

## Critique: Proposed Allocation Formula for Federal Farmworker Service Agencies

Don Villarejo

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There are five major steps of the proposed allocation formula described in *Federal Register*, December 22, 1998, pp. 70795-70805. Each is reviewed in detail on a step-by-step basis in what follows. In the first step, crop farm hired and contract labor wages are determined from the *Census of Agriculture* for each state. Second, standardized hours of crop farm hired and contract labor are determined for each state by dividing state wage totals by average hourly wage rates appropriate for each state. Third, each state's share of standardized crop hours will be adjusted using NAWS data to reflect the share of work done by 402 program-eligible workers. Fourth, adjustments for livestock, forestry and fishery workers will be made using *Census of Population* data. Fifth, the data for crop, livestock, forestry and fishery workers will be combined using weighting factors determined from the *Census of Population*.

### *Step One – Error in the use of reported Labor Expenses instead of Wages*

The most serious error contained in step one is that the *Census of Agriculture* reports total hired labor and contract labor *expenses* incurred by farms, not just wages. According to the Instructions provided with the *Census of Agriculture* form, reported labor expenses are to include: wages, employer payroll taxes, workers compensation insurance premiums, bonus payments, and any cash expenses paid to or on behalf of employees, such as medical or life insurance, vacation pay, and pension plan contributions.

Since standardized hours of crop labor are proposed to be computed from the reported value of crop labor expenses (see Step Two, where this computation is described), inflated values of standardized crop hours will result since wages comprise only a portion of the total labor expense. Therefore, it is important to compare the actual value of *crop labor wages* with *crop labor expenses* reported by the *Census of Agriculture* to determine the size of this distortion.

The non-wage portion of these labor expenses is known to be large in the western states of Arizona, California, Oregon and Washington, especially as compared with certain other states. Failure to properly account for this factor at the outset will artificially inflate all subsequent computations pertaining to the western states, leading to regional biases. This point is examined in detail below.

There is another important factor to consider as well that shows that the *Census of Agriculture* seriously misstates the farm and contract labor expenses on a state-by-state basis. As demonstrated in the literature, a significant share of hired farm labor wages in California are paid by non-farm businesses, such as wineries, food processing firms, citrus packing houses, produce packer-shipper firms and produce wholesalers.<sup>1</sup> Altogether, for 1987 it was found that direct hire labor by farm operators accounted for about 59.8% of total statewide hired farm worker wages, labor contractors accounted for an estimated 15.2%, farm management companies for 5%, and other non-farm employers accounted for about 20%. Some of the "other non-farm employers" businesses may hire farm labor contractors to do a portion or all of this work. Both the direct

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<sup>1</sup> Don Villarejo, *Farm Restructuring and Employment in California Agriculture*, Working Paper No. 1, Working Group on Farm Labor and Rural Poverty, California Institute for Rural Studies, February 1989, pp. 23-24.

hire farm labor expenses and contract farm labor expenses incurred by these “other non-farm employers” are not reported by the *Census of Agriculture* since they do not operate farms, and, hence, are not surveyed by the Census Bureau. Farm management companies provide a service to a farmer but, most often, are not labor contractors. Thus, the *Census of Agriculture* for California only accounted for, at most, 80% of the state’s farm and contract labor expenses. *At least 20% of California’s farm and contract labor expenses are not reported by the Census Bureau.*

Consider next the effect of required employer payroll taxes and workers compensation insurance premiums on reported labor expenses. Crop farm contract labor expenses in California were reported by the *Census of Agriculture* to be \$935.4 million in 1992. However, published reports of labor contractor billing practices show that employer payroll taxes, workers compensation insurance premiums and the labor contractor’s fee together amounted to an average of 35.9% of wages during this time frame.<sup>2</sup> Thus, the amount of reported crop farm contract labor *wages* was actually \$688.3 million, some \$247.1 million lower than the total reported contract labor *expense* figure. By using the uncorrected contract labor expense figure from the *Census of Agriculture*, the allocation formula incorrectly inflates all subsequent calculations based on California crop farm contract labor wages by approximately 35.9%.

Similarly, crop farm hired labor expenses in California were reportedly \$2,513.0 in 1992. Published reports of average employer payroll taxes and workers compensation premium rates for California indicate that these two factors alone account for an average of 25.8% of wages. Thus, even without taking account of additional cash hired labor expenses, such as medical or dental insurance, life insurance, pension funds, and cash bonus payments, the reported crop farm hired labor estimated wage total must be reduced to \$1,997.6 million, a reduction of \$515.4 million.

