

NLWJC - Kagan

DPC - Box 063 - Folder-014

Welfare-Privatization [1]

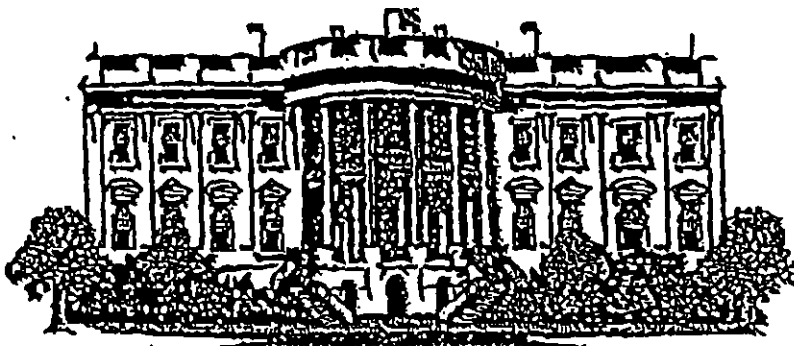
Figure out if any time bands

Cons. w/ state directives

How to roll out

- talk to the

child care -
insurance - tax deduct -



THE WHITE HOUSE

Domestic Policy Council

DATE: 12/2

FACSIMILE FOR: Bruce + Elena

FAX: 62878
PHONE:

FACSIMILE FROM: Cynthia Rice, Special Assistant to the President for Domestic Policy

FAX: 202-456-7431
PHONE: 202-456-2846

NUMBER OF PAGES (INCLUDING COVER): 7

COMMENTS: Bruce - per our conversation, the USDA letter to Arizona is on its way. You should call Senator McCain Thursday.

Attached are USDA's Q+As, the letter to the state, and the letter you got from McCain. We expect a low key reaction from the state (though you can never tell).

Food Stamp Program

Denial of Privatization Demonstration Waiver Request from the State of Arizona

Questions and Answers

Question: Why did the Food and Nutrition Service (FNS) deny the State of Arizona's privatization waiver request?

Answer: The Arizona waiver request was denied because FNS concluded the State's request did not ensure program access for food stamp applicants and recipients. More specifically, the request did not provide adequate justification to waive the requirement for the use of merit employees (public) in the certification process that results in the final determination of program eligibility. FNS can waive the Act to test alternative methods that would further improve administration and meet the nutrition assistance goals of the Food Stamp Program.

Question: Specifically, how would Arizona's waiver request deny program access?

Answer: As noted in our letter, one example is the provision in the State's law allowing for incentive payments to the vendor for caseload reductions. Any incentive to reduce caseloads is contrary to this Administration's commitment to ensure Food Stamp Program access to all eligible low-income households.

Question: Will FNS deny other requests from States to test the feasibility of using private or non-profit contractors in the Food Stamp Program's certification and eligibility determination process?

Answer: FNS will continue to review and work with any State that submits a demonstration waiver request to test privatization. It is a very serious matter to waive the law and several principles guide our consideration of this matter. A successful demonstration waiver request should include: (1) a program design with a good chance of improved program management, including client access to the Food Stamp Program; (2) a State's commitment to a time-limited test (FNS cannot permanently waive the Act) that includes arrangements to return to pre-demonstration conditions (i.e., eligibility determination by merit system employees); and (3) a comprehensive, independent evaluation to determine the positive or negative effects of privatization. (Note: Florida and Wisconsin have submitted privatization waiver requests that are under review at FNS.)

Question: Why did FNS take so long to make this decision?

Answer: While it has taken us some time to reach a decision on Arizona, it is important to recognize that we have been reviewing both the very important issue of privatization and the specifics of Arizona's proposal. We have been clarifying issues with Arizona and working with other Federal agencies. The State of Arizona requested a similar waiver for the Medicaid program from the Health and Human Service's Health Care Financing Service (HCFA).

Question: Will HCFA deny Arizona's request as well?

Answer: HCFA is aware of our denial. Questions about HCFA's next steps should be directed to HHS. (Note: HCFA has advised us that they are drafting a denial. We don't know how long this will take for clearance. However, neither the DPC nor OMB have requested that we wait any further on our letter. The State is negotiating a contract this week and is asking for an answer soon)

Question: Would you reconsider Arizona's request if the State made modifications?

Answer: Yes, we would reconsider a request that met the conditions specified above.

Question: Doesn't denying Arizona's request prevent States from experimenting with innovative approaches including privatization that were included in legislation for the Temporary Assistance for Needy Families (TANF) program?

Answer: The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 increased State flexibility in many areas for the Food Stamp Program as well as in cash assistance (TANF). However, while the law specifically provides for privatization under the TANF program, Congress specifically left the merit personnel requirements of the Food Stamp Act unchanged. Therefore, while we support State flexibility in the areas allowed by the Food Stamp Act, privatization is an area in which we are moving cautiously.

Question: Who have you heard from on this issue?

Answer: In addition to the State and most of their Congressional delegation, we've heard from State and National public employee unions such as the Arizona Public Employees Association of the American Federation of State County and Municipal Employees (AFSCME), and from numerous advocacy groups (Arizona Catholic Conference, Arizona Justice Institute, Children's Action Alliance and Arizona Network for Community Responsibility). The Congressional delegation supported approval. The employee unions and advocacy groups expressed concerns about program access, client confidentiality and administrative procedures which could potentially reduce the nutrition assistance that the Food Stamp Program provides to eligible low-income families.

J:PAD:AZQ&AS (12/2/98)

Dr. Linda Blessing
Director
Department of Economic Security
1717 W. Jefferson
P. O. Box 6123
Phoenix, Arizona 85005

Dear Dr. Blessing:

This is in response to your requests to waive the merit system personnel requirements of the Food Stamp Act (the Act) to transfer the Food Stamp Program (FSP) certification process and eligibility determinations to a private entity or to implement alternative administrative structures, in which the private entity would have direct control over the FSP certification process. The State of Arizona is requesting these waivers as part of the Arizona Works Demonstration/Pilot Project. For reasons explained in this letter, the waiver and alternative proposals are denied.

This administration is committed to ensuring that all eligible low-income households have access to vital Federal food assistance programs such as the FSP. The FSP, which provides food assistance benefits to more than 19 million eligible individuals nationwide, is the cornerstone of our efforts to guarantee a healthy and nutritious diet to all low-income families.

The Food and Nutrition Service must be cautious in allowing changes to the FSP's eligibility process which is designed to ensure fair and equitable program access. Provisions of the Act itself support this goal of program access. Section 11(e)(6) of the Act, which requires public employees to undertake the certification of applicant households, is one of these provisions. The requirement for merit employees reflects a general belief that fair and complete access to Federal FSP benefits is best served by the use of public employees in the certification process that results in the final decision of eligibility.

The FSP's eligibility process includes accepting the application, conducting the food stamp interview, collecting and entering data into a State database, requesting and reviewing verification, making a final eligibility determination and providing a fair hearing if the household wishes to contest the final eligibility determination or benefit level. Furthermore, it is through the certification process that program accountability (in which household eligibility is ensured through verification procedures); program integrity (in which State and Federal agencies work together in efforts to detect and deter program fraud and abuse); and accountability to taxpayers (in which all administrative decisions and procedures are open to public opinion and oversight) are ensured. An example of one way in which the Arizona proposals are inconsistent with these

DRAFT

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Dr. Linda Blessing

objectives of the merit system requirement is the State's option to provide incentive payments to the vendor for caseload reduction.

We do not find that the Arizona proposals sufficiently support the objectives of the Act and do not adequately ensure program access for food stamp applicants and recipients.

I appreciate the State of Arizona's cooperation and patience during our review of these requests and I regret that we were not able to respond to you earlier on this matter. Should you have further concerns, please contact me. I can be reached at (703) 305-2026.

Sincerely,

Susan Carr Gossman
Deputy Administrator
Food Stamp Program

cc: Allen Ng, Regional Administrator, WRO

FNS\FSP\PAD\SAB\CFOLEY\cp\12-198\305-2383
File:J:PAD:ARZDENIAL

SEP 16 '98 16:13 FR SEN MCCAIN

202 228 2862 TU 94562878

P. 02/03

JOHN MCCAIN
ARIZONACHAIRMAN, COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
COMMITTEE ON ARMED SERVICES
COMMITTEE ON INDIAN AFFAIRS

United States Senate

September 14, 1998

241 RUSSELL SENATE OFFICE BUILDING
WASHINGTON, DC 20510-0303
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TUCSON, AZ 85701
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Ms. Donna Shalala
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201-004

Dear Secretary Shalala :

I am writing to you regarding the Arizona Works pilot welfare program. It has been more than a year since the state of Arizona submitted an official waiver request to the appropriate federal agencies, including the Health Care Financing Administration (HCFA). Arizona still has not received an answer regarding this waiver.

I am confident you would agree that a crucial component of the 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) is the flexibility it allows the individual states in running their welfare programs. With this flexibility, the states are able to construct programs tailored to the specific needs of their communities. It is my belief that this is exactly what my state is attempting to do through the Arizona Works pilot program.

The Arizona Works program allows the state to contract with a private entity that will be responsible for determining eligibility for certain welfare services including: Temporary Assistance for Needy Families (TANF), Child Care, Food Stamps, Medicaid and the state-funded General Assistance program. Under the 1996 welfare law, states are permitted to contract with the private sector to operate TANF and Child Care programs. However, states are required to use state employees when determining eligibility for the Food Stamp and Medicaid programs. Thus, Arizona is seeking a federal waiver for their Arizona Works program which allows non-state employees to determine eligibility for the Medicaid and Food Stamp programs.

It is important to note that Arizona Works meets the federal requirements for a welfare privatization demonstration as outlined by the Administration on May 13, 1997. This includes limiting the length of the demonstration, implementation in only one county, rather than statewide, and a strong methodology for measuring and assessing outcomes.

Developing an effective and efficient welfare reform program which creates opportunities for Arizonans to become self sufficient is a laudable goal and one that should be encouraged. I am hopeful that this Administration will conclude that the Arizona

Works pilot program is an important step in this process and will determine that it meets the federal requirements for a demonstration project.

It is imperative that Arizona receive a prompt response regarding this waiver since they are obligated by state law to have this program fully operational by January 1, 1999. If, for some reason, the waiver is not approved, Arizona will need sufficient time to establish a dual system whereby private entities determine eligibility for TANF while state employees make determinations for Medicaid and Food Stamps.

Since submitting the waiver, the state of Arizona and Governor Hull have been working closely with officials from your agency to address and eliminate any concerns the Department may have about the innovative Arizona Works program. In addition, the state amended the original proposal in a concerted effort to address federal concerns about the length of the pilot program and time frames for state implementation. Now the state is simply awaiting a decision by you.

Providing a waiver for the Arizona Works program would give our nation an opportunity to learn if privatization can lead to a more efficient and effective service delivery. Therefore, I am requesting that the Department, in accordance with all applicable rules, regulations and ethical guidelines, review Arizona's formal waiver request in an efficient and expeditious manner.

I look forward to your prompt response regarding this important matter.

Sincerely,


John McCain
United States Senator

JM/sds


Governor Hull



Cynthia A. Rice

12/03/98 12:43:51 PM

Record Type: Record

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

cc:

Subject: FYI: today's Arizona Republic article about our action on privatization

This doesn't seem to have broken through to national press but here's the Arizona story.

----- Forwarded by Cynthia A. Rice/OPD/EOP on 12/03/98 12:43 PM -----



Cynthia A. Rice

12/03/98 12:40:32 PM

Record Type: Record

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

cc: julie_paradis @ usda.gov @ inet, bonny_o'neil @ fcs.usda.gov @ inet, carolyn_foley @ fcs.usda.gov @ inet, art_foley @ fcs.usda.gov @ INET @ LNGTWY

Subject: FYI: today's Arizona Republic article about our action on privatization

Welfare reforms threatened

Privatizing Food Stamp benefits rejected by U.S.

By Pat Kossan
The Arizona Republic
Dec. 3, 1998

The federal government slapped down Arizona's proposal to hand over its Food Stamp Program to a private company, a decision that endangers legislative efforts to turn other state-run benefits programs over to for-profit businesses.

The idea fails to ensure that needy families would have "fair and equitable" access to the benefits, that fraud and abuse would be detected, and that the program would be open to public scrutiny, federal Food Stamp officials said in letter sent Wednesday to state Department of Economic Security Director Linda Blessing.

This is the first decision the U.S. Department of Agriculture, which oversees the Food Stamp Program, has made about state requests for privatization, a USDA spokesman said. Wisconsin and Florida have also expressed interest in privatization of Food Stamp programs and their requests are being reviewed, he said.

Federal officials seemed especially unnerved by the Arizona's proposal to give the private vendor bonus payments for reducing

the number of people receiving Food Stamps.

Federal officials call it an example of how the program doesn't meet "the cornerstone of our efforts to guarantee a healthy and nutritious diet to all low-income families."

"The legislature has to relook at this program," said Alfredo Gutierrez, a former state senator, now lobbyist, who chairs the board responsible for designing the privatization program and finding a vendor to manage it.

"We may have to go back and reconsider our mission and re-engineer the (privatization) program," he said.

About 272,000 Arizona residents receive an average of \$78 worth of Food Stamps each month, while 96,000 of them also get cash welfare benefits averaging \$101. Most recipients are children.

