

NLWJC - Kagan

DPC - Box 061 - Folder-009

Welfare - Food Stamps:

Washington State Request

WR - food stamps Wash state request

▶ **Diana Fortuna**
05/21/97 04:56:12 PM
.....

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP
cc: Cynthia A. Rice/OPD/EOP
Subject: Letting states buy food stamps to give to legal immigrants

You will recall that USDA told Washington state that current law doesn't permit them to buy food stamps from us and give them to legal immigrants, and we developed a legislative proposal. Washington lobbied their delegation, and it now looks like Congress has agreed to this as part of the supplemental, except for electronic benefits transfer states. Maryland will not be happy because they are an EBT state. We supported it with or without EBT.

(Sounds like a weekly report item....)

WR - food stamp
Wash state request

United States Senate

WASHINGTON, DC 20510

April 3, 1997

The Honorable Dan Glickman
Secretary
Department of Agriculture
Independence Avenue and 13th Street, S.W.
Washington, DC 20250

Dear Secretary Glickman:

The welfare law enacted last year disqualifies most legal immigrants from the federal food stamp program. This action represents a potentially serious new cost burden for the states, if they decide to meet the food needs of these immigrants on their own. Many states are now actively exploring ways to continue food assistance to needy legal immigrants using state and local funds.

The purpose of this letter is to urge you to give states the option of buying into the federal food stamp program in order to provide this valuable aid to immigrants. In fact, the Massachusetts Senate voted today unanimously to pursue this option. Without this possibility, many states are facing the unwelcome prospect of creating separate state-run food programs for immigrants, while other citizens continue to be assisted by the federal food stamp program. Our hope is that we can find a way to avoid this needless duplication.

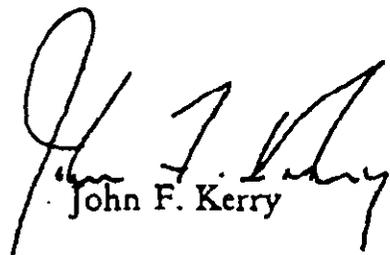
Section 15(a) of the Food Stamp Act (7 USC 2024(a)) authorizes the Secretary of Agriculture to issue food stamp coupons "to such person or persons, and at such times and in such manner, as the Secretary deems necessary or appropriate to protect the interests of the United States." We feel that granting states the flexibility to help poor legal immigrants in this way is permissible under this standard.

We understand that this proposal may raise an anti-deficiency issue under federal budget laws. If states buy into the food stamp program to help immigrants, the state reimbursement goes into the general federal treasury and not into the food stamp account. This leaves the food stamp program with an illegal deficit. One way in which this issue might be addressed is for states and the Department to agree to subtract the value of the food stamps the state is purchasing from the reimbursements for administrative expenses that are otherwise due to the states under the food stamp program.

This option would offer states a broader range of choices as they seek to minimize the harm to their legal immigrant constituencies under the new welfare

law. With legislatures in most states currently considering their budgets for the next fiscal year, we would be grateful if you could give this proposal your prompt attention.

Many thanks for your consideration, and we look forward to hearing from you.


John F. Kerry

Sincerely,


Edward M. Kennedy

WR - Wash Fd Stamp
Request

Diana Fortuna 03/12/97 08:57:43 AM

Record Type: Record

To: Elena Kagan/OPD/EOP, Cynthia A. Rice/OPD/EOP
cc:
Subject: More on legal rationale for Washington food stamp option

----- Forwarded by Diana Fortuna/OPD/EOP on 03/12/97 08:57 AM -----

Stacy L. Dean 03/12/97 08:42:28 AM

Record Type: Record

To: Diana Fortuna/OPD/EOP
cc: Kenneth S. Apfel/OMB/EOP, Keith J. Fontenot/OMB/EOP, Barry White/OMB/EOP
Subject: Re: Washington State Option 

From my small corner of the world it is too late to put something in the bill. I signed off on the final legislative specs last night. I'll touch base with Randy today and ask for a more formal opinion. In a nutshell, the lawyers are very uncomfortable with using the section of the food stamp act which says something to the effect of, "The Secretary can issue coupons to whomever he chooses as long as it is in the public interest."

