

# **EPI comment on DOL's 2025 Interim Final Rule modifying the AEWB methodology for H-2A farmworkers**

**Public Comments** • By [Daniel Costa](#) • December 1, 2025

*Submitted electronically on December 1, 2025 via <https://www.federalregister.gov/documents/2025/10/02/2025-19365/adverse-effect-wage-rate-methodology-for-the-temporary-employment-of-h-2a-nonimmigrants-in-non-range>*

TO: Brian Pasternak, Administrator, Office of Foreign Labor Certification

Employment and Training Administration  
Department of Labor  
200 Constitution Avenue NW  
Room N-5311  
Washington, DC 20210

**RE: *Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States*, Interim Final Rule, request for comments, Employment and Training Administration, 20 CFR Part 655, DOL Docket No. ETA-2025-0008, RIN 1205-AC24 (October 2, 2025)**

Dear Administrator Pasternak:

This document is submitted in response to the Department of Labor's (DOL) Employment and Training Administration (ETA) request for public comment on its Interim Final Rule (IFR) entitled "Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States," which proposes to amend the methodology for setting the Adverse Effect Wage Rate (AEWR) for the H-2A temporary agricultural worker visa program.

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5. The IFR violates the APA because there is no emergency and DOL did not consider alternative policies, methodologies, and key stakeholders
6. The new AEW methodology violates the H-2A statute because it ignores the adverse impacts that will result for U.S. farmworkers  
The new AEW methodology violates the H-2A statute because it will adversely impact the wages and working conditions of farmworkers, including U.S. farmworkers
7. New AEW based on OEWS data will result in \$4.4 to \$5.4 billion in wages being transferred annually from farmworkers to farm operators at the current size of the H-2A program
8. The IFR's new housing deduction from H-2A wages will harm H-2A workers and adversely impact U.S. farmworkers because farm operators will prefer to hire underpaid H-2A workers
9. The updated AEW methodology and the housing deduction will conflict with many state minimum wage laws and DOL has not provided guidance on how to resolve them
10. OEWS survey data are inadequate for setting the wage rates of H-2A farmworkers because they do not accurately represent the farm labor market
11. Using multiple skill levels akin to those in the H-1B program is inappropriate and DOL has rejected such a methodology for other low-wage jobs in the H-2B program
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**The Economic Policy Institute (EPI) strongly opposes the IFR and urges DOL to rescind the IFR and revert back to the previous AEWB methodology, or make amendments to the methodology as described herein.** We believe the updated AEWB methodology and the housing deduction in the IFR will negatively impact both U.S. farmworkers and migrant farmworkers recruited through the H-2A program, and worsen conditions in the farm labor market.

**EPI fully supports and endorses the written comments and recommendations submitted by Farmworker Justice, on behalf of a multitude of organizations that represent migrant and seasonal farmworkers, including H-2A workers.** EPI is a signatory listed on the comments submitted by Farmworker Justice and incorporates those comments and recommendations by reference into this comment. The comments submitted herein should be considered an addendum to those comments, which provide additional analysis to support the opposition of DOL's updated AEWB methodology.

**EPI also supports and endorses the written comments and recommendations submitted by the *Migration that Works* coalition, which EPI is a founding member of.**

## About EPI

The Economic Policy Institute (EPI) is a nonprofit, nonpartisan think tank established in 1986 to include the needs of low- and middle-income workers in economic policy discussions. EPI conducts research and analysis on the economic status of working America, proposes policies that protect and improve economic conditions and raise labor standards for low- and middle-income workers—regardless of immigration status—and assesses policies with respect to how well they further those goals.

EPI has researched, written, and commented extensively on the U.S. system for labor migration, including in particular the H-2A and H-2B programs and other temporary work visa programs, as well as on farm labor issues, including labor standards enforcement in agriculture. EPI has also provided expert testimony about work visa programs and farm labor to both the U.S. Senate and House of Representatives, as well as state legislatures.

Given the numerous reports from advocates, news investigations, and even government audits over the years that have revealed how deeply flawed the H-2A program is when it comes to protecting the rights of both migrant farmworkers and U.S. farmworkers, EPI is concerned that DOL would take such an audacious action to lower wages for H-2A farmworkers and U.S. farmworkers, who are already some of the lowest-paid workers in the entire U.S. economy.

## Farmworkers earned some of the lowest wage rates in the entire U.S. labor market in 2024

Before discussing the details of DOL's new AEWB methodology in the IFR, it is important to discuss and contextualize the wages of the 2.2 million farmworkers in the United

States—something DOL fails to adequately do.<sup>1</sup> Roughly 350,000 of them are crop farmworkers employed through the H-2A visa program.<sup>2</sup> DOL's National Agricultural Workers Survey (NAWS) shows that two-thirds of non-H-2A crop farmworkers are foreign-born, and that one-third are U.S.-born citizens, all of whom have a significant stake in the IFR.<sup>3</sup>

The agricultural industry has made numerous claims about skyrocketing and unsustainable wage growth for farmworkers, some of which DOL echoes in the IFR, and the industry has lobbied for federal actions by the executive branch and Congress to artificially restrain wage growth in the industry. As this comment will discuss, most of these claims are not supported by the available evidence.

The most reliable data on farmworker earnings comes from the U.S. Department of Agriculture's (USDA) National Agricultural Statistics Service (NASS), which conducts the Farm Labor Survey (FLS), the results of which were, until recently, published twice a year in USDA's Farm Labor report series, with data reported for reference weeks in January, April, July, and October.<sup>4</sup> On August 28, 2025, USDA announced that it would discontinue its data collection program and reports, including the FLS,<sup>5</sup> thus making 2024 the final full year for which FLS data are available. Before October 2025, FLS data was used by the U.S. Department of Labor (DOL) to set the Adverse Effect Wage Rate (AEWR) for most migrant farmworkers hired in the H-2A program. DOL based the AEWR on the average hourly earnings of nonsupervisory field and livestock workers, as reported by farm operators and by region. DOL used the FLS data to set H-2A wages so they reflect current real-world trends in the farm labor market.

The FLS data up to 2024 data show that while there have been some documented real increases over the past three decades, they have not been unreasonably large increases, and they have occurred in a broader context where the wages of farmworkers are extremely low by any measure, even when compared with the hourly earnings of comparable *non*-farm workers, as well as when compared with average wages for all workers in the United States, and workers with the lowest levels of education (see **Figure A**).

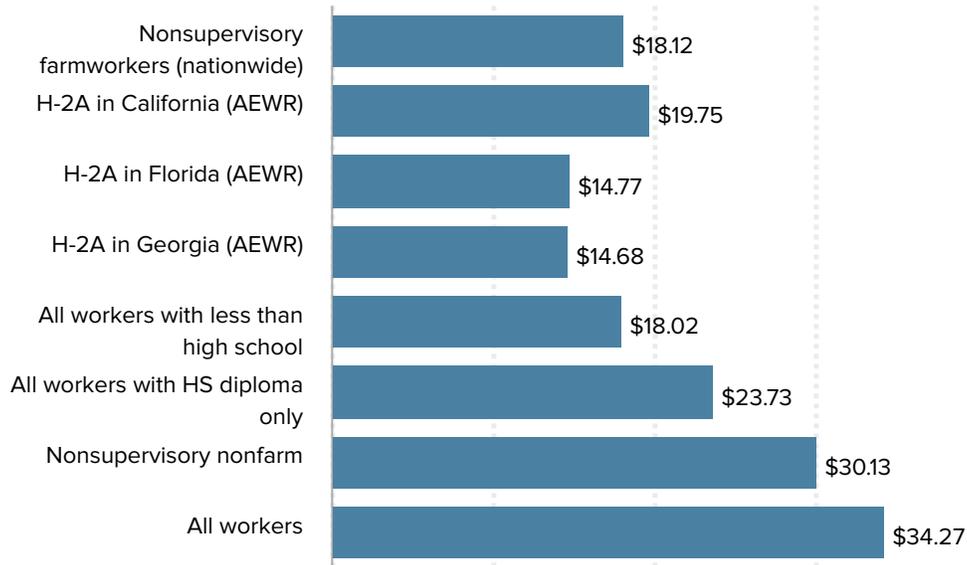
In 2024, the average earnings of all nonsupervisory farmworkers (i.e., combined field and livestock workers in the FLS) was \$18.12 per hour. The average farmworker hourly wage in 2024 was just half (52%) of the average hourly wage for all workers in the United States in 2024, which was \$34.27 per hour.<sup>6</sup>

The average hourly wage for production and nonsupervisory *non*-farm workers—the most appropriate cohort of nonagricultural workers to compare with farmworkers—was \$27.56, according to the Current Employment Statistics from the Bureau of Labor Statistics (BLS). In other words, farmworkers earned just under 60% of what production and nonsupervisory workers outside of agriculture earned, or three-fifths. In 2024, the farmworker wage gap remained substantial and virtually unchanged from the previous three years. USDA's ERS shows that between 1990 and 2023, the gap slowly narrowed from 50% to 60% and has described the wage gap between farmworker and nonfarm worker wages as “still substantial, but it is slowly shrinking.”<sup>7</sup>

Figure A

## The farmworker wage gap in 2024: Farmworkers earn very low wages compared with other workers

Average hourly wage rate for nonsupervisory farmworkers nationwide and H-2A farmworkers in selected states, compared with average hourly wages of other workers, 2024



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**Notes:** All values are for 2024 and in 2024 dollars. HS = high school. H-2A wage reflects the Adverse Effect Wage Rate set by the Department of Labor for fiscal year 2024 for migrant farmworkers working in H-2A status in the listed states of Florida and Georgia, which together account for nearly one-quarter of all H-2A workers. Nonsupervisory nonfarm workers' wage represents the average hourly earnings of production and nonsupervisory employees, total for the private sector, not seasonally adjusted. Nonsupervisory farmworkers' wage is the gross average hourly wage of field and livestock workers, combined. Data for all workers, and for workers with a high school diploma and less than high school, can be found at the Economic Policy Institute State of Working America Data Library.

**Source:** Author's analysis of U.S. Department of Agriculture, [Farm Labor Reports](#), November 2025; nonfarm wage data from the Current Employment Statistics survey, Bureau of Labor Statistics, U.S. Department of Labor [Series Id: CEU0500000008, Series Title: Average hourly earnings of production and nonsupervisory employees, total private, not seasonally adjusted]; [EPI analysis](#) of CPI-ORG microdata; Foreign Labor Application Gateway, "[H-2A Adverse Effect Wage Rates](#)," last updated July 17th, 2024, U.S. Department of Labor.

Farmworkers have very low levels of educational attainment and their wages are comparable to workers in other industries with similar educational attainment. According to the NAWS, 27% completed the 10th, 11th, or 12th grade, and only 16% completed some education beyond high school.<sup>8</sup> Farmworkers earn the same or less than the two groups of nonfarm workers with the lowest levels of education in the United States: Nonsupervisory farmworkers earned 10 cents an hour more than the average wage earned by workers without a high school diploma (\$18.02), but earned \$5.61 less per hour than the average wage earned by workers with only a high school diploma (\$23.73).

The AEWR paid to H-2A workers varies by state. In 2024, it ranged from \$14.53 to \$19.75

per hour. That means that for many H-2A workers, including in some of the biggest states for H-2A employment, the wage they earned was even lower than the national average wage for all nonsupervisory farmworkers in 2024—meaning the gap between what many H-2A farmworkers and non-farm workers earn is even wider.

