we know it" by placing states in the position of either failing to meet the law's work requirements or incurring large new costs. Even The New York Times editorial board, in discussing union plans to organize workfare participants, has opined that "what they are doing does not amount to a job" -- a view consistent with what many States and members of Congress will be saying.

The reason states will protest is obvious: applying minimum wage laws will increase the cost of running workfare programs. (Of course, requiring the minimum wage will not make it more expensive for states to help welfare recipients find unsubsidized private sector jobs or to subsidize private sector jobs.) In 36 states, the current cash welfare benefit for a family of three will fall short of a minimum wage salary even for a 20-hour work week. As the work requirement in the law increases to 25 and then to 30 hours, and as the minimum wage also increases, 48 states (all but Hawaii and Alaska) will discover that their welfare grants are insufficient. (See attached document.)

Counting the value of food stamps will ease this difficulty, to the extent that states can do so. (As noted above, states may not be able to count food stamps for individuals with children under six.) But even if both TANF and food stamp benefits are counted toward the minimum wage, Mississippi will immediately come up short. As the minimum wage increases and the work requirements increase to 30 hours, a total of twenty states will find themselves in this position.

This policy is a mixed blessing for recipients. The increased expense of public

employment will encourage state efforts to find private sector jobs for welfare recipients -- a policy we believe is desirable. But that same expense also may encourage states to cut recipients from the welfare rolls sooner, rather than place them in public sector jobs.

There is little doubt that once we announce our reading of the law, efforts will begin in Congress to exempt workfare programs from worker protection laws entirely or to enact more limited "fixes." We will have to track these efforts carefully and decide, as we gain more information, how to respond to them.

IMPACT ON STATES OF PAYING MINIMUM WAGE FOR WORKFARE[1]
Example: Family of Three

Minimum Wage Costs

The monthly cost of a $5.15 minimum wage for 20 hours a week is $443 and for 30 hours a week is $664. The welfare law's work rates for single parent families are currently 20 hours a week; they rise to 30 hours in the year 2000.[2]

If States Use TANF Funds as "Wages"

In 36 states, current TANF benefits are not enough to pay for 20 hours a week at the minimum wage. In 48 states (all but Alaska and Hawaii), current TANF benefits are too low to pay for 30 hours per week of work at the minimum wage.

If States Use TANF and Food Stamps Funds as "Wages"

In one state, Mississippi, the combined TANF and food stamp grants are not enough to pay for 20 hours a week of work at the minimum wage. In 20 states, the combined benefits are not enough to pay for 30 hours a week of work. These states are:

Nevada	Oklahoma	North Carolina	Louisiana
Arizona	Florida	Kentucky	Texas
Ohio	Missouri	West Virginia	Tennessee
Delaware	Indiana	Arkansas	Alabama
Idaho	Georgia	South Carolina	Mississippi

New legislation may be required to count food stamps as wages for certain families.[3]

---

[1] This table points out the potential shortfall for workfare programs, in which public funds would be the only source of wages for the recipient. In a wage subsidy program, the shortfall would be filled by a contribution from the employer. Thus, the application of the minimum wage will likely encourage states to have work subsidy, rather than workfare, programs.

[2] The new law requires for single parent families a minimum of 20 hours of work a week in 1997 and 1998, 25 hours in 1999 and 30 hours in 2000. The minimum for two parent families is 30 hours a week for all years. These calculations assume an average of 4.3 weeks per month.

[3] New legislation would likely be required to count food stamps as wages for most families, because the Food Stamp Act contains a prohibition against requiring individuals with children under age 6 to participate in work activities. This prohibition may be only partially waivable. Approximately 62% of families subject to the TANF work requirements have children under age six.

Handy Reference Guide to the Fair Labor Standards Act

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

WH Publication 1282
Revised October 1996

This publication is available on the Internet on the Wage and Hour Division Home Page at the following address: http://www.dol.gov/dol/esa/public/whd_org.htm.

This material will be made available to sensory impaired individuals upon request.

Voice Phone: 202-219-8743

TDD* Phone: 1-800-326-2577

*Telecommunications Device for the Deaf

Handy Reference Guide to the Fair Labor Standards Act

The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and child labor standards affecting full-time and part-time workers in the private sector and in Federal, State, and local governments.

The Wage and Hour Division (Wage-Hour) administers and enforces FLSA with respect to private employment, State and local government employment, and Federal employees of the Library of Congress, U.S. Postal Service, Postal Rate Commission, and the Tennessee Valley Authority. The FLSA is enforced by the U.S. Office of Personnel Management for employees of other Executive Branch agencies, and by the U.S. Congress for covered employees of the Legislative Branch.

Special rules apply to State and local government employment involving fire protection and law enforcement activities, volunteer services, and compensatory time off instead of cash overtime pay.

Basic Wage Standards

Covered nonexempt workers are entitled to a minimum wage of not less than $4.75 an hour, effective October 1, 1996, and not less than $5.15 an hour, effective September 1, 1997. Overtime pay at a rate of not less than one and one-half times their regular rates of pay is required after 40 hours of work in a workweek.

Wages required by FLSA are due on the regular payday for the pay period covered. Deductions made from wages for such items as cash or merchandise shortages, employer-required uniforms, and tools of the trade, are not legal to the extent that they reduce the wages of employees below the minimum rate required by FLSA or reduce the amount of overtime pay due under FLSA.