They don't feel that section 1. is intended to override the other section of the Act that says states shall not issue coupons to ineligible households, 2. provides for reimbursement, and 3. is in direct conflict with the explicit prohibition on providing coupons to immigrants.

Essentially, while we are conceptually able to disaggregate the food stamp benefit from the food stamp coupon, the law may not be able to do that.

But they were working hard to find way around it. I'll get back to you today.

WR - Wash food stamp
request



FORTUNA D @ A1
01/14/97 04:37:00 PM

Record Type: Record

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

cc:

Subject: Washington food stamps request

Gov. Lowry has made an interesting request of USDA that they want to reject tomorrow at noon. He has asked USDA to sell him food stamps for legal immigrants who are losing eligibility, and he promises to reimburse USDA for the cost. His theory is that this is easier than establishing some new state voucher for this purpose.

USDA is pretty convinced that this is legally an impossibility. They think the only hope is legislation IF we want to do this policy-wise -- which they're not sure they want to do.

Questions for us: Is this something we would want to do? Politically, we have clearly pushed to soften the impact and offer states flexibility; but do we want to get into the business of selling food stamps to all kinds of comers? They are federal food stamps, and these immigrants are not supposed to get them....

If we do like this idea, do we want to take a look at USDA's legal analysis that led them to conclude that this can't be done without legislation?

To make matters worse, Lowry wants an answer from Glickman by noon tomorrow -- I think because he is leaving office, with the new Gov. coming in?!? The new Gov. apparently favors this, but would rather it were a Lowry proposal.

I will try to learn more about the logistics, but let me know of any reactions on the policy.

Message Sent To:

Elena Kagan
Kenneth S. Apfel
Emily Bromberg
Keith J. Fontenot
REED_B @ A1@CD@LNGTWY
WARNATH_S @ A1@CD@LNGTWY

Hum, !!!
Ch
w/
Bruce



Cynthia A. Rice

03/13/97 10:51:45 AM

Record Type: Record

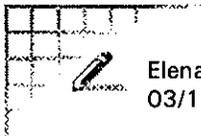
To: Elena Kagan/OPD/EOP
cc: Diana Fortuna/OPD/EOP
bcc:
Subject: Re: Here's the official word from OMB that they are giving up on Wash food stamps' admin solution



I think we should have the agency draft the language to fix the problem and transmit it to the Hill with a letter saying Congressional intent was clearly to allow states to use their own dollars to assist legal immigrants, the state of Oregon has an innovative proposal to do this, and we need this technical fix to make it happen. Then the state of Oregon and NGA should lobby the Hill to try to get it added to the welfare technicals package when House Ways and Means marks up on March 20th or when the Senate does so at a later date in the Senate. This would require Ag Cmte and Ways and Means/Finance sign off. We need to move very fast to get this added to the technicals but that's the best vehicle (only thing likely to be signed into law anytime soon).

I would note that legal counsel seems to be missing one point about Congressional intent -- yes, the law bans most legal immigrants from the food stamp program, but it also expressly says "a State is authorized to determine the eligibility for any State public benefits..." (section 412). I believe we view the proposal as Oregon wanting to provide a state benefit that use food stamps as a mechanism to deliver that state benefit. Since Congress allowed states to spend their own funds on legal immigrants but expressly forbid receipt of most federal benefits, wouldn't we need to have the state reimburse the feds for the cost of producing the food stamps? Is that part of Oregon's proposal?

Elena Kagan



Elena Kagan
03/13/97 09:05:39 AM

Record Type: Record

To: Diana Fortuna/OPD/EOP
cc: Cynthia A. Rice/OPD/EOP
Subject: Re: Here's the official word from OMB that they are giving up on Wash food stamps' admin solution



The opinion seems too definitive to change. What do you recommend now?

Diana Fortuna 03/12/97 07:56:57 PM

Record Type: Record

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

cc:

Subject: Here's the official word from OMB that they are giving up on Wash food stamps' admin solution

along with Stacy's summary of OLC's view. So I guess the only question is whether Elena wants to talk to Randy to hear it first-hand.

----- Forwarded by Diana Fortuna/OPD/EOP on 03/12/97 07:55 PM -----

Stacy L. Dean 03/12/97 06:14:58 PM

Record Type: Record

To: Diana Fortuna/OPD/EOP

cc: Keith J. Fontenot/OMB/EOP, Matthew McKearn/OMB/EOP

Subject: OLC Verbal Opinion on Washington State

Given the info in the attached note, Ken no longer supports allowing Washington administratively. I guess a next steps discussion are in order. I'll plan on finishing the language this week.

