

# IMMIGRATION REFORM RESOURCES

for the Congressional Recess

AFL-CIO ★ MARCH 2013





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## Why Commonsense Immigration Reform is a Key Priority for the Labor Movement

In this critical moment for our economy, we all must work together to put forward an **economic agenda based on shared prosperity, of which immigration reform is a key piece.**

Twenty-first century immigrants, just like immigrants before them, have come to this country to work hard. Their sacrifice and commitment have built our nation. The AFL-CIO supports the hard work of **all workers** and believes they should be rewarded with fair pay. Yet so many get paid far less than they deserve, while CEOs get millions in bonuses for shipping jobs overseas. Working immigrants have it even harder, with no rights or protections to fight back against employers who take advantage of their status.

Workplace protections for all workers will make it easier for all working people to exercise their internationally recognized human right to organize. But our commitment isn't primarily about union organizing; it is ensuring the fair treatment of every worker in this great country of ours, regardless of where they were born or what paper they carry.

All workers, immigrant or not, will see workplaces become safer and wages grow higher when we create a real road map to citizenship.

The Economic Policy Institute has put a fine point on the income premium that citizenship will create for the 11 million aspiring Americans. According to EPI's study, the average adult's income is up to 15% higher and the poverty rate is 3% lower for citizen immigrants than noncitizen immigrants.

**The labor movement is united:** In 2009, delegates to the 26th AFL-CIO Constitutional Convention adopted a resolution in support of comprehensive immigration reform. We are working with all unions, affiliates or not, on behalf of justice. And the AFL-CIO Executive Council just issued a statement calling for the immediate creation of a commonsense immigration approach with a road map for citizenship.

We believe a strong and vibrant democracy cannot function unless all men and women, regardless of skin color or where they were born, can participate meaningfully in the political process, with full rights and equal protections.





## **Immigration Reform Update**

*As of March 7, 2013*

### **White House**

On Jan. 29, President Obama announced a four-part plan for comprehensive immigration reform in Las Vegas. A number of union leaders, including AFL-CIO President Richard Trumka, were in the audience and expressed labor's unified support. The plan will:

- establish a road map to citizenship that requires undocumented immigrants to pay taxes and a penalty, pass a security and criminal background check, learn English and "go to back of the line";
- continue strengthening the border;
- crack down on employers that break the law and create an effective employment verification process; and
- streamline the existing system to reduce the decades-plus wait time and clear the current backlog.

During the speech, President Obama said, "if Congress is unable to move forward in a timely fashion, [he] will send up a bill based on [his] proposal and insist that they vote on it right away."

### **Senate**

On Jan. 28, the "Gang of 8" senators released a bipartisan framework for comprehensive immigration reform. The Gang of 8 includes Sens. Chuck Schumer (D-N.Y.), John McCain (R-Ariz.), Dick Durbin (D-Ill.), Lindsey Graham (R-S.C.), Robert Menendez (D-N.J.), Marco Rubio (R-Fla.), Michael Bennet (D-Colo.) and Jeff Flake (R-Ariz.). The framework includes four basic legislative pillars:

- create a "tough but fair" road map to citizenship contingent upon "securing the border";
- reform the immigration system in way that supports building our economy and strengthening families;
- establish an effective employment verification program; and

- improve the process for admitting future workers in a manner that protects all workers.

Since the release, the Gang of 8 has continued to negotiate and work on turning the broad pillars into detailed legislative text. At the press conference announcing the framework, the Gang of 8 members said they would like to introduce a comprehensive immigration reform (CIR) bill by the end of March.

Once a CIR bill is introduced, it is expected to move through regular order—which means the bill will be sent to the committees of jurisdiction, the committees will mark up the bill and the bill will go to the floor for a vote. While the bill may be sent to multiple committees, the primary committee of jurisdiction will be the Senate Judiciary Committee.

The Senate is currently in session. The next scheduled recess is a two-week break from March 25–April 5.

Judiciary Committee members will play a very important role during the mark-up, the process by which the committee reviews the bill and makes changes by amendments. The Senate Judiciary Committee marks up bills on Thursdays when Congress is in session. The committee was expected to begin marking up the gun control bill on Thursday, March 7. The gun control mark-up may take three to four weeks. If the committee finishes in three weeks, it will be able to start marking up the immigration bill the first Thursday after recess, April 11. If the gun control bill takes four weeks, the Judiciary Committee will not be able to get to the immigration bill until April 18. The immigration bill may take the committee four to six weeks to mark up.