The FLSA contains some exemptions from these basic standards. Some apply to specific types of businesses; others apply to specific kinds of work.

While FLSA does set basic minimum wage and overtime pay standards and regulates the employment of minors, there are a number of employment practices which FLSA does not regulate.

For example, FLSA does *not* require:

(1) vacation, holiday, severance, or sick pay;

(2) meal or rest periods, holidays off, or vacations;

(3) premium pay for weekend or holiday work;

(4) pay raises or fringe benefits; and

(5) a discharge notice, reason for discharge, or immediate payment of final wages to terminated employees.

The FLSA does not provide wage payment or collection procedures for an employee's usual or promised wages or commissions in excess of those required by the FLSA. However, some States do have laws under which such claims (sometimes including fringe benefits) may be filed.

Also, FLSA does not limit the number of hours in a day or days in a week an employee may be required or scheduled to work, including overtime hours, if the employee is at least 16 years old.

The above matters are for agreement between the employer and the employees or their authorized representatives.

Who is Covered?

All employees of certain enterprises having workers engaged in interstate commerce, producing goods for interstate commerce, or handling, selling, or otherwise working on goods or materials that have been moved in or produced for such commerce by any person, are covered by FLSA.

A covered enterprise is the related activities performed through unified operation or common control by any person or persons for a common business purpose and —

(1) whose annual gross volume of sales made or business done is not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated); or

(2) is engaged in the operation of a hospital, an institution primarily engaged in the care of the sick, the aged, or the mentally ill who reside on the premises; a school for mentally or physically disabled or gifted children; a preschool, an elementary or secondary school, or an institution of higher education (whether operated for profit or not for profit); or

(3) is an activity of a public agency.

Construction and laundry/dry cleaning enterprises, which had been previously covered regardless of their annual dollar volume of business, became subject to the $500,000 test on April 1, 1990.

Any enterprise that was covered by FLSA on March 31, 1990, and that ceased to be covered because of the $500,000 test, continues to be subject to the overtime pay, child labor and recordkeeping provisions of FLSA.

Employees of firms which are not covered enterprises under FLSA still may be subject to its minimum wage, overtime pay, and child labor provisions if they are individually engaged in interstate commerce or in the production of goods for interstate commerce, or in any closely-related process or occupation directly essential to such production. Such employees include those who: work in communications or transportation; regularly use the mails, telephones, or telegraph for interstate communication, or keep records of interstate transactions; handle, ship, or receive goods moving in interstate commerce; regularly cross State lines in the course of employment; or work for independent employers who contract to do cleri-

cal, custodial, maintenance, or other work for firms engaged in interstate commerce or in the production of goods for interstate commerce.

Domestic service workers such as day workers, housekeepers, chauffeurs, cooks, or full-time babysitters are covered if (1) their cash wages from one employer are at least $1,000 in a calendar year (or the amount designated pursuant to an adjustment provision in the Internal Revenue Code), or (2) they work a total of more than 8 hours a week for one or more employers.

Tipped Employees

Tipped employees are those who customarily and regularly receive more than $30 a month in tips. The employer may consider tips as part of wages, but the employer must pay at least $2.13 an hour in direct wages.

The employer who elects to use the tip credit provision must inform the employee in advance and must be able to show that the employee receives at least the minimum wage when direct wages and the tip credit allowance are combined. If an employee's tips combined with the employer's direct wages of at least $2.13 an hour do not equal the minimum hourly wage, the employer must make up the difference. Also, employees must retain all of their tips, except to the extent that they participate in a valid tip pooling or sharing arrangement.

Employer-Furnished Facilities

The reasonable cost or fair value of board, lodging, or other facilities customarily furnished by the employer for the employee's benefit may be considered part of wages.

Industrial Homework

The performance of certain types of work in an employee's home is prohibited under the law unless the employer has obtained prior certification

from the Department of Labor. Restrictions apply in the manufacture of knitted outerwear, gloves and mittens, buttons and buckles, handkerchiefs, embroideries, and jewelry (where safety and health hazards are not involved). The manufacture of women's apparel (and jewelry under hazardous conditions) is generally prohibited. If you have questions on whether a certain type of work is restricted, or who is eligible for a homework certificate, or how to obtain a certificate, you may contact the local Wage-Hour office.

Subminimum Wage Provisions

The FLSA provides for the employment of certain individuals at wage rates below the statutory minimum. Such individuals include student-learners (vocational education students), as well as full-time students in retail or service establishments, agriculture, or institutions of higher education. Also included are individuals whose earning or productive capacity is impaired by a physical or mental disability, including those related to age or injury, for the work to be performed. Employment at less than the minimum wage is authorized to prevent curtailment of opportunities for employment. Such employment is permitted only under certificates issued by Wage-Hour.

Youth Minimum Wage

A minimum wage of not less than $4.25 an hour is permitted for employees under 20 years of age during their first 90 consecutive calendar days of employment with an employer. Employers are prohibited from taking any action to displace employees in order to hire employees at the youth minimum wage. Also prohibited are partial displacements such as reducing employees' hours, wages, or employment benefits.

Exemptions

Some employees are exempt from the overtime pay provisions or both the minimum wage and overtime pay provisions.

Because exemptions are generally narrowly defined under FLSA, an employer should carefully check the exact terms and conditions for each. Detailed information is available from local Wage-Hour offices.

