Agriculture has one of the highest shares of foreign-born and unauthorized workers among US industries. Farm employers are among the few to openly acknowledge their dependence on unauthorized workers and object to Congressional efforts to reduce unauthorized migration unless the government legalizes currently illegal farm workers and/or provides easy access to legal guest workers. Over three-fourths of the roughly 2.4 million workers employed for wages on US farms sometime during a typical year are immigrants, usually born in Mexico, and over half are unauthorized. Farmers and sometimes farm worker unions assert that, without unauthorized migrant workers, US crops would not be harvested.¹

Agriculture produces food and fiber on farms, which are defined in the US Census of Agriculture (COA) as places that normally sell at least $1,000 worth of farm commodities a year. Most of the 2.2 million US farms enumerated in the 2007 COA are money-losing hobby and retirement operations. Most are family farms, a term that is not defined officially. The US Congress, in the Food Security Act of 1985, defined a family farm as one that uses less than 1.5 person-years of hired labor and has no hired manager. Other definitions of a family farm require the farmer and his/her family members to do more than half of the work on the farm.²

¹ The Indiana Farm Bureau said: “People don’t try to hire illegal workers, but if your crop is going to spoil, and you’ve got this one shot at income through the year, you’re going to hire whoever comes to your door.” Quoted in Immigration Reform: States, House. 2011. Migration News. April Volume 17 Number 2. http://migration.ucdavis.edu/rmn/more.php?id=1607_0_4_0
² USDA’s Economic Research Service emphasizes that “there is no hard-and-fast definition of a family farm” and that definitions of family farm have changed over time. Since 2005, ERS defines family farms as those “in which the majority of the business is owned by the operator and individuals related to the operator by blood, marriage, or
Most US family farms are diversified, producing both crops and livestock and providing work for farm operators and their family members year-round. Typical tasks on diversified family farms in the midwest and south including planting corn and soybeans in the spring, harvesting these crops in the fall, and tending livestock in the winter. The mechanization of many farm tasks has enabled farm families to farm more land and to raise more animals while also allowing one or more family members to be employed in nonfarm jobs. In 2007, over 85 percent of the total income of farm families was from nonfarm sources (Hoppe and Banker, 2010, p39).

Farms that hire foreign-born and unauthorized workers to produce fruits and nuts, vegetables and melons, and horticultural specialties such as flowers, nursery plants, and mushrooms are different. The production of so-called FVH commodities is concentrated on fewer and larger farms compared to the production of wheat and corn. Instead of thousands of roughly equal-sized farms producing corn or wheat, the largest 10 farms that produce lettuce, table grapes, and other FVH commodities often account for half or more of total production. Instead of relying on family members, these “factories in the fields” hire hundreds of thousands of seasonal farm workers. Agriculture’s quest for workers willing to accept seasonal work at relatively low wages lies at the heart of several perennial farm labor issues, including a century of Mexico-US migration.

**US Agriculture and Farm Labor**

Agriculture is the oldest industry in every society, so that much of human history is also agricultural history. Agriculture has several unique characteristics, including a biological production process that raises weather and pest risks, a need for land intensive that makes the industry geographically dispersed, and the subject of government intervention that affects levels of output and prices.

Farming was the major occupation of most workers in industrial countries until the industrial revolution drew farmers into nonfarm factory and service jobs. Today, less than five percent of workers are employed in agriculture in most industrial countries, and the average 1.2 million hired workers on US farms are less than one percent of average US wage and salary employment. Most US farm output is from a relative handful of large commercial operations that employ almost all hired workers.

About three-fourths of US farms are part-time, hobby, and retirement operations that lose money farming but survive because of nonfarm income from nonfarm jobs, social security, and other sources. At the other end of the farming size spectrum, the 250,000 farms that each had sales of $250,000 or more in 2007 accounted for almost 85 percent of US farm sales. These larger farms received most government payments to support agriculture because government
Subsidies are linked to farm output. There were less than 60,000 million-dollar farms, each with annual sales of $1 million or more, but they accounted for over half of US farm sales in 2007.\(^3\) Million-dollar farms specialize in beef, dairy, and FVH commodities (Hoppe and Banker, 2010, p10).

About 482,000 farms, less than a quarter of the total, reported that they had expenditures for hired farm labor in 2007. Table 6.1 shows that farmers spent almost $22 billion on workers they hired directly in 2007, and that almost half of farm labor expenditures were incurred by the 61,270 farms that hired workers to produce FVH commodities (note that 31,000 dairy farms accounted for 15 percent of farm labor expenditures, more than vegetables and almost as much as fruits). Second, half of the 15,000 US farms that had $250,000 or more in labor expenditures produced FVH commodities. The COA does not report the labor expenditures of these 15,000 FVH farmers, but they likely accounted for over 80 percent of the total.

Some 183,000 farms paid contractors and other intermediaries to bring workers to their farms, incurring costs $3.4 billion; many of these farms also hired farm workers directly. Two-thirds of contract labor expenses were incurred by FVH farms, emphasizing that farms producing fruits and vegetables are most likely to have contractors bring crews of workers to their farms. The 11,000 farms that had contract labor expenses of $50,000 or more likely accounted for over 80 percent of the total.

### Table 6.1 US Farm Labor Expenditures and FVH Farms, 2007

<table>
<thead>
<tr>
<th></th>
<th>All Farms With Expenses</th>
<th>Veggies &amp; Melons</th>
<th>Fruits &amp; Nuts</th>
<th>Greenhouse, Nursery</th>
<th>3 Sectors</th>
<th>Share</th>
<th>Dairy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Direct hire farms</td>
<td>482,186</td>
<td>1,362</td>
<td>36,293</td>
<td>23,615</td>
<td>61,270</td>
<td>13%</td>
<td>30,994</td>
</tr>
<tr>
<td>Labor Exp($000)</td>
<td>21,877,661</td>
<td>2,201,929</td>
<td>3,514,033</td>
<td>4,698,926</td>
<td>10,414,888</td>
<td>48%</td>
<td>2,837,455</td>
</tr>
<tr>
<td>Distribution</td>
<td>100%</td>
<td>10%</td>
<td>16%</td>
<td>21%</td>
<td>48%</td>
<td>48%</td>
<td>15%</td>
</tr>
<tr>
<td>&gt;$250,000</td>
<td>14,627</td>
<td>1,721</td>
<td>2,574</td>
<td>3,147</td>
<td>7,442</td>
<td>51%</td>
<td>2,676</td>
</tr>
<tr>
<td>Contract farms</td>
<td>182,701</td>
<td>5,265</td>
<td>30,075</td>
<td>7,638</td>
<td>42,978</td>
<td>24%</td>
<td>5,313</td>
</tr>
<tr>
<td>Labor Exp($000)</td>
<td>4,514,166</td>
<td>883,842</td>
<td>1,977,432</td>
<td>306,091</td>
<td>3,167,365</td>
<td>70%</td>
<td>123,747</td>
</tr>
<tr>
<td>Distribution</td>
<td>100%</td>
<td>20%</td>
<td>44%</td>
<td>7%</td>
<td>70%</td>
<td>70%</td>
<td>4%</td>
</tr>
<tr>
<td>&gt;$50,000</td>
<td>11,261</td>
<td>1,399</td>
<td>4,847</td>
<td>802</td>
<td>7,048</td>
<td>63%</td>
<td>543</td>
</tr>
<tr>
<td>Total</td>
<td>26,391,827</td>
<td>3,085,771</td>
<td>5,491,465</td>
<td>5,005,017</td>
<td>13,582,253</td>
<td>1</td>
<td>2,961,202</td>
</tr>
<tr>
<td>Direct Hires Farms</td>
<td>482,186</td>
<td>13,642</td>
<td>36,293</td>
<td>23,615</td>
<td>73,550</td>
<td>15%</td>
<td>30,994</td>
</tr>
<tr>
<td>Workers hired</td>
<td>2,636,509</td>
<td>255,940</td>
<td>613,889</td>
<td>351,064</td>
<td>1,220,893</td>
<td>46%</td>
<td>176,242</td>
</tr>
</tbody>
</table>

