National Office
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NCLR
NATIONAL COUNCIL OF LA RAZA

Raul Yzaguirre, President

FAX COVER MEMO

DATE: 9/30/1999

TIME: ________ am / pm

COST CENTER #______

TO
NAME: Irene Bueno

COMPANY: White House

CITY: WDC

FAX#: (202) 456 1558

FROM
NAME: Concepcion Elizabeth Romero, Administrative Assistant
Office of Research, Advocacy & Legislation (ORAL)

Direct Line: (202) 776-1782
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# of pages in transmission, including cover 2

MESSAGE:

NCLR

NATIONAL LATINO SUMMIT AGAINST GUESTWORKER LEGISLATION
MAY 3-6, 1999 -- WASHINGTON, D.C.

Steering Committee

Mario Obledo, Chair
President, California Coalition of Hispanic Organizations

Antonia Hernandez
President, Mexican American Legal Defense and Education Fund

Arturo Rodriguez
President, United Farm Workers of America

Baldemar Velázquez
President, Farm Labor Organizing Committee

Raúl Yzaguirre
President, National Council of La Raza

Contact Information:
c/o Mario Obledo
P.O. Box 1026
Sacramento, CA 95812
(916) 441-3626

c/o Raúl Yzaguirre
1111 19th Street NW
Suite 1000
Washington, D.C. 20036
(202) 785-1670

September 30, 1999

The Honorable William J. Clinton
President of the United States
The White House
Washington, D.C. 20500

Dear Mr. President:

On behalf of the "National Latino Summit against Guestworker Legislation," I am writing to express our opposition to a provision included in the Conference Report for the Agricultural Appropriations legislation for Fiscal Year 2000. We appreciate your continued support of farmworkers and your opposition to the weakening of protections for U.S. workers in the "H-2A" agricultural non-immigrant temporary worker program. The Agricultural Appropriations Conference Report contains a provision amending the H-2A program that would harm U.S. farmworkers' ability to secure employment.

As you know, certain agricultural interests have been attempting to convince Congress to enact a new "guestworker" program this year. We believe that their proposals would worsen the already intolerable working conditions under which America's farmworkers are currently suffering. Fortunately, due to your Administration's diligence and the opposition of key Members of Congress and the Latino community, we have until now been able to keep their proposals from being enacted.

However, I understand that the Conference Report contains a provision, known as the "McConnell Amendment," which would allow growers to use H-2A non-immigrant workers after only 3-8 days of attempting to recruit U.S. workers. As you know, farmworkers in America already have a difficult time securing work because of growers' preference for more compliant foreign workers, whether in undocumented status or as guestworkers. Unemployment rates for U.S. farmworkers are often in the double-digits even during peak harvest months in many of the major agricultural producing counties. The Statement of Administration Policy on the Appropriations legislation stated your opposition to this provision. Now that the Conference Report includes this language, I strongly urge you to refuse to sign this legislation until this provision is removed.

Again, thank you for your support for America's farmworkers.

Sincerely,

Mario Obledo

Mario Obledo
Chair

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: 3

Message:

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

October 1, 1999

Dear Senator:

Migrant farmworkers need your help in a difficult set of circumstances. A rider to the agricultural appropriations bill conference committee report would severely impair U.S. workers' access to agricultural jobs. **The conference committee report on the agricultural appropriations bill, H.R. 1906, should be rejected for this reason.**

The McConnell rider in section 736 would amend the H-2A temporary foreign agricultural worker program in a fundamentally inappropriate manner. 8 U.S.C. § 1101(a)(15)(H)(ii)(a), § 1188. The Administration issued a statement of position strongly opposing this provision and farmworker advocates vigorously oppose it. United States farmworkers will lose jobs if this is passed.

- **The McConnell rider would drastically shorten the period of recruitment of U.S. workers prior to the time that the Department of Labor determines whether there is a shortage of farmworkers available for the job for which guestworkers are sought. Recruitment of US worker would be cut to 3 to 8, days an utterly inadequate test of the labor market.**

- **The McConnell amendment would push the recruitment period for U.S. workers closer to the first day of work. In contrast to such last-minute recruitment inside the U.S., H-2A employers could (and do) use labor contractors who recruit foreign workers for several months before the season in foreign countries.**

- **The amendment is completely one-sided. It contravenes the 1997 US General Accounting Office report on the H-2A program, which recommended a quickening of the H-2A procedure but insisted that the recruitment period should not be shortened any further. The amendment also ignores the pro-worker H-2A reforms recommended in the report.**

- **The Department of Labor, effective July 29, 1999, changed the H-2A program's regulations to shorten the period of recruitment prior to approval of guestworkers and move the labor certification process closer to the first day of work. Farmworker advocates uniformly opposed this regulatory change. But the McConnell amendment is even more inappropriate because it limits recruitment to a period of 3 to 8 days prior to approval of guestworkers.**

The McConnell proposal contravenes a recommendation made by the U.S. General Accounting Office, "H-2A Agricultural Guestworker Program: Changes Could Improve Services to Employers and Better Protect Workers," GAO/HEHS-98-20 (Dec. 1997).

GAO said that the deadline for applying for H-2A workers could be sped up from 60 days before the date of need to 45 days before the date of need *but only if the DOL certification (approving foreign workers) date was changed closer to the date of need for labor to keep the recruitment period adequate.* It said:

> to ensure that agricultural employers have sufficient time to positively recruit for domestic workers, obtain inspections of farmworker housing, and show proof of workers' compensation coverage, it will also be necessary for the Congress to modify to 7 days the statutory requirement that applications be approved 20 days before the date of need. Without modifying this requirement, employers will not have sufficient time to meet their duties as required by the program and domestic workers will not have ample opportunity to compete for agricultural employment.

GAO Report at p. 65. The McConnell amendment does precisely what the GAO recommended against – shortening the time period for recruiting US workers.

The employers would argue that the law obligates them to give a job preference to U.S. job applicants after the DOL certifies the existence of a labor shortage and approves guestworker visas. However, once H-2A employers receive approval to hire temporary foreign workers, the employers' investment in gaining foreign workers tends to diminish their interest in hiring U.S. workers. The guestworkers, due to their non-immigrant status, are more compliant than the U.S. workers, and their wages are not subject to unemployment taxes or Social Security contributions. Many U.S. workers are rejected or discouraged from applying for jobs at H-2A employers.

In addition, the GAO found that several labor protections were not being enforced adequately. McConnell's amendment does **nothing** to improve worker protections.

The agricultural appropriations bill includes many important benefits for farmers, and it should not impose such a harsh penalty of United States farmworkers. It should be rejected until the McConnell rider is removed.

Sincerely,

BRUCE GOLDSTEIN
CO-EXECUTIVE DIRECTOR

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

June 21, 1999
(Senate Floor)

STATEMENT OF ADMINISTRATION POLICY

(THIS STATEMENT HAS BEEN COORDINATED BY OMB WITH THE CONCERNED AGENCIES.)

H.R. 1906 – AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS BILL, FY 2000

(Sponsor: Stevens (R), Alaska; Cochran (R) Mississippi)

This Statement of Administration Policy provides the Administration's views on the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Bill, FY 2000, as reported by the Senate Committee. As the Senate develops its version of the bill, your consideration of the Administration's views would be appreciated.