Following are examples of exemptions which are illustrative, but not all-inclusive. These examples do *not* define the conditions for each exemption.

Exemptions from Both Minimum Wage and Overtime Pay

(1) Executive, administrative, and professional employees (including teachers and academic administrative personnel in elementary and secondary schools), outside sales employees, and employees in certain computer-related occupations (as defined in Department of Labor regulations);

(2) Employees of certain seasonal amusement or recreational establishments, employees of certain small newspapers, seamen employed on foreign vessels, employees engaged in fishing operations, and employees engaged in newspaper delivery;

(3) Farm workers employed by anyone who used no more than 500 "man-days" of farm labor in any calendar quarter of the preceding calendar year;

(4) Casual babysitters and persons employed as companions to the elderly or infirm.

Exemptions from Overtime Pay Only

(1) Certain commissioned employees of retail or service establishments; auto, truck, trailer, farm implement, boat, or aircraft salesworkers, or parts-clerks and mechanics servicing autos, trucks, or farm implements, who are employed by nonmanufacturing establishments primarily engaged in selling these items to ultimate purchasers;

(2) Employees of railroads and air carriers, taxi drivers, certain employees of motor carriers, seamen on American vessels, and local delivery employees paid on approved trip rate plans;

(3) Announcers, news editors, and chief engineers of certain nonmetropolitan broadcasting stations;

(4) Domestic service workers living in the employer's residence;

(5) Employees of motion picture theaters; and

(6) Farmworkers.

Partial Exemptions from Overtime Pay

(1) Partial overtime pay exemptions apply to employees engaged in certain operations on agricultural commodities and to employees of certain bulk petroleum distributors.

(2) Hospitals and residential care establishments may adopt, by agreement with their employees, a 14-day work period instead of the usual 7-day workweek, if the employees are paid at least time and one-half their regular rates for hours worked over 8 in a day or 80 in a 14-day work period, whichever is the greater number of overtime hours.

(3) Employees who lack a high school diploma, or who have not attained the educational level of the 8th grade, can be required to spend up to 10 hours in a workweek engaged in remedial reading or training in other basic skills without receiving time and one-half overtime pay for these hours. However, the employees must receive their normal wages for hours spent in such training and the training must not be job specific.

Child Labor Provisions

The FLSA child labor provisions are designed to protect the educational opportunities of minors

and prohibit their employment in jobs and under conditions detrimental to their health or well-being. The provisions include restrictions on hours of work for minors under 16 and lists of hazardous occupations orders for both farm and nonfarm jobs declared by the Secretary of Labor to be too dangerous for minors to perform. Further information on prohibited occupations is available from local Wage-Hour offices.

Nonagricultural Jobs (Child Labor)

Regulations governing youth employment in nonfarm jobs differ somewhat from those pertaining to agricultural employment. In nonfarm work, the permissible jobs and hours of work, by age, are as follows:

(1) Youths 18 years or older may perform any job, whether hazardous or not, for unlimited hours;

(2) Youths 16 and 17 years old may perform any nonhazardous job, for unlimited hours; and

(3) Youths 14 and 15 years old may work outside school hours in various nonmanufacturing, nonmining, nonhazardous jobs under the following conditions: no more than 3 hours on a school day, 18 hours in a school week, 8 hours on a nonschool day, or 40 hours in a nonschool week. Also, work may not begin before 7 a.m., nor end after 7 p.m., except from June 1 through Labor Day, when evening hours are extended to 9 p.m. Under a special provision, youths 14 and 15 years old enrolled in an approved Work Experience and Career Exploration Program (WECEP) may be employed for up to 23 hours in school weeks and 3 hours on school days (including during school hours).

Fourteen is the minimum age for most nonfarm work. However, at any age, youths may deliver newspapers; perform in radio, television, movie, or theatrical productions; work for parents in their solely-owned nonfarm business (except in manufacturing or on hazardous jobs); or, gather evergreens and make evergreen wreaths.

Farm Jobs (Child Labor)

In farm work, permissible jobs and hours of work, by age, are as follows:

(1) Youths 16 years and older may perform any job, whether hazardous or not, for unlimited hours;

(2) Youths 14 and 15 years old may perform any nonhazardous farm job outside of school hours;

(3) Youths 12 and 13 years old may work outside of school hours in nonhazardous jobs, either with a parent's written consent or on the same farm as the parent(s);

(4) Youths under 12 years old may perform jobs on farms owned or operated by parent(s), or with a parent's written consent, outside of school hours in nonhazardous jobs on farms not covered by minimum wage requirements.

Minors of any age may be employed by their parents at any time in any occupation on a farm owned or operated by their parents.

Recordkeeping

The FLSA requires employers to keep records on wages, hours, and other items, as specified in Department of Labor recordkeeping regulations. Most of the information is of the kind generally maintained by employers in ordinary business practice and in compliance with other laws and regulations. The records do not have to be kept in any particular form and time clocks need not be used. With respect to an employee subject to the minimum wage provisions or both the minimum wage and overtime pay provisions, the following records must be kept:

(1) personal information, including employee's name, home address, occupation, sex, and birth date if under 19 years of age;

(2) hour and day when workweek begins;

(3) total hours worked each workday and each workweek;

(4) total daily or weekly straight-time earnings;

(5) regular hourly pay rate for any week when overtime is worked;

(6) total overtime pay for the workweek;

(7) deductions from or additions to wages;

(8) total wages paid each pay period; and

(9) date of payment and pay period covered.

