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The Role of the H-2A Program in California Agriculture

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Introduction

The H-2A program allows U.S. farm employers to request certification from the U.S. Department of Labor (DOL) to have foreign workers admitted "temporarily to the United States to perform agricultural labor… of a temporary or seasonal nature." Farmers seek certification from DOL to fill particular jobs with H-2A guest workers by ensuring that two conditions are satisfied:

1. There are an insufficient number of U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the employer petition.
2. The employment of the H-2A worker will not adversely affect the wages and working conditions of U.S. workers who are similarly employed.

After these threshold tests are satisfied, farmers who want to employ H-2A workers must satisfy three other tests to be certified: First, they must try to recruit U.S. workers and provide reasons why any U.S. workers who applied for jobs were not hired. Farmers must begin the recruitment process 45 days before they expect work to begin. Many farmers are convinced that U.S. workers will not show up when needed or remain for the entire season, so some employers discourage U.S. workers from applying.

Second, farmers must provide free housing to H-2A guest workers and out-of-area U.S. workers. Most labor-intensive agriculture is in metro countries with relatively high housing prices. For example, the 40th-percentile, fair-market rent for a two-bedroom apartment in the U.S. salad bowl of Monterey County, CA, in 2018 was $1,433/month, meaning that 60% of two-bedroom units rent for more than $1,433. A farmworker employed 160 hours at the state's minimum wage of $11/hour would earn $1,760/month, which means that a one-earner family would, after taxes, spend almost all earnings on rent. High rents relative to earnings help explain why the employment of H-2A guest workers has risen rapidly in Monterey County, where guest workers are often housed in motels that are converted into bunk houses, with four workers to a room.

Third, DOL enforces the no-adverse-effect requirement of H-2A workers by setting a super-minimum wage that must be paid to H-2A workers and any U.S. workers employed alongside them, called the Adverse Effect Wage Rate (AEWR), which varies by state but is always above the minimum wage, such as $13.18/hour in California in 2018, almost 20% above the state's $11/hour minimum wage. The AEWR is the average hourly earnings of nonsupervisory field and livestock workers for the state or region during the previous year, as determined by the U.S. Department of Agriculture (USDA) National Agricultural Statistics Service *Farm Labor* survey.

The H-2 program was created in the 1952 Immigration and Nationality Act and used primarily by sugar cane growers in Florida and apple growers along the East Coast until the mid-1990s. For example, in 1985, fewer than 21,000 farm jobs were certified to be filled by then H-2 workers, including 10,000 in Florida sugarcane. The program was revised by the Immigration Reform and Control Act (IRCA) of 1986 and renamed H-2A, with H-2B for nonfarm seasonal jobs, but the number of farm employer requests fell after IRCA rather than expanding, as was

anticipated, because of rising unauthorized migration and the mechanization of the Florida sugarcane harvest (Martin, 2009).

The number of jobs certified to be filled with H-2A workers began to rise in the mid-1990s, after former government officials created the North Carolina Growers Association (NCGA) to allow tobacco and vegetable growers to pay the NCGA a fee to recruit and transport Mexican guest workers to their farms. Turn-key and loyal H-2A guest workers proved very attractive to farmers, especially as the H-2A workers gained experience by returning year after year. The NCGA has been the largest single employer of H-2A workers for the past two decades, certified to fill over 10,000 jobs a year with H-2A workers.

