FOIA Number: 2016-0531-F

FOIA MARKER

This is not a textual record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

Collection/Record Group: Clinton Presidential Records

Subgroup/Office of Origin: Legislative Affairs

Series/Staff Member: Charles Brain

Subseries:

OA/ID Number: 23490

FolderID:

Folder Title:
Minimum Wage

Stack:	Row:	Section:	Shelf:	Position:
S	25	6	1	3

Minimum Wage

House Version
H.R. 3081/3846 as amended
-Current minimum wage of $5.15
-Increases Federal Minimum Wage;
.50/hr to $5.65 on April 1, 2000, and
.50/hr to $6.15 on April 1, 2001.

Senate Version
H.R. 833/S.625
-Current minimum wage of $5.15
-Increases Federal Minimum Wage;
.35/hr to $5.50 on March 1, 2000,
.35/hr to $5.85 on March 1, 2001, and
.30/hr to $6.15 on March 1, 2002.

House

On March 9th, 2000 the House took up a business tax break package and a minimum wage bill. The House moved forward with a "bifurcated rule" to structure the debate, which provides for separate votes on the business tax breaks package and then the minimum wage increase bill, and then joins them together after passage of both.

The House first considered HR 3081 (Rep. Lazio), legislation providing some $46 billion over five years of tax cuts for businesses. The rule provided that the text of HR 3832 (Archer) be considered as adopted in HR 3081.

The House agreed to the rule providing for consideration of HR 3081, 214 to 211.

The House then passed the HR 3081, 257 to 169.

The House then took up HR 3846 (Rep. Shimkus), the minimum wage bill. The bill would raise the minimum wage by $1 over 3 years: $5.48 per hour during the year beginning April 1, 2000; $5.81 per hour during the year beginning April 1, 2001; and $6.15 per hour beginning April 1, 2002. The bill would also allow states to opt out of the increase altogether.

HR 3846 was amended by H.AMDT.594, (Rep. Traficant). The Amendment provided for increasing the minimum wage by $1 over a 2-year period rather than three as was provided in the bill. The Traficant amendment passed by recorded vote: 246-179.

H.R. 3846, as amended, passed by a recorded vote: 282-143.

The text of H.R. 3846 was appended to the end of H.R. 3081 as was agreed to by the rule in H.RES.434.

Senate

On 3/20/00, the bill was received in the Senate.

H.R. 833, the Bankruptcy Reform Act of 1999 offered by Rep. Gekas on 2/24/1999, was passed in the House by the Yeas and Nays: 313 - 108, on 5/5/1999. It was received in the Senate on 5/6/1999. On 2/2/2000, The measure was laid before the Senate by unanimous consent. The Senate struck everything after the Enacting Clause and substituted the language of Sen. Grassley's bill S. 625, A bill to amend title 11, United States Code as amended. H.R. 833 passed the Senate in lieu of S. 625 with an amendment by Yea-Nay Vote: 83 - 14.

J. Dennis Hastert
Fourteenth District
Illinois

(202) 225-0600

Office of the Speaker

United States House of Representatives
Washington, DC 20515

September 28, 2000

Honorable Richard Gephardt
U.S. House of Representatives
Washington D.C. 20515

Dear Dick:

Thank you for your letter of September 26, 2000 regarding a balanced approach to the minimum wage. As you know, I wrote the President a week before Labor Day, asking him for his help in breaking the roadblock that has kept us from enacting legislation that would raise the minimum wage as it provided tax relief for the small business owners who often hire minimum wage workers. I appreciate your response, which I take as a good faith effort to break this roadblock.

In your response, you express grave concern about the above-the-line health care tax deduction. According to the Joint Tax Committee, 26 million Americans would be able to provide affordable health care coverage by claiming this important tax deduction. And according to the General Accounting Office, this tax deduction would primarily benefit millions of low and middle-income Americans in the 15% percent tax bracket, and help 1.6 million Americans to get health insurance for the first time.

You said in your letter that increasing the minimum wage would help 10 million workers. Likewise, our 100% health care tax deduction would help 26 million Americans get health care insurance or increase their current coverage. Most of these Americans work in small businesses, which often cannot afford to offer their employees health insurance.

One of the real problems in health care today is access to affordable health insurance. Our plan addresses that problem with a solution that works. I urge you to drop your opposition to this common-sense health care reform. If we work together, I believe we can help America's workers with their wages and with their health insurance. We can also help small businesses, which create the majority of new jobs in the country. Thank you for your letter and I look forward to hearing from you in the future.

Sincerely,

Denny Hastert
Speaker of the House

HOUSE OF REPRESENTATIVES
WASHINGTON, D. C. 20515

ROBERT E. ANDREWS
1ST DISTRICT, NEW JERSEY

September 28, 2000

Mr. John Podesta
The White House
1600 Pennsylvania Ave, NW
Washington, DC 20050

Dear Mr. Podesta:

As you take into consideration various proposals to increase the minimum wage I urge you to consider the increased costs this will mean to health care providers and nursing home owners. I believe, when the minimum wage is raised, payments from Medicare to providers should reflect the increased costs of labor. Specifically, the Health Care Financing Administration's reimbursement for "cost of care" needs to take into account the increase cost of hiring and keeping staff.

Thank you for your attention to this matter.

Sincerely,

Rob

Robert Andrews
Member of Congress

cc: Chuck Brain

Jeanne Lambrew

Congress of the United States
Washington, DC 20515

September 26, 2000

The Honorable William J. Clinton
The White House
Washington, DC 20502

Fyi: Chuck

Dear Mr. President,

We applaud all of your efforts to fight for a $1 increase in the minimum wage before we adjourn this session of Congress.

Thanks to your leadership, our nation is enjoying an unprecedented period of prosperity, and we are now in the longest period of economic growth in our nation's history. But for the more than 10 million Americans struggling to get by on the minimum wage, we cannot act too soon.

We welcome Speaker Hastert's support for a $1 increase in the minimum wage which we have long advocated. Together with your staff, we have begun bipartisan discussions on this critical issue. But certain aspects of the Speaker's proposal cause us deep concern, and we wanted to share our thoughts with you.

First, it is not fair to raise the minimum wage, while at the same time taking away overtime protections for millions of hard-working Americans. Yet the Speaker's proposal would do just that. At a time when the productivity of the American work force is at an all-time high and workers are putting in more hours than at any other time in recent history, we cannot support any proposal that deprives American workers of their overtime and minimum wage protections.

Second, it is time to strengthen the federal tip credit, not weaken it. We cannot support any proposal to strip states of the power to raise their guaranteed base wage for tipped employees above the current federal level. In fact, federal tip wages have not been increased since 1991. It is time to raise the federal floor for tipped employees which is now frozen at $2.13 an hour.

Third, it is time to insure that workers in the Commonwealth of the Northern Mariana Islands are paid the full federal minimum wage. The Commonwealth has been a territory of the United States since 1986, and has had plenty of time to bring its wage laws into compliance with federal standards.

Fourth, while there is bipartisan agreement on many of the Speaker's tax proposals, we are concerned that the overall size of the tax package is nearly four times greater than the one that accompanied the 1996 minimum wage increase. We have grave policy concerns about the above-the-line health deduction, and believe it could discourage employers from providing health coverage for their workers. We support repeal of the 0.2% FUTA surtax, but only if it is coupled with unemployment insurance reform. Overall, we believe the tax package should focus on assisting small businesses which often employ minimum wage workers. We would also like a clearer understanding of how this tax proposal fits in with the Speaker's commitment to devote 90% of the surplus to paying down the debt.

Mr. President, we stand ready to work with you in accomplishing the important goal of raising the minimum wage. We look forward to continued discussions with you and with the Speaker so that we can resolve this matter as quickly as possible.

Sincerely,

Dick Gephardt
Richard Gephardt

Tom Daschle
Tom Daschle

David E. Bonior
David Bonior

Edward M Kennedy
Edward Kennedy

Bill Clay
William Clay

Harry Reid
Harry Reid

Charles B. Rangel
Charles Rangel

Daniel Patrick Moynihan

Congress of the United States
Washington, DC 20515

September 26, 2000

The Honorable J. Dennis Hastert
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker,

As long-standing advocates of an increase in the minimum wage, we applaud your recent offer to support a $1 increase before we adjourn this session of Congress.

We believe it is imperative that the more than 10 million workers who earn the minimum wage receive an increase as soon as possible. Our country is enjoying an unprecedented period of prosperity, and we are now in the longest period of economic growth in our nation's history. But for the millions of Americans struggling to get by on the minimum wage, we cannot act too soon.

