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AN EXAMINATION OF POINT SYSTEMS AS A METHOD FOR SELECTING IMMIGRANTS

HEARING

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

OF THE

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HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

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AN EXAMINATION OF POINT SYSTEMS AS A METHOD FOR SELECTING IMMIGRANTS

TUESDAY, MAY 1, 2007

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP,
REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 3:08 p.m., in Room 2237, Rayburn House Office Building, the Honorable Zoe Lofgren (Chairwoman of the Subcommittee) presiding.

Present: Representatives Lofgren, Berman, Jackson Lee, Waters, Delahunt, Ellison and King.

Staff Present: Ur Mendoza Jaddou, Chief Counsel; R. Blake Chisam, Majority Counsel; Benjamin Staub, Professional Staff Member; and George Fishman, Minority Counsel.

Ms. LOFGREN. This hearing of the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law will come to order.

I would like to welcome the Immigration Subcommittee Members, our witnesses, and members of the public. We are here today for the Subcommittee's sixth hearing on comprehensive immigration reform.

In our first five hearings, we examined the need for comprehensive immigration to secure our borders, to address economic and demographic concerns, and for historical reasons. We have examined immigration reform in 1986 and 1996 in an effort to avoid the mistakes of the past. Last week, we considered the problems with and proposed solutions for our current employment and work site verification system.

Today, we are turning our attention to immigration point systems. You might have noticed some talk over the past couple of months about selecting immigrants using what's known as a "point system," such as those used by Canada and Australia. Some have suggested replacing many parts of our current immigration law with a point system.

In the United States, we have had three overarching criteria by which we select immigrants: family ties, economic need, and international humanitarian obligations and priorities. We have woven these principles into our immigration preference system, and they are woven into the fabric of our society.

Whatever our process, we must remain true to these cherished principles of American society. The question is, can a point system capture these principles and help us implement them in practice?

I look forward to the testimony today to help us learn more about point systems so that we may determine whether it is right for the United States.

It should be noted that immigration point systems have been considered and rejected by Congress as far back as 1981 and again in the late 1980's, even after lengthy hearings and debate. Have things changed since the 1980's? Are there new facts to be considered? New issues? These are all questions I will have for our witnesses today.

I very much look forward to the objective descriptions of point systems used by Australia, Canada, New Zealand and Britain, presented by the Library of Congress. They will provide the background we need to conduct our own analysis of point systems and allow us to compare them to the current immigration system. And, as pointed out by the Library, they are not allowed to take a position on these items, only to provide technical information.

I look forward to expert opinions on point systems from witnesses who have studied, practiced and/or advocated for point systems and, in some cases, compared them to the current U.S. System. With today's overview and analysis, I hope we can reach a conclusion on whether the U.S. should also turn to an immigration point system while moving away from a preference system built upon family ties, economic need, and humanitarian concerns.

So thank you again to our distinguished witnesses for being here today to help us sort through what is a complex and very important issue; and I would now recognize our distinguished Ranking minority Member, Congressman Steve King, for his opening statement.

[The prepared statement of Ms. Lofgren follows:]

PREPARED STATEMENT OF THE HONORABLE ZOE LOFGREN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, AND CHAIRWOMAN, SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

I would like to welcome the Immigration Subcommittee Members, our witnesses, and members of the public to the Subcommittee's sixth hearing on comprehensive immigration reform.

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Have things changed since the 1980's? Are there new facts to be considered? New issues?

These are all questions I will have for our witnesses today. I very much look forward to the objective descriptions of point systems used by Australia, Canada, New Zealand, and Britain, presented by the Library of Congress. This will provide the background we need to conduct our own analysis of point systems and allow us to compare them to the current U.S. immigration system.

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Thank you again to our distinguished witnesses for being here today to help us sort through what is a complex and very important issue.

Mr. KING. Thank you, Madam Chair; and thanks for holding this hearing. I'm glad the Immigration Subcommittee is taking an aggressive approach to the hearings on the complex issue of comprehensive immigration reform.

As you all know, this subject is like a labyrinth. One issue leads to another, which leads yet to another. It's difficult to find the end. So I look forward to many more hearings in order to flesh out the topics involved with any comprehensive immigration reform bill.

Today's topic has a long pedigree. In fact, the full Committee Ranking Member, Mr. Smith of Texas, explored immigration point systems when he chaired the Immigration Subcommittee in the late 1990's. I'm pleased the point systems are being discussed as an option as we work to seek an immigration system that benefits 21st century America.

The most important concern when discussing any changes to U.S. immigration policy should be what is in America's national interest. Unfortunately, many people seem to have the best interest of other nations and other citizens in mind.

So a system that requires foreign nationals be allocated points for certain skills and attributes seems like a promising idea. In fact, in recent years, democratic industrialized countries around the world have been instituting immigration point systems. In your remarks, you mentioned those of Canada and the skills that they identify; and one of the things that was interesting is the emphasis that Canada put on language skills, including French and English, their two official languages.

And Australia also has a point system and identifies a skilled work force, language proficiency; and also there's the focus on age and particularly youth, people who have years to contribute to the economy, rather than just a few years to tap into the Social Security benefits.

The United Kingdom as well. One of the things that I would like to point out that caught my attention would be they own a system that will give the country a, quote—and this is Liam Byrne, the United Kingdom Immigration Minister. They want a system that will give the country, quote, the best way of letting in only those people who have something to offer Britain, closed quote.

The U.K. System requires a potential immigrant to get at least 80 points based on age, aptitude and experience, et cetera. I looked through these lists, and they are very high standards; and to the extent that, once you get past a certain age, it's really a detriment to try to apply and be accepted through these systems and to put that in an economic equation and define that.

But these kind of point systems that focus on the social aspects and the family reunification plans seem to work as a detriment to our economic interests; and I'm interested in promoting an immigration policy that enhances the economic, the social and the cultural well-being of the United States of America. I think that is an important principle for us to adhere to.

I look forward to the testimony and very much welcome Senator Sessions from Alabama and appreciate the fact that he's here today. And I yield back the balance of my time, Madam Chair.

Ms. LOFGREN. Thank you, Mr. King.

Mr. Conyers is apparently on his way, and so we will reserve his opening statement. And if Mr. Smith arrives, of course, we will also reserve his opening statement.

In the interest of proceeding through our witnesses and mindful of their schedules, I would ask that other Members who arrive submit their opening statements for the record. Without objection, all opening statements will be placed into the record; and, without objection, the Chair is authorized to declare a recess of the hearing at any time.

[The prepared statement of Mr. Conyers follows:]

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN, AND CHAIRMAN, COMMITTEE ON THE JUDICIARY

Today, we examine the notion of a "point system" as a possible feature of immigration reform. This system attempts to quantify the skills of potential immigrants in comparison to the perceived need of the admitting nation.

Other English-speaking countries have used point systems to decide who may immigrate. In the United States, on the other hand, our employment and family-based immigration systems respond not only to economic needs, but to humanitarian needs as well.

At least three areas of possible concern leap out when looking at a point system.

First, a point system could result in *an inflexible bureaucratic nightmare.* Under this system, occupations are rated and given points on the basis of the Government's prediction of what jobs are needed. Frankly, this starts to a lot like the inflexible systems used by HMOs that take medical decisions away from patients and put them in the hands of bureaucrats.

In the United States, we should trust employers to determine what their needs are based on the changing market, rather than publishing and ranking every category of job and assigning them priority. Such an expansion of the Labor Department's responsibility to classify and rank jobs—as contemplated by this proposal—would create a large and expensive bureaucracy while we would *still* not have enough labor inspectors out in the field to prevent worker exploitation.

Second, it appears this system has not worked well in Canada. People admitted under this program in Canada often fail to obtain employment in their areas of expertise. An immigration system that rewards family ties or employer sponsorship seems to make underemployment or isolation less likely.

Third, a point system could foster discrimination and return us to the old days in which Northern Europeans were welcomed but African, Asians and Latin Americans were told that they "need not apply." If a point system is just a method of selecting the most educated, disparities in education systems will leave out much of the developing world. English language requirements can have a discriminatory effect. Instead of this approach, we should be encouraging talented immigrants to come to our shores and help them learn English here, which could then serve as a threshold for a more permanent stay.

Breaking the stranglehold of the old quota system has greatly benefitted our Nation. Increased numbers of immigrants from the developing world and their entrepreneurial spirit contributed to American's economic growth. Some of those people came with developed skills. Others built their skills in American universities. But many came with just a dream and a stubborn will to succeed.

A point system that results in *de facto* exclusion is inconsistent with our future needs and our lasting values. The country has always thrived on the experience and determination of such immigrants. A *controlled, orderly,* and *fair* system can harness this energy for the benefit of all.

I welcome all of our distinguished panelists and I look very much forward to their testimony.

[The prepared statement of Ms. Jackson Lee follows:]

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND MEMBER, SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

Today marks the fifth hearing in a series of hearings dealing with comprehensive immigration reform. This subcommittee previously dealt with the shortfalls of the 1986 and 1996 immigration reforms, and most recently the difficulty that employers encountered when they attempted to verify that potential foreign employees have work authorization. At last Thursday's hearing on April 26, 2007 we looked at ways to improve the employment verification system.

Any honest discussion about comprehensive immigration reform must include the methods utilized by other nations around the globe. This hearing will focus on a point system, like the ones used by our friends in the United Kingdom, Australia, and Canada. Point systems have been considered in the past by both the House and the Senate, however a point system has consistently been rejected.

Currently the United States has an immigration preference system that is broken down into two categories, family based immigration and employment based immigration.

FAMILY BASED IMMIGRATION

The opportunity to migrate to the United States based on familial status depends on four factors. First, the immigration status of the sponsoring relative, (i.e.—is the sponsor a United States citizen, or a lawful permanent resident?). Second, what is the nature of the relationship? Obviously the closer the relationship the better. Third, what is the migrant's country of chargeability, or where is the migrant from? Fourth, what is the existing and anticipated backlog (if any) of approved aliens in the relevant category for the country of chargeability. Certain family based categories are never subject to backlog because there are never subject to limitations. Those categories are 1) immediate relatives, 2) returning U.S. permanent residents, and 3) applicants for reacquisition of citizenship, 4) refugees and asylees, 5) aliens obtaining registry, 6) children born to immediate relatives after visa issuance, and 7) children born to permanent residents while temporarily abroad.

FAMILY BASED IMMIGRATION SUBJECT TO BACKLOGS

The Immigration and Nationality Act (INA) allows for 480,000 family preference entrants per year, however only 226,000 are allowed. The order of preference is as follows:

First preference goes to unmarried sons and daughters of U.S. citizens. Second preference goes to spouses, and minor children of lawful permanent residents. Also, unmarried sons and daughters of lawful

permanent residents. Third preference goes to married sons and daughters of U.S. citizens, and their spouses and children. Fourth preference goes to brothers and sisters of United States citizens, and their spouses and children, provided the U.S. citizens are at least 21 years of age. The attempt to keep families together in theory is good, however in practice we all know that this is not the case. The number of applicants is great, and our resources are few.

EMPLOYMENT BASED IMMIGRATION

Employment based immigration is broken down into five tiers: 1) Priority workers, 2) Advanced Degree Professionals and Exceptional Ability Aliens, 3) Skilled Workers, Professionals and Other Workers, 4) "Special immigrants," including religious workers, and 5) Employment creation immigrants.

The first tier applies to individuals with "extraordinary ability" in the sciences, arts, education, business, or athletics; outstanding professors and researchers; certain multinational executives and managers; the spouse and child of the aforementioned.

The second tier applies to individuals holding advanced degrees in their profession, or employees with exceptional ability whose services are sought by an employer in the United States.

The third tier applies to skilled workers, and professionals with baccalaureate degrees. The fourth tier applies to special immigrants like religious workers. The final tier applies to migrants who have an entreprenureial spirit and have invested at least 1 million, but at times as low as $500,000 in "targeted employment areas." They must also create no less than ten jobs for American citizens.

This is the current method in the United States. Quite frankly members of the tech industry will tell you that there are not enough visas to meet our needs. A practical problem is the fact that the aliens immediate family members (i.e.—spouse and children) count against the number of employment based visas that are issued. Thus the problem may not be in the system, but rather how the system works. Nevertheless, an examination of our international neighbors methods is worth looking at.

UNITED KINGDOM, CANADA, AND AUSTRALIA

All three nations utilize a points system to admit skilled workers. In fact skilled workers represent the majority of immigrants in that country, whereas the majority of immigrants to the United States are unskilled workers. Generally speaking, points are awarded on the basis of education, work experience, language proficiency, arranged employment, achievement in the applicant's field, age, and occupational demand. The UK has made a conscious effort to seek out individuals with MBA's, and Canada's goal is to recruit a majority of highly skilled immigrants every year.

In conclusion a point system could help, but I advise that any point system we implement be uniform, and practical because in the end the United States is the winner.

Ms. LOFGREN. We have three distinguished panels of witnesses here today to help us consider the important issues before us.

I would like first like to introduce Senator Jeff Sessions of Alabama, a Member of the Senate's Judiciary Committee and the Subcommittee on Immigration, Refugees, and Border Security. Prior to his election to the Senate in 1996, Senator Sessions served as both Alabama's Attorney General and the United States Attorney for Alabama's Southern District. He holds his bachelor's degree from Huntington College in Montgomery and his law degree from the University of Alabama.

Welcome, Senator Sessions, to the House Immigration Subcommittee.

We have—unlike the Senate, we have a 5-minute rule here, but we will be very generous in the enforcement of such with our Senate colleague. But we would ask that you summarize your testimony so that we might have an opportunity for questions. Thank you so much for coming over to our side of the Capitol.

TESTIMONY OF THE HONORABLE JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA

Mr. SESSIONS. Thank you, Madam Chairman; and you are wise to have a 5-minute rule, especially when Senators show up. We are used to talking on too much.

Maybe I can just sum up, and I'll offer my full statement for the record, how I see this question and how I believe we should consider it. And I want to thank you and Mr. King for both of you inviting me, because I do believe we are talking about something that is very important.

I believe it was Professor Borjas in his book *Heaven's Door* that said, in effect, if your goal for immigration is to serve the national interest, let me know, I can help you achieve that. Another witness at one of our Committees said almost the same thing.

Now, Mr. King said immigration should serve, according to the Brits and, in his view, the United States, the national interest. So I think that is a given.

Second, we had in 2000 11 million people apply for the 50,000 lottery slots. Now that gives you some indication of the truth, which is we can't accept everybody that wants to come to America. It is a door, Heaven's Door, as Professor Borjas, himself a Cuban refugee, now at the Kennedy School at Harvard, says about the subject.

So if we can't accept everybody, then we have to ask ourselves, how should we deal and decide among those who would like to come? What is a fair basis? What is a just basis? What is a basis consistent with our heritage? It's a different kind of world than we've had in the past with these large numbers out there.

So I guess first I would say that skilled—and I think you'll hear from the panels as we go along that immigrants with higher education levels and higher skills enjoy and benefit from the American experience more than those who do not. Likewise, people who come to our country with even some education, but particularly those with advanced degrees and higher education and higher skills, pay far more in taxes to the Government than they will ever take out from the Government. So those are important factors if we consider what is in our national interest.

Some have suggested that we can do immigration in large numbers, even unskilled, and that that will solve our Medicare and our Social Security long-term systemic problems. I believe you'll be hearing from Mr. Rector at the Heritage Foundation, and his numbers conclude just the opposite. In fact, they will make both of those unsound systems even more unsound.

But if the immigrants who come are high skilled, who are likely to be high income, who pay large amounts in taxes, that could in fact positively affect that. And since it's a zero sum gain when an individual becomes a citizen and has a right to bring their elderly parents, for example, we have to remember that they are denying some young person somewhere in the world who maybe has worked hard to learn English, worked hard and gotten some advanced degree. They don't have a chance unless they have a relative.

I think about two young people that might be living in Honduras. One is a valedictorian who took English in high school, took advantage of radio or television to learn English and speak it well, maybe has a year or so of technical school. That individual would have no chance of coming and would be competitively at a total disadvantage to a high school dropout who happened to be the brother of someone who is a citizen of the United States. So this is the system we have today.

Among those two, who should be the one that would have the best opportunity to succeed and would have the best opportunity to contribute to the American system? So I think that is a factor as we evaluate this.

I am also concerned that by having a disproportionate number of low-wage, low-skilled workers come in, that, in fact, wages for lower-skilled workers have not increased and, in fact, in some areas have decreased factored for inflation.

So it's clear you bring in—in my area of the country, if you flooded the country with a lot of cotton, our farmers wouldn't hesitate to complain that their cotton prices will go down because they have more foreign competition. The same is true with labor. Extensive large amounts of low-skilled, low-wage labor does pull down the wage rates of United States workers; and, in fact, Professor Borjas and others have made that point quite clear in testimony before the Senate.

So, Madam Chairman, I thank you for the opportunity to be here. In the course of this, I met the Canadian leader of the point system. We've studied the Australian system. We believe it has much to commend it. In fact, it can help us in extraordinary ways to fairly select from those millions that want to come in ways that will benefit the United States and provide the best opportunity for those to succeed here.

I'm glad that you're looking at it. It makes so much common sense to me. I believe the American people need to understand that you will still be able to bring wives and children when we say chain migration should be curtailed. But the elderly parents or brothers and sisters would not get a huge advantage as they have today to come in just because they have a relative here.

My time is up. Thank you very much.

Ms. LOFGREN. Thank you very much, Senator, and also for being so unsenatorial like in your terseness. We appreciate it.

Mr. SESSIONS. I failed to do one thing and put a chart up for you. If you will give me 1 minute to do that.

Ms. LOFGREN. Of course.

Mr. SESSIONS. This shows what the United States system does. We give out 1.1 million green cards. According to the numbers, we have 58 percent of those basically family based. That means they did not have to establish any skill to come into the country.

Canada with their point system—and, in fact, the Parliament in Canada directed the Immigration Department to achieve a 60 percent merit-based, and they let them do it how they chose, and they have about a 60 percent skill-based entry. And Australia, likewise, has 62 percent skill-based entry.

Canada definitely kept the humanitarian refugee slots. Australia has a little less refugee slots. So I would contend that we can keep our humanitarian slots, we can keep spouses and children slots, but that we ought to make a major movement to identify those people that can be so beneficial to our economy and give them priority over those with less potential.

Ms. LOFGREN. Do you have another slide?

Mr. SESSIONS. No, that is it.

Ms. LOFGREN. Okay. Thank you very, very much.

[The prepared statement of Mr. Sessions follows:]

PREPARED STATEMENT OF THE HONORABLE JEFF SESSIONS,
A U.S. SENATOR FROM THE STATE OF ALABAMA

House Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law Oversight Hearing

An Examination of Point Systems as a Method for Selecting Immigrants

Tuesday, May 1, 2007
2237 Rayburn House Office Building
3:00 p.m.

Senator Jeff Sessions
Statement For The Record

I. INTRODUCTION –THE BIG ISSUES OF IMMIGRATION

Thank you, Mr. Chairman, for having this hearing. If we are going to have comprehensive immigration reform, as ultimately we should since the current system is certainly broken, we have to move from just debating border security and how to deal with those here unlawfully.

We must focus on the great, long term issues. To an amazing degree, those issues have not been discussed. But, a mature nation, we must grapple with them and make critical decisions. For example, we have had little or no discussion on these following issues:

- How many immigrants can we let in each year?
    - Many more people want to come to the U.S. than we can accept -- Professor George Borjas of the Kennedy School of Government at Harvard illustrated that point when he testified last year before the Senate.
    - He noted that in 2005, 5 million people applied for 50,000 visa lottery spots. In the last lottery before 9/11 (2000), 11 million applications were filed.
- What set of rules should we use to pick and choose from the many applicants?
- How can our immigration policy benefit our nation to the maximum degree?
- How do we create an immigration policy that selects the people who are going to be most successful here?
- How do we ensure that immigrants will contribute more to the government in taxes than they will take out in services?
- How do we use immigration policy to improve the economic well being of

our people -- not reduce their incomes?

These are the great issues of immigration. They are questions that I do not believe we have adequately discussed.

II. SENATE JUDICIARY COMMITTEE HEARING ON THE BIG ISSUES OF IMMIGRATION

During last year's debate, the Senate Judiciary Committee – upon my request – had just one hearing focused on these questions. (*Immigration: Economic Impacts*, April 18, 2006) It was held just weeks before the full Senate voted on S. 2611 (on May 25th, 2006).

At that hearing, economic experts were in agreement that:

- The U.S. must limit annual immigration numbers – "*... we are not ready to open the floodgates on immigration. We will continue to have controls on immigration, and we need to find cost-effective and humane ways to limit those immigrants.*" Professor Harry Holzer (Associate Dean and professor of public policy at Georgetown):

- They agreed that recent low skilled immigrants have had a negative impact on the wages of low-skilled native workers -- *[the] large increase in low-skilled immigration, [] has had the effect of decreasing the wages and employment opportunities of low-skilled workers who are currently resident in the United States.*" Dr. Barry Chiswick (Head and research professor at the Department of Economics at the University of Illinois in Chicago);

- And they agreed that the U.S. needs to alter its immigration policies to focus more on high-skilled immigration -- *"[T]wo thirds of the immigrants coming in [to the U.S. annually] come in under kinship criteria. What we want to do is attract those immigrants who would have the largest positive contribution to the American economy, and they will be highly skilled immigrants, immigrants with high skills in literacy, numeracy, scientific knowledge, [and] technical training. Current immigration law pays very, very little attention to the skills that immigrants bring to the United States.*" Dr. Barry Chiswick (Head and research professor at the Department of Economics at the University of Illinois in Chicago)

Despite the advice we received, the Senate Immigration Bill gave virtually no attention to these issues and continued to prioritize low-skilled immigration over

high-skilled immigration.

III. RATIO OF SKILLED / EMPLOYMENT BASED IMMIGRATION TO OTHER TYPES OF IMMIGRATION IN THE U.S., CANADA, AND AUSTRALIA

After the *Economic Impact* hearing in the Senate Judiciary Committee, I became increasingly interested in the immigration policies of other developed nations.

I began to study the Canadian and Australian permanent immigration systems. [See Chart – "Three Approaches to Immigration"]. Indeed, there are dramatic differences in the ratio of skilled immigrants to non-skilled and family based immigrants that occur in the United States and the ratios in Canada and Australia.

Of the more than 1.1 million permanent immigrants the United States admitted in 2005, only 22% were skill based (and 1/2 of these were the family members of the employment based immigrants); 58% were family based; 16% were humanitarian based; and a 4% were given out *randomly* through the visa lottery. For the large majority of immigrants to the U.S. only 1 variable really mattered – whether they had a family member in the U.S.

In both Canada and Australia, the percentages are quite different. They make skilled migration the top priority. In Canada, 60% of immigrants are skilled; 24% are family, and 16% are humanitarian. In Australia, 62% of immigrants are skilled; 29% are family; and 9% are humanitarian.

IV. SENATE HELP COMMITTEE HEARING ON THE POINT SYSTEMS USED BY CANADA AND AUSTRALIA

Canada and Australia use "point systems" to choose the best applicants for their skilled migration programs. Early last fall, I asked the Senate Help Committee to hold a hearing to examine these point systems. (*Employment-based Permanent Immigration: Examining the Value of a Skills Based Point System, September 14, 2006*)

Before the hearing, the Canadian and Australian embassies came to the hill to brief us. I met personally with Monte Solberg, who was then Canada's Minister of Citizenship and Immigration. He told me how pleased Canada was with their point system, and how they had worked to refine it over the last 30 years.

I learned that Canada accepts three major categories of permanent immigrants – an economic class, a family class, and a refugee class. The "economic class" immigrants are what we would call "employment based" immigrants, and Parliament intended for them to account for around 60% of Canada's annual immigrant admissions.[1] In Canada points are awarded for:

Education	25 possible points
Language proficiency	24 possible points
Employment experience	21 possible points
Age	10 possible points
Arranged employment	10 possible points
(and) Adaptability[2]	10 possible points

After speaking with Australian embassy officials, I learned that Australia employs a very similar point system to evaluate their skilled worker applicants.

At the HELP hearing (September 14, 2006), we heard from several experts familiar with the U.S. immigration system, and the Canadian and Australian systems.

Mr. Charles Beach, Professor of Economics at Queens University in Ontario, Canada, was an expert on the Canadian plan. According to Beach, since 1980, Canada has increased the number of immigrants coming in under the point system from 35% to more than 60%. His advice to U.S. policy makers was that *"bringing in a skill-based point system means that you gain useful policy tools that can ... rais[e] average skill levels of arriving immigrants."*

Mr. George Borjas, the Scrivner Professor of Economics and Social Policy at the Kennedy School of Government at Harvard University made the economic case for reforming U.S. immigration policy to focus more on skills – *"high skilled immigrants earn more, pay higher taxes, and require fewer services than low-skilled immigrants."* He pointed out how current U.S. immigration policies have resulted in a steep decline in the skills of immigrants over the last 40-50 years, and stated that the net economic benefits to America of immigration could increase *substantially* if incoming immigrants were more skilled than they are today.

Mr. Massey, that Bryant Professor of Sociology and Public Affairs at Princeton University, [the Democratic minority witness] described how U.S. immigration policy has given *"the family side [of immigration].. more emphasis than it*

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1 *Id.* and http://www.cic.gc.ca/english/pub/facts2005/permanent/index.html

2 http://www.cic.gc.ca/english/skilled/qual-5.html

needs... the brother and sister provision ... is the single most important factor for the immigration chaining the creation of networks that bring more migrants." He supported eliminating the brother/sister provisions to make U.S. immigration policy more balanced.

I understand that New Zealand also has a point system similar to Australia, and that the United Kingdom will soon be expanding the point system they implemented in 2002. Focusing on nuclear families and implementing point systems is how other countries with comparative economies have prioritized skilled migration. Surely, we should consider the ideas of other developed nations -- especially when they are happy with what they have done.

V. THE SENATE AND THE WHITE HOUSE ARE CONSIDERING IMPLEMENTING POINT SYSTEM AND REDUCING CHAIN MIGRATION CATEGORIES

A few weeks ago, a power point that the White House was using in bipartisan negotiations with Senate Judiciary Committee was given to the press. It includes a proposal for a point system for merit based immigrants. It also [and] proposes eliminating the diversity visa lottery and chain migration categories so that more high-skilled immigrants can be accepted without raising the total annual immigration levels. These reforms clearly represent steps in the right direction.

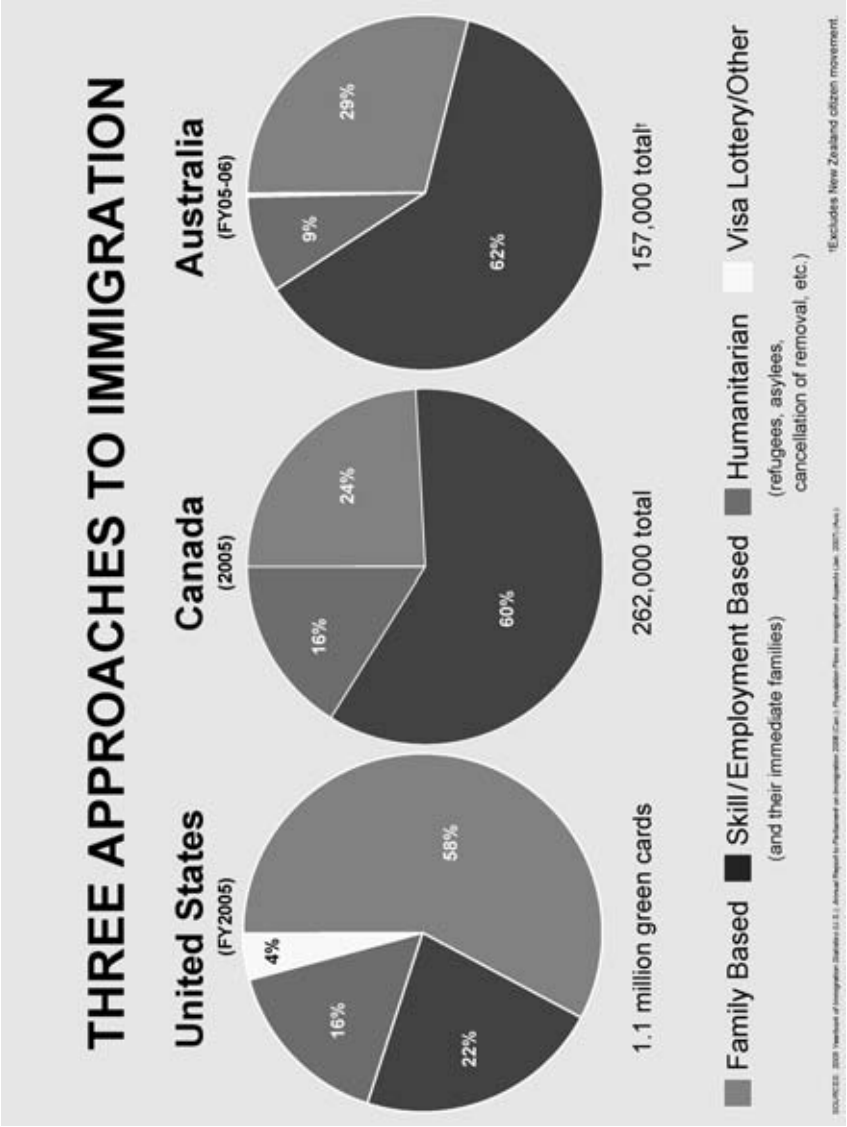
VI. CLOSING:

It is a simple fact that the United States can not admit every applicant, and it is indisputable that our policies should serve the national interest. As a whole, we must enact an immigration policy that serves as a net plus to our nation's economy, not a net drain.

In choosing between the many applicants that want to come here, it makes good sense to choose persons who are educated, young, and fluent in English. Statistically, immigrants with those characteristics will assimilate quickly, and contribute more than they consume in federal benefits and services.

I congratulate you for holding this hearing and I look forward to working with you on these issues.

ATTACHMENT


THREE APPROACHES TO IMMIGRATION
United States
(FY2005)
4%
16%
22%
58%
1.1 million green cards
Canada
(2005)
16%
24%
60%
262,000 total
Australia
(FY05-06)
9%
29%
62%
157,000 total[1]
Family Based
Skill/Employment Based
(and their immediate families)
Humanitarian
(refugees, asylees, cancellation of removal, etc.)
Visa Lottery/Other
[1]Excludes New Zealand citizen movement.

CHAIN MIGRATION: 2000-2005

	2000	2001	2002	2003	2004	2005	TOTAL PER CATEGORY
First : Unmarried Sons and Daughters (21 years of age or older) of Citizens	27,635	27,003	23,517	21,471	26,380	24,729	150,735
Second Preference B: Unmarried Sons and Daughters (21 years of age or older)	27,350	25,739	19,056	21,158	27,377	23,314	143,994
Third : Married Sons and Daughters (21 years of age or older) of Citizens	22,804	24,830	21,041	27,287	28,695	22,953	147,610
Fourth : Brothers and Sisters of Adult Citizens	60,113	67,851	57,537	56,843	65,671	65,149	373,164
Parents of a United States citizen over the age of 21	67,307	80,403	93,516	69,542	77,534	82,113	470,415
TOTAL PER YEAR	205,209	225,826	214,667	196,301	225,657	218,258	1,285,918

OVERALL TOTAL: 1,285,918

SOURCES: 2000-2001 Statistical Yearbooks of the INS; 2003-2005 Yearbooks of Immigration Statistics

Ms. LOFGREN. In reading through the testimony that will be offered here today, one of the things that struck me was how you establish the employment side. We are just looking at the point system here today, and it's fine to look at it. Most of the other countries that use it don't use the point system for the family. They're just looking for the economic-based employment. And in some of those countries underemployment or unemployment has actually been a product of the point system, because the people they've admitted based on their education may or may not have a job; they may or may not have the credentials. And it struck me that the marketplace might be a better sorter of who's going to contribute to our economy than just a Government point system. What's your thoughts on that, Senator?

Mr. SESSIONS. I think the economy does play a big role. But in certain areas the demand for low-skilled workers could be very—low-wage workers could be very, very, very substantial; and that may not be in the best national interest.

So I think Canada, for example, gives skill points for bricklayers. It gives skill points for drywall workers. So you can give points for skills for something less than college. Although in the long run I think statistics will show that a person with education can adjust to the flow, they're more flexible, they're more able to adjust and land on their feet, even if for a temporary period they have difficulties. So I would tend to not diminish the value of education, but I do think you could set a skill base set that included more than just academic skills.

Ms. LOFGREN. Well, I agree with that. We do have in our current system, for extraordinary individuals, there's no requirement that they have an offer of employment. We just make the assumption that at that level they're going to be good for the country.

But, for example, in Canada you might have someone with an M.O., but because of credentialing they're driving a cab instead. They haven't been licensed to practice. And having a job would make sure the skilled people, not the extraordinary people, were actually able to contribute in a way that was envisioned.

Mr. SESSIONS. Australia does emphasize that occupational connection much more, and points are given for a guaranteed job in an area that they've certified and needs work. In fact, if—some districts of Canada are overpopulated, and in Australia I think they give more points if you are going into an area that needs more workers.

Ms. LOFGREN. New Zealand does that as well.

In terms of the under-Ph.D.-level skill level, let's say—I mean, there's skilled trades, there's locksmiths, plumbers. Those are jobs where really there's a skill set that is required, but it may not be book learning in the same way. Australia gives points for that and seeks them out. Do you envision that being part of a system that would serve American interests as well?

Mr. SESSIONS. I do.

Madam Chairman, it's a little bit—I'm a little ambivalent about one thing. Canada just simply told the Immigration Department to do it. Our history has been for Congress to write the law and set the—even down to minute numbers. Perhaps we need to look for some sort of balance where the Labor Department or the Com-

merce Department rates certain industries as needing more workers and skills are needed and adjust those, have the flexibility to adjust them on a year-to-year basis. Probably this Congress will want to be more involved than they have been in Canada. But, likewise, I do think we should give some flexibility to the relevant department to decide national needs.

Ms. LOFGREN. It's interesting that you say that, because that is something I've observed as well. I mean, the Congress deciding where the shortage is doesn't really work. We don't meet often enough, and it just hasn't worked out. But Schedule A, which is supposed to identify the shortages in the Department of Labor, that hasn't been updated either. That is still the case with some of the medical professions, but we had some extreme shortages, and they never really updated that. So I'm wondering if we should look at—if we are going to delegate that with some guidelines, maybe we need to look at some new criteria to make that happen? I'm wondering if you've given some thought to that.

Mr. SESSIONS. I have not given detailed thought to it, but that is my general impression.

I would mention one thing. I think the talking points that the Administration got to the press, that they've put out there, one thing that we shouldn't forget in this mix and that is it creates what I expect and hope would be a real temporary worker program. So this could be agricultural workers, this could be other low-skilled workers who come for, in my view, a year or less without their family and can come back and forth as many times as they would like, something like that. So this would help—but they wouldn't be shut out of applying for citizenship.

So if they wanted to become a citizen, they could be coming for 5 years, maybe getting a junior college degree or college degree. Then they could apply for the permanent track also and perhaps have a chance to come on in as a citizen if they would be meritorious.

Ms. LOFGREN. I know my time is up, but if I can just follow up on that point. One of the things we've thought about is—I mean, there are many issues here. One is our labor needs. One is, if you take a look at our demographic needs, our birth rate is not sufficient to meet our job production rate, just as Western Europe and Russia and other developed economies—well, I don't know how developed Russia is, but certainly Western Europe and Japan are facing that same problem.

So we've thought about, rather than trying to micromanage it, use market forces to let people make some determinations themselves, since the history of migration in the Western Hemisphere is largely circular, not permanent. But rather than the U.S. Government playing Big Brother, you just let the market play more of a role than we've done in the past. It sounds like you've given some thought to that.

Mr. SESSIONS. I think something like that can work. I just believe that the bill as written in the Senate last year was defective in that the temporary guest worker program allowed an individual to come, to bring their family, their wife and children, for 3 years and, if they were still working, get an automatic 3 years and automatic 3 years on down the line. And, in effect, after a decade or

so, they're entrenched here; and if that job is not here, then we have an illegal person that we are not able to—morally, it's just very painful to try to remove someone like that.

So I think we are fooling ourselves if we go that route. We should have a genuine temporary worker program that is temporary and a permanent system of immigration that is based on merit and skill.

Ms. LOFGREN. My time has expired, and I would like to recognize the Ranking Member for his 5 minutes plus.

Mr. KING. Thank you, Madam Chair.

Senator Sessions, looking over your chart here and the United States showing 22 percent in the skill employment based in the blue, and my notes show that that's about a little short of 250,000 people annually. But 54 percent of those were used for spouses and dependent children. So I make a point that a portion of those skill based, by my statistics, and actually also a majority of them were also family reunification type of visas, and so that 22 percent gets slipped down to 10 percent. Would you concede that point or criticize it?

Mr. SESSIONS. You know, I actually would.

One of the quotes I have in my handout, I believe, is it Professor Chiswick or one of the professors that testified, his number was 7 percent actually on skill-based. This is a number that has sort of been used. But it does include, I believe, children and spouses. Certainly children wouldn't likely be skilled, and spouses may or may not be. So I think that overstates the number.

Mr. KING. So when I look at that chart, I slice that piece in half in my mind's eye; and you add that number up then to 11 or maybe even another 17 percent altogether.

Mr. SESSIONS. Mr. King, I think the reason we use that number is because that is the way Canada and Australia do, so we are comparing apples to apples when we are looking at the charts. But, in truth, many of those in that 22 percent are likely to be unskilled.

Mr. KING. If I will take the 7 percent of Professor Chiswick that is in your document, that takes us to 75 percent of that chart would be blue. So I just wanted to emphasize that point. I appreciate the position you've taken on this.

Of the categories that are most often used, and among them are education, job skills and language skills, et cetera, what would you rank as the most important criteria?

Mr. SESSIONS. I think since we have millions each year that want to come here that we are not able to accept, I think it would be perfectly responsible and reasonable to ask that they have language skills before they come. Because English is an international language. Almost any country in the world you could have developed those skills. So I think that is very important.

But I believe the statistics do show that even with a few years of college a person is most likely to be quite successful in the United States. So education seems to—now, if you take a specific skill, that could be very valuable, too. But then again a decade from now and the technology changes and that person's skills are not so much needed.

Mr. KING. As I look at these charts from the various countries and look at the categories that are there, I didn't know what I was

going to see. I expected something fairly basic that I'm looking at here. I expected something perhaps more sophisticated. Maybe behind that there are the other kind of spreadsheets that would take in some subfactors, so to speak.

But I would wonder if you've given any thought to the idea that we could put a cap on our overall immigration and say this would be a fixed number for a year, if we can agree on what that number is, no matter what the circumstances, we not exceed that, and then, when we turn that slice of blue pie into something significantly bigger than that, be able to define that to the extent that we could pick the profile of those who would be a net contributor to our economy and also pay a little consideration to their ability to fit into the culture in some way. Would you think that we could be sophisticated enough that we could give a score system in that and be able to make it a net positive and identify it scientifically and use that, Congress set the cap rather than business make the demand, and then the highest priority would be those who contribute the most?

Mr. SESSIONS. Yes, yes, and I guess with some caution. I do believe that we should spend some time as a Congress asking those more detailed questions, and I believe we can draft a legislation that includes an emphasis on areas that are likely to be successful.

I also am of the belief that immigration is ultimately in the national interest. Therefore, just to say a willing worker and a willing employer, as the President has said a number of times, does not strike me as good policy. In other words, we would almost be saying the Government has no interest. As long as there's an employer and employee, they get to decide. And that is sort of what's been happening through illegality and other things. So I don't think that is acceptable.

But I do believe we could write some standards, and we could also give governmental agencies a cap number and allow them to adjust in there for changing economic circumstances or historical changes in the economy.

Mr. KING. Thank you, Senator.

I want to make sure that I'm clear on how these pieces fit in this jigsaw puzzle. I'll say there are a lot of hypotheticals in immigration policy, and that is one of the reasons it's very complicated. But, as I understand this, you would look at the unskilled labor, an acknowledgement that we need some of that in certain areas, and those would be the temporary workers, but they wouldn't be precluded from working to get their education and skills up to where they could qualify to be a net benefit to society; and, while all that is going on, focus your real immigration that had a path to citizenship on those that could make a distribution to the economy?

Mr. SESSIONS. That is a good summary of it, Mr. King. I think that would be good for America. I think that is something other nations have proven and like what they're doing, nations that have similar economies to ours. So I think that is the way we should go.

I know it's complicated. I've been very disappointed, actually, and somewhat surprised we've had so little discussion of this in recent years. In fact, a bill that hit the Senate floor last year had no reference to these ideas at all.

I was not able to get a point-based hearing in Judiciary, but I'm on the Health, Education, Labor and Pensions Committee, and we did have one hearing in that Committee on the point system, which I thought was good because we had some excellent witnesses. So I think we should pursue this. I think we have the possibility of doing something we could be very proud of.

Mr. KING. Senator, I want to thank you for your testimony today. You've given me some things to think about, too. And that is what these hearings are about, to help rearrange our thought process so we can come to a conclusion that is good for the country. Thank you very much.

Thank you, Madam Chair.

Ms. LOFGREN. Thank you, Mr. King.

Senator, are you able to stay for additional questions?

Mr. SESSIONS. I could.

Ms. LOFGREN. Then I would recognize Mr. Delahunt from Massachusetts.

Mr. DELAHUNT. Senator, welcome to the House of Commons.

Mr. SESSIONS. It's good to be here. I almost said among the commoners, but I knew better.

Mr. DELAHUNT. We respect and appreciate the House of Lords. And I apologize. I had another hearing going on, and I'm just walking in at the tail end.

You know, the skill component of a point system, I guess much would depend on the eye of the beholder in terms of what constitutes skills. What's your definition?

Mr. SESSIONS. Well, we know education makes a difference. We know language skills make a difference. I note that the Canadian system gives skill points for bricklayers. It gives skill points for drywall workers. So I think as we analyze our economy that those could be given skill points, too.

Mr. DELAHUNT. So the concept of skill, however, for determination, the definition of skill would depend on the economic needs of the country at a particular point in time?

Mr. SESSIONS. I think so. To me, you want to select the people who are most likely to benefit from this great American experience, the people who are likely to flourish the best; and how you do that is very difficult. My inclination, as I said with the Chairman, would be that perhaps Congress, since we are in the habit of micromanaging immigration more than they do in Canada, we might have some basic standards that we set. But I believe we should give an independent agency, our Cabinet, Commerce, Labor, some input in deciding how many numbers you may need in bricklaying and how many you may need in computer workers.

Mr. DELAHUNT. But this wouldn't—you know, this would not exclude, for example, refugees or asylum seekers?

Mr. SESSIONS. No. My view would be, as Canada and Australia have—the green represents 16 percent in Canada is humanitarian, 9 percent in Australia, so we would set a number probably consistent with our 16 percent heritage of humanitarian.

Mr. DELAHUNT. That is all the questions I have. Thank you, Senator.

Ms. LOFGREN. Thank you.

Mr. Ellison.

Mr. ELLISON. Good afternoon, Senator. How are you?

Just a few questions. I notice that on the pie charts you have there that the family-based piece is a large proportion of American's immigration. The other ones are much smaller. How would the fourteenth amendment's language saying that people are citizens in the States in which they are born, essentially making a child born to immigrants a citizen, how would that impact a system in which we de-emphasize family-based decisionmaking in immigration? Do you think it would?

First of all, do you think it would; and, if so, how?

Mr. SESSIONS. Well, I've tried to read the case law on being born in America. It's maybe not conclusive but appears to suggest that birth does give you citizenship.

On family, you don't have a constitutional right to come here. And on the family question I believe that spouses and children should be able to come. But the question is aging parents or brothers and sisters, and there's a zero sum gain, Congressman. So for every, say, aging parent that comes, that is a slot denied to the young valedictorian in Honduras who speaks English but doesn't have a relative here.

Mr. ELLISON. Thank you, Senator.

I guess a part of what was inside of my question was what is this family—58 percent family made up of? Is it siblings, as you pointed out, or aging parents? What is the driver behind that?

Mr. SESSIONS. That 58 percent of family includes—and correct me if I'm wrong, counsel—does that include spouses and children or just brothers, sisters and parents?

VOICE. All of them.

Mr. SESSIONS. It includes all of them.

Mr. ELLISON. Does your able counsel have any idea on what percentage is what in terms of families?

Mr. SESSIONS. We do have the numbers. I've seen somebody float the numbers.

In other words, if you eliminated 50,000, the 4 percent lottery slots, and you eliminated the non-nuclear family, you would free up quite a number of slots. That would move us probably above 50 percent with just those changes, above 50 percent being skill-based.

Mr. ELLISON. Okay. Well, I'm sorry I missed your testimony. There's a lot of things going on around here.

But another question is I think earlier in your testimony—I could be wrong, maybe I got this wrong, but it sounded like you said that part of the criteria we should apply in immigration reform is fairly selecting from immigrants who come. Do you remember using that terminology?

Mr. SESSIONS. Yes. I believe that since everyone is not allowed to come—and we had 11 million people in 2000 apply for the 50,000 lottery slots; it gives you some indication of the number—that we should have an objective, fair system to select from those who would want to apply to come here.

Mr. ELLISON. Would you mind elaborating on how you would define fair?

Mr. SESSIONS. Well, I think it would be fair that we consider what is in our national interest first.

Second, you would ask, is this person—does this person possess skills that are likely to allow them to flourish in America and enjoy the greatest benefits from coming to America?

I think we ought to also consider the impact it might have on wages of hard-working Americans who may be overcompeted by a flood of labor in their particular skill set.

So all those would be factors that I think we should consider.

Mr. ELLISON. Would you consider fair to also include reaching for diversity of nations that people could come from? Would your calculus of fair also mean, for example, that if we are going to get a lot of people from, say, Liechtenstein, maybe we should also have some people come from Lesotho? Would that kind of fairness enter into your calculation?

Mr. SESSIONS. It would be difficult to start trying that. We used to do that, give preference to nations who had a historic flow of immigrants here, as I understand it, maybe before the '60 bill or somewhere along there. But I think our view now is to be open to the whole world and allow people an equal chance to apply. But, as we are, it's recent relatives, people that are alive. Just because your grandfather came into the United States and now deceased, it wouldn't help you at all. But if you had a brother under the current law, that would help you. So it accelerates itself to some degree, and the family connection does.

Mr. ELLISON. Okay. Thank you.

Ms. LOFGREN. Does the gentleman yield back?

I would just note before calling on my colleague, Ms. Waters, that if you add up the 50,000 for the lottery and the 65,000 and 23,000 for the other two categories, it's about 138,000. So that would actually not put us in the other 50 percent.

Mr. SESSIONS. How far would that go?

Ms. LOFGREN. Well, I went to law school so I wouldn't have to do math in my head.

Mr. SESSIONS. And, also, we've got to look at the overall number. Most of the legislation we are seeing has a big increase, not just comprehensive reform on who comes but also increases. So I think the increases might also, if that occurs, should be considered.

Ms. LOFGREN. We are going to have another hearing on that whole subject.

Mr. SESSIONS. I think that is a fundamental question: How many?

Ms. LOFGREN. That is a very important question.

Ms. Waters, you're recognized for 5 minutes.

Ms. WATERS. Thank you very much, Madam Chairwoman; and I would like to thank the Senator for his presence here.

I came here today focused on several conversations that I had this weekend as I traveled around. All of the conversations that are being brought to my attention, and including that which I'm seeing in the news media, happens to be about the family and separation of the family; and I'm increasingly getting worried about this.

There was one presentation on one of the channels where a reporter interviewed a little boy and asked him about what kind of choice was he going to make, was he going to stay here in the United States or was he going to be back with his mother, who is going to be deported? What would he like to do? And I thought it

was just such an unfair question to ask a 7- or 8-year-old boy, and I'm worried about family separation and division.

I come from a history of people who understand the devastation of family separation. Slaves were separated, children were sold off from their parents, sent to different parts of the world, and on and on and on. So it's something that many African Americans pay very close attention to and don't want to be part of separating mothers and fathers from their children and even grandmothers and grandfathers.

So you may have talked about this already and I didn't hear it, but I'm wondering what your response is to this potentially devastating occurrence as we look at immigration reform.

Mr. SESSIONS. I think you raise an important question. We did discuss that some earlier.

In my view, a person allowed into our country under our system like Canada's, their system allows the wife or husband and children to come. We might have a circumstance that I think you may be talking about where a child is born here as a citizen and the mother may not be. I think we'll just have to wrestle with that. To me, that is not a huge number. We should make a just decision about what's fair and just under those circumstances. I don't think that is a big enough number to put us in a position where we couldn't reach an agreement on how that ought to be handled.

Ms. WATERS. In defining what—the family that could be considered to stay, based on the child or children that are born here, whether that would include mother, father and others perhaps?

Mr. SESSIONS. Right. I think that is just a question we'll have to wrestle with.

There are some circumstances where a person deliberately came into the country illegally to have a child here. Maybe you would not want to reward that. But somebody who has been here for a number of years and has a child, you may want to have a different standard and say they can stay with their child. It would just something I think we would have to wrestle with.

Ms. WATERS. Thank you.

I yield to Mr. Delahunt.

Mr. DELAHUNT. I have one final question.

Senator, I appreciated your observation about flexibility in terms of economic needs as far as the skill sets are concerned. Then I heard you speak about the number, and I think that is a key question. What is the number at the end of the day?

When I listen to the demographics of those who are demographers—however you say it—demographers, thank you. As you extrapolate down the road, you know, our labor force very well will mirror what is occurring in Europe now, which is a significant decline in terms of population and an inadequate labor force. Would you consider a number that would not have to come back to Congress for approval time and time again and put the Senate and the House through an arduous task of examination but allow a built-in flexibility to meet our labor needs?

For example, I remember President Fox saying by the year 2020 there will be no more immigration from Mexico because they will need by that time the entire number of people that are immi-

grating from Mexico into the United States to meet their own economic needs.

Mr. SESSIONS. I recall Professor Borjas at Harvard, himself a Cuban refugee, his book which is authoritative at the Kennedy School——

Mr. DELAHUNT. Those are all good credentials.

Mr. SESSIONS. Good credentials. I thought you would recognize that. He wrote a number of years ago—and this really struck me. We had about 1.1 million. He wrote that, in his opinion, the economy of the United States would be best served with 500,000 a year.

So I'm not sure what that number ought to be. Most people think—you know, the conventional wisdom is, the *Wall Street Journal,* it probably ought to be more than 1.1 million. But exactly what that number is, I think we deserve to spend some time in Congress—we have a responsibility in Congress to dig into it and try to ask that. And I'm glad, Madam Chairman, you're going to be able to do that.

Ms. LOFGREN. Mr. Berman of California.

Are you running out of time?

Mr. SESSIONS. I'm running out of a bit of time, but if someone has a question or two I would be delighted to try to respond.

Ms. LOFGREN. Mr. Berman says he has just one question.

Mr. BERMAN. Thank you, Senator.

If Congress decided to shift the fundamental nature of its legal immigration system to a point-based system, essentially to expand the blue universe through a point system that recognized a lot of different things but put some special premium on education and skills and job openings and things like that, would you—as part of that—would you be prepared to support a comprehensive approach, which also included a way by which people who are now in this country out of status, illegally, however you want to—bad documents, however you want to phrase it, would be able to adjust their status?

Mr. SESSIONS. I like the talking points that the President and his Cabinet—at least his Cabinet members showed to me as a framework that could come close, could get my support, perhaps. And it has a real temporary worker program where people come temporarily without their families. They could also apply for permanent citizenship. It has a permanent citizenship with some sort of point system.

Now, this is just an outline talking points. It has a much better enforcement at the border. It has a workplace enforcement that could actually work.

Mr. BERMAN. Employee verification.

Mr. SESSIONS. Employee verification. I believe we can fix that. If we tell businesses precisely what to do, they'll comply, most of them.

And then you have the people that are here illegally, and it's my view that there has to be some compassionate resolution of that and that people who have been here a long time with children who are in school, it wouldn't be right to try to remove all of those. So we would come up with a humanitarian way to deal with that.

My general view is that persons who got the benefit of that legalization should not get every single benefit that goes to someone

who came legally and waited in line. So, to me, that is an outline that could reach a bipartisan consensus.

But, as I told the reporter a while ago, I do intend to read the fine print on whatever they put out, because oftentimes the framework sounds good, as you know, Congressman, and the fine print doesn't quite get there.

Mr. BERMAN. I think that is a hopeful sign for the ability of this place to do something this year.

Mr. SESSIONS. And, basically, that is what I said in my speeches last year as a framework for a settlement. So I can't be anything but somewhat pleased at the way the discussion is heading this year.

Ms. LOFGREN. Senator, you've been here for an hour. We appreciate your generosity of time, and we are looking forward to working with you in trying to—you know, we may not see things 100 percent, but if we work together in good faith, I'm hopeful we can come to a system that works for our country.

Mr. SESSIONS. I believe we need reform. The whole system is broken, so comprehensive reform is certainly needed, and how we get there is the question. Thank you so much.

Ms. LOFGREN. Thank you.

And I'm sorry, Ms. Jackson Lee, the Senator ran out of time before we got to your last question.

Ms. LOFGREN. We are now going to move to our second panel. The second panel should come forward.

I'm pleased to introduce Clare Feikert, the United Kingdom Foreign Law Specialist at the Law Library at the U.S. Congress. Prior to her work with the Library of Congress, Ms. Feikert served as a law clerk for the Head Solicitor of Police at the Sherwood Lodge Police Headquarters in England and as a clerk at the Center for Democracy and Human Rights here in Washington. She holds a bachelor's degree with honors from the University of Lincoln in England and an LL.M. in International Legal Studies from American University, Washington College of Law.

We are also pleased to have Stephen Clarke with us, the Senior Foreign Law Specialist for the Law Library of Congress. Mr. Clarke has conducted research with the Law Library since 1979 and has guest lectured at Georgetown University Law Center, Duke University, and the Center For Legislative Exchange in Ottawa. Mr. Clarke earned his bachelor's degree from the University of Illinois, his LL.B. from Osgoode Hall Law School in Toronto, and LL.M. from Georgetown University Law Center.

And, finally, I would like to welcome Lisa White, the Foreign Law Specialist for the Law Library on Australia, New Zealand and Pacific common law jurisdictions. Ms. White came to the Law Library last year after having practiced law at Deacons law firm in Canberra, Australia. Before her practice, Ms. White worked for the National Museum of Australia and the Australian Department of Defense as a policy advisor. Ms. White graduated with a B.A. from the College of Fine Arts and an LL.B. from the University of South Wales in Sydney; a graduate diploma in legal practice in the College of Law in Sydney; and, finally, an LL.M. from the University of Melbourne.

As you know, your entire written statements will be made part of our record; and we would ask each of you to summarize your testimony in about 5 minutes.

We understand that the Library serves as a technical resource to us here in Congress. We will not be trying to force you into giving us policy advice. But just reading your resumes reinforces what a resource we have in the Library of Congress.

Ms. LOFGREN. So if we can begin with you, Ms. Feikert.

TESTIMONY OF CLARE FEIKERT, LL.M., FOREIGN LAW SPECIALIST FOR THE UNITED KINGDOM, LAW LIBRARY OF CONGRESS

Ms. FEIKERT. Thank you, Madam Chair, Members of the Committee.

I would like to give a brief overview of the use of points based migration in the United Kingdom. Currently, the United Kingdom only has one points-based immigration system, the Highly Skilled Migrant Program. This was established in 2002 as a pilot scheme and ran for 1 year. It was decided it was a success and formally incorporated into the immigration system at the U.K. in 2003. It's been cited as one of the most dramatic developments in recent commercial immigration law.

It allows highly skilled migrants to enter the country without the need for a work permit, business plan, the requirement to invest money or create jobs without a specific job offer. It allows migrants to enter the U.K. to seek work or self-employment opportunities.

The rules for the Highly Skilled Migrant Program were amended in December, 2006, and now require applicants to score 75 points or more based on various criteria that have evolved to ensure that the system selects the migrants most likely to be successful in the labor market of the U.K. Applicants must also to intend make the U.K. Their main home, be able to maintain themselves and any dependents without recourse to public funds and, where appropriate, obtain a visa in order to lawfully enter the country.

Points are currently awarded in four areas: educational qualifications, past earnings, an age assessment—younger people obtain more points to even out work experience and earnings—and previous experience in the U.K. From December, 2006, a mandatory English language requirement was introduced, as it was found that people needed to speak English in order to most benefit the labor market in the U.K. Applicants must have an international English language testing certificate at the level 6 or above to meet these requirements. Additional guidance on the implementation of these criteria are due to be published by the Government in May, 2007.

The duration of stay under the Highly Skilled Migrant Program is initially granted for a period of 2 years, although this can be extended upon application. When applying to extend the duration of stay, the applicant must show that they continue to meet the criteria that they initially had to meet in order to obtain entry initially and again show that they have the mandatory English language requirement.

If the applicant qualifies for this 3-year extension, they are then able to later apply for a British citizenship. They would then meet

the 5-year requirement of lawful residence in the U.K. to then apply for British citizenship.

The Highly Skilled Migrant Program has been considered successful by the Government in attracting top-class workers from around the globe to contribute to the UK's economy and to fill skill gaps in the UK's labor market.

In its first year of operation, the program attracted 1,100 successful applicants. In 2006, this number increased to over 47,000. The December, 2006, part of the amendment to the criteria was to actually increase the points requirement on applicants that were attempting to come into the U.K. under this program.

The system is relatively flexible and can be easily altered to meet the skill needs and requirements of the day. For example, there's currently an MBA provision that would award a migrant with an MBA from certain schools the full 75 points that are required in order to let them enter into the country using that, provided, of course, they obtain a visa.

There are also—obviously, with any migration program, there are some abuses of the system that, if the Government had failed to address, would have led to public loss of confidence in this program as well as a loss of confidence from those that the U.K. Would have wished to apply under it.

The application criteria, as I noted, were revised in light of this. It was considered by many that the initial criteria were too subjective, leading to speculative applications, people not showing that they were meeting the points, and the criteria themselves were difficult for case workers to consistently and objectively implement. The Government believed that this uncertainty had led to a refusal rate of 56 percent of decisions made in 2005.

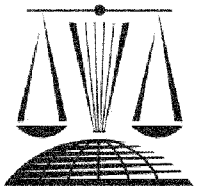
As the system is also entirely self-funding through fees, these cost the migrants each an application fee of $600, totaling nearly $14 million in fees alone, which could also act a deterrent for the people that the U.K. were truly trying to attract to come into the country.

The Government altered the criteria in December, 2006, in an attempt to resolve this and prevent the uncertainty and prevent speculative, as well as some possibly fraudulent, applications.

I would like to thank you again for inviting me to testify here today and thank you for your time and attention. I would be more than happy to address any questions you might have.

Ms. LOFGREN. Thank you very much.

[The prepared statement of Ms. Feikert follows:]



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IMMIGRATION LAWS AND POLICIES: IMMIGRATION POINTS SYSTEMS

UNITED KINGDOM

Written Statement of Clare Feikert, LLM
Foreign Law Specialist for the United Kingdom

appearing before the U.S. House of Representatives Committee on the Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law

Hearing before the Subcommittee on an Examination of Point Systems as a Method for Selecting Immigrants

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IMMIGRATION LAW AND POLICIES: IMMIGRATION POINTS SYSTEMS

UNITED KINGDOM

Executive Summary

Immigration policy in the UK is highly complex. It provides for a variety of schemes in which individuals can enter the UK either through a system of work permits or through a point-based system for highly skilled migrants to enter the country and seek work. The UK previously had a highly restrictive immigration policy but has recently moved toward a policy of managed migration that operates in the interests of its economy, encouraging individuals to come and work in the UK in either skilled or unskilled jobs where there are shortages of people to fill available vacancies in the UK. Over the next five years it intends to implement a substantive overhaul of its current immigration schemes for workers and students and to phase in an entirely points based system.

I. Introduction

Since 1891, it has been established at common law that "no alien has any right to enter [what is now the UK] except by leave of the Crown."[1] The government has recently shifted to a policy of managed migration "in the interests of the economy"[2] in which the skills and benefits that migrants bring to the country are emphasized, with particular support for skilled workers[3] and quotas for those without skills, where there is a need in the UK.[4] The statutory regime governing immigration in the UK is currently contained in the Immigration Act 1971[5] and the Immigration Rules[6] made under it by the government. The Immigration Rules are not legislation or regulations per se, but are published as House of Commons Papers and are considered to be part of the law.

II. Number of Immigrants

The last official mid-year estimate for the population of the UK was done in 2005 and reported that there are 60.2 million people resident in the UK, with 97.2 million visitors from outside

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[1] Musgrove v. Chun Teeong Toy [1891] A.C. 272 followed in Schmidt v. Home Office [1969] 2 Ch. 149.

[2] HOME OFFICE, CONTROLLING OUR BORDERS: MAKING MIGRATION WORK IN BRITAIN, FIVE YEAR STRATEGY FOR ASYLUM AND IMMIGRATION, 2005, Cm. 6472.

[3] *Id.*

[4] HOME OFFICE, SECURE BORDERS, SAFE HAVEN: INTEGRATION WITH DIVERSITY, 2002, Cm. 5387.

[5] Immigration Act 1971, c. 77.

