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Immigration Reform: Implications for Agriculture

by

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About half of U.S. farm workers are not authorized to work in the United States. Pending immigration reforms aim to prevent the entry and employment of more unauthorized foreigners, but differ on what to do about unauthorized workers already in the United States. È

About 95,000 foreigners a day arrive in the United States. About 90,000 are nonimmigrant tourists, business people, and foreign students and workers welcomed at airports and border crossings. About 3,000 are immigrants who have been invited to become permanent residents of the United States, and almost 2,000 are unauthorized foreigners, usually Mexicans, who evade border controls, enter the United States, and settle.

Is the arrival of 30 million nonimmigrants, a million immigrants, and 500,000 to 700,000 unauthorized foreigners a year something to be welcomed or feared?

Opinion polls consistently find that most Americans want the U.S. government to take additional steps to prevent illegal migration. A December 2005 *Washington Post-ABC News* poll reported that 80 percent of Americans think the federal government should do more to reduce illegal immigration, and 56 percent agree that unauthorized migrants hurt the United States more than they help it.

In December 2005, the House approved the Border Protection, Antiterrorism, and Illegal Immigration Control Act (H.R. 4437) on a 239 to 182 vote. President Bush commended the bill, saying: "I applaud the House for passing a strong immigration reform bill... I urge the Senate to take action on immigration reform so that I can sign a good bill into law."

If eventually enacted into law, H.R. 4437 would require U.S. employers within two years to submit Social Security and other data on newly hired workers to government agencies by telephone or computer. If the data do not match that in government records, employers are to notify workers to correct the problem within 30 days, or the worker could no longer be employed. Employers would have six years to verify the legal status of their current employees. H.R. 4437 also cracks down on unauthorized foreigners in the United States by making "illegal presence" in the United States a felony, which may make it hard for such persons to eventually become legal immigrants, and introduces penalties on those who support or shield illegal migrants, which could affect churches and other migrant support groups.

Perhaps the most controversial item in H.R. 4437 is a provision that calls for 700 miles of additional fencing along the Mexico-U.S. border. Adding to the 106 miles already in place, this would extend the fencing to over a third of the 2,000 mile border. Even though President Bush has been calling for a guest-worker program since his election in 2000, H.R. 4437 does not include such a program.

In March 2006, the Senate began to take up immigration reform. Unlike the House, the leading proposals in the Senate would legalize unauthorized foreigners

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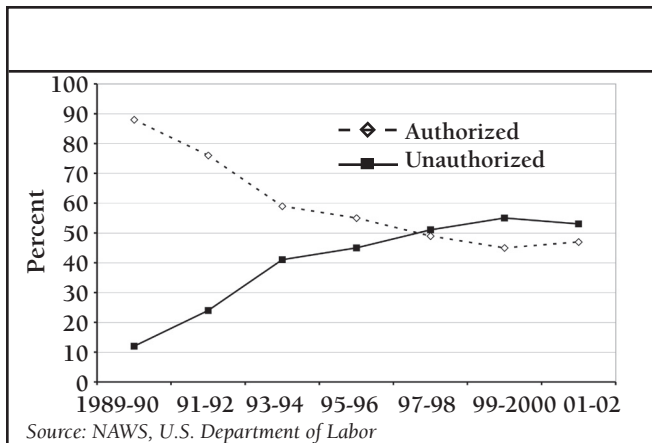
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e newly legalized workers at the end of six years of legal U.S. work.

Under the Secure America and Orderly Immigration Act of 2005 (S. 1033), introduced by Senators John McCain (R-AZ) and Edward Kennedy (D-MA), unauthorized foreigners in the United States could apply for guest worker visas by showing a U.S. work history and passing background checks. If they continued working in the United States for six years, passed additional security and background checks, and paid a fee/fine of at least \$2,000, they could qualify for immigrant visas. Legal guest workers under McCain-Kennedy could change U.S. employers, an effort to protect them from unscrupulous employers, and more visas would be made available so that foreigners who earn immigrant visas by working could have their families join them in the United States. Like the House bill, the McCain-Kennedy bill would create a new electronic work-authorization system that would ultimately replace the current paper-based system.

Senators John Cornyn (R-TX) and Jon Kyl (R-AZ) also aim to make currently unauthorized foreign workers in the United States legal. Their Comprehensive Enforcement and Immigration Reform Act of 2005 would require unauthorized foreigners in the United States to register, return to their countries of origin, and then re-enter with renewable three-year work permits. At the end of six years, these legal guest workers would be expected to leave the United States for good. Like the House bill, Cornyn-Kyl would dramatically increase funding for border and interior enforcement and introduce machine-readable, tamper-resistant Social Security cards to help employers determine the legal status of newly hired workers.