The allocation of discretionary resources available to the Senate under the Congressional Budget Resolution is simply inadequate to make the necessary investments that our citizens need and expect. The President's FY 2000 Budget proposes levels of discretionary spending that meet such needs while conforming to the Bipartisan Budget Agreement by making savings proposals in mandatory and other programs available to help finance this spending. Congress has approved, and the President has signed into law, nearly $29 billion of such offsets in appropriations legislation since 1995. The Administration urges the Congress to consider such proposals as the FY 2000 appropriations process moves forward.

The Administration appreciates efforts by the Committee to accommodate certain of the President's priorities within the 302(b) allocation. However, the Committee bill is over $500 million, or four percent, below the program level requested by the President. The FY 2000 Budget would increase spending within the discretionary caps for agriculture and other programs in the bill by 3.6 percent over comparable FY 1999 spending. We urge the Senate to consider the over $600 million in user fees proposed in the FY 2000 Budget in order to fund high-priority programs. Given the current period of financial stress in the agricultural sector, now is not the time to reduce assistance to farmers, ranchers, and rural residents.

Below is a discussion of the Administration's concerns with the Committee bill.

Food and Drug Administration

While the Administration is pleased that the Committee has provided a $62 million increase over the FY 1999 enacted level for the Food and Drug Administration (FDA), we are disappointed that the Committee did not fund the full request for the FDA, including important youth tobacco prevention activities and the proposed seafood inspection program transfer.

The Administration is concerned that the Committee's reduction of $56 million from the President's request for non-foods/tobacco FDA activities would jeopardize the FDA's ability to improve the public health infrastructure through enhanced product safety assurance and injury reporting systems. The Administration is also concerned about the Committee's reduction to the FDA building and facilities account, which would delay the completion of FDA field lab consolidation and replacement. The Committee bill does not include the $20 million requested for the replacement of the outdated Los Angeles regional lab, or the $3 million needed to continue work on the Arkansas regional lab. The Administration urges the Senate to fund these activities at the President's requested level.

The Administration is committed to Youth Tobacco Prevention activities and urges the Committee to provide the requested increase of $34 million for these programs. Every day, three thousand young people become regular smokers. Reducing young people's tobacco use would improve public health for generations to come. This is particularly important in light of the recent decision of the conferees on the FY 1999 Emergency Supplemental Appropriations Act to permit States to retain the entire amount secured from tobacco companies without any commitment whatsoever from the States that those funds be used to reduce youth smoking. To help discourage youth smoking, we urge the Congress to consider the Administration's proposal to increase tobacco taxes.

The Administration urges the Senate to approve the proposal to consolidate Federal seafood inspection activities. The Senate is encouraged to fully fund the requested $3 million for training, education, and other costs associated with the program's transfer.

Food Safety Initiative

The Administration appreciates the Committee's support for the President's Food Safety Initiative (FSI) through increases above the FY 1999 enacted and House bill levels provided to the Department of Agriculture (USDA). We are also encouraged by the increase above enacted that the Committee has provided to FDA for FSI activities. Nonetheless, we are concerned that the Committee has provided only $46 million of the $62 million increase over FY 1999 levels requested in this bill for the Initiative. American consumers enjoy the world's safest food supply, but still too many Americans get sick, and in some cases die, from preventable food-borne diseases. The President's requested increase would also provide critical resources to expand USDA's and FDA's food safety research, risk assessment, and other capabilities. We strongly urge the Senate to provide full funding at the requested levels for these activities and consider the Administration's proposal to charge user fees for Federal meat and poultry inspection services in support of a safe food supply.

Women, Infants, and Children Program

The Administration strongly supports the Committee's $30 million increase for WIC over the House level. The Committee mark would sustain a participation level of 7.4 million in FY 2000. We remain concerned that even this funding level will be insufficient to support the projected participation level of 7.5 million, thereby not achieving our longstanding goal of full participation.

Common Computing Environment

The Administration is very concerned by the Committee's decision not to fund the Common Computing Environment, either directly through the Support Service Bureau, as requested in the President's budget, or by providing additional funds to the county-office agency salaries and expense accounts. Some in Congress have criticized USDA this year for delays in providing the crop-loss assistance funds to farmers that were provided in P.L. 105-277, the FY 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act, and for long waiting periods some farmers and rural residents have faced in receiving other assistance through USDA county offices. Yet this bill would not provide the funds needed to address the very problems that contributed to the delays. At a time when the farm community is under financial stress and the demand for farm credit and other programs is high, the need for timely and efficient service to producers and rural residents has never been greater. Without the proposed $74 million in funding, it will not be possible to modernize the technology in USDA's local field offices, create "one-stop shopping" for rural customers, and promptly deliver the programs that Congress enacts with available staffing levels.

Conservation and Environmental Programs

The Committee bill appears to cut spending on key USDA conservation programs by at least $140 million from the President's request. The $26 million reduction in the Environmental Quality Incentives program (EQIP) would mean 13,000 farmers and ranchers not receiving needed financial and technical assistance to stop soil erosion, improve waste treatment in animal feeding operations, and implement other voluntary conservation measures critical to protecting our natural resources. To advance this important work further, including addressing the significant backlog of farmers' requests for aid, the Administration requested a $100 million increase in the EQIP program as part of its Clean Water Action Plan. The combination of the EQIP reduction and the Committee's failure to fully fund the request of additional technical assistance to animal feeding operations could damage livestock owners' progress toward ensuring that their operations are environmentally sound and community-friendly.

Other valuable environmental programs would be severely underfunded by the Committee bill, and we urge the Senate to restore funding for them. The Committee has failed to fund the $50 million discretionary portion of the Administration's request for the Farmland Protection Program, which is part of the Administration's Lands Legacy Initiative. America's farmers need these funds to help them stay on their land, through easements that permanently protect 80,000 acres of prime farmland from development. We urge the Senate to provide the $50 million in discretionary funds requested for the program and redirect its savings from the Conservation Farm Option to this program, as well as to the Wildlife Habitat Incentives Program to assist over 3,000 farmers in protecting and restoring wildlife habitat.

In addition, the Committee has not provided the $12 million requested in the Conservation Operations account to assess the effects of soil management on carbon sequestration, and $5 million for USDA's initiative to help communities make use of geospatial data to make more informed land use decisions and promote smart growth. The Administration recommends that funds be redirected to these high-priority activities, such as by eliminating the Forestry Incentives Program as requested and as provided for by the House bill.

Outreach for Socially Disadvantaged Farmers

The Committee bill does not provide the requested $7 million increase for the Outreach for Socially Disadvantaged Farmers program. This program has proven effective in mitigating the decline in the number of minority farmers by increasing their participation in agricultural programs, assisting them in marketing and production, and improving the profitability of their farming operations. USDA loan default rates have also improved in areas where this program operates. The requested increase is needed to expand this program beyond the limited areas in which it now operates, to further these farmers' equal access and their opportunity for success, and to continue USDA's work to improve its civil rights performance.

Research

The Committee bill would fund USDA's National Research Initiative at $81 million below the request of $200 million, while providing funding for a large number of unrequested, earmarked research grants. We urge the Senate to increase the funding for competitive research grants and to reduce earmarks for lower-priority programs.

Rural Development

The Administration appreciates the Committee's support for priority USDA rural development programs, such as water and wastewater loans and grants, Business and Industry guaranteed loans, and rental assistance for very-low income rural residents. The Administration is concerned, however, that the Committee bill's funding for Rural Development salaries and expenses would jeopardize effective implementation of these programs. The $25 million, or five percent, reduction from the requested salaries and expenses funding could require Rural Development to eliminate over 400, or six percent, of its staff through a reduction-in-force. We urge the Senate to provide the requested level of funding to ensure an adequate delivery system for these vital programs for rural America.

