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MESSAGE

Here are the Q&A.

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SYNOPSIS OF THE "AGRICULTURAL JOBS, OPPORTUNITY, BENEFITS AND SECURITY ACT OF 1999"

The AgJOBS bill reforms the existing H-2A non-immigrant temporary agricultural worker program; provides for an opportunity for seasonal agricultural workers with a substantial commitment to the agricultural work force to identify themselves and qualify to earn temporary and ultimately permanent resident alien status; and contains miscellaneous related provisions.

TITLE I. ADJUSTMENTS TO LEGAL STATUS

This title provides that aliens who can document that they were employed 150 days or more (or 880 hours or more) in agricultural work in the United States during the 12 months prior to the introduction of the Act may apply to the Attorney General for adjustment to the status of lawfully admitted nonimmigrant alien. Application for adjustment must be made during the 18-month period following enactment of the Act.

Adjusted non-immigrant aliens are authorized to be in the United States up to 300 days in any 12-month period and may lawfully enter and depart the United States to engage only in agricultural employment. To maintain this status, adjusted aliens must perform agricultural work in the United States for at least 180 days (or 1040 hours) for five of the seven years after adjustment. Aliens with a child born in the United States prior to the date of enactment are not subject to the 300 day per year limitation on presence in the United States, but must perform agricultural work for 240 days or more in a calendar year to retain such status. Employers are required to keep records of the employment of adjusted aliens and provide such records to the worker and to the INS.

Upon completing the required five years of agricultural employment, the adjusted aliens are entitled to apply for permanent resident alien status and are not subject to the numerical limitations on permanent alien admissions. Application must be made within six months of completing the required qualifying employment. No more than 20 percent of the number of aliens who adjusted to nonimmigrant status may be adjusted to permanent resident status in any year. Priority in adjustment to permanent resident status is given to adjusted aliens with the most agricultural employment during the qualifying period. Adjusted aliens who qualify for permanent resident alien status, but who cannot be adjusted to permanent resident alien status because of the 20 percent annual limitation, will receive temporary resident alien status, and are authorized to work in any employment in the United States. To qualify for adjustment to temporary and permanent resident alien status, applicants are subject to the same admissibility standards as any other alien, except that the bar on admission due to prior illegal presence in the United States is waived.

Aliens who fail to meet the 5-year agricultural work requirement or who do not choose to adjust to permanent or temporary resident status lose all status and are subject to removal.

Adjusted aliens and temporary resident aliens are not eligible for public assistance, unemployment insurance benefits and other public benefits.

TITLE II. AGRICULTURAL WORKER REGISTRIES

This title establishes a system of registries administered by the Secretary of Labor for matching available agricultural workers and agricultural job openings. A registry would be established for each state where agricultural employers sought to use the registry. The registry would replace the current labor certification process for H-2A employers.

Workers interested in agricultural employment would register with the registry, indicating their qualifications, the kind of work they were seeking, and where they were willing to consider employment. Only workers authorized to be employed in the United States would be eligible to be listed on the

Synopsis of AgJOBS Bill
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registry, and the registry would verify employment eligibility. The registries would be available to adjusted workers as well as U.S. workers and permanent resident aliens, but U.S. workers and permanent resident aliens would have priority over adjusted aliens in referral to available jobs.

All U.S. agricultural employers would be eligible to list agricultural jobs with the registry, but applicants for H-2A workers would be required to do so. An agricultural employer could require prospective new hires to register with the registry as a means of assuring that the workers were eligible to be employed in the United States. The Secretary of Labor would be authorized to advertise and otherwise disseminate the availability of the registry to qualified workers.

TITLE III. H-2A REFORM

This title reforms certain procedures and requirements for employers employing H-2A temporary alien agricultural workers.

The following requirements would apply to all workers, both domestic and alien, in job opportunities for which employers seek H-2A alien workers:

1. The job opportunity must not be vacant because the former occupant is involved in a strike, lockout or work stoppage in the course of a labor dispute.
2. The job opportunity must be temporary or seasonal.
3. The job opportunities must include the following labor standards:
 - a. At least the prevailing wage for the occupation in the area of intended employment. If the prevailing wage is less than the state's average hourly earnings of field and livestock workers, as determined by the Secretary of Agriculture, the prevailing wage must be augmented by an Adverse Effect Wage Rate of 5% of the prevailing wage or such lesser amount as is necessary to raise the prevailing wage to the state's average hourly earnings of field and livestock workers.
 - b. Housing that meets federal standards must be provided at no cost to workers from outside normal commuting distance. If the Governor of the state determines that there is adequate housing for migrant agricultural workers in an area of intended employment within the state, the employer may offer a monetary housing allowance in lieu of providing housing. During a three-year transition period after enactment of the Act, any employer may offer a monetary housing allowance in lieu of housing.
 - c. Workers recruited from outside normal commuting distance must be reimbursed for inbound transportation and subsistence costs if they complete 50 percent of the period of employment, and provided with or reimbursed for return transportation if they complete the entire period of employment.
 - d. Through the first 50 percent of the period of employment, employers must accept workers referred to them by the registry even if H-2A workers already occupy their jobs. However, the registry may not refer a worker to an H-2A employer whose jobs are already occupied unless there are no employers listed with the registry who are seeking workers in the same area of employment and in the same occupation or in a similar occupation offering similar wages and benefits.
4. The employer may not refuse to employ qualified individuals referred by the registry and may terminate workers only for lawful, job-related reasons, including lack of work.
5. The employer must comply with all applicable Federal, State and local labor laws.

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6. The employer must advertise the availability of the registry.
7. The employer must advertise its job opportunities in a publication in the local labor market.
8. The employer must contact qualified workers whom the employer employed during the previous season and invite them to return to work.
9. The employer must provide workers' compensation insurance.
10. The employer must pay an alien employment user fee designed to cover the administrative costs of the H-2A program.

Employers seeking approval to employ H-2A aliens would be required to list the job opportunities for which aliens were sought with the applicable registry at least 28 days before the date workers are needed. Applications would be reviewed to assure that they contain the requirements for H-2A job opportunities listed above, and would be accepted or rejected within seven days. If accepted, the Secretary of Labor would search the registry for qualified available workers to fill the job opportunities. Prospective workers would be contacted by the registry and, if they accepted the job opportunity, would be referred to the employer. If sufficient qualified, available workers could not be found through the registry to accept jobs with the employer, the employer would be provided with a "shortage report" not later than seven days before the date of need authorizing the employer to employ sufficient H-2A aliens to fill the remaining jobs. Provisions are made for emergency applications in unforeseeable circumstances and for situations where the Secretary of Labor fails to act within the required time frames.

H-2A aliens are admitted for temporary or seasonal agricultural employment for up to 10 months in any calendar year. Aliens will be provided with a counterfeit resistant identity and employment eligibility document, and all entries and departures from the United States would be recorded. H-2A aliens would be subject to removal and disqualification from participation in the program if they violate a material term of their admission

TITLE IV. MISCELLANEOUS PROVISIONS.

An aggrieved worker or third party may file a complaint with the Secretary of Labor alleging an employer's failure to comply with a program provision or misrepresentation of a material fact. The Secretary must investigate complaints. Expedited investigation procedures are required in the case of serious child labor, wage or housing violations. Penalties include back wages, civil money penalties and, for substantial and/or repeated violations, disqualification from the program from one year to permanently.

Commissions are created to study the problems of in-season migrant agricultural worker housing, childcare for migrant agricultural workers, field sanitation standards, and coordinated and targeted labor standards enforcement.

The Attorney General is authorized to establish bilateral commissions between the United States and major H-2A sending countries to provide a forum for discussion of matters of mutual concern.

User fees for use of the registry and for employers authorized to employ H-2A aliens are established to cover the administrative costs of the registry and the H-2A programs.

The effective date for the promulgation of regulations and implementation of the program is one year after the date of enactment.

COMMON QUESTIONS REGARDING THE "AGRICULTURAL JOB OPPORTUNITY BENEFITS AND SECURITY ACT OF 1999"

QUESTIONS REGARDING H-2A REFORM.

