

GAO

Report to the Honorable
Harry Reid, U.S. Senate

May 1993

PRISONER LABOR

Perspectives on Paying the Federal Minimum Wage



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United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-253226

May 20, 1993

The Honorable Harry Reid
United States Senate

Dear Senator Reid:

In your October 1, 1992, letter, you requested information on potential effects on prison work programs and potential fiscal impacts if the nation's prisons were made subject to the Fair Labor Standards Act (FLSA)¹ and required to pay minimum wage for prisoner work. Your interest was based on the recent decision by the U.S. Court of Appeals for the 9th Circuit that certain prisoners are subject to the minimum wage provisions of FLSA.² This information was requested to aid congressional decision-making on whether prisoners should be specifically excluded from FLSA coverage.

In order to respond to your request, we (1) compared inmates' labor wages to minimum wages; (2) obtained views of federal and state prison officials on how the minimum wage would potentially affect prison systems; and (3) obtained views of organized labor and other organizations likely to have perspectives on paying prisoners minimum wage. Our data are not projectable to all prison systems, opinions on impact are subjective, and projections for cost impacts are approximations.

Our information was obtained from officials of the Federal Bureau of Prisons (BOP) in Washington, D.C., and four state prison systems—Arizona, Florida, Nevada, and Virginia. We also visited a federal and a state prison in each of the four states. At each location, we sought data on inmate work and pay and views on potential effects of minimum wage. We also telephoned officials from 15 other state prison systems and solicited their views. Further, we interviewed officials from other organizations, such as the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and The Brookings Institution, that have expressed views on inmate pay. We did not verify the data or evaluate the views provided to us. Our objectives, scope, and methodology are discussed in more detail in appendix I. A summary of the inmate work and pay information provided by each prison system we visited is presented in appendix II.

¹Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201-19).

²Hale v. Arizona, 967 F.2d 1356 (9th Cir. 1992).

Results in Brief

If the prison systems we visited were required to pay minimum wage to their inmate workers and did so without reducing the number of inmate hours worked, they would have to pay hundreds of millions of dollars more each year for inmate labor. Consequently, these prison systems generally regarded minimum wage for prisoner work as unaffordable, even if substantial user fees (e.g., charges for room and board) were imposed on the inmates.

Prison systems officials consistently identified large-scale cutbacks in inmate labor as a likely and, in their view, dangerous consequence of having to pay minimum wage. They believed that less inmate work means more idle time and increased potential for violence and misconduct. They also noted other potentially adverse consequences for prison operations (e.g., routine maintenance performed less frequently) and generally saw few advantages to paying minimum wage.

On the other hand, some of the organizations we visited had a different perspective on inmate pay, based on the idea that prison work experiences should be more like those in the general public. Minimum or prevailing wages are a part of the "factories with fences" concept that many criminal justice, private industry, and other officials supported in the 1980s. That concept called for improved inmate work and training opportunities by (1) making greater use of prison industries, particularly those operated by the private sector, and (2) operating the industries under normal business and pay practices. Some organizations also believed that by not paying inmates minimum or prevailing wages, prison industries gain an unfair competitive advantage and/or displace workers who are not imprisoned.

Background

Inmate work is a major part of the corrections profession's effort to operate prisons safely and constructively and to reduce prison costs.³ Prison work (1) reduces inmate idleness and thus the potential for prison security problems; (2) provides opportunities for inmates to improve or develop job skills, work habits, and experiences that can assist in postrelease employment; and (3) helps to ensure that maintenance necessary for day-to-day operation of the prison is completed. Inmate labor also reduces prison costs. For example, inmates perform functions

³Correctional standards promulgated by the American Correctional Association provide that sentenced inmates, who are generally housed in maximum, medium, or minimum security prisons, be required to work and be paid for that work. These standards also provide that pretrial and unsentenced inmates, who are generally housed in jails, not be required to work. Federal and state prisons house about 850,000 inmates while jails have an average daily inmate population of over 400,000.

such as cooking that would otherwise have to be performed by higher paid civilian staff.

Generally, sentenced inmates are expected to perform some type of institution maintenance or industrial work on a full-time (6 to 8 hours a day, 5 days a week) or part-time basis.⁴ Exceptions include those who are medically unable to work, a security risk, or involved full time in an approved educational or vocational training program. Maintenance work includes cooking inmate meals, laundering inmate clothing, repairing boilers, performing clerical work, and maintaining the grounds and buildings as well as many other functions necessary for the day-to-day operation of the prison. It also sometimes includes public works projects such as assisting local communities in repairing roads and assisting forestry departments in clearing land and planting trees. Inmates may also do industrial work for the prison or private companies. This work may include manufacturing products (e.g., office furniture, mattresses, and automobile tags) and providing services (e.g., data entry and automobile repair) for sale to government agencies and sometimes to the private sector.⁵ The goods or services are sold at prices usually designed to recover costs, including manufacturing and overhead. The revenues may be used for business or prison operations.

Most inmates are assigned to maintenance rather than prison industries jobs. A nationwide American Correctional Association survey in 1991 reported that about 8 percent of the federal and state prisoners had industry type jobs.

Whether inmates are paid or the amount paid varies among the individual federal or state systems. For example, BOP and the states generally provide some compensation to prisoners for their maintenance and industry work. However, some states (e.g., Texas) do not pay for any inmate work, while some states (e.g., Florida) may generally pay only those inmates doing industry jobs. Inmate pay may be based on a rate per hour; cover a specific time period (e.g., monthly); or be based on piece work. Under some systems, inmates may also earn extra pay for overtime work and length of time employed (longevity), receive paid vacations and holidays (remain in

⁴Some inmates work in the community under a work-release program, where they typically are employed during the day and return to the institution at night. These inmates are employees of private or public sector organizations outside of the prison system and thus their entitlement to minimum wage would depend on whether their work for these organizations meets the criteria for FLSA coverage. Consequently, these inmates were excluded from our review.

⁵Some prison systems (e.g., BOP) are precluded by law from selling their products and services to the private sector.

prison but do not work), and receive payments under a workers (accident) compensation program. Some prison systems may also pay inmates for their participation in vocational training programs and in literacy or other educational programs.

Over the years, the courts have held that inmates may be required to work and are not protected by the constitutional prohibition against involuntary servitude. They have also consistently held that inmates have no constitutional right to compensation and that inmates are paid by the "grace of the state." However, some states (e.g., Virginia) have laws requiring that inmates be compensated for their work.

Under federal law, 18 U.S.C. 1761(c), 50 nonfederal prison pilot projects may produce products for sale in interstate commerce, provided that, among other things, inmates employed in these projects are paid the prevailing wage for their work. These projects, referred to as the Prison Industry Enhancement (PIE) Program, are approved by the Bureau of Justice Assistance. The Bureau requires that PIE industries pay at least the minimum wage if a prevailing wage cannot be determined. As of December 1992, PIE industries employed about 1,000 inmates nationwide.

Under FLSA, employers are generally required to pay employees at least the minimum hourly wage set by federal law for up to a 40-hour workweek. The overtime rate for all hours worked over the 40 hours is set at one and one-half times the employee's regular rate of pay. Generally, the courts have held that prisoners are not employees as defined under the act and thus not subject to the FLSA requirements.⁶

Substantial Differences Existed Between Pay and Minimum Wage

For the most part, inmates in the five prison systems we visited either were not paid or were paid at rates that are substantially less than the federal minimum wage of \$4.25 an hour. Table 1 summarizes the basic pay policy for maintenance and industries work at the five prison systems.

⁶In *Hale v. Arizona*, however, a three-judge panel of the U.S. Court of Appeals for the 9th Circuit held that the involved inmates, who worked for a "private enterprise" component of Arizona's prison industries, were "employees" of the state and thus subject to the FLSA requirements. That case was reheard *en banc* by the Court in November 1992, but a decision has not been issued.

Table 1: Basic Inmate Pay Policy at Visited Prison Systems

Prison system	Maintenance pay rates	Industries pay rates
BOP	Generally 12 to 40 cents an hour; outstanding work could result in a bonus of up to one-half an inmate's monthly pay. Some inmates are paid only \$5.25 a month because of, for example, budget problems.	23 cents to \$1.15 an hour with up to 40 additional cents an hour on the basis of work considered outstanding and length of time employed.
Arizona	10 to 50 cents an hour.	40 to 80 cents an hour, but inmates involved with private sector industries earn minimum wage (\$4.25).
Florida	Only pays a few inmates (e.g., inmates working in canteen operations receive \$50 to \$75 monthly).	15 to 45 cents an hour with increases, based on length of time employed, of up to 15 cents an hour.
Nevada	Prison officials decide who is to be paid and how much; pay is generally less than \$1 an hour.	Minimum wage (\$4.25) for private sector-operated industries. For prison-managed industries, pay is based on piece rates that could exceed minimum wage.
Virginia	20 to 45 cents an hour.	55 to 80 cents an hour. ^a

^aThese rates were being implemented at the time of our visit. Full implementation was not expected until June 1993.

