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## **Senate Immigration Reform Proposal – Agricultural Component**

On Wednesday, April 17<sup>th</sup>, 2013, the bipartisan Senate “Gang of Eight” released its comprehensive immigration reform proposal. Included in the bill is a proposal to offer legal status for the current agricultural labor supply and a proposal for the future flow of agricultural workers through a new temporary guest-worker program. What follows is a summary of the agricultural component of the proposed legislation.

**DISCLAIMER:** This document is based on our preliminary interpretation of the legislative language. We will continue to update this document as more information becomes available.

### **Current Agricultural Workforce – Blue Card Program**

The Blue Card program would extend legal status to experienced farm workers who have fulfilled certain requirements and agree to remain in agricultural employment for a certain number years. Blue Card status would be offered to any current agricultural work meeting the following criteria:

- Any agricultural worker who can document having worked in agriculture in the U.S. for at least 100-workdays or 575 hours in each of the last two years prior to December 31<sup>st</sup>, 2012.

As noted, Blue Card status is contingent upon continued agricultural employment for a defined period of time, after which Blue Card holders can apply for a Green Card provided that they show that they’ve paid all taxes, have not been convicted of any felony or violent misdemeanor and pay a \$400 fine. In order to be eligible for Green Card consideration, Blue Card holders must:

- Remain in agricultural employment for at least 100-workdays per year for at least five of the seven years beginning on the date of enactment or,
- Remain in agricultural employment for at least 150-workdays per year for at least three of the five years beginning on the date of enactment.

The application process for Blue Card consideration would be managed by the U.S. Department of Agriculture and would extend for one-year after the rulemaking process is complete, though the Secretary of Agriculture has the discretion to additionally extend the application window for a period of eighteen months. Also, deferred action would apply from the date of enactment, meaning that farmers and Blue Card-eligible farm-workers would be protected against legal action until the Blue Card application process commences.

### **Proposed New Temporary Guest-Worker Program**

The Senate proposal also acknowledges the need to account for the future flow of agricultural workers by establishing a new temporary agricultural guest-worker program. What follows are the general elements of the proposed new temporary guest-worker program:

- The program, administered by USDA, would allow for two temporary guest-worker categories: a fully portable at-will temporary visa option and a contract-based temporary visa option. In both cases, the visa term would be three years.
- To become eligible participants in this new program, agricultural employers would have to register with USDA as Designated Agricultural Employers (DAE)
- Workers unemployed for 60-days or more would be lose status and would have to depart the U.S. Similarly, contract workers who violate the terms of the contract would be required to depart the U.S. before accepting another job with a different U.S. agricultural employer.
- The H-2A program would remain intact for 1-year after the new visa program is enacted.

## E-Verify

- A mandate that all employers use E-Verify as an enforcement mechanism is included in the bill. While we are still seeking clarification on when the E-Verify mandate kicks in for agricultural employers, it is clear that it will not take effect until year four at the earliest.

## Cap

- The proposal caps the number of guest-worker visas for years one through five. Specifically:
  - For the first three years, the cap compounds by 112,333. In year one, 112,333 visas would be issued. In year two, that number would double to 224,666 visas. In year three, an additional 112,333 visas would be allocated for a total of 337,000 visas.
  - In the first year, the cap will be divided evenly by quarter. In subsequent years, it will be divided quarterly based on historic need, meaning that more visas may be allocated in certain quarters than in others. The cap will carry over each quarter, but not over a fiscal year.
  - In years four and five, no new visas would be allocated. However, in any of the first five years, the Secretary of Agriculture has the discretion to increase the cap if he can illustrate a need for an additional allocation of temporary guest-workers, a key provision to protect against labor shortages.
  - Beginning in year six, the Secretary of Agriculture will determine the cap on a yearly basis based on the industry's labor needs.

## Wage Rate

- The proposal establishes unique wage rates for six different agricultural occupation categories:
  - *Farmworkers and Laborers (Crop, Nursery, Greenhouse):* \$9.64/hour
  - *Graders and Sorters:* \$9.84/hour
  - *Dairy and Livestock:* \$11.37/hour
  - *Agricultural Equipment Operators:* \$11.87/hour
  - *Other Occupational Categories:* The Secretary of Agriculture would determine the wage rate for first line supervisors and animal breeders upon petition by employers with employees in those categories
- Each base wage rate must increase by at least 1.5% annually but also by no more than 2.5% over the same period.
- The Adverse Effect Wage Rate (AWER) would remain in place for H-2A workers, but that wage rate would be frozen for three years after enactment of the bill.

## Housing

- Employers would be required to provide housing or a housing allowance. At-will employers would always be given the option to provide either housing or a housing allowance while employers with contract-based workers would be required to provide housing unless the Governor certifies that there is housing available in that geographical area.

## **Transportation**

- Employers must provide in-bound transportation. Contract workers would receive outbound transportation if they work for the same employer for at least  $\frac{3}{4}$  of the contract term.

## **Work Guarantee**

- Contract employers must guarantee work for at least  $\frac{3}{4}$  of the contract period, though exceptions would be made for natural disasters and other significant weather-related crop loss.

## **Preference for Existing H-2A Workforce**

- Employers who currently have H-2A workers would be able to give preference to those workers over domestic workers provided that the H-2A worker in question has worked for the employer for at least three out of the past four years. Employers would be required to pay these H-2A workers the frozen AWER, a wage rate that would be frozen for the first three years after enactment then indexed for inflation thereafter.

## **Recruitment Requirements for US Workers**

- Employers would be required post a job notice with their state workforce agency at least 60-days prior to the date of need, and the position must continue to be advertised up to 15-days before the date of need. During this window, employers must hire qualified, ready, willing and able U.S. workers.

## **Dispute Resolution**

- All temporary guest-workers would be covered by the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) and mediation of any complaint is required upon request of either party before a lawsuit proceeds.
- If a worker opts to file an administrative claim that is subsequently resolved through either a settlement or adjudication, said worker cannot proceed with civil action for the same violation under MSPA.

## **Equal Treatment for Corresponding U.S. Workers**

- All corresponding U.S. workers would be entitled to equal wages, working conditions and other benefits – with the exception of housing or a housing allowance - as temporary guest-workers in the similar occupational category. The determination of whether a U.S. worker is working in a similar occupational category would be based on whether that worker spends at least 75% of his/her work time performing similar tasks.

## **Other Items**

- All current special procedures for goat herders, sheep herders, customer harvesters and beekeepers would remain intact under this new program.
- For commuter states, employers are not required to provide housing or a housing allowance to workers if the worksite is within fifty miles of the border of their home country.

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4/22/2013