In addition, the Committee bill's provisions for the Rural Community Advancement Program (RCAP) do not provide the full funding flexibility authorized for the program in the 1996 Farm Bill that was requested by the Administration and included in the House bill. The flexibility to shift funds among programs can better ensure that Federal funds can be adapted to unique local economic and community development needs, and we urge the Senate to lift this limitation.

Commodity Futures Trading Commission

The Administration is disappointed that the Committee mark reduces funding for the Commodities Futures Trading Commission (CFTC) by $7 million, or 11 percent, from the President's request. This will result in a hiring freeze, difficulty in meeting workload demands, and possible layoffs. We urge the Senate to restore funding so that the CFTC will have staffing sufficient to maintain oversight and integrity of trading on futures exchanges.

Amendment to Non-Immigrant Farm Worker Program

The Administration strongly opposes the provision of the McConnell amendment to the non-immigrant farm worker program adopted by the Committee that would adversely affect the recruitment of legal U.S. farm workers. The first part of this amendment would shorten the time before work begins that an employer must apply for using foreign workers from 60 to 45 days. While this is not objectionable, it is unnecessary because this is part of a Department of Labor regulation that will be published in the Federal Register by the end of the month. The second part, which affects the time the Department of Labor (DOL) issues its certification of the number of jobs that may be filled with guest workers, is objectionable because it substantially shortens the recruitment period for legal U.S. farm workers down to only 3-8 days. This is not long enough to recruit legal U.S. workers fairly and properly, and does not allow for proper certification checks on incoming foreign workers.

Food and Nutrition Service Research

The Administration strongly objects to any provision of the Committee bill that would prohibit the use of Food and Nutrition Service (FNS) funds for research and evaluations on nutrition programs. To address program integrity and performance issues properly, it is crucial that research on nutrition programs also occur in the context of the programs' administration. We urge the Senate to provide funding for these activities within FNS.

****

NCLR
NATIONAL COUNCIL OF LA RAZA
Raul Yzaguirre, President

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Washington, DC 20036
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FAX COVER MEMO

DATE: 9 / 29 /1999

TIME: ________ am / pm

COST CENTER #______

TO
NAME: Irene Bueno

COMPANY: ______

CITY: ______

FAX#: ( ) 456 / 5581

FROM
NAME: Joel Najar, Immigration Policy Analyst
Office of Research, Advocacy & Legislation (ORAL)

Direct Line: (202) 776-1789
ORAL's Fax: (202) 776-1794

Concepcion Elizabeth Romero, Administrative Assistant
Direct Line (202) 776-1782

# of pages in transmission, including cover 5

MESSAGE: 2 things: 1) our letter to Ag Approps Conferees on McConnell am't; 2) An earlier 2 pager on guestworker proposals does not include the broader labor protections in the Graham letter. I'll get you more stuff later.

NCLR

NCLR
NATIONAL COUNCIL OF LA RAZA

Raul Yzaguirre, President

National Office
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September 22, 1999

The Honorable Joe Skeen
Chairman
House Appropriations Subcommittee on Agriculture
2362 Rayburn HOB
Washington, D.C. 20515

The Honorable Marcy Kaptur
Ranking Minority Member
House Appropriations Subcommittee on Agriculture
2366 Rayburn HOB
Washington, D.C. 20515

The Honorable Thad Cochran
Chairman
Senate Appropriations Subcommittee on Agriculture
Rural Development and Related Agencies
136 Dirksen SOB
Washington, D.C. 20510

The Honorable Herbert Kohl
Ranking Minority Member
Senate Appropriations Subcommittee on Agriculture
Rural Development and Related Agencies
330 Hart SOB
Washington, D.C. 20510

Dear Mr. Chairmen and Ranking Members:

I write on behalf of the National Council of La Raza (NCLR), the nation's largest Hispanic advocacy organization, to urge that you reject section 746, also known as "the McConnell Amendment" of the Senate-passed version of H.R. 1906, the Agricultural Appropriations bill for FY 2000. Please do not allow this language to survive in the Conference Report.

Section 746 would amend the H-2A temporary agricultural guestworker program, which currently requires employers seeking to use foreign guestworkers to spend some time

N C L R

trying to recruit U.S. farmworkers before gaining access to foreign labor. Until recent regulatory changes by the Department of Labor (DOL) the required time period was 28-33 days. DOL has already reduced this time period to 13-18 days. Section 746 would reduce it further to 3-8 days, essentially making the already weak recruitment requirement in the H-2A program non-existent. Please see the enclosed chart for more information.

NCLR opposes the erosion of the few existing protections for farmworkers in current law. The proposed change to the H-2A program would make it more difficult for U.S. farmworkers, the vast majority of whom are Hispanic, to find farm work. Despite high rates of employment in other sectors of the job market, America's farmworkers are suffering double-digit unemployment rates in all of the major agricultural producing counties in the United States. In 1997, the General Accounting Office found as have subsequent studies by the Department of Labor and other interested parties, that even during peak harvest seasons, U.S. farmworkers are having difficulty securing work. Section 746 would make this already intolerable situation even worse.

Again, on behalf of the nation's beleaguered farmworkers, I urge you to reject section 746 when it comes before your consideration during the Conference for the Agricultural Appropriations bill for FY 2000. Thank you for your attention.

Sincerely,

Raul Yzaguirre
President and CEO

Enclosure

cc: Members of the House Appropriations Subcommittee on Agriculture
Members of the Senate Appropriations Subcommittee on Agriculture

H-2A Guestworker Program Time Frames and Proposals

Action under H-2A Program	Time Period Under Current H-2A Guestworker Law	Proposed Time Period Under 1999 **McConnell Provision**	GAO Recommendation
1. Employer applies for foreign workers, by filing application for labor certification	45 days before work begins [**Note**: Until the new regulation effective on July 29, 1999, the date had been 60 days.]	45 days before work begins	45 days before work begins
2. DOL accepts or rejects wages and other job terms within 7 days. If job terms violate the law, employer may correct within 5 days without disadvantage or extension of recruitment period	33-38 days before work begins [**Note**: until 7/29/99, it was 48-53 days]	33-38 days before work begins	33-38 days before work begins
3. Interstate recruitment of US workers begins. USDOL and state agencies begin to circulate job offer through interstate Job Service to locate U.S. migrant farmworkers. Employer also engages in private recruitment. **Note:** Employer is free to recruit *foreign* workers at any time, including months in advance.	33-38 days before work begins [**Note:** until 7/29/99, it was 48-53 days.]	33-38 days before work begins	33-38 days before work begins
4. DOL issues labor certification, stating number of jobs not filled by U.S. workers that may be filled with guestworkers	20 days before work begins	30 days before work begins	7 days before work begins
5. Number of days of interstate recruitment of US workers (box 3 minus box 4) before certification	**13 to 18 days** [**Note:** until 7/29/99, it was 28-33 days.]	**3 to 8 days or**	**26-31 days**

Amendment proposed by Mr. McConnell

To amend the rules applicable to the filing of applications for H-2A workers

On page 72 of the bill, add the following new section:

Sec._______ The Immigration and Nationality Act (8 U.S.C. 1188 *et seq.)* is amended:

(a) in Section 218(c)(1) by striking "60 days" inserting "45 days", and

(b) in Section 218(c)(3)(A) by striking "20 days" and inserting "30 days".

