The H-2A and H-2B programs admit foreign guest workers to fill seasonal farm and nonfarm jobs, respectively. The H-2 program was created in 1952 by the Immigration and Nationality Act (Public Law 82-414) and modified in 1986 into the H-2A and H-2B programs by the Immigration Reform and Control Act (Public Law 99-603). Employers must receive certification from DOL to employ H-2A and H-2B workers, who are tied to their US employers by contracts.

This article covers the Agricultural Labor Working Group report released in March 2024, the Farm Workforce Modernization Act approved by the House in 2019 and 2021, the agricultural provisions of the Immigration Reform and Control Act of 1986 and post-IRCA immigration and agriculture reform efforts, and the legacy of Bracero migration policies.

ALWG

There is unlikely to be any major Congressional action to modify the H-2A program in 2024. Legislative action in 2025 depends on the outcome of elections in November 2024.

The 14-member bipartisan House Agriculture Committee’s Agricultural Labor Working Group (ALWG) released a report in March 2024 with 15 recommendations that were supported unanimously. These recommendations include allowing employers to file one application to the three agencies that administer the program (DOL, DHS, and DOS), to specify different entry dates for H-2A workers on one application, and to waive in-person interviews at US consulates abroad for returning H-2A workers.

Other ALWG recommendations would require DOL to consult with USDA before issuing new or modified H-2A regulations and to have GAO review employer reliance on H-2A workers and compliance with H-2A regulations. The GAO would investigate the ability of H-2A workers to report violations and determine whether changes to H-2A procedures that were made during covid should be made permanent.

The AEWR was addressed directly and indirectly. The ALWG recommended an AEWR wage freeze that would be followed by caps on how much the AEWR could increase or decrease each year. An ALWG majority recommended an alternative to the FLS to calculate the AEWR.

If H-2A workers mostly harvest crops, the ALWG recommended that they be permitted to devote up to 25 percent of their work time to other activities such as driving a bus or van with fellow workers and still receive the crop AEWR. The ALWG recommended a federal heat standard for H-2A workers and called for making employers who offer year-round farm and nonfarm processing jobs eligible to employ H-2A workers.

A majority of the ALWG recommended:
- a pilot program to allow some H-2A workers to remain in the US continuously for three years and to work for one or more US employers,
- an exemption from the AEWR for farms with an annual gross cash income of less than $350,000 and
- allowing H-2A workers to be employed full-time by one employer and part-time by a second joint employer.

An ALWG majority recommended more federal funding for farm worker housing that can be used to house H-2A workers.

There was no ALWG majority for allowing employers to provide a housing allowance or stipend rather than provide housing, to require mediation before workers can sue employers for labor law violations, and to prohibit predatory loans that H-2A workers may take in their home countries.

FWMA

The House recently took the lead to reform the H-2A program, approving the Farm Workforce Modernization Act in 2019 and 2021 with
bipartisan support. However, the Senate did not vote on the FWMA.

The FWMA would allow unauthorized farm workers who did at least 180 days of farm work over the previous five years to become Certified Agricultural Workers and receive 5.5 year renewable work permits. CAWS could live and work anywhere in the US, and their family members in the US could also receive work permits and work in any US job.

In order to maintain CAW status, CAWs would have to do at least 100 days of farm work a year. After four or eight years of 100 day farm work a year, CAWs and their spouses and children could apply for immigrant visas.

The H-2A program would change by allowing H-2A workers to fill up to 20,000 year-round farm jobs and grant H-2A workers three-year visas, so that dairies and other animal agriculture operations could employ H-2A workers. The Adverse Effect Wage Rate would be frozen, and annual increases and decreases would be limited while USDA and DOL study the need for an AEWR. H-2A workers would be protected by the provisions of the Migrant and Seasonal Agricultural Worker Protection Act.

Once CAW legalization and the H-2A changes are implemented, farm employers would be required to use E-Verify to check the legal status of newly hired workers.