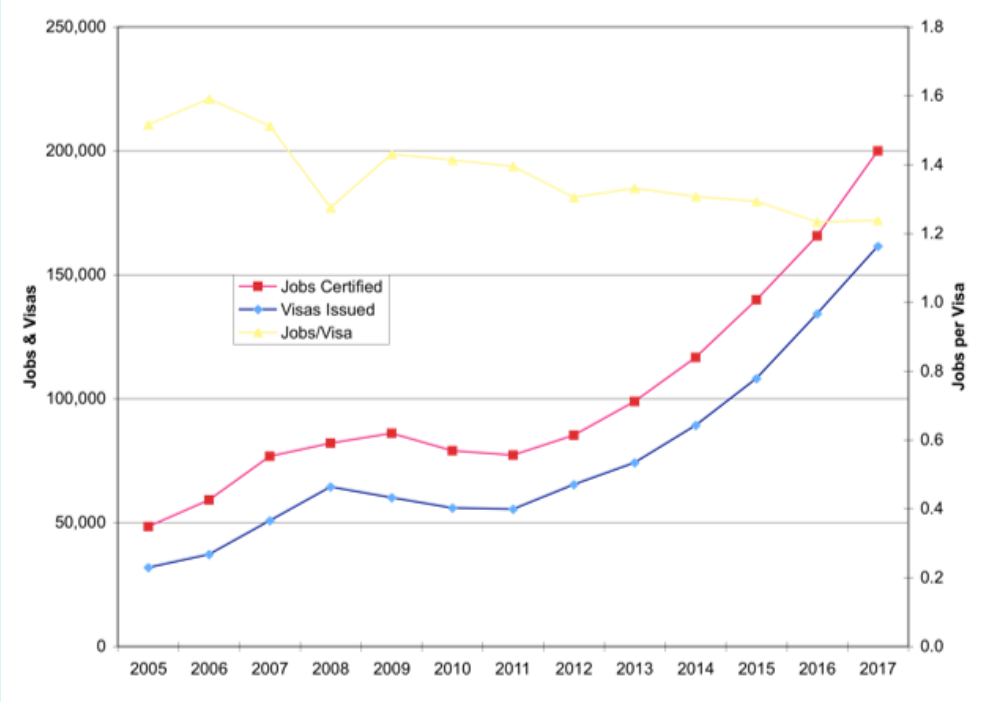
The H-2A program began to expand during the housing boom of 2005–2006, as some farmworkers found jobs in construction, farm-related processing, and services. As the number of Border Patrol agents increased, vegetable growers operating in Yuma, AZ, complained of labor shortages; border-area workers are almost all legally authorized to work because the Border Patrol often stops the buses used to carry workers to fields and checks worker documents. When these Salinas-based growers had difficulty finding workers in Monterey County, CA, in the summer months, they requested certification to employ the H-2A workers who harvested vegetables during the winter months for them in Arizona.

The H-2A program expanded in other states as well, and Florida and Georgia replaced North Carolina as the states with the most farm jobs certified. The DOL certified 200,049 jobs to be filled with H-2A workers in fiscal year (FY) 2017, up over 20% from 165,000 in FY2016. Five states accounted for 52% of all jobs certified: Florida had 13% of certifications; Georgia, 12%; North Carolina, 10%; Washington, 9%; and California, 8%.

Fewer than 10,000 farms hire H-2A workers. Over 550,000 U.S. farms reported hiring labor in the 2012 Census of Agriculture, and over 100,000 are enrolled in state unemployment insurance systems that provide benefits to laid off workers. Fewer than 10,000 farm employers request H-2A workers, but it is hard to determine the exact number of participating farms because some make multiple requests and some request workers under different names, as when a farm and its associated labor contractor make separate requests.

The top requesters of certification to fill jobs with H-2A workers are employer associations and labor contractors, including the NCGA, with 12,000 jobs certified in FY2017, WAFLA with 7,100, California labor contractor Fresh Harvest with 4,600, and Florida labor contractor R&R Harvesting with 2,000. Contractors must submit documentation to DOL of their arrangements to provide workers to farmers, but Farm Labor Contractor (FLC)–farmer contracts are not made public.

Figure 1. H-2A Jobs Certified, Visas Issued, and Jobs per Visa, 2005–2017



Some jobs that DOL certifies are not filled by H-2A workers, and some

H-2A workers fill more than one job, so there are more jobs certified than H-2A visas issued. In recent years, for every 120 farm jobs certified, DOS issued 100 H-2A visas. H-2A admissions data published by the U.S. Department of Homeland Security (DHS) are not useful because they record each entry, so that an H-2A worker living in Mexico and working in the Yuma, AZ, area creates a DHS admission each day the worker enters the United States, so that one worker entering daily for 60 days becomes 60 admissions.

