

NLWJC - Kagan

DPC - Box 060 - Folder-009

Welfare - FLSA etc [2]

American Federation of Labor and Congress of Industrial Organizations



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

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June 16, 1997

MEMORANDUM

To: Elena Kagan, Deputy Assistant to the President-Domestic Policy Council

From: Gerry Shea

Re: FLSA Coverage

For your information attached is a materials kit for our grass roots mobilization in support of FLSA coverage for workfare workers.

GS/wb

Bruce/Cynthia/Diana —

*FYI.
Elena*

MEMORANDUM

TO: Key Coordinators of FLSA Grassroots Effort
AFL-CIO State Directors

FR: Ken Grossinger, AFL-CIO Legislative Department
Deborah Dion, AFL-CIO Public Affairs Department

RE: New AFL-CIO FLSA Ad and Grassroots Activities

On Wednesday, June 18 the AFL-CIO will release a new TV and Radio ad that will run for one week in 10 House districts and in five States aimed at making a clear case for people who work in workfare programs. This will be the AFL-CIO's second round of issue ads in this Congress.

In upcoming weeks we will be organizing around pressing tax issues and NAFTA/fast track.

A broad array of national organizations support the position that welfare recipients who work in workfare programs should receive the minimum wage. This position is also supported by large margins of the American public who were polled last weekend.

In this packet you have the following documents:

- Scripts and back-up documentation for TV ads.
- List of districts where the ads are airing.
- Suggestions for holding press events around the release of the ads.
- Talking points on the issue.
- Sample advisory and release for press conferences.
- Voting records.
- General background materials to supplement our position.

You will receive another package on Tuesday, June 17 under separate cover with VHS copies of the TV ad and tapes of the radio spot. Radio scripts and backup documentation for the radio spots will be faxed on Monday, June 16. If you have any questions, or need help with press outreach, please call Deborah Dion at 202-637-5036 or David Saltz at 202-637-5318.

**PAID MEDIA ON FLSA COVERAGE
START DATE -- 6/18/97**

HOUSE:

<u>DISTRICT</u>	<u>CONGRESSMAN</u>	<u>SPOT</u>	<u>MEDIA MARKET</u>
AR-04	Jay Dickey (R)	TV	Little Rock/Shreveport
AZ-06	J.D. Hayworth (R)	TV	Phoenix
CA-01	Frank Riggs (R)	TV/Radio	Eureka
WA-03	Linda Smith (R)	TV	Portland, OR
NV-01	John Ensign (R)	TV	Las Vegas
IA-02	Jim Nussle (R)	TV	Cedar Rapids
MO-09	Kenny Hulshof (R)	TV/Radio	Columbia, Jefferson City St. Louis
WI-01	Mark Neumann (R)	TV	Milwaukee
FL-22	E. Clay Shaw (R)	Radio	Miami

SENATE:

RI	John Chafee (R)	Radio
ME	Susan Collins (R)	Radio
PA	Rick Santorum (R)	TV/Radio

AFL-CIO AR-04
:30 TV Spot on Workfare
Jay Dickey

DATE: June 13, 1996

TITLE: "Fairness" AFL-AR-04

VIDEO

Male worker in records room filing,
facing screen left

Rack focus to female worker picking
files off desk

Super headline: "GOP in House Moves
to Bar Minimum Wage for Workfare."

Cut to full screen with female worker

Tight shot of female looking
exasperated

Cut to scene of male worker; tight shot
of him looking exasperated

White type on black screen
1-800-765-4440

Two workers looking plaintively at
camera

cg: Paid for by the Working Men and
Women of the AFL-CIO

AUDIO

This worker is paid the minimum wage.

But under a proposal pending in Congress,
this worker could be paid less than the
minimum wage for the very same job --
simply because she's working her way off
welfare through a state workfare program.

At below minimum wage, she can't
provide for her children.

And if an employer can hire someone
else for less, what do you think will
happen to his job?

Call Congressman Dickey. Tell him
to fight for fairness --

One minimum wage for everybody.

AFL-CIO AZ-06
:30 TV Spot on Workfare
J.D. Hayworth

DATE: June 13, 1996

TITLE: "Fairness" AFL-AZ-06

VIDEO

Male worker in records room filing,
facing screen left

Rack focus to female worker picking
files off desk

Super headline: "GOP in House Moves
to Bar Minimum Wage for Workfare."

Cut to full screen with female worker

Tight shot of female looking
exasperated

Cut to scene of male worker; tight shot
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At below minimum wage, she can't
provide for her children.

And if an employer can hire someone
else for less, what do you think will
happen to his job?

Call Congressman Hayworth. Tell him
to fight for fairness --

One minimum wage for everybody.

AFL-CIO CA-01
:30 TV Spot on Workfare
Frank Riggs

DATE: June 13, 1996

TITLE: "Fairness" AFL-CA-01

VIDEO

Male worker in records room filing,
facing screen left

Rack focus to female worker picking
files off desk

Super headline: "GOP in House Moves
to Bar Minimum Wage for Workfare."

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At below minimum wage, she can't
provide for her children.

And if an employer can hire someone
else for less, what do you think will
happen to his job?

Call Congressman Riggs. Tell him
to fight for fairness --

One minimum wage for everybody.

AFL-CIO WA-03
:30 TV Spot on Workfare
Linda Smith

DATE: June 13, 1996

TITLE: "Fairness" AFL-WA-03

VIDEO

Male worker in records room filing,
facing screen left

Rack focus to female worker picking
files off desk

Super headline: "GOP in House Moves
to Bar Minimum Wage for Workfare."

Cut to full screen with female worker

Tight shot of female looking
exasperated

Cut to scene of male worker; tight shot
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simply because she's working her way off
welfare through a state workfare program.

At below minimum wage, she can't
provide for her children.

And if an employer can hire someone
else for less, what do you think will
happen to his job?

Call Congresswoman Smith. Tell her
to fight for fairness --

One minimum wage for everybody.

AFL-CIO NV-01
:30 TV Spot on Workfare
John Ensign

DATE: June 13, 1996

TITLE: "Fairness" AFL-NV-01

VIDEO

Male worker in records room filing,
facing screen left

Rack focus to female worker picking
files off desk

Super headline: "GOP in House Moves
to Bar Minimum Wage for Workfare."

Cut to full screen with female worker

Tight shot of female looking
exasperated

Cut to scene of male worker; tight shot
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welfare through a state workfare program.

At below minimum wage, she can't
provide for her children.

And if an employer can hire someone
else for less, what do you think will
happen to his job?

Call Congressman Ensign. Tell him
to fight for fairness --

One minimum wage for everybody.

AFL-CIO IA-02
:30 TV Spot on Workfare
Jim Nussle

DATE: June 13, 1996

TITLE: "Fairness" AFL-IA-02

VIDEO

Male worker in records room filing,
facing screen left

Rack focus to female worker picking
files off desk

Super headline: "GOP in House Moves
to Bar Minimum Wage for Workfare."

Cut to full screen with female worker

Tight shot of female looking
exasperated

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welfare through a state workfare program.

At below minimum wage, she can't
provide for her children.

And if an employer can hire someone
else for less, what do you think will
happen to his job?

Call Congressman Nussle. Tell him
to fight for fairness --

One minimum wage for everybody.

AFL-CIO MO-09
:30 TV Spot on Workfare
Kenny Hulshof

DATE: June 13, 1996

TITLE: "Fairness" AFL-MO-09

VIDEO

Male worker in records room filing,
facing screen left

Rack focus to female worker picking
files off desk

Super headline: "GOP in House Moves
to Bar Minimum Wage for Workfare."

Cut to full screen with female worker

Tight shot of female looking
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welfare through a state workfare program.

At below minimum wage, she can't
provide for her children.

And if an employer can hire someone
else for less, what do you think will
happen to his job?

Call Congressman Hulshof. Tell him
to fight for fairness --

One minimum wage for everybody.

AFL-CIO WI-01
:30 TV Spot on Workfare
Mark Neumann

DATE: June 13, 1996

TITLE: "Fairness" AFL-WI-01

VIDEO

Male worker in records room filing,
facing screen left

Rack focus to female worker picking
files off desk

Super headline: "GOP in House Moves
to Bar Minimum Wage for Workfare."

Cut to full screen with female worker

Tight shot of female looking
exasperated

Cut to scene of male worker; tight shot
of him looking exasperated

White type on black screen
1-800-765-4440

Two workers looking plaintively at
camera

cg: Paid for by the Working Men and
Women of the AFL-CIO

AUDIO

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minimum wage for the very same job --
simply because she's working her way off
welfare through a state workfare program.

At below minimum wage, she can't
provide for her children.

And if an employer can hire someone
else for less, what do you think will
happen to his job?

Call Congressman Neumann. Tell him
to fight for fairness --

One minimum wage for everybody.

AFL-CIO PA
:30 TV Spot on Workfare
Rick Santorum

DATE: June 13, 1996

TITLE: "Fairness" AFL-PA

VIDEO

Male worker in records room filing,
facing screen left

Rack focus to female worker picking
files off desk

Super headline: "GOP in House Moves
to Bar Minimum Wage for Workfare."

Cut to full screen with female worker

Tight shot of female looking
exasperated

Cut to scene of male worker; tight shot
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Two workers looking plaintively at
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welfare through a state workfare program.

At below minimum wage, she can't
provide for her children.

And if an employer can hire someone
else for less, what do you think will
happen to his job?

Call Senator Santorum. Tell him
to fight for fairness --

One minimum wage for everybody.

DOCUMENTATION FOR "FAIRNESS"

Dickey

AFL-CIO: 30 TV SPOT ON
MINIMUM WAGE/WORKFARE

Ad Script:

This worker is paid the minimum wage.

But, under a proposal pending in Congress, *this* worker could be paid less than the minimum wage for the very same job -- simply because she's working her way off welfare through a state workfare program.

At below minimum wage,
she can't provide for her children.

And if an employer can hire
someone else for less,
what do you think will happen to *his* job?

Call Congressman Dickey.
Tell him to fight for fairness --

One minimum wage for *everybody*.

*Paid for by the Working Men and Women of
the AFL-CIO*

Facts:

Quote

On June 10, the House Ways and Means Committee voted that minimum wage laws should not apply to welfare recipients who participate in state workfare programs. On June 11, the House Committee on Education and the Work Force approved the same proposal.

When the minimum wage increases from \$4.75 to \$5.15 an hour on Sept. 1, a full-time minimum-wage worker will earn \$10,753 a year, well below \$12,158, the government's poverty level for a family of three (U.S. Department of Commerce). The average welfare recipient is a single mother of two children (The Survey of Income and Program Participation, Bureau of the Census).

59 percent of voters surveyed agree with the statement that many current minimum-wage employees would lose their jobs if workfare participants could be forced to work for less (Peter D. Hart Research Associates national voter survey, June 6-9, 1997).

Quote

Quote

Talking Points

Workplace Legal Protections for Workfare Participants

Background: The U.S. Labor Department ruled in May that people who try to get off welfare by participating in state “workfare” programs are covered by minimum-wage and other basic workplace legal protections.

Some Republican members of Congress are seeking to overturn this decision. They have included a provision in the Budget Reconciliation bill, now moving through Congress, that excludes workfare participants from coverage under the Fair Labor Standards Act (FLSA) coverage and denies them protections against discrimination on the job. The House Ways and Means Committee approved this measure on June 10. The House Committee on Education and the Work Force passed it on June 11.

- **This is a backdoor attack on the minimum wage.**
The minimum wage was created to prevent exploitation and make sure that anyone who works full time can rise out of poverty. Creating exemptions for workfare participants would blow a hole in the federal minimum wage standard. It would unfairly deny 1 million workfare participants the protections afforded to every other American worker.

- **Excluding workfare participants would create incentives for employees to lay off current minimum-wage earners.**
Last year’s welfare reform legislation was never meant to artificially subsidize employers so they could replace existing workers with “cheaper” workers who earn substandard wages. But that’s exactly what will happen if welfare recipients are excluded from minimum-wage coverage. Millions of current minimum-wage workers could lose their jobs, if workfare participants could be forced to work for less.

- **Fair pay for workfare is the key to making welfare reform work.**
If the point of welfare reform is to reduce dependency on the welfare system, participants must have two things: the chance to earn enough to take care of their families and the promise that if they work hard and play by the rules, they can improve their situations. Anything less creates disincentives for welfare recipients to move into jobs.

- **States can afford to pay workfare participants the minimum wage.**
Today every state but Mississippi can afford to pay the minimum wage for workfare without new state funding or any changes in grant levels. The range of options available assures that every state can meet the laws' requirements.

The minimum wage applies only to people working in workfare programs, not those in job training and vocational education programs. When it comes to meeting the requirements of welfare reform, states have been given a great deal of flexibility. Workfare is one of at least a dozen options available to them.

- **This proposal puts working women at risk.**
The average workfare participant is a single mother of two children. This proposal would deny them the minimum wage and FLSA protections against discrimination on the job. Most minimum-wage workers are also women, who would be threatened with job loss because of the incentives for employers to fire and replace them with workfare workers.

- **The American people support minimum-wage coverage for workfare participants.**
Americans believe that everyone who works is entitled to a reasonable wage. That's why there was overwhelming public support for Congress increasing the minimum wage, last year. That's why today the public today believes -- strongly -- that workfare participants should be covered by the minimum wage. Fully 69 percent agree that workfare participants should be covered, according to a national voter survey that Peter D. Hart Research Associates conducted June 6-9. Even 62 percent of Republican voters favored minimum-wage coverage.

- **America's unions and our allies will continue to fight for and defend working families against this and other attacks.**
Part of the new American labor movement we're building is creating a new voice for America's working families: in Washington and at the state and local level, in the workplace and in our communities. Our new activism has created a strong backlash by those who don't want working families to have a say in the direction of this country, but we will not be silenced.

SUGGESTIONS FOR PUTTING TOGETHER PRESS/GRASSROOTS EVENTS

On Wednesday, June 18 the federation will launch its second round of legislative ads in this Congress and we believe it is crucial to get out our message both nationally and at the local level to stop the new attack on the minimum wage. With the paid media, press work and grassroots push, we want to make a powerful case around doing what's right and fair for people who work hard and play by the rules -- and for protecting the minimum wages against exemptions and exceptions that chomp away at it.

We suggest that you participate in any or all of the following activities and include our community allies as a broad array of national organizations (list enclosed) -- from civil rights to women's to labor to legal groups -- support this position.

- Hold a press conference in front of your congressman/woman's district office with coalition partners and minimum wage or workfare workers. (Sample advisory attached).
- Hold a press briefing on Wednesday morning at your office for the major media outlets in your area to preview the ad and give the press a background briefing on the issue as well as why we are running the ads. Include coalition partners.
- Do one-on-one interviews with print reporters either in person or by phone and get them the background materials on the ad.
- Call your local newspaper and set up an editorial board meeting with coalition partners and with workfare recipients for this week if possible.
- Get a letter-to-the-editor campaign going in your district with coalition partners to demonstrate to the public that our position has strong support from community leaders and civic groups.
- Put a phone bank together to generate calls to members' offices.
- Leaflet worksites during the week and members' events over the weekend.

Even though the ads are pretty straight forward, well-documented and not attack ads, we still anticipate some hostile negative reporting -- "labor's at it again -- attacking Republicans" -- so that's why it is crucial to conduct an all out effort to make our case on the merits to the general public and to the media. If local press need any clarification or further background information on the ads please feel free to send calls to Deborah Dion at 202-637-5036 or David Saltz at 202-637-5318. Also we will be ready to move quickly to respond to the anticipated Republican opposition with editorials and letters-to-the-editor. If you hear of ads being pulled off the air -- please notify us as soon as possible.

(SAMPLE MEDIA ADVISORY)

For information, call:
(Name, phone number)

MEDIA ADVISORY FOR WEDNESDAY, JUNE 18, 1997

**LOCAL COMMUNITY GROUPS DENOUNCE "BACK-DOOR" ATTACK
ON MINIMUM WAGE AND LOW-WAGE WORKERS**

*The coalition will unveil a television ad calling on (member of Congress) to guarantee
"workfare" participants the same rights every other worker has*

(City) -- Local community, women's, civil rights and labor groups will hold a press briefing at (location) on Wednesday, June 18, to call on Congress to reject a measure excluding "workfare" participants from coverage under the Fair Labor Standards Act and other basic worker protections. The group will unveil a new television commercial asking voters to call (member of Congress) and demand "one minimum wage for *everybody*."

As states move to implement workfare programs required by welfare "reform" legislation, an estimated one million recipients may soon be entering the work force. The proposal pending in Congress would severely undermine the federal minimum wage--a basic protection overwhelmingly supported by the majority of American voters--by creating a category of workers with "second-class" status and incentives for employers to replace existing workers.

Nationwide, a broad-based coalition has formed in opposition to the measure. "This is nothing more than a back-door attack on the minimum wage that threatens the living standards of all low-wage workers," says (name, title, organization.)

The 30-second television spot scheduled to begin airing in (city) Wednesday was produced by the AFL-CIO and is one of 15 that will run in key congressional districts and states around the country.

WHAT: Press briefing on the minimum wage and protections for workfare participants

WHEN: Wednesday, June 18
(time)

WHERE: (location)

###

(SAMPLE PRESS RELEASE)

For information, call: (Name, phone number)

FOR IMMEDIATE RELEASE:

June 18, 1997

**PROPOSAL TO EXCLUDE "WORKFARE" PARTICIPANTS:
A "BACK-DOOR" ATTACK ON THE MINIMUM WAGE**

New television ad aimed at Congress demands "one minimum wage for everybody"

(City), June 18 -- Area community, women's, civil rights and labor leaders are asking local residents to join them in sending (member of Congress) a message to "fight for fairness," by calling on Congress to reject a measure that would exclude "workfare" participants from the federal minimum wage and other basic worker protections. The group today unveiled a new television commercial asking voters to call (member of Congress) and demand "one minimum wage for everybody."

Community leaders charged that the proposal pending in Congress is a "back-door attack" on the federal minimum wage--an employment protection that carries the overwhelming support of Americans--and would create a category of workers with "second-class" status and incentives for employers to replace existing workers.

"If Congress passes such a law, they will severely damage the federal minimum wage standard, and the repercussions will be felt by all low-income workers," says (name, title, organization.) "It will further erode workers' living standards, particularly among those in the lowest-paying jobs."

An estimated one million welfare recipients may soon be entering the work force as states move to implement the workfare provisions of welfare "reform" legislation passed last year. Last month, the Labor Department ruled that people required to work in state workfare programs are covered by the Fair Labor Standards Act and other basic employment protections. But two House Committees--Ways and Means and Education and the Work Force--recently voted to deny workfare participants their right to the minimum wage and other protections.

Nationwide, a broad-based coalition has formed in opposition to the measure. "Welfare reform cannot work unless everyone who works is rewarded with a reasonable wage," says (name, title, organization). "How can we justify disparate pay formulas that create a perverse incentive to fire people who are entitled to the minimum wage?"

The 30-second television spot scheduled to begin airing in (city) today shows side-by-side workers doing the same job. One earns below the minimum wage and "can't provide for her children." Of the other, the ad asks: "If an employer can hire someone else for less, what do you think will happen to his job?"

The ad was produced by the AFL-CIO and is one of 15 that will run in key congressional districts around the country. The issue ads are part of the AFL-CIO's continuing outreach program to educate America's working families about crucial issues facing our nation and to raise questions about Congress' priorities on issues central to working families' lives and future.

###

They're chomping at the MINIMUM WAGE again

AMERICA HAS A WAGE FLOOR. It's the federal minimum wage, and it's one of our oldest and most fundamental protections for working families. It's there because Americans believe that all people who work are entitled to a reasonable wage. It's there to prevent employers from driving wages down by pitting one group of workers against another. It's there to give millions of working poor a chance to support their families and contribute to their communities.

But some members of Congress are trying to weaken this basic protection -- again. They're proposing to chomp away at our wage floor by creating different classes of workers -- some who are entitled to the minimum wage and some who aren't. They want to exempt people required to work in state "workfare" programs from the minimum wage and other basic employment rights -- civil rights, organizing rights, health and safety protections and curbs against sexual harassment.