We are pleased that discussions have begun, but certain aspects of your proposal cause us deep concern.

First, it is not fair to raise the minimum wage, while at the same time taking away overtime protections for millions of hard-working Americans. Your proposal would do just that. At a time when the productivity of the American work force is at an all-time high and workers are putting in more hours than at any other time in recent history, we cannot support any proposal that deprives American workers of their overtime and minimum wage protections.

Second, it is time to strengthen the federal tip credit, not weaken it. We cannot support your proposal to strip states of the power to raise their guaranteed base wage for tipped employees above the current federal level. In fact, federal tip wages have not been increased since 1991. It is time to raise the federal floor for tipped employees which is now frozen at $2.13 an hour.

Third, it is time to insure that workers in the Commonwealth of the Northern Mariana Islands are paid the full federal minimum wage. The Commonwealth has been a territory of the United States since 1986, and has had plenty of time to bring its wage laws into compliance with federal standards.

Fourth, while there is bipartisan agreement on many of your tax proposals, we are concerned that the overall size of the tax package is nearly four times greater than the one that accompanied the 1996 minimum wage increase. We have grave policy concerns about the above-the-line health deduction, and believe it could discourage employers from providing health coverage for their workers. We support repeal of the 0.2% FUTA surtax, but only if it is coupled with unemployment insurance reform. Overall, we believe the tax package should focus on assisting small businesses which often employ minimum wage workers. We would also like a clearer understanding of how this tax proposal fits in with your commitment to devote 90% of the surplus to paying down the debt.

Mr. Speaker, we sincerely appreciate your willingness to work together to accomplish this important goal. We look forward to sitting down with you as soon as possible to discuss this matter further.

Sincerely,

Dick Gephardt
Richard Gephardt

Tom Daschle
Tom Daschle

David E. Bonior
David Bonior

Edward M Kennedy
Edward Kennedy

Bill Clay
William Clay

Harry Reid
Harry Reid

Charles B Rangel
Charles Rangel

Daniel Patrick Moynihan

cc: The Honorable Trent Lott

FROM THE OFFICE OF

CONGRESSMAN

CAL DOOLEY

1201 Longworth House Office Building • Washington, DC 20515 • (202) 225-3341 • Fax: (202) 225-9308

Date: 9-28-00

To: Chuck Brain

Fax #: 456-6220

From:

Cal Dooley	Diane Pate	Gina Mahony
Lisa Quigley	Michelle Bright	Brandon Avila
Lori Denham	Connie Lausten	Nancy Crose
Adam Kovacevich	Jim Travis	

Message:

- Jerry Hartz
- ~~Gary~~ Craig H
- K. Tra
- B. Cho
- L. Kout

Pages: 2 Pages To Follow

If there are any problems in transmittal, please call (202) 225-3341

Congress of the United States

Washington, DC 20515

President William Jefferson Clinton
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear Mr. President:

Under current law, "inside" or "digital" sales employees are subject to overtime requirements of the Fair Labor Standards Act while "outside" or traditional sales employees are exempt. As you know, the bipartisan *Sales Incentive Compensation Act (H.R. 3846,)* is now part of the Minimum Wage package. This bill includes a provision that would provide a narrow exemption for "inside" sales employees who are engaged in electronic commerce. We strongly support the inclusion of this provision in the final Minimum Wage package.

We are asking for the change in the FLSA because the current wage and hour law creates a disparity between "outside" sales employees, who travel to the customer's place of business, and "inside" sales employees, who use the internet, the fax or telephone to sell directly to existing customers. Under the FLSA, an "inside" sales employee is classified as "non-exempt" and must be paid an *hourly* wage, with overtime pay for work over 40 hours per week. The traditional "outside" sales employee, however, is classified as "exempt" and enjoys both flexibility in work schedule and enhanced earnings potential as a *salaried* worker. As a result of this disparity in treatment, current "inside" employees and new hires believe they are at a competitive disadvantage because they lack the prospects of enhanced compensation, based on sales/performance and customer service objectives, and the career/professional development opportunities of the traditional outside sales employees.

As companies in this country have had to change the way they do business to compete in today's global e-business market place, they have also had to change the way they sell their products. To meet the needs of their customers today, high tech businesses employ two sales forces -- "inside" sales employees, who can sell the company's entire product line directly to customers via the Internet, the telephone or the fax, and traditional outside sales employees. We need to correct the disparity between the two sales forces by enacting legislation that will modernize the federal wage and hour law to bring it in line with today's work force needs.

For these reasons, we urge you to support the "inside" sales provision and ensure that it remains in the final package.

Sincerely,

Cal Dooley — David Price

Ellen Tauscher — Tim Roemer

Jim Davis — [illegible]

Lynn N. Rivers

Jim Moran

Charlie Stenholm

J. Dennis Hastert
Fourteenth District
Illinois

(202) 225-0600

Min Wage

Office of the Speaker
United States House of Representatives
Washington, DC 20515
September 28, 2000

Honorable Richard Gephardt
U.S. House of Representatives
Washington D.C. 20515

Dear Dick:

Thank you for your letter of September 26, 2000 regarding a balanced approach to the minimum wage. As you know, I wrote the President a week before Labor Day, asking him for his help in breaking the roadblock that has kept us from enacting legislation that would raise the minimum wage as it provided tax relief for the small business owners who often hire minimum wage workers. I appreciate your response, which I take as a good faith effort to break this roadblock.

In your response, you express grave concern about the above-the-line health care tax deduction. According to the Joint Tax Committee, 26 million Americans would be able to provide affordable health care coverage by claiming this important tax deduction. And according to the General Accounting Office, this tax deduction would primarily benefit millions of low and middle-income Americans in the 15% percent tax bracket, and help 1.6 million Americans to get health insurance for the first time.

You said in your letter that increasing the minimum wage would help 10 million workers. Likewise, our 100% health care tax deduction would help 26 million Americans get health care insurance or increase their current coverage. Most of these Americans work in small businesses, which often cannot afford to offer their employees health insurance.

One of the real problems in health care today is access to affordable health insurance. Our plan addresses that problem with a solution that works. I urge you to drop your opposition to this common-sense health care reform. If we work together, I believe we can help America's workers with their wages and with their health insurance. We can also help small businesses, which create the majority of new jobs in the country. Thank you for your letter and I look forward to hearing from you in the future.

Sincerely,

Dennis Hastert
Speaker of the House

Congress of the United States

JOINT COMMITTEE ON TAXATION
1015 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6453
(202) 225-3621

SEP 27 2000

Honorable J. Dennis Hastert
U.S. House of Representatives
Office of the Speaker
H232 The Capitol
Washington, DC 20515

Dear Mr. Hastert:

This is in response to your letter of September 19, 2000, requesting information on the number of taxpayers who would utilize the health insurance tax deduction contained in H.R. 2990.

H.R. 2990 contains an above-the-line deduction for health insurance expenses for which the taxpayer pays at least 50 percent of the premium. The deduction would be phased in at 25 percent of the otherwise allowable deduction for taxable years beginning in 2002 through 2004, 35 percent for taxable years beginning in 2005, 65 percent for taxable years beginning in 2006, and 100 percent for taxable years beginning in 2007 and thereafter. Taxpayers enrolled in Medicare, Medicaid, Champus, VA, the Indian Health Service, the Children's Health Insurance Program, and the Federal Employees Health Benefits Program would be ineligible for the deduction.

We are providing information on the number of taxpayers who would utilize the 100-percent health insurance deduction in 2007. We estimate that approximately 13.1 million taxpayers would claim the 100-percent deduction for health insurance expenses in 2007. About 800,000 of these taxpayers would be new purchasers of health insurance. Assuming an average of two persons covered by each health insurance policy, about 26 million persons would be covered by the health insurance eligible for the deduction in 2007, of which 1.6 million persons would be newly insured.

I hope this information is helpful to you. If we can be of further assistance, please let me know.

