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**[04/12/1999-04/26/1999]**

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CREATION DATE/TIME:12-APR-1999 14:51:30.00

SUBJECT: LRM MNB44 - - LABOR Qs and As on S385 Safety Advancement for Employees (SA

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Note to EOP staff: you will not receive a hard copy of this LRM.

The attachment is 11 pages long.

----- Forwarded by Melissa N. Benton/OMB/EOP on 04/12/99

02:45 PM -----

LRM ID: MNB44

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
Washington, D.C. 20503-0001

Monday, April 12, 1999

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: Janet R. Forsgren (for) Assistant Director for Legislative  
Reference

OMB CONTACT: Melissa N. Benton

PHONE: (202)395-7887 FAX: (202)395-6148

SUBJECT: LABOR Qs and As on S385 Safety Advancement for Employees  
(SAFE) Act of 1999

DEADLINE: 11 a.m. Wednesday, April 14, 1999

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

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  - Janet R. Forsgren
- LRM ID: MNB44 SUBJECT: LABOR Qs and As on S385 Safety Advancement for Employees (SAFE) Act of 1999  
 RESPONSE TO  
 LEGISLATIVE REFERRAL  
 MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

- (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
- (2) sending us a memo or letter

Please include the LRM number shown above, and the subject shown below.

TO: Melissa N. Benton Phone: 395-7887 Fax: 395-6148  
Office of Management and Budget  
Branch-Wide Line (to reach legislative assistant): 395-7362

FROM: \_\_\_\_\_ (Date)  
 \_\_\_\_\_ (Name)  
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*Automated Records Management System  
Hex-Dump Conversion*

The Honorable Michael B. Enzi  
Subcommittee on Employment, Safety and Training  
Committee on Health, Education, Labor and Pensions  
United States Senate  
Washington, DC 20510-3202

Dear Senator Enzi:

Thank you for the opportunity to testify before the Subcommittee regarding S.385, the SAFE Act. OSHA is committed to working collaboratively with labor and industry to seek the most effective ways to keep America's workplaces safe and healthy.

I enclose OSHA's responses to the questions posed by the Subcommittee members in your March 24, 1999 letter. I hope that these responses will be helpful in clarifying OSHA's views. I look forward to continuing our discussion about how best to improve workplace safety and health.

Sincerely,

Charles N. Jeffress  
Assistant Secretary

Enclosure

*Enclosure*

1. *Please explain your hearing testimony which strongly suggests that you believe that government employees (e.g. OSHA compliance officers) have more integrity when it comes to protecting worker safety and health than private consultants who are bound by the strict codes of ethics of their profession. Evidence of such a belief is reflected in the following statements of your testimony:*

*“[T]he private sector is driven by the market, not a mandate to protect employee safety and health.”*

*“The consultant would feel pressured to sell penalty exemptions without rigorously inspecting workplaces in order to create business.”*

My testimony should not be interpreted to mean that I believe OSHA compliance officers have more integrity than private consultants. We believe that private consultants, as a whole, provide a valuable resource to employers and execute their responsibilities in a highly professional manner. We encourage employers to use private sector consultants to help them improve the safety and health conditions of their workplaces whenever possible.

The issue here is not one of integrity; it is an issue of neutrality and accountability. The issue is the avoidance of conflicts of interest.

OSHA inspectors, as Federal employees, are governed by the Standards of Ethical Conduct for Employees of the Executive Branch. These Standards, among other things, bar Federal employees from engaging in activities that impair their ability to perform their official duties impartially or result in conflicting financial relationships. Violations of the standards may result in civil and criminal sanctions. A Federal employee who accepted money from an employer whose facility he or she inspected would be guilty of violating the criminal conflict of interest laws even if the inspection was conducted with the utmost of professionalism.

OSHA has similar concerns about the need to ensure the impartiality of consultants as the Congress has for Federal employees. These private consultants, who are paid by an employer and whose work under the legislation would result in penalty exemptions for that employer, may not remain neutral and objectively perform their duties. The legislation would create an inherent conflict of interest. For example, they risk alienation of future income if they issue strict interpretations of compliance.

We encourage the use of professional safety and health consultants. However, even though professionals may be covered by their professions' ethical codes, the rules applicable to Federal employees are designed to ensure their neutrality and to hold them accountable if they do not remain neutral. We are, therefore, opposed to the use of paid consultants whose services, as envisioned by your legislation, may result in penalty exemptions because of the consultants'

inherent conflicts of interest.

2. *Your testimony states that OSHA can discipline OSHA inspectors who are not performing "to our standards," yet cannot adequately discipline "unconscientious consultants" who could inflict harm on "thousands of working Americans." (P.7) Please explain why a consultant would not be deterred from such behavior by criminal penalties under Section 17(g) of the OSH Act for making "any false statement, representation, or certification," and would not be deterred by the revocation of a license by the professional certifying body for such behavior?*

OSHA does not believe that the OSH Act's current provisions would effectively combat fraudulent behavior by private consultants, because resource constraints, combined with high burdens of proof and classification of the crime involved as a misdemeanor, make it extremely unlikely that unconscientious consultants will be detected, prosecuted, and convicted.

First of all, the burden of proof is high. Section 17(g) states that a defendant's falsification must be "knowing," presenting U.S. Attorneys with complex issues of proof regarding state of mind. As Section 17(g) is a criminal provision, the defendant's state of mind must be proven beyond a reasonable doubt. Second, even if a defendant is found guilty, a conviction under Section 17(g) is only a misdemeanor and, thus, provides an insufficient deterrent. Finally, the percentage of private consultants engaging in criminal activity would undoubtedly be small. Given the large number of private consultants that would seek certification under this bill, however (OSHA estimates the number of private consultants to be in the tens of thousands), it is unrealistic to expect that OSHA would be able to detect a significant proportion of the violations. In fact, very few cases have been prosecuted under Section 17(g), precisely because the threat of criminal prosecution is too remote to serve as an effective deterrent.

Nor do we believe that the license revocation provision in the bill serves as an adequate deterrent.

OSHA retains a level of authority over its own inspectors because of the employer-employee relationship. OSHA has implemented regular training and yearly evaluations of its inspectors, and can terminate an inspector's employment or take other appropriate personnel action when the inspector's work is subpar. Therefore, OSHA has the means to ensure that its inspectors are fairly and conscientiously applying its standards. On the other hand, OSHA could not discipline or dismiss consultants who have demonstrated a lack of ability in applying OSHA standards. As explained above, OSHA would also be unable to hold private consultants to the ethical standards addressed by the Standards of Ethical Conduct for Employees of the Executive Branch. Nor is it reasonable to assume that OSHA could exert sufficient influence over a licensing body to persuade it to initiate license revocation proceedings.

While undoubtedly only a few consultants might make false statements and certifications, it is far more likely that consultants seeking to continue a cooperative consultant relationship will temper their advice in accord with the employer's opinion. S. 385 does not address the impact that this relationship between the employer and the private consultant will have over the consultant's independent exercise of judgement.

Many standards promulgated pursuant to the OSH Act require OSHA inspectors to independently assess an employer's compliance with a standard. Under OSHA's construction standard, for example, an OSHA inspector is required to determine, pursuant to 29 C.F.R. §1926.20(b) (Accident prevention responsibilities), whether an employer has instituted regular and frequent inspections of a job site and, pursuant to § 1926.21(b)(2) (Employer responsibilities), whether employees have been instructed in the recognition and avoidance of unsafe hazards. OSHA inspectors also assess whether an employer falls within an exception to a requirement. Pursuant to § 1910.120(a)(1) (Hazardous waste operations and emergency response), for example, if an OSHA inspector concludes that there is no reasonable possibility that the employer's operation will expose employees to safety or health hazards resulting from hazardous waste, the employer will not be required to implement the provisions of the hazardous waste standard. Obviously, an OSHA inspector's determination of such issues involves the exercise of professional judgment (derived, in part, from institutional compliance knowledge) and potentially has a significant effect on the employer's operations.

3. *Please explain how the following statement in your testimony could be considered accurate given the following language taken expressly from S.385:*

*Jeffress Testimony: "[U]nder the language of the legislation, it is entirely possible that an employer and consultant would agree to an Action Plan in which the employer is not required to come into full compliance with the OSH Act for many years."*

*S.385: "(4) Reinspection.-- At a time agreed to by the employer and the consultant, the consultant may reinspect the workplace of the employer to verify that the required elements in the consultation report have been satisfied. If such requirements have been satisfied, the employer shall be provided with a certificate of compliance for that workplace by the qualified consultant."*

The language of the reinspection section of S.385 allows the employer and consultant to agree to conduct a reinspection at any time or not at all. This legislation sets no deadline regarding when reinspection activity must be conducted. Under this provision, it would be possible for an employer and a consultant to agree to reinspect in two weeks or in two years. Moreover, the provision contains permissive, not mandatory, language. The bill states that the consultant *may* reinspect, not that he or she must reinspect. OSHA is concerned that, in practice, this permissive language would permit a consultant to determine that an employer has met the terms of the Action Plan without reinspecting the worksite at all.

