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The Farm Workforce Modernization Act and the H-2A Agricultural Visa Program

By Zachariah Rutledge

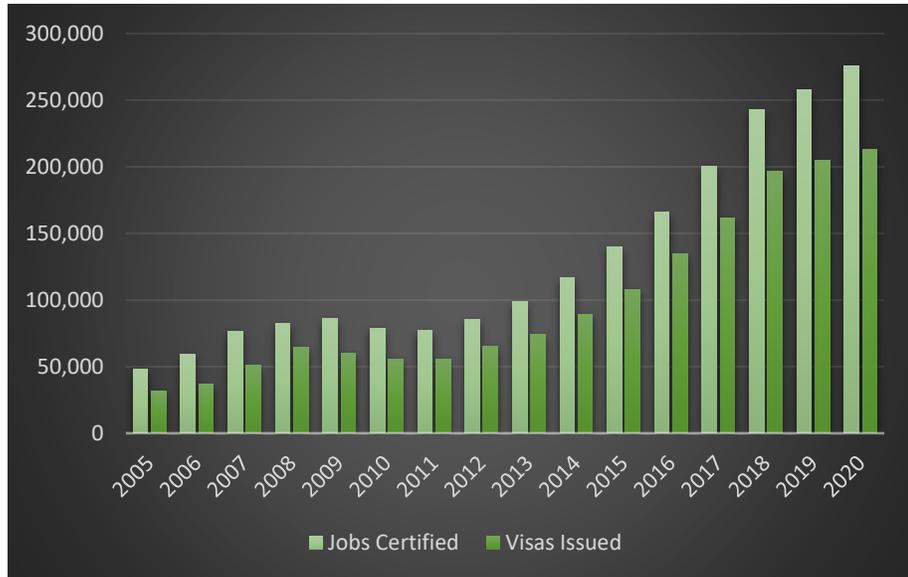
The Farm Workforce Modernization Act (FWMA) was recently reintroduced in the U.S. House of Representatives for a second time (see <https://lofgren.house.gov/media/press-releases/lofgren-newhouse-introduce-farm-workforce-modernization-act-2021>). If passed, the Act would make a number of reforms to the existing H-2A agricultural visa program, which allows agricultural employers to employ foreign workers on a temporary basis when there is a shortage of farm labor.

The H-2 program was initiated by Congress in 1952 with the passage of the Immigration and Nationality Act. The H-2 program allowed foreign laborers to work in the U.S. on a temporary basis to perform "low-skilled labor" in both the agricultural and non-agricultural sectors (Martin, 2019). When the Immigration Reform and Control Act was passed in 1986, the H-2 program was divided into the H-2A program for agricultural workers and the H-2B program for non-agricultural workers. Due to an abundance of Mexican workers willing to perform work on U.S. farms, the H-2A program has historically comprised only a small proportion of the U.S. farm labor force. However, over the past decade, use of the H-2A program has expanded rapidly.

Recent empirical and anecdotal evidence suggests that the farm labor supply is becoming smaller due to a number of political, economic, and demographic factors, which has led to labor shortages for some regions of the U.S. and has stimulated use of the H-2A program (Taylor et al., 2012; Fan et al., 2015; Charlton and Taylor, 2016; Kongsdandini et al., 2013; Ifft and Jodlowski, 2016; Hertz and Zahniser, 2012; Richards, 2018; CFBF and UC Davis, 2019; Rutledge and Taylor, 2019). Between 2010 and 2020, the number of H-2A jobs certified by the U.S. government increased from 79,011 to 275,430, a 249% increase (see Figure 1) (USDOS, 2021). In 2020, the DOL certified agricultural employers to fill about 10 percent of the jobs on U.S. crop farms with H-2A guest workers, accruing an estimated H-2A wage bill of about \$3.5 billion (Martin et al., forthcoming).

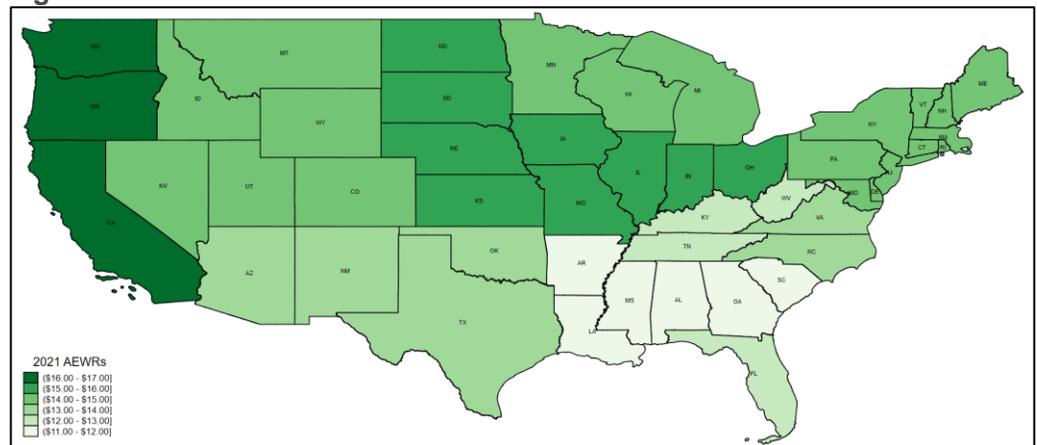
Foreign workers have served as the backbone of the U.S. agricultural labor force for many decades, yet poor economic conditions in their home countries have caused

