hispanicfederation

WASHINGTON DC OFFICE
1001 G St NW
Suite 1120W
Washington, DC 20001

NATIONAL HEADQUARTERS
55 Exchange Place, 5th FL
New York, NY 10005
Phone: 212.233.8955
Hotline: 1.866.HF.AYUDA

Brian Pasternak
Administrator
Office of Foreign Labor Certification
Department of Labor

Kimberly Vitelli
Administrator
Office of Workforce Investment, Employment and Training Administration
Department of Labor

Daniel Navarrete
Director
Division of Regulations, Legislation, and Interpretation; Wage and Hour Division
Department of Labor

November 12, 2025

RE: Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States

Dear Administrators Pasternak, Vitelli, and Navarrete,

By notice issued on 10/2/25, the Department of Labor (DOL, henceforth "the Department") has published proposals for rescinding rules published by the Department on April 29, 2024, governing Adverse Effect Wage Rates (AEWR) for workers contracted under the H-2A guest workers program. **Hispanic Federation (HF)** respectfully submits the following comment in response to DOL request for comment on the Recission of Final Rule, DOL Docket No. ETA-2025-0008, RIN 1205-AC24 (20 CFR Part 655, hence "the Rule). Ultimately, Hispanic Federation strongly advises the Department against continuing these implemented modifications to AEWR calculations, including the general intended cuts, the proposed flat reduction to rates paid to workers provided with obligated housing, and the calculation thresholds for proposed skill tiers, on the ground that these proposals will likely reduce economic output in the U.S.'s agricultural sector, improperly reduce the wages of American workers in the agricultural sector, and prompt economic deprivation in localities which are closely tied to agricultural worker. As such, we urge the Department to move immediately to rescind the Rule.

1. Hispanic Federation Interest in Rule

Hispanic Federation is a nonprofit membership and advocacy organization with a network of over 850 organizations across the country. HF is committed to empowering and advancing the Hispanic community, with a focus on low-income, marginalized, and immigrant Latinos. With programs in 43 states and territories, including Puerto Rico, the U.S. Virgin Islands and the District of Columbia, HF's focus areas include immigration, economic empowerment, civic engagement, disaster relief, philanthropy, education, health, and the environment. HF also maintains ongoing immigration advocacy and welcome campaigns and meets the organizational development needs of its member agencies through grant-making and capacity-building assistance.

Per DOL's invitation to interested parties to submit relevant written data, views, or arguments on the proposed recission, we address here the potentially harmful consequences of many of the proposals at hand, including in reducing American wage growth, economic output, and undermining compliance with the statutory obligations of the legal regime underlying the H-2A program. We do recognize value in the Department's proposal to recognize two major skill groupings among H-2A laborers, but also object to the Department's proposed methodologies for both differentiating those groupings and determining their statutory compensation rates. Ultimately, Hispanic Federation urges the Department to withdraw the Rulemaking and instead convene a Negotiated Rulemaking, in light of self-imposed challenges in implementing previous compensation calculations derived from the Farm Labor Survey (FLS).

2. Background and Benefits of Supporting H2A Regulations and Mutual Strengthening of Program Obligations

Since its inception in 1952 in response to the closure of the bracero program, the H-2A program has addressed clear needs for flexible, skilled labor in American agriculture. Following the rapid expansion of use of the program in the 1990s, H-2A workers have become an essential part of the American agricultural sector. Indeed, in recent years, H-2A workers have accounted for a full 25% of all workers employed in U.S. agriculture.[1] Furthermore, while the program has occasionally drawn scrutiny for its economic efficacy, research validates that it has proven largely successful at balancing complex policy goals. For instance, areas with widespread adoption of the H-2A program have seen statistically significant increases in housing activity,[2] while recent scholarly work has affirmed that the program as implemented and recently revised has not only failed to produce feared suppressive wage effects on non-H2A workers,[3] but has in

---

[1] Jeff Luckstead and Stephen Devadoss, "The Importance of H-2A Guest Workers in Agriculture," *Choices*, Vol. 34, No. 1, 2019. 3.

[2] Marcelo Castillo and Diane Charlton, "Housing Booms and H-2A Agricultural Guest Worker Employment," presented at the 2021 International Conference of Agricultural Economists, Online.

