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The Minimum Wage: An Overview of Issues Before the 106th Congress

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SUMMARY

The general minimum wage under the Fair Labor Standards Act (FLSA), set by the 1996 amendments to that statute, is now $5.15 per hour. By the late 1990s, about 80 million workers *were subject to* the wage requirements of the FLSA, though most were actually paid substantially in excess of that rate. In 1999, about 4.6 million wage and salary workers, paid on an hourly basis, earned at or below $5.15 per hour: about 1.6 million at $5.15 per hour; about 3.0 million, below $5.15 per hour.

Under the FLSA, there are a number of sub-minima which, when not in conflict with a higher standard under state and local (or other federal) law, permits payment of wages below the $5.15 per hour standard. For example, there are sub-minima for certain persons under 20 years of age, for full-time students who work no more than part-time, and for some persons with disabilities. In addition, there are other specialized pay practices allowed under the Act. And, of course, some may be paid less than the minimum in violation of law.

The $5.15 federal minimum wage is set by statute. It remains at the statutory level unless specifically altered through legislation. Some states have minimum wage standards that are higher than that of the FLSA: where coverage is overlapping, *the higher standard normally prevails*. In addition, the minimum wage for American Samoa is set through a commission appointed by the U.S. Secretary of Labor. In the Commonwealth of the Northern Mariana Islands (CNMI), the federal minimum wage is not applicable; the insular government exercises authority with respect to wage standards.

Consideration of minimum wage legislation by the 106th Congress could include a number of issues of long standing, among which may be the following. ***First***. Should the minimum wage be raised, abolished, or left alone? ***Second***. Should the minimum rate be indexed to rise (or fall) in tandem with an independent economic variable? ***Third***. Should the practice of allowing employers to count employee tip income toward their (the employer's) minimum wage obligation (the "tip credit" provision) be retained? Should it be expanded — or phased-out? ***Fourth***. What should be the future of the youth "sub-minimum" ($4.25 per hour) adopted in 1996? ***Fifth***. Has the so-called "small business exemption" under the FLSA been applied equitably? Is its threshold trigger in need of change? Is such an exemption appropriate? What impact does it have on workers employed by small firms? ***Sixth***. Should the minimum wage provisions of the FLSA be extended to the Commonwealth of the Northern Mariana Islands? Has the specialized treatment of American Samoa outlived the reason for its existence?

Numerous bills variously dealing with the minimum wage were introduced early in the 106th Congress. On February 2, 2000, the Senate passed H.R. 833 (amended to include the text of S. 625 bankruptcy legislation) which included language raising the minimum wage and making other changes in the FLSA. On March 9, 2000, the House passed H.R. 3081, a bill combining FLSA amendments with minimum wage, tax, pension, and numerous other provisions.

MOST RECENT DEVELOPMENTS

On February 2, 2000, the Senate approved H.R. 833 (amended by substituting the text of S. 625, the Bankruptcy Reform Act of 1999), which contains language that would raise the federal minimum wage by one dollar over a 3-year period and make certain other changes in the FLSA. No comparable language is contained in the House version of the legislation. On March 9, 2000, the House passed H.R. 3081, a bill raising the minimum wage by one dollar over a 2-year period, making other changes in the FLSA, and dealing broadly with taxes and other non-FLSA issues.

Oversight hearings were conducted on labor standards in the Commonwealth of the Northern Mariana Islands September 14 and 16, 1999, respectively, by the Senate Committee on Energy and Natural Resources and the House Committee on Resources. On February 7, the Senate passed S. 1052, dealing with immigration to the CNMI. On April 12, 2000, the Senate passed S. 2323, legislation dealing with employee stock options and their implications for overtime pay calculation; on May 3, the bill was passed by the House.

BACKGROUND AND ANALYSIS

The Fair Labor Standards Act (FLSA) of 1938 is the basic federal statute dealing with minimum wages, overtime pay, child labor, industrial homework (commercial production at home), and related issues. The Act (See **Table 1**) has been comprehensively amended and the minimum wage raised on eight occasions: in 1949, 1955, 1961, 1966, 1974, 1977, 1989, and 1996. Congress has dealt more narrowly with provisions of the Act at other times.

Table 1. Federal Minimum Wage Rates, 1938-2000

Public Law	Effective date	Rate
P.L. 75-718 (Enacted, 6/25/38)	October 1938 October 1939 October 1945	$.25 .30 .40
P.L. 81-393 (Enacted, 10/26/49)	January 1950	.75
P.L. 84-381 (Enacted, 8/12/55)	March 1956	1.00
P.L. 87-30 (Enacted, 5/5/61)	September 1961 September 1963	1.15 1.25
P.L. 89-601 (Enacted, 9/23/66)	February 1967 February 1968	1.40 1.60
P.L. 93-259 (Enacted, 4/8/74)	May 1974 January 1975 January 1976	2.00 2.10 2.30
P.L. 95-151 (Enacted, 11/1/77)	January 1978 January 1979 January 1980 January 1981	2.65 2.90 3.10 3.35
P.L. 101-157 (Enacted, 11/17/89)	April 1990 April 1991	3.80 4.25

P.L. 104-188 (Enacted, 8/20/96)	October 1996 September 1997	4.75 5.15

Introduction to the Fair Labor Standards Act

The general minimum wage under the FLSA, set by the 1996 FLSA amendments, is now $5.15 per hour. By the late 1990s, about 80 million workers *were subject to* the wage requirements of the FLSA, though most were actually paid substantially in excess of that rate. In 1998, about 4.4 million wage and salary workers, paid on an hourly basis, earned at or below $5.15 per hour: about 1.6 million at $5.15 per hour; about 2.8 million, below $5.15 per hour. Under the FLSA, there are a number of sub-minima which, when not in conflict with a higher standard under state and local (or other federal) law, permit payment of wages below the $5.15 per hour standard — as well as specialized exemptions from the Act's wage requirements. And, some may be paid less than the minimum in violation of law.

