FOREIGN LABOR OR FOREIGN FOOD?

H-2A & USDA 514/516 FARM WORKER HOUSING

By

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Executive Summary:

The purpose of our project was to ensure that our agricultural producers in Washington State are able to harvest their crops in a timely matter during peak production, by providing housing to their H-2A workforce with USDA 514/516 Farm Worker Housing.

Labor intensive agriculture in the United State is heavily reliant on the federal H-2A program to source farm labor. The main deterrent to a farmer who wishes to use the program is the federally mandated requirement to provide free housing.

Our goal was to pass federal legislation to allow farmers, using legally documented temporary laborers through the federal H-2A visa program, the use of USDA 514/516 Rural Rental Housing Programs.

The current administration’s interpretation of the regulation is that 514/516 housing cannot be used for workers on a legal guest farm worker visa (H-2A).

Overview of H-2A Federal Guest Worker Program

For Washington State farmers The Federal Guest worker program, known as H-2A, is the only solution to fill the demand for trained seasonal workers. Since 2007, the number of foreign workers in Washington State has increased by an average of 25% per year. In 2014 Washington ranked 5th among all states with 9,025 workers certified, an increase of a staggering 43% compared to 2013.1

An H-2A visa allows a foreign national entry into the U.S. for temporary or seasonal agricultural work. The H-2A certification is valid for up to 364 days.

The H-2A program provides protections to guarantee that domestic workers get priority employment. The program provides higher wages for all domestic and foreign guest workers. In addition, workers receive other benefits, including a work contract that guarantees pay for the entire season, including housing and transportation.

http://blogs.furman.edu/com121sp10/2010/02/19/a-new-kind-of-harvest-this-year/
The H-2A program helps employers as well. They can count on stable, legal workforces who have agreed to work for the entire season. In addition, the vast majority of domestic and foreign workers who work for employers in the H-2A program return year after year, adding another level of stability by providing a trained workforce.

When a farmer realizes a shortage of domestic labor for the harvest season, he may begin the process to secure H-2A workers. The employer is required to place newspaper ads to recruit Domestic U.S. Workers who are able, willing, and qualified to perform the job and cooperate with the State Workforce agency to find domestic workers. If no such workers are able, the employer can then continue the process of using H-2A guest workers.

Employers who participate in H-2A must provide free housing to all workers who are not able to return to their homes on the same day. This housing must be inspected and approved and meet all Department of Labor and Occupational Safety and Health Administration (OSHA) standards. An alternative form of housing can be rental housing.

OVERVIEW USDA 514/516 HOUSING

Section 514 loans and section 516 grants are provided to buy, build, improve, or repair housing for farm laborers.

Section 514, authorized by the Housing Act of 1949 as amended, and provides loans for housing of Domestic farm labor. The Section 514 farm worker housing program issues direct loans at a 1% interest rate for 33 year terms. These funds can be used for new construction or for the rehabilitation of existing properties. These loans are made to farmers, associations of farmers, family farm corporations, Indian Tribes, non-profit organizations, public agencies, and associations of farm workers.

Section 516 grants are made to farmworker associations, non-profit organizations, Indian Tribes, and Public agencies. In operation since the 1960’s, the section 514/516 farm labor Housing Program has provided housing for the lowest income residents. Farm workers, especially those who move from place to place to find work, suffer some of the worst housing conditions in the country.

Eligible tenants of 514/516 housing are domestic farm laborers who receive a substantial portion of their income from farm labor and are citizens or legally admitted for permanent residence. Legally admitted temporary laborers, such as H-2A workers, are not eligible tenants due to a recent interpretation by the Obama Administration prohibiting the use of section 514/516 housing for H-2A guest workers.


Yakima Housing Authority: Low income housing facility
H-2A BACKGROUND INFORMATION:

In the past guest workers have been imported to the U.S. to address worker shortages during times of war. During WWII, tens of thousands of Mexican workers performed agricultural labor as part of a temporary worker program. United States and Mexico signed The Mexican Farm Labor Agreement of 1942 which allowed basic human rights, such as shelter, food and sanitation to Mexican workers while earning a minimum wage. U.S. employers became heavily dependent upon these workers. Following many short term agreements a rise of illegal immigration occurred. President Truman’s Commission on Migratory Labor of 1951 disclosed that the presence of Mexican workers hindered wages of American farmers. Truman then signed into law the Public Law 78 which later made the hiring of an illegal immigrant a felony. This led to the establishment of the H2 program, which allowed laborers to enter the U.S. for temporary work.

