

CRS Report for Congress

Minimum Wage in the 110th Congress

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Summary

In 1938, following decades of discussion and research in academic and policy circles, Congress adopted the Fair Labor Standards Act (FLSA). It quickly became the primary federal statute in the fields of minimum wage, overtime pay, child labor, industrial work at home, sweatshops, and related areas.

The act is a living statute, variously modified through the years as Congress has set forth new requirements for American workers and their employers. Where the minimum wage is specifically concerned, the act has undergone major modification on eight different occasions: in 1949, 1955, 1961, 1966, 1974, 1977, 1989, and 1996. Under current law, the minimum wage is \$5.15 per hour.

The FLSA mandates that *not less than the minimum wage* be paid to most workers — and it requires that the employer pay it. There are other elements of the law that qualify its mandate. The employer, for example, may pay only a portion of the income of a tipped employee (\$2.13 per hour) — so long as the total income reaches the federal minimum rate. Under some conditions, a youth worker may receive less than the minimum wage. Some employees of small businesses, for example, may be entirely exempt from the federal minimum wage. Persons with disabilities can be paid a wage commensurate with their productivity — but with no floor or minimum standard.

It has now been a decade (i.e., 1996) since the minimum wage was last adjusted for inflation. The issue absorbed a considerable amount of attention during the 109th Congress — but no new legislation was adopted. Some 27 states (including the District of Columbia) have adopted a minimum wage in excess of the federal rate.

If the 110th Congress takes up the minimum wage question, there may be a number of issues to be addressed — for example, the tip credit provision, the matter of a youth sub-minimum, indexation of the wage rate, and the small business exemption.

This report examines the background and context of the minimum wage, and the demographics of the minimum wage (low-wage) workforce. It will be updated as conditions warrant.

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Minimum Wage in the 110th Congress

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). At present, the general minimum wage (although there are exceptions) is \$5.15 per hour.

Introduction

The FLSA is an umbrella statute that deals with a series of labor standards. 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, limits or qualifies its wage/hour and child labor provisions.¹

Traditionally, Congress has mandated broad general minimum wage coverage, and then has specified select 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 these areas, the Secretary of Labor has been granted wide interpretive powers — though these have not been without limit.

The minimum wage aspects of the FLSA have undergone changes on numerous occasions: in 1949, 1955, 1961, 1966, 1974, 1977, 1989, and 1996. (See **Table 1**.) The act began in a limited way, encompassing labor standards essentially for industrial workers. In 1938, the minimum wage was 25 cents an hour; the work week was 44 hours. With amendment, coverage provisions of the act were expanded while, over the years, the rate was raised to \$5.15 per hour, with a 40-hour week. For more than 40 hours worked in a week, overtime pay (time-and-a-half) would have to be paid.

Since the 1970s, coverage patterns seem to have leveled off, with few new workers, by classification, having been brought under the act. Moreover, in real terms, the value of the minimum wage rate has been on a downward slope. The minimum wage reached its peak in 1968 at \$1.60 an hour and, then, generally declined in terms of constant dollars. To equal its 1968 peak in purchasing power, it would currently need to be \$9.19 an hour. Going into the 110th Congress, the most

¹ This report focuses narrowly upon the federal minimum wage. Other related issues are considered separately in other CRS products.

frequently suggested wage level, among proponents of the minimum wage, appears to be \$7.25 per hour — set to go into effect two years and 60 days after enactment.²

Table 1. Federal Minimum Wage Rates, 1938-2006

| Public law | Effective date | Rate |
|--|----------------|--------|
| P.L. 75-718 (Enacted June 25, 1938) | October 1938 | \$0.25 |
| | October 1939 | 0.30 |
| | October 1945 | 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 | 1.15 |
| | September 1963 | 1.25 |
| P.L. 89-601 (Enacted September 23, 1966) | February 1967 | 1.40 |
| | February 1968 | 1.60 |
| P.L. 93-259 (Enacted April 8, 1974) | May 1974 | 2.00 |
| | January 1975 | 2.10 |
| | January 1976 | 2.30 |
| P.L. 95-151 (Enacted November 1, 1977) | January 1978 | 2.65 |
| | January 1979 | 2.90 |
| | January 1980 | 3.10 |
| | January 1981 | 3.35 |
| P.L. 101-157 (Enacted November 17, 1989) | April 1990 | 3.80 |
| | April 1991 | 4.25 |
| P.L. 104-188 (Enacted August 20, 1996) | October 1996 | 4.75 |
| | September 1997 | 5.15 |