The $5.15 federal minimum wage is set by statute. It remains at the statutory level unless altered through legislation. Some states have minimum wage standards higher than that of the FLSA: where coverage overlaps, *the higher standard normally prevails*. In addition, the minimum wage for American Samoa is set through a commission appointed by the U.S. Secretary of Labor. In the Commonwealth of the Northern Mariana Islands (CNMI), the insular government currently exercises authority with respect to wage standards.

Scope of the Fair Labor Standards Act

Early in the century, both Congress and the states experimented with worker protection measures, frequently oriented toward children and women: child labor regulation, minimum wage, overtime pay, and restraints upon industrial home production. Most often the states acted first and Congress followed.

Following a year of debate and negotiation, P.L. 75-718 (1938) set the minimum wage at 25 cents an hour: a determination more nearly reflective of legislative compromise than of economic theory. Critics viewed the initiative as intruding upon the prerogatives of business, and potentially of negative economic impact. Proponents viewed it as a device through which to stimulate the economy to the benefit both of employers and of labor. But, some of the most impoverished workers remained beyond its scope. Coverage was generally limited to interstate commerce, defined narrowly. Workers in service and retail trades, state and local government, and agriculture, *inter alia*, were exempt. Further, the Act contained a body of carefully focused exemptions.

Through the years, there has been a constant tug-of-war between those who have sought to expand coverage and those who have sought further exemptions. Amendment of the FLSA has varied, depending upon changing Congressional perspectives; but, almost without exception, each change has made the Act more complex and, some might argue, more difficult to administer. In response, the Department of Labor (DOL) has crafted voluminous implementing regulations, supplemented by a body of "opinion letters" focusing upon specific workplace circumstances. The result, some have asserted, has been a measure of uncertainty for all but the most sophisticated labor standards specialists.

The states entered the wage/hour field alongside the federal government with labor standards of their own. The result has been separate (and not necessarily parallel) regulation of wages and hours. As might be expected, state and local minimum wage laws often differ from each other and from the federal statute. Where coverage overlaps, the higher standard normally applies. However, some workers may be covered neither by state nor federal minimum wage law. Specific coverage can be conditioned by such elements as the type of work performed, the dollar volume of business done by an employer, the age and/or student status of the worker, the duration of his employment with a particular firm (when coupled with a worker's age), any physical or mental incapacitation, or other factors. Thus, defining coverage may not always be a simple matter nor immediately clear.

Policy Issues Concerning the Minimum Wage

From a review of hearings, congressional floor debates, and the general minimum wage literature (which is extensive), some questions seem frequently to reoccur. For example:

Socio-Economic Questions with Respect to the Minimum Wage

Some see the minimum wage as an effort to assist the *working poor*: usually non-union workers with few skills and little bargaining power. Some early advocates of a minimum wage viewed it not only as socially useful but, also, as economically useful: promoting socio-economic equity, providing a floor under wages, stimulating demand for goods and services, expanding employment and, with other measures, bolstering the general economy.

Some critics of the minimum wage, conversely, view it as an inefficient approach to income redistribution — and, an unjustified intrusion into operation of *the free market*. They contend that minimum wage increases have an inflationary impact, imposing an unnecessary burden upon employers and consumers. Such critics often view the wage floor as economically harmful, especially for the unskilled and new workforce entrants who, they say, may be priced out of the job market.

Economists and policy analysts continue to disagree about the impact of changes in the minimum wage and about what the effects of the minimum wage have been. The issues are both socio-economic and ideological and have changed little since the debates of 1937-1938.

What Do We Mean by "Minimum Wage?"

When people speak of a minimum wage, they often speak in terms of "a livable wage" or "a decent wage" or "a fair wage" or suggest that the working poor ought to be able to live "in reasonable comfort" and enjoy economic "dignity." Early in the century, it was common to speak of a "living, family, saving wage." But, when individuals use such terms, is there any reasonable assurance of a consistent meaning?

In statute, the minimum wage is clearly defined: $5.15 per hour for most (but not all) covered workers. The FLSA does not translate that dollar amount into social or human terms. Is $5.15 an hour actually a "livable wage" — and, livable by what standards? Does

"reasonable comfort," for example, mean safe and adequate shelter with modest amenities? How are "safe" and "adequate" and "modest" defined?

Some may view "minimum" as the lowest wage an individual will accept (a "reservation wage") or the highest amount an employer is willing to pay. Some urge repeal of a legislated wage floor altogether — and define the "minimum" as whatever rates are set by supply and demand in a *free market* economy: i.e., a "market wage."

How "Minimal" is Minimum?

Minimum wage debates contain frequent references to the "poverty level" for a family of two or three or more. If Congress intends the minimum wage to be set at a level high enough to move a family out of poverty (as some suggest), then some measurement of family size and of total household income is necessary in assessing the adequacy of the FLSA minima. If, instead, the minimum wage is productivity-based (i.e., resting upon the contribution of the worker), then family size and non-wage income would seem irrelevant.

Under current law, a minimum wage worker, employed full-time and full-year (40 hours per week for 52 weeks at $5.15) would earn $10,712. A full-time worker, under age 20, could earn the equivalent of $8,840: after 90 consecutive days *with an individual employer*, however, his/her sub-minimum rate ($4.25 per hour) would increase to $5.15 an hour. These amounts are prior to any deductions and exclusive of any fringe benefits. **Table 2** sets forth the level of earnings regarded as a poverty threshold, at various family sizes, for eligibility for certain federal assistance programs. (The extent to which the poverty guidelines are realistic is a separate issue.)

