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THE PRESIDENT HAS SEEN...

THE WHITE HOUSE
WASHINGTON

May 27, 1975

MR. PRESIDENT:

The attached memorandum has been staffed and generated the following comments:

Buchen (Lazarus) -- Support OMB.

Cannon -- The Domestic Council recommendation is in agreement with Department of Labor's recommendation that a job search be required only of WIN registrants certified under the law as ready for work or training.

Marsh -- Concurs with OMB.

Friedersdorf -- Concurs with OMB.

Hartmann -- Option 5.

Baroody -- HEW/option 2.

Greenspan -- Option 3. See attached comments.

Seidman -- Should get a legal opinion from Attorney General. HEW (2) takes care of DOL problems.

Don

THE CHAIRMAN OF THE
COUNCIL OF ECONOMIC ADVISERS
WASHINGTON

May 19, 1975

MEMORANDUM FOR JERRY JONES

Subject: WIN Decision Paper

I do not believe that the proposed redesign of the WIN regulations will result in any substantial reduction in AFDC costs or any substantial increase in employment among AFDC recipients.

The introduction of WIN and the subsequent increase in work requirements and work incentives do not, to date, seem to have had any substantial effects along these lines. A large proportion of AFDC recipients are women who have little work experience and few skills, but with young children and no husband providing support. The cost of services necessary to make it feasible for these women to work is high and in many cases would exceed the earnings they could possibly achieve. This is particularly true for child care and training services.

The likely effect of a stiffer work requirement is a large increase in the proportion seeking work ~~and a minimal increase in the proportion seeking work~~ and a minimal increase in the proportion working (and this result is, of course, even more likely during years of high unemployment). The increase in job search activity that is not likely to result in employment is an inefficient use of the Government's and the AFDC recipient's resources.

The administrative reforms in AFDC that have taken place over the past two years seem to have resulted in more efficient management and have been accepted by the public as such. However, the imposition of a tougher work requirement is more likely to be viewed as harassment of the poor. In addition, problems of the legality of the measures seem certain to arise even if they were settled in favor of the Government (which Justice seems to think is unlikely). Expensive measures to provide more "free day care" and other services for WIN participants are likely to follow any effort to make work compulsory.



In summary, the proposed redesign is likely to cost much more in terms of funds and goodwill than it could possibly achieve in benefits, either to the recipients or the taxpayers. Therefore, I am not in favor of the redesign, and I support option 3. I would, however, hope that efforts continue to seek ways of reforming our income maintenance programs, including AFDC.

Alan Greenspan



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

MAY 9 1975

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: JAMES T. LYNN *Chen*

SUBJECT: Summary of Attached WIN Decision Paper

The attached decision paper, incorporating the text of views from the Departments of Labor and Health, Education, and Welfare, presents for your resolution a disagreement between those Departments over their joint Work Incentive Program (WIN) established by the Social Security Act. The principal issue is: Should those AFDC recipients who must register for WIN be required to engage in a job search activity, whether or not they have been provided the child care or other supportive services necessary to certify them as ready for work or training.

The continuing disagreement is severely impairing the ability of States to plan the 1976 program, since this decision and other procedural changes not in disagreement, all significantly impact local project design.

HEW believes:

- It is imperative to require all WIN registrants, certified or not, to engage in a job search as a prerequisite for public assistance (PA).
- All able-bodied PA recipients should be responsible for doing something to find a job to meet their families' needs, even in a soft economy.
- Requiring a job search only for those certified will significantly increase pressure for more appropriations to pay for services needed to certify more recipients, and might discourage existing job search requirements in 25 States.
- Adding the requirement to the WIN program is legal and will be sustained by the Supreme Court.

DOL believes:

- Mandating a job search for welfare recipients with low skills when the unemployment rate is 8.2% would:
 - + force them into a labor market when they could not find jobs;
 - + increase the unemployment rate;
 - + subject the Administration to charges of harassing and punishing the poor.
- The WIN law does not authorize a job search requirement before a welfare recipient is certified as ready for work or training, and the Supreme Court would strike down any such administrative requirement.

Justice Department Informal Views

We asked the Justice Department Office of Legal Counsel for a quick informal review of the legal arguments as presented by the agencies. OLC advises orally, that from the arguments presented, they generally concur in the Labor Department interpretation.

Agency Recommendations:HEW

1. Issue the regulations requiring a job search by all WIN registrants, whether or not certified as ready for work or training.

Approve _____

2. As an acceptable alternative, same as 1, but suspend requirement where local unemployment exceeds 7%.

Approve HR7

DOL

3. Do not revise the WIN regulations now.

Approve _____

4. As an acceptable alternative, revise the regulations to make agreed program changes (such as adding an Intensive Manpower Services Component), but require a job search only of WIN registrants certified under the law as ready for work or training.

Approve_____

OMB

5. Same as 4, but also ask DOL and HEW to submit their differing legal interpretations to the Attorney General for his formal opinion in order to develop a definitive basis for possible legislative or regulatory action in the future.

Approve_____

EXECUTIVE OFFICE OF THE PRESIDENT


OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

MAY 9 1975

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: JAMES T. LYNN 

SUBJECT: Redesign of the Work Incentive Program

Background

The December 1971 amendments to the Work Incentive Program (WIN) law were designed to increase the ability of the program to place welfare recipients in jobs. They require, with certain exceptions, all applicants for Aid for Families with Dependent Children (AFDC) to register for work and training under the WIN program. They require the Secretary of Labor to run the WIN work and training program, including, where possible, placement in jobs without prior training. At least one-third of the funds available for that part of the program must be used for on-the-job training or public service employment. The previous programs emphasized classroom training.

The 1971 amendments require the Secretary of Health, Education, and Welfare to provide supportive services, such as child care and vocational rehabilitation, necessary to enable welfare recipients to participate in the WIN program. When these services are provided, the Secretary of Health, Education, and Welfare is required to certify such persons for participation in WIN programs set up by the Secretary of Labor. If an individual does not need any supportive services, the individual must be certified immediately into the program.

The Department of Health, Education, and Welfare is authorized to reimburse 90% of State costs for supportive services. States not certifying 15% of WIN registrants into the WIN program have their Federal share of AFDC money reduced. AFDC recipients, who are certified into the WIN program as ready for work or training, and who

refuse to accept it, must be deregistered from WIN and have their share of their family's AFDC benefits terminated after a 60-day counseling period.

About a year and a half ago, the two Departments agreed to a redesign of the WIN program that would require all WIN registrants, certified or not, to engage in an active job search. It would also add an Intensive Manpower Services Component to provide employment services and develop the job seeking skills of certified WIN registrants. OMB asked the Departments to satisfy themselves and report to us that the redesign was authorized by law before instituting it. They so reported to us.

In September 1974 proposed regulations for the redesign were issued for comment. Many of the comments received raised legal objections, and we asked the Departments to assess again the risks of a successful legal challenge to the redesign.

The two Departments have not been able to agree on the issuance of final revised regulations.

Major issue

Should the WIN program be redesigned so that all AFDC recipients registered for WIN will be required to engage in a job search whether or not they have been provided the child care or other supportive services necessary to certify them as ready for work or training.

Departmental Arguments

I. Program arguments

A. HEW arguments for the redesign

The Department of Health, Education, and Welfare believes that the immediate publication of the WIN redesign regulations is imperative. It strongly believes that a job search should be mandated for all WIN registrants for the same reasons a work requirement was included in its welfare replacement plan submitted to you last fall. It further states that this requirement must be made for all able-bodied recipients of AFDC. To limit the requirement to only those certified will result in significantly increased pressure on costs. Certification requires that a broad range

of social services be arranged for or provided to the recipient whether he has employment or not.

In addition, participation in job search as a certified participant would require payment of a so-called work incentive of \$30/month per participant. Under a job search for registrants who have not been certified, but who have been determined as able-bodied under the law, necessary social services would only be provided on an as-needed basis and the so-called \$30 work incentive would not be required to be paid. Of course, after employment was secured, services would be provided, but the \$30/month would not. Without a job search as a requisite for public assistance for the able bodied, the Department feels we will continue to undermine public confidence in AFDC programs.

Further, failure to implement the WIN redesign will continue to remove the majority of AFDC able-bodied recipients from any association with work. WIN is the sole program that imposes a registration requirement on AFDC recipients as a condition of eligibility for benefits. The redesign, for the first time, places a responsibility on the parent to do something on his part to find employment. The current program removes this responsibility from the parent and places it with the government. The basic policy that an individual remains responsible for his needs and those of his dependents even while he is receiving public assistance should not be undercut as an expedient response to a softening economy.

Considering the current economic situation, HEW would agree to a position that would permit the governor to suspend the mandatory Federal job search requirement in those labor markets where the unemployment rate exceeds 7 percent. This will preclude unrealistic demands being made on registrants when there is a presumption that little success can be expected of a job search. Approximately half of the States already have a job search requirement applying to all AFDC recipients and the Federal regulations will be consonant with these States' programs. Limiting the Federal job search requirement to only those certified might discourage these State programs and result in criticism and adverse publicity toward our administration of the AFDC program. Various types of job search activities are already required by the Federal government for food stamp applicants and unemployment compensation insurance claimants. The Administration's initiative in

developing thousands of public employment jobs provides the realistic opportunity to place WIN registrants in stable work situations.

Expression of a policy reinforcing individual responsibility will never seem timely to those who are not in agreement with the policy. There will always be extenuating circumstances to cloud the reasons why the policy is best left unsaid. The Department of Health, Education, and Welfare believes that there is ample rationale why the requirement of a job search should be formalized by regulation. The Department also believes that the discretion built into its implementation will prevent a harsh and inequitable imposition of this policy on the recipient population. Job search is not a hurdle to elimination of dependency for many recipients..

B. DOL arguments against the redesign

The Department of Labor believes:

1. With an 8.2% unemployment rate, 7,529,000 Americans are currently unemployed. If the WIN redesign is implemented, 500,000 welfare recipients, generally with low employment skills, will be forced into the labor market to engage in a "job search" program. We do not believe that these individuals can be easily employed under current economic conditions, and we are concerned that their entrance into the labor force may well have an adverse impact on the national unemployment rate.

2. Mandating a "job search" program under WIN for those welfare recipients who have so few skills that they are not likely to find jobs and who have not been certified into the WIN program will result in the Administration being charged with harassing the poor and taking punitive action against them. When the WIN redesign was published as a proposed regulation last September, DOL and HEW received much criticism -- and virtually no support -- precisely on this point. This criticism came from labor leaders, such as Meany and Woodcock, religious organizations, and numerous other groups and individuals.

3. Implementing the WIN redesign will cause a diversion of resources -- both funds and staff time -- that would

otherwise be available to help job ready welfare recipients to find employment; under the redesign, that money and staff time would be used for welfare recipients who have not been certified into the WIN program and are not job ready.

4. The current WIN program, which works with welfare recipients certified as job ready, has continued to place a significant number of welfare recipients into employment, despite the economic downturn: 87,400 WIN participants obtained employment in the first six months of this fiscal year, compared to 87,000 during the first six months of the last fiscal year. There does not appear to be compelling need, therefore, to radically amend this program at the current time, although certain technical amendments may be desirable.

II. Legal arguments

A. HEW expects that, if the joint regulations as proposed, or as modified to exclude localities with high unemployment, are issued in final form, the Departments will be sued and may lose in one or more district courts. HEW believes, however, that both of these options are legally supportable and that its position would be sustained by the Supreme Court. HEW believes the issue should be decided on policy, and that we should not decide on the basis of our estimate of what the courts may do.

