



We help build homes and communities across rural America.

October 24, 2022

Zach Ducheneaux  
Administrator  
Farm Service Agency  
U.S. Department of Agriculture  
1400 Independence Ave., S.W.  
Washington, DC, 20250-0506

Re: Farm Labor Stabilization and Protection Pilot Program  
Docket ID FSA-2022-0013

Dear Mr. Ducheneaux:

The Housing Assistance Council (HAC) appreciates this opportunity to submit the following comments in response to the Farm Service Agency's request for information on the Farm Labor Stabilization and Protection Pilot Program. HAC is a national nonprofit organization that helps build homes and communities across rural America. Since 1971, HAC has provided below-market financing for affordable housing and community development, technical assistance and training, research and information, and policy formulation to enable solutions for rural communities across the country. In our work, HAC places a special focus on high-needs rural regions and populations. These include farmworkers, as well as the Mississippi Delta and the Black Belt, Central Appalachia, Native American Lands, and the border Colonias. Our half-century of work to improve farmworkers' living conditions leaves us well positioned to comment on the pilot program, particularly as it relates to housing.

### **General Comments on the Farm Labor Stabilization and Protection Pilot Program**

HAC appreciates that USDA is proposing actions to improve the U.S. farmworker labor force and policies to protect workers. Currently, the H-2A program requires employers to provide free housing to visa holders that complies with a set of guidelines. While the law requires these living quarters to be inspected before occupancy, Department of Labor (DOL) data shows that neither federal nor state governments have allocated sufficient resources to conduct these inspections. In 38 states, there is no regulation of farmworker housing or dedicated agency to perform the required inspections.<sup>1</sup> States that do have housing inspection systems in place are often under resourced. For example, an investigation found that in 2015 Texas had earmarked no funding for farmworker housing inspections and had spent less than \$2,500 conducting them. As a result, journalists estimated that nine in 10 migrant farmworkers in the state lacked access to licensed housing facilities.<sup>2</sup> By

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2020, according to another study, the Texas Department of Housing and Community Affairs had a budget of only \$30,000 for two years of housing inspections.<sup>3</sup>

To help H-2A workers find decent, affordable housing, in 2018 Congress expanded USDA Rural Housing Service's Section 514/516 farmworker housing program to include H-2A workers as eligible tenants.<sup>4</sup> Unfortunately, even with H-2A housing quality requirements and the expansion of the Section 514/516 program, research indicates that H-2A workers are still experiencing unsanitary, overcrowded, and unsafe living conditions.<sup>5</sup>

The proposed pilot should be used to improve the livelihood of the current workforce, programming, and economic investment to incentivize the local workforce to participate, and to properly regulate protections in place for current H-2A visa holders and non-visa holding farmworkers.

Many agricultural employers try to provide dignified wages, working conditions, and living conditions. The grants identified in this pilot should be awarded only to growers who meet a high standard and need assistance to sustain these conditions to incentivize other farm owners to improve their protocols. Funding should seek to protect the farmworkers – not expand opportunities for employers who exploit farmworkers and the larger system.

To ensure that employers can continue their good-faith efforts in providing decent and standardized living and working conditions, the pilot should prioritize grantees who have a history of or propose clear strategies to put in place partnerships that provide affordable, quality housing for the long term. Such partnerships can include but are not limited to public and private sector organizations that administer or receive funding under USDA's multifamily programs, HUD's Housing Choice Vouchers and other rental assistance programs and block grants, and the Low Income Housing Tax Credit, all of which also have the benefit of bringing to bear additional quality control regulatory regimes on the housing in which this essential workforce resides.

## **Responses to Specific Questions in the Request for Information**

### ***1. What barriers or challenges do farmworkers, specifically those in northern Central American countries, face in participating in the H-2A visa program?***

The pilot program should incentivize accessible, affordable, and decent housing for farmworkers. Currently, under the H-2A regulations, employers are required to pay for or provide housing to H-2A visa holders. However, because not all states have designated agencies to provide inspections and enforce these regulations, workers are frequently placed in unhealthy living conditions.<sup>6</sup> Funding should ensure that current farmworker housing stock is adequate, safe, decent, and provides necessary appliances and features.