Table 2. Poverty Guidelines, All States and the District of Columbia (2000)

Size of family unit	Poverty guideline		
	States and District of Columbia	*Alaska*	*Hawaii*
1	$8,350	$10,430	$9,590
2	11,250	14,060	12,930
3	14,150	17,690	16,270
4	17,050	21,320	19,610
5	19,950	24,950	22,950
6	22,850	28,580	26,290
7	25,750	32,210	29,630
8	28,650	35,840	32,970

Source: U.S. Department of Health and Human Services. *Federal Register*, February 15, 2000. p. 7555-7557.

Note: For family units with more than eight members, add $2,900 for each additional member. For Alaska, add $3,630, and for Hawaii, add $3,340.

Since much minimum wage work is also part-time and/or part-year, estimating actual annual income for minimum wage workers may be problematic. Similarly, choosing a wage rate that will comport to the work patterns of minimum wage earners and still provide "a living wage" may prove daunting. As well, those earning more than the statutory minimum typically receive fringe benefits in addition to cash wages: e.g., health insurance, a pension, etc. Under present law, the concept of a minimum wage is limited to a cash wage.

To Whom Should "Not Less Than" the Minimum Wage Be Paid?

FLSA minimum wage requirements have always been subject to exceptions, sometimes excluding from coverage those likely to be the most poorly paid workers. Upon what basis has Congress included or excluded workers from minimum wage protection under the FLSA? Does Congress view the "minimum wage worker" as a single individual? A parent? The solitary support for a family? Is the FLSA minimum intended to be a wage floor for all workers, urban and rural? For employees only of large firms, or for those employed by small businesses as well? *Should any non-work or non-productivity factors be taken into account when setting the wage floor* — for example, age, student status, family size, etc.?

Various social and demographic distinctions have been cited to justify minimum wage rate differentials. For example, the FLSA, under certain conditions, allows a full-time student "employed in a retail or service establishment, agriculture, or the institution of higher education that such student attends" to be paid a lower minimum wage than that required for a non-student (even for equal work) — so long as the student works only "part-time." The wage level, here, is conditioned less upon productivity than upon how the worker spends his off-duty hours: i.e., student status. Were the worker to cease being a full-time student or work more than part-time, his employer would be required to pay him at least the applicable full minimum rate. What is the rationale for paying a part-time worker less, on a per-hour basis (here, a sub-minimum rate), than a full-time worker — for the same work?

Should the minimum wage be related to economic need? If a worker has an affluent spouse (or parents), should he (or she) be payable at *a sub-minimum* rate because his (or her) combined *family income* is relatively high — and, thus, may be less economically needy? Should one who spends his wages for luxury items (tennis shoes, CD's, etc.) be paid at a lower rate than one who spends for tuition, baby formula, or elder care? Are such distinctions useful or workable?

Some may argue that younger persons, by definition, are less experienced and, therefore, less productive than "prime age" adults. This conclusion, however, may not be valid for *minimum wage type work* and, indeed, an argument can be made that for low-skilled entry-level positions, young persons may be more productive: i.e., more vigorous, more nearly satisfied with such routine activity.

Who Should Pay the Minimum Wage?

Is the minimum wage intended to be sufficient to sustain *a worker* (however defined by Congress): i.e., a single person, a breadwinner for a family? If so, should an employer be obligated to pay a wage of at least that amount — an amount that could, presumably, be affected by the assumptions built into the definition of *a worker*? If the minimum wage is not sufficient to sustain a worker (and his or her dependents, if any), then by whom should the

deficiency be paid? Should it be paid by the employer who directly benefits through utilizing low-wage employment — and, indirectly, the consumer of goods and services such workers provide? Or, should the differences be *subsidized by* the taxpayer?

In 1975, Congress established the Earned Income Tax Credit (EITC). Modified through the years, the EITC provides a tax credit to certain low-wage workers. Some laud the EITC for helping "to lift more working families above the poverty threshold and to provide a greater work incentive to low-income workers." (*Daily Labor Report* (DLR), August 3, 1993: A10.) But, the EITC can also be viewed as a subsidy, not only to workers but also to low-wage employers who may continue to pay low wages and retain any profits from their business — while tax revenues (through the credit mechanism, or through other public subsidies) assist their workers in meeting basic living costs. Thus, arguably, the routine cost of doing business is shifted from the individual employer to the taxpayer. Similarly, the EITC can be viewed as a subsidy to consumers of goods and services produced by low-wage workers. Conversely, some argue, the EITC affords firms that operate on a slim margin an opportunity to remain in business and to provide employment, even if at low wages. However, the EITC is conditioned upon the low earnings of a worker, not the marginal profitability of an employer, and makes no distinction between businesses (employers) that are struggling, economically, and those that are profitable. Some view the EITC as **a supplement to** the minimum wage, predicated upon the needs of workers; others, as **a substitute for** future minimum wage increases the cost of which would otherwise need to be paid by employers.

Similar arguments might be made about other poverty-related programs such as food stamps that allow workers to survive while working for low-wage firms. Some have questioned whether a minimum wage requirement may complicate the internal earnings/work requirements of the Temporary Assistance for Needy Families (TANF) program. Concerning the EITC, see: CRS Report 95-542, *The Earned Income Tax Credit: A Growing Form of Aid to Low-Income Workers*. With respect to the minimum wage and TANF, see: CRS Report 97-1038, *Welfare Recipients and Workforce Laws*.

A related issue flows from the Act's exemptions. For example, under the FLSA, certain qualifying small employers may be exempt from the Act's minimum wage requirements. Speaking generally, this would include firms "whose annual gross volume of business done" is less than $500,000, though individual employees of such firms, engaged in interstate commerce, may be covered under the wage/hour provisions of the Act. (In addition, the Act contains numerous specific more focused exemptions.) There has been pressure from the small business community to expand that exemption. Proponents have argued that small firms may be adversely impacted (by having to pay their workers the minimum wage) or even driven out of business. However, no test of profitability has been proposed with respect to firms benefitting from the small business exemption: it is enjoyed by prosperous and struggling businesses alike. Where small business is free from a minimum wage obligation, the question remains: How will workers, employed by small businesses, sustain themselves and, where applicable, their families? The costs of living (food, housing, transportation, health care, etc.) are not dependent upon whether a worker (as consumer) is employed by a small business or by a large firm. Further, what are the implications of a "small business exemption" with respect to competition between small firms and mid-sized firms?

