Re: Opposition to mandatory E-Verify and need for substantive guest worker reform

Dear Honorable Members of the Washington Congressional Delegation:

Washington State agriculture associations recently met to discuss the Legal Workforce Act (H.R. 2164), as introduced by Congressman Lamar Smith. We oppose it and any other legislation that seeks to mandate E-Verify and other enforcement-only measures on agriculture without providing for an adequate agricultural workforce.

If E-Verify is imposed on our industry, Congress must provide at the same time a reasonable guest worker program to supply workers for the current and future needs of agriculture. Any program must take into consideration the unique needs of all segments of Washington agriculture, including dairy, packers, and processors. The program must provide for a timely, reliable, stable, and legal agricultural workforce. It must also ensure that our employers can have access to their trained workforces for time periods consistent with the needs of their various commodities. Without a stable source of skilled farm workers, our country and Washington State are in peril of becoming dependent on foreign sources of food and fiber.

Nationally, mandating E-Verify will harm domestic food production at a time when agriculture is a bright spot in the economy. In just the past few weeks, we have already seen the devastation that E-Verify caused in Georgia. The Legal Workforce Act has a phase-in similar to the Georgia law and will likewise lead to the same immediate, disastrous loss of labor for farmers nationwide.

Imposing E-Verify on Washington State agriculture in the absence of other crucial reforms will lead to similar economic and social problems. Agriculture is the largest employer in our state, providing more than 160,000 jobs and accounting for 11 percent of the state’s economy. Exports alone account for at least $11 billion annually. Despite high unemployment rates, Washington agriculture continues to have difficulty recruiting enough legal workers. Any further disruption in our agricultural workforce would spell trouble not only for agriculture, but for the whole economy of Washington State – with the largest impact occurring in our rural communities.
We have indications the House Judiciary Committee may mark up the Legal Workforce Act (H.R. 2164) shortly, perhaps before the August recess. As you consider this or similar legislation, we strongly urge you to support efforts to ensure a stable, ongoing supply of legal workers for all segments of agriculture. Done correctly, guest worker reform can turn the potentially devastating situation of mandatory E-Verify into an effective program consistent with American ideals.

Enclosed is a list of problems many agricultural producers have had with the current federal guest worker program, as well as a list of solutions we encourage you to adopt.

We ask you to oppose the enforcement-only approach of mandatory E-Verify in H.R. 2164. We ask you to support a guest worker program that will provide for the current and future flow of workers necessary for the success of Washington agriculture.

Sincerely,

Dan Coyne, Washington State Council of Farmer Cooperatives
Jon DeVaney, Yakima Valley Growers-Shippers Association
Scott Dilley, Washington Farm Bureau
Dan Fazio, Washington Farm Labor Association
Ed Field, Washington Cattle Feeders Association
Mike Gempler, Washington Growers League
Jay Gordon, Washington State Dairy Federation
Bruce Grim, Washington State Horticultural Association
Kirk Mayer, Washington Growers Clearing House Association
Jeanne McNeil, Washington State Nursery & Landscape Association
Charles Pomianek, Wenatchee Valley Traffic Association
Steve Rowe, Northwest Dairy Association
Vicky Scharlau, Washington Association of Wine Grape Growers
Alan Schreiber, Washington Asparagus Commission and Washington Blueberry Commission
Mike Shelby, Western Washington Agricultural Association
Chris Voigt, Washington State Potato Commission
Jon Wyss, Okanogan Horticultural Association

Enclosure

Cc: The Honorable Chris Gregoire, Governor, Washington State
    The Honorable Dan Newhouse, Director, Washington State Dept. of Agriculture
Current Guest Worker Program Falls Short of Needs for Whole Industry

The H-2A temporary agricultural worker program is broken and does not provide adequate access to workers for Washington agriculture. We have not seen detailed solutions to fix the extensive problems with H-2A.

