

# *Fordham Urban Law Journal*

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*Volume 32, Number 3*

2004

*Article 6*

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## Employer-Based Training Programs For Tanf Recipients: A Public Policy Examination

Nan S. Ellis\*

\*Loyola College in Maryland

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Nan S. Ellis

## Abstract

The article begins by stating that several programs have been introduced with the goal of lowering the amount of people that live below the poverty level. These programs try to accomplish this by focusing on getting such people jobs, but the focus cannot solely be on workers, it must also be on employers. One type of training that shows promise is Employer-based training, which involves an extensive assessment of the employees skills and job performance, and there are indications that EBT programs might offer better opportunities for at least a segment of the welfare population. The article's goal is to investigate the strength and weaknesses of EBT programs and to consider whether it is desirable for such programs to be supported by TANF reauthorization. Part I of the article describes public sector training and education programs before PRWORA (Personal Responsibility and Work Opportunity Reconciliation Act of 1996) as well as their philosophical underpinnings and Part II explores training in the private sector and considers the theory behind private sector training advanced in economic literature, and also describes EBT and considers their viability as an alternative to public sector training programs. Part III considers the theoretical and practical limitations of workforce training as a solution to poverty. Part IV considers how EBT programs can be supported through public policy. The article concludes by stating that the goal is to decrease poverty and once that begins to be reached the focus must shift to increased financial stability for those formerly below the poverty line and Employee Based Training is one way of potentially achieving that goal.

**KEYWORDS:** employer, Tanf, training programs, public policy

## EMPLOYER-BASED TRAINING PROGRAMS FOR TANF RECIPIENTS: A PUBLIC POLICY EXAMINATION

*Nan S. Ellis\**

### INTRODUCTON

Although the United States is one of the most affluent nations in the world, a substantial number of people in this country continue to live in poverty. In 2003, 35.9 million people lived below the poverty threshold, 16.7% of whom were children.<sup>1</sup> Policy makers have continually struggled with how to address the persistent issues of poverty, joblessness, and homelessness. The most recent round of discourse on welfare reform culminated with the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“PRWORA” or “Act”).<sup>2</sup> One of the central features of PRWORA was time-limited welfare and work requirements; under PRWORA, work is seen as the way out of poverty.

Perhaps because of the Act’s increased focus on employment, numerous training programs have been designed to help welfare recipients make the transition from welfare to work. The public sector has been offering such programs for years, and these programs have been the subject of extensive evaluation.<sup>3</sup> Most studies report modest success at best, with increased earnings resulting from a greater number of hours worked, rather than from higher wages.<sup>4</sup> Overall, research has revealed little evidence of long-term employment, advancement, or retention as a result of participation in these

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\* Professor of Law, Sellinger School of Business and Management, Loyola College in Maryland; J.D., Ohio State University, 1977; B.A., Political Science, Ohio State University, 1974.

1. CARMEN DENAUAS-WALT ET AL., U.S. CENSUS BUREAU, INCOME, POVERTY, AND HEALTH INSURANCE COVERAGE IN THE UNITED STATES 2003, at 9 (2004), *available at* <http://www.census.gov/prod/2004pubs/p60-226.pdf>.

2. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 1 (codified at 42 U.S.C. § 1305 (1996)) [hereinafter PRWORA].

3. *See infra* notes 83-97 and accompanying text.

4. *See infra* notes 85, 90.

training programs.<sup>5</sup> The private sector naturally offers training designed to increase the skills of its employees. More recently, some private sector companies, such as the Marriott Corporation and United Parcel Service, have begun to offer training geared to the welfare population and to work in partnership with public sector training programs or training providers under the Workforce Investment Act (“WIA”).<sup>6</sup> Limited research has focused on the employers’ role in welfare reform, so called “demand-side” research.<sup>7</sup> The demand side is particularly important given the emphasis on employment as a panacea for welfare and poverty. In other words, if we expect welfare recipients to work their way out of poverty, we cannot focus solely on workers. Instead, we must also recognize the employers’ role in the labor market. Researchers and policy makers are beginning to recognize the importance of the demand side in welfare implementation. Some research has focused on employer-based training models,<sup>8</sup> some research has looked at employer attitudes toward training and development,<sup>9</sup> and some studies have considered employer attitudes toward hiring, retaining, and promoting welfare recipients.<sup>10</sup>

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5. See *infra* notes 90-97.

6. Workforce Investment Act, 29 U.S.C. § 2801 (2000). The public sector has been offering such programs for years. The relationship between public sector training and development efforts and welfare training programs has been tenuous at best. Moreover, it has been argued that the training, administered largely through the Job Training Partnership Act (“JTPA”) of 1982, lacked coordination and purpose. U.S. DEP’T OF LABOR, WHITE PAPER: IMPLEMENTING THE WORKFORCE INVESTMENT ACT OF 1998, at 6-8 (1998) [hereinafter WHITE PAPER], available at <http://www.doleta.gov/usworkforce/documents/misc/wpaper3.cfm>. Although not formally welfare reform legislation, the Workforce Investment Act complemented PRWORA. It streamlined public sector employment and training services, replacing JTPA. Applying a market-based approach to job training and placement, the WIA attempted to make training providers accountable and to involve private sector employers by including them in Workforce Investment Boards. Nan S. Ellis, *Individual Training Accounts Under the Workforce Investment Act of 1998: Is Choice a Good Thing?*, 8 GEO. J. POVERTY L. & POL’Y 235, 235-36 (2001). To some extent, this created partnerships between the private and public sector with respect to training under the WIA. *Id.*

7. Nanette Relave, *Welfare Information Network, Involving Employers In Welfare-To-Work Efforts*, at <http://www.financeprojectinfo.org/Publications/involvingemployerswtwissue.htm> (Aug. 2001) (summarizing “demand-side” research).

8. See *infra* notes 131-35 and accompanying text.

9. See, e.g., Jobs for the Future, *Reauthorizing the Workforce Investment Act: What Employers Say About Workforce Development*, Workforce Innovation Networks, available at [http://www.nam.org/DOCS/CenterforWorkforceSuccess/26879\\_WIareauthorization.pdf](http://www.nam.org/DOCS/CenterforWorkforceSuccess/26879_WIareauthorization.pdf) (last visited May 7, 2005).

10. HARRY J. HOLZER & MICHAEL A. STOLL, PUB. POL’Y INST. OF CAL., EMPLOYERS AND WELFARE RECIPIENTS: THE EFFECTS OF WELFARE REFORM IN THE WORKPLACE iii (2001), available at [http://www.Ppic.org/content/pubs/R\\_101HHR.pdf](http://www.Ppic.org/content/pubs/R_101HHR.pdf); GREG OWEN ET AL., JOINT CTR. FOR POVERTY RES., WHOSE JOB IS IT? EMPLOYERS’ VIEWS ON WELFARE REFORM 4

One type of training that shows promise is employer-based training (“EBT”). EBT is training that is typically employer-initiated and customized to meet the needs of the employer. It involves an extensive assessment of the employee’s skills and job performance.<sup>11</sup> Although research into EBT is just beginning, results suggest that EBT is beneficial.<sup>12</sup> There are indications that EBT programs might offer better opportunities for at least a segment of the welfare population.<sup>13</sup> In addition, people are just beginning to recognize the importance of post-employment training and development if former welfare recipients are to remain and be promoted in the workplace.<sup>14</sup>

The purpose of this Article is to investigate the strengths and weaknesses of EBT programs and to consider whether it is desirable for such programs to be supported by TANF reauthorization. To accomplish this goal, it is important to understand the landscape of workforce training and development for welfare recipients. The work requirements imposed under PRWORA were not a new idea; work requirements had been part of the public policy agenda for years.<sup>15</sup> Furthermore, training and education programs designed to aid welfare recipients in the transition from welfare to work were common under previous law.<sup>16</sup>

Part I describes public sector training and education programs common before PRWORA as well as their philosophical underpinnings. This Part briefly outlines the limited success of such programs and the philosophical shift from a human capital development approach to a work-first approach. This shift led to a reduction in support for public sector education and training programs geared to the welfare population.

Part II explores training in the private sector and considers the theory behind private sector training advanced in economic literature. Under this theory, employers are most likely to provide job-specific training, and train those who are highly educated and likely to remain employed for a long

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(2000), available at <http://www.jcpr.org/wp/wpprofile.c-fm?ID=192>; MARSHA REGENSTEIN, ET AL., URB. INST., JOB PROSPECTS FOR WELFARE RECIPIENTS: EMPLOYERS SPEAK OUT 9 (1998), available at <http://www.urban.org/uploadedPDF/ANF25.pdf>.

11. KELLIE ISBELL ET AL., U.S. DEP’T OF LABOR, INVOLVING EMPLOYERS IN TRAINING: BEST PRACTICES 9, at <http://www.doleta.gov/wtw/documents/bestpractice/reportbp.cfm> (1996).

12. See *infra* notes 123-38 and accompanying text.

13. See generally *infra* note 147 and accompanying text.

14. See *infra* note 138 and accompanying text.

15. See Robert Pear, *Democrats Forge New Welfare Role*, N.Y. TIMES, Mar. 7, 1995, at A16; *infra* notes 62-64 and accompanying text.

16. Sara Rimer, *Jobs Program Participants: Still Poor and in Need of Aid*, N.Y. TIMES, Apr. 10, 1995, at A1.

period of time. Hence, employers are unlikely to provide training to the welfare-to-work population and other low-skilled employees. In recent years, some firms have begun offering training programs geared to the welfare-to-work population. Some firms have offered what is termed “employer-based training.” Part II describes these EBT programs and considers their viability as an alternative to public sector training programs. Part II concludes that EBT programs offer significant advantages over purely public sector training programs for segments of the welfare-to-work population.

Part III considers the theoretical and practical limitations of workforce training as a solution to poverty. Part III concludes that although EBT programs do not offer a panacea for poverty, and are not the solution for all segments of the welfare population, they will make the transition from welfare to work easier for a portion of welfare recipients. Lastly, Part IV considers how EBT programs can be supported through public policy.

### I. THE LANDSCAPE OF TRAINING AND DEVELOPMENT

*In a Clinton Administration, we're going to put an end to welfare as we know it . . . . We'll give them all the help they need for up to two years. But after that, if they're able to work, they'll have to take a job in the private sector, or start earning their way through community service.*<sup>17</sup>

U.S. welfare policy is a policy of ambivalence.<sup>18</sup> On the one hand, we want to provide assistance for those unable to provide for themselves. On the other hand, we fear that such assistance will provide long-term dependence.<sup>19</sup> To a large extent, this ambivalence is essential to

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17. JOEL F. HANDLER, THE POVERTY OF WELFARE REFORM 110 (1995) (quoting Bill Clinton's campaign pledge).

18. Welfare policy in the United States has been shaped by ambivalent attitudes toward the poor. The ambivalent attitudes toward welfare policy in this country are illustrated by the tension between the human capital and the labor force attachment theories. *Cf. infra* notes 46-53. The history of poor relief is a history of distinguishing between the deserving and the undeserving poor. Poor relief designed to help the deserving poor (those unable to work) has received public support, while relief perceived as helping the undeserving poor (those unwilling to work) lacked such support.

19. In more modern times, this struggle has been reduced to a struggle between competing welfare policy objectives. On the one hand, one of the goals of any welfare policy is to provide income to the poor, the so-called “income transfer strategy.” Rebecca Blank, *The Employment Strategy: Public Policies to Increase Work and Earnings*, in *CONFRONTING POVERTY: PRESCRIPTIONS FOR CHANGE* 168, 168-204 (Sheldon H. Danziger et al. eds., 1994). On the other hand, to many the income transfer strategy is “seen as merely alleviating the symptoms of poverty without addressing its root causes.” *Id.* at 168. Thus, an “employment strategy” is often preferred. *Id.* Welfare policy in the United States reflects the continuing tension between these two strategies. Even within the employment

understanding the landscape of training and development in the welfare context.