General Demographics of the Minimum Wage Workforce

In 1999, about 4.6 million wage and salary workers, paid hourly rates, earned at and below the federal minimum wage of $5.15 per hour: about 1.6 million *at* the minimum rate and 3.0 million *below* the minimum. Over time, as the value (purchasing power) of the minimum wage has been eroded by inflation, fewer workers are found employed at and below the minimum rate. But, this numerical decline in the number of minimum wage workers is a reflection of a declining value of the wage floor, not necessarily of an improved economic status for low-wage workers.

In absolute numbers, according to data provided by the Bureau of Labor Statistics, persons working at or below the minimum are more likely *adults* than *youths*, women than men, white than minority group members (although a larger proportion of minority than non-minority workers are paid the minimum wage). They are also more likely to be working part-time than full-time.

Critics of minimum wage policy often point to the minimum wage worker who is a young person, working for "pin money" and being supported by a suburban middle-class family. For example, one *The New York Times* article (February 18, 1993: D2), suggested that "much of the gain from a higher minimum would go into surfboards and stereos" and that "patrons of Taco Bell would end up paying an extra dime for their chicken fajitas so that the nice college kids behind the counter could spend spring break in Fort Lauderdale." Conversely, proponents of a higher minimum wage often discuss the minimum wage workforce as largely adult and, therefore, suggestive of a more serious problem.

Statistics can be used to support either interpretation. If, for example, using 1999 data, one defines a youth as between 16 and 19 years of age, then about 30.1% of workers, paid hourly at or below the minimum wage, are youths and 69.9% are adults. If one's definition is more expansive, defining youth as between 16 and 24 years of age, then about 50.8% of persons earning at or below the minimum wage are youths and only 49.2% are adults. *For minimum wage type work*, however, the two demographic groups may well be in competition, with youth workers readily substitutable for older workers and with younger workers having an employment advantage: they can often be hired at a sub-minimum wage.

Among those hourly paid workers, at or below the general minimum rate, about 63.7% were women with about 36.3% men. Similarly, although the data are imprecise because of definitional questions with respect to race and ethnicity, about 80% of such workers may be classified as white.

In 1999, about 60.2% of those at and below the minimum wage were engaged on a part-time basis; about 39.8% as full-time workers. (Some statistical variation may result from a small number of multiple jobholders.) But, *full-time employment is not synonymous with full-year employment*. Low-wage employment may tend to be less stable than more highly compensated employment, with workers suffering involuntary joblessness or moving in and out of the labor force from discouragement or for other reasons.

Similarly, there is a problem with projecting the income of minimum wage workers to an annual figure, since many full-time minimum wage workers may not be employed on a full-year basis. There may be blocks of time when they are not working (or are not working

at the minimum wage), their annual income being altered accordingly. Beyond uncertainties about combinations of part-time or full-time, part-year or full-year employment, one must recall that the minimum wage is a cash wage. Fringe benefits earned by a minimum wage worker are likely to be less than those of more highly paid persons, widening the gap between the actual economic well-being of the minimum wage worker and others. On the other hand, minimum wage workers may have other sources of income. (An analysis, *Characteristics of Minimum Wage Workers: 1999*, prepared by the Bureau of Labor Statistics, is available upon request.)

Minimum Wage-Related Issues of the 106th Congress

In prior Congresses, a number of minimum wage-related policy issues have evolved as recurring themes. Some of those that *may* re-emerge and receive consideration by the 106th Congress include (but, certainly, are not limited to) those discussed below.

The minimum wage was last raised by the 104th Congress. Though hearings were held on the issue, no legislation was reported. Various efforts to bring legislation directly to the floor, circumventing the committee process, culminated in a floor amendment to H.R. 3448 (the Small Business Job Protection Act of 1996). A tax bill, the measure was approved by the House; the Senate accepted the House language with respect to the FLSA/minimum wage issue. The bill was signed by the President on August 20, 1996 (P.L. 104-188). *Inter alia*, it raised the minimum wage in two steps to $5.15 per hour after September 1, 1997, established a "tip credit" at $2.13 per hour, and instituted a general sub-minimum wage of $4.25 for certain persons under 20 years of age. Thus, the stage was set for future debates.

To Raise the Minimum Wage?

Proposals to raise the minimum wage have, by tradition, been controversial. They have sparked appeals on behalf of economic equity for *the working poor* and, on the other hand, evoked dire predictions of adverse impact should *the free market* be disturbed by legislating wage rate increases not justified by demand or enhanced productivity. Each time such increases have been considered since 1937-1938, economists have been arrayed on each side of the issue. Then, after an increase has been enacted, there has followed a period in which interest in low wage workers has seemed to diminish, slowly to rebuild for the next round.

Legislation: Early in the 106th Congress, the President called for an increase of $1.00 per hour in the minimum (from $5.15 to $6.15) to be implemented through a 2-year period. New wage/hour legislation has been introduced both in the House and in the Senate. **H.R. 325** (Bonior), **S. 192** (Kennedy) and **S. 8** (Daschle) provide for a series of step increases in the minimum wage: to $5.65 after September 1, 1999, and to $6.15 after September 1, 2,000. Each also extends minimum wage coverage to the Commonwealth of the Northern Mariana Islands (discussed below). The Daschle bill is an umbrella proposal that deals with a variety of other topics. On October 29, 1999, Senator Kennedy introduced an updated version of S. 192 (now **S. 1832**), changing the effective dates of the minimum wage increases. On March 27, 2000, Senator Daschle introduced another bill (**S. 2284**), again changing the effective dates of the projected minimum wage increases. **H.R. 627** (Sanders) would increase the minimum wage to $6.50 after December 30, 1999. **H.R. 964** (Quinn) would similarly

raise the minimum wage, but in three steps: to $5.55 after September 1, 1999, to $5.85 after September 1, 2000, and to $6.15 after September 1, 2001. Floor action has occurred with respect to **H.R. 3081** (Lazio) and **S. 625**. See discussion below.