Determining eligibility for the Food Stamp Program and distributing Food Stamp benefits are only part of a pilot privatization project called Arizona Works, passed by legislators in 1997 and amended in 1998.

It is designed to make a private business responsible for moving about 20 percent of DES's welfare caseload, or about 5,000 families mostly in eastern Maricopa County, off Food Stamps and cash welfare benefits and into jobs over the next two years, Gutierrez said, threatening the jobs of about 60 state workers. Under law, the private agency must show at least a 10 percent savings in administrative costs.

The Arizona Works Procurement Board awarded the bid Monday to MAXIMUS, a national company that runs benefits programs in other states, mostly child support programs.

But the USDA's decision not to allow distribution of Food Stamps to be part of the privatization program could force the Procurement Board to cancel that award and reissue its bid requests, Gutierrez said.

The state Attorney General's Office must review the denial letter and determine whether the withdrawal of the Food Stamp Program changes the original bid proposal and opens the state up to legal action by those vendors not awarded the contract.

If that decision is made, Gutierrez said the Procurement Board would have to start with a new proposal and bid requests and could miss its Jan. 5 deadline for issuing a bid reward.

But that's not the only problem.

DES workers now help welfare parents acquire both Food Stamps and welfare cash benefits during one interview.

If the state is forced to keep its workers to run the Food Stamp program, it could mean that funding an additional privatization program for other benefits would no longer save the state money.

"Then the Legislature could choose to end, mend or extend the program," Gutierrez said.

The Procurement Board members plan to meet with the Attorney General's Office next week, he said.

Message Sent To:

Christopher C. Jennings/OPD/EOP
Jeanne Lambrew/OPD/EOP
Devorah R. Adler/OPD/EOP
Karen Tramontano/WHO/EOP
Daniel N. Mendelson/OMB/EOP
Barbara Chow/OMB/EOP
Jeffrey A. Farkas/OMB/EOP
Edwin Lau/OMB/EOP



Cynthia A. Rice

09/10/98 12:40:40 PM

Record Type: Record

To: Karen Tramontano/WHO/EOP, Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Kris M Balderston/WHO/EOP

cc:

bcc:

Subject: Re: USDA Food Stamp Waiver 

What I suspected was true is true -- USDA has been visiting and collecting information on these waiver requests as we requested, but they're not sure how much longer they can drag this out. I've asked them to write up a status report on Arizona, Florida and a new waiver request from Wisconsin, and I think we may want to meet with them to discuss next steps.

Cynthia A. Rice



Cynthia A. Rice

09/04/98 06:47:40 PM

Record Type: Record

To: Karen Tramontano/WHO/EOP

cc: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Kris M Balderston/WHO/EOP

bcc: Records Management

Subject: Re: USDA Food Stamp Waiver 

Kris -- I can check this out.

The welfare reform law required USDA to respond to waiver requests within 60 days to (1) approve (2) deny or (3) ask more questions. When we last met in the EOP on this topic, we agreed that USDA should ask Arizona more questions; in April, we told USDA to do the same thing for Florida. Historically, USDA has been good about following our guidance but I will call them and let you know.

Karen Tramontano

Karen Tramontano

09/04/98

06:05:00 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Cynthia A. Rice/OPD/EOP, Kris M Balderston/WHO/EOP

cc:

Subject: USDA Food Stamp Waiver

I just got a call from AFSCME informing me that our friends at USDA are seriously considering

waivers for Florida and Arizona of merit staff for food stamp workers ----
also they heard that USDA is visiting Florida to review its TANEF Pilot --

Kris, can you check this out w/USDA

Any other info/advice pls let me know

Diana Fortuna

07/15/98 04:46:47

PM

Record Type: Record

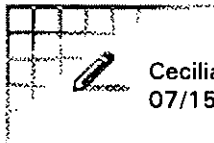
To: Elena Kagan/OPD/EOP, Cynthia A. Rice/OPD/EOP

cc: Laura Emmett/WHO/EOP

Subject: Info on Michigan

Here's an update from the NEC. I still don't feel confident we're back in this loop and will continue to try to get us there.

----- Forwarded by Diana Fortuna/OPD/EOP on 07/15/98 04:50 PM -----



Cecilia E. Rouse

07/15/98 02:17:25 PM

Record Type: Record

To: Diana Fortuna/OPD/EOP

cc:

Subject: Re: any news on Michigan? 

The only news is that the unions (with the exception of the UAW) have grudgingly agreed to a small pilot in Michigan. Therefore, Secretary Herman is waiting for Gov. Engler to call (he is scheduled to do so) to schedule a face-to-face meeting in Washington either later this week or early next week. DOL is interested in a 25% pilot which could be configured in a number of ways.

-- Ceci

Diana Fortuna

07/23/98 02:02:07

PM

Record Type: Record

To: Elena Kagan/OPD/EOP, Cynthia A. Rice/OPD/EOP, William P. Marshall/WHO/EOP

cc: Laura Emmett/WHO/EOP

Subject: arnold & porter mtg

will be sometime Monday morning. that 's what they picked. Bill, I'll let you know the exact time.

Cynthia, the notice would be issued by press release and later compiled in some IRS publication.
so this could be announced any day of the week.

Diana Fortuna

07/23/98 11:07:23

AM

Record Type: Record

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

cc: Laura Emmett/WHO/EOP

Subject: alexis is meeting w/Engler today

Just learned that this is happening today. We're still obviously not in this loop. According to Ceci Rouse:

The farthest Alexis will go is to propose a 25% pilot, which would mean Detroit and a few surrounding counties. Biggest challenge is that GI bill is ready to go, may be conference action this week, and they hope it could be signed pre-recess. So their goal is a meaningful enough conversation with Engler that the Hill thinks we're credible and we want to work it out. Alexis told Sweeney last night what she'll propose, and he supposedly will try to carry some water on that.

Ceci says DOL is driving this more than NEC, which hasn't been that involved in the mechanics.

Diana Fortuna

04/02/98 01:43:01

PM

Record Type: Record

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

cc: Andrea Kane/OPD/EOP

Subject: Florida privatization; If I don't hear from you on this by Friday, I will assume this course of action is OK

Florida's state legislature passed a law requiring a small privatization demonstration as part of their welfare reform plan. USDA has a legal deadline to act -- this Monday, April 6. Options are (1) approve, (2) deny, or (3) ask more questions. USDA proposes (3) ask more questions, as we did with Arizona. I think this is the right course of action. I will tell them we have no comment on their plans if I don't hear any objections from all of you close of business Friday.

This is the state legislature's initiative. The Governor's staff told me off the record that they will not be greatly disappointed if this is not approved.

The demo would privatize food stamp and Medicaid eligibility determination for about 1% of the state's caseload.

Keith: I wasn't sure who the right person was at OMB, so I'm sending this to you. I sent Anil the paper on this issue.

Message Sent To:

Elena Kagan/OPD/EOP
Cynthia A. Rice/OPD/EOP
Emily Bromberg/WHO/EOP
Karen Tramontano/WHO/EOP
Emil E. Parker/OPD/EOP
Keith J. Fontenot/OMB/EOP

Wp-privatizati-

U.S. Department of Labor

Assistant Secretary for
Employment and Training
Washington, D.C. 20210



January 30, 1998

Mr. Douglas Rothwell
Chief Executive Officer and Department Director
Michigan Jobs Commission
Victor Office Center, 4th Floor
201 North Washington Square
Lansing, Michigan 48913

Dear Mr. Rothwell:

In our conversation today, Douglas Stites, Chief Operating Officer of the Michigan Jobs Commission (MJC), confirmed that the MJC intends to implement Governor Engler's Executive Orders 12-1997 and 18-1997 on Monday, February 2, 1998, despite the lack of an approved Wagner-Peyser plan of service modification. This conversation is consistent with our understanding of the state's intentions based on our January 21, 1998 meeting, a recent review by staff from our Chicago Regional Office, and earlier discussions.

At the outset, I would like to reiterate our continuing commitment to work with you to improve Michigan's Employment Service, consistent with prevailing federal law, policy and program requirements. We share the high priority you place on innovations that deliver high quality employment services to all who need them and we continue to hope that this outcome can be achieved in Michigan without placing the availability of employment services to the people of Michigan at risk. This risk can be avoided if the MJC complies with the legal and regulatory requirement that Wagner-Peyser Act funds be used only in accordance with an approved plan.

I agree that strategies and policies sometimes need to change as the needs of our dynamic national economy change. In partnership with the States and the Congress, we have worked to lay the foundation for a new workforce development system, one that better integrates workforce development services, satisfies its customers better, and achieves better employment and earnings outcomes for them. I know you share this vision of a better performing and functionally integrated system that is technologically advanced and locally-directed.

I know that we both share the goal of continuing to provide quality services to all who use the ES. It is for that reason that we are anxious to continue our dialogue and to determine if there are ways to provide services that will be better, fairer and more efficient.

We cannot, however, abandon our role as the federal grantor of Wagner-Peyser funds and permit MJC to implement its plans without full consideration and proper approval as the law requires. I notified you in letters dated September 18, 1997, October 21, 1997 and December 24, 1997 that MJC could not legally use Wagner-Peyser grant funds until it has submitted and had approved a

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modification to its plan of service. On December 24, 1997, I indicated that the Department could not approve the plan modification which MJC had submitted. The letter also identified certain program weaknesses that would have prevented our approval of the plan. We suggested that the plan be withdrawn and that we take the opportunity to engage in a greater coordination of our efforts to improve the performance of Michigan's employment services. These program concerns are:

- The Michigan plan does not provide for adequate administration of the Employment Services' responsibilities with respect to the UI work test. Michigan's exclusive reliance on automated services to provide job-finding and placement services for UI claimants does not adequately provide the job referrals and verification of the outcomes of these referrals that are needed in order for the work test to be effectively managed. Merit-staffing is integral to the effective administration of the work test.
- An exclusive reliance on automated services is inadequate to carry out the purposes of the Wagner-Peyser Act. Michigan must provide a range of job search and job placement assistance services in each community that supplements an automated approach to delivering these services in order to give customers a reasonable choice of services delivery alternatives.
- An exclusive reliance on automated services to provide basic labor exchange services presents a barrier to those who have literacy problems, physical impairments, or other impediments to effectively using automated labor exchanges services effectively. The Michigan proposal does not adequately address how these barriers would be avoided.
- Michigan's automated labor exchange relies on a fully connected Americas Job Bank/America's Talent Bank where job-seekers can search for job openings that fit their skills and employers can search for resumes that match their skills needs. This new system will not be ready until March 2. Thus, the implementation schedule does not appear to be in sync with the availability of the technology needed to have a fully automated labor exchange. It also calls into question whether other aspects of the reorganization are being implemented prematurely.

I know that these concerns can be addressed and that we can move forward with the task of improving employment services for the citizens of Michigan. We can achieve this if the MJC is willing to work with us and continues to operate under its currently approved plan until our deliberations result in an approved revision to that plan. Funding for Michigan's Wagner-Peyser Act services can and will continue as long as they are delivered under an approved plan. It is my duty and commitment to see that services to the people of Michigan continue. By setting an implementation date for Monday, February 2, the MJC is jeopardizing these services.

In addition to the requirement that any Wagner-Peyser plan receive Departmental approval, relevant laws and regulations including the Wagner-Peyser Act, the Intergovernmental Personnel Act and Office of Personnel Management regulations require that State Employment Services be

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staffed by public employees selected on the basis of merit. The requirement is demonstrated by 64 years of practice and successive standards and guidance promulgated by the responsible federal entities. After extensive consultation and review of the relevant laws, regulations and guidance, we conclude that the Department's 64 year policy represents a correct interpretation of the law. We have consulted with the Office of Legal Counsel at the Department of Justice, and they have advised us that their initial view is in accord with our conclusion. Finally, we note that in 1938 the state of Missouri contended that the Wagner-Peyser Act did not require merit-staffing, and the Department withheld Wagner-Peyser funding until Missouri agreed to adopt a merit personnel system. This foundation for merit staffing remains in place today.

While merit-staffing applies under the Wagner-Peyser Act, it applies only to those services that the Secretary of Labor determines to be inherently governmental functions. This determination is reserved to the Secretary of Labor in keeping with her legal obligation to maintain a national system of employment security. In keeping with this obligation to determine which services might be inherently governmental, I previously indicated a willingness to discuss limited pilot programs.


It is my hope that you will act to ensure that the people of Michigan continue to receive their deserved Wagner-Peyser services. I sincerely hope that Michigan will suspend its actions to implement the reorganization plan and continue to negotiate with the Department to reach a mutually satisfactory resolution of MJC's performance concerns and to the Department's programmatic and policy concerns so that Wagner-Peyser funds will continue to flow under the current approved plan of service.

I cannot, however, abandon my role as an official of the federal grantor of Wagner-Peyser funds. If I do not receive from you, by close of business on February 2, 1998, an affirmative indication in writing that Michigan's Wagner-Peyser Act services will continue to operate consistent with the currently approved plan of service, ETA will withhold MJC's Wagner-Peyser Act funds expended in connection with the reorganization. This withholding of funds will remain in effect until Michigan is again operating under an approved plan.

Your first year One-Stop Career Center grant has ended. Approval of Michigan's second year One-Stop Career Center grant will also be affected to the extent that the grant would be used to implement or support the implementation of the proposed reorganization.