Fair labor standards issues are handled jointly by the states and the federal government. The states took up the question early in the 20th century, enacting a variety of measures dealing with minimum wages and related subjects — and states have continued to do so. Various states currently have minimum wage rates (and other standards) that are higher than those established by the federal FLSA, with Washington state at the top with a state minimum wage standard of \$7.63. (See **Table 2.**) Speaking generally, where there is overlapping jurisdiction, the higher standard (the one most favorable to workers) takes precedent — and where applicable, the federal statute supercedes lower standards of the states. Some aspects of fair labor standards (notably, rest breaks and lunch breaks) have traditionally been treated as state matters.

² See CRS RS20040, *Inflation and the Real Minimum Wage: Fact Sheet*, by Brian W. Cashell.

Under federal law, special treatment may be afforded to certain youth workers, to tipped employees, and to persons with a disability. Where there are state statutes that also deal with these matters (and deal with them in a manner more favorable to workers), the state standard would normally prevail. The federal FLSA provides a floor, as some perceive it, for fairness in the workplace. The states, where conditions permit, are allowed to go beyond the federal statute and enact higher standards. Individuals are not allowed to bargain away provisions of the federal law.

**Table 2. Status of State Minimum Wage Rate
(as of November 2006)^a**

| Jurisdictions with minimum wage rates <i>higher than</i> the federal FLSA | | |
|--|--------------------------------|------------------------------------|
| Alaska (\$7.15) | Hawaii (\$6.75) | New Jersey (\$6.15) |
| Arkansas (\$6.25) ^b | Illinois (\$6.50) | New York (\$6.75) |
| Arizona (\$6.75) ^b | Maine (\$6.75) ^b | Ohio (\$6.85) ^b |
| California (\$6.75) | Maryland (\$6.15) | Oregon (\$7.50) |
| Colorado (\$6.85) ^b | Massachusetts (\$6.75) | Pennsylvania (\$6.25) ^b |
| Connecticut (\$7.40) | Minnesota (\$6.15) | Rhode Island (\$7.10) |
| Delaware (\$6.65) ^b | Missouri (\$6.50) ^b | Vermont (\$7.25) |
| District of Columbia (\$7.00) | Montana (\$6.15) ^b | Washington (\$7.63) |
| Florida (\$6.40) | Nevada (\$6.15) ^b | Wisconsin (\$5.70) |
| Jurisdictions with minimum wage rates <i>at the same level as</i> the federal FLSA (\$5.15) | | |
| Georgia | Nebraska | South Dakota |
| Guam | New Hampshire | Texas |
| Idaho | New Mexico | Utah |
| Indiana | North Carolina | Virginia |
| Iowa | North Dakota | West Virginia ^d |
| Kentucky | Oklahoma | Wyoming |
| Michigan | Puerto Rico | |
| Jurisdictions with minimum wage rates <i>less than</i> the federal FLSA | | |
| American Samoa ^c (administered) | Kansas (\$2.65) | Virgin Islands (\$4.65) |
| Jurisdictions with <i>no</i> state minimum wage requirement | | |
| Alabama | Mississippi | Tennessee |
| Louisiana | South Carolina | |

Source: U.S. Department of Labor, Wage and Hour Division, Employment Standards Administration, [http://www.dol.gov/esa/minwage/america.htm], visited 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. States that have adjusted their minimum wage rate to go into effect on Jan. 1, 2007. In some instances, increases are scheduled to go into effect at a later time — in which case, they are not listed.
- c. 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.
- d. West Virginia has raised its minimum wage to \$8.85 per hour, but coverage under the state statute is very limited.

Of the state standards, many run roughly parallel to the FLSA, but they need not do so — and often do not. Even with this more or less dual coverage, not all workers are covered by wage/hour standards — though most are. Coverage patterns (including patterns of exemption) need to be taken into account when considering the potential impact of changes in federal wage/hour law. 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 without careful assessment.

Logistics of Application and Targeting

Adequacy of the Minimum Wage

In the academic literature and political debate, people often tend to speak of the minimum wage as *a livable wage* or *a decent wage*. But, it is not clear that such concepts are always interpreted in a consistent manner.