The Act requires that a State AFDC plan provide that, as a condition of eligibility for AFDC, every individual not specifically exempt (e.g., children under 16 and mothers who care for children under the age of 6) "register for manpower services, training, and employment as provided by regulations of the Secretary of Labor" (Section 402(a)(19)(A) of the Social Security Act). HEW believes this provision may be construed broadly to require that the process of registration include more than the mere signing of a registration card; i.e., that the registration process itself may include a job search activity. This process has always been construed to encompass more than the mere signing of a registration form. For example, registrants are currently required to appear for "appraisal" interviews conducted by WIN staff, and failure to so appear results in termination of welfare benefits. This provision has never been judicially challenged.

B. DOL believes that the statutory language established in the WIN program does not support the imposition of a mandatory "job search" requirement prior to a welfare recipient's certification into the WIN program. This position, as set out fully in the attached legal memorandum, is clearly supported by the actual language of the statute, its legislative history, and decisions of the Federal Courts, including the United States Supreme Court.

C. In light of the conflicting legal views of Labor and HEW, we sought informal review of the legal issue from the Justice Department. Based on the arguments presented by DOL and HEW, the Office of Legal Counsel has told us informally that it agrees with DOL that the proposal does not appear to be authorized by law and probably would not be sustained in the Courts.

OMB Comments

In addition to the views of the Office of Legal Counsel, the following points should be kept in mind in making a decision:

- The WIN program was kept at its current level in the 1976 Budget because it was seen as an available job assistance program at a time of rising unemployment.
- The WIN budget is completely controllable; the number of people served can be limited to meet available funds. However, since proposed regulations had the job search requirement, States may press for more supportive service funds in order to certify more registrants into job search.
- The first major evaluation of WIN geared to current policy issues is underway, with first meaningful results expected this summer, and completion after January 1976.
- Program statistics seem to indicate that placing certified WIN registrants directly in jobs is both possible and more cost effective than training or subsidized jobs. However, GAO and other evaluators question the validity of the statistics. The experience may not be transferrable to non-certified registrants.
- Imposing a job search requirement on non-certified WIN registrants now, when unemployment is high, will be criticized as unnecessary harassment of welfare recipients.

- This is especially true since, as HEW points out, certified registrants are eligible for greater amounts of assistance.
- Approximately half of the States already have some job search requirement in their AFDC programs. Revised WIN regulations without a universal job search requirement will not change the legal authority for such requirements and need not be written to discourage them.
- UI and Food Stamp recipients are required to accept suitable jobs but real job search requirements have been relaxed under present economic conditions.
- Even at high unemployment rates, there are unskilled jobs available for which untrained welfare recipients could qualify.
- DOL's arguments are directed against a job search as a requirement for all registrants, not against the entire redesign.
- The differing legal interpretation of DOL and HEW may make operation of a general job search difficult.

Agency Recommendations

HEW

1. The Department of Health, Education, and Welfare recommends issuance in final form of regulations which would include a Federally-mandated job search requirement prior to certification by the welfare agency of readiness for work or training.

2. HEW has advanced as an acceptable alternative, issuance of the regulations as in 1 above, except to suspend the Federally-mandated job search requirement when unemployment in the local labor market exceeds 7%.

DOL

3. The Department of Labor recommends that the WIN redesign not be implemented.

4. If it is decided, however, that a redesign is necessary, DOL believes that legal prudence and programmatic concerns dictate that the "job search" component only apply

to individuals who have actually been certified into the WIN program under the law.

OMB

5. On balance, OMB recommends that the job search requirement not be imposed on non-certified WIN registrants by Federal regulation at this time. We do not see why a redesign making other changes could not be implemented. (DOL alternative recommendation, No. 4 above). We also recommend that the two Departments submit their differing legal interpretations to the Attorney General for his formal opinion in order to develop a definitive basis for possible legislative or regulatory action in the future.

U.S. DEPARTMENT OF LABOR

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20210



FEB 26 1975

MEMORANDUM OF LAW

SUBJECT: LEGALITY OF A MANDATORY WIN JOB SEARCH
REQUIREMENT FOR WELFARE RECIPIENTS NOT
YET CERTIFIED INTO WIN

The Department of Labor believes that the statutory language establishing the WIN program does not support the imposition of a mandatory job search requirement prior to a welfare recipient's certification into the WIN program. This position is clearly supported by the actual language of the statute, its legislative history, and decisions of the Federal Courts, including the United States Supreme Court.

Title IV of the Social Security Act establishes the AFDC system. The Work Incentive Program is the component of that system which provides training and employment opportunities for AFDC recipients who have been certified into the WIN program, and which exacts penalties from recipients who refuse, without good cause, to accept training or employment. 1/ Under it, an individual who desires benefits applies at a State welfare office. In the course of completing the application process the applicant also registers for the WIN program. 2/ Once the individual's application has been accepted and eligibility for welfare established, the individual is an AFDC recipient and, if not

1/ Sections 402(a)(19)(G), 433(a), 433(b)(3).

2/ Section 402(a)(19)(A) of the Social Security Act (SSA), 42 U.S.C.A. 602(a)(19)(A), requires each State plan to provide that "every individual, as a condition of eligibility register for manpower services, training, and employment, as provided by regulations of the Secretary of Labor, unless such individual is -- (i) a child; (ii) ill, incapacitated, or of advanced age; (iii) remote from a WIN project; (iv) required to be at home to care for an ill or incapacitated household member; (v) the mother of a child under 6; (vi) the mother of a child, if the father is enrolled in the WIN program." The Conference Report on the 1971 amendments to the WIN program makes clear that the registration process for section 402(a)(19)(A) is registration for the WIN program. (Conference Report No. 92-947, 1971 U.S. Code, Cong. & Ad. News 2436).

exempt from WIN participation, is placed in the AFDC-WIN system. 3/ The individual is then to be provided with necessary social and supportive services by the welfare agency so that WIN training or employment can be arranged. 4/ When the welfare agency has provided those services, the individual is to be "certified to the Secretary of Labor" for the WIN program. (Emphasis added) 5/ This certification procedure is a key element of the statutory structure. The statutory language requiring it reads as follows:

[The State welfare agency] "(ii) will provide (through arrangements with others or otherwise) for individuals who have been registered pursuant to subparagraph (A), in accordance with the order of priority listed in section 433(a), such health, vocational rehabilitation, counseling, child care, and other social and supportive services as are necessary to enable such individuals to accept employment or receive manpower training provided under part C, and will, when arrangements have been made to provide necessary supportive services, including child care, certify to the Secretary of Labor those individuals who are ready for employment or training under Part C. . ." 6/

After an individual has been certified, the Secretary of Labor then determines the best type of training or employment for the individual, with the goal of working toward the individual's self-sufficiency. 7/ If the individual is placed in regular employment, the individual may be eligible for an income disregard; this amounts to an earnings supplement for that individual and assists persons who are working at low-paying jobs. 8/ If the individual is placed in an "institutional (or) work experience training program," the individual is eligible for a training

3/ Part C, Title IV, SSA, infra.

4/ Section 402(a)(19)(G), SSA, infra; 42 U.S.C.A. 602(a)(19)(G). Services are provided in accordance with a list of priority groupings set out in section 433(a).

5/ Section 402(a)(19)(G), SSA, infra; 42 U.S.C.A. 602(a)(19)(G).

6/ Id.

7/ Sections 430 and 433(a), SSA, infra; 42 U.S.C.A. 630, 42 U.S.C.A. 633(a).

8/ Sections 432(b) and 402(a)(8), SSA, infra; 42 U.S.C.A. 632(b), 42 U.S.C.A. 602(a)(8).

incentive payment of not more than thirty dollars a month. 9/
The individual may also be placed in a public service employment program. 10/

Thus, it can be seen that the Congress has established a system which requires persons seeking AFDC to register for the WIN program (unless exempted by the statute) at the same time they register for AFDC, and to be certified by the welfare agency to the Secretary of Labor for the WIN program, once they have been found eligible for AFDC and are actually receiving benefits.

If there is any question about this procedure, it should be dispelled by the Conference Committee report on the WIN amendments of 1971. That report explains the amendments as (1) "requir(ing) an individual, as a condition of eligibility for welfare, to register for the WIN program" and (2) "requiring the welfare agency to designate a separate administrative unit to make arrangements for supportive services needed by welfare recipients in order to participate in (the) WIN program and to refer recipients so prepared to the Labor Department for participation in the WIN program." (Emphasis added). 11/

This statutory scheme has also been clearly recognized by the courts. The Supreme Court has described the WIN program in just this way. 12/ So too have other federal courts. 13/

Title IV of the Social Security Act nowhere refers to the requiring of a job search activity or any other WIN activity for AFDC recipients who have not yet been certified to the Secretary of Labor. And the Conference Report on the 1971 WIN amendments is similarly silent. Furthermore, the statute, on its face, sets out the system for placing individuals in jobs or training.

It is a maxim of statutory construction that a statute may not be amended by administrative action, and that where a statute sets out a specific way for dealing with a specific situation, the statutory scheme must be followed. 14/

9/ Section 434(a), SSA, infra; 42 U.S.C.A. 634(a). The Secretary of Labor is "authorized" to provide this payment, but not required to do so. WIN regulations, however, do provide for this payment, 29 CFR 56.8(a)(1).

10/ Section 432(b), SSA, infra; 42 U.S.C.A. 632(b).

11/ Conference Report 92-747, 1971 U.S. Code, Cong. & Ad. News 2436 and 2437.

12/ New York State Department of Social Services v. Dublino, 41 LW 5047, 5048-5049, 5051.

13/ Woolfork v. Brown, 325 F. Supp. 1162, 1167-1181, affd. 456 F.2d 652, 654.

There remains the question, then, of whether the proposed WIN redesign, which contemplates a required job search activity for uncertified welfare recipients, does, in fact, amount to an administrative amendment of the WIN program inconsistent with the language and structure of the Act. I believe the proposal clearly does. Indeed, I believe the proposal subverts the clear statutory intent of the Social Security Act that welfare recipients be provided with necessary supportive services such as child care and vocational rehabilitation and then be certified to the Secretary of Labor as job ready before they can be required to compete in the job market.

The Department of Health, Education, and Welfare, however, has argued that the Supreme Court decision in the case of New York Department of Social Services v. Dublino supports a job search activity for the uncertified. ^{15/} We strongly disagree. Dublino merely holds that the very existence of the Federal WIN program does not constitutionally pre-empt States from establishing their own work programs for welfare recipients, when such programs are consistent with the statutory requirements of the WIN program. ^{16/} The case in no way deals with the question of whether the Social Security Act would allow a Federal WIN job search activity for those not yet certified into WIN. The case, therefore, is not relevant to a determination of the present question. ^{17/}

The Department of Health, Education, and Welfare has also argued that the job search requirement for the uncertified can be mandated as part of WIN registration. The Department of Labor does not agree. Under the statute, WIN registration is a condition of eligibility for AFDC. ^{18/} The Supreme Court has continually ruled that only Congress may establish AFDC eligibility criteria or substantively alter the scope of eligibility criteria. ^{19/} Making job search a part of registration would administratively create an additional condition of eligibility, and is thus clearly illegal.

^{14/} Social Security Board v. Nierotko, 327 U.S. 358, 369; United States v. New England Coal and Coke Company, 318 F.2d 138, 143; Air Transport Ass'n of America v. Brownell, 124 F. Supp. 909; King v. Smith, 392 U.S. 309, 333.