Let me again affirm my readiness to work with you to improve employment services in Michigan. Together, I know we can provide the leadership needed to make this an opportunity for innovation in the interest of providing better employment services to job-seekers and employers.

Sincerely,


RAYMOND J. UHALDE
Acting Assistant Secretary
for Employment and Training



03:59:47 PM

Record Type: Record

To: See the distribution list at the bottom of this message
cc: Bruce N. Reed/OPD/EOP, Sara M. Latham/WHO/EOP
Subject: Michigan Privatization

As most of you know, DOL has informed me that Engler insists on starting to privatize Michigan's Employment Service Monday. As a result, DOL is preparing a letter to the Michigan Employment Commissioner stating that DOL will begin to withhold federal funds for the operation of the Employment Service because the state is breaking the law.

Karen--I understand that Kitty called you about this. Have you seen this letter? Do you know if they have let WH Leg Affairs and the Press Office know? Do we know what the impact of withholding funds will do to recipients?

Diana-- I know you are trying to get your hands on a copy of the letter. Can you find out if they are doing talking points?

Message Sent To:

Karen Tramontano/WHO/EOP
Diana Fortuna/OPD/EOP
Elena Kagan/OPD/EOP
Mickey Ibarra/WHO/EOP
Fred DuVal/WHO/EOP

Wp-privatization



08:40:05 PM

Record Type: Record

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

cc:

Subject: Update on Michigan privatization

Engler has taken DOL to court over the privatization issue. He asked for a TRO on DOL's plans to shut off the flow of money, but he lost. But there is a hearing of some sort on Friday. The money has been shut off.

DOL continues not to be very proactive, to say the least, about keeping us in the loop about developments like this. Uhalde told me that they keep Podesta informed, and that Geri Palast talks to WH intergovernmental (although according to Emily, she doesn't hear much either). I told him that they should keep us informed as things happen.

He gave me a page of talking points that I will forward to Emily and Cynthia.

Karen Tramontano

01/20/98

07:35:33 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Gene B. Sperling/OPD/EOP, Elena Kagan/OPD/EOP, Emil E. Parker/OPD/EOP
cc: Maria Echaveste/WHO/EOP, Barbara Chow/OMB/EOP, Samuel-William @ dol.gov @ inet
Subject: Privatization Meeting @1 p.m. Room 180



PVTMEMO.W

Attached are my thoughts and process for tomorrow's meeting. If possible we should try to either have a few minutes b/4 the meeting. I will try to schedule it. Also, please e-mail me w/ comments and concerns about the attached. I hope to cover four things tomorrow -- opening, current status, options and dialogue. Thanks

To: Bruce, Gene, Elena, Emil
From: Karen
CC: Maria Eschaveste, Barbara Chow
Re: Privatization Meeting

Kitty Higgins will be joining us tomorrow a.m. Based on our previous conversation and a conversation I had with Gerry Shea, our goal is to begin a dialogue with labor about a long term strategy for privatization.

In addition to the afl-cio staff, the communication workers, auto workers, afscme and seiu will be attending the meeting. It goes without saying that their first response will be "we are winning the privatization war; the Clinton Administration needs to hold firm." In Gerry's view -- and I think we agree -- "holding firm" is not a long term strategy.

John and Sec. Herman put on the table a four-pronged approach:

- Say "no" to all privatization;
- Say "yes" to all privatization;
- Say "no" but accommodate a State proposal to privatize but w/ merit staffing principles;
- Say "yes" but just pilot.

If we can engage in a dialogue around the last two options--because I believe the first two options do not work--I think we will have made some progress. With the last two options, if we could engage in a discussion around the principles that labor would like to see us apply, we will have made significant progress.

Since the reaction from the outset will be defensive and lacking in trust, I would like to open with a "why we are here." Then, Bruce and Elena if you would give an overview of the issues that are currently before the Administration and the ones we expect to come like CHIPS, Medicaid, TANIF. With a bit of luck, we may be able to engage in a dialogue about the best options for handling the debate, the process and the substance.

Thank you.

January 5, 1997

MEMORANDUM FOR JOHN D. PODESTA

FROM: KAREN A. TRAMONTANO

**CC: BRUCE REED
ELENA KAGEN
MICKEY IBARRA
GREG FRAZIER
WILLIAM CORR
LEE SATTERFIELD**

SUBJECT: PRIVATIZATION

On Tuesday, January 6 at 2:00 p.m. there will be a meeting to discuss the Administration's response to state requests to privatize various programs. This meeting is an effort to understand those requests and to the extent appropriate, share information regarding the status of those requests and agency responses.

Department of Labor:

Several months ago, the Department of Labor through means other than state notification, learned of Michigan's desire to privatize its employment services program. Since I was not able to be involved in this matter, you are aware that the Department of Labor within the last week communicated a number of concerns to the state. As a result, the state informed the Department of Labor that it has withdrawn its request to privatize its employment services program. Secretary Herman has attempted to contact the Governor to determine whether the state will resubmit its request or whether the state has decided to halt its actions regarding this matter. At this time, the Governor has not returned the Secretary's calls.

Department of Agriculture:

The state of Arizona has a request pending with the Department of Agriculture to privatize segments of their food stamp program. Just prior to the time expiring during which the Department would have had to issue a decision, the Department requested additional information. The matter remains pending.

The state of Wisconsin has made a similar request with the Department of Agriculture. I understand that this request is pending also.

Department of Health and Human Services:

The state of Wisconsin has a pending request to privatize segments of its Medicaid program with HHS. There may be a pending request from Arizona as well.

The Domestic Policy Council has been following these issues with the agencies for some time. Since no Administration policy has been developed that would apply to every request, the most recent requests have been pending while the agencies request more information from the state to determine with specificity the state's plan and its impact on both workers and recipients.

During this meeting, I recommend we address the following:

- A. Determine the full range of proposals pending before these three agencies;**
- B. Determine the status of each proposal;**
- C. Determine whether a comprehensive Administrative policy can be developed and applied to each request;**
- D. Identify the next steps for White House and Agency officials.**



10:06:41 AM

Record Type: Record

To: Laura Emmett/WHO/EOP

cc:

Subject: Re: employment service

Emily's note (attached to Cynthia's) explains the issue and argues that there is some urgency on it. Is Elena around next week?

----- Forwarded by Diana Fortuna/OPD/EOP on 12/23/97 10:06 AM -----



Cynthia A. Rice

12/19/97 11:27:44 AM

Record Type: Record

To: Emily Bromberg/WHO/EOP

cc: Elena Kagan/OPD/EOP, Diana Fortuna/OPD/EOP

bcc:

Subject: Re: employment service

Elena --- unless you think otherwise, shouldn't the first step be for Diana and Emily -- who will be here next week -- to get together as quickly as possible with DOL and I think Ann Lewis from the NEC who works on one-stop/employment center issues and figure out what the facts are here. Emily Bromberg



05:30:26 PM

Record Type: Record

To: Elena Kagan/OPD/EOP, Sara M. Latham/WHO/EOP

cc: Bruce N. Reed/OPD/EOP, Fred DuVal/WHO/EOP, Cynthia A. Rice/OPD/EOP

Subject: employment service

I got a call from DOL this morning giving me a heads-up on Gov. Engler's efforts to privatize employment services in Michigan. I assume you all know that the employment service office is not just where you get your unemployment check, but also does job counseling, one stop shop, etc. Governor Engler proceeded to privatize without submitting a state plan to DOL (as required) and in fact notified the localities that they need to get RFP's out because they will be required to privatize in their areas starting 2/1/98. DOL has been fussing with the state for quite some time (months) re: process/where is the state plan without really dealing with the policy question (or notifying the White House). Engler submitted a state plan two weeks ago requesting privatization--so now the issue must be resolved. DOL says they must give the state an answer by 1/5/97.

I understand that Karen is recused from this because of her SEIU connection. Karen tells me that Kitty Higgins has talked to John Podesta about this directly. How do you want to proceed? Seems

like we need to resolve this quickly.



10:05:58 AM

Record Type: Record

To: Laura Emmett/WHO/EOP

cc:

Subject: Re: employment service

Do you know if Elena has focused on this and decided on whether to do a meeting as Emily suggests? I will now forward you the prior email that explains what this issue is all about.

----- Forwarded by Diana Fortuna/OPD/EOP on 12/23/97 10:05 AM -----




11:38:21 AM

Record Type: Record

To: Cynthia A. Rice/OPD/EOP

cc: Elena Kagan/OPD/EOP, Diana Fortuna/OPD/EOP

Subject: Re: employment service 

i absolutely disagree. we do not have the time for that--the facts will be more quickly sorted out at a meeting that Elena or John chairs just because DOL is playing hide the ball--and because this is such a highly charged political issue. my suggestion is that Elena and John call a meeting with DOL for early next week.



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bcc:
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Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Cynthia A. Rice/OPD/EOP

Subject: FYI apparently there is a Michigan privatization issue we weren't aware of

The following is from NEC's briefing for the AFL-CIO conference:

PRIVATIZATION OF THE EMPLOYMENT SERVICE

Michigan: Governor Engler recently issued an Executive Order that would allow for the privatization of the Michigan Employment Service. Approximately 400 merit-staffed State employees, represented by SEIU, would be affected by the Executive Order, scheduled to effect on October 6. The Department of Labor directed the Michigan Jobs Commission to suspend implementation of the reorganization plan. The Department has not made a final decision on the legality of Michigan's plan.

Texas: A request by the State of Texas to privatize its Employment Service is on hold. Last spring, HHS rejected Texas' plan to privatize portions of its Medicaid and Food Stamps program. Other states are closely watching the Michigan situation; New York, Illinois and Pennsylvania are considering similar privatization efforts.



Record Type: Record

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

cc:

Subject: Elena's suggested question for letter to Arizona on privatization waiver request

Elena, you suggested asking AZ if they would agree to limit their demo so that no eligibility determination functions would be privatized, along the lines of the Texas compromise proposal. Yvette's response to that is that they wouldn't even need a demo to do that, and so they are not inclined to ask the question. I didn't get the sense that you felt strongly about adding this question, so I am not pushing them to add it. The letter is going out Thursday or Friday.

WP-privatizati-



16

05:17:56 PM

Record Type: Record

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

cc:

Subject: Proposed add to Arizona privatization

Recognizing that perhaps we need to add something to the Arizona letter that reflects our real reservations about privatization, I just suggested the following questions to USDA. Let me know if you see any problems with them asap.

What evidence does the state have that privatizing these functions will lead to lower costs? What evidence does it have that it will not lead to a diminution of client service or increased error rates?

Diana -

TO: Elena Kagan
Cynthia Rice
Emil Parker
Emily Bromberg

FROM: Diana Fortuna

SUBJECT: Arizona Privatization

DATE: September 25, 1997

Looks good to me, and
Bruce agrees we should request
more information rather than
making a decision. (Kind of
amazing that the clock stops
completely! The only other thing
I can think of to ask is
whether the state would be

Here is USDA's response to our 2 questions to them on Arizona. We had asked them:

- Does the law set a clock ticking beyond the 60 day timeline by which they must approve, deny, or ask for more info? They say the answer is no, there are no timing requirements once we get past October 3.
- We asked them what additional information they would ask Arizona for, and the attached draft letter lays this out. It looks reasonable at first blush. Basically, it says:
 - In the evaluation, how would AZ propose to isolate the effects of privatization from the other major changes they are planning in this area?
 - Noting unique characteristics of Maricopa County, they ask what the comparison county would be and why it would be a good comparison.
 - They ask if a 2-year demo is long enough, whether 5 years would be better, and how the state's process would produce meaningful results in that "short" a timeframe.
 - A reasonable-sounding question about the state's plan to use historical records to measure client satisfaction
 - How would the state reestablish a public workforce if the experiment was a flop?
 - Would the state agree not to privatize the fair hearings process?
 - Would the state agree to release the RFP only with prior approval from USDA?
 - USDA states that it would approve only a 2-year demo; if the state wants to go statewide after that, it would have to come back to USDA.

Now the ball is in our court to see what people here think, and provide USDA with our comments. Their deadline for action is, once again, October 3 -- in about a week.

amenable to a demo project that
allowed privatization only up to
(but not including) the certification
decision -- i.e., our original compromise
Otherwise, this looks great -- let's get
it out. Percy
cc: Bruce / Cynthia

proposed State evaluation plan that need further clarification.

First, with the implementation of welfare reform, a new automated computer system, and the Arizona Works program, there are a number of programmatic changes occurring concurrently with privatization. The Department is concerned that the impacts of privatization on the outcomes of interest will be difficult to isolate from the simultaneous impacts of other programmatic factors. How does the State propose to

Draft as of 09/23/97

J:AZDRAFT2

sufficiently isolate the impacts of privatization from other programmatic impacts to allow for proper evaluation?

Second, the State indicates that a comparison county will be used to isolate the differences between the Arizona Works demonstration and the EMPOWER program from county-specific and other factors. The Department is concerned that the unique economic and demographic characteristics of the proposed demonstration site, Maricopa County, does not allow for a valid cross-county comparison. Could you please indicate what site will be used for a comparison county and please specify what characteristics make that site a valid control for evaluation purposes? How will the impact of privatization be isolated from the county specific impacts and other impacts for evaluation? Why was a comparison county design chosen over a pre-post evaluation design, a combination of a comparison county and pre-post designs, or any other experimental design?