[3] Candice Yandam Riviere, "Regulatory Changes and Labor Market Concentration in the US Agriculture Sector: Evidence from H-2A Workers," from Proceedings of the LERA 2023 Meetings; Isabella J. Cheng, "Reforming H-2A: Protecting Migrant Workers Before arrival on U.S. Farms, Duke Law Journal, Vol. 74, 2025.

fact improved wage and material conditions for H-2A workers, in turn increasing rates earned by non-H2A workers.[4]

As such, the H-2A program may be viewed as a largely successful workforce expansion program that benefits not only workers but also local communities and agricultural businesses, and therefore the sector as a whole. Nonetheless, employers registered under the program have inconsistently upheld their statutory obligations in exchange for the privilege of employing guest workers. Journalistic and scholarly research both suggest that H-2A workers are routinely confronted with illegally unsafe work environments, inadequate housing conditions, and noncompliant nutritional provisions.[5] Such exploitative labor environments are a product of the frequently monopsonic hiring conditions which characterize H-2A employers.[6] The prospect that employers might drive down wages for American, non-H2A workers by skirting workplace requirements has long been one of the key challenges faced by program administrators.[7] In turn, past reforms confirm the proposition that regulations bringing living conditions among H-2A workers into more direct alignment with those of non-H2A workers are one of the most effective ways to protect both the health and safety of H-2A workers and the financial prospects of non-H2A workers.[8] These perspectives on the program's successes and opportunities inform Hispanic Federation's comment, and our desire to ensure that the H-2A program remains successful while recognizing the continuing ability to improve upon major programs.

3. **Opposition to Revised AEWR Intended to Lower Wages**

At its core, the Rule is slated to reduce AEWR for H-2A workers across virtually all jurisdictions and occupations. The Department envisions gross compensation reductions ranging from approximately 10 to 20 percent. On level, there is no reason to believe that such marked reductions in AEWR will meet statutory obligations that wages paid to H-2A workers do "not adversely affect the wages and working conditions of workers in the United States similarly employed."[9] Barring transient effects from sticky wages, the reduction in AEWR will definitionally apply a downward pressure on local wages, encouraging wage suppression.[10] These are textbook supply-and-demand of labor considerations that are routinely borne out by research into minimum wage rates. Indeed, while the Department purports that a downward

---

[4] Zachariah Rutledge and Marcelo Castillo et al., "H-2A Adverse Effect Wage Rates and U.S. Farm Wages," American Journal of Agricultural Economics, 2025.
[5] See, for instance, Cheng, 2025 and https://www.theguardian.com/us-news/2024/oct/02/h2a-worker-program-migrant-farm-food (Accessed 8/1/25.) Indeed, Hispanic Federation's own fieldwork with visa-holding workers in North Carolina and New York confirms that individuals are often forced into illegally inadequate housing, marked by moldy sheets, cramped quarters, and dangerous pathogen exposure.
[6] Eric M. Gibbons et al., "Monopsony Power and Guest Worker Programs," Institute of Labor Economics Discussion Paper Series: January, 2019.
[7] Castillo is again instructive here.
[8] See: Rutledge et al., 2025.
[9] 8 U.S.C. § 1188
[10] For instance, Ben Zipperer, "Turnover, Prices, and Reallocation: Why Minimum Wages Raise the Incomes of Low-Wage Workers," *Journal of Law and Political Economy*, vol, 3, no. 1. 2022.

adjustment of AEWRs will ease cost constraints upon agricultural employers, there exists research that suggests that, paradoxically, it may ultimately do little to mitigate operational costs.[11] Indeed, the Department cites that farm labor costs "account for nearly 15 percent of total cash expenses across the sector," yet that ratio actually positions agricultural work toward the lower end of average labor costs.[12] In turn, these measures are unlikely to contribute to a meaningful increase in the operational capacity of America's agricultural industry. Furthermore, as the Department itself acknowledges a growing domestic demand for the types of specialized agricultural produce most frequently supported by H-2A labor (namely nuts, fruits, and vegetables), a reduction in AEWR seems to misapprehend economic headwinds. Consequently, the Department's underlying logic and assumptions seem at odds with both the material and statutory realities undergirding the H-2A guest worker program.