Today, importation of labor is much less in numbers, but need is great and demand is growing. The H-2A program has grown significantly over the last 15 years.

![H-2A Visas Issued 2000-2014](image)

Source: U.S. Department of State, Bureau of Consular Affairs

During 2007, congressional efforts were unsuccessful in enacting a comprehensive immigration legislation which allowed for a guest worker provision. The George W. Bush Administration announced it would streamline the current H-2A program. In 2008, Department of Homeland Security (DHS), and Department of Labor (DOL) published final rules to amend the H-2A regulations. Ultimately, the goal of the Bush administration was to make the program easier to use than the 1986 Immigration Law. However, during the Obama Administration, the program was intentionally made more difficult to use and put employers who used H-2A under threat of penalties to comply with requirements.

The Issue Being Addressed: Availability of USDA 514/516 housing for H-2A Farm Workers.

The Reasons for selecting this particular project:

- Due to the shortage of domestic labor force, it is imperative to the economy of Washington State to address this issue.
- Alleviate estimated 10% crop loss from lack of labor force.
- To ensure food security for domestic, national, and global markets.
- To sustain marketability in Global market
- An individual within our group worked for WAFLA and personally dealt with individuals on both sides to fill the demand of temporary farm labor needed in Washington State.
- This individual worked directly with farmers setting up H-2A workers. Part of her job was to tell farmers that unless you can provide housing that meets strict federal standards you cannot bring in H-2A workers; while knowing that down the road is a farm labor housing complex that sits largely vacant and this was happening throughout the region.
- We identify that the lack of available USDA rural housing directly contributes to the labor shortage.

State, National and International Dimensions of the Issue:

STATE

- Estimated 10% of Washington State Crops were abandoned in field during times of peak harvest due to lack of labor
- Washington State Agriculture contributes $16 billion to the state’s economy
- During fiscal year 2014, there were 9,077 H-2A visas issued, which represented a 45% increase over 2013.4

NATIONAL

- The importance of Agriculture produced in United States for domestic food security
- The necessity to produce an abundance of quality products in a timely manner annually to compete in the global market
- National economic losses due to labor issues rose to $320 million in 2010; $150,408,000 of that economic loss was due to lack of work force. $169,763,000 of loss due to inability of process foreign workers in a timely fashion.5
- Multistate work force agencies referred 36,000 domestic workers to H-2A employers in an attempt to fill agricultural labor demands. Only 5% domestic workers completed the contract.4
- 116,689 H-2A workers were certified in 2014.4

GLOBAL

- Continuing conversation over immigration laws and the need for resolution to maintain our global demand for agriculture products.
- Food Security is National Security.
- Improving quality of life for foreign workers and their families.

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5. 2010 survey of H-2A employers NCAE National Council of Agriculture Employees
Alternative Proposals/Solutions, and why they weren’t pursued

Farmers are facing a growing labor problem, and the H-2A program is the only solution to the problem. Providing housing for H-2A workers is a requirement of the program, and available housing for H-2A workers is scarce. For that reason, we did not see any alternatives we could pursue.

However, Broetje Orchards near Prescott, Washington saw the need for quality, affordable housing for their domestic employees. In response they invested $5 million dollars to build 121 single family units to meet that need. Perhaps more growers could invest capital to build housing for their H2-A workers, or growers could join in a cooperative effort to construct housing. However, many smaller growers and producers simply don’t have the capital to do so.

Impacts of our proposal

If growers could access vacant 514/516 housing for their H-2A workers, those growers would pay an unsubsidized rent to the owner of that housing. In turn, the owner could pay that rent received towards the original USDA construction loan; thus possibly repaying the loan sooner. The rent could also be used on capital improvements to the housing, providing better housing for both domestic and H-2A workers.