If they succeed, they will create a perverse incentive to fire workers who earn low wages and replace them with other who are paid even less.

They'll destroy any possibility that welfare reform can reduce dependency on welfare by leading people into real jobs with real wages.

They'll undermine the minimum wage we raised just last year -- an increase Americans overwhelmingly supported -- so that working poor families could rise from poverty through the dignity of work.

Can America afford to pay workfare participants the minimum wage? We can't afford not to. America can't stand more erosion of workers' living standards -- especially for those in the lowest-wage jobs who are already hurting the most.

Stop the new attack on the minimum wage.

Call your representatives in Congress and tell them American voters support the minimum wage -- for all workers.

MEMORANDUM

TO: AFL-CIO

FROM: Guy Molyneux and Geoffrey Garin

DATE: June 10, 1997

SUBJECT: Minimum Wage Coverage for Workfare Recipients

Peter D. Hart Research Associates has just completed a national voter survey that includes two questions measuring support for extending minimum wage and other workplace legal protections to welfare recipients in workfare programs. The survey was conducted by telephone June 6 through 9 among a representative sample of 800 registered voters who participated in the 1996 elections. The margin of error on these results is +/-4%.

Strong voter support for minimum wage coverage. The survey results reveal that American voters strongly believe that minimum wage laws and other basic legal workplace protections should apply to those in state workfare programs. The survey question reads as follows:

As you may know, Congress passed a law last year requiring able bodied welfare recipients to work in state workfare programs. Do you believe that the people who are required to work in these workfare programs should be covered by basic legal protections, including the minimum wage law, or do you believe that the states should not have to pay the minimum wage to welfare recipients in workfare programs?

Fully 69% agree that workfare participants should be covered, while just 25% believe that states should not have to pay participants the minimum wage.

We would note that workfare participants are clearly identified in this question wording (*twice*) as still being "welfare recipients," making the strong

Peter D. Hart Research Associates, Inc.

favorable response that much more impressive (and meaningful). The breadth of support for minimum wage coverage is also striking, including two-thirds of those with incomes over \$50,000 (67%), professionals (67%), and white voters (67%). Even college-educated men (71%) and Republican voters (62%) favor minimum wage coverage by large margins.

Wage impact argument for coverage is strong. Voters' initial support for coverage doubtless arises from a fundamental sense of fairness. Since other workers receive this protection, they reason, why shouldn't workfare participants in similar jobs? However, organized labor has another, less immediately obvious reason for believing that coverage is needed – namely, the corrosive effect that sub-minimum-wage workfare programs could have on the jobs and wages of low-wage workers *outside* of workfare programs. The survey tested the appeal of this argument for coverage against a powerful opposition case that focuses on the cost of coverage to taxpayers, and finds the wage impact argument prevails by a decisive two to one margin.

Supporters of paying the minimum wage to people in workfare programs say that many employees who currently work at the minimum wage would lose their jobs if workfare participants could be forced to work for less, and also say that exempting one group of workers from minimum wage protections opens the door to undermining the minimum wage for others. (59% agree.)

Opponents of paying the minimum wage to people in workfare programs say that the taxpayers would have to support higher welfare budgets if states are forced to pay the minimum wage, and also say that welfare recipients who want better pay should get off welfare and find a job on their own. (31% agree.)

**GROUPS SUPPORTING FAIR LABOR STANDARDS ACT
COVERAGE FOR WORKFARE PARTICIPANTS**

A. Philip Randolph Institute
ACORN
Americans for Democratic Action
American Friends Service Committee
American Jewish Congress
Black Women's Agenda, Inc.
Bread for the World
Business and Professional Women/USA
Catholic Charities USA
Center for Community Change
Center for Law and Social Policy
Center for Women's Policy Studies
Center on Budget and Policy Priorities
Chicago Commons Employment and Training Center
Chicago Jobs Council
Child Care Action Campaign
Church Women United
Clearinghouse on Women's Issues
Coalition on Human Needs
Commission for Women's Equity
Day Care Action Council of Illinois
Disability Rights Education and Defense Fund, Inc.
Feminist Majority
Hadassah
Illinois Hunger Coalition
INET for Women
Korean Immigrant Workers Advocates
Labor Project for Working Families
Leadership Conference on Civil Rights
League of Women Voters of Illinois
Lutheran Services in America
Mexican American Legal Defense and Education Fund, Inc.
Mid America Institute on Poverty
Migrant Legal Action Program
NAACP Legal Defense and Education Fund, Inc.
NAACP, Washington Bureau
National Association of Social Workers
9 to 5, National Association of Working Women
National Center for the Early Childhood Workforce
National Committee on Pay Equity
National Council of Jewish Women
National Council of Negro Women, Inc.

National Employment Law Project
National Hispana Leadership Institute
National Law Center for Homelessness
National Organization for Women
National Women's Conference
National Women's Law Center
NETWORK: A National Catholic Social Justice Lobby
New Girl Times
NOW Legal Defense and Education Fund
Poverty Law Project
Public Education and Policy Project
The Welfare Law Center
United Church of Christ, Office for Church in Society
Wider Opportunities for Women
Women Employed Institute
Women Work! The National Network for Women's Employment
Women's Legal Defense Fund

What They're Saying . . .

"As employers, Lutheran Services in America organizations face the same issues that every non-profit and corporate employer in America does by having to work within a budget and provide services to its clientele. But, we also believe that workfare recipients perform important work that should be valued fairly and covered by the Fair Labor Standards Act. We in Lutheran Services America challenge other employers to join us to be involved and become responsible in the opportunities we give workers."

-- Rev. Faye R. Coddling
Lutheran Services in America,
employer at nursing homes and child care centers

"The National Association of Service and Conservation Corps' 120 member corps across the country historically have employed welfare recipients to perform work for the benefit of their communities. Traditionally, Youth Corps have paid at least the minimum wage to everyone who has worked for them, regardless of their status as recipients of public benefits. We applaud the Clinton Administration for reaffirming this policy for all employers."

-- Kathleen Selz, President
National Association of Service and Conservation Corps

"If our commitment to help those struggling to escape poverty is real, then we must be vigilant in ensuring that the protections so critical to the success of other workers are also available to welfare recipients. The Leadership Conference believes that we must stand firm in our commitment to uphold basic employment protections for all individuals, particularly those most vulnerable. Ensuring that low-income individuals are protected against sub-minimum wages, inhumane working conditions, exploitation, and discrimination is only one piece of a larger, more fundamental struggle to help low-income families chart an escape path from poverty to financial independence."

-- Wade Henderson, Executive Director
Leadership Conference on Civil Rights

"Research indicates that the TANF [Temporary Assistance for Needy Families or 'Workfare'] program must include worker protections if we expect women to move from welfare to self-sufficiency. Simply providing jobs for welfare mothers will not enable them and their families to get out of poverty."

-- Institute for Women's Policy Research

What They're Saying . . .

"I applaud the President in his decision to apply labor standards, most notably the minimum wage, to welfare recipients required to return to the job market. Welfare recipients put to work are entitled to the same benefits as any other worker. To pay them less than a minimum wage is unconscionable."

-- Sharon Sayles Belton
Mayor of Minneapolis

"I have introduced legislation which would require that welfare recipients in work assignments in California have the same rights as other workers on job sites, including, first and foremost the right to receive at least the minimum wage. I strongly believe this is the best policy for California and for the nation. The Clinton Administration is to be congratulated for concluding that the Fair Labor Standards Act protects welfare recipients."

-- Antonio Villaraigosa
Majority Leader
California State Assembly

"While Workfare may be helpful in introducing some welfare recipients to the demands of the workplace, without job rights participants could all too easily be exploited. Treating Workfare participants differently from other employees would send the wrong message. It tells them and their potential employers they should not be viewed as members of the workforce. In contrast, treating Workfare participants as employees, with the rights and protections due employees, will help integrate them into the workforce and motivate them to develop and advance on the job."

-- Illinois State Representatives
Carol Ronen, Constance Howard,
Larry McKeon, Louis Lang,
Michael Smith, Kevin McCarthy,
Rosemary Mulligan, Michael Giglio,
Angelo "Skip" Saviano, Janice Schakowsky,
Larry Woolard, Steve Davis,
Arthur Turner, Mike Bost,
Lou Jones, Shirley Jones,
Miguel Santiago and Charles Morrow

Polling Data: Minimum Wage Coverage For Workfare Recipients

Peter D. Hart Research Associates conducted a national voter survey, June 6-9, that included questions on extending minimum wage and other workplace legal protections to welfare recipients in workfare programs. Key findings include:

- **Strong voter support for minimum wage coverage.** The survey results reveal that voters strongly believe that minimum wage laws and other basic legal protections should apply to those in state workfare programs.
 - Fully 69 percent agree that workfare participants should be covered, while just 25 percent believe that states should not have to pay participants the minimum wage.
 - The breadth of support for minimum wage coverage is also striking, including two-thirds of those with incomes over \$50,000 (67%), professionals (67%), and white voters (67%). Even college educated men (71%) and Republican voters (62%) favor minimum wage coverage by large margins.
- **Voters are concerned about wage impacts.** By a decisive two-to-one margin (59%-31%), voters agree that workfare participants should be covered by minimum wage and other basic workplace protections to prevent the corrosive effect that sub-minimum workfare protections could have on the jobs and wages of low-wage workers *outside* of workfare programs. These margins occur *despite* a powerful opposition case that focuses on the cost of coverage to taxpayers.
 - 59 percent agree with the statement that many current minimum-wage employees would lose their jobs if workfare participants could be forced to work for less; and that exempting one group of workers from minimum-wage protections opens the door to undermining the minimum wage for others.
 - 31 percent agree with the statement that taxpayers would have to support higher welfare budgets if states are forced to pay the minimum wage; and that welfare recipients who want better pay should get off welfare and find a job on their own.

G.O.P. in House Moves to Bar Minimum Wage for Workfare

By ROBERT PEAR

WASHINGTON, June 11 — Republicans in Congress moved today to make sure that tens of thousands of welfare recipients would not be covered by the minimum wage.

The Republicans said they intended to overturn a recent ruling by President Clinton that guarantees the minimum wage for welfare recipients participating in "workfare" programs run by public agencies or nonprofit organizations.

A proposal to exempt such welfare recipients from the minimum wage is included in budget legislation moving through Congress this week. Welfare recipients working at low-wage jobs in private industry would still be covered.

By a party-line vote of 25 to 19, the House Committee on Education and the Work Force decided today that the minimum wage should not apply to welfare recipients in state workfare programs. The House Ways and Means Committee reached a similar conclusion on Tuesday night, by a vote of 22 to 16.

The issue generated passionate debate. Representative William L. Clay of Missouri, the ranking Democrat on the Education Committee, said the Republicans' desire to pay sub-minimum wages to workfare participants "reminds me of slavery's cruel exploitation of human labor."

Representative Matthew G. Martinez, Democrat of California, said, "The minimum wage is a moral question, just as much as slavery was a moral question."

Liberals like Representative Richard A. Gephardt of Missouri, the minority leader, denounced the Republican plan. So did moderate Democrats like Representative Tim Roemer of Indiana, who voted for the welfare bill last year.

"The Republican proposal rips the heart out of the minimum wage," Mr. Roemer said.

Republicans countered with the argument that workfare was not true employment. Representative David M. McIntosh of Indiana said workfare provided welfare recipients with "an opportunity to learn the habits and skills needed for work in the private sector."

Representative James M. Talent, Republican of Missouri, said workfare participants often got a package of cash benefits, food stamps, Medicaid, child care and housing subsidies worth far more than they could earn by working 20 or 30 hours a week at the minimum wage. The minimum wage, now \$4.75 an hour, is scheduled to rise to \$5.15 on Sept. 1.

People in workfare programs work, for example, as street cleaners, file clerks, library aides and

Republican of New Jersey, said workfare was "a very cost-effective form of training." To require the minimum wage, Ms. Roukema said, would "put an untenable burden on governors" as they try to move people from welfare to work.

Governors of both parties have objected to the Clinton Administration's decision, saying it sharply increases the cost of work programs for welfare recipients.

Mr. Talent said a minimum wage requirement would make workfare prohibitively expensive for many states. The welfare law imposes stringent work requirements on welfare recipients.

"If we increase the cost of community service jobs, it will undermine the work requirements," he said. "Welfare recipients will never get from dependency to self-sufficiency."

The Education Committee today

A 'moral question,' or a 'cost-effective form of training'?

also drafted legislation to help small businesses band together and buy health insurance for their employees at reduced rates.

Under this proposal, national trade associations could offer health insurance to their members, including small-business owners, farmers and restaurateurs. Such group health plans could be exempted from state insurance regulation.

Representative Harris W. Fawell, Republican of Illinois, said: "Over 80 percent of all uninsured children are in families with working parents. Nearly two-thirds of these parents work for small businesses, which, under our bill, will gain more access to affordable health coverage."

The White House expressed "strong opposition" to the proposal. Franklin D. Raines, director of the Office of Management and Budget, said the bill would leave consumers without meaningful protection if their health plans ran short of money to pay claims or improperly denied claims.

Mary Nell Lehnhard, a senior vice president of the Blue Cross and Blue Shield Association, said the new insurance-buying groups proposed by Mr. Fawell would destabilize the insurance market by siphoning off millions of healthy workers whose premiums could otherwise subsidize

Can States Afford to Pay the Minimum Wage to Welfare-to-Work Participants?

Some have argued that applying basic labor law protections to welfare-to-work recipients is too expensive. This argument is both false and misleading. First, the range of options available to the states and the current block grant levels combine to assure that every state can meet the laws' requirements. In fact, every state but Mississippi could afford to pay the minimum wage to all participants even if none of the education and training options, which because they are not work do not require the payment of wages, were used. Second, it is just plain wrong to argue that we can successfully encourage a transition from dependency to self-sufficiency if we do not afford program participants protections afforded to every other American worker.

STATES HAVE PROGRAM FLEXIBILITY AND BUDGET SURPLUSES

- States have 13 options for meeting work requirements, many of which are activities that would most likely NOT be covered by the FLSA coverage, such as job readiness training, or time in vocational-education, and fulfilling high school. Minimum wage standards will have no effect on the cost of these options and these programs will be more suited to the particular needs of many welfare recipients.
- Although federal requirements for hours-of-work increase over time, the range of options for meeting these work requirements also expand.
- States have significant flexibility about how to meet work requirements. They can limit the numbers of people in workfare without cutting off aid (e.g., by age of kids, opt-out of 2 month community service option, waiver from food stamp work requirement to relieve pressure of finding so many "slots").
- Some states are already very far along in meeting the initial work requirements (NY already relies heavily on vocational education; Illinois and Pennsylvania may already meet their first year work requirements without having to place more recipients).

WELFARE TO WORK CAN ONLY WORK WHEN WORK IS HONORED

- The most important goal of welfare-to-work policy -- placing former welfare recipients in unsubsidized, private sector jobs -- will be encouraged by increasing the standards required under other options. Employee protections are a positive incentive for states to pursue comprehensive reform.
- The whole point of welfare reform is reduced welfare dependency. The key to reduced dependency is living-wage work and skill development.
- Any Congressional action to reverse the Administration's position would run counter to every legislative effort to reform welfare by expanding work. Since the original Social Security Act, federal policy has acknowledged that pressure to enforce work must also include pressure to raise living standards through fair payment. Many federal programs (WPA, CWTP, CETA) required prevailing wage payments, not just minimum wage.
- If states cannot meet the competing demands of creating jobs, defending living standards, and protecting state budgets, the Department of Health and Human Services has the power to grant additional flexibility under "reasonable cause" exemptions.

BACKGROUND STATISTICS ON THE IMPACT OF MINIMUM WAGE REQUIREMENTS

- The new welfare law requires states to have 25 percent of their caseloads in work-related activities for 20 hours a week this year. Any estimates of the impact of minimum wage coverage must acknowledge that (1) not all work activities will be covered by the minimum wage, (2) not all welfare recipients have to be in work, and (3) not all recipients will be forced to work full time. These realities make detailed estimates difficult.

- The Center on Law and Social Policy has estimated that only one state (Mississippi) would be unable to conform with the welfare law's current work requirements without increasing benefit levels if food stamps are included in the calculation of earnings. This is already allowable under the Food Stamps Workfare program, a program which also includes minimum wage requirements.
- Minimum wage requirements could easily be met by employers involved in workfare programs. The median state grant of \$383 means that in more than half of the states employers would only have to pay 70 cents an hour or less to meet FLSA requirements.
- State grants under the Temporary Assistance for Needy Families program (TANF) are set at 1994 levels, but caseloads have fallen. States receive funding for 5.0 million families, but current caseloads are only 4.1 million. The difference between funding and caseloads will make it easier for states to comply.
- The Urban Institute reports that even in 1994, before the welfare law passed, 23 percent of all adults receiving welfare were engaged in work activities or training that may be allowable under TANF work requirements.

WHAT THIS MEANS FOR EMPLOYEES

- Without FLSA coverage, workers sitting right next to each other doing exactly the same tasks will see that one is getting at least the minimum wage and the other is not. Acknowledging the employee status of workfare participants is key to promoting workplace acceptance.
- If the intent of welfare reform is to get welfare recipients into the real world of work, then they should experience the real world of work; if we want them to be able to support their own families off of welfare, they should be working at jobs that pay at least the minimum wage.
- Without FLSA coverage, employers will have incentives to fill positions with much cheaper welfare recipients rather than "regular" workers, degrading the entire lower end of the labor market in the process. In Mississippi, for example, a workfare worker working the required 20 hours a week would earn the equivalent of only \$1.50 an hour for their grant.

WHAT THIS MEANS FOR EMPLOYERS

- Without FLSA coverage, employers could hire welfare recipients for free, even if their welfare grant divided by the hours worked were less than the minimum wage. With FLSA coverage, employers would have to at least chip in the extra on top of the grant subsidy to come up to the minimum wage (see estimate above).
- Employers will still enjoy heavily subsidized workers through workfare and tax breaks.
- When the public supported welfare reform, we don't believe they intended welfare reform to provide free labor for businesses.
- In some states, private businesses can get tax breaks on top of the subsidized labor so that they have heavy incentives to displace current workers or create short-term positions solely to take advantage of low-cost labor.

AFL-CIO Public Policy Department

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The Washington Post

AN INDEPENDENT NEWSPAPER

Wages of Welfare Reform

THE PRESIDENT was right to order that welfare recipients put to work under the terms of last year's welfare bill be paid the minimum wage. The objecting governors and other critics are likewise right when they say that his decision will throw the bill even further out of whack than it already was. What the president basically proved in doing the right thing on the wage was how great a mistake he made in caving in to election-year pressures, some of them of his own making, and signing the bill to begin with.

The problem with the welfare part of this legislation—as distinct from the gratuitous cuts that it also imposed in other programs for the poor—is the mismatch that exists between its commands and the resources it provides to carry them out. The basic command is that welfare recipients work, but that's not something that can be achieved by the snap of a finger or the waving of a wand or it would have happened long ago. A lot of welfare recipients aren't capable of holding down jobs without an enormous amount of support. Nor, in many cases, are there jobs enough in the private sector to accommodate them even if they could hold them down.

The cost to the states of putting to work as many recipients as the bill requires was already going to be greater over time than the fixed funding in the bill. The minimum wage decision will only add to the cost; hence the squawk from the governors. But it's not the decision that was wrong. Welfare recipients put to work are no less entitled to the protections of the wage and hour laws than other

workers. To pay them less would also be to undercut the wages of other workers with whom they will now compete for low-paying jobs. That was a major part of the argument organized labor used in pushing for the order. Wages in that part of the economy are already too low to support a family, and income inequality in the country generally is too great.

The law requires that increasing percentages of welfare recipients work each year. States that fail to meet the targets risk loss of some of their federal funds. The number of hours a recipient must work to qualify also increases. Twenty hours a week will be enough at first, but eventually that will rise to 30. For now, the way the president's order is written, most states will be able to put recipients to work themselves, or pay private employers to do so, for about the amount of a monthly welfare check. But over time that will cease to be true; a welfare check that will pay for 20 hours at the minimum wage won't cover 30.