Since the Judiciary Committee will not be able to mark up an immigration bill until after the recess, we may not see an immigration bill by the end of March. It is more likely the bill will be introduced after recess—possibly the week of April 8. Assuming the immigration bill takes six weeks to mark up, we may see a floor vote in June due to additional recesses (the week of April 29 and the week of May 27).

Once the bill passes the Senate, the House of Representatives may choose to vote on the Senate bill or vote on its own bill. For a bill to become a law, it must pass both the Senate and House in identical form. If the House makes changes to the Senate bill or passes its own bill, a conference will be necessary. During a conference, Senate and House conferees compare the two bills and negotiate a compromise. The compromise bill, also known as the conference report, is sent back to the Senate and House for a vote. If the conference report passes both the Senate and the House, it is sent to the president for signature. Advocates hope to see an immigration bill become law by August.

### **House of Representatives**

The update above assumes the Senate will introduce and mark up a bill before the House. That assumption is only a guess.



The House has its own bipartisan gang of negotiators. Since the House group has not yet introduced a bill or released a set of principles, the identity of the negotiators, timeline for a House bill and contents of a bill are subject to substantial speculation.

**Legislative calendar**

While the exact path the immigration bill will take is unknown, the following calendar may be helpful for planning purposes.

<i>End of March/Early April:</i>	Immigration bill introduced
<i>April-May:</i>	Committee mark-up
<i>June/July:</i>	Floor votes





## Our 'Asks' of Members of Congress

### Road Map to Citizenship

The AFL-CIO favors passage of broad and humane immigration reform legislation that provides a clear road map to first-class citizenship for the 11 million aspiring Americans, including DREAMers, and makes it possible for them to fully integrate into the nation's social and economic fabric, with all the rights and responsibilities entailed in full integration. This is a process that permits unauthorized immigrants to come forward and receive a provisional legal status that—after paying taxes, proving they understand English and civics, passing all criminal and other background checks—allows them to become lawful permanent residents. From there, like other lawful permanent residents before them, they will have the chance to become American citizens.

We favor a *clear and certain road map* to citizenship that is not unduly burdensome or costly. The road map should be certain, not contingent on ambiguous measures such as complete border security or proof of regular employment that employers in the underground economy will never provide.

We favor an expedited program to clear up the backlog of more than 4 million current green card holders.

We will oppose any attempt to confer “legalization” without a clear road map to citizenship, as some have advocated. Such a program would perpetuate second-class status for more than 11 million immigrants residing in the United States. This second-class status would continue to depress wages and living standards throughout the economy.

The integration of aspiring Americans now living in the United States into full citizenship is good not only for those individuals but for the country as a whole. Citizenship, and the quest for citizenship, facilitates integration in ways that legal status alone does not. From the learning of English and U.S. civics to the earning of higher incomes, serving jury duty and voting in elections, citizens and would-be citizens benefit from a deeper form of incorporation into U.S. society than do legal immigrants who have no hope of ever applying for naturalization.

**Do you agree with us that the road map to citizenship should:**

- **Be certain (like the president's plan) and not contingent on ambiguous, potentially never-ending roadblocks such as complete border security?**
- **Not be contingent on proof of employment history, since so many of these aspiring Americans worked in the underground economy?**
- **Not stop at "legalization" only, which would perpetuate a second-class status for more than 11 million immigrants?**
- **Include an expedited program to clear up the backlog of green card holders so the 11 million aspiring Americans are not forced to wait decades to become citizens?**



## **Future Legal Immigration**

Families have been the cornerstone of America's immigration system and the AFL-CIO believes that should not change. Generations of immigrants came to America to be reunited with parents, siblings and others. We favor the reunification of families and oppose efforts to limit the ability of workers to bring their families.

We favor creation of an employment-based system that is based on real labor market conditions, not the whims of employers. When our country faces real labor shortages in a robust economy, employers should be able to bring in foreign workers if there are no U.S. workers to fill the jobs. Labor shortages should be identified by a neutral, depoliticized government agency, and workers should come into the United States with full rights, not as indentured workers.