There are several other proposals that share the goals of reducing the influx of unauthorized foreigners and

ensuring that workers employed in the United States are legal. However, the differences are clear: should the U.S. government try an enforcement-first and guest workers-later strategy, as in the House bill, or launch new enforcement and guest-worker programs simultaneously, as in the Senate bills? Another issue is what happens to guest workers when their work visas expire: can they become legal immigrants or must they leave the United States? Finally, an issue of special importance to agriculture is how easy it will be to obtain additional legal guest workers.

Unauthorized Farm Workers

An estimated 10.3 million unauthorized foreigners were in the United States in March 2004. Their number has been increasing by over 700,000 a year in the past decade, so that in recent years the inflow of illegal migrants has exceeded that of legal immigrants. The fact that almost 30 percent of the 36 million foreign-born U.S. residents are unauthorized, as are 55 percent of the 11 million Mexican-born U.S. residents, is a major reason why Congress is considering immigration reform.

Most unauthorized foreigners in the United States are not employed in agriculture. Almost two million are children under 18, and others are housewives or are retired, so that seven to eight million unauthorized are in the U.S. labor force of 150 million. Most are between the ages of 18 and 40, and half arrived since 1995.

There are no reliable data on the number of unauthorized farm workers and their importance to U.S. agriculture. The U.S. Department of Labor (DOL) has been surveying workers employed on crop farms for the past 15 years, and found that the percentage of unauthorized workers has been above 50 percent since the late 1990s. However, more recent surveys suggest that the unauthorized share of the crop work force has fallen slightly, perhaps because tougher border enforcement is slowing new entries while the boom in construction and other nonfarm labor markets has drawn newly arrived unauthorized seasonal workers into nonfarm jobs.

There are no government estimates of unauthorized workers in livestock, but livestock workers are more likely to be legal because a higher share have year-round jobs and benefits such as housing.

When USDA relied on the Current Population Survey to estimate the number of farm workers, they estimated there were 2.5 million farm workers, defined as persons employed for wages on farms sometime during a typical year, including 1.8 million in crops and 700,000 in livestock. If 45 percent of the crop workers and 25 percent

of the livestock workers are unauthorized, there would be almost one million unauthorized U.S. farm workers. If the unauthorized percentage is higher, say two-thirds of the crop workers and a third of the livestock workers, there would be about 1.4 million unauthorized farm workers.

The number and share of unauthorized workers varies by well-known factors, including size of employer and commodity, with large labor contractors providing workers to harvest less-perishable crops such as citrus having the highest shares of unauthorized workers. However, differences between less-perishable citrus and more-perishable strawberries have been disappearing as unauthorized workers spread. Indeed, areas in which foreign-born workers are a recent development, including many Midwestern and southeastern states, may have higher shares of unauthorized workers than states that have long relied on foreign workers, such as California.

Even though almost half of crop workers may be unauthorized, few farm employers are fined for employing such workers. There are several reasons. First, there is little enforcement of laws against hiring unauthorized workers. In FY04, the Immigration and Customs Enforcement agency issued only three notices of intent to fine (NIF) employers for violations of employer sanctions laws, down from 1,000 to 2,000 NIFs a year in the 1990s. Second, most employers protect themselves from fines by copying the documents presented by newly hired workers.

Agriculture's Stake

Agriculture's three major interests in pending immigration reform proposals deal with currently unauthorized workers, future guest workers, and enforcement. Although some farmers fear that hundreds of thousands of currently unauthorized workers will disappear overnight, this is a highly unlikely scenario.

The House bill does not include a guest-worker program that legalizes currently unauthorized workers, but it does include a two-year phase-in of the Internet-based system to verify the legal status of new hires and a six-year phase-in of the requirement to verify current employees. Thus, even under a worse-case scenario for farmers worried about "losing" unauthorized employees, there would likely be attrition rather than a sudden

disappearance of workers. The Senate bills, of course, allow currently unauthorized workers to become legal guest workers.

The seasonal farm labor market resembles a revolving door, in the sense the newcomers arrive, are employed for about a decade, and then return to their countries of origin or, more often, find nonfarm jobs and settle in the United States. If there is 10 percent annual turnover, 250,000 farm workers exit each year, and must be replaced to keep the farm work force at current levels.

Since virtually all new entrants to the farm labor force are born outside the United States, farm employers are very interested in government rules that regulate their access to foreign workers. If increased border and interior enforcement slows the influx of unauthorized workers and turnover remains at current levels, farm employers would be interested in at least 250,000 new guest workers a year, far more than the 40,000 a year requested under the current H-2A program.