- 1. Is it true that the reform bill would allow nearly automatic admissions of unlimited number of H-2A workers and that employers will not have to recruit US workers?**

NO. The reform bill simply replaces the current, over 50-year old means of requiring employers to search for domestic workers, called the labor certification process, with a modern computer-based technology called a registry, a prototype of this system already is in use by the Department of Labor (DOL). A 1998 GAO study found that under the current, outdated labor certification process, DOL misses its statutory deadline nearly 40% of the time, even though the system required application to be submitted sixty (60) days in advance. The registry matches worker requests for farm work with grower requests for workers in an efficient and timely manner. Workers don't need computers or "cell phones" to use the registry. They simply contact job service offices like they currently do. The registry, like labor certification, is simply a means by which the government can in a more timely manner determine whether domestic workers are available and refer them to jobs. Under the registry, like labor certification, the Department of Labor decides whether temporary foreign workers can be admitted, based upon unavailability of domestic workers.

Farmers seeking to use the H-2A program must advertise the registry and still must engage in positive recruitment outside of the registry by advertising for workers in local labor markets with likely sources of labor.

In sum, unless a registry check finds insufficient workers and a farmer advertises its job opportunities, a farmer cannot obtain H-2A workers. The process is not radically different than the status quo. It is simply made more efficient.

- 2. Is it true that a reformed H-2A program would take away jobs from domestic farmworkers in rural counties with high unemployment and lead to additional undocumented migration in those areas?**

NO. In 1998, a significant effort was made in rural counties in California with high unemployment rates, to recruit unemployed persons to work in agricultural jobs after enactment of the Welfare to Work legislation. Agricultural employers worked closely with county welfare and employment service offices to recruit unemployed persons. The extensive efforts, documented by government agencies, showed that few unemployed persons were interested in working in temporary and seasonal farm jobs. Unemployed workers preferred permanent, full time jobs and the agencies preferred to direct their training resources there.

Many of the unemployed were single mothers who sought full-time jobs and for whom childcare was an issue. Thus, there is not a direct correlation between unemployment rates and willing and able farm workers. Moreover, the registry job search would assure that unemployed workers get access to the jobs before any foreign workers are admitted.

3. Is it true that H-2A workers overstay their visas and don't return home, and that a reformed program would encourage more illegal immigration?

NO. A 1998 GAO study of the H-2A program did not indicate evidence of overstays of H-2A worker. Moreover, a 1999 study of the Carnegie Foundation for International Peace found minimal evidence of overstays of H-2A workers. The reason is obvious. H-2A workers get free transportation to and from home, a premium wage, free housing and many other benefits. Most importantly, they get a visa that allows them to freely cross the border into the U.S. without paying a smuggler and risking their lives. If a worker does not go home after the visa expires, he/she loses the right to these considerable benefits and is ineligible to participate in the program in the future. The reform bill assures similar benefits and takes away workers' ability to participate in the future if they do not go home in a timely manner.

4. Is it true that the H-2A reform bill does not require the payment of the federal and state minimum wage to domestic and H-2A workers?

NO. State and federal minimum wage are applicable to all workers under the bill. In all cases, US workers and H-2A workers would have to be paid a premium wage rate. The lowest wage rate would be the prevailing wage rate plus a premium of up to 5% if the prevailing wage is less than the prior year's average hourly earnings of field and livestock workers for the state. In no case would a worker receive less than the federal or state (if higher) minimum wage.

5. Is it true that redefining the adverse effect wage rate to a prevailing rate standard will hurt US and H-2A workers?

NO. The adverse effect wage rate (AEWR) is an arbitrarily set wage rate that averages all nonsupervisory field and livestock worker wages in a state. This is different than the prevailing wage rate, which is the wage for the specific occupation in the area of intended employment (the Davis-Bacon standard). The bill would require that employers provide the prevailing wage (in no case less than the minimum wage), plus a premium of up to 5% if the prevailing wage is less than the average of all field and livestock jobs statewide. Many employers cannot afford to pay the current AEWR because it ignores the market factors that dictate how much they can pay for labor and still compete in international markets with competitors from the 3rd and 2^d world countries with much lower wage and benefit standards.

The prevailing wage rate standard in the bill is a premium wage rate, but more affordable than the AEWR. As a result, many more US and H-2A workers would benefit from this standard because many more employers would be able to provide it even though it is a premium wage that exceeds the minimum wage. Currently, only about 30,000 workers are admitted under the H-2A program annually, which represents a small percentage of the actual need. Coupled with housing, and transportation, US and H-2A workers receive a substantial and costly wage and benefit package.

6. Is it true that the reform bill would not require the provision of safe and sanitary housing?

NO. The bill requires as a condition of using the H-2A program that employers provide housing or a housing allowance. The provision of a housing allowance recognizes that in some areas of the country migrant and seasonal farmworkers do not live on the farm, but, in the community and housing does not exist on farms. In other cases farmers have not built on-farm housing because the H-2A program does not work. With the reform of the program in this bill, farmers will have an incentive to build housing. The bill gives them a 3-year period wherein they can provide an allowance to be spent on housing in the area. As a practical matter, this transition would track somewhat the period for the reformed program to be implemented. After 3 years, farmers would be required to provide either housing or a housing allowance. The housing allowance option would only be available in labor markets which the Governor of each state finds have sufficient housing available.

The bill does not change current DOL housing occupancy standards. In addition, the bill creates a farm labor housing commission to study and recommend long-term solutions to the problem of adequate in-season housing for farm workers. In addition, agriculture has supported legislation in this year's agriculture appropriations bill requiring USDA to study issues related to the improvement of farmworker housing generally.

7. Is it true that the bill does not require employers to reimburse the in-bound and out-bound transportation costs of US and H-2A workers?

NO. The bill requires employers to reimburse in-bound and out-bound transportation costs for both H-2A workers and US workers. Similar to the existing H-2A program, workers who complete 50% of the contract period would have in-bound costs reimbursed, and if they complete the contract, their transportation home would be provided.

8. Is it true that employers are not required to hire US workers through 50% of the period of employment?

NO. The bill requires employers to hire any U.S. workers referred by the registry through the first 50% of the period of employment unless the employer is employing no aliens, or the registry has unfilled job opportunities in the same occupation and area of employment with other employers.

9. Is it true that employers may terminate workers for any reason, regardless of the contract commitment?

NO. Employers may only terminate workers for lawful job-related reasons, such as the inability or unwillingness to perform the job, or in a situation where there is an unanticipated lack of work for the workers to perform.

10. Is it true that an H-2A worker is not entitled to a job contract when recruited?

NO. The reform bill extends for the first time the provisions of the federal migrant Act to H-2A workers, including the requirements of the Act to disclose the term and conditions of employment in writing. These disclosure requirements provide a double disclosure of the terms the employer is also required to provide independently under the H-2A program rules.

11. Is it true that employers using the program do not have to pay a users' fee?

NO. The bill requires employers using the H-2A program to pay a reasonable fee to offset the costs incurred by DOL and INS in administering the program.

QUESTIONS REGARDING ADJUSTMENT OF STATUS

1. What is adjustment of status? Isn't it just amnesty for farmworkers?

NO. The bill recognizes that a substantial portion of the agricultural workforce is in undocumented status and possesses skills and commitment to farm work. Because of the shortage of documented workers, the choice is to try to meet our need for workers to produce the nation's food through guest workers alone, or through a program that reduces the number of H-2A workers initially needed by allowing the most experienced farm workers already here and working in agriculture to earn the right to adjust to legal status. The bill recognizes the skill and contribution of those who have worked a half a year or more in agriculture the year prior to enactment, and allows them to achieve conditional nonimmigrant status. If they work in nonimmigrant status exclusively in agriculture for a minimum of 6 months in 5 of 7 years after enactment, they can adjust their status to that of permanent resident. While in nonimmigrant status, workers could work in agriculture up to 10 months a year and would be required to leave the country

for at least 2 months each year until they adjust to permanent resident status. Then, upon becoming eligible for permanent resident status, they could work anywhere and remain in the US throughout the year.

The bill does not repeat the mistakes of the SAW program enacted in 1986, which was an amnesty program that only required proof of 90 days of farm work and then allowed workers to immediately adjust status. Many of the workers left agriculture after adjusting, leaving the industry with its current problem.