As table 1 indicates, of these five systems only some Arizona and Nevada inmates had the opportunity to earn minimum wage or more. In Arizona, about 60 of the approximately 650 inmates working in prison industries were involved with private sector operations and could earn minimum wage. In Nevada, about 150 inmates worked in PIE industries and were being paid minimum wage. The other half worked in industries operated by the Nevada prison system and were paid on the basis of a piece rate pay system. Nevada officials believe that piece rate pay provides more incentive for inmates to be productive than a regular hourly wage. In January 1993, the piece rate inmates earned an average of \$2.82 an hour—actual earnings ranged from 75 cents to about \$5 an hour.

Many inmates at the five systems were paid at the lower rates of the established pay scales. For example, BOP policy for nonindustry inmates provides that about 55 percent of the inmates are to be paid an hourly rate for maintenance work at pay grade 4 (12 cents), 25 percent at grade 3 (17 cents), 15 percent at grade 2 (29 cents), and 5 percent at grade 1 (40 cents). Our review of prisoner payroll records at the four federal prisons

we visited indicated that the inmates were generally being paid at the lower pay grades.

Our analysis of data from the Justice Department and others indicated that the nation's other prison systems had similar pay rates for their inmate workers. For example, a nationwide survey done by the Justice Department indicated that prison industry inmates were generally paid a regular rate of less than \$1 an hour during 1991.

Cost of Paying for Existing Work Levels at Minimum Wage

All five prison systems would face a substantial increase in costs in the hundreds of millions if existing inmate work levels had to be paid at minimum wage. If required to pay minimum wage, officials at these systems noted that they would likely impose substantial user fees and reduce their inmate labor levels.

BOP officials told us that their industries paid 15,300 prisoners average rates of 87 cents an hour for 27.2 million regular hours worked and \$1.75 an hour for 1.8 million overtime hours worked during fiscal year 1992. This amounted to about \$26.9 million for inmate compensation—\$100 million less than what paying the minimum wage would have cost for the same number of hours. Although overall data were not available, our review of payrolls at the four federal prisons we visited indicated that the difference in pay for maintenance work would have been substantially greater than the difference for industrial work had the inmates been paid minimum wage. This is because wages for maintenance work were substantially less than the wages for industrial work and because most inmates work in maintenance jobs.

At the state level, for example, Arizona officials noted that their industries paid about \$614,000 in inmate wages for the year ending June 30, 1992, as compared with about \$3.7 million they would have paid for the same number of hours at minimum wage. Arizona officials did not have statewide information on how much inmate maintenance would have cost at minimum wage. However, at the Arizona prison we visited officials estimated that for the year ending June 30, 1993, they will pay inmate wages of about \$458,000 (average of 26 cents an hour) for maintenance work compared with about \$7.5 million if the estimated number of hours were paid at minimum wage.

These hypothetical differences between existing and minimum wage payrolls do not include the cost of employer-paid benefits that inmates

may be entitled to if considered to be employees. For example, prison systems may be subject to paying, along with the inmates, social security taxes amounting to 7.65 percent of the inmates' earnings.⁷

On the other hand, the differences between existing and minimum wages do not include potential charges such as user fees and taxes which could result in some of the additional wage costs being returned to the federal and state governments. For example, officials at the prison systems we visited generally believed that if inmates were to receive the minimum wage, the prison systems would be forced to assess substantial user fees. Of the five prison systems we visited, only Nevada imposes a room and board charge on its maintenance and industry inmate workers who earn less than minimum wage—24.5 percent of their weekly wages in excess of \$18. Nevada also charges nonindigent inmates \$4 each time they report on sick call.

BOP has been directed (P.L. 102-395, Oct. 6, 1992) to charge new inmates for their cost of incarceration for up to a year (which is now about \$20,800). These funds are to be used for drug and alcohol abuse treatment programs. Since BOP has not yet developed procedures for implementing this charge, it is not known how much, if any, of the cost will be recovered through deductions from inmate earnings or assessments on other resources available to the inmate. Presently, BOP inmates who are employed in the community or who have other means of financial support and who reside in halfway houses pay 25 percent of their earnings to the operators of the halfway houses in accordance with BOP policy.

Victim restitution and child support payments are examples of other possible deductions from inmates' pay. Unlike room and board charges, however, these deductions represent funds that would be paid to members of the general public and not recovered by federal and state treasuries. However, some payments may result in reduced government expenditures. For example, if the inmates paid child support and their children are supported by government aid programs, the net effect may be to reduce the amount paid by federal and state governments.

Contacted Prison Systems' Views on Paying Minimum Wages

Because there is little available research or studies on the potential impact of prisoners being covered under FLSA's minimum wage provisions, some ramifications are unknown. Nevertheless, the prison systems we contacted generally believed that paying minimum wage would adversely affect prison work, job training programs, and prison security. They also noted

⁷We did not determine what taxes inmates are required to pay.

other potential issues associated with treating inmates as employees and identified few benefits of paying inmates minimum wages.

Officials did not believe that they would be able to continue to employ the same number of inmates if they had to pay minimum wage. For example, Arizona officials said it was unlikely that they would be given the additional funds to pay minimum wages, even if the increased pay amount was substantially reduced by imposing user fees. Therefore, Arizona officials maintained that they would be forced to substantially reduce the inmate workforce.

The four other prison systems we visited told us that they would have to also substantially reduce the number of inmates who work if minimum wages had to be paid. Officials from the 15 prison systems we surveyed by telephone also said that fewer inmates would be permitted to work. Further, 13 of the 20 prison systems contacted believed that the inmates who remained employed would work fewer hours, while 3 thought they would work more, and 3 thought they would work the same number of hours. One system did not know how the number of hours inmates worked would be affected.

Other Potential Impacts of Paying Minimum Wage

The prison systems provided similar responses to questions about potential impact on (1) inmate idle time, (2) prison security, (3) efforts to teach good work habits and job skills, (4) industries' earnings, (5) routine institution maintenance, and (6) public works. (See app. III for their detailed responses.)

All 20 prison systems told us there would be increased inmate idle time and more inmate rule infractions or security problems if minimum wages had to be paid. Officials at both the prison system headquarters offices and at the specific prisons we visited consistently noted that reduced inmate work means more inmate idle time, which contributes to more inmate disorder and violence and makes their prisons more dangerous. For example, the warden and others at the Nevada prison noted that any substantial cutback in inmate jobs would be a security and administrative nightmare and that they could not implement programs to reduce the resultant idle time. They said that some existing work details are overcrowded and involve little actual work but pointed out that even these jobs aid their efforts to maintain an orderly prison. According to BOP, the reduced employment "would seriously jeopardize the security of federal penal and correctional facilities, as idleness and boredom multiplied

among an inmate population serving significantly longer sentences, with virtually no prospects for early release.”

All 20 prison systems thought that efforts to teach good work habits and/or job skills would also be reduced. BOP's prison industry officials said that the reduced employment would deprive thousands of inmates of the opportunity to learn the basic work skills that are so essential to success in the outside world. Officials from three systems also told us that those inmates who end up working would receive better training.

Nineteen of the 20 prison systems we contacted had prison industries. Of the 19, 17 responded that having to pay minimum wage would eliminate or substantially reduce earnings from those industries. One said profits would decrease, and one noted that they operate without profits. Officials at the five prison systems we visited noted that they would have to eliminate or substantially alter their industrial operations. For example, BOP said that paying minimum wage would result in a substantial increase in product cost, to the point that their products would not be competitive. Consequently, BOP told us that it would have to automate much of its industrial production and reduce inmate employment drastically in order to control labor costs, continue to offer products to federal agencies at current market prices, and remain self-sufficient.⁸ BOP noted that if inmate employment was not substantially reduced, economic viability would require much greater specialization and automation, leading to a concentration in a few industries. BOP said that would be in violation of its statutory mandate to diversify industrial operations so as to minimize impact on any single private industry. BOP officials noted that even after instituting these fundamental changes in their industrial operations, they still might not be able to remain competitive because, unlike the private sector, they have security costs, employ a workforce that has minimal education and few work skills, and work within the constraints imposed by a prison's physical layout.

Regarding the impact on institution maintenance, 19 prison systems thought minimum wage would lead to less frequent routine maintenance. The other thought that maintenance efforts would be enhanced because only the most motivated and able inmates would be filling the fewer jobs available.

In response to our final survey question, 17 prison systems told us they had inmates who performed public service projects. Of the 17, 12 thought

⁸BOP officials also noted that they do not have the funds to automate their industries.

that minimum wage would result in such projects being abolished and 5 said that fewer projects would be done. For example, a Nevada official told us that they would have to stop much, if not all, of the roadwork and other public service now done by approximately 1,500 work camp inmates.