On page 131 of the report, add the following:

Section _________ to amend the Immigration and Nationality Act to reduce the Department of Labor's approval time for processing farmer's applications for legal H-2A workers.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

June 21, 1999
(Senate Floor)

STATEMENT OF ADMINISTRATION POLICY

(THIS STATEMENT HAS BEEN COORDINATED BY OMB WITH THE CONCERNED AGENCIES.)

H.R. 1906 – AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS BILL, FY 2000

(Sponsor: Stevens (R), Alaska; Cochran (R) Mississippi)

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The Administration appreciates efforts by the Committee to accommodate certain of the President's priorities within the 302(b) allocation. However, the Committee bill is over $500 million, or four percent, below the program level requested by the President. The FY 2000 Budget would increase spending within the discretionary caps for agriculture and other programs in the bill by 3.6 percent over comparable FY 1999 spending. We urge the Senate to consider the over $600 million in user fees proposed in the FY 2000 Budget in order to fund high-priority programs. Given the current period of financial stress in the agricultural sector, now is not the time to reduce assistance to farmers, ranchers, and rural residents.

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In addition, the Committee has not provided the $12 million requested in the Conservation Operations account to assess the effects of soil management on carbon sequestration, and $5 million for USDA's initiative to help communities make use of geospatial data to make more informed land use decisions and promote smart growth. The Administration recommends that funds be redirected to these high-priority activities, such as by eliminating the Forestry Incentives Program as requested and as provided for by the House bill.

Outreach for Socially Disadvantaged Farmers

The Committee bill does not provide the requested $7 million increase for the Outreach for Socially Disadvantaged Farmers program. This program has proven effective in mitigating the decline in the number of minority farmers by increasing their participation in agricultural programs, assisting them in marketing and production, and improving the profitability of their farming operations. USDA loan default rates have also improved in areas where this program operates. The requested increase is needed to expand this program beyond the limited areas in which it now operates, to further these farmers' equal access and their opportunity for success, and to continue USDA's work to improve its civil rights performance.

Research

The Committee bill would fund USDA's National Research Initiative at $81 million below the request of $200 million, while providing funding for a large number of unrequested, earmarked research grants. We urge the Senate to increase the funding for competitive research grants and to reduce earmarks for lower-priority programs.

Rural Development

The Administration appreciates the Committee's support for priority USDA rural development programs, such as water and wastewater loans and grants, Business and Industry guaranteed loans, and rental assistance for very-low income rural residents. The Administration is concerned, however, that the Committee bill's funding for Rural Development salaries and expenses would jeopardize effective implementation of these programs. The $25 million, or five percent, reduction from the requested salaries and expenses funding could require Rural Development to eliminate over 400, or six percent, of its staff through a reduction-in-force. We urge the Senate to provide the requested level of funding to ensure an adequate delivery system for these vital programs for rural America.

In addition, the Committee bill's provisions for the Rural Community Advancement Program (RCAP) do not provide the full funding flexibility authorized for the program in the 1996 Farm Bill that was requested by the Administration and included in the House bill. The flexibility to shift funds among programs can better ensure that Federal funds can be adapted to unique local economic and community development needs, and we urge the Senate to lift this limitation.

Commodity Futures Trading Commission

The Administration is disappointed that the Committee mark reduces funding for the Commodities Futures Trading Commission (CFTC) by $7 million, or 11 percent, from the President's request. This will result in a hiring freeze, difficulty in meeting workload demands, and possible layoffs. We urge the Senate to restore funding so that the CFTC will have staffing sufficient to maintain oversight and integrity of trading on futures exchanges.

Amendment to Non-Immigrant Farm Worker Program

The Administration strongly opposes the provision of the McConnell amendment to the non-immigrant farm worker program adopted by the Committee that would adversely affect the recruitment of legal U.S. farm workers. The first part of this amendment would shorten the time before work begins that an employer must apply for using foreign workers from 60 to 45 days. While this is not objectionable, it is unnecessary because this is part of a Department of Labor regulation that will be published in the Federal Register by the end of the month. The second part, which affects the time the Department of Labor (DOL) issues its certification of the number of jobs that may be filled with guest workers, is objectionable because it substantially shortens the recruitment period for legal U.S. farm workers down to only 3-8 days. This is not long enough to recruit legal U.S. workers fairly and properly, and does not allow for proper certification checks on incoming foreign workers.

Food and Nutrition Service Research

The Administration strongly objects to any provision of the Committee bill that would prohibit the use of Food and Nutrition Service (FNS) funds for research and evaluations on nutrition programs. To address program integrity and performance issues properly, it is crucial that research on nutrition programs also occur in the context of the programs' administration. We urge the Senate to provide funding for these activities within FNS.

****

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FAX COVER SHEET

Please Deliver to:
Irene Bueno

Fax #: 456-5581
Company: Domestic Policy Council

From: BRUCE GOLDSTEIN

Pages: 4

Message:

URGENT: The McConnell guestworker amendment in the Ag. Approps. bill should be opposed. If there is going to be a compromise, it should be based on the GAO report. See attached.

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Alert – June 21 – Senate Vote Possible Today

McConnell "Reform" of H-2A Temporary Foreign Worker Program in FY 2000 Agricultural Appropriations Bill Would Harm U.S. Farmworkers Who Need Jobs

On June 18, 1999, Senator Mitch McConnell successfully slipped into the agricultural appropriations bill an amendment to eliminate United States farmworkers' access to jobs and make it easier for growers to hire foreign guestworkers even when US workers are available. The bill, S. 1233, will come to the Senate floor shortly, possibly at 1 pm on Monday, June 21, with a vote late on Monday or on Tuesday (but it could be delayed).

The McConnell amendment would amend the H-2A temporary foreign agricultural worker program, 8 U.S.C. § 1101(a)(15)(H)(ii)(a), § 1188. Senators should be told that the McConnell guestworker amendment on the agricultural appropriations bill **must be stricken from the bill on the Senate floor.** Representatives should be told that it must be prevented from appearing in the House bill.

The amendment is brief but would be devastating in its impact on migrant farmworkers. Farmworker advocates vigorously oppose this proposal because:

- **McConnell's amendment would <u>drastically shorten the period of recruitment of U.S. workers prior to the time that the Department of Labor determines whether there is a shortage of farmworkers</u> available for the job.**

- **McConnell's amendment would push the recruitment period for U.S. workers closer to the first day of work. In contrast to such last-minute recruitment inside the U.S., H-2A employers could (and do) use labor contractors who recruit for several months before the season in foreign countries.**

- **This is a substantive H-2A program amendment, but is in a spending bill.**

- **The amendment is completely one-sided. It contravenes the 1997 US General Accounting Office report on the H-2A program and ignores the pro-worker H-2A reforms recommended in the report.**

Current Law: 28 to 33 days of recruitment of US migrant farmworkers before certification of labor shortage and permission to obtain visas for temporary foreign workers

Proposed McConnell Amendment: 3 to 8 days of interstate recruitment of US migrant farmworkers.