By combining an adjustment program with reform of the H-2A program, the framework for a legal short and long-term agricultural workforce is established. The adjustment provides the opportunity for legal status to a significant part of the existing agricultural workforce and ensures a temporary foreign worker program that is workable for the future as additional workers are needed. Moreover, the new registry included in the H-2A reform program facilitates recruitment of US and adjusted workers and will screen out undocumented workers and stop the past cycle of undocumented workers going through an employment eligibility system that does not afford employers the ability to determine whether workers are legal or not.

2. Isn't the adjustment of status provision just a form of indentured servitude?

NO. Participation in the adjustment process is **strictly voluntary**. If workers in undocumented status prefer to remain in that status and face the fears and uncertainties inherent in such status, they may choose to do so or, an alien could seek a job in the H-2A program. Workers who choose to adjust status must work a minimum of 6 months in agricultural work for 5 years. They have 7 years to complete this obligation, in case of health or other reasons they cannot work for a period of time.

While in the US, the adjusted workers are free to work for any employer and move from crop to crop within the U.S. Their admission does not have to be "sponsored" by an employer. They receive the full protection of all U.S., and local labor laws. They have a visa that allows them to come and go freely from their home country to the US. They will not have to rely upon smugglers and risk life, limb or their limited resources. They are simply afforded a prized opportunity to earn legal status, should they choose to accept it.

3. Can't employers and contractors control who participates in the adjustment process?

NO. The bill provides a role for employers, unions, churches and immigrant organizations, through qualified designated entities (QDEs) to assist workers in obtaining legal status. Employer records would be essential to proving the

qualifying work, but, workers can obtain assistance from QDEs in piecing together qualifying employment if necessary. Moreover, it is in the employer's interest to assist workers in adjusting status because this also assures the employer that the worker is legal. The standard of proof of qualifying employment would be high in order to avoid the problem of fraud that occurred in the SAW program in the 1986 immigration amendments. High standards would benefit the true farmworker and maintain the integrity of the program.

4. Is it unfair to treat adjusted workers differently than H-2A workers?

NO. Adjusted workers are treated for all practical purposes the same as domestic workers. They are protected by all U.S. labor laws and could move from one agricultural employer to another in pursuit of different work, higher wages or better opportunities. They are not bound by a contract that limits their employment to work for a specific employer for a specific period, a common complaint of critics of the H-2A program. Moreover, if workers eligible for adjustment preferred to work as H-2A workers, and receive the benefits of that program, including contractual commitments, they could choose to do so. The choice is strictly up to the individual worker.

The primary difference between adjusted workers and domestic workers is that adjusted workers are, in most instances, limited to work in agriculture for a minimum of 6 months and a maximum of 10 months a year and have to return to their country of origin for at least two months annually until they adjust to permanent resident status. Otherwise, they are free to pursue the work opportunities and benefits they choose in agriculture while in the U.S.

JENNIFER E. MCGEE

03/27/2000 01:55:31 PM

Record Type: Record

To: Irene Bueno/OPD/EOP@EOP, Eugenia Chough/OPD/EOP@EOP, Lauren B. Steinfeld/OMB/EOP@EOP, Peter P. Swire/OMB/EOP@EOP

cc: Martin L. Yeung/OMB/EOP@EOP

Subject: Re: SSA/Agnet Meeting

Try this...

----- Forwarded by Jennifer E. McGee/OMB/EOP on 03/27/2000 01:59 PM -----



Debra J. Bond

03/27/2000 01:45:44 PM

Record Type: Record

To: Jennifer E. McGee/OMB/EOP@EOP

cc: diana l. meredith/omb/eop@eop, Larry R. Matlack/OMB/EOP@EOP

bcc:

Subject: Re: SSA/Agnet Meeting

Two documents are attached -- talking points and a background paper on AgNet. Note that the AgNet paper has not been updated since last fall and it contains SSA's position that a worker must provide a written consent prior to verification of their SSN. The meeting today will revisit that position to see if there is an easier way to obtain consent. Please let me know if you have any questions.



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Sorry that this did not come over on Friday -- I was out in the afternoon.

JENNIFER E. MCGEE

JENNIFER E. MCGEE

03/24/2000 03:32:31 PM

Record Type: Record

To: Debra J. Bond/OMB/EOP@EOP, Diana L. Meredith/OMB/EOP@EOP

cc:

Subject: SSA/Agnet Meeting

Do you have any paper for this meeting to be included in Barbara's briefing book?

----- Forwarded by Jennifer E. McGee/OMB/EOP on 03/24/2000 03:37 PM -----

JENNIFER E. MCGEE

03/22/2000 11:35:37 AM

Record Type: Record

To: Irene Bueno/OPD/EOP@EOP, Lauren B. Steinfeld/OMB/EOP@EOP, Larry R. Matlack/OMB/EOP@EOP, Debra J. Bond/OMB/EOP@EOP

cc: Eugenia Chough/OPD/EOP@EOP, Martin L. Yeung/OMB/EOP@EOP

Subject: SSA/Agnet Meeting

Barbara Chow will be hosting a meeting with Brian Coyne and staff from SSA to discuss Agnet on **Monday, March 27th at 4:00 PM** in **OEOB 260**. Please let me know if you will be able to attend. Thank you.

SSA AgNet Meeting Talking Points

As you probably know, implementation of AgNet is very important to the Administration.

Note: You may want to provide background on the H-2A debate.

meeting w/ Podesta Thu.

One critical feature of AgNet is SSN verification of potential workers.

When OMB staff discussed this feature with SSA in the fall (in a hurry as we always seem to do) SSA's position was that we would need to get written consent from the worker prior to verification.

We stressed the need to make the verification process as simple as possible without jeopardizing worker's privacy. We also took the position that a paper process would have a negative impact on the possible success of AgNet (DOL and USDA agree). Lastly, we questioned the need for such a process versus some form of electronic verification.

Note: To date, OIRA staff, which have been included in conversations with SSA, have not seen the privacy issues raised by SSA as insurmountable.

My staff recently met with your staff (as well as the other interested agencies) to revisit the issue of SSN verification to see if there are other alternatives that may meet both of our needs. We are open to ideas on the design of AgNet and the operational structure (i.e. a public/private partnership or a State agency).

-- We should keep in mind the cost of the alternative verification methods versus the possibility of fraud. We requested \$10 million for this effort of which the majority must go to grants to community organizations in order for AgNet to be a success.

I understand that SSA has raised legitimate concerns about the operation of AgNet – specifically related to fraud. We want to work through these concerns – specifically focusing on the likelihood of fraud.

DPC and OIRA may want to give some remarks before starting the discussion.

America's Agricultural Labor Network
(AgNet)

What is AgNet?

America's Agricultural Labor Network (AgNet) will be an Internet-based, electronic tool that will facilitate the recruitment of agricultural workers by growers and the movement of agricultural workers to areas with employment needs. It will be both an information system and a labor exchange tailored to meet the needs of the agriculture industry. As an information system, it must be easy to use and meet the basic requirements of the users – growers and workers. As an exchange, its success depends on both parties to the eventual hiring (growers and workers) because their participation in the system is voluntary.

Who will own AgNet?

AgNet will be owned by the AgNet Partnership. The Partnership will consist of farm worker and grower organizations, supported by the Department of Labor (DOL) and Department of Agriculture (USDA). In consultation with DOL and USDA, the Partnership will determine the final system design.

Who will establish AgNet?

Due to the time required to establish a partnership, AgNet's initial implementation will be through a grant by DOL, in consultation with USDA and various interested groups. DOL will transfer ownership of AgNet to the Partnership at the earliest practicable date. Through a grant, DOL will continue to maintain the database and provide technical support to the Partnership as needed.

DOL will provide grants for the development and operation of AgNet. The grants will support AgNet's electronic job and resume listing services, outreach, training, and related services for farm workers and growers. Start-up through AJB will make the costs of customizing AgNet – such as offering a Spanish language version or adding a

“counselor/broker” feature to allow organizations to act on behalf of workers/growers – relatively small.

How will AgNet work?