\(^3\) The 57,000 farms that had sales of at least $1 million in 2007 accounted for $176 billion or 60 percent of total sales; the 5,600 with annual sales of at least $5 million accounted for $83 billion or 28 percent of total farm sales.


<table>
<thead>
<tr>
<th></th>
<th>&gt;150 days</th>
<th>&lt;150 days</th>
<th>&lt;150 days</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>911,439</td>
<td>1,725,070</td>
<td>1,709,530</td>
</tr>
<tr>
<td>Workers</td>
<td>84,987</td>
<td>465,184</td>
<td>465,184</td>
</tr>
<tr>
<td>for FVH farms</td>
<td>148,705</td>
<td>170,214</td>
<td>170,214</td>
</tr>
<tr>
<td>workers</td>
<td>180,850</td>
<td>806,351</td>
<td>806,351</td>
</tr>
<tr>
<td>Share</td>
<td>45%</td>
<td>47%</td>
<td>37%</td>
</tr>
<tr>
<td>Shares</td>
<td>111,651</td>
<td>64,591</td>
<td>64,591</td>
</tr>
</tbody>
</table>

Source: COA, 2007, US, Table 62

The concentration of hired farm workers on a relative handful of large farms producing fruits and vegetables is further confirmed by data on hired workers. FVH farms are a sixth of the farms that hire workers directly, but they accounted for almost half of all directly hired workers. The COA does not distinguish farm employers by the commodity they produce, but the 43,000 US farms that hired 10 or more workers directly accounted for almost 60 percent of all directly hired workers.\(^4\)

Seasonal workers are often distinguished from regular or year-round workers by how long they worked on the farm responding to the census. There were 2.6 million workers hired directly by US farmers in 2007, and two-thirds worked on the responding farm for less than 150 days, suggesting they were seasonal workers (an individual employed on two farms is counted twice in these data). As Table 6.1 shows, three-fourths of the workers employed on fruit and nut farms were seasonal, and almost half of the workers employed in greenhouse and nursery operations were seasonal.

Ensuring that there are sufficient seasonal workers available at what farmers consider an “affordable cost” has been a perennial issue for farmers producing FVH commodities. The real wages of all low-skilled US workers have been falling, including the wages of workers employed in agriculture.

Farm sales rose 50 percent between 2002 and 2007, from about $200 billion to almost $300 billion, but farm labor expenditures rose only 23 percent, from $22 billion to $26 billion. Expenditures on fertilizers and gasoline almost doubled between 2002 and 2007, helping to explain why hired farm labor fell from about 17 percent of total farm production expenses in 2002 to 14 percent in 2007. If agriculture’s total labor expenses of $26.4 billion are divided by the average earnings of hired farm workers in 2007, $10.21 an hour according to USDA’s quarterly survey of farm employers, the estimated number of full-time equivalent (2,000 hours) jobs was 1.2 million. Full-time equivalent farm employment estimated in this manner was same as in 2002.

The COA provides one window into the room that represents hired farm labor. The US Department of Labor’s Quarterly Census of Employment and Wages provides another that reinforces the concentration of hired workers on large farms. Between 2001 and 2008, employment in NAICS 11, the industry code for agriculture, forestry, fishing and hunting, averaged 1.2 million and ranged from a low of a million in January to a high of 1.3 million in July. Between 2001 and 2008, employment in NAICS 11, the industry code for agriculture, forestry,

\(^4\) COA 2007. Table 7. Hired Farm Workers and Payroll
fishing and hunting, averaged 1.2 million and ranged from a low of a million in January to a high of 1.3 million in July. The number of agricultural establishments paying unemployment insurance taxes, the source of the QCEW data, fell from about 100,000 in 2001-02 to 95,000 in 2007-08, while UI-covered agricultural wages rose from $24 billion to $30 billion, 25 percent, more than the labor expenditures reported in the COA. The QCEW reported that average weekly earnings of workers employed in agriculture rose from $400 a week to $500 a week over the decade.

The average employment of workers in NAICS 111, crop production, fell five percent between 2001 and 2008, from 564,000 to 536,000. By contrast, average employment in NAICS 115115, farm labor contractors and crew leaders, rose from 145,000 in 2001 to 159,000 in 2008, up 10 percent. FLCs accounted for over half of the employment in NAICS 1151, support activities for crop production, where employment rose from 175,000 in 2001 to 291,000 in 2008. This means that almost all of the employment increase in support activities for crop production was with FLCs.

As in the COA, unemployment insurance or QCEW data show that four major commodities account for most farm worker wages: fruits and nuts, vegetables and melons, horticultural specialties such as greenhouse and nursery products, and dairy farms. Average employment in fruits and nuts, NAICS 1113, rose from 162,000 in 2001 to 178,000 in 2008, up 10 percent. Average employment in vegetables and melons, NAICS 1112, fell from 98,000 in 2001 to 92,000 in 2008, down six percent. Average employment in NAICS 1114, greenhouse and nursery production fell from 175,000 in 2001 to 166,000 in 2008, down five percent. Average employment in NAICS 11212, dairy cattle and milk production, rose from 64,000 in 2001 to 88,000 in 2008, up 38 percent.

The QCEW data show stable overall employment in agriculture of 1.2 million, a relatively stable number of farm establishments, almost 100,000, and rising average weekly wages, up 20 percent between 2001 and 2008 to $500 a week. For all goods-producing industries, average employment fell from 25 million to 22 million between 2001 and 2008, the number of establishments was stable at 1.3 million, and average weekly earnings rose about 25 percent, from $800 a week to $1,000 a week.