The AEW was higher than the national average farmworker wage of \$18.12 in 14 states, but in the other 35 states for which DOL published an AEW, it was lower than the national average. In Florida and Georgia—the top two states for H-2A employment, and where nearly a quarter of all H-2A jobs were located in 2024, workers were paid much less than the national average wage. The AEW in Florida was \$14.77 per hour, \$3.35 less than the national average farmworker wage. And Georgia was tied with South Carolina for the second-lowest overall state AEW, at \$14.68 per hour, which was \$3.44 less than the national average wage.

To reiterate, the nearly one-quarter of all H-2A farmworkers employed in Florida and Georgia in 2024 were paid at least \$3.35 less per hour than the national average wage for farmworkers. And H-2A farmworkers in most other states were also paid less than the national average wage for farmworkers. None of the H-2A wages rates, not even those with the highest AEWs, are exorbitant salaries that can be cut without harming farmworkers and their livelihoods, contrary to what some agribusiness representatives want the public and lawmakers to believe.

## **DOL’s claim about the increase in the AEW to justify cutting wages ignores the fact that AEW wage growth over the past 20 years has been almost identical to wage growth for other low wage workers**

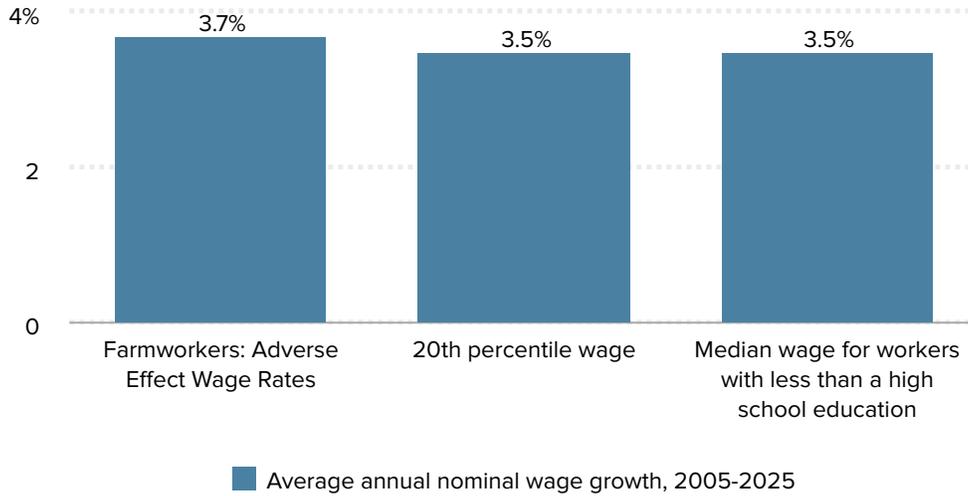
The value and the rate of increase of the AEW has become a hot-button issue and many claims about its impact have been made over the years by representatives of industry. For example, the American Farm Bureau has called the previous AEW methodology “a blow to growers” and AmericanHort said the AEWs were “steep.”<sup>9</sup>

Many of the claims by industry advocates and even DOL about year-to-year AEW increases often do not adjust for inflation, which overstates the actual increase in terms of its dollar value. This is a basic mistake that misleads—and it misleads particularly during times of relatively rapid inflation, like the post-pandemic period. DOL echoes these misleading claims from industry advocates and makes their own in the preamble to the October 2025 IFR, making the year-over-year increases in the AEW seem greater than they truly are. DOL notes that the national average AEW has more than doubled in nominal terms over 20 years from \$8.56 in 2005 to \$17.74 in 2025.<sup>10</sup> But DOL’s own CPI Inflation Calculator adjusts the value of \$8.56 in September 2005 to \$13.99 in September 2025, resulting in a real increase of just over one quarter over two decades, at 26.8%, which over that period averages out to just 1.2% per year.

Figure B

## Nominal wage growth for farmworkers has been similar to other low-wage workers for the past two decades

Average annual nominal wage growth for farmworkers (according to the Adverse Effect Wage Rate), workers at the 20th percentile, and workers with less than a high school education, 2005-2025



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**Notes:** 20th percentile and less than high school nominal wages from 2024 have been inflated to 2025 dollars using the [CBO projection for CPI-U](#).

**Source:** EPI analysis of Adverse Effect Wage Rates for 2005 and 2025, from the Employment and Training Administration, U.S. Department of Labor; Office of Foreign Labor Certification, [OFLC Performance Data](#), fiscal year 2024 H-2A disclosure data file, U.S. Department of Labor. Data for the [20th percentile nominal wage](#) and [median nominal wage for workers with less than a high school education](#) come from the State of Working America Data Library ([data.epi.org](#)).

If we examine the same period for other low-wage workers in nominal terms, we also see that wage growth for farmworkers paid the AEWR is in line with—nearly identical to—nominal wage growth for other low wage workers in the United States. **Figure B** shows annualized wage growth for workers paid at the 20<sup>th</sup> percentile wage, as well as the median wage for workers with less than a high school education—both of which are good measures for typical low-wage workers. Both saw annual nominal wage growth that was at 3.5% between 2005-2025, the period that DOL identifies. Farmworkers earning the AEWR over that same period saw annualized wage growth of 3.7%, nearly identical to other typical low-wage workers. Thus, DOL’s main example of runaway wage growth for farmworkers does not hold water.

## The 1% to 2% real annual wage growth of the AEWR over the past 15 years is solid but not

## unsustainable, and still making up for lost ground

This section examines the real value of the AEW over the past 15 years. We do not suggest that we know exactly what the appropriate AEW for each state should be or suggest that changes in the AEW have no impact on farmers, or make any other bold claims about the AEW. This section is simply an evidence-based look at the value of the AEW over time, as a response to claims by industry and DOL that the AEW has risen quickly and too sharply.

As noted in the previous section, alarmist claims about wage growth for the AEW are numerous. See this comment from Craig Regelbrugge from AmericanHort, who noted that “growers in Delaware, Maryland, New Jersey, and Pennsylvania will take the biggest hit, with a 9.6% increase” in the AEW from 2021 to 2022, with California’s increasing “more than 8%.”<sup>11</sup> Regelbrugge calculates these increases in nominal terms—but what do the increases look like after one adjusts for inflation?

While the percentage increase from 2021 to 2022 was in fact the largest in the states of Delaware, Maryland, New Jersey, and Pennsylvania, after adjusting for inflation, the increase was just 2.3% in those states. A year-over-year real hourly average wage increase of 2.3% is not even large enough to be consistent with the wage gains that could be reasonably expected for an occupation where employers have argued that severe labor shortages exist. If there are in fact labor shortages, it is reasonable to expect wages to rise; that’s simply Economics 101. And a shortage means by definition that the wage increase must be significantly more rapid than would be sustainable and expected in the long-run. Over the pandemic business cycle (between 2019 and 2024) economy-wide productivity growth has averaged 2.1% per year—and this should be the benchmark for real wage growth that is sustainable in the long-run. A raise of 2.3% for a given sector is hardly one that unambiguously signals a severe labor shortage, especially considering how low H-2A wages are relative to other occupations, and how underpaid farmworkers have been for decades.

It would take literally decades of AEW increases exceeding productivity growth by this amount before H-2A workers had made up the amount these wages had lagged economy-wide average wage growth in recent decades. And in California, what did the “more than 8%” AEW increase that Regelbrugge cites amount to after adjusting for inflation? H-2A farmworkers in California only saw a real increase of less than one percent (0.9%) in 2022.<sup>12</sup> Compare this to food inflation, which was 9.95% in 2022.<sup>13</sup> Arguably, the food sector generally was seeing potential income gains to easily cover the AEW increases. Not all of the income gains went to the farm operators that employ farmworkers, of course, but presumably they received enough of a share that would have covered a wage increase of 1% to 2%.

Now let’s turn to the AEWs in all states over the past 15 years up to 2025. **Table 1** shows the Adverse Effect Wage Rates for H-2A farmworkers in all states with an AEW between 2011 and 2025, in values that have been adjusted to constant 2025 dollars, and shows the

calculated total real change in terms of dollar value, as well as the real total percentage change, and the annualized real percentage change per year, from 2011 to 2025. The AEWRs listed are ranked by number of H-2A workers, using the number of workers certified from DOL as a proxy for the number of workers.

The top five states for H-2A employment together account for half of all H-2A employment nationwide (49.9%). The table shows that in Florida, the biggest state for H-2A farmworkers—where 12.3% of H-2A farmworkers are employed—the value of the AEWR increased by a total of \$3.07 between 2011 and 2025 (in constant 2025 dollars); that’s a total increase in value of 23.4% over 15 years. The average annual growth was 1.5% over the 2011-25 period. In Georgia, the second-biggest state for H-2A employment—where 11.3% of H-2A farmworkers are employed, the value of the AEWR increased by \$3.45 over the past 15 years, averaging an increase of 1.7% per year.

The largest increase in the value of the AEWR (in constant 2025 dollars) was in California, which accounts for nearly 10% of H-2A employment. In California, the total real value of the AEWR increased by \$5.69 over the past 15 years; a total percentage increase of 39.9%, which amounts to annualized percentage increase of 2.4% per year.

Washington, the next biggest state for H-2A employment, was one of 10 states that saw wage growth that was above 2% per year for 2011-25, growing at 2.2% per year. The fifth biggest H-2A state, North Carolina, increased by \$3.28 over the last 15 years, a total increase of 25.5%, growing annually at an average of just 1.6% per year.

For the increases that occurred in the Pacific states, it is likely that those larger increases were driven by increases in the states’ minimum wage laws, which then fed into the FLS. The state minimum wages in California and Washington are more than double the minimum wage of \$7.25 in Georgia and more than \$2 more than the state minimum wage in Florida.

In total, as the table shows, there were 39 states where the annual average real increase in the AEWR was less than 2%. There were 10 states where annual real wage growth was 1.6% to 1.9%, 14 states had annual wage growth that was 1.5%, and in 15 states, wage growth was 1.2% to 1.4%. The average yearly real percentage increase for each state over the 15-year period was 1.6%, and if weighted by the number of H-2A workers in the state, 1.7%.

The annual average real wage growth of 1.2% to 2.2%, with a weighted average of 1.7%, as Table 1 shows—as well as the 1.9% annual real wage growth in the national farmworker wage over the past decade according to USDA survey data which DOL cites<sup>14</sup>—represents decent wage growth for farmworkers and suggests a relatively tight labor market for farmworkers. However, it represents little progress for farmworkers who are in an occupation where they are exempted from key labor laws and wage and hour standards, and where they have earned 50% to 60% of the wage earned by comparable nonsupervisory workers outside of agriculture (see Figure A and discussion above). It would take many more years of faster wage growth for farmworkers to begin to approach even three-fourths of what nonsupervisory workers earn outside of agriculture.