### A. The Statutory Landscape

The statutory landscape of workforce training and development in the welfare context was historically comprised of a myriad of overlapping schemes. The primary method of providing assistance was under Aid to Families with Dependent Children (“AFDC”), created by the Social Security Act of 1935. Training and development was governed largely by the Job Training Partnership Act (“JTPA”) of 1982.<sup>20</sup> Although not limited to the welfare population, Title II-A of the JTPA was designed to provide training for disadvantaged youth and adults.<sup>21</sup> Later, the relationship between welfare delivery and workforce training and education was complicated by the creation of welfare-to-work training programs, such as the JOBS training programs authorized by the Family Support Act of 1988.<sup>22</sup> All of this changed in 1996 with the passage of PRWORA.

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strategy, Professor Blank outlines two competing perspectives: the income goal and the work goal. *Id.* at 168-69. Under the income goal, changes in welfare policy are designed to provide increases in family income such that increased earnings offset any corresponding reductions in public assistance. *Id.* at 168. By contrast, under the work goal, the focus is on work rather than simply income. *Id.* at 169. Here the goal of welfare policy is to increase the percentage of income that comes from work. *Id.* at 169. These goals are not necessarily in congruence and are, in fact, often in conflict. Professor Hecló describes the need to balance the “competing demands and political values.” Hugh Hecló, *The Politics of Welfare Reform*, in *THE NEW WORLD OF WELFARE* 179 (Rebecca Blank & Ron Haskins eds., 2001). He describes the struggle of combating welfare dependency on the one hand and protecting the vulnerable on the other hand. *Id.* at 196. Professor Blank characterizes this conflict as the “iron triangle” of welfare reform. Blank, *supra*, at 179. On one side of the triangle is the benefit level. *Id.* Concern for the welfare of nonworkers can lead to increases in the benefit level. *Id.* Such increases, however, can create work disincentives. *Id.* On the second side of the triangle is the benefit reduction level or income disregard. *Id.* Concerns about work disincentives can lead to reductions in the benefit reduction rate. *Id.* Such reductions can, however, raise program costs, as more workers remain eligible for assistance. *Id.* The last side of the triangle is program costs. Concerns about program costs can lead to either benefit cuts, which can hurt the well-being of recipients, or to tax increases, which can lower work incentives. *Id.* Welfare policy in this country reflects the struggle to address these competing concerns. *Id.*

20. The JTPA created a system of federal workforce development programs and allocated monies to states and local governments to provide training and education programs. *Id.* at 188-89. By the time it was replaced by the Workforce Investment Act of 1998, over sixty programs were administered under JTPA. James Hettinger, *Clinton Signs Job Training/Adult Education Bill*, *TECHNIQUES*, Oct. 1998, at 6.

21. ISBELL ET AL., *supra* note 11, at 18.

22. See Frank Ridzi, *Making TANF Work: Organizational Restructuring, Staff Buy-In, and Performance Monitoring in Local Implementation*, *J. SOC. & SOC. WELFARE*, June 2004, at 27, 29-31 (noting four potential pitfalls).

*1. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996*

PRWORA replaced AFDC with Temporary Assistance for Needy Families (“TANF”), and replaced the entitlement programs with block grants to the states to administer TANF programs.<sup>23</sup> Most importantly for the purpose of this Article, work requirements were an integral part of the statute.<sup>24</sup> These requirements were imposed by the statute in two ways. First, state participation rates were mandated. In order to receive the full block grant, states were required to have twenty-five percent of families receiving assistance engaged in a “work activity” by the end of 1997.<sup>25</sup> The percentage rose to fifty percent by 2002.<sup>26</sup> Work activities were statutorily defined to include such activities as unsubsidized employment, subsidized private and public sector employment, on-the-job training, job searches within specified limits, community service programs, vocational training, and attendance at secondary school.<sup>27</sup> Second, the state was required to impose work requirements upon recipients who had received assistance for two years before they could continue to receive assistance.<sup>28</sup> Furthermore, an absolute time limit of five years to receive assistance was set forth.<sup>29</sup>

*2. The Workforce Investment Act of 1998*

The WIA replaced the myriad of existing job training and development programs administered under the JTPA<sup>30</sup> with three block grants to the states funding adult employment and training, disadvantaged youth, and adult education and family literacy. One of the major goals of the WIA

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23. Min Zhan et al., *Welfare Reciprocity and Savings Outcomes in Individual Development Accounts*, 28 SOC. WORK RES. 165, 166 (2004).

24. 42 U.S.C. § 601(a)(2) (2005).

25. *Id.* § 1305; PRWORA § 407(a)(1).

26. PRWORA § 407(a)(1).

27. *Id.* § 407(d).

28. *Id.* § 402(a)(1)(A)(ii).

29. *Id.* § 408(a)(7).

30. The WIA was seen as an opportunity to create programs where any adult could gain access to “high quality information and services.” WHITE PAPER, *supra* note 6. It was argued that the agencies implementing the programs frequently lacked essential information needed to manage the programs and to assess performance. *Id.* Second, it was argued that choices about job training were made primarily through a bureaucratic process, again, without reliable information upon which to base those choices. *Id.* Third, the lack of coordination and multi-programmatic aspects of the job training system under the JTPA led to the lack of a coherent policy to address job training issues. *Id.* Last, the lack of accountability on the part of training providers led to an uneven system of services. *Id.*



was to streamline services.<sup>31</sup> To meet this objective, each local area established a one-stop delivery system offering multiple employment and training services serving both employers and job seekers.<sup>32</sup> The one-stop center allows clients to engage in job search activities, explore work preparation and career development services, and access a full range of employment, training, and adult educational programs at a single location.<sup>33</sup>

The one-stop delivery system is envisioned as a community resource for *all* Americans to help them develop job skills throughout their careers.<sup>34</sup> To this end, the WIA set forth a multi-tiered access scheme.<sup>35</sup> There is universal access for all core services under the first tier.<sup>36</sup> Core services include job search and placement assistance, career counseling, provision of labor market information, and provision of information on eligible

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31. There are seven relevant principles that guide the WIA: 1) streamlining services; 2) empowering individuals; 3) universal access; 4) increased accountability; 5) strong role for boards and the private sector; 6) state and local flexibility; and 7) improved youth programs. *Id.*

32. *See* 29 U.S.C. § 2841(a) (2005). The extent to which the WIA effectively streamlines services has been questioned. Rochelle L. Stanfield, *One-Stop Jobbing*, 30 NAT'L J. 2162, 2165 (1998). It has been argued that the WIA is just another example of incremental reform and does not go far enough in integrating the various employment programs. *Id.* For example, it has been asserted that block grants do not eliminate all the boundaries between programs and, therefore, do not go far enough in eliminating the bureaucratic approach of multiple training programs. *Id.* at 2162. Bureaucratic barriers to successful implementation remain. Karin Martinson, Urb. Inst., *Literature Review on Service Coordination and Integration in the Welfare and Workforce Development Systems*, 49-50, at <http://www.urban.org/Template.cfm?Section=ByAuthor&NavMenuID=63&template=/TaggedContent/ViewPublication.cfm&PublicationID=6339> (1999).

33. The statute provides that:

At a minimum, the one-stop delivery system—(A) shall make each of the activities described in paragraph (1) accessible at not less than one physical center in each local area of the State; and (B) may also make programs . . . available—  
 (i) through a network of affiliated sites that can provide one or more of the programs, services, and activities to individuals; and (ii) through a network of one-stop partners—(I) in which each partner provides one or more of the programs, services, and activities to such individuals and is accessible at an affiliated site that consists of a physical location or an electronically or technologically linked access point; or (II) that assures individuals that information or the availability of the core services will be available regardless of where the individuals initially enter the statewide workforce investment system . . .

29 U.S.C. § 2864(c)(2); *see generally* NAT'L GOVERNORS ASSOC. CTR. FOR BEST PRACTICES, SUMMARY OF WORKFORCE INVESTMENT ACT OF 1998, at [http://www.nga.org/center/divisions/1,1188,C\\_Issue\\_Brief^D\\_1758,00.html](http://www.nga.org/center/divisions/1,1188,C_Issue_Brief^D_1758,00.html) (1998).

34. WHITE PAPER, *supra* note 6.

35. 29 U.S.C. § 2864 (c)(1).

36. *Id.* § 2864 (d)(2).

training providers.<sup>37</sup> Furthermore, assistance in establishing eligibility for welfare-to-work programs and in obtaining financial aid is available.<sup>38</sup> Although access to the WIA is universal rather than targeted,<sup>39</sup> if funds are

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37. The full list of core services includes: 1) a determination of eligibility for services; 2) outreach, intake and orientation; 3) initial assessment of skill levels, aptitudes, abilities, and supportive service needs; 4) job search and job placement assistance; 5) provision of employment statistics information including job vacancy listings, information on job skills, and information relating to local occupations in demand and skill requirements for such jobs; 6) provision of performance information and program cost information on providers of training services; 7) provision of information regarding how the local area is performing on the local performance measures; 8) provision of accurate information relating to the availability of supportive services, including child care and transportation, available in the local area and referral to such services; 9) provision of information regarding filing claims for unemployment compensation; 10) assistance in establishing eligibility for welfare-to-work activities and programs of financial aid; and 11) follow-up services. *Id.*

38. *Id.*

39. The debate about whether universal, targeted, or selective services best serve the poor is an involved one. Selective approaches are arguably more efficient because they can focus limited dollars on those who are the most in need, and are more flexible and adaptable. Universal programs, it is argued, are too expensive. On the other hand, targeted approaches have been severely criticized. *See generally* Theda Skocpol, *Targeting Within Universalism: Politically Viable Policies to Combat Poverty in the United States*, in *THE URBAN UNDERCLASS* 411, 414 (Christopher Jencks & Paul E. Peterson eds., 1991) (“[W]hen U.S. antipoverty efforts have featured policies targeted on the poor alone, they have not been politically sustainable, and they have stigmatized and demeaned the poor.”); WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY* (1987) (stating for arguments against selective programs). Opponents argue that selective programs stigmatize the recipients, and that they cannot sustain the political support needed to maintain them. Skocpol, *supra*, at 414. Universal programs, it is argued, are administratively simpler, and command a broader political base. *See id.*

Some argue for neither universality nor selectivity, and instead argue for approaches that combine the features of both. Skocpol and Wilson both argue for what they term “targeting within universality.” *See* Skocpol, *supra*, at 428-32; Wilson, *supra*, at 149-64. Wilson, for example, argues for targeted training and education programs as part of more universal reform. “[I]nstead of focusing on remedial programs in the public sector for the poor and the unemployed, emphasis would be placed on relating these programs more closely to opportunities in the private sector to facilitate the movement of recipients . . . into more secure jobs.” Wilson, *supra*, at 151. Skocpol favors universal child support assurance, parental leave, and universal health care, arguing that there would be “no stigma, no failure, and no isolation under this system.” Skocpol, *supra*, at 429-30 (quoting David T. Ellwood, *The Spatial Mismatch Hypothesis: Are There Teenage Jobs Missing in the Ghetto?*, in *THE BLACK YOUTH EMPLOYMENT CRISIS* 169 (Richard B. Freeman & Harry J. Holzer eds., 1998)).