Records required for exempt employees differ from those for nonexempt workers. Special information is required for homeworkers, for employees working under uncommon pay arrangements, for employees to whom lodging or other facilities are furnished, and for employees receiving remedial education.

Terms Used in FLSA

Workweek — A workweek is a period of 168 hours during 7 consecutive 24-hour periods. It may begin on any day of the week and at any hour of the day established by the employer. Generally, for purposes of minimum wage and overtime payment each workweek stands alone; there can be no averaging of 2 or more workweeks. Employee coverage, compliance with wage payment requirements, and the application of most exemptions are determined on a workweek basis.

Hours Worked — Covered employees must be paid for all hours worked in a workweek. In general, "hours worked" includes all time an employee must be on duty, or on the employer's premises or at any other prescribed place of work. Also included is any additional time the employee is allowed (*i.e.*, suffered or permitted) to work.

Computing Overtime Pay

Overtime must be paid at a rate of at least one and one-half times the employee's regular rate of pay for each hour worked in a workweek in excess of the maximum allowable in a given type of employment. Generally, the regular rate includes all payments made by the employer to or on behalf of the employee (except for certain statutory exclusions). The following examples are based on a maximum 40-hour workweek.

(1) ***Hourly rate*** — (regular pay rate for an employee paid by the hour). If more than 40 hours are worked, at least one and one-half times the regular rate for each hour over 40 is due.

Example: An employee paid $8.00 an hour works 44 hours in a workweek. The employee is entitled to at least one and one-half times $8.00, or $12.00, for each hour over 40. Pay for the week would be $320 for the first 40 hours, plus $48.00 for the four hours of overtime—a total of $368.00.

(2) ***Piece rate*** — The regular rate of pay for an employee paid on a piecework basis is obtained by dividing the total weekly earnings by the total number of hours worked in that week. The employee is entitled to an additional one-half times this regular rate for each hour over 40, plus the full piecework earnings.

Example: An employee paid on a piece-work basis works 45 hours in a week and earns $315. The regular rate of pay for that week is $315 divided by 45, or $7.00 an hour. In addition to the straight-time pay, the employee is also entitled to $3.50 (half the regular rate) for each hour over 40 — an additional $17.50 for the 5 overtime hours — for a total of $332.50.

Another way to compensate pieceworkers for overtime, if agreed to before the work is per-

formed, is to pay one and one-half times the piece rate for each piece produced during the overtime hours.

The piece rate must be the one actually paid during nonovertime hours and must be enough to yield at least the minimum wage per hour.

(3) ***Salary*** — the regular rate for an employee paid a salary for a regular or specified number of hours a week is obtained by dividing the salary by the number of hours for which the salary is intended to compensate.

If, under the employment agreement, a salary sufficient to meet the minimum wage requirement in every workweek is paid as straight time for whatever number of hours are worked in a workweek, the regular rate is obtained by dividing the salary by the number of hours worked each week. To illustrate, suppose an employee's hours of work vary each week and the agreement with the employer is that the employee will be paid $420 a week for whatever number of hours of work are required. Under this agreement, the regular rate will vary in overtime weeks. If the employee works 50 hours, the regular rate is $8.40 ($420 divided by 50 hours). In addition to the salary, half the regular rate, or $4.20 is due for each of the 10 overtime hours, for a total of $462 for the week. If the employee works 60 hours, the regular rate is $7.00 ($420 divided by 60 hours). In that case, an additional $3.50 is due for each of the 20 overtime hours, for a total of $490 for the week.

In no case may the regular rate be less than the minimum wage required by FLSA.

If a salary is paid on other than a weekly basis, the weekly pay must be determined in order to compute the regular rate and overtime pay. If the salary is for a half month, it must be multiplied by 24 and the product divided by 52 weeks to get the weekly equivalent. A monthly salary should be multiplied by 12 and the product divided by 52.

Enforcement

Wage-Hour's enforcement of FLSA is carried out by investigators stationed across the U.S. As Wage-Hour's authorized representatives, they conduct investigations and gather data on wages, hours, and other employment conditions or practices, in order to determine compliance with the law. Where violations are found, they also may recommend changes in employment practices to bring an employer into compliance.

It is a violation to fire or in any other manner discriminate against an employee for filing a complaint or for participating in a legal proceeding under FLSA.

Willful violations may be prosecuted criminally and the violator fined up to $10,000. A second conviction may result in imprisonment.

Violators of the child labor provisions are subject to a civil money penalty of up to $10,000 for each employee who was the subject of a violation.

Employers who willfully or repeatedly violate the minimum wage or overtime pay requirements are subject to a civil money penalty of up to $1,000 for each such violation.

The FLSA prohibits the shipment of goods in interstate commerce which were produced in violation of the minimum wage, overtime pay, child labor, or special minimum wage provisions.

Recovery of Back Wages

Listed below are methods which FLSA provides for recovering unpaid minimum and/or overtime wages.

(1) Wage-Hour may supervise payment of back wages.

(2) The Secretary of Labor may bring suit for back wages and an equal amount as liquidated damages.

(3) An employee may file a private suit for back pay and an equal amount as liquidated damages, plus attorney's fees and court costs.

(4) The Secretary of Labor may obtain an injunction to restrain any person from violating FLSA, including the unlawful withholding of proper minimum wage and overtime pay.

