AGRICULTURAL LABOR – E-VERIFY

Issue:

E-Verify is a computer system operated by the federal government to determine job applicants' work authorization. Requiring agricultural employers to use E-Verify without assuring that a workable guest worker program is in place could have a significant, negative impact on U.S. farm production, threatening the livelihoods of many farmers and ranchers in labor-intensive agriculture.

Background:

The Immigration and Reform and Control Act of 1986 (IRCA) made it unlawful for employers to hire or employ individuals not authorized to work in the United States. Since that time, employers have been required to use the Immigration and Naturalization Service (INS) Form I-9, which is completed by job applicants who submit the form to employers with specified documents that testify to their identity and work authorization. IRCA, however, prohibits employers from questioning the documents offered by applicants, and any employer who questions the documents offered by job applicants or refuses to hire based on reasonable-appearing documents can be sued, not only by the job applicant, but also by the Department of Justice. The Department of Agriculture website explicitly advises farmers that "Employers must accept any of the documents or combination of documents listed on the back of the INS Form I-9 to establish identity and employment eligibility."

As a result of these policies instituted 25 years ago, use of fraudulent documents by workers has become prevalent, in agriculture and elsewhere. H.R. 2885 would mandate that employers use E-Verify and phase in the requirement over several years. For many agricultural producers, the requirement would begin in three years; for others, the requirement could start sooner. Most importantly, the legislation contains no worker program for agriculture – either in remedying problems with the H-2A program or in instituting any additional program to assist agricultural employers. If the mandatory E-Verify program goes forward by itself, without providing producers a source of legal workers, it would present a potentially insurmountable challenge for many agricultural employers. Farm Bureau economists estimate that as much as $5 billion to $9 billion in annual agricultural production is at risk if the industry's labor needs cannot be addressed.

Legislative Status:

On April 16, 2013, eight bi-partisan senators introduced S. 744, the *Border Security, Economic Opportunity, and Immigration Modernization Act*. S. 744 includes mandatory E-Verify requirements for employers. The E-Verify mandate is phased in by business size and industry. The agricultural industry is the last to have the mandate, beginning 4 years from date of enactment. S. 744 also requires the

Department of Homeland Security to file a report to Congress on the impact of E-Verify on agricultural and its implementation in rural areas.

In the House of Representatives, H.R. 1772 *The Legal Workforce Act* was introduced by Mr. Lamar Smith (R-Tx). That bill mandates e-verify for all employers. It provides for a 24-month phase in for agricultural employers. As one bill in a package of immigration reform bills, H.R. 1772 passed out of the judiciary committee with a vote of 22-9 on June 26. Farm Bureau does not have a position on H.R. 1772.
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AFBF Policy:

Farm Bureau could support a worker verification system provided it is coupled with a worker program that sustains the agricultural sector, improves the current E-Verify system to eliminate error rates and protect against identity fraud, and provides employers with a "safe harbor" for good faith reliance on the system. Farm Bureau opposes any mandate on employers to use E-Verify until an acceptable agriculture worker program that allows work authorization for workers not authorized currently is in place.

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