Comparison of H-2A Law, the McConnell Amendment and the GAO Recommendation

Admin proposal

Action	Time Period Under Current H-2A Guestworker Law	Proposed Time Period Under McConnell Amendment	GAO Recommendation	Labor Reg
1. Employer applies for foreign workers	60 days before work begins	45 days before work begins	45 days before work begins ok	45
2. DOL accepts or rejects wages and other job terms within 7 days. If job terms violate the law, employer may correct within 5 days without disadvantage or extension of recruitment period	48-53 days before work begins	33-38 days before work begins	33-38 days before work begins ok	50-38
3. Interstate recruitment of US workers begins. USDOL and state agencies begin to circulate job offer through interstate Job Service to locate U.S. migrant farmworkers. Employer also engages in private recruitment.	48-53 days before work begins Note: Employer is free to recruit *foreign* workers at any time, including months in advance of season.	33-38 days before work begins	33-38 days before work begins ok	33-38
4. DOL issues labor certification, stating number of jobs not filled by U.S. workers that may be filled with guestworkers	20 days before work begins	30 days before work begins	7 days before work begins	~~10~~ 20 b/c need stat. change
5. **Number of days of interstate recruitment of US workers (box 3 minus box 4) before certification**	**28 to 33 days**	**3 to 8 days or**	**26-31 days**	13-18

10 days

New AG should ~~[illegible]~~ ~~[illegible]~~ delegate authority to ~~[illegible]~~ DOL

The McConnell proposal contravenes a recommendation made by the U.S. General Accounting Office, "H-2A Agricultural Guestworker Program: Changes Could Improve Services to Employers and Better Protect Workers," GAO/HEHS-98-20 (Dec. 1997).

GAO said that the deadline for applying for H-2A workers could be sped up from 60 days before the date of need to 45 days before the date of need *but only if the certification date was changed (closer to the date of need for labor) to keep the recruitment period adequate.* It said:

> to ensure that agricultural employers have sufficient time to positively recruit for domestic workers, obtain inspections of farmworker housing, and show proof of workers' compensation coverage, it will also be necessary for the Congress to modify to 7 days the statutory requirement that applications be approved 20 days before the date of need. Without modifying this requirement, employers will not have sufficient time to meet their duties as required by the program and domestic workers will not have ample opportunity to compete for agricultural employment.

GAO Report at p. 65. The McConnell amendment does precisely what the GAO recommended against – shortening the time period for recruiting US workers.

Once H-2A employers receive approval to hire temporary foreign workers, the employers are more likely to disregard their obligation to recruit and hire U.S. workers, many of whom will be rejected or discouraged from applying for the job. Employers prefer guestworkers due to the control they possess over such workers. Guestworkers may only work for the one employer that secured the visas and must leave the country when the job ends. In addition, employers do not pay Social Security on unemployment taxes on guestworkers' wages.

In addition, the GAO found that several labor protections were not being enforced adequately. McConnell's amendment does **nothing** to improve worker protections.

The McConnell Amendment would make two changes in the H-2A law:

1. Change the words "60 days" to "45 days" in 8 U.S.C. 1188(c)(1), which concerns the deadline for an employer filing an H-2A application.

2. Change "20 days" to "30 days" in 8 U.S.C. 1188(c)(3)(A), which concerns the Secretary of Labor's deadline for issuing labor certification, allowing temporary visas

Sen. McConnell's staff person said that the Senator is working with the growers on a broader guestworker legislative effort but because it is not clear that it will be enacted this year, he wanted to ensure that demands of H-2A growers in Kentucky would be met by a legislative action that could be passed this year.

For more information, contact, Bruce Goldstein, Farmworker Justice Fund, Inc., 202-776-1757.

McConnell Am Strategy - 6/23

Ag Approps - timing unclear, ongoing discussions, likely drag on
nothing time sensitive - but will check
Hold ups
· Harkin
· Dairy - Leahy, Kohl - filibuster
· Patient's Bill of Rights

Prognosis -
Sen. Lott - threatening to pull Ag - until Labor Day
House passed Ag Approps - no H2A provision

McConnell Am

-

-

USDA - Linda
Ag groups were surprised about it, they are pretty concerned 3-8

Votes
- Bruce groups are calling to oppose
if not much time, wouldn't make sense
-
but if more time, work w/ industry -

Abraham - wants for new Admin

- Kelly. Wellstone - letter to conferees. cosigned w/ Ds + Rs - Bruce + E Cecilia
- Kennedy. ? talk to Esther

2

Substantive Am = GAO Reports - Feinstein - compromise ~~[illegible]~~ discussion

As we discussed broader issue - determine of constituency for GAO recom.

Target Rs - Jeffords - Campbell

* Briefing - education - to Senate Staff. - early next week
- Distribute paper

- Counterpoint - legislation - advocacy?
* - Advocacy document - clear principles - gaps
- Alternative - labor rights - affirmative steps housing, health enforce the law

Given something for someone to be for.

Letter ~~to~~ in preparation

Harry Reid - flipped.
Moynihan - Kennedy
Schumer - ok
Edwards -

McConnell Amendment Meeting – 6/23/99

- If no change
- Options
  - Strike – Wellstone – but would lose
  - GAO recommendations – possibly could win but we have no sponsor
  - Leave in and continue opposing but try to change in conference

Graham/Wyden legislation
- If similar to last year, we would oppose but we have not seen anything yet – we would need to review before we oppose.
- If legalization included, does this change our position – don't know internal meetings to discuss

Find out –
- What are groups hearing?
- What do they think about what they are hearing?
- What's the timing

Draft 6/21/99 11:35 am

SEC. ____. Delegation of authority to adjudicate H-2A petitions to the Secretary of Labor.

(a) Congress makes the following findings:

(1) The role of the Immigration and Naturalization Service in approving H-2A petitions is largely ministerial.

(2) Requiring growers to file petitions with by the Immigration and Naturalization Service is an additional burden on growers that creates unnecessary paperwork and may result in delays in obtaining petitions.

(3) Delays in the processing of H-2A petitions may impede the ability of growers to plant, cultivate, or harvest crops in a timely manner.

(4) Processing of petitions by the Department of Labor at the same time as it processes Requests for labor certification would be a more efficient use of government resources and would Decrease the time necessary for growers to obtain petitions for H-2A nonimmigrants.

(5) Transferring petition approval authority from the Immigration and Naturalization Service to the Department of Labor in appropriate **cases** will eliminate an unnecessary step for employers and allow the Department of Labor to issue labor certifications closer in time to the date of need. This procedure will allow for more effective recruitment of United States workers by the employer and the United States Employment Service.

(b) ~~It is the sense of Congress that~~ The Attorney General ~~should~~ shall expeditiously delegate to the Secretary of Labor the authority in appropriate circumstances to adjudicate petitions for H-2A nonimmigrants pursuant to section 214(c)(1) of the Immigration and Nationality Act, and that such delegation and regulations by the Attorney General and the Secretary of Labor to implement the delegation should be effective as soon as possible and no later than ~~January 1~~ June 30, 2000.

(c) Section 218(c)(3)(A) of the Immigration and Nationality Act shall be amended by inserting the words "Except as provided herein," at the beginning of the first sentence, and by adding the following sentence after the last sentence of the subparagraph: "~~If~~ the Attorney General delegates to the Secretary of Labor the authority to approve petitions for H-2A nonimmigrants pursuant to section 214(c)(1) and all of the requirements of this subparagraph have been met, the Secretary shall make the certification described in subsection (a)(1) not later than 7 days before the date such labor services are first required to be performed."

