



Statement of the American Farm Bureau Federation

**TO THE HOUSE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON IMMIGRATION AND BORDER SECURITY**

**RE: AGRICULTURAL LABOR REFORM: FROM H-2A TO A
WORKABLE AGRICULTURAL GUESTWORKER PROGRAM**

FEBRUARY 26, 2013

**Presented by:
Bob Stallman
President**

Good afternoon and thank you for the opportunity to testify before the subcommittee on behalf of the American Farm Bureau Federation (AFBF). Reforms to the immigration system must assure that American agriculture has a legal, stable supply of workers, both in the short- and long-term. This includes attracting a sufficient number of competent, willing and able employees to sustain and grow production; allowing the recruitment and hiring of non-resident agricultural workers when the need is demonstrated; and allowing an opportunity for some current non-resident agricultural workers to apply for legal resident status.

We appreciate Chairman Goodlatte's recognition of this vital issue for agriculture and appreciate the opportunity to provide insight to the committee, not only about the demonstrable failings of the H-2A program, but what we believe agriculture needs in a modern guestworker program to ensure access to a legal workforce into the future. There is a critical need in agriculture for a legal, stable supply of labor, and that need has only been exacerbated in the last several years.

Two developments in particular are driving this need for change:

1. The expanded use of E-Verify by state governments and the potential enactment of mandatory E-Verify in any potential reform legislation. The reason for farmers' concern is not that they wish to employ unauthorized workers: it is that they know that once E-Verify is required, their ability to retain some of their existing workers, replace workers who leave and to retain those new workers will be severely jeopardized without a workable guest worker program.
2. Over the past four years, the Department of Labor's implementation of the H-2A program has made a difficult program increasingly less workable. Farmers and ranchers have witnessed increased denials, seemingly arbitrary changes in the interpretation of longstanding agency rules, dates-of-need that have gone unmet – in short, the program as it is administered today is simply not doing what Congress designed it to do. Many farmers have reached the regrettable conclusion that the H-2A program, even with reforms, will never work, nor will the Department of Labor allow it to work.

As a result, today's hearing could not come at a more opportune time. Knowing that immigration reform discussions are occurring and reform proposals are developing, it is imperative that we all work together to find a solution to agriculture's labor problem for today and for the future. In our view, this is not a partisan issue and should not become one. In a nutshell, we want to keep farmers in the U.S. growing food, tending livestock and contributing to the American economy. We want to keep these jobs in America for U.S. workers, not outsource them. It is only when U.S. workers cannot be found that producers need the flexibility to use foreign-based workers.

Farmers and ranchers strive to produce a high quality food product for our consumers grown in American soil. They work hard every day to ensure the vast array of products on grocery store shelves are fresh, safe, and in excellent condition. To ensure that high quality product, farmers and ranchers must have access to a stable work force. Over a million workers are required to ensure that perishable, fragile crops are harvested on time and that our cows are milked.

Agriculture has long experienced difficulty in obtaining workers who are willing and able to work on farms and in fields. Jobs in agriculture are physically demanding, conducted in all seasons and are often transitory. To most U.S. residents seeking employment, these conditions are not attractive. A number of studies document this fact, and farm worker representatives also acknowledged this in recent congressional testimony. Yet, for many prospective workers from other countries, these jobs present real economic opportunities. Farmers have done their best in the last two decades to work within a broken system. A few have been able to navigate the difficulties and expense of the H-2A program; for many others, they have relied upon work authorization documents that, in too many instances, are fraudulent. But federal law has strictly barred them from questioning those documents, and as a result we now have a labor force that is far too reliant on workers who lack proper work authorization. Due to faulty administration of the H-2A program, demographic shifts, an aging workforce, and the likelihood of heightened enforcement, this system is near collapse. It is not sustainable. Agriculture seeks a solution that provides our farmers and ranchers access to a stable, legal, reliable solution.

This issue is not new for agriculture. However, rather than providing a solution that works for all sectors of the industry, past legislative attempts divided the industry. The most notable proposal, AgJOBS, provided a short-term remedy by allowing some currently experienced agricultural workers to adjust their status under certain conditions; it did not, however, reform the H-2A program in any meaningful way and provided virtually no access to a workforce in the future. Other bills have proposed changes to a guestworker program without addressing our current experienced workforce. It is critical that agriculture has a solution that addresses both.

In an effort to find a solution that our broad membership could rally around, last year AFBF formed a grassroots working committee to discuss this issue and develop a proposal that could work for fruit and vegetable growers in California or Florida; sheepherders and custom harvesters in the Midwest; dairy farmers upstate in New York and everywhere in between. But we did not just talk to ourselves. At the outset, we sought the input of and met with representatives from a broad spectrum of interested groups, from worker advocates at Farmworker Justice, the staff of this subcommittee, representatives of the AFL-CIO, La Raza, and Senator Feinstein of California to seek their input. In short, we wanted to develop a framework that could serve as a catalyst that would not only unite the agricultural industry but that would command the respect of workers and their representatives. The future health of the industry is linked closely to the well-being of our employees; we respect their rights, their aspirations and their needs and we undertook our task with that perspective. At the conclusion of Farm Bureau's efforts, we helped create the Agriculture Workforce Coalition (AWC). The AWC represents the broad swath of agricultural interests – all of which recognize that past legislative attempts are no longer viable. The proposal I am outlining this morning enjoys unqualified support from across the spectrum of agricultural employers.

