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## Guest worker programs should include strong wage protections for U.S. workers

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A key issue of evolving immigration policy in the United States is whether employers should be able to hire temporary or "guest" workers from other countries when workers are scarce and wages are rising. Though popular with employers, guest worker programs are generally opposed by labor unions and others who say these programs risk displacing U.S. workers or pushing down their wages.

The immigration bill passed on a bipartisan basis by the U.S. Senate—the McCain-Kennedy bill, or S. 2611—tries to balance these competing concerns by requiring employers who want to recruit temporary guest workers in the construction and service industries to first offer the jobs, at the prevailing industry wage, to U.S. workers. If no qualified U.S. workers apply for the jobs, employers can hire guest workers but must pay them the prevailing wage.

In a report issued in July 2006, the Senate Republican Policy Committee (RPC) attacked the prevailing wage provision in the McCain-Kennedy bill, as "unfair to U.S. workers" because it would "guarantee wages to some foreign workers that could be higher than those paid to American workers at the same worksite" (RPC 2006). This claim is false, since the law requires employers to first offer each job, at the prevailing wage, to any qualified U.S. worker who applies.

The RPC (chaired by Sen. Jon Kyl (R-Ariz.), co-sponsor of a rival immigration bill) also claims that prevailing wage measures are inflated. In fact, the same government studies cited by the RPC show these measures to be accurate. But even if this claim were true, it would strengthen, not weaken, the argument for including such wage protections in an immigration bill since they ensure that guest workers are only hired in tight labor markets when wages are rising.

Finally, the RPC claims that the law expands the reach of the Davis-Bacon Act, which requires construction companies with federal contracts to pay employees the prevailing wage. But the McCain-Kennedy bill specifies only that the wage employers offer to construction workers must be the prevailing wage, as measured under the Davis-Bacon Act, and none of Davis-Bacon's wage reporting or enforcement provisions is applied to guest workers.

### Should immigration reform include prevailing wage protections?

The rationale for expanding guest worker programs is to increase the supply of workers during labor shortages. Most economists would dispute the notion of a labor shortage in the case of low-skilled workers, since employers can always find workers to fill these jobs if they offer high enough wages. However, if we understand "labor shortage" to mean a tight labor market, then, at a minimum, guest worker visas should be granted only when the market is demonstrably tight, i.e., when wages are rising.

This is the purpose of the prevailing wage provision in S. 2611, as well as similar provisions in earlier guest worker laws. They require employers who want to hire guest workers to pay the prevailing wage, defined as the wage paid to the majority of workers in a particular job category and local labor market, or, barring that, the average wage paid to

these workers. Prevailing wages are based on periodic surveys of employers and third parties, and so they always lag in time behind current wages.

Requiring employers who want to hire guest workers to pay the prevailing wage serves two purposes. First, it ensures that employers do not hire guest workers when wages are falling because, if they did, they would have to pay them the higher previous year's wage (recall that the prevailing wage is measured with a lag). Second, it ensures that employers do not undercut the market wage by hiring foreigners willing to work for less than U.S. workers.

The prevailing wage language is the only assurance in the McCain-Kennedy bill that guest workers will be recruited only when labor markets are tight, as intended. This protection is somewhat weakened by the fact that the law still allows employers to hire guest workers when nominal wages are stagnant or rising but real (inflation-adjusted) wages are falling. However, lowering or abolishing prevailing wage measures would only make the situation worse.

### **Is the prevailing wage provision unfair to U.S. workers?**

The RPC claims that the prevailing wage provision "would guarantee wages to some foreign workers that could be higher than those paid to American workers at the same worksite." This argument implies that some employers would be willing to hire guest workers even if they had to pay them more than their other workers (an expense that would be worth it, perhaps, because guest workers' vulnerability might make them more compliant employees).

