

“The time is long overdue for our nation to have a comprehensive agricultural labor plan that works for all sectors of agriculture and across all regions of our nation.”

AFBF President Bob Stallman

What does agriculture need?

There are certain types of farm work, such as weeding or picking produce for the fresh market, that machines just can't do as well as human hands. And farm work is challenging. Most Americans choose other types of work.

A survey by the California Farm Bureau last year found that 71 percent of tree fruit growers and nearly 80 percent of raisin and berry growers were unable to find enough employees to prune trees and vines or pick crops. This is a problem for all facets of agriculture, not just fruit and vegetable growers.

Workers from other countries have often filled the gap. However, for too long, farmers and ranchers have struggled to make sure that they have a legal, reliable supply of workers. Current federal programs and policies dealing with farm labor have resulted in a daunting, broken system, riddled with shortcomings that have resulted in labor shortages, lost crops and bureaucratic nightmares.

Farmers and ranchers need a new agricultural labor program that accommodates all of agriculture, is flexible both for employers and for workers and provides short- and long-term solutions.

National and regional farm groups have joined together in the Agriculture Workforce Coalition to create an agricultural labor proposal that makes sense for farmers, workers, our food security and national security.

Summary of AWC proposal:

The crux of the Agriculture Workforce Coalition's plan for immigration reform is to establish a new visa program that would give employers and employees stability and flexibility into the future. The plan also includes provisions that would help maintain the current workforce that has contributed to our farms and communities. Both elements are necessary to provide a long-term, stable and legal workforce.

The new visa program builds on how the domestic market currently operates. Farmers would be permitted to offer workers either a contract or at-will work. Similarly, workers would be able to choose their form of employment. Whether hired under a contract or at-will, workers would be allowed to work for an employer for as long as the employer has a need—up to three years. This

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allows farmers who have year-round labor needs to use the program and avoids disruption to business operations. This program reflects real-life workforce challenges and provides both the flexibility and stability that most domestic workers enjoy. Our proposal would shift operation of the program from the Labor Department to the Agriculture Department, putting it where agriculture's needs are more likely to be understood.

Just as important, the plan would allow key workers—those who have been working in U.S. agriculture for a defined period, as well as those who are in management and other key positions at a farm—the ability to stay in the U.S. and continue to work in the agriculture sector.

Is this “amnesty?”

No. The proposal does not create a path to citizenship. Farm workers could apply for a legal status only after proving that they have worked in agriculture for years, paid taxes, kept out of trouble and paid a fine. This plan hardly lets those who have broken the law off the hook.

At the same time, farmers need to be able to keep their experienced workers—their trustworthy, right-hand men and women who have worked for them for years and know how to get the work of the farm done.

The reality is that a large percentage of farm workers are in the U.S. illegally, largely because Congress has failed to fix the shortcomings of the existing agricultural worker program. It's time to deal with that reality. Our proposal offers a tough but fair solution for these workers and the farmers who rely on them. An important part of our proposal is verification that workers who get agricultural visas are, in fact, working in agriculture. We believe enforcement is an important part of the solution, both for farmers and for American workers.

Isn't E-Verify the solution?

E-Verify is a federal, online system to determine workers' authorization to work in the U.S. That seems like a good idea, and it is...if there are legal and sensible ways for enough workers to enter the U.S. and work on farms. Unfortunately, that is not the case. Without a solution to that problem, simply cracking down on unauthorized workers leaves farmers holding the burlap bag.

If agriculture has a workable visa program, E-Verify can work as an enforcement mechanism. We are not opposed to E-Verify, as long as farmers have access to a stable supply of workers. Access and enforcement must go hand-in-hand.

Don't foreign farm workers take jobs away from American workers?

In fact, it's the opposite. Immigrant workers take jobs that Americans don't want. Agricultural work is hard, seasonal and often transitory. Most American workers are unwilling to take these jobs. Therefore, we have come to rely on an immigrant labor force.

Without immigrant workers, U.S. economic output would decline. Each of the 1.6 million hired farm employees working on American farms and ranches supports two to three full-time jobs further down the value chain in food processing, transportation, farm equipment, marketing and retail and other sectors. Without farm workers, thousands of U.S. workers who do have jobs—on farms, in food processing and in other fields—thanks to the output that immigrant workers produce would lose those jobs.

Why not just change the current ag worker program?

The H-2A visa program currently allows for citizens of other countries to enter the U.S. to do seasonal or temporary work. The program at its core is very difficult for an employer to maneuver. The Labor Department has too often changed the rules of the program on the fly, making it unworkable. Farmers and ranchers have seen an increase in denials of their applications for workers. It can take so much time and bureaucratic red tape to get workers under H-2A, a crop could be rotting on the vine by the time workers show up to harvest it. A national survey conducted by the National Council of Agricultural Employers showed that administrative delays resulted in workers arriving on the job an average of 22 days after the date of need, causing an economic loss of nearly \$320 million in 2010 for farms that hired H-2A workers.

H-2A also does nothing to address the “commuter” issue—workers who live just across the Mexican border and go home each night and return the next day. And farms that need workers for longer periods, such as dairy farms, can't use the program because the work isn't temporary enough to qualify for H-2A.

