

H2A MEETING

July 9, 1999

- INTRODUCTION

- LEGISLATIVE UPDATES

- PRESENTATIONS OF AGENCY'S VIEWS
 - LABOR

 - USDA

 - INS

- DISCUSSION

- NEXT STEPS

Administration Progress on H-2A Reform

June 23, 1999

Farm workers are among the poorest and most vulnerable in our society. Average annual earnings of farm worker families are only about \$6,500 and farm workers are employed on average only about 26 weeks per year.

The H-2A "guest worker" program admits temporary nonimmigrant agricultural workers to provide farmers with an adequate supply of laborers during the peak periods in the growing season, if there is an inadequate supply of domestic workers. There is no cap on the number of H-2A visas granted annually. Currently, there are 1.8 million hand-harvest farm workers in the US of which its estimated that approximately half are undocumented. In FY 98 there were 35,000 workers in the H-2A program.

Employer Obligations

Under the current program, in order to hire H-2A workers, an employer must demonstrate to the Department of Labor (DOL) that:

- (a) there are not sufficient U.S. workers able, willing, qualified and available to perform the services; and,
- (b) there will be no adverse effect on the wages and working conditions of similarly-employed U.S. workers.

To meet these criteria, employers are required to:

- ✓ engage in positive recruitment efforts;
- ✓ pay workers the higher of the minimum wage, locally prevailing wage, or an "adverse effect wage rate" (AEWR), the average wage paid to non-managerial agricultural workers in the state;
- ✓ provide free and safe housing to workers coming from outside the commuting area;
- ✓ reimburse workers' inbound transportation if they complete half the contract, outbound also if they complete the contract; and,
- ✓ guarantee 3/4 of the hours of the contract the grower offers; and,
- ✓ hire any qualified U.S. worker who applies during the first half of the work contract.

Administration Principles on Reform

The H-2A program has been heavily criticized by the GAO, DOL's IG, and the Hill primarily due to the administrative burdens placed on growers and its failure to adequately protect workers. As a result, Congress has proposed many different bills to restructure the H-2A program.

The Administration has acknowledged problems with the program and is working administratively (through administrative actions and the regulatory process) to reengineer and streamline the H-2A program to ease application burdens while maintaining strong worker protections. The Administration does not believe that legislation is necessary or appropriate at this time.

The Administration's guiding principles in reforming the H-2A program are to create a system:

- ✓ with procedures that are simple and the least burdensome for growers;
- ✓ which assures an adequate labor supply for growers in a predictable and timely manner;
- ✓ that provides a clear and meaningful first preference for U.S. farm workers and that diminishes reliance on foreign workers; *No b/c lower wages & legalization*
- ✓ which avoids the transfer of costs and risks from businesses to low wage workers; *yes - lower wages*
- ✓ that encourages longer periods of employment for legal U.S. workers; and, *no*
- ✓ which assures decent wages and working conditions for domestic and foreign farm workers, and that normal market forces work to improve wages, benefits, and working conditions. *no*

The Administration is committed to improving the H-2A program to assure growers of an adequate, predictable labor supply while protecting U.S. farm workers who are among the poorest and most vulnerable in our society.

FY 2000 Budget Initiative

The President's pending Budget requests \$10 million to fund America's Agricultural Labor Network ("AgNet") that would benefit growers and workers by having an efficient alternative mechanism to match workers with employment opportunities. AgNet would serve as an information broker through an electronic system that allows both growers to find workers and workers to find employment opportunities that meet their needs (e.g., location, duration, type of crop, etc.).

H-2A Regulatory Reform

DOL will soon publish a final regulation that will complete an earlier proposal to:

—reduce the length of time that employers must file an H-2A application from 60 to 45 days before the date when employees are needed;

—reduce the deadline for when employer-provided housing must be available for inspection before the date of need; and,

—modify the requirement that certified H-2A employers provide notice of the exact date on which H-2A employees have departed for the place of employment.

INS will soon issue a final regulation that will complete an earlier proposal to delegate H-2A petitioning authority to DOL. This proposed change would significantly reduce the burden to growers when filing for H-2A workers by removing an entire step from the current process.

DOL has also made additional administrative changes to the H-2A program such as modifications to the positive recruitment requirement. DOL intends to consistently meet the existing 20 day deadline to issue approved certifications for growers.

H2A Meetings

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**H2A MEETING
JUNE 29, 1999**

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[illegible]

(3)

USDA - ~~#~~ Need to make positive proposals.
Do we want change?

John F. Consensus

Want ^{US} legal workers to work more

Want temporary worker

Want illegal workers to not be illegal.

Have not dealt w/ legalization

John F - Ag Net = Registry - need to deal w/ that.
If get \$.

