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STRIVE Act Marred by Prevailing Wage Provisions

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The Security Through Regularized Immigration and a Vibrant Economy (STRIVE) Act (H.R. 1645), introduced by Representative Luis V. Gutierrez (D–IL), includes a provision that would require employers to pay guest workers the "prevailing wage." While not as destructive as most prevailing wage proposals, this provision would nonetheless be redundant, reduce labor market flexibility, and open the door to costly litigation. Congress should remove the prevailing wage requirement from the legislation.

- The prevailing wage requirement improves on previous proposals but is unnecessary because the market already requires employers to pay the prevailing wage.
- Using government surveys to set wages would unnecessarily subject businesses to even more uncertainty, complexity, and regulation.

Guest Workers. The STRIVE Act creates a new category of H-2C visas for immigrant guest workers and requires companies that hire them to pay the higher of either the wages paid to similarly skilled employees or the prevailing wage. The law defines the prevailing wage as:

- The wages set in a union collective bargaining agreement, if one exists;
- Davis–Bacon wages if the project is covered by the Davis–Bacon Act; or
- The amount that employers typically pay for that work as determined by various government surveys.

This requirement is definitely an improvement over the prevailing wage provisions of previous immigration reform proposals. The Davis–Bacon Act requires employers on federal construction projects to pay union wage scales, which are typically 15 percent to 40 percent above market rates. The Comprehensive Immigration Reform Act of 2006 (CIRA) would have required employers to pay guest workers Davis–Bacon wages for any occupation covered by the act, not just for jobs on federal construction projects.

This provision would have made the guest worker program pointless. Supporters of a guest worker program want it to provide a legal outlet for currently illegal immigrants to live and work in America. However, businesses and contractors would rarely pay immigrant guest workers a 40 percent wage premium and are more likely to decline to hire any guest workers—legally, at least. Many of the firms that employ the millions of undocumented immigrants in the U.S. would probably be willing to continue employing them illegally at market wages.

Similarly, guest workers who could not find legal work at inflated Davis–Bacon wages are unlikely to stop working. Instead, many of them would take jobs that illegally pay market wages. The Davis–Bacon provisions of CIRA would have defeated the purpose of the guest worker program and kept

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many immigrants hiding in the shadows of the underground economy.

By defining the prevailing wage as the market wage for most jobs, the STRIVE Act solves this problem and improves previous guest worker proposals. Nonetheless, Congress should still remove the prevailing wage provisions from the STRIVE Act.

A Redundant Requirement. Many Members of Congress support prevailing wage provisions to prevent businesses from hiring immigrant guest workers for far less than U.S. market wages and thereby undercutting their constituents' wages. However, the market already compels businesses to pay the market wage because guest workers can switch employers.

If a company hired an engineer as a guest worker for $35,000 per year when most engineers in the area earned $70,000, the guest worker could simply leave his original employer and work for one that paid the market rate. Once guest workers are in America and can move between companies, employers cannot pay them below-market wages without running the risk of their leaving the company for better-paying jobs. The prevailing wage provisions would only require employers to do what they must do already.

Reduced Labor Market Flexibility. Wages signal where workers are needed in the economy. High wages tell workers that those jobs are in high demand, while low wages direct workers away from those occupations. Similarly, high wages for a position tell employers that labor is scarce and needs to be used sparingly, while low wages encourage employers to hire more freely. Wage flexibility sends workers to the jobs that most need filling, keeping the economy growing.

Prevailing wage requirements and other government wage controls distort these signals. Simply requiring employers to pay the market wage would have no effect, but the law uses government surveys to determine the market wage. These surveys take months to administer, process, and publish. By the time a survey is issued, it may no longer reflect economic conditions. If an employer were hiring guest workers at the market wage and then the need for the occupation fell but the survey did not yet reflect the drop in market wages, many guest workers would be likely to take jobs where their skills benefit the economy less.

Regulatory Uncertainty. The prevailing wage provision would also impose another layer of regulatory complexity and uncertainty on American employers. The legislation properly calls for paying the prevailing wage, "taking into account experience and skill levels of employees," but federal wage surveys do not account for skills and experience. They only provide the average or median wage for an occupation.

Less-skilled or less-experienced guest workers naturally earn less than the average worker with more experience. A company that hires a Rwandan engineer with only one year of experience for $25 per hour when the average wage for all engineers is $30 per hour could not be certain that it had complied with the law. It paid the worker according to his skills and experience, but not at a rate published in a government survey.

Frivolous Charges. Additionally, companies could face lawsuits over wages paid to guest workers. Companies seeking to undermine their competitors or unions seeking to pressure companies into concessions could bring charges against businesses employing guest workers for less than a rate published by the government.

Conclusion. The STRIVE Act's prevailing wage provision would require most employers that hire guest workers to pay market wages, not inflated Davis–Bacon wages. This is a great improvement over previous prevailing wage proposals, which would have made guest workers legally unemployable and driven them back into the underground economy.

However, Congress should still remove this requirement. Legally requiring employers to do what competition already achieves would reduce labor market flexibility, increase the regulatory burden, and open the door to potential lawsuits. Congress should not subject American employers to even more uncertainty, complexity, and regulation.

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