It is apparent that the Rule will expose a wide array of workers to lower wages – as intentionally designed. Logically, it is not only H-2A workers who will be subjected to lower earnings, but so too will their peers in the agricultural sector, and, by extension, workers employed in neighboring, fungible sectors. In turn, the Rule will contribute to local economic deprivation, particularly in areas with high rates of agricultural employment or H-2A leveraging. Furthermore, the reduction in AEWRs will have a predictably deleterious effect on local housing prices and availability, in keeping with research on the local effects of H-2A employment.[13] Subsequently, it is to be expected that numerous local businesses will be subjected to downward pressure. The Rule fails to consider these businesses adequately as small entities. Additionally, while the Department argues that the Administration's ongoing, ill-advised mass deportation campaign will prompt an increase in agricultural reliance upon H-2A workers, thereby justifying AEWR reductions, the Rule fails to consider alternative means of reducing costs associated with the H-2A program that would be more fully in keeping with the statutory intent of 8 U.S.C. § 1188, including facilitating recruitment, reducing registration costs, and subsidizing or otherwise offsetting costs of workforce condition compliance. The failure to examine or discuss those opportunities further illustrates the extent to which the Rule seems more designed to artificially lower agricultural wages than to address the acknowledged challenges facing the labor market. Consequently, not only should the Rule be rescinded on the merits as harmful to H-2A workers, their American peers, and local businesses, but also on procedural grounds.

4. **Response to SOC and Skilled Labor Division Methodologies**

The Department makes a reasonable call to delineate a distinction between moderately skilled and highly skilled H-2A workers. As the Department correctly notes, many H-2A workers spend season after season in similar work environments, cultivating unique skills that are presently difficult to replace from within the domestic American workforce. However, the Rule's compensation methodology seems tailormade to depress agricultural wages, rather than provide a system which meaningfully rewards high skill workers while allowing prospective employers to select workers whose ability best meets their needs. The Department's proposal to define Skill-

---

[11] Howard Wial, "Do Lower Prevailing Wages Reduce Public Construction Costs?," *Keystone Research Group*, 1999.
[12] https://ncses.nsf.gov/pubs/nsf23322/figure/2; https://www.bls.gov/news.release/pdf/prin2.pdf (Accessed 11/5/25.)
[13] Castillo and Charlton.

Level I AEWR at the 17th percentile of occupational wage distribution and Skill-Level II AEWR at 50th percentile of occupational wage distribution will, tautologically, lead to AEWRs set below the median, 50th percentile. Indeed, given the hefty criteria the Rule imagines for qualifying under Skill-Level II, it seems likely to lead to AEWRs being placed markedly below the median, 50th percentile. As such, the Rule will likely lead to AEWRs set at levels that fail to satisfy 8 USC §1188(a)(1)(B), potentially creating a feedback loop in which domestic wages trend downward, prompting a concomitant reduce in percentile-anchored skilled wage floors, thereby triggering the process anew. The Rule's capacity to both impose a one-time, depressive wage shock and a subsequent, constant downward pressure are clearly at odds with the H-2A programs' requirement not to undermine the wages of domestic workers.

Furthermore, Department's proposal to exclude the category of "All other agricultural workers" from Standard Occupational Classifications (SOC) for H-2A AEWR determination risks creating a regime in which as many employers as possible maneuver their higher-compensation workers into the "All other agricultural workers" category for the purposes of minimizing earnings tabulated in future AEWR calculations. With the category representing approximately one percent of all workers, its inclusion in these determinations presents only a minimal administrative burden for the Department, particularly when weighed against the downstream risks of systematic intentional misclassification.[14] Consequently, we urge the Rule be withdrawn to ensure compliance with all underlying statutes and regulatory regimes, and to provide time for a proper regulatory environment for differential skill classification among H-2A workers to be created.

5. **Opposition to Scaling Reduction of AEWR for H-2A Workers Provided Legally Obligated Housing**

H-2A employers are, of course, legally required to provide adequate and effective housing to all H-2A employees, as well as commensurate accommodations to non-H2A workers engaged under similar terms.[15] The necessity of this provision is both apparent and well-established; as H-2A workers migrate from outside the United States to worksites, and therefore lack the requisite means, information, access, and in many cases legal opportunity to obtain short-term housing on their own for the duration of their H-2A contracts. As such, they are reliant upon housing provided to them by employers. In turn, H-2A workers and non-H2A workers can be severely inconvenienced to the point of jeopardizing health by failure to provide owed housing.[16] Agricultural conditions are flexible and often unpredictable; it is therefore sensible that the Department offers flexibility to H-2A contract providers in start date. However, when workers commence travel to H-2A job sites, they organize their itineraries such that they arrive at the intended start date of work. Current requirements that employers provide housing for H-2A employees from the initially-contracted start date, rather than the inception of work in the event of minor delays are sensible in light of these challenges.