On March 25, 1999, Senator Kennedy proposed an amendment to the Concurrent Resolution on the Budget (H.Con.Res. 20, S.Amdt. 195) to declare it to be the sense of the Senate that the minimum wage should be raised by 50 cents in 1999 and by 50 cents in 2000, and that the federal minimum wage be made to apply to the Commonwealth of the Northern Mariana Islands. On a point of order, the proposal was rejected by 45 yeas to 53 nays. (*Congressional Record* (CR), March 25, 1999: S3396.) On April 27 and on October 7, 1999, the Committee on Education and the Workforce, chaired by Representative Goodling, conducted hearings on the potential impact of changes in the minimum wage. No particular legislation was under consideration.

Note: On several occasions, language dealing with the minimum wage and related issues has been proposed as an amendment to non-minimum wage legislation. For example, see: **(a)** Kennedy amendment to S. 96, the "Y2K Act" (*CR*, S4327-S4330); **(b)** Kennedy amendment to S. 1429, the "Taxpayer Refund Act of 1999" (*CR*, S9896-S9897); and **(c)** Kennedy amendment to S. 625, the "Bankruptcy Reform Act of 1999" (*CR*, S11081-S11097). None of the proposed amendments were adopted. **(d)** On November 9, 1999, a further Kennedy amendment was proposed to S. 625 — and tabled; a Domenici minimum wage/FLSA amendment was approved. However, S. 625 remains under consideration in the Senate. (See discussion below.)

Representative Bonior has filed a "discharge petition." If the petition secures enough signatures, it would require that H.R. 325 (the Bonior minimum wage proposal) be called up for floor debate. See **H.Res. 301**. (*DLR*, October 6, 1999: A5-A6.)

Indexation?

The minimum wage is statutory: fixed at a specified rate until Congress alters it. The result has been interim periods during which the real value of the minimum wage has been allowed to erode. As **Table 1** shows, Congress had periodically legislated increases in the minimum wage, bringing it to $3.35 per hour on January 1, 1981. Then, it was not raised again for 9 years. In 1989, Congress mandated two further increases: to $3.80 after April 1, 1990, and to $4.25 after April 1, 1991. Thereafter, it was unchanged until the 1996 FLSA amendments mandated further increases to $4.75 after October 1, 1996, and to $5.15 after September 1, 1997. Even with the increases provided in the 1989 and 1996 amendments, the purchasing power of the minimum wage is about $2.35 below its 1968 peak value. To equal that value, it would have had to have been about $7.50 per hour early in 1999.

Some suggest that, in order to preserve a consistent purchasing power, the minimum wage ought to be *indexed*. Under such a system, the wage floor would be adjusted automatically in relation to changes, over time, in an independent economic measure or variable. The Consumer Price Index or the average hourly earnings of production workers in manufacturing have been mentioned as possible indexation standards. There are other options; none, perhaps, without deficiencies.

It is argued that indexation would bring stability to the process, providing workers with an assurance of increases and allowing employers to anticipate regular change in the wage floor, rather than being confronted with periodic higher legislated increases. Others fear that indexation would add to inflationary pressures: basing the rate upon experience rather than current economic conditions. It is also argued that continuing *direct* congressional oversight and involvement in the wage setting process may be important.

It is not clear, however, that indexation would remove Congress from the process. With indexation in place, minimum wage advocates may seek, periodically, to alter the indexation formula: to enhance economic parity for *the working poor* and to reduce the gap between the federal minimum and other wage structures. Or, since the minimum wage is a straight cash wage, some might argue for addition of a fringe benefit component — and for adjustment of that component from time to time. Further, worker and employer interests might be expected to seek indexation of the employer *tip credit*, the so-called *small business exemption*, and the various *sub-minima* — all of which are set, in varying ways, in statute.

Legislation: Bills providing for indexation were introduced early in the 106th Congress. After an initial increase in the minimum wage (to $6.50 after December 30, 1999), **H.R. 627** (Sanders) would "adjust" (index) the wage floor "by the percentage increase which is applicable to the primary insurance amount under Section 215(i) of the Social Security Act." Under **H.R. 964** (Quinn), the minimum wage be increased to $6.15 by September 1, 2001, and, thereafter, be indexed annually, "in proportion to increases in the Consumer Price Index for all urban consumers." The bill also provides that the indexed increase "shall not exceed 4% in any one calendar year" and that the minimum wage "will never fall below the previous year's level." A third bill, **H.R. 314** (Vento), would require that federal executive agency contracts and subcontracts provide for payment of not less than the poverty level for a family of four in the area in which the contract or subcontract is to be executed. The Vento bill defines *wage* to include fringe benefits such as health insurance.

The Employer "Tip Credit"

In 1966, when FLSA minimum wage and overtime pay requirements were extended to workers in the hospitality industry, Congress added "some softening provisions" — among them, *a tip credit*. (*CR*, August 26, 1966: 20793.) "To ease the impact" for employers, "the Congress permitted a tip credit system under which employers in the affected industries would pay 50% of the minimum wage to those employees who customarily and regularly received $20 [now $30] per month in tips." (H.Rept. 95-521, 95th Cong., 1st Sess., 1977. p. 31.) *A worker had to receive at least the minimum wage* in employer-paid cash wages and tips; but, if he qualified as "tipped," his employer could count the tips he received toward up to 50% of his (the employer's) minimum wage obligation.