^{15/} 93 S.Ct. 2507 (1973).

^{16/} Id., p. 2517.

^{17/} The Supreme Court remanded the case to the District Court on the question of whether New York's work requirements did in fact conflict with the Federal WIN program. The decision of the District Court is still pending.

^{18/} Section 402(a)(19)(A), SSA, infra; 42 U.S.C.A. 602(a)(19)(A).

^{19/} King v. Smith, 392 U.S. 309.

It is our conclusion, therefore, that the requirement, through WIN regulations, of a job search activity for AFDC recipients who have not yet been certified into the WIN program is not legally permissible under Title IV of the Social Security Act.

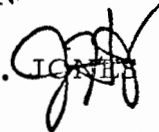
A handwritten signature in dark ink, appearing to read 'William J. Kilberg', with a long, sweeping horizontal stroke extending to the right.

William J. Kilberg
Solicitor of Labor

THE WHITE HOUSE
WASHINGTON

May 28, 1975

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR: JIM LYNN
FROM: JERRY H. IGLES 
SUBJECT: Summary of Attached
WIN Decision Paper

Your memorandum to the President of May 9 on the above subject has been reviewed and option 2 -- as an acceptable alternative, same as 1, but suspend requirement where local employment exceeds 7% -- was approved.

Please follow-up with the appropriate action.

Thank you.

cc: Don Rumsfeld
Phil Buchen
Jim Cannon
Jack Marsh
Max Friedersdorf
Bob Hartmann
Bill Baroody
Alan Greenspan
Bill Seidman

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: May 10, 1975

Time: 10:00 a.m.

FOR ACTION: Phil Buchen *gr*
 Jim Cannon *gr*
 Jack Marsh *gr*
 Max Friedersdorf *gr*
 Bob Hartmann *gr*

~~cc (for information) /~~
 Bill Baroody *gr*
 Alan Greenspan *gr*
 Bill Seidman *gr*

FROM THE STAFF SECRETARY

DUE: Date: Wednesday, May 14, 1975

Time: C.O.B.

SUBJECT:

Lynn memo (5/9/75)

re: Summary of Attached WIN Decision Paper

ACTION REQUESTED:

☐ For Necessary Action☒ For Your Recommendations☐ Prepare Agenda and Brief☐ Draft Reply☒ For Your Comments☐ Draft Remarks

REMARKS:

5/12 Baroody HEW/option 2
 Hartmann #5

5/16 - Buchen - WCB
 Cannon - w/Dunham WCB
 Greenspan WCB

5/22 - Buchen WCB
 sent another copy to Casselman

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Jerry H. Jones
 Staff Secretary

THE WHITE HOUSE

MEMORANDUM

WASHINGTON

LOG NO.:

Date: May 10, 1975

Time: 10:00 a.m.

FOR ACTION: Phil Buchen
Jim Cannon
Jack Marsh
~~Max~~ Friedersdorf
Bob Hartmann

~~XXXXXXXXXXXXXX~~
Bill Baroody
Alan Greenspan
Bill Seidman

FROM THE STAFF SECRETARY

DUE: Date: Wednesday, May 14, 1975

Time: C.O.B.

SUBJECT:

Lynn memo (5/9/75)
re: Summary of Attached WIN Decision Paper

ACTION REQUESTED:

☐ For Necessary Action

☒ For Your Recommendations

☐ Prepare Agenda and Brief

☐ Draft Reply

☒ For Your Comments

☐ Draft Remarks

REMARKS:

Support OMB. -- Ken Lazarus 5/23/75

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Jerry E. Jones
Staff Secretary

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

MAY 9 1975

ACTION

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The continuing disagreement is severely impairing the ability of States to plan the 1976 program, since this decision and other procedural changes not in disagreement, all significantly impact local project design.

HEW believes:

- It is imperative to require all WIN registrants, certified or not, to engage in a job search as a prerequisite for public assistance (PA).
- All able-bodied PA recipients should be responsible for doing something to find a job to meet their families' needs, even in a soft economy.
- Requiring a job search only for those certified will significantly increase pressure for more appropriations to pay for services needed to certify more recipients, and might discourage existing job search requirements in 25 States.
- Adding the requirement to the WIN program is legal and will be sustained by the Supreme Court.

DOL believes:

- Mandating a job search for welfare recipients with low skills when the unemployment rate is 8.2% would:
 - + force them into a labor market when they could not find jobs;
 - + increase the unemployment rate;
 - + subject the Administration to charges of harassing and punishing the poor.
- The WIN law does not authorize a job search requirement before a welfare recipient is certified as ready for work or training, and the Supreme Court would strike down any such administrative requirement.

Justice Department Informal Views

We asked the Justice Department Office of Legal Counsel for a quick informal review of the legal arguments as presented by the agencies. OLC advises orally, that from the arguments presented, they generally concur in the Labor Department interpretation.

Agency Recommendations:HEW

1. Issue the regulations requiring a job search by all WIN registrants, whether or not certified as ready for work or training.

Approve _____

2. As an acceptable alternative, same as 1, but suspend requirement where local unemployment exceeds 7%.

Approve _____

DOL

3. Do not revise the WIN regulations now.

Approve _____

4. As an acceptable alternative, revise the regulations to make agreed program changes (such as adding an Intensive Manpower Services Component), but require a job search only of WIN registrants certified under the law as ready for work or training.

Approve_____

OMB

5. Same as 4, but also ask DOL and HEW to submit their differing legal interpretations to the Attorney General for his formal opinion in order to develop a definitive basis for possible legislative or regulatory action in the future.

Approve_____

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

MAY 9 1975

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: JAMES T. LYNN *Orin*

SUBJECT: Redesign of the Work Incentive Program

Background

The December 1971 amendments to the Work Incentive Program (WIN) law were designed to increase the ability of the program to place welfare recipients in jobs. They require, with certain exceptions, all applicants for Aid for Families with Dependent Children (AFDC) to register for work and training under the WIN program. They require the Secretary of Labor to run the WIN work and training program, including, where possible, placement in jobs without prior training. At least one-third of the funds available for that part of the program must be used for on-the-job training or public service employment. The previous programs emphasized classroom training.

The 1971 amendments require the Secretary of Health, Education, and Welfare to provide supportive services, such as child care and vocational rehabilitation, necessary to enable welfare recipients to participate in the WIN program. When these services are provided, the Secretary of Health, Education, and Welfare is required to certify such persons for participation in WIN programs set up by the Secretary of Labor. If an individual does not need any supportive services, the individual must be certified immediately into the program.

The Department of Health, Education, and Welfare is authorized to reimburse 90% of State costs for supportive services. States not certifying 15% of WIN registrants into the WIN program have their Federal share of AFDC money reduced. AFDC recipients, who are certified into the WIN program as ready for work or training, and who

2
refuse to accept it, must be deregistered from WIN and have their share of their family's AFDC benefits terminated after a 60-day counseling period.

About a year and a half ago, the two Departments agreed to a redesign of the WIN program that would require all WIN registrants, certified or not, to engage in an active job search. It would also add an Intensive Manpower Services Component to provide employment services and develop the job seeking skills of certified WIN registrants. OMB asked the Departments to satisfy themselves and report to us that the redesign was authorized by law before instituting it. They so reported to us.

In September 1974 proposed regulations for the redesign were issued for comment. Many of the comments received raised legal objections, and we asked the Departments to assess again the risks of a successful legal challenge to the redesign.

The two Departments have not been able to agree on the issuance of final revised regulations.

Major issue

Should the WIN program be redesigned so that all AFDC recipients registered for WIN will be required to engage in a job search whether or not they have been provided the child care or other supportive services necessary to certify them as ready for work or training.

Departmental Arguments

I. Program arguments

A. HEW arguments for the redesign

The Department of Health, Education, and Welfare believes that the immediate publication of the WIN redesign regulations is imperative. It strongly believes that a job search should be mandated for all WIN registrants for the same reasons a work requirement was included in its welfare replacement plan submitted to you last fall. It further states that this requirement must be made for all able-bodied recipients of AFDC. To limit the requirement to only those certified will result in significantly increased pressure on costs. Certification requires that a broad range

of social services be arranged for or provided to the recipient whether he has employment or not.

In addition, participation in job search as a certified participant would require payment of a so-called work incentive of \$30/month per participant. Under a job search for registrants who have not been certified, but who have been determined as able-bodied under the law, necessary social services would only be provided on an as-needed basis and the so-called \$30 work incentive would not be required to be paid. Of course, after employment was secured, services would be provided, but the \$30/month would not. Without a job search as a requisite for public assistance for the able bodied, the Department feels we will continue to undermine public confidence in AFDC programs.

Further, failure to implement the WIN redesign will continue to remove the majority of AFDC able-bodied recipients from any association with work. WIN is the sole program that imposes a registration requirement on AFDC recipients as a condition of eligibility for benefits. The redesign, for the first time, places a responsibility on the parent to do something on his part to find employment. The current program removes this responsibility from the parent and places it with the government. The basic policy that an individual remains responsible for his needs and those of his dependents even while he is receiving public assistance should not be undercut as an expedient response to a softening economy.

Considering the current economic situation, HEW would agree to a position that would permit the governor to suspend the mandatory Federal job search requirement in those labor markets where the unemployment rate exceeds 7 percent. This will preclude unrealistic demands being made on registrants when there is a presumption that little success can be expected of a job search. Approximately half of the States already have a job search requirement applying to all AFDC recipients and the Federal regulations will be consonant with these States' programs. Limiting the Federal job search requirement to only those certified might discourage these State programs and result in criticism and adverse publicity toward our administration of the AFDC program. Various types of job search activities are already required by the Federal government for food stamp applicants and unemployment compensation insurance claimants. The Administration's initiative in

developing thousands of public employment jobs provides the realistic opportunity to place WIN registrants in stable work situations.

Expression of a policy reinforcing individual responsibility will never seem timely to those who are not in agreement with the policy. There will always be extenuating circumstances to cloud the reasons why the policy is best left unsaid. The Department of Health, Education, and Welfare believes that there is ample rationale why the requirement of a job search should be formalized by regulation. The Department also believes that the discretion built into its implementation will prevent a harsh and inequitable imposition of this policy on the recipient population. Job search is not a hurdle to elimination of dependency for many recipients..

B. DOL arguments against the redesign

The Department of Labor believes:

1. With an 8.2% unemployment rate, 7,529,000 Americans are currently unemployed. If the WIN redesign is implemented, 500,000 welfare recipients, generally with low employment skills, will be forced into the labor market to engage in a "job search" program. We do not believe that these individuals can be easily employed under current economic conditions, and we are concerned that their entrance into the labor force may well have an adverse impact on the national unemployment rate.

2. Mandating a "job search" program under WIN for those welfare recipients who have so few skills that they are not likely to find jobs and who have not been certified into the WIN program will result in the Administration being charged with harassing the poor and taking punitive action against them. When the WIN redesign was published as a proposed regulation last September, DOL and HEW received much criticism -- and virtually no support -- precisely on this point. This criticism came from labor leaders, such as Meany and Woodcock, religious organizations, and numerous other groups and individuals.

3. Implementing the WIN redesign will cause a diversion of resources -- both funds and staff time -- that would

otherwise be available to help job ready welfare recipients to find employment; under the redesign, that money and staff time would be used for welfare recipients who have not been certified into the WIN program and are not job ready.