Table 1

## Real value of the H-2A AEW increased by 1.2% to 2.2% in U.S. states over the past 15 years

Adverse Effect Wage Rates for H-2A farmworkers, total change and percentage change from 2011 to 2025, adjusted to 2025 dollars, by state and ranked by number of workers

State	# of workers	Share of total H-2A workers	AEWR 2011	AEWR 2025	Total real change	Real % change total	Real % change annual
Florida	47,396	12.3%	\$13.16	\$16.23	\$3.07	23.4%	1.5%
Georgia	43,436	11.3%	\$12.63	\$16.08	\$3.45	27.3%	1.7%
California	37,511	9.8%	\$14.28	\$19.97	\$5.69	39.9%	2.4%
Washington	35,884	9.3%	\$14.68	\$19.82	\$5.14	35.0%	2.2%
North Carolina	27,532	7.2%	\$12.88	\$16.16	\$3.28	25.5%	1.6%
Michigan	15,015	3.9%	\$14.71	\$18.15	\$3.44	23.4%	1.5%
Louisiana	14,036	3.6%	\$12.42	\$14.83	\$2.41	19.4%	1.3%
Texas	13,710	3.6%	\$13.36	\$15.79	\$2.43	18.1%	1.2%
Arizona	12,800	3.3%	\$13.30	\$17.04	\$3.74	28.2%	1.8%
New York	10,294	2.7%	\$14.20	\$18.83	\$4.63	32.6%	2.0%
Kentucky	7,650	2.0%	\$13.13	\$15.87	\$2.74	20.9%	1.4%
Arkansas	7,556	2.0%	\$12.42	\$14.83	\$2.41	19.4%	1.3%
Idaho	7,498	1.9%	\$13.71	\$16.83	\$3.12	22.8%	1.5%
Mississippi	7,101	1.8%	\$12.42	\$14.83	\$2.41	19.4%	1.3%
South Carolina	7,097	1.8%	\$12.63	\$16.08	\$3.45	27.3%	1.7%
Tennessee	6,330	1.6%	\$13.13	\$15.87	\$2.74	20.9%	1.4%
Iowa	5,585	1.5%	\$15.28	\$18.65	\$3.37	22.1%	1.4%
Illinois	5,198	1.4%	\$15.01	\$19.57	\$4.56	30.4%	1.9%
Indiana	5,058	1.3%	\$15.01	\$19.57	\$4.56	30.4%	1.9%
Virginia	4,925	1.3%	\$12.88	\$16.16	\$3.28	25.5%	1.6%
Ohio	4,601	1.2%	\$15.01	\$19.57	\$4.56	30.4%	1.9%
Colorado	4,396	1.1%	\$14.51	\$17.84	\$3.33	22.9%	1.5%
Oregon	4,260	1.1%	\$14.68	\$19.82	\$5.14	35.0%	2.2%
North Dakota	4,191	1.1%	\$15.95	\$19.21	\$3.26	20.4%	1.3%
Nebraska	4,120	1.1%	\$15.95	\$19.21	\$3.26	20.4%	1.3%
Minnesota	4,025	1.0%	\$14.71	\$18.15	\$3.44	23.4%	1.5%
Nevada	3,519	0.9%	\$14.51	\$17.84	\$3.33	22.9%	1.5%

Table 1  
(cont.)

State	# of workers	Share of total H-2A workers	AEWR 2011	AEWR 2025	Total real change	Real % change total	Real % change annual
Pennsylvania	3,123	0.8%	\$14.68	\$17.96	\$3.28	22.3%	1.5%
Wisconsin	2,950	0.8%	\$14.71	\$18.15	\$3.44	23.4%	1.5%
New Jersey	2,614	0.7%	\$14.68	\$17.96	\$3.28	22.3%	1.5%
Kansas	2,377	0.6%	\$15.95	\$19.21	\$3.26	20.4%	1.3%
South Dakota	2,346	0.6%	\$15.95	\$19.21	\$3.26	20.4%	1.3%
Missouri	2,266	0.6%	\$15.28	\$18.65	\$3.37	22.1%	1.4%
New Mexico	2,219	0.6%	\$13.30	\$17.04	\$3.74	28.2%	1.8%
Montana	1,904	0.5%	\$13.71	\$16.83	\$3.12	22.8%	1.5%
Utah	1,779	0.5%	\$14.51	\$17.84	\$3.33	22.9%	1.5%
Connecticut	1,566	0.4%	\$14.20	\$18.83	\$4.63	32.6%	2.0%
Maryland	1,468	0.4%	\$14.68	\$17.96	\$3.28	22.3%	1.5%
Oklahoma	1,420	0.4%	\$13.36	\$15.79	\$2.43	18.1%	1.2%
Maine	1,416	0.4%	\$14.20	\$18.83	\$4.63	32.6%	2.0%
Delaware	941	0.2%	\$14.68	\$17.96	\$3.28	22.3%	1.5%
Wyoming	662	0.2%	\$13.71	\$16.83	\$3.12	22.8%	1.5%
Vermont	596	0.2%	\$14.20	\$18.83	\$4.63	32.6%	2.0%
Massachusetts	561	0.1%	\$14.20	\$18.83	\$4.63	32.6%	2.0%
Hawaii	465	0.1%	\$16.63	\$20.08	\$3.45	20.7%	1.4%
West Virginia	331	0.1%	\$13.13	\$15.87	\$2.74	20.9%	1.4%
New Hampshire	325	0.1%	\$14.20	\$18.83	\$4.63	32.6%	2.0%
Alabama	61	0.0%	\$12.63	\$16.08	\$3.45	27.3%	1.7%
Rhode Island	10	0.0%	\$14.20	\$18.83	\$4.63	32.6%	2.0%
Total	384,728			Average	\$3.59	25.4%	1.6%
				Weighted average	\$3.72	27.0%	1.7%

**Economic Policy Institute**

**Notes:** All values have been adjusted to constant 2025 using the annual C-CPI-U through 2024 and then inflated to 2025 dollars using the **CBO projection for CPI-U**. Number of workers column represents the number of workers certified by the the Office of Foreign Labor Certification in the U.S. Department of Labor, which is used as a proxy for the number of workers employed in each state.

**Source:** EPI analysis of Adverse Effect Wage Rates for **2011** and **2025**, from the Employment and Training Administration, U.S. Department of Labor; Office of Foreign Labor Certification, **OFLC Performance Data**, fiscal year 2024 H-2A disclosure data file, U.S. Department of Labor

**The IFR violates the APA because there is no**

## emergency and DOL did not consider alternative policies, methodologies, and key stakeholders

DOL has violated the Administrative Procedure Act (APA) with this IFR, both because (1) it has unjustifiably asserted an emergency that necessitates the issuance of an IFR, rather than the usual APA process of issuing a notice of proposed rulemaking, receiving comments from the public, and then considering public input before publishing a final rule; and (2) because DOL did not consider alternative policies and methodologies or assess their impact, or adequately discuss the impact on key stakeholders other than farm employers.

DOL has bypassed the APA's requirements by claiming that there is good cause to do so. An agency may only bypass the APA's procedural requirements only if it "for good cause finds ... that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest,"<sup>15</sup> and "the good-cause inquiry is "meticulous and demanding."<sup>16</sup> Courts have "repeatedly made clear that the good cause exception 'is to be narrowly construed and only reluctantly countenanced.'"<sup>17</sup>

DOL claims that there is an emergency labor shortage in agriculture that threatens the American food supply, and that without the IFR, farm operators will be harmed and food prices will spike. However it is clear that DOL could have considered alternative AEWL methodologies that could have been implemented quickly and kept farm wages stable, rather than issuing an IFR that leads to the massive wage cuts for H-2A farmworkers that DOL estimates will result. Even if we accept DOL's claim that there is good cause for an emergency IFR—to the extent that one might exist—it would be an emergency that is entirely of the administration's own making. DOL notes that the administration's immigration enforcement efforts will remove many farmworkers, leaving farm operators with a shortage of available workers, which will cause food prices to spike. Did the administration consider slowing down or ending immigration enforcement efforts on farms, in order to prevent food prices from surging and to avoid reducing the supply of available labor? Did the administration consider providing work authorization to current farmworkers who lack an Employment Authorization Document (EAD), or restoring and expanding temporary immigration protections like parole, Temporary Protected Status, and deferred action, as current law permits, to maintain or even increase the supply of U.S. farmworkers? (While these measures would be the purview of DHS, DOL could consult with DHS and the White House on these measures.)

Another fact DOL has pointed to, to justify the emergency nature of the IFR, is the discontinuation of USDA's Farm Labor Survey (FLS). Again, this is an emergency of the administration's own making and could have been avoided. Ending the FLS was abrupt, ill advised, and no legitimate justification was provided for it. But even in the face USDA discontinuing the FLS, DOL could have continued to use the 2025 AEWL rates while it crafted a new AEWL methodology and notice of proposed rulemaking to take input from stakeholders. Or it could have adjusted the 2025 AEWLs upward by the estimated amount

that the Congressional Budget Office expects for inflation from 2025 to 2026, or the average AEWI inflation over the last five or ten years.

DOL also fails to adequately consider the true costs of driving down wages and working conditions for U.S. farmworkers standards. Not only will the IFR hurt the ability of U.S. farmworkers to feed themselves and their families, it will hurt rural communities in both Democratic and Republican-controlled states, negatively impact economic activity, and drive down wages and working conditions for low-wage workers in a wide range of occupations. It will also impose costs on labor unions by making it harder to organize and bargain, and make more difficult for advocacy groups to assist both migrant and U.S.-born farmworkers to assert their workplace rights. These costs must be estimated and considered by DOL before implementing the new AEWI methodology and the massive wage cuts it will impose.

## **The new AEWI methodology violates the H-2A statute because it ignores the adverse impacts that will result for U.S. farmworkers**

DOL notes in the IFR, in the section titled “Need for Regulation,” that “With illegal border crossings at record lows—agricultural employers, who have historically been incentivized to rely on [unauthorized immigrant farmworkers] because of high AEWIs mandated to use the H-2A program, will experience economic harm caused by mounting labor shortages.” This is the main justification offered to justify the substance of the updated AEWI methodology.

In the IFR’s introduction, DOL cites 8 U.S.C. §1188(a)(1), the statutory section stating that before the U.S. Department of Homeland Security (DHS) can approve a petition for an H-2A workers, DOL must assess and certify that:

*(A) there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition, and*

*(B) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.*

However, subsection (A) is ignored via DOL’s blanket and evidence-free assertion that not enough U.S. workers will apply for farm jobs, and nowhere in the IFR does DOL discuss subsection (B), by assessing or estimating whether the IFR will “adversely affect the wages and working conditions of workers in the United States similarly employed.” In fact, U.S. farmworkers are not treated as stakeholders in the IFR and the impact on their wages and working conditions are entirely ignored.

These omissions alone invalidate the IFR and justify that it be canceled and rescinded.

DOL does not explain how lowering wages for H-2A workers and significantly expanding the program—as DOL estimates will occur, to the tune of wage transfers of \$24 billion from workers to employers and an increase of 132,000 H-2A workers in the H-2A program—will not adversely affect U.S. farmworkers. In fact, it is clear and obvious that lowering wages for 10% to 15% of the crop workforce comprised of H-2A workers to far below current average wage rates will put downward pressure on the wages of all farmworkers, including U.S. farmworkers, and make farm jobs less attractive to available U.S. workers. Instead of grappling with this basic reality, DOL makes a blanket statement that “qualified and eligible U.S. workers will not make themselves available in sufficient numbers.” Perhaps DOL is attempting to discourage U.S. farmworkers from applying for farm jobs by lowering overall wage rates—and that will in fact be the result of the new AEW method in the IFR. However, there is little evidence to support the assertion that there are not sufficient U.S. workers to fill seasonal farm jobs. In fact, the vast majority of the 2.2 million agricultural workers hired by farm operators reside in the United States, and one-third of crop farmworkers are U.S.-born citizens according to DOL’s own estimates in the NAWS.<sup>18</sup>

Statements from other agencies in the administration also undermine DOL’s claim. In June, USDA Secretary Brooke Rollins went so far as to say that despite the “mass deportations” which DOL predicts in the IFR will result in too few U.S. workers available to fill seasonal farm jobs, Rollins said that the administration would “move the [farm] workforce towards automation and 100 percent American participation,”<sup>19</sup> adding that:

*There’s been a lot of noise in the last few days and a lot of questions about where the president stands and his vision for farm labor... There are plenty of workers in America.*<sup>20</sup>

Congress sought specifically to protect U.S. farmworkers from adverse effects when establishing the H-2A program and DOL cannot ignore them. The H-2A statute does not give DOL flexibility to make a blanket determination that U.S. workers will no longer be interested in farm jobs and therefore disregard the impact that the H-2A program will have on wages of similarly employed U.S. workers. The rule is therefore inconsistent with the law and should be rescinded.