----- Forwarded by Stacy L. Dean/OMB/EOP on 03/12/97 06:19 PM -----

Stacy L. Dean 03/12/97 04:50:14 PM

Record Type: Record

To: Kenneth S. Apfel/OMB/EOP

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

Subject: OLC Verbal Opinion on Washington State

OLC relayed the following opinion to me verbally, after I told them that USDA would probably only want a written opinion if they said it was legal.

They would recommend against allowing the Washington State proposal. They believe that while Section 15 of the Food Stamp Act does permit the Secretary to issue coupons to anyone if it is in the "national interest", that section was written explicitly for law enforcement purposes. The Secretary does have the ultimate decision though as to what "national interest" means. In making that decision, OLC believes that the Secretary would be compelled to consider what Congress intended under the welfare law when it banned most legal immigrants from the food stamp program. Since Congress spoke rather definitively on the subject, OLC believes there is a conflict between using Section 15 and the welfare law.

In layman's terms, it is too much of a stretch.

I told them that Elena might call back to clarify, but that I didn't think you would need a written opinion.

I'm still working on the legislative proposal with USDA.

Message Copied To:

Barry White/OMB/EOP
Keith J. Fontenot/OMB/EOP
Matthew McKearn/OMB/EOP
Cynthia M. Smith/OMB/EOP
Jill M. Pizzuto/OMB/EOP
Steven D. Aitken/OMB/EOP

WR -
Washington
Food Stamps

Diana Fortuna 03/11/97 08:42:07 PM

Record Type: Record

To: Stacy L. Dean/OMB/EOP
cc: See the distribution list at the bottom of this message
bcc:
Subject: Re: Washington State Option

Thanks for the info. Elena and Cynthia, see the attached, but here's the story in a nutshell: the lawyers may be close to telling us that Washington state's proposal to buy food stamps from us to give to legal immigrants doesn't work without legislation. Stacy is looking for guidance on how to proceed with draft legislation -- i.e., whether to rush to get it in the balanced budget bill we are submitting (it may already be too late for that); and whether the Administration proposes it or whether it would have a better chance of enactment if we get a member of the state's delegation to slip it in somewhere.

Ken and co: I think we are still stuck back at the point of thinking that this could be done administratively, so we will want to be brought up to speed on the thinking by OLC and your GC. I don't think we're in a hurry to get it in the budget bill.

All things being equal, I think we would prefer to take ownership of this, so I guess we would want to know whether it is a realistic possibility that we could hand it to a member and get it enacted quietly.

Stacy L. Dean

Stacy L. Dean 03/09/97 12:33:11 PM

Record Type: Record

To: Kenneth S. Apfel/OMB/EOP
cc: See the distribution list at the bottom of this message
Subject: Washington State Option

While OLC has not provided a final ruling on the legality of Washington State's request to purchase coupons for legal immigrants made ineligible under the welfare law, they have indicated that they have serious concerns with the proposal. OMB GC and USDA GC share these concerns and have indicated that they would want Justice to opine before the Administration proceeds. As we discussed on Friday, the Administration needs to decide immediately if it wishes to transmit legislation within the balanced budget bill which would provide States with the option to purchase coupons. However, the legislation can always be transmitted later as a stand alone piece - so the a decision to wait would not preclude the Administration from moving ahead with this policy.

USDA has drafted a legislative proposal. I am still working out the kinks with them but we could be ready to go by Tuesday (assuming no jury duty) if this issue was determined to be critical. We would have to review the language with you because there are several significant policy calls within the proposal beyond the overall issue of the option.

You asked for Diana and USDA's thoughts on the matter. I was jammed on Friday and did not reach Diana, but was able to talk with FCS. They support the notion of the legislation vs. an administrative decision to proceed with the proposal under current authority. However, they suggested that the Administration might want a member to float the language with prompting from the State or advocates. They felt that the Administration might be in a better position to respond to a State proposed option rather than to propose it itself. Washington is represented on the appropriation's committees and might be able to slip such an amendment on one of the supps.