RBACH20010@aol.com

– Current law allows 28-33 days to find US workers to fill jobs.
– The McConnell Amendment allows only 3-8 days to search this country for available workers, before allowing foreign guestworkers to take the jobs.
– The streamlining regulations published by the USDOL allow for 13-18 days of recruitment, while providing grower an earlier visa petition approval than the McConnell Proposal.

proposed change

Action	Time Period		
	Under Current H-2A Program	Under McConnell Amendment	Under new H-2A Regulations
1. Employer applies for foreign workers	60 days before work begins	45 days before work begins	45 days before work begins
2. DOL accepts or rejects wages and other job terms within 7 days. If application incomplete, employer may correct within 5 days without disadvantage or extension of recruitment period.	48-53 days before work begins	33-38 days before work begins	33-38 days before work begins
3. Interstate recruitment of US workers begins. USDOL and state employment security agencies begin circulation of job offer through interstate Job Service to locate US migrant farmworkers. Employer also engages in private recruitment.	48-53 days before work begins	33-38 days before work begins	33-38 days before work begins
4. DOL issues labor certification, stating number of jobs not filled by US workers that may be filled with guestworkers.	20 days from first day of work	30 days from first day of work	20 days from first day of work (both labor certification and approved visa petition)
5. INS issues approved visa petition to grower.	3 days before work begins	13 days before work begins	20 days (step eliminated, given to grower with certification)
Number of days of interstate recruitment of US workers (box 3 minus box 4)	28-33 days	3-8 days	13-18 days

7 days

Irene Bueno

06/18/99 06:08:56 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc: See the distribution list at the bottom of this message

Subject: RE: H2A Update

Sen. McConnell has offered an amendment to the Ag Appropriations bill to change the current H2A process to make it easier for growers to hire farmworkers. The McConnell amendment has some similarities to the new Labor H2A regulations (that will be published soon) with the exception of: (1) the timing of the certification process must take place and (2) how and when a visa petition is filed. Based on conversations today, DOL staff reports that McConnell is willing to accept changes to the amendment which are consistent with the Administration's regulations.

For further info, please attached is a side-by-side that DOL has drafted.

Please let me know if you have any questions and comments.

---------------------- Forwarded by Irene Bueno/OPD/EOP on 06/18/99 11:22 AM ---------------------------

Gohl Earl <gohl-earl@dol.gov>
06/18/99 10:07:13 AM

Record Type: Record

To: Irene Bueno/OPD/EOP

cc: Hancock Michael-ESA <mhancock@fenix2.dol-esa.gov>

Subject: RE: H2A fyi

Attached is a side by side that compares the existing H2A approval systems with the McConnel amendments and the Administration proposal for changing the system.

Our proposal maintains a longer recruitment period and provide for a quicker approval schedule for the growers. <<H-2ACHART.wpd>>

- H-2ACHART.wpd

Gohl Earl <gohl-earl@dol.gov>
06/21/99 09:11:03 AM

Record Type: Record

To: Irene Bueno/OPD/EOP, Caroline_R._Frederickson@lngate2.eop.gov

cc:

Subject: RE: H2A fyi

Note: Some recipients have been dropped due to syntax errors.
Please refer to the "$AdditionalHeaders" item for the complete headers.

<<DELEG2.H2A>> Let me know what you think

- DELEG2.H2A

SEC. ____. Delegation of authority to adjudicate H-2A petitions to the Secretary of Labor.

(a) Congress makes the following findings:

(1) Because (most petitions for H-2A workers do not identify specific workers) the role of the Immigration and Naturalization Service in processing H-2A petitions is largely ministerial.

(2) Processing petitions by the Immigration and Naturalization Service may burden employers with unnecessary paperwork and delays in obtaining petitions.

(3) Delays by the Immigration and Naturalization Service in processing of H-2A petitions may impede the ability of growers to plant, cultivate, or harvest crops in a timely manner.

Delete

(4) Processing of petitions by the Department of Labor at the same time as it processes requests for labor certification would be a more efficient use of government resources and would decrease the time necessary for growers to obtain petitions for H-2A nonimmigrants.

(5) Transfering petition approval authority from the Immigration and Naturalization Service to the Department of Labor in appropriate cases will eliminate an unnecessary step for employers and allow the Department of Labor to issue labor certifications closer in time to the date of need, thereby allowing for more effective recruitment of United States workers by the employer and the United States Employment Service.

why not all?

Conference call w/ DOL + INS OMB

(b) It is the sense of Congress that the Attorney General should expeditiously delegate to the Secretary of Labor the authority in appropriate circumstances to adjudicate petitions for H-2A nonimmigrants pursuant to section 214(c)(~~1) of the~~ Immigration and Nationality Act, and that such delegation and regulations by the Attorney General and the Secretary of Labor to implement the delegation should be effective as soon as possible and no later than January 1, 2000.

What's the status?

NO

(c) Section 218(c)(3)(A) of the Immigration and Nationality Act shall be amended by inserting the words "Except as provided herein," at the beginning of the first sentence, and by adding the following sentence after the last sentence of the subparagraph: "If the Attorney General delegates to the Secretary of Labor the authority to approve petitions for H-2A nonimmigrants pursuant to section 214(c)(1) and all of the requirements of this subparagraph have been met, the Secretary shall make the certification described in subsection (a)(1) not later than 10 days before the date such labor services are first required to be performed."

H2A

Mason - Sen. McConnell

4,

- W/in 20 days DOL must certify # of worker
  & moves INS to get the visa petition. - It takes too long to do that

- GAO Report that since visa pet. rubber stamp ~~to~~ move DOL to INS - we have leg but have ~~not~~ to do another reg or report language or leg language to do this.
  completes

Housing ~~[illegible]~~ ~~Expedited~~ & Inspection ~~before~~ before certification - 30 days.

- We can be helpful -
- meet w/ it

(1) Farmers worker

Bob Bush - Sedavic

(2) INS not ~~[illegible]~~ helpful - INS + ETA - to transfer process.

~~[illegible]~~ ~~H2A~~ ~~Get Maria~~

Timeline on ~~[illegible]~~ Accomplishment

~~[illegible]~~ ~~Judy Golub~~ -

Bruce Goldstein - 4/21/99
Farmworker - ~~#~~ NCLR oppose the amendment. Sensible compromise
GAO recommendation
McConnell table half - deny
McConnell - moves ~~labor~~ labor certifying 20 days ~~to~~ to 30 days first day of work -
If you ~~to~~ reduce 60-45 ~~to~~ move to 7 days of work if you don't do that
3-8 day interstate recruitment. Americans out of jobs.
cut Interstate recruitment 28-38 day -5 20 strictly
Mc - reduce 38 days
GAO - reduces ~~26-35~~ days ~~#~~ ~~days~~ 10 days
chng petition process: 7 days.
H2A Proposed Reg - ~~60~~ 45
Date of Certification - statutory time frame
DOL position - should be fair ~~to~~ to GAO.
- Did issue proposed reg comments objecting to it
* If you would make the change - legislative chge
objective - Substantially reduces recruitment to mean nothing
- moves the recruitment of US workers, ~~the~~ closer to first day of work. This encourages er to recruit foreign workers months in ~~advance~~ advance b/c reject US workers.

~~[illegible]~~

- He spoke to Earl - waiting resolve w/H

• Getting INS out of the process - McConnell is willing to accept GAO recommendation.

- Spoke to McConnell staff - to other people in GAO - willing to do on that - GAO Report.

- ~~[illegible]~~ McConnell working w/ bigger bill. Growers maybe lobbying agent

- Tobacco growers. McConnell.

QUESTION

- INS return for ~~[illegible]~~ transfer from 7 or to another

- Issue another reg - ~~to~~ they are no where.