Another approach is to instead adopt a universal plus selective approach under which a universal program is implemented along with programs directed at those in need. *See, e.g.*, Robert Greenstein, *Universal and Targeted Approaches to Relieving Poverty: An Alternative View*, in *THE URBAN UNDERCLASS* 437-59 (Christopher Jencks & Paul E. Peterson eds., 1991). Greenstein uses Medicaid, the Supplemental Security Income Program, food stamps, and the Earned Income Tax Credit as examples of targeted programs with strong political support and notes that many targeted programs “are considerably stronger and more durable politically than Skocpol suggests.” *Id.* at 438. Greenstein

limited, welfare recipients and other low-income individuals receive priority for training services.<sup>40</sup> The second tier provides intensive services to adults and dislocated workers who are unemployed and unable to obtain employment through the core services, and for employed individuals if it is determined that intensive services are needed to obtain or retain employment that would allow for self-sufficiency.<sup>41</sup> Second tier services include comprehensive assessment of skill levels, development of individual employment plans, group counseling, individual counseling, case management, and short-term pre-vocational services.<sup>42</sup> The third tier is available to individuals who have met the eligibility requirements for intensive services but have been unable to obtain or retain employment through these services.<sup>43</sup> In this tier, training services<sup>44</sup> are available which

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advocates a “middle ground of maintaining a targeted program structure while incorporating near-poor and moderate-income working families that are struggling themselves.” *Id.* at 450. The WIA appears to be an example of this approach.

40. 29 U.S.C. § 2864(d)(3)(A); *see generally* Susan Rosenblum, *Workforce Training Act Underscores Local Role in Planning Implementation*, NATION’S CITIES WKLY., Nov. 30, 1998, at 6.; WHITE PAPER, *supra* note 6.

41. The WIA provides that funds

shall be used to provide intensive services to adults and dislocated workers, respectively—(i)(I) who are unemployed and are unable to obtain employment through core services . . . ; [and] (ii) who are employed, but who are determined by a one-stop operator to be in need of such intensive services in order to obtain or retain employment that allows for self-sufficiency.

29 U.S.C. § 2864(d)(3)(A).

42. *Id.* § 2864(d)(3)(C). Intensive services include: 1) diagnostic testing and use of other assessment tools (which may include in-depth interviewing and evaluation to identify employment barriers and appropriate employment goals); 2) development of an individual employment plan; 3) group counseling; 4) individual counseling and career planning; 5) case management; 6) short term pre-vocational services, including development of learning skills, communication skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct to prepare individuals for unsubsidized employment or training. *See* WHITE PAPER, *supra* note 6.

43. 29 U.S.C. § 2864(d)(4). Under the third tier, the WIA provides that training services are available to

adults and dislocated workers, respectively—(i) who have met the eligibility requirements for intensive services under paragraph (3)(A) and who are unable to obtain or retain employment through such services; (ii) who after an interview, evaluation, or assessment, and case management, have been determined by a one-stop operator or one-stop partner, as appropriate, to be in need of training services and to have the skills and qualifications to successfully participate in the selected program of training services; (iii) who select programs of training services that are directly linked to the employment opportunities in the local area involved or in another area in which the adults or dislocated workers receiving such services are willing to relocate; . . . and (v) who are determined to be eligible in accordance with the priority system, if any . . . .

*Id.*

44. The training services available include: 1) occupational skills training, 2) on-the-job

are directly linked to occupations that are in demand in the local area, or in another area to which the individual is willing to relocate. These training services are typically provided through the use of Individual Training Accounts (“ITAs”), or voucher-like instruments.<sup>45</sup>

### **B. The Theoretical Landscape: A Shift From the Human Capital to a Work First Model**

Modern welfare policy is based on an often unstated assumption that work is the best way out of poverty. In other words, it is assumed that public policy should promote employment, and that employment leads to long-term self-sufficiency, allowing former welfare recipients to earn their way out of poverty. Much of the public policy debate has focused on creating the proper incentives for work, avoiding disincentives, and removing obstacles to work.<sup>46</sup> Most of that discourse is beyond the scope of this Article. It is necessary, however, to outline two relevant theories.

The human capital and labor force attachment theories represent different approaches on how best to promote long-term employment and self-sufficiency. Under the human capital theory, workers are viewed as:

[E]mbodying a set of skills that can be “rented” out to employers. The knowledge and skills a worker has—which come from education and training, including the training that experience yields—generate a certain *stock* of productive capital. . . . [T]he *value* of this amount of productive capital is derived from how much these skills can earn in the labor market.<sup>47</sup>

Thus, this human capital development or investment approach asserts that investments, such as training, education, and skill development, are the most effective ways to move people off welfare and into the workplace. Human capital theorists focus on the fact that welfare recipients are

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training; 3) cooperative education programs; 4) private sector training programs; 5) skill upgrading and retraining; 6) entrepreneurial training; 7) job readiness training; and 8) adult education and literacy activities. *Id.* § 2864(d)(4)(D).

45. Section 2864 (d)(4)(G) provides:

(i) Except as provided in clause (ii), training services provided under this paragraph shall be provided through the use of individual training accounts in accordance with this paragraph, and shall be provided to eligible individuals through the one-stop delivery system.

*See generally* WHITE PAPER, *supra* note 6.

46. *See generally* RONALD G. EHRENBERG & ROBERT S. SMITH, MODERN LABOR ECONOMICS: THEORY AND PUBLIC POLICY 229-75 (7th ed. 2000) (discussing the demand for and investment in education, and the relationship between education and earnings).

47. *See id.* at 229 (emphasis added).

typically low skilled and uneducated.<sup>48</sup> In other words, it is assumed that welfare recipients lack the skills necessary to find and retain jobs,<sup>49</sup> and the most effective way to address this deficiency is through training.<sup>50</sup>

By contrast, proponents of the labor force attachment approach believe that the best way to promote and sustain movement from welfare to the workplace is by quick entry into the labor force.<sup>51</sup> In other words, it is

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48. As a whole, welfare recipients are more disadvantaged than other low-income workers in terms of both education and skill level. ANU RANGARAJAN ET AL., MATHEMATICA POL'Y RES., EMPLOYMENT EXPERIENCES OF WELFARE RECIPIENTS WHO FIND JOBS: IS TARGETING POSSIBLE? 6 (1998), *available at* <http://www.mathinc.com/publications/PDFS/Emp-exp.pdf>. For example, at least forty-two percent of the welfare population lacks a high school diploma. JOBS FOR THE FUTURE, BUSINESS PARTICIPATION IN WELFARE TO WORK: LESSONS FROM THE UNITED STATES viii (1999) [hereinafter BUSINESS PARTICIPATION]; *see also* LaDonna Pavetti, Urb. Inst., *Who is Affected By Time Limits?*, in WELFARE REFORM: AN ANALYSIS OF THE ISSUES 32-34 (Isabel V. Sawhill ed., 1995); KATHRYN H. PORTER, MAKING JOBS WORK: WHAT THE RESEARCH SAYS ABOUT EFFECTIVE EMPLOYMENT PRACTICES FOR AFDC RECIPIENTS viii (1990). In addition, when one compares groups with the same level of education, welfare recipients have much lower basic skills than other adults. HANS P. JOHNSON & SONYA M. TAFOYA, PUB. POL'Y INST. OF CAL., THE BASIC SKILLS OF WELFARE RECIPIENTS: IMPLICATIONS FOR WELFARE REFORM 22 (1999). As many as one-half of welfare recipients receive such low scores on tests of basic skills that they do not even qualify to enter many training programs. *See generally* Loïc J. D. Wacquant & William J. Wilson, *Poverty, Joblessness, and the Social Transformation of the Inner City*, in WELFARE POLICY FOR THE 1990s 70, 70-102 (P. Cottingham & D. T. Ellwood eds., 1989). For example, in Chicago in 1980, only 7.6% of the predominately black and Hispanic graduates of Chicago's nonselective, segregated public high schools could read at the national high school level. *Id.* at 93-94. The results of a study conducted by the National Center for Education Statistics and the Educational Testing Service found that "the average person heavily dependent on welfare has difficulty performing simple arithmetic operations, such as addition, and generally cannot perform tasks requiring a single mathematical operation that is not specified in the questions." JOHNSON & TAFOYA, *supra*, at 21. Relying on data from the National Adult Literacy Survey, Carnevale and Desrochers conclude that there is a "stark mismatch between many welfare recipients' skills and the skills required to get, and successfully perform in, the "good" jobs the new economy is creating—jobs that lead to self-sufficiency." Anthony P. Carnevale & Donna M. Desrochers, *Getting Down to Business: Matching Welfare Recipients' Skills to Jobs that Train*, POL'Y & PRAC. OF PUB. HUM. SERVICES, Mar. 1999, at 18, 20.

49. Philip Harvey, *Combatting Joblessness: An Analysis of the Principal Strategies that Have Influenced the Development of American Employment and Social Welfare Law During the 20th Century*, 21 BERKELEY J. EMP. & LAB. L. 677, 730 (2000).

50. One study concluded that only about ten percent of all welfare recipients have the skills to advance beyond entry-level work. *See* BUSINESS PARTICIPATION, *supra* note 48, at viii.

51. *See* Marie Cohen, Welfare Information Network, *Education and Training Under Welfare Reform*, at <http://www.financeprojectinfo.org/publications/edissue.htm> (1998); *see also* LAWRENCE MEAD, BEYOND ENTITLEMENT: THE SOCIAL OBLIGATIONS OF CITIZENSHIP 69-90 (1986); Sandra K. Danziger & Kristin S. Seefeldt, *Ending Welfare Through Work First: Manager and Client Views*, 81 FAMILIES IN SOCIETY 593, 593-94 (2000).

The phrase work first can refer to . . . a philosophical belief about how to move

believed that obtaining a job as quickly as possible will allow the welfare recipient to develop both the work ethic and skills that will lead to long-term labor force attachment. Under this theory, work is seen as a stepping stone to advancement, which will lead to long-term success in the workplace. In addition, work itself has intrinsic value.<sup>52</sup> Work is part of a reciprocal arrangement, wherein the welfare recipient works as part of her responsibilities under a social contract to receive government benefits.<sup>53</sup>

Work requirements and welfare-to-work programs have been a part of welfare in this country since at least 1967.<sup>54</sup> The work requirements under PRWORA differed, however, from previous requirements both in practice and in theory. In terms of practice, the work requirements under PRWORA were mandatory.<sup>55</sup> In contrast, requirements under Job Opportunities and Basic Skills (“JOBS”) were supposed to be mandatory, but sanctions were rarely imposed; large numbers of recipients were excused from participation and thus participation was, by and large, voluntary.<sup>56</sup> Moreover, the theory behind the programs also changed. Work requirements under the Work Incentive Program (“WIN”)<sup>57</sup> and JOBS, for example, were based on a human capital investment theory.<sup>58</sup> Therefore, the purpose of work requirements was to train welfare recipients so they could obtain the skills necessary to find a job, and work was often coupled with training programs. The theoretical basis of PRWORA, on the other hand, termed a “work first” approach, was based on the labor force attachment model.<sup>59</sup> Under this approach, it was assumed that welfare

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welfare recipients into employment. This philosophy assumes that finding a job (typically unsubsidized) as quickly as possible and developing work skills through direct experience—rather than participating in education and training—will be more effective in moving welfare recipients off the rolls..

*Id.*

52. See generally MEAD, *supra* note 51.

53. See generally *id.*

54. JOEL F. HANDLER & YEHESEKEL HASENFELD, *WE THE POOR PEOPLE: WORK, POVERTY & WELFARE* 59 (1997) (attributing the launch of such programs to the explosion of welfare rolls and costs, and the increased association of the AFDC with African-Americans and the unmarried).

