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The Fair Labor Standards Act: Minimum Wage in the 109th Congress

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Summary

The Fair Labor Standards Act (FLSA) is the primary federal statute in the fields of minimum wage, overtime pay, child labor, and related subjects. In the 109th Congress, legislation in a variety of forms has been introduced that would modify the act in each of these areas, and that would extend the act's minimum wage protections to workers in the Commonwealth of the Northern Mariana Islands (CNMI).

This report deals only with the minimum wage aspects of the act. Other components of the FLSA are considered in separate CRS products.

In 1938, following several decades of discussion and research in academic and policy circles, Congress adopted the FLSA. The act is a living statute that Congress has variously modified through the years in response to altered public policy and workplace realities. It has undergone major amendment on eight separate occasions, in addition to periodic less extensive adjustments.

Currently, the general minimum wage is $5.15 an hour, the last adjustment having taken place in September 1997. There are, however, a number of specialized minima: for example, a sub-minimum wage for youth, special calculation of the rate as it affects *tipped* employees, and a reduced wage structure for persons with disabilities. Through the past several Congresses, bills have been introduced that would alter the minimum wage or change aspects of it. For example, in the 109th Congress, see H.R. 1091, H.R. 2429, H.R. 2748, H.R. 3413, H.R. 3732, H.R. 4505, H.R. 5368, H.R. 5550, S. 14, S. 846, S. 1062, and S. 2725, plus several floor amendments that would similarly affect the minimum wage.

Through the years (from the initial enactment of the FLSA in 1938 up to 1996), minimum wage legislation had been introduced and referred to the committees of jurisdiction for analysis and, ultimately, for a possible report. It was regarded as a singular piece of legislation. In 1996, the measure emerged as a rider to a more general economic measure. Thus, some have asserted, it has now become *traditional* (based upon the 1996 enactment) that an increase in the federal minimum wage should be accompanied by general tax breaks and other similar considerations for industry.

There are no time constraints (no expiration dates) built into the FLSA. Congress is not required to take up wage/hour legislation at all — though social and economic pressure (and other policy concerns) may render such action appropriate.

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The Fair Labor Standards Act (FLSA) of 1938, as amended, is the primary federal statute in the area of minimum wages and certain related labor standards issues: e.g., overtime pay and child labor.[1] Various bills related to the FLSA have been introduced in the 109th Congress. Thus far, none of these measures has been enacted.

There are no expiration dates embedded within the FLSA, and thus, Congress is under no obligation to act on amendments to the statute — though the declining value of the minimum wage could provide an impetus for action. Were Congress to take up minimum wage legislation, it could focus narrowly upon an increase in the base rate: raising the floor above the current $5.15 per hour level. But, it could act more expansively, dealing with a variety of minimum wage-related issues and, perhaps, revising certain other aspects of the act such as its overtime pay or child labor provisions.

Some, during recent years, have urged that changes in wage/hour standards should be coupled with tax and other benefits for business. While such linkage seems to have become a popular issue for discussion, there is no structural reason to proceed in that manner. Broadening the scope of the FLSA legislation (including overtime pay, child labor, and assorted other economic issues within a single comprehensive bill) *could* reduce the likelihood that any measure in this area would ultimately be adopted; but conversely, depending upon the overall content of such a package, it *could* expand the measure's appeal.[2]

Introduction

The FLSA is an umbrella statute that deals with a series of labor standards issues. These fall, roughly, into three categories: *first*, minimum wage (Section 6 of the act); *second*, overtime pay (Section 7); and, *third*, child labor (Section 12). Section 3 of the act defines the concepts used throughout the statute and, thereby,

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[1] For a quick summary of current proposals relating to the FLSA, see CRS Report RL32901, *Minimum Wage, Overtime Pay, and Child Labor: Inventory of Proposals in the 109th Congress to Amend the Fair Labor Standards Act*, by William G. Whittaker.

[2] Proponents and opponents of an increase in the minimum wage have, variously, discussed the potential impact of such a approach — pro and con. Some view additional provisions (for example, "comp time" or an expanded "small business exemption") as an appropriate strategy. Others regard such collateral measures as a *poison pill* intended to scuttle minimum wage revisions.

limits or qualifies its wage/hour and child labor provisions. Traditionally, Congress has mandated broad general coverage and, then, has specified select groups or categories of workers who are not to be covered by the act. Section 13 provides a body of exemptions (or special treatment) for segments of industry and/or groups of workers. In the latter areas, the Secretary of Labor has been granted wide interpretive powers — though these have not been without limit.

While the act is often treated as an integrated unit, it can also be approached in terms of its three general component parts — and of individual sub-units of each. This report focuses narrowly upon the federal minimum wage. Other related issues (e.g., child labor and overtime pay) are considered separately in other CRS products.[3]

Under the FLSA, Congress has established a basic minimum wage (since 1997, $5.15 per hour) that must be paid to most covered workers. However, the level of the wage floor may vary from one group of workers to another with various exceptions and sub-minima built into the statute. Thus, the issue may be *which* minimum wage rate is applicable and *to which* workers it should be applied.[4]

Through the past century, the minimum wage (alone or with other wage/hour issues) has sparked partisan comment and assertion. The issue has not been solely whether there is an appropriate federal role in wage/hour regulation (that continues to be debated), but what that role ought to be. At what level should the minimum wage be set? Should it be indexed? How broad should minimum wage coverage be? And if there are exemptions (which there are), upon what foundation should they rest? For example, should small firms be able to pay their workers at a lower rate than large firms? Should wage rates be productivity-based or respond to the needs and personal lifestyles of the workers involved? Might the wage floor depend upon an employee's nonwork status: e.g., whether the worker is the sole earner in a family, a secondary earner, or a student? As under current law, should the rate vary with the age of the worker — even where the work performed and productivity level among workers may be comparable?[5]

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[3] See, for example, CRS Report RL31501, *Child Labor in America: History, Policy and Legislative Issues*; and CRS Report RL31875, *Compensatory Time vs. Cash Wages: Amending the Fair Labor Standards Act?* (the comp time issue has not reemerged as free standing legislation in the 109th Congress), both by William G. Whittaker. See, also, CRS Report RL30927, *The Federal Minimum Wage: The Question of Indexation*, by Gerald Mayer, and CRS Report 98-278, *The Gender Wage Gap and Pay Equity: Is Comparable Worth the Next Step?*, by Linda Levine.

[4] Several aspects of minimum wage coverage may need to be taken into account. *First*: Many states have state-mandated minimum wage standards. These may be roughly parallel to the federal minimum wage: they need not be — and often are not. *Second*: Not all workers are covered under the FLSA — nor under state wage/hour standards. These coverage patterns (including patterns of exemption) need to be taken into account when considering the potential impact of changes in federal wage/hour law. *Third*: Because of variations in coverage (with extensive administrative rules governing implementation and enforcement of wage/hour law), it may be perilous to suggest who is (or is not) covered by the requirements of statute. Too many variables affect coverage to allow easy assessment.

[5] Under current law, there are special rates for youth workers, for full-time students who

(continued...)

Minimum Wage: Background and Comment

When the FLSA was enacted in 1938, its coverage was largely limited to industrial workers engaged in interstate commerce. Retail, service, and agricultural workers, generally, were not protected — nor were persons employed by state and local governments. On eight separate occasions through the years (see **Table 1**), the act has undergone general amendment, which has normally included language dealing with overtime pay and/or child labor, as well as with modification of the wage floor. On numerous occasions, the FLSA has been subject to more narrowly focused single purpose amendment.

Table 1. Federal Minimum Wage Rates, 1938-2006

Public law	Effective date	Rate
P.L. 75-718 (Enacted June 25, 1938)	October 1938 October 1939 October 1945	$0.25 0.30 0.40
P.L. 81-393 (Enacted October 26, 1949)	January 1950	0.75
P.L. 84-381 (Enacted August 12, 1955)	March 1956	1.00
P.L. 87-30 (Enacted May 5, 1961)	September 1961 September 1963	1.15 1.25
P.L. 89-601 (Enacted September 23, 1966)	February 1967 February 1968	1.40 1.60
P.L. 93-259 (Enacted April 8, 1974)	May 1974 January 1975 January 1976	2.00 2.10 2.30
P.L. 95-151 (Enacted November 1, 1977)	January 1978 January 1979 January 1980 January 1981	2.65 2.90 3.10 3.35
P.L. 101-157 (Enacted November 17, 1989)	April 1990 April 1991	3.80 4.25
P.L. 104-188 (Enacted August 20, 1996)	October 1996 September 1997	4.75 5.15

With the original enactment, Congress was feeling its way: i.e., learning how to deal with constitutional impediments to federal involvement in private sector labor standards regulation. Coverage patterns during the 1940s and 1950s remained relatively flat, with only minor adjustment. Then, in the 1960s and 1970s, there was

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[5] (...continued)
work no more than part-time, for disabled persons, and for others. That these rates (except nominally for the disabled) are related to productivity may not be entirely clear.

substantial expansion of coverage with intermittent increases in the level of the minimum wage. Since 1977, change has been restricted *largely* to increases in the basic wage rate and modification of existing FLSA provisions. Amendment has often been contentious, conditioned by economic considerations and political compromise.[6] Generally, expansion of coverage has been opposed by employers and supported by workers — reflecting, in the short term, who benefits from an increase in the minimum wage and upon whom the costs fall.