In fact, there have been so many problems with H-2A that farmers have no confidence it can be a solution for the future. It's time for a new approach—one that farmers and workers will embrace. A program that is market-based and fair to workers and farmers. A program that accommodates year-round work. A program that truly meets agriculture's needs.

How do we secure our borders?

One way to help secure the border is to create legal ways for agricultural workers to enter. If our government doesn't have to waste time and resources locking up farm workers, it can focus on preventing those with nefarious intentions from entering our country. We absolutely agree that America has to secure its borders. Creating a feasible agricultural worker program is a step in that direction.

As long as there is demand in the U.S. for farm workers and a supply of workers willing to cross the border, hard-working people will continue to enter the U.S. to earn a living for themselves and their families back home. Creating a legal way for them to do so through a new agricultural visa, and a way to know who they are and what they're doing while they are here, makes us more secure.

What's the status of the proposal?

A compromise agreement has been reached between the Agriculture Workforce Coalition and the United Farmworkers Union. That compromise agreement is part of S. 744, the Border Security, Economic Opportunity and Immigration Modernization Act.

What is S. 744?

S. 744, the Border Security, Economic Opportunity and Immigration Modernization Act, was introduced in the Senate April 16, 2013. The bill provides a comprehensive solution to immigration reform, including border security, immigrant provisional status, the DREAM Act, guest worker visa programs and future enforcement.

How would S. 744 increase border security?

The intent of S. 744 is to achieve and maintain effective control in high-risk border sectors along the Southern border. This will be done in two ways:

- 1) Persistent surveillance in High Risk Sectors along the Southern Border; and
- 2) An Effectiveness Rate of 90 percent in a fiscal year for all High Risk Sectors along the Southern Border.

“Effectiveness Rate” definition: The number of apprehensions and turn-backs in a specific border sector, divided by the total number of illegal entries.

“High Risk Sector” definition: Border sectors where apprehensions are above 30,000 individuals per year.

Does S. 744 require farmers to use E-Verify?

Yes, S. 744 requires employers to use E-Verify in all industries. The phase-in period is based on the size of a business, with large employers having to implement it before smaller employers are required to do so. However, agriculture is the last industry, regardless of the size of the business, mandated to implement E-Verify. Mandatory use of E-Verify for agriculture will begin four years after the date of enactment of the legislation. Once E-Verify is mandatory for agriculture, it will be that much more important that an agricultural visa program be in place.

Are adjusted workers covered under the Affordable Care Act?

Under the bill, workers who adjust to legal status (Blue Card) would be provided healthcare coverage by an employer according to the general rules applying to other workers, as required by the Affordable Care Act. The one difference is that Blue Card workers would not be eligible for tax credits/subsidies to purchase insurance on a state exchange.

Broadly, what do the agricultural provisions of S. 744 provide?

The bill introduced by the bipartisan “gang of eight” senators addresses both the short- and long-term workforce requirements of all of agriculture, for those producers with seasonal labor needs and those with year-round needs.

U.S. agriculture competes both domestically and internationally; agricultural worker shortages threaten our competitiveness and food security. The question is not whether foreign-born workers will be the ones harvesting many of our crops. The question is whether they will be picking those crops here in the U.S., or in other countries. To remain competitive, U.S. farmers need the stability of the earned legalization in the Blue Card program, as well as the future access to new workers that the Agriculture Worker Program, offered in S. 744, would provide.

The new agriculture worker visa program will provide the industry with long-term stability. The program has two work options:

- “At-will” visa employees have the freedom to move from employer to employer without any contractual commitment, replicating the way market forces allocate the labor force now.
- Contract visa employees commit to work for an employer for a fixed period of time, giving both parties increased stability where it is mutually preferred.

What are the key details of the Blue Card Program?

Current undocumented farm workers would be eligible to obtain legal status through a Blue Card program. Here’s how the program would work:

- Agricultural workers who can document working in U.S. agriculture for a minimum of 100 workdays or 575 hours in the two years prior to Dec. 31, 2012, would be eligible to adjust to legal status.
- Agricultural workers who fulfill future Blue Card work requirements in U.S. agriculture, show that they have paid all taxes, have not been convicted of any felony or violent misdemeanor and pay a \$400 fine would be eligible for a Green Card. To be eligible for a Green Card, the workers must have:
 - Performed at least five years of agricultural employment for at least 100 workdays per year during the eight-year period beginning from the date of enactment; or

- Performed at least three years of agricultural employment for at least 150 workdays per year during the five-year period beginning from the date of enactment.

What are the basic details of the new Agriculture Worker Visa program?