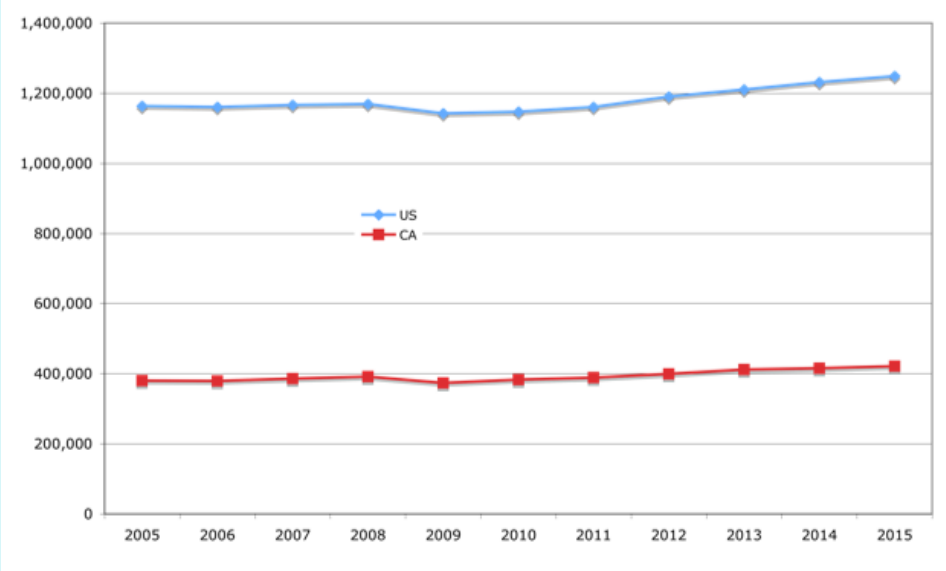
Farm Employment

Farmworker employment involves several concepts. First is average employment, the number of workers employed each month, summed, and divided by 12 months. (Average employment data are from the U.S. Bureau of Labor Statistics *Quarterly Census of Employment and Wages* [www.bls.gov/cew] and include workers on the payroll for the period that includes the 12th of the month.) Average U.S. farm employment, as measured by employer reports when paying unemployment insurance (UI) taxes, was over 1.2 million in 2015. Some states do not require smaller farmers to pay UI taxes on farmworker wages, so UI covers an estimated 86% of US hired farmworkers, for an average U.S. farmworker employment of 1.4 million. Federal law requires farm employers to provide UI coverage to wage and salary farmworkers if they paid $20,000 or more in wages in a calendar quarter or employed at least 10 farmworkers on each of 20 days in 20 different weeks during the current or preceding calendar year.

California requires all employers to participate in UI, and its average agricultural employment of 420,000 in 2015 was 30% of average U.S. agricultural employment. Over the past decade, average UI-covered farmworker employment increased in both the United States and California.

There are more farmworkers than average employment because of seasonality that generates peaks and troughs. UI-covered farmworker employment across the United States ranged from a high of 1.4 million in July 2015 to a low of 1.1 million in January, for a peak–trough ratio of 1.3. California had a peak 475,000 workers in August and 354,000 in January, for a ratio of 1.3. The peak–trough ratio increases as the geographic unit decreases. At the county level, the peak–trough ratio may be 2, and on an individual farm as high as 100 to 1, as when 200 workers are hired for harvesting but only 2 during the winter.

Figure 2. Average UI-Covered Agricultural Employment, U.S. and CA, 2005–2015



Farm employment concepts are often confused. Average employment and peak–trough ratios are measures of jobs, not the number of unique workers who fill them. Just as there are more farms than full-time equivalent farmers, so are there more farmworkers than full-time equivalent jobs for hired workers. On the 2.2 million U.S. farms, there are only 750,000 full-time equivalent farmers. Many farmers work off the farm full or part time.

The ratio of workers to jobs cannot be determined easily. During the 1980s, when the *Current Population Survey* (CPS) included questions in December asking whether anyone in the household worked for wages on a farm during the year, CPS reported 2.6 million unique farmworkers when average farm employment was 1.3 million, suggesting

two unique workers per job. These workers were grouped at the ends of the days-of-farm work spectrum. A third did fewer than 25 days of farm work during the year, while 20% worked year-round (see http://naldc.nal.usda.gov/download/IND20402024/ for an example of the 1980s CPS reports).