- Decision ~~on~~ paper

- INS develop a broader agency

(X) Barbara will get back to me.

Casline 180 Days - is very high, coercive behavior

IRCA - did not ~~&~~ illegal immig.

mtg w/ Maria Elena - 7/15/79

Bracero - use of this word concerns - indicates Mexico is somehow involved.

Concerns w/ Graham/Wyden

Attending meeting w/ Demetris - Staley - closed door mtg.

Canadian - Mexico agreement 5000 ~~in~~ ^{at} people but will not grow. Mexican govt recruits pay more, assume we put alot into training limited amount of people minimum wage based on position & type of worker housing - required & meet min. std.

H2A - recruiters go to Mexico to recruit \$300k - 1000k people ^{recruited} workers are afraid to complain. Embassy help to find white

concerns

Wage -

Transportation - fine

Housing - voucher
F

Legalization - want to protect ~~and~~ Mexican ~~rights~~
INS - DOL - MOU - limited b/c ^{no} ~~can't~~ more w/ state Govt
Helping DOL about worker rights
Card for workers

H2A Workers - to help them

HZA - ~~OK~~ 7/19

- Q: Is there an ~~INS~~ ~~proposed~~ legislation program we would support?
- A: - Does not stop illegal immigration
- Short-term solution
- Q: What do we do?
- A: INS - worksite enforcement
Labor -
Foreign Policy
- Q: Proportion of farmworkers
5th million Undocumented - at least 12 month after
visa expired
- A: May be a largest concentration
- Q: Ferris - not inclined to do it but wants more
info on legislation.

Update - Bob Graham - is working on legislation right now
- Legislation
- HZA reform
- Labor ~~to~~ Law Reforms -

Other things:

- (1) INS Reg - transfer of authority -
- (2) Final DOL Reg -
- (3) Employment Pilot - Iowa, NE, (5) - states -
- Pilot - bottom of the list
- Unemployment in agricultural area - ~~experience~~
- Inappropriate recruitment
- # of ~~at~~ INS in the pilot 2800-3800 in the pilot

Coverdell - want to restructure this process - emp. sometimes been for ~~spies~~
Collected them numerous times but no response. ^{could not not}
WASHINGTON - Gov. Locke - trying to negotiate w/ gringos - over time before housing, transport ^{to before}
Chapman - no apple giving - ~~Team~~ filed a complaint w/ US... at the behest of Mexico ^{Chap.}
Govt.

- # of agricultural work site enforcement - in the GAO report -
small #s.

- Smuggling.

AG NET - many design problems -

- Verification - ~~not~~ there are limitations ^{war} when their vehicle
• need further discussion ^{computer doant,}
• ^{immediacy} - chilling effect -
- involve other agencies - civil rights, ag, SSA,

- This would be the only job bank that union.

- Feinstein - need some level of assurance to legal.

next mtg.

LabortHHS - mark up

Mexico doing a report.

John Fraser - putting together

Int'l conference - paired w/ Sec.

Erism Gang

(1)

- Introduction

- Legislative Update

- Maybe CJS

- Grower's Proposal

- House - by Lamar Smith

DOL

~~603~~
legis

- Exclusion of H2A

- Referral to only geographic areas

- Sole means of recruitment

- Another obligation?

- Sanctions agt registers els but not ex

Recruitment

Eliminate SB 90 -

Employ State

Lower wage later - AEWK

No housing, transportation - shift from private to govt

shifting

Eliminating 3/4 rule -

Transportation is same last year ~~from~~ 6 L/Wyden

Changes

- Graham/Wyden - FICA will go to program, not to housing

- No longer part of hiring

- Housing ~~allowance~~ is required

(2)

Community Distance having = What's the area?
Distant voice -

Transition housing ~~is~~ = vaguer b/c study work out

Legalization

- Fairness -

- Rewarding Illegal Behavior -

Fairness. 900K of the 6.5 million illegals giving them an immigration benefit.

Not fair to 3.6 in the backlog - legal family ~~benefit~~ reunification - allowing them to jump ahead in the line

Rewarding Illegal Behavior by ER + ~~3~~ farmworkers

- Not the debt

- Reaching back

- IRCA

- Don't reach back instead moving forward. Last year, USDA legal - more forward than who in
Avoid IRCA bar

INS

- Lessons of IRCA

- This will not stop illegals or residence legal workers.

- This kind of proposal could exacerbate the problem b/c they have more time w/ ~~res~~ US residence

- Families - is silent - means - long term separation b/c of backlog caused ~~to~~ ~~the~~ IRCA or they will come with family illegally

(3)

Legal Immigration

- 2nd Prof. backlog - immediate only for LPRs - serious problem - Jordan Comm.
- World closed up again
- Could import other ~~for~~ country.