3 S’s: Sales, Labor’s Share, Seasonality
Three words that begin with S, sales, labor’s share of production expenses, and seasonality, define the essential features of FVH farm labor. First, FVH agriculture involves a small number of US farms and US farm land, but pays

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5 Federal law requires farm employers who pay cash wages of $20,000 or more for agricultural labor in any calendar quarter in the current or preceding calendar year, or who employed 10 or more workers on at least one day in each of 20 different weeks in the current or immediately preceding calendar year. Four major farm states cover almost all farm workers: California, New York, Texas, and Washington, while Florida and Minnesota cover most farm workers. Since 1995, states have been allowed to exclude H-2A workers from UI coverage.
almost half of all farm wages. Second, labor is typically a third or more of the cost of producing fresh fruits and vegetables, and often the most “controllable” expense in the eyes of farm employers who have more leverage negotiating with workers and labor contractors than with suppliers of seeds and fertilizer. Third, seasonality is a persisting dilemma because agriculture’s biological production process means that more workers are needed during some months than others, raising questions for farmers about whether a sufficient number of workers will be available when they are needed and for workers and society about how to support seasonal workers when farm work is not available.

Farm sales of $300 billion in 2007 were divided almost evenly between crops and livestock. In US agriculture and in most states, crop agriculture is dominated by low value-per-acre and mechanized field crops such as wheat, corn, and soybeans. Fruits, vegetables, and horticultural specialties accounted for six percent of the 417 million acres of US crop land in 2007, but generated a third of crop sales.\(^6\) In California and other states that produce FVH commodities, crop sales exceed livestock sales, and most crop sales are high-value FVH commodities.\(^7\) California has been the leading farm state since 1950 because it produces high-value FVH commodities, and today such commodities are almost 60 percent of the California’s farm sales.

Fruits, vegetables, and horticultural specialties are labor intensive in the sense that labor is often a farmer’s largest production expenditure. Farmers report their expenditures for feed, fuel, labor, seeds and other inputs for farming, and spent $26 billion on labor in 2007, a sixth of farm production expenses. Half of these labor expenses were incurred by fruit and nut, vegetable and melon, and horticultural specialty crop or FVH farms.\(^8\) Labor’s share of the cost of producing fresh fruits such as strawberries or vegetables such as lettuce is 20 to 40 percent, so that farmers often spend $2,000 on labor for a crop that yields $6,000 an acre in revenue. More important, labor is a “controllable” expense in the sense that a farmer can more easily negotiate whether to pay $0.25 or $0.26 cents for picking a 25-pound tray of raisin grapes than get a discount on the price of seeds or fertilizer.

Seasonality means that peak employment on a farm can be 5 to 10 times greater than trough employment. During the harvest season, there must be a mobilization and matching of hundreds of thousands of seasonal workers with

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6 There were 922 million acres in farms in 2007, including 416 million acres of farm land. Fruits and nuts were farmed on 12 million acres, vegetables on nine million acres, and greenhouse and nursery crops on four million acres (Statistical Abstract, 2012, Table 823).

7 In California, for example, crop sales were two-thirds of the total $35 billion farm sales (2007), and 85 percent of crop sales were fruit and nuts ($11 billion), vegetables and melons ($5.5 billion), and horticultural specialties such as flowers and mushrooms ($4 billion).

8 Based on average hourly earnings of $10.21 in 2007, this suggests 2.6 billion hours worked by hired workers in US agriculture in 2007, equivalent to 1.2 million year-round equivalent jobs (50 weeks x 40 hours a week).
seasonal jobs. Since many large fruit and vegetable farms specialize in one or a few commodities, thousands of apple or grape harvesters can be employed one week and jobless a few weeks later. Migrants can move into an area to fill seasonal jobs, or workers who are otherwise out of the labor market can join the seasonal farm work force, including students and housewives. Employers, workers, and society have grappled with how to ensure a sufficient supply of seasonal workers when they are needed and how to support seasonal workers when no farm work is available.

Farmers have traditionally defined the seasonal farm labor problem in terms of labor costs, asking how they can find a sufficient number of seasonal workers at wages they can afford to pay. One answer has been to open border gates to workers in poorer countries, or leave border gates ajar so that foreigners can enter and work illegally. Workers are eager to leave rural Mexico and elsewhere because they can earn more in a season at US wages than they could earn in a year at home. By defining the seasonal farm labor problem in terms of the cost and availability of labor, the preferred farmer solution to the seasonal farm labor problem is to hire foreigners who find seasonal US jobs and wages attractive.

If farm employers begin from the question of how to get sufficient workers at an affordable cost, worker advocates begin from labor market outcomes, often defining the seasonal farm labor problem in terms of poor labor market outcomes that include low annual earnings for the hard work involved in producing food. Across the US, seasonal farm workers earn an average $10 an hour for about 1,000 hours of farm work a year, or $10,000. Since they earn half as much as other US production workers, who average $20 an hour, and work half of the 2,000 hours of full-time nonfarm workers, seasonal farm workers earn only a fourth of the $40,000 of full-time nonfarm workers.

Most farm employers and worker advocates look to government for solutions to the seasonal farm labor problem as they have defined it. Farmers want the government to open doors to foreign workers who can earn more in the US than at home. Worker advocates, by contrast, have been divided in what they want government to do about poor seasonal farm workers. Those who believe in the Jeffersonian ideal that the government should promote a nation of family farmers advocate breaking up the large farms that hire armies of seasonal workers and converting farm workers into small farmers. Economist Paul Taylor, married to photographer Dorthea Lange of the iconic Migrant Mother photograph, advocated the creation of an Iowa-style fruit and vegetable farming system in California during the 1930s. Taylor thought that FVH commodities could be produced by breaking up large and specialized farms into family-sized plots and teaching displaced Midwestern Dust Bowl farmers how to produce fruits and vegetables.

Other farm worker advocates thought that California agriculture, which began with large farming units to grow grain and graze cattle before irrigation, technology, and transportation justified the switch to fruits and vegetables, should be recognized as different from agriculture elsewhere. Lawyer Carey McWilliams called California’s large farms “factories in the fields” and urged the
application of factory labor laws to hired farm workers. Economist Varden Fuller bolstered this argument, showing how farm wages kept low by immigration raised land prices and gave landowners an incentive to find more newcomers to preserve and enhance the value of their land. Fuller urged the government to admit fewer Mexican Bracero workers in order to put upward pressure on farm wages, which he thought would raise farm worker wages and incomes for fewer farm workers with more education and skills.

Government reacted to these very different pressures from farmers and farm worker advocates by yielding to both. Government policies for most of the past century have assured large farms sufficient seasonal workers, so farmers had few qualms about planting apple or orange trees in remote places and assuming workers would be available when needed. On the other hand, government policies have changed to cover most farm workers under most labor laws, and states such as California have gone beyond federal laws and offered farm workers more union rights than nonfarm workers. The federal government, as a legacy of the 1960s War on Poverty, funds programs to assist poor farm workers and their families with housing, training, health and other services.