[6] Immigration Rules, H.C. 395, (as amended). R v Chief Immigration Officer, Heathrow Airport, ex. p. Salamat Bibi [1976] 3 All ER 843 (CA) per Roskill, LJ : "these rules are [not administrative practice and are] just as much delegated legislation as any other form of rule making activity … which is empowered by an Act of Parliament. Furthermore, these rules are subject to a negative resolution and it is unheard of that something which is no more than an administrative circular stating what the Home Office considers to be good administrative practice should be subject to a negative resolution by both Houses of Parliament. These rules, to my mind, are just as much a part of the law of England as the 1971 Act itself."

the common travel area arriving in the UK in the same year.[7] The UK is currently experiencing increasing levels of both inward and outward migration, with one in twelve people resident in the UK born abroad.[8] In 2004, 342,000 non-British citizens migrated to the UK.[9] The most common reasons for entering the UK on a visa is for work or study purposes.[10] The number of people granted permanent residency in the UK in 2004 was 144,550; of them 42,265 were employment related, 54,310 were related to asylum, 34,905 were for family formation and reunification, and 8,365 were granted on a discretionary basis to individuals that have been resident in the UK for a long and continuous period.[11]

The following numbers of visas, extensions for leave, and permanent residencies were granted for the year 2004.[12]

Program	**Number Entering Under Scheme for 2004 (excluding EU Accession States)**	**Number Granted Extension of Leave to Stay**	**Number Granted Permanent Residency Resulting from Admission into Scheme**
Sectors Based Scheme (SBS) limit of 3,500 for 2005/6 (being phased out for 2007).	Unavailable	N/A	N/A
Students	286,000	146,555 granted extension of leave to stay	Unavailable
Students' Dependents	13,100	Unavailable	Unavailable
Working Holidaymakers	62,300	385 granted leave of extension	Unavailable
Work Permit Employment	82,715 (40,450 for less than 12 months; 42,265 for more than 12 months)	54,810 granted extension of leave to remain	16,170
Work Permit Employment Dependents	41,595	Unavailable	17,005
Permit Free Employment (includes writers, artists, businessmen, and persons of	Unavailable	18,885	2,465 (including dependents)

[7] National Statistics, *Population Estimates*, http://www.statistics.gov.uk/CCI/nugget.asp?ID=6 (last visited June 6, 2006).

[8] National Statistics, *People and Migration: Foreign Born*, Dec. 15, 2006, *available at* http://www.statistics.gov.uk/cci/nugget.asp?id=1312.

[9] National Statistics, *International Migration*, Dec. 15, 2005, *available at* http://www.statistics.gov.uk/cci/nugget.asp?id=1311.

[10] *Id.*

[11] Home Office, *Control of Immigration: Statistics United Kingdom, 2004*, Aug. 2005, *available at* http://www.home.office.gov.uk/rds/pdfs05/hosb1405.pdf.

[12] National Statistics, *Control of Immigration: Statistics United Kingdom. 2004*, Aug. 2005.

Program	Number Entering Under Scheme for 2004 (excluding EU Accession States)	Number Granted Extension of Leave to Stay	Number Granted Permanent Residency Resulting from Admission into Scheme
independent means (i.e. investors and innovators)).			
Seasonal Agricultural Workers	11,500	N/A	N/A
Post Graduate Doctors or Dentists	400	Unavailable	Unavailable
Fiancés	895	Unavailable	Unavailable
Fiancées	2,230	Unavailable	Unavailable
Spouse	32,230 (10,835 husbands on the probationary period; 21,395 wives admitted for the probationary period;	17,065 granted extension of leave to remain (6,410 husbands, 10,655 wives)	Unavailable
Dependent Children entering for probationary period of settled persons	4,265	Unavailable	Unavailable
Family formation and reunion grants	Unavailable	Unavailable	34,230
UK Ancestry	7,700	Unavailable	Unavailable
Domestic Workers	10,400	Unavailable	Unavailable
Ministers of Religion	640	Unavailable	Unavailable
Au Pairs	1,730	N/A	N/A
Grants on Discretionary Basis	Unavailable	Unavailable	8,350

III. Current System Overview

The law governing and policy surrounding immigration in the UK is highly complex, with the government attempting to balance the needs of genuine visitors and the contributions they make to the economy of the UK with concern about those that wish to enter the UK for undesirable purposes. There are currently over seventy different ways to enter the UK, with approximately fifty of these being ways to enter the UK to work or study.[13]

Work Permit Employment

The work permit scheme in the UK is the longest standing immigration employment scheme, with 119,000 people admitted under the scheme in 2003. It is possible to transfer from certain immigration categories in the UK to a work permit, and in 2003, 26,000 permits were issued for people meeting these criteria. However, the majority of permits are issued for people who apply

[13] HOME OFFICE, A POINTS-BASED SYSTEM: MAKING MIGRATION WORK FOR BRITAIN, 2005-6, Cm. 6741, *available at* http://www.official-documents.gov.uk/document/cm67/6741/6741.pdf.

from outside of the country.

There are six main types of work permit that are issued by Work Permits (UK), part of the newly established Border and Immigration Agency. Only employers can apply for a work permit, and they must specify the individual they wish to employ for a specific job that cannot be filed by labor already lawfully present in the UK. The individuals must be able to support themselves and any dependents without claiming certain state benefits. The categories for work permit employment are:

- Business and commercial, which permits UK employers to recruit people from outside the EEA to fill a vacancy that cannot be filled with a resident worker;
- Sportspeople and entertainers;
- GATS (Global Agreement on Trade in Services), which "allows employees of companies based outside the European Union to work in the UK on a service contract awarded to their employer by a UK-based organization";
- Sectors Based Scheme. This scheme allowed migrants from countries outside of the European Economic Area to enter the UK to take short term or casual jobs within the food manufacturing industry in areas that are hard to fill for up to one year. Fifteen thousand people were allowed to enter the UK under the SBS for the year 2004/5, a number that was reduced dramatically to 3,500 in 2005/6.[14] The employer wishing to hire the person had to apply for a work permit before the person assumed their job.[15] This scheme was due to be stopped at the end of December 2006, given the additional labor that the expanded EU was expected to supply to the UK. However, it was extended but now only allows workers from Romania and Bulgaria, in accordance with EU preferences, to enter the UK for up to twelve months for low-skilled employment in the agricultural and food manufacturing industry, with an initial quota of 19,750;
- Student Internships. This allows students from outside the EEA studying in first or higher degree courses overseas to undertake an internship with an employer in the UK; and
- Training and Work Experience Scheme (TWES). "This scheme allows people from outside the EEA to carry out work-based training for a professional or specialist qualification, or a short period of work experience as an extra member of staff."[16]

In addition to the work permit, individuals that are citizens of a nation from which the UK requires a visa, or who hold a work visa for six or more months, must obtain one for themselves and any dependents in order to enter the UK.[17] The visas are processed separately from the work permit by an entry clearance officer at a British mission overseas.

All employers in the UK are under a legal obligation to verify that any employees are not subject to immigration controls that would prevent them from lawfully working in the UK. Section

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[14] Home Office, *Work Permits: General Information – Guidance for Employers* 2005-2006, 2005, *available at* http://www.workingintheuk.gov.uk/workingin_the_uk/en/homepage/work_permits/sector_based_schemes.Maincontent.0010.file.tmp/generalinformation.pdf.

[15] IMMIGRATION RULES, H.C. 395 ¶ 104, http://www.ind.homeoffice.gov.uk/lawandpolicy/immigration_rules/part4 (last visited Apr. 25, 2007).

[16] Border and Immigration Agency, *Guidance - Work permit holders (INF 13)*, http://www.ukvisas.gov.uk/servlet/Front?pagename OpenMarket/Xcelerate/ShowPage&c Page&cid 1018721068127#Q2 (last visited Apr. 25, 2007).

[17] Visa countries list at Border and Immigration Agency, *Visa and Direct Airside Transit Visa (DATV) Nationals*, http://www.ukvisas.gov.uk/servlet/Front?pagename OpenMarket/Xcelerate/ShowPage&c Page&cid 1020786334922 (last visited Apr. 25, 2007).

eight of the Asylum and Immigration Act 1996 provides that it is an offence to employ workers without proper immigration clearance to either work or be in the UK.[18] The maximum penalty for employing an illegal worker is currently £5,000 (approximately US$10,000), although this is due to increase with the implementation of additional provisions to include up to two years of imprisonment.[19] In 2004, eleven people were prosecuted and nine convicted for employing an illegal worker.

In addition to the work permit route to employment in the UK, there are approximately forty work permit-free routes to employment that vary from working holiday makers, au pairs, and seasonal agricultural workers to highly skilled migrants. A number of other categories exist that are also exempt from the requirement to obtain a work permit and that are not as frequently utilized. These include: sole representatives of overseas firms, servants in diplomatic households, domestic workers in private households, overseas government employees, ministers of religion, missionaries, members of a religious order, innovators, investors, business persons, writers, artists, composers, foreign journalists, and members of the operational ground staff of an overseas owned airline.

Skilled Migration – Points System

Points-based immigration is a fairly recent development in the UK, with a pilot Highly Skilled Migrant Programme (sic) (HSMP) entering into force for a trial period of one year in 2002 that has subsequently been extended and was formally incorporated into the immigration system of the UK in 2003. This program has been cited as "the most dramatic development in commercial immigration law for the past 30 years and has made many of the other commercial immigration categories effectively redundant."[20] When introducing the system, the government considered that "if we are to achieve flexibility and sustainable growth, then legal migration, as opposed to clandestine working, must be the way forward ... [the HSMP will] control migration more effectively, tackle abuse and identify the most talented workers."[21] The aim of the new program was to develop the immigration system to maximize the benefits to the UK of receiving highly skilled workers, as the government "believed that properly managed migration is in the interests of the UK and that [they] should aim to attract the brightest and the best from around the globe."

The creation of the HSMP should be set against the backdrop of concern over a projected decline in the overall and working age population in the UK, leading the government to state that

> In this context the Government's policy of a regulated but flexible system of managed, legal migration is right. Immigration is one part of ensuring the continued success of the UK economy and supporting an ageing population. No modern economy can afford to be anti-immigration ... However, essential to the pursuit of a balanced migration policy is the need to build public trust and confidence by ensuring that we tackle abuse of the system and secure our borders.[22]

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[18] Asylum and Immigration Act 1996 c. 49, as amended by the Immigration (Restrictions on Employment) Order 2004, SI 2004/755, *available at* http://www.ind.homeoffice.gov.uk/6353/18383/18469/si2004755.pdf?view_Binary (official source).

[19] Immigration, Nationality and Asylum Act 2006, c. 13, § 21.

[20] MACDONALD'S IMMIGRATION LAW AND PRACTICE, (Ian McDonald et al eds., 6th ed 2003, ¶ 10.77).

[21] Border and Immigration Agency, *A Points-Based System: Making Migration Work for Britain*, Mar. 11, 2006, *available at* http://www.ind.homeoffice.gov.uk/aboutus/newsarchive/pointsbasedsystem.

[22] Home Office, *International Migration Statistics for 2002*, Nov. 2003, *available at* http://www.workingintheuk.gov.uk/working_in_the_uk/en/homepage/news/press/international_migration.html.

The HSMP enables individuals to enter the UK for an initial period of up to two years without the need for a work permit, business plan, the requirement to create jobs, invest money in the UK, or a specific job offer.[23] It is designed to "allow highly skilled individuals with exceptional personal skills and experience to come to the United Kingdom to seek work or self-employment opportunities."[24]

The rules for the administration of the HSMP were amended in December 2006.[25] The HSMP was suspended for twenty-seven days after it was announced that there would be revisions to the existing criteria to prevent speculative applications. The requirement to obtain a permit under the HSMP is currently a score of seventy-five or more points based on various criteria that have evolved over the five years that the HSMP has been in operation to "ensure that the system picks up those migrants most likely to be successful in the UK labour market."[26] Currently, the points are awarded in four main areas:

- educational qualifications;
- work experience;
- past earnings; and
- previous experience in the UK.[27]

There is also a mandatory English language requirement – applicants must now have an International English Language Testing System certificate of level six or above. Further guidance on the application of these criteria is due to be published by the government at the end of May 2007.[28]

In 2005, the government introduced a new provision enabling individuals with a Masters Degree in Business Administration from one of the fifty top business schools, as designated by HM Treasury,[29] the ability to "meet the points criteria on the basis of their MBA alone."[30] This provision continues in force. Thus, individuals that have graduated from one of the eligible business schools with an MBA are automatically awarded the seventy-five points that are needed to qualify under the HSMP, however, they must still meet the remaining criteria of the HSMP and, where necessary,

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[23] Immigration Rules, H.C. 395 ¶ 135, http://www.ind.homeoffice.gov.uk/_lawandpolicy/immigration_rules/part5 (last visited Apr. 26, 2007).

[24] Previously contained in the Immigration Directorates Instructions, c. 5, § 11.

[25] 7 Nov 2006 PARL. DEB. (6th ser.) (H.C.) 40WS, *available at* http://www.publications.parliament.uk/_pa/cm200506/cmhansrd/cm061107/wmstext/61107m0002.htm#column_39WS. The statutory instrument altering the forms in which applications are to be made is The Immigration (Leave to Remain) (Prescribed Forms and Procedures)(Amendment No.2) Regulations 2006, SI 2006/2899. This statutory instrument came into force following the annulment procedure.

[26] HOUSE OF COMMONS HOME AFFAIRS COMMITTEE, IMMIGRATION CONTROL, 2005-6, HC 775-III at 362.

[27] Border and Immigration Agency, *Information about the Highly Skilled Migrant Programme*, Mar. 2006, *available at* http://www.workingintheuk.gov.uk/working_in_the_uk/en/homepage/schemes_and_programmes/hsmp.html?

[28] Border and Immigration Agency, *Highly Skilled Migrant Programme - Publication of Internal Guidance*, Mar. 2007, *available at* http://www.workingintheuk.gov.uk/working_in_the_uk/en/homepage/news/announcements/hsmp_publication_of_internal_guidance.html.

[29] A list of the current fifty top business schools is provided for in the Immigration Directorates Instructions, c. 5, § 11, Annex Z8.

[30] Border and Immigration Agency, *Information about the MBA Provision*, http://www.workingintheuk.gov.uk/working_in_the_uk/en/homepage/schemes_and_programmes/hsmp/mba_provision.html? (last visited Apr. 28, 2007).

obtain a visa. The aim of the inclusion of this provision is to "attract highly qualified and talented managers to the UK"[31] to address a "weakness in the UK economy in the quality of management."[32]

In addition to meeting the above criteria, individuals that apply under the scheme must also have appropriate entry clearance, intend to make the UK their main home, and be able to accommodate and maintain themselves and any dependents without recourse to public funds.[33] As with work permits, individuals that obtain HSMP permits are not automatically guaranteed entry and must show that they qualify for entry to the UK in accordance with the Immigration Rules in order to obtain a visa for themselves and any dependents in order to enter the UK.[34]

The stay of a highly skilled migrant may, upon application, be extended for an additional three years, provided certain criteria are met. This extension can provide the highly skilled migrant with a total of five years' lawful residence in the UK, after which they can apply for British citizenship if they wish.

The requirements for an extension have recently been amended to take into account some concerns and provide more objective criteria. The current requirements are that the highly skilled migrant must again score seventy-five points against criteria similar to those that were met to obtain the permit in the first instance – qualifications, previous earnings, age, and UK experience – and they must also meet the mandatory English language requirement. While the point criteria have not yet been made publicly available, the Minister of State for Nationality, Citizenship, and Immigration has stated during Parliamentary debates that "the point scoring structure is flexible and is based on criteria that will indicate success in the labour market. If an applicant claims fewer points in one area, they can make up for it by claiming more points in another."[35]

Employment Outcomes of Highly Skilled Migrants

The government has noted that the "HSMP is designed to allow highly skilled individuals with exceptional skills and experience to seek to enter or stay to work in the UK, without having a prior offer of employment, or to take up self-employment opportunities here. We are therefore unable to record which category of work they enter."[36]

Source Country Profile of Immigrants Entering under the HSMP

The following is a list of the top ten countries and the number of individuals granted a permit under the HSMP for 2006:[37]

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[31] *Id.*

[32] *Id.*

[33] Immigration Rules, H.C. 395 ¶ 135, http://www.ind.homeoffice.gov.uk/lawandpolicy/immigration_rules/part5 (last visited Apr. 25, 2007).

[34] Visa countries listed at: Border and Immigration Agency, *Visa and Direct Airside Transit Visa (DATV) nationals*, http://www.ukvisas.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=__1020786334922 (last visited Apr. 25, 2007).

[35] 19 Feb 2007, PARL. DEB. (6th ser.) (H.C.). 108W.

[36] 23 Jan 2007 PARL. DEB. (6th ser.) (H.C.) 694W, *available at* http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm070123/text/70123w0017.htm.

[37] Information extracted from 23 Jan. 2007, PARL. DEB. H.C (6th ser.) 1695W.

Country	Number of Approved Applications
India	7,340
Australia	1,577
Pakistan	1,569
Nigeria	1,209
New Zealand	778
South Africa	658
United States of America	509
Sri Lanka	348
Peoples Republic of China	334
Bangladesh	239

Example of Applicability

As the current guidance for the implementation of the criteria of the HSMP is not available until the end of May 2007, it is not possible to give an accurate example of how the points are awarded under the new criteria.[38]

Benefits of the Highly Skilled Migrant Programme

Prior to the HSMP there were limited, if any, methods for individuals to enter the country to look for and obtain employment without a specific job offer. This made it difficult to "attract highly mobile people with the special talents that are required in a modern economy"[39] to not only contribute to the economy, but also help create opportunities for UK workers. The new rules allow employers the flexibility to hire foreign consultants and freelancers, reflecting current business practice, as the old system only permitted the hiring of foreign workers as full time employees. It also allows employers faced with widespread cuts in the work force to have qualified individuals apply under the HSMP and hire them as part time consultants

The government considers that the HSMP has played a crucial role in enabling the UK to follow a managed migration policy in the interests of the UK, by attracting highly skilled workers to both contribute to the economy and create opportunities for UK workers.[40] Highly skilled migrants have benefited the UK by contributing to the economy, filling skill gaps in the labor market, and creating opportunities for UK workers.

In its first year of operation, the program attracted over 1,100 successful applicants, causing the government to reconsider the application criteria and partially restructure it to encourage more applicants. Since then, the numbers of people seeking entry under the scheme indicate its success, with, in 2006, over 47,000 applications being approved.

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[38] A number of speculative examples of how the new system will work are available from: HOME OFFICE, A POINTS-BASED SYSTEM: MAKING MIGRATION WORK FOR BRITAIN, 2005-6, Cm. 6741, *available at* http://www.official-documents.gov.uk/document/cm67/6741/6741.pdf.

[39] 13 Dec 2001 PARL. DEB. (6th ser.) (H.C.) WA227, *available at* http://www.publications.parliament.uk/pa/ld200102/ldhansrd/vo011213/text/11213w01.htm.

[40] 7 Nov 2006 PARL. DEB. (6th ser.) (H.C.) 39WS.

Negatives of the Highly Skilled Migrant Programme

Abuses of the System

There were a number of abuses of the system that, if not addressed, could have lead to the loss of public confidence in the scheme. The following issues were addressed recently with the revision of the application criteria and processing methods.

The government believed that certain applicants were abusing the extension test. The extension allowed individuals who had already entered the UK under the HSMP to extend their stay if they had taken all reasonable steps to become lawfully economically active and continued to meet other specified criteria. This has since been replaced by an additional points test and a mandatory English language requirement, in order to prevent abuse and "ensure that applicants who are granted further leave under the HSMP have demonstrated their ability to make a contribution to our economy."

There were also certain abuses of the system with regard to the documentation being submitted. This has been countered in part by the requirement that now only original documents are accepted as evidence of their points claims, to enable the accurate independent verification of documents. Applications are also refused when documents that are not genuine have been submitted, whether or not they are material to the application. The government has stated that "such applicants should not be able to qualify under the scheme and are unlikely to benefit the UK."[41] Applications can also be refused if there are "reasonable grounds to suspect that documents are not genuine, which remain after verification checks have been undertaken." [42]

Lack of Objectivity and Transparency in Procedures

In a partial regulatory impact assessment, the Home Office noted that many of the points scoring criteria under the HSMP were too subjective, particularly with regard for previous work experience, making it

> difficult for prospective applicants to measure themselves against and for caseworkers to effectively implement. The uncertainty has resulted in 56% of the 38,728 of HSMP decisions taken in 2005 being refused with each one of these costing the migrant an application fee of over £315 (approximately US$600) (a total of nearly £7 million (approximately US$14m) in fees alone). The high percentage of failed applications indicates that the current criteria may be resulting in a high number of fraudulent or speculative applications.[43]

The government intends that the criteria introduced in December 2006 will resolve this issue, however, as the guidance on the implementation of this program has yet to be published, it is difficult at this point to determine whether the change has been, or will be, successful.

Processing Delays

The large increase in applications from the program's inception to its current application

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[41] 7 Nov 2006 PARL. DEB. (6th ser.) (H.C.) 40WS.

[42] *Id.*

[43] Home Office, *A Points Based System: Making Migration Work for Britain, Partial Regulatory Impact Assessment*, ¶ 41, http://www.homeoffice.gov.uk/documents/ria-making-migration-work-070306?view=Binary (last visited Apr. 26, 2007).

flooded the department responsible for processing them, leading to delays in the system of processing claims that some claim threaten the success of the system, as it is made unattractive to those that the UK is striving to reach. The subjective criteria and the fact that applicants have to pay a significant application fee, regardless of whether or not the application is approved, led to a number of individuals submitting overwhelming amounts of documentation to support their claims, further adding to the processing times.

In-Country Negative Experiences with the HSMP

Some individuals in the UK under the HSMP have indicated that the HSMP permit has sometimes been an issue for them in obtaining employment. Some studies indicate that some employers are "unsure over the legitimacy of the work permit for HSMP – as they may only know that someone has permission to work in this country, and be unclear as to the reason."[44]

It has also been reported that there have been some issues with employers understanding the highly skilled migrants' qualifications and experience and later finding that they are incompatible with what they were seeking in an employee. A government report notes that "this has been attributed to the difficulty of employers in understanding foreign qualifications and sometimes because the legal basis and conduct of a job vary between countries so that qualifications and experience are not directly compatible."[45]

The "Brain Drain"

The United Kingdom has been accused of "crippling African healthcare" through "poaching" medical professionals from developing countries. The UK has in the past conducted "large-scale, targeted international recruitment ... to address domestic shortages."[46] Over a third of doctors practicing in the UK possess overseas qualifications and half of the recently expanded NHS staff qualified abroad.[47] The UK has relied heavily on overseas medical professionals to reduce the wait times for the use of the National Health Service (NHS) and to counter staffing shortages.[48] The UK has recognized the problem to a certain degree, has developed a Code of Practice for International Recruitment that applies to the NHS, and claims that it is the "first nation to produce international recruitment guidance based on ethical principles and the first nation to develop a robust code of practice for international recruitment."[49] The Code establishes guidelines that provide the NHS does not actively recruit medical professionals from 158 developing countries, unless there is an explicit government-to-government agreement that supports recruitment activity.[50] While the UK has been

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[44] Home Office, *Employers' Use of Migrant Labour, Home Office Online Report* 04/06, 46, *available at* http://www.homeoffice.gov.uk/rds/pdfs06/rdsolr0406.pdf.

[45] Home Office, *Employers' Use of Migrant Labour, Home Office Online Report* 04/06, 73, *available at* http://www.homeoffice.gov.uk/rds/pdfs06/rdsolr0406.pdf.

[46] Department of Health, *Code of Practice for the International Recruitment of Healthcare Professionals*, Dec. 2004, *available at* http://www.dh.gov.uk/PublicationsAndStatistics/Publications/PublicationsPolicyAndGuidance/PublicationsPolicyAndGuidanceArticle/fs/en?CONTENT_ID=4097730&chk=DI/b1A.

[47] *UK Crippling African Healthcare*, BBC NEWS, May 27, 2005, *available at* http://news.bbc.co.uk/2/ hi/health/4582283.stm.

[48] *Id.*

[49] Department of Health, *Code of Practice for the International Recruitment of Healthcare Professionals*, Dec. 2004, *available at* http://www.dh.gov.uk/PublicationsAndStatistics/Publications/PublicationsPolicyAndGuidance/PublicationsPolicyAndGuidanceArticle/fs/en?CONTENT_ID=4097730&chk=DI/b1A.

[50] Department of Health, *Code of Practice for the International Recruitment of Healthcare Professionals, id.; NHS Taking Away Africa's Medics*, BBC NEWS, Mar. 15, 2005, *available at* http://news.bbc.co.uk/2/hi/health/4349545.stm.

taking relatively proactive steps to prevent the active recruitment of medical professionals, it has failed to provide analogous immigration measures to deter medical professionals from developing countries from applying on their own behalf to come and work or live in the UK. The Code does not prohibit doctors from the countries for which active recruitment is prohibited from applying for and receiving, jobs in the UK or entering through the HSMP. A spokesperson from the NHS stated that the ethical recruitment of medical professionals in the NHS has "a strict list of [158] countries from which it does not actively recruit ... [h]owever, if healthcare professionals are determined to come here to work we cannot legally deny them that opportunity."[51]

Recent or Proposed Changes to the System

As noted above, the HSMP has just undergone some changes in December 2006 to increase its efficiency and enhance objectivity in its decision making processes. Despite some of the issues in its application, the government has announced that it is moving a significant amount of its immigration programs over to a points based system. It is currently in the process of replacing over fifty worker and student visa categories, beginning in April 2008, with an entirely points based migration system[52] based on the Australian system. Family reunification is not touched by these changes. The aim is to replace what many consider to be an inefficiently bureaucratic processes with objective criteria and transparent decision making. The new system aims to simplify the formerly complicated procedures and improve consistency in decision making by caseworkers and immigration officers for the purpose of selectively admitting people to maximize the economic benefit of migration to the UK.

There are to be five tiers in the new system:

- Tier one will replace the existing HSMP with similar criteria.
- Tier two of the new system will replace the current work permit based immigration route in which employers

  > on a list of approved sponsors will be able to bring in migrant workers who meet the basic criteria (principally relating to a minimum skills and, in some cases, salary threshold)" To ensure that skills shortages are properly addressed, a Skills Advisory Board is to be established that will "will assist in this process by identifying (on the basis of available economic indicators and specific sectoral knowledge) occupations where there are particular shortages for which the process for bringing migrant workers becomes easier for the employer. For those occupations not identified by the Skills Advisory Body the employer will be expected to test the resident labour market to explore whether a domestic worker is available to fill the vacancy in question;[53]

- Tier three applies to temporary low skilled workers – this would apply to individual who would previously have entered under the Sector Based Scheme or Seasonal Agricultural Workers Scheme;
- Tier four applies to students; and
- Tier five applies to temporary workers and youth mobility

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[51] *NHS Taking Away Africa's Medics*, BBC News, Mar. 15, 2005, *available at* http://news.bbc.co.uk/2/hi/health/4349545.stm.

[52] HOME OFFICE, A POINTS-BASED SYSTEM: MAKING MIGRATION WORK FOR BRITAIN, 2005-6, Cm. 6741, *available at* http://www.official-documents.gov.uk/document/cm67/6741/6741.pdf.

[53] HOUSE OF COMMONS HOME AFFAIRS COMMITTEE, IMMIGRATION CONTROL, 2005-6, HC 775-III at 636.

As the scheme is of fairly recent inception, there is limited information currently available about its planned application.[54]

Unskilled Immigration

Currently, in addition to the SBS scheme mentioned briefly above, an additional guest worker scheme, known as the Seasonal Agricultural Workers Scheme (SAWS) allows individuals from outside the EEA that are over the age of eighteen and full-time students to enter the UK to do low skilled seasonal agricultural work, such as planting and gathering crops, or for farm processing and packing of crops, for up to six months.[55] Individuals entering under this scheme do not need to obtain a work permit, but must obtain appropriate entry clearance before arriving in the UK. For the year 2006, the number of individuals allowed to enter the UK under the SAWS was 16,250.[56] This scheme is run by the Home Office through operators that are responsible for placing individuals on farms and informing the workers of their "immigration status and the consequences of overstaying."[57]

Illegal Immigration

Once an individual enters the country he can remain in the UK fairly easily without discovery as, in addition to the lack of departure checks, there is currently no requirement for proof-of-identity documents for services such as health care and education.[58] Employment in the public sector rarely involves identity checks, and many employers have taken advantage of the opportunity of cheap labor that illegal immigrants are providing.

The issue of the lack of departure checks has resulted in considerable difficulty in accurately estimating the numbers of visitors, students, or failed refugee seekers who have breached the conditions of their stay and remain in the country illegally. It also makes the quantification of the success or failure of the visa process and the accuracy of entry clearance officers' decisions to issue visas almost impossible. The government recently has estimated, stated as a "best guess," that the number of illegal immigrations in the country is nearly 500,000.[59] To ascertain an estimated figure of the number of visa holders that comply with the conditions of the visa upon entry into the UK, the Immigration and Nationality Directorate Intelligence Service conducted a small-scale investigation. Preliminary reports involving visas issued to individuals in Accra, Ghana has shown that thirty-seven percent of visa holders could not be located after entering the UK.[60]

A Home Affairs Select Committee has expressed concern over the lack of exit controls and recommended the reintroduction of embarkation controls at the UK's borders. The government initially did not consider embarkation controls a viable option in terms of effectiveness, resources,

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[54] HOME OFFICE, A POINTS-BASED SYSTEM: MAKING MIGRATION WORK FOR BRITAIN, 2005-6, Cm. 6741, *available at* http://www.official-documents.gov.uk/document/cm67/6741/6741.pdf.

[55] Immigration Rules, H.C. 395 ¶¶ 104 - 109, http://www.ind.homeoffice.gov.uk/ind/en/home/laws___policy/immigration_rules/part_1.html (last visited June15, 2006).

[56] Home Office, *Information about the Seasonal Agricultural Workers' Scheme*.

[57] *Id.*

[58] NATIONAL AUDIT OFFICE, VISA ENTRY TO THE UNITED KINGDOM: THE ENTRY CLEARANCE OPERATION H.C. 367, 2004 (2003-4), ¶ 76, *available at* http://www.fco.gov.uk/Files/kfile/NAO%20Report%20170604.pdf.

[59] *Id.*

[60] NATIONAL AUDIT OFFICE, VISA ENTRY TO THE UK: THE ENTRY CLEARANCE OPERATION H.C. 367, 2004 (2003-4) ¶ 18, *available at* http://www.fco.gov.uk/Files/kfile/NAO%20Report%20170604.pdf.

and costs, estimating that it would require over £26 million (approximately US$47 million) per year to operate such a system.[61] Despite its initial reservations, it is currently moving towards this type of system through its e-borders program, which will increase electronic pre-boarding checks of passengers, enabling their information to be checked against multi-agency watch lists, and collect information on the departure and arrival of individuals to enable the relevant bodies to determine who has overstayed. The government intends to introduce measures to require airlines to check the information of certain categories of passengers against government databases prior to departing to the UK, with any airline that carries a passenger listed on the database without authority from the government being subjected to a penalty.[62] The government is also encouraging a "joined up modernised intelligence led border control and security framework"[63] and is working to create a duty to share information between the Immigration Services, the Police, and HM Customs to improve their activities.[64]

Prepared by Clare Feikert,
Foreign Law Specialist
April 2007

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[61] SELECT COMMITTEE ON HOME AFFAIRS, FOURTH REPORT, H.C. 654, 2003, (2002-3).

[62] HOME OFFICE, CONTROLLING OUR BORDERS: MAKING MIGRATION WORK IN BRITAIN, FIVE YEAR STRATEGY FOR ASYLUM AND IMMIGRATION, 2005, Cm. 6472, Annex B.

[63] *Id.*

[64] Immigration, Asylum and Nationality Bill, 2005-6, H.L. [Bill 74], clause 36. This Bill implements the proposals contained in "Controlling our borders: Making migration work for Britain" the Home Office five year strategy for asylum and immigration, published in February 2005 and Confident Communities in a Secure Britain," the Home Office Strategic Plan, 2004-2008, published in July 2004.

ATTACHMENT

Hearing before the Subcommittee on an Examination of Point Systems as a Method for Selecting Immigrants, May 1, 2007

Attachment to the oral testimony for the United Kingdom
By Clare Feikert, Foreign Law Specialist

HOME OFFICE, CONTROLLING OUR BORDERS: MAKING MIGRATION WORK FOR BRITAIN FIVE YEAR STRATEGY FOR ASYLUM AND IMMIGRATION, 2005, Cm. 6472, *available at* http://www.archive2.official-documents.co.uk/document/cm64/6472/6472.pdf. This report is the government's five year strategy plan for asylum and immigration.

HOME OFFICE, A POINTS-BASED SYSTEM: MAKING MIGRATION WORK FOR BRITAIN, 2005-6, Cm. 6741, *available at* http://www.official-documents.gov.uk/document/cm67/6741/6741.pdf. This report provides information and practical examples on the point system that the British government intends to introduce incrementally from 2008.

HOUSE OF COMMONS HOME AFFAIRS COMMITTEE, IMMIGRATION CONTROL, 2005-6, HC 775-I, *available at* http://www.publications.parliament.uk/pa/cm200506/cmselect/cmhaff/775/775i.pdf;

HOUSE OF COMMONS HOME AFFAIRS COMMITTEE, IMMIGRATION CONTROL, 2005-6, HC 775-II, *available at* http://www.publications.parliament.uk/pa/cm200506/cmselect/cmhaff/775/775-ii.pdf; and

HOUSE OF COMMONS HOME AFFAIRS COMMITTEE, IMMIGRATION CONTROL, 2005-6, HC 775-III, *available at* http://www.publications.parliament.uk/pa/cm200506/cmselect/cmhaff/775/775iii.pdf; These reports "... inquire into the policy and practice of immigration control, examining the entry clearance (visa) system, the granting or refusing of further leave in the UK and the enforcement of immigration control. The inquiry considered the degree to which the stated aims of the Immigration and Nationality Directorate (IND)1 and UK visas are being met; the extent of implementation of recommendations of recent reports and inquiries;2 and lessons to be learnt from the operation of the current system that might inform the implementation of the new Government policy."

Ms. LOFGREN. Mr. Clarke.

TESTIMONY OF STEPHEN CLARKE, LL.M., SENIOR FOREIGN LAW SPECIALIST, LAW LIBRARY OF CONGRESS

Mr. CLARKE. Thank you, Madam Chairman.

In 2006, Canada granted permanent residence to approximately 250,000 persons. These immigrants were accepted in several different categories. There were economic immigrants, family class members, business immigrants and persons who had been nominated by one of the 10 provinces. Refugees are also counted in the figure, because refugees whose claims are recognized are eventually given permanent residence.

Of the different categories, by far the largest is economic immigrants, which is mostly composed of skilled workers and independent workers and their dependents. This group accounts for over 50 percent of Canada's immigrants.

Other family class immigrants account for less than one-third of Canada's immigrants; and, as I think Senator Sessions very effectively pointed out, this is probably the major difference between Canadian and American immigration policies.

In Canada, skilled workers are assessed using a point system. The point system is not used for other classes of immigrants. Canada actually has had a point system for many years. However, prior to 2002, the system was weighted in such a manner that in order for an independent immigrant to receive an immigrant visa it was virtually necessary for him or her to have a job offer for a position that there was no Canadian ready, willing, and able to fill. There was a job certification process.

However, in 2002, Canada changed its immigration philosophy after finding that persons demonstrating specialized knowledge and initiative were the types of persons who were most likely to succeed in joining Canadian society. Therefore, the point system was revamped to de-emphasize job offers, although that still remains one consideration.

So, under the current system, there are now six selection factors. The maximum number of points that a person can accumulate is an even 100, and the current pass mark is 67, which is somewhat lower than it was several years ago.

The selection criteria and the maximum number of points that can be earned in each of the categories are as follows: For education, a person can earn up to 25 points—that would normally be for someone with a postgraduate degree—for language ability a person can earn up to 24 points, 16 for fluency in either French or English and an additional 8 for fluency in the other official language.

For experience in a qualified field or position, you can earn up to 21 points. Experience—the maximum points for experience are earned with 4 or more years of work in an approved classification position.

For age, persons between the ages of 21 and 49 can earn up to 10 points or are awarded up to 10 points. Persons who have arranged employment can earn another 10 points. And then finally there is sort of a catch-all category, which is called adaptability, for

which a person can be awarded a final 10 points, and for that category, remote, family relations are a consideration.

One of the majors advantages of the new system is that it is relatively transparent. Prospective applicants can go on line and conduct a self-assessment of their chances of meeting the pass mark.

The system is also very flexible. The Department of Citizenship and Immigration can raise or lower the pass mark to keep the number of new immigrants close to the large target figures established by the Government.

Canada doesn't have country or hemispheric quotas, but it does establish annual targets based primarily upon its labor needs. Major sources of complaints, as was mentioned by Madam Chairman, are that not all new immigrants are able to find immediate employment in their chosen field, often because their foreign credentials are not fully accepted. There is some evidence that this problem has been growing even though the Canadian economy has been very strong in recent years.

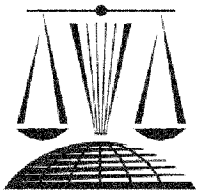
There is no easy answer to this situation, but it is well to remember that the current system was redesigned to give persons, who might otherwise have had little or no chance of obtaining a job offer in Canada, a chance to immigrate to the country. The system was never intended to guarantee all persons immediate employment in their chosen fields. Besides, many professions are licensed by provincial bodies; the Federal Government cannot order the provinces to accept foreign credentials. The most they can do is to assist new immigrants in obtaining the training or experience they need to act in their profession and to work with provincial organizations. And recently, the Government did set aside some money to assist in that endeavor.

Ms. LOFGREN. Could you summarize?

Mr. CLARKE. I will conclude.

Ms. LOFGREN. Thank you.

[The prepared statement of Mr. Clarke follows:]



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IMMIGRATION LAWS AND POLICIES: IMMIGRATION POINTS SYSTEMS

CANADA

Written Statement of Stephen Clarke, LLM
Foreign Law Specialist for Canada

appearing before the U.S. House of Representatives Committee on the Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law

Hearing before the Subcommittee on an Examination of Point Systems as a Method for Selecting Immigrants

May 1, 2007

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IMMIGRATION LAWS AND POLICIES: IMMIGRATION POINTS SYSTEMS

CANADA

Executive Summary

In 2006, Canada accepted over three-quarters of one percent of its total population as new permanent immigrants. The nearly 100,000 persons who were accepted for temporary residence pushed the total immigrant influx to over one percent. This is a relatively high figure for Western countries and demonstrates the importance of immigration to the development of Canada. In order to manage the influx, Parliament has enacted comprehensive laws respecting immigration, refugee policies, and temporary visitors. Since 2001, Canada has also strengthened its screening, deportation, and detention laws in its fight against terrorism. The major difference between the immigration policies of Canada and the United States is that Canada accepts a significantly higher percentage of skilled workers and a significantly lower percentage of family class immigrants. Skilled workers are assessed through the use of a points system. Family reunification is limited by restricting the class to apply mostly to spouses, conjugal partners, dependent children, and parents.

I. Introduction

Canada does not have country-based or hemispheric quotas, but it does establish annual worldwide targets, and the actual numbers of immigrants accepted for permanent residence within a year are usually within ten percent of those targets. Canada also does not provide that immigrants in any one category can only exceed that category's target figure by a certain percentage, but there is an understanding between Parliament and Citizenship and Immigration Canada (CIC) that, in enacting the current Immigration and Refugee Protection Act (IRPA),[1] Parliament intended to create a system in which skilled or independent workers would usually comprise about sixty percent of the annual total, and that skilled or independent workers would normally outnumber family class immigrants by a margin of approximately two to one. It is also understood that Parliament expects CIC to exercise the administrative powers conferred upon it to preserve the current balance and that any significant fluctuations in either direction would probably lead to legislative or administrative reforms. Thus, in processing applications submitted at Canadian Embassies, consulates, and internal immigration offices, officials attempt to adhere to the goals that are set out annually by CIC in consultation with the government and appropriate parliamentary committees.

II. Immigration

Categories of Immigrants

Canada accepts several categories of immigrants for permanent residence. In addition to skilled or independent workers and close family members, Canada admits business immigrants, provincial nominees, adopted children, and refugees. Temporary workers are issued work visas for prescribed periods of time. Canada has a Seasonal Agricultural Workers Programs and issues employment permits to United States citizens in accordance with the North American Free Trade Agreement.

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[1] 2001 S.C. ch. 27.

Family Class Immigrants

Family class immigrants are not assessed on a points system, but preferences are given to certain applicants based upon their relationship to their sponsor. The administrative practice is to process applications from spouses and dependent children first. Applications from parents, grandparents, and relatives who are orphans and under the age of eighteen are generally given lower preference, although persons in these categories may still qualify for the family class.

Canada has a narrower definition of family class immigration than does the United States. Applicants who do not fit into one of the above categories may be sponsored as skilled workers by a relative, but they are then assessed on the basis of the points system. Relatives who are not considered to be family class immigrants may be awarded five points towards the sixty-seven points that they need in order to qualify for permanent residence.

Business Immigrants

Canada admits three types of business immigrants: investors, entrepreneurs, and self-employed persons. Because investors must have the highest net worth, they enjoy the highest priority. Entrepreneurs are in the middle category. Self-employed persons have the lowest preference for business immigrants because they need only have the intention and ability to create their own employment.[2] Business immigrants are not assessed on the points system.

Provincial Nominees

Canada has signed agreements with a number of provinces that allow them to sponsor immigrants. By far the largest of these programs is the one administered by the Province of Quebec. Quebec uses a points system to assess its applicants which is similar to the federal government's points system, but it awards a higher number of points for fluency in the French language. Applications accepted by Quebec are submitted to the federal government for medical examinations and background checks.

Attracting qualified Francophones has long posed difficulties for Quebec. Another problem facing that province is that persons accepted into the Quebec program are not required to remain in that province once they become permanent residents. A significant portion of the applicants accepted by Quebec eventually moves to other provinces offering greater opportunities in their chosen field.

Refugees

Canadian refugee policy is generally considered to be relatively generous. Many critics contend that the system is so lax as to invite fraud and abuse.[3] Reports prepared and interviews granted by some of these critics have raised concerns in the United States that Canada offers an easy back-door entry into the United States for persons intending to conduct terrorist activities. The case of the would-be "millennium bomber," Ahmad Ressam, is often cited as an example of a person who entered Canada as a refugee and later attempted to bring explosives into the United States for the purpose of setting them off at a Los Angeles airport on the eve of 2000. However, the Canadian Government has taken a number of steps to reform the system, tighten procedures, reduce backlogs, and increase security screening. Many of the steps Canada has taken are in accordance with the Safe Border Accord signed with the United States

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[2] Citizenship and Immigration Canada, *Who Is a Business Immigrant?* (2004), *available at* http://www.cic.gc.ca/English/business/ index.html.

[3] *See, for example*, The Fraser Institute, *Canada's Dysfunctional Refugee Determination System*, Dec. 2003, *available at* http://www.fraserinstitute.ca/admin/books/files/ImmigrationPPS78.pdf.

shortly after September 11, 2001.[4] Other steps Canada has taken have been designed to address problems that are more internal or systemic in nature.

Between 1989 and 2004, an average of about 30,000 refugee claims were presented annually. In 2001, this number was at a high of approximately 45,000 persons before it fell back to approximately 39,000 in 2002, 27,000 in 2004, and 20,000 in 2005. An average of about forty-four percent of the claims were accepted between 1989 and 2004.[5] In 2005, the acceptance rate increased to around 46.6 percent.[6] This is somewhat higher than the corresponding figure in the United States, but still refutes the notion that Canada almost routinely accepts refugee claims. Of particular concern to Canadian authorities prior to 2005 was the fact that approximately forty percent of the overall total and seventy percent of port-of-entry claimants entered Canada from the United States. There is significant evidence that illegal immigrants have abused the U.S. Non-Immigrant Visa system to first access North America and then apply for asylum to stay in Canada. The result has been that many of Canada's refugee claimants have arrived in Canada without any documents and have been allowed free entry into the country even though it has been clear that many purposely disposed of the identity documents they had before entering the country. Canada does screen undocumented persons to determine whether they might pose a security or flight risk.[7]

There are four specific reasons why a person might wish to pursue a refugee claim in Canada rather than in the United States. First, as has been mentioned, the acceptance rate has generally been somewhat higher, particularly for persons from certain countries and persons claiming certain types of persecution, such as gender mutilation. Second, Canada traditionally has detained few undocumented refugee claimants pending independent identification, although it has prepared additional facilities for detainees. Third, the Canadian Charter of Rights and Freedoms has been interpreted to generally give refugee claimants the rights to immediate employment authorization, education, and health services.[8] Fourth, the appeals process can be very slow in Canada. Persons who have been judged to be ineligible for refugee status have been able to remain in the country for more than a decade fighting deportation.

Refugee claims are presented to a senior immigration official. Persons who are not determined to be in the following categories have their cases referred to the Immigration and Refugee Board (IRB):

- persons already recognized as Convention refugees;
- persons already determined to be protected in Canada;
- persons subject to a safe third country agreement;
- persons determined to be inadmissible on grounds of security, human rights violations, serious criminality or organized criminality;
- persons already rejected by the IRB;
- persons already determined to be ineligible for an IRB determination; or
- persons who had a previous refugee protection claim withdrawn or abandoned.

Appeals on decisions respecting admissibility may be filed with the Minister of Citizenship and Immigration. The Minister can refer the matter to the Immigration Division. The Immigration Division can authorize the entry of a foreign national for further examination.[9] Further appeals may be made to the

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[4] Although there have been some misperceptions on this point, there has never been any evidence of any connection between the hijackers of September 11 and Canada.

[5] Citizenship and Immigration Canada, *A Look at the Refugee Claimant Population in Canada*, 2005, *available at* http://www.fraserinstitute.ca/admin/books/files/ImmigrationPPS78.pdf.

[6] Information provided by the Minister-Counselor (Immigration) at the Canadian Embassy in Washington, D.C. on February 22, 2007.

[7] *Id.*

[8] [1985] 1 S.C.R. 177. The rights are outlined by Citizenship and Immigration Canada, *Rights to Employment, Education, and Health Services*, July 9, 2002, *available at* http://www.cic.gc.ca/english/refugees/asylum-5.html.

[9] Immigration and Refugee Protection Act, 2001 S.C. c. 27, ss. 44-45, as amended.

Immigration Appeal Division. However, no appeal can be made to the Immigration Appeal Division against a finding that a person is inadmissible on grounds of security, violating human or international rights, serious criminality, or organized criminality.[10]

Cases referred to the IRB are heard by members of the Refugee Protection Division. Persons who have had their application denied can apply to have their case heard by the Federal Court of Canada within fifteen days. The Federal Court first conducts a paper review. If leave is granted, the Federal Court can order a rehearing. Leave of the Supreme Court of Canada is needed for a further appeal.

When the Immigration and Refugee Protection Act was enacted in 2001, provision was made for the creation of a Refugee Appeal Division to review IRB decisions.[11] The relevant sections of the Act, however, were not brought into force by the former Liberal Government. The current Conservative Government has released a background paper in which it explains its position that a Refugee Appeal Division is not required, because Canada's current system is fair and in compliance with all international and treaty obligations.[12]

In addition to the appeals process, Canada has two other protection mechanisms for refugee claimants. The first of these is the pre-removal risk assessment process. This process gives failed refugee claimants an opportunity to explain why they should not be removed from Canada. New evidence can be presented at a hearing. Persons who do not qualify as refugees, but who are found to be in need of protection, can be granted permanent residence. The second protection mechanism allows persons to apply at any time to the Minister of Citizenship and Immigration for permission to remain in Canada on humanitarian or compassionate grounds. Applications for permission to remain in Canada on humanitarian or compassionate grounds do not stay other legal proceedings.

III. Number of Immigrants

According to Statistics Canada, the Canadian population in 2006 was approximately 32,623,500.[13] According to CIC's statistics, approximately 262,000 persons were admitted to Canada for permanent residence in 2005.[14] Of those, approximately 156,000 were admitted as economic immigrants and their dependents, 63,000 as family class immigrants, 13,500 as business immigrants, 8,000 as provincial nominees, and 36,000 as refugees.[15] These figures are quite close to those for 2004, except that the number of economic immigrants increased by over 20,000.[16] In 2006, the total number of persons admitted for permanent residence was 251,511. The family class grew by approximately 7,000 persons while the economic class fell by almost 18,000 persons. The number of refugees declined by slightly over 3,000 and the number of provincial nominees increased by approximately 5,000 persons.

IV. Points System for Skilled Workers

Canada's process for selecting skilled workers is fairly complex. Prior to 2002, applicants were assessed on a points system that generally required applicants to have a job offer for a position that no Canadian citizen was willing and able to fill. In enacting the IRPA, Parliament adopted a slightly

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[10] *Id.*, s. 64(1).

[11] *Id.*, s. 110.

[12] Citizenship and Immigration Canada, *The Refugee Appeal Division:Backgrounder*, Nov. 3, 2005, available at http://www.cic. gc.ca/english/refugees/rad-backgrounder.html.

[13] Statistics Canada, *Population by Year, by Province and Territory*, Oct. 26, 2006, *available at* http://www40.statcan.ca/l01/cst01/ demo02a.htm?sdi=population.

[14] Citizenship and Immigration Canada, *Facts and Figures 2005, Immigration Overview Permanent and Temporary Residents*, Aug. 18, 2006, *available at* http://www.cic.gc.ca/english/pub/facts2005/overview/01.html.

[15] *Id.*

[16] *Id.*

different philosophy. The law seeks to identify the types of persons who are most likely to integrate into the Canadian workforce based upon their background. This change of philosophy is based upon findings that persons with certain education and work backgrounds generally become well integrated into Canadian society regardless of whether or not they have a specific position waiting for them.

Under the current system, applicants must obtain at least sixty-seven points out of a total of 100 possible points on the selection grid and have at least one year of work experience within the past ten years in a management occupation or in an occupation normally requiring university or technical training set out in skill types identified in the National Occupational Classification.[17] The six selection criteria and the maximum number of points available for each are the following:

- *Education.* A maximum of twenty-five points can be earned by a person who has a Master's Degree or a Ph.D. and at least seventeen years of full-time or full-time equivalent study. The lowest number of points available is five for completion of high school.

- *Languages.* A maximum of twenty-four points can be awarded to persons who are highly proficient in both official languages. Sixteen points can be awarded for fluency in either French or English and eight for the other. Written and oral tests are administered to ascertain a person's abilities in different language areas.

- *Experience.* A maximum of twenty-one points can be awarded for experience in approved occupations. The IRPA allows CIC to designate certain professions as being restricted to guard against labor surpluses. However, at the present time, it appears that there are no professions that are designated as being restricted. The maximum of twenty-one points can be earned with four or more years experience in an approved occupation. For each year less than four, two points are deducted. The minimum number of fifteen points can be earned through one year of qualifying experience.

- *Age.* A maximum of ten points is awarded to persons who are between twenty-one and forty-nine. Persons outside this range lose two points for each year that they are under twenty-one or over forty-nine.

- *Arranged employment.* A person may be awarded ten points for having a permanent job offer that has been confirmed by Human Resources and Skills Development Canada.

- *Adaptability.* A person may be awarded ten additional points for a spouse's education, previous work in Canada, and family relations in Canada.

Each of the selection criteria is set out in charts that show how points are awarded.[18]

V. Pros and Cons of the Points System

Canada's points system is designed to attract immigrants who show promise of being able to join in and contribute to their new communities. One of the major advantages of the system is that it is largely transparent. Potential applicants can review the selection criteria to determine whether they may be able to attain sufficient points to reach the pass mark of sixty-seven points. Another advantage of the new system is that it gives persons who are unable to travel to Canada to arrange employment a better chance of being accepted than was previously the case.

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[17] Citizenship and Immigration Canada, *Skilled Workers* (2004), *available at* http://www.cic.gc.ca/English/skilled/index.html.

[18] Citizenship and Immigration Canada, *Six Selection Factors and Pass Mark* (2004), *available at* http://www.cic.gc.ca/English/ skilled/qual-5.html.

One disadvantage of the points system is that transparency can lead to complaints of unfair treatment. Persons who fall short of the pass mark often believe they should have been awarded more points in one or more categories. This is particularly true of the more subjective categories, such as adaptability.

Another source of complaints under the new system has been voiced by professionals who have been unable to find employment in their chosen field or to have their foreign credentials recognized by professional licensing bodies. Most professions, such as those in medicine and law, are licensed by provincial governing bodies. For example, each province has its own law society. Professional licensing bodies have discretion in determining what types of additional training or examination foreign trained professionals must undergo before they can practice in that province.

The problem of foreign-trained professionals being underemployed in Canada has received considerable media attention and has elicited many promises of assistance from Canadian politicians. However, what is sometimes overlooked in considering cases of hardship is that the new system was never designed to guarantee foreign-trained persons employment in their chosen fields. The system was designed to attract promising immigrants. Many of the persons who have found themselves at least temporarily underemployed would not have qualified for admission under the old system that, in general, required prospective immigrants to have a firm offer for a job that no Canadian citizen or permanent resident was ready and able to fill.

A longer-standing problem in Canadian immigration arises out of the fact that over two-thirds of Canada's immigrants have settled in the three largest metropolitan areas of Toronto, Montreal, and Vancouver. Because, the very rapid growth of these areas has brought new social and infrastructure problems to them, the federal government has long hoped for a greater dispersal of immigrants. While the new points system does not appear to have exacerbated the problem, it does not appear to have helped address it, either. The major cities have remained magnets for immigrants. However, the recent strength of the Canadian economy does appear to have encouraged more immigrants to settle in some other areas—particularly in resource-rich Alberta. The expansion of provincial nomination programs also shows some promise in bringing the benefits of immigration to areas that previously received few new arrivals.

VI. Source Country Profile of Immigrants

The top fifteen source countries for immigrants to Canada in 2005 were as follows:

1. China
2. India
3. Philippines
4. Pakistan
5. United States
6. Colombia
7. United Kingdom
8. South Korea
9. Iran
10. France
11. Romania
12. Sri Lanka
13. Russia
14. Taiwan
15. Hong Kong

The first two countries accounted for approximately 75,000 immigrants. All Asian countries now account for approximately seventy-five percent of Canada's immigrants. The number of immigrants from the United States reached a ten-year high of slightly over 9,000 in 2005.[19]

VII. Recent or Proposed Changes to the System

Because Canada has received a large number of applications for permanent residence in recent years, consideration has been given to raising the pass mark from the current sixty-seven points to a higher number. The previous pass mark of seventy-five points was lowered after backlogs had been reduced. However, there has not yet been an announcement of an impending raise in the pass mark.

Consideration is also being given to addressing the issue of underemployment. One manner in which this could be done is by restricting the admissions of certain types of professionals; this, however, has not yet occurred. What the federal government recently has done is to allocate funds to establish a program to help foreign-trained professionals to become accredited in Canada. This federal program is designed to help provide needed additional training and to work with the provinces in reforming accreditation policies.

VIII. Employment Outcomes

The philosophy behind the current Canadian immigration law is that most promising immigrants are able to become well-established in Canada. The Government appears to believe that the current system is generally working well, although it has been acknowledged that the problem of underemployment has grown in recent years. Consideration has been given to many ideas on how this can be addressed within the framework of the current system. The Government has not indicated that it would like to return to the former system, which required the vast majority of skilled workers or independent applicants to have a job offer before they would be eligible to become permanent residents.

IX. Unskilled Immigration

Visitors, Students, Employment, and Other Categories

Canada issues visas to visitors, students, and workers. Only persons from a country on the country control list are required to obtain a visa prior to their arrival as a tourist. United States citizens are not required to obtain visas or produce passports, but they may be required to prove their U.S. citizenship.

NAFTA Professionals

Skilled workers from the United States may also be able to take advantage of Chapter 16 of NAFTA. Under this Chapter, persons who fit into one of sixty professional categories can obtain employment in Canada without the Canadian employer having to first apply for a labor clearance from the government. Such a clearance requires labor authorities to conduct an inquiry as to whether there are any available citizens or permanent residents in Canada who are willing and able to accept the position being offered. Under NAFTA, persons considered to be professionals must still obtain a work permit, but this process is much less time-consuming when a labor certification is not required.

Appendix 1603.D.1 of the NAFTA agreement lists many different types of workers who are eligible to qualify as NAFTA professionals. These professions usually require at least a baccalaureate

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[19] Citizenship and Immigration Canada, Facts and Figures 2005: Immigration Overview: Permanent Residents, *available at* http://www.cic.gc.ca/english/pub/facts2005/permanent/12.html.

degree. Included on the list of NAFTA professionals are accountants, architects, foresters, lawyers, librarians, physicians and dentists, landscapers, and teachers.[20]

Guest Workers

Canada issues work visas to unskilled as well as to skilled workers. Many of the unskilled employees are agricultural workers. Canada has a Seasonal Agricultural Workers Program (SAWP) for persons who do not qualify as skilled or professional agricultural workers. Under this program, Canada has signed SAWP agreements with Jamaica, Mexico, Barbados, and Trinidad and Tobago. Under these agreements, persons may apply for admission to the program in their home country. Applicants are screened by local authorities. Canadian immigration officials issue work permits to screened workers in accordance with Canada's agricultural needs. The majority of the agricultural workers are admitted in the second and third quarters of each year. Guatemala is not a participant in the SAWP program, but an increasing number of work permits have been issued to workers from that country over the past two years. Nevertheless, Mexico and Jamaica are the leading source countries, with fifty-three and twenty-eight percent of the 2004 SAWP permits issued to citizens of those countries, respectively. The total number of SAWP permits reportedly issued in 2004 was approximately 22,000.[21] Government statistics show that in 2005, the number of foreign workers at skill level C, which includes most seasonal agricultural workers, was approximately 31,000.[22] Under the SAWP agreements, consular officials are allowed to visit housing facilities to ensure that they meet Canadian standards. Foreign officials keep records on the return of agricultural workers to ensure that the program is not used illegally by persons who want to remain in Canada indefinitely.

Services for Immigrants

Persons accepted for permanent residence in Canada generally have immediate access to all social services and enjoy the same constitutional rights and protections as Canadian citizens. Immigrants can enroll in the health insurance programs run by the provinces, receive free language training, get assistance in finding employment and housing, enroll in elementary and secondary schools, and pay in-province college tuition.

Immigrants are eligible for welfare benefits, referred to as "social assistance," but cannot receive uninsurance benefits until they have worked the number of weeks required to qualify. The Canada Pension Plan, the Old Age Security Plan, and the Guaranteed Income Supplement are open to immigrants who have paid into those plans and have reached the required age or become disabled.

In order to assist immigrants in learning for which benefits they may be eligible, Services Canada has created a benefits homepage.[23]

X. Illegal Immigration

Sanctions for Unlawful Entry and Overstaying

The IRPA does not specifically criminalize unlawfully entering the country or unlawfully overstaying a visa. Both of these types of actions, however, fall under the general prohibition against contravening the law without exercising due diligence to prevent doing so. Crown prosecutors have discretion to try general IRPA offenses either by way of an indictment or in summary proceedings. The

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[20] North American Free Trade Agreement, Appendix 1603.D.1, July 9, 2003, *available at* http://www.nafta-sec-alena.org/Default Site/index_e.aspx?DetailID=78.

[21] THE ECONOMIST, May 27, 2006, at 63.

[22] *Foreign Workers*, THE MONITOR, Jan. 26, 2007, *available at* http://www.cic.gc.ca/english/monitor/issue14/03-workers.html.

[23] *Canada Benefits.gc.ca*, Mar. 9, 2007, *available at* http://canadabenefits.gc.ca/faechome.jsp?lang=en.

distinction between indictable and summary offenses is similar to the distinction between felonies and misdemeanors in the United States, and a crime that can be tried either by way of an indictment or in summary proceedings is considered to be a "hybrid" offense. The maximum penalty for a person who commits such a general offense as entering the country unlawfully or unlawfully overstaying a visa is a fine of CanS50,000 and imprisonment for two years, if prosecuted by way of an indictment, and a fine of $10,000 and imprisonment for six months, if prosecuted in summary proceedings.[24] Crown prosecutors usually base their decisions as to whether a defendant should be tried by way of an indictment or in summary proceedings upon such factors as the seriousness of the violation, the defendant's intentions, and the defendant's prior record.

While the IRPA does provide for the prosecution of persons who enter the country illegally or illegally overstay a visa, trials for these offenses are rare. Most persons caught violating the general provisions of the immigration laws are deported or ordered to leave Canada.[25]

Sanctions for Hiring Undocumented Workers

Another general offense under the IRPA is hiring undocumented workers. Section 124(1)(c) states that any one "who employs a foreign national in a capacity in which the foreign national is not authorized under this Act to be employed" is guilty of an offense. The maximum penalties for this offense are the same as those for entering the country illegally or overstaying a visa illegally. A person is not guilty of the offense of illegally hiring an undocumented worker if he or she exercised "due diligence."[26] The Act and its regulations do not specify what the accused must show in order to prove that he or she did in fact exercise due diligence.

The IRPA also makes both counseling misrepresentation and general misrepresentation criminal offenses. Misrepresentation can be committed by withholding material facts, giving misleading information, and refusing to answer questions in legal proceedings.[27] These offenses are punishable with a maximum fine of Can$100,000 and imprisonment for five years, if prosecuted by way of an indictment, and a maximum fine of Can$50,000 and two years of imprisonment, if prosecuted in summary proceedings.

In addition to criminalizing misrepresentation, the IRPA has special provisions for using, exporting, and dealing in forged documents that purport to establish a person's identity. Using a forged document is punishable with up to five years of imprisonment and exporting or dealing in forged documents is punishable with up to fourteen years of imprisonment. Canada has had numerous problems with forged passports. In several reported cases, international incidents have arisen out of discoveries that foreign intelligence agencies were using forged Canadian passports. Forged Canadian passports are reportedly popular with criminals because immigration officials in other countries are less likely to regard them with suspicion, due to the fact that Canada has a relatively large and diverse immigrant population.

