U.S. Department of Agriculture
Office of the Chief Economist
Room 112-A, Jamie L. Whitten Federal Building
Ag Box 3810
1400 Independence Avenue, SW
Washington, DC 20250-3810
Phone: (202) 720-5955 (Collins)
(202) 720-4164 (Collins)
(202) 720-6185 (Glauber)
FAX: (202) 690-4915

To
Irene Bueno 202-456-~~55~~581

From			
	Keith Collins		Larry Salathe
	Joe Glauber		Adela Backiel
	Jim Schaub		Carol Goodloe
X	Al French		Ginny Taylor
X	Shirley Brown		Margot Anderson

MESSAGE

Number of Pages (including cover sheet) 5

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 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,

Al French

Al French
Coordinator, Agricultural Labor Affairs

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

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 <u>no cap</u> 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.

US worker intrastate - interstate
Labor Certification < recruitment < ~~St~~ State labor > US employment service

Employer Obligations

Petition - ~~to~~ INS -
Worker or worker agent.

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. ≈ 50% rule
- ✓ worker compensation offered.

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;
- ✓ which avoids the transfer of costs and risks from businesses to low wage workers; (by not providing housing, transportation)
- ✓ 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.

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~~ 6/29/99 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.

FARMWORKER JUSTICE FUND, INC.
1111 19th Street, N.W., Suite 1000
Washington, D.C. 20036
(202) 776-1757
Fax: (202) 776-1792
e-mail: fjf@nclr.org

FAX COVER SHEET

Please Deliver to:
Irene Bueno

Fax #: 456-5581
Company: Domestic Policy Council

From: BRUCE GOLDSTEIN

Pages: 5

Message:

This confidential memo about the growers' new guestworker ideas is being re-sent to some due to a computer glitch that excluded the final page.

Hopefully the typos are gone from the earlier fax.

FARMWORKER JUSTICE FUND, INC.
1111 19th Street, N.W., Suite 1000
Washington, D.C. 20036
(202) 776-1757
Fax: (202) 776-1792
e-mail: fjf@nclr.org
Bruce Goldstein
June 24, 1999 pm

MEMO EXCLUSIVELY FOR FARMWORKER ADVOCATES
DO NOT CIRCULATE

AGRIBUSINESS PLANS *TWO* NEW GUESTWORKER PROGRAMS

Agricultural industry lobbyists are circulating an outline of the guestworker legislation that the fruit, vegetable, tobacco, poultry processing and meatpacking employers apparently plan to introduce as an amendment to an appropriations bill.

FJF has obtained a copy of this outline. These are our *preliminary observations* about the growers' outline (which may or may not accurately represent what the growers place in their legislative language).

The devil is in the outline; we do not even know much about the details yet. By removing labor law protections and allowing employers to flood the labor supply with vulnerable guestworkers, this proposal would exacerbate the serious problems farmworkers currently experience. The growers' proposal should shock the conscience of all rational people. Not even the protections of the notorious *bracero* program are being offered.

The grower-led effort would create two new guestworker programs.

First Program: Guestworkers With No Labor Protections

- The first program would give guestworker status – "temporary nonimmigrant status"
- Employers could apply to hire undocumented farmworkers who they have been hiring and provide them with this guestworker status. Thus, employers could control much of this eligibility process, deciding who is in and who is out.
- Workers who have been working in an undocumented status recently could apply for such guestworker status but would have to prove previous work experience.

- The only eligible workers would be those with proof of 180 work days (or 1040 hours) in agricultural work during the 18 months beginning 12 months prior to the date of enactment

- The guestworkers would be permitted to work at any employer (that would accept them) in agriculture, but not outside agriculture.

- **there would be no labor protections in the law** against employers exploiting the vulnerable guestworkers or against employers using the program to undermine farmworkers' wages and working conditions. Thus, every single one of the existing H-2A program's wage, working condition, housing, recruitment and other labor protections would be eliminated. (in their words, "no special standards will apply to their employment")

- The guestworkers will be permitted to stay in the U.S. for up to 10 months in a calendar year (it is unclear what standards, if any, would have to be met for them to come back into the country)

- The guestworkers would not be entitled to unemployment benefits (or presumably Social Security benefits) , but their wages would be subjected to unemployment and Social Security taxes. They would be ineligible for food stamps and nonemergency medical care.

- They would probably be ineligible for federally-funded Legal Services (since they would not be designated as H-2A workers).

Second Program: A Revised "H-2A Program" Similar to Last Year's Bill

The second guestworker program is modeled after the growers' 1998 guestworker program. It would "reform" the H-2A program.

- The principal difference between this program and the one above seems to be that these guestworkers (1) could only work for the one employer that secured the visa, and (2) would never acquire the right to apply (on the basis of their work) for an immigration visa

- this would be called an H-2A program but most of the labor protections in current law would be removed

- affirmative authorization is granted to employers to engage in wage and other labor practices that are currently blatantly illegal. It is unclear whether these affirmative authorizations (such as for group wage rates in which no one is guaranteed a minimum wage) are only part of the revised H-2A program or also part of other guestworker program described above

- The principal features are the same as last year, such as:
    - no meaningful adverse effect wage rate
    - no housing requirement
    - employers would apply to a "job registry" (now 28 days before work begins, rather than last year's 21) and when the job registry fails to supply them with US workers immediately, the employer receives as many guestworker visas as demanded
    - no minimum work guarantee
    - no 50% rule job preference for U.S. farmworkers
    - no recruitment in the private marketplace required
    - no obligation to hire a US worker who applies directly to the employer, rather than through the registry; no obligation to hire US workers who are referred through a union hiring hall, a nonprofit employment center, the Job Service, or a labor contractor
    - workers would not be entitled to receive their job contract when recruited
    - apparently no employer obligation to provide transportation reimbursement upon completing half the season, or pay transportation outbound upon completion of season
    - apparently no employer fees
    - apparently this bill would supersede state and federal minimum wage laws, like last year's bill

Another Phony Provision Allowing Some Guestworkers to Apply for Immigration Visas

The 1998 guestworker proposal contained an illusory provision allowing some guestworkers to apply for an immigration visa. This provision was removed after the Senate sent the bill over to the House. The same could happen this year since the growers have no interest in providing immigration status to farmworkers (or use their political clout in Congress to win it) if they can use guestworkers instead. In any event, this year's provision is even worse.

- Guestworkers under the first program described above could "become eligible to apply" for permanent resident alien status if they worked at least 180 days per year in each of 5 years. They would have 7 years to reach this goal.

- They would have to apply during a window of 6 months after gaining that work experience, or they would lose their work authorization and be deported

- They would be "sanctioned" if they were offered a job by the job registry and "fail to report to a registry job opportunity for which they had made an affirmative commitment"

- guestworkers under the first program would only be referred by the job registry "within a prescribed geographic region," effectively preventing many of them from relocating

- Apparently, the 3 year/10 year bars and other restrictions on applicants for permanent resident alien status would remain in place; it is unclear how persons could secure permanent resident alien status if, as a condition for applying for it, they had to prove that they had worked in agriculture in undocumented status in the late 1990's

- There would be a limit – "an annual numerical quota" – on the number of guestworkers who could be provided green cards in a year, "for example 20 percent" of the guestworkers

- If eliminated by the quota, apparently some guestworkers would be given "temporary resident alien status," and they could try to "advance their priority for adjustment" to permanent resident alien status by "performing additional agricultural work." Such temporary resident aliens would be prohibited from receiving public benefits.