55. See *supra* notes 24-26 and accompanying text.

56. Cf. HANDLER & HASENFELD, *supra* note 54, at 60-61 (citing the 1994 JOBS average monthly participation rate of thirteen percent of all adult AFDC recipients “mandated” to participate).

57. See generally MEAD, *supra* note 51, at 139.

58. *Id.*

59. Sharon Dietrich et al., *Work Reform: The Other Side of Welfare Reform*, 9 STAN. L. & POL’Y REV. 53, 53 (1998) (“The policy of moving welfare recipients into paid employment is clearly the centerpiece of the . . . TANF programs.”); JOHN W. TRUTKO, ET AL., *URB. INST., POST-EMPLOYMENT EDUCATION AND TRAINING MODELS IN THE WELFARE-*

recipients lacked the necessary work ethic or work experience to enable them to get and keep a job.

The change in the theoretical basis for work requirements led to changes in the nature of the requirements themselves. Most states moved from education and training programs to mandated work activities.<sup>60</sup> Under this approach, work requirements were designed to force a quick attachment to the workforce.<sup>61</sup> The primary goal under the labor force attachment model was to move the welfare recipient into the workplace. This would allow her to develop the work experience and work ethic necessary to move into better paying jobs.

### C. The Implementation Landscape: Public Sector Training Programs

Work requirements were imposed in 1996 in PRWORA.<sup>62</sup> Although work requirements were the bedrock of the 1996 welfare reform, they were not an entirely novel idea. In modern times, work requirements had been imposed in WIN in 1967, modified in the second Work Incentive Program (“WIN II”), and expanded significantly in the JOBS program of the Family Support Act.<sup>63</sup> Additionally, a variety of historically voluntary public sector programs have been designed to aid welfare recipients in the transition from welfare to employment.<sup>64</sup> In general, welfare-to-work

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TO-WORK GRANT PROGRAM 9 (1999) (“[T]here are federal incentives in the TANF legislation for states to continue to emphasize rapid employment strategies.”), available at [http://www.urban.org/UploadedPDF/wtw\\_post-employ.pdf](http://www.urban.org/UploadedPDF/wtw_post-employ.pdf).

60. Dietrich et al., *supra* note 59, at 53 (“The state laws often embrace a ‘quick attachment to the workforce’ philosophy even more aggressive than that of TANF.”). States were given much latitude in implementing the work focus of PRWORA. See PAMELA A. HOLCOMB ET AL., *URB. INST., BUILDING AN EMPLOYMENT FOCUSED WELFARE SYSTEM: WORK FIRST AND OTHER WORK-ORIENTED STRATEGIES IN FIVE STATES 1* (1998), available at <http://www.urban.org/UploadedPDF/WORKFST.pdf>. We do see generally, however, an emphasis on work first programs and a de-emphasis on training and education programs. Cynthia Negrey et al., *Job Training Under Welfare Reform: Opportunities For and Obstacles to Economic Self-Sufficiency Among Low-Income Women*, 7 *GEO. J. POVERTY L. & POL’Y* 347, 348 (2000) (“Given welfare reform’s policy emphasis on ‘work first’ and de-emphasis on education and training, it is important to demonstrate what types of training TANF recipients receive, if any.”); see generally HOLCOMB ET AL., *supra* (offering a review of how some states responded to the work first mandate of PRWORA), available at <http://www.urban.org/UploadedPDF/WORKFST.pdf>; TRUTKO ET AL., *supra* note 59, at 9.

61. Cohen, *supra* note 51.

62. 42 U.S.C. § 1305 (2005).

63. Pub. L. No. 100-485, 102 Stat. 2343 (1988).

64. See generally HANDLER & HASENFELD, *supra* note 54, at 58-93 (discussing WIN, JOBS, California’s Greater Avenues for Independence (GAIN), Massachusetts’s Employment and Training (ET) program, Utah’s Single Parent Employment Demonstration Project, and Wisconsin Works (W-2)).

programs have attempted to address the problems of poverty in one of two ways. The first approach emphasizes immediate job search.<sup>65</sup> Such programs can be characterized as “quick-employment programs” or “employment-focused programs.”<sup>66</sup> Theoretically, work experience improves the participants’ skills and employability, and develops the behaviors necessary to keep a job. In contrast, the second approach focuses upon education and training, with the goal of long-term employment.<sup>67</sup> Under this approach, such programs work to improve the human capital of the welfare recipient. There are also mixed models which combine strategies from the two ends of the spectrum.<sup>68</sup>

The public sector approaches can be further categorized into five models: direct employment strategies, job training strategies, education strategies, subsidized employment strategies, and mixed strategies.<sup>69</sup> The most common programs follow the direct employment model.<sup>70</sup> This model employs short-term strategies, designed to move the welfare recipient quickly into the job market.<sup>71</sup> They include job search assistance, job readiness, job development, and job placement programs.<sup>72</sup> Job search programs provide guidance for job-hunting techniques, either individually or in a group setting.<sup>73</sup> Job readiness programs are designed to prepare people for work through orientations and assignments, and typically focus on resume writing and interviewing skills.<sup>74</sup> Finally, job placement and development programs provide employment counseling and job placement assistance, and act as a recruitment network by maintaining close contacts with local employers.<sup>75</sup> These programs are typically coupled with job

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65. MICHAEL E. FISHMAN ET AL., JOB RETENTION AND ADVANCEMENT AMONG WELFARE RECIPIENTS: CHALLENGES AND OPPORTUNITIES 25 (1999); see also Julie Strawn, *Beyond Job Search or Basic Education: Rethinking the Role of Skills in Welfare Reform*, 56 POL’Y & PRAC. PUB. HUM. SERV. 48, 48 (1998).

66. Strawn, *supra* note 65, at 48.

67. These are also called “skill-building programs,” *id.* at i, or “education and training focused programs,” FISHMAN ET AL., *supra* note 65, at ES-3.

68. Strawn, *supra* note 66, at 48.

69. See Demetra Smith Nightingale & Pamela A. Holcomb, *Alternative Strategies for Increasing Employment*, 17 FUTURE OF CHILDREN 52, 55 (1997), available at [http://www.futureofchildren.org/usr\\_doc/vol7no1ART5.pdf](http://www.futureofchildren.org/usr_doc/vol7no1ART5.pdf).

70. See generally *id.* at 59 (“[T]he trend is away from long-term training, education, and paid community service jobs and toward more emphasis on direct job entry and job-search requirements.”).

71. See generally *id.* at 54.

72. See generally *id.*

73. See *id.* at 55.

74. See generally *id.*

75. See generally Nightingale & Holcomb, *supra* note 69, at 55.



search and job readiness programs.<sup>76</sup>

The second model, job training, includes classroom-based occupational training and on-the-job training, which are designed to provide short-term and job-specific training.<sup>77</sup> In contrast, the education model involves skills development with a view towards long-term gains.<sup>78</sup> This includes literacy training, adult basic education, and GED preparation.<sup>79</sup> These education and training programs are often coupled with direct employment strategies.<sup>80</sup> The fourth model of welfare-to-work programs involves subsidized public employment strategies, which may include work experience through community or public service jobs.<sup>81</sup> The final model of welfare-to-work programs, mixed strategies, combines vocational training with basic skills training and supported work experience programs.<sup>82</sup>

Not surprisingly, such work programs have been the subject of considerable evaluation. The most comprehensive studies were conducted by the Manpower Demonstration Research Corporation ("MDRC"), which set up a series of experimental designs to discern the impact of welfare-to-work programs in Arkansas, West Virginia, San Diego, Baltimore, Virginia, and Cook County, Illinois.<sup>83</sup> In summary, the MDRC studies concluded that welfare-to-work programs could successfully move welfare recipients off welfare in a cost-efficient manner.<sup>84</sup> But, the MDRC studies, and the plethora of other evaluation studies, found quite small increases in earnings.<sup>85</sup> Some studies actually found the opposite effect: employment was lower and welfare participation was higher for those in the work program than for those in the control group.<sup>86</sup>

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76. *See generally id.*

77. *See id.* at 55.

78. *See id.* at 54.

79. *See id.* at 55.

80. *See generally id.* at 56.

81. *See id.* at 55.

82. *See id.*

83. *See* C. Nielson Brasher, *Workfare in Ohio: Political and Socioeconomic Climate and Program Impact*, 22 POL'Y STUD. J. 514, 515 (1994); *see also* JUDITH M. GUERON & EDWARD PAULY, *FROM WELFARE TO WORK* 186-88 (1991).

84. *Id.*

85. KATHLEEN MULLAN HARRIS, *TEEN MOTHERS AND THE REVOLVING WELFARE DOOR* 140 (1997); PORTER, *supra* note 48, at 24-25; J. Lawrence Aber et al., *Effects of Welfare Reform on Teenage Parents and their Children*, 5 FUTURE OF CHILDREN 53, 63 (1995); Gary Burtless, *The Effect of Reform on Employment, Earnings, and Income*, in *WELFARE POLICY FOR THE 1990S* 103, 103-45 (P. Cottingham & D.T. Ellwood eds., 1989); Elspeth K. Deily, *Working With Welfare: Can Single Mothers Manage?*, 12 BERKELEY WOMEN'S L.J. 132, 135 (1997).

86. *See, e.g.*, Sharon K. Long & Douglas A. Wissoker, *Welfare Reform at Three Years: The Case of Washington State's Family Independence Program*, 30 J. HUM. RESOURCES

Much of the research has focused on the characteristics of the welfare-to-work programs.<sup>87</sup> In other words, researchers have questioned whether job training programs are more effective than job search programs. One objective of such research was presumably to shape the design of successful welfare-to-work programs. Attempts to assess the consequences of alternative designs were complicated by the fact that most programs were multi-dimensional programs, each of which created a single program, for example, by emphasizing job placement versus education and training.<sup>88</sup> Evaluations reflected these “packages” of activities.

Studies demonstrate that although education and training programs can increase participants’ earnings in a cost-efficient way, such gains are typically insufficient to raise them out of poverty.<sup>89</sup> Earnings increases were typically small and achieved through more hours worked rather than higher wages.<sup>90</sup> These education and training programs tended to be more successful, however, than those programs offering less extensive services, such as job search assistance and job placement.<sup>91</sup> These less extensive services generally did not have much impact on either those just entering the welfare ranks or on long-term welfare recipients. Such programs have been largely unsuccessful in the past as welfare recipients were placed in low wage jobs that did not improve their job skills nor provide sufficient

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766, 774-81 (1995).

87. All prior research examined welfare-to-work programs that were essentially voluntary. *See supra* note 65. Mandatory programs were loosely enforced and participation rates were low. *See, e.g., supra* note 56 and accompanying text. Even prior to the PRWORA, there were calls for research to be done on programs with ongoing and high participation rates. *See* Brasher *supra* note 83, at 524; Burtless, *supra* note 85, at 129 (noting that studies were limited to voluntary participants covering only about one-third of the welfare caseload). Moreover, with the exception of the MDRC studies, virtually all of the evaluations were based on quasi-experimental or nonexperimental designs; many have urged experimental designs. *See, e.g.,* V. Joseph Hotz, *Designing an Evaluation of the Job Training Partnership Act*, in *EVALUATING WELFARE AND TRAINING PROGRAMS* 76 (Charles F. Manski & Ira Garfinkel eds., 1992). Some have questioned the validity of nonexperimental design, arguing that nonexperimental designs cannot accurately estimate or measure the impact of the programs. *See* Thomas T. Fraker & Rebecca Maynard, *The Adequacy of Comparison Group Designs for Evaluation of Employment Related Programs*, 22 *J. HUM. RESOURCES* 194, 194-96 (1987). They have argued that the nonexperimental model rests on untestable assumptions about the adequacy of the analytic model and unmeasurable characteristics of participation and comparison groups. *Id.* On the other hand, others have argued that nonexperimental methods can achieve accurate results. *See* James J. Heckman et al., *Do We Need Experimental Data to Evaluate the Impact of Manpower Training on Earnings?*, 11 *EVALUATION REV.* 395, 420-24 (1987).