In addition to the penalties for hiring illegal immigrants, Canada also has strict laws respecting human smuggling and trafficking. A person who smuggles fewer than ten persons into the country is liable on a first offense to a fine of up to CanS500,000 and imprisonment for up to ten years. For a subsequent offense, the maximum fine is doubled and the maximum period of imprisonment is raised to fourteen years. Those who smuggle more than ten persons into the country are liable to a fine of up to CanS1,000,000 and imprisonment for life. Disembarking persons at sea is a separate offense that is also punishable with a fine of up to CanS1,000,000 and imprisonment for life. This section was created in response to several instances in which owners of foreign boats filled them with illegal aliens and abandoned ship just before they washed up upon Canadian shores. In determining the appropriate

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[24] Immigration and Refugee Protection Act, 2001 S.C. c. 27, s. 124(1) (a).

[25] Information obtained from the Immigration Office at the Canadian Embassy in Washington, D.C. in 2006.

[26] Immigration and Refugee Protection Act, 2001 S.C, c. 27, s. 124.

[27] *Id.*, s. 127.

sentence for persons who engage in human trafficking, judges must consider such aggravating factors as whether the aliens suffered any bodily harm or degrading treatment.

Border Security

In December 2002, the United States and Canada signed a Safe Third Country Agreement to allow immigration officials in both countries to require most persons seeking asylum at a border crossing to go back and present their claim in the other country. This type of agreement had been called for in the Action Plan to the Smart Border Declaration. Implementation of the Agreement was delayed by the lengthy and complicated process for drafting and approving appropriate regulations in the United States, but it finally went into force at the beginning of 2005.[28]

Although the Safe Third Country Agreement aims to limit asylum shopping and the filing of multiple claims, it is limited in scope and subject to several major exceptions. One major limitation is that it only covers the presentation of claims at land border crossings. Airport and marine facilities are not covered because, as the drafters of the Agreement explained, authorities can only know that persons were in the other country when they are seen at a border crossing.

Statistics show that the number of refugee claims presented at border crossings in Canada declined by approximately forty percent in the first half of 2005 and that there were less than 20,000 total claims for the entire year. While this would suggest that the Safe Third Country agreement has had a dramatic impact on Canadian refugee claims, it is also true that claims presented at airports during the same period were down about twenty-five percent.[29] Thus, the Safe Third Country Agreement appears to have gone into effect during a period in which the number of refugee claims was already declining.

Statistics on Illegal Immigrants

Although there are no official statistics on the number of illegal immigrants in Canada, CIC is reported to have estimated that there may be as many as 300,000 undocumented workers in Canada.[30] The most widely-cited statistic is that the number is probably around 200,000.[31] In either case, it is clear that the total has increased dramatically over the past ten years. This increase reflects the growing strength of the Canadian economy over that period.

Prepared by Stephen F. Clarke
Senior Foreign Law Specialist
April 2007

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[28] Statement of Joseph E. Langlois, Director Asylum Division, United States Immigration and Naturalization Service, Department of Justice (Oct. 16, 2002), *available at* http://www.immigration.com/newsletter1/uscanadaagreement.pdf.

[29] Citizenship and Immigration Canada, Canada-U.S. Safe Third Country Agreement (2006), *available at* http://www.cic.gc.ca/ english/policy/menu-safethird.htmlhttp://www.uscis.gov/graphics/aboutus/congress/testimonies/2002/Langlois101602.pdf.

[30] Andrew Mayeda, *Legalizing Illegal Immigrants Could Hurt U.S. Ties: Solberg*, WINDOR STAR, Nov. 8, 2006, at A10.

[31] *Deportation Move Protested*, CALGARY HERALD, Mar. 30, 2006, at B2.

Ms. LOFGREN. Ms. White.

TESTIMONY OF LISA WHITE, LL.M., FOREIGN LAW SPECIALIST FOR AUSTRALIA AND NEW ZEALAND, LAW LIBRARY OF CONGRESS

Ms. WHITE. Thank you for the opportunity to testify.

Australia's immigration program is global and nondiscriminatory. It is divided into a migration program and a humanitarian program, both of which are further divided into streams and categories of visas.

Currently——

Ms. LOFGREN. Would you move the mike a little bit closer to you.

Ms. WHITE. Currently Australia's migration program is focused on skilled migration and has been so focused since the late 1970's and early 1980's. Immigration to Australia is administered by the Federal Department of Immigration and Citizenship.

Australia utilizes a point-based system in relation to some of its skilled migrant visas. The most common visas that utilize the point system are those of the independent, skilled migrants which includes students studying in Australia, Australian-sponsored skilled migrants, and state or territory-sponsored skilled migrants. The point system is not utilized for family reunions, humanitarian visas nor in relation to employer-sponsored visas.

Generally, skilled migrants have excellent labor participation rates within Australia, and certainly at least one study I have seen has suggested that the key criteria in relation to that are skills recognition and, primarily, English language skills.

Under the point system, an applicant must meet initial criteria of age and language skills, and then their application is awarded points in relation to specified categories, primarily: qualifications; age: relevant work experience, whether or not their occupation is in demand in Australia; and English language skills. Additional points may be awarded for a qualified spouse, Australian qualifications, capital investment, other language skills (other community language skills) and Australian work experience.

Under the point system, each visa has a pass mark, being the number of points necessary to obtain a visa, and a pool mark, being the number of points necessary to remain in the pool of applicants, should there not be sufficient pass-level applicants or should the pass mark be revised.

Under the current immigration procedure in place in Australia, an applicant's qualifications are assessed for recognition in Australia prior to the applicant's arriving in Australia. In that case, you are not awarded the points for certain occupations until you offer proof that your qualifications have been assessed as being recognized in Australia. This does avoid underemployment of skilled migrants.

The skilled stream of Australia's Migration Program is intended to enhance Australia's economy by allowing skilled people access to Australia's workforce. The benefits of the points system is it allows the Australian Government to systematically and objectively select the skilled migrants most likely to contribute to the objectives of the skilled migration program.

It also further allows the Australian Government to regulate the number of skilled migrants by varying the points requirement according to planning levels set by the Australian Government. Thus, for example, to encourage skilled migration to regional and rural Australia, the applicants who are seeking to live and work in rural and regional Australia are able to enter it with a lower pass mark.

Criticism of the point system and emphasis on skill migration in general are, firstly, suggestions that students are deliberately targeting educational courses that will maximize their points in relation to a visa application to Australia, that it is easy for applicants to be awarded additional points in relation to fraudulent claims of work experience; and that, secondly, an emphasis on skilled migration and subsequent reduction of places allocated to family-based migration may result in hardship to members of the Australian community.

The New Zealand immigration program permits persons to migrate to New Zealand or, if currently within New Zealand, to obtain permanent residence. New Zealand's permanent migration program is divided into: skilled/business; family sponsored; and international humanitarian streams under which there are also specific categories.

Currently, New Zealand's immigration program prioritizes skill-based migration, and it has emphasized skill-based migration since 1987.

New Zealand's immigration system is administered by Immigration New Zealand, which is part of the Department of Labor.

New Zealand utilizes the point system to select skilled migrants for the skilled migrant category visas. These visas grant permanent residence to a skilled migrant with no requirement of a job offer or current employment in New Zealand. The general objective of the New Zealand skilled migrant category is to provide New Zealand residency to persons with transferable skills to fulfill identified needs within the New Zealand economy.

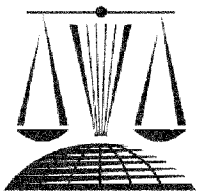
Genuinely skilled migrants have excellent labor market participation rates within New Zealand. Skilled migrants are awarded points on the basis of: qualifications; work experience; age; employment; whether their occupation is in demand in New Zealand; and whether they have any familiar relations in New Zealand. Thus, under the New Zealand system, applicants must satisfy basic criteria; they must be aged below 55 years, be of good health and character and have a reasonable understanding of English.

They must also score above a minimum point threshold after which they may submit an expression of interest to live and work in New Zealand. Essentially, it is an interest in residency within New Zealand. Once an expression of interest is submitted, it is assessed by Immigration New Zealand, who may invite the applicants to apply for residency; the assessment by Immigration New Zealand is essentially by the number of points obtained by the applicant.

Ms. LOFGREN. Could you summarize?

Ms. WHITE. I can. That is fine.

[The prepared statement of Ms. White follows:]



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IMMIGRATION LAWS AND POLICIES: IMMIGRATION POINTS SYSTEMS

NEW ZEALAND

Written Statement of Lisa White, LLM
Foreign Law Specialist for New Zealand

appearing before the U.S. House of Representatives Committee on the Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law

Hearing before the Subcommittee on an Examination of Point Systems as a Method for Selecting Immigrants

May 1, 2007

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**IMMIGRAION LAWS AND POLICIES:
IMMIGRATON PIOINTS SYSTEM**

NEW ZEALAND

New Zealand currently prioritizes skilled based migration. New Zealand utilizes a 'points system' for selection of skilled migrants. The general objective of New Zealand's Skilled Migrant category of visas is to provide New Zealand residency to persons with the transferable skills to fulfill identified needs within the New Zealand economy.[1] Skilled migrants must meet minimum criteria of age, language skills, health, and character and are then awarded 'points' on the basis of qualifications, work experience, age, employment, demand for their occupation in New Zealand, and whether they have any familial relations in New Zealand.

I. General Introduction

New Zealand consists of two islands and is located in the South Pacific Ocean, southeast of Australia. Its land mass is approximately the same size as the state of Colorado. New Zealand does not share land borders with any country.[2]

As of April 28, 2007, New Zealand's population was estimated to be 4,182,242[3] with one in five New Zealander residents being born overseas. During the period between 2005-2006, the United Kingdom was the largest source of migrants (29%), followed by China (13%).[4]

II. Immigration – General

Persons who are citizens or permanent residents of Australia, or, persons who are citizens of and traveling on a passport of a visa waiver country, and who intend to stay in New Zealand for less than three months, may enter New Zealand without a visa.[5]

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[1] NEW ZEALAND IMMIGRATION SERVICE OPERATIONAL MANUAL ISSUED 24 APRIL 2006, ¶SM1, *available at* http://www.immigration.govt.nz/nzis/operations_manual/index.htm

[2] CIA WORLD FACT BOOK, *available at* https://www.cia.gov/cia/publications/factbook/geos/nz.html (last visited April 26, 2007).

[3] Statistics New Zealand Population Clock,. Statistics New Zealand, http://www.stats.govt.nz/populationclock.htm (last visited April 27, 2007).

[4] Department of Labor, Migration Trends 2005/06, 2006, at ii, http://www.dol.govt.nz/publications/research/migration-trends/MigrationTrends-2005-06.pdf (last visited April 27, 2007).

[5] Visa free countries are: Andorra, Argentina, Austria, Bahrain, Belgium, Brazil, Brunei, Canada, Chile, Cyprus, Czech, Republic Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (South), Kuwait, Latvia, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Mexico, Monaco, Netherlands, Norway, Oman, Poland, Portugal, Qatar, San Marino, Saudi Arabia, Singapore, Slovak, Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, United Arab Emirates, United States of America, Uruguay, Vatican City. Residents of some of these

New Zealand has a migration program that permits persons to migrate to New Zealand, or if currently living within New Zealand, to obtain permanent residence. Immigration New Zealand, part of the Department of Labour, administers New Zealand's migration programs (*see* www.immigration.govt.nz).

The principal legislation is the *Immigration Act* 1987 (NZ) and *Immigration Regulations* 1999 (NZ). This legislation is supported by government policy and procedure documents, particularly the Immigration New Zealand Operations Manual.[6]

New Zealand's permanent migration program has three 'streams'. These are 'Skilled/Business,' 'Family Sponsored,' and 'International/Humanitarian.. Under each stream there are a number of specific categories.

The purpose of New Zealand's Skilled/Business stream is to "contribute to developing New Zealand's human capability base" by accessing global skills and knowledge and attracting people to contribute to New Zealand's economy.[7]

Under the Skilled/Business Stream the three main categories of visas or work permits are:[8]

- *Skilled Migrant Category* – allows for permanent residence of a skilled migrant with no requirement of a job offer or current employment;
- *Work to Residence* – allows for a temporary work visa/permit from which holders may apply for permanent residence. This is applicable to applicants qualified in occupations that are in demand, who have a job offer from a New Zealand employer accredited to hire overseas workers, or who have exceptional talents in the sports or arts;
- *Residence from Work* – applicable to people already in New Zealand on a Work to Residence permit who wish to apply for residence; and
- *Employee of Relocating Company* – key employees of companies relocating to New Zealand may apply for a work permit and work permit from which holder's may apply for permanent residence.

Of these categories, the Skilled Migrant Category utilizes a 'points system' to identify suitable applicants.

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countries have additional limitations. Citizens or permanent residents of the United Kingdom may stay for up to six months without a visa. Other exceptions include: a person who has been given a special direction, diplomats and consular officers, military personnel at Black Birch Astrometric Observatory, cruise ship passengers (time and destination limitations), and aircraft crew members (commercial aircraft flying between any other country and New Zealand) or members of any scientific programme or expedition carried out under Operation Deep Freeze. *See* Immigration New Zealand, *Do you require a visitor visa?*, http://www.immigration.govt.nz/migrant/stream/visit/visitors/quickcheck.htm (last visited Apr. 27, 2007).

[6] *See* Immigration New Zealand, http://www.immigration.govt.nz/migrant/general/generalinformation/operationsmanual/ (last visited Apr. 27, 2007).

[7] *See* http://www.immigration.govt.nz/nzopportunities/live/skilledmigrant.htm and New Zealand Immigration Service, Guide for Working in New Zealand, NZIS 1016, Nov. 2005, at 3.

[8] Immigration New Zealand, *Working in New Zealand*, http://www.immigration.govt.nz/migrant/stream/work/ (last visited Apr. 27, 2007).

III. Number of Immigrants

During 2005-2006 51,236 people were approved for permanent residence in New Zealand. Of these 62% were approved via the Skilled/Business stream, 29% through the Family Sponsored stream, and 9% via the International/Humanitarian stream.[9]

During 2005-2006, 27,539 people were approved for via the Skilled Migrant Category. Of these, 75% of principal applicants had skilled job or job offer and over 50% claimed bonus points for employment outside the Auckland region.[10]

Of those approved via the Skilled Migrant Category, 41% were from the United Kingdom, 12 % from South Africa and 11% from China.[11]

IV. Skilled Migration – Points System

There are two stages to apply for residency under the Skilled Migrant Category.

First, the applicant submits an Expression of Interest to Immigration New Zealand. This expression of interest allocates 'points' in relation to various categories. Applicants must satisfy basic criteria (age under fifty-five years, be of good health and character, and have a reasonable standard of English) and score above a minimum points threshold before they may submit an Expression of Interest (EOI) to live and work (residency) in New Zealand.[12]

Second, Immigration New Zealand assesses each Expression of Interest to decide which applicants will be invited to apply for residence in New Zealand. This assessment is based on the number of points obtained by the applicant.

Points are awarded on the basis of:

- skilled employment (either current on-going employment for twelve months or more or an offer of employment or employment for more than three but less than twelve months);
- relevant work experience;
- occupation (if the applicant's occupation is on the Long Term Skills Shortage List);
- qualifications;
- age (must be between 20 and 55yrs); and
- close family ties to New Zealand (e.g., adult siblings, children, or parents).

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[9] Department of Labor, *Migration Trends 2005/06*, 2006 at 2. *available at* http://www.dol.govt.nz/publications/research/migration-trends/MigrationTrends-2005-06.pdf.

[10] *Id.* at 3.

[11] *Id.*

[12] Immigration New Zealand website – *see* http://www.immigration.govt.nz/migrant/stream/work/workandlivepermanently/howdoiapply/theprocess/default.htm (last visited Apr. 27, 2007).

Bonus points are awarded for:

- an offer of employment or employment in an identified growth area or cluster or an area of absolute skills shortage, or a region outside Auckland or where a spouse/partner has an offer of employment or employment;
- work experience in New Zealand;
- work experience in an identified future growth area or cluster or area of absolute skills shortage; and
- New Zealand qualifications, qualifications in an identified future growth area, or identified cluster or an area of absolute skills shortage or spouse/partner qualifications.

Expressions of Interests are ranked and those that meet the current 'Selection Point' are invited to apply for residency in New Zealand. The Selection Point is a number above the minimum threshold above which Expressions of Interests will be selected. It is determined fortnightly. Currently the Selection Point is 140 points. Therefore applicants who score above 140 points will be invited to apply for residency.

If there are places remaining in New Zealand's immigration program after those applicants who score above the Selection Point are invited to apply, then an applicant whose Expression of Interest include a score between 100 and 140 and has a New Zealand job or job offer may be invited to apply for residency. If places are still available after this selection, the applicant's Expression of Interest may be selected on other criteria decided by the Minister for Immigration. Currently these criteria place the Expressions of Interests into ranks (in descending order) based on number of points awarded to the applicants for work experience in an area of absolute skills shortage or qualifications in an area of absolute skills shortage. Then, within each category the Expressions of Interests are placed in descending order of their total points.[13]

If an applicant's Expression of Interest is not selected, it will remain in the 'pool' for six months before being deleted. If no Expressions of Interests are selected from the pool in the previous six months, then all applications will be retained in the pool. Applicants whose Expression of Interest is not selected may submit another Expression of Interest.

Once an applicant's Expression of Interest is selected, he or she will be invited to apply for residency (and thus be required to submit documents to support any claims made in the Expression of Interest). Upon his or her application for residency, an applicant's Expression of Interest and application will be assessed by the Department of Immigration against government policy and to verify the information provided. Essentially this assessment will attempt to establish whether the applicant will be able to settle successfully into New Zealand and make a contribution to New Zealand's social and economic development. An applicant without skilled employment or an offer of skilled employment may still be approved for residency if it is considered that they have sufficient potential to obtain skilled employment quickly.

From this assessment an application may be declined or an applicant may be offered a permanent residence visa or a temporary visa to enter and remain in New Zealand while looking for work.

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[13] *See* Summary of Terms, http://glossary.immigration.govt.nz/additionalselectioncriteria.htm (last visited Apr. 27, 2007).

V. Example of an American Lawyer Migrating to New Zealand as an Independent Skilled Migrant

As an example, a thirty-four year-old American lawyer with an LLM who has worked for a year in New Zealand and now wishes to migrate to New Zealand via the Skilled Migrant Category in accordance with a job offer in New Zealand would be assessed under the 'points system' as follows:

- *employment* – presuming that our lawyer is not currently employed, but has a job offer as a lawyer, this would be considered skilled employment and he or she would be awarded fifty points. Because this is not a job in an identified future growth area (currently, biotechnology, information communications technology, and creative industries), and possibly not employment within an identified cluster (currently, Film in Auckland; Wellington Creative Manufacturing; Canterbury Software; Canterbury Nutraceuticals; or Biosouth) nor an occupation for which there is an absolute skills shortage, he or she will get no bonus points. If our lawyer's offer of employment is outside Auckland, however, then he will be awarded an additional ten points;
- *qualifications* – Presuming our lawyer went to a reputable school his or her master's qualifications are likely to be recognized within New Zealand; thus, he or she will be awarded 55 points. He may not obtain, however, any bonus points because his qualifications are not in a future growth area nor are they New Zealand qualifications;
- *relevant work experience* – At age thirty-four, it is hoped that our lawyer has at least five years relevant work experience; for this he or she would be awarded fifteen points. Because his or her New Zealand work experience was less than two years, and neither in an identified future growth area nor within an identified cluster, nor within an occupation for which there is an absolute skills shortage, he will not obtain any bonus points for this work experience;
- *age* – because our lawyer is 34 years old, he or she will be awarded twenty-five points;
- *family ties* – presuming that our lawyer does not have family ties to New Zealand, he or she will not obtain any points under this category;
- *spouse* – presuming that our lawyer has an equally qualified spouse he or she will obtain an additional ten points. If the spouse also has an offer of employment, he or she will obtain an additional ten points.

Thus our lawyer has potentially 175 points and, upon successful application to the New Zealand Law Society for admission to practice in New Zealand, would be eligible to submit an Expression of Interest for permanent residence within New Zealand.

VI. Pros and Cons of Points System

The benefit of a points-based skilled migration system is that it allows New Zealand greater flexibility in identifying immigrants who will readily provide a benefit to the New Zealand society and economy. A detraction of the skilled based migration programs as a whole (both those visas that are 'points based' and those that are not, such as employer-nominated visas) is a reduction in numbers for 'family' reunion based migration, which may result in some hardship for individuals within the New Zealand community.

VII. Source Country of Immigrants For Skilled Migration

During the 2005-2006 period, the United Kingdom was the largest source of skilled migrants (37% of all approved residency applications in the Skilled/Business Stream) followed by China (13% of approved residency application in the Skilled/Business).

VIII. Recent or Proposed Changes to the System

New Zealand currently is undertaking a review of its immigration laws,[14] and it is likely that the skilled migration program will be reviewed; there is, however, currently no indication that the points system per se will be abandoned.

IX. Employment Outcomes of Skilled Migrants

Overall, settlement and labor market participation for skilled migrants is very good. New Zealand has recently surveyed skilled migrants (Skilled/Business Stream[15]) twelve months after they were granted residency.[16]

Of the principal applicants:

- 94 % were working for pay or profit;
- 33% were classified as professionals; and
- 78% were very satisfied or satisfied with their current employment.

The employment rates for principal applicants from various regions are as follows:[17]

- United Kingdom and Ireland – 97%
- Europe, South Africa and North America – 94%
- Asia – 84%; and
- Other – 95%

Since gaining residency, 85% of migrants reported no difficulties in gaining employment. Of the 15%, however, who did have difficulties, the main reasons given were language difficulties (46%) and lack of New Zealand work experience (44%).[18]

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[14] IMMIGRATION ACT REVIEW: OVERVIEW, April 2006, New Zealand Department of Labour, *available at* www.dol.govt.nz/actreview/.

[15] This includes the Skilled Migrant category, the Work to Residence categories, and the Business categories.

[16] LIFE IN NEW ZEALAND, SETTLEMENT EXPERIENCES OF SKILLED MIGRANTS; RESULTS FROM THE 2005 SURVEY, Department of Labour, Wellington, 2006, at 7. This survey conducted in 2005 covered skilled migrants approved for residence in 2004, *available at* http://www.dol.govt.nz/publications/research/settlement/index.asp.

[17] *Id.* at 21. It is possible that the figures for Asia reflect a cultural bias in that Asian respondents may have responded no when asked if working for pay or profit on the presumption that this did not include self-employed persons.

[18] *Id.* at 34-35.

X. Unskilled Migration

New Zealand currently is implementing a Seasonal Work Permit (SWP)[19] pilot scheme that will allow persons already within New Zealand to provide labor to horticulture and viticulture industries during periods of high seasonal demand. This pilot scheme will run until September 30, 2007 and has 4,000 places available.

Under the SWP scheme persons in New Zealand from a visa-free country or from a country that is not visa-free but who are present in New Zealand on a valid temporary permit (valid from February 15, 2007 until the date they make their application) may apply for a work permit. Upon being granted a work permit applicants will be able to undertake 'seasonal work' (that is planting, maintaining, harvesting and packing crops) for any employer in the horticulture and viticulture industries in specific regions in New Zealand where a shortage has been identified by the Ministry of Social Development. All work permits will expire on or before September 30, 2007.[20]

From April 2007 New Zealand will implement a Recognised Seasonal Employer Policy to meet the labor requirements of New Zealand's horticulture and viticulture industry.[21] Under the RSE Policy employers who are unable to find domestic workers to undertake planting, maintenance, harvesting and packing of crops in the horticulture and viticulture industries, can apply to be a Recognised Seasonal Employer (RSE). As an RSE they may apply to the Department of Immigration for an Agreement to Recruit (ATR) under which they may recruit workers from outside New Zealand to work for a short period of time in New Zealand. Such workers must then apply (on the basis of their job offer from the RSE) for a visa to enter and work in New Zealand.[22]

It is currently proposed that up to 5,000 workers per year will be granted permission to enter and work under the RSE Policy.[23]

New Zealand also has a unique arrangement with several Pacific island nations that may contribute to unskilled or lower skilled migration. These include:[24]

- New Zealand citizenship to residents of Cook Islands; Niue, and Tokelau;
- the Samoan Quota scheme that allows entry of 1100 Samoan nationals per annum to become permanent residents (subject to criteria); and
- the Pacific Access Category that allows 250 persons from Fiji, 250 from Tonga, 75 from Kiribati, and 75 from Tuvalu annually to become permanent residents (subject to criteria).

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[19] *See* Immigration New Zealand, Seasonal Work Pilot Policy, http://www.immigration.govt.nz/community/stream/employ/employmentprocesses/employingtemporaryworkers/whatisrequired/seasonalwkrs/swp/ (last visited Apr. 27, 2007).

[20] *Id.*

[21] See Immigration New Zealand, Recognised Seasonal Employer Work Policy, Immigration New Zealand, http://www.immigration.govt.nz/migrant/stream/work/rse/ (last visited Apr. 27, 2007).

[22] *Id.*

[23] *Id.*

[24] C. STAHL AND R. APPLEYARD, MIGRATION DEVELOPMENT IN THE PACIFIC ISLANDS: LESSONS FROM THE NEW ZEELAND EXPERIENCE, APRIL 2007, AUSAID, *available at* http://www.ausaid.gov.au/publications/pdf/migration.pdf.

XI. Illegal Immigration

New Zealand does not appear to have a significant illegal immigration problem although it can be presumed that they have similar issues to Australia with respect to people unlawfully overstaying their visas or working in contravention of their work visas.

Prepared by L White
Foreign Law Specialist
April 2007

Ms. LOFGREN. It has been very helpful—since I read all of the testimony over the weekend, it has been very helpful to have this testimony.

I have a couple of questions before we turn to the other Members of the Committee.

In these jurisdictions, how do they treat family immigrants and how does that differ from the way we treat family immigrants here in the United States?

Each of you, quickly.

Ms. FEIKERT. In the United Kingdom, family reunification, per se, is limited to spouses and it also now encompasses unmarried same-sex partners, unmarried partners, and civil partners, as well as traditional relationships, and extends down to children under 18.

There is a provision for children over the age of 18 if it can be shown they are dependent upon their parents still, and if their parents will be able to provide for them without recourse to public funds to join them.

As well, there is a provision for parents of the people over—under the work permit or however they happen to be in England, but it must be shown that the parents are dependent upon the people in the UK and have no other means of being able to take care of themselves in their home countries.

Mr. CLARKE. The Canadian system is fairly similar. It does not extend to extended relatives such as siblings or aunts, uncles, people in other degrees of relationship. So that is how Canada basically limits family class reunification.

Ms. WHITE. Essentially, in Australia, it is worked out on the basis of caps. Numbers for spouses and independent children are not capped, but other family relatives may be, that is, their numbers may be capped. But it is possible to bring in age-dependent relatives.

Ms. LOFGREN. Now I—you mentioned, in Australia, that it was a concern of the government that for students—that they might be skewing their studies to maximize their points; and I thought, why would that be a problem? I mean, if you need engineers and people study engineering, wouldn't that actually meet the needs of the system?

Ms. WHITE. This has been raised as an issue by independent studies, not actually a government study.

Ms. LOFGREN. I see.

Ms. WHITE. I guess the concern was not so much that the students were taking those courses, per se, but they were taking other courses that still qualified for the points, but may not have been as useful.

I believe there were also some concerns raised about the quality of some of the courses taken by the students and whether they were actually coming out graduating and being able to participate in the workforce. There was concern that skilled migrants who were students, coming in by that visa, that their participation rate in the labor market was lower than the general participation rate of graduates; and that is a problem.

Ms. LOFGREN. Given the—that we have another panel, I am going to stop my questioning now and turn to Mr. King for his questions.

Mr. KING. Thank you, Madam Chair.

First, I have to compliment this panel on their excellent command of the English language.

And it occurs to me that at least the point systems that are out there that we are analyzing here today, and the ones I am aware of, come from English-speaking countries. And some would refer to that as Anglosphere.

But I will ask the question, starting with Ms. Feikert, is that a coincidence, do you think?

Ms. FEIKERT. That it is from an English-speaking country? I don't think that I could possibly answer that question.

I do know that it is—one of the reasons that I believe that the scheme was introduced, the government stated was there is a change in demographics. There are skills in the labor markets that aren't being met by labor within the UK. They look to different countries to see how their models were attracting skilled migrants and based it off of the Australian model.

It turns out that the majority of people that are being attracted into the country under the highly skilled migrant program are from India and from non-English-speaking countries.

Mr. KING. I think you have taken Ms. White off the hook for that question.

Ms. FEIKERT. I am sorry.

Mr. KING. Then—but I will go to Ms. White and ask her this question then: In either Australian or New Zealand, either, are there points awarded for work experience that was gained in violation of temporary visas, people who are illegally working, with either country? Do they get merit for that, demerit for that? How is that handled?

Ms. WHITE. Off the top of my head, I am not entirely certain, but as a general rule, under both migration systems, that counts against an applicant, working in violation of a visa. So if that was found out, it might be—I would have to probably take that on notice.

I think there might be some room around that if you weren't aware you were working in violation of your visa, or if it was one of those technical things and it was on one visa and it was expired and it was a couple of weeks of work for the same employer. But I would have to take that on notice.

Mr. KING. I would go ahead and submit that question for the record for an answer later so you can give it the opportunity to be confident of that.

If either of the other two witnesses are confident in where that stands, as to whether there is merit or demerit for working in the country illegally, or do you prefer to answer that in writing?

Ms. FEIKERT. I would prefer to answer it in writing.

Mr. CLARKE. I also prefer to answer it in writing.

Mr. KING. Then I go back to Ms. White, and again, in your written testimony, it shows that immigrants that are admitted under the independent skills, points-based program have the highest earnings out of all skilled migrants.

So what do you think about the independent applicants that seem to be performing better than those that are sponsored by employers? What is the reason for that?

Ms. WHITE. That is not necessarily the outcome. I believe that figure is of the independent-skilled, and not necessarily better than the employer-sponsored, although it may actually be depending on the employer.

I think it has a lot to do with the skills and criteria of the people who are coming. Just the nature of the system means they are incredibly high-caliber, as a general rule, applicants, and they have to be very confident of their ability to earn a job within Australia before they—I mean, Australia is physically a long, long way away from most other places.

So, as a general rule, people who come are just very confident of their skills and they are very high caliber; and they are able to earn that level.

Mr. KING. Another, for fun, I notice that I believe the Australians and the British both call it a "scheme." that is not a coincidence either.

Ms. WHITE. I am sorry?

Mr. KING. It is just a little aside, the different way we use language. The plans and strategy policies you put together are commonly referred to as "schemes," and when we do that here, there is a different connotation here.

But then I would go then to Ms. Feikert again, a series of questions about the reference to fraud in your testimony and how pervasive that has been. I see that you require original documents rather than copies. Can you explain that a little bit?

Ms. FEIKERT. That's correct.

The issuance of fraudulent documentation during visa applications and work permits is a fairly pervasive problem throughout the entire immigration system.

One issue with the highly-skilled migrant program was that on the basis of just speculative applications, people weren't sure whether they would meet the criteria. They would submit a large number of documents in order to try and prove that they would meet these criteria. This was overwhelming the caseworkers, and oftentimes within there, there were some fraudulent documents. Given the volume and the difference between all of the documents that were being submitted, that was becoming increasingly difficult to determine whether they were genuine or fraudulent.

So to counter this problem, they have introduced a requirement in that original documentation must be submitted, and that it should be—for some requirements, it should be off of a specified list of documents that they already—or they can easily verify.

But I do know from other research, as well, that this is an issue in other areas of visa issues and work permits and various categories such as that.

Mr. KING. Thank you, Ms. Feikert.

And not having time, I would love to go into the history of Australia immigration, Ms. White. But, instead, I will yield back to the Chair and thank you.

Ms. LOFGREN. Noting that they were not high skilled, they turned out okay. Their ancestors did.

Ms. Jackson Lee for 5 minutes.

Ms. JACKSON LEE. Let me thank the witnesses and thank the Chairwoman and the Ranking Member for the series of hearings that we are having. I know that the witnesses from the foreign law—the foreign law specialists of the Law Library of Congress will be sharing some technical responses, but I believe, as I have been listening to you, you might be able to answer some of the questions that I am going to ask.

Before I do that, I do want to note that this is a day that many, many citizens who happen to be of immigrant background are raising their voices regarding the need for this Congress to move forward on immigration reform; and I believe this Committee is moving expeditiously.

I am somewhat frustrated—and this is my own view—by what seems to be a fishing expedition that the Administration seems to be on. We have started out with a framework that dealt with comprehensive immigration reform that included border security, a worker program. Some used the term "temporary." I like the term "worker program" because it involves a number of aspects of work, whether it be agricultural or otherwise.

And then the family reunification issue was a very important component; and, of course, access to legalization certainly included concepts, no criminal background, learning English, paying fines and fees.

There is another element that I think has to be included, is the confidence of Americans that, one, we are concerned about their economic stability and their value to this Nation; and so some of us are gathering around the thought of ensuring that there is a component about job retention, job creation, and an emphasis on moving forward, with looking to Americans for positions before we go to the immigrant structure.

But certainly to begin talking about points to me offers an all-around-the-world, all-around-the-thought processes. What can we do next? A fishing expedition, a point process, that to me demeans individuals who are coming as laborers, who have come in years past and then rose up the, if you will, both the intellectual and economic ladder.

We are reminded that many came from European countries in the late 1800's and early 1900's, and I am not sure what level of degree they were, but they went into, if you will, unskilled labor work, and they moved up the economic ladder.

I would think one of the harshest examples, and I think some will think it is harsh, but my ancestry, slave history, was not about points. It was about who could work the hardest and the longest in the hot sun. And many of us have suffered from that history, but we have pulled ourselves up by the bootstraps that we are looking for, the boots we are looking for. We keep trying to go up the ladder.

So I am disturbed about a discussion on a point system, and I have a letter here to the Chairwoman that lists a number of organizations that are likewise disturbed. I think they are not disturbed about—I wouldn't represent their position to be we don't want to have reform that is strong and that has a basis to it that

has border security, but what we don't like now is the labeling that seems to go on.

May I pose a question, Mr. Clarke, simply in other countries, if they had a point system—and I might be open to a point system that also has family reunification—do they have balance, other balanced aspects, family reunification as well as maybe a point system so that we don't discard the opportunity for hard-working, tax-paying individuals who are here to be able to bring their families?

And my second point is, many of us are gathering around the idea that I just mentioned: show Americans that you want to retain jobs for them. You want them to have first opportunity for those jobs. You want to create job training. A lot of our minority communities are sensitive about losing their jobs.

Are those ideas seen in any other countries, or would you give some thought to an idea where you tell Americans their jobs are not in jeopardy or their ability to retain their job as well as a system that has points and family reunification?

Mr. CLARKE. Those are two very controversial questions.

First, as to does Canada have family reunification, yes, it most definitely does. But, generally, economic immigrants outnumber family reunification by about two to one. That gives us almost the reverse in the United States. So that is a major difference between our two countries.

As to the other point as to whether there is an emphasis on skilled workers, if I understand your question correctly, perhaps it threatens persons in this country who have trained, worked their way up into skilled positions themselves, whether it threatens them being able to hold on to that, I guess the Canadian experience is that that has not happened, that the people that have come in with high knowledge and high level of experience have been able to become successfully integrated into the economy without displacing Canadian workers.

But I think your question is well put and probably needs further investigation and a longer history since we are only talking about the fifth year of the current program.

Ms. LOFGREN. The gentlelady's time has expired.

The gentlelady from California, Ms. Waters.

Ms. WATERS. Thank you very much.

To the young lady that was talking with us about the point system and the immigration system in the U.K., where are most of your immigrants coming from?

Ms. FEIKERT. Under the points program or generally?

Ms. WATERS. Generally.

Ms. FEIKERT. Generally, I don't think that I could specifically give you where most of the immigrants are coming from off the top of my head. I could definitely get back in touch with you.

For the U.K., I could say it does exclude any countries of the——

Ms. WATERS. I'm sorry. I can't hear you.

Ms. FEIKERT. I can say that wherever the countries where the immigrants would most likely would come from, it would not include members of the European Union or the European economic area. Off the top of my head, though, I am afraid I couldn't say.

Ms. WATERS. Do you have a large African population?

Ms. FEIKERT. Not really African population. It is more from Pakistan.

Ms. WATERS. Arab League population?

Ms. FEIKERT. Not a considerable Arab League population. It would be more—predominantly, the minorities are more predominantly from Pakistan and India currently.

Ms. LOFGREN. Would the gentlelady yield?

You actually do list the numbers on page 8.

Ms. FEIKERT. This is for entry under the highly skilled migrant program.

Ms. WATERS. And those immigrants from Pakistan and India and other places are basically through the point system?

Mr. FEIKERT. They could enter into the country through any system.

Under the point system——

Ms. WATERS. Do you have a lot of undocumented from those areas?

Ms. FEIKERT. The undocumented workers the U.K. have only just recently been stated. They have recently just given how many undocumented workers there are in the U.K., and they did not break down demographic-wise.

Ms. WATERS. You recently had some unrest in the U.K.; and we were focused by the media on large numbers of, it appeared, Arab background and African background. Were these documented or undocumented? They were fighting about jobs. They were making a lot of noise about jobs.

Ms. FEIKERT. I think the one that you might be referring to may have been the Bradford riots, and these were—I think these were initially documented people that had then gone out of status. And I do remember there being a backlash against the government because the people that stepped forward as witnesses to some of these events were then linked, prosecuted and deported because they had moved out of status. So it was a mixture.

Ms. WATERS. So there are some people who came in legally, they were documented, and then they lost their jobs?

Ms. FEIKERT. No. They were—depending upon the visa that they would enter under, possibly they entered under a temporary visa worker where they would be legal in the U.K. for a period of 12 months. But then one issue that the U.K. Government is facing in terms of immigrants is that there is no departure check. So once somebody is in the U.K. They can remain there——

Ms. WATERS. Do you have a sizable number of immigrants who are coming in as temporary workers?

Ms. FEIKERT. Off the top of my head, I can't pull the figures. I'm sorry. But I can definitely get back to you with those numbers.

Ms. WATERS. But you think maybe the temporary worker numbers are sizable?

Ms. FEIKERT. There are over 50 different categories of work permits that people can enter into the U.K.; and with temporary workers, I think there are 15 different workers.

Ms. WATERS. What kinds of temporary work do they generally do?

Ms. FEIKERT. There is a working holiday-maker scheme for people of the Commonwealth which is a cultural exchange. There is a

seasonal agriculture worker scheme for unskilled people—a sect of base-skilled working scheme for unskilled people who work in the hospitality sector, and there are some schemes that literally just one or two people would apply under every year.

Ms. WATERS. So you may be in a situation similar to the one in the United States where we need agricultural workers and we need workers for low-paying jobs, entry level jobs, to support the economy.

Ms. FEIKERT. That is correct.

Ms. WATERS. But these people don't come in. It is very hard for them to get legal status, permanent legal status.

Ms. FEIKERT. That is correct.

Ms. WATERS. But if you are highly skilled with the point system, you are most likely—for example, if you are an attorney—I saw one of the cases here that you were asked to respond to—most likely you would be allowed to get in.

Ms. FEIKERT. That is correct. That is correct. Skilled people and as well people that have specific job offers, they are more than likely going to be able to obtain a work permit and then a visa for entry into the U.K.

Ms. WATERS. So you have to have temporary workers, though, in order to support the economy.

Ms. FEIKERT. That is correct.

One negative aspect that the Government is saying that is coming from the temporary workers is that they have recently mentioned that one of the reasons that these temporary workers are needed is because the pay is so low and people in England just don't want these low-paying jobs. And then one member of Parliament from the U.K. said the reason they are low paying is because everybody is coming in from overseas to have these jobs, and it is depreciating the salary.

But that is just a possibly political statement.

Ms. LOFGREN. The gentlelady's time has expired.

Mr. ELLISON. I was curious about the same topic. It is interesting, so I will pick up there. Can you describe the temporary program in the U.K.?

Ms. FEIKERT. I would refer to probably the most popular temporary worker scheme, which is the seasonal agricultural worker scheme. That is where members from—if I can just actually refer to some notes——

Mr. ELLISON. Just seasonal agricultural.

So how are the lengths of stay? Are they all the same? Is there a unified time period?

Ms. FEIKERT. The seasonal workers are allowed to stay for a 12-month period of time under which they must return. I think there is possibly a Category for extension for these workers, but I do not believe they can remain for longer than 2 years.

Mr. ELLISON. But 12 months and then can reapply and get another year?

Ms. FEIKERT. Possibly.

Mr. ELLISON. What are their rights as temporary workers? Are they allowed to form unions?

Ms. FEIKERT. I would have to get back to you in terms of whether they are able to form unions or not. I believe that they pretty much have the same rights.

Mr. ELLISON. I don't want you to speculate. If you don't know, you could just say that, and you can get back to us.

I would also like you to let me know what percentage of them are in unions if they do have the right to organization.

Does the U.K. have enshrined within its law the right to organization? Is it a statutorily granted or a constitutional right?

Ms. FEIKERT. The U.K. Does not have a constitution.

Mr. ELLISON. You have the Magna Carta, right? But I mean do you have a statutory right to organization within the U.K.?

Ms. FEIKERT. I would have to get back to you on that one as well.

Mr. ELLISON. Could you, please?

Ms. FEIKERT. Certainly.

Mr. ELLISON. What is the average wage of one of those temporary workers as compared to the general wage?

Ms. FEIKERT. It would have to be in the minimum wage requirement, which is currently in the U.K. $10 or $11 per hour.

Mr. ELLISON. So they have the right to demand the minimum wage.

Ms. FEIKERT. That is across the board. They have to pay people the minimum wage.

Mr. ELLISON. That is good. That is good.

And are these workers allowed to leave the employ of a given employer and go to another employer if they should so choose?

Ms. FEIKERT. For the seasonal agricultural workers, I would have to, again, I am sorry, get back to you on that.

Mr. ELLISON. Could you look into that?

One of the things I am really concerned about if we have a seasonal worker program and somebody comes to work for X Company. and they don't like their conditions but their status somehow prohibits them from going anywhere else, that would be a real problem for me. So I would be grateful if you could let me know what even grand—well, the U.K. Does about that.

What is the rate of injury for workers in the program? Is it higher than the general population? Is it lower than the general population?

Ms. FEIKERT. I would again have to get back to you on that, and I would also have to take into account they are doing manual labor and look at the statistics for categories of manual labor to get a better——

Mr. ELLISON. I would really love to know that.

I guess you can tell where my questions are going. I want to know if the temporary workers in England are taken advantage of or not. I am not insisting that they would be. I am not claiming. I don't know. I am hoping you can shed some light on that.

I am curious to know about New Zealand as well. Do you have a temporary workers program?

Ms. WHITE. I would have to get back to you on the exact outcome of the temporary workers program in New Zealand. I believe it might be similar to the one in Australia. Australia has a temporary—that is skilled again. It is generally skilled workers coming in.

Mr. ELLISON. Do you have a temporary agricultural program similar to what has been described by the earlier witness?

Ms. WHITE. No. Australia has not currently gone down that path, but it is investigating it, and the latest Government report on it looks at agricultural workers, but they would be considering limiting it to the Pacific Island.

Mr. ELLISON. But at this point there is no existing agricultural temporary worker program?

Ms. WHITE. That is correct. There is not.

Mr. ELLISON. Is there a temporary program for people who do factory work?

Ms. WHITE. You would have to define "factory work." There are programs by which you can bring in temporary workers into Australia where there is a skilled shortage of those workers, and that could include some form of factory work. Generally, those programs look at if you have some skill, even if it is manual skill, fabric dyeers; machinists are an excellent example.

Mr. ELLISON. And given that you are not really sure about the program, it might be hard to answer this question, but I am also interested in whether there is a right to organize into a union if you are a temporary worker, whether you have the right to claim the minimum wage, what your rates of injury are, if they are different from other workers.

Ms. LOFGREN. Is that directed to all four countries represented?

Mr. ELLISON. Yes, ma'am. Actually, it is. And I would be very grateful to get some response from each.

Thank you, Ms. White.

Ms. LOFGREN. The gentleman's time has expired.

Thank you very much, panel. You have been very, very helpful, very enlightening.

Without objection, Members of the Subcommittee will have 5 legislative days to submit additional questions which we will forward and ask you to answer as promptly as you are able to be made part of the record.

Ms. LOFGREN. We would now ask our third panel to come forward.

I am pleased first to introduce Dr. Demetrios Papademetriou—I didn't, hopefully, mess that up too badly—co-founder and President of the Migration Policy Institute. Dr. Papademetriou holds a Ph.D. in comparative public policy and international relations and has taught courses at the Universities of Maryland, Duke, American, and the New School for Social Research.

A prolific writer, he co-directs the Transatlantic Task Force on Immigration and has held an array of senior policy and research positions, including Director of Immigration Policy and Research at the U.S. Department of Labor, Chair of the Secretary of Labor's Immigration Policy Task Force, and Executive Director of the International Migration Review.

I would also like to welcome Howard Greenberg, a partner in the Canadian law firm of Greenberg Turner. Mr. Greenberg chairs the Citizenship and Immigration Law Specialization Committee of the Law Society of Upper Canada and in this capacity certifies Canadian attorneys practicing immigration law.

He co-edits the *Immigration Law Reporter*, the leading case reporting publication. He has chaired the Canadian Bar Association's National Immigration Section and the Nationality and Immigration Committee of the International Bar Association. Mr. Greenberg also teaches on the Faculty of Law at the University of Ottawa.

We are also pleased to have Lance Kaplan with us, a partner with Fragomen, Del Rey, Bernsen & Loewy and a graduate of the University of Witwatersrand in Johannesburg and California Western School of Law in San Diego.

Mr. Kaplan brings an extensive resume of international practice to our panel. He has participated on numerous Government liaison committees and formally directed his firm's global immigration services for a Big Four accounting firm.

Finally, we have Robert Rector, a Senior Research Fellow with the Heritage Foundation in Washington.

Mr. Rector's research is focused on the U.S. welfare system; and he has authored a number of works on the subject, including *America's Failed $5.4 Trillion War on Poverty*. Mr. Rector earned his bachelor's degree from the College of William and Mary and a master's from John Hopkins University.

Each of your written statements will be made part of the record in its entirety, and I would like to ask that each of you summarize your testimony in about 5 minutes.

As you have noted from the prior witnesses, we have this handy dandy little box. When it turns yellow, the light, it means there is about a minute to go; and when the light turns red, it means that the 5 minutes are up.

Ms. LOFGREN. So if we may begin with Dr. Papademetriou.

Welcome, and thank for your patience and thanks for being here.

TESTIMONY OF DEMETRIOS G. PAPADEMETRIOU, Ph.D., PRESIDENT, MIGRATION POLICY INSTITUTE

Mr. PAPADEMETRIOU. Thank you very much, Madam Chairwoman. It is good to see you again, and thank you very much for honoring us last week at the fourth annual legal conference that we cosponsored with a couple of other organizations.

What I would like to do today briefly is talk a little bit about across points systems, because most of the things that we have heard today are very specific to each country.

Secondly, I would like to answer the question of whether we should be relying on points systems; and, if we should decide that we should, exactly how should we be doing this. And I will make some overall judgements, if you will allow me, on the basis of about a couple of decades of looking at point systems.

I would like to start by making a sort of a direct statement that points systems are essentially human capital accrual mechanisms. This is for countries that feel that either their educational or training systems somehow are not capable to fill needs in the economy, and they reach out to the rest of the world in order to bring in specialized talent to do that.

Secondly, that the things that define good points systems are flexibility and constant adjustments. That is why you have heard from the other witnesses that other countries keep adjusting them in 2002, '03, '04, '05. Because, ultimately, any advantage that

points system has is that, through research and evaluation, you can always try to do a little better. And that is another one of the hallmark issues about such systems.

And all point systems, as we have heard, have four or five criteria that are common to all of them: age, education, occupation work experience, language. But what is more interesting than that is that there are five or six other categories, other criteria that different systems try to use in order to, in a sense, put forward some of the priorities that a specific country has at a specific point in time. And this includes employer nomination or job offers, previews or proposed earnings, etc. Increasingly as of late, in some systems you can meet all of the points pass marks simply by earning or having earned in the past $80,000 or $120,000 or what have you. Prior work experience or education in the country in which you are trying to immigrate to and the presence of close relatives also count toward points totals. Everybody more or less gets some points for having some close relatives in the country; and, increasingly, particularly for places like Canada and Australia that are trying to populate parts of the country that are depopulated, they may give extra points or extra consideration to people who are willing to commit to settling in a specific part of the country.

So these are the kinds of things that pretty much the various systems have.

So why are points systems so popular? Why are we having sort of the conversation that we are having in this country?

Well, I think that we need to go back to the history of points systems. You know, a lot of the countries that have them decided to move into that direction because they were trying to avoid the ups and downs of too many or too few immigrants. Think of our own experience with H-1B visas. Any number that you can actually pick is not a number that the market will really have picked. It is a number that is imposed by an outside body, in this case, of course, the U.S. Congress. Well, some of those countries wanted to avoid this; and, at the same time, they wanted to add to the overall human capital of the country constantly and systematically; and that is what they decided to do.

Also, these are countries that, in a sense, are continuing to grow and intend to continue to grow through immigration. So they want to improve overall economic outcomes by relying on an awful lot of talent from the outside. The assumption nowadays is that you cannot have too much human capital, rather than that you have to meet specific shortages or specific demand on the part of employers in order to meet your economic growth requirements.

And, of course, very frequently, they have had weak universities when they started with the points systems or universities that were not particularly full service ones. So they were not producing enough engineers, enough of this, enough of that.

Again, none of these conditions, it seems to me, really pertain to the United States.

But points systems have also been politically useful. They give you a sense in most instances—well, I won't make a judgment; I will wait for you to ask me—a sense that these are objective measurements, you know, that somehow the Government is in charge,

rather than employers or family members who have, in a sense, their own special interests.

When you do that, you are beginning to put the bureaucracy in charge of all kinds of things your economy needs. Because, ultimately, you have to make a judgment on the part of the Government as to what the economy needs, which, you know, probably has some problems in a society like ours.

Ms. LOFGREN. Could we ask that you summarize?

Mr. PAPADEMETRIOU. The two or three ways that I think, if we want to accommodate a point system, we have to do so is very perhaps narrowly. We have the EB1 a visa. It takes a long time. It takes a lot of paperwork. We could simplify this by giving points to individuals who could qualify for that visa.

There are many States in the United States that need people or need special qualifications. Perhaps we could give an opportunity to those States to add some points to the system and have some immigrants go there.

And there are two more specific ways, and I will finish on that. If we indeed cannot agree on what the requirements should be for people to gain legal status, and we wanted to have a diaphanous, transparent, simple system, we can impose a point system on that.

And, finally, temporary migration. There were several questions today about temporary workers who could have a point system that would allow temporary workers after meeting certain requirements to convert their status into that of permanent immigrants.

Thank you, Madam Chair.

Ms. LOFGREN. Thank you very much.

[The prepared statement of Mr. Papademetriou follows:]

PREPARED STATEMENT OF DEMETRIOS G. PAPADEMETRIOU

Statement of

Dr. Demetrios G. Papademetriou
President
Migration Policy Institute

Before

The Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law
of the
The House Judiciary Committee
U.S. House of Representative

Hearing on "Examining Point Systems as a Method for Selecting Immigrants"

May 1, 2007

Madame Chairwoman, Members of the Subcommittee:

Thank you for the opportunity to appear before you to discuss point and point-like immigrant selection systems. I have studied and written about such systems across the advanced industrial world for nearly two decades now and, at your invitation, I am here to share with you my reflections on whether and how such point systems might be usefully incorporated into the way that the US conducts parts of its immigration business.

While the observations below are my own, they rely on studies that I have undertaken by myself and with others, most notably, with Stephen Yale-Loehr, Kevin O'Neil, and, most recently, Will Somerville and Jeanne Batalova. The results of the collaboration with the last two authors were completed in February of 2007 and I would like to respectfully submit that product for the record.

Today, I will focus my remarks on four areas.

- The first will be a few general remarks about the nature of point systems—why and how they were created and why they seem to be so popular.
- The second will be a series of observations about whether reliance on point systems for selecting certain US-bound immigrants makes sense.
- The third area will focus on the value of point system-like procedures for conducting certain parts of our country's immigration business.
- The fourth and final area draws on my experience to suggest the proper place of point systems in the overall immigration policy toolkit of our country.

A. General Remarks About Point Selection Systems

Point systems are first and foremost human capital accrual mechanisms. They award points for certain individual characteristics that countries choose to value most at a specific point in time among the bundle of attributes that human beings possess. Five criteria seem to be most important as judged by the fact that they appear, and garner most points, across all point systems in use across the globe. They are:

- Education
- Occupation
- Work experience
- Language
- Age

An additional number of criteria also seem to be important, although they do not appear in every system and their valuation—measured in terms of assigned points—typically lags much behind that of the top five. These are:

- Employer nomination/job offer
- Previous or proposed earnings or salary
- Prior work experience or education in the country of proposed immigration

- The presence of close relatives
- Settlement stipulations and considerations (where one commits to locate)
- Investment with job creation responsibilities and retirement

Before proceeding further in this discussion, however, it might be useful to look at the genesis of point systems, particularly in the country that gave birth to them: Canada.

Canada reached the decision to move into point testing its "economic stream immigrants" (roughly what we call employment-based immigrants) in part as a means of avoiding the cycle of numerical feasts and famines in admissions that the ups and downs of its economy had been creating. (This is not unlike our own arguments over admission levels for H-1Bs.) It accomplished this by creating the point system and, after a few false starts (during which the system focused primarily on addressing job shortages) it eventually cast the system decidedly in the direction of advancing the broadest possible economic interests of the country and getting better economic "integration" outcomes for points' tested immigrants—and if numbers are any guide, it has never seriously looked back. Incidentally, Canada point tests fewer than a quarter of all its immigrants in an average year. In other words, point tested immigrants in Canada are not intended to take the place of family immigrants, refugees and asylees, temporary workers, or any other part of the country's immigration flow.

Point systems quickly became popular among government planners in other countries, also as a means of addressing another concern: That their higher education systems at the time were not producing enough professionals with the human capital characteristics their economies needed to grow and become more competitive in the emerging global marketplace. (The UK's decision whereby graduates from 50 top business schools from around the world wishing to immigrate to the UK would automatically meet its points test's "passmark" of 75 points is rooted on the same impulse. So is the "mad dash" around the advanced industrial world to facilitate the admission—with or without point tests—of selected foreign students who graduate from their universities.) Admitting immigrants selected for the education and qualifications the receiving economies need and could benefit from was thus judged to be good economic and labor market policy for both the short and, if properly weighed, the longer term.

However, point systems have also been useful for political purposes. For instance:

- They can inspire public confidence by appearing to use universal, data-driven, and objective selection criteria to advance clearly defined and easily understandable economic and labor market objectives. Compared to most other selection systems, point systems appear to avoid the case-by-case selection systems' "gamesmanship" between employers and bureaucrats.
- A point system's appearance of impartiality discourages individual-level challenges while the appearance of technical complexity and the formula's increasingly forward thrust (to address longer term economic growth and competitiveness priorities) dampens concerns about adverse effects on domestic workers.

- A point system can reassure the public that the immigrants that gain admission under it are chosen on the basis of criteria that place the country's broadest economic interests front and center—and thus promote its position in an increasingly competitive world.
- Most significantly, perhaps, a point system conveys to the public that the government is being proactive in anticipating needs and manipulating entries in ways that put national economic interests first; that is, that the government, rather than employers or families, is in charge of the most important part of the immigration system.

Selection systems that rely on point assessments, however, are not only focused on communicating with their own citizens. They also serve as announcements to would-be immigrants anywhere about the skills and preparations that could land them a work or immigrant visa to an increasing number of the most advanced economies in the world (as noted earlier, most countries' point systems use variations of a small number of basic attributes).

A final advantage of point systems also deserves mention. Adopting them can encourage the creation of "virtuous circles" whereby a country uses the fact that it must constantly adjust both the attributes it chooses to emphasize and the point value it assigns each—adaptability, flexibility, and simplicity are hallmarks of the most successful point selection systems—as the reason for engaging in systematic, targeted and ongoing research and evaluation studies on immigration. Such studies will naturally focus on improving macroeconomic outcomes and anticipating and addressing labor market imbalances. Done right, however, they can also move us in the direction of looking at the selection formula's effect on social and economic outcomes for the foreign workers themselves—a crucial priority if the frequently asserted "competition for talent" becomes more pronounced.

The Independent Task Force on Immigration and America's Future (the Abraham/Hamilton Task Force), which my own Institute impaneled with the cooperation of two other distinguished think tanks, proposed to assign these tasks to a Standing Commission on Labor Markets and Immigration.

B. Adopting a Point System for the US?

The US, unlike most countries that use or are contemplating the use of point systems, has an "employer-driven" immigrant selection system, that is, it allows employers to judge which workers they need and empowers them to select such workers within certain loosely constructed parameters. This tradition—part history, part a reflection of the (un)availability of and (low) investments in the requisite data systems (and hence governmental capacity to embark on a different course), part philosophy about how much the government should be involved in and regulate labor markets, part keen appreciation of how labor markets function in practice—argues against importing yet another practice from political systems in which the role of government vis-a-vis the economy and labor market and the place of the business sector in society are dramatically different from our own.

Yet, there are circumstances, albeit narrow ones, under which a point system that is well calibrated, is constantly fine tuned, and casts its eyes to near future economic needs (a three-to-five year horizon), might be appropriate. Such a system might be relied upon to:

- Supplement the supply of labor in economic and labor market niches while building up educational and training capacity to meet fast growing demand.
- Give US states the opportunity to recruit some of the specialized workforce they may need in order to implement economic development goals.
- Give US states the ability to augment their pool of workers in hard to fill occupations. These may range from medical and associated fields to fields in which the willingness to work hard is the main prerequisite. Uneven demographics and high out-migration rates in some US states, especially among the young and educated, make gaining access to such workers/settlers an economic imperative.
- Build up a workforce in an emerging strategic industry, such as a new energy technology, at a rate that is faster than the reaction time of the educational system.
- Simplify the process through which the EB-1 and investor visas are issued.

C. Using Point Systems for Purposes Other Than Selecting *New* Workers

There are additional immigration policy areas in which a point-like system can introduce an orderly and transparent way for conducting parts of our immigration business. Two such uses come most readily to mind:

- Allowing illegally resident persons in the US to earn legal status, just as Senator Hagel proposes to do in the bill he introduced last week ("The Immigrant Accountability Act of 2007"); and
- Allowing future (new) temporary workers, regardless of skill level, to gain/earn lawful permanent resident status.

D. Concluding Observations

Generally speaking, point and point-like systems can be a useful tool to add to our immigration policy toolkit – as long as we use them for purposes that the concept can support readily and keep in mind what point systems are not. That is, that they are not mechanisms for meeting specific needs, by specific employers, within the narrow timeframes that most firms operate.

My long study of point systems allows me to make the following judgments about their utility in the US context.

- Point systems should not become the centerpiece of economic stream immigration in the US. As noted above, however, there are instances in which sparing and selective use of them can be very effective, especially if the race for talent intensifies (as it is widely projected to do).

- The countries that developed the concept—Canada, followed by Australia—have continued to rely on point systems but are showing considerable flexibility by adopting several ideas from elsewhere, particularly the US! Specifically, after a period during which job offers had been assigned fewer and fewer points, Canadian and Australian employers are now increasingly allowed to bring the workers they need from abroad, albeit initially as temporary workers. In my mind, this points the way toward a future in which hybrid selections systems will dominate the immigrant selection field. Such hybrid systems would facilitate selecting immigrants in ways that are most consistent with a country's traditions and with the way in which its economy and labor market operate.
- Point systems will continue to be relied upon by increasing numbers of states during the early phases of opening themselves to international migration. The reasons are many. Some of them track those I identified in the first part of my testimony. But there are more. These countries need a way to get out of the "no immigration" traps they set for themselves over the last several decades. In their new calculus, opening themselves to the highly skilled, and doing so in ways that put the government in charge, may modulate the spike in the inevitable adverse popular reactions (and continue to satisfy their own bureaucracies' need to remain in charge!).
- As they mature as immigrant receiving societies, however, I expect even these countries to enter the high skill and competitiveness sweepstakes in the most direct way—by empowering their firms to gain access to the skills and talents they need speedily, although always with many more responsibilities and requirements after entry than the US demands of its corporate citizens today.

The future of selecting "economic stream" and employment-based immigrants, in other words, is likely to gravitate much closer to our way of doing things than the US having to move toward theirs. And when that happens, the race for the most talented – rather than those who simply have the right formal qualifications – will really be on. The immigration reforms the Subcommittee will propose will either enable US firms and the US economy to be at the top of the heap in the years and decades ahead or it will create obstacles to it.

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Ms. LOFGREN. Mr. Greenberg.

TESTIMONY OF HOWARD GREENBERG, PARTNER, GREENBERG TURNER

Mr. GREENBERG. Madam Chair, thank you very much for inviting me today.

The conversation has been quite stimulating, and it is my pleasure to bring a Canadian context to this discussion. So let me do so in the following way. I am going to deviate from my written presentation and actually respond to the language I am hearing today.

First of all, what is a point system? A point system is a mechanism of selecting between a group of people.

Mr. GREENBERG. It is as arbitrary as you want to make it. It has factors that reflect your national interest, your economy, your political agenda. So a point system is a tool only, just like a lottery is a tool for allowing a large number of people to come in.

So let's understand what the point system is in a larger context, and I think I'll try to take you through the Canadian context a bit. And I'm going to discuss—my discussion will have four aspects to it for the 5 minutes.

Number 1 is a little bit of structure of Canada. And the groupings we let people in, number 2. Why the Canadian system is broken is number 3. And the lessons that you could learn from our system is number 4.

In terms of structure, on or about November 1 of each calendar year, the Minister of Citizenship and Immigration tables before Parliament an immigration plan. An immigration plan tells the Immigration Department how many bodies to deliver in the next year and in what categories those bodies should be delivered.

So I am very intrigued by your discussion about what Congress does and what the Department does. In our system you tell the Department pretty well what the game plan is and they go ahead and implement that. They are not micromanaged by Parliament each day. It is done on 1 day and that is it for the next year.