Officials at the five systems we visited also expressed various other concerns about the minimum wage. Two had concerns about the unknown ramifications of classifying inmates as employees under the FLSA because historically they have not been viewed as employees. They wondered if inmate workers would be allowed to join unions or would become eligible for unemployment compensation or sick pay. Other concerns included (1) having to employ more administrative staff to handle additional payroll matters (e.g., tax withholding) and/or more security staff to oversee increased inmate idle time; (2) being unable to afford overtime work and incentive pay; and (3) having inmate dissension over the fewer jobs available.

Few Advantages Seen for Paying Minimum Wage

The prison systems we contacted generally saw few advantages to paying minimum wage. We asked officials of the five systems we visited to identify possible advantages of higher wages for inmates. Some officials (e.g., Virginia) noted that there was a school of thought that inmates should be paid minimum wage or more as part of an overall effort to make prison work more like the "real world." Officials noted that inmates would also have more funds to pay for victim restitution and child support.

Others' Perspectives on Paying Minimum Wage for Prisoner Work

Some organizations and studies had a different perspective on inmate pay than the prison officials we contacted. Some generally favor improving inmate work programs and inmate pay through greater use of prison industry programs. These programs could be operated by, or operate like, private sector businesses, the "factories with fences" approach. Some also support paying inmates the prevailing wage so that prison industries do not have an unfair competitive advantage over businesses that do not have access to prison labor.⁹

The "factories with fences" approach had its roots in Justice Department efforts in the mid-1970s to assist states in coping with the problems of inmate idle time and inefficient work programs. The Justice Department

⁹In our discussions of this matter with BOP officials, they pointed out that federal prison industries are a mandatory source of procurement for other federal agencies.

provided funds and other support to implement a prison industry model in participating states. The model was based on private sector concepts such as productivity-based wages. In 1979, Congress authorized seven PIE projects that allowed the seven participating correctional agencies to sell the products of private sector-operated prison industries across state lines, provided, among other things, that inmates be paid the higher of the prevailing wage in the free market or the minimum wage and be assessed charges such as room and board. (The Justice Department was given responsibility for certifying that a project or correctional agency met the PIE criteria.) Through subsequent amendments, Congress raised the number of authorized PIE projects to 50.

In the 1980s, then-Chief Justice Warren Burger, working with representatives from the corrections, business, labor, legal, and academic communities, further promoted the idea of greater private sector involvement in prison industries. It included having those industries pay prevailing wages, sell products to the public, and generally operate like free-world industries. Under the program, deductions were to be taken from the inmates' pay for such items as room and board, taxes, and victim restitution.

Our review showed that the "factories with fences" concept was expected to apply to industries work. Also, according to representatives from The Brookings Institution and the now-defunct National Center for Innovation in Corrections involved in developing the concept, it was anticipated that because of budgetary and other problems, many prison systems would not extensively pursue the concept. A 1989 Justice Department survey found that only about 5,000 inmates were working in PIE and non-PIE private sector-operated industries.

Concerning the issue of unfair competition, prison industries, like BOP's, have long faced criticism from labor groups and businesses about the low wages paid to inmate workers. The AFL-CIO's position is that prison labor programs should pay wages that are not less than the prevailing wage for similar work in the private sector to avoid unfair competition and displacing workers who are not imprisoned. The AFL-CIO also says that inmates should pay room and board, taxes, victim restitution, and, where necessary, dependent support. However, the AFL-CIO opposes the sale of prison-made goods and services to the public.

Agency Comments

We discussed this report with officials of the five prison systems we visited, who generally agreed with the information presented.

As arranged with your office, we plan no further distribution of this report until 30 days after its issue date, unless you publicly release its contents earlier. At that time, we will send copies to each of the prison systems and other organizations we contacted and other interested parties. We will also make copies available to others upon request.

The major contributors to this report are listed in appendix IV. Should you need additional information on the contents of this report, please contact me on (202) 566-0026.

Sincerely yours,



Henry R. Wray
Director, Administration
of Justice Issues

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Abbreviations

ACI	Arizona Correctional Industries
AFL-CIO	American Federation of Labor and Congress of Industrial Organizations
BOP	Federal Bureau of Prisons
FLSA	Federal Fair Labor Standards Act
PIE	Prison Industry Enhancement Program
PRIDE	Prison Rehabilitative Industries and Diversified Enterprises (Florida)
UNICOR	BOP's Federal Prison Industries (Trade Name)
VCE	Virginia Correctional Enterprises
WIPP	Work Incentive Pay Plan (Arizona)

Objectives, Scope, and Methodology

Our objectives were to (1) compare inmates' labor wages to minimum wages; (2) obtain the views of federal and state prison officials on how the minimum wage would potentially affect prison systems; and (3) obtain the views of organized labor and other selected organizations likely to have perspectives on paying prisoners minimum wage. To accomplish these objectives, we agreed with Senator Reid's office to

- visit five prison systems to obtain information on inmate work and pay policies, actual hours worked and wages paid, what existing work would cost if paid at minimum wage, and potential effects of minimum wage on prison work and operations;
- survey 15 other prison systems on potential effects of minimum wage on prison work and operations; and
- contact selected organizations representing various groups likely to have perspectives on the issue of minimum wage for inmate work.

We visited the Federal Bureau of Prisons (BOP) in Washington, D.C., and four state prison systems—Arizona, Florida, Nevada, and Virginia.

We selected BOP because of its convenient location and the experience and information gained from other federal prison work we have done, and its size—it has the nation's second largest inmate population and has a substantial number of inmates employed in industries and maintenance work. Arizona was selected because of its involvement in the court case that led to our work and because it consequently had developed some opinions and data on the minimum wage issue. Nevada was conveniently located near our work in Arizona and also had some information on the potential effects of minimum wage. Florida and Virginia represent, respectively, a large and a medium size inmate population prison system located in the eastern section of the United States. All four states had industry and maintenance work and a state prison and a federal prison located near their prison system's central offices.

At each of the state prison systems, we interviewed officials and reviewed documents at their central office and at a nearby prison. We did the same at BOP's central office in Washington, D.C., and at a federal prison located in each of the four states.

We also judgmentally selected the 15 states to be surveyed. We included states with small inmate populations (Montana, North Dakota, Vermont, Wyoming, and Washington); medium size inmate populations (Georgia, Louisiana, New Jersey, and Pennsylvania); and large inmate populations

(California, Illinois, Michigan, New York, Ohio, and Texas). The selected small systems had inmate populations of under 10,000, the medium size systems had inmate populations of 16,000 to 24,000, and the large size systems had inmate populations of 37,000 to 104,000. Justice Department statistics showed that these 15 states, along with BOP and the 4 states we visited, had about 598,000 inmates—70 percent of the nation's prison population as of June 1992. However, our results cannot be generalized to all of the nation's prison systems on the basis of the 20 systems contacted. We did not verify the data or evaluate the views that were provided to us.

We asked each of these 15 states as well as the 5 prison systems we visited about the potential impact, if any, of paying minimum wage on (1) the number of inmates who work, (2) the number of hours that would be worked by employed inmates, (3) inmate idle time, (4) prison security, (5) efforts to teach good work habits and job skills, (6) industries' earnings, (7) routine institution maintenance, and (8) inmate public works projects. For each question, we asked if they thought minimum wage would cause no change, an increase, a decrease, or some other change. They could also answer that they did not know. In addition, we asked for any other comments they might have on the minimum wage issue.

We provided the survey questions to the 15 states and then obtained their views through either telephone conversations or written responses. The views of the five prison systems we visited were obtained during our meetings with their officials.

We contacted the following organizations to obtain any views or information they might have on the issue of paying minimum wage for prisoner work: AFL-CIO, American Bar Association, The Brookings Institution, Correctional Industries Association, Institute for Law and Justice, National Council on Crime and Delinquency, National Association of Manufacturers, Council of State Governments, National Conference of State Legislatures, National Federation of Independent Business, and the U.S. Chamber of Commerce. We also contacted (1) the former executive director of the now-defunct National Center for Innovations in Corrections, which in the 1980s served as a focal point for efforts to enhance prison work programs, and (2) one of the authors of the federally funded issue publication Work in American Prisons: The Private Sector Gets Involved (National Institute of Justice Issues and Practices in Criminal Justice, May 1988). We also reviewed the American Correctional Association's standards on inmate work and pay.

These organizations were selected because of (1) their known interest in prison work or pay issues, (2) the possibility that they would have an overall perspective on the ability of states to fund existing inmate work at minimum wage, or (3) the recommendations of some of the organizations we initially contacted. Some did not have a position or any views regarding the payment of minimum wages. We did not meet with human or civil rights organizations because these issues were not a part of our review.