Third, the State proposes to implement, run and evaluate the Arizona Works program and privatization impacts in two years. The Department is concerned that the requested time period will not be sufficient for proper evaluation of the privatization demonstration. Our experience indicates that more reliable results may be achieved from a longer period of implementation (such as five years) which allows for a baseline survey, full program operation, and adequate evaluation time. Please provide more detail regarding the State's timeline for completing the process and comparative outcome studies. How will the two year demonstration provide robust information on which to adequately evaluate privatization of the food stamp certification process?

Fourth, the State indicates that it will evaluate outcomes including client satisfaction and program performance and suggests that historical records will be used, to the extent that they are available, as a comparison. Could you please indicate what variables will be used to measure outcomes of client satisfaction, cost, and program integrity in the privatization demonstration? What measures will be used as a comparison? With all the concurrent program changes, how can historical records be adjusted to allow a comparison of only the privatization initiative? Would the State consider adding a baseline survey of client satisfaction prior to implementation that would be repeated periodically throughout the demonstration?

- **Reconversion Plan** - Please clarify State plans to re-establish a public workforce if the decision is made to terminate the demonstration.
- **Prior Approval of Request for Proposal (RFP)** - Because many issues are not resolved or clarified until the RFP is issued, will the State agree to release the RFP only with prior approval from FCS?
- **Fair Hearings** - The proposal indicates that the State would retain control over fair hearings but it is unclear if the State would conduct the fair hearings. Who would be

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responsible for conducting fair hearings? Is the State amenable to retaining this function under its demonstration project?

We are available to meet with you and your staff to discuss these issues. I appreciate your cooperation.

Sincerely,

Yvette S. Jackson
Administrator

SPINNING THE POOR INTO GOLD

How corporations seek to profit from welfare reform

By Barbara Ehrenreich

Hndsm CEO sks woman who needs a caring but v. strict influence to help her and teach her to lead an orderly and disciplined life.

—personal ad, *The Village Voice*, 4/1/97

The registration fee for corporate participants at the conference on “welfare privatization” held in Washington, D.C., in late March was \$1,295—an amount almost equal to a year of welfare benefits for a Mississippi family of three. Not that a Mississippi family on welfare was likely to venture into the hotel where the conference was held, which rents rooms for somewhere between \$300 and \$400 a night, discounted to \$185 for conference participants. With its muted modernist decor and cavernous lounge spaces, the Park Hyatt presents itself as a setting in which the affluent can gather discreetly, over topics of mutual interest, undisturbed by any low-income people except for those wearing uniforms and available to perform small acts of personal service.

I first learned of the conference from a welfare advocate who faxed me, indignantly, the conference brochure, with its promise that the gathering would be an ideal setting for companies seeking to: *Capitalize on the massive growth potential of the new world of welfare reform/Gain a leading edge in the market while it is in its early stage/Profit from the opportunities available.* Until that time, my only acquaintance with the concept of welfare privatization came from a September *New York Times* article in which the sharp-eyed Nina

Bernstein revealed that Lockheed Martin, Electronic Data Systems (EDS), Andersen Consulting, Unisys, and a host of smaller companies were proposing to take over the states’ and counties’ burden of processing and rehabilitating the poorest of the poor. “We’re approaching this marketplace the way we approach all other marketplaces,” the article quoted Lockheed senior vice president Holli Ploog. And why not? Government at all levels currently spends \$28 billion a year administering welfare programs, a tempting prize for a company facing the prospect of long-term declines in defense spending. The “peace dividend” liberals have awaited, with the patience of a cargo cult, since the end of the Cold War in 1989 won’t be spending on social programs after all but welfare transmogrified into corporate welfare.

According to conference organizer Suzana (pronounced Susan-uh) Bacvanovic, an expensively dressed young woman who patrolled the gathering with a flight attendant’s air of reluctant helpfulness, it was this same article in the *New York Times* that had inspired her colleagues at the World Research Group with the notion that welfare privatization might be an appealing conference theme. This New York-based, for-profit firm shares Lockheed’s lofty indifference to the actual content of the task at hand; it specializes in the staging of conferences—on anything that might attract well-heeled participants—and, in the odd syntax of its Web site, “handles all aspects associ-

Barbara Ehrenreich is the author of Fear of Falling: The Inner Life of the Middle Class, among other books. Her latest, Blood Rites: Origins and History of the Passions of War, was published in May by Metropolitan Books.

ated with the superior implementation of our events," from "topic research" to "hotel contracting." In addition to welfare privatization, the World Research Group has held, or will soon hold, conferences on airport management, music and technology, satellite services in India, mining in Mexico, and "interactive sports." Privatization is a favorite theme for the group's productions—privatization of power in Brazil, for example, or of prisons in the United States. The brochure for the group's December 1996 conference on prison privatization exults, "While arrests and convictions are steadily on the rise, profits are to be made—profits from crime. Get in on the ground floor of this booming industry now!"

So this was, in all its superficial markings and accoutrements, the generic corporate conference. One morning I accidentally wandered into another business-oriented conference being held on the same floor of the Hyatt, and it took a close reading of the name tags to determine that I was in the wrong place. There was the same spread of coffee and croissants in the corridor, the same windowless ballroom containing the same long tables set primly with notepads, pencils, and ice water. For despite the occasional opulence of their venues, the culture of corporate conferences is a deeply ascetic one. At the Hyatt, the proceedings began each morning well before nine and stretched to five-thirty or six, nearly nine hours of continuous lectures and panels enlivened by few pleasantries or anything that could be construed as a joke. The exceptions were Mayor Bruce Todd of Austin, Texas, who attempted to lead the seventy or so conferees in a chorus of "Good morning's," and Dean Curtis of Curtis & Associates, a firm that runs motivational sessions to prepare welfare recipients for the work world, who had members of the audience stand and hold up signs referring to "Child Care," "Housing Subsidies," and other forms of government help that presumably block the recipient's path to successful employment. Other than that, the only respite from sensory deprivation was the handsome color slides favored by the corporate presenters. Most of these merely displayed an outline of whatever the speaker was saying ("Asset Sales and Divestitures/Long-Term Franchise/Outsourcing..."), though a few approached the level of surreal calendar art, such as the one offered by Robert D. Tyre of Andersen Consulting, which showed the sun rising or setting over a vast landscape of undulating hills, above which the words "New Realities" were stamped.

But the very blandness of the conference may have been a mercy. Better to feel you were in a group that could have been discussing anything—Indian satellite service or new opportu-

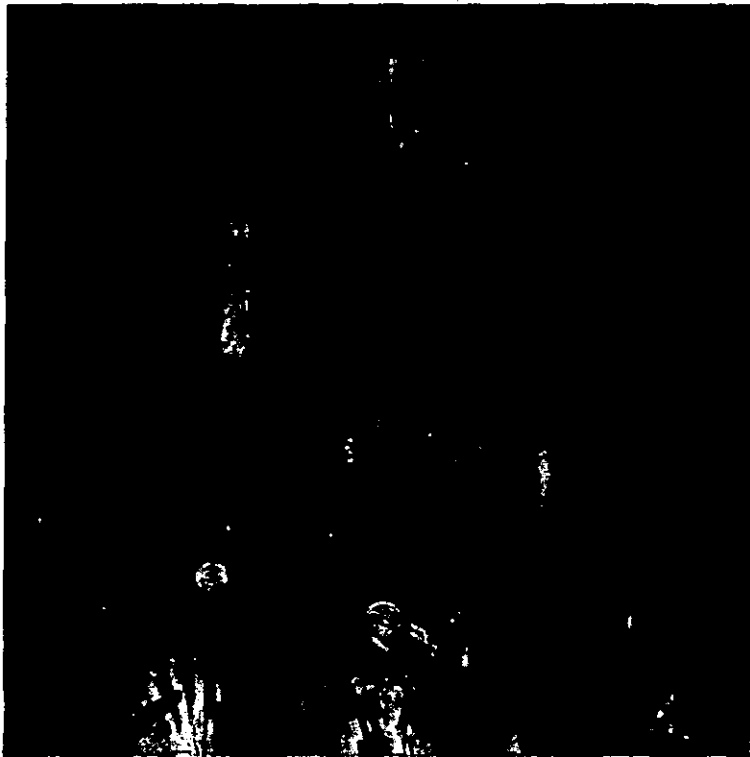
nities on the Internet—than to let your imagination wander for one moment to the human actualities portended by one suited speaker after another. As it happened, in the weeks leading up to the conference there had been a series of news reports on the likely effects of Clinton's welfare-reform bill, which, among other dire measures, ends the federal government's sixty-one-year-old obligation to the poor, sets a five-year lifetime limit on welfare for any individual, requires adult recipients to find work, and otherwise turns what remains of welfare over to the states in the form of unspecified block grants.



While the conferees were settling into their spacious rooms, Peter Edelman, the former Health and Human Services official who resigned last September to protest the bill, was traveling around the country, arguing that shoving millions of the welfare poor into sub-subsistence-wage jobs—often without child care or health insurance—will result in rising homelessness, malnutrition, infant mortality, family violence, and crime: "new realities" that are perhaps best contemplated against a remote and mythical landscape.

Monday morning began with a "Welcoming Address" delivered by William D. Eggers of the Los Angeles-based Reason Foundation, a libertarian think tank that exists to promote the privatization of government ser-

vices and that, according to its report "Privatization '96," is happy to stock conferences with keynote speakers. A youthful fellow, with hair stylishly long on top, Eggers seemed both eager to please and confident that what he had to say was of such an intrinsically pleasing nature as to require no oratorical effort on his part. Announcing that welfare privatization is now "probably the hottest area [of privatization] in the country," he promised three days of solid information on such matters as "performance contracts" and "capitated services." Plus there was good news for the public-sector representatives in the audience: Texas state officials, he told us, expect to cut their welfare costs 30 to 40 percent by contracting them out to private vendors such as Lockheed and EDS.



But the atmosphere of bureaucratic rationality was soon punctured by the perorations of the third speaker, Robert Rector of the Heritage Foundation. A thin, slightly hunched-over fellow with the gray buzz cut and thick glasses of a wonkish monk, Rector has built his career on the argument that poverty is not so bad after all, and what there is of it is the result of misguided government generosity. In 1990, for example, when the U.S. Census Bureau issued a report stating that 13 percent of the population, or 32 million Americans, were below the poverty line, Rector had responded with an op-ed piece in

the *Wall Street Journal* arguing that 22,000 of the supposed poor actually owned heated swimming pools or Jacuzzis—an extrapolation appreciated chiefly by connoisseurs of statistical sophistry.

Described in the conference program as an author of the welfare-reform provisions in the Contract with America, Rector was there to remind us that the purpose of welfare reform was not simply to redirect government aid from the poor to the corporate elite but to save the nation from sin—the sins, in particular, of sloth, lust, and the resulting epidemic of "illegitimacy." Drawing on the kind of analysis made famous in the 1980s by such right-wing intellectuals as George Gilder and Charles Murray, Rector explained that welfare does not help the poor; it is, in fact, what makes them poor, or at least what makes them demoralized and dependent, criminal and addicted, and, worst of all, pregnant. This view permeated the conference unquestioned, as if no one, including the representative of the Clinton Administration who spoke briefly on Monday afternoon, had ever heard of the numerous studies—some by former Clinton welfare official Mary Jo Bane (who resigned in protest along with Edelman)—showing that there is no correlation at all between the amount a state provides welfare mothers per child and its rate of out-of-wedlock births. But no irritating counterevidence intruded on Rector's presentation, from which it would have been easy to conclude that welfare functions, semen-like, to impregnate the poor single-handedly. Welfare, he told us, "rewards dysfunctional behavior" such as out-of-wedlock childbearing, whereas welfare reform will somehow "encourage marriage" by withdrawing the fertilizing flow of benefits. (Later, the conference's other ideological heavy hitter, the Cato Institute's Michael Tanner, ratcheted up the sexual imagery, telling us that black men have been "cuckolded" by the welfare state.)

Rector had only one slide: a colorless graph showing the caseload carried by Aid to Families with Dependent Children, the nation's erstwhile primary welfare program, declining over the last few years in the United States as a whole and declining even faster in the state of Wisconsin, where Governor Tommy Thompson effectively ended welfare about three years before the federal welfare-reform bill was passed. Commenting that "even a Harvard Ph.D. could see the difference" between the two lines on the graph, he explained that Wisconsin's "success" was due largely to "application dissuasion," or the imposition of work requirements so strict that "people never even

walk in the door in the first place." When asked what had happened to the almost 40,000 families shed by the Wisconsin welfare system—whether they had found jobs, for example, or had simply sunk into deeper destitution¹—he answered that "poverty isn't bad for kids. Most of us had grandparents who were poor." The real problem is illegitimacy, which has "a decisive bad effect on kids," and which will end when we no longer have welfare to discourage the poor from marrying. For a child, perhaps even a legitimate child (though this was not specified), thirteen years on AFDC was "thirteen years of child abuse." The one problem with the welfare-as-semen theory is that, so far, the absence of welfare-as-anyone-knew-it has not produced the hoped-for decline in Wisconsin's rates of teen pregnancy or out-of-wedlock births—a result that Rector could only term "a paradox."