At large, organized labor held that wages ought to be paid directly by an employer and that tips be regarded as a voluntary and irregular gratuity: i.e., a zero tip credit. Speaking generally, industry would have preferred a 100% tip credit, arguing that tips are essentially job-related: i.e., received only within the context of one's employment. Two considerations complicate the issue. *First*. Since tips are income, Social Security and other taxes are required to be charged against them. *Second*. Several state wage/hour laws preclude a tip credit. Thus, the FLSA tip credit option is void in those states.

With the 1996 FLSA amendments, Congress moved from a percentage tip credit (then 50%) to a fixed dollar amount: $2.13 per hour. Then, having set the floor upon which the credit rests, Congress raised the minimum wage. Thus, however much the minimum wage may rise hereafter (unless Congress alters the tip credit formula), employers will be allowed to pay their regularly tipped employees as little as $2.13 per hour *so long as the total of tips and cash wage equals not less than the federal minimum*. If there is a shortfall, the employer is obligated to make up the difference. *To alter the existing $2.13 floor for tip credit purposes would require specific language in addition to legislation effecting an increase in the general minimum wage*.

Legislation: In the 106th Congress, treatment of tips for wage, tax and other purposes is raised in **H.R. 1329** (Hunter), introduced on March 25, 1999, and referred to the Committee on Wages and Means. (See Representative Hunter's explanation of the measure, *CR*, March 25, 1999: E590-E591.) On May 25, 1999, Representative Bilbray introduced **H.R. 1921**, providing that the FLSA tip credit option may not be preempted by state law, and modifying income and employment tax treatment of tip income. The bill was referred to the Committee on Education and the Workforce and to the Committee on Ways and Means.

The Youth "Sub-Minimum" Wage

In the 1960s, the retail and hospitality industries (with a high concentration of minimum wage workers, often youth workers) were brought under the FLSA. At the same time, Congress cushioned the impact of this extension of coverage for employers by permitting payment of *a sub-minimum wage* to certain full-time students who worked part-time.

Employers, however, continued to seek a more comprehensive reduced wage option. Through 3 decades, they pressed the case for a general *sub-minimum wage*: a *youth opportunity wage* or, later, a *training wage* for youth. They argued that a reduced wage option would make youth workers less expensive to employ and would result in more youth persons finding employment — though at lower wages. Critics questioned what training would be given ***for minimum wage type work*** that would not routinely be given to any new hire. But, how might one document that such training, if of value and extraordinary, had actually been given? In 1989, at the urging of President Bush, Congress enacted an experimental *training wage* to sunset in 1993: an option, in practice, that was little used.

The 1996 FLSA amendments were called up as a floor amendment to tax legislation. Although the minimum wage, *per se*, was the subject of debate, little notice appears to have been paid to the "opportunity wage" provision. No hearings were held on the issue. As passed, it allowed employers to pay persons under 20 years of age $4.25 per hour "during the first 90 consecutive calendar days after such employee is initially employed by such employer." No specific training was required. The option might be useful in seasonal employment in the hospitality industry and in food services where the turnover rate for low-wage workers is traditional high. The senate accepted the House language without debate and the measure was signed by President Clinton, August 20, 1996 (P.L. 104-188).

The "opportunity wage" is set at a specific dollar amount: $4.25 per hour. *To change the youth sub-minimum/opportunity wage would require specific legislative language in addition to legislation effecting an increase in the general minimum wage*.

State Flexibility/State's Option

During the 1937-1938 debates on the original FLSA legislation, it was argued by some employers, especially from low-wage areas of the country, that a system of regional or other differentials should be built into the Act. Congress rejected the concept, opting instead for a national wage floor in covered work. Some, however, have continued to urge creation of regional/state sub-minima. The states, of course, are free to adopt standards higher than those set by Congress and many have.

In the 106th Congress, Representative DeMint introduced legislation (**H.R. 2928**) that would allow individual states to preempt the federal minimum wage under the FLSA so long as the state rate did not fall below $5.15 per hour (without regard for a higher federal rate). The total number of minimum wage workers, under H.R. 2928, could not be diminished but they could be paid at a lower rate than future federal minimum wage rates. Further, the Governor of a state would have the option of suspending "for a period of up to one year" wage rates within that state which exceed $5.15 per hour if: (a) "the State is unable to achieve work participation rates or other responsibilities" in connection with the welfare-to-work legislation, (b) "all or part of the State has experienced an increased rate of unemployment," or (c) "the State experienced an economic slowdown as measured by the gross State product." H.R. 2928 was introduced on September 23, 1999, and referred to the Committee on Education and the Workforce. See also **S. 1887** (Enzi) which provides state flexibility (in a manner somewhat different from H.R. 2928) and applies the minimum wage under Section 6 of the FLSA "to the territories and possessions of the United States (including the Commonwealth of the Northern Mariana Islands) in the same manner as such provisions apply to the States." S. 1887 was referred to the Committee on Health, Education, Labor, and Pensions. (The substance of the DeMint proposal had been, initially, added to H.R. 3081, but was dropped before that measure reached the House floor for a vote.)

Commonwealth of the Northern Mariana Islands (CNMI)

In the mid-1970s, the CNMI entered into a quasi-autonomous relationship with the United States. By the Commonwealth agreement, regulation of overtime pay, under the FLSA, is enforced by the U.S. DOL. CNMI law governs the minimum wage. In addition, although within the U.S. customs area, the CNMI controls its own immigration policy. The result has been development of industry based upon low wages and alien contract labor, the product of which carries a "Made in America" label and competes with other American-made goods. (See CRS Report RL30235, *Minimum Wage in the Territories and Possessions of the United States: Application of the Fair Labor Standards Act*.)