4. *I agree that all employers should be encouraged to have safety and health programs in place. But as a former small business owner, I am concerned that OSHA's draft safety and health program rule that requires a program "appropriate" to conditions in the workplace, an employer to evaluate the effectiveness of the program "as often as necessary," and "where appropriate," to initiate corrective action. I am concerned that these requirements are overly broad, overly vague, and at their core, are totally unachievable.*

*My feeling is that OSHA may do what it likes to an employer who intentionally shirks his safety responsibility. But I have serious concerns when good faith employers— and particularly small businesses— feel that OSHA is a foe rather than an ally in promoting safety.*

*What guarantees can you give that enforcement of this rule would not be a kick in the teeth to good faith employers? What guarantees are there that OSHA's enforcement would remain flexible and fair?*

OSHA has drafted the requirements in the present version of the proposed rule in very broad language to provide employers with great flexibility to develop and implement safety and health programs. OSHA, however, also was concerned that the program evaluation provisions in earlier drafts of the proposed rule did not give employers sufficient notice of its requirements. In its current draft of the proposed rule, therefore, OSHA sets forth specific parameters for program evaluation, directing employers to evaluate the program's effectiveness at least once within twelve months of the rule's compliance deadline, and thereafter (1) whenever the employer has reason to believe that all or part of the program is ineffective, (2) whenever there is a major change in the operations, and (3) at least once every three years. In addition to making the rule more specific, OSHA plans to provide many forms of nonmandatory compliance assistance materials, such as model programs and decision logics, and to work with trade associations and unions to help employers know what they have to do to comply with the rule.

Under the enforcement policy envisioned by OSHA in the current version of its draft policy directive, it is difficult to see how good faith employers could be issued serious citations or penalties for violating the proposed rule. A failure to comply with a requirement of the proposed Safety and Health Program rule will be treated as an "other than serious violation," and no penalty will be assessed as long as the employees are not exposed to a pattern of serious hazards. An employer will be cited for a serious violation of the proposed rule and a penalty will be assessed, if (1) the violation involves the failure to implement a safety and health program or a core element of a program, and (2) as a result of that violation, his or her employees are exposed to a pattern of serious hazards.

Finally, the Agency is also developing a comprehensive training program to assure that compliance officers understand there are many ways for employers to implement safety and health programs and that it would be improper to narrowly interpret the proposal's broad language to transform it through the enforcement process into a specification rule. The Agency will also publish a statement of its enforcement policy simultaneously with any final regulation to guide employers and compliance officers alike.

*5. I have additional concerns about the draft enforcement policy of this rule, which also contains "performance-based" language similar to the draft rule. OSHA's draft enforcement policy states that employers will be cited for a serious violation when employees are exposed to a "pattern of serious hazards." Please explain what you mean by the term "pattern of serious hazards," which is undefined anywhere in the draft rule or enforcement policy. Does it mean*

*two violations? Three violations? And what must the violations be?*

*Additionally, could you have a "pattern" just by having one substantive violation of an OSHA rule or regulation? Could OSHA "piggyback" one citation of a substantive OSHA standard onto another citation for not including that same substantive OSHA standard into the safety and health program? For example, could an OSHA inspector issue a citation to an employer for a particular violation of the lockout/tagout rule, and then issue another citation for not including that same, particular section of the lockout/tagout rule in the safety and health program?*

The current draft enforcement policy for this proposed rule follows the "New OSHA" policy of distinguishing between employers who make a good faith effort to comply with the rule and those who do not. Thus,

A failure to comply with a requirement of the safety and health program rule will be treated as an "other than serious violation" and no penalty will be assessed as long as the employees are not exposed to a pattern of serious hazards.

However, an employer will be cited for a serious violation and a penalty will be assessed if:

- ( i ) the violation involves the failure to implement a safety and health program or a core element of a program, and
- ( ii ) as a result of that violation, his or her employees are exposed to a pattern of serious hazards.

OSHA's current working definition of a "pattern of serious hazards," for purposes of the draft safety and health program rule, is: 1) A number of covered hazards of the same or similar type or covered hazards resulting from the same or similar deficiencies in the safety and health program; or 2) a variety of covered hazards resulting from various deficiencies in the program and representing a general failure to control hazards. Thus, a violation of a particular OSHA standard or the General Duty Clause does not automatically constitute a violation of the safety and health program rule. A single violation of an OSHA standard would not constitute a "pattern" and OSHA would not "piggyback" one citation for violation of a substantive standard (e.g. the lockout/tagout rule) onto another citation for not including that same OSHA standard in the safety and health program.

**Questions from Senator Tim Hutchinson:**

1. *How many charges are brought by OSHA against employers in a typical year?*

Please see chart below.

2. *Does OSHA categorize the investigation of these charges by size of employer?*

For each inspection, OSHA identifies the number of employees in the establishment being inspected, the total number of employees covered by the inspection and the total number of employees who are employed by the employer. This last figure is especially important, because it affects the amount of penalty reduction given to the employer if citations are proposed. An employer with between 1 and 25 employees normally receives a 60 percent reduction in the penalty; an employer with 26 to 100 employees receives a 40 percent reduction; and an employer with 101 to 250 employees normally receives a 20 percent reduction. (There is no reduction on account of size for employers with more than 250 employees, but all employers are eligible for additional reductions of up to 35 percent for good faith and past history.)

3. *How many of these charges are against employers with 100 or less employees?*

Please see chart below.

4. *How many of these charges are against employers with 50 or less employees?*

Please see chart below.

5. *How many of these charges are against employers with more than 50 but less than 100 employees?*

Establishment Size By Number of Employees Controlled Nationwide	Total Inspections Conducted FY98	Total Violations Cited FY98
Totals <sup>1</sup> – all Federal OSHA Inspections Nationwide	34,443	76,980
Employers With 100 or Fewer Employees Nationwide	22,959	51,765
Employers With 50 Or Fewer Employees Nationwide	18,764	42,589
Employers With Between 50 and 100 Employees Nationwide	4,195	9,176

<sup>1</sup>Totals include numbers of inspections conducted and violations cited for all employers, including those employing more than 100 employees.

6. *How many of these charges are contested and then considered by the Occupational Safety and Health Review Commission?*

In 1998, 2,061 Federal OSHA inspections resulting in citations were contested. Of the contested cases, 1,081 involved employers with 100 or fewer employees nationwide, 815 involved employers with 50 or fewer employees nationwide, and 266 involved employers with between 50 and 100 employees nationwide. Most cases are settled or withdrawn before the Review Commission issues a final decision. Review Commission judges adjudicated 158 cases, following a full hearing, during FY 1998.

7. *How much in fines did OSHA collect in 1998?*

In FY 1998, OSHA collected \$54,626,890 in penalties, which were deposited into the U.S. Treasury.

8. *How much in fines did OSHA assess in 1998?*

In FY 1998, OSHA assessed \$61,281,264 in penalties.

9. *Please state any and all benefits that OSHA realizes when employers within the scope of its jurisdiction employ third-party safety consultants.*

In the abstract, apart from S. 385, if an employer successfully uses the knowledge gained from the private consultant, everyone benefits: the company becomes a safer and healthier workplace and can be more profitable as a result; the employees work in a safer environment; and OSHA may deploy its resources to other, more hazardous workplaces. It is more difficult to gauge the benefits OSHA as an agency might gain. Certainly, if an industry sector experiences measurable improvement in illness and injury rates as a result of widespread use of consultants, OSHA would eventually be able to redirect its compliance resources elsewhere.

Under the scheme provided in S.385, however, we believe any benefits to OSHA's worker protection program would be far outweighed by the regulatory confusion which would be created and by the significant resource drain which implementing the bill would entail.

10. *In your testimony, you stated that you believed that collusion would result from the use of third-party safety consultants by employers within the scope of OSHA's jurisdiction. Accordingly, please state: (1) what percentage or likelihood do you suspect this would happen in the workplace?; and (2) given that percentage and the fact that whatever system we employ to govern workplace safety cannot possibly be perfect, don't you feel the advantages far outweigh the disadvantages?*

OSHA believes that the number of private consultants engaging in criminal activity would

undoubtedly be small. OSHA is concerned about the potential for a consultant's independent judgment to be undermined by his or her consideration of a future financial relationship with the employer being evaluated. OSHA also is concerned that the legislation would create an incentive for employers to "forum shop" to find a friendly consultant. Clearly, as indicated in the response to question 9, private consultants have a legitimate role to play in advancing safety and health, and many safety conscious employers are using them. However, tying a private consultation to a penalty exemption goes too far. In short, OSHA believes that the benefits would not outweigh the disadvantages of allowing private individuals to grant penalty exemptions.

11. *Please describe in detail the efforts, if any, made to recruit individuals who are experts in the industry in which they will inspect or regulate.*

The Department of Labor/OSHA is a competitive agency, which means that our vacancies are announced under open, competitive merit staffing procedures. Our vacancies are routinely listed on the Internet under the Office of Personnel Management's (OPM's) website and are listed under the Department of Labor's website. In addition, OSHA has developed a mailing list consisting of professional organizations, colleges and universities, and labor organizations/trade unions, to which many of our key vacancies are referred. We also advertise many of our key vacancies in professional magazines and publications. OSHA does not recruit individuals in specific industries. See our responses to questions 12 and 13 for additional information.