- think
    60-45 only
    agree to 7 days. - actual certification.
    Have to make contingent.
    Not making 45 days contingent

moving. INS - DOL -

McConnell -

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FAX COVER SHEET

TO: Irene Bueno(202)456 5581
FROM: Brucc Goldstein

DATE: June 17, 1999

No. Pages 9 (including this one)

FARMWORKER JUSTICE FUND, INC.
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Phone (202) 776-1757

June 17, 1999

Representative Bill Young
Chairman, House Appropriations Committee
Room H-218, The Capitol
U.S. House of Representatives
Washington, D.C. 20515

Representative David Obey
Ranking Member, House Appropriations Committee
U.S. House of Representatives
Room 1016, Longworth House Office Building
Washington, D.C. 20515

Re: Appropriations for the Department of Labor
<u>Wage and Hour Division and Solicitor of Labor</u>

Dear Senators:

The Department of Labor lacks the resources to fulfill its obligation to enforce labor laws for America's workers and the consequences of this harm fall harshly on workers in low-wage occupations, especially those in agricultural jobs. The undersigned legal assistance offices representing migrant farmworkers ask that Congress enact a substantial increase in appropriations for the next fiscal year (FY 2000) for labor-law enforcement efforts by the Department of Labor Wage and Hour Division and the Solicitor of Labor.

Violations of farmworkers' limited rights under our labor laws are rampant. The Department of Labor's enforcement resources are so limited, however, that the agency cannot make a dent in this unconscionable situation. Many workers do not receive the minimum wage, yet DOL investigators lack the travel funds necessary to investigate complaints. When, as now, there is so little chance that an employer will be investigated, many companies will seek to reduce labor costs by taking advantage of such lax enforcement. Employers who want to comply with the law but must compete against companies that skirt the law's requirements will feel pressured to cut costs by engaging in similar unlawful practices. Frequently, such flouting of the law is effected by hiring farm labor contractors, who are notorious for their harsh employment practices. This spiral downward must stop.

The Department of Labor's studies of agricultural employers reveal widespread violations of the Fair Labor Standards Act (FLSA) and the Migrant and Seasonal Agricultural Worker Protection Act (AWPA). Unlawful practices include child labor, substandard wages, and dangerous housing and transportation of agricultural workers. The *child labor* violations found by DOL and media investigations are particularly egregious since the law permits children to work on farms, and in agricultural jobs designated as hazardous, at younger ages compared to other, less dangerous industries.

During 1998, DOL reported conducting 2025 compliance actions nationwide and finding *violations in nearly half (889) of the (1,744) cases in which the law applied.*

In September, DOL released a study of the prosperous California grape industry which showed that 77% of vineyards violated at least one provision of these laws. More important, of eighty-nine surveyed employers (growers and labor contractors), twenty-six employers failed to pay 369 workers the federal minimum wage rate of $5.15 per hour. (Yet, the state's minimum wage is even higher, $5.75 per hour.) Growers' use of labor contractors is strongly related to illegal employment practices: *DOL found that a whopping 52% of the farm labor contractors violated the FLSA minimum wage provision, usually when paying a piece rate.* The DOL study covered grape pruning and tying during the winter months, but similar conditions exist in other occupations.

We have received reports, confirmed by Department of Labor officials in several areas of the country, that the Wage and Hour Division cannot investigate important cases due to inadequate funding, particularly for travel. A Wage and Hour Division official in Georgia recently informed a worker's lawyer, for example, that due to a tight travel budget, it was unlikely that the agency would be able to investigate a complaint regarding unsafe and unsanitary housing conditions at a major Georgia agricultural business. Unable to spend money to travel to interview workers and employers, DOL cannot vindicate serious violations of workers' rights.

We commend the Secretary of Labor and the Department of Labor for improving the quantity and quality of its enforcement efforts in a context of tight budgets. But farmworkers – the poorest of the working poor despite laboring at very difficult, dangerous jobs -- deserve far better treatment from our government and their employers.

Law-abiding *employers* also deserve better protection. Congress expressed its view in the preamble to the Fair Labor Standards Act that the use of substandard employment practices constitutes "an unfair method of competition in commerce." Absent a credible threat that government will discover and prosecute illegal conduct, some businesses will take the risk of violating employment laws and others will feel forced to follow in order to remain competitive. The Government must deter such cut-throat competition.

The Department's financial limitations are not temporary but rather ongoing and systemic. Although there have been some increases in the Wage and Hour budget in recent years, they have been insufficient to compensate for prior budget cuts.

In agriculture, by several measures, the level of wage-hour enforcement is less than one-half of that which occurred during President Reagan's Administration. Under the Migrant and Seasonal Agricultural Worker Protection Act, in FY 1986, the Reagan Administration DOL conducted 4,769 investigations, spent 52,000 hours on direct enforcement and collected $1.6 million in civil money penalties. In FY 1997, DOL conducted just 1,816 investigations, spent only 22,814 hours on enforcement, and collected a mere $548,971. In 1998, these numbers increased modestly. DOL conducted 2,025 investigations, still less than half the number of investigations in 1986, and collected just $970,000 in civil money penalties.

The agency's insufficient funding not only reduces the quantity of investigations but the *quality* of investigations. Cases that are not investigated promptly and thoroughly are difficult to litigate well and, consequently, are less likely to secure for workers complete reimbursement of unpaid wages. Companies that have committed violations and are caught will often fight to secure a favorable settlement by reducing backpay to workers if they believe that the resources of the Solicitor of Labor are inadequate to litigate a case.

Funding is needed to provide more bilingual investigators, specialized training for particular occupations and labor markets, more assistant solicitors of labor to litigate and settle cases, and other improvements. The utter inadequacy in farmworkers' access to publicly-funded legal services and to private attorneys causes this to be a critical need.

To enable the Wage and Hour Division to carry out its labor law enforcement responsibilities in the areas of child labor, minimum wage, overtime, foreign contract labor and occupational safety and health, we ask that Congress *substantially* increase the appropriations for enforcement during fiscal year 2000 by the Wage and Hour Division and the Solicitor of Labor.

Thank you for your consideration.

Sincerely,

Bruce Goldstein

BRUCE GOLDSTEIN
FARMWORKER JUSTICE FUND, INC.

and

CALIFORNIA RURAL LEGAL ASSISTANCE FOUNDATION, INC.

MIGRANT FARMWORKER JUSTICE PROJECT,
FLORIDA LEGAL SERVICES

MARYLAND PUBLIC JUSTICE CENTER

CASA OF MARYLAND

MICHIGAN MIGRANT LEGAL ASSISTANCE PROJECT, INC.

FARMWORKER LEGAL SERVICES OF NEW YORK, INC.

NORTH CAROLINA JUSTICE AND COMMUNITY DEVELOPMENT CENTER

ADVOCATES FOR BASIC LEGAL EQUALITY, INC. (OHIO)

OREGON LAW CENTER

UNITED FARM WORKERS (AFL-CIO) OF TEXAS

PROYECTO LIBERTAD (TEXAS)

SOUTH TEXAS CIVIL RIGHTS PROJECT

COLONIAS UNIDAS (TEXAS)

INICIATIVA FRONTERA (TEXAS)

TEXAS APPLESEED ADVOCACY FUND

VIRGINIA JUSTICE CENTER FOR FARM AND IMMIGRANT WORKERS

cc: Rep. John Porter, Chairman, Labor, Health and Human Services Subcommittee
Rep. William Goodling, Chairman, Committee on Education and Workforce
Rep. William Clay, Ranking Member, Committee on Education and Workforce
Rep. Cass Ballenger, Chairman, Workforce Protections Subcommitee
Rep. Major Owens, Ranking Member, Workforce Protections Subcommittee
Rep. Lucille Roybal-Allard, Chair, Congressional Hispanic Caucus
Rep. Howard Berman
Rep. George Miller
Secretary of Labor Alexis Herman
Assistant Secretary of Labor Bernard Anderson
Acting Administrator, Wage and Hour Division, John Fraser

FARMWORKER JUSTICE FUND, INC.
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June 17, 1999

Senator Ted Stevens
Chairman, Senate Appropriations Committee
U.S. Senate
Washington, D.C. 20510

Senator Robert Byrd
Ranking Member, Senate Appropriations Committee
U.S. Senate
Washington, D.C. 20510

Re: Appropriations for the Department of Labor
Wage and Hour Division and Solicitor of Labor

Dear Senators:

The Department of Labor lacks the resources to fulfill its obligation to enforce labor laws for America's workers and the consequences of this harm fall harshly on workers in low-wage occupations, especially those in agricultural jobs. The undersigned legal assistance offices representing migrant farmworkers ask that Congress enact a substantial increase in appropriations for the next fiscal year (FY 2000) for labor-law enforcement efforts by the Department of Labor Wage and Hour Division and the Solicitor of Labor.