The state will have to come up with the difference. Or it will have to start lopping people off the rolls for other reasons. The bill gives states power to do that, too, and that's what welfare advocacy groups fear may happen in states whose low benefits won't cover all the hours the bill requires. Back to the mismatch: The bill requires more than it pays for. As with the other flaws in this misbegotten legislation, sooner or later this one needs to be fixed, or a lot of vulnerable people including children badly in need of help are going to end up harmed instead.

France Reaps Its Reward

FOR SOME time now, a debate has raged about the efficacy of linking trade and politics in relations with China. Some say you can use one to achieve results in the other; others argue that business is business and let's keep human rights out of it. An event in Beijing on Thursday should settle the matter: You can use trade to influence political relationships.

Unfortunately, the example at hand involves China's using trade to get its way, not the other way around. A month ago, France helped make sure that the United Nations Human Rights Commission wouldn't even discuss China's dismal hu-

man rights, China notes France has made a wise decision," President Jiang Zemin said, according to a spokesman. Of course, there's no need for Americans to get too high and mighty about such French behavior. This country, too, has made its opportunistic deals.

Nevertheless we were reading about Mr. Chirac's salute to China—which "will be one of the top nations of the world," and which "must be one of our main partners"—at the same time we happened to be reading about Wei Jingsheng. Mr. Wei is a brave dissident, one of thousands in Chinese

Paid in full

There's a strange double standard applied to people on welfare. They are considered second-class citizens, even when it comes to work.

The effort to force people off welfare through a host of reforms has gained momentum, and recipients are being given time limits and other requirements aimed at getting them trained and working.

But some people want more. They think that welfare recipients who go to work shouldn't be paid the minimum wage.

That doesn't make sense, and the White House knows it. It agreed that most of the recipients being placed in work programs should be covered by the minimum wage law.

That didn't sit well with governors of both parties or the authors of the welfare reform law, who said the move would vastly increase the cost of running work programs and leave most states unable to enroll the required number of recipients. They'd rather pay them less than what is already a low wage.

Previous welfare laws explicitly outlined when minimum wage laws applied, but the new legislation does not. That left the door

open to interpretation.

Labor leaders insisted that welfare recipients are covered by the Fair Labor Standards Act, which requires the minimum wage in most cases, and after months of study, the White House agreed.

Public employee unions have opposed welfare programs in part because of concerns about worker displacement. The fear was that local governments would be less likely to hire union members to sweep streets if welfare participants could be forced to do the same work at much lower rates.

Paying the minimum wage to welfare participants should not be an issue. If the goal is to get them into the workforce and keep them there, it makes sense that they should not be paid second-class wages. Those who believe that the minimum wage somehow subverts welfare reform ought to reassess their position.

At a time when the safety net is threatened, it is particularly foolish to eliminate a class of nonworking poor only to create a class of serfs.

Newsday
EDITORIALS

"Where there is no vision, the people perish."

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Workfare Wages

Paying minimum wage makes sense; welfare clients already get that much in grants.

During the supercharged debate over welfare reform, the politicians said time and again that the point was to end dependency and instill in recipients respect for the value of work. Now the White House has agreed with the U.S. Labor Department that welfare beneficiaries in work programs are perform-

ing a service in exchange for income — so by definition, they are covered by the Fair Labor Standards Act and must be paid the minimum wage. That is as it should be.

The governors who lobbied so hard for welfare revision boasted that they could move welfare recipients into private-sector

jobs. To the extent they succeed, a debate over paying minimum wage is moot: Private employers must pay it. Besides, those in education and training programs would be exempted.

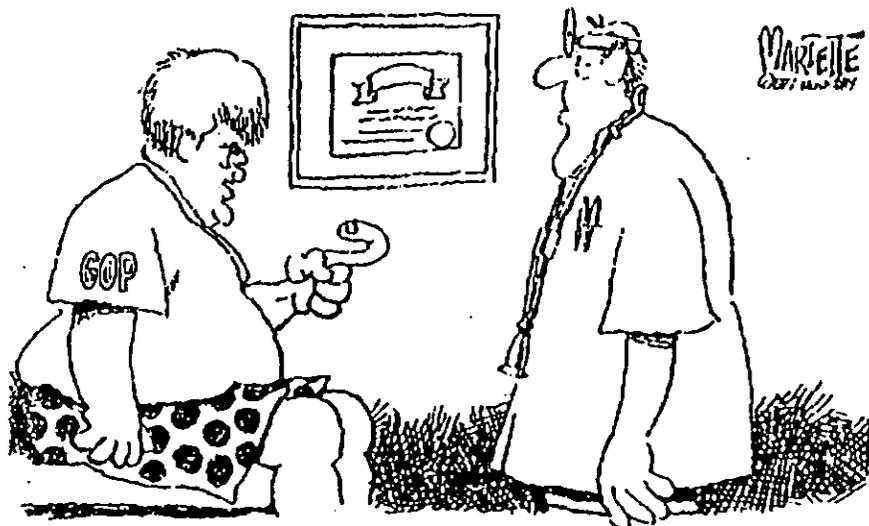
The controversy arises over what to do about recipients who are working for local or state governments, performing tasks like cleaning parks or providing clerical help.

The governors and others who complain about costs have a weak case: The minimum wage is itself so low that in all the states but Mississippi, welfare benefits plus food stamps already equal or exceed what the minimum wage would pay a welfare worker for the required 20-hour week. Costs will rise over time as more hours of work are required, and after the minimum wage rises to \$5.15 in October. Even then, however, a 30-hour-a-week welfare worker would be paid \$8,034 a year — \$4,000 less than the poverty level for a family of three.

The issue does get more complicated when other modifications are explored. The Treasury Department, for example, is researching whether there are implications for payment of Social Security and unemployment taxes. None of these intricacies was thought through in the political rush to enact welfare revision last year. Now they must be.

Paying the minimum wage is the right thing to do economically and philosophically. There already is enough downward pressure on wages among those on the lowest rungs without creating a new pool of minimum-wage workers to pull wage rates down further. And besides, if government wants welfare recipients to start thinking and acting like workers, it must treat them as workers, too.

MARLETTE'S VIEW



"IT HAPPENS EVERY TIME I POINT AT THE DEMOCRATS!"

Vallone's NYPD Audit Board Deserves Support

Who's going to watch the officers who watch the officers? In 1994, the Mollen commission

board all his own — composed solely of his appointees — and he beat Vallone in court

about Vallone's new proposal, they haven't yet cut loose with the heavy-duty handbook

Today's debate: WELFARE REFORM

Rush to workfare costs jobs of working poor

OUR VIEW Welfare laws need to be fine-tuned; they're hurting those most vulnerable to job loss.

Schools in Baltimore are bringing in welfare recipients to do janitorial work at \$1.50 an hour, less than one-third the minimum wage, rather than renew contracts with agencies that supplied custodians at \$6 an hour. The new workers continue to receive federally financed welfare benefits, at no cost to the schools.

It's a sweet deal for the money-short schools and useful work experience for people who soon must get off welfare. But what about those janitors who were displaced? How many are unemployed and candidates for the welfare rolls?

As Washington and the states push welfare recipients to work, they've created a way for employers, public and private, to replace regular employees with cheaper labor. The losers are folks who had stayed off welfare with low-income work. They're vulnerable to reduced hours, disappearing jobs and lesser wages and benefits.

A Jersey City, N.J., hospital is cutting full-time aides while hiring people on welfare as "volunteers" to do the same work.

In Nassau County, N.Y., a custodian laid off in 1992 and ultimately forced onto welfare returned to the same job last year — but as a welfare "trainee" at lower pay, no benefits and no vacation.

No one has yet quantified the problem. But the vulnerable population is large: 38 million working poor who at \$7.50 an hour or less often have no health insurance. And even with the economy thriving, most states are short of the low-wage, low-skill jobs that the working poor hold and welfare recipients need. Yet welfare reform requires that by the turn of the century, nearly 50% of all adults getting welfare assistance — 4 million people — must spend at least 30 hours a week in some sort of work.

The law bars employers from firing existing workers to hire welfare recipients whose compensation is subsidized by the state. But its intent can be defeated by re-

The job gap

State studies document the challenge of placing welfare recipients in jobs:

California: More than 1 million people have to be moved into a job market where 2 million people not on welfare are already looking for work and another half-million part-timers want more work. State's economy is growing by only 300,000 jobs a year.

New York: 1.2 million potential job seekers, including adults on welfare, for 242,000 job openings.

Maryland: Of 44,000 new jobs created in 1994, more than 38,000 were high technology or professional work requiring college degree or better. Yet work must be found for 79,000 welfare recipients.

Minnesota: Ratio of job seekers to job openings is 2.7-1; for jobs with a "livable wage," 6-1.

ducing hours, wages or benefits for existing workers or terminating outside contracts; workfare recipients can then fill vacancies.

Backers of the 1996 welfare reform minimize the problem. They fear a backlash could reverse momentum running their way. On the other side, unions trumpet scare stories, not research. But anecdotal evidence is accumulating. In addition to subtle and overt job displacement, employers from Salt Lake City to Richmond, Va., report the flow of welfare recipients into the workforce is helping keep pay rates down.

And when the inevitable economic slowdown arrives, with shrinkage in low-income jobs, the situation is likely to resemble a nasty game of musical chairs with far more players than wage-paying seats.

Welfare reform was long overdue. But the 1996 law, driven by simplistic budget-cutting politics, did little to spur the job growth needed to deal with underlying poverty and lack of opportunity. President Clinton wants to spend \$3 billion for job-training grants and tax breaks to employers who hire welfare recipients. First, some spade work is needed. Moving welfare recipients to work is a fine objective. But throwing the working poor out on the street is an unacceptable price.

Reform that risks throwing the working poor out of work and onto the welfare rolls is not worthy of the name.

The Philadelphia Inquirer

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A14

Wednesday, April 2, 1997

EDITORIALS

Money for hire

Use Pa.'s surplus to create public-service jobs.

Mayor Rendell commiserated Monday with other mayors over the burdens of the new welfare law. He urged a federal jobs program for the millions nationwide who will be forced off the rolls.

Mr. Rendell is right. It was irresponsible of Congress to pass, and President Clinton to sign, a welfare plan that did little to create jobs for folks who'll lose their benefits.

Some states aren't in good shape to bankroll a jobs program.

In New Jersey, for example, Gov. Whitman already is resorting to budget gimmickry to close a deficit and to fund the state pension system. But in Pennsylvania, which expects a surplus of more than \$300 million when the budget year ends June 30, a jobs initiative is doable.

A coalition of labor unions, community groups and religious organizations has come together to support a \$135 million jobs plan by State Sen. Vincent J. Hughes (D., Phila.).

In Republican-dominated Harrisburg, this Democratic plan is going nowhere fast. But it could spur debate and prepare the ground for a bipartisan jobs bill.

Sen. Hughes' bill would create 10,000 full-time jobs statewide, ranging from boarding up abandoned

homes to cleaning up parks. The workers would get \$6 an hour, or the "prevailing wage," if that's higher.

The pay would be set substantially above the minimum wage — \$4.75 an hour — partly to calm concerns that such a jobs program would push down the wages of other low-paid workers. That's no small issue — given the widening gap between low-income and high-earning Americans.

Still, there are compelling arguments for putting these public-service jobs at or close to the minimum wage. Such jobs are a first step out of dependency for people who can't find work in the private sector. Why should government, acting as the employer of last resort, pay more than private companies offer their least-skilled employees?

This level of pay would give welfare recipients an incentive to strive toward better jobs, in turn opening up slots for other low-skilled people. Also, since money for a jobs program isn't unlimited, keeping pay low allows more jobs to be created.

"Most workers in the inner city are ready, willing, able and anxious to hold a steady job," wrote sociologist William Julius Wilson last year. Yes. And government must do more to help prove him right.



Leadership Conference on Civil Rights

1629 "K" St., NW, Suite 1010
Washington, D.C. 20006
Phone: 202 / 466-3311
Fax: 202 / 466-3435
TTY: 202 / 785-3859

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Disability Rights Education and Defense Fund

Stephen P. Yokich

*International Union, United
Automobile Workers of America*

Raul Yzaguirre

National Council of La Raza

COMPLIANCE/ENFORCEMENT COMMITTEE

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POLICY/RESEARCH ASSOCIATE

Karen McGill Lawson

LEGISLATIVE ASSISTANT

Brian Komar

(*Deceased)

May 15, 1997

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

Re: Welfare Reform and Civil Rights Enforcement

Dear President Clinton:

On behalf of the 180 national organizations that comprise the Leadership Conference on Civil Rights, the nation's oldest and most broadly-based civil rights coalition, we write to request your assistance in making the civil rights and economic security of low-income individuals and families a higher national priority, as states implement the recently-enacted Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA).

The Leadership Conference believes that real welfare reform must remain true to fundamental principles of equality, fairness, and social justice while increasing the chances for all families in need to become economically independent. The changes required by the PRWORA create new challenges -- and new risks -- to upholding these fundamental principles.

New Threats of Discrimination Targeted at Low-Income Families

The PRWORA creates perverse new incentives for states to deny assistance to needy families and act in discriminatory ways, thus, erecting new hazards for individuals who already face discrimination: persons of color, women, people with disabilities, and older people. For example:

"Equality In a Free, Plural, Democratic Society"

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- **With the elimination of the individual entitlement to welfare benefits and services and the lack of clear rules, crucial decisions about who gets benefits, who gets services, and who gets penalized, may be made in arbitrary and discriminatory ways.** For example, as a result of the new legislation states now have wide latitude to use different rules in different geographic areas. As a result, communities with a high concentration of racial or ethnic minorities such as cities may receive lower benefits, fewer services, or be subject to harsher rules and penalties.
- **The harsh new restrictions aimed at legal immigrants will likely worsen discriminatory practices that many ethnic minorities already face.** Individuals who are eligible to participate in a particular welfare program could be shut out simply because they have an accent and are assumed not to be citizens. While the Department of Justice will be issuing guidance on verification of status procedures to providers that distribute federal public benefits, there will be no procedure to monitor the providers and likely no consequence to a provider that discriminates. Others may lose benefits because they are unfamiliar with new welfare program rules and cannot obtain materials in their native language. Still others are already being shunned by employers, or unfairly selected out to produce identification documents, simply because they "look foreign."
- **Early reports suggest that pressure on states to place recipients in jobs and meet strict new work participation requirements may push women, especially women of color, into low wage, stereotyped "women" and "minority" jobs with little training and few prospects for future employment.** States attempting to raise their work participation rates also may "cream" job seekers, i.e., focus more attention on individuals perceived as "more desirable" or the closest to being job-ready, and offer less desirable assignments to minorities, people with disabilities, older workers, pregnant women, immigrants and others who too often lose out on job opportunities, because of discriminatory stereotypes about their abilities.
- **Early reports also suggest that rigid new work participation requirements may discourage states and employers from assessing and accommodating the needs of individuals with disabilities.** A recent study by the Urban Institute found that 16-20 percent of women receiving AFDC (under the old welfare law) reported one or more disabilities that limited their ability to work. But some individuals with disabilities may be unable to comply with the new law's work requirements because their disability has never been identified, assessed, or reasonably accommodated. Moreover, specific provisions in the new law may have discriminatory effects on individuals with disabilities: the twelve month time limit on participation in vocational education, for example, may unfairly impact individuals with learning disabilities who need to enroll in specialized programs of a longer duration.

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- **Increased sexual harassment is a foreseeable problem.** Women are the majority of adult welfare recipients. Given the documented instances of sexual harassment in our society, it is reasonable to assume that some of these women may become victims of harassment in the workplace because they are particularly vulnerable -- i.e. they risk losing vital benefits if they cannot keep their jobs.
- **Children may be penalized unfairly by welfare reform simply because of the circumstances of their birth; i.e. because their parents were unmarried, or young, or immigrants.** As a result, the new law will take benefits away from children who otherwise would receive them under the old AFDC program and who now desperately need them.

Recommendations

Welfare reform should not mean a loss of civil rights protection. Moreover, devolution of power to the states cannot and must not mean the abandonment of the federal government's responsibility to provide basic civil rights protections for low-income individuals and families. The new welfare law does not modify the many civil rights laws that protect against discrimination, nor does it alter the federal government's continuing obligation to enforce such laws. In this changed environment, the role of your Administration will be critical. We urge the Administration to:

1. **Vigorously enforce the laws prohibiting discrimination in federally funded programs, including those specifically listed in the legislation and Title IX of the Education Amendments of 1972, as part of welfare implementation.** As the recent U.S. Commission on Civil Rights report, *Federal Title VI Enforcement to Ensure Nondiscrimination in Federally Assisted Programs* (June 1996) concluded, there has been a history of under enforcement of Title VI, especially in the context of block grant programs. Given the heightened potential for discriminatory practices under the PRWORA, the federal government must develop new strategies to detect and challenge discrimination, and better coordinate its enforcement efforts.
2. **As states submit, amend and expand their state plans, the federal government should require specific information about the "objective criteria" states will use to determine eligibility; how they will assure "fair and equitable treatment;" and how they will provide welfare recipients an opportunity to be heard as required by the PRWORA.** The Department of Health and Human Services does not have the authority to disapprove state plans, but it does have the responsibility to determine whether the plans are complete. Requiring states, as they submit their plans in future years, to articulate the standards and procedures they intend to follow is critical to prevent arbitrary and discriminatory decision-

making at both the level of individual benefit determinations as well as the level of state-wide implementation. For example, if the state plan proposed differences in treatment for predominantly minority urban areas and predominantly white suburban areas, potential violations of Title VI could be identified and deterred.

3. **Vigorously enforce other civil rights and labor laws on behalf of welfare recipients, including Title VII of the Civil Rights Act of 1964, the Equal Pay Act, the Age Discrimination in Employment Act, the Occupational Safety and Health Act, the Fair Labor Standards Act, the Americans With Disabilities Act and Section 504 of the Rehabilitation Act, the Immigration Reform and Control Act, and the Family and Medical Leave Act.** Welfare recipients, whose families' access to subsistence benefits hinges on their ability to get and keep jobs, will be easy and vulnerable targets for discrimination. They are entitled to the same protections against discrimination, unsafe working conditions, and exploitive pay as other workers. And enforcing the law on their behalf protects all workers, by reducing the incentive to replace current employees with cheaper and more exploitable labor.
4. **Ensure that states comply with the requirements of the PRWORA to maintain assistance to single recipients who cannot obtain child care for a child under six years old, and maintain Medicaid coverage for eligible families.** The Administration should ensure that states comply with the law's provision protecting families with children under six from being penalized if lack of child care prevents them from accepting a work assignment by requiring states to conduct case reviews of a sample drawn from families that have been sanctioned.
5. **Work to repeal the provisions of the PRWORA that severely limit the eligibility of legal immigrants and refugees for a wide variety of federal benefit programs, and to address the inadequacies of the naturalization process.** The provisions of the PRWORA related to legal immigrants are blatantly discriminatory in that they treat foreign-born individuals differently than those who are born in the United States, denying them benefits until they have become naturalized citizens regardless of whether they work and pay taxes to the United States government. These provisions have a particularly discriminatory impact on elderly and disabled immigrants, many of whom are unable to fulfill the English language and civics requirements for naturalization or to take a meaningful oath of allegiance and therefore will remain permanently ineligible for Supplemental Security Income and Food Stamps.

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We also urge efforts to allow legal immigrants to continue to receive assistance while they are in the naturalization process, to waive the English language and civics requirements for an expanded class of elderly immigrants, and to allow individuals who are too disabled to naturalize to continue to receive federal benefits.

In addition to challenging discriminatory practices at the state level, we urge the Administration to work diligently at the federal level to remedy the harshest effects of the new law. The Administration has begun some of this work, but there is more to do. For example, we support proposals in the Administration's budget to mitigate the new law's hardships for the most vulnerable legal immigrants, people with disabilities and children. But the far-reaching impact of the new law -- almost all noncitizens are no longer eligible for SSI and Food Stamp benefits, and new immigrants will be barred from federal means-tested benefit programs for five years -- will require the Administration to take more steps to restore the status of legal immigrants as full and equal members of American society.

