



Rep. Goodlatte’s “Agricultural Guestworker Act” Would Harm Farmworkers: It’s Time to Support the Bipartisan Compromise Agreed to by Employers and Farmworkers

On April 26, 2013, House Judiciary Committee Chairman Goodlatte (R-Va.) filed the “Agricultural Guestworker Act”, H.R. 1773. The bill would create a new agricultural guestworker program. Despite widespread recognition of the need for comprehensive reform legislation to fix our broken immigration system, Rep. Goodlatte offers piecemeal legislation that lacks broad support and will create even more unfairness and dysfunction in our immigration system. The terms of the new agricultural guestworker program would deprive U.S. citizens and lawful permanent residents of job opportunities, lower farmworkers’ already poor wages, and allow exploitative conditions for hundreds of thousands of new guestworkers. Most importantly, the bill lacks an opportunity for the hundreds of thousands of current farmworkers who lack authorized immigration status to earn a green card or citizenship.

This legislation stands in stark contrast to the comprehensive proposal for immigration reform by the “Gang of Eight” Senators, which includes a carefully-negotiated, balanced agreement regarding agricultural workers. Rep. Goodlatte’s one-sided bill takes some aspects of the Senate compromise but the end result would be devastating to current and future farmworkers. The agricultural provisions in the Senate bill, S.744, resulted from months of difficult negotiations between major agribusiness groups, the United Farm Workers, and a bipartisan group of very engaged Senators. The compromise includes both an earned legalization program and road map to citizenship for the current undocumented agricultural workforce and a new visa program to address future farm labor needs. It would be good for farmworkers, employers and the national interest in a secure, safe food supply.

Rep. Goodlatte’s bill would replace the H-2A agricultural guestworker program with a new H-2C program and **eliminate many long-standing worker protections**. His one-sided bill would allow exploitation of foreign citizens of poor countries and cause job loss and lower wages for U.S. farmworkers. It contravenes the recommendations for reform in the Farmworker Justice report, “No Way to Treat a Guest: Why the H-2A Agricultural Visa Program Fails U.S. and Foreign Workers.” Specifically, the bill would:

- **Deprive U.S. farmworkers of jobs by minimizing recruitment obligations.** The bill would eliminate the 50% percent rule, which requires employers to hire qualified U.S. workers who apply for work during the first half of the season.
- **Slash wage rates and withhold 10% of workers’ wages.** The H-2C program would require only that employers pay the higher of the prevailing wage or the federal or state minimum wage, but does not define prevailing wage. Currently, H-2A employers must pay the highest of three wage rates: the state or federal minimum wage, the “Adverse Effect Wage Rate” (AEWR), or the local prevailing wage. The AEWR is the regional average hourly wage rate for field and livestock workers, as measured by the Department of Agriculture’s annual Farm Labor Survey of non-supervisory workers. The AEWR was created in response to depression in local prevailing wages under guestworker programs. Goodlatte’s bill would

also withhold 10% of workers' meager wages from their paychecks. To apply for the return of their earnings, H-2C workers would be required to travel to a U.S. consulate in their homeland within 30 days of the expiration of their visa and demonstrate compliance with the terms of the H-2C program. Such workers will labor in fear of being fired and deemed out of compliance and therefore ineligible for return of their money, which will deter them from challenging unfair or illegal employer practices. Wage deduction abuses are still being litigated under the Bracero program, which ended in 1964.

- **Expand the program's coverage** from temporary and seasonal agriculture to year-round, permanent jobs in industries such as dairy and poultry and meat processing plants. U.S. citizens and lawful permanent resident immigrants in a large number of occupations will now be threatened with displacement by guestworkers. The annual limit would be 500,000 H-2C visas.
- **Minimize government oversight** of employers' claims of labor shortages, job terms and working conditions. The Goodlatte bill would change from the H-2A program's labor certification process to a labor attestation process, meaning employers simply promise to comply with required job terms and other requirements, with limited government oversight. Goodlatte would also move the application process and enforcement of the worker protections from the Department of Labor to the Department of Agriculture, despite its lack of experience enforcing labor protections and despite the fact that all other guestworker programs are run by the DOL. None of these harmful changes would be ameliorated by any new protections; in fact, the bill would remove workers' access to justice.
- **Limit worker access to judicial relief and legal assistance.** In addition to reducing government oversight, the bill would minimize workers' ability to protect their few rights. The bill would bar federal legal aid programs from representing H-2C guestworkers. Before filing a lawsuit, workers (who find an attorney) would have to use and pay for mediation services. Additionally, employers may require victimized workers to submit legal disputes to mandatory arbitration. Finally, workers would not be covered by the Migrant and Seasonal Agricultural Worker Protection Act.
- **Reduce guestworkers' minimum-work guarantee.** The H-2C program would replace the H-2A program's three-fourths guarantee with a 50% guarantee. Employers would be required to provide the H-2C workers with only half of the total hours of the contract period that they promised in the job offer, instead of the current 3/4. The 3/4 guarantee is the principal protection against over-recruitment and provides some assurance that workers who commit to the job will have the opportunity to earn close to the amount they were promised.
- **Eliminate the requirement that employers provide housing for guestworkers and U.S. workers who travel to the worksite.** Despite the severe shortage of sanitary, uncrowded, affordable housing for farmworkers, U.S. and foreign migrant workers would face the difficult task of arranging for housing from their home bases. Some farmworkers would likely end up homeless.
- **Eliminate travel-expense reimbursement to which workers are entitled.** H-2A program employers must reimburse workers for their in-bound transportation costs after one-half of the season has elapsed and then pay for their travel home if they complete the season. Goodlatte eliminates this requirement despite the workers' low incomes and the incentive it would create for employers to over-recruit and drive down wages.

The Bill Does Not Provide a Roadmap to Citizenship for the Current Experienced Undocumented Agricultural Workers or Family Members. Instead, Goodlatte's bill would merely "allow" undocumented farmworkers to become H-2C agricultural guestworkers. These workers would simply be trading one form of second-class status for another. The bill does not address the farmworkers' spouses and children living in the U.S. without immigration status. They would face the choice of staying here out-of-status and risking deportation or returning to their country of origin and living apart from their loved ones. Consequently, many farmworkers would not come forward to apply for H-2C status.

Conclusion: America wants Congress to reform our broken immigration system in balanced ways. Rep. Goodlatte's bill would harm the hundreds of thousands of U.S. workers employed in agriculture, would do almost nothing to address the presence of roughly one million undocumented workers already here, and would provide agricultural employers with access to a half-million additional foreign workers at low wages with minimal government oversight.

The House of Representatives should embrace the bipartisan Senate bill that reflects the agreement reached by agricultural employers and farmworker organizations. That bill includes both an opportunity to earn legal immigration status and citizenship for undocumented farmworkers and their family members and a new agricultural worker visa program that would provide important labor protections while ensuring employer access to needed future workers.