The AWC proposal addresses agriculture's two prominent issues: 1) how to address agriculture's long-term needs; and 2) how we can ensure short-term stability in the sector. Any legislative reform must include both of these components.

Solution to Agriculture's Long-Term Needs

To ensure access to a legal and stable workforce in the future, we propose the creation of a new modern guestworker program. I think I can say without contradiction that agricultural producers have lost confidence that the H-2A program can be reformed to adequately meet our future needs or that the Department of Labor will ever administer the program in a way that is designed to make it work. Therefore, the new market-based program we are advocating would serve as a substitute and eventual natural replacement of the H-2A program.

The program, administered by the U.S. Department of Agriculture, would allow employers the stability of a contract or the flexibility of portability depending on their business needs. In that same vein, it provides workers with options and the choice to decide which job situation best fits their needs and interests; in other words, a worker in our proposal – unlike the current H-2A program – would not be required to enter into a contract for a set period. The program would not be restricted by seasonality requirements – rather an agricultural employer demonstrating a year round need could hire workers under contract to fit those needs. To account for the extended length of need, contract workers would have the ability to remain in the country for up to 3 years, with a commitment to their home country of 30 days during that period. But to accurately reflect the sector of agriculture that has more short-term labor requirements, portable visa workers would be granted work authorization for an 11 month period. E-verify could serve as the mechanism to ensure visa holders are not unemployed for more than 30 consecutive days while continuing to meet the terms of their visa. To protect domestic workers, employers would be subject to a domestic recruitment requirement but it would be streamlined. Employers also would be required to pay a reasonable agreed upon wage that reflects market conditions. To address any employment disagreements and to ensure an expedited remedy for any employer wrong, an employer would be required to cure any defect or face arbitration proceedings.

This is not a reform of the H-2A program. By developing a modern program structure, we have provided employers with greater certainty that they will have the workers they need, when they need them and at a cost that keeps us competitive in the marketplace. At the same time, workers are granted flexibility, choice, and the ability to work for multiple employers while continuing to have a structure that enforces their rights and protects them from exploitation. The program also allows us to set up a new system that steers clear of the largest problems in the existing H-2A structure. It is not that we eliminated those provisions; it is that they no longer are necessary protections because of the framework of this program.

This market based system attempts to replicate the domestic labor market - a model that works on the ground, providing workers with freedom of choice, market-based wages, and adequate protections, while taking into consideration security concerns realized by having a largely foreign-based labor force. We recognize that through this process it will require political vetting and accommodation for legitimate concerns of worker advocates. As I mentioned earlier, we began those discussions nearly a year ago and they are continuing. Ultimately, agriculture's goal is to develop a program that treats workers fairly, while being efficient and economical for employers to use.

Solution to Agriculture's Short-Term Needs

In order to provide short-term stability and an orderly, effective transition to a new guest worker program it is imperative that any legislation approved by Congress include provisions permitting current agricultural workers who might not otherwise qualify to obtain work authorization. The existing state of affairs in agriculture did not happen over night; it has grown up over the last twenty-five years, and has been allowed to continue while all observers recognized that the H-2A program was not meeting the sector's needs. For better or for worse, agriculture has acknowledged that anywhere between 60-70 percent of agricultural workers are falsely documented. Any new program will take time to be implemented fully. Granting existing experienced agricultural workers work authorization is a crucial part of making sure that there is not economic dislocation in the agricultural sector while we transition to a new program.

Our proposal focuses on the need for a legal work force in agriculture – leaving the broader policy debate to you as members of Congress. Therefore, we recommend that experienced agricultural workers be granted work authorization in the United States. Because the basis for that authorization was agricultural experience, the authorization would require a minimum commitment to agriculture for a five-year set term. The workers would not be restricted to solely working in agriculture. After the five-year term, workers could access immigration channels to adjust to a permanent status or continue to work in agriculture under the Ag Card.

We recognize the highly contentious nature of this debate. We also recognize that there will be political decisions that must be made directly relating to this issue. But we ask your recognition that this is a labor issue for agriculture. The agricultural economy and the broader U.S. economy, cannot afford to lose millions of dollars in lost productivity because we lost 70 percent of the labor force – a production loss that, according to Farm Bureau economists, could range as high as \$9 billion per year or more

The American Farm Bureau Federation appreciates the opportunity to provide testimony to the committee. We also appreciate the recognition of agriculture's unique needs and the problems that farmers and ranchers are facing on the ground. It is critical that reform addressing both our long and short-term concerns be implemented. We look forward to working with the committee to developing that legislative solution.