Farm Worker

- X** AgNet will be a new and powerful resource for those seeking agricultural employment. It will provide a medium for farm workers or their agents to post work experience and the types of opportunities being sought in the system; to search for available job opportunities; and to have the system dynamically match worker information against potential job opportunities. The farm worker or his/her agent will be able to keep track of his/her own posting and to have the system search out new opportunities that may meet the worker’s specifications as the job opportunities are listed. The worker will be able to get reports on all of his/her searches.

The following describes the normal screen flow for a new worker entering the system.

- ☞ *Screen 1. Welcome.* Provides a brief description of AgNet’s purpose.
- ☞ *Screen 2. Code of Conduct.* Displays the voluntary rules for the use of the system. Rules will initially be modeled after AJB but later modified by the AgNet Partnership. Failure to consent to the Code of Conduct will result in denial of access to the system. Violating the code will result in removal of access to AgNet. To promote confidence in the system, AgNet users will be informed that the Immigration and Naturalization Service (INS) will not have access to the database for enforcement purposes.

This screen will also request consent from the worker to verify his/her Social Security Number (SSN) with the Social Security Administration (SSA). The worker will click the “yes” or “no” consent box. If yes, the worker will enter his/her SSN and print out the SSA consent form. The worker will mail the signed consent form to a central location determined by the AgNet Partnership. The worker’s SSN will not be publicly available in AgNet. The consent form will be subject to appropriate privacy and audit controls.

If the worker entered “yes” to both the code of conduct and the SSN verification, he/she will proceed to Screen 3. If the worker entered “no,” the worker will be

informed that they cannot be enrolled in the AgNet system.

- ☞ **Screen 3. Worker contact information.** Includes name, address, phone, email, and other items viewed as useful. In addition, the worker will enter his/her own unique identifiers that will serve as a user ID and password to enter the system in the future. In cases where the worker is using an agent, certain data fields of information such as address, phone, and email will likely be that of the agent. When the user clicks "Yes, continue," the system will query its own database to be sure that the proposed user ID and password are available.
- ☞ **Screen 4. Worker Profile.** If the proposed user ID and password are available, the user will be welcomed into the system and the next steps will be explained for setting up his/her "profile." The worker profile will contain information on work experience and work preferences (i.e., type of crop, location, etc.). If the user ID and password are not available, the person will be asked to choose a different one. Upon completing the AgNet worker profile, the user will also be asked if he/she would like to modify the profile.

The user will then be asked if he/she would like to submit the information provided to AgNet. If yes, the user will be sent an acknowledgment that request for access has been received and that SSN verification will take 24 - 48 hours after receipt of the signed consent form. Upon receipt, the system will query the SSA database (likely in batches overnight) to determine if the name and SSN match. The worker's contact and profile information will not be posted on AgNet until the SSN is verified.

If the SSN does not match, the person will be sent a message regarding the error and given the opportunity to correct it and resubmit (for example, the source of the error may have been a typo). After re-submission if the information still does not match, the individual will be denied access to the system and referred to the nearest SSA field office to correct the problem.

Grower

- ✕ AgNet will be a new and powerful resource for those seeking agricultural workers. It will enable growers on a self-service or assisted basis (for example, through an association) to enter the system to post jobs and search for candidates that have valid SSNs. The grower will be able to keep track of his/her own job orders and to have the system search out new applicants as they are listed in the system. The grower will be able to get reports on all of his/her searches.

The following describes the normal screen flow for a new grower entering the system.

- ☞ *Screen 1. Welcome.* Provides a brief description of AgNet's purpose.
- ☞ *Screen 2. Code of Conduct.* Displays the voluntary rules for the use of the system. Rules will initially be modeled after AJB but later modified by the AgNet Partnership. Failure to consent to the Code of Conduct will result in denial of access to the system. Violating the code will result in removal of access to AgNet. To promote confidence in the system, AgNet users will be informed that DOL will not have access to the database for targeted enforcement activities.
- ☞ *Screen 3. Employer contact information.* Includes name, address, phone, email, and other items (for example, type of employer – grower, association, or farm labor contractor (FLC)) viewed as necessary. In addition, the grower will enter his/her own unique identifiers to serve as a user ID and password to enter the system in the future.
- ☞ *Screen 4. Job Listing(s).* If the proposed user ID and password are available, the grower will be welcomed into the system and the next steps will be explained for setting up his/her job listing. If the user ID and password are not available, the grower will be asked to choose a different one.

The grower will then be asked if he/she would like to submit the information provided to AgNet. If yes, the grower will be sent an acknowledgment that request for access has been received and that verification will take XX hours. The application can be reviewed by the AgNet Partnership in a number of ways. The nature of review will be determined by the Partnership, in consultation with DOL and USDA; for example, one check may be to determine whether the employer is a legitimate business. The grower's job listing will not be posted on AgNet until verification is complete.

Will Social Security numbers be checked for accuracy?

Yes. The AgNet job seeker entry process will verify that the SSN provided by the applicant matches the name given. This will help alleviate problems growers have had in the past with mismatched SSNs. The match will take place electronically with SSA. The entry form will request consent from the applicant (Yes/No box) and require receipt of a signed consent form in order to process the transaction. If the applicant does not provide consent, his/her information will not be posted on AgNet. Re-disclosure of information in AgNet for non-program purposes will be strictly prohibited. The SSN data will be maintained in accordance with sound privacy principles.

Can AgNet verify an individual's employment authorization status?

No. AgNet cannot verify employment authorization status because noncitizens' immigration status often changes, and a static database cannot necessarily reflect the accurate authorization status at a later date of hire. Furthermore, effective verification of employment status requires confirmation of a worker's identity, which cannot be done by a database. Rather, the employer must verify the worker's identity in a face-to-face encounter, to be sure that the documents presented belong to that person.

However, by verifying the worker's Social Security Number in advance, AgNet provides an extra service and addresses a key concern of employers – mismatched SSNs. Currently, employers only learn that numbers are mismatched after-the-fact, on a quarterly basis. Under AgNet, the employer would not have to worry about mismatched SSNs because workers will not be in the system unless their SSN has been verified.

Who will use AgNet?

The public generally including growers, workers, FLCs, local organizations, and unions will use AgNet. Browsing the system for job opportunities will be anonymous. Local organizations could serve as a point of contact for workers or growers. The system will be designed to offer "counselor/broker accounts" to allow an organization to search for jobs for multiple workers or list jobs for multiple growers. In addition, the State Employment Service agencies will be able to post job orders and worker applications in AgNet (at the discretion of each state).

What information will be available in AgNet?

The AgNet Partnership will decide on the final information contained in AgNet. Until the Partnership is up and running, the system will likely include the following information which is important to the agriculture industry. Submission of the following information may not be included in all job and worker listings.

- ✕ The job listing will include data on the conditions of employment including location, crop, duration of employment, wages, skills requested, and whether housing and/or transportation will be provided. In addition, it will include data fields for contact formation, required worker disclosures, and further information the grower wants to provide.
- ✕ The worker resumes will include data fields for experience, desired location and crop, availability, and information on how to be contacted.

The contact and hiring arrangement will be between the grower, or FLC, and the worker, not the government or the Partnership.

How will growers and workers learn about AgNet?

The critical link to the success of AgNet will be buy-in by the farm worker and grower organizations. Given most workers find jobs through informal networks, the Partnership will have to conduct extensive outreach. DOL will provide grants to support outreach efforts. In addition to fliers and newspaper ads, public service announcements on Spanish radio would be used. The Federal government would also conduct outreach efforts through its programs including through the USDA extension offices and Workforce Investment Act (WIA) One Stop Career Centers.

How will workers and growers gain access to the AgNet?

Given this is a low-wage industry, ensuring widespread access to AgNet will be a challenge. The AgNet Partnership, along side other local organizations, will be fundamental in ensuring that workers and growers have access to the Internet. Some places that may be able to provide access include community-based organizations, community action agencies, faith-based organizations, public libraries, unions, local One Stop Career Centers, State Employment Service offices, and USDA extension offices. DOL will provide grants and technical assistance to support outreach, training, and related services for AgNet.

How long will it take to set up AgNet?