4. The current WIN program, which works with welfare recipients certified as job ready, has continued to place a significant number of welfare recipients into employment, despite the economic downturn: 87,400 WIN participants obtained employment in the first six months of this fiscal year, compared to 87,000 during the first six months of the last fiscal year. There does not appear to be compelling need, therefore, to radically amend this program at the current time, although certain technical amendments may be desirable.

II. Legal arguments

A. HEW expects that, if the joint regulations as proposed, or as modified to exclude localities with high unemployment, are issued in final form, the Departments will be sued and may lose in one or more district courts. HEW believes, however, that both of these options are legally supportable and that its position would be sustained by the Supreme Court. HEW believes the issue should be decided on policy, and that we should not decide on the basis of our estimate of what the courts may do.

The Act requires that a State AFDC plan provide that, as a condition of eligibility for AFDC, every individual not specifically exempt (e.g., children under 16 and mothers who care for children under the age of 6) "register for manpower services, training, and employment as provided by regulations of the Secretary of Labor" (Section 402(a)(19)(A) of the Social Security Act). HEW believes this provision may be construed broadly to require that the process of registration include more than the mere signing of a registration card; i.e., that the registration process itself may include a job search activity. This process has always been construed to encompass more than the mere signing of a registration form. For example, registrants are currently required to appear for "appraisal" interviews conducted by WIN staff, and failure to so appear results in termination of welfare benefits.. This provision has never been judicially challenged.

B. DOL believes that the statutory language established in the WIN program does not support the imposition of a mandatory "job search" requirement prior to a welfare recipient's certification into the WIN program. This position, as set out fully in the attached legal memorandum, is clearly supported by the actual language of the statute, its legislative history, and decisions of the Federal Courts, including the United States Supreme Court.

C. In light of the conflicting legal views of Labor and HEW, we sought informal review of the legal issue from the Justice Department. Based on the arguments presented by DOL and HEW, the Office of Legal Counsel has told us informally that it agrees with DOL that the proposal does not appear to be authorized by law and probably would not be sustained in the Courts.

OMB Comments

In addition to the views of the Office of Legal Counsel, the following points should be kept in mind in making a decision:

- The WIN program was kept at its current level in the 1976 Budget because it was seen as an available job assistance program at a time of rising unemployment.
- The WIN budget is completely controllable; the number of people served can be limited to meet available funds. However, since proposed regulations had the job search requirement, States may press for more supportive service funds in order to certify more registrants into job search.
- The first major evaluation of WIN geared to current policy issues is underway, with first meaningful results expected this summer, and completion after January 1976.
- Program statistics seem to indicate that placing certified WIN registrants directly in jobs is both possible and more cost effective than training or subsidized jobs. However, GAO and other evaluators question the validity of the statistics. The experience may not be transferrable to non-certified registrants.
- Imposing a job search requirement on non-certified WIN registrants now, when unemployment is high, will be criticized as unnecessary harassment of welfare recipients.

- This is especially true since, as HEW points out, certified registrants are eligible for greater amounts of assistance.
- Approximately half of the States already have some job search requirement in their AFDC programs. Revised WIN regulations without a universal job search requirement will not change the legal authority for such requirements and need not be written to discourage them.
- UI and Food Stamp recipients are required to accept suitable jobs but real job search requirements have been relaxed under present economic conditions.
- Even at high unemployment rates, there are unskilled jobs available for which untrained welfare recipients could qualify.
- DOL's arguments are directed against a job search as a requirement for all registrants, not against the entire redesign.
- The differing legal interpretation of DOL and HEW may make operation of a general job search difficult.

Agency Recommendations

HEW

1. The Department of Health, Education, and Welfare recommends issuance in final form of regulations which would include a Federally-mandated job search requirement prior to certification by the welfare agency of readiness for work or training.

2. HEW has advanced as an acceptable alternative, issuance of the regulations as in 1 above, except to suspend the Federally-mandated job search requirement when unemployment in the local labor market exceeds 7%.

DOL

3. The Department of Labor recommends that the WIN redesign not be implemented.

4. If it is decided, however, that a redesign is necessary, DOL believes that legal prudence and programmatic concerns dictate that the "job search" component only apply

to individuals who have actually been certified into the WIN program under the law.

OMB

5. On balance, OMB recommends that the job search requirement not be imposed on non-certified WIN registrants by Federal regulation at this time. We do not see why a redesign making other changes could not be implemented. (DOL alternative recommendation, No. 4 above). We also recommend that the two Departments submit their differing legal interpretations to the Attorney General for his formal opinion in order to develop a definitive basis for possible legislative or regulatory action in the future.

U.S. DEPARTMENT OF LABOR

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20210



FEB 26 1975

MEMORANDUM OF LAW

SUBJECT: LEGALITY OF A MANDATORY WIN JOB SEARCH
REQUIREMENT FOR WELFARE RECIPIENTS NOT
YET CERTIFIED INTO WIN

The Department of Labor believes that the statutory language establishing the WIN program does not support the imposition of a mandatory job search requirement prior to a welfare recipient's certification into the WIN program. This position is clearly supported by the actual language of the statute, its legislative history, and decisions of the Federal Courts, including the United States Supreme Court.

Title IV of the Social Security Act establishes the AFDC system. The Work Incentive Program is the component of that system which provides training and employment opportunities for AFDC recipients who have been certified into the WIN program, and which exacts penalties from recipients who refuse, without good cause, to accept training or employment. 1/ Under it, an individual who desires benefits applies at a State welfare office. In the course of completing the application process the applicant also registers for the WIN program. 2/ Once the individual's application has been accepted and eligibility for welfare established, the individual is an AFDC recipient and, if not

1/ Sections 402(a)(19)(G), 433(a), 433(b)(3).

2/ Section 402(a)(19)(A) of the Social Security Act (SSA), 42 U.S.C.A. 602(a)(19)(A), requires each State plan to provide that "every individual, as a condition of eligibility register for manpower services, training, and employment, as provided by regulations of the Secretary of Labor, unless such individual is -- (i) a child; (ii) ill, incapacitated, or of advanced age; (iii) remote from a WIN project; (iv) required to be at home to care for an ill or incapacitated household member; (v) the mother of a child under 6; (vi) the mother of a child, if the father is enrolled in the WIN program." The Conference Report on the 1971 amendments to the WIN program makes clear that the registration process for section 402(a)(19)(A) is registration for the WIN program. (Conference Report No. 92-947, 1971 U.S. Code, Cong. & Ad. News 2436).

exempt from WIN participation, is placed in the AFDC-WIN system. 3/ The individual is then to be provided with necessary social and supportive services by the welfare agency so that WIN training or employment can be arranged. 4/ When the welfare agency has provided those services, the individual is to be "certified to the Secretary of Labor" for the WIN program. (Emphasis added) 5/ This certification procedure is a key element of the statutory structure. The statutory language requiring it reads as follows:

[The State welfare agency] "(ii) will provide (through arrangements with others or otherwise) for individuals who have been registered pursuant to subparagraph (A), in accordance with the order of priority listed in section 433(a), such health, vocational rehabilitation, counseling, child care, and other social and supportive services as are necessary to enable such individuals to accept employment or receive manpower training provided under part C, and will, when arrangements have been made to provide necessary supportive services, including child care, certify to the Secretary of Labor those individuals who are ready for employment or training under Part C. . ." 6/

After an individual has been certified, the Secretary of Labor then determines the best type of training or employment for the individual, with the goal of working toward the individual's self-sufficiency. 7/ If the individual is placed in regular employment, the individual may be eligible for an income disregard; this amounts to an earnings supplement for that individual and assists persons who are working at low-paying jobs. 8/ If the individual is placed in an "institutional (or) work experience training program," the individual is eligible for a training

3/ Part C, Title IV, SSA, infra.

4/ Section 402(a)(19)(G), SSA, infra; 42 U.S.C.A. 602(a)(19)(G). Services are provided in accordance with a list of priority groupings set out in section 433(a).

5/ Section 402(a)(19)(G), SSA, infra; 42 U.S.C.A. 602(a)(19)(G).

6/ Id.

7/ Sections 430 and 433(a), SSA, infra; 42 U.S.C.A. 630, 42 U.S.C.A. 633(a).

8/ Sections 432(b) and 402(a)(8), SSA, infra; 42 U.S.C.A. 632(b), 42 U.S.C.A. 602(a)(8).

incentive payment of not more than thirty dollars a month. 9/
The individual may also be placed in a public service employment program. 10/

Thus, it can be seen that the Congress has established a system which requires persons seeking AFDC to register for the WIN program (unless exempted by the statute) at the same time they register for AFDC, and to be certified by the welfare agency to the Secretary of Labor for the WIN program, once they have been found eligible for AFDC and are actually receiving benefits.

If there is any question about this procedure, it should be dispelled by the Conference Committee report on the WIN amendments of 1971. That report explains the amendments as (1) "requir(ing) an individual, as a condition of eligibility for welfare, to register for the WIN program" and (2) "requiring the welfare agency to designate a separate administrative unit to make arrangements for supportive services needed by welfare recipients in order to participate in (the) WIN program and to refer recipients so prepared to the Labor Department for participation in the WIN program." (Emphasis added). 11/

This statutory scheme has also been clearly recognized by the courts. The Supreme Court has described the WIN program in just this way. 12/ So too have other federal courts. 13/

Title IV of the Social Security Act nowhere refers to the requiring of a job search activity or any other WIN activity for AFDC recipients who have not yet been certified to the Secretary of Labor. And the Conference Report on the 1971 WIN amendments is similarly silent. Furthermore, the statute, on its face, sets out the system for placing individuals in jobs or training.

It is a maxim of statutory construction that a statute may not be amended by administrative action, and that where a statute sets out a specific way for dealing with a specific situation, the statutory scheme must be followed. 14/

9/ Section 434(a), SSA, infra; 42 U.S.C.A. 634(a). The Secretary of Labor is "authorized" to provide this payment, but not required to do so. WIN regulations, however, do provide for this payment, 29 CFR 56.8(a)(1).

10/ Section 432(b), SSA, infra; 42 U.S.C.A. 632(b).

11/ Conference Report 92-747, 1971 U.S. Code, Cong. & Ad. News 2436 and 2437.

12/ New York State Department of Social Services v. Dublino, 41 LW 5047, 5048-5049, 5051.

13/ Woolfork v. Brown, 325 F. Supp. 1162, 1167-1181, affd. 456 F.2d 652, 654.

There remains the question, then, of whether the proposed WIN redesign, which contemplates a required job search activity for uncertified welfare recipients, does, in fact, amount to an administrative amendment of the WIN program inconsistent with the language and structure of the Act. I believe the proposal clearly does. Indeed, I believe the proposal subverts the clear statutory intent of the Social Security Act that welfare recipients be provided with necessary supportive services such as child care and vocational rehabilitation and then be certified to the Secretary of Labor as job ready before they can be required to compete in the job market.

The Department of Health, Education, and Welfare, however, has argued that the Supreme Court decision in the case of New York Department of Social Services v. Dublino supports a job search activity for the uncertified. ^{15/} We strongly disagree. Dublino merely holds that the very existence of the Federal WIN program does not constitutionally pre-empt States from establishing their own work programs for welfare recipients, when such programs are consistent with the statutory requirements of the WIN program. ^{16/} The case in no way deals with the question of whether the Social Security Act would allow a Federal WIN job search activity for those not yet certified into WIN. The case, therefore, is not relevant to a determination of the present question. ^{17/}

The Department of Health, Education, and Welfare has also argued that the job search requirement for the uncertified can be mandated as part of WIN registration. The Department of Labor does not agree. Under the statute, WIN registration is a condition of eligibility for AFDC. ^{18/} The Supreme Court has continually ruled that only Congress may establish AFDC eligibility criteria or substantively alter the scope of eligibility criteria. ^{19/} Making job search a part of registration would administratively create an additional condition of eligibility, and is thus clearly illegal.

