



Farm Workforce Modernization Act of 2021

On March 18, 2021, the House of Representatives passed the Farm Workforce Modernization Act of 2021 (H.R. 1603).¹ The bill, introduced by Representatives Zoe Lofgren (D-CA/19th) and Dan Newhouse (R-WA/4th), would establish a program through which certain undocumented farmworkers in the United States could earn legal status; reform the H-2A temporary agricultural worker program; and establish an E-Verify employment eligibility verification system for all agricultural employment.² Congressional leaders are debating whether or not to include provisions of the bill in a forthcoming budget “reconciliation” package.³

Legalization Program for Undocumented Farmworkers

There are an estimated 2.5 million farmworkers employed on U.S. farms at some point during a typical year.⁴ Data from the U.S. Department of Labor indicates that roughly 49 percent of all farmworkers are undocumented.⁵ Title I of the Farm Workforce Modernization Act would allow many of these undocumented farmworkers, as well as their spouses and minor children, to apply for Certified Agricultural Worker (CAW) status during an 18-month application period. The application process for this temporary legal status would be available to undocumented farmworkers who have worked in agriculture in the United States for at least 180 days over the previous two years. CAW status would be valid for five-and-a-half years and could be renewed indefinitely provided the applicant continued to work in agriculture for at least 100 days per year. All applicants for CAW status would have to pass criminal background checks and would be barred from the program for certain criminal convictions. Applicants would also have to be continuously present in the United States from the date the bill was introduced in Congress until the date they are granted CAW status.⁶

The bill allows long-time farmworkers who have been granted CAW status to adjust to lawful permanent resident (LPR) status if they engage in an additional period of agricultural work and pay a \$1,000 fine. Farmworkers who have worked in agriculture in the United States for at least 10 years prior to the date of enactment of the bill could apply for LPR status if they work for at least four more years in agriculture while in CAW status. Farmworkers who have worked in agriculture for less than 10 years before enactment of the bill would have to work for at least eight years more in agriculture while in CAW status before they could apply for LPR status.⁷

Reform of the H-2A Temporary Agricultural Worker Program

The H-2A visa program allows for the temporary admission of foreign workers into the United States to perform seasonal or temporary agricultural labor. An employer wishing to hire H-2A workers must first apply to the Department of Labor (DOL) for certification that the employer cannot find a sufficient number of available, qualified workers within the United States to perform the required labor, and that the employment of H-2A

workers will not adversely affect the wages and working conditions of similarly employed workers already in the country. If DOL grants the labor certification, the employer can petition U.S. Citizenship and Immigration Services (USCIS) to bring H-2A workers into the country. If USCIS approves the petition, foreign workers can then go to a U.S. embassy or consulate in their home country to attend a visa interview with the Department of State (DOS). If granted, the H-2A visa is valid for one year and the employer can apply for one-year extensions of the visa two times—for a maximum total of three consecutive years.⁸

There are no statutory limits on the number of H-2A visas which can be issued each year, and demand for H-2A workers has grown dramatically over the past decade.⁹ The number of H-2A visas issued by DOS more than tripled between Fiscal Year (FY) 2011 and FY 2019.¹⁰ The number of visa issuances exceeded 200,000 for the first time in FY 2019.¹¹ In that year, DOL certified 257,667 farm jobs to be filled by H-2A temporary agricultural workers, and DOS issued 204,791 H-2A visas.¹²

Title II of the Farm Workforce Modernization Act would significantly reform how the H-2A program operates. It would implement several measures designed to streamline the H-2A visa process, one of which would be to make H-2A visas valid for three years. The bill would also change the way wages are calculated for H-2A workers, with one significant change being the setting of different wages for workers in different agricultural operations (i.e. crop workers, livestock workers, etc.). In addition, the bill would make up to 20,000 H-2A visas per year available for year-round agricultural jobs and would create a Portable Agricultural Worker pilot program allowing up to 10,000 H-2A workers to move freely between jobs with different employers. Other provisions of the bill would improve the availability and quality of affordable housing for farmworkers, including the housing provided to H-2A workers by their employers.¹³

Another key provision of the bill would be the addition of 40,000 new immigrant visas for “unskilled” workers to the permanent employment-based immigration system’s third-preference category, meaning that an additional 40,000 unskilled workers could adjust to LPR status each year. (The current annual cap on immigrant visas for unskilled workers is 5,000). The bill would also allow workers who have worked on H-2A visas for at least 10 years to self-petition for LPR status rather than depend on an employer to petition on their behalf. Preference for the 40,000 new immigrant visas would be given to both agricultural employers wanting to petition on behalf of their workers and to those workers eligible to self-petition.¹⁴

E-Verify for All Agricultural Workers

Title III of the bill would establish a nationwide E-Verify system through which agricultural employers would electronically verify the employment eligibility of their workers. The system would become mandatory for all employers after the application period for CAW status had ended.¹⁵

Endnotes

1. Farm Workforce Modernization Act of 2021, H.R.1603, 117th Congress (2021), <https://www.congress.gov/bill/117th-congress/house-bill/1603>.
2. Office of Representative Zoe Lofgren, "Farm Workforce Modernization Act" (2-page summary), March 3, 2021, <https://lofgren.house.gov/sites/lofgren.house.gov/files/3.3.21%20-%20Farm%20Workforce%20Modernization--Two%20Pager.pdf>.
3. Lauren Fox, Daniella Diaz, and Ali Zaslav, "Democrats look to infrastructure as last chance on immigration reform," *CNN*, July 15, 2021, <https://www.cnn.com/2021/07/15/politics/immigration-infrastructure-democratic-negotiations/index.html>.
4. Philip Martin, "U.S. Farm Employment and Farm Workers" (Washington, DC: The Wilson Center, June 24, 2020), <https://www.wilsoncenter.org/article/us-farm-employment-and-farm-workers>.
5. JBS International, Inc., *Findings from the National Agricultural Workers Survey (NAWS) 2015-2016: A Demographic and Employment Profile of United States Farmworkers*, January 2018, 5, https://www.dol.gov/sites/dolgov/files/ETA/naws/pdfs/NAWS_Research_Report_13.pdf.
6. Office of Representative Zoe Lofgren, "Farm Workforce Modernization Act: H.R. 1603" (section-by-section outline), March 3, 2021, 1-3, <https://lofgren.house.gov/sites/lofgren.house.gov/files/3.3.21%20-%202021%20Farm%20Workforce%20SxS.pdf>.
7. *Ibid.*, 3-6.
8. U.S. Citizenship and Immigration Services, "H-2A Temporary Agricultural Workers," last updated June 14, 2021, <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-2a-temporary-agricultural-workers>.
9. Andorra Bruno, *H-2A and H-2B Temporary Worker Visas: Policy and Related Issues* (Washington, DC: Congressional Research Service, updated June 9, 2020), 5, <https://fas.org/sgp/crs/homesec/R44849.pdf>.
10. *Ibid.*
11. *Ibid.*
12. Philip Martin, "The H-2A Program in 2020" (Washington, DC: The Wilson Center, May 19, 2020), <https://www.wilsoncenter.org/article/h-2a-program-2020>.
13. Office of Representative Zoe Lofgren, "Farm Workforce Modernization Act: H.R. 1603" (section-by-section outline), March 3, 2021, 6-13, <https://lofgren.house.gov/sites/lofgren.house.gov/files/3.3.21%20-%202021%20Farm%20Workforce%20SxS.pdf>.
14. *Ibid.*, 11.
15. *Ibid.*, 15-18.