12. *How many years of education are required to become an OSHA inspector?*

OSHA vacancies are primarily comprise compliance officer (inspector) positions. The generic term "OSHA compliance officer" encompasses several job series, including industrial hygienists, safety engineers and safety and occupational health specialists. The minimum qualifications for these series of jobs are:

**Industrial Hygienist** - Successful completion of a full four-year course of study in an accredited college or university creditable towards a bachelor's or higher degree in industrial hygiene, or a branch of engineering, physical science, or life science. This study must have included, or have been supplemented by twelve (12) semester hours of course work in chemistry, including organic chemistry, and eighteen (18) additional semester hours of courses in any combination of the following fields: chemistry, physics, engineering, health physics, environmental health, biostatistics, biology, physiology, toxicology, epidemiology, or industrial hygiene.

**Safety Engineer** - A degree in professional engineering from a school of engineering with at least one curriculum accredited by the Accreditation Board for Engineering and Technology (ABET).

**Safety and Occupational Health Specialist** - Successful completion of a full 4-year course above high school leading to a bachelor's degree in safety and occupational health fields (safety,

occupational health, industrial hygiene), or bachelor's or higher degree in other related fields that included or was supplemented by at least 24 semester hours of study from among the following disciplines: safety, occupational health, industrial hygiene, occupational medicine, toxicology, public health, mathematics, physics, chemistry, biological sciences, engineering, and industrial psychology.

13. *Would you agree that experience in, understanding of, and familiarity with a particular industry allows an inspector to better identify safety and health risks and potential violations?*

OSHA agrees that familiarity with a particular industry allows inspectors to better identify health and safety risks and potential violations, and many journeyman level OSHA inspectors are experts in specific areas such as maritime and construction. However, all OSHA inspectors have the necessary education and/or experience to conduct inspections and perform duties to enforce Federal safety and health standards, and to provide technical assistance and consultation to employers and employees to ensure the safety and health of the American worker.

**Questions from Senator Chuck Hagel:**

1. *Nebraska's employers have expressed considerable concern about OSHA's proposal to require "employee participation" as a core element of a safety and health program. In particular, employers are worried that, in complying with OSHA's requirement they may be forced to violate the National Labor Relations Act. What can you tell us that will ease or refute their concerns?*

Employee participation in employer-sponsored health and safety programs is not inherently unlawful under the NLRA. Many employers, in a variety of industries, have successfully implemented safety and health programs with employee involvement, which indicates that worker participation in employer-sponsored workplace safety and health programs can be structured in ways which comply with the requirements of the NLRA.

In unionized workplaces, labor-management health and safety committees constituted under collective bargaining agreements are, of course, lawful under the NLRA. Moreover, even in nonunion workplaces, NLRB decisions make clear that an employer may communicate about health or safety issues with individual employees, or groups of employees, or with all of its employees, so long as no employee is put in the position of representing other workers, which might bring the group within the NLRA definition of a labor organization. Communicating individually with employees or holding all-employee safety sessions would appear to be a practical means of compliance for small employers, especially those with 20 or fewer workers, which constitute 85% of covered employers.

Delegating an employee the responsibility for monitoring a particular hazard or for implementing certain precautions or safety procedures in the workplace, with no expectation the employee will

represent other workers, would appear to be an ordinary job assignment and not an unfair labor practice. It is clear that “brainstorming” groups or information gathering committees, whose job is to assemble ideas or factual information which will be forwarded to management for decisionmaking, do not involve “dealing with” and are similarly lawful under the NLRA. Periodic safety conferences at which employees discuss and develop suggestions to be submitted to management or to a union-management safety committee have specifically been upheld by the NLRB.

2. *(A) What specific criteria do you expect employers and OSHA inspectors to use to measure the “effectiveness” of their safety and health program? (B) the number of injuries? (C) the number of accidents?*

The effectiveness of the program will be determined by each employer’s ability to establish and maintain a safety and health program to systematically achieve compliance with OSHA standards and the General Duty Clause. The program must be appropriate to conditions in the workplace, such as the hazards to which employees are exposed and the number of employees there. The purpose of this rulemaking is to reduce the number of job-related fatalities, injuries and illnesses, as well as a number of “near misses,” by requiring employers to establish a workplace safety and health program. The success of such a program may be judged in part by the extent of reduction in the number and seriousness of workplace hazards. The proposed draft was devised broadly and flexibly to allow employers in diverse situations to comply with its requirements as appropriate to the hazards, size, and other conditions of their own workplaces. The proposed draft simply requires employers to implement good consensus management practices on safety and health. As an integral part of applying the rule, the Agency will provide checklists, model programs, decision logics, and other materials to help employers determine how to comply and what constitutes compliance with its requirements.

3. *OSHA acknowledges the low incidence rates by small businesses as indicated by the Bureau of Labor Statistics. OSHA’s explanation for these low numbers rests on one study which found that under-reporting as a reason for the low numbers. How did the study come to the conclusion that under-reporting is indeed occurring at small businesses regarding injuries and illnesses? Furthermore, how is this proposed rule going to prevent the injuries and illnesses of these unreported cases?*

BLS data show that establishments with 10 or fewer employees have less than half the average illness and injury rate. Small businesses with 11 to 49 employees have 85 percent of the average injury and illness rates, and small business with 50 to 249 employees have a higher injury and illness rate than the average for all establishments. Thus the phenomenon of very low reported injury and illness rates is limited to firms with fewer than 10 employees that OSHA does not inspect unless there is a complaint.

In an effort to understand why smaller firms might have lower injury and illness incidence rates, the authors of one study examined whether smaller firms differed from larger firms in workforce

composition, in working conditions for specific industries and occupations, in labor turnover rates, and in access to preventive safety training and safety monitoring. The authors were unable to attribute differences in reported injury and illness rates to differences in any of these factors by employment size. Therefore, they concluded small employers as a group may routinely underreport workplace injuries, perhaps because their recordkeeping systems are inadequate:

With the rejection of alternative explanations, there is a strong likelihood of underreporting as the explanation, and we estimate that the annual [BLS] survey substantially undercounts injuries in small establishments (Oleinick et al., "Establishment Size and Risk of Occupational Injury," Am. J. Ind. Med., 28(1): 2-3 (1995))

NIOSH reached an essentially identical position: "recent literature comparing Annual Survey data and workers compensation data questions the validity of the estimated rates for small employers obtained through the BLS Annual Survey " (NIOSH comments on OSHA's Proposed Recordkeeping Rule, June 28, 1996, Docket ....., Exh.15-407, p. 2).

The proposed rule seeks to reduce all non-minor illnesses and injuries, whether reported or unreported, by requiring employers to conduct self inspections of their facilities. Such self inspection can find hazards that accident investigations alone would not reveal.

*4. In estimating the costs of creating and maintaining records of the results of hazard identification and assessment, OSHA used the average national wage rate of clerical personnel. Is this an accurate reflection for small businesses where almost all the work involved in setting up a safety and health program will be performed by a manager whose time value is much more than that of an average clerical personnel?*

The proposed safety and health program rule exempts employers with fewer than ten employees--approximately 75% of all covered workplaces--from hazard identification, assessment, and control documentation requirements. Therefore, nearly three quarters of all workplaces do not have to create and maintain any records pursuant to the proposed rule. Of those larger workplaces that are not included in the exemption, many have already implemented similar hazard assessment programs. Furthermore, larger workplaces that do not have programs in place are likely to have clerical staff available to create and maintain records pursuant to the proposed rule, and will not have to use managerial hours in order to comply.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Mary E. Jones ( CN=Mary E. Jones/OU=CEA/O=EOP [ CEA ] )

CREATION DATE/TIME:19-APR-1999 10:02:07.00

SUBJECT: TANF & Food Stamp Caseload Update

TO: Jennifer M. Luray ( CN=Jennifer M. Luray/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Mickey Ibarra ( CN=Mickey Ibarra/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Carl Haacke ( CN=Carl Haacke/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Barbara Chow ( CN=Barbara Chow/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: Jack A. Smalligan ( CN=Jack A. Smalligan/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: Edwin Lau ( CN=Edwin Lau/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: J. Eric Gould ( CN=J. Eric Gould/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Andrea Kane ( CN=Andrea Kane/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: David W. Beier ( CN=David W. Beier/O=OVP @ OVP [ UNKNOWN ] )  
READ:UNKNOWN

TO: Ann F. Lewis ( CN=Ann F. Lewis/OU=WHO/O=EOP @ EOP [ WHO ] )  
READ:UNKNOWN

TO: Barry White ( CN=Barry White/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: Anil Kakani ( CN=Anil Kakani/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: Joseph J. Minarik ( CN=Joseph J. Minarik/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: Richard B. Bavier ( CN=Richard B. Bavier/OU=OMB/O=EOP @ EOP [ OMB ] )  
READ:UNKNOWN

TO: Eugenia Chough ( CN=Eugenia Chough/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Cynthia A. Rice ( CN=Cynthia A. Rice/OU=OPD/O=EOP @ EOP [ OPD ] )  
READ:UNKNOWN

TO: Bruce N. Reed ( CN=Bruce N. Reed/OU=OPD/O=EOP @ EOP [ OPD ] )

READ:UNKNOWN

CC: Andrew R. Feldman ( CN=Andrew R. Feldman/OU=CEA/O=EOP @ EOP [ CEA ] )  
READ:UNKNOWN

CC: Robert F. Schoeni ( CN=Robert F. Schoeni/OU=CEA/O=EOP @ EOP [ CEA ] )  
READ:UNKNOWN

TEXT:

The TANF & Food Stamp Caseload Update, 4th Quarter 1998 Report you received last week should be treated as a "CLOSE HOLD" document. If you have questions or need further assistance, please call Bob Schoeni (x54597) or Andy Feldman (x53114).