Sincerely,

Lindy L. Paull

Lindy L. Paull

~~2 to 4 Reform package~~

MINIMUM WAGE — symmetry or our tax credits

I. Tax provisions that we agree with and are acceptable:

- Accelerate 100% self-employed health insurance deduction
- Repeal occupational taxes related to spirits, wine and beer
- Permit installment method for accrual basis taxpayers
- Commercial fishermen provision

II. Tax provisions that we can agree to with modifications:

- WOTC with extension to welfare-to-work
- Computer donations—standard and additional digital divide
- Charitable rollover-modified by appreciation to property provision ($412 million)

III. Major issues in minimum wage tax bill:

1. Dropping or moving health insurance from the minimum wage:

   Issues:

   - *How much leverage on FSLA would we lose by kicking out the health provisions?*
   - *Does trying to add Clinton priorities undercut our effort to drop provisions?*
   - *What if they agree to more progressive tax-credit options? (This is unlikely due to Archer's opposition).*

2. Reforestation and climate change.

   Issues

   - *Do we insist on the climate change tax cut and pair it with the reforestation tax cuts?*
   - *Should we go for the car tax credit at $2.5 billion, a modified package at $5 billion, or the full package of provisions at $9 billion?*

3. FUTA surtax:

Issues

- *Is it our aim to keep FUTA?*
- *Do we keep FUTA out or do we keep it in with UI reforms? (Adding UI reforms to FUTA would increase the package by $14 billion over ten years.)*

4. Meals and entertainment:

   - Everyone in the tax strategy group is opposed to increasing the business and meal deduction to 80% for all employees.

   Issue

   - *Should we support the provision granting 80% business meal deduction for workers subject to DOT hours and/or the provision moving from 50% to 60% for small businesses only?*

5. Should we follow the strategy of a symmetrical path—for example, put our digital divide package against their digital divide package and our environmental package against their environmental package?

6. Should we discuss our priority items, for which they do not have proposals, such as school construction and vaccines?

Labor Items in the Min. Wage Proposal

1. **(House) Minimum Wage Increase** – Effective January 1, 2001, the minimum wage will increase by $.50, and will increase another $.50 on January 1, 2002.

2. **(House) Inside-Sales FLSA Exemption** – Provision updates the FLSA to recognize changes in sales occupations over the past 62 years so that inside and outside sales employees are treated the same under the law (with the exception of telemarketers). This will act to equalize their compensation and overtime rules.

3. **(House) FLSA Clarification for Computer professionals** –This provision would clarify existing law by specifying all of the new duties that are performed by computer professionals who are "similarly skilled" to those computer professionals that are already exempt in current law.

4. **(House) FSLA Exemption for funeral directors** -- This provision would exempt licensed funeral directors and licensed embalmers from minimum wage and overtime rules. This issue has been the subject of several court cases and this provision would clarify the treatment of such employees under the statute.

5. **(Senate) Bonus Gainsharing** – Current law dictates that employers have to recalculate an hourly employee's overtime pay if the employee receives certain types of commissions, incentives or performance bonuses. This provision would allow employers to reward hourly employees in the same manner as non-hourly employees without incurring the administrative burdens of recalculating overtime pay.

6. **(Senate) Tip Credit** – Current law mandates that an employer may not pay less than $2.13 an hour in cash wages to tipped employees provided the employee's tips cover the difference between the cash wage and the minimum wage. Some states mandate that employers pay the entire minimum wage in cash anyway. This provision would allow all employers, under future minimum wage increases, to utilize a tip credit, while preserving existing cash wages for tipped employees.

FAX TRANSMITTAL SHEET
U.S. Department of Labor
Office of the Deputy Secretary

Date: 9/5/00

To: Joe 456-2878

From: Ed Montgomery/Reggie McBEE

Page Number one of 11 pages

Messages:

Materials for 3pm Conference Call.

Fax: (202) 693-6143
If you have questions or problems regarding this fax call 202-693-6002.

DRAFT **09/05/2000 11:48 AM**

Overview

The FLSA amendments in the Hastert proposal are objectionable in whole because they offset a modest increase in the minimum wage for the lowest paid workers by taking away minimum wage and overtime pay protections for millions of other working Americans including, in some instances, these same lowest paid workers. This proposal pits minimum wage workers against other workers and themselves – and that's just wrong.

By making overtime less costly for employers, these proposals will accelerate the already increasing problem of mandatory overtime. This is an attack on working families, leaving workers with less pay and less time to spend with their families

Industry and employer groups – such as the U.S. Chamber of Commerce, the Society for Human Resource Managers, NAM, and the LPA – are likely supporters of each proposal. Worker groups and advocacy groups – such as the AFL-CIO and constituent unions – are likely to oppose the proposals.

Eliminating Bonuses from Overtime Pay

Current Law:

- Employees who work overtime are entitled to time and one half their "regular rate of pay" for each hour over forty worked. The "regular rate of pay" is intended to include most forms of compensation (except the items the statute specifically excludes), so that employees' overtime pay is based on their real pay. The law is designed to prevent employers from paying a low hourly wage, used to calculate overtime pay, and giving the employee a significant portion of her pay as a "bonus," which would then not be reflected in any overtime pay.

- Bonuses that are announced or promised ahead of time must be included in this regular rate when calculating a worker's overtime pay. Examples of such bonuses include performance or incentive bonuses, where an employer announces she will pay a bonus if employees exceed a production or quality goal. Just like hourly pay, these kinds of bonuses are intended as direct compensation for the quality or quantity of an employee's work. When an employee earns a bonus and works overtime hours in the same week, the amount of the bonus must be included as part of the "regular rate," which is then multiplied by 1.5 to determine the overtime pay.

- Current law already excludes from overtime calculations bonuses that are not announced or promised ahead of time, as well as other benefits such as bona fide profit-sharing plans, thrift or savings plans, bona fide health insurance plans, and stock option plans.

DRAFT 09/05/2000 11:48 AM

Proposed Change:

- The Hastert proposal would amend the law so that pay in the form of incentive or performance bonuses, gainsharing or commissions would not count in calculating overtime pay.

Proponents Arguments:

- Proponents claim that administrative burdens associated with these calculations under current law discourage employers from offering incentive or performance bonuses to their hourly workers, thereby denying these workers certain benefits enjoyed by other workers. They assert that employers find it difficult to calculate retroactively additional overtime payments due employees who receive commissions, incentives or performance bonuses for work done in prior weeks that included overtime hours.

Reasons to Oppose:

- Pay structures could be manipulated, cutting workers pay. Excluding bonuses, commissions and similar payments from the regular rate used to calculate overtime creates a strong incentive to create pay systems with lower hourly wages, while shifting more of the worker's pay to "bonuses." When the worker doesn't put in overtime hours, her pay could be the same. But if the worker does work overtime hours, her pay for those hours, and her gross earnings, would be cut because it is based only on the new, lower hourly wage, with *the bonuses are excluded.*

- For some workers, hourly wages could be cut to the minimum wage (or below), and supplemented by bonuses, netting employers huge savings in overtime pay costs – and giving them a competitive edge, putting pressure on their competitors to follow suit.

- Because overtime will cost them less, there would be less disincentive for employers to force workers to put in excessive overtime hours. Overtime pay is intended to impose a cost on employers who make employees work long hours, to act as a "brake" against oppressively long workweeks. This proposal severely undermines the disincentive effect of overtime pay – leaving workers with less pay and less time with their families.

- This change would severely undermine destroy overtime pay as it has existed in this country since 1938 by providing a huge loophole to avoid paying time and one-half based on an employee's true earnings.

- The change is not necessary. Employers have been paying performance-based bonuses and properly computing overtime pay for over 50 years. Today's computer-automated payroll systems are certainly capable of making such calculations.

Whom it will affect and how:

- Approximately 75 million are currently entitled to overtime pay; while not all work overtime hours, this change could potentially affect all of them.

- Example: John, who today receives $6 an hour and a 5% commission on sales, is paid overtime based on the entire earnings, not just the $6 an hour. This change would allow his employer to exclude the commission from the calculation of overtime pay – reducing the overtime pay rate, the employer's overtime costs, and John's take home pay.

- Example: Sue is a manufacturing plant assembly line worker who earns $14.00/hour, receives time and a half overtime after 40 hours a week, and gets an additional production bonus of $100 for each week her work unit exceeds production quotas with the fewest defects. She regularly works five 10-hour days (50 hours/week). Under current law, she is due $880 with proper overtime pay each week she earns a bonus. Under the proposed amendment, she would lose ten dollars a week from her pay if the production bonus were excluded from the overtime rate. Sue could lose up to $520 a year under this proposal.

- Example: Sally makes $10 an hour today and is entitled to $15 an hour for each overtime hour she works. But, under the proposed amendment, her employer, enticed by competitive pressure and financial incentive, could cut her base pay down to the minimum wage (or less) and convert her additional compensation to some form of incentive bonus. Let's say her pay is cut to $6 an hour and she is provided a weekly bonus of $160 to meet production quotas. At first glance, it looks like Sally would have the same total pay, just in a different form. But when she works overtime, she would only get $9 an hour (instead of $15). In a 50-hour workweek, she would receive $490 in total pay ($240 straight time, $90 for overtime, and a $160 production bonus). Without these changes in the law, she would have received $550 in total pay. Sally has just seen her pay cut $60 a week, which translates to $3,120 a year if all else stayed the same.