Taken together, the California crop farm hired and contract labor expense is reported by the *Census of Agriculture* to be \$3,448.4 million. After taking account of just those non-wage factors described above, the actual crop farm hired and contract wage expense is estimated to be no more than \$2,685.9 million, and is very likely lower. *Failure to extract the non-wage factors from reported crop farm labor expenses artificially raises the “wage” total used in the proposed allocation formula as it applies to California by at least 28.4%.*

The employer payroll taxes and workers compensation insurance premiums are not the only significant factor overlooked when *expenses* are used instead of *wages*. Cash bonus payments are widely used by many employers to encourage workers hired for seasonal jobs to remain on the job until the end of the season. In California, about two-fifths of farm employers report paying cash bonuses, and an estimated three-fifths report that they provide medical insurance for regular, year-round employees, including most supervisors and foremen.<sup>3</sup> Less than one-fifth of farm employers report that they provide medical insurance for seasonal or temporary employees. The largest single farm employer in the state (based on size of payroll), issuing more than 7,000 W-2 Tax Report forms each year, provides medical insurance, dental insurance, holiday pay, vacation pay and pension contributions for all of its employees, as per its union contract.

There are no estimates available of the aggregate cash cost of these additional non-wage labor expenses incurred by California farm employers. Suffice it to say that an accurate

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<sup>2</sup> Employment Development Department, State of California, *Farm Labor Contractors in California*, California Agricultural Studies, Report No. 92-2, Labor Market Information Division, July 1992, p. 40.

<sup>3</sup> Farm Employers Labor Service, *Wage and Benefit Survey Results*, California Farm Bureau Federation.

determination of wages from the expense figures reported by the *Census of Agriculture* must seek to take account of these factors. Failure to do so incorrectly inflates the subsequent calculation of standardized hours of work.

The Workers Compensation Insurance Rating Bureau of California (WCIRB), a quasi-public agency which provides actuarial services for all workers compensation insurance carriers in California, is an important source of information regarding wages and insurance premiums. For comparison purposes, the amount of premiums paid by employers for all fourteen categories of risk classification that correspond to hired farm work was determined for 1992. Eleven of these categories correspond to crop farm tasks, and the total of premium payments reportedly paid by these employers in 1992 was \$378.1 million. *This finding directly demonstrates that the reported hired and contract labor expense is inflated with respect to the corresponding wage total by 14% due to their workers compensation insurance premium expense.*

To determine the effect of this distortion on the proposed allocation formula, consider the effective employer tax and workers compensation premium rates in nine Appalachian and Southeastern states.<sup>4</sup> During 1992, unemployment insurance laws in these specific states required unemployment insurance contributions from farm operators and other agricultural establishments only if they paid more than \$20,000 in cash wages in any calendar quarter during the current or prior year, or if during some portion of a day in twenty different weeks in the current or prior year they employed 10 or more workers. In these same states, Workers Compensation Law *does not apply to agriculture* or requires coverage only if the payroll exceeds a specified amount.

Examination of the reported annual hired labor expense of farms in these states, as reported in the *Census of Agriculture* suggests that the effective employer payroll tax and workers compensation premium rates combined for farm operators is likely to be in the range of 10%, and the non-wage factor for labor contractors is likely to be in the range of 20%. This conclusion is based on a determination of the size distribution of crop farm labor expenses for these farms and is fully explained in what follows.

The total reported hired labor expenses for all crop farms in the nine states under consideration in 1992 was \$999.0 million and the crop farm contract labor expense was reported to be \$130.2 million. But just 13,009 farms in these states reported hiring 10 or more workers, out of a total of 162,517 farms reportedly hired workers. Moreover, those farms reporting hiring 10 or more workers had an aggregate total of 318,007 workers hired, as compared to an aggregate of 727,676 workers hired by all farms. Thus, farms hiring fewer than 10 workers accounted for a majority (56.3%) of all hires. Since the unemployment insurance law requires that an employer have at least 10 employees for at least one day during twenty different weeks of the year, it is very likely that more than 56% of all hires in the combined total for all nine states do not qualify for unemployment insurance or workers compensation insurance coverage. For convenience, in what follows the figure 56% will be rounded up to 60%. *It is very likely that fewer than 40% of workers in the nine-state study region have workers compensation or unemployment insurance coverage.*

