



# Immigration and Agriculture: What Next?

BY PHILIP MARTIN

Over half of the workers employed on US farms are unauthorized, and federal and state governments are debating how to crack down on unauthorized migration and how to deal with unauthorized foreigners in the US. The status quo makes farmers uncertain that they will not have sufficient labor, workers uncertain if they can continue to live and work in the US, and communities unsure how to deal with mixed families of unauthorized parents and US citizen children.

## IMMIGRATION REFORM

There were over 40 million foreign-born US residents in 2011, including 11 million or over a quarter that were not authorized to be in the US. The number of immigrants or persons born outside the US continues to increase, but the number of unauthorized residents has fallen since peaking at 12 million in 2007 (Figure 1).

The US has been debating what to do about these unauthorized foreigners for the past decade. In April 2013, a bipartisan group of eight senators introduced the Border Security, Economic Opportunity, and Immigration Modernization Act (S 744), which was approved on a 68-32 vote in June 2013. President Obama called S 744 “largely consistent with the principles of common-sense reform I have proposed,” and the White House released several reports highlighting the benefits of comprehensive immigration reform urging Congressional action.

Many House Republicans said they would not support S 744 because they did not trust the Obama administration to secure the border and prevent unauthorized migration. Instead, they endorsed a piecemeal or step-by-step approach to immigration reform, and the House Judiciary Committee approved four bills in June 2013, two dealing with enforcement and two dealing with guest workers.

## SENATE: ENFORCEMENT AND LEGALIZATION

S 744 calls for more border and interior enforcement to deter illegal migration, legalization for most unauthorized foreigners in the US, and new guest programs to make it easier for employers to hire legal foreign workers. S 744 authorizes up to \$46 billion in additional spending for a “border surge” to secure the 2,000 mile Mexico-US border.

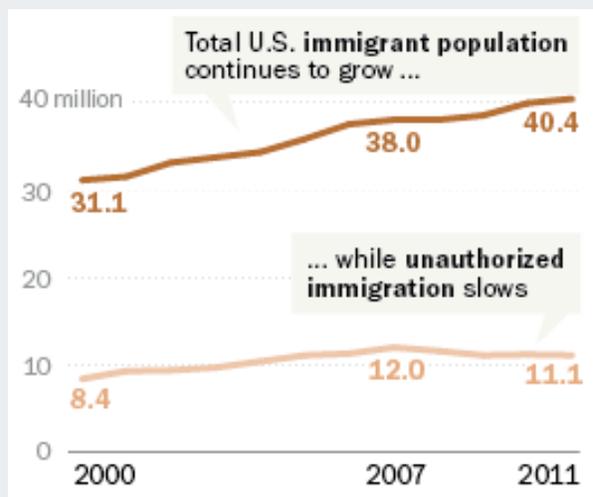


Figure 1. Total and Unauthorized Immigrants, 2000-2011.

Currently, only employers in some states and those with federal contracts must use E-Verify, the internet-based system to which employers submit data on newly hired workers to determine if they are legally authorized to work in the US. S 744 assumes that foreigners will be discouraged from coming to the US if employers will hire them, so it requires all employers to check new hires using the E-Verify system within four years. When hired, non-US citizens would have to show employers a “biometric work authorization card” or immigrant visa that includes a photo stored in the E-Verify system and can be seen over the internet by the employer.

After DHS submits a plan to secure the Mexico-US border, unauthorized foreigners who were in the US before December 31, 2011 could pay \$500, back taxes, and application fees to become “Registered Provisional Immigrants” for six years. This RPI status could be renewed after six years for another \$500 fee. After a decade, RPIs could apply for regular immigrant status by showing they have worked (or were enrolled in school) and lived in the US since registering. After three years as regular immigrants they could apply for US citizenship.

Unauthorized farm workers have a faster path to immigrant status. Those who did at least 100 days or 575 hours of US farm work in the 24 months ending December 31, 2012 could become RPIs and receive “blue cards” by paying an application fee and a \$100 fine. Agricultural RPIs could become regular immigrants by doing at least 150 days of farm work a year for three years or 100 days of farm work a year in five years. The family members of RPIs could apply for immigrant visas when the farm worker does.