Becoming a non-migrant - is unlimited

Anomaly to have ~~caps~~ no caps

Quota ~~cap~~ on adjustment - ~~if~~ you become stuck as a agricultural worker, can't buy family, ~~can't~~ ^{time does not go toward} ~~become~~ naturalized time -

Nats important b/c reduces 2nd prof. backlog.

Questions

- 2 categories of ~~all~~ ^{all immigrants in US} non-migrant - unclear
- Grant ~~adjustment~~ - US citizen child - nothing ~~that~~ ^{now} used now for surprise - ^{should be no benefit}
- Fraud.
- 6 month window to ~~app~~ apply - would not know when starts b/c linked to work history - Odd.
- Ground ~~inad~~ inadmissible - don't apply
 - IR 1RA - 4/1/97 - if you are unlawful 180 days but less than 365 - 3 year bar
 - + 365 day - bar 10 years
 - All other grounds of inadmissibility - unlawful entry, lack of visa, labor cert, voluntary departure,

Backlog - workload

Adjustment of Shift

NACARA

Driving price legal labor shortage

Examples of Legalization

- Registry - 1972
- SACS
- NACARA
- HELFA

Worksite Enforcement - priority

What do w/ this population

Registry check data sets not identity - currently a problem. Fraud adapts the system. Status can change

Wyden/Graham 1st proposal - no ~~thought~~ view on legalization

GROWER'S PROPOSAL – POLICY PROCESS

- ◆ On June 17, Barbara Chow, Brian Kennedy and Irene Bueno met with Rich Schwartz and the grower's representatives – Tony Podesta and Charles Hansen. We agreed to review the proposal and to get back to them shortly.
- ◆ The grower's H2A reform proposal is similar to the Graham/Wyden proposal from last year but with an added legalization component. Attached is a side-by-side for your review.
- ◆ DPC organized three meetings to discuss the grower's proposals on June 29, July 9, and July 19.
- At the June 29th meetings - Agencies were provided copies of the grower's proposal and asked to develop their views. I also gave copies of the Administration's principles on H2A reform that was established last year. The Administration's guiding principles in reforming the H-2A program are to create a system:
 - ✓ with procedures that are simple and the least burdensome for growers;
 - ✓ which assures an adequate labor supply for growers in a predictable and timely manner;
 - ✓ that provides a clear and meaningful first preference for U.S. farm workers and that diminishes reliance on foreign workers;
 - ✓ which avoids the transfer of costs and risks from businesses to low wage workers;
 - ✓ that encourages longer periods of employment for legal U.S. workers; and,
 - ✓ which assures decent wages and working conditions for domestic and foreign farm workers, and that normal market forces work to improve wages, benefits, and working conditions.
- ◆ On July 9th, the agencies presented their views of the grower's proposal (see below).
- ◆ DOL objects to the grower's H2A reform proposal for the following reasons:
 - Establishes a registry that would limit grower's obligation to seek US workers before seeking foreign workers and transfer the obligation to recruit workers from the employers to the federal government.
 - Eliminates the 50 percent rule, which currently requires employers using nonimmigrants to hire US workers within the first 50 percent of the period of employment.
 - Require that employers only hire US workers who are referred by the registry.
 - Eliminates the current wage requirement (AEWR) and establish a formula that could result in lower wages for workers so long as the aggregate receipts of workers in a group average at or above the minimum wage.
 - Eliminates minimum health and safety standards for housing.
 - Eliminates the three quarter guarantee that is intended to assure workers who travel long distances for a short-term employment are guaranteed work for a period of time.

DOL also objected to the legalization proposal for the following reasons:

- Rewards illegal behavior of unauthorized workers and the employers who hire them.
- Bind workers to employment in agriculture and prohibit their employment in other sectors for at least five years and possibly up to seven years. *} similar to H2A*
- Unfair to give agricultural workers preference over other immigrants who are similarly situated (e.g. restaurant workers, domestic workers, etc.).

◆ INS opposes the grower's legalization proposal for the following reasons:

- The legalization proposal is fundamentally at odds with the Administration's views in many areas and does not serve as a basis for fruitful negotiation.
- The proposal will not have a long-term impact on the number of undocumented immigration. Our experience with the IRCA legalization program indicates that there is an initial drop in the resident illegal population, but it is followed by an increase due to entry of new undocumented workers. In fact, legalization contributes to undocumented immigration by creating and reinforcing networks between workers in the U.S. and their home communities
- Furthermore, the undocumented workers are likely to be joined by undocumented family members during the 5-7 year period before the workers are eligible to adjust to LPR status.
- Even after adjustment, they will have to petition for relatives to join them under second preference. A large backlog now exists in second preference due to the IRCA legalization program. The bill makes no provision for families, contemplating either (i) separations of 7+ years among nuclear families, or (ii) illegal "family reunification" in the U.S.
- If quotas on adjustments are imposed, these workers can be stuck in nonimmigrant status through no fault of their own, limited to work in the agricultural sector, and with otherwise limited rights (e.g., duration of stay in the U.S., ability to reunite with family, access to public benefits, accruing time towards naturalization, etc.).
- With respect to the proposed H-2A reforms, INS does not believe that immigration should be the first response to worker shortages. Therefore, INS questions why an employer should have access to foreign H-2A workers without exhausting options under the registry to recruit special agricultural nonimmigrants nationwide.

