



UPDATE

Agricultural and Resource Economics

Vol. 7 No. 2

Nov/Dec 2003

AgJOBS: New Solution or New Problem?

by

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Over half of the workers employed on U.S. farms are not authorized to work in the U.S. A historic compromise between employer and worker advocates announced in September 2003 would legalize some currently unauthorized workers and make it easier for farmers to obtain guest workers, but may not fundamentally change the farm labor market.

The Agricultural Job Opportunity, Benefits and Security Act of 2003 (AgJOBS) (S 1645 and HR 3142), co-sponsored by U.S. Senators Edward Kennedy, D-MA and Larry Craig, R-ID, and U.S. Representatives Howard Berman, D-CA and Chris Cannon, R-UT, was introduced in September 2003 to legalize hired farm workers employed on U.S. farms. AgJOBS provides a path to legal status for some currently unauthorized farm workers, and makes it easier for farm employers to recruit additional workers, via the H-2A guest worker program, by changing key procedures and requirements.

The major goal of AgJOBS is to ensure that the workers employed on U.S. farms are legally authorized to work in the U.S. Worker advocates also hope that legal status will make farm workers more likely to join unions and press for wage increases, reversing the 1990s slide in wages and benefits. These goals are similar to those of the Special Agricultural Worker (SAW) program of 1987-88. The SAW program legalized many workers, but continued unauthorized migration led to a glut of workers, and the number of union contracts and wages fell despite legalization.

This article asks whether AgJOBS is likely to provide a new solution or cause new problems in the farm labor market.

As with the SAW program 15 years ago, the answer depends in part on how the program is implemented, how workers and employers respond and whether unauthorized entry and employment continue.

Long Road to AgJOBS

AgJOBS is the latest in a series of efforts since the early 1980s to trade “employer-friendly” changes in the H-2A program for an “earned legalization” path to immigrant status for unauthorized farm workers. The first major step was the SAW program, which was included in the Immigration Reform and Control Act (IRCA) of 1986. IRCA introduced sanctions on employers who knowingly hired illegal workers, an enforcement step aimed at reducing illegal entries and employment. Without unauthorized workers, farmers feared labor shortages, and the SAW legalization program allowed unauthorized foreigners who did at least 90 days of farm work in 1985-86 to become legal immigrants free to live and work anywhere in the U.S. If SAWs quickly left the farm labor market, leading to farm labor shortages, farmers could get guest workers via the H-2A program, which guaranteed workers to fill vacant jobs after the farmer tried to recruit U.S. workers under U.S. Department of Labor supervision, or via the

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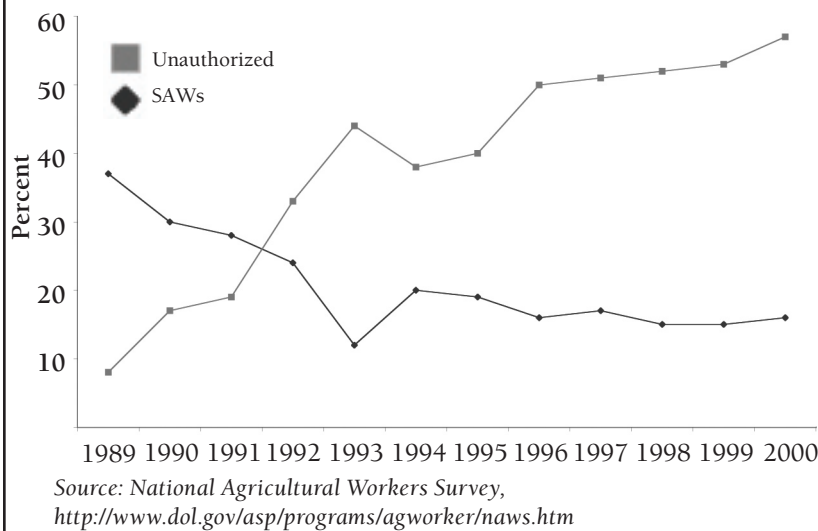
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**Figure 1. SAWs and Unauthorized Crop Workers: 1989-2000
(Percent of crop workers)**



Replenishment Agricultural Worker (RAW) program, which admitted foreign workers who were free agents in the U.S. labor market.

The late 1980s and early 1990s were marked by the continued arrival of workers who used false documents to obtain jobs, prompting the U.S. Commission on Agricultural Workers (CAW) to conclude that, instead of the anticipated “stabilization of the labor supply,” there was “a general oversupply of farm labor nationwide.” Furthermore, “with fraudulent documents easily available,” employer sanctions did not deter the entry or employment of unauthorized workers. The RAW program was not needed, and was allowed to expire in 1992, and farm labor contractors increased their share of placements in major farm labor markets such as California.