The US now has three major guest worker programs (Figure 2). The H-1B program admits about 100,000 foreigners a year with a college degree who enter the US to fill jobs that require a college degree; about half of H-1B visa holders are Indians employed in IT-services. The H-2A program admits 60,000 foreign farm workers to fill seasonal farm jobs after DOL certifies farm employers as needing foreign workers; a sixth are in North Carolina. The H-2B program admits up to 66,000 foreign workers a year to fill seasonal nonfarm jobs in landscaping, resort, hotels, and reforestry; a sixth are in Texas.

Under S 744, the number of H-1B visas would double and there would be new guest worker programs for farm and nonfarm workers. The number of regular H-1B visas would increase from the current 65,000 a year to

110,000, and the number of visas for foreigners who have earned advanced degrees from US universities would increase from 20,000 to 25,000.

The current H-2A program for farm workers would be replaced by new W-3 and W-4 guest worker programs administered by USDA. The W-3 program would be like the current H-2A program and tie a foreign farm worker to a particular US farm employer and job for up to three years. However, W-3 farm workers could work for another farmer, known as a Designated Agricultural Employer (DAE), after they completed their initial contracts. W-4 visa holders would need an initial job offer from a DAE to enter the US, but could “float” from one



Figure 2. Work Visas issued to Foreigners in FY12.

DAE to another during the three years that their W-4 visas were valid.

The number of W-3 and W-4 visas would initially be capped at 112,333 a year, so that a maximum of 337,000 new guest workers could be in the US at any one time. The minimum hourly wage for W-3 and W-4 crop workers is \$9.64 an hour across the US, and this wage can be raised each year by 1.5 to 2.5 percent. S 744 requires farm employers to provide housing or a housing allowance of \$1 to \$2 an hour in most counties to both W-3 and W-4 visa holders, but not to any US workers they employ.

A new W-2 visa program would admit more low-skilled nonfarm workers up to 20,000 in the first year, 35,000 in the second year, 55,000 in the third year, and 75,000 in the fourth year. No more than a third of W-2 visa holders could be employed in construction.

Where will US employers get low-skilled W-visa workers? Mexico-US migration has been declining, and more Mexicans returned to Mexico than were admitted in recent years. A century ago, many farm workers in western states were Chinese and Japanese. A combination of longer periods of US employment and the opportunity to bring family members may bring more Asians to the US as guest workers.

#### **HOUSE: ENFORCEMENT AND GUEST WORKERS**

The House Judiciary Committee approved four bills in June 2013 to increase enforcement and to modify guest worker programs for agriculture and IT. The Legal Workforce Act (HR 1772) would require all employers to use E-Verify to check the immigration status of employees within two years, sooner than the four years allowed by the Senate bill. HR 1772 would allow employers to use E-Verify to check their current workforce if the employer's entire workforce is checked.

The Strengthen and Fortify Enforcement Act or SAFE Act (HR 2278) would criminalize more activities by foreigners in the US to expedite their removal, increase the number of interior Immigration and Customs Enforcement agents by 5,000, and allow states and

localities to enact and enforce immigration laws as long as penalties do not exceed federal penalties for the same offense. Foreigners convicted of criminal gang membership, drunk driving, manslaughter, rape, and failure to register as a sex offender could be removed more easily.

The Agricultural Guestworker or AG Act (HR 1773) would replace the current H-2A program with a new H-2C program administered by USDA. Any farm employer, including dairy and food processing employers, could register with USDA to be designated as a registered agricultural employer (RAE) and petition USDA for permission to hire H-2C guest workers, including unauthorized workers currently in the US. However, H-2C visas would be issued only outside the US, where workers would receive 18-month visas if they filled seasonal US jobs and 36-month visas if they filled non-seasonal jobs. If their visas were still valid when the first job ended, H-2C workers could switch to another RAE, provided they were not unemployed in the US more than 30 days. Farmers would not have to pay the in-bound transportation expenses of H-2C workers or provide them with housing

H-2C workers would have to be out of the US at least a sixth of the time they were in the US, that is, at least three months after being in the US 18 months. To encourage guest workers to depart, 10 percent of the wages paid to H-2C workers would be held in an escrow account and paid with interest if claimed by returned workers at a US embassy or consulate in their home countries.