Opposition will argue that allowing H-2A workers to be housed in 514/516 housing will displace domestic workers in need of housing. Under our proposal, 514/516 housing could only be accessible to H-2A workers after domestic workers have been given priority to that housing.

Lowel Krueger, Executive Director of the Yakima Housing Authority said “that using e-verify to check the legal status of domestic workers is not a requirement by law”. As a result, we cannot be assured that some domestic workers residing in 514/516 housing are actually legal documented workers. We can be certain, however, that H-2A workers are here on legal work visas.

Foreign workers who will be present in Washington State in 2015 to supplement the domestic workforce will free up local workers for growers who cannot afford to use the H-2A program. The higher wages mandated by H-2A set the minimum wage for all growers in the region.

In addition, the H-2A established wage rate, known as the Adverse Effect Wage Rate (AEWR), dictates a higher wage for both domestic and foreign labor, as well as providing workers compensation for both labor groups.

H-2A improves working conditions for all workers of the employer who participates in the program.

Results of pursued legislation

Because the 514/516 housing is funded by the USDA, our public policy project required us to draft language to change federal legislation. We met with Representative Dan Newhouse, and have met with legislative assistants for both Representative Dan Newhouse and Senator Patty Murray, with the intent of revising federal legislation. Michigan Farm Bureau is also involved and working towards the same goal. Given the fact that it is an election year, the state of the current political climate in Washington D.C., and that our project is so closely related to the “hot button” issue of immigration, it is nearly impossible to get federal legislation passed.

This issue is key to solving labor issues not only in Washington State, but across the nation. For this reason we believe there will be a continued effort to pursue federal legislative change.
Successes:

- We were able to collaborate with the offices of U.S. Senator Patty Murray (WA-D) and U.S. Representative Dan Newhouse (WA-R) to become more familiar with the political process and bureaucratic challenges of influencing policy. This included a sit-down with Rep. Newhouse in Olympia.
- We found common interests from other offices and organizations to collaborate and gather support. These included: Washington Farm Labor Association, Yakima Housing Authority, Office of Rural & Farmworkers Housing, USDA Rural Development, Washington State Tree Fruit Association, and the Michigan Farm Bureau.
- Our group has a diverse background with varying perspectives, but we came together to support and advance our cause. We all feel better educated and networked in the policy arena for having experienced this project.
- Our group learned also how convoluted or difficult it is to pass any federal legislation in today’s government.

Challenges:

- It took several months for us to land on a topic. As a group we weren’t able to find common ground that we all felt passionate about. Once we landed on this topic, which affects many agriculture producers in Washington State, we organized our project.
- We found it challenging to pin down opposition to our project. We recognized early on that this is a critical piece of puzzle, but struggled making contact or even identifying specific organizations or groups. We found a Washington DC based organization that advocates for affordable rural housing in the U.S. by supporting the administration’s interpretation of USDA 514/516 housing, but they would not respond to our attempts to contact them.
- We wanted to focus the topic as a labor shortage rather than a housing issue, but the biggest obstacle is its perceived association with immigration. Due to the current political environment, we found that pursuing federal legislation on anything related to immigration wasn’t going to make it far in D.C.
- There is a common misunderstanding of the H-2A program that it takes away domestic jobs, so we recognized that as a general challenge when communicating about our project.
- The H-2A program has many cumbersome layers that would benefit from streamlining. The program is administratively costly, where 42% will not participate due this fact. Multifaceted problems within H-2A constrain its effectiveness to solve or aid in the resolution of the labor issue.
- Our public policy project leader, who introduced the topic and has significant experience with farm labor and the H2A program, accepted a new job outside the country. Losing this teammate affected the energy and expertise within the group and placed a burden on the rest of us to navigate the challenges.
- We felt we would have gained more traction earlier in the process if we had had our topic chosen prior to our AgForestry trip to Washington, D.C.
Final Thoughts

During times of high U.S. unemployment does importing labor make sense? This is the question and the depth of the debate that continues to be asked. Would more U.S. workers perform farm work if wages were higher and terms of work different? Would these changes make U.S. agriculture industry uncompetitive in the global marketplace?

Going forward change will be slow until after the 2016 election and things settle down; depending on which party has control.
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