Informational sessions and trainings should be provided in appropriate languages and using appropriate communication techniques. Information sessions and training on the H-2A program should be provided in the languages of potential participants. These services should be available in home countries and within the U.S. Language options and written materials go beyond just Spanish and include the indigenous languages of the northern Central American countries targeted in this pilot. Additionally, training should be provided with education levels in mind, including the use of appropriate vocabulary and offering sessions using video and audio options for individuals with varying literacy levels. Grant funding should be made available to provide necessary language services and products for informational and training sessions.

Trainings and informational resources should be made available that cover workers' rights and how to report exploitative practices. In addition to information and training being offered in appropriate languages and mediums, training and resources should be regular and include sections on each worker's rights. These services should be available to workers before they sign up for the program and also once they are in the United States. Additionally, they need to provide clear pathways to report exploitative practices and regulation violations. Utilizing funding to train H-2A workers on their rights and reporting strategies properly can help reinforce regulations on employers and ensure they are not exploiting the system or the H-2A program.

## ***2A. What do you recommend to enhance farmworker protections, including during recruitment and employment?***

This pilot program should ensure that trainings and resources are made available that cover workers' rights and program regulations (including housing). Consistent training on workers' rights and program regulations must be provided to H-2A visa holders before their work commences. A curriculum should include information regarding housing rights and requirements. H-2A workers should have a clear understanding of the housing requirements that their employers agreed to.

Additionally, visa holders should be provided reasonable and safe avenues for reporting violations of these regulations without consequence. In the current program, H-2A visa holders have reported feeling anxious about reporting violations in fear of losing their jobs or being deported.<sup>7</sup> Utilizing farmworker and partner organizations (ideally ones that have worked in the communities and have strong relationships with these individuals) as safe reporting outlets could help increase workers' comfort during the reporting process. FSA or DOL should train these institutions on a reporting protocol to help streamline and regularize the process.

The pilot program should fund a detailed, comprehensive survey on farmworker housing conditions. In addition to training on workers' rights to decent and safe housing, a regular survey for farmworkers' housing should be conducted to help regulate and determine housing trends. While some questions are asked about



housing conditions in the DOL's National Agricultural Workers Survey (NAWS), this survey currently excludes H-2A visa holders. This leaves the system unaware of current housing trends and conditions of H-2A workers. Grant funding should be used to either expand the NAWS to include H-2A workers and more informative questions about housing, or to conduct an additional survey that provides the necessary data to track this program's regulations.

The pilot program should use appropriate language and communications mediums to deliver program details. Any programs supported through the pilot program should be marketed and outlined in languages that meet the needs of potential participants. Regulations and meaningful avenues for reporting should also be provided in the workers' languages. Additionally, this information needs to be presented in a manner that people at all education levels can access and understand, including video and audio options.

***2B. What methods do you recommend for enforcement and verification of those protections that will promote a safer, healthier work environment for both U.S. workers and workers hired from northern Central American countries under the seasonal H-2A visa program?***

Regular check-ins for third-party recruiters, employers, and working/living conditions should be conducted. Enforcement of the current regulations needs to be a top priority to ensure the safety and well-being of the workers. When violations occur, penalties need to be in place and enforced. Funding from this pilot program should be designated for conducting these check-ins and ensuring that workers are being treated with dignity.

A national farmworkers survey should poll all types of farmworkers (including H-2A workers) on their experiences before, during, and after their employment. The NAWS may survey farmworkers' experiences in their working environment; however, this survey has substantial gaps in the data. For one, NAWS excludes H-2A workers. Although the NAWS includes limited questions about housing, not polling a whole demographic allows employers to exploit those workers and consistently violate the terms of the agreement. Furthermore, surveying workers throughout all stages of the process (including during the recruitment, training, working, and closing) would allow entities like FSA to see where improvement is needed.

NAWS should be remodeled or a new farmworkers survey created to ask specific questions about housing and living conditions. In addition to expanding the NAWS to include H-2A workers, more specific questioning is needed to better understand farmworkers' housing living conditions.