Through the past decade, human rights issues and labor standards in the CNMI have been the subject of DOL investigation, congressional hearings, and proposed legislation. In the 105th Congress, the Committee on Energy and Natural Resources, following hearings, voted (16 yeas; 3 nays) to report legislation co-sponsored by Senators Akaka and Murkowski that, *inter alia*, would have created a US controlled insular minimum wage structure. (See S.Rept. 105-201.) The legislation died at the close of the 105th Congress.

Legislation: In the 106th Congress, the minimum wage for the CNMI remains an issue. **H.R. 325** (Bonior), **S. 8** (Daschle), **S. 192** (Kennedy), **S. 1832** (Kennedy), and **S. 2284** (Daschle) would extend the general minimum wage under the FLSA to the CNMI. Further,

Representative Miller of California has introduced **H.R. 730**, the "United States-Commonwealth of the Northern Marianas Human Dignity Act." It would: (a) restrain the use of the "Made in USA" label in the CNMI unless sweatshop conditions were ended; (b) require that not less than the applicable FLSA minimum wage be paid in the CNMI; (c) restructure the duty-free/quota-free treatment of the CNMI in its relationship with the customs territory of the United States; (d) subject to certain specified qualifications, apply U.S. immigration law to the CNMI; (e) mandate that the Department of the Interior conduct a study of the extent of human rights and labor rights violations in the CNMI and report to the Congress; and (f) adjust certain other aspects of law. **H.R. 1621** (Franks of New Jersey) and **S. 922** (Abraham) would address the CNMI issue by prohibiting use of a "Made in the USA" label for insular products and limiting their duty-free entry into the United States.

S. 1052 (Murkowski) would restructure United States immigration policy as it applies to the CNMI under the Covenant establishing Commonwealth status. On February 7, the bill was considered by the Senate and passed under unanimous consent. (*CR*, February 7, 2000: S355-S367, S369-S373.)

On September 14, 1999, the Senate committee on Energy and Natural Resources conducted an oversight hearing on political and economic conditions in the CNMI. On September 16, 1999, an oversight hearing focusing upon labor conditions in the CNMI was conducted by the House Committee on Resources.

Note: Early in the 106th Congress, Representative Clay introduced **H.R. 90**, a bill that deals more broadly with American sweatshops. The proposal was referred to the Committee on Education and the Workforce.

Equal Pay and Related Issues

A related aspect of the FLSA wage structure is Section 6(d): the *equal pay* provision. Covered employers may not discriminate in payment of wages *within an establishment* "for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to: (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex ...." Somewhat broader (and more contentious) is the concept of *comparable worth*: a proposal to extend the mandate of equal pay, within a firm, from work that is substantially the same to work that may be different but equivalent and of comparable value. (See CRS Report 98-278, *The Gender Wage Gap and Pay Equity: Is Comparable Worth the Next Step?*; and CRS Report 95-661, *The Male-Female Wage Gap: A Fact Sheet*.)

Issues dealing with equal pay (and related concepts) have been intermittently before the Congress at least since the 1960s. In the 105th Congress, several bills were proposed that would have expanded and/or strengthened the equal pay provisions of the FLSA. While they were not adopted, the matter of equal pay (and of comparable worth) remains a subject of discussion in public policy circles and a focus of current legislative interest.

Legislation: In the 106th Congress, questions of pay equity are addressed in the "Paycheck Fairness" bills: **S. 8** and **S. 74** (Daschle) and **H.R. 541** (DeLauro). This legislation is described as amending the FLSA "to provide more effective remedies to victims

of discrimination in the payment of wages on the basis of sex, and for other purposes." **S. 121** (Feingold), "seeking to prevent the involuntary application of arbitration to claims that arise from unlawful employment discrimination based on race, color, religion, sex, age, or disability," deals not only with the FLSA but with certain civil rights and other statutes. Equal pay is also dealt with in **H.R. 872** (Markey). See **H.R. 1271** (Norton) and **S. 702** (Harkin), similar but not identical bills each titled the "Fair Pay Act of 1999."

Other Related Proposals

Other bills have been proposed in the 106th Congress that deal with minimum wage and related issues under the FLSA. **H.R. 793** (Graham) would exempt from minimum wage and overtime pay coverage licensed funeral directors and embalmers. **H.R. 1302** (Boehner) would exempt from the minimum wage requirements "any employee employed in a sales position" who meets certain specified qualifying conditions. **H.R. 1227** (Evans) and **S. 1339** (Durbin) would permit debarment or suspension from federal procurement activities of employers who violate certain labor-related statutes including the FLSA. **H.R. 3038** (Andrews) and **H.R. 3081** (Lazio) would modify minimum wage and overtime compensation requirements for certain computer professionals. **H.R. 2558** (McCollum) and **H.R. 2551** (Hoekstra) deal with prison inmate production and compensation. **H.R. 3409** (Sessions) would deny a minimum wage increase to employees whose employers provide a contribution to employee health insurance coverage of comparable value. **S. 1241** (Ashcroft) would, *inter alia*, clarify minimum wage coverage for certain professional workers. **H.R. 3540** (Isakson) and **S. 2031** (Dodd) would redefine Section 14(c) treatment of handicapped persons under the FLSA to exclude "individuals with impaired vision or blindness" from the Section's sub-minimum wage option.

Combined Minimum Wage/Tax Modification Proposals

Though most of its history, amendments to the FLSA have been vetted through the hearings process. In 1996, that procedure was side-stepped: the 1996 minimum wage amendments came directly to the floor attached to an extensive body of tax legislation. The 1996 pattern may reoccur in the 106th Congress.

