

Communicating About Agricultural Labor Reform

Comparison of House & Senate Bills



Comparison of House Agricultural Guestworker Act*, sponsored by Rep. Goodlatte, and the Agricultural Labor Provisions in the Senate Immigration Reform Bill

**AFBF has not taken a position on the Goodlatte bill. This information is presented for informational purposes only.*

Issue	Goodlatte Bill (H.R. 1773)	Senate Bill (S. 744)
<i>Creation of new visas</i>	The bill creates a two-pronged visa program that allows registered employers to hire foreign workers based on a contract or at-will. The at-will option would allow workers to travel from registered employer to registered employer without a contract. Both the employee and the employer would have the ability to terminate employment at any time. In order to ensure that workers under an agricultural visa do not seek nonagricultural employment, the at-will option will be contingent on the implementation of mandatory E-Verify. Workers must also initially enter the United States under a contract to ensure that they have work lined up, although that contract can be as short as a day. Should a worker be out of work for 30 days, he must return to his home country or be considered out of status. He may return to the U.S. once another job is lined up.	The bill also creates a two-pronged visa program that allows registered employers to hire foreign workers based on a contract or at-will. The at-will option would allow workers to travel from registered employer to registered employer without a contract. Both the employee and the employer would have the ability to terminate employment at any time. Should a worker be out of work for more than 60 days, he must return to his home country or be considered out of status. He may return to the United States once another job is lined up. While the at-will visa is not dependent on the implementation of E-Verify, the program is made mandatory for all employers in a separate part of the bill.
<i>Definition of agriculture</i>	All activities described in the current H-2A program, including those defined in the Fair Labor Standards Act and the handling, planting, drying, packing, packaging, processing, freezing or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state. In addition, this bill also covers food processing activities.	All activities described in the current H-2A program, including those defined in the Fair Labor Standards Act and the handling, planting, drying, packing, packaging, processing, freezing or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state. For example, the packing of fresh produce would be included, but further processing would not.
<i>Program administration</i>	The guestworker program is administered by USDA with Department of Homeland Security handling the visa petitions. USDA would enforce the program.	The guestworker program is administered by USDA with DHS handling the visa petitions. The Department of Labor Wage and Hour Division plays a role in enforcement.
<i>Recruitment requirements</i>	Employer must list job with state workforce agency for 30 days before date of need, and there will be a link from the federal DOL website to all state workforce agencies.	Employer must post job with state workforce agency 60 days before date of need, and hire any qualified U.S. worker who applies up to 15 days before date of need.
<i>Administrative costs</i>	Employers of jobs that are not seasonal (such as dairy and processing) must pay the equivalent of federal Social Security and Unemployment Insurance taxes on wages that would be owed if the workers were subject to these programs. This does not apply for seasonal agricultural employers. Funds are used	The bill authorizes the creation of application fee and penalty systems both for workers and for employers. There are no similar Social Security and Unemployment Insurance tax provisions in the Goodlatte bill.