We oppose the expansion of guest worker programs, which create a secondary class of workers and deny workers a voice in society and on the job.

**Do you agree with us that families should have the ability to reunite?**

**Do you agree with us that in the future, an independent, depoliticized agency should be tasked with identifying labor shortages that determine when employers are able to bring foreign workers into our country?**

**Do you agree with us that Congress should reform, not expand, guest worker programs?**



## Workers' Rights

**Fix *Hoffman Plastic*:** Since the Supreme Court's 2002 decision in this case, the National Labor Relations Board has been prohibited from awarding back pay to undocumented workers who are unlawfully fired by their employers for organizing a union or for other conduct protected by the National Labor Relations Act (NLRA). This has created a perverse incentive for employers to violate the law and has chilled workers' ability to organize.

**Broaden and strengthen existing anti-discrimination and document abuse protections:** Current law fails to protect many immigrant workers from discrimination and fails to cover many common discriminatory and abusive practices relating to the employment verification process. Employers are able to kill organizing drives with one simple demand: "Show me your papers."

**Create workplace protections for workers who adjust their status as part of the immigration reform process:** After workers are able to get on a road map to citizenship, they will need to correct their employment records, which means the boss will know they previously were undocumented. Employers may try to fire or demote these workers or take other kinds of adverse actions. It is vital that legislation include specific protections for employees to update their identifying information without losing their jobs, seniority or other benefits.

**Provide whistleblower protections for workers who seek to enforce workplace rights for themselves and their co-workers:** Workers who expose violations of law should not have to face deportation.

**Enhance regulation of foreign labor recruiters:** An increasingly global labor market has resulted in an increase in foreign labor recruiters who recruit foreign employees for U.S. companies and who, too often, engage in abusive practices. Regulation and oversight of

these foreign labor recruiters is much needed, as is a system to hold U.S. employers that utilize such recruiters jointly responsible for abuses.

**Improve and expand U, S and T visa programs to provide protection for workers who cooperate with law enforcement:** These visa programs provide a vital lifeline for workers who have experienced or witnessed serious forms of workplace abuse. Yet eligibility for these visas is statutorily limited in a manner that excludes many victims of typical forms of severe abuse. Legislation should expand the range of qualifying circumstances for these visas and increase the number of visas annually available.

**Ensure federal contractors abide by laws intended to protect the rights of workers in the immigration process:** The federal government rightfully exercises its contracting authority to ensure federal contractors abide by a wide range of federal requirements, including many basic labor and employment standards. Reform legislation should require that federal contractors similarly abide by important immigration-related employment requirements, such as anti-discrimination and due process requirements in employment eligibility verification programs, not misusing employment-based visa programs and responsibly monitoring foreign labor contractors.

**Create a streamlined process for workers to claim credit for past Social Security contributions:** The reality of our broken immigration system is that many long-term employees who lack work authorization have contributed for years to the Social Security system under names that are not their own. As a result, these workers in the future may not be able to access their contributions in the event of disability or retirement, creating not just individual hardship but significant social costs. Reform legislation must recognize this reality and ensure there is a streamlined process for workers who are on a road map to citizenship to claim credit for their own past Social Security contributions once they obtain lawful status.

**Do you agree with us that we have to make sure all workers, regardless of their immigration status, are entitled to back pay?**

**Do you agree with us that all workers, regardless of immigration status, should not suffer discrimination?**

**Do you agree with us that all workers, regardless of immigration status, should have the right to join or form a union?**

**Do you agree with us that we should have more remedies for immigrant workers who expose violations of law so they are not silenced by the fear of deportation?**



*Time permitting, the next two issues could be explored with the member of Congress:*

### **Worksite Authorization**

**Due process and worker protections (E-Verify).** To have a functioning immigration system, we must have a mechanism that holds employers accountable and respects workers' rights. All too often, employers are able to evade the current worksite authorization mechanisms like E-Verify and use them as union-busting tools. Further, E-Verify as presently structured is fatally flawed because of its database error rates, lack of worker protections, lack of due process, insufficient privacy protections and the significant amount of employer misuse of the program. Any worksite authorization mechanism must ensure workers have enforceable legal remedies against employers that misuse the system. Any mandatory electronic employment eligibility verification regime should, at a minimum, address these concerns.

