

# Immigration Reform 2013: Implications for California Agriculture

**Philip Martin**

Congress is considering immigration reform. California farmers hope that a plan to legalize currently unauthorized workers and make it easier for them to hire guest workers in the future will be enacted. The legalization and guest worker proposals being considered should not increase farm labor costs significantly.

There were over 40 million foreign-born U.S. residents in 2011, including 11 million (or over one quarter) who were not authorized to be in the United States. The United States has been debating what to do about these unauthorized foreigners for the past decade, and in April 2013 a bipartisan group of eight senators introduced the Border Security, Economic Opportunity, and Immigration Modernization Act (S 744). The Senate Judiciary Committee in May 2013 began to mark up S 744, the most comprehensive immigration reform bill since the Immigration Reform and Control Act of 1986 (IRCA). The Senate is expected to vote on S 744 in June 2013.

S 744 has three key elements:

- More fences and agents on the Mexico-U.S. border and a requirement that all employers use the Department of Homeland Security's (DHS) E-Verify system to check the legal status of new hires, a bid to deter the entry and employment of unauthorized foreigners
- A 13-year path to U.S. citizenship for unauthorized foreigners who arrived in the United States before December 31, 2011 and remained "continuously since"

their arrival (shorter for unauthorized youth and farm workers)

- New guest worker programs for low-skilled farm and nonfarm workers and significant increases in the number of H-1B visas available to foreigners with college degrees coming to the United States to fill jobs that require such degrees.

S 744 would also change the mix of legal immigrants. Today, 70% of the immigrants who receive so-called "green cards" or immigrant visas qualify for them because family members already in the United States have sponsored their admission. S 744 would add 125,000 immigrant visas a year distributed on merit or economic grounds and eliminate some family visas, raising the economic share of immigrants. S 744 aims to be revenue-neutral, with fines and fees covering an estimated \$17 billion in additional federal spending over the bill's first decade.

## Enforcement and Legalization

S 744 authorizes up to \$6.5 billion in additional spending to "secure" the 2,000 mile Mexico-U.S. border. The border would be considered secure if 100% of the border is under surveillance and 90% of those attempting to cross illegally are apprehended in areas that have had more than 30,000 apprehensions a year. There were three such areas in 2012: Tucson, the Rio Grande Valley, and Laredo.

Currently, only employers in some states and those with federal contracts must use E-Verify, the Internet-based system that allows employers to submit data on newly hired workers to DHS to determine if they are legally authorized to work in the United States. S 744 assumes that foreigners will be discouraged from coming to the United

States if they are not certain employers will hire them, so it requires all employers to check new hires using the E-Verify system within five years.

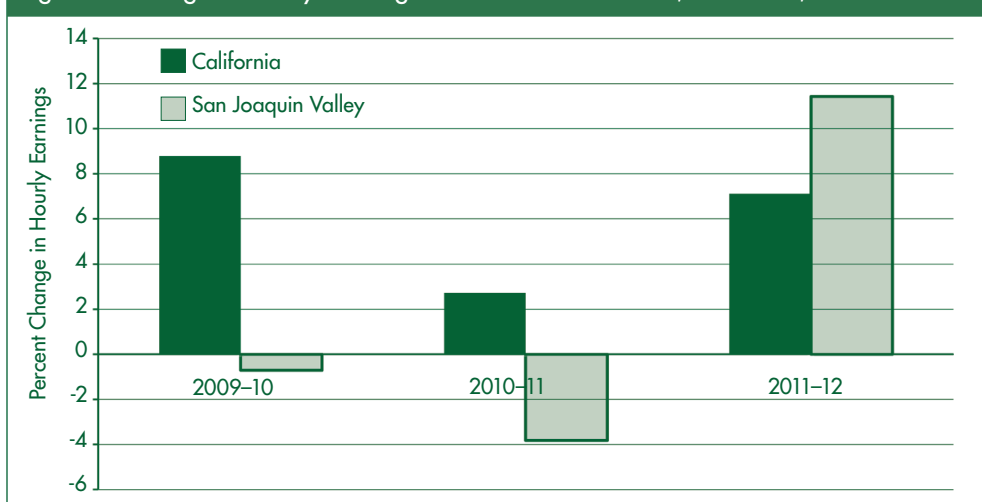
Employers with more than 5,000 employees would have to use E-Verify within two years of enactment, those with more than 500 employees within three years, and all others a year later. That is, most farm employers would have four years before they have to check the legal status of newly hired workers via the Internet. Employers would not have to check current employees.