Note:

- Working together, the Congress and the President recently agreed to amend the law to make it clear that stock options don't have to be included when calculating overtime pay, so long as there's no attempt to disguise pay as stock options. Usually, employers give stock options so their employees have an opportunity to own a piece of the company, and to share in the company's future. That's different from pay, and that's why genuine stock options – not pay in disguise – are now excluded from overtime calculations.

Exempting Inside Sales Workers

Current Law:

- The Fair Labor Standards Act specifically provides that the minimum wage and overtime requirements do not apply to a worker employed as an "outside salesman," someone who spends at least 80% of their time off the employer's premises doing sales work.

- The law recognizes that "outside sales" workers are typically outside the day-to-day control of their employers, who can't monitor or track the time these employees actually spend working and so have no way of knowing how many hours the employees work or if they work overtime.

Proposed Change:

- Under the Hastert proposal (which we assume is the same as that included in HR 3081, the minimum wage bill passed by the House), employers would not have to pay minimum wage or overtime pay to certain "inside sales" employees – employees who do sales work while on the employer's premises – who make over $25,000 in combined salary and commissions. In other words, a worker who earns that much could be forced to work unlimited hours of overtime, with no additional pay of <u>any kind</u> – not just overtime pay – for their work.

Proponents Arguments:

- Proponents claim that they are merely equalizing the treatment of "inside" and "outside" sales workers, to recognize that with changing technology workers who used to sell door-to-door are now using the Internet and other forms of technology to make those same sales.

Reasons to Oppose:

- The proponents' argument ignores the reason for the "outside sales" exemption – the employer's inability to track the worker's hours. That problem doesn't exist for employees who sell products from – or "inside" – the employer's premises. Employers have no trouble controlling and monitoring how much time these employees spend at work, and often go to great lengths to do so. Employers know when inside sales employees work overtime – in fact, they may demand it – and they should give those workers overtime pay.

- Denying minimum wage and overtime protections to "insides sales" employees who earn more than $25,000 is not justified; it is simply a way to cut employers' labor costs, by taking money out of workers' paychecks and undermining their basic right to the minimum wage and overtime pay for working more than 40 hours a week.

DRAFT 09/05/2000 11:48 AM

Whom it will affect and how:

- *[In previous SAPs on bills containing similar language, the Administration has stated that this provision could affect 1.5 million workers. We are working on a revision of that estimate, which could bring the number closer to 3 million workers. On Tuesday we will confirm our calculations and decide if we should use just the new number, or both numbers in a range.]*

- Workers who call existing customers or who receive incoming calls could lose their minimum wage and overtime protections. Telemarketers making "cold calls" would probably not be affected by this change, nor would retail counter clerks. The types of workers potentially impacted thus vary widely, but examples of workers who could be affected include:
    - sellers of mortgage banking or other financial services who simply wait for the phone to ring.
    - sellers of Yellow Pages advertising who already have ongoing relationships with customers and make sales calls to those customers.
    - sellers of medical or scientific equipment or pharmaceuticals to doctors, dentists, and dental and medical labs.
    - sellers in wholesale distribution of virtually any product sold to commercial resellers, i.e., the entire "wholesale distribution industry," such as food distributors, wholesale florists, electrical and plumbing supply shops.

- Example: A sales associate in a mortgage company receives calls from potential customers seeking home mortgages and other loans. Today she is paid a $350 weekly salary and a commission of $35 for each qualifying loan application processed. In a typical week, she processes five applications while working five nine-hour days (45 hours/week) and earns $554.17 with proper overtime pay. Under the proposed exemption, because her base pay ($350 x 52 = $18,200) exceeds 1 and 1/2 times the minimum wage for 2080 hours and her commissions exceed 40 percent of base pay, she would be entitled to receive only $525. She would suffer a $1,516.84 annual pay cut, if all else stayed the same – and she could be forced to work overtime hours with no extra pay.

DRAFT 09/05/2000 11:48 AM

Undermining State Tip Credit Laws

Current Law:

- Federal law allows employers to pay to tipped employees cash wages in the amount of $2.13/hour, and to credit tips earned by the employee toward the full federal minimum wage owed. If tips don't bring an employee's hourly wage to the full federal minimum, the employer must make up the difference.

- The federal rule constitutes a floor. States are free to pass laws requiring employers to pay a greater share, or all, of the full minimum wage. Seven States (Alaska, California, Minnesota, Montana, Nevada, Oregon, and Washington) require employers to pay the full minimum wage to tipped employees, with no tip credit allowed. Twenty-two other States allow a tip credit, but smaller than is provided for in federal law.

Proposed Change:

- We have not seen the specifics of this proposal, but it seems that the Hastert proposal would "freeze" State laws that require employers to pay a higher cash wage than under federal law. In the future, States would be preempted from increasing the amount of cash wage employers must pay tipped employees, thus forcing States to allow employers to take a credit based on tips equal to the amount by which the federal minimum wage is increased above the "frozen" State law provision.

Proponents Arguments:

- Proponents state that this provision would merely allow all employers to use a tip credit, without reducing the wages of tipped employees.

Reasons to Oppose:

- The Fair Labor Standards Act sets a floor, not a ceiling, on minimum wage and overtime pay.

- States should have the right to pass laws, according to the needs and preferences of their citizens, that provide employees with additional protections.

- This <u>will</u> reduce the wages of employees. They would, presumably, continue to receive the same amount in tips, but would eventually receive less money in cash wages from the employer.

Whom it will affect and how:

- Tipped employees are usually low paid workers, workers who have not received an increase in their minimum cash wages for many, many years. (The cash wage employers must pay tipped employees under federal law has increased only 12 cents over the past 20 years.)

- Approximately 1.4 million people work as waiters or waitresses. But this figure does not reflect all of the workers who could be affected. There are other workers who may receive tips (for example, pizza and other delivery workers, and valets), while all wait staff may not be tipped employees.

DRAFT 09/05/2000 11:48 AM

Exempting Funeral Directors and Embalmers

Current Law:

- The minimum wage and overtime laws apply to funeral directors and embalmers unless they meet the requirements for an existing exemption (e.g., as supervisory managers).

Proposed Change:

- The Hastert proposal would amend the law to specifically exempt funeral directors and embalmers from the minimum wage and overtime law.

Proponents Arguments:

- Given the nature of the business, funeral directors and embalmers are generally on call around the clock and the hours they work per week can vary greatly. Overtime pay is costly and burdensome to small funeral home concerns. Given their erratic schedules, some workers might prefer compensatory time off to overtime pay, but if the overtime law applies, it requires that workers receive overtime pay, not comp time.

Reasons to Oppose:

- The industry is changing drastically, with large chain companies buying up smaller, privately owned funeral homes. Funeral directors of small, family owned concerns are likely to be exempt as the owner/operator of the business. But as these small businesses are bought out or replaced by larger companies, funeral directors are employees, not owner-operators, entitled to overtime pay like any other workers (if they are not exempt managers).

- Employers are free to give their employees extra time off, paid or unpaid, in addition to paying them overtime pay, under current law.

- Removing the cost of overtime pay means employers will be more likely to require onerous long hours of work. Thus, making all funeral directors and embalmers exempt will give them less control over their time, and less time with their families.

Whom it will affect and how:

- We estimate that approximately 25,000 to 35,000 workers could lose minimum wage and overtime protection. The Funeral Directors Association web site puts the number of funeral directors/embalmers at 35,000; this number probably includes self-employed funeral directors, who are already exempt. According to BLS, there were 25,000 funeral directors/morticians in 1998. While this number excludes the self-employed, it does not include embalmers.

- Example: Tim is a licensed funeral directors working for a funeral home operated by a national chain. He works long hours each week at the funeral home, and is also on-call to their customers after hours, seven days a week. Tim earns $16.85 an hour and generally puts in 60 hours a week. Under current law, he is entitled to $505.50 in overtime pay (1.5 x $16.85 x 20 hours) in addition to his weekly hourly wages of $674 ($16.85 x 40 hours). If this provision becomes law, funeral directors like Tim would lose <u>all</u> minimum wage and overtime protection. He could see his pay cut to whatever his employer decided to pay – even if it's less than the minimum wage.