The basic federal minimum wage rate is statutory and will remain at its current level until Congress takes specific action to alter it. Again, Congress has no specific obligation to revisit the minimum wage and thus *may* not do so. However, over the long term, congressional inaction could have the effect of *repeal through attrition*. Fewer and fewer workers would likely earn the minimum wage (its value having been reduced through inflation), and the requirement, eventually, could become relatively meaningless. Conversely, Congress could index the minimum rate, assuring a constant real value without further congressional intervention.

Some states have a minimum wage requirement that is higher than the FLSA requirement. Where that is the case, *the higher standard normally prevails*. (See **Table 2**.) In addition, the minimum wage for American Samoa is set through a commission appointed by the U.S. Secretary of Labor, and has been, generally, lower than the otherwise applicable federal rate under the FLSA. In the Commonwealth of the Northern Mariana Islands (CNMI), the insular government currently exercises authority with respect to wage standards — an issue of ongoing contention.

General Policy Concerning the Minimum Wage

For the past century, the minimum wage has been a focus of public policy discussion. Advocates for each side in the debate — academicians (notably, economists), policy analysts, and persons from the media — have argued with great vigor. Although the literature is extensive, the result is by no means definitive. FLSA historian Willis J. Nordlund, writing in the late 1990s, observes that

> ... one would presume that enough was known about the program to formulate a defensible strategy depicting effects of program change. This is not the case. There is no more agreement about these effects today than there was at the program's inception [with passage of the FLSA] fifty years ago.[7]

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[6] See *Congressional Record* 30, 1937, p. 7876. More generally, see CRS Report 89-568, *The Fair Labor Standards Act: Analysis of Economic Issues in the Debates of 1937-1938*, by William G. Whittaker (out of print but available from the author).

[7] Willis J. Norlund, *The Quest for a Living Wage: The History of the Federal Minimum Wage Program* (Westport, Conn.: Greenwood Press, 1997), p. xvii.

Table 2. Status of State Minimum Wage Rate (as of spring 2006)

Jurisdictions with minimum wage rates *higher than* the federal FLSA		
Alaska ($7.15)	Illinois ($6.50)	Oregon ($7.50)
California ($6.75)	Maine ($6.50)	Rhode Island ($7.10)
Connecticut ($7.40)	Maryland ($6.15)	Vermont ($7.25)
Delaware ($6.15)	Massachusetts ($6.75)	Washington ($7.63)
District of Columbia ($7.00)	Minnesota ($6.15)	Wisconsin ($5.70)
Florida ($6.40)	New Jersey ($6.15)	
Hawaii ($6.75)	New York ($6.75)	
Jurisdictions with minimum wage rates *at the same level* as the federal FLSA ($5.15)		
Arkansas	Missouri	Oklahoma
Colorado	Montana	Pennsylvania
Georgia	Nebraska	Puerto Rico
Guam	Nevada	South Dakota
Idaho	New Hampshire	Texas
Indiana	New Mexico	Utah
Iowa	North Carolina	Virginia
Kentucky	North Dakota	West Virginia
Michigan	Ohio	Wyoming
Jurisdictions with minimum wage rates *less than* the federal FLSA		
American Samoa[b] (administered)	Kansas ($2.65)	Virgin Islands ($4.65)
Jurisdictions with *no* state minimum wage requirement		
Alabama	Louisiana	South Carolina
Arizona	Mississippi	Tennessee

Source: U.S. Department of Labor, Wage and Hour Division, Employment Standards Administration, [http://www.dol.gov/esa/minwage/america.htm], Apr. 3, 2006.

a. Coverage patterns vary from one jurisdiction to another. Some jurisdictions have a structured minimum wage system (i.e., different rates for various industries, sizes of firms, etc.). The table refers to *the highest standard applicable* under the law of the jurisdiction. In some jurisdictions, the rate (but not necessarily the pattern of coverage) is linked to the federal FLSA.

b. For American Samoa, the minimum wage rate is set administratively, and varies from one industry to another at rates lower than the federal minimum wage.

The available data and analysis, it would seem, are fragile and often contradictory. Still, critics and proponents of a minimum wage floor continue to praise and to critique the concept in unusually strong and, often, unqualified terms.

Few questions in the continuing debate are new. They are raised with little agreement concerning basic concepts. Many of the assumptions are implicit: not fully enunciated and, perhaps, not even recognized. Minimum wage debate, perhaps more than other economic issues, may have a psychological component, reflecting community values and fears. There continues to be an outpouring of minimum wage literature — some of it analytical but much of it political advocacy.

The Socio-Economic Context of Minimum Wage. The minimum wage is often presented as a mechanism through which to assist the *working poor*: usually a non-union worker with few skills and little bargaining power.[8] Some advocates of a minimum wage view 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, have viewed it as an inefficient approach to income redistribution — and an unjustified intrusion into the operation of *the free market*. They contend that minimum wage increases have an inflationary impact, restructure employment patterns, may reduce aggregate employment, and impose 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, critics 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.[9]

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[8] Concerning early interest in the minimum wage, see Lawrence B. Glickman, *A Living Wage: American Workers and the Making of Consumer Society* (Ithaca, Cornell University Press, 1997); George E. Paulsen, *A Living Wage for the Forgotten Man: The Quest for Fair Labor Standards, 1933-1941* (Selinsgrove, PA, Susquehanna University Press, 1996); David A. Moss, *Socializing Security: Progressive-Era Economists and the Origins of American Social Policy* (Cambridge, Harvard University Press, l996); and Jerold L. Waltman, *The Politics of the Minimum Wage* (Urbana, University of Illinois Press, 2000). In her study, *Civilizing Capitalism: The National Consumers' League, Women's Activism, and Labor Standards in the New Deal Era* (Chapel Hill: The University of North Carolina Press, 2000), Landon R. Y. Storrs discusses both the origins of minimum wage legislation and the socio-economic/reform context from which the federal legislation emerged.

[9] See, for example "New Minimum Wage Research: A Symposium," *Industrial and Labor Relations Review*, Oct. 1992, pp. 3-99; "The Minimum Wage: Some New Evidence" (a symposium) *Journal of Labor Research*, winter 2002, pp. 1-67; David Card and Alan B. Krueger, *Myth and Measurement: The New Economics of the Minimum Wage* (Princeton: Princeton University Press, 1995); and Oren M. Levin-Waldman, *The Case of the Minimum Wage: Competing Policy Models* (Albany: State University of New York Press, 2001).

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

If one thinks in terms of a "family" wage, how should the family be structured? Should both spouses engage in paid work? Should one spouse reside at home: his or her companion earning the livelihood for the *family*? Might there be children in the household? If so, how many: two or four or six? See, for example, the calculations in **Table 3**.

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 (support, for example, from other household members or through sources of income not related to the individual's employment) would seem irrelevant.[10]

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 and paid at the statutorily permissible sub-minimum rate ($4.25 per hour), could earn $8,840 — for the same hours of work and for performing the same duties. After 90 consecutive days *with an individual employer*, however, his or her sub-minimum rate would ordinarily increase to $5.15 an hour.[11] These amounts are

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[10] Some may argue that basing a wage rate on the *productivity* of the worker may be, itself, misleading since in large measure, worker productivity is based upon the skills of management and upon management-controlled elements such as work organization, availability of appropriate equipment, morale, ambience, and other similar factors.

[11] This suggests some of the problems in calculating minimum wage earnings. While a worker under age 20 can be paid $4.25 per hour through the first 90 consecutive days with any employer, his wage after 90 days would have to be increased to the full $5.15 per hour

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prior to any deductions and exclusive of any fringe benefits. **Table 3** sets forth the level of income 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 can be, and has been, debated. The guidelines have no *direct* connection with the federal minimum wage, but they are frequently cited in discussions of the minimum wage and are used by some analysts as a measure of the adequacy of the wage floor.