Table 1. California Farmworkers and Earnings, 2014

NAICS Code	Industry	Primary Workers	Earnings ($millions)	Average Earnings ($)	Only Job	Share
	Total agriculture	691,615	11,430	$16,527	499,440	72%
1111	Oilseed and grain farming	4,587	116	$25,363	3,144	69%
1112	Vegetable and melon farming	44,878	1,068	$23,789	30,760	69%
1113	Fruit and tree nut farming	153,999	2,710	$17,600	102,805	67%
1114	Greenhouse and nursery production	34,715	884	$25,452	26,530	76%
1119	Other crop farming	19,052	446	$23,414	14,244	75%
1121	Cattle ranching and farming	25,224	737	$29,223	19,817	79%
1122	Hog and pig farming	132	4	$26,804	109	83%
1123	Poultry and egg production	2,851	83	$29,143	2,123	74%
1124	Sheep and goat farming	543	12	$21,759	465	86%
1125	Animal aquaculture	441	13	$30,104	324	73%
1129	Other animal production	3,069	77	$25,144	2,308	75%
1151	Support activities for crop production	391,711	4,982	$12,719	288,435	74%
1152	Support activities for animal production	3,156	81	$25,765	2,585	82%
1153	Support activities for forestry	2,589	76	$29,217	2,012	78%
Nonfarm		137,711	4,548	$33,025	—	—
All workers with at least one ag job		829,326	15,978	$19,266	—	—

Source: Martin, Hooker and Stockton (2018).

There are no national data on the number of individuals who work for wages on farms sometime during the year. California extracted the social security numbers (SSNs) of all workers reported by farmers sometime during the year, allowing a comparison between unique farmworkers and average employment. In 2014, when average agricultural employment was 411,000, some 829,000 unique SSNs were reported by California farm employers, suggesting the same two workers for each average job as in the 1980s (Martin, Hooker, and Stockton, 2018).

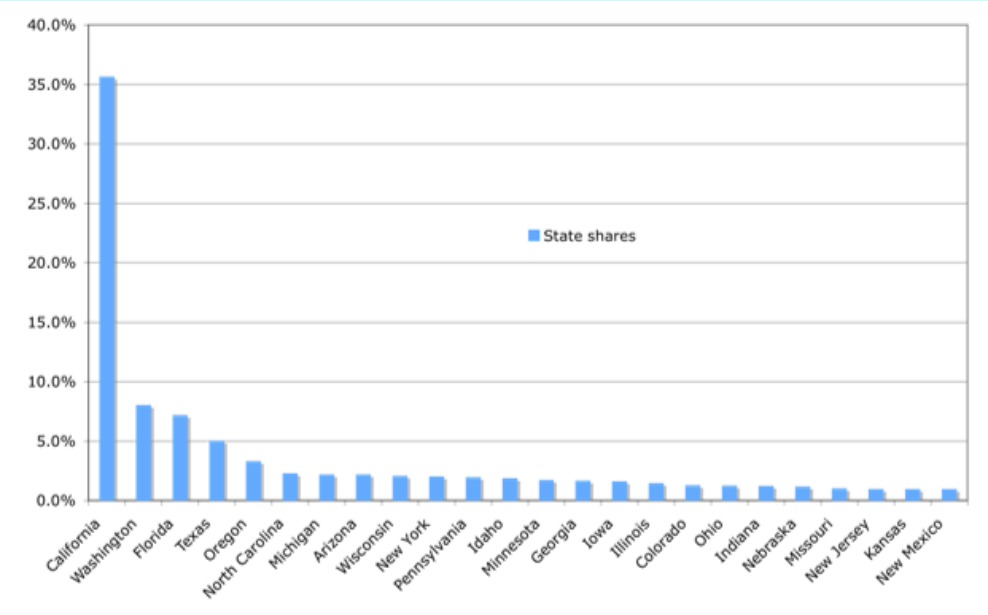
These 829,000 farmworkers earned a total $16 billion, including $11.4 billion or over 70% from agricultural employers (North American Industry Classification System [NAICS] code 11. NAICS classifies business establishments according to type of economic activity. NAICS 11 is Agriculture, Forestry, Fishing and Hunting). The average earnings of all workers with at least one farm employer were over $19,000 in 2014, while the average earnings of primary farmworkers, those who had their maximum earnings in agriculture, were $16,500.