The system could be activated in approximately two months after initial design modifications are made. Further design changes that reflect this industry's special needs will be made by the AgNet Partnership, in consultation with DOL and USDA. The initial goal will be to have 10,000 job opportunities listed in AgNet by the end of March 2000.

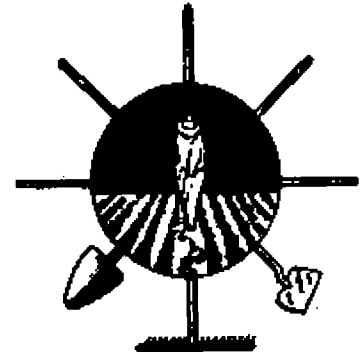
What are the benefits of AgNet?

- ✓ AgNet will be a free service provided to workers and growers with the sole purpose of exchanging information about job opportunities and potential workers to fill those jobs. It will create a more efficient labor market in agriculture.
- ✓ Workers and growers will gain exposure to a national audience. Workers will benefit by gaining the ability to plan their entire employment cycle using this system. For

example, the worker could line-up jobs from Florida up to New York. This will provide greater control and income stability for the worker.

- ✓ Growers will benefit by gaining access to a two-sided recruitment system. Now, growers file requests for workers with the Employment Service and wait for referrals -- a one-sided system. Under AgNet, growers will be able to search for, identify, and contact qualified, available workers in addition to listing job openings. AgNet will alleviate problems growers have had in the past with mismatched SSNs by conducting an SSN match up-front. Growers will also be given another forum to provide workers with required disclosures under various labor laws.
- ✓ If the system is successful, use of AgNet for recruitment will be taken into account in assessing the adequacy of a grower's effort to recruit U.S. workers. In the end, growers will find a stable, qualified workforce and workers will find jobs.

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FAX COVER SHEET

TO: Farmworker supporters

FROM: Bruce Goldstein, Co-Executive Director

DATE: November 4, 1999

RE: An interesting facet of the guestworker legislation

Pages: 2

This fax may contain confidential or privileged information. If you receive it in error, please contact the sender and do not distribute. Thank you.

One additional tidbit on the guestworker legislation that Mark Schacht alerted me to.

One thing that is not in the analysis I've circulated has to do with how the state job registries will handle requests for job referrals by the new adjusted guestworkers. See 201(b)(4) of HR 1814. It's pretty incredible.

-- The adjusted guestworkers are not obligated to sign up for the new "job registry" system.

-- However, an agricultural employer is permitted to reject any worker (adjusted guestworkers, citizens or permanent resident aliens) who does not apply through the job registry. 201(b)(7). So if someone wants a job, they probably want to register.

-- A person may only sign up for a job registry in a state in which the worker "resides." 201(b)(1)

---- Adjusted guestworkers may only be referred by the job registry to jobs inside the state covered by that state registry, or to a contiguous state. 201(b)(4).

-- Regular old United States workers, however, while limited to registering the state in which they reside, 201(b)(1), can be referred to jobs "nationwide." 201(b)(3).

So if a new guestworker resides in Texas, the person can seek a job registry referral in the job registry in Texas. But it can't register for a job in Georgia or North Carolina or New York. And the ag. employers in Georgia, NC and NY can refuse to hire the worker since he wouldn't be referred through a job registry.

Pretty interesting for a job that often requires migration.

I think this is designed to prevent the new guestworkers from going to jobs in states where there are H-2A guestworkers, because the H-2A employers wouldn't want the competition. The H-2A employers want to be able to hire only guestworkers who are stuck to the one employer who secured the visa.

Really sick.

P.S. I hope you took a look at Daniel Rothenberg's fine op-ed piece in the Chicago Tribune on Thursday, criticizing the new legislation.
(chicagotribune.com)

AMERICA'S AGRICULTURAL LABOR NETWORK
(BA in millions of dollars)

<u>FY 1999</u>	<u>FY 2000 Req.</u>	<u>House</u>	<u>Senate</u>	<u>Alternative Level</u>
0	10	0	0	10

Subcommittee: Labor/HHS/Education

2000 Budget Policy: The FY 2000 request would provide \$10 million to implement America's Agricultural Labor Network (AgNet). The requested funding increase includes resources for:

grants to community based organizations and other interested businesses (as needed and based on capacity) for computer equipment, staff training, dedicated staff, and outreach (\$6 million);

information technology including system development, hardware, and verification reimbursements (\$3 million);

a Public Service Campaign including advertisements on Spanish radio and brochures for one-stop centers (\$700 thousand); and,

an implementation evaluation (\$300 thousand).

Latest House Action: The House Committee mark did not provide resources for this initiative.

Latest Senate Action: The Senate did not provide resources for this initiative, but included report language that appeared to be supportive of the AgNet concept pending further detailed information from DOL. OMB, DPC, and DOL staff met with Senator Feinstein's staff recently to provide a demonstration of AgNet and to provide the requested information.

Latest Conference Action: The draft Conference agreement does not provide resources for AgNet.

Alternative Level: Provide \$10 million for the development and implementation of AgNet.

Background: America's Agricultural Labor Network (AgNet) will be an Internet-based, electronic tool that will facilitate the recruitment of agricultural workers by growers and the movement of agricultural workers to areas with employment needs. It will be both an information system and a labor exchange tailored to meet the needs of the agriculture industry.

Growers will benefit by gaining access to a two-sided recruitment system. Now, growers file requests for workers with the Employment Service and wait for referrals -- a one-sided system. Under AgNet, growers will be able to search for, identify, and contact qualified, available workers in addition to listing job openings. AgNet will alleviate problems growers have had in the past with mismatched SSNs by conducting an SSN match up-front. Growers will also be given another forum to provide workers with required disclosures under various labor laws.

Workers and growers will gain exposure to a national audience. Workers will benefit by gaining the ability to plan their entire employment cycle using this system. For example, the worker could line-up jobs from Florida up to New York. This will provide greater control and income stability for the worker.

Prepared By/Date: Debra Bond (5-7751) 10/20/99 I:\One Pagers\l_agnet.wpd

Irene Bueno

10/20/99 03:26:04 PM

Record Type: Record

To: Debra J. Bond/OMB/EOP

cc:

Subject: AGNet Senate Committee language - Fyi

The Committee notes that in the last few years, the seasonal agriculture industry has reported critical labor shortages, prompting some growers to seek the importation of foreign non-immigrant workers to cultivate and harvest their crops. These shortages have been reported despite high rates of unemployment in major agricultural counties. The Committee recognizes the Administration's efforts to develop an Agricultural Labor Network (AgNet) to help meet the needs of American agriculture and U.S. agricultural workers by affording growers access to a timely and legal U.S. agricultural work force. The Committee believes that AgNet should be designated to provide an efficient and expeditious means of matching qualified U.S. workers with employment opportunities in seasonal agriculture. Given the critical importance for the nation's food production system to have an effective tool for linking domestic farmworkers and agricultural employment, the Committee will reconsider the matter upon receipt of a more specific proposal from the Department.

10/14 - Left message
for Bill Daley

Whalin, David M.

70. Irene Bueno

From: Daly, William
Sent: Friday, October 08, 1999 3:29 PM
To: Whalin, David M.
Subject: FW: Judy's question on AGNET vs online request for SS Statement

FR: Judy
Chesser

-----Original Message-----

From: Cerato, Sandra E.
Sent: Friday, October 08, 1999 9:22 AM
To: Watson, John; Snurr, Grayson G.; Whalin, David M.; Daly, William
Cc: Polk, Willie J.; Elgarnil, Lorna; Cerato, Sandra E.
Subject: Judy's question on AGNET vs online request for SS Statement

At yesterday's no-match meeting, Judy relayed a question from Irene Bueno (DPC) about why SSA would require a signed consent form from AGNET participants when a person can go on line and request a SS statement without any consent form.

The answer is the difference between "access" and "disclosure". Access is getting your own information/ disclosure is a 3rd party getting your information.

In the situation involving the SS statement--allegedly you are asking for your own information (there is no proof that the person asking is the right person, but we won't go there). The person can make this request by Internet or by calling the 800 number. In this situation a person is providing personal identification information and we will send his SS statement to the address he provides. Thus he is requesting access to his own information--there is no 3rd party involvement.