Thank you.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Melissa N. Benton ( CN=Melissa N. Benton/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:21-APR-1999 15:05:19.00

SUBJECT: LRM MNB51 - - LABOR Report on S192 Fair Minimum Wage Act of 1999

TO: Janet R. Forsgren ( CN=Janet R. Forsgren/OU=OMB/O=EOP@EOP [ OMB ] )  
READ:UNKNOWN

TO: Andrew Abrams ( CN=Andrew Abrams/OU=OMB/O=EOP@EOP [ OMB ] )  
READ:UNKNOWN

TO: John A. Koskinen ( CN=John A. Koskinen/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN

TO: Sarah S. Lee ( CN=Sarah S. Lee/OU=OMB/O=EOP@EOP [ OMB ] )  
READ:UNKNOWN

TO: Jack A. Smalligan ( CN=Jack A. Smalligan/OU=OMB/O=EOP@EOP [ OMB ] )  
READ:UNKNOWN

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READ:UNKNOWN

TO: Caroline R. Fredrickson ( CN=Caroline R. Fredrickson/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN

TO: Jeffrey L. Farrow ( CN=Jeffrey L. Farrow/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN

TO: Cordelia W. Reimers ( CN=Cordelia W. Reimers/OU=CEA/O=EOP@EOP [ CEA ] )  
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TO: Larry R. Matlack ( CN=Larry R. Matlack/OU=OMB/O=EOP@EOP [ OMB ] )  
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TO: Iratha H. Waters ( CN=Iratha H. Waters/OU=OMB/O=EOP@EOP [ OMB ] )  
READ:UNKNOWN

TO: Jasmeet K. Seehra ( CN=Jasmeet K. Seehra/OU=OMB/O=EOP@EOP [ OMB ] )  
READ:UNKNOWN

TO: Lisa M. Kountoupes ( CN=Lisa M. Kountoupes/OU=WHO/O=EOP@EOP [ WHO ] )  
READ:UNKNOWN

TO: Janet E. Irwin ( CN=Janet E. Irwin/OU=OMB/O=EOP@EOP [ OMB ] )  
READ:UNKNOWN

TO: Stuart Shapiro ( CN=Stuart Shapiro/OU=OMB/O=EOP@EOP [ OMB ] )  
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READ:UNKNOWN

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READ:UNKNOWN

TO: Karen Tramontano ( CN=Karen Tramontano/OU=WHO/O=EOP@EOP [ WHO ] )

READ:UNKNOWN

TO: Sarah Rosen ( CN=Sarah Rosen/OU=OPD/O=EOP@EOP [ OPD ] )

READ:UNKNOWN

TO: Debra J. Bond ( CN=Debra J. Bond/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

TO: Barry White ( CN=Barry White/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

TO: Barbara Chow ( CN=Barbara Chow/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

CC: ocl ( ocl @ ios.doi.gov @ inet [ UNKNOWN ] )

READ:UNKNOWN

CC: cla ( cla @ sba.gov @ inet [ UNKNOWN ] )

READ:UNKNOWN

CC: lrm@os.dhhs.gov ( lrm@os.dhhs.gov @ inet [ UNKNOWN ] )

READ:UNKNOWN

CC: clrm ( clrm @ doc.gov @ inet [ UNKNOWN ] )

READ:UNKNOWN

CC: justice.lrm ( justice.lrm @ usdoj.gov @ inet [ UNKNOWN ] ) (OA)

READ:UNKNOWN

TEXT:

NOTE: Senator Kennedy intends to offer his minimum wage bill (S. 192) as an amendment to Y2K liability legislation being considered by the Senate tomorrow. Labor therefore requests expedited clearance of its letter. The deadline is 5 p.m. TODAY.

EOP STAFF: You will not receive a hard copy of this LRM.

----- Forwarded by Melissa N. Benton/OMB/EOP on 04/21/99

03:03 PM -----

LRM ID: MNB51

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

Washington, D.C. 20503-0001

Wednesday, April 21, 1999

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: Janet R. Forsgren (for) Assistant Director for Legislative Reference

OMB CONTACT: Melissa N. Benton

PHONE: (202)395-7887 FAX: (202)395-6148

SUBJECT: LABOR Report on S192 Fair Minimum Wage Act of 1999

DEADLINE: 5 p.m. Wednesday, April 21, 1999

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions

of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: NOTE: Senator Kennedy intends to offer his minimum wage bill (S. 192) as an amendment to Y2K liability legislation being considered by the Senate tomorrow. Labor therefore requests expedited clearance of its letter.

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EOP:

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Barry White  
Larry R. Matlack  
Debra J. Bond  
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Sarah Rosen  
Jeffrey L. Farrow  
Karen Tramontano  
Caroline R. Fredrickson  
Elena Kagan  
Andrea Kane  
Cynthia A. Rice  
Jack A. Smalligan  
Stuart Shapiro  
Sarah S. Lee  
Janet E. Irwin  
John A. Koskinen  
Lisa M. Kountoupes  
Andrew Abrams  
Jasmeet K. Seehra  
Janet R. Forsgren

LRM ID: MNB51 SUBJECT: LABOR Report on S192 Fair Minimum Wage Act of 1999

RESPONSE TO  
LEGISLATIVE REFERRAL  
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

- (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
- (2) sending us a memo or letter

Please include the LRM number shown above, and the subject shown below.

TO: Melissa N. Benton Phone: 395-7887 Fax: 395-6148  
Office of Management and Budget



DRAFT 4/20/99

Automated Records Management System  
Hex-Dump Conversion

Honorable Edward Kennedy  
Ranking Member  
Committee on Labor and Human Resources  
United States Senate  
Washington, D.C. 20510

Dear Senator Kennedy:

I am writing in strong support of your amendment to legislation under consideration in the Senate that would increase the minimum wage by \$1 to \$6.15 an hour by September 1, 2000. Earlier this year, President Clinton strongly endorsed raising the minimum wage by a dollar an hour over the next two years to "do more to support the millions of parents who give their all every day at home and at work. The most basic tool of all is a decent income."

We now have the strongest economy in a generation: inflation and unemployment are low and steady, and family incomes are on the rise. But millions of people are still struggling to make ends meet -- the people who clean our offices, sew our clothes, serve our food, and care for our children and our infirm parents. Your amendment offers more than 11 million Americans a greater opportunity to share in our nation's prosperity. Seventy percent of all workers who would benefit are adults, age 20 or over, and about three out of five are women, many of whom are the sole breadwinners for their families.

When we last raised the minimum wage and expanded the earned-income tax credit, we took important steps to reward work and help millions of Americans raise their families with dignity. Because of our actions, a full-time working parent with two children does not have to live in poverty. We must ensure that this continues to be the case even as costs rise, and that we continue to make progress towards ensuring that all working families are lifted out of poverty. That is why we must increase the minimum wage.

As Americans move from welfare to work, one of the most important lessons they can learn is that work pays. A full-time worker earning the current minimum wage for 50 weeks of work receives only \$10,300. This is not enough to move families from dependency to self-sufficiency and create a long-term attachment to the workforce. The real value of the minimum wage had fallen to nearly a 40-year low by the time President Clinton signed the last increase in 1996. But even after that increase, the minimum wage's purchasing power remains below its value in the 1960's and 1970's. The minimum wage should be the first rung on the ladder of opportunity, not a dead end for the working poor.

A one-dollar increase in the minimum wage would make an enormous difference in the lives of these workers and their families. It would mean an additional \$2,000 a year for someone working year-round, full-time at the minimum wage -- enough to buy a family of four groceries for 6 months or pay for 7 months rent.

Evidence from the last minimum wage increase clearly shows that we can increase the minimum wage without hurting the economy. Since President Clinton signed the last minimum wage increase into law in August 1996, the economy has created more than seven and a half million new jobs, and the inflation rate has been cut nearly in half. The unemployment rate is at 4.2 percent and has been below 5 percent for 21 consecutive months. Unemployment rates this low have not been seen for almost three decades. For African Americans, Hispanics, and women, unemployment is trending down and employment rates are trending up. And the news is also good for teenagers — 725,000 more teenagers are employed now than in August 1996, and employment is up by more than 100,000 for African-American teens.

I strongly support your amendment to increase the minimum wage. Our efforts to overhaul the education and job training system and expand the earned income tax credit have significantly advanced our common goal of assuring every worker a good job at a fair wage. Working together, we can make work pay for America's minimum wage workers.

Sincerely,

Alexis M. Herman

106TH CONGRESS  
1ST SESSION

# S. 192

To amend the Fair Labor Standards Act of 1938 to increase the Federal minimum wage.