## **The new AEW method violates the H-2A statute because it will adversely impact the wages and working conditions of farmworkers, including U.S. farmworkers**

Between 2010 and September 30, 2025, the AEW was based on a survey of farm operators conducted by USDA, commonly referred to as the Farm Labor Survey (FLS) which set AEW wage rates for each state based on the regions surveyed by the FLS. While far from perfect, it was the best data set available on the wages of directly hired farmworkers in the United States. On August 28, 2025, USDA abruptly announced that it

was discontinuing the FLS.<sup>21</sup> A month later, on October 2, 2025, DOL issued the IFR laying out a new AEWB based on data from a different data set, the DOL's Occupational Employment and Wages Statistics (OEWS) survey. In short, the OEWS is an inferior data set for agriculture and is not a valid survey for setting farmworkers' wages, in part because it only surveys nonfarm employers—meaning farm labor contractors and other staffing firms that send farmworkers to different farms and pay them roughly only three-fourths of what farmworkers are paid when they are directly hired by farm operators.<sup>22</sup>

The updated AEWB cuts wage rates dramatically and creates two artificial “skill levels” for each state which set H-2A wages at the 17<sup>th</sup> percentile of wages surveyed (skill level 1) and at the 50<sup>th</sup> percentile (skill level 2), which is the median of wages surveyed, based on five combined occupations DOL has determined are relevant in the OEWS. DOL estimates that 92% of H-2A workers will be paid at skill level 1 and 8% at skill level 2. DOL's IFR is fairly explicit about its desire to lower wages for H-2A farmworkers in order to benefit farm employers and increase H-2A hiring, and the administration's move to eliminate the FLS and DOL's move to substitute it with the OEWS appears to be a key action taken to achieve that.

In addition, DOL eliminates the previous requirement that employers pay for 100% of housing costs for H-2A workers. Currently, H-2A employers are required to provide housing for workers if they would not reasonably be able to return to their residences on a daily basis. This is an important requirement of the program given that H-2A workers are so low-paid that they cannot reasonably be expected to pay for their own housing, and that many farms where H-2A workers are employed are in remote areas, and not located close enough to a supply of affordable, accessible housing that still allow workers to report for duty for long hours in the fields. For years, news reports and worker advocates have documented many of the substandard conditions in employer-provided housing for farmworkers.<sup>23</sup> However, instead of improving these problems, the AEWB would no longer require employers to pay for 100% of housing costs and implements a new deduction to let farm owners take deductions for housing out of H-2A workers' paychecks—sometimes as much as nearly one-third of their hourly pay (up to 30%). This will harm farmworkers and reverberate across the industry.

In total, between wage cuts and housing deductions, DOL estimates that over \$1.7 billion will be transferred from H-2A workers' pockets back to farm employers under the new wage rule in 2026, amounting to \$24 billion over the next ten years as the program grows to over 500,000 jobs, as DOL predicts will occur. This would represent a shocking upward redistribution of income away from some of the country's most essential workers for the food system and its most underpaid. All of these impacts clearly violate the H-2A statute's prohibition on “adversely affect[ing] the wages and working conditions of workers in the United States similarly employed,” and the lower wage rates will make it impossible for DOL to determine whether or not there are sufficient U.S. farmworkers “who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved” in H-2A job orders.

## **New AEWB based on OEWS data will result in**

## **\$4.4 to \$5.4 billion in wages being transferred annually from farmworkers to farm operators at the current size of the H-2A program**

We believe the DOL's estimates are incomplete because they fail to fully consider the wage impacts of the new AEW, by not considering alternative methodologies and other scenarios that may result. For instance, DOL did not consider the impact on state minimum wage rates and whether the AEW housing deduction may conflict with state laws, and DOL did not estimate the impact that a massive wage cut for H-2A farmworkers will have on U.S. farmworkers. In this section we present new estimates that we hope will inform the public and DOL as to the true impact of the October 2025 AEW. They should be considered low-end estimates because the IFR also permits farm operators to pay H-2A workers the AEW for duties associated with higher-paying non-farm jobs for up to 50% of their work hours. This will put downward pressure on a number of occupations like construction and truck driving, but we have not attempted to calculate those losses to workers, and neither has DOL.

The IFR will significantly reduce the wages paid to H-2A workers. Weighted across their total weeks worked by state according to 2024 H-2A disclosure data from DOL's Office of Foreign Labor Certification,<sup>24</sup> the average AEW set for 2025 was \$17.43. The rule, however, proposes a two-tiered wage structure with far lower wages for 2026. The average skill level 1 and skill level 2 wages would be \$13.70 and \$17.22, respectively, even without housing deductions. With housing deductions, the average level 1 and level 2 wages would be \$11.78 and \$15.30.

In many cases, the new state AEW wages are low enough to fall below the wage rates set by state minimum wage laws, with the housing deduction lowering it even further, and in some states, the AEWs will fall below the state minimum wage only after housing deductions are subtracted. In all those cases, the state minimum wage becomes the AEW. As of yet, it is unclear how states will react to workers being paid below the state minimum after the housing deduction, and what guidance the federal government will provide with respect to it. For example, in Connecticut, the 2026 skill level 1 H-2A wage is \$15.93, but the 2026 state minimum wage will be \$16.94. If the state fully enforces its minimum wage and prohibits pay rates from falling below the state minimum, regardless of the Connecticut housing deduction of \$2.06, then the lowest wage an H-2A worker would be paid legally is \$16.94. But if Connecticut or federal guidance allows the AEW minus the housing deduction paid to workers to go below the state minimum wage, then an H-2A worker in Connecticut could be paid as low as \$14.88 per hour (i.e. the state minimum wage minus the housing deduction).

It is possible that some states will take the position that the hourly wage rates paid to H-2A workers may not go below the state minimum after subtracting the housing deduction, while some states may allow the deduction, arguing that the federal regulation setting the AEW supersedes the state minimum wage law. The agricultural industry is likely to argue the latter, and the issue may end up in multiple state and federal courts. As a result of this

Table 2

## Farmworker pay will fall by \$4.4 to \$5.4 billion under Trump's H-2A wage rule

Annual wage losses for H-2A and U.S. farmworkers (\$2025)

	State minimum wage fully enforced		Housing deduction can push wage below state minimum	
H-2A farmworkers	\$1.7 billion	(25.8%)	\$2.1 billion	(31.5%)
U.S. farmworkers	\$2.7 billion	(7.1%)	\$3.3 billion	(8.7%)
Total, all farmworkers	\$4.4 billion	(9.9%)	\$5.4 billion	(12.1%)

### Economic Policy Institute

**Notes:** Wage losses are the difference in 2026 annual wages under the October 2, 2025 Adverse Effect Wage Rate (AEWR) interim final rule, as compared to the previous AEWR methodology. Estimates assume the current size of the H-2A program and that that 92% of H-2A workers are paid skill level 1 wages and 8% are paid skill level 2 wages.

**Source:** Authors' analysis of Zachariah Rutledge, Marcelo Castillo, Timothy J. Richards, and Philip Martin, "H-2A Adverse Effect Wage Rates and U.S. farm wages," *American Journal of Agricultural Economics*, pp. 1–24, 2025; Bureau of Labor Statistics, *Quarterly Census of Employment and Wages* [2024 data files, annual averages], U.S. Department of Labor, accessed November 13, 2025; Office of Foreign Labor Certification, *Performance Data [H-2A Disclosure Data, FY 2024, Q4]* accessed November 18, 2025.

uncertainty, our estimates consider both state minimum wage scenarios.

The first row of **Table 2** estimates the annual pay losses for H-2A workers in 2026 under the IFR, assuming, as DOL does, that 92% of H-2A workers would be paid the skill level 1 wage. If state minimum wages were fully enforced and do not permit the hourly AEWR paid to workers to go below the state minimum wage, then H-2A annual wages would fall by \$1.7 billion in 2026, or 25.8%. If state minimum wages were not fully enforced and the housing deduction drops the AEWR below the state minimum wage rates, the losses would be larger: a \$2.1 billion or 31.5% annual pay loss. Different states may treat the AEWR and state minimum wage differently; if some states prohibit and some permit the housing deduction to be less than the state minimum wage, then the total amount of annual pay losses would fall somewhere in between those two amounts.

Reducing the AEWR for H-2A workers will also lower wages for U.S. farmworkers—one-third of whom are U.S.-born citizens, according to DOL's latest NAWS survey.<sup>25</sup> A fall in the H-2A wage will increase demand for H-2A workers, since employers can save significantly on labor costs if they hire them. As a result, it will become *relatively* more expensive to hire non-H-2A U.S. farmworkers. Employers will therefore reduce demand for U.S. farmworkers, putting downward pressure on their wages.

This is not hypothetical: Rutledge et al. found that a 10% increase in the AEWR caused an almost 2.8% increase in the wages of U.S. farmworkers.<sup>26</sup> With those estimates, the authors estimated that a one-year AEWR wage freeze would reduce annual U.S. farmworker wages by \$475 million. Using a similar methodology, we estimate the likely wage reductions for U.S. farmworkers due to the new rule.<sup>27</sup>

The H-2A wage reduction under a fully enforced minimum wage is 25.8%. Based on the responsiveness of U.S. farmworker wages to H-2A wage rates from Rutledge et al., the second row of Table 1 shows that the new rule could reduce U.S. farmworker wages by 7.1%, or \$2.7 billion in annual pay. The wage losses are again larger if states allow the housing deduction to push pay below the state minimum. In that case, U.S. farmworkers in 2026 would experience an annual pay cut of \$3.3 billion, or 8.7%.<sup>28</sup>

This means that farmworkers in total will see annual pay cuts of about \$4.4 billion to \$5.4 billion, depending on the enforcement of state minimum wage laws (9.9% to 12.1%). This amounts to a massive pay cut for farmworkers who are already some of the lowest-paid employees in the entire U.S. labor market, while working in one of the most difficult and dangerous jobs in the economy.

### ***Estimates for alternative scenarios for wage transfers from H-2A farmworkers to farm operators***

In this subsection we discuss alternative skill level scenarios that could result and one that DOL could have considered. The scenario that DOL predicts will result, with 92% of H-2A farmworkers being paid the skill level 1 wage and 8% being paid the skill level 2 wage, is an arguably reasonable estimate given certified wage rates in DOL disclosure data and employer behavior under a similar wage rule in the H-2B program<sup>29</sup>—a sister visa program of H-2A for workers in occupations outside of agriculture—which was implemented by the George W. Bush administration.