When hired, non-U.S. citizens would have to show employers a "biometric work authorization card" or immigrant visa that includes a photo stored in the E-Verify system and can be seen over the Internet by the employer. In states that put photos on driver's licenses, new hires could present drivers' licenses for the required photo.

After DHS submits a plan to secure the Mexico-U.S. border, expected within six months of enactment, unauthorized foreigners who were in the United States before December 31, 2011 could pay \$500, any back taxes they owed, and application fees to become "registered provisional immigrants" (RPI) for six years. This RPI status could be renewed after six years for another \$500 fee. Unauthorized foreigners would have two years after S 744 is enacted to apply for RPI status.

After 10 years, if a series of enforcement indicators demonstrate that unauthorized migration is "under control" and the backlog of foreigners waiting for immigrant visas is eliminated, RPIs could apply for regular immigrant status by showing they have worked (or were enrolled in school) and lived in the United States since registering. They would have to pay another

Figure 1. Change in Hourly Earnings of Hired Farm Workers, California, 2010–2012



\$1,000 fee and pass a test of English and civics and, after three more years, these now-regular immigrants could apply for United States citizenship.

Provisional RPIs would not be eligible for most federal means-tested welfare benefits, including Food Stamps and subsidized health insurance under the Affordable Care Act. RPIs are likely to be eligible to purchase health insurance on the state exchanges that begin operation in 2014, but could not receive the federal subsidies available to those with low earnings.

There is a separate legalization program for unauthorized farm workers that provides a faster path to immigrant status. Unauthorized farm workers who did at least 100 days or 575 hours of U.S. farm work in the 24 months ending December 31, 2012 could become RPIs and receive blue or agricultural cards by paying an application fee and a \$100 fine under a program that would operate for a year after implementing regulations were issued. The spouses and children of RPI farm workers could also register and receive permission to live and work in the United States in any job (not just farm jobs).

In order to become immigrants, agricultural RPIs would have to do at least 150 days of farm work a year for three years in the eight years after enactment of S 744 or 100 days of farm work a year in five of the first

eight years after enactment. To become immigrants, agricultural RPIs would have to pay an application fee and a \$400 fine, and the family members of RPIs could apply for immigrant visas when the farm worker does.

### Guest Workers

The United States now has three major guest worker programs. The H-1B program admits about 100,000 foreigners a year with a college degree who enter the United States to fill a U.S. job that requires a college degree; about half of H-1B visa holders are employed in IT-services. The H-2A program admits an unlimited number of foreign farm workers, about 60,000 a year recently, to fill seasonal farm jobs after the U.S. Department of Labor (DOL) certifies farm employers as needing foreign workers. The H-2B program admits up to 66,000 foreign workers a year to fill seasonal nonfarm jobs.

Under S 744, more H-1B visas would be made available and there would be new guest worker programs for farm and nonfarm workers. The number of regular H-1B visas would increase from the current 65,000 a year to 110,000, and the number of visas for foreigners who have earned advanced degrees from U.S. universities would increase from 20,000 to 25,000. A High Skilled Jobs Demand Index could allow the number of

H-1B visas to rise by 10,000 a year to a maximum of 180,000, depending on employer requests for H-1B visas, and H-1B workers sponsored by their U.S. employers for immigrant visas would not be counted against the quota.