The FWMA is opposed by those who reject legalization for unauthorized foreigners. The Heritage Foundation argued that the FWMA would “reward individuals who have come into the country illegally to work in agriculture—and also reward those agricultural producers who have employed these illegal workers.”

**The ALWG Supported 15 H-2A Reforms Unanimously**

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**The FWMA was Approved by the House in 2019 and 2021**

**FARM WORKFORCE MODERNIZATION ACT**

ENSURING A LEGAL AND RELIABLE WORKFORCE FOR AMERICA’S AGRICULTURE INDUSTRY

**IRCA**

The major drivers of legislative action on farm labor are worker advocates such as the UFW and farm employer advocates such as the NCAE and AFBF. The compromise brokered by then-Rep Chuck Schumer (D-NY) in the mid-1980s between worker and employer advocates to enact IRCA has persisted in the four decades since. IRCA legalized currently unauthorized farm workers and made it easier for farmers to hire guest workers, and this legalization-and-easier-guest worker formula persists.
Western farm employers in the mid-1980s insisted on a non-certification alternative to H-2 in IRCA, and won the free-agent Replenishment Agricultural Worker program, which would have admitted free-agent migrants who would find their own housing and could work only for US farmers. The number of RAW visas would be determined by a farm labor shortage number that was developed by DOL and USDA. However, there were no farm labor shortages in the early 1990s, and the RAW program was allowed to expire without being used.

DOL created a new survey of farm workers, the NAWS, to estimate the supply of US farm workers. The NAWS continued to interview crop workers and found that the share of unauthorized crop workers reached 50 percent by the mid-1990s. This 50-percent-unauthorized share of crop workers prompted some farmers to assert that there was a shortage of legal farm workers and led to Congressional proposals for another RAW-type program. Rep Richard Pombo (R-CA) proposed that the US admit up to 250,000 free-agent farm workers with work visas that would allow them to work only in farm jobs. The Pombo bill was rejected in the House in March 1996.

The Senate in 1998 approved another version of the Pombo bill in the Agricultural Job Opportunity, Benefits, and Security Act (AgJOBS), prompting President Clinton to threaten to veto any new farm guest worker program. Instead, Clinton said that: “If our crackdown on illegal immigration contributes to labor shortages… I will direct the Departments of Labor and Agriculture to work cooperatively to improve and enhance existing programs to meet the labor requirements of our vital agricultural industry consistent with our obligations to American workers.”
After the election of Presidents Vincente Fox and George W. Bush in 2000, both of whom favored new Mexico-US guest worker programs, worker and grower representatives negotiated a compromise version of AgJOBS with three elements:

• Provisional legal status for unauthorized farm workers who did at least 100 days of farm work in the preceding 18 months. This provisional status could be converted to an immigrant visa by doing at least 360 days of farm work in the next six years
• A freeze of the Adverse Effect Wage Rate (AEWR) for two or three years
• Employers could provide AgJOBS guest workers with housing or pay them a quarter of the Section 8 housing allowance for the area, under the theory that guest workers would share housing

AgJOBS went through many iterations over the next two decades. AgJOBS was included in the Comprehensive Immigration Reform Act bills approved by the Senate in 2006 and 2013, and championed by then-Senator Dianne Feinstein (D-CA), who argued in 2007 that US agriculture faced “labor shortages far into the future. Fruit will rot. Crops will go unharvested. Operations will be forced to cut back or move to Mexico. And U.S. agriculture will lose market share to growers abroad - in China, in South America, in Europe.”

Feinstein also lamented the lack of definitive data on farm labor shortages. She said: “There’s no proof that in Oregon, for example, they’re missing X thousand number of workers or in Washington they’re short. We have no state-by-state total of worker shortages. It’s very hard to find this information. People don’t want to come forward and say they’re short of workers. They find ways to get the work done.”

AgJOBS was opposed by some Republicans who argued against amnesty for unauthorized foreigners and by some Democrats who were opposed to easier access to guest workers.