88. Judith M. Gueron, *Welfare and Poverty, The Elements of Reform*, 11 *YALE L. & POL’Y REV.* 113, 122 (1993).

89. Burtless, *supra* note 85, at 137-40.

90. PORTER, *supra* note 48, at 26.

91. *See* HARRIS, *supra* note 85, at 125; PORTER, *supra* note 48, at 25, 35.

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financial support.<sup>92</sup>

Evidence of the effectiveness of remedial and post-secondary education is inconclusive. On the one hand, education is related to reduction in reliance on welfare and is seen as crucial for achieving long term independence from welfare.<sup>93</sup> On the other hand, remedial education and GED programs have not proven to be particularly effective.<sup>94</sup> The increased earnings predicted are greater than with job search programs, but significantly less than with job development or work experience programs.<sup>95</sup> These programs, however, have proven to be more promising for women, especially those without recent work experience.<sup>96</sup> Further, the impact appears to be greater on welfare recipients with the greatest barriers to employment.<sup>97</sup>

The public sector experience with training and education has covered a variety of programs with mixed results. Evaluation of public sector programs reveals that none of the programs offers more than modest success in moving participants out of poverty.

## II. TRAINING IN THE PRIVATE SECTOR

Under microeconomic theory, education and training increase the human capital of the trainee/employee.<sup>98</sup> It is assumed that the increase in human capital results in an increase in productivity, or more specifically in an increase in the marginal product of the trainee/employee.<sup>99</sup> It follows, then, that most private sector employers have an incentive to offer some training and education for their employees.<sup>100</sup> A distinction, however, is

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92. Kathleen Mullan Harris, *Teenage Mothers and Welfare Dependency: Working Off Welfare*, 12 J. FAMILY ISSUES 492, 495 (1991).

93. See HARRIS, *supra* note 85, at 125; cf. Handler, *supra* note 17, at 77.

94. Handler, *supra* note 17, at 78-79.

95. See HANDLER & HASENFELD, *supra* note 54, at 157 (discussing the effectiveness of remedial education programs); see also Nightingale & Holcomb, *supra* note 69, at 59 (“[M]any studies indicate that more intensive training strategies have had only modest impacts on employment and earnings.”).

96. Burt S. Barnow, *The Impact of CETA Programs on Earnings: A Review of the Literature*, 22 J. HUM. RESOURCES 157, 159 (1987); Laurie J. Bassi, *Estimating the Effect of Training Programs with Non-Random Selection*, 66 REV. OF ECON. & STAT. 36, 41 (1984); Burtless, *supra* note 85; Harris, *supra* note 85, at 140.

97. Brasher, *supra* note 83, at 516; Burtless, *supra* note 85, at 111 (“Larger gains are frequently enjoyed by women who are the most dependent and least employable, as measured either by prior welfare receipt or previous employment experience.”); see generally PORTER, *supra* note 48.

98. See EHRENBERG & SMITH, *supra* note 46, at 290.

99. See generally *id.*

100. See generally *id.* (explaining that education is an investment which leads to an

however, often made between general (basic skills) and specific training (job specific),<sup>101</sup> with firms more likely to pay for specific training and employees more likely to bear the cost of general training.<sup>102</sup> In addition, a wide range of factors contribute to a firm's decision to offer its employees on the job training. For example, larger firms are more likely to provide formal training than smaller firms.<sup>103</sup> More importantly, it appears that men are more likely to receive training than women,<sup>104</sup> higher educated workers are more likely to receive training than lower educated ones,<sup>105</sup> and that training is more likely to be provided to workers if the employer expects that the worker will remain employed for an extended period of time.<sup>106</sup>

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increase in a worker's productive capital).

101. In his seminal piece on human capital theory, Becker divided training into two types: general and specific training. Gary S. Becker, *Investment in Human Capital: A Theoretical Analysis*, 70 J. POL'Y ECON. 9, 12-13 (1962). General training is training that is applicable to other employers. *Id.* In other words, general training is training that raises a worker's productivity for future employment to the same extent as it has increased for present employment. Specific training, on the other hand, is training that raises the worker's current productivity but is not transferable to other employers. *Id.* at 17. Although some recent studies call this into question, see, for example, Mark A. Loewenstein & James R. Spletzer, *General and Specific Training*, 34 J. HUM. RESOURCES 710, 712 (1999), it is generally accepted that because the employer will not be able to recoup its investment in general training, the employee will be forced to bear the costs of general training. On the other hand, the employer and employee will share the costs of specific training. See, e.g., Becker, *supra*, at 19-21; Loewenstein & Spletzer, *supra*, at 712.

102. See EHRENBERG & SMITH, *supra* note 46, at 163-68, for a discussion of general and specific training. As Ehrenberg and Smith point out, the employer is more likely to pay for specific training because such training is not transferable to other employers. *Id.* at 164. Thus, the employer providing the training is likely to receive the benefits of the higher marginal product without having to increase the employee's wages. With general training, on the other hand, because the skills are transferable, the employer providing the training will likely have to increase the newly trained employee's wages to correspond to the new marginal product or lose the employee to another employer.

103. Harley Frazis et al., *Correlates of Training: An Analysis Using Both Employer and Employee Characteristics*, 53 IND. & LAB. RELATIONS REV. 443, 444-47 (2001); David E. Marcotte, *Continuing Education, Job Training, and the Growth of Earnings Inequality*, 53 IND. LAB. RELATIONS REV. 602, 613-15 (2000).

104. EHRENBERG & SMITH, *supra* note 46, at 311; Frazis et al., *supra* note 103, at 453; Jonathan Verum, *Training Among Young Adults: Who, What Kinds, and How Long?*, 116 MONTHLY LAB. REV. 27, 28 (1993).

105. Frazis et al., *supra* note 103, at 449.

106. *Id.* at 448. It is interesting to note that United States employers are much less likely to offer training and education for their employees than other countries. For example, in Japan, seventy-nine percent of employees participate in formal training in their first year of employment. See EHRENBERG & SMITH, *supra* note 46, at 168. By contrast, only eight percent of U.S. employees participate in such training. *Id.* Ehrenberg and Smith then note that the tenure of employment for Japanese workers is much longer than the tenure for U.S. workers. *Id.*

A specific type of training offered predominantly in the private sector is employer-based training.<sup>107</sup> EBT is training that is typically employer-initiated and customized to meet the needs of the employer.<sup>108</sup> It involves extensive assessment of the employee's skill and job performance and the employer's needs.<sup>109</sup> The training can occur on the work site or at other locations. Studies of EBT have classified the training in a variety of ways. EBT can be classified by the type of training as either qualifying training,<sup>110</sup> skills improvement training,<sup>111</sup> retraining,<sup>112</sup> or second-chance training.<sup>113</sup> EBT can also be classified as either general (portable) or job-specific training (firm or industry-specific training).<sup>114</sup> Alternatively, EBT can be classified by the specific content of the training: job skills training, workplace practices training, safety and health training, orientation training, apprenticeship training, or basic skills training.<sup>115</sup> In some

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107. EBT is training that is initiated in the private sector, but can involve the public sector. Trutko, Nightingale, and Barnow offer a useful typology for considering employer related training programs. TRUTKO ET AL., *supra* note 59, at 23-25. In a study considering post-employment education and training models established pursuant to the Welfare-to-Work grant program, they present a typology with resources on one axis. *See id.* Thus, EBT programs can, first, be categorized by who pays for the training. At one end of the spectrum are programs that use public sector resources, typically public subsidies. *Id.* At the other end of the spectrum, the employer pays for the training. *Id.* In between, Trutko, Nightingale, and Barnow describe employer-government cost-sharing alternatives. *Id.* at 25-26. On the other axis, we find programs categorized by the place or site for the training. *See id.* On one of the spectrum, they describe training programs conducted off-site, separate from the workplace; on the other end, we find work-place based programs conducted in the workplace. *Id.* at 24. In between, we find mixed strategies. They also add a consideration of content and purpose to this typology. *Id.* They consider the relationship of the training to the current job (whether the training is integrated with work), the employment objectives (is the training intended to qualify the employee for the current or future job), and the occupational foci (general or job-specific). *Id.* at 24-26.

108. ISBELL ET AL., *supra* note 11, at 9-10.

109. *See id.* at 10.

110. Qualifying training is training that will initially prepare an employee for work. *Id.*

111. Skills improvement training is training for already employed individuals who want to upgrade their skills. *Id.*

112. Retraining is training for people who have been displaced from their jobs and need to prepare for a new line of work. *Id.*

113. Second chance training is for individuals who need some combination of basic education and job skills to reach economic self-sufficiency. *Id.* This is obviously the type of training that is envisioned for the welfare recipient who is moving into the workplace.

114. General training allows workers to apply the skills they have learned to other jobs while job-specific training does not. *Id.* at 11.

115. *Id.* at 11-12. Job skills training enhances employee skills or qualifies workers for a job. *Id.* at 11. Workplace practices training concentrates on practices and policies that affect the work environment or employee relations. *Id.* Safety and health training informs employees about personnel and workplace practices as well as company policies. *Id.* Apprenticeship training is a structured process that combines on-the-job training and

instances EBT programs have been tailored for the welfare-to-work population.<sup>116</sup> Such programs vary in format and may offer paid work experience and supported work.<sup>117</sup> The private sector/public sector mix varies from program to program.<sup>118</sup>

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classroom instruction. *Id.* Basic skills training teaches reading, writing, arithmetic, and English language skills. *Id.* at 12.

116. *See id.* at 18 (indicating that of the seventeen EBT programs studied, nine were JTPA funded with the aim of training disadvantaged youths and adults).

117. *See* LADONNA PAVETTI & DEBRA STRONG, MATHEMATICA POL'Y RES., INC., WORK-BASED STRATEGIES FOR HARD-TO-EMPLOY TANF RECIPIENTS: A PRELIMINARY ASSESSMENT OF PROGRAM MODELS AND DIMENSIONS 8, *at*

<http://www.mathematica-mpr.com/publications/PDFs/workbasedTANF.pdf> (2001) (gathering information from sixty-five work-based programs serving hard-to-employ populations, including TANF recipients). They characterized the programs into four distinct program models. *Id.* at 10. The first model, Model I: Paid Work Experience Programs, provides temporary employment, with on-site supervision. *Id.* They may provide some help in finding permanent employment, but do not provide assessment or support to address barriers to employment. *See id.* (noting that “these programs do not place a heavy emphasis on assessment and they usually do not provide ongoing, intensive support to address personal and family challenges”). Model II: Supported Transitional Publicly Funded Job Programs provide temporary paid work in non-profit organizations, government agencies, or private sector businesses. *Id.* at 12. Participants are viewed as employees of the sponsoring agencies and their wages are subsidized through Welfare-to-Work grants or the TANF program. *Id.* Under Model II, ongoing supervision is provided at the work site. *Id.* Furthermore, participants typically receive an assessment and ongoing support to address barriers to employment. *Id.* at 12-13. Model III involves Supported Transitional Structured Employment Programs. *Id.* at 13. Under this model, participants are typically placed into private sector employment or in a sheltered workshop. *Id.* Wages are subsidized through public funds. *See id.* at 14 (noting that some programs subsidize wages with public funds while others wages are paid through program revenues). Participants receive substantial support, including on-site supervision and case management, with individualized job development on-site. *Id.* Lastly, Model IV: Supported Competitive Employment Programs, places participants directly into competitive employment. *Id.* at 15. Under Model IV, wages are not subsidized, employment is preceded by job readiness activities, and extensive support is provided on-site. *Id.*; *see also id.* (noting that once employment begins, extensive support is provided by job coaches or employment specialists that continue for an extended period of time).