In the situation involving AGNET, the way the process would work is that the worker would go to an intake location--like La Raza or other advocacy outpost, where the person would provide his personal information. That information would be transmitted to a central clearinghouse which would send all the data to SSA for verification. The verification would go back to the clearinghouse. Thus the worker's personal information is going to a 3rd party, to whom SSA would disclose verification information.

If there are any questions, let me know.

sandy

David/Bill--Please see that Judy gets this information.

Dave Wahlen 7/10/18

David Oberly + Harkin - restrict privacy ~~secta~~ to SSA
can only mail to the home on the file

Verify the person who

limits the possibility of ~~person~~ another person

Outted on on-line to privacy email groups

Another problem - what

How can you get valid consent?

Can mail to home but not to third party.

Fraud

SSA will verify (after consent form submitted) - AG Net
transmit to SSA, then ^{maintain form} SSA would electronically to AG Net
fee + charge.

House SS Subcommittee - Operation Vanguard - may - * ~~stay~~ stay
out of Immig =

Resolution 9 = AFL-CIO - no fed agency to interest INS.

Sen. ^{Caul} Perkins ~~Bill~~ ^{William Ford} ~~House~~ ^{House} Labor + Education = no charge;
housing program = ~~AG~~

San Diego, CA - Boba Health =
Union

Lawita Shickland - 9/15

~~Don't know~~

~~Don't know~~

No ~~report language~~ - Grimes's lobbying - Chairman's mark but will continue to fighting for this

Senate report language

? Incentive to workers

? ~~How~~ How wide spread

? \$ needed to get it up + running?

? \$ needed for continuous funding

? CA - problem w/ undocumented workers.

? Have we ~~been~~ met w/ grimes

? Why better than America's Job Bank?

- Tailored to ^{the} industry

? To support ^{get} ~~the~~ grimes would be willing to use?

2nd hand

Legislation Graham, Wyden, Craig ^{Smith} = stand alone - State Dept.

- Not different from grimes proposal ^{presenting as}
- ~~For~~ Labor protection but ~~not~~ probably - premium
- Legislation/grimes proposal

Michael Bill - vehicle

~~Don't~~ Matt Miller, Approfs

ETA:

NAAEP Judge Richie - probably 2 types of score - former
workers + anyone else

ADD protection - must be job clear system -
when you load up.

~~BEHOLD~~ -

Advocate - we are

Ag Net - 8/16/99

Verification - A-number should be verified (Ag)

SSA

~~Outstanding~~ Outstanding issue - trying resolve soon.

• Consent Form - on file - to allow SSA audit -

• Consortium - verify that person. 3 mps match ^{valid name} DOB, SSN

Privacy • Language of ~~Ag~~ or redisclosure of mp. If program ends, what happens to that info - can be addressed in K w/consortia

• Reimbursement - Sec. See Trust Fund

(Privacy Act does not apply to Consortium - so can disclose.)

Consortia - community - Ag, ~~will run~~ used to run Ag Net

Intermediary - Outreach

- ER - could access the system

- Grupos - " " "

Run Ag Net

• ASB - in NY State help to get to work + then transfer to consortium

• Works like ASB but need to modify

(See handouts)

Ag Net Violations

- Intermediate could monitor?

- Interstate Clearance Requirements to provide info on employment conditions but not enforced.

- Compliance w/ employment

- MSPA ^{Disclosure} requires to provide info to it - at the time of the job offer.

- MPSA ~~by~~ DRS closure - concern of the regulatory connection.
Don't try to satisfy reg. req.
- Comment §. to add MPSA requirement - voluntarily, but not ~~upfront~~ for ^{important} purposes.
- (AG Net means to provide info not a hiring process)
- Not replace interstates

Link to H2A

① ^{Position} Recruitment Requirement - ^{regulation} does this fulfil this requirement

- Did not want to fulfill any other requirement.
- A form of recruitment but not a substitute

(State decides - kind of administrator).

② Not a substitute for employment service -
Rebra - incentive to ^{engage} ~~allow~~ to use.
May require a reg. chge.

When job registers w/ employment service - this info on ^{AJB} ~~state~~

Interstate - is it it works.

\$10 million -

Set up website

National

Focus on certain states ~~to measure~~ on outreach

- Grants to AG Net - Computer, outreach
- Grant to ^{each AS} ~~each AS~~ ^{net} ~~net~~
- Supplementing grants ~~to~~ for outreach, computer.

Evaluation.

Running - AJB suite would set it up

Customization -

Administration of AG Net ~~§~~ - consultation - compliant ~~as~~ but keep gov't

Timeline 90 Day after specs in place
- Consortium in place

Translation Instruction - English or Spanish
Substance database, skill set -
Part of the service K.

Ⓢ Complex - each document must review - could cause a bottleneck.

ASB

Fed Gov't, Grant awarded

• Fed Gov't runs

• Data ~~by~~ used by the states

• Hardware - used by state to NY under Fed/govt

AG Net

consortia

Buy the service thru NY

Not Feds b/c of Paperwork Reduction Act - +/f it's a grant.

Ag Net - 8/12/99

Verification

INS - is possible to do that based on the pilot

SSA - need to linked in to work out the ~~rest~~ ~~issue~~ problems.

(win)
ATB
+ Talent
Bank

Can add another ~~data~~ ^{data} field

If no, on A-# - INS

no SSA # - SSA

Nationwide?

Simple design.

Check on the employee side but not else

Online

Identity ~~data~~ ^{data elements} could be checked on data but privacy concerns

I-9 employee

Intermediary - registered w/ SSA - info back to them on workers

Better to do construction

①
Verification
Consensus -

Can verify ~~SSNs~~ ^{SSNs} are valid that is checked w/ SSA ~~interim verification system~~ (EVS)

If no match -

Employers would still need to I-9
or register ^{get list of workers} ~~workers~~ ^{not register}

② Intermediary - run the Ag Net, ~~the~~ link "no" on SSA

- Private Consortia - b/c don't have the expertise
- System issues

• Procurement / Contracting - could start conversations

Govt + system - privacy + security are assumed using a govt agency
but could be resolved in govt / IC terms.

but could be resolved in just/1c terms.

Build carefully on the privacy side

Minimum requirements

SSN - is legal or reg. needed - privacy - disclosure

Registration - As Net not using job ~~data~~ ~~internet~~ employed ~~sum~~
~~the state~~ ~~the~~ ~~document~~ ~~the~~

Content exs - not covered by UI laws not covered so not on list

'Farmers voted - manifestly - not cruel.

126 km with 6 data bars $\approx$ Tax ID #s = EIN #

EEs

could build in something

Enforcement - Indemnity - would enforce - cont list

answer
MPSA - new
and
ways

deduction if any - having

Terms & Conditions

~~2. Ist ein normen reglement /~~
In der Bundes

~~Under the minimum right.~~
Obligation - Under Industries ~~and~~ ~~Class~~ ~~Classen~~ - If violate, DOE ~~is~~ ~~at~~ ~~apex~~.
Don't build into Ag Net fields that ~~are~~ discourage m. to use the system.

Groups ~~won't~~ wait like if don't include this.

③

① verification of SSN

② Indemnity

③ Minimum Content on Agent
MPSA - OK
Insurance - ? and firm

④ Obligation ^{el} = Regulatory Enforcement
TX provider I-9 - huge mention to our employer.

MPSA

~~HA mtg~~ HA mtg 8/10

- Feinstein - Ag Net but need details. ~~Opposing~~ legalization - upset about 1997
- Berman - willing to consider legalization instead of the new program

Ag Net

Verification

Who would run - Farm Bureau, NLR, etc.

States - few only bc \$10 million - CA, TX, FL
but

8/26 ① Status on Ag Net report.

② Status on INS Reg - Delegation of authority

• Need to do a proposed rule

• Final Rule

BLC SSA letters

There could be a shortage of workers

- Sen. Bob ^{Graham} legalization

Ag Net

worker right

who HRA reform

Snake groups

do not like
BLC want HRA

Groups - don't want
legalization w/ HRA.

- FY2001 Budget Proposal - housing, transportation, etc.