We reviewed published articles on prisons and prison work and interviewed officials and reviewed selected material on prison work and pay at the Justice Department's Bureau of Justice Assistance, Bureau of Justice Statistics, National Institute of Corrections, and National Institute of Justice. We also interviewed officials at the U.S. Marshals Service about pretrial federal offenders housed in contract jails, and the Department of Labor's Wage and Hour Division about the Fair Labor Standards Act (FLSA).

We did our work between November 1992 and March 1993 in accordance with generally accepted government auditing standards.

Information on Inmate Work and Pay at the Five Prison Systems GAO Visited

The five prisons systems provided information that was readily available on inmate work and pay. Thus, the summaries below vary with respect to the range and amount of data.

Federal Bureau of Prisons

BOP housed about 80,000 inmates in about 70 federal prisons and various contract facilities throughout the United States and in Puerto Rico. All able-bodied sentenced prisoners were required to work, except those who participated full time in education or other treatment programs or who were considered security risks. BOP's policy is to pay all inmates who perform satisfactory work, and BOP officials set the pay rates. BOP does not now charge inmates who perform maintenance and industries work a room and board charge; however, Public Law 102-395 directed BOP to assess new inmates for their cost of incarceration for up to a year (which is now approximately \$20,800).

Maintenance Work

BOP officials estimated that about 60,000 inmates work in the maintenance area. Generally, maintenance jobs, which are referred to as institution work assignments, are paid at one of four hourly pay grades: grade 1, 40 cents; grade 2, 29 cents; grade 3, 17 cents; and grade 4, 12 cents. The inmate workers may also receive bonus pay of up to one-half of their monthly pay for work considered outstanding. Because of budgetary restraints, BOP policy is to employ the largest number of inmates at the lower paying grades. Also, some inmates are not given a pay grade but are paid \$5.25 a month because of limited position allotments or for failure to participate in certain critical programs. BOP refers to pay for institution work assignments as performance pay.

Information provided by officials at the federal prisons we visited revealed a perspective on what existing institution work would cost at minimum wage. For example, at the federal prison camp in Nevada, 456 prisoners received about \$6,700 in performance pay in November 1992 for about 51,900 hours of work, or an average of about 13 cents an hour.

Industries Work

BOP's prison industries, operating under the trade name UNICOR, employed more inmates and had more sales than any other prison system in the United States. UNICOR operates factories in 47 different prisons and produces a wide range of products and services such as office furniture, military helmets, and data entry for sale generally to other federal agencies. For fiscal year 1992, UNICOR had about \$417 million in sales to

federal agencies and an average employment of 15,300 inmates, about 25 percent of the inmate population BOP officials considered employable.

UNICOR's jobs tend to be more labor intensive than those in the private sector and thus overemploy inmate production workers when compared to private firms. They do this, according to BOP officials, to employ as many inmates as possible while remaining self-sufficient and meeting their statutory mandate to diversify their products and not unduly compete with any single private industry.

BOP officials believe that UNICOR provides worthwhile training in good work habits and skills and favorably affects inmates' chances for postprison success. They noted that UNICOR's success in reducing recidivism has been documented in research on 7,000 inmates released from 1983 to 1987. The study found that inmates who participated in UNICOR work, or other vocational training, showed better adjustment while in custody and when released were less likely to have their parole revoked. While we have some methodological concerns such as the absence of random selection of study inmates, we believe that the study was a well-designed and ambitious effort, and the results generally supported the conclusion of a correlation between UNICOR work experience and postrelease outcomes, at least for the population studied.

The UNICOR inmate employees' hourly pay rates ranged from 23 cents to \$1.15. They may also earn incentive and longevity pay of up to 40 cents an hour and are paid double time for overtime work. UNICOR officials estimated that their inmate employees worked 27.2 million regular hours and 1.8 million overtime hours during fiscal year 1992 and were paid about \$26.9 million. They said those same number of hours would have cost \$126.9 million if paid at minimum wage.

Arizona Department of Corrections

The Arizona Department of Corrections was responsible for approximately 16,000 inmates, housed in 10 prison complexes throughout the state. State law requires that all able-bodied inmates work 40 hours a week or at least 20 hours if involved in treatment programs. Maintenance workers cannot be paid more than 50 cents an hour. The pay of industries workers is to be determined by Corrections Department officials, except that any inmates working for private companies are to be paid at least at minimum wage. Inmates who make minimum wage or more are to pay 50 cents per hour plus 10 percent of earnings over 50 cents per hour into a fund that is to be used to offset their room and board costs and to pay

**Appendix II
Information on Inmate Work and Pay at the
Five Prison Systems GAO Visited**

support to their dependents. Also, under state law Corrections Department officials may assess room and board charges on inmates earning less than minimum wage, but they do not do so.

Maintenance Work

About 10,000 inmates (62 percent) have a maintenance work assignment, referred to as the Work Incentive Pay Plan (WIPP). Under WIPP, inmates earn from 10 to 50 cents an hour and generally are expected to work 6 hours a day and not more than 40 hours a week. About \$3.7 million was allocated for WIPP for the fiscal year ending June 30, 1992. Since Arizona officials did not have overall data on the number of hours inmates worked, we could not estimate how much that maintenance work would have cost systemwide if it had been paid at minimum wage.

We obtained a perspective on existing versus minimum wage pay from officials at the Arizona prison (Perryville) we visited. According to prison officials, they expect to pay WIPP inmates wages of about \$458,000 for the fiscal year ending in June 1993 and would have to pay another \$7 million if that same number of hours were to be paid at minimum wage.

Industries Work

About 650 inmates (4 percent) work for the Corrections Department's self-supporting industry component, Arizona Correctional Industries (ACI). Inmates working in ACI jobs earn from 40 to 80 cents an hour and are expected to work 8 hours per day, 5 days a week. There were 8 inmates in Prison Industry Enhancement Program (PIE)-certified industries and 49 inmates working under private sector contracts, earning minimum wage.

ACI sells to federal and other state agencies and nonprofit organizations a range of products, including office furniture, picnic tables, park benches, mattresses, license plates, signs, and services such as data entry. Gross sales for the fiscal year ending in June 1992 were about \$6 million with inmate labor costs amounting to about \$614,000. Arizona officials estimated that the same amount of inmate labor would have cost an additional \$3.7 million at minimum wage and a total of \$4.1 million after including expected employer payroll costs (social security, unemployment insurance, and workers compensation) and the cost of one additional staff member to handle the increased payroll activity.

Florida Department of Corrections

Responsible for approximately 48,700 inmates, the Florida Department of Corrections housed them in 46 major institutions, 5 road prisons, 3 forestry camps, 21 work camps, and 32 community correctional centers. State law requires that all able-bodied inmates work, with compensation being left to the discretion of the Corrections Department. Inmates were generally expected to work 8 hours a day, 5 days a week. According to Florida officials, work can include participation in treatment programs.

Maintenance Work

About 39,200 inmates (81 percent) work at maintenance jobs and/or participate in treatment programs, but only a few are paid. About 350 inmates worked for contractors who provided food service in some Florida prisons. These inmates earned about 20 cents an hour. Another 300 inmates who worked in the prison canteens were also paid. These inmates were to be paid \$50 to \$75 a month from canteen revenues. Inmates are not to be assessed any room and board charges.

Overall information was not available on the number of hours actually worked by inmates with institutional jobs.

Industries Work

About 2,400 inmates worked in prison industries operated by Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE). They were generally expected to work 8 hours a day, 5 days a week and were paid 15 to 45 cents an hour, with longevity increases of up to 15 cents an hour. PRIDE makes a variety of products (e.g., laundry care products and custom signs) and offers services (e.g., converting hand-drawn plans to an electronic computer file) that are generally sold to state and local agencies and the federal government. Annual sales for 1992 were about \$68 million.

For the fiscal year ending in June 1992, PRIDE inmates worked about 4.4 million hours and received about \$1.5 million in wages, an average of 34 cents an hour. PRIDE officials estimated that had they paid the 4.4 million hours at the minimum wage, their labor cost would have increased to about \$26.1 million, including benefits of about \$7.5 million.

PRIDE inmates are not charged for room and board. PRIDE does, however, annually pay 1.5 percent of gross sales to the state to offset the cost of inmate incarceration. PRIDE also pays 15 cents for every inmate dollar earned to the Corrections Department for victim restitution purposes.

**Appendix II
Information on Inmate Work and Pay at the
Five Prison Systems GAO Visited**

**Nevada Department
of Prisons**

The Nevada Department of Prisons' 6,000 inmates were housed statewide in 18 facilities, including 6 prisons, 2 restitution centers, and 10 prison camps. According to a Prisons Department representative, inmate work assignments were voluntary. Inmates who worked receive sentenced credits (time off their sentences), and some were also paid. Nevada imposed a room and board charge on its maintenance and industry workers of 24.5 percent of their weekly wages in excess of \$18. PIE industry inmates are to be assessed an additional 5 percent of earnings for victims compensation. Nevada also charged nonindigent inmates \$4 each time they reported on sick call.