118. One example is Marriott Corporation's Pathways to Independence program. U.S. Dep't of Hous. & Urb. Dev., *Welfare to Work, Reaching a New Workforce: A Guide of Work Resources and Services for Baltimore Area Employers*, at 18-19 (2000). The Pathways to Independence Program consists of a six-week, in-house program of classroom instruction and on the job training. *Id.*; Kathy Seal, *Marriott trains, places welfare recipients*, 212 HOTEL & MOTEL MANAGEMENT 7 (1997). Marriott pays for curriculum development, use of its training facilities, training supplies and program monitoring. Seal, *supra*. It obtains government funding only to pay for the Marriott personnel costs. Seal, *supra*. Thus, Marriott's program is largely private sector, using limited public sector funding. *See also* Aaron Steelman, *Welfare to Work: What Happens When Recipient Meets Employer?*, AM. ENTERPRISE, Jan./Feb. 1998, at 60 (“The Marriott Corporation has likewise relied on private and public agencies to screen welfare recipients.”), available at [http://www.taemag.com/docLib/20030225\\_welfaretoworkjf98.pdf](http://www.taemag.com/docLib/20030225_welfaretoworkjf98.pdf). This can be contrasted with a program by the United Parcel Service. United Parcel Service, *Welfare-to-Work, at*

One of the criticisms of typical public sector training programs is the poor understanding of the labor market and lack of coordination between program administrators and area employers.<sup>119</sup> Recent attention has focused on ways to involve employers in welfare-to-work training,<sup>120</sup> employer demand for welfare-to-work employees,<sup>121</sup> and retention and

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<http://www.pressroom.ups.com/mediakits/factsheet/0,2305,779,00.html> (last visited Apr. 17, 2005). The UPS approach differs from the Marriott approach in that it is based on a series of partnerships with government and non-profit agencies. *Id.* UPS collaborates with such agencies to develop, train, and mentor welfare recipients for positions at UPS. *Id.* The UPS approach utilizes existing public sector programs and UPS participates in hiring, recruiting, and referral. *Id.*

119. See, e.g., Nightingale & Holcomb, *supra* note 69, at 62.

[T]he weakest part of the current programs administered by welfare agencies may be their poor understanding of the labor market. Few, if any, resources are devoted to cultivating relationships with firms and industries, to developing jobs for particular individuals, or to staying informed about occupational or technological changes that may dictate the skills required in the workplace.

*Id.*

120. STEVEN BLISS, MANPOWER DEMONSTRATION RES. CORP., SAN FRANCISCO WORKS: TOWARD AN EMPLOYER-LED APPROACH TO WELFARE REFORM AND WORKFORCE DEVELOPMENT 1 (2000) (noting that a coalition of San Francisco's thirty-five largest businesses, with the participation of actual employers, created job training programs for welfare recipients), available at <http://www.mdr.org/Reports2000/SFWorks3.0.pdf>; AMY BROWN ET AL., MANPOWER DEMONSTRATION RES. CORP., BUSINESS PARTNERSHIPS: HOW TO INVOLVE EMPLOYERS IN WELFARE REFORM 3-5 (1998) (helping employers to integrate welfare recipients into their workforce); ISBELL ET AL., *supra* note 11, at 18 (noting employers' programs that targeted job training for disadvantaged youths and adults); Relave, *supra* note 7 ("The continuing demand for qualified entry-level workers makes this an opportune time for welfare and workforce development agencies to engage employers in their reform efforts.").

121. See generally BRANDON ROBERTS & JEFFREY D. PADDEN, CHARLES STEWART MOTT FOUND., WELFARE TO WAGES: STRATEGIES TO ASSIST THE PRIVATE SECTOR TO EMPLOY WELFARE RECIPIENTS ii (1998) ("To increase the efficiency and effectiveness by which welfare recipients find and keep jobs, the employment and training practitioners, public agencies, advocates and recipients themselves will have to know and understand what employers are looking for."), available at <http://www.mott.org/publications/pdf/SPECIALwtowprivate.pdf>; HARRY J. HOLZER, INST. FOR RES. ON POVERTY, UNIV. OF WISCONSIN-MADISON, WILL EMPLOYERS HIRE WELFARE RECIPIENTS? RECENT SURVEY EVIDENCE FROM MICHIGAN 1-3 (July 1998) (presenting a survey of 900 employers and their potential willingness to hire unskilled welfare recipients), available at <http://www.fordschool.umich.edu/research/poverty/pdf/joycerep.pdf>; HOLZER & STOLL, *supra* note 10, at v (examining "employer willingness and ability to hire from various groups of recipients, their performance and retention rates once hired, and the wages and benefits they receive from their jobs."); Owen et al., *supra* note 10, at 2 (indicating a mutual need for each other between employers and welfare recipients); Bernice B. Wilson & Daisy L. Stewart, *Employers' Perceptions of Welfare Reform: Implications for Cooperative Extension Personnel*, 38 J. EXTENSION (Oct. 2000), at <http://www.joe.org/joe/2000october/a1.html> (noting that employers' involvement with welfare reform has had a long history).

advancement of welfare to work employees.<sup>122</sup> Some research has shown that work-based training programs are more successful for welfare recipients than mere job search or classroom education and training alone.<sup>123</sup> That, in itself, suggests that EBT programs could be beneficial for welfare recipients.

Unfortunately, there has been no rigorous evaluation of EBT programs. There has, however, been limited case study.<sup>124</sup> In 1996, the United States Department of Labor commissioned a study of sixteen EBT programs, nine of which were JTPA funded.<sup>125</sup> Based on previous research which found that training was most effective when it took place on the job and that training which was linked to work was more successful, the study examined company sponsored EBT programs.<sup>126</sup> Each program was a combination of classroom and laboratory study, and included pre-employment and workplace skills training, and training in soft skills.<sup>127</sup> The outcomes were positive. More than eighty percent of the participants completed the skills training and virtually all trainees were placed in jobs.<sup>128</sup> The hourly starting wages ranged from \$6.25 to \$8.00, and all of those hired received fringe benefits.<sup>129</sup> Moreover, retention rates were high.<sup>130</sup> For example, TempsPlus/Staffing Solutions trained and hired five participants.<sup>131</sup> Six months later, all five were still employed.<sup>132</sup>

In addition, Mathematica Policy Research, Inc. conducted a study of sixty-five work-based programs for TANF recipients.<sup>133</sup> While most of

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122. See FISHMAN ET AL., *supra* note 65, at 21 (noting the tremendous need to promote job retention and advancement among welfare recipients); HARRY J. HOLZER ET AL., URB. INST., *JOB PERFORMANCE AND RETENTION AMONG WELFARE RECIPIENTS 1* (2001) (indicating that "job retention and advancement have emerged as major issues in current discussions of welfare reform"), available at [http://www.jcpr.org/wpfiles/holzer\\_stoll\\_wissoker.PDF?CFID=5405579&CFTOKEN=87636059](http://www.jcpr.org/wpfiles/holzer_stoll_wissoker.PDF?CFID=5405579&CFTOKEN=87636059).

123. Marie Cohen, *Education and Training Under Welfare Reform*, 2 FIN. PROJECT (1998), at <http://www.financeprojectinfo.org/Publications/edissue.htm>.

124. See ISBELL ET AL., *supra* note 11, at 6-8.

125. *Id.*

126. *Id.*

127. *Id.* Soft skills are skills related to communication and teamwork. *Id.*

128. See *id.* at 25. The one hundred percent placement rate can be compared to the sixty-two percent placement rate which was typical of JTPA training programs. *Id.*

129. *Id.* In all firms studied, the starting wage exceeded the average starting wage for JTPA participants. *Id.*

130. *Id.*

131. *Id.*

132. *Id.* This compared to a sixty-nine percent retention rate under JTPA, with only forty-three percent employed by the same firm. *Id.*

133. PAVETTI & STRONG, *supra* note 117, at vi.



these programs were not EBT programs per se,<sup>134</sup> because of the strong relationship between the employer and the training provider, they can provide some insight into the likely success of EBT programs. While this study was not a rigorous evaluation, “the placement and retention data for some of the programs suggest potentially successful interventions.”<sup>135</sup>

While the research conducted to date has not provided definitive proof of the benefits of EBT, the results are promising.<sup>136</sup> The private sector is a willing participant in this effort. By 2000, over 20,000 employers were participants in the Welfare-to-Work Partnership efforts to employ welfare recipients.<sup>137</sup> Three out of four Welfare-to-Work Partnership employers provide post-employment training for welfare-to-work hires and they report a positive impact on promotion and retention.<sup>138</sup> Although further research is required, the existing research results provide a basis for supporting EBT programs.

### III. LIMITATIONS OF EBT

*The program that we have for job training is based on something I called attention to one day. . . . I looked in the Sunday paper at the help-wanted ads . . . you count as many as 65 pages. . . . And you say, wait a minute, you know, 9.8 percent unemployment, but here are the employers . . . . These newspaper ads convinced us that there are jobs waiting and people not training for those jobs.*<sup>139</sup>

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134. While EBT programs are initiated by the employer and structured by the employer, programs in the Mathematica survey are “work-based” and structured by a partnership between employer and training provider. *Id.*

135. PAVETTI & STRONG, *supra* note 117, at 24. For example, Morgan Memorial Goodwill Industries had a placement rate of seventy-five percent. *Id.* Employment Trust, Inc. had a placement rate of eighty-one percent, eighty-two percent of whom were still employed ninety days after placement. *Id.* IRIS had a fifty percent placement rate, with ninety-two percent employed nine months after placement. *Id.*

136. *See, e.g.*, Bliss, *supra* note 120, at 38-40 (performing a case study of San Francisco Works, a nonprofit organization established to create links between job market needs and welfare to work training programs); *see also* BUSINESS PARTICIPATION, *supra* note 48, at 10-23 (describing case studies of nineteen firms with welfare to work initiatives); TRUTKO ET AL., *supra* note 59, at 6-10 (describing the importance and promise of post-employment training for the welfare to work population)

137. Welfare to Work Partnership, *The Bottom Line For Better Lives: A Report To The President on Welfare to Work*, available at 4, at [http://www.welfareto-work.org/gov\\_affairs/bottomline.pdf](http://www.welfareto-work.org/gov_affairs/bottomline.pdf) (2000).

138. *Id.* at 16.

139. GORDON LAFER, THE JOB TRAINING CHARADE 19 (2002) (quoting President Ronald Reagan, 18 Weekly Comp. Pres. Doc. 1250 (Oct. 4, 1982)). Professor Lafer calls this and a subsequent quotation by President George H. W. Bush “the story of how a sheet of classified ads has dictated federal employment policy for more than twenty years.” *Id.*

– President Ronald Reagan

By far, the most important limitation behind EBT as a way to address poverty relates to an assumption underlying the focus on training and development. Recall the earlier dichotomy between the human capital and work force attachment or work first models.<sup>140</sup> Both are premised on the belief that jobs are available; however, they offer different explanations for the fact that welfare recipients are out of the workforce. Training and education are only an effective anti-poverty measure if there are jobs available and the reason for unemployment is related to the inadequate skills of the welfare recipient. If, however, there are not enough jobs available, increasing the skills and education of the welfare recipient will not provide a means to a living wage and economic self-sufficiency.<sup>141</sup>

Although the data needed to determine whether there are adequate jobs for job-seekers is not available,<sup>142</sup> it seems likely that there is in fact a job shortage in this country. Using available data, Professor Lafer concludes that “throughout the height of the putative ‘labor shortage’ economy, the number of people in need of decently paying jobs consistently exceeded the supply of such jobs by a wide margin.”<sup>143</sup> According to Lafer, “mismatch

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140. *See supra* Part I.B.