^{14/} Social Security Board v. Nierotko, 327 U.S. 358, 369; United States v. New England Coal and Coke Company, 318 F.2d 138, 143; Air Transport Ass'n of America v. Brownell, 124 F. Supp. 909; King v. Smith, 392 U.S. 309, 333.

^{15/} 93 S.Ct. 2507 (1973).

^{16/} Id., p. 2517.

^{17/} The Supreme Court remanded the case to the District Court on the question of whether New York's work requirements did in fact conflict with the Federal WIN program. The decision of the District Court is still pending.

^{18/} Section 402(a)(19)(A), SSA, infra; 42 U.S.C.A. 602(a)(19)(A).

^{19/} King v. Smith, 392 U.S. 309.

It is our conclusion, therefore, that the requirement, through WIN regulations, of a job search activity for AFDC recipients who have not yet been certified into the WIN program is not legally permissible under Title IV of the Social Security Act.

A handwritten signature in dark ink, appearing to read 'William J. Kilberg', with a stylized flourish at the end.

William J. Kilberg
Solicitor of Labor

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: *Dunham*
5/14/75

Date: May 10, 1975

Time: 10:00 a.m.

FOR ACTION: Phil Buchen

~~XXXXXXXXXXXXXXXXXXXX~~☒ Jim Cannon

Bill Baroody

Jack Marsh

Alan Greenspan

Max Friedersdorf

Bill Seidman

Bob Hartmann

FROM THE STAFF SECRETARY

DUE: Date: Wednesday, May 14, 1975

Time: C.O.B.

SUBJECT:

Lynn memo (5/9/75)

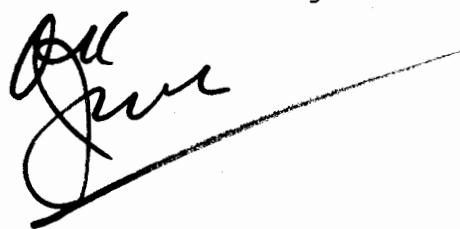
re: Summary of Attached WIN Decision Paper

ACTION REQUESTED:

☐ For Necessary Action☒ For Your Recommendations☐ Prepare Agenda and Brief☐ Draft Reply☒ For Your Comments☐ Draft Remarks

REMARKS:

The Domestic Council recommendation is in agreement with Department of Labor's recommendation that a job search be required only of WIN registrants certified under the law as ready for work or training.

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Jerry M. Jones
Staff Secretary



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MAY 9 1975

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: JAMES T. LYNN *Chair*

SUBJECT: Summary of Attached WIN Decision Paper

The attached decision paper, incorporating the text of views from the Departments of Labor and Health, Education, and Welfare, presents for your resolution a disagreement between those Departments over their joint Work Incentive Program (WIN) established by the Social Security Act. The principal issue is: Should those AFDC recipients who must register for WIN be required to engage in a job search activity, whether or not they have been provided the child care or other supportive services necessary to certify them as ready for work or training.

The continuing disagreement is severely impairing the ability of States to plan the 1976 program, since this decision and other procedural changes not in disagreement, all significantly impact local project design.

HEW believes:

- It is imperative to require all WIN registrants, certified or not, to engage in a job search as a prerequisite for public assistance (PA).
- All able-bodied PA recipients should be responsible for doing something to find a job to meet their families' needs, even in a soft economy.
- Requiring a job search only for those certified will significantly increase pressure for more appropriations to pay for services needed to certify more recipients, and might discourage existing job search requirements in 25 States.
- Adding the requirement to the WIN program is legal and will be sustained by the Supreme Court.

DOL believes:

- Mandating a job search for welfare recipients with low skills when the unemployment rate is 8.2% would:
 - + force them into a labor market when they could not find jobs;
 - + increase the unemployment rate;
 - + subject the Administration to charges of harassing and punishing the poor.
- The WIN law does not authorize a job search requirement before a welfare recipient is certified as ready for work or training, and the Supreme Court would strike down any such administrative requirement.

Justice Department Informal Views

We asked the Justice Department Office of Legal Counsel for a quick informal review of the legal arguments as presented by the agencies. OLC advises orally, that from the arguments presented, they generally concur in the Labor Department interpretation.

Agency Recommendations:HEW

1. Issue the regulations requiring a job search by all WIN registrants, whether or not certified as ready for work or training.

Approve _____

2. As an acceptable alternative, same as 1, but suspend requirement where local unemployment exceeds 7%.

Approve _____

DOL

3. Do not revise the WIN regulations now.

Approve _____

4. As an acceptable alternative, revise the regulations to make agreed program changes (such as adding an Intensive Manpower Services Component), but require a job search only of WIN registrants certified under the law as ready for work or training.

Approve_____

OMB

5. Same as 4, but also ask DOL and HEW to submit their differing legal interpretations to the Attorney General for his formal opinion in order to develop a definitive basis for possible legislative or regulatory action in the future.

Approve_____

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

MAY 9 1975

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: JAMES T. LYNN *Ohia*

SUBJECT: Redesign of the Work Incentive Program

Background

The December 1971 amendments to the Work Incentive Program (WIN) law were designed to increase the ability of the program to place welfare recipients in jobs. They require, with certain exceptions, all applicants for Aid for Families with Dependent Children (AFDC) to register for work and training under the WIN program. They require the Secretary of Labor to run the WIN work and training program, including, where possible, placement in jobs without prior training. At least one-third of the funds available for that part of the program must be used for on-the-job training or public service employment. The previous programs emphasized classroom training.

The 1971 amendments require the Secretary of Health, Education, and Welfare to provide supportive services, such as child care and vocational rehabilitation, necessary to enable welfare recipients to participate in the WIN program. When these services are provided, the Secretary of Health, Education, and Welfare is required to certify such persons for participation in WIN programs set up by the Secretary of Labor. If an individual does not need any supportive services, the individual must be certified immediately into the program.

The Department of Health, Education, and Welfare is authorized to reimburse 90% of State costs for supportive services. States not certifying 15% of WIN registrants into the WIN program have their Federal share of AFDC money reduced. AFDC recipients, who are certified into the WIN program as ready for work or training, and who

refuse to accept it, must be deregistered from WIN and have their share of their family's AFDC benefits terminated after a 60-day counseling period.

About a year and a half ago, the two Departments agreed to a redesign of the WIN program that would require all WIN registrants, certified or not, to engage in an active job search. It would also add an Intensive Manpower Services Component to provide employment services and develop the job seeking skills of certified WIN registrants. OMB asked the Departments to satisfy themselves and report to us that the redesign was authorized by law before instituting it. They so reported to us.

In September 1974 proposed regulations for the redesign were issued for comment. Many of the comments received raised legal objections, and we asked the Departments to assess again the risks of a successful legal challenge to the redesign.

The two Departments have not been able to agree on the issuance of final revised regulations.

Major issue

Should the WIN program be redesigned so that all AFDC recipients registered for WIN will be required to engage in a job search whether or not they have been provided the child care or other supportive services necessary to certify them as ready for work or training.

Departmental Arguments

I. Program arguments

A. HEW arguments for the redesign

The Department of Health, Education, and Welfare believes that the immediate publication of the WIN redesign regulations is imperative. It strongly believes that a job search should be mandated for all WIN registrants for the same reasons a work requirement was included in its welfare replacement plan submitted to you last fall. It further states that this requirement must be made for all able-bodied recipients of AFDC. To limit the requirement to only those certified will result in significantly increased pressure on costs. Certification requires that a broad range

of social services be arranged for or provided to the recipient whether he has employment or not.

In addition, participation in job search as a certified participant would require payment of a so-called work incentive of \$30/month per participant. Under a job search for registrants who have not been certified, but who have been determined as able-bodied under the law, necessary social services would only be provided on an as-needed basis and the so-called \$30 work incentive would not be required to be paid. Of course, after employment was secured, services would be provided, but the \$30/month would not. Without a job search as a requisite for public assistance for the able bodied, the Department feels we will continue to undermine public confidence in AFDC programs.

Further, failure to implement the WIN redesign will continue to remove the majority of AFDC able-bodied recipients from any association with work. WIN is the sole program that imposes a registration requirement on AFDC recipients as a condition of eligibility for benefits. The redesign, for the first time, places a responsibility on the parent to do something on his part to find employment. The current program removes this responsibility from the parent and places it with the government. The basic policy that an individual remains responsible for his needs and those of his dependents even while he is receiving public assistance should not be undercut as an expedient response to a softening economy.

Considering the current economic situation, HEW would agree to a position that would permit the governor to suspend the mandatory Federal job search requirement in those labor markets where the unemployment rate exceeds 7 percent. This will preclude unrealistic demands being made on registrants when there is a presumption that little success can be expected of a job search. Approximately half of the States already have a job search requirement applying to all AFDC recipients and the Federal regulations will be consonant with these States' programs. Limiting the Federal job search requirement to only those certified might discourage these State programs and result in criticism and adverse publicity toward our administration of the AFDC program. Various types of job search activities are already required by the Federal government for food stamp applicants and unemployment compensation insurance claimants. The Administration's initiative in

developing thousands of public employment jobs provides the realistic opportunity to place WIN registrants in stable work situations.

Expression of a policy reinforcing individual responsibility will never seem timely to those who are not in agreement with the policy. There will always be extenuating circumstances to cloud the reasons why the policy is best left unsaid. The Department of Health, Education, and Welfare believes that there is ample rationale why the requirement of a job search should be formalized by regulation. The Department also believes that the discretion built into its implementation will prevent a harsh and inequitable imposition of this policy on the recipient population. Job search is not a hurdle to elimination of dependency for many recipients..

B. DOL arguments against the redesign

The Department of Labor believes:

1. With an 8.2% unemployment rate, 7,529,000 Americans are currently unemployed. If the WIN redesign is implemented, 500,000 welfare recipients, generally with low employment skills, will be forced into the labor market to engage in a "job search" program. We do not believe that these individuals can be easily employed under current economic conditions, and we are concerned that their entrance into the labor force may well have an adverse impact on the national unemployment rate.

2. Mandating a "job search" program under WIN for those welfare recipients who have so few skills that they are not likely to find jobs and who have not been certified into the WIN program will result in the Administration being charged with harassing the poor and taking punitive action against them. When the WIN redesign was published as a proposed regulation last September, DOL and HEW received much criticism -- and virtually no support -- precisely on this point. This criticism came from labor leaders, such as Meany and Woodcock, religious organizations, and numerous other groups and individuals.

3. Implementing the WIN redesign will cause a diversion of resources -- both funds and staff time -- that would

otherwise be available to help job ready welfare recipients to find employment; under the redesign, that money and staff time would be used for welfare recipients who have not been certified into the WIN program and are not job ready.

4. The current WIN program, which works with welfare recipients certified as job ready, has continued to place a significant number of welfare recipients into employment, despite the economic downturn: 87,400 WIN participants obtained employment in the first six months of this fiscal year, compared to 87,000 during the first six months of the last fiscal year. There does not appear to be compelling need, therefore, to radically amend this program at the current time, although certain technical amendments may be desirable.