Crop support employers (NAICS 1151), many of whom are farm labor contractors, stand out as employing the most primary farmworkers. Almost 392,000 or 57% of primary farmworkers were employed by crop support employers, followed by 22% who were employed by fruit and nut farming establishments (NAICS 1113 in Table 1). Crop support workers had the lowest average earnings, $12,700, explaining why the overall average earnings of primary farmworkers were only $16,500 even though all commodities except crop support and fruit and nut farming had higher average earnings.

Average employment, peak–trough ratios, and unique farmworkers provide three windows into hired farm work. There are other windows as well, including which states and commodities have the most farmworkers. Farmworker employment is concentrated in a few states. In 2012, California had 36% of average UI-covered farm employment, followed by Washington, Florida, Texas, and Oregon, which each had 3%–8% of average employment. Another 19 states had 1%–2% of average farm employment, which means that over half of states had less than 1% of U.S. farmworker employment.

Farmworker employment is concentrated by commodity. U.S. crop employment averaged 560,000 in 2015, including almost 200,000 in fruits and nuts, almost 100,000 in vegetables and melons, and 150,000 in greenhouse and nursery production, so that 80% of average crop employment was in fruits and nuts, vegetables and melons, and horticultural specialty (FVH) crops. By commodity, average employment was 40,000 in apples, 32,000 in strawberries, 30,000 in grapes, 22,000 in other berries such as blueberries, and 20,000 in nuts.

Figure 3. State Shares of Average U.S. Farmworker Employment, 2012



California

California farm employers have traditionally shunned the H-2A program, arguing that the state's wide array of labor-intensive crops and complex farm labor market were ill-suited for a guest worker program requiring advance planning and employer-provided housing. Testifying in 2013, the CEO of the California-based Western Growers

Association said that "H-2A does not afford any ability for workers to follow cropping patterns because their status is tied to a single employer" (Nassif, 2013, p. 59). Nassif also noted that some California vegetable growers produce in different parts of the state to supply fresh vegetables year-round, so that workers could work for one employer in different areas if the employer was certified to hire H-2A workers in each area.

Imperial Valley–based Fresh Harvest is California's largest employer of H-2A workers and places most of 5,000 H-2A workers in Salinas-area berry and vegetable fields. Fresh Harvest, part of a larger logistics and farming enterprise with operations in Mexico and the United States, houses many of its H-2A workers in Salinas-area motels, although Fresh Harvest was able to convert a closed King City tomato packing shed into worker housing that it owns. Fresh Harvest has 75 buses and 50 vans to transport workers from their temporary housing to fields.

Fresh Harvest began as a custom harvester for Fresh Express, a bagged salad firm, and evolved into the supplier of labor to harvest 20% of the state's lettuce for bagged salads and 20% of the state's berries. The Salinas area has the highest number and share of H-2A workers, a peak 10,000 H-2A workers among a total of 82,000 farmworkers. Some settled workers in the Salinas area complain that younger H-2A workers are able to earn more at prevailing piece rates and have more take home pay because the H-2A workers receive free housing and transportation to work.

ISA Contracting, by contrast, hires mostly local workers to harvest mature green tomatoes for $0.72 per 5-gallon bucket, a piece rate that enables many workers to earn $20/hour or more for 5–6 hour days picking at an intense pace (see comments by ISA CEO Ileana Arvizu, April 13, 2018 at https://gifford.ucdavis.edu/events/). ISA serves several of California's eight major tomato grower–shippers and began to recruit H-2A workers in 2017, using current workers from Oaxaca to recruit 45 additional workers in their home state. ISA and the workers had good experiences: 300 more Oaxacan workers wanted to come as H-2A workers in 2018.

Mexican worker interest in U.S. jobs paying $13/hour and offering transportation and housing is very high, but many of the workers who want to become H-2As are not productive enough to justify U.S. wages that are 10 times more than prevailing farm wages in Mexico. Fresh Harvest has farming operations in Mexico and selects some of its best workers in Mexico for H-2A visas to work in the United States; it tests other workers by having them climb a ladder with a 60-pound weight to see whether they can pick avocados and wheel a strawberry cart to determine whether they will be productive berry pickers (see comments by Fresh Harvest CEO Steve Scaroni, April 13, 2018, at https://gifford.ucdavis.edu/events/).