An employee may not bring suit if he or she has been paid back wages under the supervision of Wage-Hour or if the Secretary of Labor has already filed suit to recover the wages.

A 2-year statute of limitations applies to the recovery of back pay, except in the case of willful violation, in which case a 3-year statute applies.

Other Labor Laws

In addition to FLSA, Wage-Hour enforces and administers a number of other labor laws. Among these are:

(1) the **Davis–Bacon and Related Acts**, which require payment of prevailing wage rates and fringe benefits on federally-financed or assisted construction;

(2) the **Walsh–Healey Public Contracts Act**, which requires payment of minimum wage rates and overtime pay on contracts to provide goods to the Federal Government;

(3) the **Service Contract Act**, which requires payment of prevailing wage rates and fringe benefits on contracts to provide services to the Federal Government;

(4) the **Contract Work Hours and Safety Standards Act**, which sets overtime standards for service and construction contracts;

(5) the **Migrant and Seasonal Agricultural Worker Protection Act**, which protects farm workers by imposing certain requirements on agricultural employers and associations and requires the registration of crewleaders who must also provide the same worker protections;

(6) the **Wage Garnishment Law**, which limits the amount of an individual's income that may be legally garnished and prohibits firing an employee whose pay is garnished for payment of a single debt;

(7) the **Employee Polygraph Protection Act**, which prohibits most private employers from using any type of lie detector test either for pre-employment screening of job applicants or for testing current employees during the course of employment;

(8) the **Family and Medical Leave Act**, which entitles eligible employees of covered employers to take up to 12 weeks of unpaid job-protected leave each year, with maintenance of group health insurance, for the birth and care of a child, for the placement of a child for adoption or foster care, for the care of a child, spouse, or parent with a serious health condition, or for the employee's serious health condition; and

(9) the **Immigration and Nationality Act**, as amended, which:

- *under the employment eligibility provisions*, requires employers to verify the employment eligibility of all individuals hired and keep Immigration and Naturalization Service forms (I–9) on file for at least 3 years and for one year after an employee is terminated;
- *under the H-2A provisions*, provides for the enforcement of contractual obligations of job offers which have been certified to by employers of temporary alien nonimmigrant agricultural workers;
- *under the H-1A provisions*, provides for the enforcement of employment conditions attested to by employers of H-1A temporary alien nonimmigrant registered nurses;
- *under the D-1 provisions*, provides for the enforcement of employment conditions at-

tested to by employers seeking to employ alien crewmembers to perform specified longshore activity at U.S. ports;

- *under the H-1B provisions*, provides for the enforcement of labor condition applications filed by employers wishing to employ aliens in specialty occupations and as fashion models of distinguished merit and ability; and
- *under the F-1 provisions*, provides for the enforcement of attestations by employers seeking to use aliens admitted as students in off-campus work.

More detailed information on FLSA and other laws administered by Wage-Hour is available from local Wage-Hour offices, which are listed in most telephone directories under U.S. Government, Department of Labor, Wage and Hour Division.

Equal Pay Provisions

The equal pay provisions of FLSA prohibit sex-based wage differentials between men and women employed in the same establishment who perform jobs that require equal skill, effort, and responsibility and which are performed under similar working conditions. These provisions, as well as other statutes prohibiting discrimination in employment, are enforced by the Equal Employment Opportunity Commission. More detailed information is available from its offices which are listed in most telephone directories under U.S. Government.

☆ U.S. GOVERNMENT PRINTING OFFICE:1996-418-442/64631

IMPACT ON STATES OF PAYING MINIMUM WAGE FOR WORKFARE1
Example: Family of Three

Minimum Wage Costs

The monthly cost of a $5.15 minimum wage for 20 hours a week is $443 and for 30 hours a week is $664. The welfare law's work rates for single parent families are currently 20 hours a week; they rise to 30 hours in the year 2000.2

If States Use TANF Funds as "Wages"

In 36 states, current TANF benefits are not enough to pay for 20 hours a week at the minimum wage. In 48 states (all but Alaska and Hawaii), current TANF benefits are too low to pay for 30 hours per week of work at the minimum wage.

If States Use TANF and Food Stamps Funds as "Wages"

In one state, Mississippi, the combined TANF and food stamp grants are not enough to pay for 20 hours a week of work at the minimum wage. In 20 states, the combined benefits are not enough to pay for 30 hours a week of work. These states are:

Nevada	Oklahoma	North Carolina	Louisiana
Arizona	Florida	Kentucky	Texas
Ohio	Missouri	West Virginia	Tennessee
Delaware	Indiana	Arkansas	Alabama
Idaho	Georgia	South Carolina	Mississippi

THE WHITE HOUSE

WASHINGTON

February 17, 1997

97 FEB 17 AM 10:01

MEMORANDUM FOR THE VICE PRESIDENT

FROM: BRUCE REED BR/EK
ELENA KAGAN EK

SUBJECT: LABOR ISSUES IN WELFARE REFORM

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

1. Application of worker protection laws to working welfare recipients

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

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

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

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

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

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

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

2. Privatization of welfare functions

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

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

Diana Fortuna 05/09/97 05:45:33 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Cynthia A. Rice/OPD/EOP
Subject: IRS and FLSA

I asked Karl Scholz, the DAS in Treasury who is overseeing the IRS work for FLSA, about the timing of their work. He said he will get me a hard estimate of when the IRS will be ready on Monday. But he complained that we are expecting too rapid a turnaround, said that DOL had 6 months to ponder their position, said he had tried in vain to alert folks here (Elena and Ken) a few months ago that Treasury needed to get involved, and that he suspects the IRS won't be ready with paper next week. He said they do understand that this is a very high priority.

