



Rep. Goodlatte’s “Agricultural Guestworker Act” Would Harm Farmworkers: It’s Time to Support the Stakeholder Agreement Reached by Agricultural Employers and Farmworkers

On June 19, 2013, the House Judiciary Committee approved Chairman Goodlatte’s (R-Va.) “Agricultural Guestworker Act,” H.R. 1773. The bill would create one of the worst agricultural guestworker programs in decades. Instead of providing the comprehensive immigration solution this nation desperately needs and wants, this bill represents a flawed piecemeal approach to convert an entire industry, from the fields to the processing plants, to an army of guestworkers. 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. 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 carefully-negotiated, balanced stakeholder immigration agreement regarding agricultural workers. The positive stakeholder agreement resulted from months of difficult negotiations between major agribusiness groups, the United Farm Workers, and a bipartisan group of very engaged Senators (Sens. Feinstein, Rubio, Bennet, and Hatch). 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 our national interest in a secure, safe food supply. The stakeholder agreement is included in the Senate’s Border Security, Economic Opportunity and Immigration Reform Act, S.744, which passed the Senate with a bipartisan vote of 68-32.

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. Under the four-tiered wage structure used to calculate the prevailing wage, the lowest wage level would be allowed to be used for entry level farmworkers. By definition, the level one wage would be significantly lower than the average wage in the industry, creating a downward pressure on wages. 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 AEW 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 AEW 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 120 days of the expiration of their visa and demonstrate compliance with the terms of the H-2C program.

- **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. Before filing a lawsuit, workers would be required to submit to and pay for mediation services. Additionally, employers may require victimized workers to submit legal disputes to mandatory binding arbitration. Finally, H-2C workers would be excluded from coverage under one of the main employment laws for farmworkers, the Migrant and Seasonal Agricultural Worker Protection Act and would not have access to federal legal aid programs.
- **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 three-fourths of the total hours. The three-fourths 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, Rep. Goodlatte would expect the roughly one million undocumented farmworkers to self-deport within the first 2 years after enactment. Their only opportunity to return to the U.S. would be as H-2C guestworkers and only if they have an offer of employment. These workers would simply be trading one form of second-class status for another, potentially remaining in temporary nonimmigrant status indefinitely (with mandated returns every several years) with practically no legal protections. The bill does not address the farmworkers' spouses and children living in the U.S. without immigration status and specifically excludes family from the H-2C program. Families would suffer as 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, provide no solution for the roughly one million undocumented workers already here, and create a deeply flawed and troubling new guestworker program that provides agricultural employers with access to 500,000 additional foreign workers at low wages with minimal government oversight.

The House of Representatives should embrace the positive agricultural stakeholder agreement that reflects the compromise reached by agricultural employers and farmworker organizations. Those provisions are an important part of a comprehensive immigration bill that provides a roadmap to citizenship for the 11 million, including farmworkers and their families.