NLWJC - Kagan
DPC - Box 061 - Folder-005

Welfare - FLSA

Welfare WR - FLSA

Gingrich Vows to 'Finish' Reform By Passing Legislation In Early Fall

House Speaker Newt Gingrich (R-Ga) pledged "to finish up" welfare reform this fall by passing legislation to ensure the new law is carried out the way the GOP intended.

The legislation is needed "because the Clinton administration, working with the unions and the bureaucrats and the liberals, is trying to undermine and destroy welfare reform," Gingrich said Aug. 22 during the Midwest Republican Leadership Conference in Indianapolis.

House Republicans tried, but failed, to add language to the recent budget agreement that essentially would have reversed the Clinton administration's position that welfare recipients in government-sponsored and nonprofit workfare programs are "employees" and thus covered by an array of federal labor and tax laws. This includes the Fair Labor Standards Act, which sets out minimum wage requirements, and federal payroll and unemployment insurance taxes. The workfare language was stripped from the final package after stiff resistance from organized labor.

Labor Law an Issue. "[T]he president has an obligation to work with the governors of this country to have effective, real welfare reform and not destroy it on behalf of the union bosses," Gingrich said during that meeting, which brought together GOP officials to discuss the party's agenda.

Rep. Clay Shaw (R-Fla), a key architect of the 1996 welfare law, plans to unveil legislation in September that would clarify that certain labor and tax laws would not apply to welfare recipients working for their benefits in public sector and nonprofit jobs (164 DLR A-2, 8/25/97).

Gingrich said he has already talked with key GOP leaders on a game plan. "[W]e are prepared to work with the governors of both parties to make reforming welfare for real a major part of our September and October legislative agenda," according to a transcript of the speaker's remarks.

Among those Gingrich said he spoke with regarding the workfare initiative are Shaw, who chairs the House Ways and Means Subcommittee on Human Resources; Rep. William Goodling (R-Pa), chairman of the House Education and the Workforce Committee; Rep. Jim Talent (R-Mo), who chairs the House Small Business Committee; and Senate Majority Leader Trent Lott (R-Miss).

'Union Bosses' Targeted. During his remarks, the House speaker took several swipes at organized labor, criticizing "union bosses" for allegedly spending union dues for political purposes without getting members' permission and for having too much political power.

Looking ahead to the next election, Gingrich said that in 1998, voters will have a clear choice between the two political parties. "On one hand, you have a team that believes in a smaller government in Washington with lower taxes so you have more take-home pay, a team that believes you ought to implement welfare reform and that, frankly, union bosses have become too powerful and that trial lawyers file too many lawsuits."

Pointing to the Democrats, Gingrich said, "On the other side, you're going to have a team that believes in bigger government, more bureaucracy, more lawsuits, more power to the union bosses, and higher taxes."

Gingrich said the Republicans should have a second "Contract with America" that, among other things, calls for a flat tax and a "virtual elimination" of the Internal Revenue Service. By cutting 80,000 or 90,000 of the 110,000 people at the IRS, "there would go a large part of their union base," Gingrich said referring to the IRS' unionized workforce.

Another priority, according to Gingrich, is to help people, particularly minorities, create small businesses. The speaker said he has asked Rep. Talent to lead a task force on this issue.

Welfare

Fed Economist Says Welfare Reform Boosts Employment for Single Women With Families

SAN FRANCISCO—Welfare reform has triggered a dramatic increase in the number of single women with children entering the U.S. labor force, but the actual impact on the total labor force is small, a Federal Reserve Bank of San Francisco economist reported Aug. 22.

Mary Daly estimated that about 296,000 women with families who were formerly on welfare entered the labor force between August 1996 and July 1997 as a result of welfare reform. Her study draws on data published by the U.S. Labor Department's Bureau of Labor Statistics.

During the 12-month period before reform, July 1995 to July 1996, the number of women maintaining families who were in the labor market increased by 2.4 percent. In contrast, between August 1996 and July 1997, "labor force growth among these women surged to 7.4 percent at an annual rate," she said.

One year after President Clinton signed the Personal Responsibility and Work Opportunity Reconciliation Act into law, welfare case loads have dropped 12 percent.