141. Professor Harvey offers an interesting story to explain this point, entitled “Trouble in Paradise”:

There once was an island with a population of 100 dogs. Every day a plane flew overhead and dropped 95 bones onto the island. It was a dog paradise, except for the fact that every day 5 dogs went hungry. Hearing about the problem a group of social scientists was sent to assess the situation and recommend remedies.

The social scientists ran a series of regressions and determined that bonelessness in the dog population was associated with lower levels of bone-seeking effort and that boneless dogs also lacked important skills in fighting for bones. As a remedy for the problem, some of the social scientists proposed that boneless dogs needed a good kick in the side to get them moving, while others proposed that boneless dogs be provided special training in bone-fighting skills.

A bitter controversy ensued over which of these two strategies ought to be pursued. Over time, both strategies were tried, and both reported limited success in helping individual dogs overcome their bonelessness—but despite this success, the boneless problem on the island never lessened in the aggregate. Every day, there were five dogs who went hungry.

Harvey, *supra* note 49, at 685.

142. Professor Lafer finds it interesting that “the federal government has long avoided any systematic collection of data on job vacancies. Thus, the shift from job creation to job training policies was carried out without any reliable information regarding the relationship between the supply and demand for jobs.” Lafer, *supra* note 139, at 23.

143. *Id.* Professor Lafer, concludes that, in 1996, “the total of potential openings was sufficient to employ only one-twelfth the number of people who needed work, and the gap between jobs needed and jobs available stood at 23.7 million.” *Id.* at 34-35; *see also* Harvey, *supra* note 49, at 709.

theorists” ignore the job shortage data and argue instead that education is the single most effective way for Americans to work their way out of poverty.<sup>144</sup> No one is suggesting that education is not an important and desirable goal for any segment of the population; instead, the question is whether education is the way out of poverty for *all* poor.<sup>145</sup> Professor Harvey calls this the “fallacy of composition.” Just because job training and education can help some poor to get jobs, it does not follow that all would be employed if they were similarly educated and trained.<sup>146</sup>

As the evidence from Lafer and Harvey suggests, it is unlikely that training and education programs directed at the poor, including EBT programs, would have a significant positive effect on reducing poverty. That does not mean, however that such programs should be abandoned. These programs can have a significant impact on moving certain segments of the population out of poverty, even if they do not greatly decrease aggregate poverty levels.<sup>147</sup> Such redistributive goals are not

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[T]he great bulk of unemployment actually experienced in the United States during this period, and not just during periods of recession, has been proximately caused by an insufficiency in the number of jobs available rather than by a structural mismatch between job seekers and available jobs or by a refusal on the part of unemployed persons to seek and accept available jobs.

*Id.*

144. Lafer, *supra* note 139, at 46.

145. Professor Lafer explains, “Thus it is appropriate for every parent to hope that their child becomes a professional; but it is not appropriate for federal policy makers to hope that every American becomes one.” *Id.* at 4.

146. Harvey, *supra* note 49, at 683.

The problem is that despite this rapid turnover, there aren’t enough jobs at any moment in time to provide work for all job seekers simultaneously. To assume in these circumstances that everyone would find work if they emulated the job search strategies of successful job seekers is a classic example of the fallacy of composition—akin to assuming that everyone would see better at a concert if they stood up, just because that strategy works for individual concert goers.

*Id.*

147. Professor Harvey identifies three strategies that influence American social welfare policy. Harvey, *supra* note 49, at 684. The first approach (the behaviorist approach) assumes that poverty is caused by the behavior of the poor. *Id.* at 686-89. The second approach (the job shortage approach) assumes that poverty is caused by joblessness and the economy’s inability to provide enough jobs. *Id.* at 689-94. The third approach (the structuralist approach) assumes that poverty is caused by factors that affect the ability of certain groups of people to have access to the jobs that are available (such as discrimination and lack of education and skills). *Id.* at 694-701. Harvey explains that while neither approach offers a means to increase the jobs available and thus decrease poverty, the behavioralist and structuralist approaches are important for determining the distribution of jobs among job seekers:

In other words, structural and behavioral factors appear to play a powerful role in determining who will be jobless, but very little role in determining *how many* people will be jobless. Accordingly, we should not expect behavioralist and

insignificant and are appropriate public policy goals.

In addition to the theoretical limitations on EBT's effectiveness in reducing poverty, there are some practical limitations on implementation that must be acknowledged. A number of barriers to expanding implementation of EBT programs were outlined in the Department of Labor report of 1996.<sup>148</sup> First, the occupational areas in which training occurs must be ones in which there is demand in the local economy.<sup>149</sup> One of the rationales for involving employers in the Workforce Investment Boards under the WIA was to assure that training is designed to meet needs in the local economy.<sup>150</sup> Moreover, one of the defining characteristics of a "demand-led organization"<sup>151</sup> is that such organizations are thought to understand the nature of the local and regional labor markets.<sup>152</sup> In addition, they typically understand the needs of local employers.<sup>153</sup> Thus, an effective EBT program should be tailored to the needs of the local economy.

Second, many small and mid-size firms lack sufficient resources to establish customized training programs. In contrast, large firms are more likely to provide formal training programs for their employees.<sup>154</sup> Therefore, it appears that small and mid-size firms are unlikely to design appropriate EBT programs without significant public policy support.<sup>155</sup>

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structuralist policies to reduce overall levels of joblessness. Instead, they should be understood as attempts to 1) equalize the burdens of joblessness among population groups . . . and 2) ensure that individuals who need work can find it quickly enough to avoid the personal harm that joblessness can cause.

*Id.* at 684 (emphasis added).

This does not mean, however, that the structuralist and behavioralist explanations of the problem are false, only that their influence is limited to another aspect of the problem—the *distribution* of joblessness among population groups. In other words, the structuralist and behavioralist explanations of joblessness tell us why some people suffer more joblessness than others, even if they don't help us very much in understanding why there is as much joblessness in the economy as there is.

*Id.* at 750 (emphasis added).

148. ISBELL ET AL., *supra* note 11, at 37.

149. *Id.*

150. *See supra* note 6.

151. EBT training programs are examples of demand-led approaches because the incentive for such programs is best viewed from the perspective of employer demand for labor.

152. Marty Liebowitz et al., *Building Organizational and System Capacity: How Government Can Support "Demand-Led" Reform*, at 2-3 (2000), available at <http://www.jff.org/jff/PDFDocuments/Capacity.pdf>.

153. *Id.* at 3.

154. *See* Frazis et al., *supra* note 103, at 451.

155. It could be argued that this is not a limitation of EBT programs, but in fact a

Third, companies may be reluctant to commit to hiring EBT graduates. This is a problem plaguing training programs geared to the welfare-to-work population.<sup>156</sup> On the other hand, there is reason to believe that employers are not reluctant to hire welfare-to-work employees. Existing research has found that employers report generally positive attitudes toward hiring welfare-to-work employees and are generally satisfied.<sup>157</sup>

Fourth, the time and effort needed to establish a customized training program is demanding. Companies must commit significant resources to establishing and maintaining customized programs. This means that employers must be truly committed to establishing such programs. The motivations for such a commitment might vary. Some companies may establish EBT programs because they have been unable to hire sufficient workers due in part to low unemployment rates. Welfare-to-work employees provide an attractive option for such employers. Similarly, some employers may create EBT programs out of bottom-line considerations, such as improving retention rates.<sup>158</sup> Similarly, monies available pursuant to the Welfare-to-Work grants program, the Work Opportunity Tax Credit, and the Welfare-to-Work Tax Credit presumably provide an incentive to hire welfare-to-work recipients.<sup>159</sup> Another possible motivation for this corporate behavior is the desire to do good. There is reason to believe that some corporations design EBT programs geared toward the welfare-to-work population out of a desire to be good corporate citizens, and to work with the public sector to address societal problems.<sup>160</sup> Such corporations are likely to expend the necessary time and

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justification for public policy intervention. If private sector firms are not likely to design such training programs on their own, despite these programs serving societal objectives, one could make a strong argument for intervention.

156. This also relates to concerns about whether there are sufficient numbers of adequate paying jobs available. *See supra* notes 142-46 and accompanying text.

157. *See generally* HOLZER, *supra* note 121, at 450; HOLZER ET AL., *supra* note 122, at 20-22, 35; HOLZER & STOLL, *supra* note 10, at 11-12; REGENSTEIN ET AL., *supra* note 10, at 1-4.

158. There is some indication that EBT training programs do improve retention rates. *See supra* notes 83-88 and accompanying text. In addition, Marriott's Pathways to Independence program reports that retention rates for their graduates that are higher than their standard retention rates. Interview with Brian J. Callan, Senior Project Manager, Marriott International, Inc. (Oct. 30, 2003).

159. Preliminary research suggests, however, that tax incentives and subsidies have been insufficient to induce employer participation. *See generally* STACY DICKERT-CONLIN & DOUG HOLTZ-EAKIN, CTR. FOR POL'Y RES., HELPING THE WORKING POOR: EMPLOYER VS. EMPLOYEE-BASED SUBSIDIES 13-14 (1999) (noting that compliance costs may be a cause of low employer participation rates), available at <http://www-cpr.maxwell.syr.edu/pbriefs/pb14.pdf>.

160. For example, Aramark's chairman and CEO, Joseph Neubauer, describes his

effort to create successful EBT programs.

Last, the Department of Labor reports a concern that companies may avoid working with government programs because of bureaucratic red tape or insufficient knowledge of government programs.<sup>161</sup> Public policy initiatives designed to encourage EBT program development must effectively address and alleviate these fears. It is also possible that firms which have participated in Workforce Investment Boards under the WIA can speak to minimize these fears.

#### IV. PUBLIC POLICY RECOMMENDATIONS

Since implementation of PRWORA, welfare caseloads have dropped dramatically, from 5.5% of the total United States population in 1994, to 2.1% in June 2000,<sup>162</sup> a decline of more than fifty percent nationwide, with some states reporting declines of as much as seventy percent.<sup>163</sup> In the latest figures, welfare caseloads had fallen to 4.8 million recipients.<sup>164</sup> What is less clear is how former welfare recipients have fared economically. While most who have left the welfare rolls have worked, at least at some point after leaving welfare,<sup>165</sup> “the median hourly wage of employed former recipients is \$6.61,”<sup>166</sup> which is significantly less than the income needed to reach the poverty line.<sup>167</sup> Moreover, recent data suggests that poverty might have actually worsened for those who remain poor

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company’s involvement in the Welfare-to-Work Partnership as “enlightened self-interest.” Steelman, *supra* note 118, at 60-61. Boscart Construction owner Barbara Turner said, “I’ve always felt that there’s a real need for all of us to give back and help others.” *Id.* at 63. Ken Parks, Vice President of Human Resources at United Parcel Service, said, “[a]s a responsible corporate citizen, United Parcel Service’s goal is to have a workforce that reflects the diversity of the communities we serve.” BUSINESS PARTICIPATION, *supra* note 48, at 11.