Look at condition farmworker

met w/ group

- Ag Net

- other proposals -

attitude for
to be changed
to the law.

Next Steps

- Ag Net

meet w/ groups + review.

Reinstein
Get letter from Earl

Agnet mty - 7/15

Background

General -

- Established set of relationship b/w growers + workers
- Ask ~~ees~~ for ~~other~~ other ees
- Use Agent/Labor Brokers/Crew Leaders ^{prevalent} - will find ees - recruit in Mexico, Cuba or
- Don't use ads, Spanish-speaking Ad

H2A Recruitment Reg. in US

- interested + industries - send ads
- Positive recruitment - local ads,

Outside Recruitment

- If workers pay to get on list
- Illegal deduction of payments

Workers - all word of mouth, networks both legal + illegal
Networks maintain themselves

Registry ^{ool} - don't want to recruit, want to prove shortage
Ag - willing to use program + pay for it, want undisruptable.

1.8 million in hand harvest work force - migrant
less families come single

Farmworker Justice - ~~document~~ OK except if only from
of recruitment + verification (LNs data base based)
NCC - ?

(2)

Fernstein Gruner proposal - doesn't support

Letter to
Wants to meet on Agent
Fernstein

Verification

① - Commit ~~to~~ ~~to~~ verify identity. ~~3~~ 3 data elements match ^{name} ^{SSN} ^{DOB}
- NE (investigate) - will know if someone uses more than once
- SSA privacy concerns + IRS concerns

② Improv. status routine - put a tickler in system
- State employment - if they verify they can refer but
they would be liable.
Still need a

③ Pilot - PC - immediate ~~on~~ reply
- ~~Current process~~ ^{if no} ~~takes longer~~ - overnight, IRS can't
have to follow up. - 48 hrs. ^{continuous}
- If not, ~~authorize~~ ^{authorize} (see ^{works} ~~but~~ ^{er} ~~that~~ ^{pr})
Must ask ee to follow up w/in a certain period of time

~~if not~~
Ag Net Who gets the no match info - how do they get info
to ee.

~~increasingly~~ - legal

Can help the chances - someone is legal but
Can't guarantee.

③

SSA - ~~75~~ 75% SSA

Job Bank

Verify - yes or no
if yes, need a intermediary

Design

SE

Farm Bureau/NCLR - ~~no~~

Larry - maybe ~~no~~ pilot

MEMORANDUM FOR MARIA ECHAVESTE AND BARBARA CHOW

FROM: Irene Bueno and Debra Bond

SUBJECT: AgNet – Outstanding Design Issues

As you know, we recently developed a detailed description of “America’s Agricultural Labor Network” (AgNet). While working with the various agencies on the description, a number of program design issues were raised and discussed. In order to proceed with discussions with the grower and farm worker communities, we need final resolution on a number of these issues.

Below is a brief description of the outstanding issues with DOL, USDA, DOJ, OMB, SSA, and DPC positions as appropriate. Please let us know if you would like to discuss any of the issues prior to making a decision. The latest version of the AgNet description is attached for your reference.

1. Use of AgNet Database for Enforcement Purposes

The AgNet description says that workers and growers will be informed that INS and DOL will not have access to the database of information for targeted enforcement purposes. However, INS and DOL would have access during the course of an investigation – either compliant or self-directed – but could not use the database to develop a list of workers/growers to target.

Positions: The INS, Employment Standards Administration (ESA), and OMB (EIML staff) wanted to use this information for enforcement purposes. The Employment Training Administration (ETA) did not want to link AgNet to enforcement – disincentive for growers to use the system. OMB’s Privacy Office raised concerns about the enforcement link because it could be a disincentive for workers to use the system.

Recommendation: The position reflected in the AgNet description was a compromise between the differing views. INS, ESA, OMB (EIML staff and the Privacy Office) agreed to this decision. It is our understanding that ETA has raised objections within DOL.

We recommend maintaining the current position that the database can be used during the course of an investigation but not as a source to develop candidates for targeting.

_____ Agree _____ Disagree _____ Let’s discuss
2. SSN Written Consent

this is important because ex-act some are legal.
A feature of AgNet is verification of the worker's SSN prior to posting his/her worker profile. OMB (EIML, OIRA, and Privacy Office staff) had numerous, contentious conversations with SSA regarding the method of consent required prior to verification. In order for SSA to verify a person's SSN, it requires that the person consent to the verification. The issue then is how the worker provides consent – i.e., by clicking a box on AgNet “yes, I consent” (electronic consent) or by signing a written consent.

SSA regulations require some minimal attempt to verify the identity of the worker providing consent. In practice, this has translated into a written consent. Without discussing the merits of SSA's practice, the written consent provides SSA with proof that can be used in cases where a person contends that SSA verified without their consent.

SSA will not allow an electronic consent. The main concern is that the consent could be open to widespread fraud. For example, if a person knew 7 of the 9 digits of your SSN, they could use this system repeatedly to figure out the last 2 digits and thus SSA would have verified that the person was correct. Recognizing that the likelihood of this occurring is small, it is still possible. Thus, OMB agreed to a written consent.

Positions: OMB and SSA agreed that a worker would have to provide written consent prior to verification. The consent would have to be maintained for five years by someone (either the Partnership, AgNet grantees, or the New York Employment Service – the maintainers of the AgNet database) in order for SSA to audit if needed. This of course makes using AgNet more complicated but is necessary in order to maintain the system's integrity and guard against possible fraud.

DOL has recently raised objections to requiring a written consent because it believes the requirement will be a significant obstacle to worker participation.

Recommendation: We recommend maintaining the current position that requires a written consent prior to SSN verification.

_____ Agree _____ Disagree _____ Let's discuss

3. Contents of Worker Profile and Grower Job Listing

The AgNet description is silent on whether workers and growers will be required to enter certain information in order to post of AgNet. For example, whether the worker has to provide work experience/qualifications; whether the grower has to provide MSPA disclosures such as wages and duration of work.

Positions: After much debate during a DPC meeting on AgNet, the agencies

agreed not to require information but to provide data fields that would allow workers and growers to enter the information if they chose to do so. DOL was represented by ETA at this meeting. The decision was a compromise between ETA's desire not to turn AgNet into an enforcement system, and USDA's/OMB's desire to provide data fields for growers to use to fulfill their obligations under MSPA if they choose to do so.

DOL is revisiting the position provided at the earlier meeting. ESA wants to require that growers provide information required by the Migrant and Seasonal Worker Protection Act (MSPA) – includes the terms and conditions of employment such as wages and work duration. ETA wants to leave this decision up to the Partnership. USDA is not opposed to this requirement but notes that this will likely be an obstacle initially with growers.

An alternative to requiring MSPA disclosures is to require entry of information required in order to use the Interstate Clearance System (ICS). This includes:

1. providing free housing that meets minimum safety and health standards;
2. paying at least the prevailing wage for the crop in the local area; and,
3. guaranteeing the first week's wages in the event that the promised work is not available.

Because the workers' advocates will likely see the development of AgNet as effectively replacing the ICS, if ICS requirements are not included in AgNet advocates may view it as negating the important gains they made in years of litigation to get the employment service to serve the agricultural labor force.

Recommendation: ESA and OMB (EIML staff) recommend requiring the disclosures required in MSPA. In addition, we also requiring basic information in the worker profile. USDA is comfortable with this position.

_____ Agree _____ Disagree _____ Let's discuss

3. Grower Verification

The AgNet description says that the Partnership will determine how a grower's registration will be reviewed; for example, to verify whether the grower is a legitimate business (similar to the worker SSN verification). *America's Job Bill*

Law a 14

Position: We believe that everyone is in agreement that the growers should be verified to determine that they are legitimate. Unfortunately, we have not been able to figure out what database we can verify them against. *AOB*

Recommendation: We recommend continuing to explore this issue. We also recommend informing the grower and worker communities of are intention to

verify growers somehow.

_____ Agree _____ Disagree _____ Let's discuss

4. Access to Job Listings

The AgNet description is silent on whether a grower, worker, or their agent will be required to register in order to search listings in AgNet.