Overall, 2.3 million individuals joined the labor force, boosting the labor force participation rate by 0.4 percentage point to 67.1 percent over the year ending in July 1997. Using BLS definitions, that means 67.1 percent of the U.S. working-age population was either employed or looking for work.

Total Effect Small. "Comparisons of the post-welfare reform labor force growth between women maintaining families and other groups in the population suggest that welfare reform has had an effect on labor market behavior. However, because the size of the population potentially affected by reforms is relatively small, the effect on the aggregate U.S. labor force has been minimal," Daly concluded.

Daly examined BLS figures on the labor force subgroup most likely affected by welfare reform: single women maintaining families.

"The results suggest that welfare reform appears to have induced a portion of the targeted population to enter the labor market rather than move onto the welfare rolls, but that, relative to the number of individuals entering the U.S. labor market during the past year, po-

 COPYRIGHT © 1997 BY THE BUREAU OF NATIONAL AFFAIRS, INC., WASHINGTON, D.C.

WR - FLSA

Diana Fortuna
08/27/97 09:55:59 AM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Laura Emmett/WHO/EOP
Subject: Conf call with Dem Gov staff on FLSA that Fred DuVal wants to have today

Fred DuVal has more or less agreed to have a conference call late this afternoon with Dem Govs staff (Miller, Romer, Dean, Chiles, Carper). Romer and Dean are pressing him very hard on the question of how they should respond to Carper's letter, since Carper is apparently pushing very hard for his 3-point position to become the Dem Govs position. The theory is that this conference call would reinforce our position, and slow down Carper. I'm a bit mystified as to why Dem Govs should be confused about our position, but maybe they really are.

If you don't think this conference call today is a good idea, you probably need to call Fred. He is out Thursday and Friday, which is why he's rushing. He thinks next week is too late since Carper is pushing these guys. It seems like you would have to be on such a call; we could do it without him Thurs. or Friday if we wanted.

Carper's 3 points are:

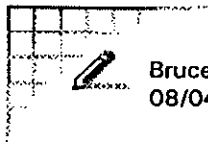
1. Recreate the CWEP system of paying the minimum wage (person can't work more hours than the state benefit divided by the minimum wage).

2. A confusing item that either weakens the work requirements by saying more things count, or just says that states can combine activities to hit the work requirements.

3. Says workfare people are not employees. This is how he gets around FICA, but obviously there's a lot more that this does.

WR-FLYBD and
Crime - crack sentencing

Jose/Leanne —
FYI on crack.
Elena


Bruce N. Reed
08/04/97 06:31:46 PM

Record Type: Record

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

cc:
Subject: Rematch

Gingrich: More Welfare
Reform On GOP Agenda

ALPHARETTA, Georgia (AllPolitics, August 2) -- House Speaker Newt Gingrich says Republicans plan to make a major push this fall to implement welfare-reform measures that President Bill Clinton refused to accept as part of the recently completed balanced-budget deal.

In interviews given Saturday while Gingrich was attending an American Legion parade in his suburban Atlanta district, the speaker also said he favors equalizing penalties for people caught selling crack and powder cocaine -- but not by reducing crack penalties as the Clinton administration has proposed.

Rather, he indicated he might support increasing the penalties for powder cocaine offenders.

"I favor equalizing them, but I'm not sure I'm not for equalizing them up," Gingrich said. "A person who commits the same relative threat to society -- the same number of doses -- should face the same consequences."

Critics say current sentencing laws are unfair to those who handle crack, which is cheaper than powder and more likely to be used by

members of racial
minorities.

Attorney General Janet Reno and President Clinton's drug-policy adviser, Barry McCaffrey, have proposed reducing the sentencing disparity for the two forms of cocaine to a 10-1 ratio.

Their plan would impose mandatory five-year penalties for selling 25 grams of crack or 10 times as much powdered cocaine, 250 grams. Current law requires five-year sentences for the sale of 5 grams of crack or 500 grams of cocaine, a 100-1 ratio.

Exemption for those in welfare-to-work programs

Gingrich said that when Republicans return in the fall, they will take up a proposal to exempt individuals in welfare-to-work programs from the $5.15-an-hour minimum wage.

That exemption is a major priority of Republican and even some Democratic governors. But GOP negotiators dropped the idea from the recent budget bill because of opposition from Clinton, promoting complaints from GOP governors.