We favor significantly increased penalties on employers for hiring unauthorized workers, particularly for employers that hire unauthorized workers to avoid having to comply with workplace standards.

**Do you agree with us that worksite authorization is important but must hold employers accountable and address issues such as database error rates, lack of worker protections, lack of due process and insufficient privacy protections?**





## **Border Enforcement**

We favor sensible operational control of our borders. But we are opposed to constantly moving the goalposts on certifying that our borders are secure.

Spending on the federal government's two main enforcement agencies, Customs and Border Control and ICE, surpassed \$17.9 billion in FY 2012. This is 15 times the spending level since 1986, when the last immigration reform bill was passed.

This amount exceeds by approximately 24% total spending for the FBI, Drug Enforcement Administration (DEA), Secret Service, U.S. Marshals Service and Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), which stood at \$14.4 billion in FY 2012.

**Do you agree with us (and the president's plan) that further enhancements to our border security are helpful, but that the road map to citizenship should not be contingent on ambiguous measures such as border security?**



## Sample Agenda for a Visit with a Member of Congress

1. Introduce attendees:
  - State federation/central labor council president;
  - Five top union affiliate leaders (or more); and
  - Immigrant workers (1-2).
2. State federation/central labor council president should explain to the member of Congress that immigration is a top AFL-CIO priority and detail how serious and broad our campaign is.
3. Explain our position and our ask on each of the priority policies (citizenship, future legal immigration, workers' rights; if time allows, go to the next two subjects: border security and worksite authorization).
  - The citizenship ask could be prefaced by an immigrant worker who has waited, or whose family member has waited, more than a decade for citizenship. This will show why we want a certain (not contingent) road map to citizenship and a wait that lasts just years, not decades.
  - Workers' rights ask could be prefaced by a worker who was victimized in an organizing drive or who was fired for speaking up.
4. Assuming we get positive responses, we should ask the member of Congress to convey our position to the Senate or House drafters of the bill.
5. Give the "leave behind" memo to the member of Congress.

*After the visit is over, make sure you fill out the [Report Back form](#) so we can collect all the information critical to winning votes in Congress.*





## **Comprehensive Immigration Reform**

*A Call to Action from a Unified Labor Movement*

The AFL-CIO is working with community allies to hold major campaign events across the country to make immigration reform a reality. Our state federations and local labor councils will be rolling up their sleeves and working tirelessly to mobilize support. Now is the time to pass comprehensive immigration reform and repair our broken system in a manner that protects *all* workers.

The labor movement remains unified. In 2009, after consultation with civil rights, faith, immigrant rights and community leaders, the unions of the AFL-CIO and Change to Win came together to support *Immigration for Shared Prosperity: A Framework for Comprehensive Reform*, a policy proposal written with the help of former Secretary of Labor Ray Marshall. This framework advocates keeping families together, creating a road map to citizenship and halting the race to the bottom in wages and work standards by employers that are taking advantage of our failures in immigration policy. This shared commitment continues today.

As Congress moves forward on comprehensive immigration reform, we ask members of Congress to ensure the following priorities are included.

### **AFL-CIO Priorities**

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- **Create a broad road map to citizenship**

The AFL-CIO urges Congress to create a timely and certain road map to citizenship. It should allow undocumented immigrants to begin the process of becoming citizens as soon as possible. Great care should be taken to ensure the prerequisites for legal status and ultimately citizenship are broad and do not exclude any workers, including those who have been forced to work in contingent employment relationships or in the underground economy. Requirements to prove employment may exclude workers who have been misclassified as independent contractors or bar workers who do not have typical employer-employee relationships, such as day laborers, domestic workers, home care workers and many others.

