

*Submitted by Lisa Van Doren
Vice President & Chief of Staff, Government Affairs
National Council of Farmer Cooperatives*

**Statement on Behalf of the
[AWC Steering Committee Members]**

**Submitted to the
Senate Appropriations Subcommittee on Labor, Health and Human Services, and
Education, and Related Agencies
United States Senate**

**Regarding the
Department of Labor**

April 15, 2016

Chairman Blunt, Ranking Member Murray, and members of the Subcommittee, thank you for your continued leadership and support for U.S. agriculture. The above signed steering committee members of the Agriculture Workforce Coalition appreciate this opportunity to submit our views regarding the FY 2017 Labor, Health and Human Services, and Education, and Related Agencies appropriations bill, and respectfully requests this statement be made part of the official hearing record.

The labor situation in agriculture has been a concern for many years, but is moving towards a breaking point. Today, large segments of American agriculture face a critical lack of workers, a shortage that makes our farms and ranches less competitive with food from abroad and that threatens the abundant, safe and affordable domestic food supply American consumers enjoy today.

Repeated evidence over the past decades has shown that there are some jobs in agriculture that Americans simply do not want to do. Although many of these jobs offer wages competitive with similar, non-agricultural occupations, they are physically demanding, conducted outdoors in all seasons and weather, and are often seasonal or transitory. It is for this reason that farmers have grown to rely on foreign workers to perform this work.

The overarching challenge to workforce stability in agriculture is the widely acknowledged lack of authorized work status by a large number of agricultural workers despite the prevalence of documentation presented by workers to the contrary. The only option for farmers and ranchers to legally find the workers they need is the H-2A temporary work visa program, a program that has not worked for many agricultural employers.

The H-2A program's basic framework is overly restrictive and difficult to maneuver.

Furthermore, the H-2A program is only accessible for producers with seasonal needs; excluding the year-round needs of many producers such as dairy, livestock, mushrooms, and other crops. In recent years the program has become even more bureaucratic, burdensome and costly to use. But, each year, more and more farms have to turn to the H-2A program for legal foreign labor to meet their workforce needs.

The demand on the program is increasing as producers have nowhere else to turn; yet the administrative weight of the program cannot keep up. H-2A employment has doubled in the past four years and will double again in the next two years or less. Even at current levels, capacity and infrastructure issues at the Departments of State, Homeland Security and Labor are leading to greater processing delays than ever before. This means bureaucratic red tape and delays in the program result in workers showing up at the farm well after the date they were needed to be there, and millions of dollars in agricultural production is lost in the interim.

To improve the function of the H-2A program, we seek the following as part of the FY2017 Labor, Health and Human Services, and Education, and Related Agencies Appropriations bill:

Farm Labor Survey Wage Categories

Agency: Department of Labor

Program: Farm Labor Survey

Justification: Allows for more detailed data collection and normalizes the data with Occupational Employment Statistics categories used by the Department of Labor.

Language Type: Bill

Proposal: No such sums shall be provided for the determination pursuant to 20 CFR 655.120 unless the Secretary determines the weighted average annual rate for field workers separately from livestock workers and equipment operators and provides a rate for field workers and a separate rate for livestock workers and equipment operators.

Advertising

Agency: DOL Employment and Training Administration

Program: H-2A Program

Justification: The H-2A program's basic framework is overly restrictive and difficult to maneuver. The traditional newspaper advertising requirement is another example of sheer inefficiencies. In this modern day farmers should not be required to place costly job postings in newspapers, but rather use the already existing DOL State Workforce Agency's online tools.

Language Type: Bill

Proposal: No such sums shall be used to implement or enforce 20 CFR 655.121, as long as the employer is using the Department of Labor State Workforce Agency's online system for advertising methods.

Staggered Entry

Agency: Department of Labor – Office of Foreign Labor Certification

Program: H-2A Program

Justification: This modification was recommended by the Government Accounting Office in a September 2012 report, which stated that to reduce the burden on agricultural employers and improve customer service, the Secretary of Labor should permit the use of a single application with staggered dates-of-need for employers who need workers to arrive at different points of a harvest season.

Language Type: Bill

Proposal: No such funds may be used to implement 20 CFR 655 unless provisions are made to allow for staggered entry dates for workers defined in 8 USC

1101(a)(15)(H)(ii)(A). (*NOTE: Staggered entry for seafood was included under H-2B in the FY2016 omnibus: Division H, Title 1, Sec. 111, page 358*)

Limitations on NFJP

Agency: Department of Labor

Program: Migrant and Seasonal Farmworker Programs under Section 167 of the Workforce Innovation and Opportunity Act

Account: 016-0174-0-1-504-0011

POTUS Budget: Page 787

Justification: At a time of increased labor shortages in the agricultural sector, the Federal government should not continue spending money to exacerbate this problem, but should instead be directing these funds in a manner that will enhance skills needed for agricultural work.

Language Type: Bill

Proposal: No such funds may be used for training purposes under Section 167 of the Workforce Innovation and Opportunity Act unless the training is dedicated to skills improvement for workforce development in all aspects of agricultural operations.

Corresponding Employment

Agency: Department of Labor Office of Foreign Labor Certification

Program: H-2A Program

Justification: From 1987 until 2010, DOL interpreted the term corresponding employment to mean that a US worker who performed all the duties in the occupation defined in the job order was in corresponding employment with H-2A workers and had to be provided the same wages and benefits as the H-2A worker. In 2010, DOL changed the wording of the regulation to state that any US worker who performed any activity in the job order was in corresponding employment. The adverse consequence is that an H-2A worker may perform highly skilled work most of the time but occasionally performs very basic unskilled work. If the H-2A worker performs any unskilled work, then the 2010 rule sweeps the entire US workforce incapable of performing the skilled work defined in the job order into corresponding employment, forcing the employer to pay unskilled workers the same as highly skilled workers. DOL's preamble explanation of the 2010 definition states that it has returned to the 1987 rule (from the brief-lived 200 Bush rule) and does not intend to sweep the entire workforce into corresponding

employment but DOL is enforcing the rule so that it does.

Language Type: Bill

Proposal: No such funds shall be used to implement the definition of corresponding employment (20 CFR 655.103) unless it is implemented consistent with the final 1987 regulation (29 CFR § 501.0, 52 Fed.Reg. page 20524) to read that “the employment of workers who are not H-2A workers by an employer who has an approved H-2A application for Temporary Employment Certification in the occupation described in the job order performed by H-2A workers and for the time period set forth in the approved job order.”

Commuter Housing

For operations along the southern border, workers commute daily from their homes in Mexico. Required housing that is provided to these workers goes unused and is therefore an unnecessary cost imposed on employers.

Agency: DHS U.S. Citizenship & Immigration Services and DOL Wage and Hour Division

Program: H-2A Program

Proposal: 8 USC 1188(c)(4) is amended as follows: the housing requirement for H-2A workers is waived when the job site is within 50 miles of the border and the worker’s place of residence is within normal commuting distance.

We remain steadfast in our pursuit of broader immigration reform that meets both the short- and long-term workforce requirements of all of agriculture—both those producers with seasonal labor needs, and those with year-round needs. Yet we recognize such reforms may not come to fruition in the near term.

Left with no other alternative, we seek your support for the inclusion of these modest adjustments as you prepare FY2017 appropriations legislation.

Thank you again, and members of the Subcommittee, for the opportunity to share our views.