Table 3. Poverty Guidelines, All States and the District of Columbia (2006)

Size of family unit	Poverty guideline		
	States and District of Columbia	*Alaska*	*Hawaii*
1	$9,800	$12,250	$11,270
2	13,200	16,500	15,180
3	16,600	20,750	19,090
4	20,000	25,000	23,000
5	23,400	29,250	26,910
6	26,800	33,500	30,820
7	30,200	37,750	34,730
8	33,600	42,000	38,640

Source: U.S. Department of Health and Human Services, "Annual Update of the HHS Poverty Guidelines," 71 *Federal Register* 3848-3849, Jan. 24, 2006.

Note: For family units with more than eight members, add $3,400 for each additional member. For Alaska, add $4,250, and for Hawaii, add $3,910. Poverty guidelines are not defined for Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, or other U.S.-related insular jurisdictions.

Since much minimum wage work is also part-time and/or part-year, estimating actual annual income for minimum wage workers may be problematic. Some workers, normally earning the minimum wage, find, either through their own designs (school and sports, for example) or through the absence of minimum wage-type work, that their year-long income may fall substantially below an annualized figure. Similarly, choosing a wage rate that will comport with the work patterns of minimum wage earners and still provide "a living wage" may prove daunting. Further, while

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[11] (...continued)
— unless he moved on to a second, third, or fourth employer, or dropped out of work for a period of time and broke the "consecutive" days pattern. Were he a full-time student working no more than part-time, he could be subject to a different sub-minimum wage option. Were he partially disabled and employed under Department of Labor (DOL) certification, he could be paid at any rate found to be commensurate with his productivity — however low that might be.

some minimum wage work may provide a fringe benefit component, such fringes are often not available until a worker has been engaged for a minimal period of time (a period that a minimum wage worker quite possibly cannot reach). Minimum wage work often provides only cash income and little more. 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?[12]

When a Member of Congress (or that body collectively through legislation) speaks of the "minimum wage worker," to whom is reference made? Is the minimum wage worker viewed as a single individual? A parent? A *single* parent? The sole economic support for a family? A teenager? 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 (a youth or senior citizen), student status, or family size? Whom does a legislator have in mind when setting the federal minimum wage at, for example, $5.15 per hour? Is that mental image consistent with the demographic reality of the minimum wage workforce?

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" (defined by the statute). The wage level, here, may be conditioned less upon productivity than upon how the worker spends his off-duty hours: i.e., that he is a student and is enrolled in academic course work. If he drops out of school but keeps his job, the law requires that his hourly rate of pay be raised to at least the full *applicable* minimum. Similarly, even while remaining an employed full-time student, if his hours of work increase to more than part-time, he must be paid at the full applicable minimum rate. Applicability of the student sub-minimum rate (Section 14(b)) is dependent upon maintenance of full-time student status and not more than part-time employment. 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 — even for the same work performed under the same conditions and equally well? What assumptions about "need" and "productivity" are implicitly built into the student sub-minimum wage option — and are these assumptions valid?

Some may argue that this wage structure creates an incentive for young persons to leave school or to shift their primary focus from study to work. The rationale for sub-minimum wage treatment, however, is that it may offset the problems young

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[12] See, for example, discussion during the 1938 debate on the original FLSA. *Congressional Record*, June 14, 1938, p. 9257.

persons have in finding work that will match their academic schedules: i.e., making them cheaper and, thus, more attractive to employ.

It can be argued 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. What criteria should be taken into account with respect to the elderly (who *may* be less — or more — productive in minimum wage-type work) or the disabled?

Should minimum wages be needs-based or productivity-based? 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? Should one who spends his wages on luxury items (designer clothes, CDs, beer and pizza) be paid at a lower rate than one who spends his earnings on tuition, baby formula — or for food, rent, or transportation? If needs-based, then should the minimum wage be pegged to family size: the more children, the higher the minimum wage rate? Are such distinctions useful or workable and do they lend themselves to public policy formulations?

Who Should Pay the Minimum Wage? How the minimum wage worker is defined and the intent of Congress in establishing/maintaining a federal minimum wage are critical to consideration of *by whom* the minimum wage ought to be paid.

Speaking Generally. Is the minimum wage intended to be sufficient *to sustain a worker* (however defined by Congress): i.e., a single person without dependents or a sole breadwinner for a family? If so, should *an employer* be obligated to pay a wage of at least the amount needed to sustain the worker (and, where applicable, his or her dependents) — an amount that could, presumably, be affected by the assumptions built into the definition of *a minimum wage worker*?[13]

If a productivity-based minimum wage is not sufficient to sustain a worker (and his or her dependents, if any), then by whom (if anyone) should the deficiency be made up? Should it be paid by the employer who directly benefits by paying low wages (through utilizing the services of a low-wage workforce) — and, indirectly, by the consumer of the goods and services such low-wage workers provide — through an increase in the minimum wage rate? Or should the difference between one's wage and one's need *be subsidized by* the taxpayer?

The Minimum Wage -v.- the EITC. In 1975, Congress established the Earned Income Tax Credit (EITC), which, as amended, provides a tax credit to certain low-wage workers. Beginning as a relatively small program (about 6.2

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[13] Since workers compete with each other in the labor market, paying a needs-based rate could encourage an employer to hire single persons without dependents and, thus, to keep labor costs (wages) low: to avoid hiring persons who are married with children. Similarly, youth workers, paid at a sub-minimum rate, are often thought to be, potentially, economic substitutes for older workers who must be paid a full minimum scale.

million recipients), it has since expanded, with various additions, to about 22.1 million tax filers (2003). To qualify, a family must reside in the United States (unless absent for military duty). While oriented toward persons with children, some childless adults may also qualify. But the program can also be complex and has been, historically, subject to significant over-claims (or, on some occasions, perhaps, under-claims) of benefits.[14]

Some laud the EITC for helping "to lift ... working families above the poverty threshold and to provide a greater work incentive to low-income workers."[15] But the EITC can also be viewed as a wage supplement, not only for workers but also for low-wage employers who may continue to pay low wages to their workers and profit from utilization of such low-wage employees 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 general taxpayer. Similarly, the EITC can be viewed as a subsidy to the consumers of the 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 conditional upon the low earnings of the worker, not the marginal profitability of the employer. It makes no distinction between businesses (employers) that are struggling economically and those that are doing well. Speaking generally, some view the EITC *as a supplement to* the minimum wage, predicated upon the needs of a worker rather than upon his productivity; others, *as a substitute for* future minimum wage increases. Employer/business acceptance of the EITC and hostility toward the minimum wage *may* reflect an economic reality: with the EITC, the taxpayer subsidizes the employer's wage costs; with the minimum wage, those costs fall directly upon the employer or businessperson and indirectly upon the consumer.

Small Businesses. The FLSA's small business exemption allows certain qualifying employers to be exempt from the FLSA minimum wage requirements. In general (though the exemption is complex), this could 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 individually. In addition, the act contains numerous more narrowly focused exemptions.

Over time, there has been pressure from the small business community to expand its exemption. Proponents have argued that small firms may be adversely affected — or even driven out of business — by having to pay their workers the minimum wage. However, some may argue that no test of profitability has been proposed with respect to firms benefitting from the small business exemption: it is

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[14] "A childless adult must be at least 25 years of age, but not more than 64 years of age to be eligible for the EITC, and cannot be claimed as a dependent on another person's tax return." See CRS Report RL31768, *The Earned Income Tax Credit (EITC): An Overview*, and CRS Report RS21477, *The Earned Income Tax Credit (EITC): Policy and Legislative Issues*, both by Christine Scott.

[15] Bureau of National Affairs, *Daily Labor Report*, Aug. 23, 1993, p. A10.

enjoyed by prosperous and struggling businesses alike. But, where small businesses are free from a minimum wage obligation, the question remains: How will workers employed by small businesses sustain themselves and, where applicable, their families? Further, what are the implications of a "small business exemption" with respect to competition between small firms and mid-sized or larger firms?

Needs of the Minimum Wage Worker. Much of the debate over increasing the minimum wage has focused upon the low-wage worker. Does he (or she) *really need* the increased income? Is he productive enough to justify (to earn) a higher minimum wage? Does he have other sources of income: for example, a working spouse or an employed parent? How will the worker spend his earnings: for essentials or for luxuries? In short, is he (or she) merely working for *pin money*?[16]

Comparable issues have not been raised about business. Does the small businessperson *really need* the increased profits from employing low-wage (sub-minimum wage) workers? Could he (or she) reasonably pay a higher wage? When assertions are made with respect to the limited resources of an enterprise, should a *means test* be prescribed for such employers?