Washington farmers have had to deal with the inefficiencies and difficulties of the H2-A program. The current H-2A program is bureaucratic, expensive, does not cover all parts of agriculture, and does little to encourage participation. Here are some of the common complaints:

- The Department of Labor has required that advertising for domestic workers not include an “experience” requirement, and firing cannot be based on performance.
- State Workforce Agencies are not required to verify the legal work status of individuals referred for employment from the agencies to a prospective employer.
- The 50% rule – H-2A requires employers first to recruit domestic workers before bringing in foreign guest workers, but continues to favor domestic workers even after the H-2A workers arrive and begin to work. The farmer must hire any domestic worker who applies for the job up to halfway through the contracted term for an H-2A worker. Even though the domestic worker may not even meet the qualifications for the job, the employer must hire the worker and potentially terminate the H-2A worker.
- The 3/4 rule – Employers are responsible for employing H-2A workers through at least three-fourths of the total contract. However, if an employer terminates an H-2A worker or the worker quits and DOL is not notified, the employer could still be responsible for paying the three-fourths guarantee. This guarantee may also be required for domestic workers at H-2A employers.
- Employers must provide or pay for inbound and outbound transportation from the workers’ permanent residence to the place of employment once 50 percent of the work contract has elapsed. Farmers must also provide or pay for transportation to and from the farm each day at no cost.
- Employers must provide free housing without an option to recoup costs for damage caused by the workers.
- Growers are required to provide $10 a day for meals to each H-2A worker or furnish free and convenient cooking and kitchen facilities.
- Growers with H-2A workers must pay a base wage rate that is historically well above market levels, making the program hugely expensive for farmers who now must compete with growers of the same product in other states and internationally.
- H-2A workers must be covered by workers’ compensation. In almost all states, employers must cover this expense. DOL is now saying that H-2A employers in Washington must pay the full premium even though federal regulations dictate that state workers’ comp laws should be followed. In Washington, employees may pay roughly 25 percent of the premium.
- Some of the federal farm worker housing standards are so exacting that most hotels and motels licensed in Washington State do not meet the guidelines. Also, HUD-financed farm worker housing facilities are not legally available to house H-2A employees.
Solutions

If the current H-2A program will not work to supply the short- and long-term labor needs for Washington agriculture, what kind of system will? The following are suggestions for a reasonable path forward:

• Recognize that establishing an entirely new guest worker program may be the simplest and most beneficial way of offering reforms. Such a program could exist alongside H-2A so that growers can choose the program that will work best for their operations.

• Establish a guest worker program for existing workers to apply for legal worker status. Many sectors in agriculture have employees in higher-skilled, specialized jobs that require tenure and training. Wholesale loss of huge percentages of experienced employees is a disaster for our farms, commodities, processors, and customers.

• Lift the 3/10-year rule bars. Under existing law, workers who have been in the United States illegally are barred from legal reentry for 3 or 10 years, depending on the length of their illegal stay. This law would effectively bar illegal workers from transitioning to a legal guest worker program. Changing this law to allow workers to enter a reformed guest worker program would help provide continuity of experience in agricultural workforces.

• The program must be quick and easy to use once a farmer shows that no local workers are available. The rules must allow the employer to require or prefer experienced workers. Employers must be enabled to legally hire guest workers without a long registration process. Expedited issuance of guest worker visas is necessary to accommodate the production, harvest, and processing of crops and livestock.

• The program should provide the option for year-round and multi-year visas. The terms of guest worker visas must be long enough to allow us to have stable, reliable employees who can gain experience and training to continue to provide quality care for farm animals and property. This provision is especially important for farmers dealing with livestock, such as sheepherders and dairy.

• The program should allow for guest workers to have portability. Guest workers should be able to move between employers and be able to travel to their home residency and return for personal reasons during their authorized visa term. However, because of this portability, employers should not be responsible for travel expenses incurred by guest workers.

• Make the program cost-effective. Agriculture faces growing international competition, and artificially inflated wages will not help our farms and ranches remain viable. Wages in a new program must also be based on prevailing, free-market figures.

• The Department of Agriculture is more suited to understand the needs of agriculture than the Department of Labor. Therefore, USDA should run any guest worker program.

• Provide for adjustment of status to allow workers to join a guest worker program for continuity in our workforce.

• Allow for packers and processors of agricultural commodities to participate in the guest worker program. Currently, participants in H-2A are limited to production agriculture, yet economic factors have forced more vertical integration and direct sales for many of our commodities.

• Approve hotels and motels licensed in Washington State to be used for farm worker occupancy. Allow H-2A workers to occupy HUD-financed housing facilities.