Violations of farmworkers' limited rights under our labor laws are rampant. The Department of Labor's enforcement resources are so limited, however, that the agency cannot make a dent in this unconscionable situation. Many workers do not receive the minimum wage, yet DOL investigators lack the travel funds necessary to investigate complaints. When, as now, there is so little chance that an employer will be investigated, many companies will seek to reduce labor costs by taking advantage of such lax enforcement. Employers who want to comply with the law but must compete against companies that skirt the law's requirements will feel pressured to cut costs by engaging in similar unlawful practices. Frequently, such flouting of the law is effected by hiring farm labor contractors, who are notorious for their harsh employment practices. This spiral downward must stop.

The Department of Labor's studies of agricultural employers reveal widespread violations of the Fair Labor Standards Act (FLSA) and the Migrant and Seasonal Agricultural Worker Protection Act (AWPA). Unlawful practices include child labor, substandard wages, and dangerous housing and transportation of agricultural workers.

The *child labor* violations found by DOL and media investigations are particularly egregious since the law permits children to work on farms, and in agricultural jobs designated as hazardous, at younger ages compared to other, less dangerous industries.

During 1998, DOL reported conducting 2025 compliance actions nationwide and finding *violations in nearly half (889) of the (1,744) cases in which the law applied.*

In September, DOL released a study of the prosperous California grape industry which showed that 77% of vineyards violated at least one provision of these laws. More important, of eighty-nine surveyed employers (growers and labor contractors), twenty-six employers failed to pay 369 workers the federal minimum wage rate of $5.15 per hour. (Yet, the state's minimum wage is even higher, $5.75 per hour.) Growers' use of labor contractors is strongly related to illegal employment practices: *DOL found that a whopping 52% of the farm labor contractors violated the FLSA minimum wage provision, usually when paying a piece rate.* The DOL study covered grape pruning and tying during the winter months, but similar conditions exist in other occupations.

We have received reports, confirmed by Department of Labor officials in several areas of the country, that the Wage and Hour Division cannot investigate important cases due to inadequate funding, particularly for travel. A Wage and Hour Division official in Georgia recently informed a worker's lawyer, for example, that due to a tight travel budget, it was unlikely that the agency would be able to investigate a complaint regarding unsafe and unsanitary housing conditions at a major Georgia agricultural business. Unable to spend money to travel to interview workers and employers, DOL cannot vindicate serious violations of workers' rights.

We commend the Secretary of Labor and the Department of Labor for improving the quantity and quality of its enforcement efforts in a context of tight budgets. But farmworkers – the poorest of the working poor despite laboring at very difficult, dangerous jobs -- deserve far better treatment from our government and their employers.

Law-abiding *employers* also deserve better protection. Congress expressed its view in the preamble to the Fair Labor Standards Act that the use of substandard employment practices constitutes "an unfair method of competition in commerce." Absent a credible threat that government will discover and prosecute illegal conduct, some businesses will take the risk of violating employment laws and others will feel forced to follow in order to remain competitive. The Government must deter such cut-throat competition.

The Department's financial limitations are not temporary but rather ongoing and systemic. Although there have been some increases in the Wage and Hour budget in recent years, they have been insufficient to compensate for prior budget cuts.

In agriculture, by several measures, the level of wage-hour enforcement is less than one-half of that which occurred during President Reagan's Administration. Under the Migrant and Seasonal Agricultural Worker Protection Act, in FY 1986, the Reagan Administration DOL conducted 4,769 investigations, spent 52,000 hours on direct enforcement and collected $1.6 million in civil money penalties. In FY 1997, DOL conducted just 1,816 investigations, spent only 22,814 hours on enforcement, and collected a mere $548,971. In 1998, these numbers increased modestly. DOL conducted 2,025 investigations, still less than half the number of investigations in 1986, and collected just $970,000 in civil money penalties.

The agency's insufficient funding not only reduces the quantity of investigations but the *quality* of investigations. Cases that are not investigated promptly and thoroughly are difficult to litigate well and, consequently, are less likely to secure for workers complete reimbursement of unpaid wages. Companies that have committed violations and are caught will often fight to secure a favorable settlement by reducing backpay to workers if they believe that the resources of the Solicitor of Labor are inadequate to litigate a case.

Funding is needed to provide more bilingual investigators, specialized training for particular occupations and labor markets, more assistant solicitors of labor to litigate and settle cases, and other improvements. The utter inadequacy in farmworkers' access to publicly-funded legal services and to private attorneys causes this to be a critical need.

To enable the Wage and Hour Division to carry out its labor law enforcement responsibilities in the areas of child labor, minimum wage, overtime, foreign contract labor and occupational safety and health, we ask that Congress *substantially* increase the appropriations for enforcement during fiscal year 2000 by the Wage and Hour Division and the Solicitor of Labor.

Thank you for your consideration.

Sincerely,

Bruce Goldstein

BRUCE GOLDSTEIN
FARMWORKER JUSTICE FUND, INC.

and

CALIFORNIA RURAL LEGAL ASSISTANCE FOUNDATION, INC.

MIGRANT FARMWORKER JUSTICE PROJECT,
FLORIDA LEGAL SERVICES

MARYLAND PUBLIC JUSTICE CENTER

CASA OF MARYLAND

MICHIGAN MIGRANT LEGAL ASSISTANCE PROJECT, INC.

FARMWORKER LEGAL SERVICES OF NEW YORK, INC.

NORTH CAROLINA JUSTICE AND COMMUNITY DEVELOPMENT CENTER

ADVOCATES FOR BASIC LEGAL EQUALITY, INC. (OHIO)

OREGON LAW CENTER

UNITED FARM WORKERS (AFL-CIO) OF TEXAS

PROYECTO LIBERTAD (TEXAS)

SOUTH TEXAS CIVIL RIGHTS PROJECT

COLONIAS UNIDAS (TEXAS)

INICIATIVA FRONTERA (TEXAS)

TEXAS APPLESEED ADVOCACY FUND

VIRGINIA JUSTICE CENTER FOR FARM AND IMMIGRANT WORKERS

cc: Senator Arlen Specter, Chairman, Labor, HHS, Education Subcommittee
Senator Tom Harkin, Ranking Member, Labor, HHS, Education Subcommittee
Senator Dianne Feinstein
Senator Edward Kennedy
Senator Paul Wellstone
Secretary of Labor Alexis Herman
Assistant Secretary of Labor Bernard Anderson
Acting Administrator, Wage and Hour Division, John Fraser