◆ AGRICULTURE DEPT– made general statements in support of H2A reforms and asked that instead of opposing proposals that we try to develop proposals to address the issues that growers have raised. Others who have been involved in this process indicated that we have had extensive discussions about other proposals and have followed through with some of those recommendations i.e. DOL regulations, delegating INS responsibilities to DOL, and AgNet and that we should try to follow through with those proposals and strengthen AgNet.

- At the conclusion of the meeting, we had consensus that we recommend that the Administration oppose the grower's H2A proposals because they violate Administration's principles. On the issue of legalization, we asked INS to go back and to think about whether there could be any kind of legalization proposal that they would support.

◆ On July 19, INS reported back that there are no circumstances or type of legalization program they could support and there was consensus that the Administration would not support the

grower's legalization proposal. Agriculture was not represented at this meeting but Irene called to confirm their position.

- ◆ With regard to next steps, we indicated that we would consult with others in the White House and then present our views to the grower's representatives and Rick Schwartz. Barbara Chow expresses willingness to call them to communicate our views. (Irene has spoken to Bruce and he is agreement with our views).
- ◆ (FYI - On July 16th, OMB and DPC hosted a meeting to try to determine if verification could be part of the AgNet proposal. Feinstein is supportive of the AgNet proposal but believes that verification must be part of it. As expected, verification is very complicated and future meetings are required to resolve this issue.)

7/22/99 2:14:10 PM

mtg. 8/2

① Workers Rights - Vulnerable.
(QOE = similar to SAWs. Groups let out \$ to legalize)

② Signal to ^{ILU} ~~Immig~~ ~~Immig~~ ~~Immig~~
know there's a problem
Solving an eco need.

Let mkt control - ~~non-mng.~~

③ Social Security issue - has had an input - mismatches - to correct - driving the process.
INS Gen. Counsel - constructive notice

③ Framework ~~DOES~~

④ Registry - order piece - for adjustment, replace labor cert., recruit,
trying to simplify the cert. process.

⑤ Groups

Unions like adjustment

Next Steps

- Dismissal of Berman, ^{Feinstein} CHC, NCLR, etc.

- Give specifics

- Get it all made

Tu - Th

7/8/99

INS Views on Draft Discussion Outline – H-2A Reform and Adjustment of Illegal Agricultural Workers

- INS believes that the proposal is fundamentally at odds with the Administration's views in many areas and does not serve as a basis for fruitful negotiation.
- The proposed legalization program for agricultural workers will not have a long-term impact on the number of resident illegal aliens in the U.S. Experience with the IRCA legalization program indicates that there is an initial drop in the resident illegal population, but it is followed by an increase due to continued flow of new illegal aliens who are drawn to the U.S. for jobs.
Does not stem # of illegals
- In fact, legalization contributes to illegal immigration by creating and reinforcing networks between workers in the U.S. and their home communities.
(?) contribute
- In particular, nonimmigrant workers are likely to be joined by undocumented family members during the 5-7 year period before they are eligible to adjust to LPR status. Even after adjustment, they will have to petition for relatives to join them under 2d preference. A large backlog now exists in second preference due to the IRCA legalization program. The bill makes no provision for families, contemplating either (i) separations of 7+ years among nuclear families, or (ii) illegal "family reunification" in the U.S.
3rd backlog
- The bill increases the likelihood that illegal agricultural workers will settle permanently in the U.S., rather than return home to Mexico. Traditionally, illegal agricultural workers "age-out" and settle out of the flow, to be replaced by younger workers.
- INS notes that the population to be legalized will be disproportionately Mexican. This is likely to affect family unity down the road, when workers adjust and petition for relatives, and then face the per country limits. Although INS has not done an analysis of the 2d preference backlog in connection with this proposal, we anticipate that it will increase the waiting time for all nationalities.
- There is no principled basis for exempting this agricultural worker population from the numerical limits generally applied to employment-based legal immigration, and to unskilled workers in particular. Now, "immediate relatives" – i.e., spouses, parents, and minor children of U.S. citizens – are numerically unlimited, in recognition of the importance of such close family bonds. Exempting these agricultural workers from numerical limits may undermine the Administration's effort to retain numerical limits in other employment-based categories, such as skilled H-1Bs.
(1) no principled basis for exemption from numerical limit
- On the other hand, if quotas on adjustments are imposed, agricultural nonimmigrants can
(5)

(3) Should be stuck in nonimmigrant status through no fault of their own, limited to work in the agricultural sector, and with otherwise limited rights (e.g., duration of stay in the U.S., ability to reunite with family, access to public benefits, accruing time towards naturalization, etc.).