- **Establish a data-driven approach to employment-based immigration**  
 Currently, the numbers for employment-based immigration are set arbitrarily by Congress without regard for actual labor market needs. Rather than setting numbers arbitrarily, the system for allocating employment visas should be based on clear and transparent data. In February, the AFL-CIO released a set of joint principles with the U.S. Chamber of Commerce. We call on Congress to build on these joint principles and create an independent, professional bureau to measure labor shortages and ensure foreign workers are not being brought into the country to displace U.S. workers or lower industry wages and working conditions. As we clearly stated in our principles with the Chamber, “Americans should have a first crack at available jobs.”
- **Improve, not expand, temporary worker programs**  
 The AFL-CIO and the Chamber also have agreed to create a new type of worker visa program that is not a guest worker program and doesn’t replicate any of the failures of temporary worker programs. The new visa program will not keep workers in a permanent temporary status; it provides workers the chance to leave abusive employers; it allows workers to self-petition for a road map to citizenship; and it automatically adjusts as the American economy expands and contracts. The AFL-CIO continues to oppose the expansion of temporary worker programs that have been used to undermine the wages and working conditions for all workers and reverse the gains workers have made through collective bargaining.
- **Protect workers’ rights**  
 Immigration is an important component of an agenda for shared prosperity. It should not be used as a tool to reduce wages, lower benefits or misclassify employees. Immigration reform legislation must include strong protections, including but not limited to the following:

  - Overturn the 2002 Supreme Court decisions in *Hoffman Plastic*. For far too long, this case has prevented the National Labor Relations Board from awarding back pay to undocumented workers who are unlawfully fired for organizing a union or engaging in activities protected by labor and employment laws.
  - Provide whistleblower protections for workers who speak out against unfair, unsafe and illegal workplace conditions. Specifically, the requirements outlined in the POWER Act and ICE’s Operating Instruction 287.3a should be included.
  - Hold foreign labor recruiters and the U.S. employers that use them jointly accountable for abuses. Regulation and oversight is needed to curtail the use of foreign labor recruiters who engage in abusive practices.
- **Ensure any worker authorization system treats workers fairly**  
 The AFL-CIO supports the creation of a secure and effective worker authorization system to determine employment authorization. Such a system must provide maximum protection to workers, contain due process provisions, prevent discrimination and include privacy protections. E-Verify, in its current form, has insufficient safeguards and is vulnerable to employer misuse. If E-Verify is made mandatory, Congress must

address these problems and ensure the program will not encourage employers to misclassify workers as independent contractors to avoid compliance.

- **Rational border control and enforcement measures**

Congress should recognize the efforts and resources the Obama administration has applied to border security. Last year, more money was spent on border control than all other law enforcement agencies combined. Moving forward, border enforcement should be rational and humane and must engage border communities. The AFL-CIO continues to oppose enforcement-alone policies like the harmful and misnamed “Secure Communities” program that terrorize communities and drive workers and their families underground.

*For additional information, please contact AFL-CIO's Legislative Representative  
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## **Reforming High-Skilled Visa Programs**

The AFL-CIO's 57 unions include numerous affiliates that represent high-skilled workers in science, technology, engineering and mathematics (STEM) occupations in which employers seek H-1B workers such as computer technicians, engineers and teachers in pre-K through post-secondary. Accordingly, the AFL-CIO has a vital interest in high-skilled visa programs and strongly supports efforts to reform the H-1B and L-1 programs.

### **About the H-1B and L-1 visa programs**

The H-1B visa is a nonimmigrant visa for foreign workers employed temporarily in specialty occupations or fields. H-1B visas are valid for up to three years and can be renewed for another three years (renewals do not count against the cap). The annual cap is 65,000; however, nonprofit and government organizations that conduct research and institutions of higher education are exempt. An additional 20,000 H-1B visas are available for workers who graduate from a U.S. university with a master's degree or higher. The program is attestation based. Employers must attest to the following: "(1) that they will pay H-1B workers the amount they pay other employees with similar experience and qualifications or the prevailing wage; (2) that the employment of H-1B workers will not adversely affect the working conditions of U.S. workers similarly employed; (3) that no strike or lockout exists...; and (4) that the employer has notified employees at the place of employment of the intent to employ H-1B workers."<sup>i</sup>

The L-1 visa is for employees of multinational corporations who have been employed by the company abroad and will be employed by a branch, parent, affiliate or subsidiary of that same employer in the United States. There is no cap on the number of L-1 visas. The visa is renewable for up to seven years and does not require the employer to pay the prevailing wage.