Conclusions

Fewer than 10% of the 100,000 U.S. farms that pay UI taxes, and less than 2% of the 500,000 farms that report hiring workers to the Census of Agriculture, are certified to employ H-2A guest workers. Farm employers want three major changes to the H-2A program, viz, (i) an end certification of need or DOL-oversight of efforts to recruit U.S. workers, (ii) elimination of the requirement to provide free housing to H-2A workers, and (iii) a reduction of the AEWR, $13.18/hour in California in 2018, when the state's minimum wage was $11/hour.

There have been several efforts to provide farm employers with an alternative to the H-2A program. In 1986, IRCA included a Replenishment Agricultural Worker (RAW) program with no certification, housing, and AEWR requirements. However, usage of the RAW program was contingent on DOL and USDA agreeing that there was a farm labor shortage, which these agencies did not find, so the RAW program expired in 1993 without ever having been used (Martin, 1994).

Farmers in the 1990s tried to persuade Congress to enact a non–H-2A alternative guest worker program for agriculture (Martin, 1998; Rural Migration News, 1995, 1996, 2000), but none was enacted, in part because President Clinton threatened to veto any new guest worker program. However, after the election of Mexican President Fox and US President Bush in 2000, worker advocates feared there could be a new Mexico–United States guest worker program (Migration News, 2001). Instead of waiting for Fox–Bush negotiations, they met with farm employers and agreed to the Agricultural Job Opportunity Benefits and Security Act (AgJOBS), which would have

repeated IRCA's compromise of legalization for currently unauthorized farmworkers and easier access to guest workers for farmers in the future (Martin, 2003).

AgJOBS would have ended or modified H-2A certification, housing, and AEWR requirements while legalizing currently unauthorized farmworkers. AgJOBS was revised several times and included in immigration reform bills approved by the Senate in 2006 and 2013 but was never enacted (Rural Migration News, 2009).

AgJOBS would have legalized unauthorized workers, whose average age was 28 in 2000, and required them to continue to work in agriculture for three to five years in order to earn immigrant status. The farm workforce has since aged, with the average age of crop workers interviewed in the National Agricultural Worker Survey approaching 40, reducing employer support for a legalization and guest worker package. The fresh blood in the farm workforce today is H-2A workers, who are a decade younger than unauthorized crop workers (Rural Migration News Blog, 2018).

Instead of legalization and guest workers, most farm employers support Representative Bob Goodlatte's (R-VA) Agricultural Guestworker Act, which would make it easier for farmers to hire guest workers by, *inter alia*, allowing the USDA to administer an H-2C guest worker program that admitted up to 450,000 guest workers a year for up to two years, after which the guest workers would have to leave the United States for at least 45 days. These workers could be employed in year-round jobs, including in livestock and meatpacking. There could be 900,000 H-2C workers in the United States during the program's second year and even more thereafter, since previously unauthorized workers who obtain H-2C visas would not count against the cap.

The ability of currently unauthorized workers to obtain H-2C visas has divided California from the rest of U.S. agriculture. The Agricultural Guestworker Act would require currently unauthorized workers to leave the United States and return legally with H-2C visas. Many California farmers do not believe that unauthorized workers with U.S.-born children would risk leaving the United States with only a promise of being able to return legally, and their opposition likely dooms Goodlatte's bill.

President Trump's winery in Virginia and his hotel operations around the United States employ H-2A and H-2B workers, which made many farmers confident that Trump would persuade Congress to enact an easy-to-use guest worker program. In April 2018 in Michigan, Trump said: "For the farmers, OK, it's going to get good. We're going to let your guest workers come in…They're going to come in, they're going to work on your farms… but then they have to go out" (Rural Migration News, 2018).

Perhaps the major surprise almost two years into the Trump presidency is the absence of a new farm or nonfarm guest worker program. Instead, stepped-up border enforcement has deterred the entry of newcomers who in the past were willing to do farm work, and the increased enforcement of immigration laws has spread fear among farmworkers. The dim prospects for enactment of a new or modified H-2A program, coupled with rising minimum wages in major farm labor states, has many farmers convinced that their options are labor-saving mechanization or accommodating current regulations and employing H-2A guest workers.

For More Information

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