We agreed that rather than duking it out about a theoretical timeline, he would first get us a realistic timeline and then we could fight about it if we want to.

So not an encouraging start, but let's see what he says on Monday.

CR/EK —
More bad news.
BR

The New York Times

May 13, 1997

Judge Rules for Increase in Pay of *Workfare* Recipients

Forum
□ Join a Discussion on ***Workfare*** and Welfare

By STEVEN GREENHOUSE

NEW ***YORK*** -- A state judge in Manhattan ruled Monday that ***New York*** City's ***workfare*** system unfairly calculates the number of hours that more than 35,000 welfare recipients must work to receive benefits.

The city now calculates those hours based on the $4.75-an-hour federal minimum wage. For many workers, in exchange for about $100 in welfare benefits each week, they work about 20 hours in jobs like cleaning parks, sweeping sidewalks or doing clerical work.

But Justice Jane Solomon of ***New York*** state supreme court ruled that the city must base the calculation on what it paid regular city workers for similar tasks, or about $8 to $10 an hour in most cases.

City officials sought to play down the significance of the decision, saying they would appeal.

But welfare advocates and lawyers for the ***workfare*** employees who brought the lawsuit praised the decision as a breakthrough that could mean that people who are required to work in return for their benefits will be treated more like other workers.

If the ruling is upheld, they said, the city will probably reduce the number of hours they work each week instead of choosing the more expensive option: increasing welfare benefits by a large margin to reflect the higher prevailing rate.

One of the most common jobs for ***workfare*** employees is cleaning parks. Calculations by City Comptroller Alan Hevesi found that the comparable pay received by regular, full-time groundskeepers in the city's parks is $9.08 an hour. Another common ***workfare*** job is clerical work in social service offices, and the comptroller said the prevailing rate for that is $8.11 an hour.

Boris Brukhman, a Ukrainian immigrant who is the lead plaintiff in the lawsuit, often does electrical repairs for the city, and the prevailing wage for such work is $18 an hour.

Marc Cohan, a senior lawyer with the Welfare Law Center, a nonprofit public

policy group that brought the lawsuit, said, "***Workfare*** has done a bad job in moving people from welfare to work, so this decision is good for the workers, because it means they can work less hours and spend more time in education and training programs that will make it easier for them to move from welfare to work."

Because of changes in federal welfare laws, city officials say they may have to put up to 100,000 welfare recipients into ***workfare*** jobs in the next few years. Some experts said Solomon's ruling could actually ease that task by forcing the city to have two recipients work, say, 10 hours a week cleaning parks, instead of having one worker do it for 20 hours.

"To the extent there is a finite amount of work that public agencies need to be done, it will certainly make it easier to spread the work around among participants," said Steven Savner, a senior staff lawyer with the Center for Law and Social Policy, a Washington research group.

In an oral decision from the bench, Solomon said the city had violated the ***New York*** State Constitution and state welfare law, because it has not determined the prevailing wage of the many different jobs done by ***workfare*** workers and then not paid the workers whichever is higher, the prevailing wage or minimum wage. She said she would issue a written decision soon.

A spokesman for Mayor Rudolph Giuliani said: "The decision will be appealed. Therefore it will have no immediate impact on our ongoing programs. Ultimately, the entire issue will be pre-empted by federal welfare law."

Welfare experts said Solomon's ruling will not take immediate effect if the city appeals, because under state law, injunctions are usually lifted when government bodies appeal.

Cohan, the lawyer for the ***workfare*** employees, insisted that City Hall was wrong to assert that state welfare rules are pre-empted by federal welfare law. He said state law applies, since most of the city's ***workfare*** workers are recipients of home relief, which is independent of the ***new*** federal welfare law.

One welfare advocate who is trying to unionize ***workfare*** recipients said the decision goes a long way toward ensuring that ***workfare*** workers are treated lke regular workers.

"This decision exposes the myth that these folks are not workers," said John Kest, director of organizing for the Association of Community Organizations for Reform Now. "It's impossible to maintain the view that these folks are in training programs or doing community service when everyone knows what they're doing is work that city employees used to do."

Welfare analysts said the decision would please union leaders who fear that the rapid growth in low-paying ***workfare*** jobs will pull down wages and take jobs away from union workers. Requiring cities to pay these workers the equivalent of the prevailing wage is expected to reduce ***workfare***'s downward tug on wages, while giving cities less incentive to use ***workfare*** employees to do the work once done by unionized city workers.

THE WHITE HOUSE

WASHINGTON

May 15, 1997

MEMORANDUM FOR BRUCE REED

FROM: **SUSAN BROPHY**
LEGISLATIVE AFFAIRS

SUBJECT: **PRESIDENTIAL CORRESPONDENCE**

Enclosed please find a copy of the letter that was sent to the President from Sen. Pat Roberts (R-KS) and Rep. Todd Tiahrt (R-KS).

I do not believe this letter requires a Presidential response at this time. Please review the attached material and respond directly to the Member(s) of Congress, forwarding copies to the Office of Legislative Affairs, attention Chris Walker.