Positions: AgNet is modeled on America's Job Bank (AJB). AJB allows browsing of the system without registration. One could argue that because tax payer money is being used to finance the system, that searching the system should be open to anyone regardless of whether or not they have registered. On the other hand if registration is not required, the system could potentially be used by illegal workers (or their representatives) to learn about jobs and apply directly with the grower. DOL raised this as an issue but did not provide a position.

Recommendation: We recommend requiring registration prior to providing access to search AgNet listings. ~~DPC does not object~~

_____ Agree _____ Disagree _____ Let's discuss

5. AgNet Performance Goals

The AgNet description contains an initial goal to have 10,000 job opportunities listed in AgNet by the end of March 2000.

Positions: We understand that DOL will be objecting to the inclusion of a goal because it views it as premature and incomplete. OMB staff note that including a goal in the description is consistent with previous documents on AgNet – that were developed with DOL. When DPC requested comment in August, DOL (ESA and ETA) did not object to either the inclusion of a goal or the number used in the description.

Recommendation: We recommend maintaining the current goal provided in the AgNet description.

_____ Agree _____ Disagree _____ Let's discuss

6. Linkage to the H-2A Program

The AgNet description says "If the system is successful, use of AgNet for recruitment will be taken into account in assessing the adequacy of a grower's effort to recruit U.S. workers."

Positions: After much debate during a DPC meeting on AgNet, the agencies agreed that if the system worked we would recognize use of AgNet as a legitimate form of recruitment. DOL was represented by ETA at this meeting. The decision was a compromise between ETA's desire not to revise grower's recruitment requirements and OMB's desire to lessen the burden on growers if the system worked. This would not be the only form of recruitment required on growers but could be one of them.

DOL is revisiting the position provided at the earlier meeting. ESA believes that there was agreement not to link AgNet with the H-2A program. In their view, if the decision is to link it to the H-2A program, then the AgNet description should state that it would not meet (on its own) the recruitment obligations in the H-2A program. OMB staff believes that there was a decision to revise the recruitment requirements on growers if AgNet works to allow growers to count use of the system as a legitimate form of recruitment. Recognizing that the current system run by the Employment Service (ETA), accounts for less than 2% of agricultural job placements annually it does not make sense to continue requiring its use if AgNet works.

Recommendation: We recommend maintaining the current position in the AgNet description that if AgNet works, use of the system will be taken into account in assessing the adequacy of a grower's effort to recruit U.S. workers. We do not object to adding a statement that use would not meet on its own the recruitment obligations on growers seeking foreign workers.

_____ Agree _____ Disagree _____ Let's discuss

Feinstein
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Important to job
report language
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USDA

SEP 23 1999

**United States
Department of
Agriculture**

Office of Secretary

Office of the Chief Economist

14th & Independence Ave., SW
Washington, DC 20250

Ms. Irene Bueno
Domestic Policy Council
The White House
Washington, D.C. 20500

Dear Ms. Bueno:

This is in response to your request for suggestions regarding the AgNet proposal.

I believe that AgNet has the potential to be the most significant development in agricultural labor affairs in decades. I am enthusiastic about it, and would like very much to be closely involved with its implementation.

AgNet has such clear advantages to employers and employees that they will readily utilize it once it is ramped up and workers can find a good range of job choices and employers can find workers available.

The overriding principle for AgNet to be successful is for it to be readily accessible to workers, easy to use, contain complete job information, and free of costly impediments to employers.

Employers will be attracted to AgNet because:

SOURCE OF LEGAL WORKERS

Farm employers want legal workers. Employers are acutely aware of INS actions in Yakima, Washington; Vidalia, Georgia; and among Nebraska meat packers where a large portion of the labor force with fraudulent documents was suddenly removed and operations severely disrupted.

Farmers have nightmares about financial ruin due to the inability to harvest their crop. By comparison, the risk of an INS action is small during the short period when illegal workers may be present compared to a greater and certain loss from losing a crop.

SIGNIFICANT COST SAVING AND RISK REDUCTION

Most farm employers lack staff to do remote recruiting and, thus, utilize farm labor contractors when there is an insufficient supply of local workers. This middleman cost and liability is significant

and it could be avoided by recruitment through AgNet. It would be expected that some of the cost saving would result in higher wage offers

MSPA COMPLIANCE

AgNet could facilitate the hard copy delivery of the terms and conditions of employment as required by the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) and establish proof of such delivery. Although this would not be as important as the factors discussed above, it would be useful to employers covered by MSPA.

REDUCE TURNOVER

By linking their own web site to AgNet, employers may provide fuller descriptions of the job, housing, and working conditions thereby avoiding disappointment by workers if the job is different than their expectations. Such information reduces turnover.

Links from AgNet can also enable communication with workers regarding starting dates, directions to the jobsite, information on available rental housing, etc..

Employees will be attracted to AgNet because:

GREATER RANGE OF CHOICES

AgNet, once established, would enable workers to select jobs from among a wide range of opportunities and locations. Farm workers have clear preferences, *i.e.*, some won't do stoop labor; others won't climb ladders; some workers are allergic to peppers, tomatoes, or tobacco; sheep shearing and lettuce cutting require special skills; etc.

AgNet would also enable workers to do comparison shopping for wage rates, better locations, and longer periods of employment.

REDUCE DOWN TIME

AgNet will enable workers to be more fully employed by enabling them to plan a work itinerary or obtain quick referrals following layoffs.

ALTERNATIVE TO FARM LABOR CONTRACTORS

AgNet will provide workers an alternative to exploitative and sometimes abusive farm labor contractors.

ALTERNATIVE TO THE JOB SERVICE SYSTEM

AgNet will provide workers a much quicker alternative to the Job Service system whose offices may be inconveniently located for farm workers.

Other considerations.

A consortium to own and operate the system is a good theoretical concept but may not be a practical way to structure AgNet. Past experience with negotiated rulemaking and joint legislative initiatives indicates this kind of structure may lead to prolonged impasse. It might be better to have a similarly constituted advisory committee make recommendations to an operating entity whose primary interest is in making AgNet function efficiently.

Worker advocate groups to do outreach to educate workers about using the AgNet system has great merit. However, employers will be very skeptical of worker advocates having access to names of a farmer's hires. Without a wall of separation, such an entity would be in an advantageous position to make eleventh hour demands and organize a job action by simply redirecting the target employer's workers elsewhere. If that should ever happen, employers would leave AgNet en masse.

AgNet should be available to workers and employers through any internet connection without requiring processing through an intermediary.

Some facility should exist whereby workers could retrieve messages by telephone when they are hired, changes in starting date, travel directions to the farm, etc.

The system should be open, permitting workers to view directly job listings and employers to view applicant listings rather than having a third party designate which workers should go to certain jobs.

An employer's commitment to hire should be a binding commitment to the worker. For example, employers should not be allowed to secure their workforce at one rate and then shop around to replace them with other workers at lower rates. Similarly, workers should not be allowed to shop for a better job than the one they accepted without first giving up the first job. Some procedure should exist to discourage workers from

Ms. Irene Bueno

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providing false information or for accepting a job and, without notice, failing to show up.

AgNet should be an employment information exchange not connected to the interstate clearance system. The interstate clearance system isn't used by non-H-2A employers because it imposes significant costs and liabilities upon them such a prevailing wage minimum, free housing, guarantees, etc.

AgNet should include the MSPA notice requirements of terms and conditions of employment because they help describe the job offer. Using it should be mandatory for covered employers and it should be deemed sufficient to meet their MSPA obligations.

The system should be designed so that individual workers that desired to stay together as a crew or family unit could do so.

The system should be designed so that when a farmer winds up his crop, the workers could be relisted or a notice posted that x number of workers are becoming available. (I can't think of a good incentive for an employer to do this other than as a perk for workers or in a spirit of cooperation with other employers).

I hope these suggestions will be helpful to you. I would welcome an opportunity to meet with you to discuss these matters more fully.

Sincerely,

A handwritten signature in black ink, appearing to read 'Al French', with a stylized, cursive script.

Al French
Coordinator, Agricultural Labor Affairs

cc: Debra Bond, OMB
Linda Delgado, USDA-OSEC
Keith Collins, USDA-OCE