Surveys of crop workers in the late 1980s found that over a third were SAWs (Figure 1). SAWs quickly learned that they could obtain higher wages and more hours of work in the nonfarm labor market, and despite the recession of the early 1990s, many quickly exited the farm labor market, and were replaced by unauthorized workers. By 2001, the percentage of SAWs in the crop work force dropped below 15 percent, and the percentage of unauthorized workers topped 50 percent; the others were U.S. citizens and legal immigrants.

Farmers recognized that a growing dependence on unauthorized workers made them vulnerable to the enforcement of immigration laws, including stepped-up efforts to prevent entries over the Mexico-U.S. border. Farmers wanted a free agent program that

would admit a certain number of foreign workers who would be free to “float” from farm to farm seeking jobs, much as unauthorized workers did. Since these new guest workers would not be tied to a particular farm with a contract as H-2A workers were, U.S. farmers would not be responsible for their housing or their transportation costs.

There was widespread opposition to the farmers’ proposal for a new guest worker program. President Clinton issued a statement on June 23, 1995 that read: “I oppose efforts in this Congress to institute a new guestworker or ‘bracero’ program that seeks to bring thousands of foreign workers into the

United States to provide temporary farm labor.” Congress agreed with Clinton, and rejected proposals for a new large-scale guest worker program in 1996 and a scaled-down pilot version in 1997-98. The U.S. Senate approved a free-agent guest worker proposal in July 1998, but Clinton threatened to veto it and the House did not consider it.

Farmers did not give up on an alternative guest worker program. The election of Vicente Fox as president of Mexico in July 2000, and of George Bush as U.S. president in November 2000, prompted employer and worker advocates to agree on a compromise version of AgJOBS in December 2000 that introduced a new concept—earned legalization. The compromise offered temporary legal status to unauthorized workers who had done at least 100 days of farm work during the previous year, and allowed them to earn immigrant visas if they did at least 360 more days of farm work in the next six years. Earned legalization satisfied employers, who received assurance that newly legalized farm workers would not immediately leave for non-farm jobs, and worker advocates, who wanted farm workers to eventually have the same rights as U.S. workers. However, Republicans who opposed “rewarding lawbreakers” with legal status blocked the AgJOBS compromise in December 2000.

During the spring and summer of 2001, there were Mexico-U.S. meetings on migration, the top foreign policy priority of Mexico, and a variety of proposals were introduced in Congress to legalize farm and other workers. The debate centered largely on whether currently unauthorized workers should be granted

only a guest-worker status, an immigrant status or a temporary status that would enable workers to “earn” an immigrant status. The September 11, 2001 terrorism stopped legislative momentum for these proposals.

AgJOBS 2003

AgJOBS 2003 would allow unauthorized foreigners who did at least 575 hours or 100 days of farm work (one hour or more constitutes a day of work), which ever is less, in a 12-consecutive month period between March 1, 2002 and August 31, 2003 to receive a six-year Temporary Resident Status (TRS) that gives them the right to live and work in the U.S. The application period would begin six months after enactment, and last 18 months; applications could be filed within the U.S. or at U.S. ports of entry with Mexico. To avoid dealing directly with the Department of Homeland Security, workers could file applications with Qualified Designated Entities, and farm worker unions and employer associations would be favored to receive applications.

TRS workers could earn a permanent immigration status by doing at least 2,060 hours or 360 days of farm work in the next six years, including at least 1,380 hours or 240 work days during the first three years following adjustment, and at least 430 hours or 75 work days during each of three 12-month periods in the six years following adjustment. Spouses and minor children of TRS workers would not be deportable (but would not be allowed to work), and could receive permanent immigrant status when the farm worker received an immigrant visa. There is no cap on the number of unauthorized foreigners who could qualify for TRS.

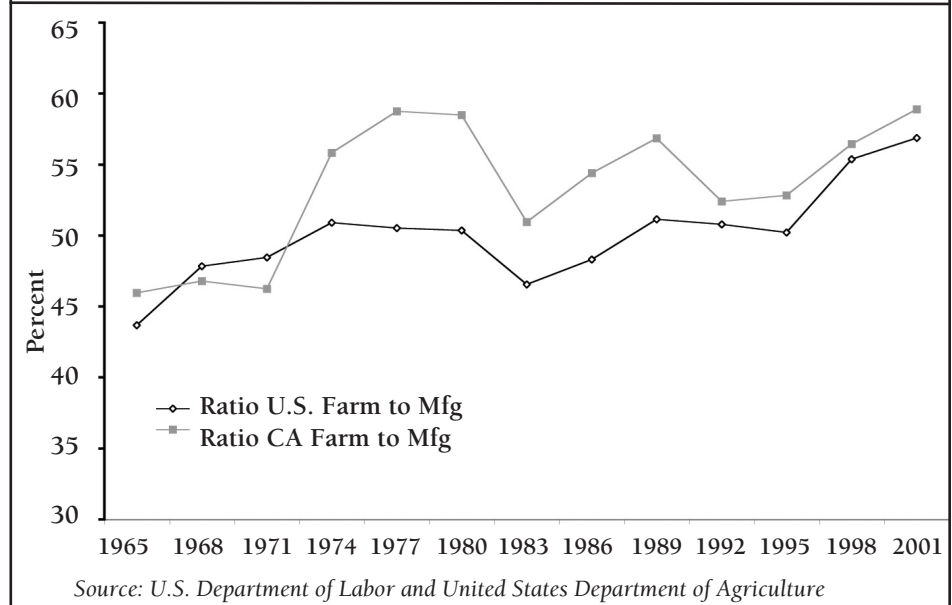
For employers, the H-2A program would be made more “employer-friendly” by allowing employers to “attest” to their need for foreign workers. By law, the U.S. Department of Labor would have to approve employer requests for H-2A workers if their job offers were filed at least 28 days before workers were needed at local Employment Service offices

and employers advertised jobs in local media at least 14 days before the need date. If local workers did not appear, the employer would be authorized to have guest workers admitted.

Employers must provide housing to H-2A workers or “a monetary housing allowance” if the governor certifies there is sufficient housing for workers to find their own. The allowance would be a quarter of the Section 8 housing allowance for a region, or \$100 to \$150 a month per worker in states such as California, assuming that four workers share a two-bedroom apartment. Employers would have to reimburse inbound and return transportation costs for satisfactory workers and guarantee work for at least three quarters of the period of employment. For the first time, H-2A workers would be able to sue in federal rather than state courts to enforce their contracts. Housing and other provisions could be modified by a collective bargaining agreement, if there is one.

Average hourly farm earnings fell relative to manufacturing earnings after the SAW legalization program. Under AgJOBS, farmers would have to pay to H-2A workers, but not to U.S. citizens and immigrants, newly legalized TRS workers and unauthorized workers, the higher of the federal or state minimum wage, the prevailing wage in the occupation and area of intended employment, or the Adverse Effect Wage Rate (AEWR). The 2002 AEWRs would apply until 2006, while farm wages are studied, and are \$8.02 an hour in California, \$7.69 in Florida, \$7.53 in North

Figure 2. Ratio of Manufacturing Worker Hourly Earnings 1965-2001



Carolina, \$7.28 in Texas and \$8.60 in Washington. If most workers are H-2A workers, the ratio of farm to manufacturing hourly earnings may continue to rise; if they are not, it could turn down as in the past.

AgJOBS' Effects

If AgJOBS is approved, there is likely to be renewed interest in the farm labor market. As organizations are created to legalize farm workers (legalization will be funded by worker application fees), a new system would be established to monitor days of farm work, and a database on TRS workers would record days of farm work as well as data on dependents, taxes paid and crime. A new adjudication system would be established to give TRS workers credit for days not worked in agriculture because of on-the-job injuries or if they were fired without "just cause."

A key issue will be verifying the data in worker applications. During the Special Agricultural Worker program, there was widespread fraud, as foreigners who did not do sufficient farm work submitted letters (affidavits) from especially contractors saying they did, and the U.S. government was unable to meet its burden of proof to show that the applicant's information was wrong. AgJOBS puts the burden on the applicant to demonstrate "by a preponderance of the evidence," that the claimed work was performed. There may also be less fraud because of the required continuing farm work. On the other hand, the market share of workers brought to farms by contractors has risen significantly, to almost half of all farm work days in California, and employment records may be less reliable now than 15 years ago.

Based on the SAWs experience, most currently unauthorized workers may soon be legal workers. Many are likely to be tempted to satisfy their farm work obligation as soon as possible which, combined with easier admissions via the H-2A program and continued illegal migration, could increase the farm labor supply. This would place downward pressure on wages and benefits, make it difficult for labor unions to organize farm workers, and perhaps speed up the rate at which workers who can find nonfarm jobs leave the farm labor market. In the absence of effective border and interior enforcement, rural Mexicans are likely to continue to migrate to the U.S.

Many things will not change with AgJOBS. Most workers will continue to be young immigrant men from rural Mexico; however, for at least a few years, the work authorization documents they present to

employers may be valid. Second, there may continue to be controversy over H-2A admissions, with the focus shifting from suits against employers for inadequate housing to political pressure on governors to certify that there is sufficient housing available, so that farmers can pay housing allowances rather than provide housing. Many states apply for federal housing grants citing the lack of housing for farm workers, which may make such certification a political issue. Farm employers applying for H-2A workers for the first time may learn costs are higher than they have been paying, since the minimum H-2A wage is \$8.02 an hour in California rather than the state's \$6.75 minimum.

AgJOBS continues to send mixed signals about the future availability and cost of farm workers. On the one hand, AgJOBS expresses a desire for a legal farm work force, which advocates assume will also be a higher-wage work force. However, an easing of admissions under the H-2A program combined with a three-year AEW freeze signals the ready availability of workers at a predictable cost. There is also a high probability that unauthorized workers will continue to arrive and present false documents to employers in the hope of another legalization, so the combined effect may be no fundamental changes in the farm labor market.

For additional information on this topic, the author recommends the following reading:

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