Sensing another paradox, or at least an apparent contradiction, at lunch I made my way over to an empty seat next to the Reason Foundation's William Eggers. How, I wanted to know, did he reconcile his libertarianism with the ambient demands to regulate the reproductive behavior of the poor? As the baked-salmon entrée was cleared to make way for a five-inch-high structure of ice cream and chocolate, he explained, first, that he wasn't a 100 percent libertarian, and, second, that the receipt of government aid seemed to him to justify the consequent loss of freedom. What about mortgage-interest deductions for the middle class and the affluent, I asked (which average \$6,600 per household per year, \$2,100 more than the average AFDC grant for a family of three)? Should these deductions entitle the government to dictate the lifestyles of wealthy home owners? Eggers, whose conference bio describes him as the author of the book that made "the greatest contribution to the understanding of the free economy during the last two years," smiled and nodded at this novel perspective. He had heard such an argument once before, from a fellow in California, or maybe it was Oregon, he confided vaguely before turning his attention back to the dessert tower, now dribbling promiscuously into a brown and white pool.

Assuming that welfare leads to moral decay and that the only goal of reform is "case-load reduction," as speaker after speaker suggested, why bother with privatization? Surely

¹ Milwaukee saw sharp increases in homelessness and the use of soup kitchens last winter, as well as a small increase in reported cases of child abuse and neglect.

the public sector could turn away supplicants every bit as efficiently as any profit-making firm and has, in fact, been known to "churn" welfare recipients, or hassle them off the rolls, as state and local budgets require. According to Rector, though, this is "the last thing in the world they [the public sector] know how to do"—a theme repeated by other speakers. Pub-

FORMERLY, ONLY GOVERNMENT COULD DECIDE WHO WAS ELIGIBLE FOR WELFARE; NOW THAT ROLE MAY BE PARCELED OUT TO UNDEREMPLOYED WEAPONS MANUFACTURERS

lic-sector welfare suffers from a "culture of permissiveness" to the point of apologizing to clients, we were told, for the newly imposed work requirements. Furthermore, it was manifestly clear to the conference speakers that the "attributes of personal behavior," in the words of Austin's affable Mayor Todd, welfare recipients need to acquire are best instilled by the private businesspeople who will become their employers. Punctuality, appropriate dress, and an agreeable demeanor were all mentioned at one time or another, either by the speakers or in the slides and videos they presented.

In fact, privatization was already under way, in a scattershot fashion, well before the advent of Clinton's welfare reform. The defense contractor BDM International Inc. won a contract to automate New Mexico's welfare system as early as 1988; Lockheed was in the business of collecting child support and fingerprinting (or "finger-imaging," as the euphemism goes) recipients in various states; Curtis & Associates and the job-brokerage firm America Works were propelling recipients into the workforce in Buffalo, San Francisco, and other cities.

But with the Personal Responsibility and Work Opportunity Act signed by Clinton in August 1996, the way was cleared for private takeover of even the most intimate and fateful act of state-sponsored welfare—the determination of eligibility, a process that has always involved a measure of subjective judgment. Under the old welfare law, only government entities could distinguish the poor from the not quite so poor, the deserving from the undeserving; but this requirement vanished when the federal government block-granted welfare off to the states. The states will still set eligibility levels, but it will be up to the private contractors to determine which individuals fit them. To highlight the new flexibility, the 1,229-page welfare-reform act stipulates that a state may administer its welfare program "through contracts with charitable, religious, or private orga-

nizations"—a Mormon temple, for example, or an underemployed weapons manufacturer.²

The calls I made before the conference uncovered no evidence that private companies had actually lobbied to make the welfare-reform bill so congenial to themselves. More likely, privatization was always a gleam in the eyes of at least some of the proponents of welfare re-

NO ONE DEFENDED THE MUCH-SLANDERED WELFARE RECIPIENTS, PERHAPS BECAUSE IT WAS SO EVIDENT THAT THE FUTURE BELONGS TO THE PRIVATIZERS

form, since those who see the poor as objects for moral uplift tend also to see corporate America as the embodiment of efficiency and Protestant virtue. Florida Representative E. Clay Shaw Jr., the millionaire Republican who sponsored the welfare-reform bill in Congress, has stated that privatization is "exactly what has to happen for welfare reform to work." If the corporations lobbied for anything—and representatives of the welfare arms of EDS and Lockheed were observed hanging around Capitol Hill at critical times in the summer of 1996—it was for the bill to contain more funds for "information technology," a specialty of high-tech, defense-oriented firms. Although the amounts allocated were disappointing, according to EDS's Richard Ferreira, more money may yet be freed up for this purpose. One of the key provisions of the bill is its five-year lifetime limit on welfare, the enforcement of which will require a vast investment in technology to track individuals, through name changes and geographical moves, for decades on end—creating a veritable Foucaultian panopticon of surveillance and a growth industry for the finger-imagists and information technologists.

However privatization managed to attach itself to the goal of "reform," the conference aimed at serving a matchmaking function between the thousands of state and county agencies entrusted with providing welfare and the scores of companies lining up to relieve them

² Eligibility for Medicaid and food stamps must, by law, still be determined by government employees, and, if enforced, this requirement may stymie Texas's ambitious plan to privatize the administration of all benefits for the poor—welfare (now called Temporary Assistance for Needy Families), Medicaid, and food stamps. In May the federal Health and Human Services Administration warned Texas not to flout the law. But Texas congressional representatives have introduced federal legislation to remove the restrictions. Alternatively, Texas may decide to utilize the loophole offered the state by HHS and begin the privatization of food stamps and Medicaid with "pilot programs" at the county level.

of some part or other of this task. The conference brought together about a hundred representatives of the public sector, generally at the "deputy director" level, with a rotating crew of about a dozen of their corporate suitors. In a strict sociological sense, the two parties to the potential "partnership"—public-sector "directors" and private-sector executives—are occupants of the same professional-managerial social class. Both groups spend their normal working lives at desks or meeting tables—monitoring, managing, deal making, and coming up with ideas that people paid less than themselves will be assigned to implement. If the abstract connection between the two groups was not clear enough, the list of conference speakers was replete with individuals who had made or were about to make the transition from one to the other: Lockheed's Holli Plog, for example, is a former welfare administrator for the state of Alaska. Jason A. Turner, Wisconsin's director of capacity building; Richard J. Schwartz, the "architect" of New York City's welfare reform; and Mayor Todd of Austin have all jumped ship for more lucrative careers either as independent "consultants" or as corporate administrators of welfare.

But at the Hyatt you didn't need an accountant to tell the difference between the public and private sectors. The corporate executives present, who were overwhelmingly male, wore expensive gray suits subtly indented at the waist; their faces were tanned, or at least buffed and peeled to a hearty glow; and they seemed, on average, actually taller than their potential partners in the public sector. The representatives of state and county governments, on the other hand, were in some cases overweight, often bearded, and given to such fashion solecisms as navy suits, heavy gold cufflinks, or even (this from my home state of Montana) a pink checked skirt worn with a matching pink embroidered sweater. To underscore their evident superiority, the corporate participants tended to sit not at the tables provided but along the wall at the very back of the room, in case their beepers should rouse them to more urgent business outside. And while the public sector bent over its legal pads, none of the corporate people took notes, at least none that I could observe—notetaking being, in the modern institutional context, a well-known gesture of submission.

For the public-sector people, the conference was in every way a punishing experience. First, there was the problem of sheer subsistence on the kind of miserly expense accounts provided by most state and county agencies: a participant from Suffolk County, Long Island, had made the five-hour drive to Washington rather

than pay for airfare; several stayed in cheaper hotels from which they walked every day to the conference. John Grexa, from New York's Westchester County social services department, shared with me his rueful discovery that a single whiskey at the hotel bar goes for six dollars and change. But these were minor indignities compared with the relentless message from the podium: That the public sector, in its "permissiveness," had screwed up, turning welfare into something that "destroyed the lives" of the poor and created a shiftless underclass. This message, delivered most forcefully by Rector and the Cato Institute's Tanner, was further reinforced by the presence of the public-sector defectors, whose "tough love" approaches to welfare were now being rewarded with corporate jobs. When I playfully asked Grexa whether any of the corporations had tried to recruit him yet, I got something between a deathly hollow laugh and a snort.

It was a scene that the cognoscenti of the far right would have savored: public-sector "welfare statist" writhing under the assault of their corporate and think-tank betters. If there is any social group that the American right despises more than the welfare poor, it is what they term the "new class," consisting of professionals and managers in the nonprofit sector—foundation executives, university professors, journalists, and, of course, government bureaucrats. According to neoconservatives, this new class is bent on ruling the United States much as their counterparts in the nomenklatura once ruled the Soviet Union. Key to this takeover is the new class's exploitation of the poor as a rationale for government expansionism, as explained, for example, in the pungent verbiage of *The American Spectator's* editor, R. Emmett Tyrrell Jr.:

The welfare state . . . turned many heretofore toiling Americans into parasites, and this new class of busy-bodies live[s] as superparasites, deriving nourishment from the dependence of the welfare clients.

It is this sinister symbiosis between the new-class welfare statist and the hapless poor that welfare privatization promises to end once and for all. Henceforth, the corporations themselves will manage the poor, while the erstwhile new-class cadre will have the choice of scrambling to win corporate jobs for themselves or, if all else fails, joining their former clients at corporate-run "job readiness" programs.

A few of the public-sector participants rolled their eyes during the fire-breathing lectures from Rector and Tanner; several muttered over lunch about the infomercial-like quality of the corporate presentations. New York's Richard Schwartz, for example, brazenly promoted his

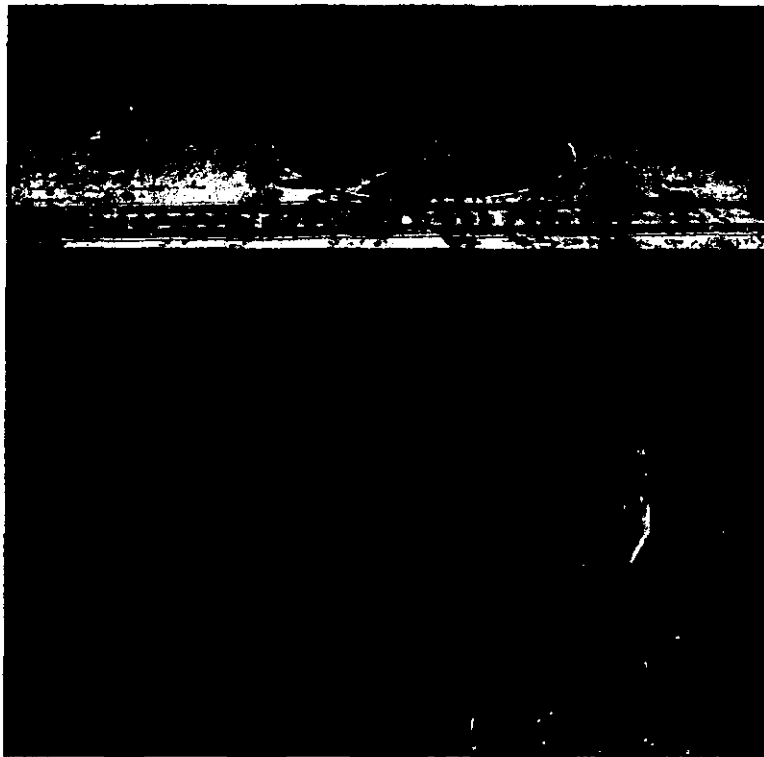
fledgling company by beginning his talk with the announcement that "there are only two words you need to know for welfare reform—'Opportunity America.'" But no one from the public sector rose to defend either welfare statism or, sadly, even the much-slandered welfare recipients, perhaps because it was so evident in every presentation that the future belongs to the privatizers: men like EDS's Robert G. Stauffer, who had just returned from an international welfare-privatization conference held in New Zealand, and Andersen Consulting's Robert D. Tyre, who spoke of "surfing the [privatization] wave" as it sweeps the world. Compared with these torchbearers of international capitalism, proudly unrooted in any particular issue or locality, a deputy social service director from, say, Allegheny County, Pennsylvania, is a remnant of a dying culture.

I had been looking forward to the Monday afternoon presentation by Lockheed's Holli Ploog,



if only because she was one of just three women on the program and the only female speaker from the corporate sector. But she turned out to be not the fearsome Sigourney Weaver figure of my expectations, just a mousy presence in black and brown whose theme—"Virginia Child Support Privatization: Applying the Success to Other Human Service Areas"—sent a handful of the audience sneaking out to refresh their blood caffeine levels. It was a good moment to catch up

on the free literature available to conferees, such as the March issue of *Governing* magazine, featuring corporate ads that seemed to encapsulate the conference itself. "Beginning to feel the effects of welfare reform?" demanded a two-page offering from Unisys. "You're caught in the middle of a welfare revolution. . . . It's a tough spot to be in. But Unisys EIS (Efficiency, Integrity and Self-Sufficiency) offers a way out." There was a full-page ad for a conference on "Marketing to State Governments," to be held in Las Vegas for a mere \$450 a person, which gave me the odd feeling that I wasn't at a distinct event at all but suspended in some airless continuum of interconnecting hotel ballrooms, decorated only with spreadsheets. But then Ploog wound to an end,



people wiggled in their seats, and we could congratulate ourselves on another orderly succession from speaker to speaker, without dissension or even much applause.