---

## IN THE SENATE OF THE UNITED STATES

JANUARY 19, 1999

Mr. KENNEDY (for himself, Mr. DASCILE, Mr. LEAHY, Mr. SARBANES, Mr. MOYNIHAN, Mr. LEVIN, Mr. DODD, Mr. LAUTENBERG, Mr. BINGAMAN, Mr. KERRY of Massachusetts, Mr. HARKIN, Ms. MIKULSKI, Mr. AKAKA, Mr. WELLSTONE, Mrs. FEINSTEIN, Mrs. BOXER, Mrs. MURRAY, Mr. FEINGOLD, Mr. WYDEN, Mr. DURBIN, Mr. TORRICELLI, Mr. REED, and Mr. SCHUMER) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

---

## A BILL

To amend the Fair Labor Standards Act of 1938 to increase the Federal minimum wage.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Fair Minimum Wage  
5 Act of 1999".

---

1 **SEC. 2. MINIMUM WAGE INCREASE.**

2 (a) WAGE.—Paragraph (1) of section 6(a) of the Fair  
3 Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) is  
4 amended to read as follows:

5 “(1) except as otherwise provided in this sec-  
6 tion, not less than—

7 “(A) \$5.65 an hour during the year begin-  
8 ning on September 1, 1999; and

9 “(B) \$6.15 an hour beginning on Septem-  
10 ber 1, 2000;”.

11 (b) EFFECTIVE DATE.—The amendment made by  
12 subsection (a) takes effect on September 1, 1999.

13 **SEC. 3. APPLICABILITY OF MINIMUM WAGE TO THE COM-**  
14 **MONWEALTH OF THE NORTHERN MARIANA**  
15 **ISLANDS.**

16 The provisions of section 6 of the Fair Labor Stand-  
17 ards Act of 1938 (29 U.S.C. 206) shall apply to the Com-  
18 monwealth of the Northern Mariana Islands.

○

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Melissa N. Benton ( CN=Melissa N. Benton/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME: 26-APR-1999 10:46:06.00

SUBJECT: LRM MNB53 - - LABOR Report on S385 Safety Advancement for Employees (SAFE)

TO: Janet R. Forsgren ( CN=Janet R. Forsgren/OU=OMB/O=EOP@EOP [ OMB ] )  
READ: UNKNOWN

TO: Peter Rundlet ( CN=Peter Rundlet/OU=WHO/O=EOP@EOP [ WHO ] )  
READ: UNKNOWN

TO: Caroline R. Fredrickson ( CN=Caroline R. Fredrickson/OU=WHO/O=EOP@EOP [ WHO ] )  
READ: UNKNOWN

TO: Sandra Yamin ( CN=Sandra Yamin/OU=OMB/O=EOP@EOP [ OMB ] )  
READ: UNKNOWN

TO: Cordelia W. Reimers ( CN=Cordelia W. Reimers/OU=CEA/O=EOP@EOP [ CEA ] )  
READ: UNKNOWN

TO: Karen Tramontano ( CN=Karen Tramontano/OU=WHO/O=EOP@EOP [ WHO ] )  
READ: UNKNOWN

TO: Lisa B. Fairhall ( CN=Lisa B. Fairhall/OU=OMB/O=EOP@EOP [ OMB ] )  
READ: UNKNOWN

TO: Daniel J. Chenok ( CN=Daniel J. Chenok/OU=OMB/O=EOP@EOP [ OMB ] )  
READ: UNKNOWN

TO: Larry R. Matlack ( CN=Larry R. Matlack/OU=OMB/O=EOP@EOP [ OMB ] )  
READ: UNKNOWN

TO: Iratha H. Waters ( CN=Iratha H. Waters/OU=OMB/O=EOP@EOP [ OMB ] )  
READ: UNKNOWN

TO: Courtney B. Timberlake ( CN=Courtney B. Timberlake/OU=OMB/O=EOP@EOP [ OMB ] )  
READ: UNKNOWN

TO: Robert G. Damus ( CN=Robert G. Damus/OU=OMB/O=EOP@EOP [ OMB ] )  
READ: UNKNOWN

TO: Richard J. Turman ( CN=Richard J. Turman/OU=OMB/O=EOP@EOP [ OMB ] )  
READ: UNKNOWN

TO: Elena Kagan ( CN=Elena Kagan/OU=OPD/O=EOP@EOP [ OPD ] )  
READ: UNKNOWN

TO: Sarah Rosen ( CN=Sarah Rosen/OU=OPD/O=EOP@EOP [ OPD ] )  
READ: UNKNOWN

TO: John E. Thompson ( CN=John E. Thompson/OU=OMB/O=EOP@EOP [ OMB ] )  
READ: UNKNOWN

TO: Stuart Shapiro ( CN=Stuart Shapiro/OU=OMB/O=EOP@EOP [ OMB ] )  
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TO: Debra J. Bond ( CN=Debra J. Bond/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

TO: Barry White ( CN=Barry White/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

TO: Barbara Chow ( CN=Barbara Chow/OU=OMB/O=EOP@EOP [ OMB ] )

READ:UNKNOWN

CC: OPBRE ( CN=OPBRE/OU=ONDCP/O=EOP [ ONDCP ] )

READ:UNKNOWN

CC: lrm@os.dhhs.gov ( lrm@os.dhhs.gov @ inet [ UNKNOWN ] )

READ:UNKNOWN

CC: cla ( cla @ sba.gov @ inet [ UNKNOWN ] )

READ:UNKNOWN

CC: clrm ( clrm @ doc.gov @ inet [ UNKNOWN ] )

READ:UNKNOWN

CC: ca.legislation ( ca.legislation @ gsa.gov @ inet [ UNKNOWN ] )

READ:UNKNOWN

CC: ola ( ola @ opm.gov @ inet [ UNKNOWN ] )

READ:UNKNOWN

CC: justice.lrm ( justice.lrm @ usdoj.gov @ inet [ UNKNOWN ] ) (OA)

READ:UNKNOWN

CC: jwedekind ( jwedekind @ nlr.gov @ inet [ UNKNOWN ] )

READ:UNKNOWN

TEXT:

NOTE: DEADLINE IS 4 p.m. TODAY.

EOP staff: you will not receive a hard copy of this LRM. The attachment is approximately 9 pages long.

----- Forwarded by Melissa N. Benton/OMB/EOP on 04/26/99

09:29 AM -----

LRM ID: MNB53

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

Washington, D.C. 20503-0001

Monday, April 26, 1999

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: Janet R. Forsgren (for) Assistant Director for Legislative Reference

OMB CONTACT: Melissa N. Benton

PHONE: (202)395-7887 FAX: (202)395-6148

SUBJECT: LABOR Report on S385 Safety Advancement for Employees (SAFE) Act of 1999

DEADLINE: 4 p.m. Monday, April 26, 1999

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the

program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: The Senate Health, Education, Labor, and Pensions Committee is scheduled to consider S. 385 on Wednesday, April 28th.

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Courtney B. Timberlake  
Janet R. Forsgren

LRM ID: MNB53 SUBJECT: LABOR Report on S385 Safety Advancement  
for Employees (SAFE) Act of 1999

RESPONSE TO  
LEGISLATIVE REFERRAL  
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

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- (2) sending us a memo or letter

Please include the LRM number shown above, and the subject shown below.



draft -- March 3, 2010

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The Honorable James Jeffords  
Chairman  
Committee on Health, Education, Labor and Pensions  
United States Senate  
Washington, DC 20510-6300

Dear Chairman Jeffords:

I understand that the Committee on Health, Education, Labor and Pensions has scheduled a mark-up session for April 28, 1999 on S. 385, the "Safety Advancement for Employees Act of 1999" (SAFE Act).

I am writing to reiterate the Department's view that the SAFE Act, if passed, would unintentionally undermine OSHA's ability to protect workers. As Assistant Secretary for Occupational Safety and Health Charles Jeffress testified on March 4, 1999, before the Subcommittee on Employment, Safety and Training, if S. 385 is passed by Congress and presented to the President, I will recommend that he veto the legislation.

The effort to enact S. 385 ignores the very real successes that have been achieved since the bipartisan sponsorship and enactment of the Occupational Safety and Health Act nearly 30 years ago. The successes of the 1990's are particularly compelling. Workplace injuries and illnesses have declined for five consecutive years. The rate for 1997 was the lowest since the Bureau of Labor Statistics began reporting this information in the early 1970s. OSHA and the OSH Act have been catalysts for these achievements by private sector employers and workers.

OSHA is having success through results-driven enforcement efforts, compliance assistance and standard setting. The agency has developed a broad range of successful partnership programs that promote cooperative efforts among employers, workers and government.

OSHA also is making its enforcement programs smarter and fairer by spending more time at the most hazardous workplaces and less time at safer ones. Finally, OSHA is measuring results, where possible, not by numbers of citations or penalties, but by real improvements in the lives of working people, such as reduced injury and illness rates. The five-year decline in injury and illness rates is evidence that this combination of approaches is working. The SAFE Act focuses on old problems that OSHA has moved beyond, not new challenges the agency, workers and employers will face in the future.

**draft -- March 3, 2010**

We all agree that more must be done to protect workers. Too many workers continue to die or suffer injuries or illnesses because of work-related causes. Any legislation must increase workplace safety and health. The Department is concerned that S. 385 would, instead, place workers at increased risk.