Definitions of socio-economic problems usually include suggested interventions to resolve them, as with the farmer’s definition of the seasonal farm labor problem as how to get sufficient workers at an affordable cost pointing to foreign workers. Similarly, worker advocates who lament low farm earnings often urge government to restrict immigration, protect farm workers under labor laws, and offer services to poor farm workers and their families. With government embracing some aspect of each of these options, farm labor policy exhibits the contradictions common in government responses to pressure groups. For example, government-funded employment and training programs provide farm workers with skills that enable them to raise their earnings in nonfarm jobs, helping individuals to climb the US job ladder but creating a labor vacuum that results in the entry of more immigrant farm workers.

3 C’s: Concentration, Contractors, and Conflict

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9 Federal labor law coverage of farm workers is incomplete, with some farm workers employed on small farms not covered by minimum wage laws and younger children allowed to work in agriculture than in nonfarm jobs.

10 Many of the federally funded assistance programs were launched during the 1960s war on poverty to help migrant and seasonal farm workers (MSFWs) and their children to "escape" from farm work. At the time, farm wages were rising rapidly, many farm tasks were being mechanized, and it was assumed that there would be far fewer jobs for entry-level hand workers in US agriculture ((Martin and Martin, 1993). Federal MSFW programs expanded as their clientele changed from US-born families from southern Florida, Texas, and California to workers born in Mexico and Central America. There were a dozen federal programs assisting MSFWs and their children in 2010, and the federal government spent almost $1 billion on the so-called Big 4 programs: Migrant Education Program ($395 million in FY10), Migrant Health, Migrant Head Start, and the National Farmworker Jobs Program ($78 million in FY10). Federal MSFW Programs, 2010. Rural Migration News, January. Volume 17 Number 1. http://migration.ucdavis.edu/rmn/more.php?id=1588_0_3_0
Agriculture is often considered the textbook example of a competitive industry because there are thousands of producers of a homogeneous commodity such as corn or wheat. The production of labor-intensive FVH commodities is far more concentrated. The 10 largest producers of lettuce or table grapes produce half or more of the total crop, a level of concentration that is less than in meatpacking or poultry processing, but far higher than in major grain crops.\(^\text{11}\)

Large producers of fresh fruits and vegetables hire seasonal farm workers directly and indirectly, as when intermediaries bring workers to farms. Direct hires are those that the farm employer recruits and pays, while indirect hires are workers brought to farms by contractors, custom harvesters and other intermediaries who usually handle recruitment, training, supervision on the job, and payment.

Contractors should be win-win intermediaries that improve labor market efficiency by specializing in finding jobs for seasonal workers and seasonal workers for farmers. However, the combination of farmers wanting a reserve supply of workers and competition between contractors can generate simultaneous labor shortages and surpluses. For example, farm employers often ask for more workers sooner than they are truly needed because there is no cost to the farmer to have workers on standby. Similarly, contractors may promise more workers then they can provide in order to win the job, but disappoint the farmer when they show up with fewer than promised workers, prompting the farmer to complain of labor shortages. Instead of a centralized information system that enables employers to post seasonal jobs and workers to find them, decentralization and perverse employer-intermediary incentives mean that an employer can be seeking additional workers while a contractor has idle crews.

Contractors, who receive a commission of 20 to 40 percent on top of wages paid to workers, have a very mixed reputation. The wedge or difference between what a farmer pays to have work done and what the worker receives must cover payroll taxes such as social security and workers compensation, other business expenses including toilets in the fields, and profits. Farmers survey themselves and know going contractor commission rates, but competition between contractors encourages some to accept what appear to be money-losing commissions, such as a 25 percent commission when payroll taxes alone add over 25 percent to wage costs. Some contractors nonetheless profit from what appear to be money-losing agreements with farmers by not paying taxes or charging newly arrived migrants for services such as housing, rides to fields and cashing checks. The usual response to contractor abuse of workers are proposals to make farm operators jointly liable with the intermediaries who bring workers

\(^{11}\) COA data do not permit top-10 measures of concentration. The 2007 COA reported that 4,700 fruit, berry and nut farms, each with over $1 million in sales, comprised 4 percent of this type of farm but accounted for 67 percent of the sales. Vegetable and melon sales were even more concentrated; the 4,900 farms with sales of over $1 million in 2007 made up just 7 percent of this type of farm, but accounted for 84 percent of sales.
to farms for violations of labor and other laws, a remedy that has been very hard
to put into practice.\footnote{Joint liability is determined case-by-case, and most farm employers who use
contractors to get work done on their farms try to ensure that they are not jointly liable
for labor law and tax violations committed by the contractor
(www.dol.gov/whd/regs/compliance/whdfs35.htm)}

Work is the exchange of effort for reward, and this exchange can generate
conflict between employers and workers in farm and nonfarm labor markets.
Labor market transactions differ from other exchanges because of their
continuous nature. Hiring a worker for $10 an hour is the first step in a
continuous relationship that involves negotiations over how much effort a
worker must exert to keep the job and how many mistakes are tolerated. Many
workplaces have human resource or personnel management departments to
monitor and evaluate work performance on an ongoing basis. Union agreements
and government laws and regulations govern many aspects of continuous
bargaining in workplaces, but play a smaller role in the farm labor market.

\textbf{3 R's: Recruitment, Remuneration, and Retention}
All labor markets perform three basic functions, recruitment or getting workers
into jobs, remuneration or motivating them to work, and retention or checking
on the performance of workers during a season and ensuring sufficient seasonal
workers for the next season. The seasonal farm labor market deals with these
labor market Rs in unique ways.

Recruitment of seasonal workers is often handled by bilingual supervisors or
crew leaders, often ex-farm workers who are asked by their farm employer to
recruit additional workers. Network hiring is common, which means that
supervisors ask current workers to recruit friends and relatives to fill vacant jobs.
Network hiring has several advantages for farm employers, since current
workers generally recruit only workers who can do the job and often train the
friends and relatives they refer to the employer who are hired. Network hiring
avoids the need to place help-wanted ads or organize job fairs, and often
eliminates written applications, references, and tests. Contractors also use
network hiring to recruit additional workers.

Remuneration or motivation to perform the job is encouraged by the wage or
reward system. Most farm and nonfarm jobs pay hourly wages, with supervisors
monitoring the speed of work. Hourly wages are usually paid when the quality
of the work done is important, as with pruning trees and vines, and when
supervisors can set or monitor the pace of work. For example, jobs hoeing weeds
or harvesting lettuce or melons behind a conveyor belt usually pay hourly wages
because a foreman or driver can set the pace of work. The number of farm jobs
offering hourly wages has been rising for several reasons, including a more
homogeneous farm work force of young men, technologies such as conveyor
belts in the fields, and to avoid the additional record-keeping required for workers paid piece rate wages.13

When quality is less important and worker speed is harder to monitor, as when workers pick crops in trees, piece-rate remuneration systems give workers an incentive to work fast without close supervision. Piece rates keep grower costs constant regardless of variation in worker productivity, that is, the cost of picking a 1,000 pound bin of apples is $20 whether one fast or two slow workers picks the bin. Piece rate wage systems shift the employer’s monitoring task from checking the speed of work to checking the quality of work performed.