The transformation of welfare is, as was clear by the end of Monday's session, a revolution without soul or solidarity, a matter of smelling money and drifting closer to it, the way an amoeba is driven, chemotactically, toward the molecular emanations of its prey. There is money in welfare, obviously, even in "reformed" welfare, and this attracts the corporations, which have learned from EDS's experience with Medicare in the 1960s that whenever

government money flows from one point to another, it is generally possible to siphon some off. There also is money in advising corporations or public agencies, and this in turn draws the think tanks, such as Heritage and Cato and Reason. "If you ask me," a woman representing an independent, for-profit consulting firm whispered to me subversively during a coffee break, "welfare privatization means full employment for consultants." And there is, of course, money to be made in holding conferences that bring all these parties together. In addition to collecting the registration fees, the World Research Group offers corporations, for undisclosed prices, an "official lead-platinum" level of conference sponsorship, which includes a "guaranteed . . . speaking engagement," and an "official co-lead-gold" level of sponsorship, which carries with it "a confidential copy of the delegate list for your own marketing purposes."

But once you have accepted the idea that there is money to be made in anything, even ostensible acts of charity, the only socially responsible question is: Can the corporations, and private "vendors" in general, do a better job than government at finding employment for the welfare population? This question was not raised at the conference, where the speakers unanimously assumed that, as one of them put it, the business community is "the genius in America . . . and the Western world." Even so, fragments of dissenting data surfaced disconcertingly here and there. In the course of making the point that government is "deadly efficient" at what it does—though what it does in the realm of welfare is clearly evil—Rector allowed that administrative overhead in government welfare agencies averages an admirably slim 10 to 15 percent; and it's hard to imagine firms such as Lockheed, which has fattened for so long on cost-plus defense contracts, improving on that. Later, Andersen Consulting's Tyre mentioned a General Accounting Office study showing, as he put it, that "government agencies that aren't working well now won't succeed at privatization," which would seem to pose another "paradox": the agencies that arguably most need to privatize won't do a good job at it, and those agencies that have the capacity to do a good job of privatizing might be better off using that capacity to deliver the service themselves.

Clearly privatization involves more, on the part of government, than handing welfare management over to some public-spirited corporation and walking away. As officials of the unions that currently represent public-sector welfare workers were eager to inform me before the conference, the progress of welfare privatization to date has been blemished by a number of near-scandals and disappointments, unmen-

tioned by the speakers at the Hyatt. For example, GTech Corporation, which is the nation's largest operator of state lotteries and is the parent company of a firm under contract to administer food stamps in Texas, has been accused of bid rigging and influence peddling. Andersen Consulting's cost overruns led the Nebraska Department of Social Services to temporarily withhold its payments last January. America Works, which earns an average of \$5,000 for every welfare recipient it places in a job, has been repeatedly accused of "creaming" the caseload for relatively high-skilled recipients who would have readily found jobs on their own. Maximus Inc. allegedly paid a West Virginia welfare administrator to provide the company with inside information that would have helped it win a child-welfare-services contract. And when Orange County, California, set up a competition to see whether Maximus or the county welfare department could move the most welfare recipients into jobs, it was the welfare department that won.

The question of how welfare privatization will work, though, hinges ultimately on that great mathematical mystery: Where will the profits come from? According to privatization's cheerleaders, corporations will not only extract healthy profits from welfare for themselves but will garner sizable savings (as much as 40 percent, as Reason's Eggers suggested) for government: a potential miracle on the scale of the loaves and the fishes. There were three or four representatives of public-sector unions on spy duty at the conference, dressed indistinguishably from most of the other participants in public-sector grunge, and it was their hands that shot up at Q&A time to query, very politely, the source of the anticipated largesse. No one offered a clear answer: EDS's Robert Stauffer, for example, responded that the source of profits was "undefined at this point of time." One possibility is that the firms will take their profits out of the services and allotments intended for the poor; this will be especially tempting if—as forcefully recommended by Rector—the companies are paid solely for "caseload reduction," as opposed to being paid for finding long-term, decent-paying jobs for welfare recipients. It is no great trick to achieve effective levels of "application dissuasion"—by, for example, locating a welfare office several bus rides out of town and opening it at odd and erratic hours.

The other likely source of profits lies in the wages currently paid to the nation's tens of thousands of public-sector welfare employees—caseworkers, administrators, and clerical workers, most of them unionized, many of them (thanks to the public sector's history of

relatively nondiscriminatory hiring practices) female and/or black. Once privatization takes off, unknown numbers of these people will be displaced by lower-paid, nonunion corporate employees or even by machines. One of the

WELFARE'S TRANSFORMATION IS A MATTER OF SMELLING MONEY AND DRIFTING CLOSER TO IT, THE WAY AN AMOEBEA IS DRIVEN CHEMOTACTICALLY TOWARD ITS PREY

privatizers' favorite innovations—and the theme of a World Research Group conference held in late April—is "electronic benefit transfer," through which welfare grants and food stamps are distributed via "smart cards" and dispensed at the equivalent of ATMs.³

We may never know enough, though, to judge the private sector's performance in helping the poor to post-welfare-reform self-sufficiency. Clinton's welfare-reform bill has smashed that central moral bond, which linked the destitute to the rest of us, into thousands of fragments, and these in turn will be buried in contracts and, most likely, subcontracts, inaccessible to public view. Private firms are not subject to the same rules of financial disclosure as are the public agencies they will take over from, nor are they, given the threat of competition, particularly forthcoming about their operations. The potential for abuse or at least flagrant nonaccountability mounts when the contracts are drawn up and monitored, as they often will be, by public-sector managers eager to make the leap to the other side of the table. When Texas recently requested proposals from would-be vendors, for example, even those requests were not made available to the public. If secret deals and diffused responsibility are frustrating to journalists, imagine their effect on a welfare recipient who has been indentured by a local welfare department into a "work-readiness" program run by, say, Curtis when she goes to her Lockheed-operated ATM, presents a fingertip for identification, and finds herself rejected. Whom is she going to call?

There is, finally, the question of whether privatization can succeed in the terms set by the

³ According to a GTech spokesperson, some of the "core technology" used in machines that issue lottery tickets is now being applied to the electronic transfer of welfare benefits operated by GTech's Texas subsidiary, Transactive. The spokesperson insists, however, that there is no plan at this time to design a multipurpose ATM that will allow welfare recipients to purchase their lottery tickets at the same time they collect their welfare benefits.

moralists who brought us welfare reform. The goal of reform, as set forth by Rector and Tanner at the conference, is to stop welfare—and all forms of government aid to the poor—before they drag another victim into the quicksand of “dependency.” By comparison, the corporate speakers often sounded positively liberal—respectful of the public sector with which they would soon be “partnering” and even vaguely aware that larger issues of social stability may be at stake. EDS’s Stauffer fretted briefly about whether we are unwittingly “creating classes of society,” with one of them “earning \$6 an hour who’ll never get beyond that.” He reported that at the New Zealand conference he had just attended they’re “really worried” about what he called the “social and income gap,” although, he said, trailing off, “I’m not sure we should [be].” But it’s not hard to see how the profit motive alone could seduce the private vendors of welfare-related services into becoming a permanent constituency for continued government spending on the poor, much as companies like Lockheed serve as permanent constituencies for the Pentagon and some operators of privatized prisons have become lobbyists for prison construction. In his talk, Tanner had offhandedly denounced even the nonprofit Catholic Charities as a “pig at the trough” for its reliance on government funding, so I wondered how he felt about having Lockheed et al. become similarly habituated to public welfare spending—to the point, perhaps, of lobbying for *more* of it. When I cornered him with this possibility at a phone bank outside the ballroom, he gave me a momentary look of alarm and acknowledged that this would be a “perverse” outcome indeed.

The difference between, say, a moralist such as Tanner and a corporate privatizer such as Stauffer mirrors a larger ambivalence in American conservative politics. With one hand, the right pounds the pulpit convulsively for balanced budgets and a federal government shrunk to the size of a flyspeck on the Washington Monument. The other hand, however, is firmly extended for whatever handouts—in the form of subsidies, tax breaks, or straight-out corporate welfare—can be coaxed or extorted from the public sector. There is, of course, no rule that a social movement has to be logically coherent: European fascists managed an unlikely blend of technological modernism and agrarian romanticism for much of the twentieth century; Gingrich slams “big government” even as he solicits the defense contracts that so richly nourish his congressional district in Cobb County, Georgia. Neither, for that matter, do a movement’s activists and apparatchiks even have to know where they’re going or the name of the landscape around them. On the

last evening of the conference, I approached Bacvanovic, who was still manning the registration table, to ask why there were no liberals on the program. Her fairy-tale-princess face lit up in triumph as she retorted, “We have Michael Tanner from the Cato Institute—that’s very liberal.” It seemed pedantic, and probably irrelevant to her career, to explain that libertarian is not the same as liberal.

In the case of post-reform welfare, things may turn out nicely both for those who want to end welfare and for those who want to feed off what’s left of it. What the moralists desire above all is that welfare recipients who are not supposedly lying about in drugged stupors drag themselves out to low-paying but redemptive labor. This outcome can only please a business community irritated by the minimum wage, the sanctions against hiring illegal immigrants, and the occasional victories of union organizers. If nothing else, the reform and privatization of welfare will create a huge pool of American workers who will have no choice but to shape up for whatever jobs the employers have to offer: First there will be all the welfare recipients who have exhausted their time on the dole and no longer have the option of returning to welfare if the boss is abusive or the children get sick. Add to these recruits the one third of the workforce that constitutes the working poor, who, in states where reform has begun, are already seeing their jobs lost and wages decline as former welfare recipients tumble into the labor market. According to the Economic Policy Institute, the working poor will see their wages drop by 11.9 percent as welfare recipients are ejected into the workforce. Surely, in this emerging dystopia, Lockheed et al. will have a valued role to play—providing what’s left of welfare to the temporarily jobless, prepping the inexperienced, disciplining the discouraged, channeling people from one job to another, and generally trading in the desperation and helplessness of the post-welfare-reform poor.

I checked out of the Hyatt amid a sycophantic swarm of bellhops, doormen, and clerks eager to open doors, call a cab, or book me for a second visit. It was a ten-minute walk to the Dupont Circle Metro stop, where I encountered my first nonuniformed low-income person in more than three days—a young woman in greasy layers of clothing who challenged me to give her some change. This, it occurred to me, was precisely the evil the conference aimed to save us from: poor people, outdoors with no definite errand, surly and free. More likely, though, in the reformed and privatized future, there will be thousands more like her milling at subway stops and maybe, eventually, even pressing up against the huge glass doors of the Hyatt itself. ■

1 **Subtitle H—Miscellaneous**

2 SEC. 5801. AUTHORITY OF STATES TO CONSOLIDATE AND
3 AUTOMATE THE ADMINISTRATION OF CER-
4 TAIN ASSISTANCE PROGRAMS, AND TO CON-
5 TRACT COMPETITIVELY FOR THE ADMINIS-
6 TRATION OF SUCH PROGRAMS TO REDUCE
7 FEDERAL AND STATE PROGRAM COSTS.

8 (a) IN GENERAL.—Notwithstanding any other provi-
9 sion of law, a _____ may administer or provide
10 for the administration of 1 or more programs described
11 in subsection (d) in accordance with a qualified plan ap-
12 proved as provided in subsection (c)(2), and any eligibility
13 determination made by a nongovernmental entity or em-
14 ployee in accordance with such a qualified plan shall be
15 considered to be made by the State and a State agency.
16 No provision of law shall be construed as preventing the
17 State from allowing eligibility determinations described in
18 this section to be conducted, using Federal funding and
19 processes established by the State, by an entity which
20 meets such qualifications as the State determines and is
21 not a State or local government, or by an individual who
22 is not an employee of the State government or of local
23 government in the State.

24 (b) QUALIFIED PLAN DEFINED.—As used in sub-
25 section (a), the term “qualified plan” means a plan which

1 covers 1 or more programs described in subsection (d) and
2 which—

3 (1) provides for increased automation of the
4 processing of eligibility determinations under the
5 program to promote efficiency and allow a reduction
6 of the total number of persons assigned to perform
7 the determinations;

8 (2) provides for integration of eligibility deter-
9 minations under the programs covered by the plan,
10 including the consolidation of State agencies to allow
11 for a further reduction of the total number of per-
12 sons assigned to perform the determinations;

13 (3) provides for competitive bidding for the
14 right to collect and process data used to make eligi-
15 bility determinations under the programs covered by
16 the plan, under State regulations to ensure that the
17 State relies on the most efficient and innovative pro-
18 vider of such services and minimize State and Fed-
19 eral costs;

20 (4) provides assurances that the plan does not
21 affect—

22 (A) any condition for eligibility for benefits
23 under a program covered by the plan;

1 (B) any right to challenge any determina-
2 tion regarding eligibility for, or any right to,
3 benefits under any such program;

4 (C) any determination regarding quality
5 control or error rates under any such program;
6 or

7 (D) any safeguard of the privacy, confiden-
8 tiality, or protection of any individual eligible
9 for, or receiving any benefit under any such
10 program; and

11 (5) applies to not more than 50 percent of the
12 recipients of benefits under any program described
13 in subsection (d).

14 (c) ADMINISTRATIVE PROVISIONS.—

15 (1) SUBMISSION OF PLANS.—A State desiring
16 to administer or provide for the administration of 1
17 or more programs described in subsection (d) in ac-
18 cordance with a qualified plan may submit a plan for
19 such administration to the appropriate Federal offi-
20 cial with respect to any program covered by the
21 plan. Notwithstanding any other provision of law, re-
22 view of a plan under this section by the appropriate
23 Federal official as defined in subsection (e) to whom
24 the plan is submitted is the sole requirement nec-
25 essary prior to implementation by the State.