Independent evidence supports this conclusion. The National Agricultural Workers Survey (NAWS) finds that SAS workers in the Southeast are rarely covered by workers

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<sup>4</sup> The states are Alabama, Arkansas, Georgia, Kentucky, Louisiana, Mississippi, Missouri, South Carolina, Tennessee.

compensation (20%) or unemployment insurance (28%).<sup>5</sup> Thus, at least 56.3% and very probably 72% of hired workers in this region are not covered by unemployment compensation. With respect to workers compensation insurance, it is likely that as many as 80% of workers are not covered. Thus, employer payroll taxes and workers compensation premium expenses paid by employers in these states are significantly lower than is the case for the western states, as described above. As indicated previously, for convenience, we assume that 40% of payroll in the nine states under consideration are eligible for payroll taxes and workers compensation premiums. Since 60% of aggregate payroll is not covered, this report finds that average value of payroll taxes and workers compensation insurance is 9.85% of crop farm payroll in these states. For labor contractors, taking account of these factors plus the labor contractor's fee leads to an estimate 19.85% for crop farm contract labor in these states. These two non-wage factors reduce the aggregate crop farm hired labor expenses by \$89.6 million to \$909.4 million (9%), and the crop farm contract labor expenses are lowered to \$108.7 million, a reduction of \$21.6 million (16.5%). *The nine-state crop farm hired and contract labor expense must be reduced by just 9.8% to take account of payroll taxes and workers compensation insurance premiums.*

The differential effect in comparing labor expenses and wages in California and the nine-state study area is now apparent. Payroll taxes and workers compensation insurance, when applied to reported labor expenses amount to a reduction of 28.4% in California but just 9.8% in the nine-state study area.

Taken together, nine state and California crop farm hired and contract labor expense total is \$4,577.6 million, and the nine-state portion is 24.67% of this total. When the employer tax and workers compensation premium components are extracted, the remaining estimated wage total is just \$3,704 million, and the nine-state portion is 27.49%. ***The nine-state allocation would increase by at least 11.4% if estimated wage figures are used instead of total labor expense.***

Western states farm employers also are more likely to provide health and life insurance, vacation pay, and pension plan payments as compared to farm employers in the southeastern region of the U.S. If these factors are properly taken into account, the regional distortion effect described above is even larger.

*Step Two – Standardized Labor Hours based on state-specific average wage rates can not be computed using published wage rate data*

The proposed allocation formula contemplates dividing crop farm hired and contract labor wage totals for each state by corresponding individual state wage rates published in the USDA report *Farm Labor*. There are two problems with this approach. First, *Farm Labor does not publish wage rates for individual states, with the exception of California, Florida and Hawaii*. Therefore, it is not possible to perform the proposed computation as described in the *Federal Register*. Only wage rates for USDA crop regions are regularly reported, which implies that the proposed allocation formula instead likely use *regional* average wage rates. Obviously, states with lower than average wage rates will be disadvantaged in the allocation formula computations in which rates are used as denominators, such as those proposed in Step Two.

Second, wage rates for Agricultural Services, such as contract labor, are published for only two states: California and Florida. These published rates differ from wage rates published

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<sup>5</sup> U.S. Department of Labor, *Findings from the National Agricultural Workers Survey (NAWS) 1989*, Research Report No. 2, Office of Program Economics, November 1991, p. 87.

for direct hire employees, which suggests that accuracy in the allocation formula would require using contract labor wage rates in calculating crop farm contract labor hours. Combining the hired labor and contract labor expense totals for each state using the *Census of Agriculture*, as described in the proposed allocation formula, unfortunately obscures the absence of needed wage rate data for contract workers in all states except California and Florida.

With respect to the first problem, during 1992 *Farm Labor* did publish wage rates for a few additional individual states beyond California, Florida and Hawaii, but only for a portion of the full year. The implied annual average wage rates for these states can be compared with those found for the crop region within which they are located.

To illustrate, the Lake Region is comprised of Michigan, Minnesota and Wisconsin. In 1992, the properly weighted annual average field worker wage rate for the Lake Region was \$5.85. Based on the partial year data published in *Farm Labor*, the weighted “annual average” field worker wage rates for the three individual states comprising this region were \$5.66 (MI), \$6.46 (MN), and \$5.34 (WI), respectively. Thus, use of the *regional* average wage rate would *disadvantage* Michigan by 3.2%, *advantage* Minnesota by 10.4%, and *disadvantage* Wisconsin by 8.7%.