"There will be a very big push on welfare reform," Gingrich said. "We did not fight it out on the budget agreement, but we are going to really ask all the governors in the country to work with us to pass a welfare-reform implementation act which we think the president has to sign."

"The bureaucrats and the unions are trying to destroy welfare reform. We cannot allow that to happen."

'We are moving in the right direction'

Also, Gingrich said he would prefer that President Clinton not use the line-item veto on any provisions of the balanced-budget agreement. He said the Clinton team did not raise that prospect during negotiations, so "I think it would be helpful for them not to exercise it."

"But I am not going to get into a fight about it. This is his right. We gave it to him deliberately."

Just two weeks after a small group of restless Republicans tried to topple him, Gingrich said House Republicans are now unified.

WR - FLSA

Fair Labor Standards Act (FLSA) Options

Option 1:

- If an individual participating in a work experience or community service program is an employee (as determined by current law), the Fair Labor Standards Act (FLSA) applies.

  -- Participants who are employees are covered by employee protection laws such as the FLSA, the OSH Act, and anti-discrimination laws.

  -- Participants who are not employees (e.g., trainees) under the FLSA, will be covered by other employee protection laws such as the OSH Act and anti-discrimination laws.

    o In addition, they will be covered by a grievance procedure that includes the right to a hearing within a specified time period and appeal of an adverse finding to a neutral State agency selected by the Governor.

- Participants in activities funded by welfare-to-work funds or TANF cannot displace current employees (including a reduction in hours, wages, or benefits) or be employed in a job resulting from a layoff or a workforce reduction to create the vacancy or in a job that impairs promotional opportunities for current employees. (Senate provision)

- Regardless of "employee" status, participants in programs financed with welfare-to-work or TANF funds, and their employers, shall not be covered by unemployment compensation and FICA taxes. Such individuals shall not be eligible for the EITC.

Option 2:

- The determination of the applicability of the FLSA to participants in community service or work experience programs published in the Federal Register by the Department of Labor (DOL) on May 16, 1997 shall remain unchanged through September 30, 2000. The DOL shall not issue any other regulations, interpretations, or guidance on this matter prior to September 30, 2000.

  -- Participants who are not employees shall be treated as in Option 1.

- Anti-displacement provisions same as Option 1.

- Coverage of and eligibility for unemployment compensation, FICA, and the EITC same as Option 1.

Option 3:

- House provision, but sunset on September 30, 2000. Participants in work experience and community service programs during this period are not considered to be receiving compensation for work and are not entitled to a salary or work or training expenses.

- Unemployment compensation, FICA, and the EITC same as Option 1.

I:\data\wtwjobs\flsa_opt.724

04/18/97 11:25 IGA
APR-18-1997 12:23

002/004
P.02/04

WR - FL 8A

APR 15 '97 04:24PM NAT'L GOVERNORS' ASSOCIATION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

MAR 27 1997

Mr. David R. Riemer
City of Milwaukee
Department of Administration
Room 606 -- City Hall
200 East Wells Street
Milwaukee, Wisconsin 53202

Dear Mr. Riemer:

This is in response to your letter dated January 23, 1997, requesting information regarding the federal tax treatment of government assistance payments in the context of the recently enacted welfare reform law with regard to programs you are proposing in the future.

The Internal Revenue Service ordinarily does not issue rulings on proposed transactions or on hypothetical situations. Accordingly, because the programs you described are proposed, we are providing you with the following general information.

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.

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).

The general welfare doctrine applies to payments that are not intended as compensation. Thus, for example, a federal benefit to an eligible individual is excludable from the recipient's gross income so long as the payments are not compensation for services. Similarly, government benefit payments made directly by a government agency to an individual undergoing training or retraining (including on-the-job training) are excludable from the recipient's gross income because the payments are intended to promote the general welfare and are not compensation for services. See Rev. Rul. 63-136, 1963-2 C.B. 19, concerning payments made to individuals to aid them in their

efforts to acquire new skills that will enable them to obtain better employment opportunities. See also Rev. Rul. 72-340, 1972-2 C.B. 31, which holds that city-paid stipends 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.

