

Statement for the Record by Senator Chuck Grassley of Iowa
Chairman, Senate Judiciary Committee
Subcommittee on Immigration and the National Interest
“The H-2B Temporary Foreign Worker Program: Examining the Effects on Americans’
Job Opportunities and Wages”
June 8, 2016

I want to thank Chairman Sessions for having this hearing today. Though the H-2B visa program is a significant source of foreign workers being brought into this country, it has not been subject to the same level of oversight as other, better-known foreign worker visa programs, like the H-1B visa program. It’s time we took a good look at this program and the potential harm it could be doing to American workers.

One of today’s witnesses, Daniel Costa of the Economic Policy Institute, summarizes the concern shared by many: “American workers are ... hurt because when H-2B workers have few rights and employers are allowed to legally underpay them, it puts downward pressure on the wages and working conditions of American workers who are employed or seeking work in the main H-2B occupations.”

I would also like to take this opportunity to express concern about pressure to include certain H-2B-related provisions – that were included in the Consolidated Appropriations Act 2016 and which could be harmful to American workers – in the Fiscal Year 2017 appropriations bill. The provisions in last year’s appropriations bill related to the H-2B visa program were controversial and included:

- A “returning worker” provision¹ greatly expanding the size of the H-2B visa program. The H-2B program is capped by law at 66,000 workers per year. The provision in the omnibus gets around the cap by allowing H-2B workers who were already counted against the cap during any of the three preceding years to not count against the cap this year. In Fiscal Year 2007, the last year the returning worker provision was in effect before the current fiscal year, the total number of H-2B visas issued was more than double the statutory cap.

According to statistics received by the Committee from U.S. Citizenship and Immigration Services (USCIS), as of June 2, 2016, USCIS has already approved petitions for 12,727 returning workers, with 1,171 potential additional returning workers in the pipeline. That’s a potential total, so far, of 13,898 returning workers this fiscal year. That number exceeds by almost 75% the Congressional Budget office’s estimate of only 8,000 H-2B returning workers this fiscal year.²

¹ P.L. 114-113, Sec. 565.

² Letter from the Congressional Budget Office to the Honorable Paul Ryan, Speaker of the House (Dec. 22, 2015) (“CBO estimates that in fiscal year 2016, section 565 will increase the number of workers in the

United States in H-2B status by about 8,000 ...”), available at <https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/hr2029.pdf>.

- A provision requiring the Department of Labor to accept private wage surveys submitted by employers to determine whether H-2B workers are being paid the prevailing wage – a practice that results in lower prevailing wage determinations that hurt both the foreign and American workers³;
- A provision defunding the Department of Labor’s—
 - authority to audit H-2B applications⁴;
 - authority to conduct assisted or supervised recruitment of U.S. workers when the Department determines that the employer has violated the recruitment rules⁵; and
 - regulatory authority to require employers of H-2B workers “to provide at least the same wages and other working conditions as they provide to H-2B workers to certain U.S. workers performing substantially the same work identified in the labor certification or performed by the H-2B workers”⁶.

While these same provisions are being pushed by business and industry leaders, organized labor and American worker advocates are lobbying strongly against their inclusion. On April 26, the AFL-CIO sent a letter to Sen. Cochran asking that the Committee “refrain from allowing any additional riders that would erode the [H-2B] program’s [American] worker protections.”⁷ A story in Politico on May 3 says that the looming fight over the H-2B provisions in the appropriations bill “threatens to drive a wedge through both parties.”⁸

This hearing will help us better understand how the program is being used, how American workers are being affected, and whether Congress should do more to rein in fraud and abuse. This is not the time to take away U.S. worker protections. And, if there are Americans willing to do these jobs, then we need to do better to ensure they have the opportunity.

³ P.L. 114-113, Sec 112.

⁴ P.L. 114-113, Sec. 114.

⁵ Id.

⁶ P.L. 114-113, Sec. 113.

⁷ Letter from William Samuel, Director, Government Affairs Department, AFL-CIO, to Senate Appropriations Committee Chairman Cochran and Vice Chairwoman Mikulski (April 26, 2016), available at <http://static.politico.com/51/81/440d28774bd7a493c27bdc844c35/afl-h2b-letter.pdf>.

⁸ Seung Min Kim, “New immigration fight looms in Congress,” Politico (May 3, 2016), available at <http://www.politico.com/story/2016/05/h2b-riders-222737#ixzz47hwISHxs>.