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THE PRESIDENT HAS SEEN

1-30-97

THE WHITE HOUSE
WASHINGTON

January 29, 1997

MR. PRESIDENT:

The attached memo from Bruce Reed and Elena Kagan reflects a joint recommendation from DPC and HHS on how to proceed with implementing the portion of the maintenance-of-effort provision in the welfare law that restricts how states can spend these funds.

Erskine, Sylvia, Rahm and Marcia concur in the approach and OMB has no objections to the memo.

In order for the plan to be rolled-out to various Governors in advance of the NGA meeting, Bruce/Elena and IGA would appreciate your action as soon as possible.

Phil Caplan *fwl*

*Miscellaneous
to me -*

*copied
Reed
Kagan*

'97 JAN 29 PM5:48

THE WHITE HOUSE
WASHINGTON

THE PRESIDENT HAS SEEN

1-30-97

January 28, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED *BR*
ELENA KAGAN *EK*

SUBJECT: WELFARE LAW IMPLEMENTATION ISSUE

*Welfare good - let them
have all money they want
for child support
but keep states out
of work issue
HHS*

Before the NGA meeting, we need to give states an answer to the question of whether a state must comply with the welfare law's requirements in order to get maintenance-of-effort credit for a state expenditure. States would like to spend their money in separate, non-TANF programs, free from all federal restrictions, but still counting toward the maintenance-of-effort standard. Allowing them to do so, however, may deprive the federal government of a great deal of money and may undermine the law's work requirements. This memo contains a joint HHS and DPC recommendation as to the proper Administration approach to this issue.

Background and analysis

As you know, the maintenance-of-effort provision of the welfare law requires states to spend each year a set percentage of their FY 1994 welfare expenditures. Each state meeting its work participation rate must spend 75 percent of FY 1994 expenditures; any state failing to meet its rate must spend 80 percent of that sum. If a state fails to spend this amount of money, its next year's block grant is reduced accordingly.

The question here concerns the restrictions that apply to expenditure of these "maintenance-of-effort funds." (All agree that no federal restrictions apply to state monies for which the state is not seeking maintenance-of-effort credit.) The law is clear that certain restrictions -- the limits on benefits to aliens and the five-year time limit -- do not apply to maintenance-of-effort funds. The law is far less clear as to whether other requirements apply. But it is difficult, as a legal matter, to pick and choose among these remaining requirements: HHS cannot, for example, say that work requirements, but not reporting requirements, apply.

The governors have argued vehemently that applying federal restrictions to state maintenance-of-efforts funds would impede state innovation. And because the advocacy groups would like to undermine some of the federal requirements -- particularly regarding work -- they have joined the states in taking this position.

But a completely "hands-off" approach -- which would allow the states to set up wholly independent programs, free of all federal restrictions, with maintenance-of-effort dollars -- poses two significant problems. First, states could place the families most likely to make child support

payments in the state-only program and thereby avoid sharing child support collections with the federal government. OMB estimates that the amount of money at stake could exceed \$1 billion per year.

Second, such an approach could seriously undermine the work provisions of the welfare law. As you know, the law requires states to show, on pain of financial penalty, that a certain percentage of families receiving assistance under TANF are engaged in work. The governors' approach would allow states to get around this requirement by transferring their hardest-to-employ welfare recipients from the TANF program (where they would count as part of the denominator in calculating the percentage) to a separate state program funded by maintenance-of-effort dollars (where they would not so count). Indeed, under one interpretation of the law, such a transfer might count as the kind of "reduction in caseload" that operates to reduce the minimum participation rate applicable to the state. Hence by the simple device of shifting beneficiaries from one program to another, a state could simultaneously make it easier to meet the existing participation rate and lower the participation rate applicable in the future.

Recommendation

To provide the states with needed flexibility, protect the government's share of child support collections, and maintain the integrity of the law's work participation requirements -- and to do all this in a legally defensible way -- HHS and the DPC recommend the following actions:

1. Interpret the law so as to give the states far-reaching discretion and flexibility over maintenance-of-effort funds. Under this interpretation, states can set up programs that are free of any of the welfare law's prohibitions and requirements.

2. Advise states that they should not use their own programs to appropriate child support collections that otherwise would go to the federal government; issue regulations authorizing HHS to collect the data necessary to monitor whether states are using their programs for this purpose; and work with both the governors and Congress to ensure that states do not do so. Conversations with Governors have suggested a willingness to work cooperatively on this issue. We also have every reason to think that Congress -- which in assessing the budgetary impact of the bill, did not envision a reduction in federal child support collections -- would legislate a remedy if that is necessary.