In general, permanent, employment-based immigration is not targeted to one sector of the economy, such as agriculture. This targeting should be justified.

- It is inconsistent to say that nonimmigrants “establish a permanent residence” in the U.S. By definition, nonimmigrants don’t permanently reside in the U.S. What does the draft outline mean by “establishing permanent residence”? In addition, it is unprecedented and unwise to condition favorable immigration treatment on having a U.S.-born minor child. There are limited circumstances under which a relationship with a U.S. citizen child may be taken into account for immigration purposes, e.g., suspension/cancellation of removal, but it is not the basis for per se favorable immigration treatment.
- The proposed registry system cannot effectively identify legally authorized workers, for two primary reasons. First, a registry can only match data elements, it cannot establish identity. Thus, it cannot prevent an unauthorized worker from using valid data that pertain to another person. In addition, since aliens work eligibility often changes over time, a status check performed at the time of registration does not guarantee that the worker is legally authorized to work at a later date of employment.
- With respect to the proposed H-2A reforms, INS does not believe that immigration should be the first response to worker shortages. Therefore, INS questions why an employer should have access to foreign H-2A workers without exhausting options under the registry to recruit special agricultural nonimmigrants nationwide.

If a program such as the outline proposes were to be adopted, INS raises the following specific concerns:

- Given the experience with the SAW program, INS would be interested in reviewing more specific safeguards against potential fraud in the proposed legalization program.
- If legalization is adopted, there should be a cut-off date for applications for nonimmigrant status.
- Employers should not be eligible to petition for a worker if they previously knowingly hired or continued to employ the worker illegally.
- It is unclear why the draft outline limits these agricultural nonimmigrants to a 6-month window to adjust status, and imposes severe penalties for missing the window. As a practical matter, INS would not know when this window begins – i.e., when the

nonimmigrant has worked in agriculture a minimum of 8 months in 5 of the 7 years after becoming a nonimmigrant. Even if there were a mechanism to alert INS when the 6-month period had elapsed without an adjustment petition being filed, it would be extremely labor-intensive for INS to locate and remove such agricultural nonimmigrants. Moreover, due to their significant periods of legal stay in the U.S., such aliens are likely to have established substantial equities that will make their removal unpalatable in many cases.

- The outline's reference to the "IIRIRA bar on receipt of immigration benefits" is unclear, but it presumably is intended to waive the bars to admission that apply to accumulations of "illegal presence" in the U.S. – 3 years (180 days) or 10 years (365 days). Absent other exemptions, it is likely that many illegal agricultural workers would still be found inadmissible. Grounds of inadmissibility include, for example:
 - lack of labor certification (212(a)(5))
 - unlawful entry (212(a)(6)(A))
 - lack of immigrant visa (212(a)(7)(A))
 - previous removals (212(a)(9)(A))
- INS does not currently produce a work-authorization document that is sector-specific – e.g., agriculture only. There are currently two types of work-authorization documents – open-market and employer-specific. It would take time to design and create such a sector-specific document and to educate all employers (not just the agricultural sector) about it. Moreover, with strong congressional backing, INS has been working to reduce the number of acceptable work-authorization documents over several years. Introducing a new card would run counter to this general effort.
- Processing legalization applications would represent a substantial new workload for INS when it is currently facing adjudication backlogs in core programs, as well as facing surges in applications due to recent legislation including NACARA and HRIFA.

– DRAFT July 9, 1999, 11am DRAFT –

**U.S. Department of Labor Views on
1999 “Growers’ Proposal” for H-2A Reform**

Legalization Scheme

Any consideration of a legalization proposal must seriously evaluate the issue of fairness. The demand to immigrate to the U.S. greatly exceeds the supply of visas. There is a backlog of over 3.6 million persons already qualified for a visa and waiting for visas to become available. There are not enough visas available to reunite legal permanent residents with their spouses and children, yet this proposal would reward people who violated U.S. immigration laws by giving them a special allocation of visas. There seems little justification for giving low-skilled, low-wage workers who have violated U.S. immigration law such preferential treatment.