1 (2) APPROVAL OF PLANS.—

2 (A) IN GENERAL.—The appropriate Fed-
3 eral official to whom a plan is submitted pursu-
4 ant to paragraph (1) shall approve the plan if
5 the appropriate Federal official determines that
6 the plan contains all of the elements specified
7 in subsection (b), and shall disapprove the plan
8 if the appropriate Federal official determines
9 that the plan does not contain all of the ele-
10 ments specified in subsection (b). In order to
11 disapprove the plan, the appropriate Federal of-
12 ficial shall inform the State in writing, within
13 10 days after receipt of the plan, of the specific
14 elements of the plan that are not present as re-
15 quired for the plan to be approved.

16 (B) DEFAULT APPROVAL.—If, by the end
17 of the 10-day period that begins with the date
18 a plan is submitted pursuant to paragraph (1)
19 to an appropriate Federal official, the appro-
20 priate Federal official has not disapproved the
21 plan, the plan is deemed to be approved.

22 (C) CONSULTATIONS.—In determining
23 whether to approve a plan that covers more
24 than 1 program described in subsection (d), the
25 appropriate Federal official to whom the plan is

1 submitted shall consult with the appropriate
2 Federal official or officials with respect to the
3 other program or programs covered by the plan.

4 (d) PROGRAMS DESCRIBED.—The programs de-
5 scribed in this subsection are the following:

6 (1) The special supplemental nutrition program
7 for women, infants, and children (WIC) established
8 under section 17 of the Child Nutrition Act of 1966
9 (42 U.S.C. 1786).

10 (2) The food stamp program under the Food
11 Stamp Act of 1977.

12 (3) A medical assistance program operated
13 under a State plan approved under title XIX of the
14 Social Security Act.

15 (e) APPROPRIATE FEDERAL OFFICIAL.—As used in
16 this section, the term “appropriate Federal official”
17 means—

18 (1) in the case of the programs described in
19 paragraphs (1) and (2) of subsection (d), the Sec-
20 retary of Agriculture; and

21 (2) in the case of the program described in sub-
22 section (d)(3), the Secretary of Health and Human
23 Services.

24 (f) PAYMENTS TO STATES.—

1 (1) IN GENERAL.—Within 60 days after the
2 date a State plan submitted pursuant to subsection
3 (e)(1) is approved, the appropriate Federal official
4 to whom the plan was submitted shall pay the State
5 \$_____ from sums in the Treasury of the
6 United States not otherwise appropriated, which
7 amount be used only to cover the costs of conducting
8 competitive bidding in accordance with the plan and
9 to cover the other initial costs incurred in developing
10 the plan.

11 (2) LIMITATION.—A State may not receive
12 more than 1 payment under paragraph (1).

▶ **Diana Fortuna**
07/29/97 11:17:35 AM
.....

Record Type: Record

To: Elena Kagan/OPD/EOP
cc: Laura Emmett/WHO/EOP
Subject: Question from Ed Lorenzen on Texas privatization


Ed Lorenzen, Stenholm's guy, says the state is asking him the following: can they privatize in 50% of the state, and do their integrated thing statewide; or is the deal that their integrated thing could only be state-wide? I assume it's a 50% limit on privatization, and there is no limit on the integrated enrollment system per se. Do you know?



Cynthia A. Rice

07/29/97 06:52:47 PM

Record Type: Record

To: Diana Fortuna/OPD/EOP
cc: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP
bcc:
Subject: Re: Lorenzen has question on spin on Texas 

Ed says it would help his boss, and he thinks it would be good for us, to portray us as having been willing to discuss reasonable, sub-state options, and to make clear that the Republicans pulled the plug, not us. Do you think this is something we want to do and something others in the building would allow us to say or want Stenholm to say?

Also, he's wondering if he can divide the Texas Republicans by indicating that Phil Gramm was willing to do substate but Gov. Bush was not, and he wants to know if Gramm signed off on the "deal" this weekend.

Diana Fortuna



Diana Fortuna
07/29/97 05:22:23 PM

.....

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Cynthia A. Rice/OPD/EOP
cc:
Subject: Lorenzen has question on spin on Texas

Ed Lorenzen says the Texas and the Republicans have officially pulled the plug on Texas. He would like to spin it that Texas and the Republican leadership pulled the plug without approaching us about any specific concerns, and that the White House was willing to try to work out details, and wants to make sure this is accurate. What do you think?

1 **Subtitle H—Miscellaneous**

2 **SEC. 5801. AUTHORITY OF STATES TO CONSOLIDATE AND**
3 **AUTOMATE THE ADMINISTRATION OF CER-**
4 **TAIN ASSISTANCE PROGRAMS, AND TO CON-**
5 **TRACT COMPETITIVELY FOR THE ADMINIS-**
6 **TRATION OF SUCH PROGRAMS TO REDUCE**
7 **FEDERAL AND STATE PROGRAM COSTS.**

8 (a) **IN GENERAL.**—Notwithstanding any other provi-
9 sion of law, a _____ may administer or provide
10 for the administration of 1 or more programs described
11 in subsection (d) in accordance with a qualified plan ap-
12 proved as provided in subsection (c)(2), and any eligibility
13 determination made by a nongovernmental entity or em-
14 ployee in accordance with such a qualified plan shall be
15 considered to be made by the State and a State agency.
16 No provision of law shall be construed as preventing the
17 State from allowing eligibility determinations described in
18 this section to be conducted, using Federal funding and
19 processes established by the State, by an entity which
20 meets such qualifications as the State determines and is
21 not a State or local government, or by an individual who
22 is not an employee of the State government or of local
23 government in the State.

24 (b) **QUALIFIED PLAN DEFINED.**—As used in sub-
25 section (a), the term “qualified plan” means a plan which

1 covers 1 or more programs described in subsection (d) and
2 which—

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4 processing of eligibility determinations under the
5 program to promote efficiency and allow a reduction
6 of the total number of persons assigned to perform
7 the determinations;

8 (2) provides for integration of eligibility deter-
9 minations under the programs covered by the plan,
10 including the consolidation of State agencies to allow
11 for a further reduction of the total number of per-
12 sons assigned to perform the determinations;

13 (3) provides for competitive bidding for the
14 right to collect and process data used to make eligi-
15 bility determinations under the programs covered by
16 the plan, under State regulations to ensure that the
17 State relies on the most efficient and innovative pro-
18 vider of such services and minimize State and Fed-
19 eral costs;

20 (4) provides assurances that the plan does not
21 affect—

22 (A) any condition for eligibility for benefits
23 under a program covered by the plan;

1 (B) any right to challenge any determina-
2 tion regarding eligibility for, or any right to,
3 benefits under any such program;

4 (C) any determination regarding quality
5 control or error rates under any such program;
6 or

7 (D) any safeguard of the privacy, confiden-
8 tiality, or protection of any individual eligible
9 for, or receiving any benefit under any such
10 program; and

11 (5) applies to not more than 50 percent of the
12 recipients of benefits under any program described
13 in subsection (d).

14 (c) ADMINISTRATIVE PROVISIONS.—

15 (1) SUBMISSION OF PLANS.—A State desiring
16 to administer or provide for the administration of 1
17 or more programs described in subsection (d) in ac-
18 cordance with a qualified plan may submit a plan for
19 such administration to the appropriate Federal offi-
20 cial with respect to any program covered by the
21 plan. Notwithstanding any other provision of law, re-
22 view of a plan under this section by the appropriate
23 Federal official as defined in subsection (e) to whom
24 the plan is submitted is the sole requirement nec-
25 essary prior to implementation by the State.

1 (2) APPROVAL OF PLANS.—

2 (A) IN GENERAL.—The appropriate Fed-
3 eral official to whom a plan is submitted pursu-
4 ant to paragraph (1) shall approve the plan if
5 the appropriate Federal official determines that
6 the plan contains all of the elements specified
7 in subsection (b), and shall disapprove the plan
8 if the appropriate Federal official determines
9 that the plan does not contain all of the ele-
10 ments specified in subsection (b). In order to
11 disapprove the plan, the appropriate Federal of-
12 ficial shall inform the State in writing, within
13 10 days after receipt of the plan, of the specific
14 elements of the plan that are not present as re-
15 quired for the plan to be approved.

16 (B) DEFAULT APPROVAL.—If, by the end
17 of the 10-day period that begins with the date
18 a plan is submitted pursuant to paragraph (1)
19 to an appropriate Federal official, the appro-
20 priate Federal official has not disapproved the
21 plan, the plan is deemed to be approved.

22 (C) CONSULTATIONS.—In determining
23 whether to approve a plan that covers more
24 than 1 program described in subsection (d), the
25 appropriate Federal official to whom the plan is

1 submitted shall consult with the appropriate
2 Federal official or officials with respect to the
3 other program or programs covered by the plan.

4 (d) PROGRAMS DESCRIBED.—The programs de-
5 scribed in this subsection are the following:

6 (1) The special supplemental nutrition program
7 for women, infants, and children (WIC) established
8 under section 17 of the Child Nutrition Act of 1966
9 (42 U.S.C. 1786).

10 (2) The food stamp program under the Food
11 Stamp Act of 1977.

12 (3) A medical assistance program operated
13 under a State plan approved under title XIX of the
14 Social Security Act.

15 (e) APPROPRIATE FEDERAL OFFICIAL.—As used in
16 this section, the term “appropriate Federal official”
17 means—

18 (1) in the case of the programs described in
19 paragraphs (1) and (2) of subsection (d), the Sec-
20 retary of Agriculture; and

21 (2) in the case of the program described in sub-
22 section (d)(3), the Secretary of Health and Human
23 Services.

24 (f) PAYMENTS TO STATES.—

1 (1) IN GENERAL.—Within 60 days after the
2 date a State plan submitted pursuant to subsection
3 (e)(1) is approved, the appropriate Federal official
4 to whom the plan was submitted shall pay the State
5 \$_____ from sums in the Treasury of the
6 United States not otherwise appropriated, which
7 amount be used only to cover the costs of conducting
8 competitive bidding in accordance with the plan and
9 to cover the other initial costs incurred in developing
10 the plan.

11 (2) LIMITATION.—A State may not receive
12 more than 1 payment under paragraph (1).

WR - privatization

Privatization of Health and Human Services Programs
6/17/97

- The Administration believes that allowing states to privatize health and human services programs would not be in the best interests of program beneficiaries. Discretionary judgments about eligibility for federal benefits such as Medicaid, foster care, Food Stamps, and WIC should be made by impartial, merit-based public employees.
- Therefore, the Administration opposes the provisions in the Chairman's mark and any amendments which would allow complete or partial privatization.
- The Chairman's mark would allow the eligibility and enrollment determination functions of Federal and State health and human services benefit programs to be privatized in ten states and deems approved such a proposal for the State of Texas. Under this proposal, 58% of the nation's Medicaid beneficiaries could be placed in a private system.
- While certain program functions, such as computer systems, can currently be contracted out to private entities, the certification of eligibility for benefits and related operations (such as obtaining and verifying information about income and other eligibility factors) should remain public functions.
- Without a change in law, states can already privatize all aspects of the Temporary Assistance for Needy Families program. They can also hire private firms to design and operate information systems, develop and recommend revised eligibility processes, and provide management training and assistance.

Allows Private Contractors to:	Finance Committee Proposal	Possible Amendment	Administration Position
Obtain and Verify Information used to Determine Eligibility	Yes	Yes	No
Determine Eligibility	Yes	No	No

Wp - privatization



Cynthia A. Rice

06/18/97 12:58:18 PM

Record Type: Record

To: See the distribution list at the bottom of this message
cc:
Subject: Senate Finance Committee on Privatization

This morning, Sen. Conrad moved to strike the privatization provisions of the Senate Finance Committee mark, which would deem Texas approved and allow up to 10 more states to privatize.

Conrad's motion to strike won.

Then, clearly there was some back room dealing as other subjects were debated.

Then, D'Amato who had voted w/Conrad before, asked for a vote to reconsider Conrad.

The chairman offered to change his mark to take out the other states. The vote to reconsider won on a party line vote.

End result: the Finance Committee deems Texas approved but does not allow other states to privatize.

We worked hard to provide official and unofficial documents to help Conrad's efforts. John -- I'll send a package over to you for your information.

On other matters, Moseley-Braun's effort to not count teens in the 20% of caseload in vocational education cap passed, but Nickles insisted he wanted to work with her in drafting to ensure it doesn't weaken the work requirements. Moseley-Braun apparently told him it didn't, which isn't really true (The law requires teen parents to be in school to get assistance. This wouldn't change that. This would not count those teens as being in "vocational education" -- which would allow more adults in vocational education to be counted as "working.")

Message Sent To:

John Podesta/WHO/EOP
Bruce N. Reed/OPD/EOP
Elena Kagan/OPD/EOP
Diana Fortuna/OPD/EOP
Janet Murguia/WHO/EOP
Emil E. Parker/OPD/EOP
Kenneth S. Apfel/OMB/EOP
Barry White/OMB/EOP
Keith J. Fontenot/OMB/EOP

WR - privatization

FAX TRANSMISSION

Center on Budget and Policy Priorities

To: Gene Sperling (456-2620)
Anne Lewis (456-2802)
Elena Kagan (456-2878)
Cynthia Rice (456-5570)

Date: June 17, 1997

Fax #:

Pages: 6, including this cover sheet.