We strongly urge the Administration to take advantage of any flexibility permitted under the new law to minimize its negative consequences. For example, the PRWORA targeted the SSI Childhood Disability program for cuts, and required the Social Security Administration to develop a new definition of childhood disability. Unfortunately, the Social Security Administration failed to take advantage of the statute's flexibility, and has issued unnecessarily harsh interim final regulations. If these regulations are not changed, they are likely to disqualify at least 135,000 children with significant impairments, and to fall especially heavily on children with mental retardation or mental health problems.

Restricting children's eligibility for the SSI Childhood Disability Program will also restrict their eligibility for Medicaid. Most children who qualify for SSI are automatically eligible for Medicaid; thus, children who fail to meet the new restrictive definitions for SSI eligibility lose this automatic coverage. Some will qualify for Medicaid on other grounds; others, however, will not. We commend the Administration for proposing to continue Medicaid coverage for children currently receiving SSI, who are disqualified under the new rules defining childhood disability. However, this proposal only helps current recipients. It will not ensure Medicaid coverage for children who would have qualified for SSI, and thus Medicaid, under the former rules, but cannot meet the stringent new standards.

New Barriers to Economic Security Facing Low-Income Families

Ensuring that low-income individuals are protected from discrimination is only one piece of a larger, more fundamental struggle to help low-income families chart an escape path from poverty to financial independence. The new law ignores many of the specific barriers -- such as the lack of

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livable wage jobs, transportation, health care, child care, domestic violence counseling, and limited access to quality education and job training programs -- that make it difficult for low-income individuals to move permanently from welfare to work. Many welfare recipients, for example, are being forced to drop out of school and take "dead-end" jobs even though completing their education may be the only way they can get jobs to support themselves and their families.

The welfare to work initiatives included in the budget may mean more funding to help individuals get jobs, but it is unclear what these initiatives will be and how much funding will be available. Even the original budget proposal -- \$3.6 billion allocated over five years -- is not enough to meet the needs of all of those who must find work. **We urge you to pursue meaningful and much-needed reforms, and seek additional funds to: (1) create new jobs that pay decent wages; (2) expand access to education and job training so that welfare recipients can be better prepared for the workplace; and (3) provide necessary support services, such as child care, health care, domestic violence counseling, and transportation costs, that welfare recipients need to go to work.** Without such reforms, welfare recipients will be pitted against, or simply displace, other low-wage workers as they vie for an inadequate supply of jobs and compete for ever-dwindling support services.

This Administration has distinguished itself by standing firm in its commitment to uphold basic civil rights protections for all individuals. We urge you to make the promise of our civil rights laws a reality for all individuals, particularly those most vulnerable, by making civil rights enforcement a top priority as the new welfare law is implemented. And, we urge you to go even further, by working to restore equal treatment for immigrants to this country, a safety net for children and adults with disabilities, and assistance to poor families struggling to achieve financial independence.

Sincerely,

Dr. Dorothy I. Height
Chairperson
Leadership Conference on Civil Rights

Wade Henderson
Executive Director
Leadership Conference on Civil Rights

Horace Deets
Executive Director
American Association of Retired Persons

Jackie DeFazio
President
American Association of University
Women

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Marian Wright Edelman
Founder & President
Children's Defense Fund

Marcia Greenberger
Co-President
National Women's Law Center

Antonia Hernandez
Executive Director
Mexican American Legal Defense &
Educational Fund

Judith L. Lichtman
President
Women's Legal Defense Fund

Paul Marchand
Director
The Arc of the United States

Gerald McEntee
International President
American Federation of State,
County & Municipal Employees

Kweisi Mfume
President & CEO
National Association for the
Advancement of Colored People

Karen Narasaki
Executive Director
National Asian Pacific American
Legal Consortium

Hugh Price
President
National Urban League

Rabbi David Saperstein
Executive Director
Religious Action Center
Union of American Hebrew
Congregations

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Andrew L. Stern
President
Service Employees International Union

Patrisha Wright
Executive Director
Disability Rights Education and Defense
Fund

Stephen P. Yokich
President
International Union, United Automobile
Workers of America

Raul Yzaguirre
President
National Council of La Raza

WOMEN EMPLOYED INSTITUTE

22 WEST MONROE STREET, SUITE 1400 • CHICAGO, ILLINOIS 60603
VOICE 312.782.3902 • FAX 312 782 5249

April 25, 1997

President William J. Clinton
The White House
1600 Pennsylvania Ave.
Washington, DC 20500

Dear President Clinton:

On behalf of hundreds of thousands of women in poverty who will be required to meet the work requirements of Temporary Assistance for Needy Families (TANF) under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, we urge you to support employment protections for participants of "Workfare" and other work-related programs.

Most Workfare programs, which states can create to meet their TANF work requirements, require TANF recipients to work in exchange for their benefits. Unfortunately, TANF does not mention the full range of employment and anti-discrimination laws that can protect Workfare participants from unlawful conduct. Current workers who do not receive TANF are already protected by such employment laws as the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, the Pregnancy Discrimination Act, the Family and Medical Leave Act and the Occupational Safety and Health Act. Denying Workfare participants similar protections sends the intolerable message that employers need not worry about treating Workfare participants fairly or with dignity and would allow Workfare employers to benefit from the labor of Workfare participants who are trying to support their families.

In a typical Workfare arrangement, employers will get TANF recipients to work for 20 hours per week and perform any work that the employer assigns. The employer will direct the participant's work, supervise the participant, and monitor the participant's progress, but will not be required to pay the participant's wages, provide skill training or commit to hiring the participant permanently. In most cases, the employer's extensive authority to direct and control the participant's work will satisfy the legal tests, such as the "economic realities" test that courts have used to determine whether a worker is covered by a particular employment law.

If employment protections are denied to Workfare participants, then this "make work" program, which is not creating jobs, is punishing recipients. In the absence of basic employment protections, Workfare participants are treated as prisoners who may have to endure discrimination or working in unsafe and hazardous environments or risk being sanctioned and losing their TANF benefits if they do not work under these conditions.

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In light of TANF's strict work participation requirements and our economy's lack of a sufficient number of entry-level jobs, we must create programs and policies that help women find livable wage jobs that can support women and their families. Unfortunately, many Workfare programs will not advance these goals. Workfare forces participants to work in any job without regard to whether they need additional education, pre-employment or vocational skills training, or whether that job will lead to permanent, unsubsidized employment before their time limited cash assistance expires. But, if states decide to implement Workfare programs, basic employment protections must be extended to program participants.

As you stated in your proclamation for Women's History Month, women are almost an equal share of the labor force, yet gender barriers still exist that must be broken down. Do not allow Workfare to increase the barriers that women on welfare face as they work to become self-sufficient. We count on you to insure that Workfare workers are covered by the same employment protections that our country ensures for the rest of our workforce.

Sincerely,

American Friends Service Committee
American Jewish Congress Commission for Women's Equity
Black Women's Agenda, Inc.
Center for Women Policy Studies
Chicago Commons Employment and Training Center
Chicago Jobs Council
Child Care Action Campaign
Clearinghouse on Women's Issues
Church Women United
Day Care Action Council of Illinois
Hadassah
Illinois Hunger Coalition
INET for Women
League of Women Voters of Chicago
League of Women Voters of Illinois
Mid America Institute on Poverty
National Association of Social Workers
National Center for the Early Childhood Workforce
National Council of Negro Women, Inc.
National Organization for Women
National Women's Conference

For more information:
Maurice Emsellem
National Employment Law Project
(212) 285-3025, ext. 106

WORKFARE PRESS CONTACTS

May 1, 1997

WORKER ACCOUNTS

- **General Issues**

Kathy Wilkinson (attached press clipping)
Wheeling, West Virginia
(304) 242-7773

Kathy Wilkinson is a single mother with two daughters, ages nine and eleven, from Wheeling, West Virginia. She works two part-time minimum wage jobs at West Virginia Northern Community College – as a lab assistant and a math tutor. She has an Associate's degree and is currently working toward a Bachelor's Degree in Education. Ms. Wilkinson was actively involved in last year's successful campaign to raise the federal minimum wage. In recognition of her work, she was honored at the minimum wage bill signing ceremony and introduced the President. Ms. Wilkinson is now campaigning for the rights of workfare workers for protection under basic employment laws.

Brenda Stewart (attached affidavit)
Brooklyn, New York
(718) 789-6565

Brenda Stewart, who has two children has been receiving Aid to Families with Dependent Children and Food Stamps since was laid off in 1992 from her job of two years with a community-based organization. Since 1994, Ms. Stewart has been assigned to the New York City workfare program doing extensive clerical work (filing, answering phones, and processing mail) for the Department of Social Services, which are duties equivalent to City employee title "Office Aide III". In return for \$561 a month in benefits, she has worked from 20 to as much as 35 hours a week. She was recommended for a full-time position by her supervisors, which she did not receive, and was instead assigned to train the newly-hired worker.

- **Health & Safety**

Ralph Tricoche (testimony attached)
Queens, New York
contact: Karen Yau, National Employment Law Project
(212) 285-3025, ext. 109

Ralph Tricoche is a recipient of Home Relief in New York City. Since August 1996, he has been assigned to the Department of Parks and Recreation workfare program for 46 hours every two weeks in return for monthly Home Relief and Food Stamps totaling \$296 a month. In the Parks Department, workfare workers now outnumber regular paid employees by 3 to 1. Among other responsibilities, Mr. Tricoche has raked leaves, removed garbage and swept the grounds. In fulfilling these duties, he has handled contaminated needles, soiled diapers, cloths and underwear, vomit, faces and Kotex. He has trimmed trees and rode on the back of a garbage truck to pick up garbage. He has used a chain-cutter to cut chains in order to replace old garbage cans. He has performed these responsibilities without any training on his health and safety rights.

Mr. Luis Pagan (attached workers' compensation complaint)
Bronx, New York
contact: Karen Yau, National Employment Law Project
(212) 285-3025, ext. 109

Mr. Pagan is a recipient of Home Relief in New York City. In 1995, he was assigned to a workfare placement in the Department of Parks and Recreation. He was seriously injured on April 16, 1996, working in a parks garage. Over his objection, Mr. Pagan was told to go with a truck driver to deliver garbage to a recycling plant. He was told to unjam the garbage container which was stuck with a tree. Mr. Pagan recalled that when he turned the handle of the container, the handle flew against his mouth "like a bullet". His teeth were knocked out of his mouth and he was rendered almost unconscious and taken to the emergency room. Since assigned to workfare, Mr. Pagan has never received any right-to-know health and safety training or any training in the operation of mechanical equipment. Despite his injury, he has been reassigned to workfare in the parks, and he continues to work without required health and safety training.

- **Discrimination**

For examples of disability discrimination in the operation of New York City's workfare program, contact: Cathleen Clements, Brooklyn Legal Services (Corp. B), (718) 237-5500.

- **Wage & Hour**

For information on an Ohio court case (Marilyn M.) involving a workfare participant who worked 740 hours extra without "compensation" due to an error in the calculation of her hours, contact: Gary Smith, Southeastern Ohio Legal Services (330) 364-7769.

EMPLOYER ACCOUNTS

- **Non-Profit Employers**

Fay Coddling
Lutheran Services in America, Washington, D.C.
(202) 626-7935

Lutheran Services in American (formerly the Association of Lutheran Social Ministry Organizations) is a national organization with local affiliates that operate social service programs for the poor. Lutheran Services in America is a signatory to the Fair Work Campaign, which is a code of conduct for employers of workfare participants guaranteeing basic worker protections, including the minimum wage, and promoting maximum access to job training and job placement.

- **Private-Sector Workfare**

Jerry Helmick, United Food & Commercial Workers, Kansas City, Missouri,
(816) 842-4086
Tim Barchak, Service Employees International Union, Local 91, Kansas City, Missouri,
(816) 931-9100

The Tyson Chicken plant in Sedalia, Missouri, a rural area of Missouri, has developed a program with the local Department of Social Services, which is also being promoted in state legislation, to refer welfare recipients to the plant for minimum wage jobs processing chicken parts. If the recipients do not accept the placements, in what are often hazardous jobs, they are automatically sanctioned from their benefits.

Geri Reilly, New York Assembly Labor Committee, Albany, New York, (518) 455-4311
(see attached correspondence)

In August 1996, the calendar-making company, "At-A-Glance" began employing workfare workers referred by a local community-based organization for work regularly performed by the union workforce. As the regular workforce was laid-off in December 1996, the workfare workers stayed on the job until the program was eventually terminated.

NATIONAL ORGANIZATIONS

- **Civil Rights Groups**

Wade Henderson
Leadership Conference on Civil Rights
Washington, D.C.
(202) 466-3311

Catherine Powell
NAACP Legal Defense & Education Fund
New York, New York
(212) 219-1900

- **Women's Groups**

Ellen Bravo
9 to 5, National Association of Working Women
Milwaukee, Wisconsin
(414) 274-0928

Jocelyn Frye
Women's Legal Defense Fund
Washington, D.C.
(202) 986-2600

Martha Davis
NOW Legal Defense & Education Fund
New York, New York
(212) 925-6635

Melissa Josephs
Women Employed Institute
Chicago, Illinois
(312) 782-3902

- **Fair Work Campaign**

Maurice Emsellem
Fair Work Campaign
c/o National Employment Law Project
New York, New York
(212) 285-3025, ext. 106

- **Labor Unions**

Marc Baldwin
AFL-CIO, Policy Dept.
Washington, D.C.
(202) 637-5202

Marie Monrad
AFSCME, Policy Dept.
Washington, D.C.
(202) 429-1155

Carol Golubock
SEIU, Legal Dept.
Washington, D.C.
(202) 898-3454

- **Low-Wage & Immigrant Worker Organizations**

Roy Hong
Korean Immigrant Workers Advocates
Los Angeles, California
(213) 738-9050

Maurice Emsellem
National Employment Law Project
New York, New York
(212) 285-3025, ext. 106

- Welfare Advocacy Groups

Henry Freedman
The Welfare Law Center
New York, New York
(212) 633-6967

Steve Savner
Center for Law & Social Policy
Washington, D.C.
(202) 328-5118

Cindy Mann\Steve Berg
Center for Budget & Policy Priorities
Washington, D.C.
(202) 408-1080

- Workfare Organizing Groups

John Kest
ACORN
Brooklyn, New York
(718) 693-6700

Benjamin Dolchin
WEP Workers Together!
c/o Fifth Avenue Committee
(718) 857-2990, ext. 18



Before President Clinton signed legislation raising the minimum wage during a ceremony at the White House yesterday, he speaks with Kathy Wilkinson, a minimum-wage worker from Wheeling, W.Va. Her daughters, Lisa and Deborah, are at right.

Clinton Signs a Bill Raising Minimum Wage by 90 Cents

By RICHARD W. STEVENSON
 WASHINGTON, Aug. 20 — Calling a political battle Democrats had played to their advantage for months, President Clinton signed legislation today raising the minimum wage by 90 cents an hour over the next year, saying the measure would give 16 million workers "a chance to raise stronger families and build better futures."

The increase will raise the minimum wage to \$5.15 an hour, from \$4.25. In two steps, the first being an increase of 50 cents an hour in paychecks effective Oct. 1, a month before Election Day.

Sounding a theme that will be central to his re-election campaign, Mr. Clinton said the increase was part of his Administration's record of improving conditions for working Americans.

"Those 16 million Americans will become part of America's economic success story," Mr. Clinton declared at a ceremony on the South Lawn attended by labor leaders, Vice Pres-

ident Gore and a group of children of minimum-wage workers.

For a full-time worker earning the current minimum, the new law, when fully phased in with a 40-cent-an-hour increase on Sept. 1, 1997, will mean an annual raise of \$1,300 before taxes, to \$14,300.

Mr. Clinton used the occasion to credit his Administration with the creation of 10 million new jobs, a steep reduction in the Federal budget deficit and signs that a long period of wage stagnation is ending. The signing is the first of a series of events this week that he hopes will both borrow his Presidential image and emphasize his campaign message that he is the best protector of the economic interests of average Americans.

Mr. Clinton was also clearly seeking to give himself some political momentum in the days leading up to the Democratic National Convention in Chicago next week. He is scheduled to sign legislation on Wednesday to improve access to health insur-

Sounding a theme for Election Day and seeking political momentum.

ance, and he will sign the bill overhauling the welfare system later in the week, probably on Thursday.

Although the minimum-wage increase was largely the work of Democrats in Congress, the legislation also contained many provisions demanded by Republicans to help small businesses. Several Republican legislators were present at the ceremony. Mr. Clinton did not once mention his Republican challenger, Bob Dole, who as Senate majority leader opposed raising the minimum wage.

But he alluded to his campaign's strident criticisms of Mr. Dole's plan to slash taxes on wealthy corporations and a threat to Medicare and other politically sensitive programs.

"A minimum-wage increase, portable health care, pension security, welfare-to-work opportunities — that's a plan that's putting America on the right track," Mr. Clinton said.

"Now we have to press forward," he said, "giving tax cuts for education and child rearing and child care, buying a first home, finishing that job of balancing the budget without violating our obligations to our parents and our children and the disabled and health care, to education and the environment and to our future."

The Dole campaign issued a statement calling the minimum-wage bill a "helpful, but small, step toward addressing the economic anxiety of American workers."

"Remember, a tax cut is a raise,

and that is exactly what Bob Dole will give Americans," said Christina Martin, a spokeswoman for the Dole campaign. "Fair tax cuts, a balanced budget and spurred job growth will be the hallmarks of a Dole Administration."

The minimum-wage legislation was among the most hotly debated bills of the current Congress, and one that for months seemed doomed by strong opposition from the Republican majority. Many Republicans argued that raising the minimum wage would destroy jobs by making it too expensive for employers, especially small-business owners, to keep on as many workers.

But the wage increase won overwhelming public support in opinion polls, and Republicans largely gave in after it was tied to a measure offsetting some of the cost to small business owners, partly through tax breaks valued at \$21 billion over 10 years.

The breaks include more generous provisions for writing off the cost of investments. The measure also simplifies requirements for small-business pension programs. In addition, it contains an unrelated provision establishing a \$8,000 tax credit for couples who adopt a child.

Kathy Wilkinson, a lab assistant and student from Wheeling, W.Va., who is a single parent of two daughters and earns the minimum wage, said at today's signing ceremony that the law would have a "phenomenal" effect on her life.

"It's going to be such a relief to be able to pay the gas and the electric all within one month because I've got that little bit extra in my paycheck," Ms. Wilkinson said. "And for my children, both of whom want to be in the school band, I can now afford to put some money away to get them the instruments."

7. No one ever advised me how my hours of WEP participation were calculated.
8. At the Livingston IS Center, Audrey Brow, the WEP supervisor, assigned me to an Undercare Group in the Income Support Center. The Undercare Assistant Office Manager assigned me to do clerical work. My responsibilities included compiling information for various reports, which involves tallying the number of cases processed each day by the caseworkers. I was also responsible for filing papers, answering the phone, and processing incoming and outgoing mail.
9. My work responsibilities as a WEP participant were equivalent to that of a City employee with the title "Office Aide III".
10. In 1995, the office manager changed my duties as a WEP participant. I was to compile information for various reports, but on behalf of many more caseworkers.
11. In August 1995 I heard from co-workers that there were job openings for clerks at IS Centers. I spoke to the office manager about my applying for one of these positions, and she told me my name had been submitted. I also read a memo to directors of IS Centers asking for lists of potential applicants. A copy of that memo is attached hereto as Exhibit B. I was not hired.
12. Instead, I trained the person who was hired for the clerk position in my office. She then took over the responsibility for compiling information for some of the reports I had been doing.
13. In January 1996 I received a letter from a representative of respondent HAMMONS, advising me my hours of WEP participation were increased to 70 hours every two weeks. A copy of that letter is attached hereto as Exhibit C. As a result, I then worked at the Livingston IS Center from 9 AM to 5 PM, 5 days a week, with one hour for lunch, for a total of 35 hours a week.