The Department is concerned about a legalization scheme that rewards the illegal behavior of unauthorized workers and often the employers who hire them. Such a scheme is particularly ill-advised given that in 1996, Congress passed a law penalizing aliens who had been in the U.S. without legal status by making them inadmissible for some period of time. Now, this proposal contemplates rewarding – with legal permanent resident status and eventual citizenship – the very individuals who chose to disregard the 1996 law. At the same time, an individual who was once in the U.S. illegally, but decided to go back to their home country rather than become inadmissible, would not qualify for legalization. Such a reversal sends a perverse message to future unauthorized migrants.

The Department also has serious concerns about a legalization scheme which would bind individuals to employment in agriculture and prohibit their employment in other sectors. Such a scheme would give agricultural employers immense bargaining power over newly legalized workers in terms of wages and working conditions, since the workers would be entirely dependent on these employers to offer them work in order to maintain their livelihood, their newly-obtained legal status, as well as their eligibility for eventual permanent resident status.

This particular proposal allows workers to remain in the U.S. for 10-12 months each year – whether employed or not. However, they can only work in agriculture. During this time, they are ineligible for public assistance and unemployment insurance¹ (though the taxes that support such programs would still be paid), even if otherwise entitled under State law. Furthermore, the worker's last agricultural employer is under no obligation to provide transportation to the home country. This is an unwarranted restriction on the workers' ability to feed, clothe, and house themselves. In addition, it relieves agricultural employers of any responsibility for the workers' continued presence in the U.S., or for any adverse impact on local communities which will have to deal with poor, unemployed, homeless legal nonimmigrants.

Under this proposal, the new nonimmigrants are restricted to employment in agriculture, and can only adjust to permanent resident status if they work at least 1040 hours or 180 work days (6 - 9 months) – or, in the case of those with U.S. born minor children, 8 months – in 5 of the 7 years following their adjustment to nonimmigrant status. This annual employment threshold is very high for agricultural employment – current employment in agriculture averages just 31 weeks a year.² In addition, they are required to work exclusively in agriculture for many years. If agricultural employers are concerned with losing workers once they have legal status, then the solution lies not in indenturing these migrants, as this proposal does, but in improving the wages and working conditions of the poorest of America's working poor.

Registry

The Department of Labor strongly opposes several provisions of the proposed Registry.

¹ Presumably to encourage them to work more in agriculture, or leave the country (and avoid the problem of public opposition based on their access to taxpayer-supported benefits).

² This average includes the most settled farmworkers, who work full-time, year-around in nurseries or other long-term work. However, due to the seasonality of agricultural employment, many workers find far fewer weeks of work than this average might initially imply.

1. Its exclusion of “traditional H-2A” workers. What is the rationale or justification for their exclusion? These are, after all, the workers who have complied with U.S. immigration laws to do agricultural work in this country.
2. Limiting referrals of the new nonimmigrants “within a prescribed geographic region.” Any limit on linking these workers to jobs is entirely unreasonable when they are restricted to only agricultural employment and are required to work 6 - 9 months a year.
3. The registry takes the dramatic step – unprecedented in any industry – of transferring the responsibility for recruiting workers from the employers who need them to the federal government, at taxpayer expense.
4. The proposal limits the agricultural employer’s recruitment efforts to use of the Registry and advertisement in the local labor market. If these minimal efforts are unsuccessful, the employer is eligible to recruit abroad and bring in additional agricultural guestworkers.
5. Unspecified sanctions against workers who fail to report for a job found through the Registry, and no sanctions against employers who refuse to employ workers referred through the Registry.

Application, Recruitment and Referral of Workers

The Department of Labor strongly opposes the elimination of the “50 percent rule” which currently requires agricultural employers using nonimmigrants to hire U.S. workers within the first 50 percent of the period of employment. Only those U.S. workers referred through the Registry, presumably before the date of need, must be considered for employment by employers seeking foreign guestworkers. Forcing U.S. farm workers to use the untested Registry and precluding them from any preferential treatment when they contact employers directly for employment is likely to result in increased unemployment among lawful U.S. workers.

Employment Standards and Other Provisions

The Department of Labor strongly opposes:

1. The elimination of the current requirement to pay foreign guestworkers the higher of the State or Federal minimum wage, the prevailing wage, or the adverse effect wage rate (AEWR).
2. The ability of the employer to pay individual workers below the minimum wage so long as the aggregate receipts of workers in a group average at or above the minimum wage. This would sanction the payment of subminimum wage to individual workers and would be difficult if not impossible to administer. It also offends a fundamental principle incorporated in sixty years of law under the Fair Labor Standards Act – that each worker is assured the payment of at least the minimum wage.
3. The apparent elimination of the minimum health and safety standards for housing and the elimination of the obligation of employers of newly-adjusted nonimmigrant workers to provide worker housing.
4. Shifting responsibility for transportation reimbursement from the employer to the government. It would create an administratively complex system whereas the current direct reimbursement system has proven to be efficient and effective.
5. Elimination of the current “three quarter guarantee.” This is intended to assure low-wage workers who travel long distances for short-term employment are guaranteed work (or pay) for a reasonable period of the promised employment period. The guarantee is also intended to reduce the incentive to recruit more workers than the employer can reasonably use.

