EXECUTIVE SUMMARY: AEWRs and the H-2A Program

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The Adverse Effect Wage Rate (AEWR) is a minimum wage that U.S. employers must offer to H-2A guest workers and domestic workers performing similar work. It is typically higher than state and local minimum wage rates and thus serves as the effective minimum wage that farm employers must pay if they employ H-2A workers. The AEWR, intended to ensure that the employment of foreign workers does not adversely affect the wages or working conditions of U.S. workers, began in 1962 when U.S. farm workers were not covered by federal minimum wage laws.

AEWR Evolution and Methodology

The U.S. Department of Labor (DOL) originally developed AEWRs to address concerns that Braceros (Mexican guest workers) who were guaranteed a minimum wage depressed the wages of domestic farmworkers who were not protected by federal minimum wage laws. Following the end of the Bracero program in 1964, the DOL required employers to pay AEWRs to both H-2A workers and US workers. Under the Immigration Reform and Control Act (IRCA) of 1986, DOL changed its methodology to make the AEWR for the current year the previous year's average hourly earnings as determined by the U.S. Department of Agriculture's (USDA) Farm Labor Survey (FLS).

There have been three primary methodologies for setting AEWRs:

- **Farm Jobs:** The FLS is used to set AEWRs for most crop and livestock jobs.
- **Nonfarm Jobs:** For jobs like truck drivers and construction workers, the AEWR is based on the average wage from the DOL's Occupational Employment and Wage Statistics (OEWS) program.
- **Range Herders:** The AEWR is based on the federal minimum wage for a 48-hour work week, adjusted annually using the Employment Cost Index (ECI) for wages and salaries.

Impacts of the AEWR

Our analysis summarizes the perceived and reported effects of AEWRs from multiple stakeholder groups, especially agricultural employers and farmworker advocacy groups, and reviews relevant literature to assess these claims. Our key findings on the effects of the AEWR are:

- **Impact on U.S. Workers:** AEWRs can increase the wages of non-H-2A U.S. farm workers because employers may raise wages to attract domestic workers and avoid the extra costs associated with hiring H-2A workers. Additionally, U.S. workers in areas with H-2A employees may expect to be paid the AEWR.
- **Impact on Foreign Workers:** H-2A workers undoubtably benefit from AEWRs and H-2A policy more broadly. These workers, mostly from lower-wage countries, can earn 5 to 10 times more in the U.S. and save a high percentage of their earnings since US employers cover their housing and transportation costs. Most of their savings are sent

home as remittances and can improve the living standards, health care, and education of their families back home.
- **Impact on Agriculture:** Rising AEWRs increase labor costs, which can encourage some farmers to shift to less labor-intensive crops, invest in mechanization, or reduce U.S. production. The result is also an increase in U.S. imports of labor-intensive commodities from countries with lower wages.

Alternatives and Recommendations

Our analysis of AEWR benefits and drawbacks, review of the current AEWR methodologies and alternatives, and comparison of the U.S. farmworker visa program with those of other countries prompt the following recommendations:

- **H-2A Program Reform:** The AEWR is unique. Other countries, including Australia, New Zealand, Canada, and the UK, typically require employers to pay a relatively high minimum wage, but they also require guest workers to pay some or all costs of housing and local transportation, and contribute to pension, health care, and unemployment insurance programs via deductions from wages. Our estimates indicate that among these countries, visa workers in the U.S. net the highest take-home pay in part due to AEWRs, but also to the many programmatic and labor-related costs that U.S. H-2A employers are responsible for. See Table 4 (pg. 43) in the report.
- **AEWR Data Source & Methodology Alternatives.** The AEWR for most farm jobs is based on the FLS, which has a declining response rate, was not designed to set AEWRs, and was recently terminated. We outline alternative sources wage data to set AEWRs (see Table 2, pg. 29 in the full report) and suggest that, if AEWRs continue to be used as minimum wages for H-2A visa workers, they be established to: (1) reflect general economic conditions by adjusting them annually using the Employment Cost Index (ECI); (2) exclude the wages of workers who are required to receive the AEWR, including H-2A workers and non-H-2A workers performing similar work; and (3) release updated AEWRs well in advance of their implementation or include a mechanism to cap year-to-year changes.
- **Policy Recommendations.** We recommend that DOL:
    - Define and measure the "adverse effects" the AEWR aims to prevent and demonstrate (1) that these effects would occur without an AEWR, and (2) that the AEWR and its methodology counteract these effects.
    - Consider an alternative data source (e.g., the ECI), alternative measure (e.g., median rather than mean), or methodology (e.g., capping year-to-year increases or weighting wages) to set AEWRs. See Table 2 and pages 31-41 for a detailed description of alternatives.
    - Review other aspects of the H-2A program, particularly requirements related to employer-paid housing, benefits, and transportation, especially by comparing U.S. policy to that in other countries. See Table 4 and pages 42-57 for a detailed overview of temporary worker visa policies in Australia, New Zealand, Canada, and the UK.