Retention involves getting seasonal workers to return day after day and season after season. The short-term retention issue in piece-rate wage systems is the iron triangle between minimum hourly wages, the piece rate per unit of work, and the productivity standard, the units of work accomplished per hour or day. A worker’s earnings are the higher of the minimum hourly wage or piece-rate earnings, and average piece rate earnings must exceed the minimum hourly wage to give workers an incentive to work at a fast pace.

Employers must decide what to do about employees who do not work fast enough to earn the minimum wage. Governments set minimum wages and employers set piece rates, and these two parameters establish a minimum productivity standard. For example, if the piece rate for picking apples is $16 a bin and the minimum wage is $8 an hour, the productivity standard is at least 0.5 bins an hour or 4 bins in an 8-hour day. Employers must “make up” the wages of slow workers to ensure they earn the minimum wage, but they are not required to retain workers who do not satisfy the productivity standard. Workers who cannot earn at least the minimum wage at the employer-specified piece rate are usually terminated.

The long-term retention issue is how ensure sufficient seasonal workers for the next season. Some farmers identify and encourage the best workers to return next season, but most consider seasonal workers to be interchangeable and exert political pressure to ensure there will be an adequate supply of seasonal farm workers year-after-year. The easiest way to ensure an adequate seasonal work force is to have government open border gates to legal foreign workers or tolerate unauthorized migration.

**Farm Labor Trends**
The major changes in the farm labor market over the past two decades include a 50 percent share of unauthorized workers, a larger role for contractors, temp firms, and other non-farmers in recruiting and bringing workers to farms, and a

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13 In the DOL NAWS, where over 85 percent of workers interviewed are hired directly by farmers and less than 15 percent by contractors, over 80 percent of jobs held by interviewed workers paid hourly wages between 2005 and 2010 (www.doleta.gov/agworker/naws.cfm)
return to the worker-led boycotts and supply-chain pressures of the 1960s rather than the farm worker strikes of the late 1970s to pressure farm employers.

Average annual employment on US farms is about 1.2 million, including an average 750,000 to 800,000 workers hired directly by farm operators and 350,000 to 400,000 workers brought to farms by contractors and other intermediaries. The total number of workers employed for wages on farms sometime during the year is larger, involving 2.4 million individuals and reflecting both peak summer employment on farms and the fact that many workers try farm work and soon quit. As with the concentration of farm production on fewer and larger farms, a relatively small share of hired workers probably contribute half or more of the total hours worked by hired workers, but there is no easy way to classify hired workers by their hours worked.

A major farm labor challenge is turnover. According to the NAWS, 15 to 20 percent of the workers employed on crop farms are newcomers, meaning they have been in the US less than a year. Over 95 percent of these newcomers are immigrants, persons born outside the US, and the overwhelming majority are unauthorized.14 If current trends continue, the farm workers of tomorrow are growing up today outside the US, explaining the keen interest of farmers in influencing the terms on which they gain access to foreign workers.

A second trend is the rising importance of contractors and other intermediaries who bring workers to farms. By finding a series of jobs for workers, contractors could increase worker hours and earnings and help farmers to minimize recruitment costs. However, the contracting process can also complicate the task of obtaining accurate information on supply and demand in the seasonal farm labor market and wind up taking advantage of vulnerable immigrant workers.

The third major farm labor market trend is the shift from traditional union activities such as strikes to boycotts and supply-chain pressure to influence farm employers. Strikes aim to reduce the supply of a good by withholding the labor needed to produce it, while boycotts try to reduce the demand for goods by persuading consumers not to buy them.

Unlike strikes called against factories that stop production, it is very hard for farm worker unions to completely stop the harvesting of farm commodities. When unions call partially effective strikes and the demand for the commodity is inelastic, meaning that consumers buy about the same amount of lettuce at higher and lower prices, a strike can raise prices and revenues for growers as a group, but not those who cannot harvest because of the strike. This is what happened during the February 1979 lettuce strike in California’s Imperial Valley, where the United Farm Workers called a strike to support a demand for higher

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14 In recent years, the NAWS portrays an older and more experienced crop work force. For example, between 2007 and 2009, the NAWS found that a quarter of workers were in the US less than five years, down from almost half in the late 1990s. Similarly, the average age of farm workers rose from 31 in the late 1990s to 36 between 2007 and 2009.
wages. The strike and disease problems reduced lettuce production by a third, the price of lettuce tripled, and grower revenues doubled, with the farms that had no unions or contracts with the Teamsters’ union reaping the benefits of higher prices.

In contrast to strikes that aim to reduce the supply of a commodity, boycotts try to reduce demand by persuading some consumers not to buy the product. If demand is inelastic and a relatively small share of consumers honor the boycott, say 10 percent, the price of the commodity can fall more than 10 percent. The UFW’s table grape boycott of the late 1960s, when 12 percent of Americans told pollsters they avoided table grapes, is considered one of the most successful union-mounted boycotts.

Boycotts were restricted in California after the state enacted an Agricultural Labor Relations Act in 1975 that extended union organizing rights to farm workers. However, they have proven effective outside California, where farm workers do not have union organizing rights guaranteed by law. The Ohio-based Farm Labor Organizing Committee, which calls itself a union and a social movement, enlisted churches and nonfarm unions in its campaign against Campbell’s Vlasic Pickles and Heinz Pickles and won three-way contracts covering farm workers in Ohio in 1986-87. FLOC negotiated wages and benefits for farm workers with Campbell’s and Heinz, and these food processors required growers who supplied them with cucumbers to abide by the terms of the FLOC contracts in dealing with their farm workers. The food processors raised the prices they paid growers to cover the higher wages and benefits included in the FLOC agreements.

FLOC used the same boycott-the-processor strategy to win three-way contracts covering workers employed by growers selling to Mount Olive pickles in North Carolina in 1999. The FLOC-Mount Olive agreement requires the farmers who sell cucumbers to Mount Olive to abide by the agreement for their farm workers, many of whom are Mexican guest workers with H-2A visas brought to the US by the North Carolina Growers Association. Under a separate FLOC-NCGA agreement, these Mexican H-2A workers are FLOC members.15

FLOC has moved from cucumbers to tobacco, asking tobacco buyers such as Reynolds American to sign contracts that set wages and working conditions for the workers employed on tobacco farms. Tobacco production is declining, but FLOC estimates that 100,000 workers are employed on tobacco farms and alleges that most are unauthorized and live in "fear of arrest and deportation." (Oxfam, 2011). FLOC wants firms Reynolds American and other tobacco buyers to establish and enforce wage and labor standards on the farms from which they buy tobacco, and FLOC won a promise in May 2011 that Reynolds American would use an independent, third-party monitor to assess the working conditions on the farms from which it buys tobacco.