***3. What suggestions do you have to help ensure compliance for any additional standards required by recipients of grants as part of this farm labor stabilization and protection pilot grant program?***



In addition to an annual farmworker housing survey that includes responses from H-2A visa holders, the DOL needs to ensure that the required housing quality evaluations are conducted. While penalties need to be imposed on violators, this program should utilize the funding to ensure current housing and work environment regulations are being implemented. Conducting regular housing evaluations can help ensure compliance. Unfortunately, as it stands, not all states have designated offices to conduct these assessments.<sup>8</sup> Utilizing the funds to establish sound and efficient protocol around these housing and employment requirements will help keep grantees accountable while participating in the program and encourage other employers to meet the same standards.

This pilot program should fund farmworker organizations and partner organizations who are on the ground and familiar with farmworker communities to perform regular wellness checks. Wellness checks should be conducted at all stages of the process to gain a better understanding of what the H-2A candidate/visa holder is experiencing and ensure they are being treated fairly. By working with organizations that have ongoing relationships with these communities and have already established trust, farmworkers, including H-2A visa holders, will be more willing and comfortable sharing valuable information. These organizations can help track successes and opportunities within the program. Additionally, these wellness checks will help hold employers accountable.

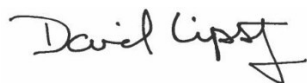
***4. What recommendations do you have to increase farmworker awareness of their resources and worker rights both for workers within the United States and for H-2A visa holders in their country of origin?***

The pilot program should provide services and information in necessary languages and mediums that are accessible to all. While Spanish is an important language, not all workers speak or understand it. Resources and trainings need to be available in all languages this population uses, including Mayan and other indigenous languages. Additionally, these services need to be accessible to all learning levels. For example, resources must be made available in print, video, audio, and illustrative versions to allow all to understand and participate effectively.

**Conclusion**

Thank you for your consideration of these comments. Please do not hesitate to contact me if you have questions or need additional information.

Sincerely,



David Lipsetz

President & CEO



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<sup>1</sup> Centro de los Derechos del Migrante, Inc. (CDM), “Ripe for Reform: Abuses of Agricultural Workers in the H-2A Visa Program,” 2020, 1–41, <https://cdmigrante.org/wp-content/uploads/2020/04/Ripe-for-Reform.pdf>.

<sup>2</sup> Jeremy Schwartz, “Unlivable: How Texas Fails Farmworkers,” *Austin American-Statesman*, March 17, 2016, <http://specials.mystatesman.com/farmworker-housing/>.

<sup>3</sup> CDM, “Ripe for Reform.”

<sup>4</sup> Consolidated Appropriations Act, 2018, P.L. 115-141, March 23, 2018, <https://www.congress.gov/115/plaws/publ141/PLAW-115publ141.pdf>.

<sup>5</sup> Daniel Costa, *Temporary Work Visa Programs and the Need for Reform: A Briefing on Program Frameworks, Policy Issues and Fixes, and the Impact of COVID-19* (Washington, DC: Economic Policy Institute, 2021), <https://www.epi.org/publication/temporary-work-visa-reform/>.

<sup>6</sup> Ann Moss Joyner, Lance George, Mary Lee Hall, Ilene J. Jacobs, E.D. Kissam, Shelley Latin, Allan Parnell, Virginia Ruiz, Nargess Shadbeh, and Janet Tobacman, “Federal Farmworker Housing Standards and Regulations, Their Promise and Limitations, and Implications for Farmworker Health,” *New Solutions: A Journal of Environmental and Occupational Health Policy* 25, no. 3 (November 2015): 334–52, <https://pubmed.ncbi.nlm.nih.gov/26378154/>.

<sup>7</sup> Stronger Together, “Understanding H-2A Worker Risks: New Research and Resources,” *Stronger Together* (blog), July 3, 2020, <https://www.stronger2gether.org/understanding-h-2a-worker-risks-new-research-and-resources/>.

<sup>8</sup> CDM, “Ripe for Reform.”