161. ISBELL ET AL., *supra* note 11, at 38.

162. HEATHER BOUSHEY & BETHNEY GUNDERSEN, ECON. POL’Y INST., WHEN WORK JUST ISN’T ENOUGH: MEASURING HARDSHIPS FACED BY FAMILIES AFTER MOVING FROM WELFARE TO WORK 1 (2001), available at <http://www.epinet.org/briefingpapers/hardshipsbp.pdf>.

163. DEMETRA W. NIGHTINGALE ET AL., URB. INST., STATUS OF THE WELFARE-TO-WORK (WTW) GRANTS PROGRAM AFTER ONE YEAR i (1999), available at [http://www.urban.org/uploadedPDF/wtw\\_labor.pdf](http://www.urban.org/uploadedPDF/wtw_labor.pdf).

164. U.S. Dep’t of Health & Hum. Services, Office of Family Assistance, TANF: Total Number of Recipients FY2004, at <http://www.acf.hhs.gov/programs/ofa/caseload/2004/recipienttanf.htm> (last updated Feb. 26, 2005).

165. PAMELA LOPREST, URB. INST., FAMILIES WHO LEFT WELFARE: WHO ARE THEY AND HOW ARE THEY DOING? 8 (1999).

166. *See id.* at 12.

167. *See generally* NIGHTINGALE ET AL., *supra* note 163, at 3-4.

because of the loss of government support.<sup>168</sup>

Recall that under PRWORA, the focus of welfare programs has switched from a human capital development approach to a workforce attachment, or a work first approach.<sup>169</sup> In order for the work first approach to be successful, involvement of the business community is essential. At a bare minimum, employers must hire welfare recipients in order for PRWORA to move welfare recipients off welfare and into the workplace. Hiring, however, is not enough. Retention and advancement is crucial for welfare recipients to be self-sufficient in the long-term. Given the relatively low demand for low-skilled workers and the relatively low skill level of the typical welfare recipient,<sup>170</sup> this will likely require training and development of the welfare worker. Under the work first approach, the focus has switched from training to placement. If the public policy goals, however, are for workers to advance, to remain employed, and to stay off welfare, further training is required. Hence, as people leave welfare for work, private sector training programs become increasingly important.

Congress is currently considering reauthorization of TANF.<sup>171</sup> A number of bills have been considered by Congress in discussing reauthorization.<sup>172</sup> The bills under discussion vary significantly; however, there are important similarities. Most importantly for the purposes of this Article, it is likely that TANF reauthorization would substantially increase the number of families required to work and the number of hours that

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168. WENDELL PRIMUS & ROBERT GREENSTEIN, CTR. ON BUDGET & POL'Y PRIORITIES, POVERTY RATE HITS LOWEST LEVEL SINCE 1979 AS UNEMPLOYMENT REACHES A 30-YEAR LOW 2 (2000).

The average poor person fell \$2,416 below the poverty line in 1999. By contrast in 1993, the average poor person fell \$2,104 below the poverty line; in 1996, the figure was \$2,122 . . . . The increase since 1996 in the amount by which the average poor person falls below the poverty line reflects the large decline in the proportion of the low-income population receiving means-tested benefits such as food stamps.

*Id.*

169. *See* TRUTKO ET AL., *supra* note 59, at ii; *see also supra* notes 47-59 and accompanying text.

170. *See supra* notes 49-50 and accompanying text.

171. TANF reauthorization has been on the public policy agenda for at least four years, since PRWORA expired in 2001. *See, e.g.*, Personal Responsibility, Work, and Family Promotion Act of 2002, H.R. 4737, 107th Cong. (2002). Not surprisingly, a number of bills have been proposed, debated, and even passed during that time. *Id.* Congress is once again considering TANF reauthorization during its current session. *See, e.g.*, H.R. 240, 109th Cong. (2005).

172. *See* H.R. 240, 109th Cong. (2005); S. 6, 109th Cong. (2005); S. 105, 109th Cong. (2005); S. 141, 109th Cong. (2005); S. 321, 109th Cong. (2005); S. 458, 109th Cong. (2005).

recipients are required to participate in work activities.<sup>173</sup> For example, the Personal Responsibility, Work, and Family Protection Act of 2005 would increase the work participation rates from the current rate of fifty percent to sixty percent by 2008.<sup>174</sup> In addition, both the Senate and House bills would increase the number of weekly hours that a participant would have to be involved in a work activity in order to fulfill the state's participation requirement.<sup>175</sup> Under the Senate bill, recipients would have to participate for forty hours each week to count as engaged in a work activity.<sup>176</sup> Twenty-four of these hours would have to be participation in a rather narrow set of direct work activities, including paid and unpaid work.<sup>177</sup> Both bills would limit the amount of pre-employment training and education that would count as a "work activity."<sup>178</sup>

Given the current proposals for TANF reauthorization, the importance of post-employment training and education becomes critical.<sup>179</sup> Moreover, the focus on welfare-to-work continues. While EBT research has not conclusively shown that EBT programs are effective, the viability of such programs should at least be explored with further research. Moreover, EBT experimentation should be statutorily supported. Thus, both TANF and WIA reauthorization proposals should consider ways to promote private-public sector partnerships, such as EBT training.<sup>180</sup>

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173. See, e.g., H.R. 240, 109th Cong. (2005).

174. This bill would increase state participation rates to fifty percent in 2006, fifty-five percent in 2007, sixty percent in 2008, sixty-five percent in 2009, and seventy percent in subsequent years. See S. 105, 109th Cong. § 407 (2005); H.R. 240 § 407.

175. See S. 105, § 407; H.R. 240 § 407.

176. See S. 105, § 407.

177. See *id.*

178. See, e.g., H.R. 240 § 407 (restricting "Direct Work Activity" to unsubsidized employment, subsidized private sector employment, subsidized public sector employment, on-the-job training, supervised work experience, or supervised community service). TANF reauthorization proposals have been criticized as restricting state flexibility in this regard.

179. In fact, it has been suggested that the increased work requirements in TANF reauthorization proposals would force states to "scale back" access to targeted vocational education programs. See generally HEIDI GOLDBERG, CTR. ON BUDGET & POL'Y PRIORITIES, RECENT TANF PROPOSALS WOULD HINDER SUCCESSFUL STATE EFFORTS TO HELP FAMILIES OVERCOME BARRIERS TO EMPLOYMENT AND FIND BETTER-PAYING JOBS 2 (2002), available at <http://www.cbpp.org/5-9-02tanf.pdf>.

180. Government activities have been characterized as either "steering roles" or "rowing roles." See Liebowitz et al., *supra* note 152, at n.1. Steering roles include policymaking activities, such as government investments and activities that support the rowing roles. *Id.* Rowing roles are direct service delivery activities. *Id.* The proposals in this Article focus on "steering" activities. There have been repeated calls for employer subsidies, in spite of the limited research to their effectiveness. See, e.g., Harry J. Holzer & Douglas Wissoker, *How Can We Encourage Job Retention and Advancement for Welfare Recipients?*, at 5 (2001) ("Subsidies to employers for providing on-the-job training to less-advantaged



One promising initiative that was part of House Bill 4737: The Work, Opportunity, and Responsibility for Kids Act of 2002, was the creation of Innovative Business Link Partnership Grants.<sup>181</sup> Under House Bill 4737, a program of competitive grants would be created, and administered by the Secretary of Labor.<sup>182</sup> Nonprofit organizations, local workforce investment boards, states, local entities, tribes, and employers would be eligible to receive grants to promote business linkages.<sup>183</sup> These grants were envisioned to promote programs designed 1) to substantially increase the wages of eligible individuals by “creating or upgrading job and related skills in partnership with employers, *especially by providing supports and services at or near work sites;*” and 2) to “identify and strengthen career pathways by expanding and linking work and training opportunities for such individuals in collaboration with employers.”<sup>184</sup> They would provide support to further the retention and advancement of welfare-to-work recipients<sup>185</sup> and could conceivably be used to support EBT efforts. Moreover, the grant funds could explicitly be used to fund a “comprehensive set of employment and training benefits and services” including “workplace supports and accommodations, curricula development, wage subsidies, retention services, and such other benefits or services as the program deems necessary to achieve the overall objectives

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workers might also generate positive outcomes, though the research here is limited.”), available at <http://www.urban.org/urlprint.cfm?ID=7443>; see also Anne Kim, *Transitional Jobs: A Bridge Into The Workplace For Hard-To-Employ Welfare Recipients*, at 2-3 (2001) (discussing the benefits to employers, communities, and employees of wage subsidies), available at <http://www.ndol.org/documents/TransitionalJobs.pdf>.

181. H.R. 4737, 107th Congress § 704 (2002). Section 704 would replace Section 403(a)(4) (codified at 42 U.S.C. 603(a)(4)) by creating grants for “Innovative Business Link Partnership Grants for Employers and Nonprofit Organizations.” *Id.*

182. H.R. 4737 § 704.

183. *Id.* Grants would also be available to promote transitional jobs programs. *Id.*

184. *Id.* (emphasis added). Section 704 further provides:

(E) ALLOWABLE ACTIVITIES.—An eligible applicant awarded a grant under this paragraph shall use funds provided under the grant to do the following: (i)

PROMOTE BUSINESS LINKAGES.—(I) IN GENERAL.—To promote business linkages in which funds shall be used to fund new or expanded programs that are designed to—

(aa) substantially increase the wages of eligible individuals . . . whether employed or unemployed, who have limited English proficiency or other barriers to employment by creating or upgrading job and related skills in partnership with employers, especially by providing supports and services at or near work sites; and (bb) identify and strengthen career pathways by expanding and linking work and training opportunities for such individuals in collaboration with employers.

185. Eligible individuals are defined in Section 704(F) as including individuals who receive assistance, who have ceased to receive assistance, who are at risk of receiving assistance, individuals with disabilities, and noncustodial parents who are having difficulty meeting child support obligations. *Id.* § 704(F).

of this clause.”<sup>186</sup> Some policy analysts have supported such innovative approaches, which are consistent with calls for Congress to take steps to encourage employer sponsored training efforts.<sup>187</sup> Another innovative suggestion, consistent with this proposal, is the establishment of what have been termed “Career Ladder Funds.”<sup>188</sup> A Career Ladder Fund would make training funds available via Career Training Accounts to individuals who typically do not have access to such training programs. Arguably, such accounts would encourage retention by providing incentives for employees to remain employed long enough to qualify for the training account.<sup>189</sup>

As we move more deeply into the work first environment, we must recognize that declining caseloads are not the only measure of the success of welfare reform. The goal of welfare reform should be increased financial stability and an improved lifestyle for the poor. That cannot be accomplished merely by moving former welfare recipients into low-paying jobs. Attention must be paid to retention, promotion, and advancement. EBT programs offer one very promising alternative and should be promoted by public policy initiatives incorporated into current TANF reauthorization proposals.

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186. HR 4737 § 704(IV)(aa).

187. See, e.g., SHAWN FREMSTAD ET AL., CTR. ON BUDGET & POL’Y PRIORITIES, ONE STEP FORWARD OR TWO STEPS BACK? WHY THE BIPARTISAN SENATE FINANCE BILL REFLECTS A BETTER APPROACH TO TANF REAUTHORIZATION THAN THE HOUSE BILL 10 (2002), available at <http://www.cbpp.org/8-9-02tanf.pdf>.

188. See Steve Savner et al., *TANF Reauthorization: Opportunities to Reduce Poverty by Improving Employment Outcomes*, at 12-13 (2002), available at [http://www.clasp.org/publications/tanf\\_reauthorization\\_opprtunities\\_to\\_reduce.pdf](http://www.clasp.org/publications/tanf_reauthorization_opprtunities_to_reduce.pdf).

189. *Id.* at 13.