I tend to agree with them. I'm not sure USDA or FCS is positioned to handle this legislatively or rhetorically. (As you know getting the Department and FCS on the same page can take some doing.) This proposal has not been extensively vetted and it is certainly subject to significant attack. Some may wonder why it hasn't been discussed to date. It probably makes sense to do a policy assessment of what is lost if the Administration doesn't propose this themselves.

My most significant "technical" concern is that the Administration would have less ownership and therefore less ability to control some of the outcomes on the secondary policy questions like:

1. should EBT states be allowed this option?
2. should States be allowed to purchases coupons for any group of individuals other than immigrants or 18-50's
3. should the State be allowed to reimburse the feds after the coupons are issued instead of paying for the coupons up front?

As currently drafted, the answer to each of these questions is no.

FCS is going to raise this question up to their Acting UnderSecretary Mary-ann Keefe on Monday.

You do not need to decide these issues immediately -- only if you want the proposal in the BBB. Please advise. Either way, I'll work quickly to resolve the issues and to set up a time to go over the policy calls with you and to finalize the next steps.

Diana, please let us know what your thoughts are.

Message Copied To:

Diana Fortuna/OPD/EOP
Barry White/OMB/EOP
Keith J. Fontenot/OMB/EOP
Matthew McKearn/OMB/EOP
Cynthia M. Smith/OMB/EOP
Jill M. Pizzuto/OMB/EOP

Message Copied To:

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Matthew McKearn/OMB/EOP
Cynthia A. Rice/OPD/EOP
Jill M. Pizzuto/OMB/EOP

Wp - Food Stamps
Wash. request

Diana Fortuna 03/12/97 05:27:58
PVI

Record Type: Record

To: Elena Kagan/OPD/EOP
cc: Cynthia A. Rice/OPD/EOP
Subject: washington food stamps legal logic

Talked to Randy Moss about this. I think it probably makes sense for you to talk to him about it, with your lawyer hat on. He also said he thinks Stacy is preparing something summarizing their views.

The question is whether doing this is reading too much into the part of the law that says the Secretary can give out food stamps in the public interest -- especially giving it to a class of people that Congress has deemed ineligible. This provision was intended to be used in enforcement situations, he said.

FOR
FILING

Randy Moss

BR
from Elena

TO: Elena Kagan
Ken Apfel
Emily Bromberg
Steve Warnath
Keith Fontenot
Wendy White

FR: Diana Fortuna *Diana*

DATE: January 15, 1997

Attached FYI is an analysis from USDA on the issue of whether Washington State should be permitted to purchase and reimburse us for Federal food stamps for use by legal immigrants.

political hit -
after all, the
state is paying. We're
~~Washington State~~
~~Washington State~~
~~Washington State~~

just providing the state
with a kind of
administrative
convenience.
What do you
think?
Elena -

Bruce -
FYI, FAS denied the request
already on the ground that
it was illegal. Since then,
Bob Greenstein has offered a
new - and apparently ~~reasonable~~
plausible - legal theory. Under this
theory, the secretary would have
to determine that sale of the
food stamps to the state "protects
the interests of the U.S."
I've begun to change my mind
on this. ^{Given that} (1) A state wants to
mitigate the effects of the welf. law on
legal immigrants and (2) we want
states to do ^{exactly this} - why not make it as
easy for the state as possible? I don't
even think we'll take much of a

USE OF FOOD STAMP COUPONS FOR STATE FUNDED PROGRAMS

ISSUE: The Washington State Agency requested to be allowed to purchase food coupons from FCS for use in operating a State-funded program for qualified aliens made ineligible by the food stamp welfare reform provisions. The State has agreed to pay any additional costs for printing, issuing, storing and redeeming the State coupons, in addition to paying for the face value of the coupons. FCS denied the State's request on November 21, 1996, on the grounds that it violates section 7(a) of the Food Stamp Act. That Section states that the coupons shall be issued only to households which have been duly certified as eligible to participate in the Food Stamp Program. In addition, appropriations law prohibits cash receipts from being deposited in the appropriations account; rather, the payments from the State would have to be deposited in the general Treasury account. Thus, when the State coupons are redeemed, draw downs would be made from the food stamp redemption account, but the appropriations account could not be credited with the State's payment to offset the expenditure.

On December 6, 1996, the State requested FCS to reconsider its position.