Bracero 1

As a nation of immigrants, the US preferred foreigners who wanted to settle and become Americans rather than migrants who wanted to earn money in the US and return to their countries of origin. Before the Foran Act of 1885, foreigners could indenture themselves or promise to work several years for the US person who paid for their travel to the US. Unions helped to persuade Congress to bar foreign “indentured workers” for fear that they would undercut the wages and working conditions of US workers.

Admitting guest workers tied to a US employer was an exception to US immigration laws for most of the 20th century, since there was no statutory basis for the admission of temporary foreign or non-immigrant workers between 1885 and 1952. The Immigration Act of 1917 imposed a literacy test on foreigners 16 and older and doubled the head tax to $8. However, the US Department of

Heritage Opposed the FWMA

Congress Should Reject Amnesty for Illegal Agricultural Workers

Heritage Recommends Phasing Out the H-2A Program

PUTTING AMERICAN WORKERS FIRST

A labor agenda focused on the strength of American families must put American workers first. As the family necessarily puts the interests of its members first, so too the United States must put the interests of American workers first.

Immigration. The H-2A visa, meant to allow temporary agricultural workers into the United States, also suffers frequent employer abuse. The low cost of H-2A workers undercut American workers in agricultural employment. The H-2A program is not subject to any statutory numerical cap and has been expanding in recent years, surpassing 200,000 visa issuances for the first time in 2019.

• Cap and phase down the H-2A visa program. Congress should immediately cap this program at its current levels and establish a schedule for its gradual and predictable phasedown over the subsequent 10 to 20 years, producing the necessary incentives for the industry to invest in raising productivity, including through capital investment in agricultural equipment, and increasing employment for Americans in the agricultural sector.

• Encourage the establishment of an industry consortium and match funding. Congress should also encourage the establishment of an industry consortium of agricultural equipment producers and other automation and robotics firms interested in entering the sector and match funding invested by the industry, with intellectual property developed within the consortium freely available to all participants.
Labor, which included the Bureau of Immigration at the time, on May 23, 1917 approved requests made by western farmers “to admit temporarily otherwise inadmissible aliens” from Canada and Mexico to work in agriculture and on railroads.

There was opposition to this first Bracero program. Some DOL officials were skeptical of farmer claims that there were farm labor shortages due to conscription for WWI. Then-assistant Secretary of Labor Louis Post said: “the farm labor shortage is two-thirds imaginary and one-third remedial,” meaning that farmers could recruit enough seasonal workers if they raised wages and improved housing conditions. The Chair of the House Committee on Immigration and Naturalization did not think DOL had the power to unilaterally suspend the 1885 bar on the admission of contract workers tied to a US employer. DOL responded that the alternatives, including repealing the Chinese Exclusion Act to obtain farm workers, were worse.

Mexican workers were admitted in 1917 primarily for “employment in the sugar beet fields of California, Colorado, Utah, and Idaho, and in the cotton fields of Texas, Arizona, and California.” A DOL order issued June 12, 1918 outlined the certification procedure for farm employers, who had to provide proof to their local Employment Service office that there were not sufficient US workers despite offering the same wages that were paid “for similar labor in the community in which the admitted aliens are to be employed.” Local Employment Service offices could certify or deny an employer’s request for Mexicans.

The first Bracero program continued until March 2, 1921. Some 73,000 Mexican Braceros were admitted between 1917 and 1921, and the Bureau of Immigration reported that 21,000 absconded from their US employer and 16,000 were still employed by the farmer who first hired them, meaning that fewer than half of the Braceros who were admitted returned to Mexico. A review of this first Bracero program concluded that neither workers nor employers felt that they had to abide by the contracts they signed.

Legal and illegal Mexican immigration increased in the 1920s after the first Bracero program ended. The US Border Patrol was established in 1924 with 60 mounted agents, and illegal entry meant entering the US without paying the head tax at one of the border stations.

Dust Bowl

There were farm labor surpluses during the 1930s, especially after Dust Bowl migration added over a million residents to California, a state with less than six million people in 1930. Dust Bowl migrants quickly learned that California’s commercial farms hired crews of seasonal workers when they were needed, not the hired hands or apprentice farmers who lived and worked alongside farmers, with their children inter-marrying.