Even if this were true, S. 2611 requires that employers first offer the jobs, at the prevailing wage, to U.S. workers. Thus, the scenario envisioned by the RPC could only occur if employers were breaking the law or if U.S. workers were somehow unwilling to apply for higher-paying jobs. Because the RPC ignores the fact that McCain-Kennedy requires employers to first offer the jobs to U.S. workers, it does not specify whether it believes employers to be lawbreakers or U.S. workers to be oblivious to their own well-being.

It should be noted that building trade unions, which have experience with similar language in previous immigration laws, support the prevailing wage provision, while the U.S. Chamber of Commerce, an employer group, opposes it.

### **Are prevailing wage measures biased and inaccurate?**

The RPC claims that "Davis-Bacon wages tend to be inflated because of the bias caused by the wage-setting process that relies solely on voluntary wage data reporting."

The RPC does not explain the source of this supposed bias, except to say that "there is no incentive (and perhaps there is a disincentive) for private sector employers to provide wage information that may aid their competitors." The RPC seems to imply that low-wage employers will not participate in the survey because they do not want their employees recruited by competitors offering higher wages. The problem with this theory is that all company-specific wage data collected by the Department of Labor are confidential.

Another possibility is alluded to in a later paragraph: "Bias is inherent since the DBA (Davis-Bacon Act) relies only on information volunteered by employers and third parties, some of whom could have an interest in influencing the outcome of the prevailing wage determinations." Again, the RPC does not explain what would motivate an employer or third party to withhold information from the survey.

In fact, both high-wage and low-wage employers have an incentive to participate in prevailing wage surveys. High-wage employers, unions, and these employers' business associations participate in an effort to keep the prevailing wage high and prevent low-wage competitors from undercutting them on federal contracts or from hiring guest workers. Low-wage employers, on the other hand, participate in an effort to keep the prevailing wage low so they do not have to raise wages when bidding on federal contracts or recruiting guest workers. Competitive pressures therefore encourage

participation by all employers and promote accuracy.

The fact that all employers are motivated to participate in prevailing wage surveys is enhanced by the fact that construction labor markets are highly competitive, so that wages for, say, drywall finishers do not typically vary much between employers (though there can be differences between union and non-union contractors). Thus, it is not surprising that a 1999 General Accounting Office report cited by the RPC found that errors averaged only 76 cents per hour (GAO 1999). These errors generally fall within the statistical margin of error used in Bureau of Labor Statistics surveys (Lipnic 2004).

### **Does it matter if prevailing wage measures are too high?**

It is important to note that even if prevailing wage measures are slightly inflated, as the RPC claims, this would actually *improve* wage protections for U.S. workers, who must first be offered jobs at the prevailing wage before an employer seeks to recruit guest workers. Because the prevailing wage is measured with a lag, this also ensures that the local labor market is tight and wages are rising before guest workers are brought in, in keeping with the intent of the law.

### **Do other measures better capture the prevailing wage?**

The RPC does not say whether it supports wage protections in any form. However, it repeatedly contrasts what it calls "biased" prevailing wage determinations under the Davis-Bacon Act with "statistically valid" wage data from the Occupational Employment Statistics (OES) survey. In fact, both wage measures are similar in relying on voluntary surveys conducted by the Department of Labor.

The RPC's focus on the OES survey is misguided and misleading, since the OES survey does not gather information on benefits and therefore cannot be used to construct prevailing wage measures. Other factors that make the OES survey an inappropriate source for prevailing wage determinations include differences in geographic scope (prevailing wages are reported at the county level, whereas the OES provides only national, state, and metropolitan area wage data) and occupational categories (prevailing wage measures include more occupational classifications as well as breakdowns by construction type).