Number 2, the groupings do not compete with one another. The government sets its priorities by, first of all, determining the volume of the immigrants that will come to Canada—for argument's sake, 265,000 on the high end—and then divides up that grouping appropriately. So there will be a certain number of groupings that are in that family class that are selected for whatever political reasons those might be. And there are a certain number that are in a range in the economic class, but they do not compete. And if you don't get one, it is not like you get more of the other.

So the nice thing about that discussion that I have heard here today is that if you decide to increase the economic class, it doesn't have to be to the detriment of another class. It all depends on what the global sum is that you start with. If you create enough capacity in the system, everybody can win. It just means how large of a system do you want to create.

And I should tell you, that debate is ongoing now in Canada, both in the forefront and the background, because there is some suggestion by the economists, some economists, one economist, that we should be moving to 1 percent of our population, which will be 300,000. So we are eeking our way up for that 1 percent. Nobody

understands the rationale to the 1 percent, but it is easy to calculate, and so we now know where the finish line is.

So I have had a chance to discuss structure with you. Within the structure you have the groupings. Now, understand, within one of the groupings you have economic, and—I'm sorry, that is the blue that has disappeared on the chart. And then you say to yourself, well, how many are you taking in that blue grouping? And if you're talking, like we are about, according to my paper, about 140 to 158,000 in that grouping, you got to say to yourself, well, we don't have a lot of money to do this; so what kind of instrument can we use, what kind of blunt instrument can we use that we can sift these people through where we don't have to touch 158,000 people and interview them and expend a huge amount of money? And the answer is, why not just get a point system? So we started with a point system.

We would run them all through the point system like flour through a sifter. But what did we find out about the previous point systems, that arbitrary system of selecting people? We found out that the criteria was not objective enough. It was too subjective. We had visa officers looking into people's eyes trying to figure out if they were personally suitable to come to Canada, and then say, I don't think so, I'm giving 2 points out of 10. Court challenges all over the place that decisions were too arbitrary. Language testing by a visa officer saying, say that to me again in English so I can hear how you say that; read me from a book.

So when we got to the point of June 2002 when the new legislation came into effect, the answer was let's overhaul this thing and do a comprehensive immigration change. And we did. We were where you are now. And so if you sat in a small room with some of the decision makers like I did, and we had some focus discussions about what are we really doing here, they would say, look, our number one principle is we want to make this so objective that we don't have discrepancy amongst visa officers in the world. They don't like you in China, you fail; they like you in Hong Kong, you pass. Same guy being assessed. They don't want that. So let's see if we can make it more objective.

But how about that language test? Well, there is this international language test, ILs. We'll choose a pass point to 7 for maximum points. You write the test. Everyone writes the same one in the world. Great.

What about the rest of the criteria? Well, I don't know, we kind of make up something, like your spouse has education, we'll give you 5 more points; you got a job in Canada, you get 10 points. In other words, let's just throw together a whole combination. Great. Now what happens? Let's create a pass rate.

Ms. LOFGREN. Mr. Greenberg, we need to have you——

Mr. GREENBERG. Okay. Start a pass rate of 70. We move down to 67 points at the end of the day, pass rate. Why? It is arbitrary. And that is the tool that was used and that is the tool that is used.

Here is the problem with the system. If you are coming in through the system and you are coming in through employment-based jobs, you are getting your credit, you have a job offer, you are getting off the plane and you are hitting the ground running, great.

If you are getting off that plane and you don't have a job offer in your hand, even though you have made a sufficient number of points, your point of assimilating into Canadian society is delayed considerably, if not permanently hampered. You are unemployed for months on end, and if you do get employment, you don't get employment in the standard that you left your country at. You come off the plane as an engineer, but you never practice as an engineer.

So that is the breakage in the system, is that you don't come back into the system where you left your own country. And that is why the emphasis in my paper is an employment-based system. That is why I think you kind of got it right with the H visas. Thank you.

[The prepared statement of Mr. Greenburg follows:]

PREPARED STATEMENT OF HOWARD GREENBERG

May 1, 2007

Testimony before the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law

The Use of a Point System in Selecting Immigrants: Lessons from the Canadian Model

Presentation by Howard Greenberg
Greenberg Turner,
A Human Resources Law Firm

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The Use of a Point System in Selecting Immigrants: The Canadian Model

Madame Chairwoman and Distinguished members of the Committee.

My name is Howard Greenberg. I am a partner in the law firm of Greenberg Turner in Toronto Canada and have been practising immigration law for more than 22 years. I have held the position of Chair of the Citizenship and Immigration Section of the Canadian Bar Association, the Chair of the Citizenship and Immigration Section of the Ontario Bar Association and immediate past Co-Chair of the Immigration and Nationality Committee of the International Bar Association. In addition, I have had the opportunity to work closely with prior Ministers of Citizenship and Immigration and their staff with respect to the development of immigration laws and policy.

It is indeed a privilege, as a Canadian, to address the Committee today on the Canadian experience with selecting immigrants using a point system. At the outset, it is to important consider a brief outline of the Canadian immigration system and the role which the point system plays in effectively selecting appropriate immigrants.

I. The Organization of the Canadian Immigration Process – An Annual Plan

Each year, the Minister of Citizenship and Immigration tables an Annual Report to Parliament setting out the immigration targets for the following calendar year. The 2007 Plan prescribes a target of between 240,000 to 265,000 admissions.

The composition of this immigration movement consists of the following groupings:

Economic Immigrants:	141,000 – 158,000
Family Class:	67,000 – 69,000
Refugees:	25,900 – 30,800
Others:	6,100 – 7,200

Economic immigrants primarily consist of the following subgroups or categories:

• Skilled Workers	**Using a point system**
• Quebec Skilled Workers	**Using a point system**
• Provincial Nominees	**Selected by Provinces based on Provincial criteria**

At the outset, it is important to recognize that Canada processes immigrants using 2 different methods:

a. *Selection Process (Economic)* – individuals are evaluated based on their qualifications – if they have the appropriate mix of attributes, success can be achieved. i.e. the Skilled Worker Category utilizes a point assessment system to select immigrants.

b. *Admission Process (Family Class)* – Applicants are primarily granted entry as immigrants based on relationships to Canadian citizens or permanent residents of Canada; their personal attributes are not assessed against objective criteria.

Under Canada's selection process, a points system accounts for approximately one half of the annual immigration flow.

II. The Structure of the Point System

The point system's application is based on 2 basic premises. First, a minimum point total must be achieved, subject to a limited opportunity to overcome an inadequate point assessment in individual cases. Second, criteria may be used as an additional or secondary threshold for qualification – i.e. the lack of one year of the prescribed work experience would constitute a bar to success, notwithstanding the attainment of the requisite points.

The point system is designed to evaluate factors which are viewed as being central to an immigrant's ability to become economically established in Canada. (See Schedule I). The factors of assessment include Age, Education, Work Experience, and Language Capability in Canada's official languages, Arranged Employment and Adaptability. The threshold for success or pass rate is fixed at 67 points.

The criteria were designed to be capable of being applied objectively by a decision maker. – There was a recognized need to remove any aspect of subjectivity from the assessment process to promote fairness and equality of treatment.

III. The Perceived Benefits of Utilizing a Point System

The point system is, in reality, simply one of many tools which are available to immigration policy makers to assist in distinguishing appropriate applicants within an international labour pool. Its attractiveness lies in the following perceived benefits:

a. Applicants can self select by simply applying the criteria to their individual situations – if the applicant achieves the pass mark, he or she can apply with some degree of certainty.

b. The cost of administering a point system is relatively small as the criteria are limited to objective criteria which permits, in most cases, adequate paper screening. The need for interviews is therefore limited to investigating fraudulent representations or obvious inconsistencies in the information provided.

c. The adjustment of the pass mark from time to time can be used as tool for controlling the flow of successful applicants which can succeed.

d. Selection criteria can be modified from time to time, as required, to adjust the characteristics of the applicants selected – the qualifying pool can be adjusted in much the same manner as selection criteria is adjusted from year to year to address admission requirements at universities.

e. The use of a point system can reward applicants who have job offers from Canadian employers by allocating points which effectively enhance the prospect of selection considerably. Essentially, there is a capability to micromanage the applicants by their individual characteristics to create selection systems within the point system itself by assigning priorities.

IV. The Canadian Experience In Using a Point System

One would think that the benefits outlined above would make a most compelling argument for implementation of a point system, as a cornerstone of a national immigration policy. The Canadian system, in its present form, does not support this premise. It is important to evaluate the effectiveness of selecting a high proportion of a targeted number of immigrants by this process.

a. *Opening the Immigration Door Too Wide – Forfeiting Selectivity*

In the Canadian scenario, the threshold mechanism for controlling applicants is the demonstration of one year of work experience and the achievement of the required 67 points. As noted in Schedule I, the attainment of 67 points is not difficult – the reality is that an extremely large number of educated population of mobile workers qualify.

As a result, it is clear that current point selection system directly and indirectly raises fundamental issues as to whether this is an appropriate tool for selection in its current form. Consider the following:

- The door is open to applicants who do not have valid job offers from Canadian employers. Schedule I illustrates how a candidate can succeed under the Canadian point system without a job offer from a Canadian employer. A considerable number of applicants, in fact, achieve permanent resident status with first obtaining a job; they cannot enter Canada and "hit the ground running". The period of time for integration can be considerable.
- The consequences of the failure to secure a job prior to immigration can have long term implications in terms of prospects for successful establishment or settlement in the following respects:
    - i. Failure to undertake their chosen professions due to licensing or accreditation issues;
    - ii. Failure to obtain substantially similar employment to that enjoyed prior to immigration – with decreasing prospects as the period of post immigration unemployment continues.
- We are continually confronted with stories of professionals such as doctors who perform low skill occupations in Canada such as driving taxis. The presumption that the immigrant will attain equal employment prospects based on a simply point assessment is clearly false and tends to create inappropriate expectations from both the immigrants perspective and the perceptions of Canadians.

Professor Jeffrey Reitz, a noted Canadian authority on immigrant settlement raises critical issues in his article, *Tapping Immigrants' Skills: New Directions for Canadian Based Economy Immigration Policy in the Knowledge*, Economy Choices Vol. 11, no. 1, February 2005 ISSN 0711-0677 www.irpp.org:

Because of changes in recruitment and hiring practices, qualified immigrants appear to be having increasing difficulty gaining access to work in knowledge occupations (Reitz 2003b). As a result, they end up working in less-skilled occupations than do comparably qualified native-born Canadians. In 1996, 59 percent of native-born men with bachelors' degrees were working in knowledge occupations, compared with only 35 percent of recent immigrants (arriving in the previous five years) with bachelors' degrees. The corresponding figures for women were 57 and 28 percent. Of men with postgraduate degrees, 79 percent of those who were born in Canada were working in knowledge occupations, compared with only 59 percent of recent immigrants. The corresponding figures for women were 78 and 49 percent. Between 1981 and 1996, as the importance of knowledge occupations has increased, the differences between the income levels

and representation in knowledge occupations of native-born Canadians and immigrants have grown as well. Despite the increases in the skill levels of new immigrants, their representation in knowledge occupations was lower in 1996 than it was in 1981 (Reitz 2003b, 485, 495).

This is not to say that the use of a point system is solely responsible for disparity in income between immigrants and native born Canadians, but its application may certainly contribute if the criteria for selection are not or cannot be sensitive to the labour market.

- The receipt of more applications than can be processed in any fiscal year is a recipe for disaster. Consider a simple illustration. A bathtub is constantly being filled with water – there is no tap and therefore no restrictions on the volume of water entering the tub. However, the drain is of a fixed size – the volume of water which can be discharged is less that volume entering the tub.
- In the Canadian scenario, the 67 point pass rate attracts an unlimited number of applicants, which simply means the tap constantly runs. The drain, being the annual immigration targets, limits the amount of water that can escape. It is not surprising that Canada's bathtub is overflowing. Canada now has an inventory of over 800,000 immigrant applicants, which is far in excess of the number which can be processed in a reasonable period of time. These applicants will, in many situations, have to remain in queue for years before they will become eligible to receive their permanent resident visas. This problem is well recognized by Canadian immigration officials – a Simplified Application Process has been implemented which simply requires an applicant to file a one page application to reserve a place in line. The full application package will be requested at a future date, when there is sufficient capacity in the system.
- The upward adjustment of the 67 point threshold is fraught with issues. First, it is difficult to assess what the inpact will be on the immigration flow. In other words, what is the appropriate point threshold. Second, by selecting a particularly high point threshold, the number of candidates who may succeed drops considerably; effectively the immigration system is perceived to be closed. If this occurs, it may take a considerable time to again attract a high number of qualified applicants – the closing of a selection system creates a perception that immigrants are unwanted. This was Canada's experience when it closed the skilled worker category in 1981.

V. What Can Be Learned About Successes of the US and Canadian Immigration Systems

Despite harsh criticisms of US immigration laws and policies, there is considerable merit in the overall approach taken to economic immigration. The use an employer driven model offers clear benefits.

- By and large, US non immigrant visa holders tend to "hit the ground running." They arrive in the US with professional job occupations and commence working in their areas of study from the time of entry. The prevailing wage requirement discourages the underutilization of a worker's education and experience. The transition of temporary workers to permanent status in these circumstances avoids issues which arise in the Canadian scenario - the Canadian assessment criteria uses a "blunt instrument" of selection without predictability.

- Within the Canadian system, there are 2 opportunities to select immigrants based on employer preferences. In both of these situations, there has been considerable success in immigration selection based on the employer selection or employer driven model:
    - First, within the selection criteria, immigrants with job offers achieve additional points. There is a connection between an employer and the applicant, which permits the applicant to hit the ground running. Accordingly, there is an attempt by immigration officials to process applicants with job offers quickly. In many cases, the applicants are already in Canada on work permits.
    - Second, applicants may be selected by Provinces under new powers provided to Provinces under Provincial Nominee Agreements entered into with the federal government. Simply described, Provinces authorized under such Agreements can approve requests from employers for key foreign workers. Visa offices expedite processing of their Permanent Resident applications; in many cases the processing times are officials by more than 50 percent.

VI. Conclusion

It is respectfully submitted that an immigration policy which is premised on a point system will face considerable challenges, particularly if this tool designed to select a high number of applicants. In addition to the logistics of getting the correct mix of selection criteria, it is likely that considerable resources will be required to undertake evaluation of individual applications. Open ended selection criteria should not take the place of the fundamental criterion for success: a bone fide job offer in an occupation consistent with the applicant's education, training and experience.

A concluding comment relates to the need to implement an appropriate inventory control system. The model may not be dissimilar to the strategy undertaken by major retailers such as Wal-Mart. A "just in time" system would receive applications from candidates in a process which the completion time and process are well established. In other words, the volume of applications is determined and controlled by the number of applications and prescribed number of visas which may be issued during the relevant period. A system which meets immigrant expectations and enjoys the confidence of the public is one which provides predictability and is well managed.

The obvious goal is to avoid trading one backlog for another – any selection system must be streamlined to permit processing in a timely fashion.

Schedule I

Six Selection Factors and Pass Mark – Pass rate 67

Sample Evaluation: Software Worker, 35 years old, Degree, 4 years working experience, Fluent in English, No Job offer or relatives in Canada

Factor One: Education	Maximum 25	Sample Evaluation
You have a Master's Degree or Ph.D. and at least 17 years of full-time or full-time equivalent study.	25	
You have two or more university degrees at the bachelor's level and at least 15 years of full-time or full-time equivalent study.	22	
You have a three-year diploma, trade certificate or apprenticeship and at least 15 years of full-time or full-time equivalent study.	22	
You have a university degree of two years or more at the bachelor's level and at least 14 years of full-time or full-time equivalent study.	20	20
You have a two-year diploma, trade certificate or apprenticeship and at least 14 years of full-time or full-time equivalent study.	20	
You have a one-year university degree at the bachelor's level and at least 13 years of full-time or full-time equivalent study.	15	
You have a one-year diploma, trade certificate or apprenticeship and at least 13 years of full-time or full-time equivalent study.	15	
You have a one-year diploma, trade certificate or apprenticeship and at least 12 years of full-time or full-time equivalent study.	12	
You completed high school.	5	

Factor Two: Official Languages	Maximum 24	
1st Official Language		16
High proficiency (per ability)	4	
Moderate proficiency (per ability)	2	
Basic proficiency (per ability)	1 to maximum of 2	
No proficiency	0	
Possible maximum (all 4 abilities)	16	
2nd Official Language		
High proficiency (per ability)	2	
Moderate proficiency (per ability)	2	
Basic proficiency (per ability)	1 to maximum of 2	
No proficiency	0	
Possible maximum (all 4 abilities)	8	
Factor Three: Experience	**Maximum 21**	
1 year	15	
2 years	17	
3 years	19	
4 years	21	21
Factor Four: Age	**Maximum 10**	
21 to 49 years at time of application	10	10
Less 2 points for each year over 49 or under 21		
View the full age chart to determine your points.		

Factor Five: Arranged Employment In Canada	Maximum 10	0
You have a permanent job offer that has received a positive labour market opinion from Human Resources and Social Development Canada (HRSDC).	10	
You are applying from within Canada and have a temporary work permit that was:		
issued after receipt of a positive labour market opinion of your job offer from HRSDC; or	10	
you have a temporary work permit that was exempted from the requirement of obtaining a labour market opinion from HRSDC on the basis of an international agreement (e.g., NAFTA), a significant benefit to Canada (e.g., intra-company transfer) or public policy on Canada's academic or economic competitiveness (e.g., post-graduate work).	10	
Factor Six: Adaptability	**Maximum 10**	**0**
Spouse's or common-law partner's education	3 - 5	
Minimum one year full-time authorized work in Canada	5	
Minimum two years full-time authorized post-secondary study in Canada	5	
Have received points under the Arranged Employment in Canada factor	5	
Family relationship in Canada	5	
Total	**Maximum 100**	
Pass Mark	**67**	**67**

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http://www.cic.gc.ca/english/skilled/qual-5.html

Ms. LOFGREN. Mr. Kaplan.

TESTIMONY OF LANCE KAPLAN, PARTNER, FRAGOMEN, DEL REY, BERNSEN, AND LOEWY

Mr. KAPLAN. Madam Chairwoman, Members of the distinguished Subcommittee, thank you for the opportunity to testify today. I won't repeat what I have previously indicated in my written testimony, nor will I repeat the factors which are inherent in most of the countries' points-based systems. But I will focus some of my remarks today in relation to Australia specifically.

The most important issue to note from a comparison of other countries' immigration systems is the realization that other countries who compete against us for global leadership and innovation are more aggressively harmonizing their immigration policies with their economic needs.

In this knowledge-based economy, the key to success of any venture is having the right talent in the right place at the right time. The priorities that we have established within our immigration system have caused doors to be closed to such talent, albeit sometimes unintentionally.

The question to consider for us is whether a points-based system will help us secure this much-needed talent within our vibrant economy. The concept of assigning points to immigrants first arose as a way for most countries to increase population by attracting industrious people into their workforce. In essence, a point-based immigration system allows the government to socially engineer its demographic. It is well accepted that Australia is considered to have a very effective points-based system and allocates points according to the age, skill-level, English language, and whether the occupation is in demand. And of course, there are other factors which have been mentioned here today.

But whether a points-based system is appropriate for the United States requires careful consideration of the following issues:

First, it must be flexible and respond to market changes. And would such a system work as well in our form of Government as it does under a Parliamentary structure where the government of the day establishes and implements policy in a more expedient manner? We cannot be responsive to market changes if we have to go through a legislative process each time we have to amend a list of jobs or adjust a pass mark.

Second, even if Congress were to use its authority to delegate immigration policy to either the USCIS or the Department of Labor or the Department of State, is the rulemaking process necessarily more nimble or responsive to market demands? In 1990 Congress authorized the Department of Labor to place a list of shortage occupations on Schedule A. For the past 17 years, even though the structure of our economy has gone through many changes, and we have been through many business cycles, Schedule A has remained static. By contrast, Australia reviews its lists every 6 months.

Third, what outcome do we as a Nation want to achieve with a points-based system that is not accomplished in the current system? A point-based system is one way to socially engineer a demographic when an influx of immigrants is needed to boost the country's workforce. The United States, as my colleague mentioned ear-

lier, is not in that situation. What we need are qualified people to fill skill or labor gaps. And as such, a point-based system must be sufficiently flexible to identify particular needs of U.S. Employees and not just generalized credentials.

One way to achieve this flexibility is to provide greater point value for prearranged employment or advanced education and experience. But it is unclear what results such a system would produce that differs from the current American system of employee-sponsored preference categories. Therefore, it must be clear as what we have achieved through this points-based system that cannot be achieved by removing from our system the obstacles of arbitrary quotas and processing delays. That is a really important point.

It is also important to note that the points-based system is an avenue to address one component of an entry program into the country. But it cannot and should not be viewed in isolation or to the exclusion of any other component of a well-contemplated, broader immigration program.

The political administrator of economic structures of the U.S. economy are different from those of other countries currently administering a points test as part of the immigration programs. We have the fundamentals of a good system that addresses the economic needs of the United States. However, I believe that we need to sharpen the economic focus and significantly improve the procedural elements within our current existing program. And this will improve our ability to not only compete for, but actually bring in and absorb, skilled workers so that we can continue to reap the benefits of immigration.

I also wanted to mention two important points. Most other countries, when they have a points-based system, use the points-based system for permanent residents primarily. When we have this discussion it is important to note that we have a temporary need for immigrants, we have a permanent need for immigrants, we have a permanent need for immigrants that are going to come in under the employment-based program and under a family-based program in a points-based system. In whichever way we ultimately decide to implement it, if we actually do, we would benefit greatly from fixing our current system, which would form the basis of the points-based system going forward, as well as potentially respond to the issues which the Senator——

Ms. LOFGREN. We are going to ask you to wrap up so we can hear from Mr. Rector.

Mr. KAPLAN. Sure.

—which the Senator referenced in relation to the illegal immigration provisions. And with that, I will conclude, and thank you for the opportunity.

[The prepared statement of Mr. Kaplan follows:]

PREPARED STATEMENT OF LANCE KAPLAN

TESTIMONY OF LANCE KAPLAN
Hearing before the United States House of Representatives
Committee on the Judiciary, Subcommittee on
Immigration, Citizenship, Refugees, Border Security and International Law
"Use of Point Systems for Selecting Immigrants"
May 1, 2007

Introduction

Madam Chairwoman, members of this distinguished subcommittee, thank you for the opportunity to testify before you today. My name is Lance Kaplan and I am the Managing Partner of the International Practice Group at Fragomen Del Rey Bernsen & Loewy LLP., which is the world's largest immigration law firm with twenty-nine offices in ten countries. My duties include assisting a clientele of multinational businesses with the mobility of their highly skilled employees across international boundaries. I practice both U.S. immigration and am a registered Migration Agent in Australia with experience in the practice of Australian immigration law. My legal career has focused entirely in the area of world-wide immigration since 1988. It is a privilege to share with this subcommittee my professional experience with, and insight into, measures that countries outside the United States are taking to recruit the world's best talent, including the implementation of a point-based selection system in some countries, and how such a system could fit into the U.S. political and economic objectives.

Policy Considerations for Immigration of Highly-Skilled Professional

Since other distinguished panelists today are discussing in detail the history of the point-based system and how they have been implemented in other countries, I will simply reiterate that countries such as Australia, Canada, New Zealand and the United Kingdom use the point-based system to favor persons with skill sets that are needed in these respective job markets. If there is a lesson for us as Americans to learn from these countries, it is a realization that other countries are more aggressively harmonizing their immigration policies with their economic needs by focusing often and more heavily on economic considerations over other factors, including family unification. Indeed, the twenty-first century economy provides unparalleled opportunities for collaboration and innovation. In this knowledge-based economy, the key to success of any venture is having the right talent in the right place at the right time.[1] Consequently, the competition for talent continues to intensify.

According to a recent survey, almost half of all British business leaders plan to recruit MBA graduates from China to compensate for a shortfall of skills – notably language skills – needed to work in and trade with China.[2] Declining birthrates have caused some industrialized countries to face an even more acute skills shortage than that which exists in the United States. At the same time, developing countries are increasing efforts to entice their domestic talent to study and work at home. The Chinese, for example, are determined to create a super-league of universities to

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[1] *The Global Economy's Last Barrier: Cross-Border Mobility of Highly Educated Workers*, The Executive Working Group on Global Mobility Policies, Jan. 2002, at 17.

[2] Peter Walker, The Challenge of China: How No Business School Can Ignore the New Giant. CNN.Com (Aug. 14, 2006).

rival the best in the world, and also are offering special financial and professional incentives to returning nationals.[3] A key component of corporate strategic planning is to recruit, hire and retain the best talent available, be it local or foreign. Whether a particular country's political policies foster or impede access to talent is becoming an increasingly important factor in decisions about where to invest and where to conduct research and operations.[4]

Despite the clear need for talented foreign professionals, current U.S. policies often close our doors to such individuals. Obstacles include months-long, and sometimes years-long, visa processing delays, arbitrary quotas limiting the number of professionals who can come to work each year, layers of "red-tape" that drain an employer's resources, and a pervasive perception abroad that the United States no longer welcomes foreign professionals and their families. In fact, at no time in our nation's history has the access to talent been as limited as it is today.

Most illustrative of this fact is that the fiscal year 2008 quota for H-1B visas (used to hire, among others, foreign graduates from U.S. universities) received twice the number of applications on the very first day of filing than spaces available.[5] Even the quota for persons with advanced degrees is close to being exhausted. U.S. employers and employees are anxiously awaiting the results of a lottery where half the applicants who followed all the rules and whose applications were filed the *first day* will have their dreams and career plans shattered. Because the lottery is completely random, there is no way for an employer to choose which of its H-1B applicants wins. Talented foreign professionals are postponing graduation, returning to graduate school and looking for work abroad in the hope of riding out this H-1B disappointment. Employers are considering how they will move projects abroad or postpone client contracts until October 2009 when they will have another shot at hiring H-1B workers. Our foreign competitors have followed this drama as well and are taking advantage of this opportunity to hire talented professionals disillusioned with our system.

In addition, there are significant backlogs in our permanent or "green card" system. We recently experienced backlogs where even some professionals deemed to have "extraordinary ability" or "exceptional ability" had to wait several years for a visa to become available– and these are the Ph.D. scientists at the cutting-edge of research. Other desperately needed professionals face an even longer backlog. These backlogs are due to politically imposed numerical limits established at a time when our economy was smaller and even less dependent on technology, research and science than it is today. Even where a visa is available, there are months-long delays in processing an application and obtaining a visa interview, which result in significant losses to our businesses and research facilities. Security checks that take years to complete further frustrate employers and employees alike.

Our self-imposed limitations put America at a grave disadvantage. As a nation, we are educating some of the brightest scholars and researchers from around the world, only to send them to our competitors because there are no visas available.[6] Many companies have moved meetings, training and projects, and even in some instances lucrative contracts, abroad to avoid visa

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[3] Oded Shenkar, *Dawn of the Chinese Century*. (Wharton School Publishing, 2005).

[4] *The Global Economy's Last Barrier*, at 11-13.

[5] USCIS Update, *USCIS Updates Count of FY 2008 H-1B Cap Filings* (Apr. 10, 2007).

[6] *See, e.g., Visa Policies Rob U.S. of a Valuable Labor Source*. Dallas Morning News (Aug. 7, 2006).

problems and barriers. The current situation also sends the world a dangerous message that foreign talent is no longer welcome here. In sum, our current immigration system is a tremendous impediment to our ability to compete worldwide.[7]

The reality for American employers is that our education system does not produce a sufficient number of professionals that are able to compete in today's economy. As evidence of our changing economy, job opportunities that require a degree are rising at twice the rate as those requiring only on-the-job training.[8] Some estimate that by 2010, ninety percent of all science and engineering Ph.D.s will come out of Asia.[9] According to the National Science Foundation, in 2000, foreign-born scientists accounted for over fifty percent of U.S. engineers with a Ph.D., and forty-five percent of our life scientists, physical scientists and math and computer scientists holding doctoral degrees.[10] These percentages are only increasing over time as our children pursue other degrees. We already have policies that encourage U.S. youth to pursue these careers, which include the education and training fees we pay with each H-1B visa petition, and we must continue to do more. At the same time, we must recognize the global nature of the economy and market for highly-educated professionals. Experts have warned that with fewer foreign science and engineering workers, fewer U.S. citizens with science degrees, and increased competition from abroad, "the U.S. [science and engineering] work force growth will slow considerably, potentially affecting the relative technological position of the U.S. economy."[11]

The answer to this anticipated skilled labor shortage lies in both our education system as well as in our immigration system. U.S. employers invest billions of dollars each year in education initiatives and they strongly support competitiveness legislation pending before this Congress. However, if we cannot expect to produce a sufficient number of science and technology professionals domestically, then we must remove the obstacles to our ability to recruit and retain international talent. One such obstacle is that our immigration laws have not been significantly updated for almost twenty years. Legislation passed since 1990 has been, at best, reactionary measures that address only narrow and short-term needs. At worst, our lengthy legislative process causes whatever policy we create to be a step behind the marketplace's reality. Fortunately thus far, despite the obstacles to recruiting or retaining the necessary talent for American employers, there remains one advantage that the United States still has over virtually all other countries: we are one of the greatest democracies on the face of the earth and people want to live here. Aside from purely economic considerations, many executives and managers want to stay here for the quality of life and the freedoms upon which this country is based. In addition to some of the finest research and educational institutions in the world, we also have the most robust laws to protect entrepreneurs and businesses. However, even the appeal of living

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[7] *See, e.g.*, Jeffrey Natchtigal, *Access Denied, Are Tightening Security Measures Harming Science at Cal*, Berkeley Science Review, Vol. 4, No. 1, at 19-23 (Spring 2004).

[8] Frances Cairncross, The Idea of A University, Global Agenda, at 226-27 (2006).

[9] Mervis, Jeffrey, *Perceptions and Realities of the Workplace*, Science, Vol. 304, Issue 5675, 1285-85 (May 28, 2004).

[10] *Science and Engineering Indicators-2004*, The National Science Board, National Science Foundation, at O-13, O-5 (2004).

[11] *Science Board Warns of Uncertain Future for US Science and Engineering Leadership*, Physics Today, (Jul. 2004).

and working in a place of such opportunity cannot indefinitely compensate for the shortcomings of our immigration system. If our immigration policies and practices continue to deter the recruitment or retention of the best the world can offer, the top talent will go elsewhere and we will find ourselves watching other countries prosper at our expense.

Reasons Why Some Countries Have a Point-Based System

Those who prefer the point-based system say that it provides more clarity, consistency and transparency to an immigration system, and removes subjectivity from the selection process. Moreover, such a system allows policy makers to implement policies that promote the values that country embraces, whether the value is placed on importing skills that are in demand, increasing the highly-educated population, or giving preference to other considerations such as age, language proficiency, family unity or humanitarian need.

The concept of assigning points to intending immigrants first arose as a way for some countries to attract industrious and productive people into their workforce. These were countries whose job markets required an influx of labor, but who also wanted to be sure that those coming into their workforce had the attributes to become successful, and whose presence would likely result in a net benefit to the economy. In essence, a point-based immigration system allows the government to socially engineer its demography.

The world's other major migrant accepting countries--Australia, Canada, New Zealand and the United Kingdom--have, or are in the process of adopting, a point-based selection process for certain elements of their immigration program. Canada was the first to adopt such a system in 1967 after recognizing that a universal, non-discriminatory immigration policy (which it adopted in 1962) posed a problem in the skill level of new arrivals. The system awards points for education, language ability, employment experience, age, arranged employment and adaptability.[12]

From my experience, Australia is generally considered to have the most effective points test system. Indeed both New Zealand and the United Kingdom have modeled their own points tests on the Australian system. I shall therefore specifically address the key elements of the Australian system.

The Australian points test has been in place for more than twenty years, but in the last ten to twelve years there has been a distinct emphasis placed on using the points test as one of the primary mechanisms to sharpen the economic focus of the annual immigration intake. Indeed, about seventy percent of the immigration program is devoted to skilled categories, while the remaining thirty percent is devoted to close family reunion categories.[13] Of this seventy percent allocation to skilled migration, more than half are subject to a points test.[14]

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[12] Queen's University, *Impacts of the Point System and Immigration Policy Levers on Skill Characteristics of Canadian Immigrants*. Queen's Economics Dept. Working Paper No. 1115 (Mar. 2006).

[13] Australian Government, Department of Immigration and Citizenship, *Key Facts in Immigration*. http://www.immi.gov.au/media/fact-sheets/02key.htm

[14] Australian Government, Department of Immigration and Citizenship, *Overview of Skilled Migration to Australia*. http://www.immi.gov.au/media/fact-sheets/24overview_skilled.htm#a2

The test allocates points accordingly to the person's age, skill level (which is a combination of formal education and employment experience), English language skills and whether the occupation is in demand. There are other "bonus" point elements in the test which recognize factors such as relatives in Australia, funds available for transfer and spouse skills. These are all considered measurable elements designed to ease a person's migration experience and ensure the program is attracting those most likely to succeed in their new country.

The Australian Government has tried to address one of the main criticisms of a points based selection system - that it is not responsive to changes in the needs of the employment market – by introducing the Migration Occupations in Demand List. This list is reviewed every six months and regularly updated when necessary by the Department of Employment.

So, in summary, the Australian system deliberately targets young, English speaking, highly skilled people in particular occupations considered in demand as part of a program with a strong economic focus. They have coupled this with a robust public education study to show the public the economic benefits of the immigration program, thereby building a better level of broad public support. This was initially achieved through the Bureau of Immigration Research, a Government funded but independent academic research house that researched the various benefits (or otherwise) of a structured immigration program. This research led to a far more informed immigration debate in Australia than had previously occurred.

However, it is fair to say that while these stated ideals are generally admirable, there is no doubt that a point-based system, including one as sophisticated as Australia's or Canada's, can be arbitrary and unforgivingly tough in clearly targeting particular outcomes. What is not measured is who does not succeed at the points test but who would otherwise make an excellent and valuable migrant. It is for this reason that if we contemplate the introduction of a point-based selection system, it must be anchored in broad and comprehensive review of our immigration programs.

Issues to Consider When Implementing a Point-Based System in the United States

While we certainly must be aware of what other countries are doing to attract workers who possess skills that match the needs of their economies, we must consider the particular nature of the U.S. economy and its political system vis-à-vis those of the countries utilizing a point-based systems when deciding *how* to stay competitive through immigration reform. I testified before the Senate Immigration Subcommittee last year that, historically, the world has looked to us for leadership and have emulated *our* policies. My point then was, and still is, that while other countries are looking for ways to attract highly skilled workers, current U.S. immigration laws and procedures actually hinder our ability to do the same. What we need to do is to reform our visa system so that we have better access to needed talent. *How* we reform our system largely depends on what works best for our country given our economy and political system, and we should look at the best of all components of other countries systems, and extract those elements which best suit our country's needs and systems.

Whether we adopt a point-based system requires careful consideration and meticulous planning. At a minimum, we must address the following threshold issues:

First and foremost, we live in a dynamic and global economy. The needs of our job market change continually while Congress has historically only revamped our immigration laws every

fifteen to twenty years, with minor adjustments in the intervening years. If we were to have a point-based system that gives preference to one set of skills over another, then that system must be flexible, and the bureaucracy and politics must not get in the way of that flexibility.

A characteristic of the Westminster, or Parliamentary political structures in Australia, Canada, New Zealand and the United Kingdom is that there is far less separation of executive power than exists in the U.S. democratic system. As a result the government of the day establishes and implements policy, including immigration policy, in a far more expedient manner. That is not to say their systems do not contain the same checks and balances but the time taken to implement changes is significantly less. This is a practical issue which makes a significant difference in accomplishing much needed change. For example, in the Australian system, the power to establish the precise criteria for the points test rests with the Minister for Immigration, with some oversight by the Cabinet. The Migration Act determines that there should be a points test within the migration program and changes to the Act require approval of both houses of Parliament. However, the Act delegates authority to determine key elements of the points test, such as the "pass-mark" and the Occupations in Demand to the Minister, who implements it through Government Regulation or Gazette Notice. The opposition does not generally have the opportunity to directly influence policy unless the change requires a parliamentary vote.

A points test requires the ability to quickly change elements of the test to address changes in the labor market or shifting government priorities. The more direct executive powers of the Westminster system allows for this flexibility but equally removes the power of oversight and review by Congress we enjoy in the United States. The only way a point-based system could operate effectively in the United States is if upon enactment a practical procedure were included to allow for the necessary adjustments to take place at a meaningful level.

Given that in the United States the lawmakers and law enforcers are in two different branches of the government, and Congress has plenary authority to make immigration policy, how much authority is Congress willing to cede to the Executive Branch? Recently Congress has taken exception when the Executive Branch raised immigration issues as part of trade negotiations. If Congress were to retain its plenary authority in this area, then how expedient would it be to have to go through the legislative process every time the needs of the market changes and we need to adjust point allocation?

While I believe there are a number of benefits in a points test selection system, it would be necessary to define what decision making power would be ceded to which agencies, whether there would be role for an independent advisory group (as some have recommended) and what oversight role Congress would retain. Otherwise, a point-based system could become unwieldy.

Second, even if Congress were to enable this element of policy making in this limited area to the appropriate Executive branch office or agency, is the rulemaking process necessarily more nimble or responsive to market demands? It is not clear that the Department of Labor currently has the infrastructure in place to readily determine market shortages to the same extent that agencies in other countries do. One example is the creation of the "Schedule A" for shortage occupations.[15] In 1990, Congress conferred authority on the Department of Labor to designate certain occupations as exempt from the normal labor market tests due to the great demand for workers. For the past seventeen years, even though the structure of our economy has gone

[15] 20 CFR 656.10,

through many changes and we have been through several business cycles, Schedule A has remained static and includes only physical therapists, nurses and certain persons of exceptional ability in the sciences and arts. Efforts to amend Schedule A to account for demand during the "dot.com" boom were fraught with controversy. Determining shortages in an economy as large, diverse and dynamic as the United States is not easy. However, if we are to move to a system where a government bureaucracy would assign point values to each occupation, we need to be able to revisit these point values more frequently than once every seventeen years.

Third, what outcome do we as a nation wish to achieve with a point-based system that is not accomplished with the current system? As I mentioned earlier, a point-based system is one way to socially engineer a demographic when an influx of immigrants are needed to boost the country's workforce. The United States is not in that situation. What we need are qualified people to fill skill or labor gaps, throughout all sectors of the economy. As such, a point-based system must be sufficiently sophisticated to identify particular traits, and not just generalized credentials. Our current immigration already has mechanisms in place which are meant to address this. For example, foreign nationals deemed to possess "extraordinary ability" or whose presence is deemed to be in our "national interest" may petition for an immigrant visa without the sponsorship of an employer. This is reserved for the very few in this world whose presence is presumed to be beneficial, regardless of actual demands. For the rest of the employment-based immigrant population, the United States admits them based upon the most reliable indicator of true market needs – requests from employers who are willing to devote the extra time and resources required to hire a foreign national. A point-based system might be appropriate for certain segments of the job market, as addressed in Senator Chuck Hagel's "Immigrant Accountability Act of 2007," which he just introduced last Thursday. However, we do not yet have a model for a point-based system that would apply throughout all sectors of our economy. The point being that to just implement a point-based system in and of itself is not the sole solution here. We must adapt current programs to be more facilitative and efficient. All that effort, if correctly implemented, will not be lost if Congress then determines that a point-based system is warranted, because the same issues which need to be fixed will be required to be put in place if a viable points system is to be established. Therefore no effort will be wasted in fixing elements of the current system as they will serve any type of new points system to be introduced. Both can be worked on simultaneously if Congress is serious about immigration reform.

Fourth, to the extent that any subjectivity remains in a point-based system that the United States implements, it begs the question whether employers, who know exactly what qualities they want in an employee, or bureaucrats would be in the best position to determine who has the best attributes to serve America's economic interest. For example, in some point-based system bureaucrats award extra points for characteristics such as "adaptability" or "ability to learn" as determined during an interview. The American system of employer-sponsorship has been enormously successful over the years in attracting and identifying individuals with the skills needed to thrive in our society. Employment-sponsorship also provides a path toward assimilation and integration at no cost to the public.

It is important to note that having a point system does not necessarily mean a complete abandonment of employer sponsorship. As stated above, of all the skilled immigrants to Australia, more than half received status by passing a points test. The remainder gained entry through employer sponsorship. Furthermore, two years ago, Australia announced a new point-based system that would increase the visa numbers for skilled professionals and for those who

have corporate sponsorship. The United Kingdom's system also has an employer sponsorship and labor market test component. What we in the United States must decide is whether we want to transition completely to a point-based system where all immigrants must pass a points test, or should we retain some of the existing programs. If we want to retain some of the programs, then we must determine what a point-based system would add to our current statutory scheme.

Finally, we in the United States hold certain values to be paramount, such as family and other moral values. A point-based system, if skewed a certain way, could become an acceptable way to discriminate against the old or less educated, and policy makers must decide to what degree we want to consider value other than economic.

A More Immediate Solution to a Crisis

As mentioned above, the ability of the United States to recruit and retain talent is hindered by our politically imposed quotas and processing inefficiencies. This is not to say whether the United States should or should not move to a point-based system eventually. However, the longstanding point-based programs, such as the ones in Canada and Australia, have taken over twenty years to develop and refine. The United Kingdom also has been working on its current program for several years. As such, any drastic change in policy in this country also merits careful consideration and development.

In the meantime, I respectfully suggest that immediate relief is needed and available in the form of Title V of Congressmen Gutierrez and Flake's bill, the Security through Regularized Immigration and a Vibrant Economy Act, or STRIVE Act of 2007 (H.R. 1645), which would create a system that is much more market-based than the current scheme and remove the processing hurdles. Likewise, the Securing Knowledge, Innovation, and Leadership (SKIL) Act, which Congressman John Shadegg introduced in the House and Senator John Cornyn introduced in the Senate, would do the same.

Conclusion: The Necessary Components to a Point-Based System

The point system's merits in the United States require further study. At this time, I hope all will agree that the last thing we want is a system which adds to and does not reduce the level of bureaucracy in our system. We further should agree that any point-based system must be nimble and responsive to market demands. I respectfully submit that, at a minimum, the following components are necessary for a point-based system to work in the United States:

1. The system must be designed to take into account occupational needs based on actual labor shortages in all sectors – this could include a range of occupations ranging from tradespersons to PhD candidates in specific areas of science technology or mathematics.

2. Where subjectivity is inserted in any part of the process, the needs of the market as communicated by employers, not arbitrary or capricious preferences of bureaucrats, should dictate the exercise of discretion.

3. The system must have a way of responding quickly to changing economic trends, and should not depend entirely on governmental agencies to make arbitrary determinations as to point allocation. Having to go through legislative or agency

rulemaking processes each time the market shifts would cause undue delay and be detrimental to innovation.

I firmly believe we need to sharpen the economic focus of our immigration program to improve our ability to compete for skilled workers and continue to reap the benefits of immigration, but I believe a point-based system would require a major shift in the way immigration policy is determined and administered in this country. A broadening of the economic categories within our existing system, combined with targeted review of existing programs, may achieve everything we hope for from a points system but retain the checks and balances we currently enjoy. In other words, the key to a successful point-based system is flexibility and nimbleness in reacting to market changes without political or bureaucratic hindrance. As we contemplate the merits of the points system, we must first redefine policy to be more facilitative even using the categories we have, and as we effectuate this policy change, we may then find that with those changes a points system may then be more likely to succeed.

Thank you, Madam Chair and members of this subcommittee. I look forward to answering your questions.

Ms. LOFGREN. Mr. Rector.

TESTIMONY OF ROBERT RECTOR, SENIOR RESEARCH FELLOW, THE HERITAGE FOUNDATION

Mr. RECTOR. Thank you very much for the opportunity to be here today. I am going to talk to you today about research I have done over the last 6 months concerning the fiscal costs of low-skill immigrants into the United States. By low-skill immigrants I mean individuals that do not have a high school degree.

Over the last 20 years or so, the United States has imported about 11 million people without a high school degree through both the legal and illegal immigration channels. If we look at illegal immigrants, 50 or 60 percent of them do not have a high school degree. Even if we look at legal immigrants, about 25 percent do not have a high school degree. Overall, about a third of all adult immigrants do not have a high school degree. You could compare that to around 9 percent for the native-born population.

Most people think that historically we have always had this pattern of bringing in individuals that are much lower skilled than the nonimmigrant population, but that is not true. Historically, in fact, immigrants were slightly more skilled than the native-born population. And what we have done in the last 20 years is an anomaly. Altogether there are about 4-1/2 half million immigrant households headed by high school dropouts. They are about 5 percent of our U.S. population.

Now, those households, looking at Census Bureau data and data from the Bureau of Labor Statistics and other Government sources, in fact receive about $30,000 a year in Government benefits. That includes Social Security, Medicare, 60 different means-tested welfare programs, public education costs, as well as costs like fire departments, police and highways, things that have to expand as you add additional people into the population.

Those same households on average pay about $10,500 in taxes. And my study examines over 30 different types of taxes. These households pay very little in income tax, but they pay a significant amount of Social Security tax, very large amounts of consumption tax, sales tax, property tax, pay a substantial amount of State lottery costs and things like that. But, overall, there you have a gap for each of those households of about 19- to $20,000 a year of benefits that they receive that they do not pay for; that someone else has to pay for. As some people have said, that is equivalent to purchasing them a convertible automobile each and every year.

If this type of individual comes into the United States or brings a family with him and remains for the course of his life, the net cost to the U.S. taxpayer, benefits minus taxes paid in, is about $1.2 million over his lifetime. If you take all of these low-skilled immigrant households in any given year, the net cost to the taxpayer is around $90 billion.

I also find very significantly that there is virtually no difference in the fiscal cost of high school dropout native-born households when compared to high school dropout immigrant households. They both cost a bundle. If you were to ask the average citizen, hey, we had 10 million native-born high school dropouts that came from Kentucky, Tennessee, Florida, everyone would realize, hey, that

doesn't sound like a very good idea. But somehow in this debate, if the high school dropout is coming from Mexico or Guatemala, well, that is very different. In reality it is not very different. Both of those types of individuals are very costly to the taxpayer.

Moreover, you will see in my written research that these households are a net burden on the taxpayer at every stage of their life cycle. From the moment they enter the country until the point that they die, these households on average cost significantly more in terms of benefits received than they pay in in taxes. And on average it is about $3 of benefits for every dollar of taxes paid in.

The irony that we are looking at here is that the United States has a very generous system of support for disadvantaged Americans. It gives it to working disadvantaged Americans and those that don't work. We transfer about $1-1/2 trillion out of the upper middle class in taxes to provide benefits for those who have less advantages.

The problem is that that system is justified, and that is also a system that we can afford. However, if you try to apply that same standard of generosity to a very large inflow of very poorly educated immigrants from abroad, this imposes enormous fiscal costs that the Nation really cannot afford. I would say that my estimates show that these low-skill immigrant households over the next 10 years alone will cost the taxpayers nearly a trillion dollars.

I believe that as a national policy what we have inadvertently done is that we actually have an immigration system, through both legal and illegal immigration, that is forming a sort of welfare outreach where we are bringing welfare recipients in from abroad at huge costs to the taxpayer.

Since there are probably a billion people that would like to come and live in the United States, I think as a general rule we should set our immigration policy so that those who come in will be a net gain to the U.S. taxpayer, not a net loss. Thank you.

[The prepared statement of Mr. Rector follows:]

PREPARED STATEMENT OF ROBERT RECTOR

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CONGRESSIONAL TESTIMONY

The Fiscal Cost of Low-Skill Immigrants to the U.S. Taxpayer

Testimony before
The Subcommittee on Immigration
Committee on the Judiciary
United States House of Representatives

May 1, 2007

Robert Rector
Senior Research Fellow

Domestic Policy Studies
The Heritage Foundation

My name is Robert Rector. I am Senior Research Fellow for Welfare and Family Issues at The Heritage Foundation. The views I express in this testimony are my own, and should not be construed as representing any official position of The Heritage Foundation.

Summary

This testimony provides a fiscal analysis of households headed by immigrants without a high school diploma. The testimony refers to these households as "low-skill immigrant households." In FY 2004 there were around 4.5 million low-skill immigrant households in the U.S. containing 15.9 million persons. About 60 percent of these low-skill immigrant households were headed by legal immigrants and 40 percent by illegal immigrants. The analysis presented here measures the total benefits and services received by these "low- skill immigrant households" compared to the total taxes paid. The difference between benefits received and taxes paid represents the total resources transferred by government on behalf of this group from the rest of society.

In FY 2004, low-skill immigrant households received $30,160 per household in immediate benefits and services (direct benefits, means-tested benefits, education, and population-based services). In general, low-skill immigrant households received about $10,000 more in government benefits than did the average U.S. household, largely because of the higher level of means-tested welfare benefits received by low-skill immigrant households.

In contrast, low-skill immigrant households pay less in taxes than do other households. On average, low-skill immigrant households paid only $10,573 in taxes in FY 2004, thus low-skill immigrant households received nearly three dollars in immediate benefits and services for each dollar in taxes paid.

A household's net fiscal deficit equals the cost of benefits and services received minus taxes paid. When the costs of direct and means-tested benefits, education, and population-based services are counted, the average low-skill household had a fiscal deficit of $19,588 (expenditures of $30,160 minus $10,573 in taxes).

Low-skill immigrant households impose substantial long-term costs on the U.S. taxpayer. Assuming an average adult life span of 60 years for each head of household, the average lifetime costs to the taxpayer will be nearly $1.2 million for each low-skill household for immediate benefits received minus all taxes paid.

As noted, in 2004, there were 4.5 million low skill immigrant households. With an average net fiscal deficit of $19,588 per household, the total annual fiscal deficit for all of these households together equaled $89.1 billion (the deficit of $19,588 per household times 4.54 million low-skill immigrant households). Over the next ten years, the net cost (benefits minus taxes) to the taxpayer of low-skill immigrant households will approach $1 trillion.

Current immigrants (both legal and illegal) have very low education levels relative to the non-immigrant U.S. population. At least 50 percent, and perhaps 60 percent of illegal immigrant adults lack a high school degree.[1] Among legal immigrants the situation is better, but a quarter still lack a high school diploma. Overall, a third of immigrant households are headed by individuals without a high school degree. By contrast, only nine percent of non-immigrant adults lack a high school degree. The current immigrant population, thus, contains a disproportionate share of poorly educated individuals. These individuals will tend to have low wages, pay little in taxes and receive above average levels of government benefits and services.

Recent waves of immigrants are disproportionately low-skilled because of two factors. For years, the U.S. has had a permissive policy concerning illegal immigration: the 2000 mile border with Mexico has remained porous and the law prohibiting the hiring of illegal immigrants has not been enforced. This encourages a disproportionate inflow of low-skill immigrants because few college educated workers are likely to be willing to undertake the risks and hardships associated with crossing the southwest U.S. deserts illegally. Second, the legal immigration system gives priority to "family reunification" and kinship ties rather than skills; this focus also significantly contributes to the inflow of low-skill immigrants into the U.S.

The U.S. currently operates a very generous system of government benefits and services that heavily subsidizes disadvantaged native-born Americans. These individuals receive a very expensive array of government welfare benefits and other services throughout their life-times and pay little in taxes. While this fiscal redistribution system is justified for low-skill native-born Americans, it will be fiscally ruinous to apply it to a massive influx of poorly educated immigrants from the third world.

Types of Government Expenditure

To ascertain the distribution of government benefits and services, my analysis begins by dividing government expenditures into four categories: direct benefits; means-tested benefits; educational services; and population-based services.

Direct Benefits

Direct benefit programs involve either cash transfers or the purchase of specific services for an individual. Unlike means-tested programs (described below), direct benefit programs are not limited to low-income persons. By far, the largest direct benefit programs are Social Security and Medicare. Other substantial direct benefit programs are Unemployment Insurance and Workmen's Compensation.

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[1] Jeffrey S. Passel, *The Size and Characteristics of the Unauthorized Migrant Population in the U.S.: Estimates Based on the March 2005 Current Population Survey,* Pew Hispanic Center, March 7, 2006. See also Jeffrey S. Passel, *Unauthorized Migrants: Numbers and Characteristics,* Pew Hispanic Center, June 14, 2005. Steven S. Camarota, *The High Cost of Cheap Labor: The Impact of Illegal Immigration on the Federal Budget,* Center for Immigration Studies, August, 2004.

Direct benefit programs involve a fairly transparent transfer of economic resources. The benefits are parceled out discretely to individuals in the population; both the recipient and the cost of the benefit are relatively easy to determine. In the case of Social Security, the cost of the benefit would equal the value of the Social Security check plus the administrative costs involved in delivering the benefit.

Calculating the cost of Medicare services is more complex. Ordinarily, government does not seek to compute the particular medical services received by an individual. Instead, government counts the cost of Medicare for an individual as equal to the average per capita cost of Medicare services. (This number equals the total cost of Medicare services divided by the total number of recipients.)[2] Overall, government spent $840 billion on direct benefits in FY 2004.

Means-Tested Benefits

Means-tested programs are typically termed welfare programs. Unlike direct benefits, means-tested programs are available only to households below specific income thresholds. Means-tested welfare programs provide cash, food, housing, medical care, and social services to poor and low-income persons.

The federal government operates over 60 means-tested aid programs.[3] The largest of these are Medicaid; the Earned Income Tax Credit (EITC); food stamps; Supplemental Security Income (SSI); Section 8 housing; public housing; Temporary Assistance to Needy Families (TANF); the school lunch and breakfast programs; the WIC (Women, Infants, and Children) nutrition program; and the Social Services Block Grant (SSBG). Many means-tested programs, such as SSI and the EITC, provide cash to recipients. Others, such as public housing or SSBG, pay for services that are provided to recipients. Overall, the U.S. spent $564 billion on means-tested aid in FY 2004.[4]

Public Education

Government provides primary, secondary, post-secondary, and vocational education to individuals. In most cases, the government pays directly for the cost of educational services provided. Education is the single largest component of state and local government spending, absorbing roughly a third of all state and local expenditures.

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[2]For example, the Census Bureau assigns Medicare costs in this manner in the Current Population Survey.
[3]Congressional Research Service, *Cash and Noncash Benefits for Persons with Limited Income: Eligibility Rules, Recipient and Expenditure Data, FY2002–FY 2004,* March 27, 2006. The value of Medicaid benefits is usually counted in a manner similar to Medicare benefits. Government does not attempt to itemize the specific medical services given to an individual; instead, it computes an average per capita cost of services to individuals in different beneficiary categories such as children, elderly persons, and disabled adults. (The average per capita cost for a particular group is determined by dividing the total expenditures on the group by the total number of beneficiaries in the group.)

[4]This spending figure excludes means-tested veterans programs and most means-tested education programs.

The average per pupil cost of public primary and secondary education is now around $9,600 per year. Overall, federal, state, and local governments spent $590 billion on education in FY 2004.

Population-Based Services

Whereas direct benefits, means-tested benefits, and education services provide discrete benefits and services to particular individuals, population-based programs generally provide services to a whole group or community. Population-based expenditures include police and fire protection, courts, parks, sanitation, and food safety and health inspections. Another important population-based expenditure is transportation, especially roads and highways.

A key feature of population-based expenditures is that such programs generally need to expand as the population of a community expands. (This quality separates them from pure public goods, described below.) For example, as the population of a community increases, the number of police and firemen will generally need to expand in proportion.

In its study of the fiscal costs of immigration, *The New Americans*, the National Academy of Sciences argued that if a service remains fixed while the population increases, a program will become "congested", and the quality of the service for users will deteriorate. Thus, the National Academy of Sciences uses the term "congestible goods" to describe population-based services.[5] Highways are an obvious example of this point. In general, the cost of population-based services can be allocated according to an individual's estimated utilization of the service or at a flat per capita cost across the relevant population. Government spent $662 billion on population-based services in FY 2004.

Exclusion of Public Goods and Interest on Government Debt from Calculations

The four expenditure categories described above can be termed "immediate benefits and services". There are two additional spending categories, which have less relevance to immigrants. They are:

- **Interest and other financial obligations resulting from prior government activity,** including interest payments on government debt and other expenditures relating to the cost of government services provided in earlier years; and

- **Pure public goods,** which include national defense, international affairs and scientific research, and some environmental expenditures.

Unlike the first four spending categories, expenditures on public goods, debt and other financial obligations are fixed and are largely independent of the level or type of

[5]National Research Council, *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration*, National Academy Press, Washington, D.C., 1997, p. 303

immigration flow into the U.S. The entry of legal or illegal immigrants into the U.S. will not cause expenditures in these two categories of expenditure to increase, therefore these two categories of expenditure are not included in the fiscal burden calculation for low-skill immigrants presented in this testimony.

Summary: Total Expenditures

As Table 1 shows, overall government spending in FY 2004 came to $3.75 billion. Direct benefits had an average cost of $7,326 per household across the whole population, while means-tested benefits had an average cost of $4,920 per household. Education benefits and population-based services cost $5,143 and $5,765, respectively. Interest payments on government debt and other costs relating to past government activities cost $3,495 per household. Pure public good expenditures comprised 18.5 percent of all government spending and had an average cost of $6,056 per household. Excluding spending on public goods, interest on the debt and related financial obligations, total spending came $23,154 per household across the entire population.

Table 1

Summary of Total Federal, State and Local Expenditures FY2004

	Federal Expenditures (in millions)	State and Local Expenditures (in millions	Total Expenditures (in millions)	Percentage of Total Expenditures	Average Expenditure Per Household Whole Population (in dollars)
Direct Benefits	783,350	57,607	840,957	22.4%	$7,326
Means-tested Benefits	406,512	158,240	564,752	15.0%	$4,920
Educational Benefits	59,621	530,801	590,422	15.7%	$5,143
Population-Based Services	180,122	481,696	661,818	17.6%	$5,765
Interest and Related Costs*	182,000	219,260	401,260	10.7%	$3,495
Pure Public Goods Expenditures	694,153	1,050	695,203	18.5%	$6,056
Total Expenditures	**2,305,758**	**1,448,654**	**3,754,412**	**100.0%**	**$32,706**
Total Expenditures Less Public Goods, Interest, and Related Costs	**1,429,605**	**1,228,344**	**2,657,948**		**$23,154**

* Excludes interest costs resulting from public goods expenditures in prior years

Estimation Methodology

The methodology used in this testimony is fully explained in my recent publication, *The Fiscal Cost of Low Skill Households to the U.S. Taxpayer.*[6] The analysis

[6] Robert Rector, Christine Kim, Shanea Watkins, *The Fiscal Cost of Low- Skill Households to the U.S. Taxpayer, Heritage Special Report,* Sr-12, The Heritage Foundation, Washington, D.C. April 4, 2007.

is based on three core methodological principles: comprehensiveness; fiscal accuracy; and transparency.

- Comprehensiveness – The analysis seeks to cover all government expenditures and all taxes and similar revenue sources for federal, state and local governments. Comprehensiveness helps to ensure balance in the analysis; if a study covers only a limited number of government spending programs or a portion of taxes, the omissions may bias the conclusions.

- Fiscal accuracy – A cardinal principle of the estimation procedure employed for each expenditure program or category in the analysis is that, if the procedure is replicated for the whole U.S. population, the resulting estimated expenditure will equal actual expenditures on the program according to official budgetary documents. The same principle is applied to each tax and revenue category. Altogether, the estimating procedures used in this paper, if applied to the entire U.S. population, will yield figures for total government spending and revenues that match the real life totals presented in budgetary sources.

- Transparency – Specific calculations were made for 30 separate tax and revenue categories and over 60 separate expenditure categories. Since conclusions can be influenced by the assumptions and procedures employed in any analysis, we have endeavored make the mechanics of the analysis as transparent as possible to interested readers by describing the details of each calculation in the monograph.[7]

Data on receipt of direct and means-tested benefits were taken from the U.S. Census Bureau's Current Population Survey (CPS). Data on attendance in public primary and secondary schools were also taken from the CPS; students attending public school were then assigned educational costs equal to the average per pupil expenditures in their state. Public post-secondary education costs were calculated in a similar manner.

Wherever possible, the cost of population-based services was based on the estimated utilization of the service by low-skill immigrant households. For example, the low-skill immigrant households' share of highway expenditures was assumed, in part, to equal their share of gasoline consumption as reported in the Bureau of Labor Statistics Consumer Expenditure Survey (CEX). When data on utilization of a service were not available, the estimated low-skill immigrant households' share of population-based services was assumed to equal their share of the total U.S. population.

Sales, excise, and property tax payments were based on consumption data from the Consumer Expenditure Survey (CEX). For example, if the CEX showed that low-skill immigrant households accounted for 10 percent of all tobacco product sales in the U.S., those households were assumed to pay 10 percent of all tobacco excise taxes.

[7] Robert Rector, *The Fiscal Cost of Low- Skill Households to the U.S. Taxpayer, op.cit.*

Federal and state income taxes were calculated based on data from the CPS. FICA taxes were also calculated from CPS data and were assumed to fall solely on workers. Corporate income taxes were assumed to be borne partly by workers and partly by owners; the distribution of these taxes was estimated according to the distribution of earnings and property income in the CPS.

CPS data generally underreport both benefits received and taxes paid somewhat. Consequently, both benefits and tax data from the CPS had to be adjusted for underreporting. The key assumption in this adjustment process was that households headed by immigrants without a high school diploma (low-skill immigrant households) and the general population underreport benefits and taxes to a similar degree. Thus, if food stamp benefits were underreported by 10 percent in the CPS as a whole, then low-skill immigrant households were also assumed to underreport food stamp benefits by 10 percent. In the absence of data suggesting that low-skill and high-skill households underreport at different rates, this seemed to be a reasonable working assumption. The *New Americans* study of immigration by the National Academy of Sciences also adjusted for under-reporting in its fiscal analysis.

