



Farm Workforce Modernization Act

MYTH VS. FACT

Here are the **FACTS** about what the Farm Workforce Modernization Act does:

- Simplifies H-2A by reducing duplicative paperwork—now only one filing needed instead of three.
- Bureaucracy is reduced even further for farmers with staggered labor needs. Farmers can file one petition for the entire season, allowing for staggered entry of H-2A workers.
- Modernizes recruitment by allowing employers to post job openings on an online job registry. No classified ads required.
- Reduces labor costs by freezing wages for 1 year and capping wage growth thereafter. The adverse effect wage rate is replaced in later years.
- Makes available 60,000 year-round H-2A visas over the first 3 years, growing annually by 12.5%. Dairy is guaranteed at least half of these visas, and any unused visas are available for other agriculture industries.
- Stabilizes the existing workforce by giving legitimate farmworkers a chance to get a 5-year Certified Agriculture Worker (CAW) visa to work in U.S. agriculture. As long as the worker continues to meet minimum days in agriculture annually, the worker can continue to work in the U.S. with unlimited 5-year renewals. CAWs can cross the border as they need without restriction.
- CAWs can earn the opportunity to apply for a green card by paying a penalty and continuing to work in agriculture for at least 8 years. If a CAW can prove 10 years of prior work in agriculture, they can apply for a green card at 4 years.

MYTH: This bill will codify wage surveys into law and result in multiple wage classes. Under this bill, wages will be much higher than the current Adverse Effect Wage Rate (AEWR).

FACT: This bill provides for granularity in wages similar to the Trump Administration's H-2A regulation. However, unlike the Trump regulation, this bill applies a one-year freeze of wages across all categories at the current rate. After the one-year freeze, all categories are then limited in wage growth to 3.25% with the ability to go down -1.5%. (Exception: If the resulting wage is less than 110% of the Federal or state minimum wage, then the wage could go up by up to an additional percent to 4.25%.) After year 10, the AEWR requirement ends, and the Secretaries of Agriculture and Labor must develop a new wage standard with input from stakeholders. Further, if Congress fails to act without reforming AEWR, some estimates have shown wages could go up at least 7% in 2020.

MYTH: Adjusted workers are treated immediately as U.S. workers, thus requiring employers to hire them. This displaces previous H-2A workers.

FACT: Certified Agriculture Workers (CAWs) have a requirement to work in agriculture that no domestic worker has. Because of that requirement and proven experience in agriculture work, CAWs do receive preference over foreign agriculture workers. There is no expansion of the current workforce; CAW workers are already here and working in agriculture. The bill eliminates the legal chaos farmers and workers face today.

MYTH: This bill does not allow agricultural associations to file as agents on behalf of their members.

FACT: This bill does not affect the ability of associations to file as agents. The bill allows associations to file as agents, or as a joint or sole employer of workers.

MYTH: This bill provides no relief for dairies or year-round agriculture.

FACT: This bill creates year-round access to the H-2A program for dairy and other agricultural sectors that desperately need workers but have previously been unable to utilize the program. Without this bill, year-round agriculture has no access to a legal immigrant workforce.

MYTH: This bill would create new funding for the Legal Services Corporation.

FACT: There is no new funding in this bill for the Legal Services Corporation.

MYTH: This bill requires farmworker housing to meet Occupational Safety and Health Administration (OSHA) standards.

FACT: Farmworker housing is already required to meet OSHA standards. The bill makes no changes to that requirement. The bill provides \$11 billion in additional funds for grower-provided and other farmworker housing.

MYTH: This bill establishes a new complaint/investigation process that allows anyone to file a complaint.

FACT: There is no new process established in this bill. It simply codifies existing regulations.

MYTH: The bill requires more reporting on employer recruitment efforts.

FACT: There are no additional reporting requirements in this bill, and requirements for recruitment efforts have been simplified and modernized.

MYTH: This bill creates a new private right of action for H-2A workers (under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA)).

FACT: Under current law, any operation that hires one domestic worker is covered by MSPA. This bill would require H-2A workers to go through mandatory mediation before litigating.