In statute, the minimum wage is reasonably clearly defined: \$5.15 per hour for most (but not all) covered workers. However, the FLSA does not translate that dollar amount into social or human terms. For example, some have questioned as to whether \$5.15 an hour is actually a “living wage.” The livability of the minimum wage, in some measure, depends upon the context in which it is earned: whether in urban or rural areas or the section of the country. It may also be dependent upon the earner’s role within the family and the number of persons in a family unit.

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.³

Since much minimum wage work is also part-time and/or part-year, estimating actual annual income for minimum wage workers can be problematic. Some workers, earning the minimum wage, find, either through their own designs (school, sports, family responsibilities) or through the absence of alternative work, that their year-long income may fall substantially below an annualized figure. While some minimum wage work may provide a fringe benefit component, such fringes are often not available until a worker has been employed for a specific period of time: a period that many minimum wage workers may not reach. Under present law, the concept of a minimum wage is limited to a cash wage.

As set forth in **Table 3**, one sees 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 have

³ After 90 consecutive days *with an individual employer*, however, a qualifying youth employee would ordinarily see his or her wage increased to \$5.15 an hour — unless he or she breaks the consecutive days rule.

been, debated. The guidelines have *no direct connection* with the federal minimum wage, but they are frequently cited in discussions of minimum wage and are used by some analysts as a measure of the adequacy of the wage floor.⁴ If the estimated annual income (\$10,712) for a minimum wage worker is compared to the poverty guidelines in Table 3, the income is just above the poverty line for a family of one and below the poverty line for families of any other size.

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

| Size of family unit | Poverty guideline | | |
|---------------------|--|---------------|---------------|
| | <i>States and District of Columbia</i> | <i>Alaska</i> | <i>Hawaii</i> |
| 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.

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

FLSA minimum wage requirements have always been subject to exceptions: e.g., the tipped worker, the youth worker, the person with disabilities. In some cases, an exception has been made on the basis of the type of work performed: for example, in the early days of the act, agricultural labor — and, even now, certain small business establishments. (See discussion below.)

A collateral question involves the issue of *need* — which, it would seem, also involves a variety of socio-economic questions. If the worker is engaged primarily for *pin money*, then his or her *need* may be less extreme than a fellow worker who supports a parent or is saving for tuition at the local university. But, here, one may

⁴ The table is provided as a reference. Minimum wages are not a *federal assistance program* but, rather, are payment for performance that comes directly from the employer.

want to ask: Should compensation be based upon the needs of the worker, their productivity, or simply based upon the demand for services.⁵

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.

If one thinks of the minimum wage as an anti-poverty measure, then it is more likely to be considered as *needs-based* and focused on moving the worker out of poverty. Conversely, if the minimum wage is *productivity based*, but fails to provide income sufficient to maintain an individual (or his dependents), then some supplemental means may be necessary through which to increase the worker's income. But, by whom should this supplemental income be paid?

The Minimum Wage v. the EITC. In 1975, Congress established the Earned Income Tax Credit (EITC). As amended, it provides a tax credit to certain low-wage workers. 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. The program can also be complex. Historically, it has been subject to over-claims of benefits — and, on occasion, to under-claims as well.⁶

Proponents of the EITC argue that it 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. 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.

⁵ There are other options available to the employer. A youth, under 20 years of age, can be paid a youth sub-minimum rate (\$4.25 an hour) through certain periods. Or, if the youth is involved in tipped employment, his earnings from the employer can be reduced to \$2.13 an hour. If he or she is employed in a small business (defined under the act), he may not be subject to the act at all.

⁶ 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.

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.

Over time, there has been pressure from the small business community to expand this 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, since there is no test of profitability, the exemption is enjoyed by prosperous and struggling businesses alike.

General Demographics of the Minimum Wage Workforce

Precise data on the minimum wage workforce is difficult to develop. Not everyone is covered by the minimum wage. Some low-wage workers may be paid at or below the federal minimum wage; because of exemptions built into the statute, they may not be affected by changes Congress may make — their pay continuing at whatever level. Conversely, some employers may choose to pay the statutory minimum because it is a convenient and generally recognized basic rate — even where workers are not subject to the act.

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.⁷

Not all workers *covered* under the FLSA are covered in precisely the same way. Thus, we may be speaking of *the low-wage worker* rather than *the minimum wage worker* covered under the FLSA.