Estimating Taxes and Benefits for Illegal Immigrant Households

By most reports, there were some 11 million illegal immigrants in the U.S. in 2004. [8] About 9.3 million of these individuals were adults.[9] Roughly 50 to 60 percent of these illegal adult immigrants lacked a high school degree.[10] About ninety percent of illegal immigrants are reported in the CPS.[11] This testimony covers only those illegal immigrants reported in the CPS and does not address the remaining ten percent not counted by Census.

Assuming that the illegal immigrant households omitted from the CPS are similar to those that are included, incorporation of the missing 10 percent of illegals (roughly one million individuals) might raise the aggregate net tax burden imposed by low-skill immigrant households by roughly 4 percent; these additional costs are not addressed in this testimony.[12] If there are more than 11 million illegal immigrants in the U.S., then the number of illegal immigrants who reside in the U.S. but do not appear in the CPS would be greater than one million and the costs to the taxpayer would be proportionately greater. Again, any such potential costs are not included in the analysis in this testimony which is limited to the legal and illegal immigrant households that appear in the CPS.[13]

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[8] Passel, 2005, op. cit., p. 2.
[9] Ibid., p 6.
[10] Passel, 2004, p.23
[11] Passel, 2004, p. 4.
[12] This figure assumes that the missing illegal immigrant households are similar to those appearing in the CPS. If 41 percent of low skill immigrant households are illegal, then the addition of 10 percent more illegal immigrant households would boost the overall number of low skill immigrant households by roughly 4 percent. Presumably, the aggregate net tax burden would increase proportionately.
[13] A very small number of immigrants who reside in nursing facilities has also been added to the calculations; individuals who reside in nursing facilities do not appear in the CPS.

Of the 4.5 million low-skill immigrant households analyzed in this report an estimated 41 percent were headed by illegal immigrants.[14] Households headed by illegal immigrants differ from other immigrant households in certain key respects. Illegal immigrants themselves are not eligible for means-tested welfare benefits, but illegal immigrant households do contain some 3 million children who were born inside the U.S. to illegal immigrant parents; these children are U.S. citizens and are eligible for and do receive means-tested welfare.

Most of the tax and benefits estimates presented in this paper are unaffected by a low-skill immigrant household's legal status. For example, children in illegal immigrant households are eligible for, and do receive, public education. Similarly, nearly all the data on direct and means-tested government benefits in the CPS is based on a household's self report concerning receipt of each benefit by family members. Because eligibility for some benefits is limited for illegal immigrants, illegal immigrants will report lower benefit receipt in the CPS, thus, in most cases, this analysis automatically adjusts for the lower use of government and benefits by illegal immigrants.

In a few isolated cases, the CPS data does not rely on a households' self-report of receipt of benefits but imputes receipt to all households who are apparently eligible based on income level. The most notable example of this practice is the Earned Income tax Credit. Since illegal immigrant households are not eligible for the EITC, the CPS procedure assigns EITC benefits to illegal immigrant households which have not, in fact, been received by those households. To compensate for this mis-allocation of benefits, my analysis reduces the EITC benefits received by low-skill immigrant households by the portion of those households which are estimated to be illegal (roughly 40 percent).

Similarly, the CPS assumes all laborers work "on the books" and pay taxes owed. CPS therefore imputes federal and state income taxes and FICA taxes based on household earnings. But most analyses assume that some 45 percent of illegal immigrants work "off the books", paying neither individual income nor FICA taxes.[15] The present analysis adjusts the estimated income and FICA taxes paid by low-skill immigrant households downward slightly to adjust for the "off the books" labor of low-skill illegal immigrants.

The Declining Education Levels of Immigrants

Current immigrants (both legal and illegal) have very low education levels relative to the non-immigrant U.S. population. As Chart 1 shows, some 50 percent, and

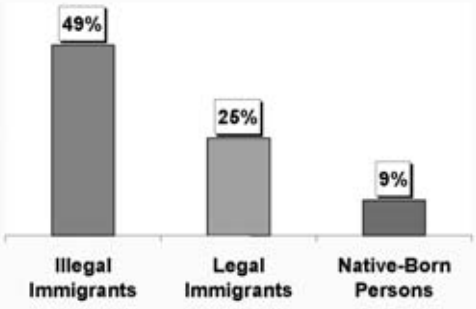
[14] Information provided by Steven A. Camarota of the Center for Immigration Studies

[15] Randy Capp, Everett Henderson, Jeffry S. Passel, and Michael Fix, *Civic contributions Taxes Paid by Immigrant in the Washington, DC Metro Area.* The Urban Institute, May 2006, footnote 3 on page 6. http://www.urban.org/UploadedPDF/411338_civic_contributions.pdf; Jeffrey S. Passel, Rebecca L. Clark, *Immigrants in New York: Their Legal Status, Income and Taxes,* Urban Institute, 1998. http://www.urban.org/publications/407432.html. Steve Camarota, *The High Cost of Low Skill Labor,* Center for Immigration Studies, op.cit.

perhaps as many as 60 percent, of illegal immigrant adults lack a high school degree.[16] Among legal immigrants the situation is better, but a quarter still lack a high school diploma. Overall, a third of immigrant households are headed by individuals without a high school degree. By contrast, only nine percent of non-immigrant adults lack a high school degree. The current immigrant population, thus, contains a disproportionate share of poorly educated individuals. These individuals will tend to have low wages, pay little in taxes and receive above average levels of government benefits and services.

Chart 1

Percent of Adults Who Are High School Dropouts



Source: Pew Hispanic Center

There is a common misconception that the low education levels of recent immigrants is part of a long standing historical pattern, and that the U.S. has always brought in immigrants who were poorly educated relative to the native born population. Historically, this was not the case. For example, in 1960, recent immigrants were no more likely than were non-immigrants to lack a high school degree. By contrast, in1998, recent immigrants were almost four times more likely to lack a high school degree than were non-immigrants.[17]

As the relative education level of immigrants fell so did their relative wage levels. In 1960, the average immigrant male in the U.S. actually earned more than the average non-immigrant man. As the relative education levels of subsequent waves of immigrants

[16] Passel, 2005, op.cit. and Camarota, op.cit.
[17] George J. Borjas, *Heaven's Door: Immigration Policy and the American Economy*, Princeton New Jersey, Princeton University Press, 1999, p. 27.

fell, so did relative wages. By 1998, the average immigrant earned 23 percent less than the average non-immigrant.[18]

Recent waves of immigrants are disproportionately low-skilled because of two factors. For years, the U.S. has had a permissive policy concerning illegal immigration: the 2000 mile border with Mexico has remained porous and the law prohibiting the hiring of illegal immigrants has not been enforced. This encourages a disproportionate flow of low-skill immigrants because few college educated workers are willing to undertake the risks and hardships associated with crossing the southwest U.S. deserts illegally. Second, the legal immigration system gives priority to "family reunification" and kinship ties rather than skills; this focus also significantly contributes to the inflow of low-skill immigrants into the U.S.

Characteristics of Low Skill Immigrant Households

In 2004, there were 4.5 million households in the U.S. headed by immigrants who lacked a high school degree (or low-skill immigrant households). These households contained 15.9 million persons or roughly five percent of the U.S. population. Low-skill immigrant households had, on average, more persons (3.6 per household) and more children (1.2 per household) when compared to households headed by persons with a high school degree or more (with 2.6 persons and .06 children per households). Low-skill immigrant households have roughly the same number of workers per household as better educated households, but the average annual earnings per worker in low-skill immigrant households ($18,490) was roughly half the earnings per worker in households headed by persons with a high school degree or better ($38,713).

Low wage levels in low-skill immigrant households lead to high levels of poverty: over 30 percent of persons living in low-skill immigrant households were poor in 2004 compared to overall poverty rate of 12.7 percent in the U.S. population.

Costs of Benefits and Services for Low skill immigrant households

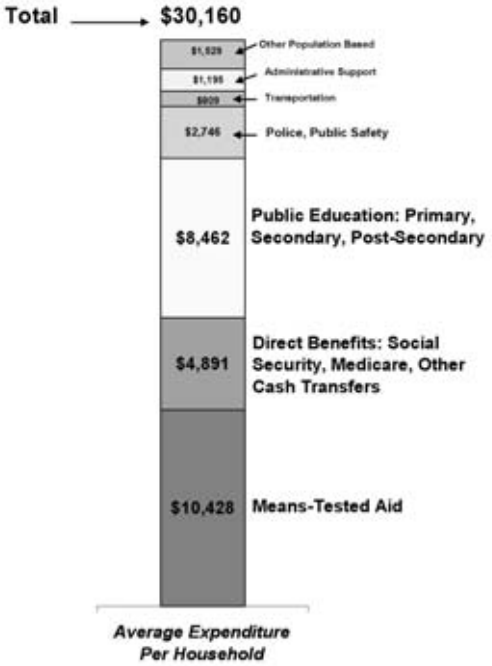
Overall, households headed by immigrants without a high school diploma (or low-skill immigrant households) received an average of $30,160 per household in direct benefits, means-tested benefits, education, and population-based services in FY 2004.

Chart 2 gives a more detailed breakdown of the immediate benefits and services received by low-skill immigrant households. Means-tested aid came to $10,428 per household, while direct benefits (mainly Social Security and Medicare) amounted to $4,891. Education spending on behalf of these households averaged $8,462 per household, while spending on police, fire, and public safety came to $2,746 per household. Transportation added another $809, while administrative support services cost $1,195. Miscellaneous population-based services added a final $1,529.

[18] Ibid., p. 8

Chart 2

Government Expenditures for Immediate Benefits and Services for Households Headed by Immigrants Without A High School Diploma



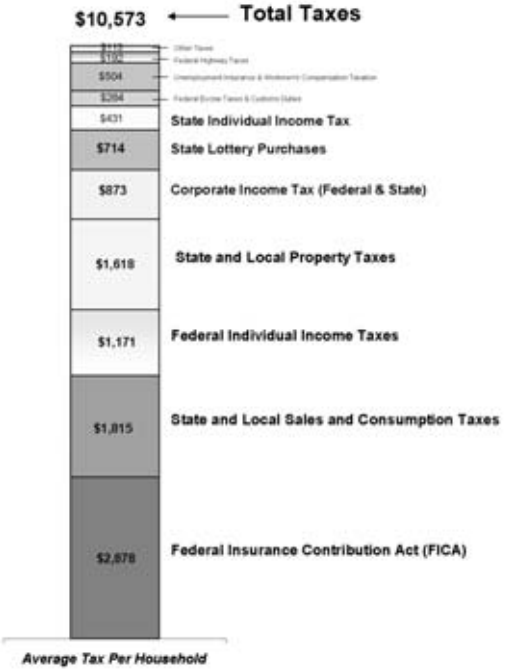
It is important to note that the costs of benefits and services outlined in Chart 2 are a composite average of all low-skill immigrant households. They represent the total costs of benefits and services received by all low-skill immigrant households divided by the number of such households. It is unlikely that any single household would receive this exact package of benefits; for example, it is rare for a household to receive Social Security benefits and primary and secondary education services at the same time. Nonetheless, the figures are an accurate portrayal of the governmental costs of low-skill immigrant households as a group. When combined with similar data on taxes paid, they enable an assessment of the fiscal status of such households as a group and their impact on other taxpayers.

Taxes and Revenues Paid by Low skill immigrant households

As Chart 3 shows, total federal, state, and local taxes paid by low-skill immigrant households came to $10,573 per household in 2004. Federal and state individual income taxes comprised only 15 percent of total taxes paid. Instead, taxes on consumption and employment produced the bulk of the tax burden for low-skill immigrant households.

Chart 3

Taxes Paid by Households Headed by Immigrants Without at High School Diploma



The single largest tax payment was $2,878 per household in Federal Insurance Contribution Act (FICA) tax. (Workers were assumed to pay both the employee and employer share of FICA taxes.) On average, low-skill immigrant households paid $1,815 in state and local sales and consumption taxes. The analysis assumed that a significant portion of property taxes on rental and business properties was passed through to renters and consumers; this contributed to a $1,618 property tax burden for the average low-skill household. The analysis also assumed that 70 percent of corporate income taxes fell on workers; this contributed to an average $873 corporate tax burden for low-skill immigrant households. Low-skill immigrant households are frequent participants in state lotteries, with an estimated average purchase of $714 in lottery tickets per household in 2004.

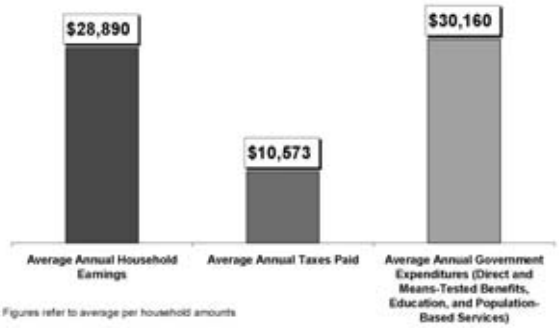
Balance of Taxes and Benefits

On average, low-skill immigrant households received $30,160 per household in immediate government benefits and services in FY 2004, including direct benefits, means-tested benefits, education, and population-based services. By contrast, low-skill immigrant households paid only $10,573 in taxes. Thus, low-skill immigrant households received nearly three dollars in benefits and services for each dollar in taxes paid.

Strikingly, as Chart 4 shows, low-skill immigrant households in FY 2004 had average earnings of $28,890 per household; thus, the average cost of government benefits and services received by these households not only exceeded the taxes paid by these households, but actually exceeded the average earned income of these households.

Chart 4

Taxes Paid and Benefits Received: Households Headed by Immigrants Without a High School Diploma



Note: Figures refer to average per household amounts

Net Annual Fiscal Deficit

The net fiscal deficit of a household equals the cost of benefits and services received minus taxes paid. As Chart 5 shows, if the costs of direct and means-tested benefits, education, and population-based services were counted, the average low-skill household had a fiscal deficit of $19,588 (expenditures of $30,160 minus $10,573 in taxes).

Chart 5

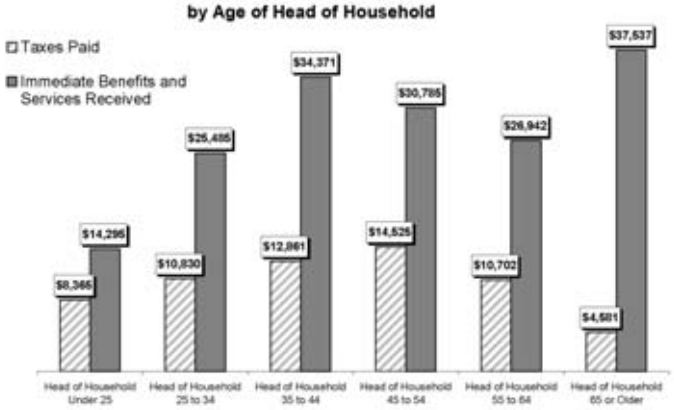
Dropout Households Receive More Than Three Dollars in Benefits for Every Dollar Paid in Taxes

Age Distribution of Benefits and Taxes among Low Skill Immigrants

Charts 6 and 7 separate the 4.5 million low-skill immigrant households into six categories based on the age of the immigrant head of household. The benefits levels on Chart 6 include direct benefits, means-tested benefits, public education and population-based services; these benefits start at a moderate level of $14,295 for households headed by immigrants under 25 then rise sharply to $34,371 for households with heads between 35 and 44. This increase is driven by a rise in the number of children in each home. As the head of household ages over 45 , the number of children in the home falls; benefits dip slightly, and then shoot up sharply to $37,537 after the household head reaches 65.

Chart 6

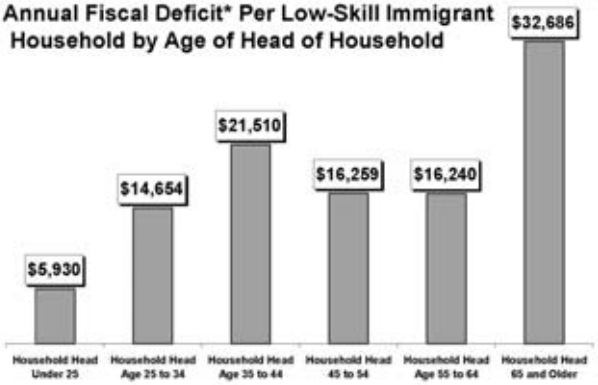
Benefits Received and Taxes Paid by Low-Skill Immigrant Households by Age of Head of Household



Note: Immediate Benefits include Direct and Means-Tested Benefits, Public Education, and Population-Based Services

Chart 7

Net Annual Fiscal Deficit* Per Low-Skill Immigrant Household by Age of Head of Household



*Net Fiscal Deficit Equals Immediate Benefits and Services Received Minus Taxes Paid
Note: Immediate Benefits include Direct Benefits, Means-Tested Benefits, Public Education and Population-Based Services

Tax payments vary less by the age of the householder than do benefits, rising slowly to a peak for immigrant householders in their late 40'sand early 50's, and then dropping sharply after retirement.

The critical fact shown in Chart 6 is that for each age category, the benefits received by low-skill immigrant households exceed the taxes paid. At all ages, the average low-skill immigrant household pays in less in taxes than it takes out in benefits.

The gap between benefits and taxes is least for households with heads under age 25 but even these young households receive $1.70 in benefits and services for each $1.00 in taxes paid. In all other age categories, low-skill immigrant households receive at least two dollars in benefits for each dollar in taxes paid. Among elderly low-skill household, more than eight dollars in benefits are received for each dollar in taxes paid.

These figures belie the notion that government can relieve financial strains in Social Security and other programs simply importing younger immigrant workers. The fiscal impact of an immigrant worker is determined far more by skill level than by age. Low-skill immigrant workers impose a net drain on government finance as soon as they enter the country and add significantly to those cost every year they remain. Actually, older low-skill immigrants are less costly to the U.S. taxpayer since they will be a burden on the fisc for a shorter period of time.

Chart 7 shows the net fiscal deficits (benefits minus taxes) for each age category. Fiscal deficits rise from $5,930 per year for young immigrant households, to between $16,000 and $20,000 in middle age and then surge up to $32, 686 for elderly low-skill households.

Net Lifetime Costs

Receiving, on average, $19,588 more in immediate benefits than they pay in taxes each year, low-skill immigrant households impose substantial long-term costs on the U.S. taxpayer. Assuming an average 60-year adult life span for heads of household, [19]the average lifetime costs to the taxpayer will be nearly $1.2 million for each low-skill household, net of any taxes paid.[20]

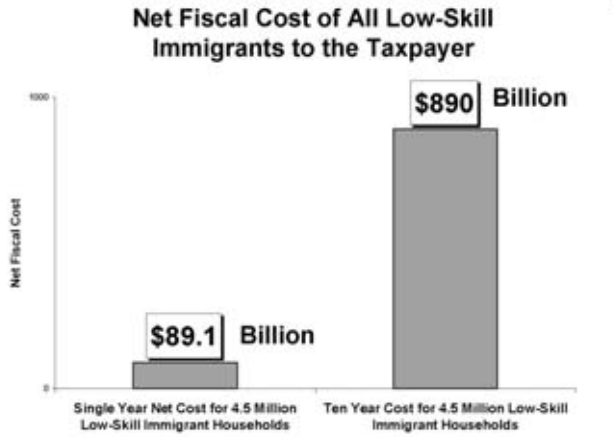
Aggregate Annual Net Fiscal Costs

In 2004, there were 4.54 million low-skill immigrant households. As shown in Chart 8, the average net fiscal deficit per household was $19,588. This means that the total annual fiscal deficit (total benefits received minus total taxes paid) for all 4.54 million low-skill immigrant households together equaled $89.1 billion (the deficit of

[19] This calculation assumes the low skill immigrant remains in the U.S. for his full adult life.
[20] An alternative approach to calculating life time fiscal costs is to multiple the average fiscal cost per age category by the expected survival rate of householders from age 25 on; this allows the number of households to shrink slowly as the heads of household age. This approach also yields a net life-time fiscal burden of around $1.2 million. Figures are available upon request.

$19,588 per household times 4.54 million households). This sum includes direct and means-tested benefits, education, and population-based services. Over the next ten years, the net cost (benefits minus taxes) to the taxpayer of all low-skill immigrant households will approach one trillion dollars.

Chart 8



Note: Net Fiscal Cost equals the cost of Direct Benefits, Means-Tested Benefits, Public Education, and Population-Based Services received minus Taxes Paid

Conclusion

Current immigration practices, both legal and illegal, operate like a system of trans-national welfare outreach bringing millions of fiscally dependent individuals into the U.S. This policy needs to be changed. In the future, U.S. immigration policy should encourage high-skill immigration and strictly limit low-skill immigration. In general, government policy should limit immigration to those who will be net fiscal contributors, avoiding those who will increase poverty and impose new costs on overburdened U.S. taxpayers.

It is sometimes argued that since higher-skill immigrants are a net fiscal plus for the U.S. taxpayers while low-skill immigrants are a net loss, the two cancel each other out and therefore no problem exists. This is like a stock broker advising a client to buy two stocks, one which will make money and another that will lose money. Obviously, it would be better to purchase only the stock that will be profitable and avoid the money losing stock entirely. Similarly, low-skill immigrants increase poverty in the U.S. and impose a burden on taxpayers that should be avoided.

Current legislative proposals that would grant amnesty to illegal immigrants and increase future low-skill immigration would represent the largest expansion of the welfare state in 30 years. Such proposals would increase poverty in the U.S. in the short and long term and dramatically increase the burden on U.S. taxpayers.

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Ms. LOFGREN. Mr. Rector, all those bells mean that we have votes on the floor. And all you have been here since 2:00. Your testimony has been terrific. What the Ranking Member and I have agreed to is that—there are four of us here—we will limit ourselves to 1 minute that includes both our question and the answer. And then we will not ask you to wait because it is going to be 40 minutes of voting.

And so I would just like to ask Dr. Papademetriou, your suggestion was the first I have heard that if we, looking at a new worker provision, as has been discussed by the White House in sum, that if there were a temporary program, that there is a need for stability.

I think Mr. Ellison had some questions about sort of creating an underclass that you might use some point system to convert or allow people who want to apply to convert to a permanent system. That is the first I have heard of that. Can you explain any more in 25 seconds?

Mr. PAPADEMETRIOU. Yes. Suppose that people come and work here for 3 years. At the end of those 3 years they could try to become permanent residents. It would be a point-like system. It c give points for some additional education, some greater knowledge of the language, of course not breaking the rules, et cetera, et cetera. Those people who would want to try to pass that screen and become LPRs can do so.

Ms. LOFGREN. My time is expired. I am going ask Mr. King for his 1 minute.

Mr. KING. Thank you, Madam Chair. For a lightening round I will go directly then to Mr. Rector and ask you a question I am confident you don't expect. And that is: Has the open borders lobby responded to your study and, if so, how?

Mr. RECTOR. No. I think they are very afraid of this type of data. I would say that what my findings are are essentially the same findings the National Academy of Sciences has had 10 years ago, which are low-skill immigrants are a huge burden on the U.S. taxpayer. We have tried to bury that piece of information in the debate.

Mr. KING. In other words, they are ignoring this study rather than trying to come up with some alternative numbers? There are no other numbers available out there that one could discuss alongside these to identify the distinctions between the rationale?

Mr. RECTOR. There is no study that I am aware of that shows that low-scale immigrants pay more in taxes than they take out in benefits. It would be implausible to have such a study; although in my study we lay out all hundred equations. Very simply, anyone who doesn't like the way I did the tobacco excise tax can go in and do it their way. But the fact of the matter is I think the numbers kind of speak for themselves.

Mr. KING. Thank you, Mr. Rector. I ask unanimous consent that your study be introduced into the record.

Ms. LOFGREN. Without objection.

Mr. Berman, 1 minute.

Mr. BERMAN. I won't get into who the open borders lobby is. I haven't met them yet.

Taxes versus benefits, Mr. Rector. Where do you put the value—one of the reasons income taxes is low is because wages for this population is pretty low. Where do you put the value of industries that would not be here but for the—basically the population of people who hasn't graduated high school?

Let's just take agriculture. How do you value the enhanced value of having that part of the economy in perishable fruits and vegetables, seasonable agricultural industry, how do you value the costs in terms of economic security of not having such an industry in this country and having to import all of that? Where does that come into your equation?

Ms. LOFGREN. Mr. Berman——

Mr. BERMAN. Now, there is my minute.

Ms. LOFGREN. I think we are going to have to get the answer in writing.

Mr. BERMAN. I think this format, unfortunately, because there is no alternative, doesn't lead to an answer.

Mr. RECTOR. I would be happy to give you that answer in writing, Congressman.

Ms. LOFGREN. I would ask unanimous consent that a letter from a number of organizations about this hearing be submitted into the record.

I would thank the witnesses not only for being here, but for your written testimony which was excellent, and note that the record is open for 5 legislative days. We may send you questions in writing that we would ask that you answer as promptly as possible.

We will have our next hearing on Thursday: The U.S. Economy, U.S. Workers, and Immigration Reform. It will be held May 3, as I said, at 3 p.m., and this hearing is adjourned.

[Whereupon, at 5:15 p.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

QUESTIONS SUBMITTED TO EACH OF THE LAW LIBRARY OF CONGRESS WITNESSES BY THE HONORABLE STEVE KING, RANKING MEMBER, SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

Questions for the Record
Submitted by Immigration Subcommittee Ranking Member Steve King
"An Examination of Point Systems as a Method for Selecting Immigrants"
May 1, 2007

Question for Clare Feikert:

1. Regarding the U.K. immigration point system, does the fact that an applicant worked in the United Kingdom illegally prior to applying through the point system, impact the number of points he/she is awarded? Does such action garner merit or a demerit?

Question for Stephen Clarke:

1. Regarding the Canadian immigration point system, does the fact that an applicant worked in Canada illegally prior to applying through the point system, impact the number of points he/she is awarded? Does such action garner merit or a demerit?

Question for Lisa White:

1. Regarding the Australian immigration point system, does the fact that an applicant worked in Australia illegally prior to applying through the point system, impact the number of points he/she is awarded? Does such action garner merit or a demerit?

2. Please answer the same question regarding New Zealand's immigration point system.

MEMORANDUM ACCOMPANYING ANSWERS TO POST-HEARING QUESTIONS POSED BY THE HONORABLE STEVE KING, RANKING MEMBER, SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW, RECEIVED FROM RUBENS MEDINA, LAW LIBRARIAN OF CONGRESS

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June 27, 2007
LL File No. 2007-04023

TO: The Honorable Zoe Lofgren, Chairwoman
Subcommittee on Immigration, Citizenship, Refugees, Border Security and International Law
Committee on the Judiciary
United States House of Representatives

Attention: Benjamin Staub

FROM: Rubens Medina
Law Librarian of Congress

SUBJECT: Additional Question from Subcommittee Members Regarding Immigration Testimony for Australia, Canada, New Zealand, and United Kingdom

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In supplement to testimony before the above-entitled Subcommittee, and in response to your specific question of May 25, 2007, please find attached responses for Australia, Canada, New Zealand, and United Kingdom from Stephen Clarke, Clare Feikert, and Lisa White, the Foreign Law Specialists who testified at the May 1, 2007 hearing.

If you have any questions concerning the information contained in this report on Canada or United Kingdom, please contact Mr. Kersi Shroff, the Assistant Director of Legal Research for the Western Law Division, by telephone at (202) 707-7850 or by email at ksbr@loc.gov. If you have questions concerning the information on Australia or New Zealand, please contact Dr. Bryan Bachner, the Assistant Director of Legal Research for the Eastern Law Division, by telephone at (202) 707-9825 or by email at bbac@loc.gov. It has been our pleasure to assist you, and we hope that this information will be helpful.

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ANSWERS TO POST-HEARING QUESTIONS POSED BY THE HONORABLE STEVE KING, RANKING MEMBER, SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW, RECEIVED FROM RUBENS MEDINA, LAW LIBRARIAN OF CONGRESS

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AUSTRALIA

Migration – testimony – additional question

Q: If an immigrant is currently in the country illegally and applies for the Skilled Worker Visa by the points system in that country, are points given under the system or are they taken away for being in the country illegally?

A: There are eleven different general skilled migration visas divisible into three categories: independent – requiring no sponsorship; Australian sponsored – requiring sponsorship by an eligible Australian relative; and, state/territory specific visas that involve nomination or sponsorship by an Australian state or territory.[1] Of these three categories the independent and the Australian sponsored[2] are assessed via a 'points' system.[3]

Under the 'points system' each visa has a 'pass mark,' being the number of points necessary to obtain a visa, and a 'pool mark,' being the number of points necessary to remain in a pool of applicants should there not be sufficient pass level applicants or should the pass mark be revised.

An applicant for a skilled worker visa who is seeking a visa under the points system may be awarded additional points for Australian work experience;[4] this work experience, however, must be both in a skilled occupation and obtained legally; that is, the applicant must have been working in Australia while on a valid visa and working in compliance with any conditions of that visa.[5] Therefore, while an applicant would not have points removed for illegal work experience, neither would he or she be awarded any points for that work experience.

Prepared by Lisa White
Foreign Law Specialist
June 2007

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[1] Department of Immigration and Citizenship, Booklet 6: General Skilled Migration, http://www.immi.gov.au/allforms/booklets/books6.htm (last visited June 25, 2007).

[2] That is the Skilled Independent, Skilled Independent Regional (introduced on July 1, 2004) and the Skilled-Australian Sponsored visas. BOB BIRRELL, LESLEYANNE HAWTHORNE, AND SUE RICHARDSON, EVALUATION OF THE GENERAL SKILLED MIGRATION CATEGORIES, DIMIA, Mar. 2006, p. 6, http://www.immi.gov.au/media/publications/research/gsm-report/index.htm (last visited June 25, 2007).

[3] *Migration Act* 1958 (Cth) §§92-96.

[4] Changes to the skilled migration program from September 1, 2007 will result in an even greater emphasis on skilled work experience. *See* Department of Immigration and Citizenship website,http://www.immi.gov.au/skilled/general-skilled-migration/changes/index.htm (last visited June 25, 2007).

[5] Migration Regulations 1994 (Cth) Regulations 2.27C, 136.223B.

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CANADA

Migration – testimony – additional question

Q: Regarding the Canadian immigration point system, does the fact that an applicant worked in Canada illegally prior to applying through the point system impact the number of points he/she is awarded? Does such action garner merit or a demerit?

A: Canada uses a points system to select skilled workers for permanent residence. There is no provision in the law establishing a system for the deduction of points for persons found to have worked illegally in Canada prior to submitting their application. However, persons who fail to comply with the requirements for obtaining a work permit are generally permanently inadmissible, unless they are granted an authorization to return by the Minister of Citizenship and Immigration.[1] Persons who have not been determined to have worked illegally in Canada, but who have been given an exclusion order cannot reenter Canada for a period of one year.[2] If the exclusion order is based upon misrepresentation, the period is increased to two years.[3] Persons who have been deported for any reason are generally permanently ineligible to reenter Canada unless they are granted a special authorization to return by the Minister of Citizenship and Immigration.[4]

Prepared by Stephen F. Clarke
Senior Foreign Law Specialist
June 2007

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[1] Immigration and Refugee Protection Act, 2001 S.C. c. 27, s. 41.

[2] Immigration and Refugee Protection Regulations, S.O.R. 2002-227, s. 225(1), as amended.

[3] *Id.*, S. 225(3), as amended.

[4] *Id.*, S. 226(2).

2007-04023

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NEW ZEALAND

Migration – testimony – additional question

Q: If an immigrant is currently in the country illegally and applies for the Skilled Worker Visa by the points system in that country, are the points given within the system or taken away for them for being in the country illegally?

A: Under New Zealand's Skilled/Business immigration stream the four main categories of permanent visas are:[1] Skilled Migrant Category – skilled migrants with no requirement of a job offer or current employment; Work to Residence – temporary work visa/permit from which holders may apply for permanent residence; Residence from Work – applicants currently in New Zealand on a Work to Residence permit who wish to apply for residence; and Employee of Relocating Company. Of all these categories, only the Skilled Migrant Category utilizes a 'points system.'[2]

There are two stages to apply for residency under the Skilled Migrant Category. First, the applicant submits[3] an Expression of Interest. Applicants must satisfy basic criteria[4] and score above a minimum points threshold before they may submit an Expression of Interest (EOI) to live and work (residency) in New Zealand.[5] Second, Immigration New Zealand assesses each Expression of Interest to decide which applicants will be invited to apply for residence in New Zealand. This assessment is based on the number of points obtained by the applicant.[6]

Points are awarded for (among other things) previous skilled employment and relevant work experience,[7] including additional points for work experience in New Zealand.[8]

Thus an applicant may obtain points for work experience; points, however, will only be awarded in relation to work experience that was lawfully obtained (i.e., in accordance with a valid visa).[9]

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[1] Immigration New Zealand: Working in New Zealand, http://www.immigration.govt.nz/migrant/stream/work/ (last visited June 25, 2007).

[2] Immigration New Zealand: Claiming points on your EOI, http://www.immigration.govt.nz/migrant/stream/work/skilledmigrant/canapply/claimingpoints/default.htm (last visited June 25, 2007).

[3] EOIs are submitted to Immigration New Zealand.

[4] Eg. aged under 55 years, be of good health and character and have a reasonable standard of English.

[5] Immigration New Zealand, How do I apply? Available from the Immigration New Zealand website – see http://www.immigration.govt.nz/migrant/stream/work/skilledmigrant/apply/default.htm (last visited June 25, 2007).

[6] Immigration New Zealand website: Application Process: Available from the Immigration New Zealand's website at: http://www.immigration.govt.nz/migrant/stream/work/skilledmigrant/apply/process/assessment.htm (last visited June 25, 2007).

[7] Immigration New Zealand website: Claiming points on your EOI. Available from the Immigration New Zealand's website at: http://www.immigration.govt.nz/migrant/stream/work/skilledmigrant/canapply/claimingpoints/default.htm (last visited June 25, 2007).

[8] Immigration New Zealand website at: http://glossary.immigration.govt.nz/additionalselectioncriteria.htm (last visited June 25, 2007).

[9] Immigration New Zealand, OPERATIONS MANUAL, Apr. 10, 2007, ¶SM11.15 Additional requirements for recognition of work experience, available at http://www.immigration.govt.nz/nzis/operations_manual/index.htm.

Therefore an applicant will not have points deducted for illegal work experience but will not be awarded points in relation to that work experience.

Prepared by Lisa White
Foreign Law Specialist
June 2007

2007-04023

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UNITED KINGDOM

Migration – testimony – additional question

Q.: Regarding the United Kingdom immigration point system, does the fact that an applicant worked in the United Kingdom illegally prior to applying through the point system impact the number of points he/she is awarded? Does such action garner merit or a demerit?

A.: There are no specific provisions in the immigration rules of the United Kingdom under the Highly Skilled Migrant Programme that provide for the deduction or addition of points for applicants that are illegally working in the UK or that have remained and worked illegally in the UK.

Individuals that apply in country for the highly skilled migrant visa should be present lawfully in the country either under the Highly Skilled Migrant Programme or under a visa category that allows transfer to the highly skilled migrant status. These categories are currently: students, post-graduate doctor or dentist, working holidaymaker[1], science and engineering graduates, international graduates, innovator, or participant in the Fresh Talent: Working in Scotland scheme. However, there is no absolute prohibition on individuals that are present in the UK under any other statns than those listed above from making an application nnder the Highly Skilled Migrant Programme. If this application is successful, an individual must also obtain leave to remain and the application is likely to fail. The applicant must then leave the conntry and make an entry clearance application from overseas. That application is also likely to fail, as any individual that remained in the UK illegally in the past will typically not be granted a further entry clearance. The Immigration Rules provide that entry clearance to the UK will normally be refused if the individual has failed in the past "to observe the time limit or conditions attached to any grant of leave to enter or remain in the United Kingdom."[2]

Prepared by Clare Feikert
Foreign Law Specialist
June 2007

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[1] A person aged between 17 and 30 inclusive, who has the means to pay for his return journey and who intends only to take employment incidental to a holiday. Immigration Rules, ILL. 395 (1994), Part 4, r. 95.

[2] *Id.*, Part 9, r. 320 (11).

QUESTIONS SUBMITTED TO EACH OF THE LAW LIBRARY OF CONGRESS WITNESSES BY THE HONORABLE KEITH ELLISON, MEMBER, SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

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May 7, 2007

The Honorable Zoe Lofgren
Chairwoman
Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law
517 Cannon House Office Building

Dear Chairwoman Lofgren:

I want to thank you for your leadership in guiding our Subcommittee through important hearings on comprehensive immigration reform. After the hearing on Tuesday, May 1st on point systems, I would like to learn more from our witnesses about international experiences with low and unskilled immigrant workers. If you see fit, I would like to submit the following questions for the record from this hearing:

Witness Clare Feikert, Foreign Law Specialist, Law Library of Congress
Please provide any information you can on the unskilled and low-skilled immigration program in the United Kingdom. I am particularly interested in whether low and unskilled immigrants are afforded workforce protections like a minimum wage and the right to organize.

Witness Stephen F. Clarke, Senior Foreign Law Specialist, Law Library of Congress
Please provide any information you can on the unskilled and low-skilled immigration program in the Canada. I am particularly interested in whether low and unskilled immigrants are afforded workforce protections like a minimum wage and the right to organize.

Witness Lisa White, Foreign Law Specialist, Law Library of Congress
Please provide any information you can on the unskilled and low-skilled immigration program in the New Zealand. I am particularly interested in whether low and unskilled immigrants are afforded workforce protections like a minimum wage and the right to organize.

Again, I extend my gratitude for your leadership on this Subcommittee.

Sincerely,

Keith Ellison

KEITH ELLISON
Member of Congress

KME/als

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MEMORANDUM ACCOMPANYING ANSWERS TO POST-HEARING QUESTIONS POSED BY THE HONORABLE KEITH ELLISON, MEMBER, SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW, RECEIVED FROM STEPHEN F. CLARKE, SENIOR FOREIGN LAW SPECIALIST, LAW LIBRARY OF CONGRESS

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June 4, 2007
LL File No. 2007-03866

TO: The Honorable Zoe Lofgren, Chairwoman
Subcommittee on Immigration, Citizenship, Refugees, Border Security and International Law
Committee on the Judiciary
United States House of Representatives

Attention: Benjamin Staub

FROM: Stephen F. Clarke
Senior Foreign Law Specialist

SUBJECT: Additional Questions on Migration Points Systems in Australia, Canada, New Zealand and the United Kingdom

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In response to your May 4, 2007, request for supplemental information on questions that were raised during the testimony of Stephen F. Clarke, Clare Feikert, and Lisa White before the Subcommittee on Immigration, Citizenship, Refugees, Border Security and International on May 1, 2007, we have prepared the attached answers covering Australia, Canada, New Zealand, and the United Kingdom.

If you have any questions concerning this issue, please call me at (202) 707-7121 or email me at scla@loc.gov. It has been our pleasure to assist you, and we hope that our further responses will be helpful.

The Law Library of Congress is the legal research arm of the U.S. Congress. Congressional workload permitting, the Law Library also serves the legal research needs of the other branches of the U.S. government and renders reference service to the general public. Should you need further assistance with any other matter pertaining to international, comparative, or foreign law, please contact the Director of Legal Research by email at law@loc.gov or by fax at (202) 609-9264.

Attachments

ANSWERS TO POST-HEARING QUESTIONS POSED BY THE HONORABLE KEITH ELLISON, MEMBER, SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW, RECEIVED FROM STEPHEN F. CLARKE, SENIOR FOREIGN LAW SPECIALIST, LAW LIBRARY OF CONGRESS

2007-03866

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AUSTRALIA

Migration – Use of Points System – Additional Questions

Executive Summary

Australia's temporary workers program focuses on skilled workers sponsored by an employer. Australia's agricultural industry is not experiencing a harvest labor shortage; should such a shortage arise, however, it is likely Australia will source labor from South Pacific island states. Temporary workers are protected by Australia's employment laws, including minimum salary and freedom of association. In some instances, sponsored temporary workers must be paid at or above the minimum salaries published in the government gazette.

I. Temporary Worker Program

- **What are the types of temporary worker programs?**

Agricultural workers

In 2006 the Australian Senate Employment, Workplace Relations, and Education Committee (the Committee) reported on the use of temporary agricultural workers.[1] The Committee concluded that:

1. there is only scant evidence that Australia currently is experiencing an indisputable harvest labor shortage. Although the Committee acknowledged that there were instances of losses to producers who were unable to harvest produce due to labor shortages, it found that currently backpacker, 'grey nomad,' and local casual labor is sufficient; [2]
2. the Committee was not prepared to recommend a scheme of contract harvest labor from the Pacific Island states, however, if such a scheme were to be considered it should be limited to Pacific Forum Nations and be formalized and regulated to ensure correct minimum wages would be paid; and
3. Australia should now begin developing policy to introduce a contract harvest labor scheme because such a scheme may become necessary within the next five years; and, that should such a scheme become necessary, then Australia should consider an arrangement utilizing labor from the South Pacific.

General

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[1] Senate Standing Committee on Employment, Workplace Relations, and Education, PERSPECTIVES ON THE FUTURE OF THE HARVEST LABOUR FORCE, Oct. 2006, *available at* the Parliament of Australia's website, http://www.aph.gov.au/senate/committee/eet_ctte/contract_labour/report/index.htm.

[2] Backpackers or working vacation program participants are encourage to undertake agricultural work in certain areas within Australia by being 'rewarded' with being able to apply for a second working vacation program visa. *See* Department of Immigration and Citizenship, Working Holiday Visa (subclass 417), 'Seasonable Work', http://www.immi.gov.au/visitors/working-holiday/417/working-in-australia.htm#c (last visited May 22, 2007). Information about harvest work opportunities in regional Australia can be found on the Harvest Trail web site, www.jobsearch.gov.au/harvesttrail (last visited May 22, 2007).

Australia does provide temporary work visas for skilled workers,[3] as well as specialist workers such as academics[4] and medical practitioners.[5] Generally such visas must be 'sponsored' by the potential employer.[6] As visa applicants, employees must meet health and character requirements and any other visa requirements. Visas are valid for three months to up to four years. Employees under these visas must meet skills requirements, be paid a minimum specified salary,[7] and pay Australian taxes. Depending on the employee's country of citizenship her or she may be eligible to use Australia's universal health insurance (Medicare). If the employee is not eligible for Medicare he or she may be eligible for a tax refund of any Medicare levy paid by the employee.[8] Temporary workers are not eligible to claim benefits from Australia's social security system but are eligible to withdraw money paid into their superannuation (retirement) accounts upon permanent departure from Australia.[9] In some instances visa recipients may apply to remain permanently in Australia.[10]

Australia has several temporary visas with some or full work rights for specific circumstances such as: working vacation program and student visas and employment in specific occupations or sectors such as religious workers, domestic workers for diplomatic and senior executives, or entertainers or film and television production staff.[11]

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[3] The general categories are: 1. Sponsored by an Australian or overseas business (known also as the Business (Long Stay) visa or 457 Visa). A state or territory government may also act as a sponsor but does not have to fulfill the sponsor obligations. A sponsor must be pre-approved as a sponsor. Approval as a sponsor is for two years during which the employer may sponsor an agreed number of overseas employees. 2. Employed via a Labour Agreement – an agreement negotiated with the Australian government to allow a business or industry association to resolve a labor shortage via employment of overseas workers through a streamlined immigration process. 3. Invest Australia Supported Skills Agreement (IASS) – an agreement to allow businesses making a significant investment in Australia to bring to Australia key managerial or specialist employees to establish the business in Australia. *See* Department of Immigration and Citizenship, BOOKLET 11: SPONSORING A TEMPORARY OVERSEAS EMPLOYEE, 2007, p. 35, *available at* http://www.immi.gov.au/allforms/booklets/1154.pdf.

[4] The sponsor must be an Australian tertiary education, school, or research institution. It is also possible to employ educational workers via a Business (Long Stay) visa. Therefore, sponsors and applicants are being directed towards Business (Long Stay) visas.

[5] See Department of Immigration and Citizenship Medical Practitioner Visa (subclass 422), http://www.immi.gov.au/skilled/medical-practitioners/medical-practitioners/index.htm (last visited May 22, 2007). It is also possible to employ medical practitioners via a Business (Long Stay) visa. Sponsors must be either direct employers from the health industry; state or territory health authorities that need doctors to work in public hospitals or medical practices; deputising services and locum agencies that need doctors to work for private practices; in regional areas where there is a shortage of doctors, community bodies such as a local council, community organisations, regional health organisations or regional medical centres.

[6] For academic visas labor market testing is not required where the position is for less than twelve months, is for senior academic/research staff, or, is part of a Labour Agreement. *See* Department of Immigration and Citizenship, Educational Visa (subclass 418), http://www.immi.gov.au/skilled/skilled-workers/cv/labour-market.htm (last visited May 22, 2007).

[7] Currently the minimum gross annual salary, based on a 38 hour week, is $57,300 for information technology professions and $41,850 for all other gazetted occupations. *See* Gazette Notice IMMI 06/036 MINIMUM SALARY LEVELS AND OCCUPATIONS FOR THE BUSINESS LONG STAY VISA, *available at* http://www.immi.gov.au/skilled/skilled-workers/sbs/occupations.pdf.

[8] Employees from a country with no reciprocal health care arrangements with Australia are not entitled to Medicare and therefore may seek an exemption from the Medicare levy in their financial year income tax return. Employees from a country with reciprocal health care arrangements with Australia are eligible for some Medicare and thus are not exempt from the Medicare levy. *See* Department of Immigration and Citizenship website, http://www.immi.gov.au/skilled/skilled-workers/sbs/how-the-visa-works.htm (last visited May 22, 2007).

[9] Department of Immigration and Citizenship, BOOKLET 11: SPONSORING A TEMPORARY OVERSEAS EMPLOYEE, 2007, p. 35, *available at* http://www.immi.gov.au/allforms/booklets/1154.pdf.

[10] *See* Employer Sponsored Workers – Temporary Visas available from the Department of Immigration and Citizenship website,0 http://www.immi.gov.au/skilled/skilled-workers/visa-options.htm (last visited May 22, 2007).

[11] *See* Department of Immigration and Citizenship, FACT SHEET NO. 47 'TEMPORARY RESIDENCE', Department of Immigration and Citizenship website, http://www.immi.gov.au/media/fact-sheets/47temporary_residence.htm (last visited May 22, 2007).

Work rights are not granted automatically for student visas; it is possible, however, to have limited work rights attached to a student visa.[12] Students under the age of eighteen may be accompanied by a guardian; guardians, however, are not eligible to work while in Australia.[13]

The working vacation program allows young tourists to have an extended vacation in Australia by supplementing their travel funds with employment.[14] Working vacation visas are only available to nationals from countries with reciprocal arrangements for Australian nationals.[15]

- **What is the rate of entry of temporary workers?**

As of June 30, 2006 there were in Australia a total of 171,502 temporary residents, (that is, working vacation program entrants, long term temporary business entrants, and other persons intending to work or reside temporarily in Australia).[16]

Between 2005 and 2006 Australia issued 111,973 working vacation program visas and 71,150 business long-stay visas (visas that permit entry and residence for up to four years applicable to skilled overseas employees for companies operating in Australia and for personnel from offshore companies intending to establish a branch in Australia).[17]

- **Is there a set minimum wage for temporary workers?**

There are minimum skill and salary requirements for business long-stay visas.[18] Visa holders must be paid the higher of either the statutory minimum established by immigration law or that established by Australian employment laws. As of May 3, 2006 the minimum salary was $41,850 AUD (and $57,300 for those visas holders working in information technology).[19]

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[12] Department of Immigration and Citizenship, FACT SHEET NO. 50: OVERSEAS STUDENTS IN AUSTRALIA, http://www.immi.gov.au/media/fact-sheets/50students.htm. (last visited May 22, 2007).

[13] Student Guardian Visa.

[14] There are two programs: Working Holiday Program and Work and Holiday Program. Department of Immigration and Citizenship, FACT SHEET NO. 49: WORKING HOLIDAY PROGRAMME, *see* http://www.immi.gov.au/media/fact-sheets/49whm.htm; and Department of Immigration and Citizenship, FACT SHEET NO. 49A: WORK AND HOLIDAY PROGRAMME, see http://www.immi.gov.au/media/fact-sheets/49awhp.htm. The latter program requires applicants to have professional qualifications. (last visited May 22, 2007).

[15] Australia has reciprocal arrangements with: the United Kingdom, Canada, the Netherlands, Japan, Republic of Ireland, Republic of Korea, Malta, Germany, Denmark, Sweden, Norway, the Hong Kong Special Administrative Region (HKSAR) of the People's Republic of China, Finland, the Republic of Cyprus, France, Italy, Belgium, Taiwan, Estonia as well as Iran, Thailand, Chile, Turkey and Bangladesh. Applicants from Iran, Thailand, Chile, Turkey and Bangladesh must have professional qualifications.

[16] Department of Immigration and Citizenship, TEMPORARY ENTRANTS IN AUSTRALIA DATA, QUARTERLY REPORT 2005-2006, *available at* Department of Immigration and Citizenship website, www.immi.gov.au/media/statistics/statistical-info/temp-entrants/tempres.htm.

[17] Department of Immigration and Multicultural Affairs (now the Department of Immigration and Citizenship), POPULATION FLOWS: IMMIGRATION ASPECTS 2005-2006, p. 55. *Available at* the Department of Immigration and Citizenship website, http://www.immi.gov.au/media/publications/statistics/popflows2005-6/Ch5pt1.pdf.

[18] Minimum salary requirements are specified in a Gazette Notice and must be based on a thirty-eight-hour week excluding overtime and any other allowances. In some circumstances employers located in a rural or regional area may apply for a reduced skill or salary threshold. *See* Department of Immigration and Citizenship, BOOKLET 11: SPONSORING A TEMPORARY OVERSEAS EMPLOYEE, 2007, pp.14-15, *available at* http://www.immi.gov.au/allforms/booklets/1154.pdf.

[19] Department of Immigration and Multicultural Affairs (now the Department of Immigration and Citizenship), POPULATION FLOWS: IMMIGRATION ASPECTS 2005-2006, p. 70. Salary levels are reviewed annually. Department of Immigration and Citizenship website, *available at* http://www.immi.gov.au/media/publications/statistics/popflows2005-6/Ch5pt3.pdf (last visited May 22, 2007).

There are criticisms suggesting that systemic failures by the Australian government to monitor effectively the use of temporary worker visas has resulted in workers being paid below market rates in contravention of Australian law.[20]

- **Do temporary workers have a statutory right to organize a trade union or participate in the trade union?**

Any worker employed within Australia has the right to join or participate in a trade union.[21] It is an obligation on any employer who sponsors an employee as a temporary worker that the employer comply with all relevant laws relating to workplace relations and any workplace agreements that are applicable to the employee, including permitting employees to join or participate in a trade union.[22]

Submissions to a current government inquiry into the use of temporary worker visas have expressed concerns that some temporary employees are not being made aware of their rights under Australian law.[23]

- **What are the rights of temporary workers? ie. health benefits, workers' compensation?**

Workers' compensation is implemented at a state level and therefore the coverage provided to temporary workers will depend on the law of the state in which the employee is employed. Generally temporary workers will be covered by workers' compensation legislation.[24] In some states illegal workers have been found to be eligible to sue to enforce workers' compensation.[25]

Temporary workers may not be eligible to access all aspects of Medicare, Australia's universal health insurance program.[26] Employers who sponsored workers are liable for all costs payable for the employee (and family members) payable for treatment in an Australian public hospital (other than those expenses covered by insurance or reciprocal health agreements).[27] Depending on their country of

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[20] H. WILLIAMS, 457-VISA; THE INTERNATIONAL BRIDGEAGE OF THE RESERVE ARMY OF LABOR, Working Paper no. 07-01, Feb. 2007, Centre for Full Employment and Equity, University of Newcastle, Callaghan, NSW 2308, *available at* http://c1.newcastle.edu.au/coffee/pubs/wp/2007/07-01.pdf. The Australian Parliament Joint Standing Committee on Migration has commenced an inquiry into ELIGIBILITY REQUIREMENTS AND MONITORING, ENFORCEMENT AND REPORTING ARRANGEMENTS FOR TEMPORARY BUSINESS VISAS. Details of the inquiry are available from the Joint Standing Committee website, http://www.aph.gov.au/house/committee/mig/457visas/index.htm. (last visited May 22, 2007).

[21] Workplace Relations Act 1996 (Cth) §§ 794 (inducement to cease membership in an industrial organization), 810 (objectionable provisions in industrial agreements and awards), Schedule 1 § 166 (eligibility to be a member of an employee organization). WORKCHOICES AND UNION MEMBERSHIP FACT SHEET 20, 2006, available from the Australian Government Office of Workplace Services (OWS),*available at* https://www.workchoices.gov.au/ourplan/publications/html/WorkChoicesandunions.htm.

[22] Department of Immigration and Citizenship, Obligation on Employers, available from the DIAC website, http://webster.immi.gov.au/skilled/skilled-workers/sbs/obligations-employer.htm (last visited May 22, 2007).

[23] *See* submissions (such as that by the Human Rights Commission and Equal Opportunity Commission) to the Australian Parliament Joint Standing Committee on Migration inquiry 'ELIGIBILITY REQUIREMENTS AND MONITORING, ENFORCEMENT AND REPORTING ARRANGEMENTS FOR TEMPORARY BUSINESS VISAS, 'http://www.aph.gov.au/house/committee/mig/457visas/subs.htm (last visited May 22, 2007).

[24] Workers Compensation Act 1987 (NSW), Workplace Injury Management and Workers Compensation Act 1998 (NSW).

[25] For example, *see* Australia Meat Holdings Pty Ltd v Kazi [2003] QSC 225, 24 July 2003. Queensland Supreme Court permitted the applicant to sue for workers' compensation despite working illegally. The text of the judgment is available at the Queensland Supreme Court website, http://www.courts.qld.gov.au/qjudgment/QSC%202003/QSC03-225.pdf.

[26] http://www.immi.gov.au/skilled/skilled-workers/sbs/how-the-visa-works.htm#!/ (last visited May 22, 2007).

[27] Department of Immigration and Citizenship, Temporary Business (Long Stay) - Standard Business Sponsorship (Subclass 457), Employer Obligations, available from the Department of Immigration and Citizenship website, http://www.immi.gov.au/skilled/skilled-workers/sbs/obligations-employer.htm. (last visited May 22, 2007).

citizenship, some participants in the working vacation program will also be covered by reciprocal health agreements.[28]

- **Can temporary workers move between employers once in the country? For example they are hired to work for Company X but feel they are being mistreated and get a job with Company Y, Can they change employers?**

It is possible for temporary employees to change jobs; they, however, will need to find another employer willing to sponsor them and apply for another temporary worker visa or apply for an alternative visa. In the absence of obtaining another visa the employee will need to make arrangement to leave Australia within twenty-eight days of ceasing employment.[29] Working holiday program participants are not required to remain with one employer or even remain in employment per se. Rather, working vacation program participants are limited to working for a maximum of six months in Australia for each employer.[30]

II. General questions

- **What is the general rate of immigration by race? By country?**

During the period 2005-2006 the most common nationalities of immigrants were:[31]

- Skills Stream – The United Kingdom (26%); India (14%); People's Republic of China (13%); South Africa (4%), Malaysia (4%), Republic of Korea (3%), Philippines (3%), Singapore (3%);[32]
- Family Stream – The United Kingdom (15%); People's Republic of China (11%); India (6%), Philippines (5%), Viet Nam (5%), USA (4%), Thailand (3%), Lebanon (2%), Indonesia (2%), Fiji (2%);[33]
- Humanitarian stream – Africa (56%), Middle East and South West Asia (34%), Asia and Americas (10%);[34]

- **If an immigrant is currently in the country illegally and applies for the Skilled Worker Visa by the points system in that country, are points given or are they taken away for them for being in the country illegally?**

An applicant for a skilled worker visa is assessed via a points system. Under this points system the applicant may be awarded additional points for Australian work experience; this work experience,

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[28] Residents of Republic of Ireland, New Zealand, United Kingdom, Sweden, Finland, Norway, and the Netherlands are granted coverage for the duration of their approved visit. Residents of Malta or Italy are covered for a period of six months from date of arrival in Australia. Coverage is of limited subsidized health services for medically necessary treatment. *See* Medicare Australia, Health Care for Visitors to Australia, available from the Medicare Australia website, http://www.medicare.gov.au/youhealth/going_overseas/vtla.shtml. (last visited May 22, 2007).

[29] Department of Immigration and Citizenship website site Temporary Business (Long Stay) - Standard Business Sponsorship (Subclass 457) – employee obligations, http://www.immi.gov.au/skilled/skilled-workers/sbs/obligations-employee.htm (May 22, 2007).

[30] Working Holiday Maker Visa Options, http://www.immi.gov.au/visitors/working-holiday/visa-options.htm (last visited May 22, 2007).

[31] DIMIA, POPULATION FLOWS: IMMIGRATION ASPECTS 2005-06 (Commonwealth of Australia) (2007).

[32] Within the Skills Stream outcomes for Independent Skilled Visas (i.e., visas granted less those visas cancelled, refused or not taken up) are: UK 24%; India 18%; PRC 16%; Malaysia 5%, Singapore 3%; South Africa 3%; Indonesia 3%; Republic of Korea 3%, and other 27%. DIMIA, POPULATION FLOWS: IMMIGRATION ASPECTS 2005-06 (Commonwealth of Australia) (2007) p. 22 fig. 2-5.

[33] DIMIA, POPULATION FLOWS: IMMIGRATION ASPECTS 2005-06 (Commonwealth of Australia) (2007) p. 27. fig. 2-13.

[34] DIMIA, POPULATION FLOWS: IMMIGRATION ASPECTS 2005-06 (Commonwealth of Australia) (2007) p. 35. fig. 2-25.

however, must be both in a skilled occupation and legal, that is, the applicant must have been working in Australia while on a valid visa and working in compliance with any conditions of that visa.[35]

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May 2007

[35] Migration Regulations 1994 (Cth) Regulations 2.27C, 136.223B.

2007-03866

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CANADA

Migration – Use of Points System – Additional Questions

Executive Summary

The report addresses a variety of issues relating to temporary workers in Canada. These issues include the types of temporary worker programs in Canada, what rights temporary workers have, and general immigration statistics.

Introduction

This report is in response to questions asked during a hearing on An Examination of Points Systems as a Method for Selecting Immigrants before the U.S. House of Representatives Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, on May 1, 2007.

I. Temporary Worker Programs

Skilled Workers

Canada admits both skilled and unskilled workers as temporary employees. Admission of both groups is based upon labor needs. Skilled workers from the United States may be able to take advantage of Chapter 16 of the North American Free Trade Agreement (NAFTA). Under this Chapter, persons who fit into one of sixty professional categories can obtain employment in Canada without the Canadian employer having to first apply for a labor clearance from the government. Such a clearance requires labor authorities to conduct an inquiry as to whether there are any available citizens or permanent residents in Canada who are willing and able to accept the position being offered. Under NAFTA, persons considered to be professionals must still obtain work permits, but this process is much less time-consuming when a labor certification is not required.

Appendix 1603.D.1 to NAFTA lists many different types of workers who are eligible to qualify as NAFTA professionals. These professions usually require a baccalaureate degree. Included in the list of NAFTA professionals are accountants, architects, foresters, lawyers, librarians, physicians and dentists, landscapers, and teachers.[1]

Guest Workers

Canada issues work visas to unskilled, as well as to skilled workers. Many of the unskilled employees are agricultural workers. Canada has a Seasonal Agricultural Workers Program (SAWP) for persons who do not qualify as skilled or professional agricultural workers. Under this program, Canada has signed SAWP agreements with Jamaica, Mexico, Barbados, and Trinidad and Tobago. Under these agreements, persons may apply for admission to the program in their home country. Applicants are screened by local authorities. Canadian immigration officials issue work permits to screened workers in accordance with Canada's agricultural needs. The majority of the agricultural workers are admitted in the second and third quarters of each year. Guatemala is not a participant in the SAWP program, but an

[1] North American Free Trade Agreement, Appendix 1603.D.1, http://www.nafta-sec-alena.org/DefaultSite/index_e.aspx?DetailID=78 (last visited May 31, 2007).

increasing number of work permits has been issued to workers from that country over the past two years. Nevertheless, Mexico and Jamaica are the leading source countries, with fifty-eight and twenty-nine percent of the 2005 SAWP permits issued to citizens of those countries respectively. The total number of SAWP permits reportedly issued in 2005 was approximately 20,000.[2] Government statistics show that in 2005, the number of foreign workers at skill level C, which includes all seasonal agricultural workers, was approximately 45,000.[3] Under the SAWP agreements, consular officials are allowed to visit housing facilities to ensure that they meet Canadian standards. Foreign officials keep records on the return of agricultural workers to ensure that the program is not illegally employed by persons who want to remain in Canada indefinitely.

Workers considered to be low-skilled, but not seasonal, employees are usually given permits valid for twelve months. The Government has recently allowed for renewals within the country for another twelve months. After two years, a person must return to his or her home country to apply for a new work permit.

On May 16, 2007, the Minister of Citizenship and Immigration introduced a bill that would give immigration officials the authority to deny persons work visas if they believe the applicants may be exploited or abused if admitted to Canada.[4] Although the bill does not define exploitation or abuse, the Department of Citizenship and Immigration has released a statement stating that it is primarily aimed at protecting foreign strippers and other persons who may become victims of human trafficking. Over the past year, the Government has been trying to reduce the number of foreign strippers admitted to Canada, most of whom come from Eastern Europe, because of the large number of cases in which women admitted for that purpose have been forced into prostitution. However, immigration officials are generally required to issue permits to persons who meet the existing criteria for temporary workers. The proposed changes would give these officials the authority to deny permits to persons who may be at risk. These changes could also be applied to other businesses that have a history of exploiting or abusing persons.