MYTH: This bill gives workers up to two years to file a legal claim against an employer, even after the worker has returned to their home country.

FACT: Under current statute, H-2A workers already get this. There is nothing new in this bill.

MYTH: This bill gives the Department of Labor (DOL) the ability to sue on behalf of an employees.

FACT: Under the Fair Labor Standards Act (FLSA), DOL already has this ability. Nothing new in this bill.

MYTH: To overcome a denial of labor certification, this legislation places the burden of proof on employers to show that domestic workers were turned away for lawful reasons.

FACT: Nothing new in this bill. This provision already exists under current law.

MYTH: This bill permits very limited appeals and does not grant de novo appeals of denials or NODs.

FACT: This bill allows employers to quickly fix application deficiencies, as with current law. The bill, however, improves this process by creating a new emergency procedures for farmers, so issues are fixed faster and workers are not delayed.

MYTH: This bill establishes a new requirement for employers to provide housing for domestic workers outside of a 50-mile distance.

FACT: The bill does not change any current housing requirements. As with current law, the requirement to provide housing applies only to U.S. workers who live outside of the normal commuting distance for the area.



FARM WORKFORCE MODERNIZATION ACT

Title I. Earned Status for Certified Agricultural Workers

This title establishes a program for agricultural workers in the United States to get right with the law and earn legal status through continued agricultural employment and contribution to the U.S. agricultural economy.

- America's farmers and ranchers are in desperate need of a legal, reliable workforce. President Trump has called for merit-based immigration reform, and that is exactly what this bill does.
 - This bill creates a stringent employment-based program for our current agricultural workforce, requiring significant past and future work commitments, to ensure the stability of American agriculture.
 - It includes strong biometric security for the current and incoming agriculture workforce, and it prohibits access to social safety net programs.
 - Current H-2A visa holders can remain in the program as they are now.
1. **Initial Eligibility.** Applicants must show at least 180 days of agricultural employment over the last 2 years. These are the same criteria as Rep. Goodlatte's Ag bill in the 115th Congress. The applicant must also pass a background check.
 2. **Five Year Renewable Visas.** Qualified applicants are provided 5-year renewable agricultural work visas. Workers can renew their 5-year visas by working in agriculture each year. Those who have ag experience but do not meet the criteria for eligibility are provided the option of applying for H-2A visas.
 3. **Option for Permanent Resident Status.** Individuals have the opportunity, but are not required, to earn Lawful Permanent Resident (LPR) status. Those applying for LPR status must pay a \$1,000 fine and meet one of the following criteria:
 - a. If an individual worked in agriculture in the U.S. for at least 10 years before enactment, they must work at least 4 more years in agriculture on CAW status before they can apply.
 - b. If an individual worked in agriculture in the U.S. for less than 10 years, they must work at least 8 more years in agriculture on CAW status before they can apply.

Title II. Improving the H-2A Program

- This bill would improve the H-2A visa program to work for all of agriculture.
- It would reduce the time and cost for growers who utilize the program, so they have access to a legal source of labor when they need it.
- It modernizes and applies caps to out-of-control wage growth in the Adverse Effect Wage Rate (AEWR).
- It streamlines the processing of H-2A petitions so growers can get farmworkers when they need them.
- It pilots a portable H-2A visa program to allow employers and farmworkers to respond more dynamically to labor needs.

This title reforms the H-2A program to provide more flexibility for employers, while ensuring workers are protected. The bill focuses on making the H-2A program more responsive and user-friendly for employers.