### **Shortage claims are not supported by data**

The AFL-CIO is concerned about anecdotal claims that there is a STEM labor shortage. The unemployment rate for engineers has doubled since the last recession and prospects for employment also have diminished for U.S. STEM graduates. According to the Bureau of

Labor Statistics, currently 146,047 workers are unemployed in computer occupations, actively looking for work around the country.

### **Anti-displacement and recruitment requirements must be expanded**

Currently, only H-1B-dependent employers and employers that have willfully violated H-1B rules are required to abide by anti-displacement provisions and recruit U.S. workers prior to hiring an H-1B worker. An H-1B-dependent employer is an employer that has 25 or fewer full-time employees and seven or more H-1B workers; 25 to 50 full-time employees and 12 or more H-1B workers; or more than 50 full-time employees, of whom 15% or more are H-1B workers. The AFL-CIO urges Congress to create a labor market test to require all H-1B employers to demonstrate there are no U.S. workers available. All H-1B employers, not just H-1B-dependent employers and willful violators, should be required to make good faith efforts to recruit U.S. workers and be barred from petitioning for an H-1B worker during the 90 days before and after a U.S. worker has been displaced.

### **Wages must be increased**

According to a Government Accountability Office (GAO) analysis of data from the U.S. Department of Labor, 54% of H-1B visas are certified at the Level 1 wage and 29% are certified at the Level 2 wage (33rd percentile wage). Both the Level 1 and Level 2 wage are below the local average wage for the occupation (the 50th percentile wage). That means 83% of H-1B visas are certified below the local average wage in the occupation. The AFL-CIO urges Congress to raise the wage floor in the H-1B program to at least the average (75th percentile wage) and include a wage floor in the L-1 visa. Level 2 wages are too low, because they are only at about the 33rd percentile wage.

### **Employees should be able to self-petition for green cards**

Employers have the option to sponsor H-1B workers for permanent status, in which case the visa is extended in one-year increments until the green card is issued. But less than 10% of firms actually sponsor permanent status. If a worker is making a long-term commitment to a company and desires to become a U.S. citizen, the worker should be able to self-petition for a green card.

### **'Body shops' should be barred from H-1B**

"Body shop" is the term used to describe staffing companies that hire thousands of H-1B workers and then place the workers with third-party employers. The third-party employer then may contract the worker to a different employer. Passing a worker from employer to employer increases the difficulty of enforcing H-1B laws, especially because liability and accountability are technically limited to the employer that first petitioned for the visa. In 2012, the top 10 users of H-1B visas were mostly India-based companies specializing in offshore outsourcing. The AFL-CIO urges Congress to bar staffing companies from the H-1B program. A large majority of the wage and hour complaints the Labor Department receives are related to activities at body shops.<sup>ii</sup> Such violations and offshoring should not be tolerated.

### **Congress should reform, not expand, high-skilled visa programs**

The AFL-CIO continues to support the H-1B and L-1 Visa Reform Act, also known as the Durbin-Grassley bill. The bill, last introduced in the 111th Congress as S. 887, would enhance protections in H-1B and L-1 by: stepping up U.S. worker recruitment and investment; improving wage standards; strengthening the Labor Department's ability to prevent and penalize obvious fraud and misrepresentation; enhancing the Labor Department's audit authority; and providing H-1B and L-1 visa holders with job information and employer obligations prior to their entrance to the United States.

The AFL-CIO opposes the Immigration Innovation Act or I-Squared Act (S. 169). Not only does the bill fail to incorporate any of the Durbin-Grassley reforms, it increases the H-1B cap from 65,000 to up to 300,000 using a "market-based escalator." This increase is not based on actual labor market needs or supported by data.

<sup>i</sup> *"H-1B Visa Program: Reforms Are Needed to Minimize the Risks and Costs of Current Program,"* Government Accountability Office, GAO-11-26, January 2011.

<sup>ii</sup> *Ibid.*





## **Improving the H-2B Program**

The 57 unions of the AFL-CIO include many affiliates that represent workers employed in the industries in which employers most frequently seek to employ H-2B guest workers, including construction, hotel services, landscaping, food services and amusement, gambling and recreation. Accordingly, the AFL-CIO has a vital interest in the H-2B program and strongly supports efforts to strengthen the Department of Labor's oversight of this often misused visa program.