Thank you very much for your assistance in this matter. If you have any questions, please feel free to call Chris at 456-7500.

Enclosure

PAT ROBERTS
KANSAS

302 HART SENATE OFFICE BUILDING
WASHINGTON, DC 20510-1605
202-224-4774

COMMITTEES:
ARMED SERVICES
AGRICULTURE
INTELLIGENCE
ETHICS

United States Senate

WASHINGTON, DC 20510-1605

May 5, 1997

The Honorable Bill Clinton
President of the United States
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

MAY 9 PM 1:59

Dear President Clinton:

We are writing on behalf of our constituent Ms. Rochelle Chronister, Secretary of the Kansas Department of Social and Rehabilitation Services. Secretary Chronister is opposed to the proposed plan to extend the provisions of the Fair Labor Standards Act (FLSA) to welfare cash assistance recipients. We have enclosed copies of all pertinent documents.

We share Secretary Chronister's opposition to this proposal and urge you to give her comments your upmost consideration.

With every best wish,

Sincerely,

Pat Roberts

Todd Tiahrt

PR:jt
Enclosure

BILL GRAVES, GOVERNOR OF THE STATE OF KANSAS

KANSAS DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES
915 SW HARRISON STREET, TOPEKA, KANSAS 66612

ROCHELLE CHRONISTER, SECRETARY

March 6, 1997

The Honorable Pat Roberts
116 Dirksen Senate O.B.
Washington DC 20510

Re: Welfare Reform - Fair Labor Standards Act

Dear Senator Roberts:

I am writing to express my concern about the Administration's plan to extend the provisions of the Fair Labor Standards Act (FLSA) to welfare cash assistance recipients who are required to be in work programs. This proposed action would have the effect of turning a beneficiary of state services into an employee.

In 1996, Congress passed the welfare reform package, the Personal Responsibility and Work Opportunity Reconciliation Act (P. L. 104-193). This measure has strict requirements for states to place specified percentages of recipients in work activities at specified hourly levels as a condition of receiving the federal block grant that provides cash assistance. The Administration's proposal will make it impossible for many states to meet these requirements.

Further, operation of the Administration's proposal will raise the following issues.

1. We have made worksite agreements with public, private not-for-profit and private for profit organizations. We expect many of these to drop out of our program, because of the complexities of administering the Administration's proposal for recipients in the work experience programs.

2. Limiting work experience to the product of the cash (or food stamps or child care) benefit divided by the minimum wage would yield a number of work experience hours that would vary from individual to individual and from month to month. This would be difficult to administer.

3. Extending the provisions of the FLSA to recipients of welfare benefits is a way of partially restoring individual entitlement to benefits, expressly abolished by P.L 104-193.

4. In order to meet their work participation levels required by P. L. 104-193 some states would need to raise their welfare cash grants, an unacceptable dilemma in the light of recent changes in the public welfare system.

5. Paying minimum wage and ancillary benefits to welfare recipients in work experience programs would tie future increases in the minimum wage to automatic increases in public welfare costs in the states.

6. Costs associated with extending provisions of the FLSA to welfare recipients in work experience represents an unfunded mandate to the states. Subjecting state public welfare programs to a new, limiting federal mandate is inimical to the welfare reform law's encouragement of states to design programs that work best for them.

For additional detail, I have attached information prepared by my staff and supplied to the American Public Welfare Association and the National Governors' Association who have requested input from the states on this issue.

I hope that you agree that the Administration's approach on this issue is contrary to congressional intent in passing the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. I request that you do whatever you can to persuade the Administration to modify its position on this issue.

Sincerely,

Rochelle Chronister

Rochelle Chronister
Secretary

RRC:ciu
Attachment
cc: Senator Sam Brownback
Representative Jerry Moran
Representative Jim Ryun
Representative Vince Snowbarger
Representative Todd Tiahrt
Connie Hubbell, Commissioner, Income Maintenance/ Employment Preparation Services

ANSWERS TO QUESTIONS REGARDING WORK EXPERIENCE IN KANSAS

Q: What types of work experience programs does your state currently provide or plan to provide in the future? What purpose do they serve?

A: Kansas has provided a community work experience component for work program participants since 1983. AWEP was implemented in 1995 to expand the work experience component into the private sector and to allow for increased hours of assignment necessary to meet the increasing participation rate. The component became available to food stamp only recipients in April 1996. The purpose of the program is to provide a work environment that will teach work skills and work habits. The work experience component also allows the participant to establish references for job-seeking. Kansas considers both CWEP and AWEP to be training programs.

Q: What percentage of your caseload is currently in these activities? How do you expect this to change over time?

A: We currently have 20% assigned to the work experience program. Beginning March 1, parents of children 1-3 become mandatory. We anticipate participation in work experience to increase to over 40% fairly quickly.

Q: What limitation does your state impose on the length of time an individual may participate in a work experience position?

A: Established policy is for initial assignments to private for- profit work sites to be for thirteen weeks or less. The length of the assignment is based on the training guidelines for specific occupations as listed in the Dictionary of Occupational Titles. The maximum length of assignment to any worksite is nine months.

Q: What types of agencies and organizations do you place individuals with?

A: Worksite agreements are made with public, private not-for-profit, and private for- profit companies.

Q: Do you consider these individuals to be employees? If so, who is the employer?

A: We do not considered work experience employment; participants are not considered employees.

Q: Do these individuals receive a paycheck or a benefit check?