The Supplying Knowledge-based Immigrants and Lifting Levels of STEM Visas (SKILLS) Act (HR 2131) would eliminate the 55,000 diversity immigrant visas and make them available to foreigners who earn advanced degrees from US universities in STEM fields (science, technology, engineering, and mathematics). SKILLS would raise the number of regular H-1B visas from 65,000 a year to 155,000, and double the number of H-1B visas for foreigners with advanced degrees from US universities to 40,000.

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## WHAT NEXT?

About three-fourths of the hired workers on US crop farms were born abroad and over half of all crop workers are not authorized to work in the US (Figure 3). Although most of the estimated eight million unauthorized workers are employed in nonfarm jobs, farmers are nervous that the million unauthorized foreigners employed in agriculture sometime during a typical year may become unavailable if enforcement precedes legalization.

Both the Senate and House bills are likely to give agriculture a legal workforce comprised first of currently unauthorized workers and later legal guest workers. Second, immigration reform should stabilize farm labor costs because average hourly farm worker earnings are already more than the minimum wage that must be paid to guest workers. Even if farm employers have to pay a housing allowance of \$1 to \$2 an hour, as under the Senate bill, the \$9.64 that must be paid to guest workers in 2016 plus the housing allowance is less the average hourly earnings of hired farm workers, \$11.91 an hour in April 2013 according to USDA.

Third, both bills should provide farm labor certainty. However, the Senate bill may give farmers in high-wage states such as California and Washington a competitive edge over farmers in lower-wage areas such as the southeast. Under the Senate bill, all farmers in 2016 can hire guest workers at \$9.64 an hour, which is less than average hourly earnings of \$11 in California in 2013, but more than the \$9.50 reported for some southeastern states.

The agricultural provisions of the Senate bill were negotiated by farm worker advocates and farm employers who have pledged to “strongly resist” efforts to change what they describe as a “delicately balanced compromise.” The House guest worker bill, on the other hand, is supported by some farm employers but opposed by farm worker advocates. The Senate bill may stall due to opposition to legalization, but the House bill is unlikely to be enacted unless there is a severe farm labor shortage that threatens widespread crop losses and consumer price increases.

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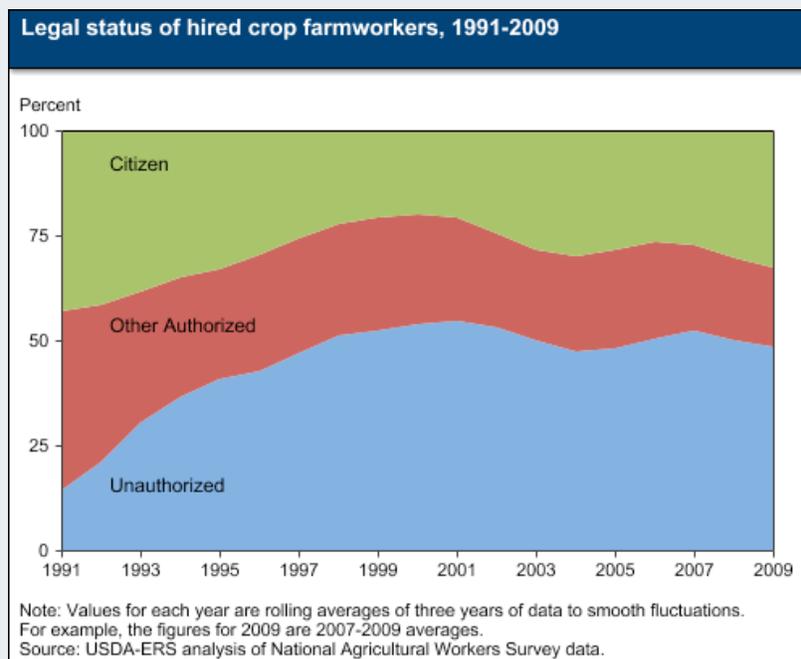


Figure 3. Legal Status of Crop Workers, 1991-2009.