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Senate Immigration Bill Marred by Prevailing Wage Provision

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The Senate should remove from the Secure Borders, Economic Opportunity and Immigration Reform Act of 2007 (S. 1348) a provision that would require employers to pay temporary guest workers the "prevailing competitive wage." The requirement is an improvement over the wage provision in the 2006 Senate immigration reform bill (S. 2611), which required employers to pay guest workers "Davis-Bacon" wages set far above market rates. Nonetheless, the prevailing wage provision in the current bill is redundant, would reduce labor market flexibility, and would open the door to costly litigation.

An Improvement Over Previous Bills. The compromise bill creates a new category of Y visas for temporary immigrant guest workers. Companies must pay these workers the higher of two wages—the amount paid to similarly skilled employees or the prevailing competitive wage. The legislation defines the prevailing competitive wage as:

- the wage set in a union collective bargaining agreement, if one exists;
- the Davis-Bacon wage 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.

The requirement is a major improvement over the 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 temporary immigrants Davis-Bacon wages for any occupation covered by the act, not just for jobs on federal construction projects.

The Davis-Bacon provision would have made the temporary guest worker program pointless. The program's supporters want it to provide a legal outlet for immigrants to live and work temporarily in America. However, businesses and contractors would be averse to paying a 40 percent wage premium to hire legal guest workers. Many firms would probably continue employing undocumented immigrants illegally at market wages. Guest workers who could not find legal work at inflated Davis-Bacon wages would continue working illegally, meaning that millions of immigrants would remain hiding in the shadows of the underground economy.

The Senate immigration bill defines the prevailing wage as the market wage for most jobs, avoiding the problems created by Davis-Bacon wage rates. Nonetheless, the provision remains unnecessary and harmful.

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A Redundant Requirement. Many Members of Congress support prevailing wage provisions to prevent businesses from paying guest workers below-market wages, thereby undercutting their constituents' wages. However, the market will already compel businesses to pay the market wage because the legislation allows guest workers to switch employers.

If a company hired an engineer as a temporary worker for $35,000 per year when most engineers in the area earned $70,000, the temporary worker could simply leave his original employer and work for one that paid the market rate. Employers cannot pay guest workers below-market wages without running the risk of them leaving the company for better paying jobs. The prevailing competitive wage provision would legally require employers to do what market forces already compel them to do.

Reduced Labor Market Flexibility. Wages signal where workers are needed in the economy. Jobs paying high wages indicate that demand for new workers is high, while low wages discourage new workers from entering the field. 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 efficient and growing.

Prevailing wage requirements and other government wage controls distort these signals, creating systematic economic inefficiencies. The provision would have no effect if it were not for the government surveys required to determine the market wage. Although the legislation stipulates that they be "recently conducted," such surveys still take months to administer, process, and publish. By the time a survey is issued, it may no longer reflect economic realities. If the surveys are slow to reflect a decline in demand for particular jobs, 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 a new layer of regulatory complexity, creating uncertainty for 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 workers 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. Companies could face lawsuits for paying guest workers less than the "official" wage published by the government. Companies seeking to undermine their competitors or unions seeking to pressure companies into concessions could threaten or encourage such lawsuits.

Conclusion. The immigration reform bill's prevailing wage provision would require most employers who hire temporary guest workers to pay market wages. This is an improvement over previous proposals that required inflated Davis-Bacon wages, which would have made guest workers legally unemployable and driven them back into the underground economy.

Yet Congress should still remove the prevailing wage requirement. The provision duplicates a function already provided by the free market, reduces labor market flexibility, increases regulatory burdens, and opens the door to frivolous lawsuits. Congress should not subject employers to more uncertainty, complexity, and regulation.

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