Many Dust Bowl migrants wound up in farm labor tent camps known as Hoovervilles, where union organizers were active. Dust Bowl migrants were US citizens, and there were fears that Hoovervilles could become a fertile breeding ground for Communists and others who wanted to make major changes to the US socio-economic system. These fears led to the creation of federally funded farm worker housing centers, one of which served as a backdrop for John Steinbeck’s 1939 novel, The Grapes of Wrath.

There was an oversupply of farm workers during the late 1930s. The USDA Secretary testified before a Senate subcommittee in 1940 that the number of US farm workers far exceeded the number who could expect to make a decent living from agriculture. Western farmers nonetheless requested a second Bracero program in 1941, a request rejected by DOL at the behest of California’s Governor.
Bracero 2

Farmers asked for Braceros again after the US declared war on the Axis powers in December 1941, and a federal interagency committee in May 1942 agreed that foreign farm workers would be needed for the fall harvest. Despite protests from US unions and Mexican American groups, an interagency committee drafted a guest worker agreement and sent it to Mexico, which modified it slightly before approving it on July 23, 1942. The first of the 4,200 Mexican Braceros admitted in 1942 entered at El Paso on September 27, 1942 and went to work in sugar beet fields near Stockton, CA.

The Mexican government insisted that the US government be the employer of record for Mexican Braceros (the Farm Security Administration signed the contracts), and the US farmer became the sub-employer to the FSA. The US government paid transportation and subsistence costs for Braceros while they traveled to US work sites, and these costs were reimbursed by farmers. Braceros were guaranteed work for at least three-fourths of the contract period specified by the farm employer, and 10 percent of Bracero earnings were withheld and deposited with the Mexican Agricultural Credit Bank. Most Bracero forced savings were not claimed in Mexico or lost by Mexican banks.

US laws on importing foreign farm workers lapsed in 1947, but the Mexico-US agreement remained valid, so DOL’s Employment Service replaced the FSA as the agency that certified an employer’s need for foreign workers. DOL forwarded its certification of employer need to the INS, which regulated border admissions. Many of the Mexican workers who were employed in US fields between 1948 and 1951 arrived illegally. When these “wet backs,”
a term used in official documents, were detected inside the US, they were often returned to the border, issued documents, and returned to the farm on which they were detected.

The President’s Commission on Migratory Labor in 1951 concluded that the presence of Mexican Braceros depressed wages in the crops where they were concentrated, especially cotton picking, so that “alien labor has depressed farm wages and, therefore, has been detrimental to domestic labor.” The President’s Commission recommended no more Braceros. Nonetheless Congress, over the objections of President Truman, enacted PL 78, the Migratory Labor Agreement of 1951, to expand Bracero admissions. East Coast farmers had private arrangements to recruit seasonal farm workers from Caribbean islands and were not covered by PL 78.

PL 78 Section 503 said that Braceros could not be imported unless “the Secretary of Labor has determined and certified that (1) sufficient domestic workers who are able, willing, and qualified are not available at the time and place needed to perform the work (2) the employment of such workers will not adversely affect the wages and working conditions of domestic agricultural workers similarly employed, and (3) reasonable efforts have been made to attract domestic workers for such employment at wages similar to those offered to foreign workers.”

DOL relied on local ES offices (today State Workforce agencies) to “assist the [DOL] Secretary in recruiting domestic farm workers and determining if they were available.” Bracero earnings were exempt from social security and income-tax withholding.

The major justification for the PL 78 Bracero program was the Korean War, which ended in 1953. The number of Braceros and illegal Mexican migrants rose together in the early 1950s because immigration agents who detected unauthorized Mexicans routinely legalized them, encouraging illegal Mexico-US migration by migrants who wanted to avoid bribes and fees in Mexico. General Joseph Swing was appointed to head INS in 1954, when the number of Border Patrol agents rose by 50 percent to 1,500. Swing mounted Operation Wetback in 1954-55 to detect and remove illegal Mexicans from the US. At the same time, DOL relaxed housing and other regulations to encourage farmers to employ legal Braceros, whose admissions rose from less than 200,000 in 1952 to a peak 445,000 in 1956.