The first possible alternative scenario, which we believe is reasonable given employer savings and the growth that is likely to occur in the H-2A program, is one where 100% of H-2A workers are paid at the skill level 1 wage (or closer to 100% than 92%). Thus we have calculated what the wage losses would look like in that case, shown in **Table 3**. If state minimum wages were fully enforced and do not permit the hourly AEWR paid to workers to go below the state minimum wage, then H-2A annual wages would fall by \$1.8 billion in 2026, or 26.8%. If state minimum wages were not fully enforced and the housing deduction drops wage rates below the state minimum wage rates, the losses would be larger: a \$2.2 billion or 32.9% annual pay loss. Both result in a pay cut that is \$100 million greater relative to the 92/8 scenario.

Another possible scenario could result if DOL updated and amended the IFR to require the minimum AEWR to be set at the skill level 2 wage, which is the median wage (i.e. the 50<sup>th</sup> percentile wage), for the five OEWS occupations DOL uses to calculate the state AEWRs. This is not a likely scenario without a change to the IFR because unless they are forced to do otherwise, employers are likely to opt for the lower pay rates, as DOL also predicts. But setting the AEWR at the median would be a slightly more reasonable methodology for setting the AEWR—since it would at least arguably prohibit employers from undercutting H-2A wage rates relative to the median OEWS wages. (The H-2B program for example, sets the prevailing (minimum) wage rate at the local average wage for the occupation according to the OEWS.) Nevertheless this would still not be a methodology we believe is justified and we would not support it. Table 3 shows that even under this slightly more

Table 3

## Trump's AEWB will transfer billions from H-2A farmworkers to employers

Annual wage losses for H-2A farmworkers at the current size of the H-2A program (2025\$)

H-2A skill level scenarios	Fully enforced state minimum wage		Housing deduction can push wage below state minimum	
Level 1 = 92%, Level 2 = 8%	\$1.7 billion	(25.8%)	\$2.1 billion	(31.5%)
Level 1 = 100%, Level 2 = 0%	\$1.8 billion	(26.8%)	\$2.2 billion	(32.9%)
Level 1 = 0%, Level 2 = 100%	\$0.9 billion	(13.3%)	\$1.0 billion	(15.1%)

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**Notes:** Wage losses are the difference in 2026 annual wages under the October 2, 2025 Adverse Effect Wage Rate (AEWR) interim final rule, as compared to the previous AEWB methodology. Estimates assume the current size of the H-2A program and that that 92% of H-2A workers are paid skill level 1 wages and 8% are paid skill level 2 wages.

**Source:** Authors' analysis of Zachariah Rutledge, Marcelo Castillo, Timothy J. Richards, and Philip Martin, "H-2A Adverse Effect Wage Rates and U.S. farm wages," *American Journal of Agricultural Economics*, pp. 1–24, 2025; Bureau of Labor Statistics, *Quarterly Census of Employment and Wages* [2024 data files, annual averages], U.S. Department of Labor, accessed November 13, 2025; Office of Foreign Labor Certification, *Performance Data [H-2A Disclosure Data, FY 2024, Q4]* accessed November 18, 2024.

defensible formulation of the AEWB, H-2A workers would still see a pay cut of roughly \$1 billion per year under both state minimum wage enforcement scenarios.

### *The median wage under the OEWS is still far too low*

This significant wage cut for H-2A farmworkers, even if they are paid at the median wage according to OEWS data, reveals the inferiority of the OEWS data set for setting the wages of farmworkers. The OEWS does not directly survey farm employers, rather nonfarm employers that act as subcontractors and pay farmworkers much less on average—thus the OEWS is not an accurate representation of the farm labor market and should not be used to set the state AEWBs. DOL notes in the interim final rule that the OEWS will begin surveying farm employers in May 2026 and that the May 2027 release of the OEWS will be the first to include those survey data. However, it will take a number of additional years for the OEWS to have a robust data sample from farm employers as compared to a dedicated farm employment survey like the USDA's FLS—three at least, given three-year cycle under which the OEWS operates under—and in the meantime, the wages of both H-2A and U.S. farmworkers will be undercut by billions each year.

### *Estimates for alternative scenarios for wage transfers from U.S. farmworkers to farm operators*

Similarly to the alternative scenarios discussed in the previous section, we have calculated the wage losses to U.S. farmworkers where 100% of H-2A workers are paid the skill level 1 wage and where 100% are paid the skill level 2 wage. **Table 4** shows that if state minimum

Table 4

## Trump's AEWB will transfer billions from U.S. farmworkers to employers

Annual wage losses for U.S. farmworkers at the current size of the H-2A program (2025\$)

H-2A skill level scenarios	Fully enforced state minimum wage		Housing deduction can push wage below state minimum	
Level 1 = 92%, Level 2 = 8%	\$2.7 billion	(7.1%)	\$3.3 billion	(8.7%)
Level 1 = 100%, Level 2 = 0%	\$2.8 billion	(7.4%)	\$3.4 billion	(9.0%)
Level 1 = 0%, Level 2 = 100%	\$1.4 billion	(3.7%)	\$1.6 billion	(4.1%)

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**Notes:** Wage losses are the difference in 2026 annual wages under the October 2, 2025 Adverse Effect Wage Rate (AEWR) interim final rule, as compared to the previous AEWB methodology. Estimates assume the current size of the H-2A program and that that 92% of H-2A workers are paid skill level 1 wages and 8% are paid skill level 2 wages.

**Source:** Authors' analysis of Zachariah Rutledge, Marcelo Castillo, Timothy J. Richards, and Philip Martin, "H-2A Adverse Effect Wage Rates and U.S. farm wages," *American Journal of Agricultural Economics*, pp. 1–24, 2025; Bureau of Labor Statistics, *Quarterly Census of Employment and Wages* [2024 data files, annual averages], U.S. Department of Labor, accessed November 13, 2025; Office of Foreign Labor Certification, *Performance Data [H-2A Disclosure Data, FY 2024, Q4]* accessed November 18, 2024.

wages were fully enforced and do not permit the hourly AEWB paid to workers to go below the state minimum wage, then annual wages for U.S. farmworkers would fall by \$2.8 billion in 2026, or 7.4%. If state minimum wages were not fully enforced and the housing deduction drops wage rates below the state minimum wage rates, the losses would be larger: a \$3.4 billion or 9% annual pay loss. Both result in a pay cut that is \$100 million greater relative to the 92/8 scenario.

Table 4 also shows that under the 100% skill level 2 scenario, U.S. farmworkers would see a pay cut of \$1.4 billion or \$1.6 billion, depending on enforcement of the state minimum wage laws. As noted earlier, different states may treat the AEWB and state minimum wage differently, so the total amount of annual pay losses would fall somewhere in between the amounts in each of the scenarios.

### Estimates for alternative scenarios for wage transfers from H-2A and U.S. farmworkers

The final table shows the estimates of wage losses under the same alternative skill and state minimum wage enforcement scenarios, but for all farmworkers (U.S. + H-2A) farmworkers. **Table 5** shows that if state minimum wages were fully enforced and do not permit the hourly AEWB paid to workers to go below the state minimum wage, then annual wages for all farmworkers would fall by \$4.6 billion in 2026, or 10.3%. If state minimum wages were not fully enforced and the housing deduction drops wage rates below the state minimum wage rates, the losses would be larger: \$5.6 billion, which is a 12.6% annual pay loss. Both result in a pay cut that is \$200 million greater relative to the 92/8 scenario.

Table 5

## Trump's AEWB will transfer billions from H-2A and U.S. farmworkers to employers

Annual wage losses for U.S. and H-2A farmworkers combined at the current size of the H-2A program (2025\$)

H-2A skill level scenarios	Fully enforced state minimum wage		Housing deduction can push wage below state minimum	
Level 1 = 92%, Level 2 = 8%	\$4.4 billion	(9.9%)	\$5.4 billion	(12.1%)
Level 1 = 100%, Level 2 = 0%	\$4.6 billion	(10.3%)	\$5.6 billion	(12.6%)
Level 1 = 0%, Level 2 = 100%	\$2.3 billion	(5.1%)	\$2.6 billion	(5.8%)

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**Notes:** Wage losses are the difference in 2026 annual wages under the October 2, 2025 Adverse Effect Wage Rate (AEWR) interim final rule, as compared to the previous AEWB methodology. Estimates assume the current size of the H-2A program and that that 92% of H-2A workers are paid skill level 1 wages and 8% are paid skill level 2 wages.

**Source:** Authors' analysis of Zachariah Rutledge, Marcelo Castillo, Timothy J. Richards, and Philip Martin, "H-2A Adverse Effect Wage Rates and U.S. farm wages," *American Journal of Agricultural Economics*, pp. 1–24, 2025; Bureau of Labor Statistics, *Quarterly Census of Employment and Wages* [2024 data files, annual averages], U.S. Department of Labor, accessed November 13, 2025; Office of Foreign Labor Certification, *Performance Data [H-2A Disclosure Data, FY 2024, Q4]* accessed November 18, 2024.

Table 5 shows that under the 100% skill level 2 scenario, all farmworkers would see a pay cut of \$2.3 billion or 5.1% if state minimum wages were fully enforced, or \$2.6 billion or 5.8% if they are not. Different states may treat the AEWB and state minimum wage differently, and in that case, the total amount of annual pay losses would fall somewhere in between those amounts.

## The IFR's new housing deduction from H-2A wages will harm H-2A workers and adversely impact U.S. farmworkers because farm operators will prefer to hire underpaid H-2A workers

The IFR creates a new housing deduction that H-2A workers must pay out of the wages of each hour they work—which DOL erroneously refers to as a "housing adjustment." In an Orwellian passage, DOL attempts to justify the housing deduction as promoting fairness for U.S. farmworkers who do not receive "additional non-wage compensation in the form of free housing."<sup>30</sup> The opposite is true: the housing deduction will harm both H-2A workers and U.S. workers.

H-2A workers are scarcely "benefitting" from employer-provided housing. H-2A housing is

in fact, primarily for the benefit of the employer. The employer benefits by having a worker remain on or near the worksite, reducing travel time. Employers also benefit by exerting additional control over their workers whose lodging they own and control; workers have few options if they wish to reside elsewhere, and employers sometimes restrict the ability of workers to invite guests, which could include labor organizers or nonprofit groups that could inform H-2A workers of their rights.

H-2A workers also cannot reasonably be expected to afford housing in the United States on the low wages paid to H-2A workers. Even if they could afford housing—it could be nearly impossible to find temporary housing in a remote rural area, or to navigate the rental process if they don't speak English, or have U.S. identification, or significant sums of money to pay for a down payment up front. H-2A workers also leave their families behind in their countries of origin and most are likely paying to maintain a residence there. Reducing the wages paid to H-2A workers by up to 30% as the IFR does, will only benefit employers by padding their profits by almost \$880 billion in 2026, as DOL estimates.<sup>31</sup>

The housing deduction will also harm U.S. farmworkers, not help them. H-2A rules before the IFR required employers to offer no-cost housing to U.S. farmworkers if they were in corresponding employment with H-2A workers, thus they were entitled to the same benefit if they needed housing. But the massive reduction in wages that H-2A workers will see from the housing deduction will greatly reduce labor costs for employers who hire H-2A workers as compared to U.S. farmworkers—undercutting U.S. wages and incentivizing employers to hire H-2A workers and bypass U.S. farmworkers—which will unquestionably “adversely affect” the wages and working conditions of U.S. farmworkers.