Whether payments under work-training programs are includible in a participant's gross income depends on whether the payments are for the performance of services or for participation in a training program that promotes the general welfare. If the activity engaged in is the performance of services, then the payments are includible in gross income as compensation for services; otherwise the payments are for the promotion of the general welfare and are excludable.

In Rev. Rul. 71-425, 1971-2 C.B. 76, a state welfare agency requires able-bodied individuals on welfare to participate in work experience projects that is sponsors or administers under 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. 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 welfare 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 those costs.

Rev. Rul. 71-425, 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. However, where the primary measure of the amount a participant receives under a program is based on the participant's personal or family need rather than the value of any services performed, the payments are more in the nature of welfare payments in connection with the recipient's participation in the training program than payments for services rendered.

Rev. Rul. 75-246, 1975-1 C.B. 24, illustrates the federal income and employment tax treatment of payments made and received

Mr. David R. Riemer

under titles I and II of the Comprehensive Employment and Training Act of 1973 (CETA) in three factual situations. In one situation, 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. The company receives the trainee's services and compensates the trainee 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.

Rev. Rul. 75-246, concludes that the payments the trainee receives from the company are includible in gross income because the trainee is basically engaged in the performance of services, even though the services embody some degree of training. The payments are also subject to income tax withholding and FICA and FUTA taxes.

Based on the above principles and revenue rulings, it seems that the participants in the second model you described are employees, and any payments they receive would constitute wages for income tax withholding and 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 participants.

For purposes of the earned income tax credit (EITC), section 32(c)(2)(A) defines "earned income," in part, as wages, salaries, tips, and other employee compensation. Thus, all payments of wages qualify as earned income.

We hope that this general information will be helpful to you. If you have any questions regarding this letter, please contact Felicia A. Daniels at (202) 622-6050.

Sincerely yours,

Philip M Cronk

PHILIP M. CORN
Special Assistant
Office of the Associate
Chief Counsel
(Employee Benefits and
Exempt Organizations)

WR-FLSA

FOOD STAMP PROGRAM
USDA/FCS/RM. 710
ALEXANDRIA, VA 22302
703-305-2454–FAX

Fax

To: Cynthia Rice, Diana Fortuna, Jeff Farkas
From: Bonny O'Neil

Fax:
Pages: 3

Phone:
Date: 4/23/97

Re: FS/TANF Workfare
CC:

☐ Urgent ☑ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

• Comments: Attached is a summary of the three options discussed last week. Pls. note that the legislative option is to use TANF workfare rules, not Food Stamp rules which specifically address minimum wage and other protections. The option to use the simplified program also assumes the substitution of TANF rules for Food Stamp rules.

Yvette has reviewed this paper and is ready for any further discussion.

TANF WORKFARE FIX

- Section 20 of the Food Stamp Act contains specific exemptions from food stamp workfare. Exemptions are provided for, among others, parents or other caretakers of a dependent child under 6 years old (between 1 and 6 in some States for three years), students, individuals participating in drug or alcohol treatment programs, and parents or other caretakers of a dependent child who are members of a household which include another member that is subject to workfare or is employed full time.

- States are required under PRWORA to make TANF recipients work 20 hours weekly to retain eligibility; this requirement will increase to 30 hours in 7 years. Some households' TANF benefits, however, may not be large enough to cover 20 (or, later, 30) hours per week of work at the minimum wage.

- One means to address the TANF workfare problem would be to exclude able-bodied-TANF recipients from food stamp workfare exemptions. This would allow States to combine a household's TANF and food stamp benefit when determining the workfare obligation.

- We have three options for excluding able-bodied-TANF recipients from food stamp workfare exemptions:

  1. **We may advise States to exclude able-bodied-TANF recipients from food stamp workfare exemptions through means of the Simplified Food Stamp Program.** The simplified program was designed specifically to be the vehicle for creating conformity between TANF and the Food Stamp Program. States can exclude able-bodied TANF recipients from food stamp workfare exemptions simply by adopting TANF rules relating to workfare. States, however, may make other changes to workfare beyond removing the exemptions for able-bodied-TANF recipients. For example, States may choose to adopt TANF's less restrictive workfare participation protections in place of the protections afforded participants under the Food Stamp Act.