II. Statistics

In 2005, Canada accepted almost 100,000 temporary workers.[5] The number of temporary workers has been rising over the past ten years as the country's unemployment rate has fallen to a thirty-year low. Skilled workers slightly outnumbered unskilled workers.

III. Minimum Wages

In Canada, most employees are covered by provincial minimum wage laws. Federal labor law only applies to employees in those few businesses that fall under federal jurisdiction, such as banking and aeronautics. The provincial minimum wage laws generally apply to all employees, but there are some exceptions for students and apprentices. There are no special rates for temporary workers. The current provincial rates vary from a low of Can$7.00 in Alberta to a high of Can$8.00 in British Columbia and Ontario.[6]

III. Union Activities

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[2] Citizenship and Immigration Canada, *Foreign Worker Overview*, THE MONITOR, http://www.cic.gc.ca/english/monitor/issue14/05-overview.html (last visited June 1, 2007).

[3] *Id.*

[4] An Act to Amend the Immigration and Refugee Protection Act, Bill C-57, 39th Parl. 1st Sess., http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=2950025&Language=e&Mode=1 (last visited May 31, 2007).

[5] Citizenship and Immigration Canada, *Working Temporarily in Canada*, http://www.cic.gc.ca/english/pub/facts2005/temporary/01.html (last visited May 29, 2007).

[6] 2 CANADIAN LABOUR LAW REPORTER, para. 5410 (C.C.H. Can. 2007).

Under federal and provincial labor laws, all employees have the right to join a union.[7] The term "employee" usually does not cover persons who may be considered to be independent contractors. Many temporary employees fall into this category. However, there are no statutory limits on the rights of temporary employees to join a union. There are also no statutory restrictions on the right of temporary employees to form a union. However, which employees are considered to be bargaining unit members and are thus covered by a collective bargaining agreement is left to be determined by the collective bargaining process. Employees may be required to be a member of the bargaining unit for a prescribed period of time before they are afforded the rights and protections of a collective bargaining agreement.

IV. Rights of Temporary Workers

Health Benefits

In Canada, each province operates its own health insurance program. These programs are generally similar, but there are some differences in the way they are funded and in their eligibility requirements. In Ontario, temporary workers are eligible for Ontario Health Insurance Plan coverage if they have work permits that are valid for at least six months, but there is a three-month waiting period for all new residents who have arrived in Ontario from outside Canada. The Government encourages persons who have not yet established three months' residence to acquire private health insurance.[8]

Workers' Compensation

Employment Insurance is administered by the federal government. At the present time, a new entrant to the system must work slightly over twenty-two weeks before being eligible for unemployment insurance.[9] A person whose work permit has expired is not eligible for employment insurance. Payments to eligible persons are based upon length of service, amount of contributions, and occupation.

V. Changing Jobs

Because temporary workers are admitted to fill specific jobs offered to them by an employer who is unable to find a Canadian citizen or permanent resident who is willing and able to fill the position, they generally do not have the right to move between employers once they are in the country, unless they fall into one of the narrow exempted classes such as certain entertainers. However, persons who wish to change jobs while in possession of a work permit can apply for a change in their conditions of employment. The Department of Citizenship and Immigration has posted the appropriate form on its web site.[10] Persons who fail to have their application approved can be ordered to leave the country.

VI. Immigration by Country

In 2005, the top source countries for new permanent residents were as follows:

1. China
2. India
3. Philippines

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[7] Canada Labour Code, 1999 S.C. c. 31, s. 16(2)(c)).

[8] Ontario Ministry of Health and Long-Term Care, *Health Services in Your Community*, http://www.health.gov.on.ca/english/public/program/ohip/ohipfaq_dt.html#Q1 (last visited May 30, 2007).

[9] Service Canada, *Current Version of the Employment Insurance Act*, June 13, 2006, *available at* http://www1.servicecanada.gc.ca/en/ei/legislation/ei_act_part1_1.html.

[10] Citizenship and Immigration Canada, *Application to Change Conditions or Extend Your Stay in Canada as a Worker*, http://www.cic.gc.ca/english/applications/extend-worker.html (last visited May 30, 2007).

4. Pakistan
5. United States
6. Colombia
7. United Kingdom
8. South Korea
9. Iran
10. France
11. Romania
12. Sri Lanka
13. Russia
14. Taiwan
15. Hong Kong[11]

VII. Applications from Illegal Immigrants

Canada generally allows only spouses, dependent children, and persons who have presented refugee claims to apply for permanent residence within the country. The Government has been considering extending the ability to apply for adjustments of status to certain students and temporary workers, but has not yet made any legislative changes.[12]

Persons who are in Canada illegally are not allowed to apply for permanent residence. A person who has overstayed a visa does not lose points on the points system. However, if he or she has been ordered to leave the country, he or she is barred from applying for permanent residence from outside Canada for a period of two years.[13]

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June 2007

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[11] Citizenship and Immigration Canada, *Facts and Figures 2005*, http://www.cic.gc.ca/english/pub/facts2005/permanent/12.html (last visited May 29, 2007).

[12] Information obtained from the Canadian Embassy in Washington, D.C. on May 30, 2007.

[13] *Id.*

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NEW ZEALAND

Migration – Use of Points System – Additional Questions

Executive Summary

New Zealand has temporary worker programs for both skilled and unskilled workers. All employers of temporary workers must comply with legal obligations to pay employees no less than the relevant minimum wage or other contracted industry standard; and to provide all vacation and other leave and to comply with any other statutory criteria such as occupational health and safety. Employers of some unskilled workers must agree to pay half the return airfare between New Zealand and the employee's country of residence. Some sponsored skilled temporary workers must be paid at or above a statutory minimum wage.

I. Temporary Worker Program

- **What are the types of temporary worker programs?**

New Zealand has several visas that allow skilled employees or skilled applicants with employment offers from New Zealand companies to work temporarily within New Zealand. Some of these visas permit the visa holder to apply for permanent residence.[1]

New Zealand is currently implementing a Seasonal Work Permit (SWP) pilot program that will allow persons already within New Zealand to provide labor to horticulture and viticulture industries during periods of high seasonal demand. This pilot program will run until September 30, 2007.[2]

Under the SWP program persons in New Zealand from a visa-free country or from a country that is not visa-free but who are present in New Zealand on a temporary permit that is valid from February 15, 2007 until the date they make their application may apply for a work permit. Upon being granted a work permit applicants will be able to undertake 'seasonal work' (i.e., planting, maintaining, harvesting and packing crops) for any employer in the horticulture and viticulture industries in specific areas where a shortage has been identified by the Ministry of Social Development. All work permits will expire on or before September 30, 2007.

From April 2007 New Zealand will implement a Recognised Seasonal Employer (RSE) Policy to meet the labor requirements of New Zealand's horticulture and viticulture industry.[3] Under the RSE Policy employers who are unable to find domestic workers to undertake planting, maintenance, harvesting, and packing of crops in the horticulture and viticulture industries, may apply to be a Recognised Seasonal Employer (RSE). As an RSE an employer may apply to the Department of Immigration for an Agreement to Recruit (ATR) under which employers may recruit workers from

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[1] Both the Work to Residence and the Employee of Relocating Company visa categories permit applications for permanent residence. *See* http://www.immigration.govt.nz/nzopportunities/live/skilledmigrant.htm (last visited May 22, 2007) and NEW ZEALAND IMMIGRATION SERVICE, GUIDE FOR WORKING IN NEW ZEALAND, NZIS 1016, NOV. 2005, p. 3.

[2] *See* Immigration New Zealand, Seasonal Work Pilot Policy, http://www.immigration.govt.nz/community/stream/employ/employmentprocesses/employingtemporaryworkers/whatisrequired/seasonalwkrs/swp/ (last visited May 22, 2007).

[3] *See* Immigration New Zealand, Recognised Seasonal Employer Work Policy, http://www.immigration.govt.nz/migrant/stream/work/rse/ (last visited May 22, 2007).

outside New Zealand[4] to work for a short period of time in New Zealand. Such workers must then apply (on the basis of their job offer from an RSE) for a visa to enter and work in New Zealand.

- **What is the rate of entry of temporary workers?**

During the 2005-2006 fiscal year New Zealand issued labor market tested work permits to 29,503 applicants.[5] The majority of these were issued to persons from the United Kingdom (19%) and China (12%).[6]

New Zealand's working vacation program consisted of 36,000 places in 2005-2006 and will have 40,000 places in 2006-2007.[7]

The Seasonal Work Permit (SWP) Pilot program currently has 4,000 places available.[8]

It is proposed that up to 5,000 workers per year will be granted permission to enter and work under the Recognised Seasonal Employer Policy.[9]

- **Is there a set minimum wage for temporary workers?**

All employers of temporary workers must comply with their obligations to pay employees no less than the relevant minimum wage or other contracted industry standard; to provide all vacation and other leave; and to comply with any other statutory criteria such as occupational health and safety.[10]

Employees under the Recognised Seasonal Employer Policy must have a signed employment agreement that specifies a compensation rate for the employee and this rate must be the 'market rate,' i.e., consistent and equivalent to that paid to New Zealand citizen or resident workers for the same work in the same region; and paid in accordance with all relevant New Zealand employment laws (including vacation and leave requirements), and be at least at the minimum wage.[11] The employer must also pay half the return airfare between New Zealand and the employee's country of residence.[12]

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[4] Generally workers will be drawn from Pacific Island nations unless the employer is able to justify recruitment of workers from other areas. *See* IMMIGRATION NEW ZEALAND OPERATIONS MANUAL, Apr. 10, 2007 ¶ WG8.10.1, *available at* http://www.immigration.govt.nz/NR/rdonlyres/0A1DBFDA3-EFEB-4638-B6AB-896C7851C36B/0/TemporaryEntry.pdf. In this instance Pacific Islands means: Federated States of Micronesia, Kiribati, Nauru, Palau, Papua New Guinea, Republic of Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. *See* IMMIGRATION NEW ZEALAND OPERATIONS MANUAL, Apr. 10, 2007, ¶ WG8.10.10, *available at* http://www.immigration.govt.nz/NR/rdonlyres/0A1DBFDA3-EFEB-4638-B6AB-896C7851C36B/0/TemporaryEntry.pdf.

[5] This covers work permits to cover skills shortages and includes: "General work permit, Talent (Accredited Employers), LTSSL (Long Term Skills Shortage List) ... some business policies, machinery installers, specialist skill areas, seasonal work permit policy, and Japanese interpreters." DEPARTMENT OF LABOR, MIGRATION TRENDS 2005/06, 2006 p. 30. *available at* http://www.dol.govt.nz/publications/research/migration-trends/MigrationTrends-2005-06.pdf.

[6] *Id.* at 28-29.

[7] *Id.* at 33.

[8] *See* Immigration New Zealand, Seasonal Work Pilot Policy, http://www.immigration.govt.nz/community/stream/employ/employmentprocesses/employingtemporaryworkers/whatisrequired/seasonalwkrs/swp/ (last visited May 22, 2007).

[9] *See* Immigration New Zealand, Employing Seasonal Workers, www.immigration.govt.nz/community/stream/employ/employmentprocesses/employingtemporaryworkers/whatisrequired/seasonalwkrs/ (last visited May 22, 2007).

[10] Immigration New Zealand, OPERATIONS MANUAL, April 10, 2007 ¶ RW2, RW4, available at: http://www.immigration.govt.nz/nzis/operations_manual/index.htm ¶W2.10.5.

[11] Employment laws include the Employment Relations Act 2000. Immigration New Zealand, Recognised Seasonal Employer Policy Employment Agreements, *available at* www.immigration.govt.nz/community/stream/employ/employmentprocesses/employingtemporaryworkers/whatisrequired/seasonalwkrs/rse/Employmentagreements.htm.

[12] *See* Immigration New Zealand, Requirements for an Agreement to Recruit, http://www.immigration.govt.nz/community/stream/employ/employmentprocesses/employingtemporaryworkers/whatisrequired/seasonalwkrs/rse/atrrequirements.htm. (last visited May 22, 2007). Minimum wage means the statutory amount set for adults.

The Talent (Accredited Employers) Work Policy visa and the Long Term Skills Shortage policy visa require the relevant job offer to have a minimum base salary of NZD45,000.[13]

- **Do temporary workers have a statutory right to organize a trade union or participate in the trade union?**

Under New Zealand law all employees have a right to join or not join a union.[14]

- **What are the rights of temporary workers, i.e., health benefits, workers' compensation?**

Employers employing persons under the Recognised Seasonal Employer Policy must comply with all New Zealand statutory health and safety obligations.[15]

All employees within New Zealand (including temporary employees) are covered in relation to personal injuries under New Zealand's universal no-sue compensation and rehabilitation insurance program.[16] Personal injury includes death, physical injuries, some mental injuries and damage (other then wear and tear) to prosthetics.[17]

- **Can temporary workers move between employers once in the country? For example, if they are hired to work for Company X but feel they are being mistreated and get a job with Company Y, can they change employers?**

A work visa may be issued with a condition that the visa holder works solely in the employment of a specified employer. In this instance, to change employers the visa holder would have to apply for a variation in the conditions of his or her visa.[18]

An employee employed by a Recognised Seasonal Employer Policy employer (RSE) may transfer from one RSE to another where his or her employer's RSE status has been rescinded or where he or she is no longer able to work for the initial RSE due to exceptional circumstances (such as crop failure).[19] If the employee, however, is unable to find further employment with another RSE then his or her visa will be revoked and he or she must leave New Zealand.[20] The employee may not apply for any other type of visa or for permanent residence.[21]

II. General Questions

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under the Minimum Wage Act 1983.

[13] IMMIGRATION NEW ZEALAND OPERATIONS MANUAL Apr. 10, 2007, ¶¶ RW2, RW4, *available at* http://www.immigration.govt.nz/nzis/operations_manual/index.htm.

[14] Employment Relations Act 2000 §6 (definition of employee); Part 3 (freedom of association); Department of Labour, 'Joining a Union Fact Sheet,' *available at* http://www.ers.govt.nz/union/joining_print.html.

[15] Employment laws include the Employment Relations Act 2000. Immigration New Zealand, and Recognised Seasonal Employer Policy Employment Agreements, www.immigration.govt.nz/community/stream/employ/employmentprocesses/employingtemporaryworkers/whatisrequired/seasonalwkrs/rse/Employmentagreements.htm (last visited May 22, 2007).

[16] Injury Prevention, Rehabilitation, and Compensation Act 2001. IPRC came into force on April 1, 2002 and replaced the Accident Insurance Act 1998. Injury Prevention, Rehabilitation, and Compensation Act 2001, § 339(1). Despite being repealed the Accident Insurance Act 1998 continues to apply in respect of some personal injuries.

[17] IPRC § 26.

[18] IMMIGRATION NEW ZEALAND OPERATIONS MANUAL Apr. 10, 2007, ¶ W2.25.1, *available at* http://www.immigration.govt.nz/nzis/operations_manual/index.htm.

[19] *Id.* at ¶ WG8.15.5, *available at* http://www.immigration.govt.nz/nzis/operations_manual/index.htm (last visited May 2,, 2007).

[20] *Id.* at ¶ WG8.15.35.

[21] *Id.* at ¶ WG8.15.25.

- **What is the general rate of immigration by race? By country?**

During the 2005-2006 fiscal year, the primary nationalities of applicants approved for permanent residence in New Zealand were as follows:

- Skilled/Business stream – 37% UK; China 13%; South Africa 11%; South Korea 6%; India 5%; USA 4%; Fiji 3%; Philippines 3%; Malaysia 2%; Germany 2%;
- Family sponsored – China 18%; UK 18%; India 11%; Fiji 7%; Samoa 5%; South Africa 4%; USA 4%; Tonga 3%; Philippines 2%; South Korea 2%;
- International/Humanitarian – Samoa 31%; Tonga 12%; Zimbabwe 11%; Fiji 9%; Myanmar 7%; Iran 5%; Kiribati 3%; Tuvalu 3%; Congo 2%; Iraq 2%.[22]

- **If an immigrant is currently in the country illegally and applies for the Skilled Worker Visa by the points system in that country, are points given or taken away for them for being in the country illegally?**

Under the skilled migrant visas an applicant may obtain points for work experience; a requirement of this work experience, however, is that it was lawfully obtained (i.e., in accordance with a valid visa).[23]

III. Injuries to Temporary Workers

A 2004 study found that in general, "work permit holders tended to be employed in industries with a lower incidence of injuries than New Zealand workers and they were less represented in the more injury-prone industries".[24]

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May 2007

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[22] Department of Labor, MIGRATION TRENDS 2005/06, 2006 p. 47 fig. 5.7, *available at* http://www.dol.govt.nz/publications/research/migration-trends/MigrationTrends-2005-06.pdf.

[23] IMMIGRATION NEW ZEALAND, OPERATIONS MANUAL, Apr. 10, 2007, ¶ SM11.15. Additional requirements for recognition of work experience, *available at* Immigration New Zealand website http://www.immigration.govt.nz/nzis/operations_manual/index.htm.

[24] Immigration Research Programme, NEW ZEALAND WORK POLICY: MEETING TALENT, SKILL AND LABOUR NEEDS, Mar. 2004, p. 6, *available* at http://www.immigration.govt.nz/NR/rdonlyres/165B5CC1-F0DA-4E8B-B32C-1C8AB746F98F/0/NZWorkPolicyMeetingtalentskillandlabourneeds.pdf.

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UNITED KINGDOM

Migration – Use of Points System – Additional Questions

Executive Summary

The report addresses a variety of issues relating to temporary workers in the UK. These issues include the types of temporary worker programs in the UK, what rights temporary workers have, and general immigration statistics.

I. Introduction

This report is in response to questions asked during a hearing on An Examination of Points Systems as a Method for Selecting Immigrants before the U.S. House of Representatives Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, on May 1, 2007.

Types of Temporary Worker Programs

There are a number of schemes that allow individuals to enter the UK temporarily to seek or take up employment and require that these individuals return to their home countries upon the completion of their time in country. However, a significant proportion of these allow applicants to apply to extend their stay for additional periods or transfer to other visa categories that eventually culminate in the eligibility to apply for permanent residence and later citizenship. Strictly temporary worker categories that require individuals to return to their home countries at the completion of their stay in the UK and provide limited or no prospects for transfer into another visa category fall under the following headings: au pair placements, working holiday makers, seasonal agricultural workers, and the sectors-based scheme.

Working Holiday Makers

The UK operates a scheme in which citizens from certain Commonwealth countries, British Dependant Territories citizens, British Overseas citizens, or British Nationals (Overseas), aged between seventeen and thirty years old can enter the UK for a maximum period of two years and engage in employment for up to twelve months during this period, without the need for a work permit.[1] Individuals entering the UK under this scheme must have enough money to pay for both their outward and return journeys; to support themselves without recourse to public funds; and to provide for accommodations and living expenses for at least two months after arrival in the UK, or one month if a job has been arranged in advance that will pay enough to cover these expenses. Individuals entering under the scheme must not be married or in a civil partnership, unless their partner also qualifies to enter the UK under the working holiday maker scheme, nor have any children that will be over the age of five years old at any point during their stay in the UK as a working holiday maker. Any type of employment is permitted under the scheme, with the exception of engaging in business or providing services as a professional sports person. In the year 2004, 62,400 people entered the UK using working holiday maker visas. Individuals must intend to leave the UK at the end of the two-year period, although they may be able to extend their stay by transferring to an employment-based category as an innovator, highly skilled migrant, or work permit employee, if the occupation is on a designated shortage occupations list.[2]

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[1] Immigration Rules, HC 395 ¶ 95, http://www.bia.homeoffice.gov.uk/lawandpolicy/immigrationrules/part4 (last visited May 29, 2007).

[2] *Id.*, ¶¶ 95-100.

Seasonal Agricultural Workers

A temporary worker scheme, known as the Seasonal Agricultural Workers Scheme (SAWS), allows individuals from outside the European Economic Area (EEA) that are over the age of eighteen and students in full time education to enter the UK to perform low-skilled seasonal agricultural work, such as planting and gathering crops or on-farm processing and packing of crops, for up to six months and are also provided with accommodation during this time.[3] Individuals may enter the UK multiple times under this scheme, provided that they return to their home country for a minimum of three months between each entry. Individuals entering under this scheme do not need to obtain a work permit, but must obtain appropriate entry clearance before arriving in the UK. For the year 2007, the number of individuals allowed to enter the UK under the SAWS is 16,250, with forty percent of these places being allocated to Romanian and Bulgarian nationals in anticipation of a complete move to solely limiting the scheme to those nationals in 2008.[4] This scheme is run by the Home Office through operators that are responsible for placing individuals on farms and for informing the workers of their "immigration status and the consequences of overstaying."[5]

Au Pairs

Individuals without partners or dependents between the ages of seventeen and twenty-seven from certain countries that are able to maintain themselves without recourse to public funds or accommodations may enter the UK for a period of up to two years to take up a placement as an au pair. Au pair placements in the UK are to aid nationals from certain countries in learning the English language and to permit them to study in return for an allowance and up to five hours help around the hosts' home five days a week.[6]

Sectors-Based Scheme

The sectors-based scheme (SBS) provides UK employers in the food processing and hospitality sectors the opportunity to apply for work permits for nationals from Romania and Bulgaria to enter the UK for up to twelve months, to take low-skilled work in the food manufacturing industry.[7] In order to enter under the UK, applicants must be aged between eighteen and thirty, be able to maintain themselves without recourse to public funds, hold a valid work permit issued under the scheme by the Home Office, intend to leave the UK at the end of their employment, and be capable of assuming the employment specified in the work permit.[8]

II. Rate of Entry for Temporary Workers

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[3] *Id.*, ¶¶ 104 - 109.

[4] Home Office, *General Information About SAWS*, http://www.workingintheuk.gov.uk/working_in_the_uk/EN/homepage/work_permits0/seasonal_agricultural/general_information.html (last visited May 29, 2007).

[5] Home Office, *Information about the Seasonal Agricultural Workers' Scheme*, http://www.workingintheuk.gov.uk/working_in_the_uk/EN/homepage/work_permits0/seasonal_agricultural/saws_nepen.html (last visited May 29, 2007).

[6] Immigration Rules, H.C. 395, ¶¶ 88-94, http://www.bia.homeoffice.gov.uk/lawandpolicy/immigrationrules/part4 (last visited May 29, 2007).

[7] UK Visas, *Sectors Based Scheme for Low-Skilled Migrants*, Feb. 2007, *available at* http://www.ukvisas.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1054570721105.

[8] Immigration Rules, H.C. 395 ¶¶ 135I-135N, http://www.bia.homeoffice.gov.uk/lawandpolicy/immigrationrules/part4 (last visited May 29, 2007); Home Office, *Work Permits*, 2007, http://www.ind.homeoffice.gov.uk/6353/114466/49552/bulandromsectorbasedscheme.pdf.

The following table provides the rate of entry for strictly temporary workers in the UK.[9]

Type of Temporary Employment	Total Number Granted Entry in 2005
Au Pairs	2,360
Working Holiday Makers	56,600
Seasonal Agricultural Workers	13,000 (quota based)
Sectors-Based Scheme	3,500 (quota based).

III. Minimum Wage

Employees that ordinarily work in the UK under a contract of employment and that are not of compulsory school age (sixteen years old) are eligible for the national minimum wage, which is currently set at £5.35 (approximately US$10) per hour.[10] This provision is broad and encompasses a variety of workers, including agency workers and foreign workers working in the UK.[11] The provisions specifically exclude individuals under the age of twenty-six that participate in apprenticeships or schemes provided by the government and workers that reside in the family home of the employer and are treated as family members through the provision of accommodation, meals, and sharing of tasks and leisure activities.[12] The Secretary of State has modified the provisions of the National Minimum Wage Act 1999 to lower the minimum wage applicable to individuals between the ages of sixteen and eighteen and those between the ages of eighteen and twenty-two. The current rate for these individuals is £3.30 (approximately US$6) or £4.45 (approximately US$9) per hour, respectively.[13]

Agricultural workers are also covered by the Agricultural Wages Order, which sets rates of pay that may be higher than the national minimum wage. Currently, workers aged sixteen and over are paid based on a six-tier structure on an hourly basis: basic trainees earn £5.35 (approximately US$10); standard workers earn £5.74 (approximately US$10.50); lead workers earn £6.31 (approximately US$12); craft workers earn £6.77 (approximately US$12.50); supervisory grade workers earn £7.18 (approximately US$14); farm management workers earn £7.75 (approximately US$15).[14] The Secretary of State has the authority to make regulations to exclude certain classes of individuals specified in the National Minimum Wage Act 1999 from entitlement to the minimum wage or may make regulations to modify the hourly rate for these classes of people. Currently, the Secretary of State may exclude from the provisions of the Act individuals under the age of twenty-six or individuals over the age of twenty-six who are within the first six months of employment for a new employer; those participating in a scheme in which shelter is provided in return for work; a scheme in which training, work experience, or temporary work is provided; a scheme in which assistance in the seeking or obtaining of work is provided; or a scheme where the person is attending a course of higher education and must work for the experience.[15] There have yet to be regulations made under these provisions.

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[9] Table based upon information contained in: HOME OFFICE, CONTROL OF IMMIGRATION STATISTICS 2005, 2006, Cm. 6904 Table 2.2, http://www.official-documents.gov.uk/document/cm69/6904/6904.pdf.

[10] National Minimum Wage Act 1998, c. 39, § 1; National Minimum Wage Regulations 1999/584 (as amended).

[11] National Minimum Wage Act 1998, c. 39, § 54; *see further* House of Commons Library, *National Minimum Wage*, (1999), Research Paper 99/18.

[12] National Minimum Wage Act 1998, c. 39 § 157.

[13] *Id.*, c. 39, § 1; National Minimum Wage Regulations 1999/584 (as amended).

[14] Agricultural Wages Order 2006 (Amendment) (Number 1), *available at* http://www.defra.gov.uk/farm/working/agwages/pdf/awo06-amend.pdf. This order provides extensive information related to vacation time and rights of agricultural workers and is made by the Agricultural Wages Board under powers granted to it in the Agricultural Wages Act 1948, c. 11 & 12 Geo. 6, c. 47.

[15] National Minimum Wage Act 1998, c. 39, § 3, as amended by the National Minimum Wage Regulations 1999, SI 1999/584.

IV. Right to Unionize

In the UK, a trade union is defined as an

> organization (whether temporary or permanent) which consists wholly or mainly of workers … whose principal purposes include the regulation of relations between workers … and employers or employers' associations; or which consists wholly or mainly of constituent or affiliated organizations which fulfill the [above condition] (or themselves consist wholly or mainly of constituent or affiliated organizations which fulfill those conditions), or representatives of such constituent or affiliated organizations, and whose principal purposes include the regulation of relations between workers and employers or between workers and employers' associations, or the regulation of relations between its constituent or affiliated organizations.[16]

The right to unionize is currently governed by the Trade Union and Labour Relations (Consolidation) Act 1992, supplemented by a Code of Practice. This Act does not provide any restrictions on temporary workers organizing a trade union and provides a statutory regime in which employers of twenty-one or more workers, or those who have averaged twenty-one or more workers in the thirteen weeks preceding the week of the application, can be required to recognize such unions.[17] The Secretary of State can make an order that must be approved by Parliament to vary the provisions that are required for the recognition of a trade union.[18]

V. Right to Membership in a Union

At common law, with the exception of the police, all workers are free to form and join trade unions.[19] The right not to be excluded[20] from a trade union has been present in various forms since the 1970s, with the adoption of the Industrial Relations Act 1971. Membership of and in trade unions is typically governed by the individual unions' rule books, which must comply with provisions of the Trade Union and Labour Relations (Consolidation) Act 1992 (as amended).[21] The right not to be excluded from a trade union is currently governed by sections 174-177 of that Act 1. These sections provide that an individual cannot be excluded from membership in the trade union unless:

- He does not satisfy an enforceable requirement contained in the rules of the union;
- He does not qualify for membership of the union by reason of the union operating only in a particular part of Great Britain;
- He is no longer employed by the employer for which the trade union is organized to regulate labor relations; or
- The exclusion is entirely attributable to conduct that is not protected within the terms of the Act.[22] Conduct for which an individual can be excluded from a trade union includes participation in the activities of a political party

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[16] Trade Union and Labour Relations (Consolidation) Act 1992, c. 52, § 1.

[17] *Id.* c. 52, § 70 & sch. A1 (as amended). The process for the statutory recognition of trade unions is lengthy and complex. Explanatory notes to the amending Act (the Employment Relations Act 1999, c. 26 are *available* at http://www.opsi.gov.uk/acts/en1999/99en26--a.htm (last visited May 29, 2007).

[18] Trade Union and Labour Relations (Consolidation) Act 1992, c. 52, § 70 and sch. A1, ¶ 4 (as amended).

[19] GILLIAN MORRIS AND TIMOTHY ARCHER, COLLECTIVE LABOUR LAW, 2000, ¶ 3.2.

[20] Excluded is defined as where "an individual's application for membership of a trade union is neither granted nor rejected before the end of the period within which it might reasonably have been expected to be granted if it was to be granted … shall be treated as having been excluded from the union." Trade Union and Labour Relations (Consolidation) Act 1992, c. 52, § 177(2)(a).

[21] *Id.*, c. 52, §§ 174-177.

[22] *Id.*, c. 52, § 174(2).

Furthermore, membership in a trade union can lawfully be restricted by one or more of the following criteria:

- employment in a specific trade, industry or profession;
- an occupational description, including grade, level, or category of appointment; and
- possession of specified trade, industrial, or professional qualifications or work experience.[23]

VI. Changing Employers

The rules governing changes in employer depend upon the type of temporary employment the individuals entered the UK to undertake. Working holiday makers are not tied to any one employer and may change jobs, provided they meet the requirements of the scheme and contractual obligations, at any point. Individuals in the UK under the SAWS are placed in their positions by operators acting on behalf of the Home Office and may only change employers with the agreement of the operator.[24] If there is no work available at the original farm where the individual has been placed, he may be transferred to another farm within the scheme.[25] Under the au pair scheme, a change of employer is permitted provided the new employment continues to meet the requirements of the scheme.[26]

Under the SBS, individualss can change employers if another employer applies to the Border and Immigration Agency for permission to employ them within the same industry for which they first entered the UK and if they show that they meet the requirements for a work permit, e.g. that there are no suitable individuals already present in the UK for the position.[27] If the work permit change of employment is approved, the individual must then apply to vary their leave to remain to cover the change of employment. The twelvemonth period for which the individual was granted entry into the UK is not altered by any change in employment.

VII. Rights of Temporary Workers

There are a number of employment rights protections that apply to all workers, such as protection against unfair discrimination; the right to join a union; the right to a safe working environment; and limits set by law on the time that individuals can work – currently the limite is forty-eight hours a week averaged over seventeen weeks (twenty-six weeks if working on a farm), unless an alternative agreement in writing notes anything to the contrary.[28]

Health and safety legislation extends to all workers, encompassing migrant workers whether or not they are legally present in the UK, and places a duty on employers to protect their employees' health, safety, and welfare at work.[29] The government's Health and Safety Executive has provided guidance on good practice for employers to follow in ensuring these duties are met. The advice states that employers must:

- inform all employees of any risks to their health and safety at work;

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[23] *Id.*, c. 52, § 174(3).

[24] *Information about the Seasonal Agricultural Workers' Scheme*, *supra* note 5.

[25] Home Office, *Immigration Nationality Directorates Instructions*, 2004, ch. 4, § 3, ¶ 2, http://www.ind.homeoffice.gov.uk/documents/idischapter4/section3.pdf?view=Binary (last visited May 29, 2007).

[26] Home Office, *Information About Au Pairs*, http://www.workingintheuk.gov.uk/working_in_the_uk/en/homepage/schemes_and_programmes/au_pairs.html (last visited May 29, 2007).

[27] Home Office: Border and Immigration Agency, *Work Permits*, 2007, http://www.ind.homeoffice.gov.uk/6353/11406/49552/bnlandromsectorbasedscheme.pdf (last visited May 29, 2007).

[28] The Working Time Directive 1998, SI 1998/1833.

[29] Health and Safety at Work etc. Act 1974, c. 37.

- provide information, instruction and training to employees that is needed to ensure safe working practices;
- ensure that all safety signs in the workplace can be understood;
- ensure that employees can speak with and understand an experienced supervisor;
- ensure any equipment used is suitable and in proper working order;
- provide employees with free protective equipment or clothing;
- provide access to emergency first aid;
- ensure there are adequate toilet and washing facilities and clean drinking water; and
- keep a log of any injuries, ill health, or dangerous occurrences and report them to the government's Health and Safety Executive.[30]

Employers in the UK are required to obtain Employers' Liability Compulsory Insurance of at least £5 million (approximately US$10 million) and display a certificate of this insurance.[31] This insurance covers individuals that have entered into work under a contract of service with an employer; applies whether the contract is express, implied, oral, or in writing; and covers employers against costs when a worker is injured or becomes ill at work. Regulations were made under the Employers' Liability (Compulsory Insurance) Act 1969 to include within the ambit of the provisions of the Act employees that are not ordinarily resident in the UK, but who have been present for fourteen days in the course of employment.[32]

Medical treatment in the UK is provided free of charge to residents through the National Health Service. Certain forms of treatment, including anything administered in an Emergency Room or similar walk-in treatment center, are provided free of charge no matter where an individual's residence ordinarily is. The decision whether an individual is to be charged for full medical treatment in the UK rests with the hospital trust providing the treatment; however, a number of exemptions exist for certain groups of people who, although not normally resident in the UK, are entitled to hospital treatment free of charge through the National Health Service.[33] This includes individuals employed in the UK by an employer who is based or registered in the UK.[34]

For individuals covered under the National Health Service, medical insurance in the UK normally covers treatment at private medical facilities. The Home Office notes that the matter of medical insurance is one between employer and employee, with the employer being able to require that an employee take out insurance as a condition of taking a position. Specific guidance from the Home Office to Operators of the SAWS notes that the participants in the scheme cannot be required to take out insurance through Operators. However, many Operators offer non-mandatory health insurance schemes on a costs-only basis that participants can join.[35]

VIII. General Rate of Immigration By Country

In 2005, 11,800,000 people were admitted to the UK for all purposes, including short term visitors. The top ten countries represented were:

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[30] Health and Safety Executive, *Working in the UK from Overseas*, May 2007, *available at* http://www.hse.gov.uk/pubns/indg410.pdf.

[31] Employers' Liability (Compulsory Insurance) Act 1969, c. 57.

[32] The Employers' Liability (Compulsory Insurance) Regulations 1998, SI 1998/2573.

[33] National Health Service (Charges to Overseas Visitors) Regulations 1989, SI 1989/306, ¶ 4.

[34] Department of Health, *Overseas Visitors*, http://www.dh.gov.uk/en/Policyandguidance/International/OverseasVisitors/Browsable/DH_074379 (last visited May 31, 2007).

[35] Home Office, *The Seasonal Agricultural Workers' Scheme, Report on the Outcomes of the Consultation on the Revised Business and Financial Arrangements*, ¶ 5.4.2, http://www.ind.homeoffice.gov.uk/6353/6356/17715/closedconsultationsnwsomc1.pdf (last visited May 30, 2007).

Nation[36]	Total Number Admitted
USA	3,880,000
Australia	1,010,000
Canada	901,000
India	687,000
Japan	563,000
South Africa	452,000
New Zealand	291,000
Nigeria	266,000
China	252,000
Pakistan	229,000

In 2005, 51,200 individuals were permitted entry into the UK for work permit employment for over twelve months (excluding EEA nationals). The top ten nations represented were:

Nation[37]	Total Number Admitted
India	15,000
USA	5,570
Philippines	2,800
South Africa	2,800
Australia	2,650
Bangladesh	2,290
China	1,940
Indonesia	1,770
Pakistan	1,530
Romania	1 ,220

In 2005, 40,300 individuals were permitted entry into the UK for work permit employment for less than twelve months (excluding EEA nationals). The top ten nations represented were:

Nation[38]	Total Number Admitted
USA	13,700
India	6,360
Russia	2,540
Australia	1,600
Chile	1,540
South Africa	1,180
Ukraine	980
Bulgaria	970
Japan	765
Brazil	580

In 2005, 179,120 individuals were granted settlement in the UK. The top ten nations represented were:

Nation[39]	Total Number Granted Settlement

[36] The figures were extracted from HOME OFFICE, CONTROL OF IMMIGRATION: STATISTICS UK, 2006, Cm. 6904.

[37] *Id.*

[38] *Id.*

India	16,720
Philippines	14,710
Parts of Asia	13,315
South Africa	9,385
Pakistan	9,185
Somalia	8,255
Serbia and Montenegro (former Yugoslavia)	6,805
Parts of Africa	5,600
Sri Lanka	5,475
Turkey	5,330

IX. Illegal Immigrants Applying in Country for the Highly Skilled Migrant Programme

Individuals that apply in country for the highly skilled migrant visa must be present lawfully in the country, either under the Highly Skilled Migrant Programme or under a visa category that allows transfer to the highly skilled migrant status. These categories are currently: students; post-graduate doctor or dentists; working holiday makers; science and engineering graduates scheme members; international graduates scheme members; innovators; or participants in the Fresh Talent: Working in Scotland scheme. Thus, anyone that is not lawfully present in the country under one of these categories and applies to stay under the Highly Skilled Migrant Programme will be refused.[40]

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Foreign Law Specialist
May 2007

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[39] *Id.*

[40] Immigration Rules, H.C. 395 ¶¶ 135I-135N, http://www.bia.homeoffice.gov.uk/lawandpolicy/immigrationrules/part4 (last visited May 29, 2007).

HERITAGE SPECIAL REPORT ENTITLED "THE FISCAL COST OF LOW-SKILL HOUSEHOLDS TO THE U.S. TAXPAYER," BY ROBERT RECTOR, CHRISTINE KIM, AND SHANEA WATKINS, PH.D., PUBLISHED BY THE HERITAGE FOUNDATION, SUBMITTED BY THE HONORABLE STEVE KING, RANKING MEMBER, SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

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The Fiscal Cost of Low-Skill Households to the U.S. Taxpayer

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The Heritage Foundation

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The Fiscal Cost of Low-Skill Households to the U.S. Taxpayer

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Executive Summary

Each year, families and individuals pay taxes to the government and receive back a wide variety of services and benefits. When the benefits and services received by one group exceed the taxes paid, a distributional deficit occurs, and other groups must pay for the services and benefits of the group in deficit. Each year, government is involved in a large-scale transfer of resources between different social groups.

This paper provides a fiscal distribution analysis of households headed by persons without a high school diploma. The report refers to these households as "low-skill households." The analysis measures the total benefits and services received by these households compared to total taxes paid. The difference between benefits received and taxes paid represents the total resources transferred by government on behalf of this group from the rest of society.

The size and cost of government are far larger than many people imagine. In fiscal year (FY) 2004, federal, state, and local expenditures combined amounted to $3.75 trillion. One way to grasp the size of government more readily is to calculate average expenditures per household. In 2004, there were some 115 million households (multi-person families and single persons living alone) in the U.S. Government spending thus averaged $32,706 per household across the U.S. population.

Government expenditures can be divided into six categories. The first four, which can be termed "immediate benefits and services," are:

- **Direct benefits**, which include Social Security, Medicare, and a few smaller transfer programs;
- **Means-tested benefits**, including cash, food, housing, social services, and medical care for poor and near poor individuals;
- **Public educational services**, which include the governmental cost of primary, secondary, vocational, and post-secondary education;
- **Population-based services**, which are government services made available to a general community including police and fire protection, highways, sewers, food safety inspection, and parks.

Two additional spending categories are:

- **Interest and other financial obligations resulting from prior government activity**, including interest payments on government debt and other expenditures relating to the cost of government services provided in earlier years; and
- **Pure public goods**, which include national defense, international affairs and scientific research, and some environmental expenditures.

On average, low-skill households receive more government benefits and services than do other households. In FY 2004, low-skill households received $32,138 per household in immediate benefits and services (direct benefits, means-tested benefits, education, and population-based services). If public goods and the cost of interest and other financial obligations are added, total benefits rose to $43,084 per low-skill household. In general, low-skill households received about $10,000 more in government benefits than did the average U.S. household, largely because of the higher level of means-tested welfare benefits received by low-skill households.

In contrast, low-skill households pay less in taxes than do other households. On average, low-skill households paid only $9,689 in taxes in FY 2004. Thus, low-skill households received at least three dollars in immediate benefits and services for each dollar in taxes paid. If the costs of public goods and past financial obligations are added, the ratio rises to four to one.

Strikingly, low-skill households in FY 2004 had average earnings of $20,564 per household. Thus, the $32,138 per household in government immediate benefits and services received by these households not only exceeded their taxes paid, but also substantially exceeded their average household earned income.

A household's net fiscal deficit equals the cost of benefits and services received minus taxes paid. If the costs of direct and means-tested benefits, education, and population-based services alone are counted, the average low-skill

household had a fiscal deficit of $22,449 (expenditures of $32,138 minus $9,689 in taxes). The average net fiscal deficit of a low-skill household actually exceeded the household's earnings.

If interest and other financial obligations relating to past government activities are added, the average deficit per household rose to $27,301. In addition, the average low-skill household was a free rider with respect to government public goods, receiving public goods costing some $6,095 per household for which it paid nothing.

Receiving, on average, at least $22,449 more in benefits than they pay in taxes each year, low-skill households impose substantial long-term costs on the U.S. taxpayer. Assuming an average adult life span of 50 years for each head of household, the average lifetime costs to the taxpayer will be $1.1 million for each low-skill household for immediate benefits received minus all taxes paid. If the cost of interest and other financial obligations is added, the average lifetime cost rises to $1.3 million per low-skill household.

In 2004, there were 17.7 million low-skill households. With an average net fiscal deficit of $22,449 per household, the total annual fiscal deficit (total benefits received minus total taxes paid) for all of these households equaled $397 billion (the deficit of $22,449 per household times 17.7 million households). This sum includes direct and means-tested benefits, education, and population-based services. If the low-skill households' share of interest and other financial obligations for past activities is added, their total annual fiscal deficit rises to $483 billion. Over the next ten years the total cost of low-skill households to the taxpayer (immediate benefits minus taxes paid) is likely to be at least 3.9 trillion dollars. This number would go up significantly if changes in immigration policy lead to substantial increases in the number of low-skill immigrants entering the country and receiving services.

Politically feasible changes in government policy will have little effect for decades on the level of fiscal deficit generated by most low-skill households. For example, to make the average low-skill household fiscally neutral (taxes paid equaling immediate benefits received and the appropriate share of interest on government debt), it would be necessary to eliminate Social Security, Medicare, all 60 means-tested aid programs and cut the cost of public education in half. It seems certain that, on average, low-skill households will generate deep fiscal deficits for the foreseeable future. Policies that reduce the future number of high school dropouts and other policies affecting future generations could reduce long-term costs.

Policies that would expand Medicaid and other entitlements will increase the size of future deficits of low-skill households at the margin. On the other hand, policy changes that curtailed medical inflation could reduce costs at the margin in future years. Policies which would halt the growth of out-of-wedlock childbearing or increase real educational attainments of future generations could also limit the growth of future deficits somewhat. However, these policy changes would be dwarfed by any alteration in immigration policy that would substantially increase the future inflow of low-skill immigrants; such a policy would dramatically increase the future fiscal burden to taxpayers.

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The Fiscal Cost of Low-Skill Households to the U.S. Taxpayer

Introduction

Each year, families and individuals pay taxes to the government and receive back a wide variety of services and benefits. A fiscal deficit occurs when the benefits and services received by one group exceed the taxes paid. When such a deficit occurs, other groups must pay for the services and benefits of the group in deficit. Each year, government is involved in a large-scale transfer of resources between different social groups.

Fiscal distribution analysis measures the distribution of total government benefits and taxes in society. It provides an assessment of the magnitude of government transfers between groups. This paper provides a fiscal distribution analysis of households headed by persons without a high school diploma. It measures the total benefits and services received by this group and the total taxes paid. The difference between benefits received and taxes paid represents the total resources transferred by government on behalf of this group from the rest of society.

The first step in an analysis of the distribution of benefits and taxes is to count accurately the cost of all benefits and services provided by the government. The size and cost of government is far larger than many people imagine. In fiscal year (FY) 2004, the expenditures of the federal government were $2.3 trillion. In the same year, expenditures of state and local governments were $1.45 trillion. The combined value of federal, state, and local expenditures in FY 2004 was $3.75 trillion.[1]

The sum of $3.75 trillion is so large that it is difficult to comprehend. One way to grasp the size of government more readily is to calculate average expenditures per household. In 2004, there were some 115 million households in the U.S.[2] (This figure includes multi-person families and single persons living alone.) The average cost of government spending thus amounted to $32,706 per household across the U.S. population.[3]

The $3.75 trillion in government expenditure is not free but must be paid for by taxing or borrowing economic resources from Americans or by borrowing from abroad. In general, government expenditures are funded by taxes and fees. In FY 2004, federal taxes amounted to $1.82 trillion. State and local taxes and related revenues amounted to $1.6 trillion.[4] Together, federal, state, and local taxes amounted to $3.43 trillion. At $3.43 trillion, taxes and related revenues came to 91 percent of the $3.75 trillion in expenditures. The gap between taxes and spending was financed by government borrowing.

Types of Government Expenditure

Once the full cost of government benefits and services has been determined, the next step in the analysis of the distribution of benefits and taxes is to determine the beneficiaries of specific government programs. Some programs, such as Social Security, neatly parcel out benefits to specific individuals. With programs such as these, it is relatively easy to determine the identity of the beneficiary and the cost of the benefit provided. At the opposite extreme, other government programs (for example, medical research at the National Institutes of Health) do not neatly parcel out benefits to individuals. Determining the proper allocation of the benefits of that type of program is more difficult.

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1. See Appendix Tables A–1, A–2A, A–2B, and A–2C.
2. This figure includes persons in nursing homes. See Appendix A.
3. In measuring the distribution of benefits and services, this paper will count the value of each benefit and service as equal to the cost borne by the taxpayer to deliver it. The cost of any benefit to the taxpayer does not necessarily equal the subjective value the beneficiary may place upon the benefit. For example, if the food stamp program provides a family $400 per month in food stamp benefits, the family itself may value the food stamps at more or less than $400. Similarly, if child receives public education costing $10,000 per pupil per year, the child's family may value those education services subjectively as worth more or less than $10,000. While the question of recipient valuation of government benefits is an interesting one, this paper is concerned with the basic question of the distribution of benefits valued according their costs to taxpayers.
4. This figure includes property income earned by the government such as the sale of assets or interest earned on assets.

To ascertain most accurately the distribution of government benefits and services, this study begins by dividing government expenditures into six categories: direct benefits; means-tested benefits; educational services; population-based services; interest and other financial obligations resulting from prior government activity; and pure public goods.

Direct Benefits. Direct benefit programs involve either cash transfers or the purchase of specific services for an individual. Unlike means-tested programs (described below), direct benefit programs are not limited to low-income persons. By far the largest direct benefit programs are Social Security and Medicare. Other substantial direct benefit programs are Unemployment Insurance and Workmen's Compensation.

Direct benefit programs involve a fairly transparent transfer of economic resources. The benefits are parceled out discretely to individuals in the population; both the recipient and the cost of the benefit are relatively easy to determine. In the case of Social Security, the cost of the benefit would equal the value of the Social Security check plus the administrative costs involved in delivering the benefit.

Calculating the cost of Medicare services is more complex. Ordinarily, government does not seek to compute the particular medical services received by an individual. Instead, government counts the cost of Medicare for an individual as equal to the average per capita cost of Medicare services. (This number equals the total cost of Medicare services divided by the total number of recipients.)[5] Overall, government spent $840 billion on direct benefits in FY 2004.

Means-Tested Benefits. Means-tested programs are typically termed welfare programs. Unlike direct benefits, means-tested programs are available only to households below specific income thresholds. Means-tested welfare programs provide cash, food, housing, medical care, and social services to poor and low-income persons.

The federal government operates over 60 means-tested aid programs.[6] The largest of these are Medicaid; the Earned Income Tax Credit (EITC); food stamps; Supplemental Security Income (SSI); Section 8 housing; public housing; Temporary Assistance to Needy Families (TANF); the school lunch and breakfast programs; the WIC (Women, Infants, and Children) nutrition program; and the Social Services Block Grant (SSBG). Many means-tested programs, such as SSI and the EITC, provide cash to recipients. Others, such as public housing or SSBG, pay for services that are provided to recipients.

The value of Medicaid benefits is usually counted in a manner similar to Medicare benefits. Government does not attempt to itemize the specific medical services given to an individual; instead, it computes an average per capita cost of services to individuals in different beneficiary categories such as children, elderly persons, and disabled adults. (The average per capita cost for a particular group is determined by dividing the total expenditures on the group by the total number of beneficiaries in the group.) Overall, the U.S. spent $564 billion on means-tested aid in FY 2004.[7]

Public Education. Government provides primary, secondary, post-secondary, and vocational education to individuals. In most cases, the government pays directly for the cost of educational services provided. In other cases, such as the Pell Grant program, the government in effect provides money to an eligible individual who then spends it on educational services.

Education is the single largest component of state and local government spending, absorbing roughly a third of all state and local expenditures. The average per pupil cost of public primary and secondary education is now around $9,600 per year. Overall, federal, state, and local governments spent $590 billion on education in FY 2004.

Population-Based Services. Whereas direct benefits, means-tested benefits, and education services provide discrete benefits and services to particular individuals, population-based programs generally provide services to a whole group or community. Population-based expenditures include police and fire protection, courts, parks, sanitation, and food safety and health inspections. Another important population-based expenditure is transportation, especially roads and highways.

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5. For example, the Census Bureau assigns Medicare costs in this manner in the Current Population Survey.
6. Congressional Research Service, *Cash and Noncash Benefits for Persons with Limited Income: Eligibility Rules, Recipient and Expenditure Data, FY2002–FY2004*, March 27, 2006.
7. This spending figure excludes means-tested veterans programs and most means-tested education programs.

A key feature of population-based expenditures is that such programs generally need to expand as the population of a community expands. (This quality separates them from pure public goods, described below.) For example, as the population of a community increases, the number of police and firemen will generally need to expand in proportion.

In its study of the fiscal costs of immigration, *The New Americans*, the National Academy of Sciences argued that if service remains fixed while the population increases, a program will become "congested," and the quality of service for users will deteriorate. Thus, the NAS uses the term "congestible goods" to describe population-based services.[8] Highways are an obvious example of this point. In general, the cost of population-based services can be allocated according to an individual's estimated utilization of the service or at a flat per capita cost across the relevant population.

A sub-category of population-based services is government administrative support functions such as tax collections and legislative activities. Few taxpayers view tax collection as a government benefit; therefore, assigning the cost of this "benefit" appears problematic.

The solution to this dilemma is to conceptualize government activities into two categories: primary functions and secondary functions. Primary functions provide benefits directly to the public; they include direct and means-tested benefits, education, ordinary population-based services such as police and parks and public goods. By contrast, secondary or support functions do not provide direct benefits to the public but do provide necessary support services that enable the government to perform primary functions. For example, no one can receive food stamp benefits unless the government first collects taxes to fund the program. Secondary functions can thus be considered an inherent part of the "cost of production" of primary functions, and the benefits of secondary support functions can be allocated among the population in proportion to the allocation of benefits from government primary functions.

Government spent $662 billion on population-based services in FY 2004. Of this amount, some $546 billion went for ordinary services such as police and parks, and $116 billion went for administrative support functions.

Interest and Other Financial Obligations Relating to Past Government Activities. Often, tax revenues are insufficient to pay for the full cost of government benefits and services. In that case, government will borrow money and accumulate debt. In subsequent years, interest payments must be paid to those who lent the government money. Interest payments for the government debt are in fact partial payments for past government benefits and services that were not fully paid for at the time of delivery.

Similarly, government employees deliver services to the public; part of the cost of the service is paid for immediately through the employee's salary. But government employees are also compensated by future retirement benefits. Expenditures of public sector retirement are thus, to a considerable degree, present payments in compensation for services delivered in the past. The expenditure category "interest and other financial obligations relating to past government activities" thus includes interest and principal payments on government debt and outlays for government employee retirement. Total government spending on these items equaled $468 billion in FY 2004.[9]

Allocation of the benefit of this spending is problematic since the benefits were actually delivered in past years, but a definite portion of spending on interest and employee retirement was generated by past expenditures on behalf of low-skill households. Broadly conceived, spending on behalf of low-skill households includes not only spending for benefits in the current year, but also lagged spending that relates to outlays on such households in earlier years. In this sense, the low-skill households' share of interest and government employee retirement outlays would be proportionate to their share of government expenditures in prior years. Although calculating the low-skill households' share of spending in prior years would be very complex, the present analysis approximates this figure by assuming that these households' share of expenditures in prior years is equal to its share of FY 2004 expenditures.

An alternative approach to allocating interest and employee retirement costs would employ the distinction between government primary and secondary functions described in the prior section. If government failed to pay interest on its existing debt, it would be unable to borrow in the future; benefits would have to be slashed or taxes raised steeply. Gov-

8. National Research Council, *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration* (Washington, D.C.: National Academy Press, 1997), p. 303.
9. Of this total, an estimated $67 billion represents the costs of financial obligations resulting from past public goods expenditures. These costs are entered in the public goods category in Table 1.

ernment's honoring of past financial obligations is thus an essential secondary function, a necessary cost of business that enables government to perform its primary functions. The ultimate beneficiaries of this secondary function are the beneficiaries of the primary functions that can be continued because government fulfills its debt obligations. The low-skill households' share of expenditures on these secondary functions would equal their share of benefits from primary function expenditures in FY 2004. Both approaches to allocating costs relating to interest and related financial obligations yield the same level of spending on behalf of low-skill households in FY 2004.

Pure Public Goods. Economic theory distinguishes between "private consumption goods" and pure public goods. Economist Paul Samuelson is credited with first making this distinction. In his seminal 1954 paper "The Pure Theory of Public Expenditure,"[10] Samuelson defined a pure public good (or what he called in the paper a "collective consumption good") as a good "which all enjoy in common in the sense that each individual's consumption of such a good leads to no subtractions from any other individual's consumption of that good." By contrast, a "private consumption good" is a good that "can be parceled out among different individuals." Its use by one person precludes or diminishes its use by another.

A classic example of a pure public good is a lighthouse: The fact that one ship perceives the warning beacon does not diminish the usefulness of the lighthouse to other ships. Another clear example of a governmental pure public good would be a future cure for cancer produced by government-funded research. The fact that non-taxpayers would benefit from this discovery would neither diminish its benefit nor add extra costs to taxpayers. By contrast, an obvious example of a private consumption good is a hamburger: When one person eats it, it cannot be eaten by others.

Direct benefits, means-tested benefits, and education services are private consumption goods in the sense that use of a benefit or service by one person precludes or limits the use of that same benefit by other. (Two people cannot cash the same Social Security check.) Population-based services such as parks and highways are often mentioned as "public goods," but they are not pure public goods in the strict sense described above. In most cases, as the number of persons using a population-based service (such as highways and parks) increases, either the service must expand (at added cost to taxpayers) or the service will become "congested" and its quality will be reduced. Consequently, use of population-based services such as police and fire departments by non-taxpayers does impose significant extra costs on taxpayers.

Government pure public goods are rare; they include scientific research, defense, spending on veterans, international affairs, and some environmental protection activities such as the preservation of endangered species. Each of these functions generally meets the criterion that the benefits received by non-taxpayers do not result in a loss of utility for taxpayers. Government pure public good expenditures on these functions equaled $628 billion in FY 2004. Interest payments on government debt and related costs resulting from public good spending in previous years add an estimated additional cost of $67 billion, bringing the total public goods cost in FY 2004 to $695 billion.

Although low-income households that pay little or no tax do benefit from pure public good programs, their gain neither adds costs nor reduces benefits for others. Thus, the benefit gleaned by non-taxpayers from these pure public good functions does not impose an extra burden on society. However, households that pay little or no tax are "free riders" on public good programs in the sense that they benefit from government activities for which they have not paid. (For a further discussion of pure public goods, see Appendix B.)

Summary: Total Expenditures. As Table 1 shows, overall government spending in FY 2004 came to $3.75 billion, or $32,706 per household across the entire U.S. population. Direct benefits had an average cost of $7,326 per household across the whole population, while means-tested benefits had an average cost of $4,920 per household. Education benefits and population-based services cost $5,143 and $5,765, respectively. Interest payments on government debt and other costs relating to past government activities cost $3,495 per household. Pure public good expenditures comprised 18.5 percent of all government spending and had an average cost of $6,056 per household.

A detailed breakdown of expenditures is provided in Appendix Table A–1 for federal expenditures and Appendix Tables A–2A, A–2B, and A–2C for state and local expenditures.

10. Paul A. Samuelson, "The Pure Theory of Public Expenditure," *Review of Economics and Statistics*, Vol. 36, No. 4 (1954), pp. 387–389.

Table 1 SR 12

Summary of Total Federal, State, and Local Expenditures, FY 2004

	Federal Expenditures (in millions)	State and Local Expenditures (in millions)	Total Expenditures (in millions)	Percentage of Total Expenditures	Average Expenditure per Household Whole Population (in dollars)
Direct Benefits	783,350	57,607	840,957	22.4%	$7,326
Means-tested Benefits	406,512	158,240	564,752	15.0%	$4,920
Educational Benefits	59,621	530,801	590,422	15.7%	$5,143
Population-Based Services	180,122	481,696	661,818	17.6%	$5,765
Interest and Related Costs*	182,000	219,260	401,260	10.7%	$3,495
Pure Public Goods Expenditures	694,153	1,050	695,203	18.5%	$6,056
Total Expenditures	**2,305,758**	**1,448,654**	**3,754,412**	**100.0%**	**$32,706**
Total Expenditures Less Public Good Expenditures	**1,611,605**	**1,447,604**	**3,059,209**		**$26,660**

* Excludes interest costs resulting from public goods expenditures in prior years.

Source: Appendix Tables 1 and 2c.

Taxes and Revenues

Total taxes and revenues for federal, state, and local governments amounted to $3.43 trillion in FY 2004, with an average cost of $29,919 per household across the whole population. A detailed breakdown of federal, state, and local taxes is provided in Appendix Table A–3. The biggest revenue generator was the federal income tax, which cost the taxpayers $808 billion in 2003, followed by Federal Insurance Contribution Act (FICA) taxes, which gathered $685 billion.

Property tax was the biggest revenue producer at the state and local levels, generating $318 billion, while general sales taxes gathered $244 billion.

Summary of Estimation Methodology

This paper seeks to estimate the total cost of benefits and services received, and the total value of taxes paid, by households headed by persons without a high school diploma. To produce this estimate, calculations were performed on 50 separate expenditure categories and 33 tax and revenue categories. These calculations are explained in detail in Appendix A and presented in Appendix Tables A–4 and A–5. The present section will briefly summarize the procedures used.

Data on receipt of direct and means-tested benefits were taken from the U.S. Census Bureau's Current Population Survey (CPS). Data on attendance in public primary and secondary schools were also taken from the CPS; students attending public school were then assigned educational costs equal to the average per pupil expenditures in their state. Public post-secondary education costs were calculated in a similar manner.

Wherever possible, the cost of population-based services was based on the estimated utilization of the service by low-skill households. For example, the low-skill households' share of highway expenditures was assumed to equal their share of gasoline consumption as reported in the Bureau of Labor Statistics Consumer Expenditure Survey (CEX). When data on utilization of a service were not available, the estimated low-skill households' share of population-based services was assumed to equal their share of the total U.S. population.

The share of public goods received by low-skill households was assumed to equal their share of the total U.S. population. The low-skill households' share of the cost of interest and other financial obligations relating to past government activities was assumed to equal their share of current expenditures on direct and means-tested benefits, education, population-based services, and public goods.

Federal and state income taxes were calculated based on data from the CPS. FICA taxes were also calculated from CPS data and were assumed to fall solely on workers.

Sales, excise, and property tax payments were based on consumption data from the Consumer Expenditure Survey. For example, if the CEX showed that low-skill households accounted for 10 percent of all tobacco product sales in the U.S., those households were assumed to pay 10 percent of all tobacco excise taxes.

Corporate income taxes were assumed to be borne partly by workers and partly by owners; the distribution of these taxes was estimated according to the distribution of earnings and property income in the CPS.

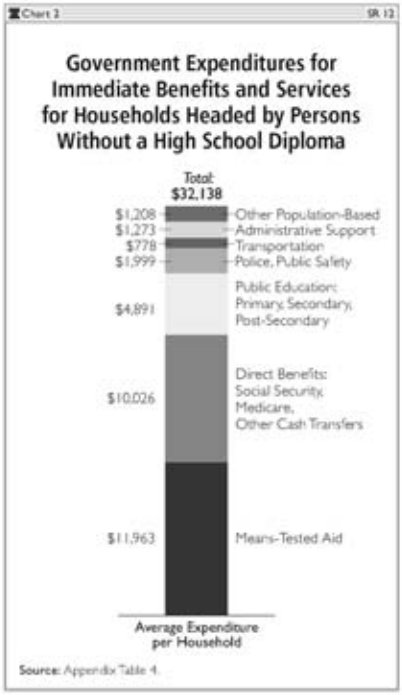
A fundamental rule in the analysis was that the estimated expenditure for each program for the whole population had to equal actual government outlays for that program. Similarly, total revenue for each estimated tax had to equal total revenue from the tax as reported in government budget documents.

CPS data are problematic in this respect since they generally underreport both benefits received and taxes paid. Consequently, both benefits and tax data from the CPS had to be adjusted for underreporting. The key assumption in this adjustment process was that households headed by persons without a high school diploma (low-skill households) and the general population underreport benefits and taxes to a similar degree. Thus, if food stamp benefits were underreported by 10 percent in the CPS as a whole, then low-skill households were also assumed to underreport food stamp benefits by 10 percent. In the absence of data suggesting that low-skill and high-skill households underreport at different rates, this seemed to be a reasonable working assumption.