## **The updated AEWB methodology and the housing deduction will conflict with many state minimum wage laws and DOL has not provided guidance on how to resolve them**

The extremely low AEWBs that DOL has set in the IFR through the use of OEWS data and the creation of two skill levels has rendered the state AEWBs so low that many are now below the state minimum wage—or go below the state minimum wage after the housing deduction has been subtracted. Under the previous AEWB methodology, the AEWB was in all cases higher than the state minimum wage. While the state minimum wage will set the AEWB in states where the state minimum wage is higher than the AEWB, DOL has provided no guidance as to how H-2A employers should treat the housing deduction.

For example, in Florida, the biggest state for H-2A employment, the skill level 1 wage is \$12.47 and the Florida state minimum wage will be \$14.00 per hour in 2026. The AEWB methodology mandates that the higher state minimum wage of \$14.00 per hour will set the H-2A wage. But when the housing deduction is subtracted from the state minimum wage, the H-2A wage falls to \$12.00 per hour, violating the state minimum wage law. There are numerous states where this scenario plays out, but the IFR fails to mention or even

contemplate this reality, or to suggest what the appropriate H-2A wage would be in such situations.

It is unclear how states will react to workers being certified at and/or paid an H-2A wage that is below the state minimum after the housing deduction, or if DOL will provide any guidance with respect to it. It is possible that some states will take the position that the hourly wage rates paid to H-2A workers may not go below the state minimum regardless of the housing deduction—essentially outlawing the deduction—while some states may allow the deduction, arguing that the federal AEW regulation supersedes the state minimum wage law. The agricultural industry is likely to argue the latter, and the issue is almost certain to end up in multiple state and federal courts.

## **OEWS survey data are inadequate for setting the wage rates of H-2A farmworkers because they do not accurately represent the farm labor market**

Since 1910, USDA has satisfied a statutory mandate to procure and preserve information concerning agriculture, including “by the collection of statistics” and “any other appropriate means within his power”<sup>32</sup> by conducting the Agricultural Labor Survey, commonly referred to as the Farm Labor Survey (FLS).<sup>33</sup> For decades the FLS has been the best and most reliable survey detailing conditions in the farm labor market—a fact DOL has acknowledged in multiple previous rulemakings on H-2A.<sup>34</sup>

USDA abruptly discontinued the FLS in late August of this year, before the final installment of the FLS could be completed for 2025. Arguably, this has left DOL without a viable survey with which to determine and set wage levels for H-2A workers that will prevent adverse effects on the wages of U.S. farmworkers. However, using the OEWS is not an adequate or rational alternative for setting H-2A wages given the inherent weaknesses in the OEWS data set.

First, as DOL notes, the OEWS only surveys non-farm employers—meaning farm labor contractors (FLCs) and other staffing firms that send farmworkers to different farms. However, nationwide, a majority of farmworkers are employed directly.<sup>35</sup> As noted earlier, farmworkers employed by FLCs are paid only roughly only three-fourths of what farmworkers are paid when they are directly hired directly by farm employers.<sup>36</sup> This is because FLCs use a fissured subcontracting employment model, and research shows that subcontracted workers earn lower wages on average, in part because the FLC makes profits by taking a portion of workers’ wages and by lowering costs.<sup>37</sup> EPI research also shows that FLCs account for the largest share of wage and hour violations in agriculture—roughly a quarter nationwide and half in two of the largest farm states, California and Florida.<sup>38</sup> Thus, DOL is relying on a survey that is overrepresented by FLCs that pay farmworkers significantly less and violate the law at higher rates, while entirely excluding the vast majority of farmworkers who are directly employed and paid more.

Second, while DOL states that it will take action to revise the OEWS to cover agricultural employers to begin use in the May 2026 survey, with data first being available for the May 2027 edition of the OEWS, the reality is that OEWS data on agricultural employers will not be a reasonably adequate representation of the farm labor market until years after that. This is in part because the OEWS estimates are created by averaging wage rates across a span of three years. To be adequate, OEWS would need to collect data from farm operators in 2026, 2027, and 2028, with the data being first published and available at the earliest in 2029. In the meantime, the AEWRs set by OEWS wage data will be artificially low and adversely impacting the wages of H-2A workers and U.S. workers.

Another problematic aspect of using the OEWS is that the data being used by DOL for the 2026 AEWRs are from 2024, thus already two years behind, and DOL has made no upward adjustment for inflation so that the AEWRs reflect a more realistic snapshot of wage rates in the current farm labor market. It is irrational and harmful to both H-2A and U.S. farmworkers for DOL to use wages that are both representative of only non-farm employers and of wages that were paid to workers who were employed by FLCs two years ago.

The FLS was problematic in a similar way, with the average field and livestock worker wage in one year setting the AEWR for the following year, and DOL should have adjusted the FLS wages upward with an estimate for inflation, perhaps by using the Employment Cost Index (ECI) projection from the Congressional Budget Office (CBO) for private-sector wage growth,<sup>39</sup> or the average annual wage increase for farmworkers for the past five or ten years. But at least the FLS was a reasonable representation of what employers were paying farmworkers, even if one year behind.

Third, OEWS data also fail to reflect the seasonal nature of the farm jobs filled by H-2A workers. By only collecting data in May and November, it will fail to capture wages during peak harvest season in the summer,<sup>40</sup> when farm employment peaks and wages may be higher due to increased hiring. The FLS on the other hand, more adequately captures seasonal peaks in farmworker employment and wages by measuring wages at four points during the year, in January, April, July, and October.

Seen in this light, the move to use the OEWS seems like an intentional move by DOL to lower the wages of farmworkers as much as possible while ostensibly retaining some connection to available data sets. This is not the first time DOL attempted to set the AEWRs with a data set that would result in lower wages. In 2008, the Department temporarily stopped relying on the FLS and also implemented multiple skill levels, which led to a “precipitous drop” in farmworker wages.<sup>41</sup> Thus DOL was aware that moving from the FLS to the OEWS would drastically lower wages for farmworkers.

**Using multiple skill levels akin to those in the H-1B program is inappropriate and DOL has rejected such a methodology for other low-wage**

## jobs in the H-2B program

DOL's decision in the IFR to adopt a multi-tiered prevailing wage structure, which DOL notes reflects the one created for the H-1B program in the H-1B Visa Reform Act of 2004,<sup>42</sup> and to require its application to prevailing wage determinations in the H-2A program, was irrational, arbitrary, and not adequately justified by the DOL—similarly to when DOL created multiple skill levels for the H-2B program in 2008.<sup>43</sup> The four wage levels for each occupation superimposed on the OEWS prevailing wage data were designed to apply to the H-1B visa category—a visa category where the vast majority of beneficiaries possess at least a bachelors, masters, or doctoral degree (the minimum requirement is a bachelor's or its equivalent). The four wage levels are intended to be “commensurate with” the workers’ “experience, education, and the level of supervision.”<sup>44</sup> In the IFR, DOL has created two skill levels, setting the first, skill level 1, at the 17<sup>th</sup> wage percentile of wages surveyed in the OEWS, mirroring the level 1 prevailing wage in the H-1B program. The second is the at the 50<sup>th</sup> percentile (the median wage), mirroring the level 3 wage in the H-1B's four-tiered structure.

If crafted smartly and enforced adequately, four wage levels could arguably make sense in the H-1B context, if for no other reason than to account for the variation in levels of educational attainment amongst the beneficiaries who are granted an H-1B visa. However, as EPI research has shown, the wage levels are not scientifically linked to degrees of education and experience, they are simply chosen points along the distribution of surveyed wages by DOL, and as Ron Hira and I have argued, DOL has set the two lowest wage levels far too low to protect U.S. wage standards.<sup>45</sup> In addition, in the H-1B program it is clear that in practice the employer gets to choose the wage level and the government doesn't verify that a prevailing wage is appropriate unless a lawsuit or a complaint is filed by a worker,<sup>46</sup> which is rare, and it seems that very little enforcement has ever been conducted by DOL to prevent underpaying and misclassifying workers at inappropriate wage levels. It is thus reasonable to expect the results will be similar with regard to the use of skill levels in the H-2A context.

DOL's use of skill levels for H-2A is akin to how it applied the four H-1B wage levels to the H-2B program—another visa program used for temporary low-wage jobs outside of agriculture—and its subsequent rejection of them for H-2B is instructive and worth recalling. In a 2010 notice of proposed rulemaking, DOL observed that “[t]he types of jobs found in the H-2B program involve few if any skill differentials necessitating tiered wage levels.”<sup>47</sup> This is because the occupations filled by H-2B workers generally require little or no formal education or training—if some training is required, it can often be learned quickly and on the job (e.g., in the case of janitors, landscapers, amusement park and hotel staff)—and such positions offer little in the way of career advancement. As a result, employers hiring under the H-2B rule with multiple skill levels would routinely hire H-2B workers at the lowest prevailing wage level, because they are in fact searching for workers with only the most basic skills and no formal education. This had an obvious impact on wages, as DOL observed, finding that “in about 96 percent of the cases, the H-2B wage is lower than the mean of the OES wage rates for the same occupation.”<sup>48</sup> [The OEWS was formerly known as the OES, which stands for Occupational Employment

Statistics.] Using skill levels in the H-2A context will necessarily result in lowered wages for U.S. workers in farm occupations because they will be forced to compete with H-2A workers who are paid at the 17<sup>th</sup> percentile for skill level 1, far less than the going rate for a U.S. farmworker.

DOL in its proposed H-2B wage methodology in 2010 also noted that “even if skill-based wage tiers were desirable as a theoretical matter, neither the OES nor any other comprehensive data series that we are aware of attempts to capture such variations.”<sup>49</sup> The OEWS wage data do not differentiate the types of skills that would justify one particular wage level or tier over another, because, as DOL explained, “the actual OES survey instrument does not solicit data concerning the skill level of the workers whose wages are being reported.”<sup>50</sup> In other words, there is no scientific correlation between the range of experience and skill level within an occupation and the wage tiers superimposed on the OEWS wage data.

Any prevailing wage structure that permits H-2A workers to be paid below the mean or the median wage is flawed and should be rejected by DOL. The H-2A statute’s mandate to ensure U.S. workers are recruited for farm jobs and to guard against adverse impacts on the wages of U.S. farmworkers cannot be complied with if employers are allowed to pay their H-2A employees at wages that are below the mean or median. By definition, any employer who is allowed to pay their H-2A employee a wage that is below the mean or median will be putting downward pressure on “wages and working conditions of workers in the United States similarly employed.” And U.S. workers will be reluctant to apply for jobs that are being advertised at wage rates that are far below the mean or median.

The mean or median wage alone as defined by the OEWS however, would still be too low of a wage, given the flaws inherent in the OEWS that render it an inadequate data set for setting H-2A wages, as discussed earlier. This is illustrated by the findings in Tables 3 and 4. Table 3 shows that even if all H-2A workers were paid at skill level 2, the median wage according to the OEWS, H-2A farmworkers would still see annual wage losses of \$0.9 to \$1.0 billion, and Table 4 shows that even if H-2A farmworkers are paid the median, U.S. farmworkers would see wage losses of \$1.4 billion to \$1.6 billion. To ensure that employers do not put downward pressure on the wages of U.S. farmworkers, DOL should amend the IFR to rely on FLS wages for 2024 or the latest release for 2025, which was published in May 2025 and had results for the January and April reference weeks. Those wage rates could then be adjusted upward with an estimate for inflation, perhaps by using the Employment Cost Index (ECI) projection from the Congressional Budget Office (CBO) for private-sector wage growth,<sup>51</sup> or the average annual wage increase for farmworkers for the past five or ten years.

