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WASHINGTON'S ASSAULT ON WELFARE REFORM

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INTRODUCTION

The Welfare Reform Act of 1996 was the most significant reform passed by the 104th Congress. Thanks in part to that legislation and to their own earlier steps to reform welfare, some states are making great strides in reducing their welfare rolls. The recently enacted budget reconciliation bill, however, will destroy the progress these states have made. The bill fails to reverse several actions taken recently by the Clinton Administration to "fix" the welfare system.

Together, the Administration's actions and the newly enacted budget bill embody three devastating assaults on welfare reform. Specifically, these new measures will:

- **Prohibit community service work.** The Clinton Administration issued regulations prohibiting states from operating community service programs that require recipients of Aid to Families with Dependent Children (AFDC) to perform work in exchange for welfare benefits. Such a program has enjoyed tremendous success in Wisconsin. Under the Clinton Administration's regulations, a state wishing to make its AFDC recipients work would be required to hire the recipient in a formal public-sector job. Such a job would be subject to union or government wage scale and Davis–Bacon rules. For example, if New York State required a welfare recipient to perform janitorial services in the public schools, it would have to pay that recipient about $20 per hour. The recipient also would be covered by union work rules; complex government personnel rules regarding hiring, firing, and disciplinary action; retirement benefits; unemployment insurance (UI); and the earned income tax credit (EITC).

1 This study relies on an analysis performed by Jason A. Turner, Executive Director of the Center for Self-Sufficiency in Milwaukee, Wisconsin.

President Clinton's regulations clearly violate last year's welfare reform law. But Congress has failed to challenge Clinton's unlawful regulatory assault on welfare reform. By refusing to include language in the budget bill to overrule the Administration's regulations, Congress effectively has outlawed community service workfare. Now, if welfare recipients are required to work in exchange for benefits, they must be placed in expensive jobs in the public sector. This measure will kill all efforts to reduce dependency at the state level.

- **Abolish work requirements.** The 1996 Welfare Reform Act contains performance standards that require states to reduce their AFDC caseloads or, if they fail to do so, to require at least a certain percentage of their recipients to work. The budget bill destroys these requirements by redefining "work" to include going to school or receiving training.
- **Create a new CETA-style program.** The budget bill gives the Clinton Administration carte blanche authority to design an expensive new Welfare to Work (WTW) program. With guaranteed funding of $3 billion, this program will fund primarily public-sector "job creation"; that is, it will create expensive public-sector jobs for welfare recipients similar to those created under President Jimmy Carter's CETA (Comprehensive Employment and Training Act) program. The new program also is highly prescriptive; funds may not be used for conservative initiatives.With lavish funding that would equal 7 percent of total AFDC costs, this new liberal program would dominate and direct state welfare reform activities for the next five years, shouldering aside most of the conservative reforms.

HOW THE CLINTON ADMINISTRATION GUTTED WORKFARE

The welfare reform law enacted in the 104th Congress does not state that workfare is "employment." Rather, the clear intent and legislative history of the act show that workfare was not meant to be employment with all the labor requirements that follow such a designation. Since the Omnibus Budget Reconciliation Act (OBRA) of 1981, in fact, workfare never has been deemed to mean employment. The 1996 welfare reform legislation contained a workfare provision in the Temporary Assistance to Needy Families (TANF) program. Inadvertently, however, it contained no explicit exclusion of workfare participants as regular wage employees, even though the intent of Congress on this matter was clear: that workfare provide an opportunity for those receiving benefits to contribute to society while learning necessary habits and skills to help them succeed in private employment in the future. Calling workfare "regular employment," as the Clinton Administration does, triggers dozens of inappropriate statutes and decades of legal case law that will regulate the private wage employment sector.

News reports circulating earlier this year indicated that the U.S. Department of Labor intended to issue a ruling that recipients of workfare assignments henceforth would be classified as regular employees and subject to the Fair Labor Standards Act. In response, Congress voted to correct the prior law by including a provision in the budget legislation specifically excluding workfare assignments from consideration as regular employment. In the just-concluded reconciliation negotiations over the budget bill, however, the Clinton Administration adamantly refused to agree to these provisions with only one exception: exclusion of the EITC.