Maintenance Work

About 1,500 inmates were housed in prison work camps and were paid by Nevada's Department of Forestry. These inmates were being paid up to about \$1 an hour. Decisions regarding maintenance pay for inmates at other Nevada prisons were made by the warden at each prison, subject to the Prisons Department's approval of the prison's budget.

We obtained a perspective on existing pay at the Nevada prison (Southern Desert Correctional Center) we visited. Data provided by Prisons Department and prison officials showed that 950 of the prison's 1,480 prisoners had maintenance work assignments. Data for November 1992 showed that about 200 inmates' pay rates ranged from \$10 to \$72 a month.

Industries Work

About 300 inmates worked in Nevada's prison industries. About half worked in PIE-certified industries making minimum wage. All other inmates worked in prison system-operated industries under a piece rate pay plan with opportunities to earn more than minimum wage. According to a Nevada official, the piece rate inmates received, on average, \$2.82 per hour worked during January 1993, ranging from the lowest paid inmate who averaged 75 cents to the highest who averaged about \$5 an hour.

Nevada industries' annual sales amounted to about \$3 million and involved enterprises as diverse as antique automobile restoration and making waterbeds. Sales are made to other state agencies and private sector firms.

**Virginia Department
of Corrections**

The Virginia Department of Corrections was responsible for approximately 17,000 inmates housed in 23 major institutions and 28 road camps. State law requires that inmates be provided opportunities to work

**Appendix II
Information on Inmate Work and Pay at the
Five Prison Systems GAO Visited**

to the extent feasible and that they be paid, with the pay rates to be set by the Corrections Department. The inmates did not pay for room and board.

Maintenance Work

About 10,300 inmates (61 percent) were assigned to maintenance jobs, referred to as institutional work assignments. These inmates were paid at rates ranging from 20 to 45 cents an hour and were expected to work about 24 hours each week. (A bill pending before the state legislature would require inmates to work 40 hours per week.) For the fiscal year ending June 30, 1992, the Corrections Department paid about \$5.6 million for the institutional work.

Information provided by officials at the Powhatan State Prison we visited provided a perspective on what existing institution work would have cost at minimum wage. For example, for January 1993, 577 inmate workers received about \$17,300 in wages for about 57,300 hours. On average, that amounts to about 30 cents an hour.

Industries Work

Prison industries in Virginia are referred to as Virginia Correctional Enterprises (VCE). They employed about 1,400 inmates who may earn from 55 to 80 cents an hour. The inmates were generally expected to work 6 hours a day, 5 days a week. VCE makes various products (e.g., shoes, office furniture, and vehicle license plates) and offers services (e.g., printing and data entry) that are generally sold to government agencies.

For the year ending June 30, 1992, VCE had about \$21 million in sales and paid about \$1.2 million for inmate wages. Officials at the Powhatan prison said that for January 1993, 93 inmates were paid about \$7,680 for 14,521 hours worked. On average, that amounts to about 53 cents an hour.

Responses of the 20 Contacted Prison Systems to GAO's Questions on Potential Impacts of Minimum Wage

Question	Response
1. What change, if any, do you expect to happen to the size of your inmate labor force?	All 20 said that fewer inmates would be permitted to work.
2. For inmates who will be working, what change, if any, do you expect to happen to the number of hours they work?	<p>(a) No change: BOP, New York, and Texas.</p> <p>(b) Will work more hours: Nevada, Ohio, and Virginia</p> <p>(c) Will work fewer hours: Arizona, California, Florida, Georgia, Louisiana, Michigan, Montana, New Jersey, North Dakota, Pennsylvania, Vermont, Washington, and Wyoming.</p> <p>(d) Other: None.</p> <p>(e) Don't know: Illinois.</p>
<p>3. Part 1: Do you sell prison made products/services? (non-PIE)</p> <p>Part 2: What, if anything, do you believe will happen to the profits derived from sale of prison-made products/services?</p>	<p>Nineteen said yes, 1 (Wyoming) said no.</p> <p>The 19 with industries:</p> <p>(a) No change: None.</p> <p>(b) Will be eliminated: BOP, California, Georgia, Illinois, Louisiana, Montana, North Dakota, Ohio, Pennsylvania, Texas, Vermont, Virginia, and Washington.</p> <p>(c) Will be substantially reduced: Arizona, Florida, Michigan, and New Jersey.</p> <p>(d) Will increase: None.</p> <p>(e) Other: Nevada (will be decreased) and New York (operates on a break-even basis).</p> <p>(f) Don't know: None.</p>
4. What, if anything, do you believe will happen to inmate idle time?	All 20 said that inmate idle time would increase.
5. What, if anything, do you believe will happen to the number of inmate rule infractions or security problems?	All 20 said that inmate rule infractions or security problems would increase.
6. What, if anything, do you believe will happen to normal institution maintenance work (such as minor repairs or janitorial work)?	Nineteen thought that the work would be done less frequently, and one (Virginia) thought the maintenance work would improve since only the more motivated and qualified inmates would be assigned to work.

(continued)

**Appendix III
Responses of the 20 Contacted Prison
Systems to GAO's Questions on Potential
Impacts of Minimum Wage**

Question	Response
7. Part 1: Do your inmates perform public works projects?	Seventeen said yes, and 3 (Montana, Pennsylvania, and Wyoming) said no.
Part 2: What, if anything, do you believe will happen regarding your inmates' public works projects?	Of the 17, 12 said the projects would cease, and 5 (California, Louisiana, Michigan, Nevada, and Washington) said they would be done, but at a lower level.
8. What, if anything, do you believe will happen regarding your efforts to teach inmates good work habits and/or job skills?	All 20 thought that efforts would be reduced.

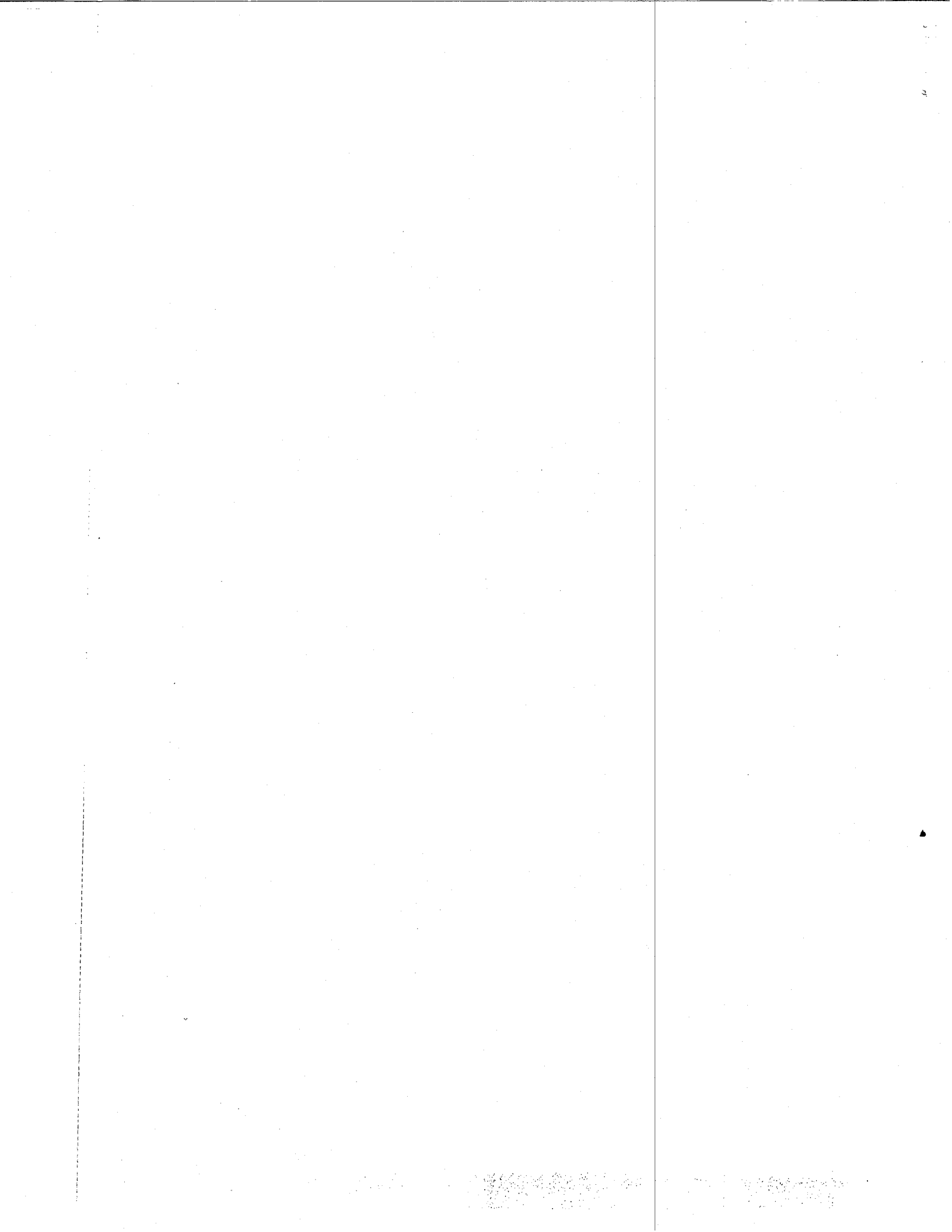
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Testimony