In an attempt to satisfy critics who allege that the H-1B program allows U.S. employers to replace U.S. workers with H-1B workers, all employers of H-1B workers would have to try to recruit U.S. workers for at least 30 days before hiring H-1B workers by posting job openings on a web site and certifying that they did not lay off U.S. workers to open jobs for H-1Bs. Spouses of H-1B workers could work in the United States if their country of origin provides reciprocal treatment of the spouses of U.S. workers.

Employers considered to be “H-1B dependent,” that is, having mostly H-1B employees, would have to pay higher wages and fees and could be prohibited from hiring additional foreigners with H-1B or L-1 visas. Firms with more than 30% of their U.S. workers on temporary visas would have to pay \$5,000 for each new temporary foreign worker, and those with more than 50% foreign workers would not be able to sponsor more after 2016. So-called “body shops” that bring H-1B workers into the United States and send them from one employer to another would have their access to foreign workers restricted—a blow to India-based outsourcers.

The current H-2A program that admits foreign farm workers would be replaced by new W-3 and W-4 guest worker programs a year after S 744 is enacted. USDA would develop the regulations to implement the W-3 and W-4 programs and adjust the number of farm workers admitted.

The W-3 program would be like the current H-2A program and tie a foreign farm worker to a particular U.S. farm employer and job for up to three years. However, W-3 farm workers could work for another registered U.S.

farm employer, known as a Designated Agricultural Employer (DAE), after they completed their initial contracts.

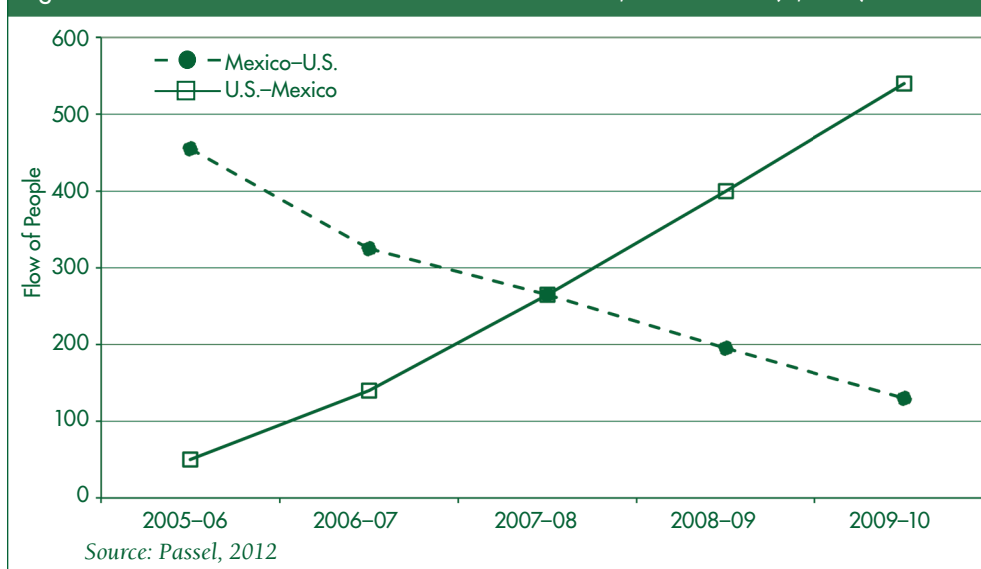
The W-4 program resembles the Replenishment Agricultural Worker program in IRCA that was never implemented. W-4 visa holders would need an initial job offer from a DAE to enter the United States, but could “float” from one DAE to another during the three years that their W-4 visas were valid. Both W-3 and W-4 visa holders could re-enter the United States for another three-year term after spending at least 90 days outside the United States.

The number of W-3 and W-4 visas would initially be capped at 112,333 a year, so that a maximum of 337,000 new guest workers could be in the United States at any one time during the three-year period that currently unauthorized farm workers who receive probationary immigrant status are required to continue doing farm work. USDA could recommend an adjustment to the number of W-2 and W-3 visas during the first five years after enactment of S 744, and adjust the number in consultation with the DOL after that.