1. **Single Portal for Filing.** Employers would now have a *single* filing process through an online portal, through which DHS, DOL, and State Workforce Agencies (SWAs) can process simultaneously (rather than sequentially in three different steps). This streamlining reduces costs and processing time for growers.
2. **Single Petition for Staggered Needs.** Employers would now be able to file one petition reflecting staggered labor needs. For example, under the current program, if an employer needs 5 workers for tilling, another 10 workers for planting, and another 10 for harvesting, the employer must file 3 different petitions. This bill streamlines the process by allowing employers to file one petition for the whole season.
3. **Streamlined Recruiting.** Employers would now be required to simply file a job posting on an electronic registry, rather than filing newspaper print advertisements.
4. **Wage Reform.** The bill reforms H-2A wages to better reflect real-world wages, while protecting against sudden wage increases that disrupt employer planning and operations:
 - a. **More Granular Wages.** Rather than one wage determination for all farm labor, the bill adopts a proposal from the Trump Administration's proposed H-2A rule to disaggregate wages for various agricultural occupations (e.g., crop workers, livestock workers, machine operators, graders and sorters, etc). This will ensure that wage requirements better reflect the real-world wages paid to specific types of workers. Some workers would see higher wages (machine operators), while others would see lower wages (crop workers, which account for the majority of incoming H-2A workers).
 - b. **Limiting Wage Fluctuations.** To prevent wage fluctuations, the bill limits wage increases/decreases, thus providing more stability and predictability for employers. Wages are governed as follows:
 - i. **2020:** One-year wage freeze—wages will not increase in 2020.
 - ii. **2021-2029:** Wages could not decrease by more than 1.5% or increase by more than 3.25%. Exception: If the resulting wage is less than 110% of the Federal or state minimum wage, then the wage could go up by up to an additional percent.
 - iii. **2030 and Beyond:** Current wage structure (AEWR) goes away and the Secretaries of Ag and Labor will determine a new wage structure through rule making. If that replacement is delayed, wages could not decrease by more than 1.5% or increase by more than 3.25%.
 - c. **Limiting Mid-Contract Wage Increases.** Wage requirements would now apply for the duration of the contract, rather than potentially fluctuating mid-contract.
5. **Reducing Housing Costs.** The bill improves the availability of farmworker housing while lowering employer costs related to providing such housing.
 - a. **Preserving Existing Housing.** The bill adopts an improved version of the Rep. Clay bill, which was recently passed by the House, to prevent current farm- and rural-housing stock from serving other constituencies. Among other things, the bill authorizes \$1 billion to rehabilitate housing that is aging out of USDA incentive programs, thus reopening eligibility for rental assistance and preserving housing stock for farmworkers.
 - b. **Incentivizing New Housing.** The bill triples the amount of funding for the USDA 514 loan program and 516 grant programs, which provides 1% loans and grants, respectively, for constructing new housing. The bill would also reform eligibility criteria to expand the use of those programs in more expensive housing markets.
 - c. **Lowering Housing Costs.** The bill reduces grower costs related to housing by increasing funding for the USDA 521 rental assistance grant program, while making H-2A housing eligible for the 521 operating assistance program.

6. **Filling Year-Round Labor Needs.** The bill takes a two-pronged approach to meet year-round labor needs.
 - a. **Temporary 3-Year Visas.** The bill creates a new, capped program for employers seeking to bring in temporary workers to fill year-round needs. Although the program would be capped, the Secretaries of Agriculture and Labor would be able to increase visa caps if market conditions warrant such increases. Visas would be made available for both dairy and non-dairy needs. After ten years, the cap on year round guestworkers is eliminated.
 - b. **Increased Access to Green Cards.** Building off of current law, this bill dedicates an additional 40,000 green cards per year for agricultural workers. These visas can be used by employers to sponsor workers to fill unmet permanent agricultural labor needs. The bill also creates an option for H-2A workers to apply directly after completing 10 years of H-2A work in the United States. These 40,000 green cards will go a long way to meeting year-round labor needs.
7. **Reducing the Need for Litigation.** The bill requires mediation to resolve differences before lawsuits are initiated.

Title III. Mandatory E-Verify for the Agricultural Sector

- This title would establish a mandatory, nationwide E-Verify system modeled off of the Lamar Smith/Ken Calvert E-Verify bills for all agricultural employment, serving as the last necessary piece to ensure a legal workforce for the sector.
- The bill would improve E-Verify for the whole country, but the system would be made mandatory only for the agricultural sector, with a structured phase-in and guaranteed due process for authorized workers who are incorrectly rejected by the system. This phase-in will ensure that agricultural employers are not inadvertently harmed while the new systems the bill puts into place are being stood up.