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15 FLOC, which in 2007 claimed 12,000 members in six states, Ohio, Michigan, North Carolina, Virginia, Tennessee and South Carolina, collects 2.5 percent of wages in dues. There have been no elections to determine if workers want to be represented by FLOC.
The Coalition of Immokalee Workers during the 1990s pressured growers to increase the piece rate wage of Florida tomato pickers, typically $0.35 to $0.40 for each 32-pound bucket of mature-green tomatoes. When CIW pressure on growers failed to raise piece rates, the CIW mounted boycotts of fast-food chains that bought Florida slicing tomatoes. Taco Bell, the parent Yum Brands, agreed in 2005 to pay Florida growers an additional penny a pound for Florida tomatoes, and to have growers pass the extra penny on to pickers, almost doubling piece rates. McDonald’s signed a similar agreement with the CIW in 2007, as did Burger King and Subway in 2008, so that most major fast-food chains are now paying an extra 1.5 cents per pound for Florida tomatoes, with the extra money going to workers.

The 16 major Florida tomato growers, organized into the Florida Tomato Growers Exchange, initially refused to pass on the extra money paid by tomato buyers to their workers. However, the CIW and the FTGE in November 2010 agreed on a Fair Food Code of Conduct that includes a complaint resolution system for employees, a participatory health and safety program, and a worker-to-worker education process. All 16 FTGE growers employing 33,000 workers participated in the CIW-FTGE Fair Food program in 2011-12, which includes audits of farm labor conditions and can lead to growers being unable to sell tomatoes for 90 or more days to particular buyers if they or their supervisors violate the code and do not quickly remedy violations.

The CIW and participating tomato growers hope that the Code of Conduct will protect workers and increase productivity. The overall goal is to minimize worst-case outcomes, such as slavery and trafficking. The hope is that handbooks that spell out worker rights and responsibilities, effective mechanisms for workers to communicate with employers, and higher wages will also reduce turnover and raise productivity.

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16 Piece rates in 2010-11 are typically $0.45 to $0.50 a bucket, with workers earning an extra $0.32 cents a bucket when they pick tomatoes destined for buyers who have agreed to the extra 1.5 cents. The CIW notes that, under the Code, pickers no longer have to overfill or cup buckets by filling them with three or four additional pounds of tomatoes, effectively raising wages by up to 10 percent by requiring less work to fill each bucket.

17 Under the CIW-tomato buyer agreements, buyers pay an extra 1.5 cents a pound for Florida tomatoes. Pickers receive an extra cent a pound for the packed out tomatoes that are bought by signatories to the agreement. With the pack out rate between 70 and 80 percent, and with perhaps 15 to 25 percent of Florida tomatoes covered by CIW agreements, pickers receive an extra penny a pound for the quantity of packed-out tomatoes they picked that are eventually sold to the signatories of the agreement. The other 0.2 cents a pound covers additional payroll taxes on the workers’ higher wages.

18 For example, a frequent complaint of female pickers is sexual harassment at the hands of supervisors or male co-workers. In the past, some growers were reluctant to fire supervisors who harassed female workers because they brought workers into the fields. Under the Code, failure to fire supervisors who have engaged in sexual harassment with physical contact leads to at least a 90-day bar on selling to buyers who have agreed to require compliance with the Code.
UFW and FLOC and CIW boycott experience suggest that improvements for immigrant farm workers are more likely to come in a top-down fashion from buyers of farm commodities than bottom-up from farm worker unions using the threat of strikes to push up wages. In the United Kingdom and other European countries, supply-chain management programs have supermarkets and other buyers of commodities supporting groups that “audit” the farms supplying them with fruits, vegetables and flowers to ensure adherence to wage and working condition standards. Some of these private standards set wages and benefits that exceed local laws and regulations, and some deal with environmental and other factors.

US worker advocate groups would like major buyers of fruits and vegetables to develop similar labor and sustainability standards that farm suppliers would have to meet in order to sell to major supermarket chains. They reason that, if buyers of commodities feel threatened or believe they can obtain a competitive advantage by setting and enforcing labor standards for their suppliers, farmer-suppliers will improve wages and working conditions in order to have a market for their produce.

Almost all top-down labor standard agreements require suppliers to comply with local labor laws, and most pay special attention to child labor, minimum wage, and health and safety laws. Some require adherence with International Labor Office (ILO) core labor standards, and some require farm producers to issue handbooks outlining the standards and educating employees about them.19 Some agreements call for grievance mechanisms that permit employees to complain about wages and working conditions and require worker complaints to be dealt with by a neutral.

Immigrant Farm Workers
Over half of the hired workers employed on US crop farms have not been authorized to work in the US since the mid-1990s, increasing the risk that immigration law enforcement could reduce the availability and raise the cost of hired farm labor. Stepped-up enforcement of existing immigration laws, such as audits of the I-9 forms completed by newly hired workers and their employers, and federal and state laws mandating employer participation in the federal government’s E-Verify system, could reduce the supply of farm workers and increase farm labor costs.

More enforcement could be coupled with immigration reforms that legalize unauthorized farm workers and speed the exit of current farm workers from the

19 The eight core ILO labor standards are normally grouped into four categories: (1) No forced and compulsory labor (ILO Conventions 29 and 105); (2) no child labor (ILO Conventions 138 and 182); (3) no discrimination in employment (ILO (Conventions 100 and 111); and (4) freedom of association and collective bargaining (ILO Conventions 87 and 98). Many US farm workers lacked the rights in the fourth group, the right to form unions and require employers to bargain with recognized unions (www.oecd.org/document/20/0,3343,en_39048427_39049464_42744852_1_1_1_1,00.htm l).
farm workforce. Grower responses to the higher wages that may result from enforcement or legalization depend on the cost and availability of guest workers and alternatives to hand labor such as labor-saving machinery and mechanical aids (Calvin and Martin, 2010). US vegetable production is far more mechanized than fruits. About 75 percent of US vegetable and melon tonnage is machine harvested, but less than half of the fruit tonnage.

Imports of labor-intensive commodities may increase if farm labor costs rise, or there may be a mix of rising imports and mechanization. Green onions provide an example of how labor costs shifted production from the US to Mexico. In the late 1970s, almost all US green onions were produced in the US; today, almost all are imported from around Mexicali, Mexico. Some processed commodities may be more sensitive to labor costs than fresh commodities. For example, hand-cut frozen broccoli spears are mostly imported, while machine-chopped frozen broccoli is mostly grown in the US.

Until there is mechanization or rising imports, those attracted to seasonal farm work are likely to be workers whose alternative US job options are limited by a lack of English, education, or other factors. The National Agricultural Worker Surveys (NAWS) interviews workers employed on US crop farms, and in recent years found that 70 percent of workers were born abroad, increasingly in southern (20 percent) rather than western Mexico (45 percent). Almost half of crop farm workers have less than seven years of (Mexican) schooling. A third of crop workers speak no English and a third speak a little English.

The share of migrants in the farm workforce has been falling. About a quarter of US crop workers moved at least 75 miles to do farm work in recent years, the NAWS definition of a migrant. The most common more-than-75-mile move is from Mexico to the US, that is, crossing the Mexico-US border and remaining in one US area to do farm work, followed by legal Mexican immigrants who shuttle between Mexican homes and US farm jobs (most return to Mexico for 2-3 months for the Christmas holidays). Less than a fifth of migrant farm workers are the stereotypical follow-the-crop migrants who move north with the ripening crops from home bases in California, Florida, or Texas.