- It establishes a new portable visa program with two work options: 1) an at-will-employment based visa, and 2) a contract-based visa program.
- The visa program is open to all sectors of agriculture without any restriction on an employer's duration of labor need. (Under H-2A, work must be temporary or seasonal.)
- The H-2A program would sunset one year after the new visa program is enacted.
- The visa would be valid for three years and could be renewed one time only. After six years, the visa holder would have to return home for at least three months before reapplying.
- The new visa program would administered by USDA.
- An employer must register with USDA as a Designated Agricultural Employer or DAE.
- Employers must attest that they will follow the rules of the program.
- Employers must recruit U.S. workers by posting the job availability on the state workforce agency website no later than 60 days before the date of need and must advertise the offer for 45 days. The employer must hire qualified, ready, willing and able U.S. workers up to 15 days before the date of need.
- A worker would lose his or her status and be required to leave the U.S. if unemployed for more than 60 consecutive days.
- A contract worker who breaches an employment contract must depart the U.S. before he or she could accept another job with a U.S. employer.
- Contract employers are required to guarantee work for 75 percent of the contract period, with an exception for natural disasters such as freeze, flood and other weather-related destruction of crops.

Is there a cap on the new program?

Yes, the political realities of this debate necessitated the inclusion of a cap. The AWC negotiated to ensure that there were safeguards to address employers' needs in the event of worker shortages and to ensure that the Secretary of Agriculture has the discretion to address long-term needs. Specifically, the bill provides a visa cap of 112,333 in the first year. The cap compounds: In the first year, there would be 112,333 visas; in the second year, there would be 224,666 visas; and in the third year, 337,000 visas. The cap could not exceed 337,000 in the five-year period. The cap would be divided evenly by quarter in year one and would be based on quarterly historical need thereafter. The cap would carry over from one quarter to the next, but would not carry over a fiscal year. After five years, the Secretary of Agriculture would determine the cap on an annual basis using established criteria.

If the cap is filled during a fiscal year, an employer could petition the secretary to increase the cap. The secretary would then review objective factors to determine whether to increase the cap, and would have to issue a decision no more than 30 days after receiving a petition.

What is the minimum wage I'll be required to pay?

As listed below, the bill establishes statutory wage floors for six occupational categories.

Established wage rates for 2016:

- Farmworkers and Laborers – Crop, Nursery and Greenhouse
 - \$9.64/hour
- Graders and Sorters
 - \$9.84/hour
- Dairy and Livestock
 - \$11.37/hour
- Agricultural Equipment Operators
 - \$11.87/hour
- Other occupational categories
 - The Secretary of Agriculture will determine the appropriate wage for First Line Supervisors and Animal Breeders.

Each base wage will increase annually by at least 1.5 percent but no more than 2.5 percent, as established by the Employment Cost Index (ECI).

H-2A wages: The Adverse Effect Wage Rate will be frozen for three years after enactment (or one year after the new program is operational).

Will employers be required to provide housing?

Yes, all Designated Agricultural Employers will be required to provide housing or a housing allowance. The housing allowance is based on Department of Housing and Urban Development-established fair market rental rates for a two-bedroom dwelling, occupied by four individuals.

Will employers be required to pay for visa workers' transportation?

It depends. All visa workers, whether under contract or working at-will, shall receive an allowance for inbound transportation from their home country to their first initial place of employment. However, at-will visa workers are not entitled to outbound transportation, and contract workers are only entitled to outbound transportation if they work for the same contract employer for 27 months in the three-year visa term.

My workers commute from their home country every day. Do I have to provide them housing or a housing allowance?

If your job site is 50 miles or less from an international border, you will not have to provide housing or a housing allowance for that visa worker.

In the new program, can my visa worker sue me in federal court?

Yes, workers under the new visa program are covered by the Migrant and Seasonal Agricultural Worker Protection Act, which provides that workers can sue their employers. However, if either party requests mediation (where a neutral third party assists in trying to settle the claim), the claim must go through mediation before the suit can proceed. If a visa worker elects to file an administrative claim with the U.S. Department of Labor, he or she cannot also sue in federal court for the same violation. The worker must choose one route or the other.

What are the legal ramifications for employers who find out they have an undocumented worker who is seeking legal status via the Blue Card program?

The employer would be held harmless and, if needed, could assist an employee in attesting to his or her past work in agriculture.

How does the hiring of visa workers affect the U.S. workers or Blue Card workers I have on my farm?

Employers must offer the U.S. workers no less than the same benefits, wages and working conditions (excluding the provision of housing or a housing allowance) that the employer offers or intends to offer to visa workers.

Do I have to pay employment taxes on visa worker wages?

No, employers hiring visa workers will not be required to take out employment withholdings from visa workers' paychecks.

How can I get engaged in this issue?

The first step in achieving comprehensive agriculture labor reform begins by educating lawmakers. Please let your senators and member of Congress know that, as part of immigration reform, you support establishing a new agricultural worker visa program that gives both employers and employees stability and flexibility, now and into the future.

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Farm Bureau has created a website that will help farmers and ranchers share their stories with their lawmakers. We encourage farmers and ranchers to share their stories through a secure Web page at this link: <http://www.fbactinsider.org/share-your-story>. Also, check out the Farm Bureau FBACT Insider Agricultural Labor website (<http://www.fbactinsider.org/issues/agricultural-labor>) for news, background information and ways to let your senators and representative know that agricultural labor reform is important to you.

Also, visit the Agriculture Workforce Coalition's website to read what the press is saying and get the latest information from the coalition's members. The coalition's website is: <http://www.agworkforcecoalition.org/>.