The overwhelming majority of discussion relating to S. 385 has focused on the third-party certification provisions of the bill, about which the Department has made its position clear. As we have previously stated, private consultants, as a whole, provide a valuable service to employers and execute their responsibilities in a highly professional manner. OSHA encourages employers to use consultations to help detect and control hazards. But S. 385 provides only a marginal incentive for employers to hire third-party consultants, while creating significant conflict-of-interest problems by enabling employers to hire private, for-profit consultants to, in effect, exempt them from OSHA penalties. The SAFE Act also limits the accountability of consultants and employers. Under S. 385, OSHA has little recourse against consultants whose improper certifications put workers at risk. The SAFE Act also allows employers and consultants to negotiate the terms and time frames of compliance and fails to guarantee that all hazards will be corrected before a certificate of compliance is granted.

Although the Department is pleased that S. 385 emphasizes the importance of safety and health programs, it differs from OSHA's Safety and Health Achievement Recognition Program (SHARP) in significant ways. For example, while OSHA's SHARP program enables employers to receive a one-year exemption from programmed inspections, it does not provide a penalty exemption. In addition, employers participating in SHARP only receive their exemption from programmed inspections after they have received significant attention from OSHA and demonstrate the highest commitment to safety and health. Moreover, if OSHA is called in for a complaint or fatality investigation and discovers uncorrected violations, the SHARP employer is subject to citation and penalties.

In addition to the SAFE Act's third-party certification provisions, other provisions of the bill pose a significant threat to workplace safety and health. The Department's position on each of those provisions is detailed in the attached analysis. For the convenience of the Committee, I will highlight some, but by no means all, of the most significant issues that concern the Department:

draft -- March 3, 2010

**Expanded Inspection Methods.** Although investigation of complaints by telephone, facsimile and other similar methods is desirable in many situations, section 6 would enable those methods to be used at the expense of the fundamental worker right to an inspection.

**Worksite-Specific Compliance.** Section 7, which would require OSHA to vacate citations if the employer had at least as effective a means of protecting its employees as those required by the OSH Act, could render OSHA standards academic. This new employer defense could convert every enforcement action into a time-consuming litigation effort, imposing substantial burdens on agency resources and the court system. OSHA standards would become guidelines for open debate each time an employer received a citation.

**Technical Assistance.** The Department is concerned that section 8 runs counter to the agreement reached last year to codify OSHA's consultation program. Last year, the Congress enacted H.R. 2864 with bipartisan and Administration support and codified OSHA's consultation program with enhanced employee protections. The Department was proud of that cooperative effort and believes it is premature to amend this new law. In addition, the fee-for-service element of S. 385 would give priority to those who can afford to pay for consultation, not those who need it most. Consultation is and should remain prioritized for small, high-hazard industries, not for large, wealthy ones.

**Discretionary Compliance Assistance.** Section 11 would allow OSHA to issue warnings in lieu of citations, even for violations that have killed employees, as long as the employer agrees to abate the violation promptly. The Department believes that such unlimited discretion is inappropriate and sends a message that employers need not take preventive steps to protect their workers prior to an OSHA inspection.

The attached analysis discusses these issues in greater detail, along with the Department's position on Sections 4, 5, 9 and 10 of the bill.

Mr. Chairman, S. 385 would greatly diminish the ability of the Occupational Safety and Health Administration to administer and enforce the OSH Act. The bill would undermine OSHA's effort to achieve the Act's stated purpose: "to assure so far as possible every working man and woman in the Nation safe and healthful working

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**draft -- March 3, 2010**

conditions and to preserve our human resources." The SAFE Act would result in an increased risk of occupational injuries and illnesses, jeopardizing the lives and well-being of our Nation's workers and their families. This legislation, drafted in the name of retooling and augmenting compliance-related resources, is a step backward and would require OSHA to devote valuable resources to monitoring private consultants rather than workplace safety and health. Accordingly, the Administration opposes its enactment.

The Office of Management and Budget advises that there is no objection to the submission of this report and that enactment of S. 385 would not be in accord with the Administration's program.

Sincerely,

Alexis M. Herman

Enclosure

DEPARTMENT OF LABOR ANALYSIS OF S. 385

April 1999

Section 3. Third Party Consultation Services Program

Section 3 requires the Secretary to establish a program to “qualify” individuals who could then serve as consultants to employers to assist them in identifying and correcting safety and health hazards in their workplaces. An employer who contracted for and received such services and who was declared by the consultant -- after the initial visit to the workplace, agreement on an Action Plan, and a possible follow-up “reinspection” visit -- to be in compliance with the Act, would be exempt from any assessment of a civil penalty under the Act for a period of one year, with certain limited exceptions.

The Department of Labor strongly opposes this section.

Initially, although we agree that employee safety and health are paramount, the Department is compelled to object to the new “purpose” that has been added to this section. The new “purpose” statement would codify the erroneous opinion that all employers are unable to read, understand and comply with the OSH Act. It would further codify the opinion that OSHA is unable to satisfy the compliance needs of each employer and employee within its jurisdiction. The addition of such sentiments to the OSH Act is, at best, inappropriate.

The incentives created by coupling the third party consultation provision with a penalty exemption leave the program extremely vulnerable to conflict-of-interest and accountability problems. At the most obvious level, a consultant paid by an employer would be likely to feel pressured to approve the employer’s program or to fail to recommend costly engineering controls even when they were necessary to prevent an injury or illness. Likewise, businesses may feel obligated to purchase unnecessary services proposed to them by their consultant in order to ensure being granted a certificate of compliance. In addition, the provision permitting employers and consultants to agree upon the terms of the Action Plan would invite abuses that could result in seriously delayed abatement, if abatement is agreed to at all. Further, there is no provision in the bill that would prevent an employer from utilizing one of its own employees, or a former employee, to provide consulting services. Though this is no doubt not the intent of the bill’s authors, section 3 would in effect enable employers to “purchase” immunity from OSHA inspections and penalties.

Reliance on the private sector for compliance declarations, coupled with exemptions from the possibility of civil money penalties for those employers who receive such declarations, would leave the agency without sufficient recourse if an inspection is necessary within the exemption

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period. For example, even if conditions in a certified workplace had undergone major change during the exemption period, a penalty could only be levied if OSHA could demonstrate the occurrence of a “fundamental change in the hazards” of the workplace or that the employer had not made a good faith effort to remain in compliance. The only large-scale study to date that correlates worksite injury data with worksite inspection history over time has shown that inspections in which penalties are assessed result in a significant reduction in injuries at the inspected site for three years following the inspection, and that inspections without penalties have no appreciable impact (Wayne Gray and John Scholz, “Does Regulatory Enforcement Work? A Panel Analysis of OSHA Enforcement,” *Law and Society Review*, pages 177-213 (July 1993)).

The new version of the SAFE Act has been modified to include a safety and health program component. This is a positive addition to the bill, but does not cure flaws inherent in the third party consultation proposal. OSHA’s Safety and Health Achievement Recognition Program (SHARP), part of OSHA’s consultation program, exempts employers from a *programmed inspection only* after the employer requests and receives a full-service consultation visit, and works with the consultation program for a period of at least a year from the date of the initial visit to correct and abate all hazards, implement a fully effective worksite safety and health program and lower the lost workday and accident rates to a level at or below the national average for their industry. Unlike S.1237 in the 105<sup>th</sup> Congress, S. 385 incorporates a requirement for employers to implement a safety and health program before they can receive a certificate of compliance. However, unlike OSHA’s SHARP program, there is no guarantee that all hazards will be abated before a certificate is granted. In addition, the ability of private, for-profit consultants to provide *penalty* exemptions, rather than the exemptions from programmed inspections that the SHARP program provides, gives those private, for-profit consultants power well beyond any power granted to an OSHA compliance officer or a state consultant. SHARP companies never receive blanket exemptions from penalties. Finally, under the SHARP program, OSHA has the final say over whether companies should receive SHARP recognition. This system provides an additional check to ensure that a workplace is safe and has an effective safety and health program before it becomes exempt from a *programmed inspection*.

The Department remains concerned that the bill is completely silent about a consultant’s obligations when an employer is found NOT to be in compliance. This means that the consultant then has the option of refusing to provide a declaration, which leaves the employer free to seek out another consultant. While the bill now requires the consultant to identify violations of the OSH Act and possible corrective measures, there is still no clear requirement that employers abate the identified hazards or that consultants report to OSHA in the event of an employer’s refusal to abate. Moreover, because reinspections are not necessarily required, there is no way for the consultant, employees or OSHA to verify either abatement or whether the elements of an effective safety and health program have been fully implemented.

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The Department is concerned that the bill could allow an employer to receive a certificate of compliance even if it has not yet completed the process of hazard abatement. This would allow an employer that is out of compliance with the law to be declared in compliance. The problem is further compounded because an employer with a certificate of compliance who has not yet abated hazards identified in the written plan could not be penalized by OSHA for one year. Finally, unlike OSHA's abatement verification rule, the employer would not have to "inform affected employees and their representatives about abatement activities" the employer had promised to undertake. Elimination of a mandatory reinspection requirement worsens this problem. Without reinspection, an employer could obtain a certificate without having to show that it has abated a single hazard. In the event that a reinspection does actually occur, there is no provision for further action if the employer has not satisfied all the elements in the consultation report.