Before the Committee on Labor and Human Resources, United States Senate

For Release on Delivery
Expected at
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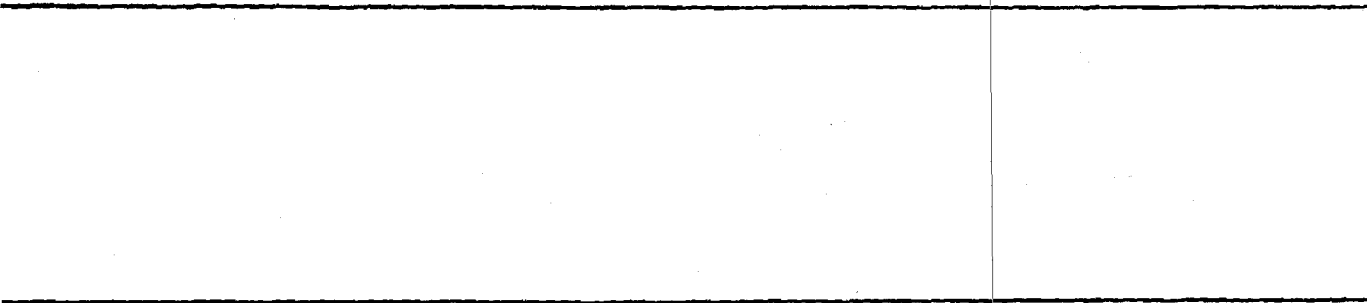
PRISONER LABOR

Perspectives on Paying the
Federal Minimum Wage

Statement of
Lynn H. Gibson
Associate General Counsel



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PERSPECTIVES ON PAYING
PRISONERS MINIMUM WAGES

SUMMARY OF STATEMENT OF
LYNN H. GIBSON
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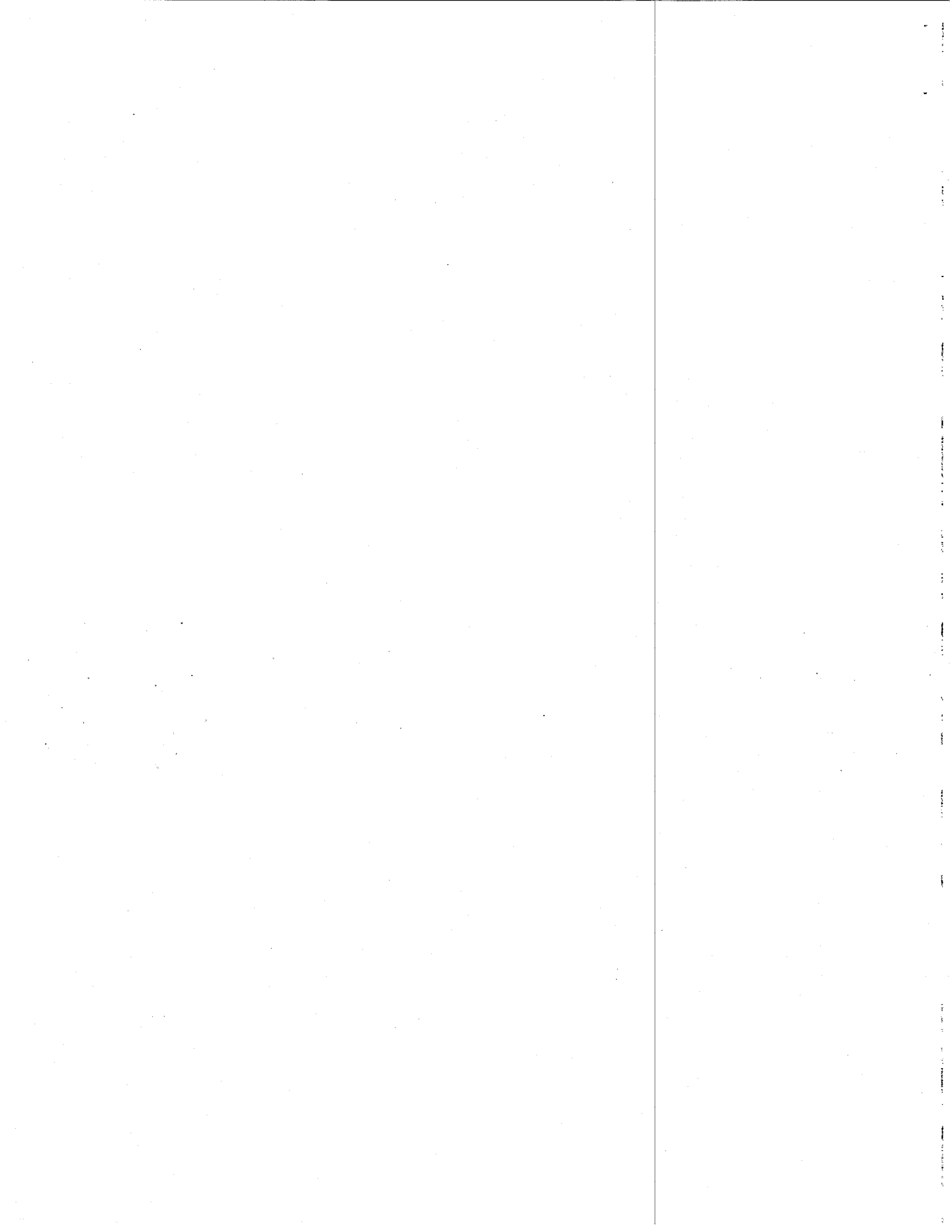
GAO's testimony is based on its report--Prisoner Labor: Perspectives on Paying the Federal Minimum Wage (GAO/GGD-93-98, May 20, 1993). Inmate work is a major part of the corrections system's effort to operate prisons safely. Inmate labor also reduces prison costs. Generally, sentenced inmates are expected to perform some type of institution maintenance work (e.g., cooking inmate meals, laundering inmate clothing, and maintaining the grounds) or industrial work (e.g. manufacturing office furniture and automobile tags) for sale to government agencies and sometimes to the private sector. According to an American Correctional Association survey, about 8 percent of the federal and state prisoners had industry type jobs.

The Fair Labor Standards Act, which generally requires employers to pay at least the statutorily-mandated minimum hourly wage to employees, does not specifically address whether prisoners performing work are "employees" entitled to the minimum wage. However, the courts have generally held that prisoners working in prison are not entitled to the minimum wage.

For the most part, inmates in the five prison systems--BOP, Arizona, Florida, Nevada, and Virginia--GAO visited either were not paid or were paid at rates that were substantially less than the federal minimum wage of \$4.25 an hour. For example, BOP generally pays its maintenance inmates 12 to 40 cents per hour and its industry inmates 23 cents to \$1.15 per hour. Our analysis of data from the Justice Department and others indicated that the nation's other prison systems had similar pay rates for their inmate workers. For example, a nationwide survey done by the Justice Department indicated that prison industry inmates were generally paid a regular rate of less than \$1 an hour during 1991.

If the five prison systems GAO visited were required to pay minimum wage to their inmate workers and did so without reducing the number of inmate hours worked, they would have to pay hundreds of millions of dollars more each year for inmate labor. Consequently, these prison systems generally regarded minimum wage for prisoner work as unaffordable, even if substantial user fees (e.g., charges for room and board) were imposed on the inmates. Officials from the 20 prison systems GAO contacted consistently identified large-scale cutbacks in inmate labor as a likely and, in their view, dangerous consequence of having to pay minimum wage. They believed that less inmate work would mean more idle time and increased potential for violence and misconduct.

On the other hand, some of the organizations GAO visited had a different perspective on inmate pay, based on the idea that prison work experiences should be more like those in the general public. Some organizations also believed that by not paying inmates minimum or prevailing wages, prison industries gain an unfair competitive advantage and/or displace workers who are not imprisoned.



Mr. Chairman and Members of the Committee

I am pleased to be here to discuss our recent report to Senator Reid entitled Prisoner Labor: Perspectives on Paying the Federal Minimum Wage (GAO/GGD-93-98, May 20, 1993).