  2. **We may grant States waivers of Section 20 to exclude able-bodied-TANF recipients from food stamp workfare exemptions.** Waivers have the advantage of being narrow and targeted; there is no potential for States to make additional changes to food stamp workfare requirements. The waiver option, however, may be unpopular with States because waivers are subject to a number of Federal requirements. For example, waivers are time-limited and must be reevaluated periodically. Waivers may also be undesirable from a Federal standpoint. The Food and Consumer Service has taken the position that the intent of waivers is to test and evaluate new procedures, not to provide States with operational alternatives. Granting 30 waivers or more in this area would undermine FCS' position. Finally, waivers of food stamp workfare exemptions may be questionable legally. The Food Stamp Act prohibits waivers of the exemptions from work requirements in Section 6(d). Section 20 of the Act, while not prohibiting waivers of work exemptions, is predicated on Section 6(d). Thus, while waivers of Section

20 to eliminate workfare exemptions for able-bodied-TANF recipients may be technically permissible, they may contradict the spirit of the law.

3. **We may make a legislative change to Section 20 of the Food Stamp Act to allow States to require able-bodied TANF recipients to participate in workfare under TANF rules.** Legislation would provide a permanent solution to the TANF workfare issue, unlike a waiver which would need to be periodically reevaluated. It also would not call attention to the simplified program and its risks. A legislative change could be written as a technical amendment which would make it less likely that the change would be a subject of controversy. It is unclear if the Agriculture Committee will take up a food stamp technical amendment package. If a legislative change is drafted, however, and legislation delayed, the other two options could always be reexamined. A drawback to making a legislative change is that legislation can be unpredictable. Congress may select a different solution to the problem of a TANF participant's inability to meet the 20-hour-a-week work requirement than the one which we suggest. For example, Congress may eliminate the problem by allowing participants to be reimbursed for workfare at a rate below the minimum wage.

WR - FLSA

Record Type: Record

To:

cc:
Subject: FLSA and Food Stamps: Paper from Dept of Ag

FYI: USDA sent us and OMB paper outlining the options for allowing states to count food stamp toward work wages for families with kids under age 6. Elena, the options are as Bonnie O'Neil laid out to us verbally:

1) Advise states they can use the Simplied Food Stamp option to import TANF rules -- such as work requirements -- into the Food Stamp program for dual eligible individuals. Downside: could alert states that they could adopt TANF's less restrictive worker protections in the food stamp program.

2) Notify states that USDA will grant waivers to exclude able-bodied recipients from food stamp workfare exemptions. Downside: states will have certain reporting requirements because of the "experimental" nature of the waiver (some of these could perhaps be waived);

3) Propose legislation to require able-bodied TANF recipients to participate in workfare. Downside: could encourage Congress to legislate a different solution such as a subminimum wage.

Next steps -- let me know what you think:

1) I will ask OMB to examine which waiver requirements they would feel comfortable exempting so we could see how "painless" we could make the waiver option;

2) I will ask USDA to prepare (if they haven't already) legislative language so we'll have it ready;

3) Then, we will need to choose:

a) We could simply inform states of their options. This will allow us to play the "honest broker" informing states of our interpretation of the law;

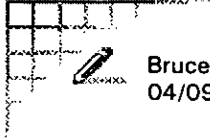
b) We could suggest a particular intermediate step for states (either Simplified Program or waiver) and push for legislation as the longer-term solution.

c) We could suggest either Simplified Food or waiver and not push for legislation

but share legislative language with others who want to do so.

d) We could suggest either Simplified Food or waiver and not push for legislation but wait and see what happens in the Senate.

WR-FLSA

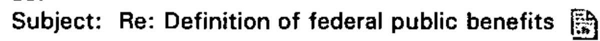


Bruce N. Reed
04/09/97 03:22:04 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc:



Subject: Re: Definition of federal public benefits

Can you look at the letter from Chiles? It makes me think we should push in the technicals to exempt from FICA and EITC.

Or push in Treasury
[illegible]

WR-FLSA

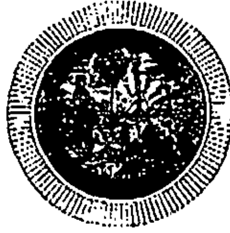
Cynthia A. Rice 04/09/97 06:37:18 PM

Record Type: Record

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

cc:
Subject: FLSA Rollout Planning

Secretary Shalala has gotten a letter from Gov. Chiles saying the worst thing about appying FLSA will be the state having to pay FICA taxes. It reminded HHS that we should engage Treasury, as well as Labor, HHS, and Ag, in the rollout if possible. HHS has had no luck in moving Treasury along and thought we might be able to.