Table 1 Examples of Labor Laws That Apply to "Employees," June 1997
1. Fair Labor Standards Act (requiring minimum wage, overtime, and wage and hour record-keeping by covered employers)
2. Davis–Bacon Act (including prevailing wage law)
3. Service Contract Act (including prevailing wage law)
4. Walsh–Healey Act
5. Contract Work Hours and Safety Standards Act
6. Migrant and Seasonal Agriculture Worker Protection Act
7. Employee Retirement Income Security Act (affecting employee benefits including health) and Retirement Income Security Act (affecting employee benefits including health, retirement, and vacation)
8. Group health plan continuation coverage under COBRA
9. Unemployment Compensation Program (requiring payroll taxes from employers)
10. Family and Medical Leave Act
11. Title VII of the Civil Rights Act (including compensatory and punitive damages)
12. Executive Order 11246 (affirmative action for all government contractors)
13. Age Discrimination in Employment Act
14. Americans With Disabilities Act (including compensatory and punitive damages)
15. Occupational Safety and Health Act
16. Drug-Free Workplace Act
17. National Labor Relations Act (providing for collective bargaining and other union activities)
18. Employment provisions in the Immigration and Nationality Act
19. Worker Adjustment and Retraining Notification Act
20. Workers' Compensation
21. Earned Income Tax Credit
22. Child Support Enforcement Reporting
23. Wage Garnishment Requirements
24. FICA (requiring Social Security and Medicare payroll taxes from employees and employers).
25. Many state laws, including common laws regarding wrongful discharge, and payment of state unemployment taxes and other payroll and income taxes
Source: U.S. General Accounting Office, *Workplace Regulation: Information on Selected Employer and Union Experiences*, June 1994.

The House Ways and Means Committee, in an attempt to assess the impact of the agreed-upon provisions, compiled a list of laws regulating wage employment (see Table 1). Application of these laws to workfare assignments would make work activity under the TANF impractical on any scale (see Table 2).

Table 2.
Possible Scenarios from the New Administration Regulations

Examples of the scenarios that could result under the new Clinton Administration regulations include:	
Wrongful Discharge	A female participant is placed with the municipal parks department and works outside with a crew. The participant has unresolved emotional problems, however, that cause her to act out frequently and be disruptive. The parks department requests that she be transferred to another site, and the welfare agency complies. Then this participant, citing her employment status, sues the parks department for wrongful discharge, including punitive damages.
Unemployment Compensation	A small United Way agency has agreed to place a welfare recipient in its office to do filing, which subjects the private nonprofit to increased UI taxes based on the participant's imputed income. In order to obtain an agreement, the welfare agency agrees to compensate United Way and all other work site employers for the resulting increased costs. This results in extra reporting and paperwork, a reduced number of willing sites, and increased program costs to the welfare agency. Moreover, after several months of work at United Way and other locations, the participant in question has accumulated a sufficient number of quarters of work to be eligible for unemployment benefits. Rather than take another work assignment, the recipient decides to file for UI benefits and stay home.
Union Organizing	Representatives of the local public employees union set up an arrangement whereby welfare participants can join for $1 as associate members. The union then calls for a strike of all participants working at municipal or county work sites. The welfare agency objects, but a judge issues an injunction requiring the agency to continue paying welfare benefits while these participants stay at home awaiting an agreement between the agency and the union regarding alleged infringement of union job tasks and inadequate work site conditions.
Prevailing Wage Provisions	A contractor, subject to the prevailing wage provisions of federal law, makes an agreement with the welfare agency to set aside a small number of unpaid work assignments for a limited period. Many of these assignments are expected to lead to permanent high-paid private jobs with the same firm. The welfare agency, however, discovers that, as an employee of the contractor, the participant must receive an imputed prevailing wage of $18 per hour. The welfare grant of $400 per month plus $250 in food stamps means, therefore, that the participant can be scheduled for only eight-and-one-half hours per week.

Table 2
Possible Scenarios from the New Administration Regulations

Examples of the scenarios that could result under the new Clinton Administration regulations include:	
Employment Discrimination	A private nonprofit company managing several senior community centers and nursing homes agrees to provide unpaid work opportunities for 20 participants who have been referred by the welfare agency. The participants are to work with seniors in tasks ranging from providing companionship to serving meals. After a few weeks of activity, a plaintiff's attorney, citing the employment status of the participants, lodges a lawsuit against the private company for compensatory and punitive damages, alleging that the distribution of the most desirable work assignments was racially motivated.
Reasonable Employment Accommodation	Unknown to the welfare agency, a participant with a work assignment at the public library has mild schizophrenia, controlled regularly with medication. In addition, the participant has problems with substance abuse. The combination makes the participant unsteady and unreliable. The agency wishes to transfer the participant to a work assignment away from the public while providing simultaneous treatment, but the participant likes the assignment at the library and refuses, citing rights under the Americans With Disabilities Act to reasonable employment accommodation for workers with a disability.