Senator Reid requested information on potential effects on prison work programs and potential fiscal impacts if the nation's prisons were required to pay minimum wage for prisoner work. His request was prompted by a decision of a three-judge panel of the U.S. Court of Appeals for the 9th Circuit which held that certain prisoners were subject to the minimum wage provisions of the Fair Labor Standards Act (FLSA).¹ This decision was subsequently reversed by the full court.²

In response to Senator Reid's request, we (1) compared inmates' labor wages to minimum wages; (2) obtained views of federal and state prison officials on how the minimum wage would potentially affect prison systems; and (3) obtained views of organized labor and other organizations likely to have perspectives on paying prisoners the minimum wage. To do this, we (1) visited five prison systems--Federal Bureau of Prisons (BOP), Arizona, Florida, Nevada, and Virginia--to obtain information on inmate work and pay policies, actual hours worked and wages paid, what existing work would cost if paid at the minimum wage, and potential effects of payment of the minimum wage on prison work and operations; (2) surveyed 15 other prison systems on potential effects of payment of the minimum wage on prison work and operations; and (3) contacted selected organizations representing various groups likely to have perspectives on the issue of payment of the minimum wage for inmate work. In each of the four states we visited, we also visited a state and a federal prison. Our data are not projectable to all prison systems. The opinions we obtained on impact are subjective and projections for cost impacts are approximations.

If the federal and four state prison systems we visited were required to pay the minimum wage to their inmate workers and did so without reducing the number of inmate hours worked, they would have to pay hundreds of millions of dollars more each year for

¹Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201-19).

²The three-judge panel held, in Hale v. Arizona, 967 F.2d 1356 (1992), that the inmates, who worked for a component of Arizona prison industries, were "employees" of the state and thus were subject to FLSA requirements. However, this case was reheard en banc by the Ninth Circuit in November 1992. Subsequent to the completion of our work, the full court reversed the three-judge panel and affirmed the decision of the lower court that the state prisoners were not entitled to the minimum wage under FLSA. Hale v. Arizona, 993 F.2d 1387 (1993).

inmate labor. Consequently, these prison systems generally regarded minimum wage for prisoner work as unaffordable, even if substantial user fees, such as charges for room and board, were imposed on the inmates.

Prison systems officials consistently identified large-scale cutbacks in inmate labor as a likely and, in their view, dangerous consequence of having to pay minimum wages. They believed that less inmate work would mean more idle time and increased potential for violence and misconduct. They also noted other potentially adverse consequences for prison operations, such as routine maintenance being performed less frequently.

On the other hand, some of the organizations we visited had a different perspective on inmate pay, based on their view that prison work experiences should be more like those in the general public. Some organizations also believed that by not paying inmates minimum or prevailing wages, prison industries gain an unfair competitive advantage and/or displace workers who are not imprisoned.

BACKGROUND

Inmate work is a major part of the corrections system's effort to operate prisons safely and constructively and to reduce prison costs. Prison work (1) reduces inmate idleness and thus the potential for prison security problems; (2) provides opportunities for inmates to improve or develop job skills, work habits, and experiences that can assist in postrelease employment; and (3) helps to ensure that maintenance necessary for day-to-day operation of the prison is performed. Inmate labor also reduces prison costs. For example, inmates perform functions such as cooking that would otherwise have to be performed by higher-paid civilian staff.

Generally, sentenced inmates are expected to perform some type of institution maintenance or industrial work on a full-time (6 to 8 hours a day, 5 days a week) or part-time basis.³ Maintenance work includes cooking inmate meals, laundering inmate clothing, repairing boilers, performing clerical work, and maintaining the grounds and buildings as well as many other functions necessary for the day-to-day operation of the prison. It also sometimes

³Some inmates work in the community under a work-release program, where they typically are employed during the day and return to the institution at night. These inmates are employees of private or public sector organizations outside of the prison system and thus their entitlement to minimum wage would depend on whether their work for these organizations meets the criteria for FLSA coverage. Consequently, these inmates were excluded from our review.

includes public works projects such as assisting local communities in repairing roads and assisting forestry departments in clearing land and planting trees. Inmates may also do industrial work for the prison or private companies. This work may include manufacturing products (e.g., office furniture, mattresses, and automobile tags) and providing services (e.g., data entry and automobile repair) for sale to government agencies and sometimes to the private sector.

Most inmates who work are assigned to maintenance rather than prison industries jobs. A nationwide American Correctional Association survey in 1991 reported that about 8 percent of the federal and state prisoners had industry type jobs.

Whether inmates are paid or the amount paid varies among the individual federal or state systems. For example, BOP and the states generally provide some compensation to prisoners for their maintenance and industry work. However, some states (e.g., Texas) do not pay for any inmate work, while some states (e.g., Florida) generally pay only those inmates doing industry jobs. Inmate pay may be based on a rate per hour; cover a specific time period (e.g., monthly); or be based on piece work. Under some systems, inmates may also earn extra pay for overtime work and length of time employed (longevity), receive paid vacations and holidays (remain in prison but do not work), and receive payments under a workers compensation program. Some prison systems may also pay inmates for their participation in vocational training programs and in literacy or other educational programs.

Under federal law, 18 U.S.C. 1761(c), 50 nonfederal prison work pilot projects may produce products for sale in interstate commerce, provided that, among other things, inmates employed in these projects are paid the prevailing wage for their work. These projects, referred to as the Prison Industry Enhancement (PIE) Program, are approved by the Bureau of Justice Assistance. The Bureau requires that PIE industries pay at least the minimum wage if a prevailing wage cannot be determined. As of December 1992, PIE industries employed about 1,000 inmates nationwide.

Under FLSA, employers are generally required to pay employees at least the minimum hourly wage set by federal law for up to a 40-hour workweek. The overtime rate for all hours worked over the 40 hours is set at one and one-half times the employee's regular rate of pay. While the vast majority of employers, including state governments, are subject to the requirements of FLSA, there are a number of workers who are not covered by the law's minimum wage and overtime provisions. Prison inmates are not specifically excluded from the definition of "employee" under FLSA. However, the courts have generally held that prisoners performing work behind prison walls for prison-operated industry or for a prison itself are not entitled to minimum wage under

FLSA because they are not in an employer-employee relationship with the prison.⁴

SUBSTANTIAL DIFFERENCES EXISTED
BETWEEN PAY AND MINIMUM WAGE

For the most part, inmates in the five prison systems we visited either were not paid or were paid at rates that were substantially less than the federal minimum wage of \$4.25 an hour. (See Appendix). For example, BOP generally pays its maintenance inmates 12 to 40 cents per hour and its industry inmates 23 cents to \$1.15 per hour. Of these five systems only some Arizona and Nevada inmates had the opportunity to earn the minimum wage or more. For example, about 60 of the approximately 650 Arizona inmates working in prison industries were involved with private sector operations and could earn minimum wage.

Many inmates at the five systems were paid at the lower rates of the established pay scales. For example, BOP policy for nonindustry inmates provides that about 55 percent of the inmates are to be paid an hourly rate for maintenance work at pay grade 4 (12 cents), 25 percent at grade 3 (17 cents), 15 percent at grade 2 (29 cents), and 5 percent at grade 1 (40 cents). Our review of prisoner payroll records at the four federal prisons we visited indicated that the inmates were generally being paid at the lower pay grades.

Our analysis of data from the Justice Department and others indicated that the nation's other prison systems had similar pay rates for their inmate workers. For example, a nationwide survey done by the Justice Department indicated that prison industry inmates were generally paid a regular rate of less than \$1 an hour during 1991.

⁴See Hale v. Arizona, 993 F.2d 1387, 1393-95 (9th Cir. 1993) (inmates working in prison programs structured under Arizona law requiring prisoners to work at hard labor were not "employees" of the prison under FLSA); Harker v. State Use Indus. Envelope Shop Inmates, 990 F.2d 131, 135-36 (4th Cir. 1993) (FLSA does not apply to prison inmates performing work at prison workshop within the penal facility as part of rehabilitative program); Vanskike v. Peters, 974 F.2d 806, 807-9 (2d Cir. 1992) (inmate who worked in Illinois prisons as a maintenance worker and knit shop line worker was not entitled to minimum wage under FLSA). It should be noted that some courts have found inmates to be entitled to minimum wage under FLSA when the inmates are performing work for private, outside employers. See, e.g. Carter v. Dutchess Community College, 735 F.2d 8 (2d Cir. 1984) (holding that FLSA might apply to an inmate working as a community college tutor for classes taught inside a prison).

Cost of Paying for Existing Work
Levels at Minimum Wage

All five prison systems would face a substantial increase in costs in the hundreds of millions if existing inmate work levels had to be compensated at the minimum wage. If required to pay the minimum wage, officials at these systems noted that they would likely impose substantial user fees and reduce their inmate labor levels.

BOP officials told us that their industries paid 15,300 prisoners average rates of 87 cents an hour for 27.2 million regular hours worked and \$1.75 an hour for 1.8 million overtime hours worked during fiscal year 1992. This amounted to about \$26.9 million for inmate compensation--\$100 million less than what paying the minimum wage would have cost for the same number of hours. Although overall data were not available, our review of payrolls at the four federal prisons we visited indicated that the difference in pay for maintenance work would have been substantially greater than the difference for industrial work had the inmates been paid minimum wage. This is because wages for maintenance work were substantially less than the wages for industrial work and because most inmates work in maintenance jobs.