Furthermore, Congress directed DOL through the H-1B statute to set four wage level tiers for the H-1B program, but Congress was silent when it came to wage levels in the H-2A program, which is strong evidence that they intended for the H-2A program to *not use* wage tiers. The H-2A statute states simply that the wages and working conditions of U.S. farmworkers should not be adversely impacted, and it is obvious that creating a new skill level that allows employers to pay farmworkers below the median or mean farmworker wage will undercut wage rates in agriculture and violate the plain language of the statute.

There is no question that creating a skill level that is below the median wage in the new AEW methodological is inappropriate for farm jobs and will lead to adverse impacts on the wages and working conditions of U.S. farmworkers, and as a result, DOL should rescind the AEW methodology in the IFR. But even skill level 2, which the IFR sets at the median wage, contradicts the H-2A statute because it is based on OEWS data which are inappropriate given the aforementioned flaws of the survey (only surveying farm labor contractors etc.) that lead to much lower wage rates than the FLS.

## **DOL did not consider or estimate the impact of the 50% rule, which will undercut the wages of workers outside of agriculture and circumvent the H-2B annual cap**

The IFR permits farm operators to pay H-2A workers the state AEW for duties associated with higher-paying occupational codes that fall outside of the main farmworker SOCs, for up to 50% of their workdays, as long as the duties that fall outside of the main farmworker occupations do not make up a majority of the workdays. In other words, H-2A workers could be employed doing construction work or truck driving for up to 50% of their workdays while being paid the AEW—as long as they did not engage in those non-farmworker/non-agricultural duties for a majority of their workdays. While DOL is right to point out that many H-2A workers perform tasks associated with higher-paying occupations outside of agriculture, the IFR does not create adequate safeguards to protect workers and the result will be downward pressure on a number of occupations like construction and truck driving. DOL does not seem to have considered these impacts in the IFR nor has DOL attempted to estimate the impacts on U.S. workers, and the relevant provisions in the IFR do not appear to have been crafted carefully. DOL should rescind these provisions, estimate the impacts, and go back to the drawing board and solicit public input from the public, unions, and worker groups, whose interests appear to have been entirely ignored.

The IFR states that :

*For all other occupations... The occupational classification and applicable Adverse Effect Wage Rate shall be determined based on the majority (meaning more than 50 percent) of the workdays during the contract period the worker will spend performing the agricultural labor or services, including duties that are closely and directly related, and the qualifications on the job order.<sup>52</sup>*

Many of the terms in this passage are not defined clearly and it will be difficult for certifying officers (COs) and State Workforce Agencies (SWAs) to interpret in practice. For example the IFR uses a “workdays” standard for this provision to determine if a worker is performing job duties associated with agricultural labor, but workdays are not defined. How much time engaging in a particular task constitutes a “workday”? Why didn’t DOL use work hours instead?

DOL expects that adjudicators, COs, and SWAs will review the job duties on a job order and determine which duties will be performed for a majority of workdays, and then choose the applicable SOC code or codes and AEWRs, whether it be the AEW for the main farmworker occupations or a separate non-farm occupation or occupations. But what are “closely and directly related” duties? Is the construction of a building on a farm closely and directly related to agricultural labor because it occurs on a farm? Would DOL certify a position that permits an H-2A worker to work for 60%, 80%, or 100% of their work hours doing work that should be classified in the construction laborer SOC code, since it takes place on a farm? And would DOL require that worker to be paid the AEW rate rather than the higher construction laborer wage rate since it may believe that construction duties are closely and directly related to agricultural work, because it takes place on a farm?

Clarity is lacking and DOL’s language in the IFR creates a massive loophole that will lead to farmworkers being underpaid when they engage in non-agricultural tasks and U.S. workers in non-farm occupations will be undercut when they have to compete with underpaid H-2A workers who have few rights or other options, or the power to negotiate a higher wage with their employer. DOL’s lack of emphasis that H-2A jobs should be agricultural in nature and it’s broad and undefined closely and directly related standard, are not enough to prevent H-2A workers from being underpaid at the AEW for higher-paying job duties.

The wage savings for employers who take advantage of the loophole created by the IFR are significant—creating a strong incentive to underpay H-2A workers. For example, DOL’s AEW spreadsheet shows that the construction laborers occupation, Standard Occupational Code (SOC) 47-2061, in California has a median wage of \$31.50 an hour (i.e. the skill level 2 wage for U.S. workers). The median wage can be considered the going rate for construction workers in California; if an employer wanted to hire a construction laborer, \$31.50 is roughly the wage workers would expect to be paid, and that an employer recruiting a worker would have to advertise the job at. Compare the construction laborer median wage to the combined farmworker occupations AEW for skill level 1 in California, which will be \$16.90 in 2026, as set by the higher state minimum wage. The California AEW will be just 54% of the statewide median wage for construction laborers—leading to a massive savings for farm employers who pay the AEW for construction work.

In the southeast, in Georgia, it’s a similar story. According to DOL’s AEW spreadsheet, the median (skill level 2) wage for U.S. workers in the construction laborers occupation is \$19.43 per hour. The skill level 1 AEW in Georgia, after the housing deduction is subtracted, is \$8.77 an hour. That’s just 45% of the median wage for construction work—again giving employers a massive incentive to use H-2A labor to undercut wage standards in construction.

While DOL has now published applicable AEW rates at two skill levels for occupations outside of the five main combined farmworker occupations, it is unlikely that employers will ever draft job orders in a manner that leads an adjudicator to select the higher wage to be paid to an H-2A worker, or that DOL will ever judge that the higher wage should be paid, given the broad and undefined standards for adjudication in the IFR. Since the H-2A

the program is uncapped, employers who actually adhere to the standard in the IFR will still be able to get around the IFR's requirements by hiring additional H-2A workers and having them work half their workdays doing non-farm duties while being paid the lower wage

A major open question is how much scrutiny and oversight will be applied to job orders that list job duties outside of the main farmworker occupations. Will each job order be reviewed by COs, SWAs, and staff at the Office of Foreign Labor Certification (OFLC) at DOL to prevent misclassification? Funding at OFLC has been flat while the workload has increased significantly,<sup>53</sup> making additional scrutiny of 380,000 to over 500,000 job orders unrealistic. What about oversight after H-2A workers are already employed in the United States? Given that the number of Wage and Hour Division investigations of agricultural employers dropped to a record low of 659 in 2024<sup>54</sup> and that the number of investigators is also at a record low in 2025,<sup>55</sup> and the fact that already, far fewer than 1% of agricultural employers are inspected in a given year,<sup>56</sup> it is unlikely that employer abuse of this provision in the IFR will ever be discovered, allowing employers to operate with impunity and underpay H-2A workers.

DOL should take a strong stance that it will not certify any positions where a majority of the work hours will consist of duties outside of the main farmworker occupations. Such positions—like construction laborers, light truck drivers, and heavy and tractor-trailer truck drivers—are more appropriate for the H-2B program, where DOL sets the minimum wage at the local average wage according to the OEWS. If H-2A workers are allowed to continue to engage in tasks and duties outside of the main farmworker occupations that should be paid at the higher wage for the occupation, DOL should cap the number of work hours in the non-farm occupation at 20%, and not certify any jobs where H-2A workers will spend more than 20% of their work hours performing those duties. And if H-2A workers are in fact performing tasks and duties outside of the major farmworker occupations, they should be paid the higher non-farm SOC's wage—at the median, skill level 2 wage—for 100% of their work hours. In addition, if it is higher, they should be paid at the local average wage according to the occupation in the OEWS, which is DOL's H-2B wage methodology, in order to prevent undercutting the wages of H-2B workers and U.S. workers similarly employed.

## Recommendations

This section provides a brief summary of the recommendations, most of which are discussed in more detail in the earlier sections of this comment.

### ***The White House should direct USDA to reinstate the Farm Labor Survey to set the AEWs***

The FLS has been the best and most reliable survey detailing conditions in the farm labor market—a fact DOL has acknowledged in multiple previous rulemakings on H-2A.<sup>57</sup> USDA abruptly discontinued the FLS in late August of this year, before the final installment of the

FLS could be completed for 2025. This has left DOL without a viable survey with which to determine and set wage levels for H-2A workers that will prevent adverse effects on the wages of U.S. farmworkers. While DOL is not responsible for USDA's discontinuation of the FLS, in order to have an adequate data set with which to set the AEWRs, DOL should urge USDA and the White House that the FLS should be reinstated as quickly as possible in order to comport with 8 U.S.C. §1188(a)(1)'s requirement that H-2A employment "will not adversely affect the wages and working conditions of workers in the United States similarly employed."

### ***The OEWS is inadequate and inappropriate for setting the AEWR because it does not reflect an accurate picture of the farm labor market, and DOL's improvements will take years to implement***

In multiple previous formal comments to DOL, we have discussed the inadequacies of the OEWS data set, including for its use to set agricultural wages,<sup>58</sup> and have done so again here. Thus, until and unless DOL makes significant investments in, and improvements to, the OEWS data, they will continue to be inadequate as a substitute for the FLS. The OEWS's reliance on wage data collected exclusively by farm labor contractors with a fissured business model and lower wages will significantly lower the AEWRs—as the results of the new AEWRs set in the IFR make clear. DOL notes that it is taking steps to improve the collection of farmworker wage and earnings data in the OEWS; for example, by expanding the population surveyed by the OEWS to include farm operators. However, while DOL says the first updated OEWS data will be available for the May 2027 edition of the OEWS, the reality is that OEWS data on agricultural employers will not be a reasonably adequate representation of the farm labor market until years after that. This is in part because the OEWS estimates are created by averaging wage rates across a span of three years. To be adequate, OEWS would need to collect data from farm operators in 2026, 2027, and 2028, with the data being first published and available at the earliest in 2029. In the meantime, the AEWRs set by OEWS wage data will be artificially low and adversely impacting the wages of H-2A workers and U.S. workers.

In addition, the OEWS data being used by DOL for the 2026 AEWRs are from 2024, thus already two years behind, and DOL has made no upward adjustment for inflation so that the AEWRs reflect a more realistic snapshot of wage rates in the current farm labor market. It is irrational and harmful to both H-2A and U.S. farmworkers for DOL to use wages that are both representative of only non-farm employers and of wages that were paid to workers who were employed by FLCs two years ago.

### ***DOL should eliminate the use of artificial skill levels to set the AEWRs***

DOL's decision in the IFR to adopt a multi-tiered prevailing wage structure, which DOL notes reflects the one created for the H-1B program in the H-1B Visa Reform Act of 2004,<sup>59</sup> and to require its application to prevailing wage determinations in the H-2A program, was

irrational, arbitrary, and not adequately justified by the DOL—similarly to when DOL created multiple skill levels for the H-2B program which were later invalidated by a federal court and which DOL ultimately rejected. DOL notes at 90 Fed. Reg. 47933 that it has:

*conclude[d] employers seeking temporary nonimmigrant workers under the H-2A visa classification should receive an AEWL determination that also takes into account the qualifications of the employer’s job offer to better effectuate the requirement to, protect the wages of U.S. workers similarly employed and more closely align the wage standard in the H-2A program with the wage standards in other employment-based immigration programs which use skill-based wage levels.*

This reasoning fails for the reasons cited earlier, namely that unlike with the H-2A program, the four H-1B prevailing wage levels are mandated by statute, and are intended to differentiate between workers with different levels of education and experience in a work visa program where the minimum requirement is a bachelor’s degree. In addition, any prevailing wage structure that permits H-2A workers to be paid below the mean or the median wage is flawed and should be rejected by DOL because it fails to guard against adverse impacts on the wages of U.S. farmworkers as the H-2A statute’s mandate requires. By definition, any employer who is allowed to pay their H-2A employee a wage that is below the mean or median will be putting downward pressure on “wages and working conditions of workers in the United States similarly employed.” The mean or median wage as defined by the OEWS however, would not suffice, given the flaws inherent in the OEWS that render it an inadequate data set for setting H-2A wages, as discussed earlier, and as illustrated by the findings for skill level 2 wage impacts in Tables 3 and 4.