H2Ameeting.709

H2A MEETING

HISTORY

Last year we oppose legislation b/c

- 2 bipartisan Commissions (Commission on Agriculture & Comm on Immig Reform) recommended against it
- no labor shortages – GAO report – perhaps there is localized shortages areas
- ① - weaken worker protections for US workers
- ② developed a H2A reform proposal to address these issues – reg changes, transfer of authority from INS to DOL

GROWERS PROPOSAL-

Major differences from last year:

- Wage structure different – worse
- Positive Recruit - better
- Housing – unclear if better than worse than last year but definitely worse than current law. voucher available is state certifies there is housing. If no housing available, there is a “transition period” for growers to provide housing – unclear what this means. Last year bills, - employers are still permitted to charge utilities and maintenance; employer provided rental or public accommodations need not comply with any standards. Employer provided tents must comply with federal standards.
- Legalization proposal – worse

Major Objections

- Continues to eliminate worker protections – wages, ¾ hour rule, registry, (hire any qualified US worker who applies during first half of the contract?)

DOL

- Can we do anything to beef up the AgNet

INS

- What do we do about the large undocumented population?
- will increase the number of undocumented immigrants
- will increase to the backlog for 2nd preference for all nationalities
- No basis to exempt agricultural workers from numerical limits
- If quota met, immig could be stuck in nonimmigrant status at the no fault of their own, limited to work in certain areas, and other limited rights
- Registry – cannot establish identity. Also, status changes.
- Administrative difficulties in implementation and suggestions

USDA

- How does paying foreign workers lower wages help U.S. workers

OPPOSE b/c:

H2A REFORM

- does not meet certain Administration principles for reform
 1. does not provide clear and meaningful preference for US farmworkers and does not diminish reliance on foreign workers;
 2. does not avoid transfer of costs and risks from business to low wage workers;
 3. does not encourage longer periods of employment for legal U.S. workers;
 4. does not assure decent wages and working conditions for domestic and foreign farmworkers, and that normal market forces work to improve wages, benefits and working conditions.

LEGALIZATION

- ② No compelling reason
- ① will increase the number of undocumented immigrants
- will increase to the backlog for 2nd preference for all nationalities
- No basis to exempt agricultural workers from numerical limits
- If quota met, immig could be stuck in nonimmigrant status at the no fault of their own, limited to work in certain areas, and other limited rights

③ unfair
other undoc. workers
others who are playing by the
rules - why in line

H2A ISSUES

June 29, 1999

INTERNAL DISCUSSIONS ONLY

PURPOSE

- develop position on H2A proposals particularly on the legalization provisions as well as the revised Graham/Wyden provisions (Schwartz proposal)
- and to discuss should we offer some type of alternative (consistent with our principles) – to give something that is good for workers, help growers.

BACKGROUND

Current Proposals:

1. Administration proposals
 - Regulation reform
 - Ag Net
2. McConnell Amendment part of Senate Ag Approps – we oppose, conference strategy
 - certification days 60-45 days
 - reduce recruitment period from 20 days to 3-8 days
 - does not include delegation from INS to DOL
3. Feinstein – interested in something but not H2A reform but seems open to legalization (perhaps GAO recommendation)?
4. Others - Wellstone, Kennedy - ?
5. Graham/Wyden – of last year (may offer to CJS)
6. Schwartz proposal (see summary, Goldestein's concerns)

DISCUSSION OF THE SCHWARTZ PROPOSAL

Legalization

- concern that this provision could be dropped when it goes to the House as it did last year
- Administration – can be argued that Administration has supported legislation but in a very limited context where there was strong foreign or humanitarian reasons to support – NACARA, HRIFA,

- If oppose, we would need to distinguish those situations from the proposed legalization program that is being proposed for a economic purpose (source of cheap labor), could lead to larger problems (fraud) and to very limited extent to help those undocumented workers who are here.
- Under what circumstances if any would be support.