14. In the spring of 1996, I went to the ninth floor of 250 Church Street, the headquarters of the New York City Human Resources Administration ("HRA"), where I spoke with a Ms. Nelly Perez about the hiring procedure at HRA. She told me that the agency chose names submitted according to the priority that the ISC directors placed them in. She explained that the agency had not gotten to my name on the list and that I would have to wait. After that, I asked two staff members at the Livingston ISC to write letters of recommendation for me to speed along the hiring process. A copy of the two recommendation letters I received are attached hereto as Exhibit D. In June 1996, I received from the Director and Deputy Director of the Livingston ISC a Certificate of Appreciation for outstanding achievement. A copy of that certificate is attached hereto as Exhibit E.

15. Although my family's budget was reduced in May 1996 to reflect to removal of my husband from the budget, my work hours not reduced at that time. My WEP supervisor, Audrey Brown, told me I need to wait until my case was reclassified to reflect my husband's absence from the household to see if my hours would be reduced.

16. If the work I was performing at that time had been done by a paid City employee, it would have been compensated at a significantly higher rate. On information and belief, an Office Aide III would be paid no less than \$8.50 an hour.

17. As I was working in essentially the same position for approximately two years, it seemed unlikely that my WEP assignment would lead to full-time employment with the City.

18. If my hours of WEP participation had been reduced I could have taken refresher courses in computers and sought employment in that field. I took several computer courses in the past and did very well in them, including being the salutatorian of my class at Crown Business Institute.

19. Since I was required to be at work from 9 AM to 5 PM, 5 days a week, it was extremely difficult for me to pursue other employment opportunities.

20. On or about August 12, 1996, I was told that my name had been removed from the WEP roster at the Livingston ISC. No one at the center or at OES was able to explain to me why my name had been removed. A supervisor at OES told me that I would get a letter from the BEGIN program, but he did not tell me what the letter would say and he did not know when I would get the letter.

21. In November 1996, I received a letter calling me in to the BEGIN program on November 25. I went to the November 25 appointment at the Willoughby BEGIN Center where I was reassigned to WEP, this time at the Department of Health. I was given a referral form for that assignment which informed me that I was to work 40 hours every two weeks. A copy of that referral form is attached hereto as Exhibit F. I was never told how the 40 hours was calculated, and no one I spoke to about my assignment mentioned what wage rate was used to determine the number of hours I was to work.

22. If I do not participate in the Health Department WEP assignment, I could be subjected to a sanction reducing my benefits. My grant is currently not enough to pay all of my bills. On the other hand, if I go to work to avoid a sanction, I would be working at least part of the time for the City for free.

23. I object to being assigned without being told what the Labor Department's determination of the prevailing wage rate is for this new assignment. Also, I am currently contesting my assignment through the administrative process on grounds unrelated to this suit.

24. No prior application has been made for the relief requested herein.

WHEREFORE, it is respectfully requested that the Court grant the relief sought herein.

Brenda Stewart
BRENDA STEWART

Sworn to before me this
18th day of December, 1996.

Michelle Florence Green
Notary Public

MICHELLE FLORENCE GREEN
Commissioner of Deeds
City of New York 3-3559
Certificate Filed in New York County
Commission Expires October 1, 1996

**Statement by
RALPH TRICOCHÉ
WEP Worker**

Submitted to

The Council of the City of New York

**Joint Hearing of the Committee on Parks, Recreation,
Cultural Affairs and International Intergroup Relations and
the Committee on General Welfare**

December 12, 1996

**“Oversight of the Parks Department Use of
Work Experience Program (WEP) Workers”**

Good afternoon, my name is Ralph Trioche. I live in Astoria, Queens and I was a participant in the Work ^{H.R.} Experience Program from August through November of 1996. My first WEP assignment was in Astoria Park in Queens. I was there for two weeks before I was transferred to my own site, Athens Square Park. Athens Square is a playground park in Queens. I was responsible for taking care of this park with one other WEP worker.

When I arrived at Astoria Park, I received no instruction or training to do my job. I was handed a rake and told to rake leaves. When I moved to Athens Park, I was dropped off by the supervisor and told to keep the park clean. The supervisor said, when he came by he wanted to see the park clean. I wasn't told I would be picking up feces or how to deal with bloody needles.

As the person responsible for the park, I did things like paint, clean bathrooms and pick up trash. People who used the park's bathrooms sometimes left feces on the floor, which I had to clean up. When I did painting, I had to scrape old paint off and I had no way of knowing what was in the paint chips that were flying into my nose and mouth. At no time was I issued protective gear to do these things. I was not provided a mask or rubber gloves to do any of these jobs. I believe, I was entitled to a uniform of some kind including pants, shirt and jacket. When I went to work, I had to wear my own clothes which were ruined by the work I did. I received no extra money from welfare to buy clothes to do my WEP job.

In doing my job, I picked up garbage and anything that people left in the park. I picked up bloody needles, pampers, kotex, dirty clothing, broken glass and feces. I received no training as to how to pick these things up and no protective equipment. The only personal protective equipment I ever received was the one pair of gloves. I never

learned about any hazardous material, biological or chemical, virus or bacteria that I may have been exposed to by coming into contact with blood or feces.

In doing my WEP job, I ran the same risk as the Sanitation worker who recently died doing his daily routine when a jug of acid that was left out for curbside pick up, exploded in his face. If I had been hurt doing the same type of daily routine, picking up some unknown hazardous material that had been left in the park, my story never would have made it in the paper. And I wouldn't have even received a decent burial.

I had no chance of getting a real job with the Parks Department. I did the same job that city workers used to do, except I did it for slave wages. The WEP program is about exploitation. It's about indentured servitude with no chance for advancement or independence for obtaining a real job.

Douglas Besharov, a welfare scholar at the conservative American Enterprise Institute, said he rejected the culture of poverty argument in the 1960s and still believes poverty then was related mostly to high unemployment and discrimination. But, he said, the debate has moved to the right, with liberals more likely to agree that welfare rules should be tightened to discourage those who don't need help from coming on the rolls.

And while many on the left continue to reject the old culture argument, he said, "even liberals would say we have cultural and economic forces that are driving young people to irresponsible and ultimately self-destructive behavior."

Judging the Results

Hold Strive's approach up to a certain light and it looks strikingly harsh: Work like a dog. Accept the wages offered. Don't complain about racism. Bow to authority.

Sykes says that is the wrong way to view it. "My clients are jobless, close to homeless. I am trying to shock them into getting a foot on the ladder, to get enough experience to ask for better wages, to stand up against racism."

But does it really work? Gary C. Walker, president of Public/Private Ventures in Philadelphia, a well-known group in the field of job training, cautions that Strive and many other programs have not been subjected to careful studies to determine whether successful graduates would have found jobs anyway.

"There is no way of knowing whether everyone needs that sort of treatment," said Walker, who has visited Strive.

The March session underscores the challenge.

Of the more than 50 clients who registered for the session, only 29 showed up the first day. Fifteen graduated. Three have already disappeared into "inactive" status, which means Strive can't contact them or they are not looking for work, often because they are back in jail or pregnant. Nine of the students have jobs and the remaining three are still looking.

*Copyright 1997 The Washington Post
The Washington Post
June 16, 1997, Monday, Final Edition (SECTION: OP-ED; Pg. A21)*

The Minimum Wage Debacle

BYLINE: Paul Offner

Liberals are hailing the White House announcement that states must pay workfare participants the minimum wage, but they shouldn't be. The ruling may be good for organized labor, but it's bad news for welfare recipients and a raw deal for states.

It all goes back to a year ago when critics were screaming that the welfare bill then being debated by Congress was weak on work. Rather than deal with the problem, the president agreed to language mandating that half of all recipients be working within six years.

The Congressional Budget Office said at the time that most states wouldn't make it because no additional funding was provided, but no one paid much attention. Now, under pressure from organized labor, the president has agreed to a wage rule that all but guarantees they won't make it. Caught in the middle are the nation's governors who opposed both the requirement and the rule, but who now are stuck with both.

Please contact Dana Colarulli if you would like to receive the WR Daily Report by e-mail or if you have questions about articles found in this publication. (dcolarulli @acf.dhhs.gov (e-mail) or 202-401-6951 (voice)).

Welfare Reform Daily Report -- June 16, 1997 (PAGE 11)

The administration's rule isn't a problem right now, but within a year the minimum wage goes to \$ 5.15, and a couple of years after that the work requirement increases to 30 hours a week, at which point almost every state will be in trouble. Then all bets are off. As states must put more and more recipients to work, and as the cost of doing so goes higher and higher, they will either have to come up with additional welfare funding or cut recipients from the rolls. In the current environment, it's not hard to imagine how that choice will come out.

The argument that all workfare jobs should pay the minimum wage is appealing but also weak. For many young mothers who have never held a job, workfare can provide the experience they need before they seek private employment. In effect, it's part work, part training. Wages should be low so there's an incentive to find a real job. Moreover, workfare differs from private employment. If you miss work but have a valid excuse (the baby sitter didn't show up, or the car broke down), you're not sanctioned in most places. If you have no excuse, you still get the children's portion of the grant.

Partly it's a desire not to hurt the children, and partly it's a recognition that many welfare mothers have serious problems -- low IQ, substance abuse, little discipline -- that make it difficult for them to hold regular jobs. They still should be required to work, but they need special help, which is what they get in workfare (in this respect, it's like sheltered workshops for the disabled). There's no reason why every rule designed for regular employment should apply.

The administration says the minimum-wage rule is needed to protect the low-wage market. "Current workers were at risk of being replaced by lower-paid welfare recipients in both the public and the private sectors," writes Mary Jo Bane, former assistant secretary of Health and Human Services.

It's a fair point. Forcing several million welfare mothers to work clearly will put downward wage pressure on the job market. But that's a consequence of the welfare bill the president signed, and it's a problem however we come out on the wage issue. The way to deal with it is through policies that supplement wages, such as the earned income tax credit. The new wage policy may help, but it could also make matters worse, because more families will be kicked off the welfare rolls, thus adding to the competition for low-wage jobs and further depressing wages at the low end of the market.

For President Clinton, it's another case of trying to have it both ways. Having earlier endorsed an unrealistic vision of welfare-to-work, he now agrees to a proposal that undermines that vision. Having sought to appease the supporters of the work strategy, he now seeks to placate its hard-line opponents.

Faced with such criticisms, presidential assistant Bruce Reed argues that the states shouldn't be focusing on workfare anyway. "Our first preference has always been for states to place people in private-sector jobs," he says. If only it were that easy. The Clinton people never have been willing to acknowledge the fact that their welfare reform strategy depends heavily on public employment. Sooner or later they'll have to.

As the more employable recipients get jobs and leave the rolls, states will be left with the more difficult cases, the long-term recipients who have severe barriers to employment and for whom workfare is the only real alternative. That's who is likely to be hurt by the new policy.

The writer is commissioner of health care finance for the District of Columbia.

FCRA interagency mtg

1. benefits

CWEP

weaker wk regs

other laws - FICA/ETC - FUTA

1. Benefits

HHS - not acceptable

weakens min wage measures

c.c. - inconsistent w/ where Admin wants to go.

pol msg on c.c. + Medicaid - big step backward -

erode in coalition.

Lbr - agree Subst burdens for m.w.

HUD - admin - difficult to value

(F.S. - easier to value?)

EmB - Wouldn't do it for Gov. Need additional
measurable/hard to value

2. CWEP -

Lbr - depends on how it is written -

exempt from min wage regs of the FLSA -

+ concurrent recordkeeping regs.

also - has to have some kind of sub mech -

further way show out mech → further way to being OK

HHS - need to reflect crit.

Try to come up w/ something acceptable in this area

has to think thru more

operational issue

3. Wage requirements

HHS - Substantively has some appeal. Percepti - - weak

How fast
no priv
of active
↓
How serious
would wage



on work. No change in water
change ~~layers~~ ^{OR} activities.

Lots of tracking necessary.

BR - Diff doing 20-30 // filling in part below 20
Reps. Hatching for way to say - enhance FLTA and bring
weak on work.

Labon - Poss of a deal, Repubs seem OK - given us
some cover.

Substantively enthusiastic about this.

[Harkin's proposal gives some cover]

4. Other laws

EITC/FICA - ~~the~~ 94 bill - NO EITC / YES FICA
HHS: this is even less like actual work.

Treasury - Follow same as 77

Repubs looking to heat up on EITC.

FICA makes sense for L-inc p - makes up
quarter

HHS - has huge implies for all gen'l ass. props
NO FICA OR EITC. Not deeply reflected.

Timetable on IRS guidance?

FICA - big deal for gens.

can pass on cost?? -

Paperwork burden heavy too.

FUTA -

gents don't pay FUTA tax
no one will surely.

anything to get back?

anti-unemployment

MOE ↑

6-6 FLPA - Union mtg

Press conf on Tuesday on FLPA.



- Flexibility on work mgs - make it clear.

Need gov-wide msg - Pres on down.

When? Next week

Events

2-week debate

Pres in shry?

Hammer after a vote

Ed Board mailing - from social serv spp etc.

▶ **Diana Fortuna**
06/13/97 05:51:05 PM
.....

Record Type: Record

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

----- Forwarded by Diana Fortuna/OPD/EOP on 06/13/97 05:51 PM -----

E-mail back

▶ **Diana Fortuna**
06/13/97 05:41:28 PM
.....

Record Type: Record

To: Cynthia A. Rice/OPD/EOP
cc:
Subject:

According to APWA and Lyn Hogan (who heard it from Mickey Kaus), there is something bad for private welfare to work efforts in the Ed/Workforce bill. I'm still not clear on details, but according to Elaine Ryan it says that under TANF, states may not require welfare recipients to participate in private sector jobs, subsidized private sector jobs, or subsidized public sector jobs, "unless the recipient is compensated at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience and skills, and such rates shall be in accordance with applicable law. (Not clear what last phrase means; Elaine wonders if this is Davis-Bacon type stuff??)

Like NY!

Not clear to me how much this requires beyond current practice, but Elaine and Mickey Kaus think it's very bad. Lyn says AFSCME snuck it in, and Haskins was shocked when he heard about it after the fact.

On a second issue, Elaine raised an interesting criticism of Haskins' FLSA solution that may or may not be significant, depending on how extensively you think states will make use of the trainee exemption. She says his language mandates paying the minimum wage for trainees, which our position does not. Elaine is very much into finding a solution here by making sure the trainee option is wide enough. She thinks everyone's picture of workfare being ditch-digging is erroneously based on what Giuliani's doing, and that in fact states will create office workfare assignments that are closer to training. She just sent us a piece arguing that DOL created a big FLSA exemption for our school to work program by hanging their hat on the trainee exception, and thinks there is a precedent there.

*In Lewsky.
A way to
keep
gov. w
bd? tell
Emily.*

WR-FLM

6-11-97 Terry Shea - telecon

German poll - good results

Good edit packet to 160 pages -

cover w/ Lichtman/Henderson/Sweeney

Lichtman - op. ed.

US Carter Conf. - letter went up yesterday

Draft TV ads - make a decision on Thursday - on air on Monday.

↳ any thoughts on this?

Pres announcements / Cal mbr statements

1800 800 7759

DRAFT

Control Number: RR-109108-97

9/25

Part III - Administrative, Procedural, and Miscellaneous

Treatment of Certain Payments Received as Temporary Assistance
for Needy Families (TANF)

Notice 98-

SECTION 1. PURPOSE

This notice addresses the federal income and employment tax consequences of payments received by individuals with respect to certain work activities performed in state programs under part A of title IV of the Social Security Act, as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. No. 104-193, 110 Stat. 2105 (August 22, 1996) (TANF payments). The notice sets forth certain conditions under which TANF payments are not income, earned income, or wages for federal income and employment tax purposes. The Treasury Department and the Internal Revenue Service intend to issue regulations that will address the federal income and employment tax consequences of TANF payments. The regulations generally will be effective retroactively to [INSERT DATE NOTICE IS RELEASED TO THE PUBLIC]. As applied to the interim period between [INSERT DATE NOTICE IS RELEASED TO THE PUBLIC] and the date the regulations are issued, the regulations will be consistent with this notice.

~~2~~

SECTION 2. SCOPE

This notice addresses only the treatment of TANF payments under certain income and employment tax provisions of the Internal Revenue Code. Because this notice is based on the "general welfare doctrine" (see section 4.01, below), which is unique to the determination of federal tax liability, ^{this note} ~~no~~ ^{does not determine} ~~implication is intended regarding~~ the treatment or effect of TANF payments (or regarding whether an employment relationship exists) under any other provision of law, including the Fair Labor Standards Act and other federal and state employment laws. This notice does not reach a determination as to whether the recipient of TANF payments is a common law employee or is self-employed.

OK

For purposes of the analysis set forth herein, however, it is assumed that the recipient of the TANF payments is a common law employee.

SECTION 3. BACKGROUND

Congress reformed the welfare system through the enactment of PRWORA, which replaced Aid to Families with Dependent Children (AFDC) with Temporary Assistance for Needy Families (TANF). AFDC required individuals to perform some work activities in order to continue to receive public assistance. TANF provides states with more flexibility than they had under AFDC to determine basic eligibility rules and benefit amounts. TANF also requires that specified percentages of individual recipients engage in work activities and imposes penalties on the states for non-compliance with that requirement.

For purposes of TANF, the term "work activities" is defined under § 407(d) of the Social Security Act, 42 U.S.C. § 607(d), as:

- (1) unsubsidized employment;
- (2) subsidized private sector employment;
- (3) subsidized public sector employment;
- (4) work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available;
- (5) on-the-job training;
- (6) job search and job readiness assistance;
- (7) community service programs;
- (8) vocational educational training (not to exceed 12 months with respect to any individual);
- (9) job skills training directly related to employment;
- (10) education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency;
- (11) satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate; and
- (12) the provision of child care services to an individual who is participating in a community service program.

SECTION 4. TREATMENT OF TANF PAYMENTS

.01 General Analysis.

The federal income and employment tax consequences of TANF payments generally are determined under the following analysis.

Payments by a governmental unit to an individual under a legislatively provided social benefit program for the promotion of the general welfare that are not basically for services rendered are not includible in the individual's gross income and are not wages for employment tax purposes, even if the individual is required to perform certain activities to remain eligible for the payments. See Rev. Rul. 71-425, 1971-2 C.B. 76. Similarly, these payments are not earned income for Earned Income Tax Credit (EIC) purposes. If, however, taking into account all the facts

and circumstances, payments by a governmental unit are basically compensation for services rendered, ^{even though some training is provided} then the payments are

OK

includible in the individual's gross income and are wages for employment tax purposes. Similarly, such payments generally are earned income for EIC purposes. ^{See Rev. Rul. 75-246}

In addition, § 32(c)(2)(B)(v) of the Internal Revenue Code (as added by § 1085(c) of the Taxpayer Relief Act of 1997, Pub. L. No. 105-34, 111 Stat. 788 (August 5, 1997), and effective for taxable years beginning after December 31, 1997) provides that earned income for EIC purposes does not include amounts received for "service performed in work activities as defined in paragraph (4) or (7) of section 407(d) of the Social Security Act to which the taxpayer is assigned under any State program under part A of

[Proposed addition Not agreed to is attached]

Where payments to a participant in a social benefit program are made by an entity for which the participant provides services, and some or all of the payments (whether termed "wages" or otherwise) are subsidized by a state or local welfare or work training agency, the participant is in essence engaged in subsidized employment. Under these circumstances, such payments are includible in the individual's gross income, are wages for employment tax purposes, and are earned income for EIC purposes.

title IV of such Act, but only to the extent such amount is subsidized under such State program."

.02 Application of General Analysis to Certain TANF Payments.

Due to the flexibility TANF affords states to determine basic eligibility rules and benefit amounts, a TANF payment may be made both for the promotion of the general welfare and as compensation for services. In these cases, it is extremely difficult to characterize the basic purpose of the payments. It is also not practically feasible to determine the relative proportion of the payment each purpose represents.