### **About the H-2B program**

The H-2B program permits U.S. employers to hire up to 66,000 temporary foreign workers each year when U.S. workers are not available. The key to determining whether U.S. workers are available—as well as the key to protecting H-2B workers—is the H-2B program's requirement that employers advertise open positions to U.S. workers at the prevailing wage rate before they hire guest workers. If an employer is permitted to advertise a wage that is lower than the prevailing wage rate, unemployed U.S. workers may not apply. And if an employer is permitted to employ H-2B workers at less than the prevailing wage, it will create downward pressure on the wages and working conditions of similarly employed U.S. workers.

During the first term of the Obama administration, the Labor Department proposed two key rules—the H-2B prevailing wage rule and the H-2B comprehensive final rule. Both rules have yet to be implemented. The prevailing wage rule, scheduled to be implemented on Oct. 1, 2011, was delayed by Congress through successive continuing resolutions that prohibited funding for implementation. The comprehensive final rule, scheduled to be implemented on April 23, 2012, has been delayed through litigation.

### **Davis-Bacon and Service Contract wages must be restored**

Historically, the H-2B program required employers to advertise and pay wages set by the long-established Davis-Bacon Act and Service Contract Act. The Bush administration changed this practice by allowing employers to ignore Davis-Bacon and Service Contract wages and instead pay H-2B workers the lowest of a multitiered wage scale. Not surprisingly, the result was a significant decrease in the wages advertised to U.S. workers and paid to H-2B workers. Restoring Davis-Bacon and Service Contract wages is good public policy: it ensures that employers make reasonable efforts to hire unemployed U.S. workers.

### **Current H-2B regulations are inadequate**

A 2010 U.S. Government Accountability Office (GAO) report, *H-2B Visa Program: Closed Civil and Criminal Cases Illustrate Instances of H-2B Workers Being Targets of Fraud and Abuse*, “demonstrate[d] fraud and abuse committed by recruiters and employers participating in the H-2B visa program,” including “violations in areas such as unfair wages for employees, excessive fees charged to employees and fraudulent documentation submitted to federal agencies to circumvent program rules.” The Labor Department’s own recent audit of employers that participate in the H-2B visa program discovered that almost half of H-2B employers attesting compliance were in fact not in compliance with regulatory obligations. Typical violations included “misrepresentations as to the work time that was actually being offered or the number of workers actually needed[,] workers being paid less than the prevailing wage and U.S. workers being rejected for other than lawful job-related reasons, such as not having a commercial driver’s license when one is not required to perform the job.” 76 *Fed.Reg. at 15132*. Moving away from the current attestation method of regulation and returning to the certification model that was in place for the H-2B program’s entire history until 2009 will improve compliance.

### **Improving recruitment requirements will benefit U.S. workers**

The AFL-CIO strongly supports strengthening requirements for employers to test the U.S. labor market. Current regulations require employers to recruit through the state workforce agencies (SWAs), but permits employers to advertise positions with SWAs for as few as 10 days and to do so for almost four months prior to the anticipated first day of work. The proposed comprehensive final rule would require employers to continuously recruit U.S. workers until 21 days prior to the date of need, meaning that open positions would be advertised during the time period when unemployed U.S. workers are most likely to be seeking work. Other important improvements in the rule include rehiring former employees when available.

### **Increased protections will prevent exploitation**

Even with the delayed requirement for employers to pay a properly calculated prevailing wage rate, employers still can attempt to reduce the effective wage rate of H-2B guest workers through illegal deductions and other violations of wage and hour laws. The comprehensive final rule addresses these problems by requiring employers to pay the cost of workers' in-bound transportation, provide tools and equipment needed to perform the job and guarantee the work hours equal to at least three-fourths of the workdays in each 12-week work period. Other provisions include anti-retaliation protections.

### **The long delayed H-2B prevailing wage rule and comprehensive final rule must be implemented**

For the reasons stated above, the AFL-CIO strongly supports the Labor Department's H-2B prevailing wage rule and H-2B comprehensive final rule. The AFL-CIO urges Congress to incorporate the proposed changes into legislation and oppose efforts to delay or prevent either rule from going into effect.