General Demographics of the Minimum Wage Workforce

Data concerning the minimum wage workforce are difficult to develop with precision. Not everyone is covered by the minimum wage. Some low-wage workers may be paid at or below the federal minimum wage; but because of exemptions built into the statute, they may not be affected by the changes that Congress may make. In such cases, their pay may continue (at whatever levels) without being influenced by Congressional action. Conversely, some employers may choose to pay the statutory minimum because it is a convenient and generally recognized basic rate for low-wage employment — even where their workers may not be subject to the act's minimum wage provisions.

In addition, persons employed at or below the federal minimum wage may change jobs (and economic status) with some frequency, moving into and out of work in response to non-work-related factors: school, pregnancy or, perhaps, a change in marital status. Some workers may be multiple jobholders.[17]

Not all workers *covered* under the FLSA are covered in precisely the same way. Thus, statistical data in this area may be somewhat imprecise and we may, often, be speaking of *the low-wage worker* rather than *the minimum wage worker* covered under the FLSA.

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[16] The term, *pin money*, historically, was frequently used with respect to women's wages: i.e., to provide *a little something extra* but not for the *essentials* of a household. Increasingly, the term is now used, mostly disparagingly, with respect to youth workers who have various alternative sources of income and do not really *need* to be employed — or who are doing so as a lark.

[17] Surveys of income *may* collect information only with respect to a worker's main job.

Who Are the Minimum Wage Workers? In 2005, about 1.882 million workers, paid at hourly rates, earned at or below the federal minimum wage of $5.15 per hour: about 479,000 were paid *at* the minimum rate and about 1.403 million were paid *below* the minimum.[18] These are workers who are 16 years of age or older.

In absolute numbers, according to data provided by the Bureau of Labor Statistics (BLS), persons working at or below the minimum are about as likely to be adults as youth (see the discussion below), more likely to be female than male, and more likely to be white than of another race. Further, persons working at or below the minimum wage are more likely to be working part-time than full-time.

Critics of the minimum wage often point to a minimum wage worker who is a young person, working for "pin money" and being supported by a suburban middle-class family. Conversely, proponents of a higher minimum often view the low-wage workforce as largely adult and, thus, suggestive of more serious needs.

Statistics can be used to support either interpretation. If, for example, using 2005 data, one defines a youth as someone between 16 and 19 years of age, then about 26.1% of workers, paid hourly at or below the minimum wage, are youths and about 73.9% are adults. If one's definition is more expansive, defining youth as between 16 and 24 years of age, then about 53.3% of persons earning at or below the minimum wage are youths and only 46.7% are adults. Thus, even with an expansive definition of youth (16 to 24 years of age), close to half of the minimum wage/sub-minimum wage workforce is 25 years of age or over.[19]

For minimum wage type work, 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. Even where covered by minimum wage requirements, youth workers may often, legally, be hired at a sub-minimum wage — and, often, at hours of work (fragmented part-time employment) that could not sustain a family or even a single adult.[20]

Among hourly workers, paid at or below the general minimum rate, about 65.6% were women and about 34.4% men. Although the data are imprecise because

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[18] About 75.6 million workers, out of a civilian noninstitutional workforce of around 150 million, were paid hourly rates in 2005.

[19] It is difficult to assess needs, in the context of minimum wage work; but one might speculate that persons who continue to be employed in very low-paying jobs, over time, may have a pressing need for the income earned.

[20] In addition to their legally allowable lower wage rate, other arguments can be made for the competitive advantages of youth workers. They may have more energy than older workers and may be more flexible. They are normally short-term employees who do not join unions, do not vest in pension programs, do not earn vacation benefits, and are less likely to be ill or suffer job-related strains that one might associate with long-term employment or age. Conversely, the argument can be made that they are less disciplined, have fewer skills (though few skills are required for minimum wage-type work), are less dependable, and may be less acclimated to the culture of the world of work.

of definitional questions with respect to race and ethnicity, it is clear that the majority of workers earning at or below the federal minimum wage are white.[21]

In 2005, about 59.8% of workers at and below the minimum wage were employed on a part-time basis; about 39.9% were full-time. Some 71.1% of part-time workers were female. (Some statistical variation may result from a small number of multiple jobholders.) 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 because of discouragement, quitting to seek better wages and working conditions, or for other personal reasons.

Full-time employment is not synonymous with full-year employment. Estimating the annual income of minimum wage workers may be problematic since many full-time minimum wage workers may not be employed on a full-year basis. There may be periods when they are not working (or not working at the minimum wage).

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 economic well-being of the minimum wage worker and others. On the other hand, minimum wage workers may have other sources of income.[22]

The Size of the Minimum Wage Workforce. In 2005, as noted above, there were roughly 1.882 million workers, paid at hourly rates, who earned at or below the federal minimum wage of $5.15 per hour. They constituted only about 2.5% of hourly paid workers from an aggregate of about 75.6 million hourly paid workers. This figure constitutes the smallest percentage of persons earning at or below the minimum wage in the United States in recent times.[23] (See **Table 4**). An important question is: Why?

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[21] BLS divides the low-wage workforce into "white," "black," and "Asian" within the context of race and provides a separate classification of "Hispanic or Latino." The various shadings of color are becoming increasingly difficult to categorize. Concerning this classification, see Mary Bowler, et al., "Revisions to the Current Population Survey Effective January 2003," *Employment and Earnings*, Feb. 2003, pp. 4-7, and 14.

[22] Data, here, have been drawn from unpublished sources provided by the U.S. Bureau of Labor Statistics. The bureau has used information drawn from the Current Population Survey (CPS), provided by the U.S. Census Bureau.

[23] The early history of the FLSA was marked by a relatively sparse coverage which, through the 1960s and 1970s, was generally broadened giving the act, roughly, its present form.

Table 4. Number and Percent of Workers Paid Hourly at the Minimum Wage or Less

Workers paid hourly rates		
	Total paid the minimum wage or less	
Year	Number in thousands	As a percentage of hourly paid workers
1979*	6,913	13.4
1980*	7,773	15.1
1981*	7,824	15.1
1982	6,496	12.8
1983	6,338	12.2
1984	5,963	11.0
1985	5,538	9.9
1986	5,060	8.8
1987	4,697	7.9
1988	3,927	6.5
1989	3,162	5.1
1990*	3,228	5.1
1991*	5,283	8.4
1992	4,921	7.7
1993	4,332	6.7
1994	4,127	6.2
1995	3,655	5.3
1996*	3,724	5.4
1997*	4,754	6.7
1998	4,427	6.2
1999	3,340	4.6
2000	2,710	3.7
2001	2,238	3.1
2002	2,168	3.0
2003	2,100	2.9
2004	2,003	2.7
2005	1,882	2.5

Source: United States Bureau of Labor Statistics.

***** Years in which a legislated change in the federal minimum wage took effect.

This numerical decline is not necessarily indicative of improved economic status for the low-wage worker. Rather, it may be that, as the value of the statutory minimum shrinks in terms of constant dollars, fewer workers are employed at or

below the rate reflected in the reduced value of the statutory minimum. Nor does this imply that the economic status of those who have moved to a rate a little in excess of the statutory minimum has improved: i.e., those who are above the statutory minimum but who are still low-wage workers. Rather, their wage may have kept pace with inflationary pressures while the statutory minimum did not — suggesting little or no actual change of economic status.

In policy terms, this would appear to have several implications. If the statutory minimum wage remains at its current level while the general wage level rises because of inflation and/or productivity improvements, the number of minimum wage workers could reasonably be expected to experience a further decline. Fewer and fewer people could be expected to be employed at the low wage level — even though their economic condition may not have improved. Thus, were Congress to take no action with respect to the minimum wage, allowing its value to continue to decline, the size of *the minimum wage workforce* could reasonably be expected to decline until it virtually disappears. This *would not mean* that the low-wage workforce had shrunk, but merely that an increasingly large number of such persons would be employed *at wages above the declining real value of the statutorily defined minimum*.

Under this scenario (which is generally consistent with the trajectory of legislated increases in the statutory minimum wage since its peak year, 1968), the minimum wage would have been effectively *repealed by attrition*.[24] In that context, an argument might be made that since so few would actually be employed at rates at or below the statutory minimum (its relative value notwithstanding), the problem of the working poor could be handled through other more narrowly targeted means — possibly through transfers of income rather than through strictly work-related earnings. This, however, may run counter to public policy that income from work is generally preferable to transfers or entitlements that must be financed through taxation.

Finally, as noted on **Table 2**, state minimum wage rates have, in some respects, moved in to fill the gap of a declining federal minimum wage. *However*, such considerations have been uneven. Eighteen states and the District of Columbia have rates higher than the federal standard, but most of these are on the West Coast and in New England. Illinois, Delaware, Maryland, the District of Columbia, and Florida provide exceptions — and, even here, Florida might not be classified as a traditional Southern state. Speaking generally, the Midwest and the Old South have either gone along with the federal rate (they would have had little choice since the federal rate, if the standard is higher, takes precedent over a state rate), or they have simply stood apart. To the extent that there is a disparity in earnings, this might be viewed by some as contributing to a certain fracturing of the national economy with relative levels of wealth and of poverty among America's workers.