Minimum hourly wages are established in S 744 for six farm worker occupations. Beginning in 2016, crop workers across the United States must be paid at least \$9.64 an hour, graders and sorters \$9.84, livestock and dairy workers \$11.37, and equipment operators \$11.87. The U.S. Department of Agriculture will set wages for agricultural supervisors and animal breeders. These minimum wages will be adjusted each year according to the Bureau of Labor Statistics’ Employment Cost Index by at least 1.5% and no more than 2.5%.

California farmers should benefit from a national minimum wage for guest workers that is significantly less than the average hourly earnings of California farm workers, which were \$12.56 an hour in 2012. Average hourly earnings rose sharply

Figure 2. Annual Mexico–U.S. and U.S.–Mexico Flows, 2005–2010 (1,000s)



between 2011 and 2012, and the increase was even greater in the San Joaquin Valley, which has over half of the state’s farm workers (Figure 1).

Housing emerged as a major issue. Farm employers wanted to provide housing or a housing allowance only to the W-3 workers who are tied to their farms, but S 744 requires farm employers to provide housing or a housing allowance to both W-3 and W-4 visa holders. U.S. workers employed alongside W-3 and W-4 visa holders would not have to be provided with housing or a housing allowance.

The amount of the housing allowance depends on whether the farm employer is in a metro or non-metro county. In California, W-visa workers would receive \$295 a month in metro counties and \$225 a monthly in non-metro counties in 2013, or \$1.84 an hour in metro counties for full-time workers and \$1.40 in non-metro counties. Almost all of California’s labor-intensive agriculture is in metro counties.

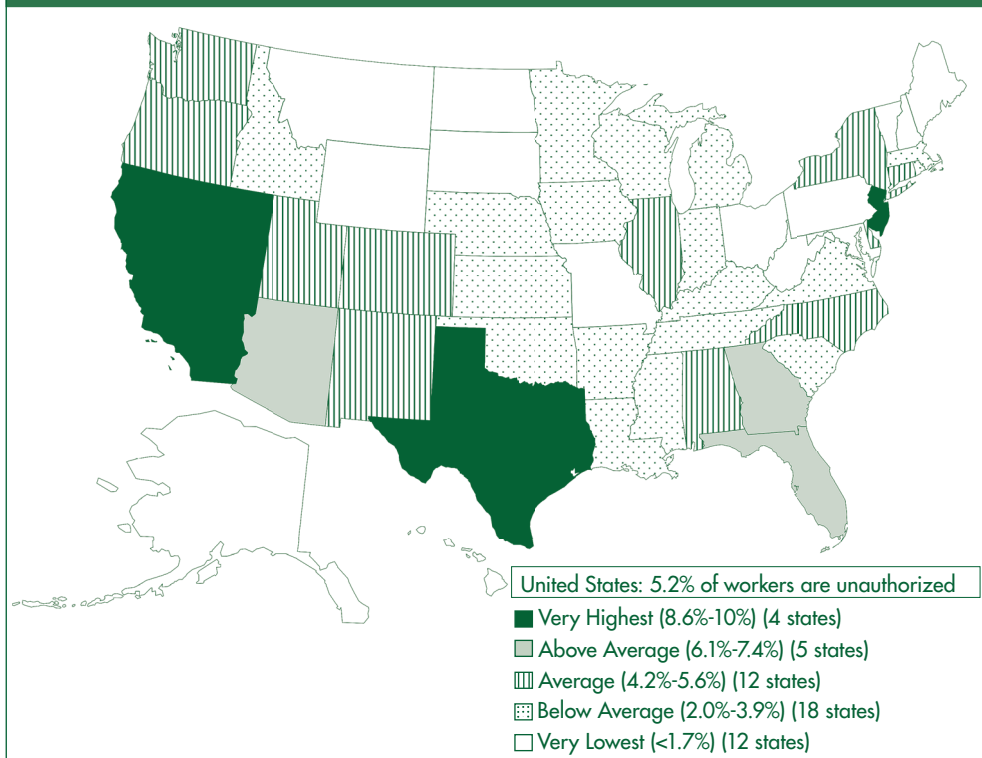
A new W-2 visa program would admit more low-skilled workers, with the number eventually determined by a Bureau of Immigration and Labor Market Research, located in U.S. Citizenship and Immigration Services. Its \$20 million budget raised from fees

