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# *Immigration Reform and Agriculture*

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Presentation delivered at the 2013 Annual Meeting  
of the International Agricultural Trade Research Consortium (IATRC)  
Clearwater Beach, FL, December 15-17, 2013

# Immigration and Agriculture

Immigration Reform and Agriculture

December 15, 2013

Peter Feather, USDA, Office of the Chief Economist

# Present Situation

- Approximately one million agricultural workers in the U.S. – Half are thought to be illegal
- Farmers have access to a guest worker program (H-2A) for temporary workers if a labor shortage exists and can be documented
  - Dysfunctional program that is not well utilized
- Senate Bill -- Border Security, Economic Opportunity, and Immigration Modernization Act
  - All encompassing bill, about a fourth devoted to agricultural immigration issues
- House Bill – Agricultural Guest Worker Act
  - More limited -- specific to a new guest worker proposal

# Senate Bill: Undocumented Farm Workers Presently in the U.S.

- Resident aliens who have worked at least 100 days per year in agriculture during the two year period ending in December 31, 2012 can apply for documentation (“blue card”)
  - Spouses and children also eligible
  - One year application window – pay fee/penalty
  - Blue card expires after 8 years
- The blue card holder must continue to work in agriculture to ultimately apply for permanent resident status within five to eight years
  - 8 Year period – 100+ days/year for at least 5 years
  - 5 Year period – 150+ days/year for at least 3 years

# Entry Into the Program

## Existing H-2A

- Demonstrate a shortage
  - Newspaper ads, contact former employees, state work force ad
- Petition the U.S. DOL for temporary certification
- File form (I-129) with DHS
- Worker applies for a visa in his home country

## Proposed Senate Program

- Demonstrate a shortage
  - State work force ad sufficient
- Employer registers with USDA
  - “Designated Agricultural Employer” – good for 3 years
- File form (I-129) with DHS
  - DHS must grant within 7 days
- Worker applies for a visa in his home country

# Housing, Travel and Compensation

## Existing H-2A

- Employer pays employee transportation cost
- Employer provides on-site housing
- Employer must hire any U.S. worker until 50% of the job is complete
- Employer must pay three fourths of contract hours

## Proposed Senate Program

- Employer pays employee transportation cost
- Employer provides on-site housing, or vouchers
- Employer must hire any U.S. worker until H-2A workers arrive
- Employer must pay three fourths of contract hours
  - Appeal process for natural disasters

# Numbers and Length of Stay

## **H-2A Program**

- No cap on employees
- Only available for seasonal work
- Workers return home when the contract is fulfilled

## **Proposed Senate Program**

- Capped at 112,333 per year
- Available to all types of agriculture
- Workers must fulfill initial contract, then become “at-will” workers
  - Can work for any designated agricultural employer
  - Can stay in the U.S. for 3 years (+3 year extension)

# Wages

## H-2A Program

- Wage rate set by the U.S. Department of Labor, known as the “adverse effects wage rate”
- Same wage for all workers in different regions of the U.S.
- Across regions, it ranges from \$9.50 to \$12.33 in 2013.

## Proposed Senate Program

- Six occupations identified with separate wages initially set either by statute or by USDA
  - Supervisors (Set by USDA)
  - Animal breeders (Set by USDA)
  - Graders and sorters ..... (\$9.37, \$9.60, \$9.84)
  - Equipment operators ... (\$11.30, \$11.58, \$11.87)
  - Crop/nursery/greenhouse (\$9.17, \$9.40, \$9.64)
  - Farm/ranch, aquaculture (\$10.82, \$11.09, \$11.37)

# Enforcement

- Enforcement
  - Worksite labor laws apply to guest workers – enforced by the DOL (same as H-2A)
  - DOL has the power to fine employers (same as H-2A); USDA has the power to remove employers from the program
- Winners and Losers? -- Both sides benefit
  - Wages now tied to skill level
  - Housing vouchers
  - Streamlined process with DOL removed
  - More worker mobility with no contracts
  - Longer term visas
  - Both seasonal and non-seasonal employers have access

# Entry Into the Program

## Existing H-2A

- Demonstrate a shortage
  - Newspaper ads, contact former employees, state work force ad
- Petition the U.S. DOL for temporary certification
- File form (I-129) with DHS
- Worker applies for a visa in his home country

## Proposed House H-2C Program

- Demonstrate a shortage
  - State work force ad sufficient
- Petition USDA for temporary certification
  - USDA must grant petition within 10 business days
- File form (I-129) with DHS
  - DHS must grant within 7 days
- Worker applies for a visa in his home country

# Housing, Travel and Compensation

## Existing H-2A

- Employer pays employee transportation cost
- Employer provides on-site housing
- Employer must hire any U.S. worker until 50% of the job is complete
- Employer must pay three fourths of contract hours

## Proposed House H-2C Program

- Employer does not pay employee transportation cost
- Employer does not provides on-site housing, or vouchers
- Employer must hire any U.S. worker until H-2A workers arrive
- Employer must pay one half of contract hours
  - Appeal process for natural disasters

# Numbers and Length of Stay

## **H-2A Program**

- No cap on employees
- Only available for seasonal work
- Workers return home when the contract is fulfilled

## **Proposed House H-2C Program**

- Capped at 500,000 total
- Available to all types of agriculture including processing
- Workers must fulfill initial contract, then ...
  - Can work for any agricultural employer who petitions USDA
  - Can stay in the U.S. for either 18 months (seasonal employment) or 36 months (non-seasonal employment)

# Wages

## **H-2A Program**

- Wage rate set by the U.S. Department of Labor, known as the “adverse effects wage rate”
- Same wage for all workers in different regions of the U.S.
- Across regions, it ranges from \$9.50 to \$12.33 in 2013.

## **Proposed Senate Program**

- Wages are the greater of the minimum wage and the prevailing wage

# Enforcement

- Enforcement
  - USDA and DHS have the power to fine employers who fail to meet the required employer conditions
  - USDA has the power to remove employers from the program
  - DOL role? Bill does not elaborate on who enforces job site conditions
- Winners and Losers?
  - Mostly benefits employers