**MEMORANDUM**

**DATE:** February 28, 2017

**TO:** Congressional Members

**FR:** Tobacco Growers Association of NC

**RE:** Agricultural Guest Worker Program Changes

Our farmers encourage the Trump Administration to adopt common sense regulatory reforms to the current H-2A guest worker program as a stop gap measure while Congress works towards a permanent legislative fix. Included below are some ideas that should be considered in both regulatory and legislative reforms.

Farmers and farm-workers desire to comply with labor and immigration laws. Now is the time for the Administration and Congress to take strong action to achieve meaningful reforms that protect and enhance the guest worker program that is proven to be an effective and reliable system.

The current H-2A program has become costly, unpredictable, and administratively flawed. It is too expensive, too litigious, and too cumbersome. In the current business and immigration climate, many participants (including farmers and employees) have increasing concerns that the federal agencies running the H-2A program many not always make the required decisions necessary to implement important actions on time, even when farmers meet their regulatory responsibilities on time.

**Reform the Super Minimum Wage Rate to be Predictable and Fair**

The H-2A program minimum hourly wage rate in NC is currently $11.27, which represents a $.55 per hour increase over 2016 and has risen, on average, 3.7%

annually over the last 25 years. In addition, farm workers employed under the terms and conditions of the H-2A program receive free government inspected housing, free utilities, free transportation each day to the job, and have the fees associated with obtaining the visa paid by the employer. All of these costs are paid for by the farmers. Beyond the program requirements, many farmers provide additional fringe benefits such as complimentary food and beverages and entertainment such as free Wi-Fi and cable television.

Using the comprehensive economic model developed by NC State Ag Economists to calculate an average hourly value for ALL program costs, most NC farmers participating in the H-2A program in 2017 can estimate their aggregate expense on a per hour basis to be between $16 and $17. One feasible solution being discussion among farmers and commodity organizations is to adjust the super minimum wage required under the H-2A program to the State or federal minimum, whichever is higher in each state. An H-2A wage rate of 110% of minimum wage is a fair wage rate (for both farmers and workers) that will prevent an adverse effect on US Farmworkers. Farmers would still use “piece-rates” to incentivize productivity, so the 110% would be the absolute minimum wage.

Other options to reform wage protections under the program can be reviewed by examining wage provisions introduced in House and Senate legislation from the 112th Congress until now. Wage provisions for the agricultural guestworker program found in H.R. 2847 from the 112th Congress, H.R. 1773 and S. 744 from the 113th Congress all generate improvements that make the super minimum wage more predictable for farmers going forward without sacrificing protections for foreign and domestic farmworkers.

**Streamline and simplify the H–2A application process.**

There are many administrative and bureaucratic delays with the U.S. Departments of Labor, Homeland Security, and State. With the current H-2A program experiencing 15-20% growth annually over the last few years, it is has become all too common for workers to arrive at the farms 2 or 3 weeks late. Planting, cultivating and harvesting tasks on labor intensive crop farms are extremely time sensitive. Delays in worker arrivals are devastating to farmers and lead to lost yields and rotting crops when perishable crops are ready to harvest and there are no workers. It also places the delayed worker at a financial and safety training disadvantage.

The entire H-2A system needs to be streamlined, simplified and modernized, eliminating redundant actions at multiple agencies. Much of this work can be done electronically from farmer to government, intra and interagency, to avoid inefficient conventional mail and expensive overnight courier expenses.

Inexpensive new systems could easily be implemented that would streamline the foreign visa application process, eliminate unnecessary costs, increase capacity and efficiency, and improve transparency by developing a system for returning foreign agricultural guest workers similar to the Transportation Safety Administration Pre-Check Program used at airports. Workers who are going to participate in the farm guestworker program repeatedly could elect apply for a background check in order obtain a machine readable card with appropriate security features that would allow them to move through an expedited process – this is a common sense solution with modern day conveniences without reducing security measures that Americans support. It also could become another verification system to capture timely transitions and alert if visa exit date has been overstayed.

In addition, farmers would prefer to see plainly worded, easy to understand regulatory language that describes program requirements in detail to avoid regulatory whipsawing with executive branch changes. Farmers have learned the hard way that when statutory language is ambiguous, it can lead to administrative and civil legal disputes about interpretations that can only be resolved in Court and such conclusions may not match the original intent of Congress.

It is also critical to expand the scope of the program to allow greater participation from farmers in ALL sectors of agriculture. Farming and agribusiness represent America’s largest industry. Providing the food and fiber needs for our society is a year round demand, so it doesn’t make sense to prohibit dairy farmers and livestock operations from participating or limiting farmers in areas of the country that can grow fruits and vegetables in every season from participating year round – the program should be available all 12 months and not arbitrarily limited to 10.

**Implement mediation and arbitration.** Growers and workers should be provided the option to quickly resolve legal issues through an expedited mediation and arbitration with explicit timelines. Farmers and workers desire an inexpensive and efficient way to resolve legal concerns.

These are some practical and sustainable solutions that agricultural employers across the nation agree will give farmers and farm workers confidence that an agricultural guestworker program can work, be predictable, and treat all parties fairly. The potential solutions include:

* **Wage -** A rational wage rate linked to the Fair Labor Standard Act (FLSA) minimum wage plus 10% to 15% to help preclude wage stagnation; mediation and arbitration to streamline resolution of worker grievances and avoid costly lawsuits that slowly drag through the already over used Court systems.
* **Streamline -** Simplifying the overly bureaucratic processes required to utilize the program, which presently serves as a disincentive to participation.
* **Expand -** Including all sectors of agriculture in the program to encourage wider participation, and provide a path for farmers and farmworkers to comply with immigration law.
* **User Friendly -** Any reforms should include plain language that explicitly defines the role and reach of administrative agencies so that farmers and farmworkers always know what to expect. Applications and instructions should be designed for simple interpretation.

Thank you in advance for your time and consideration.

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