Action in the House: H.R. 3081

On October 14, 1999, Representative Lazio introduced H.R. 3081, a bill to increase the minimum wage, make certain other changes in the FLSA, and amend the Internal Revenue Code "to provide tax benefits for small businesses" — though it is somewhat broader than this might suggest. The bill was referred, jointly, to the Committee on Ways and Means and to the Committee on Education and the Workforce. The Ways and Means Committee filed H.Rept., Part 1, *Wage and Employment Growth Act of 1999*, on November 11, 1999; the Committee on Education and the Workforce did not report the bill, being discharged from further responsibility on January 28, 2000. On March 9, the legislation was considered, amended to phase-in the minimum wage through a 2-year period, and passed. It was then combined with previously separate legislation dealing with taxes and other non-FLSA matters and dispatched to the Senate as a package — a single bill. On final passage, the vote was 282 yeas to 143 nays, with 9 not voting. (*CR*, March 9, 2000: H773-H902.)

In its labor standards component, H.R. 3081 provides for an increase in the minimum wage of $1 an hour phased-in over a 2-year period: to $5.65 an hour on April 1, 2000, and to $6.15 an hour on April 1, 2001. ***The legislation would also***: **(a)** expand the current minimum wage and overtime pay exemption with respect to certain computer service workers; **(b)** add new language dealing with exemption of certain sales personnel from minimum wage and overtime pay coverage; and **(c)** exempt from minimum wage and overtime pay protection "any employee employed as a licensed funeral director or a licensed embalmer." The FLSA provisions cover pages 205-209 of the GPO-PDF version of the bill. (See: CRS Report RL30003, *Modifying Minimum Wage and Overtime Pay Coverage for Certain Sales Employees Under the Fair Labor Standards Act*.)

Action in the Senate: S. 625

On November 9, 1999, as the Senate resumed consideration of S. 625, the Bankruptcy Reform Act of 1999, it took up FLSA-related amendments by Senator Kennedy and by Senator Domenici.

The Kennedy amendment called for an increase in the federal minimum wage spread over 2 years: to $5.65 on January 1, 2000, and to $6.15 after January 1, 2001. In addition, it extended full federal minimum wage coverage to the Commonwealth of the Northern Mariana Islands. (Senate Amendment No. 2751) Following debate, the Senate voted to table the Kennedy amendment: 50 yeas to 48 nays.

The Domenici amendment would in increase the minimum wage over a 3-year period to $5.50 after March 1, 2000, to $5.85 after March 1, 2001, and to $6.15 after March 1, 2002. However, the Domenici amendment included a second provision: altering the definition of "regular" when calculating a worker's overtime pay (i.e., one and one-half times one's *regular* rate of pay) **to exclude** various incentive payments (i.e., bonuses, commissions, productivity or quality awards). The latter change has been urged by employers and opposed by workers. The issue of the Northern Marianas was not addressed in the Domenici package.

On November 9, the Senate approved the Domenici amendment by 54 yeas to 44 nays. (*CR*, November 9, 1999: S14340-S14353.) On February 2, 2000, the Senate approved H.R. 833 (after substituting the text of S. 625) by a vote of 83 yeas to 14 nays. There is no comparable wage/hour language in the House version of the legislation. (*Washington Post*, February 3, 2000, p. A1.) On various occasions, the Senate has attempted to reach an agreement that would bring minimum wage legislation to the floor.

Continuing Action

On March 27, 2000, Senator Daschle (with Senator Kennedy, and others) introduced S. 2284, a bill to raise the minimum wage over two years (to $5.65 after April 1, 2000, and to $6.15 after April 1, 2001), and to extend FLSA minimum wage coverage to the Mariana Islands. The bill was read twice and placed on the Senate Legislative Calendar under General Orders: Calendar No. 472. Were the Congress to take further action on the minimum wage issue, it could (among other options) proceed with either S. 625 or H.R. 3081 — bills that contain language dealing with the minimum wage but which also contain a range of other provisions — or it could call up S. 2284, a more narrowly focused measure. But, it could

also move in another direction altogether — or take no further action on the minimum wage issue during the 106th Congress.

During consideration of H.Con.Res. 290 (April 7, 2000), the Senate again took up the minimum wage issue. First, Senator Kennedy proposed, as the sense of the Senate, that the minimum wage should be increased by $1 an hour over a 2-year period. Second, Senator Nickles proposed, as the sense of the Senate, that the Domenici amendment to S. 625 (discussed above) be reaffirmed. On the Nickles amendment, the vote was 51 yeas to 49 nays. Senator Kennedy then moved to amend the Nickles amendment by changing the 3-year phase-in period for minimum wage increases to a 2-year period. On the Kennedy amendment, the vote was 51 yeas to 48 nays. (*CR*, April 7, 2000: S2406-S2408.) As the resolution was reported from conference, the language had reverted to a simple affirmation that "any increase in the minimum wage should be accompanied by tax relief for small businesses." (*CR*, April 12, 2000: H2235-H2236.)

Stock Options and Overtime Pay

Under the FLSA, covered workers employed more than 40 hours per week are required to be paid at a rate of 1½ times their *regular rate* of pay. But, are benefits such as "stock options" to be calculated as part of that *regular rate* for overtime pay purposes? On April 12, 2000, the Senate approved a bill (**S. 2323**, McConnell and Dodd) to amend the FLSA to make clear that stock options are not to be counted as part of a worker's *regular rate* and to clarify the conditions under which that exemption obtains. Further, Senator McConnell said, the bill "includes a broad 'safe harbor' that specifies that employers have no liability because of any stock options or similar programs that they have given to employees in the past." The bill passed with 95 yeas and 5 not voting. (*CR*, April 12, 2000: S. 2575-S2586.) Companion legislation (**H.R. 4109**, Ballenger; and **H.R. 4182**, Cunningham) has been introduced in the House. On May 3, S. 2323 was called up in the House under suspension and was passed: yeas, 421; nays, 0; not voting, 13. (*CR*, May 3, 2000: H2437-2449, H2467.
See also CRS Report RL30542, *Stock Options and Overtime Pay Calculation under the Fair Labor Standards Act*.)