According to NAWS data, most hired workers stay in the seasonal farm workforce for less than a decade. However, there are no longitudinal data to track farm workers and ex-farm workers, or studies that assess the relative importance of factors that could induce seasonal farm workers to remain in the farm workforce longer, such as higher wages or more benefits. There is general

20 Between 1,500 and 3,000 workers a year are interviewed at work with the permission of their employer, a total of 56,000 workers over the past two decades. Two thirds of employers agree to allow their workers to be interviewed, and over 90 percent of the workers offered $20 agree to answer NAWS questions.

21 NAWS data suggest that more farm workers are staying in agriculture, perhaps because the 2008-09 recession made it harder to climb the US job ladder into construction and other nonfarm jobs. A third of crop workers interviewed in 2009-10, down from half in the late 1990s, had less than four years of US farm work experience.
agreement that the children of farm workers who are educated in the United States rarely follow their parents into the fields.

Since most hired farm workers are immigrants who move out of the seasonal farm labor market within a decade, the supply of US farm workers depends on a constant influx of new workers attracted by US wages significantly above those in their countries of origin, primarily Mexico. Immigration policy determines the legal status of such workers and influences their duration of stay in the US.

**Immigration Policy and Agriculture**

Agriculture has long occupied a special role in immigration policy debates. As early as 1917, after the US imposed a head tax and literacy test on Europeans to deter the entry of the poor and illiterate, immigration policy made an exception “to admit temporarily otherwise inadmissible aliens” to work in agriculture and on railroads.\(^{22}\) This first Mexican Bracero program operated between 1917 and 1921, ending after complaints that illegal immigration rose in part because US farmers refused to pay return transportation for guest workers as required. However, with the Border Patrol established only in 1924, it was relatively easy for Mexicans who had gained experience working on US farms as Braceros to enter illegally and go to work.

Some Mexicans who settled in the US during the 1920s were repatriated to open jobs for US workers during the Depression of the 1930s, when high unemployment and internal migration from the Midwestern Dust Bowl to California assured ample supplies of farm workers in western states. The outbreak of World War II allowed western farmers to argue that, without Mexican Bracero workers, there would be insufficient “food to win the war,” and Mexico agreed to allow the recruitment of its workers as a contribution to the allied war effort. As with many guest worker programs, the Bracero program got larger and lasted longer than anticipated. About 50,000 foreign workers a year came to the US during WWII, while almost 500,000 a year arrived in the mid-1950s. Tougher enforcement of wage and other standards combined with the 1960s War on Poverty and pressure from unions and churches led to the end of the Bracero guest worker program in 1964.

The 15 years between the mid-1960s and late 1970s were a golden age for hired farm workers, one of the few times when the earnings of hired farm workers rose faster than the earnings of nonfarm workers. The United Farm Workers union won 40 percent wage increases for grape harvesters in California, and there was a widespread sense that farm work would become like construction work, meaning that seasonal farm workers would earn high wages when they worked and receive unemployment insurance benefits when no work was available.

\(^{22}\) In 1917, the Bureau of Immigration was part of the US Department of Labor, and DOL used the ninth proviso of Section 3 of the Immigration Act of 1917 to admit Mexican Braceros. allowed the “Commissioner General of Immigration, with the approval of the Secretary of Labor,…to control and regulate the admission and return of otherwise inadmissible aliens applying for temporary admission.” (Quoted in CRS, 1980, 7-8).
Rising farm wages prompted widespread labor-saving mechanization in the 1960s and 1970s.

Farm worker unions that won significant wage increases such as the United Farm Workers were in the forefront of efforts to curb rising illegal migration in the late 1970s, urging the enactment of sanctions or fines on employers who hired unauthorized workers. Farm employers acknowledged that they hired unauthorized workers, and opposed employer sanctions unless the federal government enacted a new Bracero-type guest worker program. After demonstrating their ability to win a new free-agent guest worker program in Congress, a compromise was included in the Immigration Reform and Control Act of 1986 that legalized unauthorized farm workers and made employer-friendly changes to the existing agricultural guest worker program, whose name was changed from H-2 to H-2A.

IRCA was expected to usher in a new era in farm labor marked by rising farm labor costs, more mechanization, and more imports. It failed for several reasons, including the fact that unauthorized migration continued as workers presented false documents or documents belonging to legally-authorized workers to get hired. There were no sanctions on employers even if enforcement later determined that the workers were unauthorized because employers were not required to determine the authenticity of the documents presented by newly hired workers.

Illegal migration increased in the 1990s, and a proliferation of false documents allowed unauthorized workers to spread throughout the US. Congress recognized the false-document problem in 1996, instructing the then-Immigration and Naturalization Service to develop pilot projects to allow employers to check on the authenticity of the documents provided by newly-hired workers. These pilot projects evolved into E-Verify, the federal government’s internet-based system that allows employers to check data provided by newly-hired workers against Social Security and other government databases.

All federal contractors and 18 states required some or all their employers to participate in E-Verify at the end of 2011. There are 50 million to 60 million US job matches each year, and employers submitted 15.6 million queries to E-Verify in FY10, so that up to 30 percent of the workers hired that year were checked by E-Verify. USCIS reported that 98.3 percent of employer submissions were confirmed as work-authorized in less than five seconds. Of the remaining 1.7 percent “tentative nonconfirmations,” 18 percent or 47,000 were later confirmed as work authorized when the employee challenged government databases. The remaining 218,000 employees, who receive a written notice from their employers that spell out procedures for contesting the tentative nonconfirmation, self-terminated their employment.

Representative Lamar Smith (R-TX), chair of the House Judiciary Committee, introduced the Legal Workforce Act in summer 2011 to require all employers to participate in E-Verify within four years, with the smallest employers having the
most time to comply. As introduced, farmers would not have had to re-verify returning seasonal workers, but the exemption for returning seasonal workers was removed in September 2011.

Having the federal government mandate that all employers use E-Verify to check new hires has the support of the US Chamber of Commerce and other employer groups because it would pre-empt state and local laws that aim to prevent employers from hiring unauthorized workers. However, most farm organizations oppose mandatory use of E-Verify unless it is accompanied by a “workable” guest worker program. Smith’s response to farm employer concerns was the American Specialty Agriculture Act, a guest worker program that would provide 500,000 H-2C visas a year to foreign farm workers who could stay in the US up to 10 months a year.

The proposed H-2C program would allow farm employers to attest that they are abiding by the regulations laid out in the ASSA, eliminating the current certification process that requires farm employers to try to recruit US workers under DOL supervision before receiving permission to hire H-2A workers. H-2C jobs would not have to be of a temporary or seasonal nature, so year-round dairy jobs could be filled by H-2C workers, but H-2C workers would have to leave the US after 10 months (sheepherders with H-2A visas are allowed to remain in the US up to three years).