UNDERSTANDING THE ADMINISTRATION'S NEW WELFARE TO WORK PROGRAM

The budget bill contains provisions that establish a new WTW program as crafted by the Clinton Administration. Congressional leaders thus far have paid little attention to this program, regarding it merely as an expensive but marginal add-on to the TANF program. This assumption is wrong.

The WTW program would provide up to $1 billion per year for "work-related" activities. When states receive these funds, they must reallocate TANF funds to other activities such as daycare or general social services or cut their state's TANF contribution. This means that, in the future, the bulk of the money devoted directly to work/dependency reduction activities is more likely to come from WTW funds, not TANF funds.

The provisions of the new WTW program, therefore, are not peripheral to the issue; they are central to the future of welfare reform. Regrettably, the proposed WTW program will become a tightly micromanaged program that does not permit use of funds for conservative initiatives. For example, community service work and Self-Sufficiency First—two programs that Wisconsin used to cut its welfare caseload by a stunning 58 percent—would receive no funding under WTW. In addition, WTW funds could not be used to fund programs designed to reduce illegitimacy.

The new WTW program would channel its funding through a new but duplicative bureaucracy known as Private Industry Councils. These councils would be largely unaccountable to governors or Congress, and would not be subject to the serious performance goals of the 1996 welfare reform law. If conservative reforms are to have a future, WTW

should be broadened to permit a full range of use of funds, and governors should be free to determine what organizations are best suited to administering these funds.

THE BURGEONING WELFARE LEVIATHAN

Taxpayers should know that the budget agreement is part of a larger White House and congressional budget deal that will increase the growth of welfare spending dramatically. In 1992, federal and required state spending on means-tested welfare programs (including spending on food, housing, medical, training, and social services) consumed $304 billion. By 1997, welfare spending had reached $412 billion, or 5.4 percent of the total economy. Under the budget agreement, this explosive growth will continue, and welfare spending will reach $532 billion by 2002.

Over the next ten years, the United States will spend $5 trillion on means-tested welfare at a cost of roughly $50,000 for each taxpaying household. Moreover, under the budget agreement, even though taxpayers would have to work very hard to pay for the expanding cost of welfare, few if any welfare recipients would be required to work.

In light of the strong public support for serious welfare reform, Congress's retreat from sound and effective policy is mind-boggling. Wisconsin, for example, has cut its AFDC caseload dramatically—by nearly 60 percent. But instead of publicizing and celebrating such stunning public policy miracles, Congress ignores them. Considering the contents of the budget bill, reform at the state level will come to a halt, and much of the success already achieved could be reversed. Similarly, the 1996 welfare reform law's no-nonsense performance standards for caseload reduction and work have had a big effect at the local level by pushing welfare offices to find ways to reduce dependence on government. The response in Congress to such achievements? Eliminate those standards.

WHAT SHOULD BE DONE

The Clinton Administration's regulations are a clear violation of both the letter and the intent of last year's welfare legislation. The Welfare Reform Act of 1996 does not state that workfare is employment; since the 1981 OBRA, in fact, workfare never has been considered a form of employment.

The leaders of the House and Senate need to demonstrate their support for the efforts of the governors by declaring Clinton's anti-work regulations unlawful and enacting legislation that reaffirms the intent of welfare reform and reins in Administration efforts to undo the central provisions of the 1996 reforms. It is also important for the congressional leadership to highlight successful dependency reduction programs, including initiatives like Self-Sufficiency First and Pay for Performance that have cut Wisconsin's AFDC caseload in half.

Congress has an excellent opportunity to acknowledge and perpetuate the miraculous accomplishments of state officials like Wisconsin Governor Tommy Thompson—achievements that will be destroyed by the budget reconciliation bill and the imposition of the Clinton Administration's new regulations. It is crucial that all the country's governors stand firm against the Administration's regulations, which violate the Welfare Reform Act of 1996 and will undermine their attempts to reform the welfare systems in their states.