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[24] See CRS Report RS20040, *Inflation and the Real Minimum Wage: Fact Sheet*, by Brian W. Cashell.

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 DOL — but the minimum wage is governed by CNMI law. The CNMI also controls its own immigration policy. Finally, the CNMI is regarded as within the U.S. customs area. The result has been the development of industries 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.[25]

Through the past decade, human rights and labor standards in the CNMI have been the subject of DOL investigations, congressional hearings, and proposed legislation. In the 105th Congress, the Committee on Energy and Natural Resources voted to report legislation co-sponsored by Senators Daniel Akaka (D-Hawaii) and Frank Murkowski (R-Alaska) that would, *inter alia*, have created a U.S.-controlled insular minimum wage structure.[26] The legislation died at the close of the 105th Congress, but the CNMI issue was the subject of further hearings by the Committee during the 106th Congress. Several general minimum wage proposals of the 106th Congress included language that would have brought the CNMI wage floor into conformity with that of the states, had they been adopted.

In the 107th and 108th Congresses, there was continuing interest in the CNMI, with a number of bills introduced that would have extended FLSA minimum wage protection for workers employed in the insular jurisdiction. Normally, these proposals would have phased in the full national rate through a series of incremental steps. In related action, on June 5, 2001, the Senate Committee on Energy and Natural Resources reported legislation to amend immigration law as it applies to the CNMI under the Covenant of Association between the Islands and the United States. (See S.Rept. 107-28.) The bill died at the close of the 107th Congress.

The issue of minimum wage protection for workers in the CNMI, in part because of the alleged concentration of *sweatshop* industry in the islands, remains on the wage/hour agenda of the 109th Congress. (See the legislative section of this report, below.)

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[25] See CRS Report RL30235, *Minimum Wage in the Territories and Possessions of the United States: Application of the Fair Labor Standards Act*, by William G. Whittaker.

[26] U.S. Congress, Senate Committee on Energy and Natural Resources, *Northern Mariana Islands Covenant Implementation Act*, report to accompany S. 1275, 105th Cong., 2nd sess., S.Rept. 105-201.

Minimum Wage Legislation in the 109th Congress

Early in the 109th Congress, various proposals were introduced that would have raised the federal minimum wage and/or made other changes in the FLSA. Some were single-issue proposals; others were part of broader legislative packages.

Establishing a *Tradition*?

The original FLSA proposals of 1937-1938 were in the form of freestanding legislation: focusing narrowly upon labor standards but covering the entire field of wage/hour and child labor protections. As a procedural matter, the next seven rounds of minimum wage increases (1949, 1955, 1961, 1966, 1974, 1977, and 1989), though each provided for other changes in the FLSA itself, took the form of freestanding legislation. Non-FLSA or non-wage/hour issues were not addressed as part of a package with minimum wage and related concerns. Any "trade-off" to assist employers in dealing with the impact of wage/hour enactments (for example, the "tip credit" or youth/student sub-minimum wage provisions) were considered within the context of wage/hour legislation *per se*.

In 1996, minimum wage and related FLSA amendments were brought to the floor in the House as an amendment to a broad package of non-wage/hour proposals mostly associated with tax matters of interest to industry. Indeed, the FLSA was a relatively small part of the overall package. While some components of the wage/hour portion of the bill had been the subject of hearings during the 104th Congress, others had not been — nor had the body of FLSA-related provisions been considered by committee as a unit. During the spring and summer of 1996, the joint minimum wage/tax revision measure moved through Congress, and was signed by President Clinton on August 20, 1996 (P.L. 104-188).[27]

When minimum wage legislation came to the floor during the 106th Congress, it largely followed the 1996 pattern. It combined tax revisions in behalf of the business community with changes in the FLSA — including an increase in the minimum wage.[28] By this point, the two issues — a minimum wage increase for low-paid workers and tax breaks for employers (whether or not they employed workers paid at the minimum wage) — had become linked in policy terms: i.e., that the former could not go forward, it seemed, without the latter.

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[27] See CRS Issue Brief IB95091, *The Minimum Wage: An Overview of Issues Before the 104th Congress*, by William G. Whittaker (archived, but available from the author). See also Alissa J. Rubin, "Congress Clears Wage Increase with Tax Breaks for Business," *Congressional Quarterly*, Aug. 3, 1996, pp. 2175-2177; and Julie Kosterlitz, "A Bounty For Business," *National Journal*, Oct. 26, 1996, pp. 2289-2292.

[28] In the Senate, minimum wage increases had been included in H.R. 833, as amended, the Bankruptcy Reform Act of 1999; in the House, it was part of H.R. 3081, the "Small Business Tax Fairness Act of 2000." Though each chamber passed a version of the minimum wage legislation, the proposals died at the close of the 106th Congress. See CRS Report RL30690, *Minimum Wage and Related Issues Before the 106th Congress: A Status Report*, by William G. Whittaker (archived, but available from the author).

Linkage, although a *tradition* only since the 104th Congress (1996) and used only during that one occasion, has appeared to become a frequently accepted focus of the minimum wage debate during succeeding Congresses. "We came to the table," observed Representative Rick Lazio (R-NY), "with the realization that a wage increase was fair but we also came to the table with a desire to protect the small business people who will end up bearing the direct burden of any wage increase that we pass here today."[29] Senator Don Nickles (R-OK) concluded, looking ahead to the 107th Congress: "It kind of fits, frankly, to do it as a part of the tax package next year."[30] Some may argue that, in practice, linkage is a matter of fairness and equity with respect to those who are called upon to fund an increased minimum wage.

Not all observers concurred. Amy Borrus, writing in *Business Week*, termed the tax/minimum wage bill "a monument to legislative logrolling," stating that "its veneer of virtue made it the perfect vehicle for a tax-break extravaganza."[31] Representative Charles Rangel (D-NY) seemed to sum up the views of critics of linkage: "We should not be forced to bribe the wealthy in our society in order to secure a simple dollar more per hour for the poorest working American families."[32] Thus, some may argue, that proposals to raise the minimum wage have become, in practice, a vehicle for legislating economic benefits for employers and others in higher income brackets.[33] The notion continues into the 109th Congress.

Minimum Wage: The Issue of Indexing

Varying through the years, the minimum wage reached its peak in 1968 in real (inflation-adjusted) terms and has, since then, declined in constant value. "In January 2006," states CRS analyst Brian W. Cashell, "it would need to have been increased to $9.05 to equal the purchasing power of the statutory minimum wage in February 1968."[34]

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[29] *Congressional Record*, Mar. 9, 2000, p. H860.

[30] Bureau of National Affairs, *Daily Labor Report*, Dec. 6, 2000, p. A12.

[31] Amy Borrus, "Why Business Isn't Bucking This Minimum-Wage Hike," *Business Week*, Nov. 1, 1999, p. 55. Borrus added, "And that's how lobbyists managed to squeeze maximum benefits for their clients out of the minimum-wage measure."

[32] Bureau of National Affairs, *Daily Labor Report*, Mar. 9, 2000, p. A8.

[33] In general, see Bureau of National Affairs, *Daily Labor Report*, Apr. 25, 2001, pp. A6-A7; and Juliet Eilperin, "Business Seeks Tax Breaks in Wage Bill: Pay Raise is Viewed as Best Chance at Cuts," *The Washington Post*, May 14, 2001, pp. A1 and A12. In an article, "Business Coalition Holds Firm for Bush Tax Cut Package," *Congress Daily*, Apr. 19, 2001, reporters Stephen Norton and Charlie Mitchell state that trade association and business supporters of the Bush Administration's tax package have shown "remarkable discipline in resisting the urge to press for inclusion of their own pet items" in the tax package, "mindful of assurances from GOP leaders that there will be a 'second bite at the apple' for business-specific provisions next year or even later this year — possibly paired with a bill to raise the minimum wage."

[34] CRS Report RS20040, *Inflation and the Real Minimum Wage: Fact Sheet*, by Brian W. Cashell. As noted here, the current minimum wage level ($5.15 per hour) can be reduced,

(continued...)

During the initial debates on wage/hour legislation in 1937-1938, it was suggested that a reasonable rate (for that period) would have been 40 cents an hour and a 40-hour work week. Under prolonged objections from southern industrialists, the operative figures were dropped to 25 cents per hour and to a 44-hour work week — in each instance to be raised or lowered according to statute. Thus, Congress avoided dealing with a regional option and southern industrialists also avoided stricter standards.