At the state level, for example, Arizona officials noted that their industries paid about \$614,000 in inmate wages for the year ending June 30, 1992, as compared with about \$3.7 million they would have paid for the same number of hours at minimum wage. Arizona officials did not have statewide information on how much inmate maintenance would have cost at minimum wage. However, at the Arizona prison we visited officials estimated that for the year ending June 30, 1993, they will pay inmate wages of about \$458,000 (average of 26 cents an hour) for maintenance work compared with about \$7.5 million if the estimated number of hours were paid at minimum wage.

These hypothetical differences between existing and minimum wage payrolls do not include the cost of employer-paid benefits that inmates may be entitled to if they were considered to be employees. For example, under certain circumstances prison systems and the inmates both could be subject to paying social security taxes amounting to 7.65 percent of the inmates' earnings.

On the other hand, the differences between existing and minimum wages do not include potential charges such as user fees and taxes which could result in some of the additional wage costs being returned to the federal and state governments. For example, officials at the prison systems we visited generally believed that if inmates were to receive the minimum wage, the prison systems would be forced to assess substantial user fees.

Of the five prison systems we visited, only Nevada imposes a room and board charge on its maintenance and industry inmate workers who earn less than minimum wage--24.5 percent of their weekly wages in excess of \$18. Nevada also charges nonindigent inmates \$4 each time they report on sick call.

Victim restitution and child support payments are examples of other possible deductions from inmates' pay. Unlike room and board charges, however, these deductions represent funds that would be paid to members of the general public and not recovered by federal and state treasuries. However, some payments may result in reduced government expenditures. For example, if the inmates paid child support and their children are supported by government aid programs, the net effect may be to reduce the amount paid by federal and state governments.

CONTACTED PRISON SYSTEMS' VIEWS ON PAYING MINIMUM WAGES

Because there is little available research or studies on the potential impact of prisoners being covered under FLSA's minimum wage provisions, some ramifications are unknown. Nevertheless, the 20 prison systems we contacted generally believed that paying minimum wage would adversely affect prison work, job training programs, and prison security. They also noted other potential issues associated with treating inmates as employees and identified few benefits of paying inmates minimum wages.

Officials did not believe that they would be able to continue to employ the same number of inmates if they had to pay the minimum wage. For example, Arizona officials said it was unlikely that they would be given the additional funds to pay minimum wages, even if the increased pay amount was substantially reduced by imposing user fees. Therefore, Arizona officials maintained that they would be forced to substantially reduce the inmate workforce.

The four other prison systems we visited told us that they would also have to substantially reduce the number of inmates who work if minimum wages had to be paid. Officials from the 15 prison systems we surveyed by telephone also said that fewer inmates would be permitted to work. Further, 13 of the 20 prison systems contacted believed that the inmates who remained employed would work fewer hours, while 3 thought they would work more, and 3 thought they would work the same number of hours. One system did not know how the number of hours inmates worked would be affected.

Other Potential Impacts of
Paying Minimum Wage

The prison systems provided similar responses to questions about potential impact on (1) inmate idle time, (2) prison security, (3) efforts to teach good work habits and job skills, (4) industries' earnings, (5) routine institution maintenance, and (6) public works.

All 20 prison systems told us there would be increased inmate idle time and more inmate rule infractions or security problems if minimum wages had to be paid. Officials at both the prison system headquarters offices and at the specific prisons we visited consistently noted that reduced inmate work would mean more inmate idle time, contribute to more inmate disorder and violence and make their prisons more dangerous. For example, according to BOP, the reduced employment "would seriously jeopardize the security of federal penal and correctional facilities, as idleness and boredom multiplied among an inmate population serving significantly longer sentences, with virtually no prospects for early release."

All 20 prison systems thought that efforts to teach good work habits and/or job skills would also be reduced. BOP's prison industry officials said that the reduced employment would deprive thousands of inmates of the opportunity to learn the basic work skills that are essential to success in the outside world.

Nineteen of the 20 prison systems we contacted had prison industries. Of the 19, 17 responded that having to pay minimum wage would eliminate or substantially reduce earnings from those industries. For example, BOP said that paying minimum wage would result in a substantial increase in product cost, to the point that their products would not be competitive. Consequently, BOP told us that it would have to automate much of its industrial production and reduce inmate employment drastically in order to control labor costs, continue to offer products to federal agencies at current market prices, and remain self-sufficient.

Regarding the impact on institution maintenance, 19 prison systems thought minimum wage would lead to less frequent routine maintenance. The other thought that maintenance efforts would be enhanced because only the most motivated and able inmates would be filling the fewer jobs available.

In response to our final survey question, 17 prison systems told us they had inmates who performed public service projects. Of the 17, 12 thought that minimum wage would result in such projects being abolished and 5 said that fewer projects would be done. For example, a Nevada official told us that they would have to stop much, if not all, of the roadwork and other public service now done by approximately 1,500 work camp inmates.

OTHERS' PERSPECTIVES ON PAYING
MINIMUM WAGE FOR PRISONER WORK

Some organizations and studies had a different perspective on inmate pay than the prison officials we contacted. Some generally favor improving inmate work programs and inmate pay through greater use of prison industry programs. These programs could be operated by, or operate like, private sector businesses, the "factories with fences" approach. Some also support paying inmates the prevailing wage so that prison industries do not have an unfair competitive advantage over businesses that do not have access to prison labor.⁵

The "factories with fences" approach had its roots in Justice Department efforts in the mid-1970s to assist states in coping with the problems of inmate idle time and inefficient work programs. The Justice Department provided funds and other support to implement a prison industry model in participating states. The model was based on private sector concepts such as productivity-based wages. In 1979, Congress authorized seven PIE projects that allowed the seven participating correctional agencies to sell the products of private sector-operated prison industries across state lines, provided, among other things, that inmates be paid the higher of the prevailing wage in the free market or the minimum wage and be assessed charges such as room and board. (The Justice Department was given responsibility for certifying that a project or correctional agency met the PIE criteria.) Through subsequent amendments, Congress raised the number of authorized PIE projects to 50.

In the 1980s, then-Chief Justice Warren Burger, working with representatives from the corrections, business, labor, legal, and academic communities, further promoted the idea of greater private sector involvement in prison industries. It included having those industries pay prevailing wages, sell products to the public, and generally operate like free-world industries. Under the program, deductions were to be taken from the inmates' pay for such items as room and board, taxes, and victim restitution.

Our review showed that the "factories with fences" concept was expected to apply to industries work. Also, according to representatives from The Brookings Institution and the now-defunct National Center for Innovation in Corrections involved in developing the concept, it was anticipated that because of budgetary and other problems, many prison systems would not

⁵In our discussions of this matter with BOP officials, they pointed out that federal prison industries are a mandatory source of procurement for other federal agencies.

extensively pursue the concept. A 1989 Justice Department survey found that only about 5,000 inmates had worked in PIE and non-PIE private sector-operated industries.

Concerning the issue of unfair competition, prison industries, like BOP's, have long faced criticism from labor groups and businesses about the low wages paid to inmate workers. The American Federation of Labor and Congress of Industrial Organizations' (AFL-CIO) position is that prison labor programs should pay wages that are not less than the prevailing wage for similar work in the private sector to avoid unfair competition and displacing workers who are not imprisoned. The AFL-CIO also says that inmates should pay room and board, taxes, victim restitution, and where necessary, dependent support. However, the AFL-CIO opposes the sale of prison-made goods and services to the public.

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This concludes my prepared statement. I would be pleased to answer any questions the Committee may have.

Basic Inmate Pay Policy At Visited Prison Systems

Prison system	Maintenance pay rates	Industries pay rates
BOP	Generally 12 to 40 cents an hour; outstanding work could result in a bonus of up to one-half an inmate's monthly pay. Some inmates are paid only \$5.25 a month because of, for example, budget problems.	23 cents to \$1.15 an hour with up to 40 additional cents an hour on the basis of work considered outstanding and length of time employed.
Arizona	10 to 50 cents an hour.	40 to 80 cents an hour, but inmates involved with private sector industries earn minimum wage (\$4.25).
Florida	Only pays a few inmates (e.g., inmates working in canteen operations receive \$50 to \$75 monthly).	15 to 45 cents an hour with increases, based on length of time employed, of up to 15 cents an hour.
Nevada	Prison officials decide who is to be paid and how much; pay is generally less than \$1 an hour.	Minimum wage (\$4.25) for private sector-operated industries. For prison managed industries, pay is based on piece rates that could exceed minimum wage.
Virginia	20 to 45 cents an hour.	55 to 80 cents an hour. ^a

^aThese rates were being implemented at the time of our visit.

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