II. Legal arguments

A. HEW expects that, if the joint regulations as proposed, or as modified to exclude localities with high unemployment, are issued in final form, the Departments will be sued and may lose in one or more district courts. HEW believes, however, that both of these options are legally supportable and that its position would be sustained by the Supreme Court. HEW believes the issue should be decided on policy, and that we should not decide on the basis of our estimate of what the courts may do.

The Act requires that a State AFDC plan provide that, as a condition of eligibility for AFDC, every individual not specifically exempt (e.g., children under 16 and mothers who care for children under the age of 6) "register for manpower services, training, and employment as provided by regulations of the Secretary of Labor" (Section 402(a)(19)(A) of the Social Security Act). HEW believes this provision may be construed broadly to require that the process of registration include more than the mere signing of a registration card; i.e., that the registration process itself may include a job search activity. This process has always been construed to encompass more than the mere signing of a registration form. For example, registrants are currently required to appear for "appraisal" interviews conducted by WIN staff, and failure to so appear results in termination of welfare benefits. This provision has never been judicially challenged.

B. DOL believes that the statutory language established in the WIN program does not support the imposition of a mandatory "job search" requirement prior to a welfare recipient's certification into the WIN program. This position, as set out fully in the attached legal memorandum, is clearly supported by the actual language of the statute, its legislative history, and decisions of the Federal Courts, including the United States Supreme Court.

C. In light of the conflicting legal views of Labor and HEW, we sought informal review of the legal issue from the Justice Department. Based on the arguments presented by DOL and HEW, the Office of Legal Counsel has told us informally that it agrees with DOL that the proposal does not appear to be authorized by law and probably would not be sustained in the Courts.

OMB Comments

In addition to the views of the Office of Legal Counsel, the following points should be kept in mind in making a decision:

- The WIN program was kept at its current level in the 1976 Budget because it was seen as an available job assistance program at a time of rising unemployment.
- The WIN budget is completely controllable; the number of people served can be limited to meet available funds. However, since proposed regulations had the job search requirement, States may press for more supportive service funds in order to certify more registrants into job search.
- The first major evaluation of WIN geared to current policy issues is underway, with first meaningful results expected this summer, and completion after January 1976.
- Program statistics seem to indicate that placing certified WIN registrants directly in jobs is both possible and more cost effective than training or subsidized jobs. However, GAO and other evaluators question the validity of the statistics. The experience may not be transferrable to non-certified registrants.
- Imposing a job search requirement on non-certified WIN registrants now, when unemployment is high, will be criticized as unnecessary harassment of welfare recipients.

- This is especially true since, as HEW points out, certified registrants are eligible for greater amounts of assistance.
- Approximately half of the States already have some job search requirement in their AFDC programs. Revised WIN regulations without a universal job search requirement will not change the legal authority for such requirements and need not be written to discourage them.
- UI and Food Stamp recipients are required to accept suitable jobs but real job search requirements have been relaxed under present economic conditions.
- Even at high unemployment rates, there are unskilled jobs available for which untrained welfare recipients could qualify.
- DOL's arguments are directed against a job search as a requirement for all registrants, not against the entire redesign.
- The differing legal interpretation of DOL and HEW may make operation of a general job search difficult.

Agency Recommendations

HEW

1. The Department of Health, Education, and Welfare recommends issuance in final form of regulations which would include a Federally-mandated job search requirement prior to certification by the welfare agency of readiness for work or training.

2. HEW has advanced as an acceptable alternative, issuance of the regulations as in 1 above, except to suspend the Federally-mandated job search requirement when unemployment in the local labor market exceeds 7%.

DOL

3. The Department of Labor recommends that the WIN redesign not be implemented.

4. If it is decided, however, that a redesign is necessary, DOL believes that legal prudence and programmatic concerns dictate that the "job search" component only apply

to individuals who have actually been certified into the WIN program under the law.

OMB

5. On balance, OMB recommends that the job search requirement not be imposed on non-certified WIN registrants by Federal regulation at this time. We do not see why a redesign making other changes could not be implemented. (DOL alternative recommendation, No. 4 above). We also recommend that the two Departments submit their differing legal interpretations to the Attorney General for his formal opinion in order to develop a definitive basis for possible legislative or regulatory action in the future.

U.S. DEPARTMENT OF LABOR

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20210



FEB 26 1975

MEMORANDUM OF LAW

SUBJECT: LEGALITY OF A MANDATORY WIN JOB SEARCH
REQUIREMENT FOR WELFARE RECIPIENTS NOT
YET CERTIFIED INTO WIN

The Department of Labor believes that the statutory language establishing the WIN program does not support the imposition of a mandatory job search requirement prior to a welfare recipient's certification into the WIN program. This position is clearly supported by the actual language of the statute, its legislative history, and decisions of the Federal Courts, including the United States Supreme Court.

Title IV of the Social Security Act establishes the AFDC system. The Work Incentive Program is the component of that system which provides training and employment opportunities for AFDC recipients who have been certified into the WIN program, and which exacts penalties from recipients who refuse, without good cause, to accept training or employment. 1/ Under it, an individual who desires benefits applies at a State welfare office. In the course of completing the application process the applicant also registers for the WIN program. 2/ Once the individual's application has been accepted and eligibility for welfare established, the individual is an AFDC recipient and, if not

1/ Sections 402(a)(19)(G), 433(a), 433(b)(3).

2/ Section 402(a)(19)(A) of the Social Security Act (SSA), 42 U.S.C.A. 602(a)(19)(A), requires each State plan to provide that "every individual, as a condition of eligibility register for manpower services, training, and employment, as provided by regulations of the Secretary of Labor, unless such individual is -- (i) a child; (ii) ill, incapacitated, or of advanced age; (iii) remote from a WIN project; (iv) required to be at home to care for an ill or incapacitated household member; (v) the mother of a child under 6; (vi) the mother of a child, if the father is enrolled in the WIN program." The Conference Report on the 1971 amendments to the WIN program makes clear that the registration process for section 402(a)(19)(A) is registration for the WIN program. (Conference Report No. 92-947, 1971 U.S. Code, Cong. & Ad. News 2436).

exempt from WIN participation, is placed in the AFDC-WIN system. 3/ The individual is then to be provided with necessary social and supportive services by the welfare agency so that WIN training or employment can be arranged. 4/ When the welfare agency has provided those services, the individual is to be "certified to the Secretary of Labor" for the WIN program. (Emphasis added) 5/ This certification procedure is a key element of the statutory structure. The statutory language requiring it reads as follows:

[The State welfare agency] "(ii) will provide (through arrangements with others or otherwise) for individuals who have been registered pursuant to subparagraph (A), in accordance with the order of priority listed in section 433(a), such health, vocational rehabilitation, counseling, child care, and other social and supportive services as are necessary to enable such individuals to accept employment or receive manpower training provided under part C, and will, when arrangements have been made to provide necessary supportive services, including child care, certify to the Secretary of Labor those individuals who are ready for employment or training under Part C. . ." 6/

After an individual has been certified, the Secretary of Labor then determines the best type of training or employment for the individual, with the goal of working toward the individual's self-sufficiency. 7/ If the individual is placed in regular employment, the individual may be eligible for an income disregard; this amounts to an earnings supplement for that individual and assists persons who are working at low-paying jobs. 8/ If the individual is placed in an "institutional (or) work experience training program," the individual is eligible for a training

3/ Part C, Title IV, SSA, infra.

4/ Section 402(a)(19)(G), SSA, infra; 42 U.S.C.A. 602(a)(19)(G). Services are provided in accordance with a list of priority groupings set out in section 433(a).

5/ Section 402(a)(19)(G), SSA, infra; 42 U.S.C.A. 602(a)(19)(G).

6/ Id.

7/ Sections 430 and 433(a), SSA, infra; 42 U.S.C.A. 630, 42 U.S.C.A. 633(a).

8/ Sections 432(b) and 402(a)(8), SSA, infra; 42 U.S.C.A. 632(b), 42 U.S.C.A. 602(a)(8).

incentive payment of not more than thirty dollars a month. 9/
The individual may also be placed in a public service employment program. 10/

Thus, it can be seen that the Congress has established a system which requires persons seeking AFDC to register for the WIN program (unless exempted by the statute) at the same time they register for AFDC, and to be certified by the welfare agency to the Secretary of Labor for the WIN program, once they have been found eligible for AFDC and are actually receiving benefits.

If there is any question about this procedure, it should be dispelled by the Conference Committee report on the WIN amendments of 1971. That report explains the amendments as (1) "requir(ing) an individual, as a condition of eligibility for welfare, to register for the WIN program" and (2) "requiring the welfare agency to designate a separate administrative unit to make arrangements for supportive services needed by welfare recipients in order to participate in (the) WIN program and to refer recipients so prepared to the Labor Department for participation in the WIN program." (Emphasis added). 11/

This statutory scheme has also been clearly recognized by the courts. The Supreme Court has described the WIN program in just this way. 12/ So too have other federal courts. 13/

Title IV of the Social Security Act nowhere refers to the requiring of a job search activity or any other WIN activity for AFDC recipients who have not yet been certified to the Secretary of Labor. And the Conference Report on the 1971 WIN amendments is similarly silent. Furthermore, the statute, on its face, sets out the system for placing individuals in jobs or training.

It is a maxim of statutory construction that a statute may not be amended by administrative action, and that where a statute sets out a specific way for dealing with a specific situation, the statutory scheme must be followed. 14/

9/ Section 434(a), SSA, infra; 42 U.S.C.A. 634(a). The Secretary of Labor is "authorized" to provide this payment, but not required to do so. WIN regulations, however, do provide for this payment, 29 CFR 56.8(a)(1).

10/ Section 432(b), SSA, infra; 42 U.S.C.A. 632(b).

11/ Conference Report 92-747, 1971 U.S. Code, Cong. & Ad. News 2436 and 2437.

12/ New York State Department of Social Services v. Dublino, 41 LW 5047, 5048-5049, 5051.

13/ Woolfork v. Brown, 325 F. Supp. 1162, 1167-1181, affd. 456 F.2d 652, 654.

There remains the question, then, of whether the proposed WIN redesign, which contemplates a required job search activity for uncertified welfare recipients, does, in fact, amount to an administrative amendment of the WIN program inconsistent with the language and structure of the Act. I believe the proposal clearly does. Indeed, I believe the proposal subverts the clear statutory intent of the Social Security Act that welfare recipients be provided with necessary supportive services such as child care and vocational rehabilitation and then be certified to the Secretary of Labor as job ready before they can be required to compete in the job market.

The Department of Health, Education, and Welfare, however, has argued that the Supreme Court decision in the case of New York Department of Social Services v. Dublino supports a job search activity for the uncertified. 15/ We strongly disagree. Dublino merely holds that the very existence of the Federal WIN program does not constitutionally pre-empt States from establishing their own work programs for welfare recipients, when such programs are consistent with the statutory requirements of the WIN program. 16/ The case in no way deals with the question of whether the Social Security Act would allow a Federal WIN job search activity for those not yet certified into WIN. The case, therefore, is not relevant to a determination of the present question. 17/

The Department of Health, Education, and Welfare has also argued that the job search requirement for the uncertified can be mandated as part of WIN registration. The Department of Labor does not agree. Under the statute, WIN registration is a condition of eligibility for AFDC. 18/ The Supreme Court has continually ruled that only Congress may establish AFDC eligibility criteria or substantively alter the scope of eligibility criteria. 19/ Making job search a part of registration would administratively create an additional condition of eligibility, and is thus clearly illegal.