on W-2 workers and their employers. The Bureau would be charged with determining the annual change to the W-visa cap, devising methods to help employers who use guest workers to recruit U.S. workers, creating a methodology to designate “shortage occupations,” and making recommendations on employment-based visa programs.

In order to hire W-2 workers, U.S. employers in metro areas with an unemployment rate of less than 8.5% would register themselves and their jobs and request W-2 visas for specific foreigners. Foreigners’ families could also receive W-2 visas, which would be valid for three years. Up to 20,000 W-2 visas could be issued in the first year, 35,000 in the second year, 55,000 in the third year, and 75,000 in the fourth year, and the number could rise further if certain conditions are met. No more than one-third of W-2 visa holders could be employed in construction.

Where will U.S. employers get low-skilled W-visa workers? Mexico–U.S. migration has been declining, and more Mexicans returned to Mexico, often after being deported from the US, than were admitted in recent years (Figure 2). A century ago, most of the state’s farm workers were Asians. A combination of longer periods of U.S. employment and the opportunity to bring

Figure 3. Unauthorized Share of Workers 2010



family members may bring more Asians to the United States as guest workers.

### Implications for Agriculture

About three-fourths of the hired workers on U.S. crop farms were born abroad, and over half of all farm workers are not authorized to work in the United States. Although most unauthorized workers are employed in non-farm jobs, California has a higher-than-average share of unauthorized workers than most other states (Figure 3). The state's share of unauthorized farm workers is also higher than average, which explains why California farmers have been in the vanguard of those advocating for immigration reform.

If S 744 is enacted with its current agricultural provisions, there are likely to be three major changes. First, the hired farm work force is likely to become mostly legal, comprised first of currently unauthorized workers who become legal blue card holders and later legal guest workers. Second, labor costs should be stable, since average hourly earnings in California are well above the minimum wage that must

be paid to guest workers. Even if farm employers have to pay a housing allowance of up to \$2 an hour, the \$9.64 that must be paid to guest workers in 2016, plus a \$2 an hour housing allowance, is less than the average hourly earnings of crop workers in California in 2012, which were \$12.56 an hour.

Third, S 744's agricultural provisions should provide labor certainty for California farmers, and give them advantages over farmers in lower-wage areas of the United States. The capacity to hire legal guest workers for up to six years at \$9.64 an hour, with wage increases limited to 2.5% a year, should make it easier to plan investments in labor-intensive agriculture and secure financing for them. California farmers should benefit by the switch from a national minimum wage for guest workers rather than state-by-state wages. The current Adverse Effect Wage Rates (AEWRs) that must be paid to legal guest workers in 2013 range from \$9.50 an hour in some southern states to \$12 in Oregon and Washington; the California AEWR is \$10.74.

The agricultural provisions of S 744 benefit currently unauthorized farm workers at the expense of future guest workers. Currently unauthorized farm workers and their families can become legal immigrants and leave the farm work force within five years, while future guest workers will have lower wages and perhaps fewer protections than current guest workers. Farm worker advocates and farm employers negotiated the agricultural provisions of S 744, and both have said they will strongly resist efforts to change what they describe as a "delicately balanced compromise." If enacted, they should provide California agriculture with a legal work force at current costs.

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### For additional information, the author recommends:

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- Martin, P.L. 2013. Immigration and Farm Labor: Policy Options and Consequences. *American Journal of Agricultural Economics* 95(2): 470-475. <http://ajae.oxfordjournals.org/content/95/2/470.full>.