WR-FLSA

THE GOVERNOR OF THE STATE OF FLORIDA

LAWTON CHILES

April 4, 1997

The Honorable Donna Shalala
Secretary
Department of Health and Human Services
Independence Avenue
Washington, D.C. 20201

Dear Madam Secretary:

It was good to see you in Washington recently and get caught up on several issues of importance to us in Florida.

First of all, I am pleased to see the continued emphasis placed on Medicare and Medicaid fraud prevention. I look forward to working with you and others in the Administration to provide states with even greater incentives for deterring fraud and abuse by allowing states to invest any savings in coverage expansions for some of the ten million uninsured children in this country. I am also pleased that HHS will soon issue regulations on requiring a surety bond for "high-risk" providers in the Medicaid program. As you know, that provision has been an integral and successful part of our anti-fraud effort in Florida. Please let me know if we can do anything to help promote these initiatives.

Secondly, my sincerest appreciation for your assistance in shaking loose our long term care waiver for Palm Beach county. Your tools of persuasion are impressive.

Lastly, I wanted to get back to you and others in the Administration about my concerns over imposing the Fair Labor Standards Act and other labor laws to all elements of our new welfare program.

The attached point sheet from our state officials summarizes some of our major questions about imposing such standards across the board and relate to some of your questions about costs for Florida. Again, as the welfare law is silent on this matter and we have been given very little specific information on this "proposal" of the Administration, we must base our calculations and estimates on the traditional applications of the various labor laws to this new, unique welfare/work program.

My overall concern is that this blanket application of FLSA and other laws will undermine our sincere and genuine efforts to reform welfare in Florida. Indeed, some of our Department of Labor officials tell me that such application would eliminate community/work experience in our program. Community willingness to participate - both public and private - will evaporate if it is now determined that they must meet responsibilities associated with unemployment compensation and FICA. In many instances, if dollar to dollar commitments are now required of employers, they will renege on pledges to cooperate.

This would, in my view, essentially destroy the delicate blueprint that we have designed to create a bridge from total dependence on welfare to a meaningful, stable job. As you know, community work experience is not work. It is intended as training to help secure employability skills for those with no experience in the job market and who won't survive in that competitive environment unless they have the opportunity to develop some skills and experience in a community or work experience activity. While the law mandates incremental participation rates, in Florida we have 100% participation as our goal so that each individual has every opportunity to succeed. The potential loss of the community service option denies the most vulnerable population the maximum amount of assistance in this "time-limited" program.

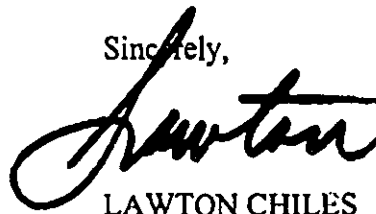
Our state program - WAGES - requires application of the minimum wage and workers compensation to employment, but we never envisioned or budgeted for those and the related provisions to be extended to other activities. The alternatives we have - supplementing the TANF block grant or paying penalties - concern me of course, but I am more troubled about how it can throw our direction off-course as we strive to implement substantive, established reform. The course is fragile enough but will become more-so if such impediments continue. With all due respect to you and the others who promote such extreme interpretations of a silent clause, this is not the type of cooperative partnership we need to make reform work.

I would welcome any comments you and others have on the attached "reaction" and do hope that we will have another opportunity to discuss before any final decisions are made.

Thanks again for all of your efforts and attention to our needs.

With kind regards, I am

Sincerely,



LAWTON CHILES

cc: Cynthia A. Metzler, Acting Secretary of Labor
Bruce Reed, Domestic Policy

WHAT IF THE FAIR LABOR STANDARDS ACT APPLIES TO WORK EXPERIENCE UNDER TEMPORARY ASSISTANCE TO NEEDY FAMILIES?