Who Are the Minimum Wage Workers?

In 2005, about 1.882 million workers, 16 years of age and up, paid hourly rates, earned at or below the federal minimum wage of \$5.15 per hour. About 479,000

⁷ Surveys of income *may* collect information only with respect to a worker’s main job.

were paid *at* the minimum rate; about 1.403 million were paid *below* the minimum.⁸

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 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.

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 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.⁹

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 experiencing 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.

⁸ About 75.6 million workers, of a civilian noninstitutional workforce of around 150 million, were paid hourly rates in 2005. In transmitting numbers of minimum wage workers, the Bureau of Labor Statistics states, “It should be noted that it is *not possible to determine* whether workers surveyed in the CPS [Current Population Survey, upon which BLS relies] are actually covered by the Fair Labor Standards Act or by individual State minimum wage laws. Thus, some workers being reported as earning an hourly wage of \$5.15 may not, in fact, be covered by Federal or State minimum wage laws; at the same time, the presence of a sizable number of workers with wages below the prevailing Federal minimum wage does not necessarily indicate violations of the Fair Labor Standards Act or applicable State laws, because of the numerous exemptions to these wage statutes.” (Emphasis added.)

⁹ 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.” 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.

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).

One may 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.¹⁰

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 constitute 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.¹¹ (See **Table 4.**) The numerical decline doesn't necessarily indicate improved economic status for the workers but may suggest a progressive movement up from the statutory (fixed) minimum wage in response to inflationary pressures.

The decline in the real value of the minimum wage (in policy terms) 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. This *would not mean* that the low-wage workforce had shrunk: merely that an increasingly large number of persons would be employed *at wages above the declining real value of the statutorily defined minimum.*

¹⁰ 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.

¹¹ 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 | | |
|---------------------------|-------------------------------------|--|
| Year | Total paid the minimum wage or less | |
| | 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.

Under this scenario, the federal minimum wage would, soon, be effectively *repealed by attrition*. 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 aside), 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 may run counter to public policy that income from work is generally preferable to entitlements financed through taxation.

Finally, as noted on **Table 2**, some state minimum wage rates have moved in to fill the gap of a declining federal minimum wage. *However*, such considerations have been uneven. What impact such state regulations may have is yet to be assessed.

Some Collateral Issues

Minimum Wage: the Issue of Indexing

Varying through the years, the minimum wage reached its inflation-adjusted peak in 1968, and has since generally declined in value. A recent CRS analysis suggests that the minimum wage would need to be raised to \$9.19 an hour (October 2006) to reach its February 1968 level.¹²

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. Under prolonged objections from southern industrialists, the figure was dropped to 25 cents per hour. Thus, Congress avoided a regional option and southern industrialists avoided stricter standards.

With the minimum wage under the FLSA set in statute, it remains at a fixed level, without regard for general economic changes, 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 suggested that the minimum wage 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 hand, some contend that there really isn't a need for a federal minimum wage at all.

Indexation was discussed during the early 20th century as an approach to wage stability. It was last a subject of extensive congressional debate during the 1970s and in the context of the 1988-89 FLSA amendments. It has been rejected with Congress seeming to prefer direct control of legislative action.¹³ Several states have experimented with indexation: e.g., Oregon, Washington, Vermont, and Florida (with

¹² CRS Report RS20040, *Inflation and the Real Minimum Wage: Fact Sheet*, by Brian W. Cashell.

¹³ See H.R. 2812 (107th Congress), introduced by Representative Bernard Sanders (I-VT), which discusses indexation.

others currently in the process of such experimentation).¹⁴ No federal action has been taken — though the issue remains alive.

The Youth Sub-Minimum Wage

During the 1960s and 1970s (as retail and service industries, major employers of youth workers, came under the FLSA), the issue of a *youth sub-minimum wage* became active. Proponents of the concept 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, the issue was defeated.