Furthermore, Bob Greenstein has intervened on the State's behalf. He refers us to Sec. 15(a) of the Act which gives the Secretary authority to issue coupons to anyone if the Secretary deems it necessary or appropriate to protect the interests of the United States. OGC advises us that this argument, while not persuasive, is plausible.

FACTORS FOR CONSIDERATION:

Political - The President has expressed concern with the alien provision of Welfare Reform. Providing the States with a tool to quickly implement a State program for legal immigrants would align with the President's commitment to "soften the blow" of the impact of welfare reform on this group. Advocacy groups and the retail trade associations would also support this action. Also, food stamp coupons are an already established secure non-cash instrument which can only be used to purchase food. The outgoing Governor is anxious to present this opinion to the legislature before his successor takes office. His successor, a more moderate Democrat, is expected to support a similar proposal, but to limit it to a smaller group of immigrants.

Washington's approval could be controversial in that it is likely to be perceived by the public and members of Congress as undermining the intent of the legislation by continuing a program abolished by law.

Bob Greenstein

Legal - There are various legal issues relative to the fiscal accounting process involved in selling the coupons to States. We looked into the possibility of a reimbursable agreement with the State, but OGC has advised that the Economy Act applies to Federal agencies only. Also, the Intergovernmental Cooperation Act allows technical assistance to States, but would not cover selling coupons to States.

Administrative - There would be an impact on retailer compliance issues due to the commingling of Federal and State coupons. A store's Food Stamp Program redemption history would be comprised which would have an impact on our store monitoring system. In addition, in the case of high redeemers, a store could effectively argue we could not prove whether it was State or Federal coupons being trafficked and thus possibly avoid a Federal sanction. OIG has also expressed concerns about the impact.

We have surveyed the regions and, except for Maryland which wants to use the EBT system for such a program (issues involved in using a State's LBT system are different), no other State has yet expressed an interest similar to Washington's. Washington and other States have other options available to them, including development of State-specific voucher systems or cash payments.

*Even having
Washington's request?*



FORTUNA_D @ A1
01/15/97 11:55:00 AM

Record Type: Record

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

cc:

Subject: Washington food stamps question

On the Washington state purchase of food stamps issue: I just advised USDA that we think the best course for today is to tell the state that we are continuing to look at it, but we can't give a definitive answer today.

They are sending me some paper that I'll send around.

Message Sent To:

Bruce N. Reed
Elena Kagan
Kenneth S. Apfel
Keith J. Fontenot
Emily Bromberg
WARNATH_S @ A1@CD@LNGTWY

Bruce —
I told Diana to
do this, after hearing
that Ken was
leaning the other
way. However, we
came out — and
my gut is still
not to do it —
we shouldn't be
rushed into a
decision.
Elena

011512A6.txt

From: Kenneth S. Apfel@EOP@LNGTWY@EOPMRX@LNGTWY

*To: FORTUNA_D@A1@CD@LNGTWY

Date: 1/14/97 6:07pm

Subject: Re: Washington food stamps request

Message Creation Date was at 14-JAN-1997 18:07:00

I'd like to know for sure whether we do or don't have the legal authority to do this. If we do have the authority, I'm somewhat inclined to support the request. Also, I see no reason to be forced to act on this tomorrow.

WELFARE REFORM: FOOD STAMP WORK REQUIREMENT

Question: The new welfare law cuts off food stamps for non-disabled adults who refuse to work after three months of benefits, and allows the Department of Agriculture to exempt areas with high unemployment. Why does the Administration want to give food stamp benefits to men and women who refuse to work?

Answer: Enacting the welfare law was an historic accomplishment that represents a significant step forward in social policy for this country. However, as I said when I signed this bill, several provisions of the law have nothing to do with the goal of welfare reform -- putting people to work. Instead, they cut back on our vital food safety net and are unfair to immigrants who have entered this country legally.

I strongly support work requirements. But the welfare law's harsh and unreasonable time limit of 3 months in 36 cuts off people who want to work but can't find jobs. In my budget, I proposed an alternative: a real and tough work requirement without arbitrary cut-offs.

Under my proposal, those who refused to work or refused to take advantage of a work opportunity would face tough new penalties. We would limit food stamps to 6 months out of 12. This policy would encourage work while giving those out of work the transitory help they need to get back on their feet. We proposed new funding and a wage supplementation option to expand the number of work slots available to this group by nearly 400,000 over five years. I am looking forward to working with Congress to enact this sensible proposal.