In many of these cases, TANF payments are received in lieu of (and generally in amounts no greater than) payments the individual formerly received or would have received under AFDC based upon the individual's personal and family subsistence requirements. In these cases, the primary measure of the amount received is the personal or family need of the individual recipient rather than the value of any services performed.

These cases typically share, and can be identified by, common characteristics. In cases where the following three conditions are satisfied, TANF payments will not be includible in an individual's gross income, will not be earned income for EIC purposes, and will not be wages for employment tax purposes:

- (1) The only payments received by the individual with respect to the work activity are received directly from the state or local welfare agency (for this purpose, an entity with which a state or local welfare agency contracts to

administer the state TANF program on behalf of the state will be treated as the state or local welfare agency);

(2) The determination of the individual's eligibility to receive any payment is based on need and the only payments received by the individual with respect to the work activity are funded entirely under a TANF program (including any payments with respect to qualified state expenditures (as defined in § 409(a)(7)(B)(i)(I) of the Social Security Act)) and the Food Stamp Act of 1977; and

(3) The size of the individual's payment is determined by the applicable welfare law, and the number of hours the individual may engage in the work activity is limited by the size of the individual's payment (as determined by applicable welfare law) divided by the higher of the federal or state minimum wage.

The federal income and employment tax treatment of TANF payments that do not satisfy each of these three conditions is determined under the general analysis described in section 4.01, above.

REQUEST FOR COMMENTS

The Treasury Department and the Service invite comments on this notice and on the future regulations. In particular, comments are requested on the three conditions set forth in section 4.02 of this notice. Written comments should be submitted by October 1, 1998. An original and eight copies of written comments should be sent to:

Internal Revenue Service

DRAFT

- 7 -

Attn: CC:DOM:CORP:R
Room 5228 (IT&A:Br2)

P.O. Box 7604

Ben Franklin Station

Washington, DC 20044.

or hand delivered between the hours of 8 a.m. and 5 p.m. to:

Courier's Desk

Internal Revenue Service

Attn: CC:DOM:CORP:R (Notice 98-__)

Room 5228 (IT&A:Br2)

1111 Constitution Avenue, NW

Washington, D.C.

Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to:

http://www.irs.ustreas.gov/prod/tax_regs/comments.html (the IRS internet site). All comments will be available for public inspection and copying in their entirety.

FURTHER INFORMATION

For further information, contact Mr. Edwin B. Cleverdon at (202) 622-4920 regarding the income tax issues in this notice and Ms. Jean Casey at (202) 622-6060 regarding the EIC and employment tax issues in this notice (not toll-free calls).



Cynthia A. Rice

11/19/98 06:21:16 PM

Record Type: Non-Record

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

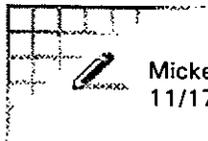
cc:

Subject: FICA

Treasury is really ready to blow. They want to get this out now. Fred was actually arguing for delay, just a little, so he could couple it with bad budget news, but he says if we have to go of course he'll make the most of it (he'd like the VP to be the one to give the news to the govts).

Karen is ready and willing to call labor -- I've only been waiting to see if she can call and give them the Arizona news too. We're won't have HHS sign off on Arizona until Monday when we get Kevin Thurm into the room.

So this is a long winded way of saying: shall I tell Treasury we'll go next week? Should I wait until Monday to tell them anything?



Mickey Ibarra
11/17/98 07:50:17 AM

Record Type: Record

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

cc:

Subject: FICA

----- Forwarded by Mickey Ibarra/WHO/EOP on 11/17/98 07:52 AM -----

Fred Duval 11/16/98 06:32:27 PM

Record Type: Record

To: Karen Tramontano/WHO/EOP, Cynthia A. Rice/OPD/EOP, Mickey Ibarra/WHO/EOP

cc:

Subject: FICA

A thought. Once we get final clearance on FICA, we must talk about timing. I don't want to just drop this. I want to time it with some bad budget news the states will be getting. (Conversly, I REALLY need this when some of the bad budget news does hit in a couple of weeks so PLEASE let's continue to press ahead so it is in our pocket).

DRAFT

Control Number: RR-109108-97

Part III - Administrative, Procedural, and Miscellaneous

Treatment of Certain Payments Received as Temporary Assistance for Needy Families (TANF)

Notice 98-

Post-It™ brand fax transmittal memo 7671 # of pages > 7

To	Elana Kasan	From	Cynthia Rice
Co.		Co.	PPC
Dept.		Phone #	
Fax #	6 2878	Fax #	6-7431

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- 2 -

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- 3 -

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DRAFT

- 4 -

SECTION 4. TREATMENT OF TANF PAYMENTS

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The federal income and employment tax consequences of TANF payments generally are determined under the following analysis.

Payments by a governmental unit to an individual under a legislatively provided social benefit program for the promotion of the general welfare that are not basically for services rendered are not includible in the individual's gross income and are not wages for employment tax purposes, even if the individual is required to perform certain activities to remain eligible for the payments. See Rev. Rul. 71-425, 1971-2 C.B. 76. Similarly, these payments are not earned income for Earned Income Tax Credit (EIC) purposes. If, however, taking into account all the facts and circumstances, payments by a governmental unit are basically compensation for services rendered, then the payments are includible in the individual's gross income and are wages for employment tax purposes. Similarly, such payments generally are earned income for EIC purposes.

In addition, § 32(c)(2)(B)(v) of the Internal Revenue Code (as added by § 1085(c) of the Taxpayer Relief Act of 1997, Pub. L. No. 105-34, 111 Stat. 788 (August 5, 1997), and effective for taxable years beginning after December 31, 1997) provides that earned income for EIC purposes does not include amounts received for "service performed in work activities as defined in paragraph (4) or (7) of section 407(d) of the Social Security Act to which the taxpayer is assigned under any State program under part A of

DRAFT

- 5 -

title IV of such Act, but only to the extent such amount is subsidized under such State program."

.02 Application of General Analysis to Certain TANF Payments.

Due to the flexibility TANF affords states to determine basic eligibility rules and benefit amounts, a TANF payment may be made both for the promotion of the general welfare and as compensation for services. In these cases, it is extremely difficult to characterize the basic purpose of the payments. It is also not practically feasible to determine the relative proportion of the payment each purpose represents.

In many of these cases, TANF payments are received in lieu of (and generally in amounts no greater than) payments the individual formerly received or would have received under AFDC based upon the individual's personal and family subsistence requirements. In these cases, the primary measure of the amount received is the personal or family need of the individual recipient rather than the value of any services performed.

These cases typically share, and can be identified by, common characteristics. In cases where the following three conditions are satisfied, TANF payments will not be includible in an individual's gross income, will not be earned income for EIC purposes, and will not be wages for employment tax purposes:

- (1) The only payments received by the individual with respect to the work activity are received directly from the state or local welfare agency (for this purpose, an entity with which a state or local welfare agency contracts to

DRAFT

- 6 -

administer the state TANF program on behalf of the state will be treated as the state or local welfare agency);

(2) The determination of the individual's eligibility to receive any payment is based on need and the only payments received by the individual with respect to the work activity are funded entirely under a TANF program (including any payments with respect to qualified state expenditures (as defined in § 409(a)(7)(B)(i)(I) of the Social Security Act)) and the Food Stamp Act of 1977; and

(3) The size of the individual's payment is determined by the applicable welfare law, and the number of hours the individual may engage in the work activity is limited by the size of the individual's payment (as determined by applicable welfare law) divided by the higher of the federal or state minimum wage.

The federal income and employment tax treatment of TANF payments that do not satisfy each of these three conditions is determined under the general analysis described in section 4.01, above.

REQUEST FOR COMMENTS

The Treasury Department and the Service invite comments on this notice and on the future regulations. In particular, comments are requested on the three conditions set forth in section 4.02 of this notice. Written comments should be submitted by October 1, 1998. An original and eight copies of written comments should be sent to:

Internal Revenue Service

Welfare Reform: Application of FICA to Workfare Jobs

Summary of Draft Notice

The draft notice establishes that payments that meet the following three-part test will not be subject to FICA taxes or the EITC:

- The only payments the individual receives for the work activity come directly from the state or local welfare agency, or its contractor;
- Payment is funded entirely by TANF and/or food stamps; and
- Size of the payment is limited by welfare laws; and the number of hours is limited by the size of the payment divided by the minimum wage.

The policy would be effective immediately. After considering public comments, the IRS would then issue a formal regulation.

The notice is based on IRS's 1971 "general welfare" doctrine, summarized in the guidance as "Payments by a government unit to an individual under a legislatively provided social benefit program for the promotion of the general welfare that are not basically for services rendered are not includible in the individual's gross income and are not wages for employment tax purposes, even if the individual is required to perform certain activities to remain eligible for the payments."

The guidance notes that "Due to the flexibility TANF affords states to determine basic eligibility rules and benefit amounts, a TANF payment may be made both for the promotion of the general welfare and as compensation for services. In these cases, it is extremely difficult to characterize the basic purpose of the payments. It is also not practically feasible to determine the relative proportion of the payment each purpose represents." The guidance then discusses how in many cases the TANF payments are received in lieu of payments a family would have received under AFDC and are based primarily on family need. It then establishes the three part test listed above for those payments that will not be considered wages for tax purposes.

The ruling contains a disclaimer: "This notice does not determine the treatment or effect of TANF payments (or regarding whether an employment relationship exists) under any other provision of law, including the Fair Labor Standards Act."

Letter from Gerry Shea

The July 30th letter from Gerry Shea said "To the extent language has been added to address concerns regarding potential adverse implications of the Treasury ruling, we appreciate those efforts. At the same time, we do not believe this cures the

problem, because by issuing a directive applying the "general welfare doctrine" to TANF payments where recipients are clearly engaged in services, Treasury's approach still sends the message that TANF recipients engaged in work activities are not like other workers."

American Federation of Labor and Congress of Industrial Organizations



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

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July 30, 1998

Mr. Bruce Reed
Advisor to the President for
Domestic Policy
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Bruce:

The AFL-CIO and the Clinton Administration share a keen interest in the fair treatment of individuals who are required to work as a condition of receiving Temporary Assistance for Needy Families (TANF). The Administration has frequently stated its view, which we strongly share, that such individuals should be afforded the same status and protections as other workers, and should not be subjected to second-class status or inferior treatment.

We understand that for several months, the Treasury Department and Internal Revenue Service have been working on a draft regulation to address the tax treatment of TANF payments for TANF recipients engaged in work activities. We believe that Treasury's proposed approach would relieve states and TANF recipients of all tax liability (income tax, FUTA, and FICA) for TANF payments under the IRS's "general welfare doctrine." That doctrine has typically been applied in circumstances where individuals receive benefit payments and receive training but do not perform services in exchange for their benefits. We are greatly concerned that applying the doctrine to TANF payments in circumstances where individuals are clearly performing services sends the message that these individuals are not "real workers," and jeopardizes their status as employees under labor and employment laws. Given its prior pronouncements on the importance of employment protections for workfare participants, I am confident that the Administration shares this concern.

We have consistently taken the view, and have conveyed a detailed analysis supporting our view, that an approach utilizing existing "work relief" exemptions in the governing statutes is superior to the approach under consideration by Treasury, because the "work relief" approach



Mr. Bruce Reed
July 30, 1998
Page Two

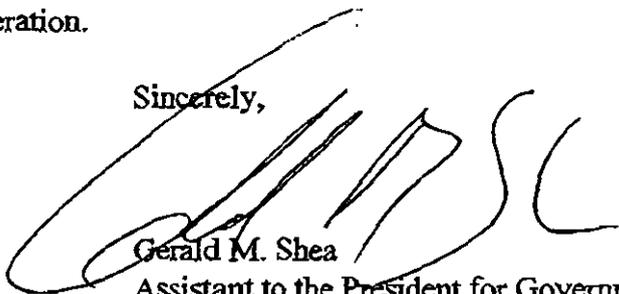
both meets the policy objectives of the Administration and the states without expanding IRS precedent and endangering employee status and related protections for TANF workers.

Earlier this week, we learned that Treasury had decided to proceed with its original "general welfare" approach, albeit with the addition of language aimed at making clear that the ruling in no way was intended to have any effect on labor and employment laws. To the extent language has been added to address concerns regarding potential adverse implications of the Treasury ruling, we appreciate those efforts. At the same time, we do not believe this cures the problem, because by issuing a directive applying the "general welfare doctrine" to TANF payments where recipients are clearly engaged in services, Treasury's approach still sends the message that TANF recipients engaged in work activities are not like other workers. We believe such an approach would also constitute a significant expansion of the general welfare doctrine from current precedent.

We are greatly disappointed that the Administration appears to have decided to proceed down this path when a superior and less harmful approach is available to it, and we ask that the Administration reconsider its decision. If the Administration insists on following the "general welfare doctrine" course, it must ensure that it correctly applies, and does not expand, the doctrine. We ask that the Administration not publish any notice until we have an opportunity to discuss this matter.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "GMS", is written over the typed name and title.

Gerald M. Shea
Assistant to the President for Government Affairs

Welfare Reform: Application of FICA to Workfare Jobs

Summary of Draft Notice

The draft notice establishes that payments that meet the following three-part test will not be subject to FICA taxes or the EITC:

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The policy would be effective immediately. After considering public comments, the IRS would then issue a formal regulation.

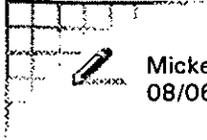
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The guidance notes that "Due to the flexibility TANF affords states to determine basic eligibility rules and benefit amounts, a TANF payment may be made both for the promotion of the general welfare and as compensation for services. In these cases, it is extremely difficult to characterize the basic purpose of the payments. It is also not practically feasible to determine the relative proportion of the payment each purpose represents." The guidance then discusses how in many cases the TANF payments are received in lieu of payments a family would have received under AFDC and are based primarily on family need. It then establishes the three part test listed above for those payments that will not be considered wages for tax purposes.

The ruling contains a disclaimer: "This notice does not determine the treatment or effect of TANF payments (or regarding whether an employment relationship exists) under any other provision of law, including the Fair Labor Standards Act."

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The July 30th letter from Gerry Shea said "To the extent language has been added to address concerns regarding potential adverse implications of the Treasury ruling, we appreciate those efforts. At the same time, we do not believe this cures the problem, because by issuing a directive applying the "general welfare doctrine" to TANF payments where recipients are clearly engaged in services, Treasury's approach still sends the message that TANF recipients engaged in work activities are not like other workers."



Mickey Ibarra
08/06/98 07:24:26 PM

Record Type: Record

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

cc:

Subject: FICA

Can you help us out here?

----- Forwarded by Mickey Ibarra/WHO/EOP on 08/06/98 07:03 PM -----

Fred Duval 08/06/98 06:45:48 PM

Record Type: Record

To: Mickey Ibarra/WHO/EOP

cc:

Subject: FICA

In case it comes up, three Govs office have now called in to see if we have met our latest commitment of getting FICA done this week. It is apparent that we won't.

Diana Fortuna

07/27/98 07:42:57
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: We have a new draft from Treasury

It incorporates all the agreements we made with DOL, except that it modifies the "because" language to reflect the compromise Treasury worked out with the IRS. I will fax copies to Cynthia and Bill, and to Marvin Krislov as well. Not as bad as I feared a few hours ago, but DOL may still perceive as back-sliding off on Friday's deal. Bill, what do you think?

Here's the compromise (most relevant language in italics):

Language DOL loved that the IRS balked at:

"Because this ruling is based on the general welfare doctrine and *assumes that a recipient of payments is in a common law employment relationship*, and because the considerations underlying the general welfare doctrine are unique to the determination of federal tax liability, no implication is intended as to the treatment or effect of such payments or as to whether an employment relationship exists under any other provision of law, including the FLSA and other federal and state employment laws."

New compromise with IRS that we must vet with DOL:

"Because this notice is based on the general welfare doctrine, which is unique to the determination of federal tax liability, no implication is intended regarding the treatment or effect of TANF payments (or regarding whether an employment relationship exists) under any other provision of law, including the Fair Labor Standards Act and other federal and state employment laws. *This notice does not reach a determination as to whether the recipient of TANF payments is a common law employee or is self-employed. For purposes of the analysis set forth herein, however, it is assumed that the recipient of the TANF payments is a common law employee.*"



Mickey Ibarra
07/31/98 09:06:33 AM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP
cc: John Podesta/WHO/EOP, Fred DuVal/WHO/EOP
Subject: FICA

We are about out of time on this issue. NGA opens tomorrow. Please give me status report ASAP.
Thanks.

----- Forwarded by Mickey Ibarra/WHO/EOP on 07/31/98 09:05 AM -----

Fred Duval 07/30/98 10:01:31 PM

Record Type: Record

To: Mickey Ibarra/WHO/EOP
cc:
Subject:

for Sr staff - still no closure on FICA

Diana Fortuna

07/27/98 02:59:28

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: Possible bad news from Treasury

We haven't gotten the new draft yet because the IRS is not happy with the new language that Treasury has put forth that DOL loves (saying that Treasury assumes there IS an employment relationship. (Tax policy has been simultaneously talking to the IRS and us.) Treasury will try hard to convince them, but this could be rotten if we can't even offer what we've already put on the table. And unfortunately Lubick mentioned this wonderful new language at the Arnold&Porter meeting today, so the unions know about it.

Diana Fortuna

07/29/98 10:54:11

AM

Record Type: Record

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

cc: Laura Emmett/WHO/EOP

Subject: Conversation I just had with Marvin on FICA

I just talked to Marvin Krislov to get a preview of where DOL is prior to this noon meeting. He said:

- he can't speak for AFL. They were "ballistic" after Arnold&Porter/Treasury meeting Monday because Treasury represented this to them as a done deal, and also suggested more than they should have that the new draft was OK with DOL.
- Notice still presents some risk; he's not sure how much this adds to the current risk, although he termed it "not overwhelming"
- he said that Treasury has made efforts to reduce the risk.
- he thinks it would be very helpful if the AFL could see the latest draft, to mend fences, see if they are comfortable or have suggestions. He said he spoke to Elena about this and she "seemed open" to the idea.

Showing it to the AFL could get us into another round of back and forth, obviously, so that's a risk we should consider.

Laura: please hand this to Elena.

From Marvin

DOL Suggested Changes to Draft IRS Ruling

1. Page 5, line 4, start the sentence: "In many of these cases, TANF payments...."

This makes it clear that these are a subset of cases where the TANF payment is both promotion of general welfare and compensation for services where it is difficult to characterize the basic purpose. This is the basic thesis underlying the ruling.

2. Modify the suggested phrase which Treasury wants to add (no. 1 on cover sheet) to read as follows:

"Because this ruling is based on the general welfare doctrine and not on a determination as to whether the common law employment test is met, and because the considerations underlying the general welfare doctrine are unique to the determination of federal tax liability, no implication is intended as to the treatment or effect of such payments or as to whether an employment relationship exists under any other provision of law, including the FLSA and other federal and state employment laws."

This change makes it much clearer that the general welfare doctrine is unique to tax law, and should strengthen the argument that it is not related to a determination of employment relationship which would impact on employment laws.

3. Please note that it is our understanding that the handwritten changes on page 6 have been incorporated in the ruling, to read as follows:

"The size of the individual's payment is determined by the applicable federal and state welfare laws, and the number of hours the individual may engage in the work activity is limited by the size of the individual's payment (as determined by applicable federal and state welfare laws) divided by the federal or state minimum wage."

From Kurlaw

1. Restore the language from the section entitled Application of Facts and Circumstances... in (February 19 draft) that was deleted from Section 4.02 of the July 15 draft. The elimination of the language in the earlier draft is **hugely problematic** because it eliminates the acknowledgment that the TANF payment can serve as both a payment to promote the general welfare and compensation for services.

- In order for states to count the benefit check towards the MW when recipients work for the state, they must acknowledge that the check is compensation for wages owed. To the extent the IRS ruling characterizes the benefit as not for services rendered (or fails to acknowledge the dual purpose), it may create a conflict for states that want to/need to expressly acknowledge they are compensation for FLA. purposes.