From: Bob Greenstein, Stacy Dean and
Karin Martinson

Subject:

COMMENTS: Attached is a paper we have shared with Congressional staff which discusses some of the problems with the Senate Finance Proposal on privatization. We expect Senator Conrad to offer an amendment to strike the proposal and Senator Kerrey to offer amendments to modify the proposal; however, we are not hopeful that any changes will be adopted.



CENTER ON BUDGET AND POLICY PRIORITIES

June 17, 1997

SENATE PRIVATIZATION PROPOSAL SHOULD NOT BE ADOPTED

Senator Roth's proposed Reconciliation package contains a provision that would *require* the Secretaries of Health and Human Services and Agriculture to approve up to 10 state proposals to contract out the eligibility functions for federal and state health and human services programs. This provision is an attempt to steamroll the Administration into approving a request made by the State of Texas to contract with a private entity to conduct the eligibility for a range of programs, including: food stamps, Medicaid, child care, and WIC. While the Administration has the authority to approve such demonstration projects under current law, it has approached this important issue with an appropriate level of caution and concern.

The Senate Finance Committee should not eliminate the federal government's ability to review and evaluate thoughtfully state requests that would affect millions of low-income families and elderly people and would potentially involve the expenditure of billions of federal dollars.

Background

Under the new welfare law, states do not need Secretarial approval to contract eligibility determinations for the Temporary Assistance for Needy Families (TANF). They may choose to have private companies — either for-profit or non-profit — determine which low-income families are eligible for TANF cash assistance and employment services. States do not, however, have this explicit authority under most other federal assistance programs. They must seek approval for a waiver for such an activity from the Secretary of HHS or Agriculture if they wish a private company to determine the eligibility for Medicaid, food stamps, and other programs. Since most states determine TANF, food stamp and Medicaid eligibility simultaneously, some states are interested in privatizing food stamps and Medicaid along with TANF.

The Roth proposal would not provide the Administration with the authority to grant 10 waivers of this nature in 10 states — *that authority already exists under current law*. In fact, Wisconsin has requested a limited demonstration proposal of privatization that the Administration is currently considering. Instead, the Roth provision requires the Administration to approve statewide proposals to turn over the administration of all public assistance program to non-governmental entities even if the states' plans are deeply flawed and could have adverse consequences for the federal fisc as well as the recipients involved. The State of Texas has sought such approval from the Administration which the Administration denied based on the Texas proposal as it was submitted. If the ROTH

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proposal is enacted, the Administration would be compelled to approve the Texas privatization initiative despite its concerns.

* The size and complexity of Texas proposal alone call for caution. Texas represents 9 percent of the national food stamp and WIC caseloads and 7 percent of the national Medicaid caseload. Some \$9 billion a year in food stamp and Medicaid benefits are provided in Texas. Moreover, the Texas proposal is *not* a demonstration. It represents statewide implementation of a radically new way of administering federal public assistance programs. There would be no control group, no meaningful data collection and no ability for the federal government to stop the privatization effort in the future if it is determined a failure. The state mechanism that currently administers these programs would be dismantled or subsumed within the private contractor.

Senate Finance Proposal Is Unwise and Premature

The Finance Committee provisions would require the Administration to approve large and unprecedented changes in the way services and benefits are delivered. Congress would be ill-advised to pass such sweeping changes without fully understanding their implications. Neither the Senate Finance nor the Senate Agriculture Committee have had the opportunity to question witnesses, experts, interested companies, affected interest groups, or the Administration on the merits of privatizing eligibility. Although proponents of the Texas plan have made assertions about the savings it might produce, none of these have been subjected to independent verification. Indeed, the very plan for which Texas seeks approval has not even been made available for public or Committee comment. The Committee and Congress as a whole have not yet examined the potential impacts of this proposal on low-income families, children, and elderly and disabled people.

Privatization Raises Many Unanswered Questions

Privatization of food stamps and Medicaid raises an array of issues that deserve serious consideration. The Committee has not had the opportunity to examine these issues.

- **Public Input.** Some have argued that since the Administration did not approve the Texas proposal, Congress must approve the plan. It is not clear, however, exactly what the contents of the Texas proposal are. The Texas proposal is not a public document and has not been made available in its final form to the public in the state. *It is not available for review by the Finance Committee.* The Administration denied Texas' request after reviewing the proposal. It is not sound policy to mandate approval of a proposal that is subject to neither public nor Congressional scrutiny and that the Secretaries of HHS and Agriculture have determined should not be approved.

- **Affected Programs.** The Senate Finance proposal allows states to contract out eligibility determinations for all federal and state health and human services benefit programs. This is a sweeping change that would include programs such as child welfare and programs outside the Finance Committee's jurisdiction such as WIC. The idea of privatizing programs such as these raises particularly thorny questions that neither the Finance Committee nor the Agriculture Committee have considered. Should someone other than a state be given the authority to remove a child from their home when there are allegations of physical abuse? Should a for-profit private contractor make this determination? Should a WIC private contractor be permitted to require pregnant women applying for WIC to travel to an HMO on the other side of a city or county for the health screening that is a part of the WIC application process, a problem that may arise if privatization allows private entities that are not health providers to operate WIC?
- **Incentives.** Many are concerned that when eligibility functions are turned over to a private entity, service delivery could be driven by profit motives rather than the goal of ensuring that eligible families receive the assistance for which they qualify. For example, depending on how contracts are structured with the private entity, a state may give the contracting entity financial incentives that could (unconsciously or consciously) result in actions that would have an adverse impact on families. State food stamp and Medicaid workers must serve everyone who applies for benefits; workers are not penalized for taking additional time to assist the more problematic cases. It is possible that a private for-profit entity would not be as willing to spend the extra amount of time and resources to assist the most complicated and time consuming cases. Yet these often are the most vulnerable cases and include the homeless and the mentally ill.

It is not clear that the current quality control system is designed to measure the accuracy with which a non-governmental entity delivers benefits. For example, the quality control system does not penalize a state for improperly denying a household that applies for benefits. States are only penalized for improper approvals. This system only works because public agencies have no profit motive to deny households benefits. If private contractors are permitted to issue benefits, there may not be a measurement system in place to ensure that they are not discouraging individuals from applying in order to keep down their costs.

- **Financial Accountability.** As mentioned earlier, states may use private contractors to determine a family's eligibility for TANF. Since TANF is a block grant, the federal government faces no financial exposure if states elect to use private contractors. Food stamps however is a 100% federally funded benefit, and the benefit costs of Medicaid are shared between the state and

the federal government. If a contractor does not operate the eligibility determination process effectively, it is possible that the federal government could incur large added costs in these programs.

First, a contractor may operate the programs in such a manner that high error rates result by allowing too many individuals to receive benefits or to receive overly large benefits. While the state agency would be held accountable for these cost overruns, adding another party to federal-state quality control negotiations would complicate what can already be difficult and lengthy negotiations. Private entities are likely to have impressive legal talent at their disposal for such contract disputes.

Second, since food stamps and Medicaid share state administrative costs at a 50 percent match rate, the federal government would share the cost of any cost overruns billed by the contractor.

Even if HHS and USDA were confident that the proposal a particular state submitted could not be operated without significant federal financial risk, they would be required under the Roth proposal to approve the state's plan unless at least 10 states has already applied for privatization approval. The Roth provision does not provide the Secretaries with any latitude to turn down a proposal which appears to be seriously flawed or very risky.

- ***Contractor Accountability.*** The policies and practices of a public agency are subject to open records requirements, state Administrative Procedure Act, and judicial review under statutory and constitutional standards. These public accountability mechanisms should be similarly applied to private companies taking on this public function. Moreover, additional monitoring may be needed to ensure that the contractor is not minimizing eligibility, benefits, or services in response to financial incentives. These concerns need to be addressed in considering the privatization of benefit programs.
- ***Confidentiality.*** The proposal raises serious questions about the disclosure of private client data and private sector access to and use of confidential government data bases. Families that seek public benefits must provide personal confidential information to the entity which determines their eligibility, benefits, and services. In addition, the entity must sometimes access confidential data bases, including IRS and Social Security data in order to verify eligibility. Public data of this nature is not made available to private entities that might have commercial uses for such data. While many confidentiality concerns might be able to be addressed, the Roth proposal does not give the Secretary adequate authority to deny plans which risk raise serious confidentiality concerns.

Summary and Conclusion

The Roth privatization proposal should not be adopted. It would be premature for the Senate Finance Committee to allow a proposal with such significant and far-reaching consequences. By tying the Administration's hands and forcing it to approve potentially flawed privatization schemes, the Committee could cause serious unintended harm.

W2-privatization

**Private Eligibility Determination for Medicaid, Child Welfare,
Food Stamps, and WIC**

This "Demonstration" Could Cover 58% of Medicaid Beneficiaries.

The Finance Committee proposal is a big change to undertake without Congressional hearings or oversight. The proposal would allow up to 10 states to turn all their health and human services programs -- including Medicaid, child welfare, Food Stamps, and WIC -- over to private contractors. These private contractors would decide which families were eligible for benefits -- a new and untested role for private agencies.

If the 10 states with the largest Medicaid caseloads (CA, FL, GA, IL, MI, NY, NC, OH, PA, TX) exercised this option, then 58 percent of the nation's Medicaid beneficiaries would be in the private system (see attached). Texas alone, whose application is deemed approved by this provision, has 7 percent of the nation's Medicaid caseload.

This Proposal Should be Out of Order Because it Affects Programs Outside Finance Committee Jurisdiction. This proposal explicitly allows private contractors to operate eligibility and enrollment determination functions for Food Stamps and the Special Supplemental Food Program for Women, Infants and Children (WIC). In its reconciliation markup last week, the Senate Agriculture Committee did not include a provision to allow private contractors to operate WIC or Food Stamps. Thus, the Finance Committee is violating jurisdictional rules by including this provision here.

Under the TANF Block Grant, States Can Already "Privatize" Welfare -- Are We Ready to Let them Privatize Other Programs Too?

The new TANF welfare block grant gives states tremendous flexibility. States set eligibility rules, and they can hire private or religious organizations to screen applicants, provide benefits, and operate welfare to work and abstinence programs. TANF will provide an opportunity to test privatization -- we don't need any more "demonstrations" right now.

There is a Role for the Private Sector in Medicaid -- but Not in Determining Eligibility for Federally Guaranteed Benefits.

Medicaid and other programs already take advantage of private sector efficiencies by hiring private sector providers, such as managed care companies, for-profit hospitals, and computer systems experts. This role is entirely appropriate and allows the Medicaid program to take advantage of the competition of the private market. This proposal, on the other hand, would allow private companies to perform what has always been a public function -- determining who's eligible for taxpayer-funded benefits. Making decisions about the eligibility of needy people for benefits is one of the most fundamental functions of government.

Private Incentives Could Undermine Efforts to Balance the Budget.

The goal of this legislation is to eliminate the federal deficit by the year 2002. There's reason to be concerned that private contractors determining eligibility for open-ended federal entitlements may cost the federal government more -- either through higher error rates during start-up or because a company's primary concern would be its own bottom line, not the federal treasury's.

Privatization May Not Be in the Best Interest of Beneficiaries.

To prevent cost-overruns or simply to reduce spending, states may include financial incentives in company contracts which would encourage them to cut corners with complicated cases and make them more likely to deny benefits. It is unclear how much of a federal role there would be in monitoring contracts and ensuring basic safeguards.

It's Unclear What Kind of Texas Program is "Deemed Approved" by this Provision. The State of Texas has not submitted an actual proposal to privatize state functions, nor requested a waiver of any federal statutes or regulations. Instead, the state sought guidance from HHS and the Department of Agriculture about the terms under which it could release a "request for offers" (RFO) seeking private bids. Although select state and federal agency officials have seen the State's proposed "RFO", its terms have not been made public. Thus, Senators may approve a plan that not one of them has seen.

The Committee May Regret a Decision which Encourages States to "Appeal" Agency Waiver Decisions to Congress. By deeming the Texas application approved as submitted, the Finance Committee will encourage other states unhappy with agency waiver decisions to appeal, flooding the Committee with petitioners.

Fact Sheet on Administration Response to Texas

On May 13, 1997, in a letter to Texas Health and Human Services Commissioner Michael McKinney, HHS and the Department of Agriculture responded in writing to certain questions that had arisen in discussions with Texas state officials.

The State of Texas had not submitted an actual proposal to privatize State functions, nor requested a waiver of any federal statutes or regulations. Rather, the state and federal agencies had engaged in discussions to provide guidance to the state in its plan to release a "request for offers" to seek private vendors.

The Administration's letter concluded that the state could develop an integrated enrollment system so long as public employees perform the essential eligibility determination functions. For example:

- A non-public employee may not take actions involving discretion or value judgments, including all elements of the benefit eligibility determination process that relate to the evaluation of information provided by an applicant or which bears on the eligibility decision.
- In an integrated enrollment system, most if not all activities involving personal contact with an applicant or recipient have the potential to involve the use of discretion or judgment and must be performed by state merit system employees.

But much flexibility is currently available to the state, the letter said:

- The state has broad authority to administer the Temporary Assistance for Needy Families (TANF) program, the block grant created by last year's welfare law, and can use private contractors without limitation there.
- The state can also use private contractors to design and operate information systems, develop and recommend revised eligibility processes, and provide training and assistance in the management of an integrated enrollment system.