Because the minimum wage under the FLSA is set in statute, it remains at a fixed level, without regard for changes in the general economy, until Congress alters it through legislation. Failure of the minimum wage to maintain parity with the cost of living has been a continuing concern. Some have questioned whether the minimum wage floor should remain at a fixed point, subject to action by Congress. They suggest it might usefully be *indexed* to reflect changes in the cost of living (or shifts in other economic variables), thus providing a more regular pattern of increase. On the other side, some contend that there really isn't a need for a federal minimum wage at all.

Indexation was discussed during the last century as an approach to wage stability — but was rejected. It was last a subject of extensive congressional debate during consideration of the 1977 FLSA amendments — but was, once again, rejected, the Congress seemingly preferring the current method of direct legislative action.[35] Several states — notably, Oregon, Washington, and Vermont — have experimented with minimum wage indexation in recent years.[36]

To reach the 1968 level (in current dollars), as suggested above, the federal minimum wage would need to be approximately $9.05. The most expansive proposal, now before the Congress, would set the minimum wage at $7.50 per hour — to go into effect October 1, 2009.

Proposals To Raise the Federal Minimum Wage

The general federal minimum wage is set in statute at $5.15 per hour: a cash wage that does not take into account fringe benefits. Various provisions of law permit payment at a lower rate.

Senate Floor Action in the 109th Congress. On two occasions thus far during the 109th Congress, minimum wage legislation was before the Senate. On

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[34] (...continued)
under various segments of the law, to lower rates — including a special reduced wage for *disabled* workers predicated upon their individual capabilities but with no fixed standard.

[35] See H.R. 2812 (107th Congress), introduced by Representative Bernard Sanders (I-VT), which discusses indexation.

[36] See CRS Report RL30927, *The Federal Minimum Wage: The Issue of Indexation*, by Gerald Mayer.

each occasion, the measure was defeated — though not always, it seems, on substance.[37]

The Kennedy/Santorum Debate. During debate on the "Bankruptcy Abuse Prevention and Consumer Protection Act of 2005" (S. 256), minimum wage emerged twice.

First, on March 3, 2005, Senator Edward Kennedy proposed an amendment (S.Amdt. 44) that would have raised the minimum wage, in steps, to $7.25 an hour beginning 24 months (and 60 days) after enactment of the legislation. In addition, the Kennedy proposal would have applied the federal minimum wage, in steps, to the Commonwealth of the Northern Mariana Islands.[38] The proposal by Senator Kennedy was defeated by a vote of 46 ayes to 49 nays on March 7, 2005.[39] He indicated that the debate would continue as other bills moved forward.

Second, on March 7, 2005, in connection with the amendments by Senator Kennedy, Senator Rick Santorum introduced a more far-reaching proposal (S.Amdt. 128). It would have: (a) raised the minimum wage to $6.25 an hour, in steps, to have full effect 18 months after enactment; (b) created a program of *compensatory time* as an alternative to ordinary overtime pay; (c) created an enhanced *small business exemption*; (d) altered the *tip credit* under the FLSA; and (e) provided a range of unrelated tax and other incentives for business. The Santorum proposal was defeated (38 yeas to 61 nays) on March 7, 2005.[40]

The Kennedy/Enzi Debate. On October 18, 2005, Senator Kennedy reintroduced legislation that would have raised the minimum wage. On this occasion, however, the Senator's proposal would have called for an increase in the minimum wage in two steps, to $5.70 and to $6.25, respectively — as had been proposed by Senator Santorum during the earlier debate. At this juncture, Senator Michael Enzi entered a separate proposal that would have provided for a number of changes: flexible schedules, an alteration of the *tip credit*, and revision of various accounting provisions — among other items. The proposals were debated at length. As the matter came to a vote, Senator Christopher Bond raised a point of order that an increase in the minimum wage that Senator Kennedy was advancing would be in violation of the Congressional Budget Act of 1974 as an "unfunded mandate." In turn, Senator Kennedy raised a similar point of order on the Enzi amendment. As a result, each proposal was defeated — not on its substance but, rather, on a point of order.[41]

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[37] For a quick summary of minimum wage legislation (and that affecting overtime pay and child labor), see CRS Report RL32901, *Minimum Wage, Overtime Pay, and Child Labor: Inventory of Proposals in the 109th Congress to Amend the Fair Labor Standards Act*, by William G. Whittaker.

[38] *Congressional Record*, Mar. 3, 2005, pp. S1979-S1980.

[39] *Congressional Record*, Mar. 7, 2005, p. S2132.

[40] Ibid., pp. S2132-S2133.

[41] See *Congressional Record*, Oct. 18, 2005, pp. S11469-S11470, and Oct. 19, 2005, pp. (continued...)

Other Action Proposed During the 109th Congress. Additional minimum wage legislation in the 109th Congress has emerged in a variety of forms: sometimes, as an independent free-standing bill; on other occasions, as part of more general legislation.

The Stabenow Proposal. Senator Debbie Stabenow, on January 24, 2005, introduced S. 14, a composite infrastructure and jobs bill, part of which would increase the minimum wage to $7.25. The minimum wage component would begin to take effect 60 days after enactment and be phased in over two years. The bill would also reverse actions taken (2003-2004) on overtime payment for certain workers categorized as *executive, administrative,* or *professional*.[42] The bill was referred to the Committee on Finance.

The English Proposal. Representative Phil English, on March 3, 2005, introduced H.R. 1091, a bill (a) to increase the minimum wage, in steps, to $6.50 beginning October 1, 2008, and to expand the pattern of exemption to eliminate employers with nine or fewer employees; (b) to allow for an altered *small business exemption* under the act; and (c) to provide assorted incentives intended to stimulate the growth of business. The bill was referred to the Committee on Ways and Means and to the Committee on Education and the Workforce.

See, also, H.R. 5368, a composite bill that provides for small business tax incentives and would raise the federal minimum wage, in steps, to not less than $7.50 an hour beginning October 1, 2009. At the same time, H.R. 5368 would increase the small business exemption from $500,000 (its current rate) to $1 million by September 30, 2008. The bill would also exempt employers with fewer than 10 employees from minimum wage protection. The bill was introduced by Representative English (with Representatives Simmons and Weldon of Pennsylvania), and was referred to the Committees on Ways and Means and Education and the Workforce.[43]

The Durbin Proposal. Under the date of April 19, 2005, Senator Durbin introduced S. 846, a bill to increase the federal minimum wage, in steps, to $7.25 per hour beginning 24 months and 60 days after enactment. The bill also deals with overtime pay under Section 13(a)(1) of the act, and expresses the *sense of the Senate*, among other things, for "strong support for multiemployer defined benefit pension plans." The bill was placed on the Senate Legislative Calendar under General Orders (Calendar No. 80).

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[41] (...continued)
S11547-S11548. See also *Daily Labor Report,* Oct. 19, 2005, p. A10 and Oct. 20, 2005, p. A15. One industry spokesperson opined: "... if an increase [in the minimum wage] appeared inevitable, one way of softening the impact would be to include some pro-business measures in the bill — like a corresponding increase in the deductibility of business meals." See *Nation's Restaurant News,* Sept. 26, 2005, p. 77.

[42] See CRS Report RL32088, *The Fair Labor Standards Act: A Historical Sketch of the Overtime Pay Requirements of Section 13(a)(1),* by William G. Whittaker.

[43] H.R. 5368 was introduced on May 11, 2006. The summary, above, is drawn from a "pre-publication" edition of the bill, on line as of May 15, 2006.

The Kennedy/Miller Proposals. On May 18, 2005, Senator Kennedy and Representative George Miller introduced bills that would raise the federal minimum wage to $7.25 per hour (over a period of years) and would amend treatment of the minimum wage in the Commonwealth of the Northern Mariana Islands (S. 1062 and H.R. 2429, respectively). The Miller bill was referred to the House committee on Education and the Workforce and, on June 22, 2005, was referred to the Subcommittee on Workforce Protections. The Kennedy proposal was placed on the Senate Legislative Calendar under General Orders (Calendar No. 109).

The Andrews Proposal. Representative Robert Andrews, on June 7, 2005, proposed the "Camp Safety Act of 2005." The bill (H.R. 2748) would "condition the minimum-wage-exempt status of organized camps under the Fair Labor Standards Act of 1938 on compliance with certain safety standards...." The bill was referred to the House Committee on Education and the Workforce and, on June 11, to the Subcommittee on Workforce Protections.