Costs of Benefits and Services for Low-Skill Households. The focus of this paper is the benefits received and taxes paid by households headed by persons without a high school diploma. (Throughout the paper, these households are also called low-skill households.) In 2004, there were 17.7 million such households in the U.S. Appendix Table A–4 shows the estimated costs of government benefits and services received by these households in 50 separate expenditure categories. The results are summarized in Charts 1 and 2.

Overall, households headed by persons without a high school diploma (or low-skill households) received an average of $32,138 per household in direct benefits, means-tested benefits, education, and population-based services in FY 2004. If expenditures for interest and other financial obligations relating to past government activities are added to the count, expenditures rise to $36,989 per household. If the cost of public goods is added, annual total expenditures on benefits and services come to $43,084 per low-skill household.

Chart 2 gives a more detailed breakdown of the immediate benefits and services received by low-skill households. Means-tested aid came to $11,963 per household, while direct benefits (mainly Social Security and Medicare) amounted to $10,026. Education spending on behalf of these households averaged $4,891 per household, while spending on police, fire, and public safety came to $1,999 per household. Transportation added another $778, while administrative support services cost $1,273. Miscellaneous population-based services added a final $1,208.



It is important to note that the costs of benefits and services outlined in Chart 2 are a composite average of all low-skill households. They represent the total costs of benefits and services received by all low-skill households divided by the number of such households. It is unlikely that any single household would receive this exact package of benefits; for example, it is rare for a household to receive Social Security benefits and primary and secondary education services at the same time. Nonetheless, the figures are an accurate portrayal of the governmental costs of low-skill households as a group. When combined with similar data on taxes paid, they enable an assessment of the fiscal status of such households as a group and their impact on other taxpayers.

Taxes and Revenues Paid by Low-Skill Households. Appendix Table A–5 details the estimated taxes and revenues paid by low-skill households in 31 categories. The results are summarized in Chart 3. As the chart shows, total federal, state, and local taxes paid by low-skill households came to $9,689 per household in 2004. Federal and state individual income taxes comprised only 20 percent of total taxes paid. Instead, taxes on consumption and employment produced the bulk of the tax burden for low-skill households.

The single largest tax payment was $2,509 per household in Federal Insurance Contribution Act (FICA) tax. (Workers were assumed to pay both the employee and employer share of FICA taxes.) On average, low-skill households paid $1,486 in state and local sales and consumption taxes. The analysis assumed that a significant portion of property taxes on rental and business properties was passed through to renters and consumers; this contributed to a

$1,371 property tax burden for the average low-skill household. The analysis also assumed that 70 percent of corporate income taxes fell on workers; this contributed to an average $704 corporate tax burden for low-skill households. Low-skill households are frequent participants in state lotteries, with an estimated average purchase of $686 in lottery tickets per household in 2004.

Balance of Taxes and Benefits. On average, low-skill households received $32,138 per household in immediate government benefits and services in FY 2004, including direct benefits, means-tested benefits, education, and population-based services. Total benefits rose to $43,084 if public goods and the cost of interest and other financial obligations are added.

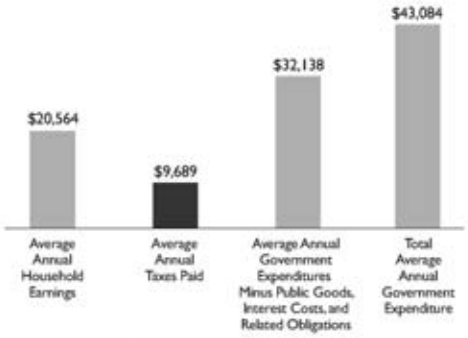
By contrast, low-skill households paid only $9,689 in taxes. Thus, low-skill households received at least three dollars in benefits and services for each dollar in taxes paid. If the costs of public goods and past financial obligations are added, the ratio rises to four to one.

Strikingly, as Chart 4 shows, low-skill households in FY 2004 had average earnings of $20,564 per household; thus, the average cost of government benefits and services received by these households not only exceeded the taxes paid by these households, but substantially exceeded the average earned income of these households.

Net Annual Fiscal Deficit. The net fiscal deficit of a household equals the cost of benefits and services received minus taxes paid. As Chart 5 shows, if the costs of direct and means-tested benefits, education, and population-based services alone were counted, the average low-skill household had a fiscal deficit of $22,449 (expenditures of $32,138 minus $9,689 in taxes). The net fiscal deficit of the average low-skill household actually exceeded the household's earnings. If interest and other financial obligations relating to past government activities were added as well, the average deficit per household rose to $27,301.

Chart 4 SR 12

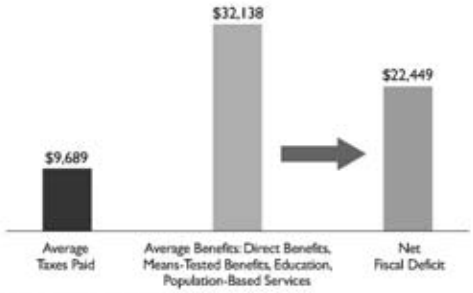
Taxes Paid and Benefits Received: Households Headed by Persons Without a High School Diploma



Note: Figures refer to average per household amounts.
Source: Appendix Tables 4 and 5.

Chart 5 SR 12

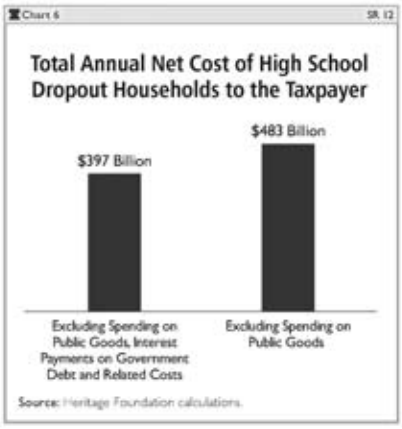
Dropout Households Receive More Than Three Dollars in Benefits for Every Dollar Paid in Taxes



Note: Figures refer to average per household amounts.
Source: Appendix Tables 4 and 5.

In addition, the average low-skill household was a free rider with respect to government public goods, receiving public goods costing some $6,095 per household for which it paid nothing.

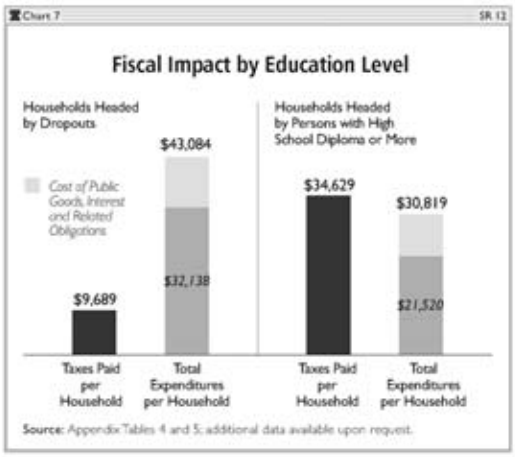
Net Lifetime Costs. Receiving, on average, at least $22,449 more in benefits than they pay in taxes each year, low-skill households impose substantial long-term costs on the U.S. taxpayer. Assuming an average 50-year adult life span for heads of household, the average lifetime costs to the taxpayer will be $1.1 million for each low-skill household, net of any taxes paid. If the costs of interest and other financial obligations are added, the average lifetime cost rises to $1.3 million per household.



Aggregate Net Fiscal Costs. In 2004, there were 17.7 million low-skill households. As shown in Chart 5, the average net fiscal deficit per household was $22,449. This means that the total annual fiscal deficit (total benefits received minus total taxes paid) for all 17.7 million low-skill households together equaled $397 billion (the deficit of $22,449 per household times 17.7 million households). This sum includes direct and means-tested benefits, education, and population-based services.

If the low-skill households' share of interest and other financial obligations for past activities is added, the total annual fiscal deficit of these households rose to $483 billion. Over the next ten years, the constant dollar net cost of low-skill households (immediate benefits received minus taxes paid) is likely to be at least $3.9 trillion. Policy changes that would expand entitlement programs such as Medicaid will increase these costs at the margin. On the other hand, changes in immigration law that would significantly increase the inflow of low-skill workers and families will increase future government spending dramatically.

Low-Skill Households Compared to Other Households. Chart 7 compares households headed by persons without a high school diploma to households headed by persons with a high school diploma or better. Whereas the dropout-headed household paid only $9,689 in taxes in FY 2004, the higher-skill households paid $34,629—more than three times as much. While dropout-headed households received from $32,138 to $43,084 in benefits, high-skill households received less: $21,520 to $30,819. The difference in government benefits was due largely to the greater amount of means-tested aid received by low-skill households.



Households headed by dropouts received $22,449 more in immediate benefits (i.e., direct and means-tested aid, education, and population-based

services) than they paid in taxes. Higher-skill households paid $13,109 more in taxes than they received in immediate benefits.

Externalities of Benefits. It might be argued that certain government benefits generate positive externalities; that is, they benefit society at large as well as the immediate beneficiary. This is argued most often with respect to education.

An increase in the skill level of each U.S. worker may have a positive feedback effect that increases the productivity and wage of other workers; thus, everyone will gain indirectly as the overall skill level of U.S. workers rises.

Consequently, it might be argued that all Americans benefit economically from the education of children in low-skill families. If so, it might be further argued that it is inappropriate to assign the full per pupil costs of education to children in low-skill households. But if other households benefit indirectly from the education of children in low-skill families, it is equally true that low-skill families benefit indirectly from the education of children in middle- and upper-class families. This is particularly true of the education of high-skill workers who will produce future technological and managerial innovations that lead to productivity increases.

Thus, if it is true that the education of children in low-skill homes produces positive externalities that raise the incomes of more affluent families, it is equally true that the education of children in more affluent homes will produce positive externalities for low-skill households. Rather than attempting to map the reciprocal externalities of education, it appears simpler to assign the full per pupil cost of public education to the child receiving that education.

Education as a Social Investment. It is sometimes argued that the costs of public education should be "off the books" and should not be counted toward the fiscal deficits generated by low-skill households. Proponents of this view contend that publicly financed education for children in low-skill families represents a positive investment for taxpayers because it will increase the wages earned and taxes paid by those children as adults, thereby reducing the future fiscal drag (benefits in excess of taxes) that their children will impose on society.[11] Although this argument obviously has considerable merit, two caveats are in order.

First, even if public education does represent a positive investment for taxpayers, the immediate costs of that investment are real. When children in low-skill families receive public education, other families generally will pay the costs of that education and will be forced to forgo their own economic needs and wants to do so. Consequently, education costs should remain on the ledger when computing the net transfers between social groups.

Second, the potential returns to public education often appear exaggerated. When a child from a lower socioeconomic class receives subsidized public education, three fiscal outcomes are possible:

1. There is no increase in wages, and the child remains in the same deep fiscal deficit as his parents;
2. The child's income increases, and the magnitude of his fiscal deficit is reduced relative to that of his parents, but the child remains in fiscal deficit when becoming an adult; or
3. Education raises the child's income to the point where he becomes a positive fiscal contributor (taxes exceed benefits over a lifetime).

Simplistic accounts of the gains from education often suggest that schooling will enable children from a lower socioeconomic standing to readily achieve the third outcome. Given the regressive nature of the distribution of benefits and the progressive nature of taxation, this seems unlikely. On average, an individual must achieve a fairly high income to become a net fiscal contributor. This does not mean that investment in education is unwise. It simply means that society should be realistic about its expectations with respect to what education can achieve.

Conclusion

Households headed by persons without a high school diploma are roughly 15 percent of all U.S. households. Overall, these households impose a significant fiscal burden on other taxpayers: The cost of the government benefits

11. The analysis in this paper does not include fiscal impacts in the second generation, that is, it does not examine the fiscal status of children in low-skill households once they become adults and begin to live independently. Once a minor child in a low-skill household becomes an adult and moves out of his parents' household, he is no longer included in the fiscal cost analysis for the parents' household.

they consume greatly exceeds the taxes they pay to government. Before government undertakes to transfer even more economic resources to these households, it should have a very clear account of the magnitude of the economic transfers that already occur.

The substantial net tax burden imposed by low-skill U.S. households also suggests lessons for immigration policy. Recently proposed immigration legislation would greatly increase the number of poorly educated immigrants entering and living in the United States.[12] Before this policy is adopted, Congress should examine carefully the potential negative fiscal effects of low-skill immigrant households receiving services.

Politically feasible changes in government policy will have little effect on the level of fiscal deficit generated by most low-skill households for decades. For example, to make the average low-skill household fiscally neutral (taxes paid equaling immediate benefits received plus interest on government debt), it would be necessary to eliminate Social Security, Medicare, all 60 means-tested aid programs and cut the cost of public education in half. It seems certain that, on average, low-skill households will generate deep fiscal deficits for the foreseeable future. Policies that reduce the future number of high school dropouts and other policies affecting future generations could reduce long-term costs.

Future government policies that would expand entitlement programs such as Medicaid would increase future deficits at the margin. Policies that reduced the out-of-wedlock childbearing rate or which increased the real educational attainments and wages of future low-skill workers could reduce deficits somewhat in the long run.

Changes to immigration policy could have a much larger effect on the fiscal deficits generated by low-skill families. Policies which would substantially increase the inflow of low-skill immigrant workers receiving services would dramatically increase the fiscal deficits described in this paper and impose substantial costs on U.S. taxpayers.

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12. Robert Rector, "Senate Immigration Bill Would Allow 100 Million New Legal Immigrants over the Next Twenty Years," Heritage Foundation *WebMemo* No. 1076, May 15, 2006. Robert Rector, "Immigration Numbers: Setting the Record Straight," Heritage Foundation *WebMemo* No. 1097, May 26, 2006.

Appendix A
General Methodology

Introduction

This appendix documents the methods used to calculate the spending and tax figures presented in the paper. Throughout, the term "low-skill households" is used as a synonym for households headed by persons without a high school degree.

Data Sources

Data on federal expenditures were taken from *Historical Tables, Budget of the United States Government, Fiscal Year 2006.*[13] Data on federal taxes and revenues were taken from *Analytical Perspectives, Budget of the United States Government, Fiscal Year 2006.*[14]

State and local aggregate expenditures and revenue data were taken from the U.S. Bureau of Census survey of government finances and employment.[15] Added information on state and local spending categories was taken from U.S. Census Bureau, *Federal State and Local Governments: 1992 Government Finance and Employment Classification Manual.*[16]

Detailed information on means-tested spending was taken from Congressional Research Service, *Cash and Noncash Benefits for Persons with Limited Income: Eligibility Rules, Recipient and Expenditure Data, FY2002–FY2004.* This report provides important information on state and local means-tested expenditures from states' and localities' own financial resources as distinct from expenditures funded by federal grants in aid.[17]

Data on Medicaid expenditures for different recipient categories were taken from the Medicaid Statistical Information System (MSIS) as published in *Medicare & Medicaid Statistical Supplement, 2006.*[18] Data on the distribution of benefits and distribution of some taxes were taken from the U.S. Census Bureau's Current Population Survey (CPS) of March 2005 (which covers the year 2004).[19] Additional data on public school attendance were taken from the October 2004 *Current Population Survey.*[20] Data on household expenditures were taken from the Bureau of Labor Statistics Consumer Expenditure Survey (CEX) for 2004.[21]

Data on Medicaid expenditures in institutional long-term care facilities were taken from *Medicare & Medicaid Statistical Supplement, 2006.*[22] Data on the education levels of elderly persons in institutional long-term care facilities were taken from the National Long Term Care Survey (NLTCS).[23] Data on the number of individuals residing in nursing homes in the average month and the number of Medicaid recipients in nursing homes were taken from the

13. Office of Management and the Budget, *Historical Tables, Budget of the United States Government, Fiscal Year 2006.*
14. Office of Management and the Budget, *Analytical Perspectives, Budget of the United States Government, Fiscal Year 2006*, pp. 299–313.
15. See *www.census.gov/govs/estimate/0400ussl_1.html.*
16. See *http://ftp2.census.gov/govs/class/classfull.pdf.*
17. Congressional Research Service, *Cash and Noncash Benefits for Persons with Limited Income: Eligibility Rules, Recipient and Expenditure Data, FY2002–FY2004*, March 27, 2006.
18. U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, *Medicare & Medicaid Statistical Supplement*, Medicaid Tables 14.1–14.27, 2006. This survey covers 2003.
19. The analysis used an electronic version of the March CPS data from the National Bureau of Economic Research. See *www.nber.org/data/cps.html.*
20. The analysis used an electronic version of the October CPS data from the National Bureau of Economic Research. See *www.nber.org/data/cps.html.*
21. U.S. Department of Labor, U.S. Bureau of Labor Statistics, *Consumer Expenditure in 2004*, Report 992, April 2006.
22. U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, *Medicare & Medicaid Statistical Supplement*, Medicaid Tables 14.1–14.27, 2006.
23. Duke University and National Institutes of Health, National Institute on Aging, National Long Term Care Survey, 1999 Public Use Data Files National Long Term Care Study (NLTCS), 1999 public use dataset. Produced and distributed by the Duke University Center for Demographic Studies with funding from the National Institute on Aging under Grant No. U01-AG007198. The NLTCS is a nationally representative sample of individuals ages 65 years and older in long-term care facilities.

2004 National Nursing Home Survey (NNHS). Data on the number of individuals in other types of institutions were taken from Census 2000 Summary File 1.[24]

Count of Households. The Current Population Survey (CPS) reports some 113.15 million households in the U.S. in 2004. In addition, in the average month in 2004, some 1.65 million persons resided in long-term care facilities.[25]

These long-term care residents were not included in the population reported in the CPS; however, because these individuals are the beneficiaries of a substantial share of Medicaid expenditure, it is important that they be included in any accounting of fiscal balances and distribution. Consequently, the 1.65 million persons in long-term care facilities were included in the present analysis; each individual in such a facility was counted as a separate household, swelling the overall count of households from 113.15 million to 114.8 million.[26]

Calculating Aggregate Federal, State, and Local Spending. Aggregate federal expenditures at the subfunction level were taken from *Historical Tables, Budget of the United States Government, FY 2007*. These data are presented in Appendix Table A–1. State and local aggregate expenditures were based on data from the U.S. Bureau of Census survey of government.[27]

Two modifications were necessary to yield an estimate of the overall combined spending for federal, state, and local government. First, some $408 billion in state and local spending is financed by grants in aid from the federal government. Since these funds are counted as federal expenditures, recording them again as state and local expenditure would constitute a double count. Consequently, federal grants in aid were deducted from the appropriate categories of state and local spending.

A second modification involves the treatment of market-like user fees and charges at the state and local levels. These transactions involve direct payment of a fee in exchange for a government service: for example, payment of an entry fee at a park. User fees are described in the federal budget in the following manner:

> [I]n addition to collecting taxes…the Federal Government collects income from the public from market-oriented activities and the financing of regulatory expenses. These collections are classified as user charges, and they include the sale of postage stamps and electricity, charges for admittance to national parks, premiums for deposit insurance, and proceeds from the sale of assets such as rents and royalties for the right to extract oil from the Outer Continental Shelf.[28]

In the federal budget, user fees are not counted as revenue, and the government services financed by user fees are not included in the count of government expenditures. As the Office of Management and Budget states:

> [User charges] are subtracted from gross outlays rather than added to taxes on the receipts side of the budget. The purpose of this treatment is to produce budget totals for receipts, outlays, and budget authority in terms of the amount of resources allocated governmentally, through collective political choice, rather than through the market.[29]

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24. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics, 2004 National Nursing Home Survey (NNHS), public use files, and U.S. Census Bureau. 2000 Census Summary File (SF 1). PCT16, PCT17–PCT17I.
25. In the average month in 2004, about 1.49 million individuals resided in nursing homes; another estimated 155,000 individuals resided in long-term care institutions other than nursing homes. Data on nursing home residents come from Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics, 2004 National Nursing Home Survey (NNHS), public use files. Data on individuals in other types of long-term care institutions come from the Bureau of Labor Statistics.
26. Because individuals in long-term care facilities are not counted in the CPS, they are not included in the expenditure and revenue allocation estimation of this analysis, except for Medicaid expenditures on institutional long-term care. However, they are included in the total number of U.S. households and the total number of low-skill households. To the extent that individuals without a high school degree represent a disproportionate share of the population in institutional long-term care and receive a number of government benefits and services, this analysis provides an underestimation of both actual aggregate and average expenditures received by low-skill households in the U.S.
27. See *www.census.gov/govs/estimate/0400ussl_1.html*.
28. Office of Management and Budget, *Analytical Perspectives, Budget of the United States Government, Fiscal Year 2006*, p. 301.
29. *Ibid.*

In contrast, Census tabulations of state and local government finances include user fees as revenue and also include the cost of the service provided for the fee as an expenditure.[30] The most prominent user fees treated in this manner in the Census state and local government financial data are household payments to public utilities for water, power, and sanitation services.

But market-like, user fee payments of this type do not involve a transfer of resources from one group to another or from one household to another. In addition, government user fee transactions do not alter the net fiscal deficit or surplus of any household (defined as the cost of total government benefits and services received minus total taxes and revenues paid) because each dollar in services received will be matched by one dollar of fees paid. Finally, determining who has paid a user fee and received the corresponding service is very difficult.

For these reasons, this paper has applied the federal accounting principle of excluding most user fees from revenue tallies and excluding the services funded by the fees from the count of expenditures to state and local government finances. This means that user charges and fees were removed from both the revenue and expenditure tallies for state and local government. As noted, the inclusion or exclusion of these user fees has no effect on the fiscal deficit figures for low-skill households presented in this paper.

Appendix Tables A–2A, A–2B, and A–2C show the deductions of federal grant in aid and user fee expenditures that yielded the state and local expenditure totals used in this analysis.

Estimating the Allocation of Direct and Means-Tested Benefits. In most cases, the dollar cost of direct benefits and means-tested benefits received by low-skill households was estimated by the dollar cost of benefits received as reported in the Census Bureau's Current Population Survey (CPS). One problem with this approach is that the CPS underreports receipt of most government benefits. This means that the aggregate dollar cost of benefits for a particular program as reported in the CPS is generally less than the actual program expenditures according to government budgetary data.

To be accurate, any fiscal analysis must adjust for benefit underreporting. This has been done in prior studies; for example, the National Academy of Sciences study of the fiscal costs of immigration, *The New Americans*, made an adjustment for such underreporting.[31]

The current analysis adjusts for underreporting in the CPS with a simple mathematical procedure that increases overall spending on any given program to equal actual aggregate spending levels and increases expenditures on low-skill households in an equal proportion. Let:

E_{tx} = total expenditures for program x reported in the CPS;

E_{lx} = expenditures for program x for low-skill households reported in the CPS;

E_{bx} = total expenditures for program x according to independent budgetary sources; and

H_l = number of low-skill households in the CPS.

The share of expenditures reported in the CPS received by low-skill households would equal E_{lx}/E_{tx}. The actual expenditures allocated to low-skill households would be estimated to equal (E_{lx}/E_{tx}) times E_{bx}.

The average per household benefit from the program received by low-skill households would equal:

(E_{lx}/E_{tx}) times (E_{bx}/H_l)

For example, if the CPS reported that low-skill households received 50 percent of food stamp benefits and the total expenditures on food stamps according to budgetary data were $10 billion, then low-skill households would be estimated to receive $5 billion in food stamp benefits. If there were 20 million low-skill households, then the average food stamp benefit per low-skill household would equal $5 billion divided by 20 million households, or $250.

30. U.S. Census Bureau, *Federal State and Local Governments: 1992 Government Finance and Employment Classification Manual*, sections 3.31 and 7.24.

31. National Research Council, *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration* (Washington, D.C.: National Academy Press, 1997), p. 308.

The key assumption behind this underreporting adjustment procedure is that low-skill households underreport receipt of welfare and other government benefits at roughly the same rate as the general population. For example, if receipt of food stamps is underreported by 15 percent in the CPS for the overall population, the adjustment procedure assumes that the sub-group of low-skill households in the CPS would also underreport food stamp receipt by 15 percent. The average level of food stamp benefits among low-skill households as reported in the CPS is then adjusted upward by this ratio to compensate for the underreporting.[32] Since there is no evidence to suggest that low-skill households underreport government benefits to the Census at a rate different from that of the general population, this procedure appears valid as an estimating technique.

Estimating the Allocation of Education Expenditures. The average cost of public education services was calculated in a somewhat different manner since the CPS reports whether an individual is enrolled in a public school but does not report the cost of education services provided. Consequently, data from the Census survey of governments were used to calculate the average per pupil cost of public primary and secondary education in each state.[33] The total governmental cost of primary and secondary schooling for each household was then estimated by multiplying the number of enrolled pupils in the household by the average per pupil cost in the state where the household resides.

This procedure yielded estimates of total public primary and secondary education costs for low-skill households in the CPS and for the whole population in the CPS. Adjustments for misreporting in the CPS were made according to the procedures outlined above. (This process is described more fully below.) Public costs for post-secondary education were allocated in a similar manner.

Estimating the Allocation of Medical Expenditures. There is often confusion concerning the calculation of the cost of Medicaid and Medicare benefits by the Census. The Census makes no effort to determine the costs of medical treatments given to a particular person. Instead, it calculates the average cost of Medicaid or Medicare benefits per person for a particular demographic/beneficiary group. For example, per capita Medicaid costs for children are very different from those for the elderly. The Census assigns the appropriate per capita Medicaid or Medicare costs to each individual who reports coverage in the CPS, according to the individual's beneficiary class: for example, elderly, children, non-elderly able-bodied adults, and disabled adults.

The present analysis uses the per capita Medicaid and Medicare costs provided by the CPS and then adjusts for underreporting according to the procedures described above. (For more details, see the specific discussion of Medicare and Medicaid below.)

Medicaid expenditures on persons in institutional long-term care facilities require separate calculations. In the average month in 2004, some 1.65 million persons resided in long-term care facilities;[34] about 62 percent of these individuals received Medicaid assistance.[35]

Individuals in long-term care facilities are not included in the population reported in the CPS. In FY 2004, some $76 billion in Medicaid funds was spent on individuals in nursing homes and other institutional long-term care facilities,[36] of which nearly 60 percent was spent on Medicaid recipients without a high school diploma.[37]

Estimating the Allocatiou of Population-Based Services. Wherever possible, this analysis has allocated the cost of population-based services for low-skill households in proportion to their estimated utilization of those ser-

32. If CPS underreports benefits by 15 percent, then the underreporting would be corrected by multiplying the CPS total by the inverse of 100 percent minus 15 percent (the inverse of 85 percent).
33. U.S. Census Bureau, Governments Division, *Public Education Finances, 2004*, issued March 2006. Costs included both current expenditures and capital outlays.
34. In the average month in 2004, about 1.49 million individuals resided in nursing homes; another estimated 155,000 individuals resided in long-term care institutions other than nursing homes.
35. The 62 percent statistic comes from the 2004 National Nursing Home Survey (NNHS). This analysis assumes that the share of Medicaid recipients in other types of long-term care institutions is equal to the share of Medicaid recipients in nursing homes.
36. Estimates based on FY 2003 MSIS expenditure data, as published in *Medicare & Medicaid Statistical Supplement, 2006*, and adjusted to equal actual FY 2004 expenditure levels as reported by the CRS. The spending figure includes a 16 percent increase for ancillary medical services.
37. Estimate comes from the 1999 National Long Term Care Survey.

vices. For example, the proportionate utilization of roads and highways by low-skill households was estimated, in part, on the basis of their share of gasoline purchases as reported in the Consumer Expenditure Survey (CEX).

When an estimate of proportionate utilization was not possible, the cost of population-based services was allocated on a uniform per capita basis. Some population-based services, such as airports, will be used infrequently by low-skill households; in these cases, the cost of the service for low-skill households was set at zero or at an arbitrary low level.

Estimating the Allocation of the Costs of General Government and Administrative Snpport Services. Allocation of the costs of general government services such as tax collections and legislative functions presents difficulties since there is apparently no one who directly benefits from those services. Most taxpayers would regard IRS collection activities as a burden, not a benefit; however, while government administrative functions *per se* do not benefit the public, they do provide a necessary foundation that makes all other government benefit and service programs possible. A household that receives food stamp benefits, for example, could not receive those benefits unless the IRS had collected the tax revenue to fund the program in the first place.

It seems reasonable to integrate proportionally the cost of government support services into the cost of other government functions that depend on those services. Following this reasoning, the expenditures for general government and administrative support have been allocated among households in the same proportions that total direct benefits, means-tested benefits, education, and population-based services are distributed among households.[38]

Estimating the Allocation of Financial Obligations Relating to Past Government Activities. Year by year, throughout most of the post-war period, U.S. taxpayers have not paid for the full cost of benefits and services provided by government. A portion of annual costs is passed on to be paid in future years.

Government costs are shifted to future years through two mechanisms. First, when government expenditure exceeds revenue, the government runs a deficit and borrows funds. The cost of borrowing is passed to future years in the form of interest payments and repayments of principal on public debts. Second, when a government employee provides a service to the public, part of the cost of that service is paid for immediately through the employee's salary, but the employee may also receive government retirement benefits in the future in compensation for services provided in the present. Expenditures on public-sector retirement systems are thus, to a considerable degree, present payments in compensation for services delivered in the past.

The mechanism for allocating these costs for past service among the present-day population is uncertain. In this paper, the following procedure was used.

First, veterans benefits were regarded as compensation for pure public goods and were allocated as such.

Second, the share of debt payments associated with past public good expenditure was considered a pure public good itself and allocated as such.

Third, the remaining interest and government retirement payments were allocated in proportion to the share of all direct benefits, means-tested benefits, education, and population services received by a group in FY 2004. Thus, the share of interest payments on government debt and government employee retirement costs allocated to low-skill households was proportionate to those households' share of direct and means-tested benefit spending, education, and spending on population-based services in FY 2004.

There are two rationales for this allocation. First, the government's honoring of past financial obligations is a necessary precondition for current government operations. For example, if government violated its obligations and refused to pay retirement benefits owed to past employees, it would find it difficult to hire current employees, at least at their present wage rates. Similarly, if the government failed to pay interest on its existing debt, it would find it very difficult to borrow money in the future; unable to borrow, the government would be forced to slash benefits or sharply raise taxes. Thus, payment of past government financial obligations is a necessary element of current government operations; it is an integral part of the "cost of production" of current government benefits and services.

38. Approximately 27 percent of total federal expenditure is devoted to pure public good functions; thus, 27 percent of federal support service expenditure was assumed to assist public good functions.

As in the case of tax collections, the public does not benefit directly from the payment of past governmental financial obligations, but the payment of those past obligations makes the provision of current benefits and services possible. Payment of past obligations is an important governmental secondary function that makes primary functions possible.

It seems reasonable, therefore, to integrate the cost of servicing past financial obligations into the costs of current government operations and to allocate the benefits of debt service expenditures in proportion to the distribution of present benefit and services.[39] That procedure has been used in this analysis.

A second perspective on this issue can be obtained by considering the multi-year costs of high school dropout households rather than just the single-year costs. As noted, in most years in the post-war period, government has failed to pay fully for its activities, passing part of the cost on to future years. A significant portion of current government debt represents benefits for low-skill households that were financed by deficit spending in prior years. In a multi-year perspective, the true fiscal cost of low-skill households includes not merely the fiscal deficit (benefits minus taxes) for the current year, but the fiscal deficit of low-skill households from prior years that has been shifted forward to the present by government borrowing.

Consequently, the true cost of low-skill households for the taxpayers would include the portion of government debt obligations that can be attributed to past benefits for low-skill households. To calculate this, it would be necessary to calculate the share of government debt that can be attributed to past benefits and services for low-skill households, a number that would be roughly comparable to the share of total government spending allocated on behalf of low-skill households in prior years.

Calculating such a figure would be a daunting task; however, review of government spending over the past three decades suggests that the share of spending devoted to low-skill households has probably not changed dramatically over that time. Consequently, the share of government spending on direct benefits, means-tested benefits, education, and population-based services to support low-skill households in FY 2004 (19 percent) can serve as a very rough proxy for the share of spending on such households in recent decades. Thus, the share of interest on the government debt that can be attributed to past expenditures on low-skill households is probably roughly proportionate to the share of current spending devoted to those households.

Estimating the Distribution of Pure Public Goods. Government pure public goods include expenditures on defense, veterans, international affairs, scientific research, and part of spending on the environment, as well as debt obligations relating to past public good spending. The total cost of pure public goods was divided by the whole U.S. population to determine an average per capita cost.

The share of benefits going to low-skill households was estimated based on their share of the population; the average value came out at roughly $6,000 per low-skill household. (This procedure assumes that low-skill households receive the same per capita utility from pure public good spending as does the general population.) Thus, it might be reasonable to say that each low-skill household benefits from some $6,000 in public goods spending each year that it does not pay for, but it would be inaccurate to assume that the benefit received by low-skill households imposes added costs on society. For a further discussion, see Appendix B.

Estimating the Distribution of Taxes and Other Government Collections. The distribution of federal and state income taxes was calculated from CPS data. The Census imputes tax payments into the CPS based on a household's income and demographic characteristics and the appropriate federal and state tax rules; however, since income is underreported in the CPS, this means that imputed taxes will also be too low. Thus, the imputed tax payments in the CPS were adjusted to equal the aggregate income tax revenues reported in government budgetary documents. Federal revenue totals were taken from *Analytical Perspectives, Budget of the U.S. Government, Fiscal Year 2006*.[40] State and local tax and revenue data were taken from the U.S. Census survey of governments.[41]

39. Financial obligations also include government employee retirement costs.
40. Office of Management and Budget, *Analytical Perspectives, Budget of the United States Government, Fiscal Year 2006*, pp. 299–323.
41. See *www.census.gov/govs/estimate/0400ussl_1.html*.

The procedures for adjusting for the underreporting of income taxes were the same as those used to adjust for underreporting of expenditures. For example, for federal income tax, let:

T_t = total income tax reported in the CPS;

T_l = total income tax for low-skill households reported in the CPS;

T_b = total income tax according to independent budgetary sources; and

H_l = number of low-skill households in the CPS.

The share of taxes paid by low-skill households as reported in the CPS would equal T_l/T_t. The actual taxes allocated to low-skill households would be estimated to equal (T_l/T_t) times T_b.

The average tax paid per low-skill household would equal:

(T_l/T_t) times (T_b/H_l)

State income taxes were adjusted for underreporting according to the same formula.

Employees were assumed to pay both the "employee" and "employer" share of FICA taxes. Allocation of FICA taxes was estimated based on the distribution reported in the CPS, adjusted for underreporting in the manner described above.

The incidence of federal and state corporate profits tax was assumed to fall 70 percent on workers and 30 percent on owners of capital.[42] The workers' share was allocated according to the distribution of earnings in the CPS, the owners' share according to the allocation of property income in the CPS.

Sales and excise taxes were assumed to fall on the consumer; tax payments were estimated based on the share of total consumption of relevant commodity or commodities in the Consumer Expenditure Survey. For example, since the CEX reported that households headed by persons without a high school degree consumed 18.2 percent of the sales of tobacco products, these same households were estimated to pay a corresponding 18.2 percent of all excise and sales taxes on tobacco products. Additional information on specific taxes is provided below.

Specific Calculations on Expenditures

The average cost of government benefits and services per low-skill household was calculated for 50 separate expenditure categories. The algorithms employed for each category are described below, and the specific calculations are shown in Appendix Table A–4.

Calculations for Specific Direct Benefit Expenditures.

- **Social Security Benefits.** Social Security benefits for individual households were calculated using dollar benefit values reported in the CPS. Adjustments for underreporting of benefits in the CPS were made using the procedures described above.
- **Medicare.** The value of Medicare benefits per household was calculated based on data in the CPS. The CPS calculates the value of Medicare coverage for an individual as equal to the average cost per eligible beneficiary. Adjustments for misreporting of benefits in the CPS were made using the procedures described above.[43]
- **Unemployment Insurance Benefits.** Unemployment insurance benefits for individual households were calculated using dollar benefit values reported in the CPS. Adjustments for underreporting of benefits in the CPS were made using the procedures described above.
- **Workmen's Compensation.** Workmen's compensation benefits for individual households were calculated using dollar benefit values reported in the CPS. Adjustments for underreporting of benefits in the CPS were made using the procedures described above.

42. William C. Randolph, "International Burdens of the Corporate Income Tax," Congressional Budget Office *Working Paper* No. 2006-09, 2006.
43. In the case of Medicare, the CPS actually slightly overreports the total cost of benefits; therefore, in this case, the adjustment procedure results in a small reduction in Medicare costs per household compared to the CPS data.

- **Other Federal Retirement Programs.** This category includes Railroad Retirement and the Black Lung Disability Trust Fund. Benefits for individual households were calculated using dollar values reported in the CPS. Adjustments for underreporting of benefits in the CPS were made using the procedures described above.
- **Agricultural Subsidy Programs.** Low-skill households were assumed to receive zero benefit from these programs.
- **Deposit Insurance.** Net expenditure for this category is very low; low-skill households were assumed to receive zero benefit.

Calculations for Public Education.

- **Public Primary and Secondary Education.** The average cost of public education services was calculated in a somewhat different manner since the CPS reports whether an individual is enrolled in a public school but does not report the cost of education services provided. Data from the October 2004 CPS were used to determine enrollment in public schools, while data from the Census survey of governments were used to calculate the average per pupil cost of public primary and secondary education in each state.[44] The total governmental cost of primary and secondary schooling for each household was then estimated by multiplying the number of enrolled pupils in the household by the average per pupil cost in the state where the household resides.

  This procedure provided an estimate of total public primary and secondary education costs for the whole population and the percentage of total costs going to low-skill households. The percentage of costs going to low-skill households was multiplied by the expenditure total for primary and secondary education from independent budgetary sources; this yielded an estimate of aggregate primary and secondary public school expenditures for low-skill households. Average per household costs of public primary and secondary education were calculated by dividing the total costs of low-skill households by the overall number of such households.
- **Public Post-Secondary Education.** Public costs for post-secondary education were allocated using the same procedures used for primary and secondary expenditures.
- **Other Education.** These state and local costs were allocated in proportion to the low-skill households' share of the general population.

Calculations for Specific Means-Tested Benefit Expenditures.

Means-Tested Expenditures in General. Aggregate figures on federal means-tested expenditures were taken from Office of Management and Budget totals in *Historical Tables, Budget of the United States Government, Fiscal Year 2006*. (See Appendix Table A–1.) Federal expenditures on individual means-tested programs are presented in Appendix Table A–4 and were taken from the Congressional Research Service report, *Cash and Noncash Benefits for Persons with Limited Income: Eligibility Rules, Recipient and Expenditure Data, FY2002–FY2004*.

Figures on specific state and local means-tested expenditures are presented in Appendix Tables A–2A, A–2B, A–2C, and A–4 and were taken from the CRS report. These figures exclude state means-tested expenditures financed by federal grants. An estimated $2.5 billion in state-run General Relief programs was included in the "public assistance" category in Appendix Table A–4; these expenditures do not appear in the CRS report because they lack a federal component.

The total means-tested expenditure figure of $550.9 billion, presented in Appendix Table A–3, excludes means-tested veterans benefits (which are counted as public good spending) and most means-tested educational spending.[45]

Medicaid Expenditures in General. The Medicaid Statistical Information System (MSIS)[46] reports Medicaid expenditures for four recipient groups: children; disabled, non-elderly adults; able-bodied, non-elderly adults;

44. Data from U.S. Census Bureau, Governments Division, *Public Education Finances, 2004*, issued March 2006.
45. The means-tested spending total does include Head Start.

and elderly adults. The MSIS data further divide expenditures in each of the four recipient categories into expenditures for recipients in the general population and expenditures for recipients in long-term care institutions, which include nursing facilities (NF) and intermediate care facilities for the mentally handicapped (ICF-MR). This yields eight overall Medicaid recipient categories; separate expenditure calculations were made for each of these eight categories.

- **Elderly Medicaid Recipients in Long-Term Care Institutions.** Medicaid expenditures for elderly persons without a high school diploma in long-term care institutions were estimated according to four steps.

  First, institutional long-term care expenditures on recipients of unknown recipient status were imputed into the four known recipient categories of persons in institutions on a pro rata basis.

  Second, institutional long-term care expenditures (nursing facility plus ICF-MR spending) as reported in the MSIS are facility expenditures and do not reflect Medicaid spending on ancillary medical services (such as inpatient hospital, physician, and prescription drugs services) used by institutional long-term care recipients. On average, ancillary medical spending is estimated to be about 16 percent of facility expenditures across the four recipient groups.[47] To calculate the adjusted institutional long-term care expenditures that would include both facility and ancillary spending, MSIS-based nursing facility and ICF-MR expenditures are multiplied by a factor of 1.16.

  Third, total Medicaid expenditures reported in the MSIS fall short of total expenditures reported by the Congressional Research Service.[48] To compensate for this shortfall, the expenditure total calculated in stage 2 was multiplied by the ratio of CRS total Medicaid expenditures divided by MSIS total expenditures; this yielded an adjusted institutional long-term care expenditure total (ALCET) for elderly persons in long-term care.

  Fourth, the National Long Term Care study showed that some 59 percent of elderly Medicaid recipients in nursing facilities lacked a high school diploma.[49] In addition, all elderly persons in ICF-MR were assumed to lack a high school diploma. Based on their share of Medicaid recipients in long-term care institutions, elderly persons without a high school diploma were assumed overall to receive 59.9 percent of the adjusted long-term care expenditure total (ALCET) for all elderly persons in institutional long-term care.

- **Non-elderly Medicaid Recipients in Long-Term Care.** Medicaid expenditures for non-elderly persons without a high school diploma were estimated according to four steps similar to those used for the elderly.

  First, institutional long-term care expenditures on recipients of unknown recipient status were imputed into the four known-eligibility recipient categories on a pro rata basis.

  Second, institutional long-term care expenditures (nursing facility plus ICF-MR spending) as reported in the MSIS are facility expenditures and do not reflect Medicaid spending on ancillary medical services (such as inpatient hospital, physician, and prescription drugs services) used by institutional long-term

46. Calculations in this appendix are based on FY 2003 MSIS data. U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, *Medicare & Medicaid Statistical Supplement, 2006*, Medicaid Tables 14.1–14.27, at *www.cms.hhs.gov/MedicareMedicaidStatSupp/L1Item detail.asp?filterType=none&filterByDID=-99&sortByDID=1&sortOrder=ascending&itemID=CMS1190631&intNumPerPage=10* (February 20, 2007).
47. The 16 percent figure was taken from Anna Sommers *et al.*, "Medicaid's Long-Term Care Beneficiaries: An Analysis of Spending Patterns." Kaiser Commission on Medicaid and the Uninsured, 2006, Table 2. The study used MSIS 2002 data.
48. MSIS expenditures fall short of actual Medicaid expenditures because of its accounting system and because the MSIS does not include disproportionate provider payments, some supplemental payments, and administrative costs. In addition, Medicaid expenditure calculations for the different recipient groups are based on published FY 2003 data. Assuming that each recipient group's share of spending did not vary from 2003 to 2004, FY 2003 expenditure figures were also adjusted to equal actual FY 2004 spending levels as reported by the CRS. Step 3 in this estimation process accounted for both adjustments at once.
49. National Long Term Care Study (NLTCS), 1999 public use dataset. Produced and distributed by the Duke University Center for Demographic Studies with funding from the National Institute on Aging under Grant No. U01-AG007198. The NLTCS is a nationally representative sample of individuals ages 65 years and older in long-term care facilities.

care recipients. On average, ancillary medical spending is estimated to be about 16 percent of facility expenditures across the four recipient groups.[50] To calculate the adjusted institutional long-term care expenditures that would include both facility and ancillary spending, MSIS-based nursing facility and ICF-MR expenditures were multiplied by a factor of 1.16.

Third, total Medicaid expenditures reported in the MSIS fall short of total expenditures reported by the Congressional Research Service. To compensate for this, the expenditure total calculated in stage 2 was multiplied by the ratio of CRS total Medicaid expenditures divided by MSIS total expenditures; this yielded an adjusted institutional long-term care expenditure total (ALCET) for non-elderly persons in long-term care.

Fourth, the share of adjusted institutional long-term care expenditure for non-elderly persons that went to persons without a high school diploma was then estimated. Of the total adjusted Medicaid expenditures for non-elderly recipients in institutional long-term care, 52.3 percent was spent on individuals residing in intermediate care facilities for the mentally handicapped (ICF-MR); all beneficiaries in these facilities were assumed to be without a high school diploma.[51] Some 6.8 percent of expenditures went to non-elderly persons who lacked a high school diploma and who resided in nursing facilities.[52] Altogether, 59.1 percent of Medicaid expenditures on non-elderly persons in institutional long-term care went to persons who lacked a high school diploma.

- **Medicaid Expenditures on Elderly Persons in the General Population.** Medicaid expenditures for elderly persons residing in low-skill households were calculated as follows.

  First, total Medicaid expenditures reported in the MSIS fall short of total expenditures reported by the Congressional Research Service. To compensate for this, Medicaid expenditures for elderly persons as reported in the MSIS were multiplied by the ratio of CRS total Medicaid expenditures divided by MSIS total expenditures.

  Second, the adjusted long-term care expenditure total (ALCET) for elderly persons in long-term care institutions was subtracted from the product calculated in stage 1. The remainder equaled expenditures on the non-institutional elderly.

  Third, the percent of Medicaid expenditures on the non-institutional elderly going to persons in low-skill households was calculated from CPS data; this percentage was applied to the remainder in stage 2 to yield Medicaid expenditures for the non-institutional elderly going to low-skill households.

  The formula for Medicaid expenditures for elderly persons in low-skill households in the general population would be as follows. Let:

  M_{el} = Medicaid expenditures for elderly persons residing in low-skill households in the general population;

  M_{et} = Total Medicaid expenditures on the elderly according to MSIS data;

  M_{ei} = Medicaid expenditures on the elderly in long-term care institutions;

  $MSIS_t$ = Total Medicaid expenditure according to MSIS data;

  CRS_t = Total Medicaid expenditure according to Congressional Research Service data; and

  CPS_e = Share of Medicaid expenditures for elderly persons in the CPS going to elderly persons residing in low-skill households.

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50. The 16 percent figure came from Anna Sommers *et al.*, "Medicaid's Long-Term Care Beneficiaries: An Analysis of Spending Patterns," Kaiser Commission on Medicaid and the Uninsured, 2006, Table 2. The Kaiser study used MSIS 2002 data.
51. For more information on ICF-MR facilities, see *www.cms.hhs.gov/CertificationandCompliance/09_ICFMRs.asp* (March 7, 2007).
52. To derive this figure, the percent of non-elderly adult recipients without a high school education in long-term care nursing facilities was assumed to equal that of the general U.S. population: about 14 percent in 2004. U.S. Census Bureau, Current Population Survey, Educational Attainment in the United States: 2004, Table 1, at *www.census.gov/population/socdemo/education/cps2004/tab01-01.xls* (March 2, 2007).

Medicaid expenditures for elderly persons residing in low-skill households in the general population can then be calculated as:

$M_{el} = (M_{et} - M_{ei})$ times $CRS_t/MSIS_t$ *times* CPS_e

- **Medicaid Expenditures on Children in the General Population.** Medicaid expenditures for children residing in low-skill households were calculated with the same three-step procedure used for elderly persons in the general population.

  First, total Medicaid expenditures reported in the MSIS fall short of total expenditures reported by the Congressional Research Service. To compensate for this, Medicaid expenditures for children as reported in the MSIS were multiplied by the ratio of CRS total Medicaid expenditures divided by MSIS total expenditures.

  Second, the adjusted long-term care expenditure total (ALCET) for children in long-term care institutions was subtracted from the product calculated in stage 1. The remainder equaled Medicaid expenditures on non-institutionalized children.

  Third, the percent of Medicaid expenditures on non-institutionalized children going to children in low-skill households was calculated from CPS data; this percentage was applied to the remainder in stage 2 to yield Medicaid expenditures for the non-institutional children residing in low-skill households.

- **Medicaid Expenditures on Able-bodied Adults in the General Population.** Medicaid expenditures for able-bodied adults residing in low-skill households were calculated with the same three-step procedure used for elderly persons in the general population.

  First, total Medicaid expenditures reported in the MSIS fall short of total expenditures reported by the Congressional Research Service. To compensate for this, Medicaid expenditures for able-bodied adults in the general population as reported in the MSIS were multiplied by the ratio of CRS total Medicaid expenditures divided by MSIS total expenditures.

  Second, the adjusted long-term care expenditure total (ALCET) for able-bodied adults in long-term care institutions was subtracted from the product calculated in stage 1. The remainder equaled Medicaid expenditures on non-institutionalized able-bodied adults.

  Third, the percent of Medicaid expenditures on non-institutionalized able-bodied adults going to able-bodied adults in low-skill households was calculated from CPS data; this percentage was applied to the remainder in stage 2 to yield Medicaid expenditures for the non-institutionalized able-bodied adults residing in low-skill households.

- **Medicaid Expenditures on Disabled Adults in the General Population.** Medicaid expenditures for disabled adults residing in low-skill households were calculated with the same three-step procedure used for elderly persons in the general population.

  First, total Medicaid expenditures reported in the MSIS fall short of total expenditures reported by the Congressional Research Service. To compensate for this, Medicaid expenditures for disabled adults in the general population as reported in the MSIS were multiplied by the ratio of CRS total Medicaid expenditures divided by MSIS total expenditures.

  Second, the adjusted long-term care expenditure total (ALCET) for disabled adults in long-term care institutions was subtracted from the product calculated in stage 1. The remainder equaled Medicaid expenditures on non-institutionalized disabled adults.

  Third, the percent of Medicaid expenditures on non-institutionalized disabled adults going to disabled adults in low-skill households was calculated from CPS data; this percentage was applied to the remainder in stage 2 to yield Medicaid expenditures for the non-institutionalized disabled adults residing in low-skill households.

- **Food Stamps.** The Food Stamp Program is a means-tested program. Benefits for individual households were calculating using dollar benefit values reported in the CPS. Adjustments for underreporting of food stamp benefits in the CPS were made using the procedures described above.
- **Supplemental Security Income (SSI).** SSI is a means-tested program. SSI benefits for individual households were calculated using dollar benefit values reported in the CPS. Adjustments for underreporting of benefits in the CPS were made using the procedures described above.
- **The Earned Income Tax Credit (EITC).** The EITC is a means-tested program supporting low-income working families with children. Dollar values of EITC benefits are calculated by the Census for each eligible household and imputed into the CPS data files. For the present analysis, EITC benefits for individual households were based on the dollar benefit values reported in the CPS. Adjustments for underreporting of EITC benefits in the CPS were made using the procedures described above.
- **Public Housing Subsidies.** There are a number of federal means-tested housing benefit programs. Public housing benefits for individual households were determined using dollar benefit values reported in the CPS. Adjustments for underreporting of benefits in the CPS were made using the procedures described above.
- **Public Assistance.** Public assistance covers cash benefits from the Temporary Assistance to Needy Families (TANF) program and General Relief programs.[53] Public assistance benefits were determined for individual households using dollar benefit values reported in the CPS. Adjustments for underreporting of benefits in the CPS were made using the procedures described above.
- **Energy Assistance.** Energy assistance is a means-tested benefit program. Benefits for individual households were determined using dollar benefit values reported in the CPS. Adjustments for underreporting of benefits in the CPS were made using the procedures described above.
- **Women, Infants and Children (WIC) Nutrition Program.** WIC is a means-tested program subsidizing food consumption for low-income pregnant women and low-income mothers with infants and small children. The CPS reports receipt of WIC benefits by households but gives no dollar value. The share of total WIC spending going to low-skill households was assumed to equal the share of WIC recipients in the CPS in low-skill households.
- **Day Care Assistance.** Federal, state, and local governments provide day care assistance to low-income parents through a variety of means-tested programs. The CPS reports receipt of day care assistance by households but gives no dollar value. The share of total day care spending going to low-skill households was assumed to equal the share of day care recipients in the CPS in low-skill households.
- **Indian Health Services.** Indian Health is a means-tested aid program. The CPS reports receipt of Indian Health benefits by households but gives no dollar value. The share of total Indian Health spending going to low-skill households was assumed to equal the share of Indian Health recipients in the CPS in low-skill households.
- **Training.** The CPS reports whether an individual participates in government job training programs but assigns no cost to this participation. The share of total means-tested training spending going to low-skill households was assumed to equal the share of training-participant recipients in the CPS who lived in low-skill households.
- **Other Means-Tested Aid.** Altogether, the federal government operates some 70 different means-tested aid programs. The CPS contains data on household utilization of 11 of the largest programs, which cover 93 percent of overall means-tested spending, but provides no data on the smaller programs. Allocation of benefits from the remaining means-tested programs was estimated in the following manner.

53. The state and local expenditures on public assistance presented in Appendix Table A–4 include data and state TANF spending taken from the Congressional Research Service and an estimated $2.5 billion in state and local spending on General Relief.

First, the share of reported total spending for the 11 means-tested programs covered by the CPS going to households headed by persons without a high school degree was determined.

Second, the low-skill households were assumed to receive a share of the means-tested benefits from the remaining unreported programs equal to their share of all expenditures on reported means-tested programs in the CPS.

Third, once the estimated total benefits from these residual programs received by low-skill households as a whole was calculated, an average value per low-skill household could be computed.

Specific Calculations for Population-Based Programs.

- **Highways and Roads.** Utilization of roads, highways, and parking facilities by low-skill households was assumed to be proportionate to their share of gasoline expenditures in the CEX.
- **Mass Transit Subsidies.** Low-skill households were assumed to utilize mass transit in proportion to their share of expenditures on public transportation as reported in the CEX.
- **Air Transportation.** Low-skill households were assumed to receive minimal benefit from government spending on airports and air travel. The low-skill household share of this spending was arbitrarily set at 2 percent of total expenditures.
- **Sea and Inland Port Facilities and Other Ground Transportation.** The share of these expenditures benefiting low-skill households was assumed to equal their share of total consumption in the CEX.
- **Other Federal Ground Transportation.** Low-skill households were assumed to receive none of the benefits of this spending.
- **Justice, Police, and Public Safety.** These programs provide a general benefit to entire communities. These expenditures were assumed to have a uniform per capita value across the entire population. The share of expenditures benefiting low-skill households was assumed to be equal to their share of the total population.
- **Population-Based Expenditures on Resources, Sanitation, and the Environment.** This category covers spending on parks and recreation, sewage and waste management, pollution control, natural resources, and public utility expenditures that are not financed through user fees. These expenditures were assumed to have a uniform per capita value across the entire population. The share of expenditures benefiting low-skill households was assumed to be equal to their share of the total population.
- **Public Utility Spending for Water Supply.** These expenditures represent expenditures on public water supply beyond those financed through user fees. The low-skill households' share of this spending was assumed to equal the group's share of expenditures on water in the CEX.
- **Public Utility Spending for Electric Power Supply.** These expenditures represent expenditures on public electric power beyond those financed through user fees. The low-skill households' share of this spending was assumed to equal the group's share of expenditures on electricity in the CEX.
- **Public Utility Spending for Gas Supply.** These expenditures represent expenditures on public gas supply beyond those financed with user fees. The low-skill households' share of this spending was assumed to equal the group's share of expenditures on gas supply in the CEX.
- **Pollution Control and Abatement.** The analysis assumes that expenditures on pollution control would be proportionate to a household's propensity to pollute and that a household's propensity to pollute would be proportionate to its share of overall consumption. In consequence, low-skill households' share of pollution control expenditure would be proportionate to the group's share of total consumption in the CEX.
- **General Health.** This category includes spending on mental health, substance abuse, and public health. These expenditures were assumed to have a uniform per capita value across the entire popu-

lation. The share of expenditures benefiting low-skill households was assumed to be equal to their share of the total population.

- **Consumer and Occupational Health.** These expenditures were assumed to have a uniform per capita value across the entire population. The share of expenditures benefiting low-skill households was assumed to be equal to their share of the total population.
- **Protective Inspection and Regulation.** These expenditures were assumed to have a uniform per capita value across the entire population. The share of expenditures benefiting low-skill households was assumed to be equal to their share of the total population.
- **Community Development.** These expenditures were assumed to have a uniform per capita value across the entire population. The share of expenditures benefiting low-skill households was assumed to be equal to their share of the total population.
- **Miscellaneous Spending.** This category includes labor services, activities to advance commerce, postal service, and libraries. These expenditures were assumed to have a uniform per capita value across the entire population. The share of expenditures benefiting low-skill households was assumed to be equal to their share of the total population.

Specific Calculations for General Government Support Services for Other Government Programs.

- **General Government/Administrative Support Functions at the State and Local Levels.** This category consists mainly of administrative services in support of other government functions. It includes tax and revenue collection, lottery administration, budgeting, central administration, legislative functions, trust fund administration, central administration, and legislative functions. These activities do not provide benefits or services to the general public, but rather provide support for other programs that do directly affect the public. For example, tax collection does not directly benefit anyone but is necessary to provide funding for all other programs that do provide benefits and services to the public. Since the purpose of these support functions is to sustain other government programs, the costs for administrative support services was allocated according to the share of overall state and local direct benefits, means-tested benefits, education, and population-based services received by a household.
- **General Government/Administrative Support Functions at the Federal Level.** Like the previous category, this category includes tax collection activity, legislative functions, and other administrative support activities; and like the previous category, these activities do not directly benefit the public, but rather sustain all other government activities. In FY 2004, some 27 percent of total federal spending was allocated to pure public good functions. Therefore, 27 percent of federal general government and administrative support spending was estimated to be in support of pure public good functions. The remaining spending was allocated among households according to the share of all federally funded direct benefits, means-tested benefits, education, and population-based services received by a household.

Specific Calculations for Financial Obligations Relating to Past Government Activities.

- **Federal Financial Obligations.** This category includes interest payments on the federal debt and expenditures on federal employee retirement. These expenditures do not directly benefit the public, but rather sustain all other government activities. In FY 2004, some 27 percent of total federal spending was allocated to pure public good functions. Therefore, 27 percent of federal financial obligations were estimated to be in support of pure public good functions. The remaining spending was allocated among households according to the share of all direct and means-tested benefits, education, and population-based services received by a household.
- **State and Local Financial Obligations.** This category includes interest payments on the state and local debt and expenditures on state and local employee retirement. These expenditures do not directly benefit the public, but rather sustain all other government activities. Spending was allocated among households according to the share of all direct and means-tested benefits, education, and population-based services received by a household.

Specific Calculations for Public Goods Expenditure. This category includes spending on national defense, international affairs, science and scientific research, veterans programs, and natural resources and the environment. These expenditures were assumed to have a uniform per capita value across the entire population. The share of expenditures benefiting low-skill households was assumed to be equal to their share of the total population.

- **National Defense.** National defense is a pure public good. Defense expenditures were assumed to have a uniform per capita value across the entire population. The share of expenditures benefiting low-skill households was assumed to be equal to their share of the total population.
- **Veterans Programs.** Spending on veterans programs represents a cost related to past public goods services. These expenditures were assumed to have a uniform per capita value across the entire population. The share of expenditures benefiting low-skill households was assumed to be equal to their share of the total population.
- **Science and Scientific Research.** These expenditures were assumed to have a uniform per capita value across the entire population. The share of expenditures benefiting low-skill households was assumed to be equal to their share of the total population.
- **International Affairs.** These expenditures were assumed to have a uniform per capita value across the entire population. The share of expenditures benefiting low-skill households was assumed to be equal to their share of the total population.
- **Natural Resources and the Environment.** These expenditures represent an estimate of pure public goods spending on the environment such as preservation of species and wilderness. Parks, recreation, and pollution abatement activities are not included in this category because the cost of those activities will tend to increase as the population increases. The environmental expenditures in this category were assumed to have a uniform per capita value across the entire population. The share of expenditures benefiting low-skill households was assumed to be equal to their share of the total population.
- **Expenditures on Administrative Support Functions That Assist Governmental Public Good Functions.** Some 27 percent of federal government spending in FY 2004 went to public good functions; therefore, it is assumed that 27 percent of federal administrative support spending also was devoted to backing public goods functions.
- **Financial Obligations for Past Public Good Functions.** This category includes interest payments on the federal debt and federal employee retirement costs. These are obligations that result from federal activities in prior years. The public good share of these obligations would be equal to the public good share of total federal spending in prior years. In FY 2004, some 27 percent of federal spending went to public good functions. The analysis assumes that 27 of federal spending in past years also went to public good functions; therefore, the public good share of spending on past financial obligations is assumed to equal 27 percent of the full costs of past financial obligations.

Specific Calculations for Taxes and Revenues

Average payments per low-skill household were calculated for 33 specific tax and revenue categories. The algorithm used for each revenue category is described below, and the calculations for each category are presented in Appendix Table A–5.

Specific Calculations for Federal Taxes and Revenues.

- **Federal Individual Income Tax.** The distribution of federal income taxes was calculated from CPS data. The Census imputes tax payments into the CPS based on a household's income and demographic characteristics and the appropriate federal income tax rules; however, since income is underreported in the CPS, this means that imputed taxes will also be too low. Thus, the imputed tax payments in the CPS were adjusted so that aggregate tax revenues equaled those reported in *Analytical Perspectives, Budget of the U.S. Government, Fiscal Year 2006.*[54] Adjustments for underreporting of tax

54. Office of Management and Budget, *Analytical Perspectives, Budget of the United States Government, Fiscal Year 2006*, pp. 299–323.

payments in the CPS were made using the procedures used for adjusting benefits for underreporting as described above.

- **Federal Insurance Contribution Act (FICA) Taxes.** Employees were assumed to pay both the "employer" and "employee" share of FICA taxes. Data on the distribution of FICA tax were taken from the CPS. The Census imputes FICA tax values into the CPS based on reported earnings. Adjustment for underreporting was done in the manner previously described.
- **Federal Corporate Income Tax.** There are many conflicting opinions on the incidence of corporate income tax. The tax may be paid by owners, workers, consumers, or a combination of all three. For example, the Congressional Budget Office has traditionally assumed that the burden of this tax was fully borne by the owners of businesses; however, a recent CBO analysis concluded that in a competitive international environment, 70 percent of the cost of this tax was in fact shifted to workers.[55] As a whole, workers will experience lower wages as a result of the tax.