DRAFT 09/05/2000 11:48 AM

Exempting More Workers as "Computer Professionals"

Current Law:

- Under current law, workers who qualify as "professionals" – i.e., doctors, lawyers, engineers, architects and others who must have advanced academic degrees, and artists – are not covered by the minimum wage or overtime laws.

- In 1990 and 1996, Congress amended the law to deem computer systems analysts, computer programmers, software engineers and similar computer workers as exempt "professionals," if they earn a salary of at least $250 per week ($13,000 per year) or are paid hourly wages of at least $27.63. As a result, these workers are not entitled to overtime pay regardless of whether they meet the traditional criteria for exempt professionals.

Proposed Change:

- The Hastert proposal would add to the "computer professional" exemption categories of lower skilled workers, and workers who manage or train such employees.

Proponents Arguments:

- This provision simply updates the exemption by clarifying that job titles and categories that didn't exist in 1990 or 1996 and should also be exempt from overtime.

Reasons to Oppose:

- The proposed exemption would further erode the definition of an exempt professional by including lesser skilled and even non-salaried workers. The industry is rapidly growing and tight; competitive pressure to work people overtime is already severe. More and more people will fall under this exemption as the industry continues its tremendous growth.

- It invites other industries to lobby for the same treatment – that is, to deprive workers of minimum wage and overtime protection by exempting specific jobs from the law.

Whom it will affect and how:

- Based on 1998 BLS OES data, we estimate that at least 165,000 computer workers paid hourly rates of $27.63 or more could be affected by this provision. An unknown number of additional computer workers in these categories paid guaranteed <u>salaries</u> as low as $250 per week ($6.25 per hour or $13,000 per year)

AFSCME®

American Federation of State, County and Municipal Employees, AFL-CIO

1625 L Street, N.W., Washington, D.C. 20036-5687
Telephone: (202) 429-1000
Fax: (202) 429-1293
TDD: (202) 659-0446
Website: http://www.afscme.org

September 11, 2000

Mr. Wagt
File

Mr. Charles Brain
Assistant to the President and
Director for Legislative Affairs
The White House
1600 Pennsylvania Avenue, N. W.
Washington, D. C. 20500

Dear Chuck:

We appreciated the opportunity to meet with you on Friday. I am responding to the questions you asked regarding the Unemployment Income (UI) reform package.

The business organization which participated in the "stakeholder" negotiations is Strategic Services on Unemployment & Workers' Compensation (UWC), an umbrella group of various business interests. The Chairman of UWC is Chuck Yarbrough of Tyson Foods, Inc., and he testified last Thursday in support of the UI reform proposal.

UWC's Board voted to support the UI reform package although the vote was not unanimous. (A list of the Board of Directors is enclosed.) J.C. Penny voted against the proposal, and, as you know, is now opposing it. Additionally, the National Retail Federation submitted testimony against the part-time coverage provisions of the package. However, a majority of other companies on the Board voted to support the package, including USX and the big three auto makers. As far as we know, the Chamber of Commerce and NAM have not come out in opposition, and we do not expect them to do so.

In addition, the package has support from some key governors. Enclosed are letters from Governors Taft, Engler, Leavitt, and Vilsack. Other letters should be forthcoming.

I hope this information is helpful. Please let me know if we can provide you with any other information. We very much appreciate your support.

Sincerely,

Charles M. Loveless
Director of Legislation

CML:nmr

cc: Peggy Taylor
Enclosures

Board of Directors

Chairman
Charles Yarbrough
Division H.R. Manager
Tyson Foods, Inc.

Vice Chairman
George E. Bradford
Director, U.S. Steel Group, Taxes
USX Corporation

Treasurer (Acting)
Matthew L. Harvill
Director of Unemployment Compensation
Kelly Services

President
Eric J. Oxfeld
President
UWC -- Strategic Services on
Unemployment & Workers' Compensation

Craig A. Berrington
Senior V.P. & General Counsel
American Insurance Association

Warren G. Blue
Senior Vice President
Harrington Services Corporation

G. Bart Bontems
Vice President, Industrial Relations
Deere & Company

Patrick J. Cleary
Vice President, Human Resource Policy
National Association of Manufacturers

Thomas J. Conway, Jr.
Program Manager, Employee Benefits
General Electric Company

John P. Davidson
Attorney at Law, Benefit Programs Planning
Chrysler Corporation

Charles O. Howarth
Senior Vice President
CA Assn. of Hospitals & Health Systems

Stanley R. Janis
National Manager, Workers' Compensation
Rockwell International Corporation

June Jennings
Unemployment Insurance Tax Manager
JC Penney Company, Inc.

Roberts T. Jones
President
National Alliance of Business

Paul Mattera
Vice President & Assistant General Counsel
Liberty Mutual Insurance Company

Sue Meisinger
COO & Senior Vice President

Society for Human Resources Management

Lee Mezza
Manager North American Compensation & Benefits Planning
Ford Motor Company

John R. Rathgeber
Executive V.P. & Secretary
Connecticut Business & Industry Association

Lori Roberts
National Claims Director
GatesMcDonald

Alan H. Strohmaier
Director, Unemployment and Workers' Compensation
General Motors Corporation

faxed 9/6/00
@ 4pm
202-225-4488
followed up c̄ mail.

THOMAS J. VILSACK
GOVERNOR

OFFICE OF THE GOVERNOR

SALLY J. PEDERSON
LT. GOVERNOR

September 6, 2000

Emily DeRocco
202-434-8033

Honorable Nancy L. Johnson, Committee Chair
House Ways & Means Committee
Subcommittee on Human Resources
U.S. House of Representatives
Washington, DC 20515

Dear Congresswoman Johnson:

We would like to express our strong support for an important initiative to Iowa, the Unemployment Insurance – Employment Service Reform Package Legislation.

Our nation is facing a workforce shortage and in Iowa the situation is critical. For the past 18 months Iowa's unemployment rate has been among the lowest in the nation. On September 7, 2000, as the Subcommittee on Human Resources begins hearings on reform of the unemployment compensation system, you have the opportunity to provide states like Iowa the tools to upgrade and strengthen the workforce system upon which so many workers rely. Please include these remarks as part of the record for purposes of that hearing.

The Workforce Development system in Iowa has been recognized as a leader in providing workers and employers with high quality job placement and labor exchange services. Iowa has continued these efforts while federal funding for these services has been severely reduced over the years. The FUTA tax was designed to provide adequate funding to states for these services. Since the early 1930s, this funding system has worked well. However, over the past several years the federal government has cut funding for the workforce system forcing significant staff reductions and office closings nation-wide. At the same time, the FUTA reserve fund has been used to balance the federal budget rather than provide adequate resources to maintain services. We support taking the FUTA money "off-line" and making the fund a mandatory item in the federal budget. Iowa, together with 34 other states, moved to enact a surcharge in order to provide adequate support for local Workforce Development services. Without the funding through the current state surcharge, we would be forced to close 56 offices, all of which provide critical workforce services to workers and employers in smaller communities and rural areas. This surtax would not have been necessary if the funds, as prescribed by federal statute, were available for the workforce system.

The Unemployment Insurance – Employment Service Reform legislation also provides specific funding for the utilization of electronic commerce to distribute unemployment compensation to workers faster and more efficiently. Funding to upgrade technology is

STATE CAPITOL DES MOINES, IOWA 50319 515 281-5211 FAX 515-281-6611

necessary to compete in the new economy and essential to provide efficient, convenient and effective services to our citizens. The reform package also contains a number of technical changes that will further eliminate barriers to update and improve services.

As you are aware, a broad constituency including a coalition representing all of the significant groups active in this arena supports the reform package legislation. This widespread support demonstrates that the reform package will provide significant enhancements to the current system. We support the Unemployment Insurance — Employment Service Reform Package Legislation and urge your committee members to do the same.

Sincerely,

Thomas J. Vilsack
Governor

Sally Pederson
Sally J. Pederson
Lieutenant Governor

STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

JOHN ENGLER
GOVERNOR

September 5, 2000

The Honorable Nancy L. Johnson
Chair, Subcommittee on Human Resources
House Ways and Means Committee
B-317 Rayburn House Office Building
Washington, DC 20515

Dear Representative Johnson:

First, I want to express my thanks for your leadership and the willingness of your committee to address the problems that have existed in the Employment Security system for many years.

In Michigan, the Unemployment Insurance (UI) and Employment Service (ES) programs have performed key roles in maintaining economic security for employers and workers. Because of inadequate funding, during both periods of economic downturn and sustained economic growth, our state programs have struggled to provide adequate service to the public.. As a result, Michigan has had to supplement federal administrative funds with additional state resources to improve service delivery. In view of the surplus of federal receipts from dedicated employer taxes, it is essential that changes be made immediately.