The Boehlert Proposal. Representative Sherwood Boehlert, on July 25, 2005, introduced the "Minimum Wage Competitiveness Act of 2005." The Boehlert bill (H.R. 3413) would increase the federal minimum wage, in steps, to $7.15 an hour beginning on January 1, 2007. The bill also includes a provision raising the minimum wage of the CNMI in steps until it reaches the federal minimum wage. Referred to the House Committee on Education and the Workforce, the bill was referred to the Subcommittee on Workforce Protections.

The Clinton Proposal. On May 4, 2006, Senator Clinton introduced S. 2725, titled the "Standing with Minimum Wage Earners Act of 2006." The bill would increase the federal minimum wage to $7.25 per hour, in steps, beginning 24 months and 60 days after enactment. In addition, the bill provides that subsequent changes in the minimum wage "shall be automatically increased for the year involved by a percentage equal to the percentage by which the annual rate of pay for Members of Congress" is increased under "the Legislative Reorganization Act of 1946 (2 U.S.C. 31)." The bill was referred to the Committee on Health, Education, Labor, and Pensions.

The Miller CNMI Proposals. On June 7, 2006, Representative George Miller, with others, introduced a new proposal, the "United States-Commonwealth of the Northern Marianas Human Dignity Act" (H.R. 5550).

When, during the mid-1970s, the CNMI entered into a quasi-autonomous relationship with the United States, the islanders retained certain rights or responsibilities. For example, goods produced in the islands were allowed to be shipped under the designation of "Made in America." Since the islanders also controlled immigration policy and the minimum wage (overtime was the responsibility of the DOL in Washington), their industries enjoyed a major advantage of foreign labor employed at low costs.

It has been suggested, by some, that the islands have gradually become *sweatshops*, making use of labor from China and the south Pacific states but with little concern for labor standards or labor laws. Others have viewed the islands as an indicator of how a free enterprise system could and should work — being free from

artificial constraints. Through a number of years, insular affairs have been the subject of hearings before committees of the Congress — with an ample record established, though with some disagreement as to its implications.

With H.R. 5550, there would be a restructuring of the U.S.-Insular relationship. At the end of the Covenant between the Marianas and the United States, certain additional items would be added. *Inter alia*:

> (a) The bill would restrict the use of the term, "Made in America," unless certain conditions had been met. Each individual "providing direct labor in production of such product," must have been paid a wage "equal to or greater than" the minimum wage under the FLSA. The product was "produced or manufactured in compliance with all Federal laws relating to labor rights and working conditions...." None of the workers would be employed "under conditions of indentured servitude."[44]
>
> (b) The minimum wage provisions of the FLSA shall apply to the Commonwealth. However, there would be a series of step increases to bring the insular minimum up to the otherwise applicable federal rate — which rate shall be reached about the end of the first decade of the twenty-first century. Thereafter, the insular rate shall be equal to the federal rate.
>
> (c) Duty-free and quota-free status will not apply unless (1) federal labor standards are met, (2) indentured workers are not employed in the manufacture of the product, and (3) the Commissioner of Customs has certified that the islands are not being used as an illegal trans-shipment point.
>
> (d) The Immigration and Nationality Act shall apply to the Northern Mariana Islands as though it were a state of the union. The Secretary of Homeland Security shall, under specified constraints, be permitted to adjust the immigration status of certain insular workers.
>
> (e) Special protections are afforded to persons engaged in contracts for the construction of "public buildings and public works" — setting wage and related standards.
>
> (f) A program of technical assistance would be included.
>
> (g) Various reports are mandated.

The Miller bill (H.R. 5550) was referred to the Committee on Resources and, in addition, to the Committee on Ways and Means.

Consideration of the Labor, Health and Human Services, and Education Appropriations Bill (for 2007). During consideration of the Departments of Labor, Health and Human Services, and Education (for 2007) on

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[44] Indentured servitude is defined as including "all labor for which an alien worker is in the Commonwealth ... solely by virtue of an employment contract with a specific and sole employer or 'master' who is in control of the duration of the stay of the indentured alien worker in the Commonwealth.... If the worker displeases the employer/master, the contract is terminated and the employee must leave the Commonwealth...."

June 13, 2006, by the Appropriations Committee, an amendment was offered by Representative Steny Hoyer that would increase the federal minimum wage to "not less than $5.85 an hour beginning on January 1, 2007, not less than $6.55 an hour beginning on January 1, 2008, and not less than $7.25 an hour beginning on January 1, 2009." The Hoyer amendment was approved in committee by a vote of 32 yeas to 27 nays and, thereafter, the measure was approved by a voice vote.[45]

The measure (with the Hoyer amendment) will still require floor consideration. Representative Howard P. "Buck" McKeon, Chairman of the House Education and Labor Committee, was quoted as suggesting that he would like to see a point of order raised against the amendment if it comes to the floor.[46] The minimum wage amendment, the Bureau of National Affairs's *Daily Labor Report* notes, "is outside the jurisdiction of the Appropriations Committee," which could make it "subject to a point of order under House rules."[47]

Some Collateral Issues

Although not always thought of as part of the minimum wage debate, there are other issues that do play an intricate role in consideration of minimum wage-related issues. Certain of these are discussed below.

The Youth Sub-Minimum Wage. During the 1960s and 1970s (as retail and service industries — major employers of youth workers — were brought under the FLSA), the issue of a *youth sub-minimum* wage became extremely active. Proponents of the concept (most notably from the hotel and restaurant industries — but from other segments of the economy as well) urged that youth workers be paid at a rate lower than the standard minimum wage, regardless of experience or the quality of work they performed. In each case and after heated debate (this came up through several years), the issue was defeated.

Through a number of years after adoption of the 1977 FLSA amendments, no further adjustments were made in the federal minimum wage. When George H. W. Bush became President in 1989, he agreed to sign a new minimum wage increase if, among other things, it included a general sub-minimum wage for workers beginning new employment. However, in the form adopted by the Congress, the President vetoed the measure. Following an extended period of reconsideration, Congress presented the President with a new bill, which he did sign — and which contained a sub-minimum wage for youth.[48]

The new program, as it related to youth employment, was divided into two parts, and focused upon youth not having "attained the age of 20 years." The first part covered a 90-day period at the sub-minimum wage with no conditions beyond those

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[45] Bureau of National Affairs, *Daily Labor Report*, June 14, 2006, p. AA1,

[46] Ibid.

[47] Bureau of National Affairs, *Daily Labor Report*, June 16, 2006, p. A11.

[48] See "Minimum-Wage Impasse Finally Ended," *Congressional Quarterly: Almanac, 101st* Congress, 1st Session, 1989. Congressional Quarterly Inc., 1990, pp. 333-340.

imposed by the employer and the willingness of the worker to accept the work. The second part was more complex. It involved an additional 90-day period, but included a training wage component. At the close of the 180-day period, a regular minimum wage or more would be required for the employee. The program was *experimental*, to begin on April 1, 1990, and to end on April 1, 1993. At the end of the trial period, the Secretary of Labor was to provide Congress with an assessment. As it turned out, almost no one used the program and it was not extended.[49]

Three years passed. In 1996, minimum wage legislation came up as a floor amendment to an industry-oriented bill — with a sub-minimum wage for youth as one of its provisions. Following floor debate and approval in the House, the measure was forwarded to the Senate. Negotiations continued in the Senate and, ultimately, the measure was passed with the sub-minimum wage in place — the bill subsequently being signed into law by President William Clinton (P.L. 104-188).[50] As enacted, the bill would allow an employer to pay a youth (under 20 years of age) a sub-minimum wage of $4.25 per hour through the first 90 consecutive days of employment with an employer.

Having set forth a youth sub-minimum rate, Congress then raised the general minimum rate to $5.15 an hour — but without linking the youth worker option to the new standard. Unless Congress takes specific action to increase the youth rate, it will remain at $4.25 per hour even if the general minimum wage is raised. Legislatively, the youth rate is a separate issue from the general wage floor.[51]

The 'Tip Credit' Provision. During the 1960s and 1970s, the FLSA was progressively expanded to provide protection for retail and service employees. Some of these workers were "tipped employees" and their employers argued, successfully, that since they were given tips by the public, they (the employers) ought not to be responsible for paying such tipped employees a full minimum wage. Through the years, the level of the so-called *tip credit* (the value of tip income received by tipped employees that an employer could count toward his or her minimum wage obligation) has varied.

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[49] P.L. 101-157, Section 6: training wage. See U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, *Report to the Congress on the Training Wage Provisions of the Fair Labor Standard Act Amendments of 1989 from the Secretary of Labor*, Robert B. Reich, Apr. 21, 1993, 24 pp.; and Kevin G. Salwen, "Subminimum Wage of $3.62 an Hour Is on Deathbed but Draws Few Mourners," *The Wall Street Journal*, Mar. 12, 1993, p. A4.