From these results, it is clear that the *difference* in improper allocations that rely on regional average wage rates, as compared to state annual average wage rates, is 19.1% in the case of the Lake Region. This imbalance in allocations is unacceptable large and would provide Wisconsin and Michigan program with significantly fewer resources than the allocation formula, as stated in the *Federal Register*, would qualify them to receive, and provide Minnesota programs with more resources than the formula intends.

The second factor that improperly leads to an incorrect computation of Standardized Crop Labor hours in the proposed allocation formula is the proposed use of crop farm hired labor wage rates for both hired labor and contract labor. As pointed out above, *Farm Labor* does not publish contract labor wage rates for individual states, with the exception of California and Florida. In those two states, the differences in hired labor and contract labor annual average wage rates is not insignificant. For Florida, the 1992 annual average wage rate for hired field workers was \$5.88, while for agricultural service workers the corresponding value was \$6.43, a difference of 9.4%. For California the two rates were \$6.00 and \$5.66, respectively, or 5.7%.

The National Agricultural Workers Survey (NAWS) finds average wage rates as reported by hired crop farm workers. In contrast, *Farm Labor* average wage rates are compiled from reports submitted by employers. Reports by employers may differ from those of employees. It would be helpful to compare wage rates from the NAWS with those from *Farm Labor*.

NAWS also finds that average wage rates paid by labor contractors differ from wage rates paid by farm operators. In the case of California, these published wage rates differ by 11%.<sup>6</sup>

### *Step Three – NAWS data is inadequate to assess state-by-state eligibility for 402 programs*

The NAWS is arguably the most comprehensive survey of hired farm workers ever undertaken in the U.S. More than 2,000 hired farm workers have been interviewed each year, in three seasonal cycles. NAWS findings differ from those of the *Current Population Survey*, which forms the basis of reports published by the USDA. It is likely that these differences are

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<sup>6</sup> Howard R. Rosenberg, Anne Steirman, Susan M. Gabbard, and Richard Mines, *Who Works on California Farms?* Agricultural Personnel Management Program, Publication 21583, 1998, p. 14.

related to differences in survey methodology: NAWS uses a multi-stage sampling strategy that begins with a survey of farm work sites; CPS is a straightforward survey of all U.S. households. It is estimated that CPS finds less than half as many farm worker households each year than does the NAWS.

The reliability of the NAWS is supported by numerous independent case studies published by farm labor scholars in different regions of the U.S. Invariably, these case study reports yield findings that are in closer accord with the NAWS than with CPS findings.

Nevertheless, NAWS has several significant shortcomings that bear on its use in the allocation formula. First, as is the case for USDA's *Farm Labor*, NAWS is unable to report findings on a state-by-state basis. This is because the sample size in a given state, with the exception of California, is too small to yield statistically significant findings. In fact, NAWS does not survey any hired farm workers in twenty-three states, which together comprise about 20% of present allocations. Moreover, NAWS has not published data reflecting the number of interviews conducted in each state. It is likely that the number of interviews in a significant number of those states where NAWS does actually conduct interviews may be too few in number to yield statistically reliable state level data for those states.

NAWS also reports regional data, but published reports refer only to *regions comprised of composites of USDA crop regions*. This step is necessary because

Therefore, NAWS does not yield statistically reliable findings at the state level for at least thirty-four states, which together comprise 38% of present allocations. For this reason, NAWS has consistently reported that its findings refer only to averages for USDA crop regions and to the nation as a whole ***and can not be used at the state level.***

A second major shortcoming of the NAWS is that no interviews are conducted during the important summer harvest season. While NAWS has made a very positive contribution to the literature by conducting interviews during three seasonal cycles, and, for example, can report important findings regarding persons working in the south or southwest during the winter months, the deliberate omission of the peak season in many crop regions severely limits the degree of reliability of its findings for other regions. A measure of this important limitation can be obtained by reference to USDA's *Farm Labor* which reports that migrant workers, as a percent of all U.S. hired farm workers, are twice the share of the national total during July, when NAWS does not conduct surveys, as compared with April, when NAWS is interviewing crop farm workers.