

March 5, 2018

The Honorable Paul Ryan, Speaker  
The Honorable Kevin McCarthy, Majority Leader  
The Honorable Steve Scalise, Majority Whip  
The Honorable Cathy McMorris Rodgers, Conference Chair  
United States House of Representatives  
Washington, DC 20515

Dear Speaker Ryan, Leader McCarthy, Majority Whip Scalise,  
and Conference Chair McMorris Rodgers:

As you are aware, agricultural organizations across the country have sought to find agreement with Chairman Goodlatte on key agricultural provisions of the Securing America's Freedom Act, H.R. 4760. While there has been some progress, significant problems remain pertaining to our current workforce, visa length, a cap on visas, and a viable at-will employment option. Collectively, our organizations represent a significant majority of America's labor-intensive agricultural employment, including both H-2A program users and non-users.

Over the past several months we have shared our concerns with the Chairman and House members from key agricultural districts from coast-to-coast. We have also made suggestions as to improvements that could be made to the AG Act both before and after introduction of the SAF Act. Our goal has been and continues to be to get consensus on a package that would work for our respective producers. We must not pick winners and losers; the stakes are too high. We need a solution that works for those currently in the H-2A program and those who are not, those with year-round jobs and those with seasonal needs.

Unfortunately, our most fundamental concerns have not been addressed in a manner that gives us confidence that the proposed single solution – a new H-2C program – will provide a workable solution for agriculture. Meanwhile, the urgency for the required federal legislative solution becomes more acute each day, because the labor situation in agriculture is nothing short of a crisis.

The structural realities of America's farm labor force are well understood. At least half of the 2 to 2.5 million farm workers hired each year lack proper status. The average term of employment of the workforce exceeds 14 years. In the face of worsening labor shortages, the existing H-2A program is straining to meet surging demand and is not available as an option at all for some sectors of agriculture like dairy, livestock, and some fruit, vegetable, and horticultural production.

Growers and producers need clarity, stability, and practicality for our existing workforce. Substantively, one of our most fundamental concerns is that H.R. 4760's treatment of the current workforce requiring initial departure from the US will lead to chaos for H-2 users and non-users alike, despite proposals for a "pre-certification" process addressing employer eligibility. Forcing one million or more long-tenured current workers to depart the country, leave behind jobs and families, trust that they will be issued a visa and readmitted and enter the pool of temporary visa holders who must be processed every two years or more through limited bandwidth at American consulates abroad, is a recipe for the permanent loss of many of our farmers' most critically important workers.

We fear that many current workers will simply be driven deeper into the shadows. We fear that current workers who do depart will likely face challenges being readmitted. Under long-established law and practice, they will need to demonstrate non-immigrant intent or deep ties to their home country that they have no intention of abandoning. How will a worker who has been in the U.S. for 10 to 20 years, and has family here in the U.S., achieve that requirement? Either the consular official will look the other way, or the worker will be denied. There is no appeal. What happens to our workers without valid passports from their countries of origin? What if those countries of origin block the reentry of our workers after so many years?

In short, H.R. 4760 lacks provisions for an effective, stable transition in which we can be confident the current workforce will participate. We believe the current workforce needs an option or options other than the proposed guest worker program. There are many ways such an approach could be practically structured but, making this entire population guest workers threatens chaos and crisis for all labor-intensive farmers, H-2A users and non-users alike.

We have other unresolved concerns, including the arbitrary cap of 450,000 workers (40,000 of which are allocated for meat and poultry processing workers) on the number of H-2C visas. While some improvements have been offered, the bill's structure still presents great uncertainty about whether a cap will be sufficient to accommodate actual workforce needs. If the cap is hit, it will arbitrarily limit American farmers' ability to produce food to meet growing domestic and international market demand. The market should determine the number of visas necessary to do the job, not government. With the historical demonstration that few Americans will take jobs in our fields and on our farms, imposing a cap places a harmful and unnecessary constraint on the future economic growth of agriculture in this country and will lead to further offshoring of production, even though we have the soil and climates needed to produce many of these commodities here at home.