[50] When signing the new minimum wage bill, President Clinton observed, "I should note that I disagree with certain provisions added to the minimum wage title of the Act, such as the provision creating a new sub-minimum wage for young people and the one denying increased cash wages to most employees who rely on tips for part of their income. Still, those defects do not obscure the central accomplishment of this Act — securing the first minimum wage increase since 1991." See *Public Papers of the Presidents of the United States: William J. Clinton*, Book II, 1996. Washington: United States Government Printing Office, 1998, p. 1317.

[51] See "Congress Clears Wage Increase With Tax Break for Business," *Congressional Quarterly: Almanac, 104th Congress, 2nd Session, 1996*. Congressional Quarterly Inc., 1997, pp. 7-3 to 7-9.

Under the 1996 FLSA amendments, Congress provided a *tip credit* at 50% of the regular minimum wage (i.e., $2.13 an hour) — based upon the $4.25 per hour general minimum wage as it was then in effect. So long as an employee received tip income on a regular basis sufficient to reach the statutory minimum wage, when combined with an employer contribution of $2.13 per hour, the employer had no further minimum wage obligation. (The credit deals only with the amount to be paid by the employer of a tipped employee.) Thereafter, the tipped employee would receive — either in a combination of tips and cash wages or cash wages alone where there were insufficient tips — an amount sufficient to reach the full minimum wage. Then, Congress increased the federal minimum wage, in steps, to $5.15 per hour.[52]

In the 1996 FLSA amendments, Congress was working from a minimum wage floor of $4.25 per hour. Thus, $2.13 per hour (one half of the minimum wage) was set as the new base rate for employers. When Congress increased the federal minimum, in steps, to $5.15 per hour, the threshold income for tipped employees remained at $2.13 per hour. The minimum cash wage ($5.15 per hour) and the *tip credit* provision ($2.13 per hour) are not linked. They do not increase in tandem.[53]

The Computer Services Professional Rate. Beginning in the 1960s, pressure increased to have certain computer services workers defined administratively by the Department of Labor as "professional" and, therefore, exempt under Section 13(a)(1) of the FLSA from the standard minimum wage and overtime pay protection. When the Department seemed to demur, Congress (in 1990) enacted legislation directing the Secretary to develop regulations that would permit such an exemption if, among other criteria, "such employees are paid on an hourly basis" at a rate that is "at least 6½ times greater than the applicable minimum wage" (P.L. 101-583). The Department proceeded as directed, developing a regulation under Section 13(a)(1) and justifying the exemption on the *professional* character of the targeted personnel.

Under the 1996 FLSA amendments, Congress *directly* amended the act with Section 13(a)(17) to exempt the targeted computer services workers where, among other qualifying criteria, they are paid "on an hourly basis ... at a rate of not less than $27.63 an hour" (P.L. 104-188). While $27.63 was 6½ times the then applicable minimum wage of $4.25 per hour prior to the 1996 FLSA amendments, the wage requirement for exemption was set at a specific dollar amount. Then, Congress raised the minimum wage. The computer services threshold wage and the general minimum wage were no longer linked. Specific action by Congress is required to alter the threshold.[54]

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[52] For a discussion of the tip credit, see CRS Report RL33348, *The Tip Credit Provisions of the Fair Labor Standards Act*, by William G. Whittaker.

[53] See also H.R. 3732, introduced on Sept. 13, 2005, and referred to the Committee on Education and the Workforce, Subcommittee on Workforce Protections: the "Minimum Wage Fairness Act of 2005." The bill calls for a restructuring of the current tip credit system.

[54] See CRS Report RL30537, *Computer Services Personnel: Overtime Pay under the Fair Labor Standards Act*, by William G. Whittaker. Regulatory changes, proposed (and now

(continued...)

The 'Small Business' Exemption. Since enactment of the FLSA in 1938, Congress has attempted, variously, to exempt certain *small businesses* from coverage under the act. Ultimately, Congress instituted a dollar volume test for exemption, though the level of that test has been changed through the years.

In 1989, the threshold for the small business exemption was $362,500 in terms of annual sales. Congress, as part of the 1989 FLSA amendments (P.L. 101-157), increased the threshold to $500,000 — and made certain other adjustments in the statute. With enactment, the amendments were turned over to the Department of Labor for implementation. At that juncture, the Department ruled that there were, in effect, two standards. On the one hand, a person — employed by a firm with proceeds of less than $500,000 — could be exempt *unless* he were personally engaged in interstate commerce. If he were involved in interstate commerce, then he would be covered by minimum wages and overtime pay *as an individual* under the FLSA. Some argued that the department's ruling did not adhere to the intent of Congress. Others held that the ruling was, indeed, the correct interpretation of congressional intent. In any case, an employer, henceforth, would need to be absolutely certain that the work engaged in by his or her employee *could not be classified* as interstate commerce — thus, rendering the worker FLSA-covered.

The small business threshold, however interpreted, is set at a specific dollar amount, requiring direct action by Congress to alter it. The provision is not directly affected by any change in the general minimum wage.[55]

The Case of American Samoa. American Samoa was acquired by the United States as a result of the Spanish-American War (1898), supplemented by a series of treaties.

When enacted in 1938, the FLSA applied (or seemed to apply) to Samoa as it did to the states of the Union. However, the wage/hour statute does not appear to have been immediately enforced. During the early 1950s, the tuna canning industry became Samoa's major private sector employer. When it appeared that the industry would be required to pay its workers the national minimum wage (though its economy was somewhat different from that of the mainland), the industry appealed to Congress to write an exception into the act. Following hearings, the FLSA was amended. An industry committee structure was created under which an appropriate minimum wage for the island group would be developed administratively.[56]

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[54] (...continued)
implemented) by the Department of Labor with respect to Section 13(a)(1) could affect workers in the computer services industry. See CRS Report RL32088, *The Fair Labor Standards Act: A Historical Sketch of the Overtime Pay Requirements of Section 13(a)(1)*, by William G. Whittaker.

[55] See CRS Issue Brief IB90082, *The Federal Minimum Wage: Changes Made by the 101st Congress and Their Implications*, by William G. Whittaker. (Archived, but available from the author.)

[56] P.L. 84-1023. See also U.S. Congress, Senate Committee on Labor and Public Welfare, *Amending the Fair Labor Standards Act of 1938*, hearings, 84th Cong., 2nd sess., May 8, 1956 (continued...)

The industry committee structure was intended, it appears, to have been an interim measure while the insular economy progressed toward mainland standards. Half a century later, the system remains in place. The minimum wage for American Samoa continues to be set administratively. It is independent from any change in the general minimum wage rate under the FLSA.[57]

Health Care Concerns and the Issa Bill. On December 13, 2005, Representative Issa proposed linking the minimum wage, both federal and state, with certain aspects of health care legislation. The bill, H.R. 4505 (the "Health Care Incentive Act"), was referred to the Committee on Education and the Workforce, and to the Subcommittee on Workforce Protections.

Under the Issa bill, the Secretary of Labor would be directed to promulgate a rule "requiring" that any employer engaged in interstate commerce where "Federal or State law" establishes a minimum wage "at a rate that is higher than the minimum wage required by section 6(a) of the Fair Labor Standards Act of 1938 ... as in effect on September 1, 1997" (i.e., $5.15 per hour) would "... be permitted, in accordance with regulations promulgated by the Secretary, to count the value of creditable health care benefits provided by such employer to an employee in determining the wage such employer is required to pay an employee." The Secretary "shall include a contribution to a health saving account or similar account" in determining *creditable benefits*, and shall determine a formula for "a minimum value of such benefits." Finally, the bill provides the following: "In no case shall the credit permitted by the rule promulgated under this section exceed the difference between the minimum wage under section 6(a) [in effect on September 1, 1997] ... and the wage rate otherwise applicable."

Under the Issa proposal, the wage floor would be $5.15 per hour (the rate payable under section 6(a) of the FLSA on September 1, 1997). Any amount above that level, whether under state or federal law, could be payable in the form of *creditable benefits* — to be defined by the Secretary of Labor but to include "a contribution to a health savings account or similar account." The credit for health care benefits could be substituted for any future increase in the cash minimum wage. Thus, in effect, the minimum wage could be capped at $5.15 per hour — depending upon how the benefit package is assessed by the Secretary, the value that is assigned to it, and whether it is fully utilized. crsphpgw

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[56] (...continued)
(Washington: GPO, 1956).

[57] See CRS Report RL30235, *Minimum Wages in the Territories and Possessions of the United States: Application of the Fair Labor Standards Act*, by William G. Whittaker. The Samoan minimum wage is calculated on an industry-by-industry basis, but is generally lower than that which applies on Guam or in the States.