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	for administration of the program. A fee structure with maximum limitations is set in the bill to determine the cost for applications, as well as limitations on fines for violations.	
<i>Employer eligibility</i>	Any agricultural employer, including associations or cooperatives that register with USDA, are eligible to participate. The definition of agriculture is listed above and employers must reapply every three years. Only registered employers may hire these employees. Workers may also be shared under one contract among members of associations or cooperatives.	Any agricultural employer, including associations or cooperatives that register with USDA, are eligible to participate in the program. The definition of agriculture is listed above. Only registered employers may hire these employees.
<i>Visa term</i>	For seasonal employment, the visa length is 18 months with a requirement for the worker to return to his home country for three months. For year-round employment, the initial visa term is three years with a three-month touchback requirement (i.e. dairy and year-round processing). After that, the visa length is 18 months with a requirement to return to his home country for three months, as with seasonal employment.	The visa term is three years, with a requirement for workers to return home for three months before reapplying. There is no limit to the number of times that workers can reapply.
<i>Transportation</i>	The employer is explicitly not responsible for transportation costs.	Employers must compensate workers for the cost of one inbound trip. Contract workers also get one out-bound trip if contract is 27 months or more.
<i>Housing</i>	The employer is explicitly not required to pay for housing or a housing allowance.	Employers must provide either housing or a housing allowance. Calculations estimate this to equal approximately \$2 per hour on top of wages.
<i>Legal Services Corp.</i>	Workers are explicitly <u>not</u> eligible for legal assistance through the LSC.	Workers are eligible for all assistance through the LSC.
<i>Wages</i>	Minimum wages are set at the greater of the prevailing wage or the state minimum wage. Additional clarification is likely necessary to ensure that these wages are fair.	Language in the bill sets the wage as escalating for the next three years for farm laborers at \$9.17 per hour to \$9.64, for graders and sorters at \$9.37 to \$9.84, for dairy and livestock workers at \$10.82 to \$11.37, and for equipment operators at \$11.30 to \$11.87. After that, wages will increase annually as established by an Employment Cost Index, but will rise by at least 1.5 percent and no more than 2.5 percent.
<i>Workers Compensation</i>	Employers must provide Workers Compensation insurance based on applicable state law or, if the worker is not covered under state law, insurance coverage for injury or disease resulting from the job equal to those of comparable employment under the state's Workers Compensation law.	Employers must provide Workers Compensation insurance based on applicable state law or, if the worker is not covered under state law, insurance coverage for injury or disease resulting from the job equal to those of comparable employment under the state's Workers Compensation law.
<i>Dispute resolution</i>	Growers may require as a condition of employment that workers are subject to binding arbitration and mediation for any grievances. Regardless, civil actions for damages cannot	While employers and employees must attempt mediation before going to court, the mediation is not binding and employees have full private right of action (or right to sue).

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	be brought unless a request for mediation has been made 90 days prior. Workers are given a private right of action, or right to sue.	
<i>Employment guarantee</i>	Under the contract option, the bill requires employers to provide work for at least 50 percent of their contract.	Under the contract option, the bill requires employers to provide work for at least 75 percent of their contracts.
<i>Escrow account</i>	To ensure that workers return to their home countries and do not overstay their visas, the bill places 10 percent of their wages into a trust fund to be paid at the U.S. Embassy in their home country.	No similar provisions.
<i>Current workforce</i>	Current illegal immigrants on the date of enactment of the bill may stay in the U.S. and lawfully work in agriculture for the two years leading to the implementation of the new program. If they have worked more than 100 days per year in each of the two years, they may remain in the U.S. legally by participating in the visa program once it operational.	Illegal immigrants who have worked a minimum of 100 days in the two years prior to the end of 2012 and have paid taxes, completed a background check and paid a \$400 fine are eligible for a renewable Blue Card visa allowing them to work in agriculture for five years. If they work for at least 100 days per year for five of the seven years beginning on date of enactment or 150 days in three of the five years following enactment, then they are eligible to apply for a Green Card. This ultimately makes them eligible to apply for citizenship before the option is made available for non-agricultural workers in the bill.
<i>Application process</i>	USDA has 10 days to approve or reject a petition by employers for participation in the program, either as an at-will employer or for a specific contract. If there are deficiencies in the application, USDA must notify the employer within five days and then will have 10 days to approve or reject the corrected petition once it is received by the grower.	No time limit on the consideration of application.
<i>Cap</i>	The bill includes a cap of 500,000 visas per year with an emergency provision allowing an increase based on verifiable need. Those who worked in agriculture for 100 days per year in the two years before passage of the bill and enactment of the program are exempt from the cap.	The bill includes a compounding cap of 112,333 for year 1, making 224,666 visas available in year 2 and 337,000 for years 3, 4 and 5. The cap is evenly divided by quarter (allows unused visas to carry over into next quarter, but not into next fiscal year). After year 5, the secretary of agriculture will determine an annual cap based on certain criteria. The bill includes an emergency provision to allow the cap to be increased, based on verifiable need. Workers participating in the Blue Card program (i.e. the current workforce) are exempt from the cap.