In addition, relying on the private sector for such certifications, while at the same time exempting the employer's worksite from the possibility of a penalty, would deprive the agency of sufficient "quality control" over both certifications and the safety and health audits performed by Federally-sanctioned, certified individuals. The only oversight granted to OSHA under this bill is meaningless. The bill requires OSHA to maintain a registry of safety and health consultants it deems qualified, but hamstringing the agency in the event problems occur. In addition, maintaining a registry would place a substantial burden on the agency's already limited resources. Those resources should be targeted toward making workplaces and workers safer, not toward policing a new army of consultants.

These problems are compounded because the disciplinary action anticipated by this legislation is insufficient to redress or deter the abuses for which S.385 creates an incentive. Removal of a consultant from participation in the program is simply not enough to prevent or punish abuses such as fraud or collusion. Further, the circumstances under which an employer or consultant could be disciplined are so limited that the bill would permit a consultant to continue to participate where injuries and illnesses continue to occur as a result of incompetence or simple negligence. In addition, it appears that a consultant's failure to identify a hazard would exempt the employer from penalties for that hazard.

Further compounding these problems is the bill's failure to clearly identify the minimal qualifications for a consultant. For example, section 8A(b)(2)(A) identifies practitioners of certain state-licensed occupations as "eligible to be qualified" as consultants, but neglects others and does not specify what experience in hazard identification and occupational safety and health eligible consultants must have. OSHA is further concerned that this provision requires states to create licensing programs for safety and health professionals. We believe that this requirement may impose a significant burden upon the states.

The Department is unaware of any concrete evidence that a third party certification program would be successful. At the outset of this Administration, the idea of third-party audits was

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raised at a meeting of OSHA's stakeholders, where it met with little enthusiasm from either labor or business representatives. More recently, a State of North Carolina survey demonstrated a resounding preference on the part of employers for an OSHA consultant over a private consultant. Cost, as well as suspicion that the private consultant might attempt to sell an employer unnecessary services, were among the reasons given in support of OSHA consultants.

#### Section 4. Establishment of Special Advisory Committee

Section 4 would require the Secretary to establish a new advisory committee consisting of employees, employers, members of the general public, and an official from a state plan state. The committee would advise and make recommendations to the Secretary concerning the establishment and implementation of third-party consultation services programs under section 8A of the bill.

Section 7(a) of the current statute establishes the National Advisory Committee on Occupational Safety and Health (NACOSH), which exists to make recommendations on matters relating to the administration of the current Act. Mandating the establishment of a new advisory committee dealing with the new consultation program in section 8A of the bill would duplicate part of the existing jurisdiction of NACOSH and, as such, would be redundant and not in keeping with the concept of reinvention and streamlining. In the event the Secretary needs to consult with experts on the specifics of consultation programs, Sections 7(c)(1) and (2) of the OSH Act now give the Secretary broad powers to hire consultants and experts, and to utilize the services of experts from other Federal agencies and states. If the Secretary wishes to obtain advice through the instrumentality of an advisory committee, she may establish such a committee pursuant to the requirements of the Federal Advisory Committee Act.

#### Section 5. Continuing Education and Professional Certification for Certain Occupational Safety and Health Administration Personnel

Section 5 requires Federal employees who enforce the Act to meet the eligibility requirements established under new section 8A(b)(2) for third-party consultants. In addition, these employees must receive professional education and training every five years.

OSHA agrees that effective training of enforcement personnel is vitally important. OSHA and the State Plans conduct a wide range of training programs to ensure that compliance officers conduct fair and effective investigations.

The OSH Act is not industry-specific; it applies to a wide variety of workplaces throughout the nation. Therefore, it has been OSHA's experience that individuals with broad professional backgrounds become the best inspectors. During their first three years of employment, new

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Compliance Safety and Health Officers (CSHOs) are teamed with experienced inspectors and are given over 250 hours of training on investigative techniques at the OSHA Training Institute (OTI) in Des Plaines, Illinois. Additional training is mandatory for experienced CSHOs at least once every three years. Finally, whenever new standards are promulgated, OTI offers specialized training in these standards.

As this discussion illustrates, OSHA does train and educate its employees, but not in a manner that matches the bill's inflexible requirements. We are concerned that the bill is unclear about which employees would be required to receive this training. For example, would the agency's attorneys be considered "responsible for enforcing this Act"? We are further concerned about the cost of providing the required training.

Finally, we note that the bill contains no specific training requirements for the consultants for the program created under section 5, whose inspections and reports may result in employer exemptions from civil money penalties.

#### Section 6. Expanded Inspection Methods

Section 6 of the bill would allow OSHA to investigate an alleged violation or danger by telephone or facsimile. The bill also states that OSHA is not required to conduct complaint inspections if "a request for inspection was made for reasons other than the safety and health of the employees of an employer" or if OSHA determines that workers are not at risk.

OSHA has two primary concerns about this section. First, although investigation of complaints by telephone, facsimile and other similar methods is desirable in many situations, these methods should not replace a worker's fundamental right to an inspection. In the past two years, OSHA has reduced the time from the filing of a complaint to the time hazards are abated by using telephone and facsimile methods for investigating *informal* complaints. In addition, several offices have experimented with these methods for investigating *formal* worker complaints, but only where the complaining worker agrees. However, these methods should not be allowed to interfere where a worker seeks to exercise his or her statutory right to an inspection.

Second, section 6 would allow OSHA to forgo a formal complaint inspection if it determines that the complaint was made for reasons other than safety and health -- even if the information provided by the complainant suggests that the workers in question may be facing substantial risk.

Again, the agency's determination as to whether to inspect following a formal complaint should be based on the likelihood that workers are at risk -- not on the motivation of the complainant. Where workers face substantial hazards, OSHA should act -- and is compelled by statute to act -- to protect them. Moreover, it would be very difficult for OSHA to determine the complainant's motivation. This exercise would consume scarce agency resources and delay inspections.

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Ultimately, the agency should continue to inspect where it has reasonable cause to believe that workers are at risk.

#### Section 7. Worksite-Specific Compliance Methods

Section 7 would create an entirely new statutory defense to an OSHA citation, based on an employer's demonstration that employees were protected by alternate methods equally or more protective than those required by the standard the employer violated.

The OSH Review Commission and the courts have held repeatedly that when OSHA's standards require employers to adopt specific precautions for protecting employees, employers must comply in the manner specified. Under current law, employers have the right to select alternative means of compliance when literal compliance is impossible or would pose a greater hazard to employees. In "greater hazard" cases, the Commission requires an employer to show that a variance has either been sought or would be inappropriate.

Under these rules, the contest rate has remained relatively low; less than ten percent of all citations are currently contested. Under this provision of S. 385, however, virtually every employer cited for violations of the OSH Act or OSHA standards could claim that an alternative means of compliance was as effective as the standard in question. In effect, standards would become guidelines, subject to challenge -- and potential waiver -- in every individual contested case. This provision could seriously undermine OSHA's standards, turn every enforcement action into a costly and time-consuming variance proceeding, and impose substantial burdens upon agency resources, the OSH Review Commission, and the Federal courts.

#### Section 8. Technical Assistance Program

Section 8 amends the OSH Act's "Training and Employee Education" provision to require cooperative agreements between OSHA and States to provide consultation programs. The Department objects to amending the new consultation law Congress passed less than a year ago with bipartisan support after extensive negotiations between Congress and the Department ((P.L. 105-197, 112 Stat. 638 (July 16, 1998) (the "Occupational Safety and Health Administration Compliance Assistance Authorization Act of 1998"))).

We are particularly concerned with further amending the program in the way contemplated by section 8. Under section 8, the Secretary must establish a pilot program in three states for a duration of up to two years, the purpose of which would be to test a fee-for-service system. The fifty state agencies that already administer the consultation program have expressed very strong reservations about charging fees in the consultation program. The Administration shares these

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concerns. Those who could pay would be visited first, defeating the philosophy that this service is aimed at small or highly hazardous businesses that cannot afford to hire other consultants.

### Section 9. Voluntary Protection Program

Section 9 attempts to codify OSHA's Voluntary Protection Program, requiring the Secretary to establish cooperative agreements with employers, who would create and maintain comprehensive safety and health management systems. The bill requires enhanced OSHA efforts to include small businesses in the VPP. Participation in this program would result in exemptions from inspections and certain paperwork requirements.

OSHA has supported codifying the VPP program, but we do not support this provision as drafted. The VPP has traditionally been, and should remain, a program for *work sites*, not employers. Although there are references to "the worksite" in the section, this vital mainstay of the program must be emphasized. OSHA is also concerned that codification could jeopardize the high standards of the program currently in operation. As drafted, this provision does not reflect the idea that the VPP program is reserved exclusively for those employers who have demonstrated the highest commitment to worker safety and health. Ideally, any codification of this program should limit participation to employers who have truly superior safety and health records, but should allow OSHA the flexibility to define (and modify as necessary) the specific criteria for participation in the program. We further note that the bill does not include a program requirement for VPP participants to provide meaningful employee involvement in safety and health matters, which we believe to be an important component of the program. These changes must be made before OSHA would withdraw its objections.

### Section 10. Prevention of Alcohol and Substance Abuse

Section 10 authorizes the Secretary to test employees and management for drugs and alcohol following any work-related fatality or serious injury. It also permits employers to institute their own testing programs conforming to HHS and Federal workplace guidelines. Testing is permissible on a for-cause basis, as part of a scheduled medical examination, where an accident involving actual or potential loss of human life, bodily injury, or property damage has occurred, during participation in a drug treatment program, or on a random basis.