Figure 1: H-2A Jobs Certified and Visas Issued FY2005-FY2020



(Congressional Research Service, 2008). As a result, these workers have often been seen as an economic threat to the domestic workforce. In order to mitigate adverse effects from the employment of temporary foreign workers in the agricultural sector, H-2A workers (and the U.S. workers who work for H-2A employers) must be paid an amount no less than a wage called the Adverse Effect Wage Rate (AEWR), which is supposed to reflect the market clearing wages of U.S. farm workers, separately for each state. H-2A workers must also be paid the highest of the state or federal minimum wage, the prevailing wage, or the AEWR. The AEWRs for 2021 range from \$11.81 in the southeastern part of the country to more than \$16.00 for states on the Pacific coast (see Figure 2).

Figure 2: AEWRs in 2021



The FWMA is intended to help stabilize the agricultural sector in response to the ongoing labor-availability problems experienced by U.S. farm employers. The Act has three main functions, which fall under three Titles.

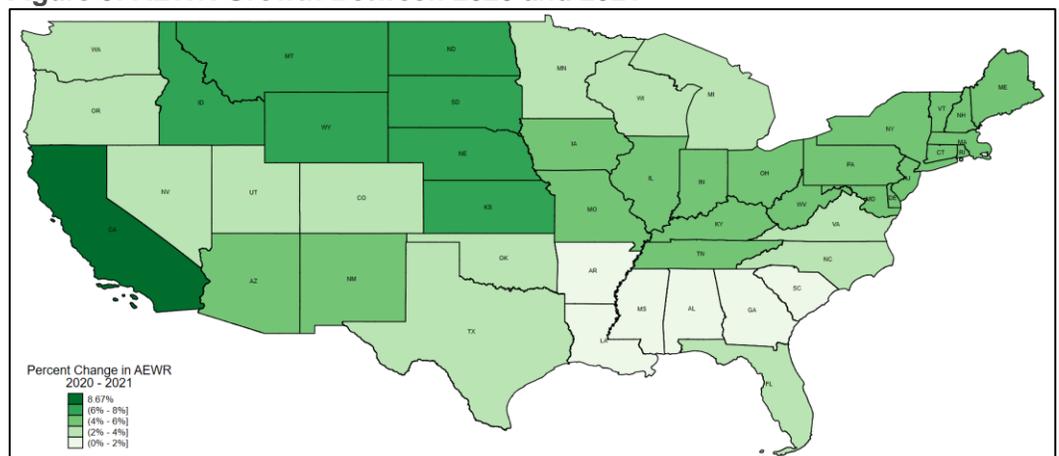
The goal of Title 1 is to ensure that a domestic agricultural workforce is available. Title 1 would allow farmworkers to seek and obtain Certified Agricultural Worker (CAW) status, which is a temporary legal status for workers who have been engaged in agricultural work for at least 180 days during the previous 2 years. CAW status could

be renewed every year if workers continue to engage in agricultural work for at least 100 days per year. Workers would not be required to do anything else to keep their legal status, but they could earn a green card if they pay a \$1,000 fine and continue to engage in agricultural work for (i) four more years if they have done at least 10 years of agricultural work in the U.S. or (ii) eight more years if they have done less than 10 years of agricultural work in the U.S.

The goal of Title 2 is to ensure that there is an agricultural workforce in the future. Title 2 would reform the H-2A visa program by providing more flexibility for agricultural employers and providing protections for workers. Title 2 would streamline the H-2A application process by providing an electronic platform for H-2A visa application filing, which would also allow employers to file one application for seasonal labor needs that are staggered throughout the year. It would also allow farmers to post job advertisements electronically and would reduce hiring and recruiting costs by extending the length of the visa to 3 years.

In addition, Title 2 would revise the methodology for calculating the AEWRs, by using occupation-specific AEWRs instead of a single AEWR for all workers. AEWR growth would also be capped at 3.25% per year until the year 2030. A cap on AEWR growth could potentially slow AEWR growth for many states (see Figure 3).

Figure 3: AEWR Growth Between 2020 and 2021



workers in the U.S. To the extent that the AEWR serves as a benchmark wage for the 90% of workers who are not H-2A workers, a cap on AEWR growth could lead to slower earnings growth for farmworkers. Under the current version of the FWMA, some farmworkers may simply have to accept slower wage growth in exchange for a path to legal status.

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