Background:

- As of March 1, states will begin to cut off food stamp benefits for people who have not met the new work requirement in the welfare law.
- Under the law, able-bodied childless adults between the ages of 18-50 are not permitted to get food stamps for more than 3 months in a 3-year period, unless they are working at least 20 hours a week.
- USDA can waive the work requirement in cities or counties with high unemployment. To date, USDA has granted waivers to 23 states that exempt specified counties or cities with high unemployment.
- Despite these exemptions, 600,000 individuals will lose their food stamp eligibility in FY98 due to this provision. Under the Administration's proposal, approximately 35,000 individuals would lose eligibility in FY98. Unlike the

welfare law, the Administration's proposal targets tough sanctions at those individuals who are unwilling to work and to play by the rules.

WELFARE REFORM: BENEFITS TO LEGAL IMMIGRANTS

Question: Immigrants shouldn't be coming to the U.S. to get on welfare. Why is the Administration making restoration of these benefits a priority?

Answer: I believe that legal immigrants should have the same opportunity, and bear the same responsibility, as other members of our society. The welfare law denies most legal immigrants access to fundamental safety net programs unless they become citizens -- even though they are in the U.S. legally, are working and paying taxes and are responsible members of our communities. My Administration has always supported making individuals who encourage their relatives to emigrate to the United States responsible for the immigrant's well being. However, as a nation, we should not turn our backs on anyone who has lost their ability to earn a living due to injury, disease, or illness.

Consequently, my budget proposes to make legal immigrants who become disabled after entering the United States eligible for SSI and Medicaid.

My budget would also provide poor immigrant children the same Medicaid health care coverage low-income citizen children receive.

The United States admits refugees and asylees into this country on a humanitarian basis. My budget proposes to lengthen the five-year exemption for refugees from the ban from five to seven years in order to give this group adequate time to naturalize.

Finally, the law denies food stamps to most legal immigrants. My budget would delay the cutoffs from April 1, 1997 to August, 1997 in order to give immigrants more time to naturalize.

WELFARE REFORM FIX LEGISLATIVE PROPOSALS

Question: You say you are ready to work with Congress to fix the immigrant and food stamp parts of the welfare law, but the Republican leadership says the bill is fine as it is. Even some Democrats are saying the law shouldn't be changed until we have had a chance to see how it works. Doesn't this mean your proposals have no chance of being enacted?

Answer: I think it is very significant that the nation's Governors are now on record as recognizing that the cuts in benefits to legal immigrants are too harsh and need to be addressed -- even though their final resolution was softened at the last minute at the request of the Congressional leadership.

As the new welfare law is being implemented, the Governors are gaining a new appreciation of some parts of the bill that I have had a problem with from the beginning -- those parts that are not related to putting people to work. This is particularly true of those Governors in states with large numbers of legal immigrants. They are now looking more carefully at their state budgets and the fact that many legal immigrants who are disabled, many in nursing homes, will lose their SSI and Medicaid over the summer. In addition to noting that these provisions are unfair, they can see the potential costs to their own state budgets if they make the decision to ameliorate those cuts.

I think that, over time, more and more people will come to see the harm that these provisions could do to hard-working people who came to this country and, through no fault of their own, became disabled and could no longer support their families.

Also, I truly believe we are seeing some real changes in our relationship with the Congress. It appears that we have gotten past some of the unproductive ways of doing business we have had over the past two years, and that we are learning how to work with one another in a far more constructive fashion.

Question: Last summer when you said you would sign the welfare bill there were press reports that you wanted to restore about \$14 billion in cuts. Now we understand your budget includes \$18 billion in legislative restorations. Are you proposing to restore more in food stamps and benefits to immigrants that you were last year?

Answer: No, absolutely not. The budget includes \$18 billion in legislative proposals for Food Stamps and immigrants that correspond directly to the commitments I made at the time I signed the bill. Because of a number of technical reestimates, the budget estimate for these legislative proposals is now higher.

The commitment I made to a \$3 billion program to help the private sector, states, and cities move welfare recipients to work was always separate from that total, and was paid for separately elsewhere in my

budget.