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Surety Bonds: A Better Solution Than Burdensome Workplace Immigration Enforcement

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The Senate's immigration proposal would make employers largely responsible for enforcing immigration laws. It includes intrusive workplace enforcement measures that would prove both costly and burdensome for businesses and would force a bureaucratic nightmare on employers and employees. Rather than increase the regulatory burden on businesses and workers, Congress should emulate the private sector's solution to similar problems. To ensure that companies hire only legal immigrants, Congress should require them to post surety bonds backed by an insurance company guaranteeing that their employees are legally allowed to work in America. In addition, to ensure that temporary guest workers leave after their visas expire, Congress should require them to post a bond when they enter the United States.

Surety Bonds a Better Solution. Rather than forcing every worker to obtain federal approval before he or she can take a job, Congress should look to a more effective private sector solution to ensure that companies do not hire illegal immigrants. Before undertaking construction projects, most contractors obtain a surety bond with an insurance company. The insurance company guarantees the customer that the project will be completed according to the contract. If the contractor fails to meet the agreed upon terms, the insurance company compensates the customer for the loss. The insurance company then recoups the cost of the payments from the contractor or, if the contractor has gone bankrupt, covers it itself.

Because the insurance company is ultimately liable if the contractor defaults and cannot pay, insurance companies thoroughly investigate contractors before they post bonds for them. They examine the companies' reputations, references, financial strength, experience, and equipment to ensure that they can do the job. They charge less reliable companies higher premiums to post a bond and refuse to post bonds for firms that they believe are unlikely to meet their obligations.

Congress should institute a similar procedure to ensure that private businesses do not hire illegal immigrants. Instead of instituting an expensive and burdensome government intrusion into corporate employment practices, Congress could simply require businesses to obtain a surety bond stating that they are not hiring illegal immigrants.

More Efficient and Effective. Private insurers would find the most efficient and effective means of verifying that employers are not hiring illegal immigrants. Because insurers would lose money if they posted a bond for a company that was later found to employ illegal immigrants, they would have the incentive to thoroughly investigate firms' hiring practices before posting bonds and continually

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improve their investigative methods. Surety bonds would put the same profit motive that encourages businesses to hire illegal immigrants at work finding new and better ways of ensuring that employers obey the law. In this way, surety bonds would be far more effective than any inflexible government workplace enforcement measures.

Surety bonds would also ensure that only those employers most likely to hire illegal immigrants, such as construction companies, pay the highest premiums and face the most rigorous investigations before obtaining a bond. Firms less likely to employ illegal immigrants, such as software engineering companies, would face a lighter burden. This is far better than forcing every employer and every new business to endure an expensive and time-consuming verification procedure for each new employee.

Bonds for Temporary Workers. Employers who hire seasonal or truly temporary workers face one additional hurdle in addition to those faced by employers who maintain a full-time, resident work force: Temporary workers sometimes choose to remain in the United States rather than return to their home countries. A guest worker program would fail if those registered to work in the United States for a specified time violated their temporary work visas and became part of the vast population of undocumented immigrants. A straightforward solution to this problem would be to require guest workers or their employers to post sponsorship bonds before they can begin their employment.[1]

An effective guest worker program could be organized around the following four elements:

1. **Exit Bonds:** Bonds could be used to validate a migrant's entry into the U.S. labor market or to begin employers' searches for temporary migrant workers. In the first instance, an immigrant worker could enter the U.S. to find temporary work only after posting a bond that assures his duty to return to his home country after a specified period of time. In the second instance, companies could buy a number of bonds and then find workers to match to the bonds. In either case, the value of the bond would be repaid when the immigrant lawfully returned to his or her home country.
2. **Sponsorship:** Each guest worker would need to find a sponsoring employer within a month of entering the country. Employers would need to verify that the worker they were thinking about sponsoring was eligible to work in the United States. If a worker lost his or her sponsor, the law would give the worker a month to find another sponsor. A sponsorship program uses a market approach of supply and demand rather than bureaucratic regulation to determine the size of the temporary immigrant workforce.
3. **Benefits:** Sponsors would provide medical, disability, and other insurance to migrant employees to ensure that temporary workers do not depend on public services.
4. **Identification and Exit:** Sponsored employees would have to be biometrically identified and catalogued at the border, carry identification with them while in the U.S., and return home when their visas expire or forfeit their bonds.

Tie Value of Bond to Cost of Illegal Immigrants. The value of the surety bonds should be large enough to discourage employers from hiring illegal immigrants. It should also be small enough not to discourage firms from hiring workers out of the fear that accidentally hiring an illegal immigrant could bankrupt the business. It consequently seems reasonable to tie the value of the surety bond to the net cost that taxpayers bear for each new illegal immigrant.

According to one estimate, it costs taxpayers $5,258 to provide general services to each immigrant household without a high school diploma, because services like roads, police protection, public safety, and other administrative government services expand as the population grows.[2] Illegal immigrants may also use other government programs such as food stamps, Medicaid, the Earned Income Tax Credit,

1. For a detailed description of this approach, see Tim Kane, Ph.D., and Kirk A. Johnson, Ph.D., "The Real Problem with Immigration…and the Real Solution," Heritage Foundation *Backgrounder* No. 1913, March 2, 2006, at *www.heritage.org/Research/Immigration/bg1913.cfm*, and Tim Kane, Ph.D., "Sponsorship: The Key to a Temporary Worker Program," Heritage Foundation *Executive Memorandum* No. 1022, February 27, 2007, at *www.heritage.org/Research/Immigration/em1022.cfm*.

or housing assistance. Congress should require companies to obtain a bond to cover the cost of a year's worth of services and any public assistance money spent on an illegal immigrant, less the withholding taxes the employer collected over the past year.

For example, suppose the government found that a construction company had hired one illegal immigrant, and that the immigrant had not collected any government aid over the past year and had paid $1,000 in taxes. The company's insurer would owe $4,258, which is a year's worth of services at $5,258, less the money the immigrant and his employer had contributed toward the cost of those services in taxes. If the immigrant had also used $10,000 worth of food stamps and government subsidized medical care during that time, the insurer would owe $14,258.

This would also ensure that insurers and employers focus their resources on catching the immigrants who would be the greatest drains on taxpayers and the economy. Employers would face the largest fines for hiring immigrants who contribute the least to society, and most of their verification efforts would be focused on identifying these immigrants.

Conclusion. Intrusive workplace enforcement measures would add an expensive layer of regulation to the burdens that American businesses already face. Congress should reject this approach and instead require companies to obtain a surety bond stating that they have not hired illegal immigrants. Likewise, sponsorship bonds put a greater emphasis and reliance on market mechanisms than on central planners in Washington.

Using bonds in these creative ways would harness the innovative energies of the private sector to find the most efficient ways of verifying that a company's workforce is legal. This would also ensure that companies unlikely to hire illegal immigrants would not face the same burden as those more likely to do so. The bond would be the amount of the cost to taxpayers of the immigrants staying illegally in the country, less any taxes paid, ensuring that most enforcement resources are devoted to finding the immigrants who are the greatest drain to taxpayers.

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2. Robert Rector, Christine Kim, and Shanea Watkins, "The Fiscal Cost of Low-Skill Households to the U.S. Taxpayer," Heritage Foundation *Special Report* No. 12, April 4, 2007, Chart 2, at *www.heritage.org/Research/Welfare/sr12.cfm*.