14/ Social Security Board v. Nierotko, 327 U.S. 358, 369; United States v. New England Coal and Coke Company, 318 F.2d 138, 143; Air Transport Ass'n of America v. Brownell, 124 F. Supp. 909; King v. Smith, 392 U.S. 309, 333..

15/ 93 S.Ct. 2507 (1973).


16/ Id., p. 2517.

17/ The Supreme Court remanded the case to the District Court on the question of whether New York's work requirements did in fact conflict with the Federal WIN program. The decision of the District Court is still pending.

18/ Section 402(a)(19)(A), SSA, infra; 42 U.S.C.A. 602(a)(19)(A).

19/ King v. Smith, 392 U.S. 309.

It is our conclusion, therefore, that the requirement, through WIN regulations, of a job search activity for AFDC recipients who have not yet been certified into the WIN program is not legally permissible under Title IV of the Social Security Act.



William J. Kilberg
Solicitor of Labor

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED

MAY 10 1975

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: May 10, 1975

Time: 10:00 a.m.

due: 5/14
COB

FOR ACTION: Phil Buchen
Jim Cannon
✓ Jack Marsh
Max Friedersdorf
Bob Hartmann

~~XXXXXXXXXXXXXXXXXXXX~~

Bill Baroody
Alan Greenspan
Bill Seidman

FROM THE STAFF SECRETARY

DUE: Date: Wednesday, May 14, 1975

Time: C.O.B.

SUBJECT:

Lynn memo (5/9/75)
re: Summary of Attached WIN Decision Paper

ACTION REQUESTED:

☐ For Necessary Action☒ For Your Recommendations☐ Prepare Agenda and Brief☐ Draft Reply☒ For Your Comments☐ Draft Remarks

REMARKS:

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Jerry H. Jones
Staff Secretary



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MAY 9 1975

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: JAMES T. LYNN *Chen*

SUBJECT: Summary of Attached WIN Decision Paper

The attached decision paper, incorporating the text of views from the Departments of Labor and Health, Education, and Welfare, presents for your resolution a disagreement between those Departments over their joint Work Incentive Program (WIN) established by the Social Security Act. The principal issue is: Should those AFDC recipients who must register for WIN be required to engage in a job search activity, whether or not they have been provided the child care or other supportive services necessary to certify them as ready for work or training.

The continuing disagreement is severely impairing the ability of States to plan the 1976 program, since this decision and other procedural changes not in disagreement, all significantly impact local project design.

HEW believes:

- It is imperative to require all WIN registrants, certified or not, to engage in a job search as a prerequisite for public assistance (PA).
- All able-bodied PA recipients should be responsible for doing something to find a job to meet their families' needs, even in a soft economy.
- Requiring a job search only for those certified will significantly increase pressure for more appropriations to pay for services needed to certify more recipients, and might discourage existing job search requirements in 25 States.
- Adding the requirement to the WIN program is legal and will be sustained by the Supreme Court.

DOL believes:

- Mandating a job search for welfare recipients with low skills when the unemployment rate is 8.2% would:
 - + force them into a labor market when they could not find jobs;
 - + increase the unemployment rate;
 - + subject the Administration to charges of harassing and punishing the poor.
- The WIN law does not authorize a job search requirement before a welfare recipient is certified as ready for work or training, and the Supreme Court would strike down any such administrative requirement.

Justice Department Informal Views

We asked the Justice Department Office of Legal Counsel for a quick informal review of the legal arguments as presented by the agencies. OLC advises orally, that from the arguments presented, they generally concur in the Labor Department interpretation.

Agency Recommendations:HEW

1. Issue the regulations requiring a job search by all WIN registrants, whether or not certified as ready for work or training.

Approve _____

2. As an acceptable alternative, same as 1, but suspend requirement where local unemployment exceeds 7%.

Approve _____

DOL

3. Do not revise the WIN regulations now.

Approve _____

4. As an acceptable alternative, revise the regulations to make agreed program changes (such as adding an Intensive Manpower Services Component), but require a job search only of WIN registrants certified under the law as ready for work or training.

Approve gm

OMB

5. Same as 4, but also ask DOL and HEW to submit their differing legal interpretations to the Attorney General for his formal opinion in order to develop a definitive basis for possible legislative or regulatory action in the future.

Approve gm

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

MAY 9 1975

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: JAMES T. LYNN *DL*

SUBJECT: Redesign of the Work Incentive Program

Background

The December 1971 amendments to the Work Incentive Program (WIN) law were designed to increase the ability of the program to place welfare recipients in jobs. They require, with certain exceptions, all applicants for Aid for Families with Dependent Children (AFDC) to register for work and training under the WIN program. They require the Secretary of Labor to run the WIN work and training program, including, where possible, placement in jobs without prior training. At least one-third of the funds available for that part of the program must be used for on-the-job training or public service employment. The previous programs emphasized classroom training.

The 1971 amendments require the Secretary of Health, Education, and Welfare to provide supportive services, such as child care and vocational rehabilitation, necessary to enable welfare recipients to participate in the WIN program. When these services are provided, the Secretary of Health, Education, and Welfare is required to certify such persons for participation in WIN programs set up by the Secretary of Labor. If an individual does not need any supportive services, the individual must be certified immediately into the program.

The Department of Health, Education, and Welfare is authorized to reimburse 90% of State costs for supportive services. States not certifying 15% of WIN registrants into the WIN program have their Federal share of AFDC money reduced. AFDC recipients, who are certified into the WIN program as ready for work or training, and who

refuse to accept it, must be deregistered from WIN and have their share of their family's AFDC benefits terminated after a 60-day counseling period.

About a year and a half ago, the two Departments agreed to a redesign of the WIN program that would require all WIN registrants, certified or not, to engage in an active job search. It would also add an Intensive Manpower Services Component to provide employment services and develop the job seeking skills of certified WIN registrants. OMB asked the Departments to satisfy themselves and report to us that the redesign was authorized by law before instituting it. They so reported to us.

In September 1974 proposed regulations for the redesign were issued for comment. Many of the comments received raised legal objections, and we asked the Departments to assess again the risks of a successful legal challenge to the redesign.

The two Departments have not been able to agree on the issuance of final revised regulations.

Major issue

Should the WIN program be redesigned so that all AFDC recipients registered for WIN will be required to engage in a job search whether or not they have been provided the child care or other supportive services necessary to certify them as ready for work or training.

Departmental Arguments

I. Program arguments

A. HEW arguments for the redesign

The Department of Health, Education, and Welfare believes that the immediate publication of the WIN redesign regulations is imperative. It strongly believes that a job search should be mandated for all WIN registrants for the same reasons a work requirement was included in its welfare replacement plan submitted to you last fall. It further states that this requirement must be made for all able-bodied recipients of AFDC. To limit the requirement to only those certified will result in significantly increased pressure on costs. Certification requires that a broad range

of social services be arranged for or provided to the recipient whether he has employment or not.

In addition, participation in job search as a certified participant would require payment of a so-called work incentive of \$30/month per participant. Under a job search for registrants who have not been certified, but who have been determined as able-bodied under the law, necessary social services would only be provided on an as-needed basis and the so-called \$30 work incentive would not be required to be paid. Of course, after employment was secured, services would be provided, but the \$30/month would not. Without a job search as a requisite for public assistance for the able bodied, the Department feels we will continue to undermine public confidence in AFDC programs.

Further, failure to implement the WIN redesign will continue to remove the majority of AFDC able-bodied recipients from any association with work. WIN is the sole program that imposes a registration requirement on AFDC recipients as a condition of eligibility for benefits. The redesign, for the first time, places a responsibility on the parent to do something on his part to find employment. The current program removes this responsibility from the parent and places it with the government. The basic policy that an individual remains responsible for his needs and those of his dependents even while he is receiving public assistance should not be undercut as an expedient response to a softening economy.

Considering the current economic situation, HEW would agree to a position that would permit the governor to suspend the mandatory Federal job search requirement in those labor markets where the unemployment rate exceeds 7 percent. This will preclude unrealistic demands being made on registrants when there is a presumption that little success can be expected of a job search. Approximately half of the States already have a job search requirement applying to all AFDC recipients and the Federal regulations will be consonant with these States' programs. Limiting the Federal job search requirement to only those certified might discourage these State programs and result in criticism and adverse publicity toward our administration of the AFDC program. Various types of job search activities are already required by the Federal government for food stamp applicants and unemployment compensation insurance claimants. The Administration's initiative in

developing thousands of public employment jobs provides the realistic opportunity to place WIN registrants in stable work situations.

Expression of a policy reinforcing individual responsibility will never seem timely to those who are not in agreement with the policy. There will always be extenuating circumstances to cloud the reasons why the policy is best left unsaid. The Department of Health, Education, and Welfare believes that there is ample rationale why the requirement of a job search should be formalized by regulation. The Department also believes that the discretion built into its implementation will prevent a harsh and inequitable imposition of this policy on the recipient population. Job search is not a hurdle to elimination of dependency for many recipients..

B. DOL arguments against the redesign

The Department of Labor believes:

1. With an 8.2% unemployment rate, 7,529,000 Americans are currently unemployed. If the WIN redesign is implemented, 500,000 welfare recipients, generally with low employment skills, will be forced into the labor market to engage in a "job search" program. We do not believe that these individuals can be easily employed under current economic conditions, and we are concerned that their entrance into the labor force may well have an adverse impact on the national unemployment rate.

2. Mandating a "job search" program under WIN for those welfare recipients who have so few skills that they are not likely to find jobs and who have not been certified into the WIN program will result in the Administration being charged with harassing the poor and taking punitive action against them. When the WIN redesign was published as a proposed regulation last September, DOL and HEW received much criticism -- and virtually no support -- precisely on this point. This criticism came from labor leaders, such as Meany and Woodcock, religious organizations, and numerous other groups and individuals.

3. Implementing the WIN redesign will cause a diversion of resources -- both funds and staff time -- that would

otherwise be available to help job ready welfare recipients to find employment; under the redesign, that money and staff time would be used for welfare recipients who have not been certified into the WIN program and are not job ready.

4. The current WIN program, which works with welfare recipients certified as job ready, has continued to place a significant number of welfare recipients into employment, despite the economic downturn: 87,400 WIN participants obtained employment in the first six months of this fiscal year, compared to 87,000 during the first six months of the last fiscal year. There does not appear to be compelling need, therefore, to radically amend this program at the current time, although certain technical amendments may be desirable.

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C. In light of the conflicting legal views of Labor and HEW, we sought informal review of the legal issue from the Justice Department. Based on the arguments presented by DOL and HEW, the Office of Legal Counsel has told us informally that it agrees with DOL that the proposal does not appear to be authorized by law and probably would not be sustained in the Courts.

OMB Comments

In addition to the views of the Office of Legal Counsel, the following points should be kept in mind in making a decision:

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- The WIN budget is completely controllable; the number of people served can be limited to meet available funds. However, since proposed regulations had the job search requirement, States may press for more supportive service funds in order to certify more registrants into job search.
- The first major evaluation of WIN geared to current policy issues is underway, with first meaningful results expected this summer, and completion after January 1976.
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- This is especially true since, as HEW points out, certified registrants are eligible for greater amounts of assistance.
- Approximately half of the States already have some job search requirement in their AFDC programs. Revised WIN regulations without a universal job search requirement will not change the legal authority for such requirements and need not be written to discourage them.
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- Even at high unemployment rates, there are unskilled jobs available for which untrained welfare recipients could qualify.
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DOL

3. The Department of Labor recommends that the WIN redesign not be implemented.

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to individuals who have actually been certified into the WIN program under the law.