  This study uses the conclusions of this recent CBO analysis, assigning 70 percent of the federal corporate income tax burden to workers and 30 percent to owners; this allocation increases the estimate of the average taxes paid by low-skill households. The distribution of the workers' share of the tax burden was estimated on the basis of the distribution of earnings reported in the CPS. The share of federal corporate income tax borne by workers in low-skill households was assumed to be proportionate to the share of total earnings reported by low-skill households in the CPS. The distribution of the owners' share of the tax burden was estimated on the basis of the distribution of property income (dividends, interest, and rent) in the CPS; the share borne by workers in low-skill households was assumed to be proportionate to the share of total property income reported by low-skill households in the CPS.
- **Federal Receipts for Unemployment Insurance.** This tax was assumed to fall on workers. The share paid by low-skill workers was assumed to equal their share of earnings in the CPS.
- **Federal Highway Trust Fund Taxes.** This tax was assumed to fall half on the private owners of motor vehicles and half on businesses. The business share was further assumed to fall half on consumers and half on owners. Overall, the tax was assumed to fall 50 percent on private motor vehicle operators, 25 percent on consumers, and 25 percent of owners of businesses.[56] The portion of the tax paid by private motor vehicle operators that fell on low-skill households was assumed to equal those households' share of gasoline consumption as reported in the CEX. The portion of the tax paid by consumers that fell on low-skill households was assumed to be proportionate to those households' share of total consumption as reported in the CEX. The portion of the tax paid by business owners that fell on low-skill households was assumed to be proportionate to those households' share of property income (interest, dividends, and rent) as reported in the CPS.
- **Federal Airport and Airways Taxes.** Low-skill households probably use air travel infrequently. They were assumed to pay 2 percent of these taxes and to utilize a corresponding 2 percent of government air travel expenditures.
- **Federal Excise Tax on Alcohol.** This tax was assumed to fall on the consumers of alcohol. The share of the tax borne by low-skill households was assumed to be proportionate to those households' share of the total consumption of alcohol products as reported in the CEX.
- **Federal Excise Tax on Tobacco.** This tax was assumed to fall on the consumers of tobacco products. The share of the tax borne by low-skill households was assumed to be proportionate to those households' share of the total consumption of tobacco products as reported in the CEX.
- **Federal Excise Tax on Telephones.** This tax was assumed to fall on telephone users. The share of the tax borne by low-skill households was assumed to be proportionate to those households' share of the total consumption of telephone products as reported in the CEX.

55. Randolph, "International Burdens of the Corporate Income Tax."
56. Based on information provided by the Tax Foundation.

- **Federal Excise Tax on Transportation Fuels.** This tax was assumed to fall on the consumers of transportation fuels. The share of the tax borne by low-skill households was assumed to be proportionate to those households' share of the total consumption of fuels as reported in the CEX.
- **Other Federal Excise Taxes.** These taxes were assumed to fall on consumers in general. The share of tax borne by low-skill households was assumed to be proportionate to those households' share of the total consumption as reported in the CEX.
- **Federal Gift and Estate Taxes.** Low-skill households were assumed to pay none of these taxes.
- **Federal Customs, Duties, and Fees.** These taxes were assumed to fall on consumers. The share of tax borne by low-skill households was assumed to be proportionate to those households' share of the total consumption as reported in the CEX.

Specific Calculations for State and Local Taxes and Revenues.

- **State Individual Income Tax.** This tax was estimated in the same manner as the federal individual income tax. State income tax data reported in the CPS are calculated using the tax rules of the individual states.
- **State Corporate Income Tax.** This tax was estimated in the same manner as the federal corporate income tax.
- **State and Local Property Taxes.** Property taxes were assumed to fall partly on businesses and partly on owner-occupied and rented dwellings. The tax falling on businesses was assumed to be partly borne by owners and partly passed on to consumers. Overall, 50 percent of the tax was allocated to households as home owners and renters; the share of this tax paid by low-skill households was assumed to be proportionate to these households' share of payments for shelter costs in the CEX. Another 25 percent of property taxes was assumed to be paid by owners of capital; the share paid by low-skill households was assumed to be proportionate to these households' share of dividends, interest, and rent income in the CPS. A final 25 percent of property tax was assumed to be passed on from businesses to consumers; the share of this burden borne by low-skill households was assumed to be equal to their share of total consumption as reported in the CEX.
- **State and Local General Sales Taxes.** These taxes were assumed to fall on consumers. The share that low-skill households paid was assumed to be proportionate to their share of the consumption of nonexempt goods and services as reported in the CEX. Items routinely exempted from sales tax coverage include food eaten at home, housing expenditure, utilities, fuels, gas and motor oil, public services, health care, education, cash contributions, and personal insurance and pension payments.[57]
- **State and Local Tax on Motor Fuel.** This tax was calculated in the same manner as the federal Highway Trust Fund taxes.
- **State and Local Sales Tax on Alcohol.** This tax was estimated in the same manner as the federal excise tax on alcohol.
- **State and Local Sales Tax on Tobacco.** This tax was estimated in the same manner as the federal excise tax on tobacco.
- **Motor Vehicle License Fees.** The share of these fees paid by low-skill households was assumed to equal these households' share of spending on licenses as reported in the CEX.
- **Public Utilities Tax.** The share of this tax paid by low-skill households was assumed to equal these households' share of total utility expenditures as reported in the CEX.
- **Other Selective State and Local Sales Taxes.** The share of these taxes paid by low-skill households was assumed to equal these households' share of total consumption based on CEX data.

57. Based on information provided by the Tax Foundation.

- **Other State and Local Taxes Including Estate, Stock Transaction, and Severance Taxes.** Low-skill households are assumed to pay few of these taxes.
- **State Taxes for Unemployment Insurance.** These taxes, like FICA taxes, were assumed to fall on workers. The share of taxation borne by low-skill households was assumed to equal their share of earnings reported in the CPS.
- **Other Insurance Trust Fund Revenues.** The share of these revenues paid by low-skill households was assumed to be proportionate to the number of persons in low-skill households as a share of the general population.
- **State Taxes for Workmen's Compensation.** These taxes, like FICA taxes, were assumed to fall on workers. The share of taxation borne by low-skill households was assumed to equal their share of earnings reported in the CPS.
- **Employee Contributions to State and Local Government Retirement Funds.** The distribution of these revenue contributions was assumed to be proportionate to the distribution of state and local employees participating in employer pension plans according to CPS data.
- **State Lottery Receipts.** An important source of government revenue paid by low-skill households is the purchase of state lottery tickets. Households headed by persons without a high school degree appear to pay more to state government through lottery ticket sales than they do through individual income taxes. A major study of the sale of state lottery tickets to different socioeconomic groups shows that per capita spending on state lottery tickets by adult high school dropouts was twice that of other adults.[58] In the present analysis, lottery spending by households headed by persons without a high school degree was assumed to be twice that of other households. The share of state lottery revenue contributed by low-skill households was calculated as $2h_l/(h_l + h_i)$, where h_l is the number of low-skill households and h_i is the number of households in the total population.
- **Earnings on Investments Held in Employee Retirement Trust Funds.** These state and local revenues represent the property income received by government trust funds as owners of capital. These earnings are not taxes and cannot be allocated among households.
- **State and Local Interest Earnings and Earnings from the Sale of Property.** These revenues represent the property income received by government as owner of capital and other property. These earnings are not taxes and cannot be allocated among households.
- **Special Assessments.** Low-skill households were assumed to pay none of these taxes.
- **Other State and Local Revenue.** This revenue includes dividends on investment, recovery of expenditures made in prior years, and other non-tax revenue. Low-skill households were assumed to fund none of this revenue.

58. Charles T. Clotfelter, Philip J. Cook, Julie A. Edell, and Marian Moore, "State Lotteries at the Turn of the Century: Report to the National Gambling Impact Study Commission," Duke University, April 23, 1999.

Appendix B
Pure Public Goods, Private Consumption Goods, and Population-Based Services

Fiscal distribution analysis seeks to determine the government benefits received by a particular group compared to taxes paid. A necessary first step in this process is to distinguish government programs that provide "pure public goods" as opposed to "private goods." These two types of expenditures have very different fiscal implications.

Economist Paul Samuelson is credited with being the first to develop the theory of public goods. In his seminal 1954 paper "The Pure Theory of Public Expenditure,"[59] Samuelson defined a pure public good (or what he called in the paper a "collective consumption good") as a good "which all enjoy in common in the sense that each individual's consumption of such a good leads to no subtractions from any other individual's consumption of that good." By contrast, a "private consumption good" is a good that "can be parceled out among different individuals." Its use by one person precludes or diminishes its use by another.

A classic example of a pure public good would be a lighthouse: The fact that any particular ship perceives the warning beacon does not diminish the usefulness of the lighthouse to other ships. A typical example of a private consumption good is a hamburger: When one person eats it, it cannot be eaten by others.

Formally, all pure public goods will meet two criteria.[60]

- **Non-rivalrous consumption:** Everyone in a given community can use the good; its use by one person will not diminish its utility to others.
- **Zero-cost extension to additional users:** Once a pure public good has been initially produced, it requires no extra cost for additional individuals to benefit from the good. Expansion of the number of beneficiaries does not reduce its utility to any initial user and does not add new costs of production. As Nobel prize–winning economist James Buchanan explains, with a pure public good, "Additional consumers may be added at zero marginal cost."[61]

The second criterion is a direct corollary of the first. If consumption of a good is truly non-rivalrous, then adding extra new consumers will not reduce utility or add costs for the initial consumers.

The distinction between collective and private consumption goods can be illustrated by considering the difference between a recipe for pie and an actual piece of pie. A recipe for pie is a public consumption good in the sense that it can shared with others without reducing its usefulness to the original possessor; moreover, the recipe can be disseminated to others with little or no added cost. By contrast, an actual slice of pie is a private consumption good: Its consumption by one person bars its consumption by another. Efforts to expand the number of individuals utilizing the pie slice will either reduce the satisfaction of each user (as each gets a smaller portion of the initial) or entail new costs (to produce more pie).

Examples of Governmental Pure Public Goods. Pure public goods are relatively rare. One prime example of a governmental public good is medical research. If research funded by the National Institutes of Health produces a cure for cancer, all Americans will benefit from this discovery. The benefit received by one person is not reduced by the benefit received by others; moreover, the value of the discovery to each individual would remain the same even if the U.S. population doubled.

Another notable example of a pure public good is defense expenditure. The utility of an Army division or an aircraft carrier lies in its effectiveness in combating foreign threats to America. In most respects, one person's benefit from defense strength is not reduced because others also benefit. The military effectiveness of an Army division or an aircraft carrier is not reduced just because the size of the civilian population being defended is increased.

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59. Paul A. Samuelson, "The Pure Theory of Public Expenditure," *Review of Economics and Statistics*, Vol. 36, No. 4 (1954), pp. 387–389.
60. A third criterion is non-exclusion from benefit; it is difficult to deny members of a community an automatic benefit from the good. This aspect of public goods is not critical to the fiscal allocation issues addressed in this paper.
61. James M. Buchanan, *The Demand and Supply of Public Goods*, Liberty Fund, Library of Economics and Liberty, p. 5.4.3, at *www.econlib.org/library/Buchanan/buchCv5Contents.html* (March 6, 2007).

Finally, individuals may receive psychic satisfaction from the preservation of wildlife or wilderness areas. This psychic satisfaction is not reduced because others receive the same benefit and is not directly effected by changes in the population. By contrast, enjoyment of a national park may be reduced if population increases lead to crowding. In consequence, general activities to preserve species may be considered a public good, while provision of parks is a private good.

Pure Public Goods Compared to Population-Based Goods. Many government services that are dubbed public goods are not true public goods. Economists Thomas MaCurdy and Thomas Nechyba state that "relatively few of the goods produced by [the] government sector are pure public goods, in the sense that the cost of providing the same level of the good is invariant to the size of the population."[62] In other words, many government services referred to conventionally as "public goods" need to be increased at added expense to the taxpayer as the population increases, thereby violating the criterion of zero cost extension to additional users.

For example, police protection is often incorrectly referred to as a "public good." True, police do provide a diffuse service that benefits nearly all members of a community, but the benefit each individual receives from a policeman is reduced by the claims other citizens may make on the policeman's time. Someone living in a town of 500 protected by a single policeman gets far more protection from that policeman than would another individual protected by the same single policeman in a town of 10,000.

The National Academy of Sciences explains that government services that generally need to be increased as the population increases are not real public goods. It refers to these services as "congestible" goods: If such a program remains fixed in size as the number of users increases, it may become "congested," and the quality of service will consequently be reduced. An obvious example would be highways. Other examples of "congestible" goods are sewers, parks, fire departments, police, courts, and mail service.[63] These types of programs are categorized as "population-based" services in the paper.

In contrast to population-based services, governmental pure public goods have odd fiscal properties. The fact that a low-income person who pays little or nothing in taxes receives benefit from government defense or medical research programs does not impose added cost or reduce the utility of those programs to other taxpayers. Therefore, it is inaccurate to say that the non-taxpayers' use of these programs imposes a burden on other taxpayers. On the other hand, non-taxpayers or individuals who pay little in taxes are "free riders" on public goods in the sense that they benefit from a good they have not paid for.

62. Thomas MaCurdy, Thomas Nechyba, and Jay Bhattacharya, "An Economic Framework for Assessing the Fiscal Impacts of Immigration," in James P. Smith and Barry Edmonston, *The Immigration Debate: Studies on the Economic, Demographic and Fiscal Effects of Immigration* (Washington, D.C.: National Academy Press, 1998), p. 16.
63. National Research Council, *The New Americans*, p. 303.

Table A–1 SR 12

Federal Outlays–Fiscal Year 2004

Function and Subfunction	Millions of Dollars	Program Type
050 National Defense:		
051 Department of Defense—Military:		
Military Personnel	113,576	Public Good
Operation and Maintenance	174,045	Public Good
Procurement	76,216	Public Good
Research, Development, Test, and Evaluation	60,759	Public Good
Military Construction	6,312	Public Good
Family Housing	3,905	Public Good
Other	1,708	Public Good
051 Subtotal, Department of Defense—Military	436,521	Public Good
053 Atomic Energy Defense Activities	16,625	Public Good
054 Defense-related Activities	2,762	Public Good
Total, National Defense	***455,908***	Public Good
150 International Affairs:		
151 International Development and Humanitarian Assistance	13,825	Public Good
152 International Security Assistance	8,369	Public Good
153 Conduct of Foreign Affairs	7,897	Public Good
154 Foreign Information and Exchange Activities	1,141	Public Good
155 International Financial Programs	-4,341	Public Good
Total, International Affairs	***26,891***	Public Good
250 General Science, Space, and Technology:		
251 General Science and Basic Research	8,416	Public Good
252 Space Flight, Research, and Supporting Activities	14,637	Public Good
Total, General Science, Space and Technology	***23,053***	Public Good
270 Energy:		
271 Energy Supply	-1,555	
272 Energy Conservation	926	
274 Emergency Energy Preparedness	158	
276 Energy Information, Policy, and Regulation	305	
Total, Energy	***-166***	Population-based Services
300 Natural Resources and Environment:		
301 Water Resources	5,571	Public Good
302 Conservation and Land Management	9,758	Public Good
303 Recreational Resources	2,963	Population-based Services
304 Pollution Control and Abatement	8,485	Population-based Services
306 Other Natural Resources	3,948	Public Good
Total, Natural Resources and Environment	***30,725***	
350 Agriculture:		
351 Farm Income Stabilization	11,186	Direct Benefit
352 Agricultural Research and Services	4,254	Public Good
Total, Agriculture	***15,440***	
370 Commerce and Housing Credit:		
371 Mortgage Credit	2,659	Direct Benefit
372 Postal Service	-4,070	Population-based Services
373 Deposit Insurance	-1,976	Direct Benefit
376 Other Advancement of Commerce	8,660	Population-based Services
Total, Commerce and Housing Credit	***5,273***	

(continued on next page)

Table A–1 SR 12

Federal Outlays–Fiscal Year 2004 (continued)

Function and Subfunction	Millions of Dollars	Program Type
400 Transportation:		
401 Ground Transportation		
Highways and Roads	32,336	Population-based Services
Other Ground Transportation	8,407	Population-based Services
402 Air Transportation	16,743	Population-based Services
403 Water Transportation	6,898	Population-based Services
407 Other Transportation	242	Population-based Services
Total, Transportation	***64,626***	
450 Community and Regional Development:		
451 Community Development	6,167	Not Applicable
452 Area and Regional Development	2,329	Not Applicable
453 Disaster Relief and Insurance	7,301	Not Applicable
Total, Community and Regional Development	***15,797***	Duplicates Below
450 Community and Regional Development: Duplicate Accounts		
Community and Regional Development Proportional	13,754	Population-based Services
Community and Regional Development: Public Good (Homeland Security)	2,043	Public Good
Total, Community and Regional Development: Duplicate Accounts	***15,797***	
500 Education, Training, Employment, and Social Services:		
501 Elementary, Secondary, and Vocational Education	34,357	Educational Benefits
502 Higher Education	25,264	Educational Benefits
503 Research and General Education Aids	3,005	Public Good
504 Training and Employment	7,912	Means-tested
505 Other Labor Services	1,552	Population-based Services
506 Social Services (Including Head Start)	15,855	Means-tested
Total, Education, Training, Employment, and Social Services	***87,945***	
550 Health:		
551 Health Care Services, Public Health, Mental Health, and Substance Abuse	19,888	Population-based Services
551 Health Care Services, Means-tested	190,204	Means-tested
552 Health Research and Training	27,099	Public Good
554 Consumer and Occupational Health and Safety	2,943	Population-based Services
Total, Health	***240,134***	
570 Medicare:		
571 Medicare	269,360	Direct Benefit
600 Income Security:		
601 General Retirement and Disability Insurance (Excluding Social Security) (Pension Benefit Guarantee, Black Lung and Disabled Miners, Railroad Retirement)	6,573	Direct Benefit
602 Federal Employee Retirement and Disability: Total	88,729	Interest and Other Financial Obligations
602 Federal Employee Retirement and Disability Due to Past Public Good Functions+subtotal	23,868	Public Good
602 Federal Employee Retirement and Disability, All Other: Sub-total	64,861	Interest and Other Financial Obligations
603 Unemployment Compensation (Counted as State Expenditure)		Not Applicable
604 Housing Assistance	36,568	Means-tested
605 Food and Nutrition Assistance	46,012	Means-tested
609 Other Income Security (Supplemental Security Income, Refundable Earned Income Credit, Temporary Assistance to Needy Families, Low Income Energy Assistance, Foster Care, Child Care and Child Development Block Grant)	109,961	Means-tested
Total, Income Security	***332,837***	

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Table A-1 SR 12

Federal Outlays–Fiscal Year 2004 (continued)

Function and Subfunction	Millions of Dollars	Program Type
650 Social Security:		
651 Social Security	495,548	Direct Benefit
700 Veterans Benefits and Services:		
701 Income Security for Veterans	31,654	Public Good
702 Veterans Education, Training, and Rehabilitation	2,751	Public Good
703 Hospital and Medical Care for Veterans	26,783	Public Good
704 Veterans Housing	-1,980	Public Good
705 Other Veterans Benefits and Services	571	Public Good
Total, Veterans Benefits and Services	***59,779***	Public Good
750 Administration of Justice:		
751 Federal Law Enforcement Activities	19,090	Population-based Services
752 Federal Litigative and Judicial Activities	9,685	Population-based Services
753 Federal Correctional Activities	5,509	Population-based Services
754 Criminal Justice Assistance	11,251	Population-based Services
Total, Administration of Justice	***45,535***	Population-based Services
800 General Government:		
801 Legislative Functions	3,187	Population-based Services
802 Executive Direction and Management	510	Population-based Services
803 Central Fiscal Operations	9,339	Population-based Services
804 General Property and Records Management	228	Population-based Services
805 Central Personnel Management	217	Population-based Services
806 General Purpose Fiscal Assistance	7,675	Population-based Services
808 Other General Government	2,345	Population-based Services
809 Deductions for Offsetting Receipts	-1,679	Population-based Services
Total, General Government	***21,822***	Population-based Services
General Government in Support of Public Good Functions	*5,870*	Public Good
General Government, All Other	*15,952*	Population-based Services
900 Net Interest:		
901 Interest on Treasury Debt Securities (Gross)	321,679	Not Applicable
902 Interest Received by on-budget Trust Funds	-67,761	Not Applicable
903 Interest Received by off-budget Trust Funds	-86,228	Not Applicable
908 Other Interest	-4,473	Not Applicable
909 Other Investment Income	-2,972	Not Applicable
Total, Net Interest	***160,245***	
Net Interest Due to Post Public Good Functions	*43,106*	Public Good
Net Interest, All Other	*117,139*	Interest and Other Financial Obligations
TOTAL OUTLAYS WITH OFFSETTING RECEIPTS (Excludes Unemployment Insurance)	**2,305,758**	

Source: Budget Historical Tables for FY 2006 at www.whitehouse.gov/omb/budget/fy2006/pdf/hist.pdf. Budget codes 401 details taken from FY2006 Budget Appendix, pp. 792-824

Table A–2A SR 12

Removing Federal Grants in Aid from State and Local Expenditures

	State and Local Expenditures (in millions)	Expenditure Subtotals (in millions)	Federal Grants in Aid to States (in millions)	State and Local Expenditures Less Federal Grants (in millions)
Total Income Security, Health, and Social Services	532,154.07			
Means-tested Aid and Services		440,859.00	277,849.00	163,010.00
Other		91,295.07	9,835.00	81,460.07
Total Transportation	141,958.53			
Highways		118,178.67	30,689.00	87,489.67
Air Transportation (Airports)		18,030.57	2,958.00	15,072.57
Parking Facilities		1,335.99		1,335.99
Sea and Inland Port Facilities		4,046.65		4,046.65
Transit Subsidies		366.66	20.00	346.66
Total Education and Training	664,561.08			
Higher Education		173,085.92	482.00	172,603.92
Elementary and Secondary		452,054.91	20,522.00	431,532.91
Other Education		30,219.74	14,810.00	15,409.74
Libraries		9,200.51	136.00	9,064.51
Training			4,325.00	-4,325.00
Total Resources and Environment	109,673.71			
Natural Resources		23,298.71	7,423.00	15,875.71
Parks and Recreation		30,467.48	239.00	30,228.48
Sewage		35,534.72		35,534.72
Solid Waste Management		20,372.80		20,372.80
Justice and Public Safety	187,551.12		5,084.00	182,467.12
Veterans	1,503.74		454.00	1,049.74
General Government	67,748.37		9,015.00	58,733.37
Protective Inspection and Regulation	11,498.04			11,498.04
Unallocated Expenditure	100,142.99		14,712.00	85,430.99
Employment Security Administration	4,679.16		2,650.00	2,029.16
Interest on General Debt	81,723.06			81,723.06
Insurance Trust Expenditure				
Unemployment Compensation	43,277.64			43,277.64
Employee Retirement	137,537.44			137,537.44
Workers' Compensation	12,299.80			12,299.80
Other Insurance Trust	4,289.89			4,289.89
Utility Expenditure				
Water Supply	44,806.24			44,806.24
Electric Power	59,298.84			59,298.84
Gas Supply	6,716.95			6,716.95
Transit	44,236.69		7,777.00	36,459.69
Liquor Store Expenditure	4,672.90			4,672.90
TOTAL STATE AND LOCAL OUTLAYS	**2,260,330.26**			
TOTAL FEDERAL GRANTS IN AID TO THE STATES			**408,980.00**	**1,851,350.26**

Table A-2B SR 12

Removing User Fees and Charges from State and Local Expenditures

State and Local Expenditures Net Federal Grants in Aid	Expenditures Net Federal Grants (from Table 2A) (in millions of dollars)	User Fees and Charges: Type	User Fees and Charges: Amount (in millions of dollars)	State and Local Expenditures Net Federal Grants in Aid and Net Fees and Charges	Final Expenditures (in millions of dollars)
Total Income Security, Health, and Social Services				Total Income Security, Health, and Social Services	
Means-tested Aid and Services	163,010.00	Housing and Community Development	4,770	Means-tested Aid and Services	158,239.53
Other Income, Health and Services	81,460.07	Hospitals	72,652	Other Income, Health and Services	8,808.39
Total Transportation				Total Transportation	
Highways	87,489.67	Highways	8,991	Highways	78,498.76
Air Transportation (Airports)	15,072.57	Air Transportation (Airports)	13,345	Air Transportation (Airports)	1,727.56
Parking Facilities	1,335.99	Parking Facilities	1,540	Parking Facilities	-203.93
Sea and Inland Port Facilities	4,046.65	Sea and Inland Port Facilities	3,107	Sea and Inland Port Facilities	939.84
Transit Subsidies	346.66			Transit Subsidies	346.66
Total Education and Training				Total Education and Training	
Higher Education	172,603.92	Institutions of Higher Education	71,780	Higher Education	100,823.83
Elementary and Secondary	431,532.91	School Lunch Sales (Gross)	6,326	Elementary and Secondary	425,206.94
Other Education	15,409.74	Other Education Charges	6,314	Other Education	9,095.47
Libraries	9,064.51	Libraries		Libraries	9,064.51
Training	-4,325.00			Training	-4,325.00
Total Resources and Enviroment				Total Resources and Enviroment	
Natural Resources	15,875.71	Natural Resources	3,264	Natural resources	12,611.90
Parks and Recreation	30,228.48	Parks and Recreation	7,982	Parks and recreation	22,246.96
Sewage	35,534.72	Sewerage	29,792	Sewerage	5,742.49
Solid Waste Management	20,372.80	Solid Waste Management	12,083	Solid waste management	8,289.80
Justice and Public Safety	182,467.12			Justice and Public Safety	182,467.12
Veterans	1,049.74			Veterans	1,049.74
General Government	58,733.37			General Government	58,733.37
Protective Inspection and Regulation	11,498.04			Protective Inspection and Regulation	11,498.04
Administration and Unallocated Expenditures	85,430.99	Other Charges	46,696	Total Unallocated Expenditure	38,734.62
Employment Security Administration	2,029.16			Employment Security Administration	2,029.16
Interest on General Debt	81,723.06			Interest on General Debt	81,723.06
Insurance Trust Expenditure				Insurance Trust Expenditure	
Unemployment Compensation	43,277.64			Unemployment Compensation	43,277.64
Employee Retirement	137,537.44			Employee Retirement	137,537.44
Workers' Compensation	12,299.80			Workers' Compensation	12,299.80
Other Insurance Trust	4,289.89			Other Insurance Trust	4,289.89
Utility Expenditure		Utility Revenue		Utility Expenditure	
Water Supply	44,806.24	Water Supply	36,087	Water Supply	8,719.05
Electric Power	59,298.84	Electric Power	55,980	Electric Power	3,318.36
Gas Supply	6,716.95	Gas Supply	6,506	Gas Supply	211.20
Transit	36,459.69	Transit	9,783	Transit	26,676.34
Liquor Store Expenditure	4,672.90	Liquor Store Revenue	5,698	Liquor Store Expenditure	-1,024.71
Total State and Local Outlays	**1,851,350.26**	**Total Fees and Charges**	**402,696**	**Total State and Local Outlays**	**1,448,653.82**

Table A-2C SR 12

State and Local Outlays Minus Federal Grants in Aid and User Fees and Charges

State and Local Outlays Net Federal Grants in Aid and Net Fees and Charges	Net Expenditures (in millions of dollars)	Type of Program
Total Income Security, Health, and Social Services		
Means-tested Aid and Services	158,239.53	Means-tested
Other Income, Health and Services	8,808.39	Population-based
Total Transportation		
Highways	78,498.76	Population-based
Air Transportation (Airports)	1,727.56	Population-based
Parking Facilities	-203.93	Population-based
Sea and Inland Port Facilities	939.84	Population-based
Transit Subsidies	346.66	Population-based
Total Education and Training		
Higher Education	100,823.83	Educational Benefits
Elementary and Secondary	425,206.94	Educational Benefits
Other Education	9,095.47	Direct Benefit
Libraries	9,064.51	Population-based
Training	-4,325.00	Educational Benefits
Total Resources and Environment		
Natural Resources	12,611.90	Population-based
Parks and Recreation	22,246.96	Population-based
Sewerage	5,742.49	Population-based
Solid Waste Management	8,289.80	Population-based
Justice and Public Safety	182,467.12	Population-based
Veterans	1,049.74	Public Good
General Government	58,733.37	Population-based
Protective Inspection and Regulation	11,498.04	Population-based
Administraton and Unallocated Expenditure	38,734.62	Population-based
Employment Security Administration	2,029.16	Direct Benefit
Interest on General Debt	81,723.06	Interest and Other Costs due to Past Services
Insurance Trust Expenditure		
Unemployment Compensation	43,277.64	Direct Benefit
Employee Retirement	137,537.44	Interest and Other Costs due to Past Services
Workers' Compensation	12,299.80	Direct Benefit
Other Insurance Trust	4,289.89	Population-based
Utility Expenditure		
Water Supply	8,719.05	Population-based
Electric Power	3,318.36	Population-based
Gas Supply	211.20	Population-based
Transit	26,676.34	Population-based
Liquor Store Expenditure	-1,024.71	Population-based
TOTAL STATE AND LOCAL EXPENDITURES	**1,448,653.82**	
Summary		
Direct Benefit Total	57,606.60	
Means-tested Total	158,239.53	
Educational Benefits Total	530,801.24	
Population-based Services	481,696.22	
Interest and Other Financial Obligation Due to Past Activities	219,260.50	
Pure Public Good Expenditures	1,049.74	
TOTAL STATE AND LOCAL EXPENDITURES	**1,448,653.82**	

Table A–3 SR 12

Government Taxes and Revenues

Federal Revenue Receipts FY 2004 *From Taxes and Related Sources*	Aggregate Revenue *(in millions of dollars)*	Revenue Sub-totals *(in millions of dollars)*	Average Federal Revenue per Household *114.79 million households (in dollars)*
Individual Income Taxes	808,959		$7,047
Corporate Income Taxes	189,371		$1,650
Federal Insurance Contributions Act (FICA)	685,334		$5,970
Old Age and Survivors Insurance		457,120	
Disability Insurance		77,625	
Hospital Insurance		150,589	
Unemployment Insurance - Federal Reciepts	6,718		$59
Other Retirement Receipts	8,620		$75
Railroad Retirement		2,297	
Railroad Social Security Equivalent Account		1,729	
Federal Employees Retirement Employee Share		4,543	
Non-federal Employees Retirement		51	
Excise Taxes	69,855		$609
Alcohol Excise Tax		8,105	
Tobacco Excise Tax		7,926	
Telephone Excise Tax		5,997	
Tramportation Fuels Excise Tax		1,381	
Other Taxes		1,157	
Trust Fund Excise Taxes	45,289		$395
Highway		34,711	
Airport		9,174	
Other		1,404	
Estate and Gift Tax	24,831		$216
Customs Duties and Fees	21,083		$184
Other Miscellaneous Receipts	12,913		$112
Miscellaneous: Fees for Permits and Regulatory and Judicial Services		8,675	
Miscellaneous: Fines, Penalties, and Forfeitures		3,902	
Other Miscellaneous Federal Receipts		336	
TOTAL FEDERAL RECEIPTS	**1,827,684**		**$15,922**

Note: Excludes $32.6 billion in unemployment insurance receipts from state governments and $19.6 billion in earnings of the Federal Reserve System.

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Table A–3 SR.12

Government Taxes and Revenues (continued)

State and Local Revenue *From Taxes and Related Sources*	Aggregate Revenue *(in millions of dollars)*	Revenue Sub-totals *(in millions of dollars)*	Average Revenue per Household *(in dollars)*
Taxes			
Property	318,242		$2,772
General Sales	244,891		$2,133
Selective Sales	115,738		$1,008
Motor fuel		34,944	
Alcoholic beverage		4,986	
Tobacco products		12,626	
Public utilities		21,427	
Other selective sales		41,756	
Individual Income	215,215		$1,875
Corporate Income	33,716		$294
Motor Vehicle License	18,709		$163
Other Taxes	63,766		$556
Miscellaneous General Revenue	165,139		$1,439
Interest Earnings		53,194	
Special Assessments		6,453	
Sale of Property		1,960	
Lottery Receipts		45,466	
Other General Revenue		58,066	
Insurance Trust Revenue	66,024		$575
Unemployment Compensation		38,362	
Workers' Compensation		21,758	
Other Insurance Trust Revenue		5,904	
Employee Retirement Trust Revenue*	365,318		$3,182
Employee Contributions		30,786	
Earnings on Investments		315,554	
Other		18,974	
TOTAL STATE AND LOCAL REVENUE	**1,606,758**		**$13,997**
Note: Excludes $396 billion in user fees and $408 billion in federal grants to states and localities.			
TOTAL FEDERAL, STATE, AND LOCAL REVENUE *From Taxes and Related Sources*	**3,434,442**		**$29,919**

Note: Excludes intra-government transfers to retirement trust funds.

Sources: Analytical Perspectives, Budget of the United States Government, Fiscal Year 2006; U.S. Census, Survey of Governments, at www.census.gov/govs/estimate/0400usst_1.html

Table A–4 SR 12

Aggregate Government Expenditures

Low-skill group share of total program expenditures means the percentage of total expenditures received by households headed by persons who lack a high school diploma.
Low-skill roup share of beneficiaries means the percentage of all program beneficiaries who reside in households headed by persons who lack a high school diploma.

	Allocation Algorithms for Expenditures for Households Headed by Persons without a High School Degree	Aggregate Federal Spending *(in millions of dollars)*	Aggregate State and Local Spending *(in millions of dollars)*	Combined Aggregate Spending *(in millions of dollars)*	Share of Expenditures Received by Households Headed by Persons without a High School Degree *(in percent)*	Aggregate Expenditures Received by Households Headed by Persons without a High School Degree *(in millions of dollars)*	Average Expenditures per Household for Households Headed by Persons without a High School Degree *17.67 million households (in dollars)*
Direct Benefits							
Social Security Benefits	Low-skill group share of total program expenditures in the CPS	495,548.0		495,548.0	20.72%	102,677.55	$5,811
Medicare Benefits	Low-skill group share of total program expenditures in the CPS	269,360.0		269,360.0	24.93%	67,151.45	$3,800
Other Cash Transfers and Benefits							
Unemployment Compensation	Low-skill group share of total program expenditures in the CPS		45,306.8	45,306.8	11.91%	5,396.04	$305
Worker's Compensation	Low-skill group share of total program expenditures in the CPS		12,299.8	12,299.8	14.09%	1,733.04	$98
Other Federal Retirement (Railroad and Black Lung Disability) (601)	Low-skill group share of total program expenditures in the CPS	6,573.0		6,573.0	3.00%	197.19	$11
Agricultural Subsidies	Low-skill households are assumed to receive no benefits	11,186.0		11,186.0	0.00%	0.00	$0
Mortgage Credit and Deposit Insurance	Low-skill households are assumed to receive no benefits	683.0		683.0	0.00%	0.00	$0
Other Cash Transfers and Benefits Sub-total				76,048.6			
Direct Benefits Total		***783,350.0***	***57,606.6***	***840,956.6***		***177,155.27***	***$10,026***
Education Benefits							
Higher Education	See text	25,264.0	100,823.8	126,087.8	5.37%	6,770.92	$383
Elementary and Secondary	See text	34,357.0	425,206.9	459,563.9	17.17%	78,907.13	$4,466
Training and Other Education	Low-skill group share of the total population		4,770.5	4,770.5	15.49%	738.95	$42
Education Benefits Total		***59,621.0***	***530,801.3***	***590,422.3***		***86,417.0***	***$4,891***

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Table A–1 SR 12

Aggregate Government Expenditures (continued)

	Allocation Algorithms for Expenditures for Households Headed by Persons without a High School Degree	Aggregate Federal Spending *(in millions of dollars)*	Aggregate State and Local Spending *(in millions of dollars)*	Combined Aggregate Spending *(in millions of dollars)*	Share of Expenditures Received by Households Headed by Persons without a High School Degree *(in percent)*	Aggregate Expenditures Received by Households Headed by Persons without a High School Degree *(in millions of dollars)*	Average Expenditures per Household for Households Headed by Persons without a High School Degree *17.67 million households (in dollars)*
Means-tested Benefits							
Public Aid	Low-skill group share of total program expenditures in the CPS	6,485.0	10,082.0	16,567.0	38.49%	6,376.64	$361
SSI	Low-skill group share of total program expenditures in the CPS	34,693.0	5,146.0	39,839.0	38.35%	15,278.26	$865
EITC	Low-skill group share of total program expenditures in the CPS	34,012.0		34,012.0	29.36%	9,985.92	$565
Food Stamps	Low-skill group share of total program expenditures in the CPS	28,431.0	2,562.0	30,993.0	39.64%	12,285.63	$695
School Lunch and Breakfast	Low-skill group share of total program expenditures in the CPS	8,531.0		8,531.0	29.01%	2,474.84	$140
WIC	Low-skill group share of beneficiaries in the CPS	4,899.0		4,899.0	35.98%	1,762.66	$100
Housing	Low-skill group share of total program expenditures in the CPS	38,881.0	0.8	38,881.8	40.89%	15,898.77	$900
Energy	Low-skill group share of total program expenditures in the CPS	2,118.0	141.0	2,259.0	31.85%	719.49	$41
Daycare	Low-skill group share of beneficiaries in the CPS	13,158.0	4,946.0	18,104.0	20.25%	3,666.06	$207
Indian Health	Low-skill group share of beneficiaries in the CPS	3,706.0		3,706.0	23.44%	868.69	$49
Training	Low-skill group share of beneficiaries in the CPS	6,131.0	876.0	7,007.0	21.81%	1,528.23	$86
Medicaid/SCHIP							
Medicaid: Elderly in General Population	Low-skill group share of total program expenditures in the CPS			26,401.0	41.97%	11,080.50	$627
Medicaid: Non-elderly Disabled Adults in the General Population	Low-skill group share of total program expenditures in the CPS			108,146.0	29.75%	32,173.44	$1,821
Medicaid: Non-elderly Able-bodied Adults in the General Population	Low-skill group share of total program expenditures in the CPS			35,860.6	35.27%	12,648.03	$716

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Table A–4 SR 12

Aggregate Government Expenditures (continued)

	Allocation Algorithms for Expenditures for Households Headed by Persons without a High School Degree	Aggregate Federal Spending *(in millions of dollars)*	Aggregate State and Local Spending *(in millions of dollars)*	Combined Aggregate Spending *(in millions of dollars)*	Share of Expenditures Received by Households Headed by Persons without a High School Degree *(in percent)*	Aggregate Expenditures Received by Households Headed by Persons without a High School Degree *(in millions of dollars)*	Average Expenditures per Household for Households Headed by Persons without a High School Degree *17.67 million households (in dollars)*
Means-tested Benefits *(continued)*							
Medicaid: Children in the General Population including Children on SCHIP	Low-skill group share of total program expenditures in the CPS			59,976.8	31.96%	19,168.59	$1,085
Medicaid Elderly in Institutional Care	See text			47,691.8	59.90%	28,567.39	$1,617
Medicaid Others in Institutional Care	See text			28,857.0	59.10%	17,054.49	$965
Medicaid/SCHIP Total		*179,712.0*	*127,221.0*	306,933.2			
Other Means-tested Aid (Foster Care, Social Services, Child Credit, Medical Care)	Allocated in proportion to the sum of total means-tested expenditures reported individually in the CPS	45,755.0	7,264.7	53,019.7	37.43%	19,844.90	$1,123
Means-tested Benefit Total		***406,512.0***	***158,239.5***	***564,751.5***		***211,382.51***	***$11,963***
Population-based and Government Support Services							
Transportation							
Highways, Roads, and Parking Facilities	Low-skill group share of gasoline consumption in the CEX	32,336.0	78,294.9	110,630.9	10.3%	11,394.98	$645
Air Transportation (Airports)	Low-skill households are assumed to receive two percent of all expenditures	16,743.0	1,727.6	18,470.6	2.0%	369.41	$21
Sea and Inland Port Facilities	Low-skill group share of total consumption in the CEX	6,898.0	939.8	7,837.8	8.5%	666.22	$38
Other Federal Ground Transportation	Low-skill households are assumed to receive zero percent of expenditures	8,407.0		8,407.0	0.0%		$0
Transit Subsidies	Low-skill group share of public transportation consumption in the CEX		27,023.0	27,023.0	4.90%	1,324.13	$75
Other	Unallocated	242.0		242.0	0.0%		$0
Transportation Sub-total				172,611.3			$778.4

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Table A–4 SR 12

Aggregate Government Expenditures (continued)

	Allocation Algorithms for Expenditures for Households Headed by Persons without a High School Degree	Aggregate Federal Spending *(in millions of dollars)*	Aggregate State and Local Spending *(in millions of dollars)*	Combined Aggregate Spending *(in millions of dollars)*	Share of Expenditures Received by Households Headed by Persons without a High School Degree *(in percent)*	Aggregate Expenditures Received by Households Headed by Persons without a High School Degree *(in millions of dollars)*	Average Expenditures per Household for Households Headed by Persons without a High School Degree *17.67 million households (in dollars)*
Population-based and Government Support Services *(continued)*							
Justice, Police, and Public Safety	Low-skill group share of the total population	45,535.0	182,467.1	228,002.1	15.49%	35,317.53	$1,999
Resources, Recreation, and Environment							
Natural Resources	Low-skill group share of the total population		12,611.9	12,611.9	15.49%	1,953.58	$111
Parks and Recreation	Low-skill group share of the total population	2,963.0	22,247.0	25,210.0	15.49%	3,905.02	$221
Sewerage	Low-skill group share of the total population		5,742.5	5,742.5	15.49%	889.51	$50
Solid Waste Management	Low-skill group share of the total population		8,289.8	8,289.8	15.49%	1,284.09	$73
Public Utility Spending: Expenditures Exceeding User Charges							
Water Supply	Low-skill group share of water consumption in the CEX		8,719.0	8,719.0	11.60%	1,011.41	$57
Electric Power	Low-skill group share of electricity consumption in the CEX		3,318.4	3,318.4	12.70%	421.43	$24
Gas Supply	Low-skill group share of natural gas consumption in the CEX		211.2	211.2	11.40%	24.08	$1
Pollution Control and Abatement	Low-skill group share of total consumption in the CEX	8,485.0		8,485.0	8.50%	721.23	$41
Energy	Low-skill group share of the total population	-166.0		-166.0	15.49%	-25.71	-$1
Resources, Recreation, and Environment Sub-total				72,421.8			$576

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Table A–4 SR 12

Aggregate Government Expenditures (continued)

	Allocation Algorithms for Expenditures for Households Headed by Persons without a High School Degree	Aggregate Federal Spending *(in millions of dollars)*	Aggregate State and Local Spending *(in millions of dollars)*	Combined Aggregate Spending *(in millions of dollars)*	Share of Expenditures Received by Households Headed by Persons without a High School Degree *(in percent)*	Aggregate Expenditures Received by Households Headed by Persons without a High School Degree *(in millions of dollars)*	Average Expenditures per Household for Households Headed by Persons without a High School Degree *17.67 million households (in dollars)*
Population-based and Government Support Services *(continued)*							
Other Health Related							
General Health (Mental Health, Substance Abuse, Public Health)	Low-skill group share of the total population	19,888.0	8,808.4	28,696.4	15.49%	4,445.07	$252
Consumer and Occupational Health	Low-skill group share of the total population	2,943.0		2,943.0	15.49%	455.87	$26
Protective Inspection and Regulation	Low-skill group share of the total population		11,498.0	11,498.0	15.49%	1,781.05	$101
Other Health Related Sub-total				*43,137.4*			$378
Miscellaneous							
Other Labor Services	Low-skill group share of the total population	1,552.0		1,552.0	15.49%	240.40	$14
Other Advancement of Commerce	Low-skill group share of the total population	8,660.0		8,660.0	15.49%	1,341.43	$76
Postal Service	Low-skill group share of the total population	-4,070.0		-4,070.0	15.49%	-630.44	-$36
Community Development	Low-skill group share of the total population	13,754.0		13,754.0	15.49%	2,130.49	$121
Libraries	Low-skill group share of the total population		9,064.5	9,064.5	15.49%	1,404.09	$79
Miscellaneous Subtotal				*28,960.5*			$254
General Government/Administrative Support							
General Government		21,822.0	58,733.4	80,555.4			
General Government Activities in Support of Public Good Functions		5,870.1					
General Government Less Activities in Support of Public Good Functions	Low-skill group share of total direct, means-tested and education benefits, and other population-based benefits	15,951.9	58,733.4	74,685.3	19.28%	14,395.75	$815

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Table A–4 SR 12

Aggregate Government Expenditures (continued)

	Allocation Algorithms for Expenditures for Households Headed by Persons without a High School Degree	Aggregate Federal Spending *(in millions of dollars)*	Aggregate State and Local Spending *(in millions of dollars)*	Combined Aggregate Spending *(in millions of dollars)*	Share of Expenditures Received by Households Headed by Persons without a High School Degree *(in percent)*	Aggregate Expenditures Received by Households Headed by Persons without a High School Degree *(in millions of dollars)*	Average Expenditures per Household for Households Headed by Persons without a High School Degree *17.67 million households (in dollars)*
Population-based and Government Support Services *(continued)*							
Unallocated Expenditures	Low-skill group share of total direct, means-tested and education benefits and other population-based benefits		37,709.9	37,709.9	19.28%	7,268.67	$411
Other insurance trust	Low-skill group share of total direct, means-tested and education benefits and other population-based benefits		4,289.9	4,289.9	19.28%	826.89	$47
General Government Net Public Good Support Sub-total				*116,685.1*			$1,272.9
Population-based and Government Support Total		***180,121.9***	***481,696.3***	***661,818.1***		***92,916.17***	***$5,258***
Interest and Other Financial Obligations Associated With Past Service							
Interest Payments on Government Debt	Low-skill group share of total direct, means-tested and other population-based benefits	160,245.0	81,723.1	241,968.1	21.37%	51,696.51	$2,926
Retirement Benefits for Former Government Employees	Low-skill group share of total direct, means-tested and other population-based benefits	88,729.0	137,537.4	226,266.4	21.37%	48,341.84	$2,736
Financial Obligations Associated with Post Services and Benefits Total		*248,974.0*	*219,260.5*	*468,234.5*			
Less Financial Obligations for Post Public Goods		*66,974.0*					
Total Net Financial Obligations: Interest and Other Financial Obligations Associated with Post Service Minus Obligations Associated with Post Public Goods		***182,000.0***	***219,260.5***	***401,260.5***	***21.37%***	***85,729.34***	***$4,852***

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Table A–4 SR 12

Aggregate Government Expenditures (continued)

	Allocation Algorithms for Expenditures for Households Headed by Persons without a High School Degree	Aggregate Federal Spending *(in millions of dollars)*	Aggregate State and Local Spending *(in millions of dollars)*	Combined Aggregate Spending *(in millions of dollars)*	Share of Expenditures Received by Households Headed by Persons without a High School Degree *(in percent)*	Aggregate Expenditures Received by Households Headed by Persons without a High School Degree *(in millions of dollars)*	Average Expenditures per Household for Households Headed by Persons without a High School Degree *1.767 million households (in dollars)*
Pure Public Goods Expenditures							
National Defense and Related Costs	Low-skill group share of the total population	457,951.0		457,951.0	15.49%	70,936.61	$4,015
Veterans	Low-skill group share of the total population	59,779.0	1,049.7	60,828.7	15.49%	9,422.37	$533
Science and Scientific Research	Low-skill group share of the total population	57,411.0		57,411.0	15.49%	8,892.96	$503
International Affairs	Low-skill group share of the total population	26,891.0		26,891.0	15.49%	4,165.42	$236
Natural Resources and Environment	Low-skill group share of the total population	19,277.0		19,277.0	15.49%	2,986.01	$169
General Government Services in Support of Public Good Functions	Low-skill group share of the total population	5,870.1		5,870.1	15.49%	909.28	$51
Interest and Other Financial Obligations for Past Public Good Functions	Low-skill group share of the total population	66,974.0		66,974.0	15.49%	10,374.27	$587
Pure Public Goods Expenditures Total		***694,153.1***	***1,049.7***	***695,202.8***	***15.49%***	***107,686.92***	***$6,094***
TOTAL EXPENDITURES		2,305,758.0	1,448,653.9	3,754,411.9		761,287.2	$43,084
TOTAL EXPENDITURES LESS PURE PUBLIC GOOD EXPENDITURES		1,611,604.9	1,447,604.2	3,059,209.0		653,600.3	$36,989

Source: See Appendix A.

Table A–5 SR 12

Tax and Revenue Algorithms and Calculations

LGSC (low-skill group share of consumption) means the share of consumption of a given item performed by households headed by persons without a high school diploma.
LGSTC (low-skill group share of total consumption) means the share of total consumption of all items performed by households headed by persons without a high school diploma.

Federal Taxes and Revenues	Algorithms for Households Headed by Persons without a High School Degree	Aggregate Tax Receipts *(in millions)*	Consumption Share of Households Headed by Persons without a High School Degree in CEX *(in percent)*	Relevant Income Share Received by Households Headed by Persons without a High School Degree in CPS *(in percent)*	Aggregate Tax Paid by Households Headed by Persons without a High School Degree *(in millions)*	Taxes Paid per Household by Households Headed by Persons without a High School Degree *17.67 million households (in dollars)*
Federal Individual Income Tax	CPS tax payment figures with adjustment for under-reporting	808,959.0		3.22%	26,048.5	$1,474
FICA Taxes	CPS tax payments with adjustments	685,334.0		6.47%	44,341.1	$2,509
Federal Corporate Income Tax	Incidence assumed to be 70 percent on workers and 30 percent on owners	189,371.0				
Federal Corporate Income Tax on Workers	70 percent of total tax times share of earned income in CPS			6.19%	8,205.4	$464
Federal Corporate Income Tax on Owners	30 percent of total tax times share of dividend, interest and rental income in CPS			4.15%	2,357.7	$133
Unemployment Insurance - Federal Reciepts	Assume incidence falls 100 percent on workers; share of tax paid by households headed by person without a high school degree equals their share of earned income in the CPS	6,718.0		6.19%	415.8	$24
Highway Trust Fund	Incidence assumed to fall half on private owners of motor vehicles; one quarter on owners of business; and one quarter on general consumers	34,711.0				
Highway Trust Fund Taxes on Private Vehicle Drivers	One half of total tax times LGSC on gasoline in CEX		10.3%		1,787.6	$101
Highway Trust Fund Taxes on Business Owners	One quarter of of total tax times share of dividend, interest and rental income in CPS			4.15%	360.1	$20
Highway Trust Fund Taxes on Consumers	One quarter of total tax times LGSTC in CEX		8.5%		737.6	$42
Airport and Airway Taxes	Taxes paid by households headed by persons without a high school degree assumed to be two percent of total	9,174.0	2%		183.5	$10

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Table A–5 SR.12

Tax and Revenue Algorithms and Calculations (continued)

Federal Taxes and Revenues *(continued)*	Algorithms for Households Headed by Persons without a High School Degree	Aggregate Tax Receipts *(In millions)*	Consumption Share of Households Headed by Persons without a High School Degree in CEX *(In percent)*	Relevant Income Share Received by Households Headed by Persons without a High School Degree in CPS *(In percent)*	Aggregate Tax Paid by Households Headed by Persons without a High School Degree *(In millions)*	Taxes Paid per Household by Households Headed by Persons without a High School Degree *17.67 million households (In dollars)*
Federal Excise Taxes: Alcohol	Total tax times LGSC of alcohol in CEX	8,105.0	6.4%		518.7	$29
Federal Excise Taxes: Tobacco	Total tax times LGSC of tobacco in CEX	7,926.0	17.4%		1,379.1	$78
Federal Excise Taxes: Telephone	Total tax times LGSC of telephone in CEX	5,997.0	11.4%		683.7	$39
Federal Excise Taxes: Transportation Fuels	Total tax times LGSC of fuels in CEX	1,381.0	11.2%		154.7	$9
Federal Excise Taxes: All Other	Total tax times LGSTC in CEX	2,561.0	8.5%		217.7	$12
Federal Retirement Receipts						
Railroad and Other Retirement Receipts	Total receipts times share of railroad earnings in CPS	4,077.0		1.1%	44.8	$3
Federal Employees Retirement Employee Share	Total receipts times share of federal employee earnings in CPS	4,543.0		2.98%	135.4	$8
Federal Gift and Estate Tax	Share paid by households headed by persons without a high school degree assumed to be minimal	24,831.0		0%	0.0	$0
Customs Duties and Fees	Total tax times LGSTC in CEX	21,083.0	8.5%		1,792.1	$101
Miscellaneous: Fees for Permits and Regulatory and Judicial Services	Not Applicable	8,675.0				N.A.
Miscellaneous: Fines, Penalties, and Forfeitures	Not Applicable	3,902.0				N.A.
Other Miscellaneous Federal Receipts	Not Applicable	336.0				N.A.
Federal Total Taxes and Revenues		**1,827,684.0**			**89,363.5**	**$5,057**

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Table A–5 SR 12

Tax and Revenue Algorithms and Calculations (continued)

State and Local Taxes and Revenues	Algorithms for Households Headed by Persons without a High School Degree	Aggregate Tax Receipts *(in millions)*	Consumption Share of Households Headed by Persons without a High School Degree in CEX *(in percent)*	Relevant Income Share Received by Households Headed by Persons without a High School Degree in CPS *(in percent)*	Aggregate Tax Paid by Households Headed by Persons without a High School Degree *(in millions)*	Taxes Paid per Household by Households Headed by Persons without a High School Degree *1.767 million households (in dollars)*
State and Local Individual Income Taxes	CPS tax payment figures with under-reporting adjustment	215,214.7		4.02%	8,651.6	$490
State and Local Corporate Income Tax	Incidence assumed to fall 70 percent on workers and 30 percent on owners	33,715.8				
State and Local Corporate Income Tax on Workers	70 percent of total tax times the share of total earnings received by households headed by persons without a high school degree as reported in the CPS			6.19%	1,460.9	$83
State and Local Corporate Income Tax on Owners	30 percent of total tax times the share of total interest, dividends and rent received by households headed by persons without a high school degree as reported in the CPS			4.15%	419.8	$24
Property Taxes	Incidence is assumed to fall half on homes and rented apartments; half on businesses. The business portion is further assumed to fall half on consumers and half on owners.	318,242.5				
Property Taxes on Owner-occupied and Rented Domiciles	One-half of total tax time LGCS of shelter costs		8.9%		14,161.8	$801
Property Taxes on Owners	One-quarter of total tax times the share of total interest, dividends and rent received by households headed by persons without a high school degree as reported in the CPS			4.15%	3,301.8	$187
Property Taxes on Consumers	One-quarter of total tax times LGSTC		8.5%		6,762.7	$383
General Sales Taxes	Total Tax Times LGSTC Minus Exemptions	244,891.3	6.88%		16,848.5	$953
Motor Fuel Tax	Incidence assumed to fall half on private owners of motor vehicles; one quarter on owners of business; and one quarter on general consumers	34,943.6				

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Table A–5 SR 12

Tax and Revenue Algorithms and Calculations (continued)

State and Local Taxes and Revenues *(continued)*	Algorithms for Households Headed by Persons without a High School Degree	Aggregate Tax Receipts *(in millions)*	Consumption Share of Households Headed by Persons without a High School Degree in CEX *(in percent)*	Relevant Income Share Received by Households Headed by Persons without a High School Degree in CPS *(in percent)*	Aggregate Tax Paid by Households Headed by Persons without a High School Degree *(in millions)*	Taxes Paid per Household by Households Headed by Persons without a High School Degree *17.67 million households (in dollars)*
Motor Fuel Tax on Drivers of Personal Vehicles	One-half total tax times LGSC of gasoline		10.3%		1,956.8	$111
Motor Fuel Tax on Consumers	One-quarter of total tax times LGSTC		8.5%		777.5	$44
Motor Fuel Tax on Business Owners	One-quarter of total tax on gasoline times share of interest, dividends and rents in the CPS going to households headed by persons without a high school degree			4.15%	362.5	$21
Tobacco Tax	Total tax times LGSC of tobacco	12,625.8	18.2%		2,297.9	$130
Alcohol Tax	Total tax times LGSC of alcohol	4,985.7	6.3%		308.4	$17
Other Selective Sales Tax	Total tax times LGSTC	41,755.9	8.5%		3,716.3	$210
Motor Vehicle Licenses	Total tax times LGSC for licenses	18,709.0	5.3%		1,010.3	$57
Public Utilities Tax	Total tax times LGSC for utilities	21,426.6	11.9%		2,699.7	$153
Other General Taxes State and Local (Mainly Estate, Stock Transaction, and Severance Taxes)	Assume taxes paid by households headed by persons without a high school degree will be minimal	63,766.5	0%			$0
Insurance Trust Revenue						
Unemployment Compensation	Assume incidence falls 100 percent on workers; share of tax paid by households headed by person without a high school degree equals their share of earned income in the CPS	38,361.5		6.19%	2,374.6	$134
Workers' Compensation	Assume incidence falls 100 percent on workers; share of tax paid by households headed by person without a high school degree equals their share of earned income in the CPS	21,757.9		6.19%	1,346.8	$76
Other Insurance Trust Revenue	Unknown	5,904.4				$0

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Table A–5 SR 12

Tax and Revenue Algorithms and Calculations (continued)

State and Local Taxes and Revenues *(continued)*	Algorithms for Households Headed by Persons without a High School Degree	Aggregate Tax Receipts *(in millions)*	Consumption Share of Households Headed by Persons without a High School Degree in CEX *(in percent)*	Relevant Income Share Received by Households Headed by Persons without a High School Degree in CPS *(in percent)*	Aggregate Tax Paid by Households Headed by Persons without a High School Degree *(in millions)*	Taxes Paid per Household by Households Headed by Persons without a High School Degree *17.67 million households (in dollars)*
Employee Retirement Trust Revenue						
Employee Contributions	Total contribution times the share of earnings of state and local employees going to households headed by person without a high school degree	30,785.8		4.18%	1,287.0	$73
Earnings on Investments	Not applicable	315,553.9				N.A.
Other	Not applicable	18,978.8				N.A.
State and Local Other General Revenue						
Interest Earnings	Not applicable	53,194.3				N.A.
Sale of Property	Not applicable	1,959.6				N.A.
Special Assessments	Not applicable	6,452.7				N.A.
Other General Revenue	Unknown	58,066.0				N.A.
Lottery Receipts	Per capita expenditures assuming double normal use by households headed by persons without a high school degree	45,465.8		2.66%	12,130	$686
Total State and Local Taxes and Revenues		**1,606,757.9**			**81,874.9**	**$4,633**
TOTAL FEDERAL, STATE, AND LOCAL TAXES AND REVENUES		**3,434,441.9**			**171,238.5**	**$9,689**

LETTER FROM THE ALLIANCE OF FILIPINOS FOR IMMIGRANT RIGHTS AND EMPOWERMENT (AFIRE), ET AL. TO THE HONORABLE ZOE LOFGREN, CHAIRWOMAN, SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

May 1, 2007

The Honorable Zoe Lofgren
Chair
House Subcommittee on Immigration, Citizenship,
Refugees, Border Security and International Law
House of Representatives
Washington, DC

Dear Chair Lofgren:

The undersigned organizations are writing to express our deep concern about the White House proposal to immediately institute a new point system to replace our family and employment based system of immigration. As we understand the proposal, it represents a wholesale shift away from emphasis on family reunification to a new "merit-based" system. A fundamental restructuring of this magnitude, both administrative and conceptual, requires extensive analysis, testing, and debate to ensure workability, fairness, and protection of core American values.

Major changes to the conceptual foundations of our immigration system could create significant unintended long-term policy challenges. Families are the backbone of immigrant communities in this country. Limiting their ability to remain united will undermine our ability to facilitate the social, economic, and cultural integration of arriving immigrants. These family units help take care of each other's children so that family members can work; they pool resources to start and build businesses and purchase homes; and they invest in the next generation by sending young family members to college.

If the Subcommittee intends to explore the point system concept further, we suggest you consider a pilot program to test its workability and evaluate its impact. But it cannot come as a tradeoff for eliminating the family categories or the ability of legalizing immigrants and new workers to sponsor their family members. Nor can a pilot program substitute for enacting comprehensive immigration reform now.

Replacing our current dysfunctional immigration system with a system likely to generate even greater uncertainty without sufficient study and testing seems misguided at best.

We look forward to further exploring these complex issues with the Subcommittee.

Sincerely,

Alliance of Filipinos for Immigrant Rights and Empowerment (AFIRE)
American Immigration Lawyers Association
Asian American Justice Center
Asian Law Alliance
Asian Law Caucus

Asian Pacific American Legal Center of Southern California
Association of Asian Pacific Community Health Organizations
Church World Service, Immigration and Refugee Program
Coalition for Comprehensive Immigration Reform
Hebrew Immigrant Aid Society (HIAS)
Immigrant Legal Resource Center
Japanese American Citizens League
Judson Memorial Church
Legal Momentum
Manna for Progressive People
National Advocacy Center of the Sisters of the Good Shepherd
National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund
National Council of La Raza
National Federation of Filipino American Associations
National Immigrant Justice Center
National Immigration Forum
National Immigration Law Center
National Network to End Violence Against Immigrant Women.
NETWORK, A National Catholic Social Justice Lobby
Organization of Chinese Americans (OCA)
People for the American Way
Presbyterian Church (USA)
Service Employees International Union (SEIU)
Services, Immigrant Rights and Education Network (SIREN)
Sikh American Legal Defense and Education Fund (SALDEF)
Sisters of Mercy of the Americas
Southeast Asia Resource Action Center (SEARAC)
United Methodist Church, General Board of Church and Society
World Relief

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