OSHA strongly supports measures that contribute to a drug-free work environment and reasonable programs of drug testing within a comprehensive workplace program for certain workplace environments, such as those involving safety-sensitive duties, and which take into consideration employee rights to privacy. However, OSHA is concerned that it may not have the resources to oversee drug and alcohol programs.

Section 11. Discretionary Compliance Assistance

This section provides that the Secretary may issue warnings in lieu of citations where the violation has no significant relationship to safety or health or where the employer has acted in good faith to promptly abate the violation. The Secretary may not exercise this discretion where the violation has a "significant relationship to employee safety or health" or where the violation is willful or repeated.

Currently, the OSH Act provides that OSHA "shall" issue a citation for each violation it discovers during an inspection. This provision would change this provision to "may." As a practical matter, the impact of this proposed change is unclear. Federal case law demonstrates that OSHA possesses a greater degree of prosecutorial discretion than was recognized in the early years of the agency's existence. The agency has discretion under existing law to establish programs in which it does not issue a citation for every violation it finds. For example, OSHA has used this discretion to establish programs such as Maine 200.

Among other things, OSHA is particularly troubled by paragraph 3(B), which allows the issuance of a "warning in lieu of a citation" for violations that the employer "acts promptly to abate[.]" Even though it allows OSHA the discretion to issue citations in such circumstances, this provision may signal employers that they need not take preventive steps to protect their workers prior to an OSHA inspection. As such, this provision could undermine both the preventive purpose as well as the deterrent effect of OSHA's enforcement program.

Prompt abatement of hazards should be encouraged, but it should be encouraged through penalty reductions, not by eliminating any citations whatsoever for violations. Otherwise, employers who make good faith efforts to protect workers before an OSHA inspector arrives at their door will be treated the same as neglectful employers who have ignored their workers' safety until the inspection.

Finally, the limitations on the Secretary's discretion are so narrow that they could lead to outrageous results. For example, the Secretary's discretion is not limited to cases in which an employer has shown good faith by implementing a safety and health program or in which no employee has been killed or seriously injured because of the employer's violation. Rather, the bill authorizes the Secretary to issue a warning in lieu of a citation if the employer "acts promptly to abate the violation" even if the employer has a long history of previous violations and causes the death of several employees.

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Melissa N. Benton ( CN=Melissa N. Benton/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME:26-APR-1999 15:11:15.00

SUBJECT: Reminder--commetns on LABOR Report on S385 Safety Advancement for Employee

TO: Peter Rundlet ( CN=Peter Rundlet/OU=WHO/O=EOP@EOP [ WHO ] )  
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TO: Caroline R. Fredrickson ( CN=Caroline R. Fredrickson/OU=WHO/O=EOP@EOP [ WHO ] )  
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TEXT:

This is a reminder that your comments on the subject report are due at 4 p.m. today.

Please provide any comments via fax (395-6148), e-mail, or phone (395-7887) no later than the deadline. If we do not hear from you by the deadline, we will assume you have no comments.

Please call if you have any questions. Thanks!

RECORD TYPE: PRESIDENTIAL (NOTES MAIL)

CREATOR: Melissa N. Benton ( CN=Melissa N. Benton/OU=OMB/O=EOP [ OMB ] )

CREATION DATE/TIME: 26-APR-1999 17:26:17.00

SUBJECT: LRM MNB54 - - LABOR report on Increasing the minimum wage

TO: Janet R. Forsgren ( CN=Janet R. Forsgren/OU=OMB/O=EOP@EOP [ OMB ] )  
READ: UNKNOWN

TO: Jack A. Smalligan ( CN=Jack A. Smalligan/OU=OMB/O=EOP@EOP [ OMB ] )  
READ: UNKNOWN

TO: Andrea Kane ( CN=Andrea Kane/OU=OPD/O=EOP@EOP [ OPD ] )  
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TEXT:

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05:15 PM -----

LRM ID: MNB54

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
Washington, D.C. 20503-0001

Monday, April 26, 1999

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution  
below

FROM: Janet R. Forsgren (for) Assistant Director for  
Legislative Reference

OMB CONTACT: Melissa N. Benton

PHONE: (202)395-7887 FAX: (202)395-6148

SUBJECT: LABOR Statement for the Record on Increasing the minimum  
wage

DEADLINE: 11 a.m. Tuesday, April 27, 1999

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: The Department of Labor wants to submit this statement for the record for a House Education and the Workforce hearing tomorrow afternoon (April 27th).

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 Janet R. Forsgren

LRM ID: MNB54 SUBJECT: LABOR Statement for the Record on  
 Increasing the minimum wage  
 RESPONSE TO  
 LEGISLATIVE REFERRAL  
 MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

- (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
- (2) sending us a memo or letter

Please include the LRM number shown above, and the subject shown below.

TO: Melissa N. Benton Phone: 395-7887 Fax: 395-6148  
 Office of Management and Budget  
 Branch-Wide Line (to reach legislative assistant):  
 395-7362

FROM: \_\_\_\_\_ (Date)  
 \_\_\_\_\_ (Name)  
 \_\_\_\_\_ (Agency)  
 \_\_\_\_\_ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

- \_\_\_\_\_ Concur
- \_\_\_\_\_ No Objection
- \_\_\_\_\_ No Comment
- \_\_\_\_\_ See proposed edits on pages \_\_\_\_\_
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**STATEMENT OF ALEXIS M. HERMAN,  
SECRETARY OF LABOR**

**BEFORE THE**

**COMMITTEE ON EDUCATION AND THE WORKFORCE  
HOUSE OF REPRESENTATIVES**

**APRIL 27, 1999**

I am pleased to be able to offer my remarks today in strong support of the President's proposal to increase the minimum wage. For more than 11 million American workers, increasing the minimum wage from \$5.15 an hour to \$6.15 a hour over two years is not an academic debate among economists. Instead, it is about paying the rent, buying the groceries, and keeping the kids in clothes. Seventy percent of those who would benefit are adults, 20 and over. Three-fifths are women, many of whom are the sole breadwinners in their families. Mr. Chairman, these hard-working Americans – some of whom work 2 and 3 jobs -- deserve a raise.

When we last raised the minimum wage and expanded the earned income tax credit, we took important steps to reward work and help millions of Americans raise their families with dignity and move off welfare. Because of our actions, a full-time working parent with two children does not have to live in poverty. But more must be done to ensure that *all* working families are lifted out of poverty.

The minimum wage is not enough to make ends meet for many families. Working 40 hours a week, 50 weeks a year, a minimum wage worker still earns just \$10,300 a year. For these

workers and their families, a one-dollar increase would make a real difference. It would mean another \$2,000 a year. That's enough to buy a family of four groceries for 7 months or pay for 5 months' rent.

Opponents of an increase in the minimum wage overlook these benefits, and claim an increase will hurt those it's intended to help. When we last raised the minimum wage, opponents claimed that jobs would be lost throughout the economy -- especially in lower-wage sectors such as retail stores and restaurants. They predicted that unemployment rates would skyrocket for teenagers and disadvantaged workers. Some claimed that inflation would go through the roof.

The facts have proven the critics were wrong. Unemployment and inflation are the lowest they have been in roughly 30 years. Since President Clinton signed the last increase into law, over 7 million new jobs have been added. More than one million new retail jobs have been added, and restaurant jobs have grown by over 270,000.

Unemployment has also declined significantly over the same period. The unemployment rate for African-Americans has dropped from 10.6% to 8.1%. Unemployment for Hispanics is at a record low of 5.8% -- down from 8.3% in September 1996. For high school dropouts, unemployment dropped from 8.2% to 6.1% -- another record low. Teenage unemployment declined from 15.7% to 14.3%, while African-American teen unemployment went from 33% to 31%.

Employment has increased dramatically as well. Employment among African-American women has risen from 57.2% to 60.9%. And employment for welfare recipients and single mothers with children is continuing to climb, at least partly because of policies that “make work pay” such as a higher minimum wage.

Some critics claim that these employment increases might have been even greater in the absence of the minimum wage increases, but it is hard to take these claims seriously. Many surveys of employers currently show that, instead of facing pools of qualified applicants whom they refuse to hire, they are having difficulty finding applicants to fill jobs that they've already created. This simply doesn't fit the picture of an economy in which moderate increases in the minimum wage have led to fewer jobs and lost employment opportunities.

The minimum wage increase would help, not hurt, poor families. Most studies show that minimum wage increases disproportionately benefit workers in low-income families. While a majority of those who earn the minimum wage live in families with incomes above the poverty line, these incomes are often below the average level of family income in the United States. An increase in the minimum wage would therefore help a wide range of families with low-wage workers who need a raise.

Mr. Chairman, we know who will benefit from this bill. We see minimum wage workers every day when we buy a cup of coffee on the way to work. We see them cleaning our offices as we

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leave. We see them as we pick up our children from the child care center, or visit our parents in the nursing home. Our nation's extraordinary prosperity rests on the efforts of all these workers.

They deserve to be treated with dignity. They deserve a fair share of our prosperity. They deserve an increase in the minimum wage, and I urge you to adopt the President's proposal.