The UI/ES Reform proposal, which is being considered by your committee, represents a significant change that will strengthen the system across the nation. More importantly, these changes would enable Governors to provide better state administration of Employment Security programs. As is the case with many compromises, there are some aspects of the proposal necessitating state law changes, which I do not agree with since these are essentially state prerogatives. However, considering the magnitude of positive changes in other areas, I am supportive of the proposed compromise and would request that you give favorable consideration to the proposal.

Sincerely,

John Engler
Governor

JE/tw/law.dc
cc: Representative Dave Camp
Representative Sandy Levin

Statement of Bob Taft, Governor, State of Ohio
Committee on Ways and Means
Subcommittee on Human Resources
US House of Representatives
September 7, 2000

Thank you for the opportunity to submit a statement expressing my strong support for repeal of the "temporary" Federal Unemployment Tax (FUTA) surcharge and reforms to the employment security financing system to provide full funding for the unemployment insurance and employment service programs.

Reform of this system is an issue that is extremely important to employers, workers and states administering unemployment insurance and employment service programs. I was pleased to testify before the Ways and Means Committee in June of 1999 and to submit a statement to this subcommittee in February of this year in support of badly needed reforms to this system.

The FUTA surcharge was enacted by Congress in 1976 to provide funds to reimburse depleted trust fund accounts that have long since been restored. The Tax Relief Act of 1997 extended this surcharge much longer than necessary through the year 2007.

The current system overtaxes employers and underfunds the unemployment insurance program and employment services which are critical to provide needed access to jobs and support for families in the workforce of the new century.

In 1997, 49 of the 53 states and jurisdictions received less in administrative funding than their employers paid in FUTA taxes – many states significantly less. Since 1990, less than 58 cents of every employer FUTA tax dollar has been returned in administrative funding for states.

An examination of the taxes paid by employers in comparison to administrative funds provided to the states paints a compelling picture. From 1993 to 1998, annual FUTA tax collections increased from $4.23 billion to $6.45 billion while administrative funding was cut from $3.81 billion to $3.47 billion. Although the latest data is only available through 1998, the trend line has continued in 1999 and 2000, further diminishing the percentage return of employer taxes to the states each year.

This grossly inadequate return to the states is striking, as is the unjustified continuation of the "temporary" surcharge. In Ohio, where we receive 39 cents on the dollar, the lack of adequate funding has required the closing of local offices, reductions in staff, and the use of State general revenue to make up for cuts in federal funds.

Not only is there no justification for the continuation of the FUTA .2% surcharge to fund the system, but the funds appropriated are insufficient to meet the costs of supporting the state adequately in administering the unemployment insurance and employment service programs. Ohio employers are paying too much in FUTA taxes, and the differential between the amount of federal administrative funds appropriated and actual costs of administration by the states continues to increase.

We must do a better job of supporting state efforts to ensure the ability of American families to adjust to the demands of the workforce in the coming century by providing adequate funding for employment services for those who become unemployed. In Ohio, we have merged the Bureau of Employment Services and the Department of Human Services into the Department of Job and Family Services to develop the comprehensive system we need to address workforce development.

We need a system which properly funds states for administration, minimizes the tax burden on employers, and provides states with the flexibility to design and effectively run workforce development systems.

Since 1997, a coalition of 32 states and more than 100 state and national employer organizations representing hundreds of thousands of employers have joined together to seek reform of employment security financing. The Western Governors Association and the Southern Governors Association have passed resolutions urging reform of the system, and the National Governors' Association has adopted a policy statement outlining specific areas where reform is needed.

Congressman McCrery and Senator DeWine have been instrumental in bringing the need for reform to the attention of Congress by introducing legislation earlier this session. Their efforts and those of the reform coalition have now been joined with reform initiatives from representatives of organized labor and the United States Department of Labor to develop a bi-partisan reform proposal.

The bi-partisan proposal now under consideration was crafted to address appropriate administrative funding levels and employer taxes. The proposal includes provisions to:

* Repeal the .2% FUTA surcharge;

* Provide adequate dedicated funds for administration of unemployment insurance, public employment services and veterans employment services; and

* Streamline employer tax reporting requirements to reduce employer reporting burdens and the costs of administration.

I urge you to favorably consider this bi-partisan proposal for reform.

STATE OF UTAH
OFFICE OF THE GOVERNOR
SALT LAKE CITY
84114-0601

MICHAEL O. LEAVITT
GOVERNOR

OLENE S. WALKER
LIEUTENANT GOVERNOR

September 1, 2000

The Honorable Nancy L. Johnson, Chair
Subcommittee on Human Resources
Committee on Ways and Means
U.S. House of Representatives
B-317 Rayburn Building
Washington, DC 20515

Dear Chair Johnson:

I want to express my support for the comprehensive Unemployment Insurance and Employment Service (UI/ES) reform on which you have scheduled a hearing for Thursday, September 7, 2000. Please include this letter in the record of the hearing.

Since taking office in 1993, I have made quality of life issues one of my top priorities throughout my administration. This includes matching qualified workers to good jobs and helping businesses expand through the retention of their employees. In fact, in 1997, I led the merger of five different agencies into the newly created Department of Workforce Services to better meet the customer service expectations of employers and job seekers.

The UI/ES reform legislation that you are considering greatly enhances the ability of states to fund the critical services that more quickly connect unemployed people to available jobs. I, along with the Utah Legislature, believe so strongly in these programs that last year Utah contributed almost $3.7 million toward UI and ES services. This represents approximately 11 percent of the total funds dedicated to unemployment insurance and the employment service in Utah.

Unfortunately, our contribution to the UI/ES effort cannot adequately fund services that meet employer and job seeker demands in the current economy particularly when employers are already paying for these services through the federal unemployment tax (FUTA). Using state general revenues to support these programs when federal unemployment compensation accounts have billions of dollars in surplus is unfair to our taxpayers. At the same time, we do not want to miss opportunities to help businesses expand or connect unemployed workers to good paying jobs. They need our support, and I see this current UI/ES reform package as a unique opportunity to provide that support.

I want to thank you for holding this hearing and for your continued support of our publicly-funded workforce system.

Sincerely,

Michael O. Leavitt

DRAFT

Tax Items in the Minimum Wage Proposal

D's add Welfare Work.

* 1. **(Senate) WOTC** – Compromise to extend Work Opportunity Tax Credit through 2004 to assist businesses in hiring disadvantaged workers.

* 2. **(House) Reforestation** – Provide tax relief for reforestation expenses to create and maintain jobs *[House bill increases maximum reforestation expenses qualifying for amortization and credit from 10k to 25k; removes cap on amortization cost in 2001 and 2003.]*. D's – perm. + small Bus.

* 3. **(Senate/House) Section 179** – Allow small businesses to expense qualifying property costs up to $35,000. Admin Simplifications

* 4. **(Senate/House) Meals/Entertainment** – Speed up phase-in for 80% deduction of meals and entertainment expenses [*Senate increased meal/entertainment deduction to 80%. House increased meals to 60%, and 80% for those subject to DOT hour limitations.*]. Senate Bill was small increase

17B over 10 yr.

* 5. **(Senate/House) Installment method** – Repeal installment method accounting requirement. Done

* 6 **(Senate/House) Health deductibility 100% for self-employed** – Accelerate and extend deductibility to those who choose not participate in employer-subsidized health plans. Done

7. **(Senate) FUTA surtax** – Repeal .2% FUTA surtax [*Though the net FUTA tax rate is .8%, the permanent tax rate is only .6%.*]. Package of Reform.

8. **(Senate) Health expense above-the-line deduction** – Phase-in for individuals to deduct 100% of health expenses without itemizing [*Individuals currently cannot deduct for health expenses unless they itemize and that is only 7.5%.*].

9. **(House) Special Occupations Taxes** – Repeal excise taxes imposed on producers and marketers of distilled spirits, wine, and beer.

10. **(House) Commercial Fisherman income averaging** – Extend income-averaging benefits for farmers to include commercial fisherman.

11. **(House) Mortgage Cancellation**

ESTIMATED COST: $23 billion over 5 years, $76 billion over 10 years.

* Similar or identical version in House Democratic Substitute.

DRAFT

USING WOTC TO BRING WELFARE FATHERS INTO THE WORKFORCE

- The Work Opportunity Tax Credit (WOTC) has helped nearly 1,000,000 welfare recipients and other needy persons get jobs since October 1996. However, since WOTC eligibility criteria targets primarily women on welfare, 80% of those hired through WOTC (and the Welfare-to-Work credit) are women.