Note that even if this language is restored, we should have an understanding with IRS that if a state raises a question about how it can be not wages for IRS and wages for FLA., this language constitutes an acknowledgment that it can have these different natures for different purposes ... and they will so respond if asked by any state.

- In addition, the July 15 formulation makes it more difficult to make the case that a welfare recipient in work experience or community services is an employee and entitled to the minimum wage and other labor protections.

2. Restore language from February draft to Section 4.01 so that the second sentence (top of page 4) reads:

"... rendered are not includible in the individual's gross income and are not treated as wages for employment tax purposes. . . . "

3. Restore language from February draft to Section 4.01 so that the fourth sentence (page 4, line 4) reads:

"Similarly, payments made other than as employee compensation or as earnings from self-employment are not earned income. . ."

4. Page 5, line 4, (Feb 19 draft) start the sentence: "In many of these cases, TANF payments...."

- This makes it clear that these are a subset of cases where the TANF payment is both promotion of general welfare and compensation for services where it is difficult to characterize the basic purpose. This is the basic thesis underlying the ruling.

5. Modify the suggested phrase which Treasury wants to add (no. 1 on cover sheet) to read as follows:

"Because this ruling is based on the general welfare doctrine and not on a determination as to whether the common law employment test is met, and because the considerations underlying the general welfare doctrine are unique to the determination of federal tax liability, no implication is intended as to the treatment or effect of such payments or as to whether an employment relationship exists under any other provision of law, including the FLA. and other federal and state employment laws."

- This change makes it much clearer that the general welfare doctrine is unique to tax law, and should strengthen the argument that it is not related to a determination of employment relationship which would impact on employment laws.

6. Please note that it is our understanding that the handwritten changes on page 6 have been incorporated in the ruling, to read as follows:

"The size of the individual's payment is determined by the applicable federal and state welfare laws, and the number of hours the individual may engage in the work activity is limited by the size of the individual's payment (as determined by applicable federal and state welfare laws) divided by the federal or state minimum wage."

- * 7. Note that these comments and the comments ^{DS} we have provided to Treasury in the past reduce the risk that working welfare recipients will be deprived of employment protections to which they are entitled. There is still a risk to the FLA. -- and a far greater risk to other workplace laws like the Civil Rights Act, the ADA and the NLRA where courts explicitly look at the tax treatment of "wages/payments" in determining whether workers are covered by these laws.

Diana Fortuna

07/23/98 04:13:26
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: more from Treasury

1. Re the language that DOL was so concerned that Treasury had dropped: Treasury dropped it because they thought DOL would like it better that way. I'm triple-checking this, but it appears they would be happy to add it back in if that's what DOL wants.
2. Arnold & Porter is tentatively Monday morning at 10am, Don Lubick's office, room 1000 of main Treasury. Bill Marshall says he can attend.

Diana Fortuna

07/24/98 11:08:31
AM

Record Type: Record

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

cc: Laura Emmett/WHO/EOP

Subject: from fred duval

----- Forwarded by Diana Fortuna/OPD/EOP on 07/24/98 11:13 AM -----

Fred Duval 07/24/98 10:54:03 AM

Record Type: Record

To: Diana Fortuna/OPD/EOP

cc:

Subject: Re: what are you hearing... 

They have cut me some slack and will not do policy, BUT instead, will likely express their frustration orally at next Tuesdays press conf on welfare.

Diana Fortuna

07/23/98 12:48:48
PM

Record Type: Record

To: Elena Kagan/OPD/EOP, Cynthia A. Rice/OPD/EOP
cc: Laura Emmett/WHO/EOP
Subject: Latest from Treasury

Don Lubick & co. just called.

1. On Arnold & Porter, they say we should wait until Monday to have the meeting. They say the key A&P guy is in Europe, and that having the meeting tomorrow would be counterproductive --- the unions would feel like they were doing an end run around their smartest guy on this issue when an extra day would allow him to be there and articulate their best arguments. I told them that, if our goal is to have this released Tuesday, a meeting on Monday would lessen the value of the meeting because the unions would know that the meeting couldn't possibly have any influence on the notice. They, of course, didn't seem to mind that.

This raises the question of whether we really want to or need to -- or can -- have this out on Tuesday, because of whatever Governors event is happening that day. Since the Marvin language controversy is not yet resolved, I'm not sure Tuesday is realistic from that angle anyway.

What do you think? Should we absolutely insist on tomorrow, or tell them Monday is OK?

2. They say they haven't circulated anything new to Marvin/DOL. Someone may have sent them a copy of the full notice, but they say it would have been the most recent version.

Diana Fortuna

07/17/98 05:15:11

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: conversation with Treasury

Talisman said OK. He wasn't happy, in that he said they've already gone far beyond their usual process on this issue, but he agreed he'd call the A&P guy right now to set up a meeting. He said the client attended the meeting the other time they met with A&P, so he assumes they'd come now. (The other meeting was perhaps 6 months ago, before A&P wrote this paper, when they first laid out the alternative idea to Treasury.) He gave me the caveat that he doesn't want it to be a negotiating session. I told him that is not our goal, and I made it clear that we are in no way asking Treasury to reconsider its position, but that we would expect them to lay out their reaction to A&P's arguments. I said we would attend not in a substantive role, but to observe and make sure everyone's clear on the purpose of the meeting.

I told him we wanted the meeting Tuesday.

WR-FL8A

Post-It™ brand fax transmittal memo 7671		# of pages ▶ 10
To	Laura Emmett	
From	Diana F	
Co.	Co.	
Dept.	Phone #	
Fax #	Fax #	

July 17, 1998

TO: Elena Kagan
 Bill Marshall
 Marvin Krislov fax 219-7257

FROM: Diana Fortuna

CC: Cynthia Rice

Attached is material for our 4:30 conference call.

Items for Discussion on Draft IRS Ruling

Attached is a one-page summary of the draft IRS ruling with all the key language in it, as well as the full notice itself. We have two issues to discuss.

1. Treasury is considering adding a phrase to the scope section (in bold below) to strengthen the ruling's statement that no implication is intended as to employment laws:

Because the considerations underlying the general welfare doctrine are unique to the determination of federal tax liability, no implication is intended as to the treatment or effect of such payments or as to whether an employment relationship exists under **any other provision of law, including the FLSA and other federal and state employment laws.**

2. More minor issue -- we need not discuss today: Treasury is considering adding the language in bold below to the 2nd criterion for the FICA exemption. Their goal is to address the concern that states might try to run state payrolls or other government programs through TANF in order to get the FICA exemption. However, they are open to dropping this idea if we think it will create more trouble than it's worth.

Criteria 2: The determination of the individual's eligibility to receive any payment is based on need, and the only payments received by the individual with respect to the work activity are funded entirely under a TANF program ... and the Food Stamp Act.

Summary of Draft IRS Ruling

Purpose: Notice sets forth certain conditions under which TANF payments will not be treated as income, earned income, or wages for federal income and employment tax purposes. IRS seeking comments on notice and will issue a regulation.

Scope: Addresses only "treatment of TANF payments under certain income and employment tax provisions of the Internal Revenue Code. No implication is intended as to the treatment or effect of such payments or as to whether an employment relationship exists under any other provision of law, including FLSA and other federal and state employment laws."

Background: Describes TANF.

Treatment of TANF Payments – In General: This section summarizes a 1971 Treasury ruling known as the general welfare doctrine: "Disbursements by a governmental unit that are made to an individual under a legislatively provided social benefit program for the promotion of the general welfare, and that are not made basically for services rendered, are excludable from the individual's gross income and are not treated as wages for employment tax purposes, even if the recipient is required to perform certain activities to remain eligible for such payments.... If, however, taking into account all the facts and circumstances, such payments by a governmental unit are basically compensation for services rendered, then the payments are includible in the individuals' gross income and are treated as wages for employment tax purposes."

Treatment of TANF Payments – Application of facts and circumstances analysis to certain TANF payments: "...a TANF payment may be made both for the promotion of the general welfare and as compensation for services. In these cases, it is extremely difficult to characterize the basic purpose of the payments. It is also not practically feasible to determine the relative proportion each purpose represents of the payment.

"In many cases, however, TANF payments are received in lieu of (and generally in amounts no greater than) payments the individual formerly received or would have received under AFDC based upon the individual's personal and family subsistence requirements. In these cases, the primary measure of the amount received is the personal or family need of the individual recipient rather than the value of any services performed. These cases typically share, and can be identified by, common characteristics.

"Accordingly, in cases where the following 3 conditions are satisfied, TANF payments will not be" taxable:

"1. The only payments received by the individual with respect to the work activity are received directly from the state or local welfare agency" (or a contractor that administers TANF).

"2. The only payments received by the individual with respect to the work activity are funded entirely under a TANF program ... and the Food Stamp Act.

"3. The size of the individual's payment [including food stamps] is determined by the applicable federal and state welfare laws, and the number of hours the individual may engage in the work activity is limited by the size of the individual's payment (as determined by applicable federal or state welfare law) divided by the federal or state minimum wage."

DRAFT

Draft Date: 02/19/98

Control Number: RR-109108-97

Part III - Administrative, Procedural, and Miscellaneous

Treatment of Certain Payments Received as Temporary Assistance for Needy Families (TANF)

Notice 98 -

PURPOSE

This notice addresses the federal income and employment tax consequences of payments received by individuals with respect to certain work activities performed in state programs under part A of title IV of the Social Security Act, as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. No. 104-193, 110 Stat. 2105 (August 22, 1996) (TANF payments). The notice sets forth certain conditions under which TANF payments will not be treated as income, earned income, or wages for federal income and employment tax purposes. The Treasury Department and the Internal Revenue Service intend to issue regulations that will address the federal income and employment tax consequences of TANF payments. The regulations to be issued will be effective as of the date of this notice. Pending issuance of these regulations, the provisions of this notice apply.

SCOPE

This notice addresses only the treatment of TANF payments under certain income and employment tax provisions of the

- 2 -

Internal Revenue Code. No implication is intended as to the treatment or effect of such payments or as to whether an employment relationship exists under ~~any~~ other provision of law, including the Fair Labor Standards Act and other federal and state employment laws. ~~of the~~

BACKGROUND

Congress reformed the welfare system through the enactment of PRWORA, which replaced Aid to Families with Dependent Children (AFDC) with Temporary Assistance for Needy Families. AFDC required ^{some} recipients to perform some work activities in order to continue to receive public assistance. TANF provides states with more flexibility than they had under AFDC to determine basic eligibility rules and benefit amounts. TANF also requires that specified percentages of recipients engaged in work activities and imposes penalties on the states for non-compliance with that requirement.

For purposes of TANF, the term "work activities" is defined under §407(d) of the Social Security Act as:

- (1) unsubsidized employment;
- (2) subsidized private sector employment;
- (3) subsidized public sector employment;
- (4) work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available;
- (5) on-the-job training;
- (6) job search and job readiness assistance;

DRAFT

- 3 -

(7) community service programs;

(8) vocational educational training (not to exceed 12 months with respect to any individual);

(9) job skills training directly related to employment;

(10) education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency;

(11) satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate; and

(12) the provision of child care services to an individual who is participating in a community service program.

42 U.S.C. § 607(d).

TREATMENT OF TANF PAYMENTS

A. In General.

Generally, the federal income and employment tax consequences of TANF payments are determined under the following analysis.

Disbursements by a governmental unit that are made to an individual under a legislatively provided social benefit program for the promotion of the general welfare, and that are not made basically for services rendered, are excludable from the individual's gross income and are not treated as wages for employment tax purposes, even if the recipient is required to perform certain activities to remain eligible for such payments.

DRAFT

- 4 -

Similarly, payments made other than as employee compensation or as earnings from self-employment are not earned income for Earned Income Tax Credit (EIC) purposes. If, however, taking into account all the facts and circumstances, such payments by a governmental unit are basically compensation for services rendered, then the payments are includible in the individual's gross income and are treated as wages for employment tax purposes. Similarly, payments made as employee compensation or as earnings from self-employment generally are treated as earned income for EIC purposes (but see § 32(c)(2)(B)(v) of the Internal Revenue Code, discussed below).

Section 32(c)(2)(B)(v) (as added by § 1085(c) of the Taxpayer Relief Act of 1997, Pub. L. No. 105-34, 111 Stat. 788 (August 5, 1997), and effective for taxable years beginning after December 31, 1997) provides that earned income for EIC purposes does not include amounts received for "service performed in work activities as defined in paragraph (4) or (7) of section 407(d) of the Social Security Act to which the taxpayer is assigned under any State program under part A of title IV of such Act, but only to the extent such amount is subsidized under such State program."

B. Application of facts and circumstances analysis to certain TANF payments.

Due to the flexibility TANF affords states to determine basic eligibility rules and benefit amounts, a TANF payment may be made both for the promotion of the general welfare and as compensation for services. In these cases, it is extremely

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- 5 -

difficult to characterize the basic purpose of the payments. It is also not practically feasible to determine the relative proportion each purpose represents of the payment.

In many cases, however, TANF payments are received in lieu of (and generally in amounts no greater than) payments the individual formerly received or would have received under AFDC based upon the individual's personal and family subsistence requirements. In these cases, the primary measure of the amount received is the personal or family need of the individual recipient rather than the value of any services performed. These cases typically share, and can be identified by, common characteristics.

Accordingly, in cases where the following three conditions are satisfied, TANF payments will not be includible in an individual's gross income, treated as earned income for EIC purposes, or treated as wages for employment tax purposes (the federal income and employment tax treatment of TANF payment that do not satisfy each of the following three conditions is determined under the general analysis described in paragraph (A) above):

(1) The only payments received by the individual with respect to the work activity are received directly from the state or local welfare agency (for this purpose, an entity with which a state or local welfare agency contracts to administer the state TANF program on behalf of the state will be treated as the state or local welfare agency);

DRAFT

- 6 -

incl FS payment

(2) The only payments received by the individual with respect to the work activity are funded entirely under a TANF program (including any payments with respect to qualified state expenditures (as defined in § 409(a)(7)(B)(i) of the Social Security Act)) and the Food Stamp Act of 1977; and

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(3) The number of hours the individual may engage in the work activity is limited by the size of the individual's payment (as determined by applicable federal or state welfare law) divided by the federal or state minimum wage.

REQUEST FOR COMMENTS

The Treasury Department and the Service invite comments on this notice and on the future regulations. In particular, comments are requested on the three conditions set forth in the "Treatment of Workfare Payments" section of this notice. Written comments should be submitted by April 1, 1998. An original and eight copies of written comments should be sent to:

Internal Revenue Service
Attn: CC:DOM:CORP:R
Room 5228 (IT&A:Br2)
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044.

or hand delivered between the hours of 8 a.m. and 5 p.m. to:

Courier's Desk
Internal Revenue Service
Attn: CC:DOM:CORP:R (Notice 98-__)

DRAFT

- 7 -

Room 5228 (IT&A:Br2)

1111 Constitution Avenue, NW

Washington, D.C.

Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to:

http://www.irs.ustreas.gov/prod/tax_regs/comments.html (the IRS internet site). All comments will be available for public inspection and copying in their entirety.

FURTHER INFORMATION

For further information, contact Mr. Edwin B. Cleverdon at (202) 622-4920 regarding the income tax issues in this notice and Ms. Jean Casey at (202) 622-6060 regarding the EIC and employment tax issues in this notice (not toll-free calls).

Diana Fortuna

07/16/98 11:05:12
AM

Record Type: Record

To: William P. Marshall/WHO/EOP

cc: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Cynthia A. Rice/OPD/EOP, Laura Emmett/WHO/EOP

Subject: Treasury language on FICA/workfare for our review asap

Treasury just gave me its edit on how to strengthen the FICA notice's caveat that the tax reasoning should not be imported into FLSA decisions. It doesn't seem overwhelmingly creative to me, but I'm not sure how picky to be at this point. Treasury is holding off on getting clearance on this from the IRS until we say we're comfortable, so we should act on this asap. I assume we will not share this with DOL until after the IRS signs off, because DOL should see it when it's ready to go out the door, but let me know if you disagree.

On timing, Treasury says early next week, although not with 100% certainty.

New language in bold:

Because the considerations underlying the general welfare doctrine are unique to the determination of federal tax liability, no implication is intended as to the treatment or effect of such payments or as to whether an employment relationship exists under any other provision of law, including the FLSA and other federal and state employment laws.

Karen Tramontano

07/16/98

11:24:59 AM

Record Type: Record

To: Diana Fortuna/OPD/EOP

cc: Cecilia E. Rouse/OPD/EOP, Elena Kagan/OPD/EOP

Subject: Re: any news on Michigan? 

on Michigan -- the Secretary is keeping her own counsel on this one -- we've made suggestions

since Bruce, Mickey, Fred, Elena all have said that FICA will be decided b/4 the governors meeting -- I just want to make sure that we are clear that unless there is language that is satisfactory to the Department of Labor and to our labor allies --- these are commitments we have made -- we are not going to be comfortable moving on this --- we just had a major process snafu today we don't need another one -- thanks

Karen Tramontano

07/15/98

07:47:40 PM

Record Type: Record

To: Diana Fortuna/OPD/EOP
cc: Cecilia E. Rouse/OPD/EOP
Subject: Re: any news on Michigan? 

actually i have to talk w/ dol about whether the secretary talked w/ engler --- i will try to do that tomorrow. kt

where are we w/ fica ----- i spoke w/ bill marshall today and the language had not be worked out w/ treasury --- yet, folks keep saying this is going to happen. podesta is concerned about whether the dol/labor are okay w/ the caveats --
would you let me know what's the status, thanks



Record Type: Record

To: Mickey Ibarra/WHO/EOP, Elena Kagan/OPD/EOP

cc: Diana Fortuna/OPD/EOP, Fred DuVal/WHO/EOP

Subject: NGA and FSLA

Carper's office called and asked if NGA could have a heads-up before we announce our decision on FSLA. Will this happen this week?



Mickey Ibarra
07/15/98 04:30:33 PM

Record Type: Record

To: William H. White Jr./WHO/EOP

cc: Elena Kagan/OPD/EOP, Diana Fortuna/OPD/EOP, Fred DuVal/WHO/EOP

Subject: Re: NGA and FSLA

I sure hope it will happen this week! Bruce said he was trying to get it done last week. The notification issue is sensitive and we need to coordinate closely with Karen Tramentano for labor groups who have a stake in this as well.

Diana Fortuna

07/16/98 03:33:19

PM

Record Type: Record

To: Fred DuVal/WHO/EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: FICA/workfare notice 

Today Treasury is giving us the new language we asked for that is intended to address labor's issue, and we plan to discuss it with DOL tomorrow morning. Treasury has not yet cleared it with the IRS, but they anticipate that will take only a day or so. Treasury says they can be ready to go early next week. However, DOL's readiness is a separate question, and we hope we can resolve that at our meeting tomorrow.

Fred Duval 07/16/98 11:50:30 AM

Fred Duval 07/16/98 11:50:30 AM

Record Type: Record

To: Elena Kagan/OPD/EOP
cc: See the distribution list at the bottom of this message
Subject:

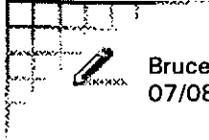
I have a briefing tomorrow with the Demo Govs staff in preparation of NGA at the end of the month. Among the major questions will be FLSA. I am trying to convince them to help us kill an NGA statement critical of us on this. They won't settle for "its coming" Are we ready yet?

Message Copied To:

John Podesta/WHO/EOP
Karen Tramontano/WHO/EOP
Mickey Ibarra/WHO/EOP
Diana Fortuna/OPD/EOP
William H. White Jr./WHO/EOP

Message Copied To:

Elena Kagan/OPD/EOP
Karen Tramontano/WHO/EOP
Mickey Ibarra/WHO/EOP
William H. White Jr./WHO/EOP
Cynthia A. Rice/OPD/EOP



Bruce N. Reed
07/08/98 09:25:55 AM

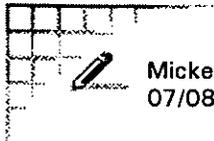
Record Type: Record

To: Mickey Ibarra/WHO/EOP

cc: Elena Kagan/OPD/EOP, Karen Tramontano/WHO/EOP

Subject: Re: FLSA

We think Treasury can wrap this up next week. We'll keep on them and let **you** know if new problems emerge.