---

[14] Jason M. Goldstein, "Money under the Bridge: The Worker Misclassification Problem," 5 Fla. A&M U. L. Rev. (2009).

[15] https://www.dol.gov/agencies/whd/fact-sheets/26g-housing-standards-for-rental-and-public-accommodations-H-2A (Accessed 8/8/25.)

[16] Ashby (2007), Cheng (2025.)

The Department, however, proposes implementing a 30 percent across-the-board reduction in real AEWR payments to H-2A workers employed by employers who comply with these requirements to provide housing. In their own explanation, the Department "recognizes that 20 CRF 655.122(d)1 currently requires that employers 'provide housing at no cost to the H-2A workers and those workers in corresponding employment who are not reasonably able to return to their residence within the same day.'" Nonetheless, the Department suggests that this 30 percent flat wage reduction is "appropriate in light of the rising costs and other obstacles… faced by employers in locating sufficient and affordable housing." From the outset, the Department's proposal clearly fails to satisfy plain reading requirements that housing be provisioned under terms in alignment with federal, state, and local regulations, which themselves offer no parallel to the Department's proposals of penalized wages. Without an explicit call to rescind 20 CRF 655.122(d)1, it is also unclear how the Department intends to justify AEWR reductions in light of current regulatory obligations.

Furthermore, the Department's proposal to reduce real AEWR's for H-2A workers residing in employer-provided housing seemingly run afoul of both the intent and law underlying the H-2A program. The Department contends that this provision is an acceptable response to a cost imposed on H-2A employers, thereby justifying the functional reduction in AEWR's. However, 8 U.S.C. § 1188(a)(1)(B) clearly states that wage terms "will not adversely affect the wages and working conditions of workers in the United States similarly employed." Upwards of 50 percent of American renter households are rent-burdened according to Census records, spending more than 30 percent of their monthly earnings on rent.[17] These statistics clarify that employers are, broadly speaking, more than willing to pay workers wage rates that fall below the local minimum threshold to avoid rent burden. In turn, it is implausible that the Department's proposal will lead to the creation of a local wage floor that lies above the local minimum threshold to avoid rent burden. Instead, the most likely result is that these changes will simply reduce local wages, in keeping with monopsonic laws of supply and demand, thereby violating requirements that H-2A regulations avoid depressing the wages of domestic American workers.

Simultaneously, the proposal mandates no commensurate increase in the quality of housing that H-2A employers would be obligated to provide. Many H-2A employers are perennial participants in the program, with pre-established compounds, which themselves frequently fail to satisfy preexisting housing standards. Without providing for expanded enforcement of housing standards or augmenting preexisting standards above current levels, it is a reasonable expectation that many employers will continue to provide their current housing arrangements while simply lowering real wages. As such, the Rule may contribute to an increased exposure of domestic American workers to substandard housing, both through a decrease in competitive housing standards and through direct occupation by those domestic workers who are unable to return to their typical domiciles in an ordinary workday and are therefore similarly obligated to receive housing. Simultaneously, these proposals will undermine observed increases in local housing stock and home values stemming from local employment of H-2A workers without meaningfully improving housing availability for domestic workers. As such, the Rule should be rescinded.

---

[17] https://www.census.gov/newsroom/press-releases/2024/renter-households-cost-burdened-race.html (Accessed 11/15/25.)

6. **Methodological Concerns**

Some of the Department's quantitative assessments as well as inconsistent deference to court rulings suggest that the proposed changes were not subjected to sufficiently rigorous consideration to meet rulemaking requirements, including those requiring quantitative assessment of impacts to small entities. For instance, the Department's consideration of cost-savings is apparently rooted in simple percentile calculations, without considering alterations in economic growth, productivity, labor access, or long-term administrative savings.[18] Likewise, the haphazard consideration of impact to small entities bodes similarly poorly for the long-term impact of the Rule. Similarly, while the Department is quick to defer to cases like *Barton*, yet largely ignores the implications of *Torres Hernandez v. Su*. The Department's justifications for deferring to district court rulings in regions with fewer H-2A employers and workers over appellate rulings from the Ninth Circuit (which oversees a tremendous proportion of H-2A workers across multiple sectors) lacks transparency. Consequently, Hispanic Federation urges the Department to withdraw the Rule and resubmit proposals with greater methodological clarity.