The H-2A program requires farm employers to provide free and approved housing to H-2A and out-of-area US workers who respond to the employer ads required by the certification process. The ASSA allows farm employers to provide housing to H-2C workers or provide them with a housing voucher that the H-2C worker could give to a landlord to obtain housing. The ASSA also changes the minimum wage that farm employers must offer and pay. Instead of the Adverse Effect Wage Rate, which varies by state and ranged from $9 to $12 an hour in 2011, the ASSA would require employers to pay H-2C workers the higher of the federal or state minimum wage or the prevailing wage in the occupation in which the H-2C worker will be employed, lowering wages.

Even without immigration reform, more farmers are using the current H-2A program to obtain legal guest workers. Some 7,025 employers were certified by DOL to fill 94,200 jobs with H-2A workers in FT10, when almost 99 percent of employer requests were approved. The largest type of job certified was tobacco; almost 2,000 farms were certified to fill 21,800 tobacco jobs with H-2A workers. The largest single certification was for the Washington Farm Labor Association, which was certified for 900 “farm worker” jobs between May and November 2010. Washington’s Zirkle Fruit was certified to employ 750 H-2A farm workers between August and November 2010, and Arizona’s S&H Farms to fill almost 700 cantaloupe jobs for October 2009 and another 650 for June-July 2010.

Most farm employers who use the H-2A program support Smith’s ASSA. However, California growers who do not have housing for farm workers, and fear that they could not find landlords to accept the vouchers they could give to H-2C workers, want a guest worker program that eliminates housing
requirements. Representative Dan Lundgren (R-CA) introduced the Legal Agricultural Workforce Act in September 2011 to admit foreign farm workers but not tie them to a particular farm. Lundgren’s LAWA would grant an unlimited number of 10-month W-visas to foreigners to work on US farms under a program administered by USDA, which would certify that farmers are eligible to employ W-visa workers. Farm employers would pay Social Security and Federal Unemployment Insurance Taxes on the wages of W-visa workers to cover the cost of administering the program, and W-visa workers would receive a refund of their Social Security contributions as an incentive to leave the US after a maximum 10 months.

Most worker advocates oppose both of these proposed new guest worker programs. Instead, they urge Congressional approval of the Agricultural Jobs, Opportunity, Benefits and Security Act (AgJOBS), an earned legalization and H-2A reform proposal negotiated by farm employers and worker advocates in December 2000. AgJOBS has gone through several iterations, but the most recent version would allow up to 1.35 million unauthorized farm workers who did at least 150 days or 863 hours of farm work in the 24-month period ending December 31, 2008 to apply for Blue Card probationary status. This status would allow them to work in any US job and obtain a "derivative" probationary legal status for unauthorized family members in the US.

Blue Card holders could earn an immigrant status for themselves and their families by continuing to do farm work using one of three options: (1) performing at least 150 days (a day is at least 5.75 hours) of farm work a year during each of the first three years after enactment; (2) doing at least 100 days of farm work a year during the first five years; or (3) working at least 150 days in any three years, plus 100 days in a fourth year (for workers who do not do 150 days in the first three years). Employers would provide Blue Card employees with written records of their farm work and submit a copy to DHS.

AgJOBS would make it easier for US farm employers to employ H-2A guest workers by making three major changes to the current program that are similar to those proposed in the ASSA and the LAWA. First, attestation would replace certification, effectively shifting control of the border gate from the US Department of Labor to employers, who would make assertions (assurances) to DOL that they have vacant jobs, are paying at least the minimum or prevailing wage, and will comply with other H-2A requirements.

Second, rather than provide free housing to H-2A and out-of-area US workers, AgJOBS would allow farm employers to pay a housing allowance of $1 to $2 an hour, depending on local costs to rent two-bedroom units that are assumed to house four workers. State governors would have to certify that there is sufficient rental housing for the guest workers in the area where they will be employed in order for H-2A employers to pay a housing allowance rather than provide free housing.

Third, the Adverse Effect Wage Rate would be frozen and studied. If Congress failed to enact a new AEWR within three years, the AEWR would be adjusted on
the basis of the three-year change in the Consumer Price Index and eventually rise with the CPI by up to four percent a year.

The H-2A program currently allows only employers offering seasonal farm jobs to participate, although H-2A sheep and goat herders have been allowed to work in the US continuously for up to three years as an exception. Under AgJOBS, dairy workers would be added to the exceptions, and H-2A dairy workers could work three years continuously in the US. Dairy farms accounted for 15 percent of direct-hire labor expenses in the 2007 COA, about the same as fruit and nut farms, and reported hiring 176,000 workers, two-thirds for more than 150 days on their farms.

**Whither Agriculture and Migration**

Agriculture has long been a special case in immigration policy discussions, and western (California) agriculture has consistently demanded a guest worker program that does not require DOL certification of the need for guest workers or employer-provided housing. Farm employers succeeded in persuading the House and Senate to approve such a guest worker program before IRCA was approved, resulting in the compromise included in IRCA. During the 1990s, farmers who recognized that a rising share of workers were unauthorized supported free-agent guest worker proposals, but President Clinton threatened to veto them and none was enacted.

The election of Presidents Vicente Fox in Mexico and George W. Bush in the US in 2000 prompted speculation that there would be comprehensive immigration reform, as epitomized by Mexico’s then Foreign Minister Jorge Castaneda. He laid out a four-pronged immigration agenda in June 2001 that included legalization, a new guest-worker program, reducing border violence and exempting Mexico from visa quotas, and concluded: "It's the whole enchilada or nothing." Fox was visiting Bush and pressing for this “whole enchilada” immigration reform just before the September 11, 2001 terrorist attacks.

In anticipation of whole enchilada immigration reform, worker advocates negotiated the AgJOBS compromise with farm employers that would repeat IRCA’s legalization for unauthorized farm workers coupled with employer-friendly changes to the H-2A program. Despite bipartisan support, Congress has not approved AgJOBS. Instead, House Republicans in 2011 proposed an enforcement-first approach to immigration reform that would require all employers to use E-Verify to check new hires, and new guest worker programs to dampen the opposition of farmers. However, even if a bill requiring employers to use E-Verify and offering farm employers new guest worker programs was approved in the House, it would likely die in the Senate or be vetoed by President Obama, who favors comprehensive immigration reform that includes more enforcement and legalization for most unauthorized foreigners in the US.

Agriculture has long occupied a special place in US immigration and immigration policy. America’s first century was highlighted by the debate over slavery that culminated in the Civil War, ending an institution that assured
agriculture a supply of seasonal workers in a country offering free land to settlers. America’s second century has been marked by contentious debates over Mexico-US migration, which has its roots in the efforts of especially western farmers to hire Mexicans as seasonal farm workers. During America’s third century, the triangle of marked by rising imports of labor-intensive commodities, increasing mechanization, and guest workers is likely to dominate the immigration and agriculture debate.

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