The cap relief that we are told will come from current workers being exempt if they transition to guest worker status is fraught with uncertainty for the reasons articulated above. Moreover, any cap relief resulting from returning H-2A workers being exempt is short lived. The only current H-2A workers who would be exempt are those that return to the same employer, which is significantly less than 100%. A recent Florida study showed that 81% return each year -- this suggests that in as little as 5 years that relief disappears and in fact each year the literal cap will decrease.

With respect to visa term for guest workers, a 36-month visa with a minimum cumulative 45 days out of country is much more conducive to effective worker safety training, it enhances the competitiveness of U.S. agriculture and does not erode the intent of the bill that workers retain ties to their home country. Further, any notion that a 24-month visa will provide a doubling of the cap is doubtful, at best. It is very unlikely that DHS will issue a 24-month visa for a 6- or 9-month agricultural job; most of the workers will not receive a 24-month visa thereby eliminating the potential benefit of a cumulative cap of up to 820,000 or more farm workers over two years.

Finally, there are no clear and workable provisions for employers and employees who would prefer a more flexible at-will employment option (i.e., allowing portability for workers who wish to transition from one agricultural job to another). While that goal was envisioned in development of the legislation, H.R.4760 as structured does not provide a viable at-will program.

Notwithstanding our diligent good faith efforts to work with the Chairman to address the workforce crisis in agriculture, and acknowledging some movement on his part, H.R. 4760 in current form does not provide a workable solution. We cannot in good conscience sign off on legislation that we believe will

fail substantively to solve the problem. We stand ready to work with you, Chairman Goodlatte and other Members of the House to achieve the necessary improvements that provide certainty for our farmers and their current workforce, and modernization or replacement of the H-2A agricultural worker visa program.

We greatly appreciate the hard work and determination you as House Republican leaders have given to this matter and we remain hopeful that an agricultural workforce solution can soon be advanced by the House of Representatives.

Sincerely,

National Council of Farmer Cooperatives  
National Council of Agricultural Employers  
United Fresh Produce Association  
US Apple Association  
National Farmers Union  
Agriculture Coalition for Immigration Reform  
AmericanHort (American Horticulture Industry Association)  
American AgriWomen  
National Potato Council  
National Watermelon Association  
National All-Jersey, Inc.  
New England Apple Council  
United Ag  
Western Growers  
Western United Dairywomen  
South East Dairy Farmers Association  
WineAmerica  
Agricultural Council of California  
American Olive Oil Producers Association  
American Pistachio Growers  
Blue Diamond Growers  
California Agricultural Irrigation Association  
California Alfalfa and Forage Association  
California Association of Nurseries and Garden Centers  
California Association of Wheat Growers  
California Avocado Commission  
California Canning Peach Association  
California Cattlemen's Association  
California Cherry Growers and Industries Association  
California Citrus Mutual  
California Cut Flower Commission  
California Farm Bureau Federation  
California Fresh Fruit Association  
California Grain and Feed Association  
California Pear Growers Association  
California Rice Commission  
California Seed Association  
California State Floral Association  
California Tomato Growers Association  
California Warehouse Association  
California Women for Agriculture  
Grower-Shipper Association of Central California

Grower-Shipper Association of Santa Barbara and San Luis Obispo Counties  
Imperial Valley Vegetable Growers Association  
Nisei Farmers League  
Nursery Growers Association  
The Wonderful Company  
Ventura County Agricultural Association  
Arizona Nursery Association  
Colorado Fruit and Vegetable Growers Association  
Florida Citrus Mutual  
Florida Fruit & Vegetable Association  
Florida Nursery, Growers, and Landscape Association  
Idaho Dairymen's Association  
Idaho Nursery and Landscape Association  
Idaho Grain Producers Association  
Potato Growers of Idaho  
J.R. Simplot Company (Idaho)  
Illinois Green Industry Association  
Ohio Nursery & Landscape Association  
Pennsylvania Landscape & Nursery Association  
Virginia Nursery & Landscape Association  
Northern Virginia Nursery & Landscape Association  
Washington Growers League  
Wisconsin Nursery & Landscape Association  
Wisconsin Green Industry Federation