- Fathers of children on welfare don't receive cash assistance because they are absent or ineligible under state law, or both. However, poor males often face the same barriers to employment as welfare mothers--lack of job skills and work experience.

- Unemployment of inner city males is typically three to five times higher than the national average. Poor rural areas also have higher unemployment rates. The public schools and other programs have failed to make these men employable.

- Currently, WOTC is available for 18-24 year olds who are in food stamp families or living in Empowerment Zones or Enterprise Communities (EZ/ECs). Persons above that age are simply not eligible under these categories.

- An extensive infrastructure has developed for the WOTC program that includes efficient state agency program management, solid links to community organizations, and effective employer outreach and training. This system could easily be expanded to include other persons facing major barriers to workforce participation.

PROPOSAL: EXPAND WOTC ELIGIBILITY TO <u>ALL</u> PERSONS ON FOOD STAMPS OR RESIDING IN EZ/ECs

- The proposed change would increase employment options for needy persons--especially men--by providing employers the resources needed to recruit, hire, and retain them. The proposal would allow everyone from poor households to make use of the highly effective operating structure that WOTC has created.

- The proposed change would protect the program's focus on needy persons because 90% of those on food stamps live below the poverty line. Persons on food stamps above the poverty line are generally "working poor" and are not interested in the entry-level jobs usually offered by employers participating in the WOTC program.

- Earlier this year, Congress passed and the President signed into law a measure to encourage older Americans to remain in the workplace by eliminating the earnings limits on those receiving social security benefits. The proposal to eliminate the WOTC age ceiling for those on food stamps and those who reside in EZ/ECs would similarly encourage employment for persons who have never been in the workforce. Like the social security change, this would have positive social benefits and would help reduce labor shortages in some job markets.

DRAFT

September 8, 2000

MEMORANDUM FOR SECRETARY SUMMERS
DEPUTY SECRETARY EIZENSTAT

FROM JON TALISMAN
ACTING ASSISTANT SECRETARY (TAX POLICY)

MARTI THOMAS
ACTING ASSITANT SECRETARY (LEGISLATIVE AFFAIRS AND PUBLIC LIAISON)

RE ISSUES WITH TAX CUT IN HASTERT MINIMUM WAGE OFFER

In an August 28 letter to the President (attached), Speaker Hastert made a compromise offer that would include a $1.00 an hour increase in the minimum wage to $6.15 over two years. The offer also dropped the estate tax and pension provisions contained in the current bills before Congress, but still contains (as in Senator Nickles' small business package), among other provisions, the deduction for individually purchased (i.e., non-employer provided) health insurance. According to the Speaker, the estimated cost of this offer is $23 billion over five years, and $76 billion over ten. The health insurance deduction provision, which raises serious policy concerns, is about $45 billion over ten years

The President reportedly raised concerns about several of the tax provisions in the Speaker's offer on their recent trip to Columbia, but they agreed to discuss the issues further at the staff level. Representative Bonior has stated that the tax provisions are too expensive. He noted that the tax cuts accompanying the last minimum wage increase (in 1997) only totaled about $20 billion over ten years. Senator Daschle indicated that he would accept some tax provisions as a part of a deal for increasing the minimum wage, but he wanted the cost of the package reduced by $30 billion.

This memo discusses the major elements of the Speaker's tax cut proposal and some options for modifying the tax proposal to reflect some of our priorities.

Tax Items in the Minimum Wage Package

The Speaker's offer is an improvement over the minimum wage bills that had passed the House and Senate, but some elements still raise issues. The earlier versions of the minimum wage bill, which would have cost over $100 billion over ten years, included costly proposals for estate tax relief and major elements from the Portman-Cardin and Patients' Bill of Rights (PBOR) proposals. All of the pension and estate tax proposals have been stripped from the Speaker's offer (as they are moving in other legislation), but the largest tax cut from PBOR remains. Based on a very sketchy description, the Speaker's proposal would:

- allow an above-the-line deduction for health insurance expenses (discussed above),
- repeal the 0.2 percent FUTA surtax (discussed above),
- speed up the phase-in of 100-percent deductibility for health insurance purchased by self-employed people,
- speed up the phase-in for 80-percent deduction of meals and entertainment expenses for employees subject to DOT hour limitations (e.g., truckers and airline pilots),
- increase to $35,000 the amount of property that small businesses can expense,
- double (to $20,000) the amount of reforestation expenses eligible for a tax credit,
- extend the Work Opportunity Tax Credit (WOTC) through 2004,
- allow accrual-basis taxpayers to use the installment method of accounting (i.e., repeal 1999 law changes),
- repeal the special excise taxes (effectively license fees) on producers of distilled spirits, wine, and beer, and
- allow commercial fishermen to income-average in the same way as farmers.

In addition, the Speaker proposed two other tax cuts directly to the President:

- a deduction for donations by computer manufacturers of used computer equipment to schools, and
- tax-free rollovers from IRAs and 401(k) plans to charitable organizations.

We have significant policy concerns about the first two proposals, which are outlined below. We also need further details on the specifics of the proposals, many of which were unclear in the Speaker's offer.

Above-the-line deduction for health insurance. The most problematic element of the proposal is the above-the-line deduction for health insurance. It is the most expensive element of the package, costing $45 billion over ten years according to OTA, and it does little or nothing to help small businesses. Providing a tax deduction for purchases of health insurance outside the workplace makes employer-provided health insurance less attractive, especially to young, healthy employees who can get inexpensive insurance in the nongroup market. This is a particular problem for small firms that want to offer health insurance, because the cost of their insurance increases dramatically as the number of employees covered decreases—especially, if the uncovered employees are also the healthiest. Moreover, a deduction is most valuable to high-income employees in higher tax brackets, whereas the greatest need for expanded coverage is among lower-income employees.

Repeal of the FUTA surtax. We also have a problem with repeal of the FUTA surtax as a stand-alone measure. As described in the September 1 memo from de la Vina, Elmendorf, and Burman, the Department of Labor has reached a tentative agreement with representatives of states, employers, and unions on a package of reforms to the Unemployment Insurance program. Repeal of the FUTA surtax is an essential element of that agreement: employers might not support reform without that sweetener attached. For that reason, the Administration should insist that the reforms be included with the FUTA surtax repeal. Since the reform package has bipartisan support, it should be possible to include it in the minimum wage bill, and its enactment this year would be a significant achievement.

Although the details of the rest of the package are unclear, most of the other elements could probably be made acceptable in some form. (The attachment discusses the issues that need to be resolved.)

<u>**Possible counter-offer options**</u>

The following table presents some options from the Administration's Budget that could be added to an overall package. Several of the options either directly or indirectly help small businesses.

- **New Markets** -- the new markets tax credit and renewal community bill ($18 billion), which has the broad bipartisan support in both the House and the Senate, contains a number of incentives to help businesses in distressed communities, as well as the new tax credit to make available equity capital in areas where it has traditionally been scarce.

- **Education** -- Investment in schools through school modernization bonds and qualified zone academy bonds, ($8 billion). This provision has strong bipartisan support in the House as a part of the larger Johnson-Rangel School Modernization bill, but may face Republican opposition in the Senate. We also could add our college opportunity tax cut, which costs $30 billion. Finally, we may want to add in our proposed employer tax credit for workplace literacy (including computer literacy), which was part of the $2 billion digital divide initiative.

- **Child Care** -- The proposed expansions of the child and dependent care tax credit ($31 billion) help low- and moderate-income people to meet the high cost of child care, an essential cost of working, thus helping to expand the labor supply in a very tight labor market. The proposal to provide a tax credit for employer-provided child care ($1.4 billion) proposed by Senator Kohl would be useful complement and a direct aid to employers who provide this valuable fringe benefit.

- **Health Care** -- The tax credits for COBRA continuation coverage ($10 billion) and Medicare buy-in ($2 billion) provide targeted assistance in paying for health insurance for workers between jobs and early retirees. Since the credits target employees who are out of the work force, they do not undermine the system of employment-based health insurance, in sharp contrast to the Speaker's proposed health insurance deduction. The proposal to encourage the development of small business health insurance purchasing coalitions would strengthen the system of employment-based health insurance by helping small employers to pool together to gain some of the health insurance cost savings that accrue to large employers. These proposals have received interest from both the Blue Dogs and centrist Democrats in the Senate. Versions of health-related tax credits targeted to small businesses were introduced before the August recess by Senator Robb [and the Blue Dogs].