When George H. W. Bush became President in 1989, he agreed to sign a new minimum wage increase if, *inter alia*, it included a general sub-minimum wage *for workers beginning new employment*. A first bill was vetoed; but, following extended discussions, Congress adopted a new bill with a sub-minimum wage for youth.¹⁵

The youth program, affecting persons under 20 years of age, was divided into two parts. The first part covered a 90-day period with no conditions beyond a willingness of the worker to accept the work. The second part was more complex, mandating training through a second 90-day period. After 180 days, the regular minimum would be required. The program was *experimental*: from April 1990 to April 1993. As it turned out, almost no one used the program and it was not extended.¹⁶

In 1996, during the Clinton Administration, the minimum wage came up as a floor amendment to the “Small Business Job Protection Act of 1996” — essentially a tax bill but with the sub-minimum wage as one of its provisions. The measure was passed with the sub-minimum wage in place (P.L. 104-188).¹⁷ As enacted, the bill allows 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

¹⁴ See CRS Report RL30927, *The Federal Minimum Wage: The Issue of Indexation*, by Gerald Mayer.

¹⁵ See “Minimum-Wage Impasse Finally Ended,” *Congressional Quarterly: Almanac*, 101st Congress, 1st Session, 1989. Congressional Quarterly Inc., 1990, pp. 333-340.

¹⁶ 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.

¹⁷ On President Clinton’s views, 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. In some states, this arrangement (still on the books) may not be permissible.

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.¹⁸

The ‘Tip Credit’ Provision

Minimum wage coverage was expanded, during the 1960s and 1970s, to provide protection for retail and service workers. Some of these workers were “tipped” and their employers argued, successfully, that 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* has varied.

Under the 1996 FLSA amendments, Congress provided a *tip credit* of 50% of the then standard minimum wage \$4.25 (or \$2.13 an hour). 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 not to be paid by the employer of a tipped employee.) The tipped employee would receive a full minimum wage: either through tips or, where tips were insufficient, in combined tips and cash. Then, Congress increased the federal minimum wage, in steps, from \$4.25 to \$5.15 per hour.¹⁹

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. Tipped employees do receive the minimum wage albeit in a combination of tips and cash wages.

Legislative *Linkage*: Moving a ‘Clean Bill’

The original FLSA proposals (1937-1938) were in the form of freestanding legislation: focusing narrowly upon 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 various changes in the FLSA itself, took the form of freestanding legislation. Non-FLSA or non-wage/hour issues were not addressed as part of the package with minimum wage and related concerns.

In 1996, minimum wage and related FLSA amendments were brought to the House floor as an amendment to a broad package of industry-related proposals: the “Small Business Job Protection Act of 1996.” Indeed, the FLSA was a relatively small part of the overall package. While some components of the wage/hour portion

¹⁸ 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.

¹⁹ 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.

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).²⁰

When minimum wage legislation came up during the 106th Congress in 1999-2000, it largely followed the 1996 pattern. It combined tax revisions that were beneficial to the business community with changes in the FLSA — including an increase in the minimum wage.²¹ 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.

Linkage, although a *tradition* only since the 104th Congress (1996) and used only during that one occasion, has appeared to become a frequent 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.”²² 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.”²³ 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 concur. 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.”²⁴ 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

²⁰ See CRS Issue Brief IB95091, *The Minimum Wage: An Overview of Issues Before the 104th Congress*, by William G. Whittaker (out of print, 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.

²¹ 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 (out of print, but available from the author).

²² *Congressional Record*, Mar. 9, 2000, p. H860.

²³ Bureau of National Affairs, *Daily Labor Report*, Dec. 6, 2000, p. A12.

²⁴ 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.”

secure a simple dollar more per hour for the poorest working American families.”²⁵ 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.²⁶

The concept of *linkage*, though utilized only once (in 1996), continues as an active theme in the public policy discourse. It is unclear whether the theme will remain active as the 110th Congress convenes.

There has been speculation that some “Senate Democrats are willing to add tax sweeteners to a minimum wage bill” in order to secure the requisite number of votes for passage.²⁷ However, Senator Edward Kennedy (D-MA) has reportedly indicated that “he wants the Senate to pass a minimum wage bill ... without additional provisions....” Senator Kennedy was quoted as saying: “It is going to be clean.”²⁸ In the House, Representative George Miller (D-CA) reportedly held a similar view.²⁹

²⁵ Bureau of National Affairs, *Daily Labor Report*, Mar. 9, 2000, p. A8.

²⁶ 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.”

²⁷ Bureau of National Affairs, *Daily Labor Report*, Nov. 15, 2006, p. A12.

²⁸ Bureau of National Affairs, *Daily Labor Report*, Nov. 17, 2006, p. A6.

²⁹ Bureau of National Affairs, *Daily Labor Report*, Dec. 13, 2006, p. A1.