Mickey Ibarra
07/08/98 08:37:27 AM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP
cc: Karen Tramontano/WHO/EOP
Subject: FLSA

We need to wrap-up this issue up right away. Both NACo and NGA are on our case for delay. Please advise. Thanks.

Draft Talking Points for Unions:

- We appreciate your work in helping Treasury evaluate all of the possible alternatives it has to answer this question.
- However, we understand from Treasury officials that they have serious concerns about your alternative route to a FICA exemption.
- Courts have a significant basis for determining that FLSA and other worker protections apply to those on workfare, including the underlying FLSA law and the May 1997 DOL guidance on workfare. They are very unlikely to turn to a tax ruling as a basis for their decisions.
- We continue to believe that this FICA exemption will help our long-term efforts to ensure that workfare participants retain the essential labor protections we have worked so hard to secure for them.
- A ruling should be issued as soon as possible. We should not allow a continued delay to give the Congressional majority another opportunity to try to roll back worker protections.
- The FICA exemption is also fair in light of Congress's decision that those on workfare are not eligible for the EITC.
- Treasury's ruling, while effective immediately, would be subject to a public comment process, and followed by a regulation that will consider comments received.
- We remain committed to enforcing the application of the FLSA and other worker protection laws to those on workfare. For example, in the current dispute in California, DOL has been vigilant in informing state officials and the public that the state's interpretation of the law is erroneous.

Issue: Should Treasury proceed with its draft ruling that workfare participants are not subject to income and employment taxes?

Summary of Draft Ruling:

- 3-part test for whether workfare is subject to taxes:
 - The only payments the individual receives for the work activity come directly from the state or local welfare agency, or its contractor.
 - Payment is funded entirely by TANF and/or food stamps.
 - Size of the payment is limited by welfare laws; and the number of hours is limited by the size of the payment divided by the minimum wage.
- Ruling is based in part on IRS's 1971 "general welfare" doctrine, which states that "disbursements by a government to an individual under a legislatively provided social benefit program for the promotion of the general welfare, and that are not made basically for services rendered" are not subject to income or employment taxes.

Ruling states that a TANF payment may be made both for the promotion of the general welfare and as compensation for services, and it is not practically feasible to determine the relative proportion of each purpose. Therefore, it carves out the 3-part exception above for cases where the primary measure of the amount received is the state's welfare grant rather than the value of services performed.

- Ruling has disclaimer: "No implication is intended as to ... whether an employment relationship exists under any other provision of law, including FLSA."

Concern by Unions/DOL:

- Risk that courts, in determining whether FLSA really applies to workfare position, will import logic of tax ruling that work is not really or entirely compensation for services.
- Unions believe that Treasury has a viable alternative: a 1950 Social Security law says that people employed by states who are "employed to relieve [them] from unemployment" are not covered by FICA.

Response by Treasury:

- Risk that courts will use this ruling to rule that workfare participants are not subject to employment laws appears small to non-existent. Examples given by unions are not convincing.
- The unions' alternative is not promising. The scope of employment it would cover is not clear (e.g., may not be limited to workfare). Also, it does not deal with income taxes. Fuller evaluation of unions' alternative would take many months.

FICA Meeting

Issue: Should Treasury proceed with its draft ruling that workfare participants are not subject to income and employment taxes?

Summary of Draft Ruling:

- 3-part test for whether workfare is subject to taxes:
 - The only payments the individual receives for the work activity come directly from the state or local welfare agency, or its contractor.
 - Payment is funded entirely by TANF and/or food stamps.
 - Size of the payment is limited by welfare laws; and the number of hours is limited by the size of the payment divided by the minimum wage.
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- Unions believe that Treasury has a viable alternative: a 1950 Social Security law says that people employed by states who are "employed to relieve [them] from unemployment" are not covered by FICA.

Response by Treasury:

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- The unions' alternative is not promising. The scope of employment it would cover is not clear (e.g., may not be limited to workfare). Also, it does not deal with income taxes. Fuller evaluation of unions' alternative would take many months.

Karen Tramontano

06/03/98

05:13:18 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP

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

Subject: Re: FICA/workfare ruling 

I agree. I do need some help w/ a strategy/spin w/labor. My understanding is that treasury's believes its decision will exempt workfare w/o impacting flsa. Our DOL folks disagree w/ that analysis which is one of the reasons why labor movement folks are concerned. that being said, timing our disclosure is critical --- thoughts on how to proceed would be helpful. thanks

Message Copied To:

Diana Fortuna/OPD/EOP
Fred DuVal/WHO/EOP
Elena Kagan/OPD/EOP
Cynthia A. Rice/OPD/EOP
Fred DuVal/WHO/EOP

Diana Fortuna

06/02/98 09:37:33

AM

Record Type: Record

To: Fred DuVal/WHO/EOP, Karen Tramontano/WHO/EOP

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

Subject: FICA/workfare ruling

Here is the latest from Treasury on their draft ruling on FICA taxation of workfare. On behalf of the unions, Arnold and Porter sent them a paper with legal arguments against their draft ruling.

Treasury is still scrutinizing that paper. Their preliminary reaction is that it will not persuade them to change their position -- i.e., they expect that, after finishing their analysis, their view will be that their draft notice exempting workfare from FICA taxes is the best way to go. Completing this analysis is not Treasury's top priority at this point, but my sense is that they could finish their work quickly (1-2 weeks) if we told them it was a top priority and we were ready to move.

Fred Duval 06/02/98 10:18:25 AM

Record Type: Record

To: Diana Fortuna/OPD/EOP

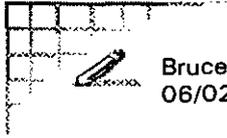
cc: See the distribution list at the bottom of this message

Subject: Re: FICA/workfare ruling 

We have to make this a priority. You'll all recall that it was on the verge of announcement a year ago when the Govs made it a major priority, and then again 6 months ago when the Govs came to DC. As you know, I have been telling Chile, Carper and others to hold off calls to Bruce and others because the decision was coming. Bruce assured Carper of the same 6 weeks ago. I think we all have a lot of credibility at stake in getting this done.

Message Copied To:

Fred DuVal/WHO/EOP
Karen Tramontano/WHO/EOP
Bruce N. Reed/OPD/EOP
Elena Kagan/OPD/EOP
Cynthia A. Rice/OPD/EOP
Mickey Ibarra/WHO/EOP



Bruce N. Reed
06/02/98 01:28:53 PM

Record Type: Record

To: Diana Fortuna/OPD/EOP

cc: Fred DuVal/WHO/EOP, Karen Tramontano/WHO/EOP, Elena Kagan/OPD/EOP, Cynthia A. Rice/OPD/EOP

Subject: Re: FICA/workfare ruling

I agree with Fred. Let's tell Treasury it's a high priority, and get this over with before the NGA meeting Aug 1-4.

Diana Fortuna

05/12/98 12:52:56
PM

Record Type: Record

To: Elena Kagan/OPD/EOP, Cynthia A. Rice/OPD/EOP
cc: Laura Emmett/WHO/EOP
Subject: Chiles wants to talk to Podesta on FICA; see attached

(Maybe that wouldn't be the worst thing in the world.)

----- Forwarded by Diana Fortuna/OPD/EOP on 05/12/98 12:54 PM -----

Fred Duval 05/12/98 12:47:53 PM

Record Type: Record

To: John Podesta/WHO/EOP
cc: See the distribution list at the bottom of this message
Subject:

Gov Chiles will be in DC tomorrow and is looking to set up a call with you to discuss the anticipated FICA ruling. I have been attempting to convince him that a decision is forthcoming and a call is not necessary. He has not accepted this response and is seeking a more firm and higher level guarantee.

Message Copied To:

Karen Tramontano/WHO/EOP
Diana Fortuna/OPD/EOP
Mickey Ibarra/WHO/EOP
Bruce N. Reed/OPD/EOP
Emory L. Mayfield/WHO/EOP

Diana Fortuna 04/20/98 01:05:12
PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP
cc: Cynthia A. Rice/OPD/EOP, Laura Emmett/WHO/EOP
Subject: A reminder on your conversation with Podesta on FICA/workfare

Just a reminder: I know you're planning to speak to Podesta on the timing of the FICA/workfare notice. This Friday, the Exec Comm of NGA is meeting (I believe you're meeting with Democratic Governors that day as well). Charlie Salem of Gov. Chiles office has suggested that Chiles may find it difficult not to raise this at the NGA meeting this Friday, so we should deal with this soon.

----- Forwarded by Diana Fortuna/OPD/EOP on 04/20/98 01:04 PM -----

Diana Fortuna 04/09/98 11:05:26
AM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP, Cynthia A. Rice/OPD/EOP
cc: Laura Emmett/WHO/EOP
Subject: FICA/workfare

Charlie Salem of Gov. Chiles' office says Chiles is itching to start banging the drum again on the FICA/workfare notice issue with his fellow Governors. He has been holding back after we quietly consulted just him and Carper on the specifics of the notice right before the Feb. NGA meeting. But there is an NGA executive committee meeting in DC on April 24 (where they will focus mostly on tobacco), and Charlie says it may find its way onto the agenda by then. So perhaps that gives us a deadline in pushing Podesta.

(By the way, Treasury says their desire to do the notice is not affected by Rubin's chat with Swäeney. Rubin wants to be briefed on the issue, but Scholz is certain that that briefing will just be informational and won't alter their position.)

Diana Fortuna

04/23/98 07:26:42

PM

Record Type: Record

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

cc:

Subject: Fred DuVal sent attached email on FICA/workfare to Bruce, Podesta, etc. fyi

----- Forwarded by Diana Fortuna/OPD/EOP on 04/23/98 07:28 PM -----



07:28:30 PM

Record Type: Record

To: Diana Fortuna/OPD/EOP

cc:

Subject: FYI

----- Forwarded by William H. White Jr./WHO/EOP on 04/23/98 07:27 PM -----

Fred Duval 04/23/98 06:32:22 PM

Record Type: Record

To: Mickey Ibarra/WHO/EOP, John Podesta/WHO/EOP, Bruce N. Reed/OPD/EOP

cc: William H. White Jr./WHO/EOP, Emory L. Mayfield/WHO/EOP, Suzanne Dale/WHO/EOP

Subject:

Governor Carper's office just indicated that the issue of FLSA - and the Treasury ruling on whether TANF payments will be treated as income for federal income and employment purposes - may be brought up at tomorrow's Governors meeting. You will recall that the Governor's have been pressing Treasury for this ruling since last summers NGA meeting in Las Vegas, and the ruling was poised for announcement before the Governors Winter meeting here in Washington but was postponed at Governor Carper's request because he wanted to avoid that controversy with the Governors here. Two months later, they are eager for it to come out and will ask about its status.



Cynthia A. Rice

04/22/98 01:00:40 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP

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

Subject: Bruce--you should know Dem Govrs may raise FICA

on Friday, either in front of Podesta or privately with you. I think you should talk to Podesta before then so he's not caught unawares. We could use this a way to dislodge this ruling.

Diana Fortuna 04/23/98 07:26:42
PM

Record Type: Record

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

cc:

Subject: Fred DuVal sent attached email on FICA/workfare to Bruce, Podesta, etc. fyi

----- Forwarded by Diana Fortuna/OPD/EOP on 04/23/98 07:28 PM -----



07:25:30 PM

Record Type: Record

To: Diana Fortuna/OPD/EOP

cc:

Subject: FYI

----- Forwarded by William H. White Jr./WHO/EOP on 04/23/98 07:27 PM -----

Fred Duval 04/23/98 06:32:22 PM

Record Type: Record

To: Mickey Ibarra/WHO/EOP, John Podesta/WHO/EOP, Bruce N. Reed/OPD/EOP

cc: William H. White Jr./WHO/EOP, Emory L. Mayfield/WHO/EOP, Suzanne Dale/WHO/EOP

Subject:

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Diana Fortuna

04/14/98 11:35:55
AM

Record Type: Record

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

cc: Andrea Kane/OPD/EOP, Larry R. Matlack/OMB/EOP, Robert N. Weiner/WHO/EOP, Suzanne Dale/WHO/EOP

Subject: New York workfare situation similar to California's

Seth Harris tells me that a situation similar to the one in California has sprung up in New York, on compliance with FLSA/minimum wage for workfare slots. DOL hears that the state is planning to issue guidance that would say FLSA doesn't apply to workfare. So they plan to reach out as they did in California by first calling the state with a general offer of technical assistance, followed by a letter. Once they officially see the draft guidance that is problematic, they plan to tell the state that they got it wrong. Seth notes the examples in the workfare series in the NYTimes that indicate people aren't getting minimum wage. I assume we concur with their course of action. This could get big, since the city is already running such a large workfare program for both TANF and general assistance.

Message Sent To:

Elena Kagan/OPD/EOP
Cynthia A. Rice/OPD/EOP
Karen Tramontano/WHO/EOP
Barbara Chow/OMB/EOP
Emil E. Parker/OPD/EOP

Diana Fortuna

04/03/98 05:11:45

PM

Record Type: Record

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

cc: Laura Emmett/WHO/EOP

Subject: FICA/workfare notice: Rubin and Herman happened to have a meeting today...

with John Sweeney of the AFL on steel, and apparently Sweeney cornered Rubin after the meeting on FICA/workfare. I don't know how Rubin responded, but Karl Scholz had given Rubin talking points on this based on my alert to him. I will follow up and get a better sense of what happened.

I doubt DOL will give this a green light unless they get the word that people here want it to go, so I think it still rests with Podesta.

Diana Fortuna 03/30/98 01:58:09
PM

Record Type: Record

To: See the distribution list at the bottom of this message
cc: Andrea Kane/OPD/EOP, Larry R. Matlack/OMB/EOP, Robert N. Weiner/WHO/EOP
Subject: Update from DOL on California guidance on FLSA doesn't apply to workfare

Seth Harris asked me to update you on California's draft guidance saying workfare jobs aren't subject to FLSA. DOL has just been formally asked for an opinion on the draft by the assemblywoman who chairs a state-wide welfare advisory council, in preparation for a meeting tomorrow. DOL will send a letter today saying the guidance is inconsistent with the law and asking more questions. This may or may not give the assemblywoman and her allies ammo to stop it.

DOL is still not sure if this is the Governor's or the welfare department's initiative.

----- Forwarded by Diana Fortuna/OPD/EOP on 03/30/98 01:52 PM -----

Diana Fortuna 03/25/98 01:42:19
PM

Record Type: Record

To: See the distribution list at the bottom of this message
cc: Andrea Kane/OPD/EOP, Larry R. Matlack/OMB/EOP, Robert N. Weiner/WHO/EOP
Subject: Action by California on FLSA and workfare

Seth Harris says DOL hears from reliable sources that California plans to send guidance to welfare directors next week that people in work experience are not covered by FLSA. Here's DOL's plan to deal with it.

1. DOL will call the state now, saying in a neutral way that they hear guidance is being prepared, and offer to help in their interpretation, with a followup letter saying the same thing.
2. Then they expect to get within a few days a formal request from a Democratic state legislator asking for a formal opinion on the guidance. DOL will respond to that by saying the guidance appears to be inconsistent with DOL's guidance, that the state is wrong to make categorical judgments about the status of work experience participants, but that they need to learn more.
3. If this doesn't stop the state from issuing the guidance, advocates will find a plaintiff and bring suit in federal court. (An alternative would be for the advocates to ask DOL's Wage and Hour Division to take enforcement action, but Seth thinks they'll bring suit.) If that happens, DOL would then like to file an amicus brief in the case. That won't happen for a few weeks at the earliest.

Let me know if you have a concern about DOL's plan of action or would like to discuss further.

Message Sent To: _____

Diana Fortuna

04/06/98 12:02:25

PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP

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

Subject: Bruce, I will call Carper's people back on FICA/workfare. Also, see the attached.

I am trying to make sure this has not altered Treasury's position -- I doubt it has.

Finally, Chiles' people are calling me on this as well. Chiles is in DC tomorrow and is supposedly getting very anxious about this.

----- Forwarded by Diana Fortuna/OPD/EOP on 04/06/98 10:29 AM -----

Diana Fortuna

04/03/98 05:11:45

PM

Record Type: Record

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

cc: Laura Emmett/WHO/EOP

Subject: FICA/workfare notice: Rubin and Herman happened to have a meeting today...

with John Sweeney of the AFL on steel, and apparently Sweeney cornered Rubin after the meeting on FICA/workfare. I don't know how Rubin responded, but Karl Scholz had given Rubin talking points on this based on my alert to him. I will follow up and get a better sense of what happened.

I doubt DOL will give this a green light unless they get the word that people here want it to go, so I think it still rests with Podesta.

Diana Fortuna

04/03/98 12:02:43

PM

Record Type: Record

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

cc: Laura Emmett/WHO/EOP

Subject: Tramantano on FICA/workfare notice

Karen says she called DOL at Podesta's request a few days ago to see if they were comfortable with the notice. Kitty Higgins asked for one last chance to talk to Treasury, probably Larry Summers (presumably to talk him out of it, though I don't know if Summers is familiar with the issue). That may have happened already. I'm trying to find out. I have alerted Karl Scholz at Treasury.

Exempting Workfare Positions from FICA Taxes

Question: Is it true that the Treasury Department and Internal Revenue Service are about to undermine our hard-won labor protections for welfare recipients by ruling that workfare payments are not subject to FICA and unemployment taxes?

Answer: As you know, the Administration has been steadfast in its position that worker protection laws, such as the Fair Labor Standards Act, should apply to workfare participants in the same way they apply to other workers, and that no one doing real work should be paid a subminimum wage. We fought hard with you and succeeded in stopping Republican efforts on the Hill to roll back these protections. We repeatedly told states that paying working welfare recipients the minimum wage and giving them other worker protections will promote, not undermine, the goals of welfare reform, because it will give them the ability to support their families and break the cycle of dependency.

In last year's legislative debate, we did go on record in favor of a narrow legislative fix exempting workfare participants from FICA and FUTA. We did so because we believe that removing the tax issues from the debate will make it more likely, not less likely, that we will prevail in our efforts to preserve worker protections, including the minimum wage, for those in workfare programs.

As you know, the Treasury Department and the Internal Revenue Service have been working for months on an administrative ruling that would resolve the question of how, under current law, FICA and FUTA apply to welfare recipients in workfare programs. They hope to have an answer to this question shortly. I understand that they are carefully limiting their ruling to this tax question, and will make clear that any ruling they issue has no effect on non-tax issues such as application of worker protection laws.

Background

Labor Protections: A key question for labor and states is whether workfare participants have protections under labor laws such as the Fair Labor Standards Act (including payment of the minimum wage), worker safety laws, anti-discrimination laws, and collective bargaining rights. The labor movement believes strongly that workfare participants should have all these protections, while Governors have resisted them to varying degrees because they make workfare programs more expensive and complex to manage. (Most Governors have conceded that it is fair to pay the minimum wage and offer safety protections.)

The Administration has agreed with organized labor on this issue except for the tax question described below. Department of Labor guidance issued last May clarified that most workfare participants are "employees" and entitled to most worker protections. Last fall, Congressional Republicans vowed to reverse this guidance but failed to do so because of dissension in their caucus over how far to go.

Tax Issue: A related issue is whether workfare jobs should be subject to FICA and unemployment taxes. Governors -- especially key Democratic Governors such as Carper and Chiles -- have been vehement in opposition to applying these taxes to workfare participants.

Within a few weeks, the IRS expects to issue a notice that clarifies that these jobs are exempt from taxes under current law. The notice says that workfare jobs are distinct from other jobs because the payment is determined more by state welfare policy and family need than the value of services performed. The unions are aware of this notice, and oppose it on the grounds that states might try to use its logic in court to argue against the application of labor protections to workfare participants. Our position is that taking this action will remove the momentum from Congressional efforts to weaken labor protections, while not putting labor protections at any significant risk.