STRATEGY

If we oppose, discuss strategy

- Stats and Documents to substantiate our position.
- Target key members to lead
- Work with groups
- Briefings for all

NEXT STEPS

- FINALIZE OUR POSITION AND COMMUNICATE THOSE CONCERNS
- ADMINISTRATION ALTERNATIVE – something to be for, update accomplishments document
 - Fight for worker enforcement funding ?
 - Strengthen AgNet – include verification?
 - GAO proposal – 7 day statutory change?
 - H2A Labor Reg
 - H2A INS Reg on delegation

PAPER

- Accomplishment
- SAP for McConnell
- Letter and SAP for Graham/Wyden

LEGALIZATION/H2 REFORM PROPOSAL

Legalization

Non-Immigrant *(avoids grant) allows in to enter US.*

- Establish a legalization program that provides an undocumented farmworker with non-immigrant temporary status if they can demonstrate that they have worked in agriculture in the US for 180 days (1040 hours) during the 18 month period beginning 12 months prior to the date of enactment.
- Employer must petition for the worker or worker may apply through a QDE.
- They are permitted to stay in the US for up to 10 months in year and are free to depart and leave within this time period.
- If they have a US born children they will not be subject to this 10 month limitation.
- Ineligible for welfare and unemployment insurance (what about worker's comp?)
- Can work anywhere in the US but only referred through the registry within a region
- Cannot work outside non-ag (Ag defined includes meatpackers, etc)
- ER must apply with employment laws but no special protections for these workers.
- Worker subject to FICA and FUTA = US workers

- IIRCA waiver. ~~ER~~ less restricted than H2A not subject to ext'l program

Adjusted to LPR

- To be eligible for permanent resident status, non-immigrant temporary worker must work at least 180 days each year for 5 years of the 7 years following the adjustment to non-immigrant status. (this guarantees that they work in agriculture for at least 5 years). *not part of SAN*
- For non-immigrants who are not subject to 10 month restriction, are required to work in agriculture for 8 months in 5-7 years but no work hour equivalent.
- ✓ - Must apply for adjustment within 6 months of qualifying or will lose their status and subject to removal.
- After qualify for LPR – they will be given temporary resident alien status until they are adjusted to LPR *b/c they have reached quota.*
- Annual quota on number of workers who can adjust. Workers who were approved for adjustment will get priority for the next year. If worker works more hours in agriculture then are eligible for higher priority (extra credit?).
- Outside the per country quota.
- Ineligible for welfare (what about worker's comp?)
- The proposal does not automatically confer permanent legal status to undocumented farm workers to reduce fraud and to ensure that the newly legalized worker would stay in the agricultural for a certain period of time.

- 0

H2A Reform Side - The proposal seems very similar to Wyden/Graham but housing requirement has changed slightly and affirmative recruitment - employers would be required to recruit affirmatively.

Registry

- Worker registry = substitute for certification = Government would run the registry and verify immigration status.
- Worker listed would be US workers, adjusted non-immigration who want to be listed but not H2A workers.
- US workers would have preference for jobs throughout the US. Adjusted are only referred to jobs in a certain region.
- As a condition of being referred and determining eligibility, registry will be required to contact workers, determine if they are interested and get a commitment
- If adjusted fail to report for registry job that they made an affirmative commitment, they would be sanctioned (What do we do for H1B? What happens if employers renege?)
- Applicants for H2A workers are required to use registry but open to other US employers.
- ER may require their new hired to go through the register to verify employment. (I think this negotiable).

Application, Recruitment and Referral of Workers – similar to last year except

- H2A employer required to file application with registry at least 28 days from date needed (we propose 45 days)
- Emergency application process permit applications after normal filing date
- Affirmative recruitment required – advertise their jobs through the registry in publications in the local labor market
- H2A applicants must accept all qualified US workers who make a commitment and the adjusted immigr.

Employment Standards

- Wage provisions similar to last year but clarify language to provide that when a piece rate is paid & average hourly earnings of piece rate workers taken as a group are below hourly earnings of state workers (current AEWR), they would only be required to assure that worker's hourly earnings, taken as a group would increase 5 % or less to bring it to the group's AEWR???
- Housing provision – similar last year except state would make determination if there is *Shall each be* adequate ~~housing if not~~, then a housing allowance *required* ~~permitted~~ (state has a conflict of interest, eg WA, what does the housing allowance get you – if there is substandard housing available)
- Transition period for required housing
- Commission will study the problem and report to Congress
-  Transportation reimbursement from last year's bill – what were they?
- Cost-based user-fee (what's this?) *problem last year*

MISC

- Enforcement program to improve knowledge of labor laws focused on bad actors – industry wide
- Bilateral commissions with sending countries – to do what?

SEPARATE LEGISLATION

- Correct FmHA ban on occupancy of immigrants of housing assisted by FmHA financing (why not in this legislation)
- Provide tax credits for construction of housing.

~~MISS~~ Do I put

Not required to pay minimum wage

No 3/4 guarantee

No 50% guarantee

Importation fee paid by Govt for cost. bond.

Recruitment

Housing -