Fiscal Implications - Key Points

- In order to meet federal participation rates, a state must make extensive use of work experience. This is because all other activities that can be counted are either limited in duration or scope.
- This is particularly true in a low grant state like Florida where, even with our enhanced earnings disregard, a family of three will lose eligibility at about $800 in earnings per month.
- Historically, the number of participants in work experience has been a few hundred per month.
- Our implementation plan for WAGES relies on our having about 40,000 participants a month in work experience by the end of this calendar year.
- There are two approaches we can make in estimating the effect of a decision to apply the Fair Labor Standards Act to work experience.
- One approach is to estimate what it would cost to raise benefits so that the combination of cash assistance and food stamps divided by the minimum wage equals the number of hours of required participation per week. To this, we would add the cost of paying FICA benefits for cash assistance. We do not know whether the FICA benefits for the value of food stamp benefits would be a state cost, a federal cost or a shared state/federal cost.
- Under this approach, the minimum financial impact would be (no assumption made about caseload change):

Estimated Impact on Mandatory Cash Assistance Increases and FICA Payments for Work Experience Participants

(*in thousands*)	FY 98	FY 99	FY 00	FY 01	FY 02	Total
Cost of increased benefits	$118	$591	$1,361	$1,361	$1,361	$4,792
Cost of FICA - cash assistance	$783	$783	$783	$783	$783	$3,915
Cost of FICA - food stamps	$928	$928	$928	$928	$928	$4,640
Total Cost	**$1,829**	**$2,302**	**$3,072**	**$3,072**	**$3,072**	**$13,347**

- These estimates could change due to the interactive effect of cash assistance and food stamps. Currently, cash assistance is counted as unearned income in the calculation of food stamp benefits. If it were determined that work experience is "work" rather than "preparation for work", then it may be necessary to count cash assistance paid to work experience participants as earned income for food stamp purposes (this could occur either through a statutory change or as a result of court action - it's hard to imagine how we could defend counting benefits paid for "work" as anything other than earnings). For individuals who were not receiving the maximum allotment, then their food stamp benefits would increase. This of course would increase the number of hours they could be required to "work" and could affect the above calculations.

- The other approach is to assume that public sector and private not-for-profit entities will not serve as community work sites due to potential liabilities and administrative complications. For example, if a work experience participant is "fired", does she potentially qualify for unemployment? Would the work experience site be liable? If such questions meant that work experience was not a viable program component, then the potential cost to the state would be the amount of the potential penalty for failure to meet participation rates. This would be about $28 million the first year and would grow by $11 million per year to a maximum of about $118 million.

?

File - WR - FLSA

Cynthia A. Rice 03/11/97 07:08:04 PM

Record Type: Record

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

cc:

Subject: Re: FLSA in 94 and 96 Administration WR Bills

Jeff Farkas found basically that our '94 bill kept worker protections for workfare protections while our '96 bill did not (see below). This will make our roll-out even more tricky.

--------------------- Forwarded by Cynthia A. Rice/OPD/EOP on 03/11/97 07:01 PM ---------------------------

Jeffrey A. Farkas
03/11/97 09:34:15 AM

Record Type: Record

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

cc: Keith J. Fontenot/OMB/EOP, Stacy L. Dean/OMB/EOP

Subject: FLSA in 94 and 96 Administration WR Bills

Here is some information on the FLSA-related provisions of the Administration's 1994 and 1996 welfare bills (in the sections related to cash assistance work programs). Please let me know if you have any questions.

The WORK program in the 1994 bill incorporated a comprehensive set of workfare protections, including minimum wage (FLSA), workers compensation, working conditions, and FICA taxation. The bill did not provide unemployment compensation coverage (at the Federal or State level), and did not allow the EITC for earnings from WORK positions.

The 1996 bill is much less specific than the 1994 bill. It would extend FLSA coverage for work supplementation programs (the language is nearly identical to the work supp provisions in the JOBS statute, where FLSA applied), but not for workfare positions. Under workfare, participants in community service jobs were required to work a designated number of hours (reaching 30 per week in the outyears) and to be paid at a rate which is "100 percent of the maximum amount of assistance that may be provided under the State plan...to a family of the same size and composition with no income." In many instances this level would be sub-minimum wage. In addition, the bill provided that "wages paid under a workfare program shall not be considered to be earned income for puposes of any provision of law." This would seem to preclude application of FLSA.

Message Sent To: