



Bill Summary: The Farm Workforce Modernization Act of 2019

The Farm Workforce Modernization Act of 2019, or [H.R. 5038](#), seeks to reform the process by which temporary foreign workers migrate to the U.S. to work in agriculture. The bill has support from both sides of the aisle and from both farmworker and grower constituencies.

The bill consists of three key platforms: (1) It would create a pathway to legalization for current unauthorized agricultural workers, including an eventual option to become a lawful permanent resident (LPR). (2) It would reform and modernize the existing H-2A temporary agricultural worker visa program. And (3), it would require all agriculture employers to implement a reformed “E-Verify” program to ensure their workers are authorized.

Representatives Zoe Lofgren (D-California) and Dan Newhouse (R-Washington) introduced the Farm Workforce Modernization Act on November 12, 2019.

1. Earned Pathway to Legal Status

The bill would:

- **Create a new temporary worker visa program** for current unauthorized farmworkers called Certified Agricultural Worker (CAW) status. CAW visas would be renewable and five-and-a-half years in length, more than quintupling the length of the existing H-2A nonimmigrant farmworker visa. The number of CAW visas would be uncapped.
- **Establish eligibility requirements of the CAW visa.** Unauthorized immigrants who have spent at least 180 days of the last two years in agricultural employment would be eligible. With few exceptions, applicants must meet existing work visa admissibility requirements to be eligible and must pass a criminal background check. Felons and those who have been convicted of multiple misdemeanors (two or more offenses of moral turpitude or three offenses in general) would not be eligible. DHS would accept applications only for 18 months after the bill goes into effect (with an option for DHS to extend for an additional year). Concerning the unauthorized farmworkers who have not worked enough days to qualify, additional H-2A visas would be made available for those who have worked for a lower threshold of at least 100 days over the last three years. Employees would not have to apply from their home country to receive these additional H-2As, so they would be able to continue working as their petition is processed.
- **Provide protections for employers, employees, and dependents.**
 - **Employers:** Employers would not face penalties for past hires of unauthorized migrants who are applying for CAW or H-2A status or for providing employment records or any other necessary documentation to assist with a CAW or green card

application. They would also not be penalized for continuing to employ an unauthorized worker who intends to apply for status under the bill.

- **Employees:** All workers would receive interim proof of employment authorization upon filing for a CAW visa, and any eligible worker would be protected from removal proceedings while his or her application is pending. CAW visa holders would *not* be eligible for public benefits, tax benefits, or health care subsidies.
- **Dependents:** Children and spouses of CAW visa holders would be allowed to adjust to principal status or any other legal immigration status should they qualify. The bill also protects children from “aging out” of dependency status after turning 21 and suddenly losing authorization and the ability to renew or adjust their status. The bill would allow them to use their age at the time of the initial CAW status application in any future status adjudications up to ten years after the initial application.
- **Create a green card option for long-term agriculture workers.** Foreign workers would be able to apply for a green card after successfully maintaining either eight years of CAW status *or* four years of CAW status plus ten years of previous agricultural work experience. They would also have to make restitution by paying a fine and any back taxes owed.
- **Allocate Funds from the USCIS Immigration Examinations Fee Account (IEFA).** In order to carry out this section, the bill would allow the appropriation of up to \$10,000,000 from the IEFA, where all immigration application fees are deposited.

2. H-2A Temporary Nonimmigrant Visa Program Reforms

The bill would:

- **Establish new provisions for employers.**
 - **Streamlining of employer petition process:** The bill seeks to make the H-2A temporary agricultural work visa program more efficient. It would streamline the H-2A application process by allowing employers to file with many of the relevant agencies in a single platform. Employer petitions would require more evidence of compliance to H-2A guidelines, but a single petition could be used for multiple positions with multiple potential start dates. This coverage of staggered entry extends to up to 10 different start dates and seeks to account for within-season variation in agricultural labor needs.
 - **Wage reform:** The bill stabilizes H-2A worker wages and makes wage growth more predictable. H-2A wages currently follow the Adverse Effect Wage Rate (AEWR), a regional weighted average farmworker wage rate that is used to ensure foreign workers do not negatively impact U.S. wages. This bill seeks to reform and ultimately phase out the AEWR, including a ten-year period preventing wage growth of more than 3.5 percent and the promise of a new system to be put in place by the Secretaries of Agriculture and Labor by 2030. Other wage stabilization efforts include allowing noncompliance with mid-contract wage increase announcements and the disaggregating of wages by

occupation to allow crop workers, for example, to be paid a lower fixed rate than machine operators.

- **Establish new provisions for workers.**
 - **Housing:** Employers would be required to furnish housing to employees and to families when it is common practice to do so according to regulations set by the Department of Labor (DOL). DOL would be required to complete housing inspections before an H-2A position is certified. In addition, the bill would provide for significant investment into farmworker and rural housing.
 - **Workers' protections:** This act would afford H-2A visa holders a number of protections and benefits. Workers would be guaranteed paid labor for at least 75% of the workdays in their contract. Employers would also be required to pay for reasonable transportation and subsistence costs, half to be paid at the midpoint of the work contract and half to be paid after the completion of the contract. Employers would also provide workers funding for an annual round-trip to their home communities. All H-2A employers would need to create a "Heat Illness Prevention Plan" for employees and dairy employers would be required to design and implement a broader workplace safety plan as well. A surety bond concerning potential litigation would be compulsory, incentivizing compliance to the listed workers protections.
 - **Foreign labor recruitment standards:** A series of provisions seek to ensure the legitimacy of foreign labor recruiters (FLRs) and prevent them from defrauding and misinforming potential workers. DOL would be required to register and track the FLRs, and potential workers would be exempt from any fees levied on them during the recruiting process.
- **Create new temporary visa options for farmworkers to work year-round:** H-2A visas are currently reserved for seasonal agriculture workers and are not designed to accommodate year-round positions. This bill attempts to solve this problem by creating a new three-year H-2A visa with an initial cap of 20,000 per year. Half of these visas would be allocated for dairy workers. In addition, the bill would allow for the annual issuance of 40,000 additional employment-based green cards to H-2A workers. The green cards would be under the unskilled EB-3 visa category, with H-2A workers given preference and even the ability to self-petition if they have 10 or more years of agricultural work experience. Finally, the bill would establish a pilot program for three-year "portable" agricultural work visas, where a maximum of 10,000 registered workers can use a 60-day grace period to move from one registered job to another. Once registered, employers would not need to file specific H-2A petitions for these workers. Only previously admitted H-2A workers would be eligible for the portable visas.

3. E-Verify for Agricultural Sector

The bill would:

- **Reform the existing E-Verify program.** E-Verify is a generally voluntary, internet-based system that matches employees' data to government records to ensure that all employees have work authorization. The bill aims to reform E-Verify to create an improved program that is more effective at identifying unauthorized workers, including

the implementation of a photo matching tool and new processes to allow individuals to verify the proper use of their information. The program would also be free to use, reliable in remote locations, and include safeguards against privacy violations, misuse, and fraud. The privacy protections include allowances for individuals to suspend the use of their social security number in the system and a clarification that the system does not and will not call for the issuance of a national identification card. The new verification program would include appeals processes for non-confirmations.

- **Require agriculture employers to use E-Verify.** Employers would be given between 6 and 15 months after the end of the CAW application period to implement the reformed E-Verify system, allowing a period for their current unauthorized workers to obtain legal status via either CAW or H-2A visas. The new E-Verify requirement would be phased in to apply to only new hires, with reverification processes reserved for employees whose work authorization is within three days of expiring or who have been specifically identified by the Secretary of Homeland Security as having potentially used fraudulent Social Security numbers.
- **Establish penalties for employer infractions:** Penalties for employer hiring and recruiting violations would be \$2,500 to \$5,000 per infraction, increasing to \$25,000 in cases where the employer has received multiple prior cease-and-desist orders.