OMB

5. On balance, OMB recommends that the job search requirement not be imposed on non-certified WIN registrants by Federal regulation at this time. We do not see why a redesign making other changes could not be implemented. (DOL alternative recommendation, No. 4 above). We also recommend that the two Departments submit their differing legal interpretations to the Attorney General for his formal opinion in order to develop a definitive basis for possible legislative or regulatory action in the future.

U.S. DEPARTMENT OF LABOR

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20210



FEB 26 1975

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Title IV of the Social Security Act establishes the AFDC system. The Work Incentive Program is the component of that system which provides training and employment opportunities for AFDC recipients who have been certified into the WIN program, and which exacts penalties from recipients who refuse, without good cause, to accept training or employment. 1/ Under it, an individual who desires benefits applies at a State welfare office. In the course of completing the application process the applicant also registers for the WIN program. 2/ Once the individual's application has been accepted and eligibility for welfare established, the individual is an AFDC recipient and, if not

1/ Sections 402(a)(19)(G), 433(a), 433(b)(3).

2/ Section 402(a)(19)(A) of the Social Security Act (SSA), 42 U.S.C.A. 602(a)(19)(A), requires each State plan to provide that "every individual, as a condition of eligibility register for manpower services, training, and employment, as provided by regulations of the Secretary of Labor, unless such individual is -- (i) a child; (ii) ill, incapacitated, or of advanced age; (iii) remote from a WIN project; (iv) required to be at home to care for an ill or incapacitated household member; (v) the mother of a child under 6; (vi) the mother of a child, if the father is enrolled in the WIN program." The Conference Report on the 1971 amendments to the WIN program makes clear that the registration process for section 402(a)(19)(A) is registration for the WIN program. (Conference Report No. 92-947, 1971 U.S. Code, Cong. & Ad. News 2436).

exempt from WIN participation, is placed in the AFDC-WIN system. 3/ The individual is then to be provided with necessary social and supportive services by the welfare agency so that WIN training or employment can be arranged. 4/ When the welfare agency has provided those services, the individual is to be "certified to the Secretary of Labor" for the WIN program. (Emphasis added) 5/ This certification procedure is a key element of the statutory structure. The statutory language requiring it reads as follows:

[The State welfare agency] "(ii) will provide (through arrangements with others or otherwise) for individuals who have been registered pursuant to subparagraph (A), in accordance with the order of priority listed in section 433(a), such health, vocational rehabilitation, counseling, child care, and other social and supportive services as are necessary to enable such individuals to accept employment or receive manpower training provided under part C, and will, when arrangements have been made to provide necessary supportive services, including child care, certify to the Secretary of Labor those individuals who are ready for employment or training under Part C. . ." 6/

After an individual has been certified, the Secretary of Labor then determines the best type of training or employment for the individual, with the goal of working toward the individual's self-sufficiency. 7/ If the individual is placed in regular employment, the individual may be eligible for an income disregard; this amounts to an earnings supplement for that individual and assists persons who are working at low-paying jobs. 8/ If the individual is placed in an "institutional (or) work experience training program," the individual is eligible for a training

3/ Part C, Title IV, SSA, infra.

4/ Section 402(a)(19)(G), SSA, infra; 42 U.S.C.A. 602(a)(19)(G). Services are provided in accordance with a list of priority groupings set out in section 433(a).

5/ Section 402(a)(19)(G), SSA, infra; 42 U.S.C.A. 602(a)(19)(G).

6/ Id.

7/ Sections 430 and 433(a), SSA, infra; 42 U.S.C.A. 630, 42 U.S.C.A. 633(a).

8/ Sections 432(b) and 402(a)(8), SSA, infra; 42 U.S.C.A. 632(b), 42 U.S.C.A. 602(a)(8).

incentive payment of not more than thirty dollars a month. 9/
The individual may also be placed in a public service employment program. 10/

Thus, it can be seen that the Congress has established a system which requires persons seeking AFDC to register for the WIN program (unless exempted by the statute) at the same time they register for AFDC, and to be certified by the welfare agency to the Secretary of Labor for the WIN program, once they have been found eligible for AFDC and are actually receiving benefits.

If there is any question about this procedure, it should be dispelled by the Conference Committee report on the WIN amendments of 1971. That report explains the amendments as (1) "requir(ing) an individual, as a condition of eligibility for welfare, to register for the WIN program" and (2) "requiring the welfare agency to designate a separate administrative unit to make arrangements for supportive services needed by welfare recipients in order to participate in (the) WIN program and to refer recipients so prepared to the Labor Department for participation in the WIN program." (Emphasis added). 11/

This statutory scheme has also been clearly recognized by the courts. The Supreme Court has described the WIN program in just this way. 12/ So too have other federal courts. 13/

Title IV of the Social Security Act nowhere refers to the requiring of a job search activity or any other WIN activity for AFDC recipients who have not yet been certified to the Secretary of Labor. And the Conference Report on the 1971 WIN amendments is similarly silent. Furthermore, the statute, on its face, sets out the system for placing individuals in jobs or training.

It is a maxim of statutory construction that a statute may not be amended by administrative action, and that where a statute sets out a specific way for dealing with a specific situation, the statutory scheme must be followed. 14/

9/ Section 434(a), SSA, infra; 42 U.S.C.A. 634(a). The Secretary of Labor is "authorized" to provide this payment, but not required to do so. WIN regulations, however, do provide for this payment, 29 CFR 56.8(a)(1).

10/ Section 432(b), SSA, infra; 42 U.S.C.A. 632(b).

11/ Conference Report 92-747, 1971 U.S. Code, Cong. & Ad. News 2436 and 2437.

12/ New York State Department of Social Services v. Dublino, 41 LW 5047, 5048-5049, 5051.

13/ Woolfork v. Brown, 325 F. Supp. 1162, 1167-1181, affd. 456 F.2d 652, 654.

There remains the question, then, of whether the proposed WIN redesign, which contemplates a required job search activity for uncertified welfare recipients, does, in fact, amount to an administrative amendment of the WIN program inconsistent with the language and structure of the Act. I believe the proposal clearly does. Indeed, I believe the proposal subverts the clear statutory intent of the Social Security Act that welfare recipients be provided with necessary supportive services such as child care and vocational rehabilitation and then be certified to the Secretary of Labor as job ready before they can be required to compete in the job market.

The Department of Health, Education, and Welfare, however, has argued that the Supreme Court decision in the case of New York Department of Social Services v. Dublino supports a job search activity for the uncertified. 15/ We strongly disagree. Dublino merely holds that the very existence of the Federal WIN program does not constitutionally pre-empt States from establishing their own work programs for welfare recipients, when such programs are consistent with the statutory requirements of the WIN program. 16/ The case in no way deals with the question of whether the Social Security Act would allow a Federal WIN job search activity for those not yet certified into WIN. The case, therefore, is not relevant to a determination of the present question. 17/

The Department of Health, Education, and Welfare has also argued that the job search requirement for the uncertified can be mandated as part of WIN registration. The Department of Labor does not agree. Under the statute, WIN registration is a condition of eligibility for AFDC. 18/ The Supreme Court has continually ruled that only Congress may establish AFDC eligibility criteria or substantively alter the scope of eligibility criteria. 19/ Making job search a part of registration would administratively create an additional condition of eligibility, and is thus clearly illegal.

14/ Social Security Board v. Nierotko, 327 U.S. 358, 369; United States v. New England Coal and Coke Company, 318 F.2d 138, 143; Air Transport Ass'n of America v. Brownell, 124 F. Supp. 909; King v. Smith, 392 U.S. 309, 333.

15/ 93 S.Ct. 2507 (1973).


16/ Id., p. 2517.

17/ The Supreme Court remanded the case to the District Court on the question of whether New York's work requirements did in fact conflict with the Federal WIN program. The decision of the District Court is still pending.

18/ Section 402(a)(19)(A), SSA, infra; 42 U.S.C.A. 602(a)(19)(A).

19/ King v. Smith, 392 U.S. 309.

It is our conclusion, therefore, that the requirement, through WIN regulations, of a job search activity for AFDC recipients who have not yet been certified into the WIN program is not legally permissible under Title IV of the Social Security Act.



William J. Kilberg
Solicitor of Labor

THE WHITE HOUSE

WASHINGTON

May 12, 1975

MEMORANDUM FOR:

JERRY JONES

FROM:

MAX L. FRIEDERSDORF

M.C.

SUBJECT:

LYNN MEMO (5/9/75)

Summary of Attached WIN Decision
Paper.

The Office of Legislative Affairs concurs with subject memo.

THE CHAIRMAN OF THE
COUNCIL OF ECONOMIC ADVISERS
WASHINGTON

May 19, 1975

MEMORANDUM FOR JERRY JONES

Subject: WIN Decision Paper

I do not believe that the proposed redesign of the WIN regulations will result in any substantial reduction in AFDC costs or any substantial increase in employment among AFDC recipients.

The introduction of WIN and the subsequent increase in work requirements and work incentives do not, to date, seem to have had any substantial effects along these lines. A large proportion of AFDC recipients are women who have little work experience and few skills, but with young children and no husband providing support. The cost of services necessary to make it feasible for these women to work is high and in many cases would exceed the earnings they could possibly achieve. This is particularly true for child care and training services.

The likely effect of a stiffer work requirement is a large increase in the proportion seeking work and a minimal increase in the proportion seeking work and a minimal increase in the proportion working (and this result is, of course, even more likely during years of high unemployment). The increase in job search activity that is not likely to result in employment is an inefficient use of the Government's and the AFDC recipient's resources.

The administrative reforms in AFDC that have taken place over the past two years seem to have resulted in more efficient management and have been accepted by the public as such. However, the imposition of a tougher work requirement is more likely to be viewed as harassment of the poor. In addition, problems of the legality of the measures seem certain to arise even if they were settled in favor of the Government (which Justice seems to think is unlikely). Expensive measures to provide more "free day care" and other services for WIN participants are likely to follow any effort to make work compulsory.



In summary, the proposed redesign is likely to cost much more in terms of funds and goodwill than it could possibly achieve in benefits, either to the recipients or the taxpayers. Therefore, I am not in favor of the redesign, and I support option 3. I would, however, hope that efforts continue to seek ways of reforming our income maintenance programs, including AFDC.

Alan Greenspan

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: May 10, 1975

Time: 10:00 a.m.

FOR ACTION: Phil Buchen
Jim Cannon
Jack Marsh
Max Friedersdorf
Bob Hartmann

~~XXXXXXXXXXXXXXXXXXXX~~

Bill Baroody
Alan Greenspan
~~Bill Seidman~~

FROM THE STAFF SECRETARY

DUE: Date: Wednesday, May 14, 1975

Time: C.O.B.

SUBJECT:

Lynn memo (5/9/75)

re: Summary of Attached WIN Decision Paper

ACTION REQUESTED:

☐ For Necessary Action☒ For Your Recommendations☐ Prepare Agenda and Brief☐ Draft Reply☒ For Your Comments☐ Draft Remarks

REMARKS:

*Should get a legal opinion
from Attorney Gen. HEW (2)
takes care of DOK problems.*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

MAY 10 1975

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Jerry H. Jones
Staff Secretary