

House Committee on Appropriations  
Subcommittee on Homeland Security  
Tuesday, April 9, 2019 Members Day Hearing  
Rep. Jack Bergman (R-MI-01) and Rep. Paul Mitchell (R-MI-10)

Chairwoman Roybal-Allard, Ranking Member Fleischmann, and all Members of the committee, we sincerely appreciate this opportunity to submit our testimony to the committee as you draft the FY 2020 Department of Homeland Security (DHS) appropriations bill. On behalf of the seasonal employers in our state, we urge you to include H-2B cap relief in the form of a returning worker exemption (RWE) in the FY 2020 DHS appropriations bill. Employers in Michigan and across the nation will struggle to operate their businesses next year under the current H-2B cap, which is statutorily set at 66,000 visas per year.

The H-2B program is essential to employers who cannot find enough temporary American workers to fill jobs across a number of seasonal industries. These seasonal businesses need H-2B workers to supplement their American workforce. Over the past three fiscal years, however, a lack of seasonal workers, due to the statutory visa cap, has had a significant adverse effect on seasonal businesses and local economies. Businesses have been forced to turn away customers, scale back services, and cancel capital equipment purchases. In some cases, businesses were forced to lay off American workers whose jobs are supported by H-2B workers or shut down their operations entirely. Seasonal businesses need meaningful cap relief to continue contributing to the economy, expanding their operations, and adding American jobs.

The H-2B program relies on well-vetted returning workers who come to the U.S. for seasonal employment and then go home. Returning workers are denied re-entry to the United States if

they overstay their visas or break the law. These workers are not immigrants. They do not desire to become U.S. residents. They provide an opportunity for U.S. businesses to operate at a greater capacity, retain their full-time workers, and contribute to their local economies. Seasonal workers help support many upstream and downstream jobs. Every H-2B worker is estimated to create and sustain 4.64 American jobs.

In our strong economy with record-low unemployment, the H-2B program's congressionally mandated cap of 66,000 visas is inadequate to meet the labor needs of seasonal businesses.

For FY 2019, on January 1, 2019, the first day on which employers could request H-2B workers with an April 1 start date, the DOL iCERT online filing system crashed right after midnight due to an unprecedented demand for H-2B labor certifications. Employers were able to re-file on January 7. For FY 2019, well over 100,000 H-2B workers have been requested for temporary work beginning on April 1, and DOL has already certified more than 100,000 H-2B workers. It is important to note that DOL provides labor certifications only after determining sufficient U.S. workers are not available and the H-2B workers will not negatively affect U.S. workers. The H-2B cap for the first half of FY 2019 was reached on December 6, 2018, and the cap for the second half of FY 2019 was reached on February 19, 2019. Petitions received by DHS that day were put into a lottery. The fate of seasonal businesses and their domestic workforce should not be dependent upon a lottery.

The FY 2019 Consolidated Appropriations Act authorized DHS, in consultation with DOL, to issue additional H-2B visas for the second half of FY 2019 (P.L. 116-9, Div. H, Title I, §105).

Specifically, DHS was allowed discretionary authority to increase the allocation of visas to an amount “not more than the highest number of H-2B nonimmigrants who participated in the H-2B returning worker program in any fiscal year in which returning workers were exempt from such numerical limitation.” On March 28, 2019, DHS announced that it would use this authority to release 30,000 additional visas for the rest of FY 2019. DHS stated that these visas would be allocated to returning workers who held an H-2B visa in at least one of the past three fiscal years dating back to FY 2016. DHS plans to carry out this action under a rulemaking process, so no additional visas have been issued as of the date of this testimony. DHS further noted to Members of Congress that “Congress is in the best position to know the ‘right’ number of H-2B visas that American businesses should be allocated without harming American workers. DHS is committed to ensuring that our immigration system is implemented lawfully and that American workers are protected. We look forward to working with Congress so it can set an appropriate numerical limitation moving forward” (Letter dated March 28, 2019).

FY 2016 was the last year Congress included a returning worker exemption in an appropriations bill (P.L. 114-113, Div. F, Title V, §565). Since then, the discretionary authority given to DHS in the FY 2019 bill was also included in FY 2017 and FY 2018 provisions. The pressure on American employers to access a very limited number of H-2B workers has resulted in the same adverse scenario for the past three years.

For the seasonal employers who have no other option but to rely on the H-2B program, the annual cap of 66,000 visas and only discretionary authority for DHS to release additional visas is untenable and destructive to U.S. workers, U.S. suppliers, seasonal businesses, as well as state

and local economies. We stand ready to work together on important permanent changes to the program going forward and urge you to include much needed H-2B cap relief in the form of an RWE in the FY 2020 DHS appropriations bill so that those seasonal businesses that follow the rules and rely on the same workers coming back year after year can continue to generate economic growth and job creation for American workers across the country.

We again would like to thank Chairwoman Roybal-Allard, Ranking Member Fleischmann, and all Members of the committee. We look forward to working with you on this issue and respectfully request that the committee give it serious consideration.