3. Issue a regulation providing that a state cannot receive a reduction in its participation rate for reducing its caseload unless the state shows that the caseload reduction is real and not simply the result of transferring beneficiaries from TANF into a separate state program. Such a regulation, which rejects the interpretation of the law most beneficial to states, will prevent states from decreasing their obligation to put people to work through making purely formal changes in the structure of assistance programs.

4. Issue a regulation providing that a state cannot receive any good cause consideration --

i.e., any mitigation in penalty for failure to meet work participation rates -- unless the state shows that it has not used its own program to escape the force of work participation rates. This regulation will create a disincentive for states to use their own programs as dumping grounds for hard-to-place beneficiaries.

5. Issue a regulation providing that HHS will look at a state's overall work effort -- i.e., its success in putting to work the beneficiaries of both TANF and separate state programs -- in determining whether the state qualifies for a high-performance bonus. This regulation too will encourage states to make real efforts to place in work activities those individuals who receive assistance from separate state programs.

6. Work with Congress and the Governors to enact a legislative clarification to ensure that states do not use their discretion over maintenance-of-effort funds to evade the participation requirements. Specifically, we will seek language making clear that calculation of whether a state has met the applicable participation rate shall take into account the state's success in placing in work activities the participants in both the TANF program and any separate state program that counts toward the maintenance-of-effort standard.

Together, these steps should give governors broad flexibility to run their own programs without giving them perverse incentives to evade the work requirements. Please let us know if this resolution of the issue meets with your approval. If it does, we would like to roll out this program prior to the NGA meeting.

WHITE HOUSE STAFFING MEMORANDUM

DATE: 1/29 ACTION/CONCURRENCE/COMMENT DUE BY: 1/29 5:00 pm

SUBJECT: Welfare implementation issue

	ACTION	FYI		ACTION	FYI
VICE PRESIDENT	<input checked="" type="checkbox"/>	<input type="checkbox"/>	McCURRY	<input type="checkbox"/>	<input checked="" type="checkbox"/>
BOWLES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	McGINTY	<input type="checkbox"/>	<input type="checkbox"/>
McLARTY	<input type="checkbox"/>	<input type="checkbox"/>	NASH	<input type="checkbox"/>	<input type="checkbox"/>
PODESTA	<input checked="" type="checkbox"/>	<input type="checkbox"/>	QUINN	<input type="checkbox"/>	<input type="checkbox"/>
MATHEWS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	RASCO	<input type="checkbox"/>	<input type="checkbox"/>
RAINES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	REED	<input type="checkbox"/>	<input type="checkbox"/>
BAER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SOSNIK	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	LEWIS	<input type="checkbox"/>	<input type="checkbox"/>
EMANUEL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	YELLEN	<input type="checkbox"/>	<input type="checkbox"/>
GIBBONS	<input type="checkbox"/>	<input type="checkbox"/>	STREETT	<input type="checkbox"/>	<input type="checkbox"/>
HALE	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SPERLING	<input checked="" type="checkbox"/>	<input type="checkbox"/>
HERMAN	<input type="checkbox"/>	<input type="checkbox"/>	HAWLEY	<input type="checkbox"/>	<input type="checkbox"/>
HIGGINS	<input type="checkbox"/>	<input type="checkbox"/>	WILLIAMS	<input type="checkbox"/>	<input type="checkbox"/>
HILLEY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	RADD	<input checked="" type="checkbox"/>	<input type="checkbox"/>
KLAIN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Aptel</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BERGER	<input type="checkbox"/>	<input type="checkbox"/>	<u>Vervcer</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
LINDSEY	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS: Please advise

RESPONSE:

Welfare Law
Implementation
Issue

THE WHITE HOUSE
WASHINGTON

January 28, 1997

'97 JAN 29 AM 10:57

MEMORANDUM FOR THE PRESIDENT

FROM: BRUCE REED
ELENA KAGAN

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2. Advise states that they should not use maintenance-of-effort programs to appropriate child support collections that otherwise would go to the federal government -- and work with both the governors and Congress to ensure that states do not in fact use their programs for this purpose. Conversations with Governors have suggested a real willingness to work cooperatively on this issue. If states do not make good on these promises, we have every reason to think that Congress -- which in assessing the budgetary impact of the bill, did not envision a reduction in federal child support collections -- will legislate a remedy.
3. Issue a regulation providing that a state cannot receive a reduction in its participation rate for reducing its caseload unless the state shows that the caseload reduction is real and not simply the result of transferring beneficiaries from TANF into a separate state program. Such a regulation, which rejects the interpretation of the law most beneficial to states, will prevent states from decreasing their obligation to put people to work through making purely formal changes in the structure of assistance programs.
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THE WHITE HOUSE
WASHINGTON
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