**Ending Bracero 2**

DOL Secretary James Mitchell appointed four consultants to study the effects of the Bracero program in the late 1950s. Their October 1959 report concluded that Mexican Braceros were hurting US farm workers, and recommended that DOL determine a minimum wage “rate necessary to avoid adverse effect on domestic wage rates” in crops and areas dominated by Braceros.

Mitchell implemented the consultants’ recommendations in November 1959 despite pushback in Congress, and DOL Secretary Arthur Goldberg in May 1962 issued the first AEWRs: $0.95 an hour in AZ, $1 an hour in CA, $0.90 in CO, $1 in KS, $0.75 in NM, and $0.70 in TX. These AEWR wages had to be paid.

### Mexican Bracero Admissions Peaked at 445,000 in 1956

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<tr>
<th>Year</th>
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<th>Apprehensions</th>
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Source: Congressional Research Service, 1980
to US farm workers, who were not covered by federal minimum wages at the time, who were employed on farms with Braceros.

The federal minimum wage was $1.15 an hour after September 1961. US farm workers were first covered by the FLSA in 1966, when the regular minimum wage was $1.40 while the farm worker minimum wage was $1 after February 1967. US farm workers were entitled to regular the regular FLSA minimum wage of $2.65 after 1978.

President Kennedy announced plans to end the Bracero program in 1961, but Congress extended the program until the end of 1964. Illegal Mexico-US migration remained relatively low during the 1960s, but was on a rising trajectory: there were 110,000 apprehensions in 1965 and 284,000 in 1969.

A comprehensive review concluded that “the Bracero program only seemed to reduce illegal migration when it was combined with both massive law enforcement (Operation Wetback) and an expansion of the farm labor program to the point where it almost certainly had an adverse impact on the wages and working conditions of domestic workers [as in the mid-1950s].”

**H-2**

East coast farmers recruited workers from the British West Indies under MOUs between the War Food Administration and the Bahamas (March 16, 1943), Jamaica (April 2, 1943), and Barbados (May 24, 1944). The British West Indies Central Labor Organization (BWICLO) represented the governments of Caribbean islands. Between 1960 and 1980, BWICLO reported that an average 12,000 BWI workers (the range was from 9,000 to 15,000 a year) were sent to the US to harvest sugar cane in Florida and pick apples along the eastern seaboard.

The H-2 program was created by the Immigration and Naturalization Act (McCarran Walter Act) of 1952, enacted over President Truman’s veto. Section 101 (a) (15) (H) outlined procedures to admit three types of temporary workers: persons of distinguished merit and ability, other temporary workers, and trainees. INA Section 214 (c) gave the Attorney General the authority to deal with petitions from employers for H-2 visas for foreign workers “after consultation with the appropriate agencies of the government.” DOJ, and DHS since the movement of INS to DHS, normally denies employer petitions for H-2 visas unless they are accompanied by a certification from DOL that the US workers are unavailable and that their presence will not adversely affect US workers.

After the Bracero program ended in 1964, many farmers expected to employ Mexican workers under the H-2 program. However, DOL on December 19, 1964 published regulations that required employers of H-2 workers to offer and pay any US workers they employed the AEWR and to provide US workers on farms with Braceros the same housing, transportation, and other rights included in Mexican worker contracts.

These DOL regulations were challenged by Florida growers in 1965 after DOL refused to certify their need for foreign celery cutters. After a federal judge refused to require DOL to issue the certification, Senators from California and Florida tried to transfer responsibility for certifying farm employer requests for foreign workers from DOL to USDA, an effort that failed on a 46-45 vote in 1965 because Vice President Hubert Humphrey cast a vote to break the previous tie.

### References

Agricultural Labor Working Group Report. 2024. March 7


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