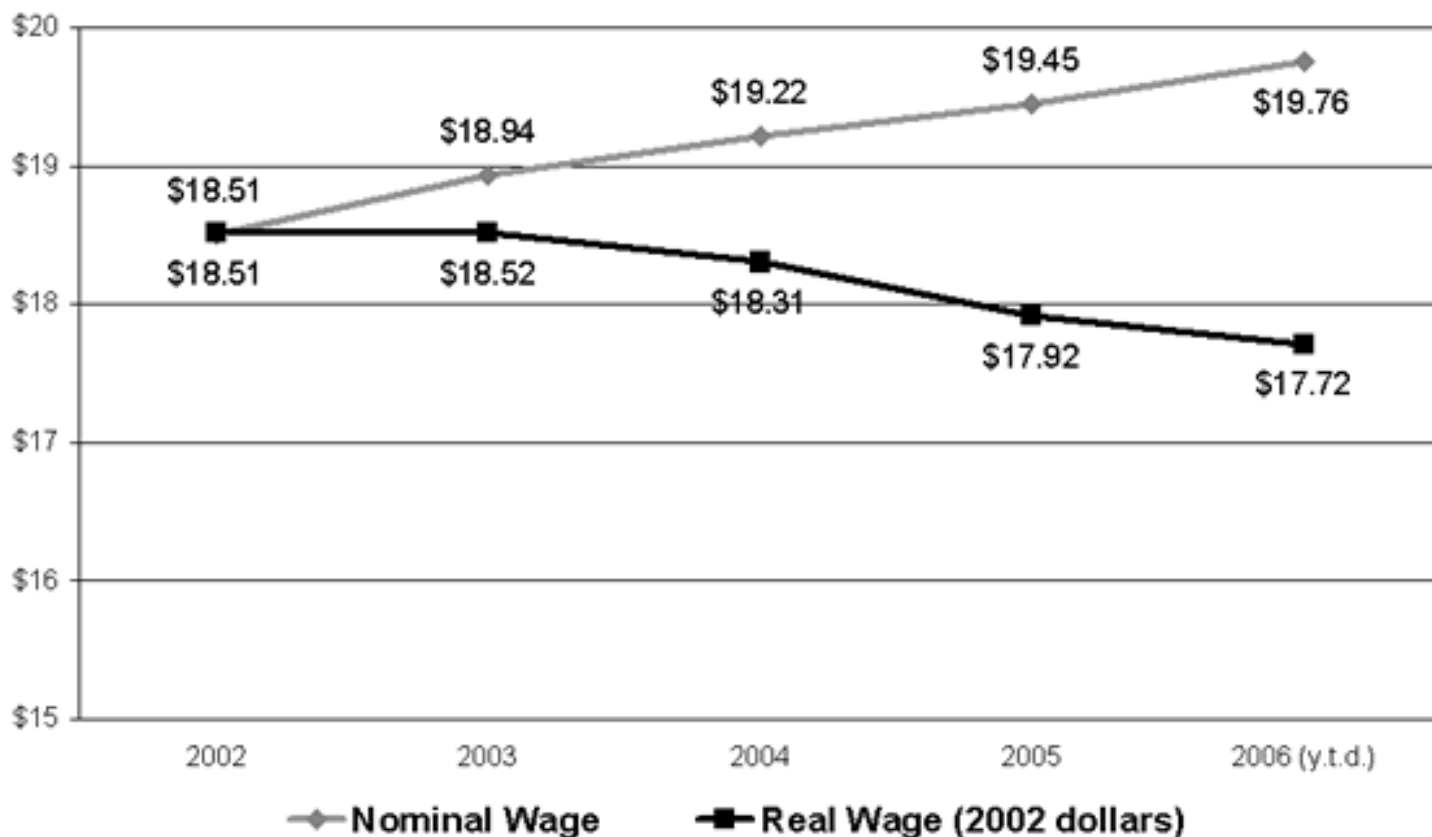
Even if such obstacles could be overcome, however, it is not clear why the RPC prefers OES data, unless the hope is that the OES survey, even if expanded to include information from other surveys on vacation, health, retirement, and other benefits, would tend to underreport wages and benefits. The Department of Labor's Wage and Hour Division, which is responsible for issuing the Davis-Bacon prevailing wage determination, currently surveys unions and business associations to ensure the accuracy of wages and benefits covered under collective bargaining agreements.