A: They receive a benefit check. Hours of assignment are not tied to the amount of the benefit.

Q: What, if any, employee benefits are provided to these participants and by whom?

A: Participants in this component do not receive any type of employee benefits. Kansas currently provides worker's compensation coverage by paying medical expenses with the medical card and providing death benefits or scheduled injury benefits through program funds. Private sector placements usually add clients to their private workers compensation policy.

Q: What would be the implications or what concerns would you have if your state was required to comply with the minimum wage (and other requirements) of the Fair Labor Standards Act for your work experience slots?

A: General FLSA issues:

-- Most of our work program jobs are not "professional" positions and would not be exempt from overtime under FLSA. Would additional grant money need to be paid for hours worked over 40 and would those hours have to be paid at time and a half?

-- Does the application of the FLSA trigger leave for clients under the Family and Medical Leave provisions? FMLA is not always paid leave. If a client claims leave under FMLA, would the agency still be required to pay benefits? Could a sanction be imposed if the client requests leave under FMLA?

-- FLSA specifically covers state and local government employees. Are clients employees of the work site or state employees? If state employees, do they qualify for paid vacation and sick days? retirement benefits? paid health insurance?

-- FLSA has specific exemptions for "learners". All employers are eligible to apply for this exemption and Dept of Labor determines on a case by case basis. Can work program participants be called learners as most work programs are essentially training programs? This would exempt work experience from minimum wage rules.

-- What about the Americans with Disabilities Act? Many of our clients have disabilities that might be covered by the ADA. Who pays if a client requests some type of accommodation?

Other Concerns and Unintended Consequences of Applying FLSA to Work Experience:

--Work sites will drop out because they will also be subject to FLSA and other labor regulations and won't want the risks.

--Kansas ranks in the middle of the 50 states in its payment level of grants to recipients. Using the minimum wage standard, Kansas could meet the 20 hour work participation requirement for single parent families with no child support income. It could not meet the

35 hour requirement for 2 parent families, nor will it meet the participation rate for single parent families when it climbs to 30 hours. Kansas could not meet even the 20 hour requirement for any single parent family for whom we collect child support, which is about 25% of the cases.
This is because the amount of child support we collect in their behalf is assigned to the state and would have to be subtracted from the amount of the cash assistance grant in order the arrive at the amount of the grant they would be required to "work off" at minimum wage standards.

--Kansas used minimum wage as the standard to arrive at the number of required hours of CWEP participation for General Assistance recipients many years ago. We learned that work sites would not accept recipients whose assignment was for less than 20 hours per week. They found the cost of training a recipient and monitoring their participation was too cost intensive for a less than 20 hour per week commitment. They also did not want to work with recipients whose hours fluctuated from week to week.

--If Kansas can not meet its work participation rate due to the administration's planned changes to the work experience requirements, work experience may be dropped as a component of work. The other alternative, to raise grant payments to the equivalent of minimum wage x 35 hours to assure work experience assignments which meet work participation rate requirements, is not a viable alternative in Kansas. The Kansas Legislature would never approve a grant increase of that magnitude. What incentive would recipients have to find unsubsidized employment if welfare pays them the equivalent of minimum wage, and assures them complete medical coverage through Medicaid (which is not a guarantee in the private sector). The issue of a lack of incentive really escalates if one assumes that deeming work experience participants to be "employees of the state" means they will be entitled to the same retirement benefits, vacation/sick pay, health insurance benefits, etc. as other employees. The administration's plan seems to totally undermine the intent of the federal welfare reform legislation. It is also not in the best interests of the recipients. In many areas of the state, particularly the rural areas, work experience placements are the only avenue for work training. If that avenue is closed, the only alternative is job search. While this may allow us to meet our work participation rates, it is not going to help an unskilled welfare recipient with no work history or references to get a job. This is not the type of program Kansas plans or wants to run.

--If the minimum wage becomes intrinsically linked with welfare, it is likely there will be no future increases in the minimum wage. While cash assistance accounts for only 1%-3% of the federal budget, taxpayers see it as a black hole. Trying to get taxpayers (and their Congressional representatives) to go along with an increase in the minimum wage which would cause an increase in welfare payments would be an uphill battle.

Q: **What would the implications be for your program if other work laws, such as unemployment insurance, workmen's compensation, FICA, etc., were applied? Would the state or participating agency bear the cost? Can you estimate the increased costs of applying these laws? Would this affect your state's ability to provide work experience**

as an option in your welfare-to-work program?

A: If we tried to make the participating agencies bear the cost of this, they would drop out. While many businesses and non-profits have a desire for altruism, they will not endanger their operating capital in order to "do their part" for welfare reform. It would, therefore, become the state's responsibility to bear this cost. A very quick estimate based on work experience participants working 20 hours at $4.75/hour is an additional $2.5M to $4.5M annual cost depending on who pays the "employee's" share of the FICA tax. If providing services to help recipients find jobs is the true goal of welfare reform, then this money would be much better spent on skill-specific training programs and job retention programs. This would impact greatly on the state's ability to operate a welfare-to-work program.

Q: Are there other types of welfare-to-work activities that you would be concerned about if FLSA and other laws were to apply?

A: This could impact the community service employment mandate of the federal welfare reform law for any state that did not opt out of this requirement. It would also affect community service components of the welfare-to-work program. This could also impact some stages of customized training programs which have been developed in Kansas.