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The H-2A program presumes that U.S. farmers will normally find sufficient U.S. workers. Farmers anticipating too few U.S. workers must file a job order at their local employment service (ES) office and ask the DOL to certify their need for foreign H-2A workers. Before certification, the ES and the farmer seek U.S. workers but, since farmers do not request certification to employ H-2A workers until they have found them abroad, most do not really want U.S. workers, and recruitment usually finds few.

Making the request for H-2A workers alerts unions and advocates, who sometimes sue employers who do not hire the U.S. workers who respond to the farmer's ads. In addition, farm employers requesting H-2A workers must offer approved housing, which means that DOL inspectors arrive to check housing. Applying to the government for H-2A workers in areas that often have double-digit unemployment rates tends to bring unwelcome attention to farm employers who may have been operating out of the limelight with unauthorized workers, explaining why many farmers say the H-2A program is "unworkable." Proposals to make the H-2A program more employer-friendly include the AgJOBS proposal described below.

The third uncertainty for agriculture is enforcement. Fines on employers who knowingly hire unauthorized

workers were introduced by the Immigration Reform and Control Act of 1986 to “demagnetize the U.S. labor market.” The theory was that foreigners would quickly discover that even if they eluded the Border Patrol, they could not get U.S. jobs, but this theory failed to deter illegal migration because of the availability of false documents and little enforcement.

A mandatory Internet-based verification system could make enforcement easier. For example, if employers learn that the data on a newly hired worker was suspect, but continue to employ the worker after 30 days, there could be a presumption that they knew the worker was unauthorized. Similarly, by having all employers submit data on newly hired workers, it will be easy for enforcers to spot problem industries, areas, and employers.

AgJOBS

One of the immigration reform proposals, the Agricultural Job Opportunity, Benefits, and Security Act (AgJOBS), would deal only with unauthorized farm workers. As the number of unauthorized farm workers rose in the 1990s, farmers asked Congress to approve a new guest-worker program for agriculture that did not require DOL certification or housing. President Clinton opposed these proposals, and threatened to veto any that reached his desk, and Congress did not approve a new guest-worker program. However, the Senate approved a version of what became AgJOBS as an amendment to an appropriations bill in 1998, as farmers gained support of their effort to win a new guest-worker program.

After the 2000 election of Vicente Fox in Mexico and George W. Bush in the United States, farm employers and worker advocates reached a compromise to deal with unauthorized farm workers. Farm employers wanted a new guest-worker program with two major features, no certification and no housing, while worker advocates wanted a system under which currently unauthorized workers could become immigrants. The compromise that became AgJOBS satisfied farmers by allowing them to self-certify their need for guest workers and to pay housing allowances to out-of-area workers rather than provide housing. Worker advocates won the promise of a temporary legal status for unauthorized farm workers and a path to immigrant status for such workers and their families. This “amnesty” provision prompted opposition from law-and-order members of Congress, and the December 2000 compromise was not enacted.

The bipartisan version of AgJOBS pending in the Senate would offer currently unauthorized farm workers

a path to immigrant status for themselves and their children and offer farmers easier access to legal guest workers. Supported by a coalition of over 400 employer, union, and advocate groups, AgJOBS got 53 votes when it was attached to an emergency military-spending bill in the Senate on April 19, 2005 but, since 60 votes were needed, it was not approved. A competing bill offered by Senator Saxby Chambliss (R-GA), that would have simply made the current H-2A program more employer-friendly was defeated 77-21.

Conclusions

As Congress debates immigration reform, there could be comprehensive reform, dealing with all unauthorized workers in the United States, or piecemeal reform, such as enacting only AgJOBS. If there is comprehensive reform, Congress could mandate enforcement first and guest workers or legalization later, as in the House bill, or have new enforcement measures introduced together with guest workers and legalization, as in the Senate bills. In 1986, IRCA had legalization first and enforcement second, an approach absent from the 2006 discussion.

Agriculture has a higher stake in the 2006 debate than it did in the 1986 debate. First, labor-intensive agriculture is far larger than it was two decades ago. Second, there are more unauthorized workers, and they are far more widely dispersed, so that more farmers would likely be affected.

However, the major change between 1986 and 2006 is that experience has taught what does not work. A generous legalization program and weak enforcement, as in the late 1980s, increased illegal migration and spread unauthorized workers throughout the United States. Two decades later, there may be much tougher enforcement and fewer opportunities for currently unauthorized workers to become legal immigrants.

Agriculture is cooperating with worker advocates to preserve the labor status quo under AgJOBS, which would legalize currently unauthorized workers and provide easier access to additional guest workers. These guest workers could become a point of contention between advocates and farm employers.

For additional information:

Martin, Philip and Bert Mason. 2004. Hired Workers on California Farms. in Jerry Siebert, ed. *California Agriculture*. UC Div. of Agricultural and Natural Resources.

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