The only real problem with wage data from the Department of Labor—not just prevailing wage data, but also OES survey data—is that it is often out of date. In both cases, wage measures can be based on surveys conducted as many as three years earlier (BLS 2004; OIG 2004). Though the RPC expresses concern with the timeliness of prevailing wage determinations, it does not call for an increase in the DOL's budget in order to increase the frequency of these surveys, perhaps because increasing the frequency of surveys would generally *raise* prevailing wage measures, not lower them.

### **Is there a labor shortage in the construction industry?**

Despite a recent building boom, construction wages have been rising slowly in nominal terms and actually falling in real terms (**Figure A**), a situation that is not consistent with a labor shortage or a tight labor market.

**Figure A Construction industry wages, 2002-06**



Source: EPI, based on Bureau of Labor Statistics, average hourly earnings of production workers in the construction industry. Real wages adjusted by CPI-U. 2006 figures are from January to June.

However, because wages are still nominally rising, prevailing wage measures are somewhat lower than the actual market wage, since they are measured with a lag. This means that, under the prevailing wage provision of S. 2611, employers could recruit guest workers at or below the real market wage, even though the labor market is stagnant. This effect would be countered if wage measures were slightly inflated, as the RPC claims. In other words, given a survey lag, there is a strong argument for requiring employers to pay *above* the prevailing wage. Thus, if the RPC claim is true, so much the better, for slightly inflated guest worker wages would help ensure that guest workers do not displace U.S. workers or undercut their wages.

### **Is McCain-Kennedy an unwarranted expansion of the Davis-Bacon Act?**

The RPC's focus on the supposed expansion of the Davis-Bacon Act to the private sector appears to be an attempt to galvanize members of the business community who oppose the Davis-Bacon Act, and does not add any substantive points to its argument. Nor is there anything novel or precedent-setting about the prevailing wage provision of S. 2611; it is similar to provisions in earlier guest worker laws, going at least as far back as the Bracero program of 1942-1964.

### **Conclusion**

The RPC has attacked the prevailing wage protections in the Senate's comprehensive immigration bill as "unfair to U. S. workers," but just the opposite is true. In fact, by making it more difficult for employers to qualify for temporary foreign guest workers, the prevailing wage provision protects U.S. workers from employers who would otherwise replace them with foreign workers willing to work at a lower wage. Without the provision, the guest worker program

would truly be unfair to U.S. workers.

Experience with foreign guest worker programs over the last half century tells us that many employers prefer to hire foreign workers rather than U.S. residents, even when there are many qualified U.S. workers available. The reason is obvious: foreign workers can almost always be found who are willing to work for lower wages, for longer hours, and in worse conditions than U.S. workers. They are, therefore, less expensive to employ. Given the opportunity, many employers would seek visas for guest workers rather than offer work to U.S. residents, especially since temporary guest workers' reliance on employers for visas makes them highly dependent on employers, even more so than immigrants who are legal permanent residents.

If Congress goes along with President Bush and the U.S. Chamber of Commerce and creates a large guest worker program—potentially bringing hundreds of thousands of temporary foreign workers to the U.S. for employment—then mechanisms must be created to ensure that U.S. workers are not displaced and that employers do not pay wages so low as to undercut the market wage for U.S. workers. That is the purpose of the Senate immigration bill's prevailing wage requirement.

Business groups oppose the prevailing wage requirement for obvious reasons: they want foreign guest workers at the cheapest possible wage. Their public position, however, is not that the provision is unfair to employers, but rather that it is unfair to U.S. employees because it will lead to foreign guest workers being paid more than U.S. residents. This claim is demonstrably untrue.

The prevailing wage provision in the McCain-Kennedy bill, like similar provisions in earlier guest worker laws, is designed to prevent employers from recruiting guest workers willing to work for a wage that will adversely affect the living standards and wages of American workers. It also helps to ensure that guest workers are hired only when labor markets are tight, though it does so imperfectly since prevailing wage measures are always out of date. The prevailing wage provision of S. 2611 is thus a minimum, but necessary, standard.

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