- **Energy and the Environment** -- The climate change tax incentives are aimed at helping the producers and marketers of innovative energy-saving technologies to develop markets for those products and achieve profitability. Several of the incentives help businesses to reduce their energy costs.

- **Vaccines** -- While the vaccine tax credit doesn't address small business concerns, it remains one of the Administration's highest priorities.

- **Encourage philanthropy** – As discussed above, the Speaker made two proposals to encourage philanthropy. Our budget proposals would allow non-itemizers to take a partial deduction for charitable donations, simplify the tax rules for public foundations, raise the limits on donations of appreciated property to charity, and clarify the tax-treatment of donor-advised funds. The $15 billion package would be a more equitable way to address the concerns raised by the Speaker.

Revenue Cost Of Selected Budget Options
(Billions of Dollars)

	2000-2005	2000-2010
Provide incentives for public school construction and modernization	-2.4	-8.0
New markets package (HR 4923)	-5.1	-17.8
Enhance the child and dependent care tax credit	-7.6	-31.0
Provide tax credit for employer-provided child-care facilities	-0.5	-1.4
Encourage COBRA continuation coverage	-3.3	-10.3
Provide credit for Medicare buy-in program	-0.4	-1.6
Provide tax relief to encourage small business health plans	-0.1	-0.3
Provide climate change tax incentives	-4.0	-9.3
Encourage development of vaccines for targeted diseases	0.0	-1.0
Encourage philanthropy	-4.7	-14.7

Source: Office of Tax Analysis

Attachment. Speaker Hastert's Offer and Issues

(based on the description attached to the August 28 letter to the President)

Based on a very sketchy description, the Speaker's proposal would:

- allow an above-the-line deduction for health insurance expenses (discussed above),
- repeal the 0.2 percent FUTA surtax (discussed above),
- speed up the phase-in of 100-percent deductibility for health insurance purchased by self-employed people,
- speed up the phase-in for 80-percent deduction of meals and entertainment expenses for employees subject to DOT hour limitations (e.g., truckers and airline pilots),
- increase to $35,000 the amount of property that small businesses can expense,
- double (to $20,000) the amount of reforestation expenses eligible for a tax credit,
- extend the Work Opportunity Tax Credit (WOTC) through 2004,
- allow accrual-basis taxpayers to use the installment method of accounting (i.e., repeal 1999 law changes),
- repeal the special excise taxes (effectively license fees) on producers of distilled spirits, wine, and beer, and
- allow commercial fishermen to income-average in the same way as farmers.

In addition, the Speaker proposed two other tax cuts directly to the President:

- a deduction for donations by computer manufacturers of used computer equipment to schools, and
- tax-free rollovers from IRAs and 401(k) plans to charitable organizations.

We have significant policy concerns about the first two proposals, which are outlined above. We also need further details on the specifics of the proposals, many of which were unclear in the Speaker's offer.

Issues with other tax provisions

Speed-up proposals. The speed-ups of the deductibility of self-employed health insurance and business meals for employees subject to DOT hour limitations (e.g., truckers and airline pilots) are not particularly objectionable if they only change the timing of the policies. There are business meal proposals that would substantially expand the scope of the 80-percent deduction to apply to other employees and would be problematic. (We can't tell from the Speaker's description what version of the proposal he has in mind. Senate Minority Leader Daschle made critical comments about the Speaker's offer suggesting that he interpreted the proposal to be the more expansive one.)

Higher expensing limit for small firms. Our Budget proposal would have raised the expensing limit immediately to $25,000 and indexed it for inflation. Raising the limit further to $35,000 is acceptable policy, but the limit increase should be combined with the simplifications that we proposed in the Budget. The Administration's 2001 Budget proposal on Section 179 expensing would not only encourage small businesses to increase investment by raising the deduction limit, but also would simplify the operation of Section 179 and remove some of the confusion that small business owners face in using the provision. In addition, it would better target the provision on small businesses. The proposal could be expanded further to help small businesses by modifying the list of property eligible for expensing improvements to include storefronts and buildings as described in S. 1341, The Main Street Business Incentive Act.

Double expenses eligible for reforestation credit and rapid amortization. This proposal would double from $10,000 to $20,000 the amount of expenses eligible for the 10-percent reforestation credit and seven-year amortization. It would also eliminate the cap on amortization expenses in 2001-2003. The increase in the amount of eligible expenses is mildly objectionable because it would provide a small windfall to large timber companies. The temporary elimination of the cap on expenses eligible for rapid amortization is highly objectionable because it would create large windfalls for large timber companies and inequities between the tax treatment of timber and other investments. OTP staff is working on developing an alternative that is better targeted at the needs of small timber producers.

Tax-free rollovers from retirement savings to charities. This proposal would allow owners of IRAs and 401(k)s to make contributions to charity from those accounts without either including the income or taking the charitable deduction. Under certain circumstances, such a transaction would be advantageous. For example, under the proposal, taxpayers could effectively deduct fully the amount of contributions made from an IRA, without regard to whether they itemize their deductions, and without regard to the present-law limitations on deductible charitable contributions. By comparison, under current law, they would first include the IRA distribution in income, and then deduct the charitable contribution only to the extent, if any, that their other deductions plus the contribution exceed the standard deduction. Thus, under current law, a non-itemizer's income tax liability could increase despite the charitable donation. Similarly, taxpayers whose AGI exceeds the threshold for phasing out itemized deductions also would have a slight increase in tax liability, even if they donated the full amount of their IRA distribution to charity. Finally, taxpayers whose contributions to public charities exceed 50 percent of their AGI (30 percent for donations of appreciated property) may not currently deduct that excess. Contributions directly from an IRA or 401(k) could skirt that limit under the proposal.

Although encouraging contributions to charity is clearly worthwhile, the issue is why we should change the rules only for those with IRAs or 401(k) accounts. Our Budget proposals, which increase the AGI limits for contributions of appreciated property and allow a limited above-the-line charitable deduction for non-itemizers would be a more equitable way to advance the same objectives. We also have worked with representatives from the computer industry to develop a workable option to encourage their donation of computers to schools, as part of the Administration's ongoing digital-divide initiative, and believe we could support a proposal with sufficient safeguards that are acceptable to industry.

Extend the Work Opportunity Tax Credit through 2004. We strongly support the Speaker's proposal to extend this popular credit, and extension has broad bipartisan bicameral support. However, if WOTC is extended, the Welfare to Work Tax Credit, which is specifically targeted to employers who hire long-term welfare recipients, should be extended at the same time. (Both credits are currently scheduled to expire at the end of 2001.) If these credits are extended, the provision that prevents the AMT from reducing the value of personal credits, which also expires in 2001, could also be extended through 2004. The Small Business Administration's Office of Advocacy raised AMT relief as a special concern of small business owners. Moreover, extending this provision through 2004 could be viewed as a down payment on the more fundamental AMT reform that has to happen soon.

Labor Items in the Min. Wage Proposal

Effective Date?

1. **(House) Minimum Wage Increase** – Effective January 1, 2001, the minimum wage will increase by $.50, and will increase another $.50 on January 1, 2002.

2. **(House) Inside-Sales FLSA Exemption** – Provision updates the FLSA to recognize changes in sales occupations over the past 62 years so that inside and outside sales employees are treated the same under the law (with the exception of telemarketers). This will act to equalize their compensation and overtime rules.

3. **(House) FLSA Clarification for Computer professionals** –This provision would clarify existing law by specifying all of the new duties that are performed by computer professionals who are "similarly skilled" to those computer professionals that are already exempt in current law.

4. **(House) FSLA Exemption for funeral directors** -- This provision would exempt licensed funeral directors and licensed embalmers from minimum wage and overtime rules. This issue has been the subject of several court cases and this provision would clarify the treatment of such employees under the statute.

5. **(Senate) Bonus Gainsharing** – Current law dictates that employers have to recalculate an hourly employee's overtime pay if the employee receives certain types of commissions, incentives or performance bonuses. This provision would allow employers to reward hourly employees in the same manner as non-hourly employees without incurring the administrative burdens of recalculating overtime pay.

6. **(~~Senate~~ Not in) Tip Credit** – Current law mandates that an employer may not pay less than $2.13 an hour in cash wages to tipped employees provided the employee's tips cover the difference between the cash wage and the minimum wage. Some states mandate that employers pay the entire minimum wage in cash anyway. This provision would allow all employers, under future minimum wage increases, to utilize a tip credit, while preserving existing cash wages for tipped employees.