7. **Hispanic Federation Serving Relevant Initiatives**

Hispanic Federation and its network have been serving economic development and agricultural workforce programs decades through programs coordinating training, direct aid, safety advocacy, and culturally and linguistically competent support upon arrival. As an umbrella organization, Hispanic Federation has a proven track record of designing and launching national, state-wide, and locally focused initiatives, that directly support H-2A workers and facilitate their effective employment within the program. Programs include:

- *Farm and Food Workers Relief Program:* In 2022, HF kickstarted the FFWR program that provides one-time relief payments of $600 to 62,900 qualifying farmworkers and meatpacking workers thanks to a two-year, $44.3 million grant administered by the U.S. Department of Agriculture's Agricultural Marketing Service. Workers who incurred pandemic-related health and safety costs in 19 states, Puerto Rico and the U.S. Virgin Islands are eligible for rewards through the grant.
- *Florida's HELLO Program:* Through Florida's HELLO (Help, Education, Legal Assistance, Listening, Outreach) program, HF conducts monthly workshops with the Orlando Center For Justice to provide immigrant community members, including newly arrived migrants, with culturally and linguistically competent information about the immigration system in America. This includes free legal guidance with trained lawyers and staff to help participants navigate this immigration system. HF's experience serving the immigrant community in Florida is particularly relevant to our assessment of the proposed maritime expansion of the Circumvention of Legal Pathways rule.

---

[18] Castillo (2022) and Rutledge (2025) both offer more robust quantitative modelling that could serve as alternatives for future rulemaking.

8. **Conclusion**

The Department has proposed a drastic reduction in Adverse Effect Wage Rates for workers enrolled in the H-2A program, ranging from definitionally depressive rate tethering of Skill tiers to steep deductions for those housed by employers to flat reductions across the board. These proposals are poised complicate the regulatory landscape, reduce economic output, and jeopardize compliance with broader statutory requirements. Hispanic Federation urges the Department to more broadly consider local and sectoral economic effects from the proposals at hand. Many would risk trading long-term benefits in productivity and support for American workers in exchange for hypothetical short-term gains. In turn, we exhort the Department to consider a broader base of qualitative and quantitative data and research to inform decisions that will shape not only working conditions for all Americans, but also the viability of our nation's domestic food supply. As such, we advise the Department withdraw the Rule as it stands.

Sincerely,

Julietta Lopez

Julietta Lopez
Vice President for Federal Advocacy and Network Mobilization
Hispanic Federation

cc.

Keith E. Sonderling, Deputy Secretary, Department of Labor
Lori Chavez-DeRemer, Secretary, Department of Labor
The Honorable Mike Johnson, Speaker of the United States House of Representatives, U.S. House of Representatives
The Honorable Hakeem Jeffries, Minority Leader, U.S. House of Representatives
The Honorable John Thune, Majority Leader, United States Senate
The Honorable Charles Schumer, Minority Leader, United States Senate
The Honorable Markwayne Mullin, Chair, Subcommittee for Employment and Workplace Safety, Committee on Health, Education, Labor, and Pensions, US Senate
The Honorable John Hickenlooper, Ranking Member, Subcommittee for Employment and Workplace Safety, Committee on Health, Education, Labor, and Pensions, US Senate
The Honorable Tammy Baldwin, US Senate
The Honorable Chris Murphy, US Senate
The Honorable Tim Kaine, US Senate
The Honorable Angela Alsobrooks, US Senate
The Honorable Ashley Moody, US Senate

The Honorable Rick Scott, US Senate
The Honorable Alex Padilla, US Senate
The Honorable Adam Schiff, US Senate
The Honorable Ryan MacKenzie, Chair, Subcommittee for Workforce Protections, Committee on Education and Workforce, US House of Representatives
The Honorable Ilhan Omar, Ranking Member, Subcommittee for Workforce Protections, Committee on Education and Workforce, US House of Representatives
The Honorable Mary E. Miller, US House of Representatives
The Honorable Randy Fine, US House of Representatives
The Honorable Greg Casar, US House of Representatives
The Honorable Haley M. Stevens, US House of Representatives
The Honorable Mark Takano, US House of Representatives