### ***DOL should base the 2026 AEWL on the most recent FLS survey data available***

Even if the FLS is not reinstated, to ensure that employers do not put downward pressure on the wages of U.S. farmworkers through H-2A employment, the IFR should be rescinded and DOL should rely on the most recent FLS data available to set the 2026 AEWL. This would mean using either the FLS annual wage data for 2024 (which set the 2025 AEWLs) or the latest release for 2025, which was published in May 2025 and had results for the January and April reference weeks. Those wage rates could then be adjusted upward with an estimate for inflation for 2026, by using the Employment Cost Index (ECI) projection from the Congressional Budget Office (CBO) for private-sector wage growth,<sup>60</sup> or the average annual wage increase for field and livestock workers in the FLS for the past five or ten years.

DOL in fact proposed a similar methodology in its 2020 AEWL Final Rule.<sup>61</sup> That methodology would have abandoned the FLS, frozen worker wages for two years, and then adjusted the AEWL annually based on the Employment Cost Index for wages and salaries for the preceding 12 months. Freezing wages for two years would have been disastrous for workers, and DOL was rightly enjoined by a federal court from enforcing the 2020 AEWL Rule partly for that reason—but adjusting the FLS-based AEWL for inflation

was a reasonable response to updated FLS data no longer being available.

***H-2A employers should not be permitted to have their H-2A employees engage in non-agricultural tasks like construction for more than a small share of their work hours; never more than 20%***

As discussed above, under the IFR farm operators will be permitted to employ H-2A workers who are paid at the combined farmworker occupations AEW wage rates even when their job duties consist of non-agricultural tasks that would command much higher wages under the OEWS, for up to 50% of their workdays; so long as those job duties do not account for a majority of workdays. This will allow the employers of H-2A workers to undercut U.S. wage standards for occupations like construction and truck driving. Farm operators who primarily wish to hire construction workers, truck drivers, or workers in other non-agricultural occupations outside of the main farmworker (i.e. field and livestock worker combined) SOC codes are eligible to utilize the H-2B program—which Congress created to fill labor shortages in occupations *outside* of agriculture—and should do so. Instead, DOL in the IFR has created a scheme that is rife with loopholes and that will be easily gamed by farm operators who can save on labor costs by hiring H-2A workers instead of U.S. construction workers and truck drivers, etc., who would command much higher wage rates than the combined farmworker SOC AEWs. While it is understandable that H-2A workers in some cases will be required to carry out job duties that do not fall entirely under the main farmworker occupations—as DOL has acknowledged in the IFR by creating AEWs by SOC codes for non-farm occupations—permitting anything beyond small share of an H-2A worker’s work hours to be dedicated to non-agricultural tasks risks undermining the statutory protections for workers in the H-2A program as well as the H-2B’s statutory protections and annual numerical limit. When certifying officers and State Workforce Agencies identify more than one SOC code for an occupation, they should require the employer to certify that the employee will not be engaged in duties that fall outside the definition of agriculture and the main combined farmworker SOC codes for more the 20% of the total work hours.

***H-2A employers should be required to pay H-2A workers who engage in non-farm tasks at the higher non-farm wage for the occupation for 100% of their work hours, at skill level 2 or at the local average OEWS wage, whichever is higher***

As discussed in the previous subsection, H-2A employers should not be permitted to have their H-2A employees engage in non-agricultural tasks like construction for more than a small share of their work hours; never more than 20%. If COs and SWAs identify more than one SOC code, including one that is outside of the main combined farmworker SOC codes (i.e. field and livestock worker combined), and where the worker will spend up to 20% of their work hours engaged in non-agricultural tasks and duties, then the H-2A worker

should be paid the SOC code with the higher wage for 100% of the worker's work hours. But skill level 1, because it is so far below the true market rate or the local median or average for both farm and non-farm occupations, should never set the AEWR for a non-agricultural occupation/SOC code. Instead, H-2A workers who are paid for 100% of their work hours for a non-agricultural occupation should be paid either the state median wage for the SOC—which is the skill level 2 AEWR—or the local average wage according to the occupation in the OEWS, if it is higher. The local average wage (i.e. the mean wage in the region or metropolitan statistical area, etc., as defined by the OEWS) is DOL's H-2B wage methodology. The H-2B prevailing wage formulation should be included because H-2A workers performing duties in non-agricultural SOC codes will be doing work that would normally require an employer to hire an H-2B worker. Thus the same wage methodology must be utilized in order to prevent undercutting the wages of H-2B workers and U.S. workers similarly employed.

Paying workers for 100% of work hours at the highest wage rate for an applicable SOC code outside of the combined farmworker SOC codes is similar to DOL's 2023 AEWR rule.<sup>62</sup> In that rule, if the job duties on the H-2A application (including the job order) did not fall within a single occupational classification, and the occupations involved were subject to different AEWRs, the applicable AEWR would be the occupation with the highest wage for the applicable occupational classifications, and the worker would be paid for 100% of their work hours at that wage. The 2023 AEWR was vastly superior to the AEWR methodology in the IFR; EPI supported that proposed and final rule, with a key recommendation being that when the OEWS was used to set an AEWR, DOL should use the highest of the local or statewide OEWS wages. Agribusiness interests and employers filed multiple lawsuits that ultimately led to the 2023 rule being vacated recently, but only after the current administration ceased to defend the rule in court.<sup>63</sup>

### ***If OEWS data are utilized to set wages, they should be set at the 90<sup>th</sup> percentile wage for the state***

The statutory mandate to ensure that U.S. workers are adequately recruited and that the employment of H-2A workers does “not adversely affect the wages and working conditions of workers in the United States similarly employed,” can only be met if the wage that employers must offer to U.S. workers to test the labor market is high enough to attract them and to prevent downward pressure on wages and standards in agriculture. Setting the wage at the new AEWRs according to the OEWS, a data set that is not appropriate for agricultural workers, will be far too low to attract available U.S. workers to work on farms. While DOL should not use the OEWS, if it continues to do so, DOL should not set the AEWR at percentiles (like the 17<sup>th</sup>) that will put downward pressure on the wages of farmworkers. DOL could instead more adequately test the labor market and protect wages standards in agriculture by setting the AEWR at the 90<sup>th</sup> percentile wage.

The following is one example comparing the OEWS 90<sup>th</sup> percentile wage to the 2025 AEWR: Take the Farmworkers and Laborers, Crop, Nursery, and Greenhouse (SOC 45-2092) occupation in the OEWS for 2024—which is the most common and relevant farmworker occupation in the OEWS for H-2A jobs—and compare it with the wage rates

set in the 2025 AEW, which DOL set with FLS data from 2024. The 2025 AEW for California, which is based on FLS data *from 2024* (making it the more appropriate comparison year for 2024 OEWS wages) was \$19.97. The 2024 OEWS 90<sup>th</sup> percentile wage in California for SOC 45-2092 was \$21.97 in 2024,<sup>64</sup> about 10% percent more than the 2025 AEW. The 2025 AEW for Florida (based on 2024 FLS survey data) was \$16.23, and the OEWS 90<sup>th</sup> percentile wage for the occupation in 2024 was \$17.81, just under 10% more than the FLS wage.

Since the OEWS already reports the 90<sup>th</sup> percentile wage, DOL would not have to do any complicated arithmetic when setting AEWs. While still inadequate as compared to using FLS data, setting the AEW at the 90<sup>th</sup> percentile wage would help adjust for the fact that the OEWS only surveys non-farm employers that pay much lower wages to farmworkers and excludes directly-employed farmworkers. Setting the AEW at the 90<sup>th</sup> percentile wage, with a roughly 10% increase that results relative to the FLS data set of the same year in the main OEWS farmworker occupation in these two significant examples, would also help adjust for the fact that fringe benefits are not included in OEWS data—and help compensate for DOL’s ill-advised housing deductions—in either case making it a fairer wage vis-à-vis U.S. farmworkers, and going further to ensure that U.S. workers are adequately recruited and do not suffer adverse impacts. The 90<sup>th</sup> percentile would also help protect the higher earners in farm occupations, rather than creating a de facto cap on H-2A earnings at the 50<sup>th</sup> percentile (median) wage, which adversely impacts higher earners in the occupation. It must also be noted that 2024 OEWS wages are being used to set 2026 AEWs in the IFR, despite being two years behind and not adjusted for inflation. If this recommendation is adopted, the 90<sup>th</sup> percentile AEWs should also be adjusted for inflation using the CBO’s projections in the Employment Cost Index, or by the annual average real increase in farmworker wages for the past five or ten years, if the OEWS wage data used are from years prior to the year for which they will be used to set the AEW. (In other words the 2024 OEWS-based AEWs should be adjusted for inflation to their projected real value in 2026, etc.)

## Conclusion

There is no evidence to suggest that farmworkers overall have been overpaid or that the AEW rates that H-2A workers have been paid are too high and unsustainable for farm operators to earn a profit. In fact, the evidence presented in this comment shows the opposite is true—that farmworkers are underpaid according to a number of metrics and their wages have far to go before they can reach levels that would make them comparable to workers employed outside of the agricultural industry. In addition, as USDA has pointed out, the modest increases in farm wages have been “offset” by productivity and output prices, so that “labor costs as a share of gross cash farm income have not shown an upward trend for the sector (as a whole) over the past 20 years.”<sup>65</sup> Farmers have virtually exponentially increased their use of the H-2A program under the previous AEW methodology—in fact its use and popularity is at an all-time high—contradicting DOL’s claims that the program needs radical changes to be sustainable for farm operators. As a result, DOL has not shown an adequate justification for sharply cutting the wages of H-2A

farmworkers—or for lowering wages and reducing opportunities for U.S. farmworkers, which will inevitably result if the IFR is allowed to stay in place. In addition, The Administrative Procedure Act requires DOL to provide more notice and an opportunity for the public to comment—and must devise additional analyses and estimates regarding impacted stakeholders—before it can make such a radical change to a program that will impact the entire agricultural industry.

We urge DOL to resist the pressure from agribusiness to intentionally degrade wages and standards in the agricultural industry. Instead, we urge DOL to rescind the IFR and focus its efforts on protecting labor, health, and safety standards and worker rights for farmworkers, regardless of their immigration status, by vigorously enforcing the labor and employment laws that are applicable to farm operators.

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## Endnotes

1. As counted by the latest [Census of Agriculture](#) from the U.S. Department of Agriculture, 2022.
2. See Daniel Costa and Ben Zipperer, “[Trump’s new H-2A wage rule will radically cut the wages of all farmworkers: New estimates show farmworkers stand to lose \\$4.4 to \\$5.4 billion annually under DOL’s updated Adverse Effect Wage Rate](#),” *Working Economics* blog (Economic Policy Institute), November 26, 2025.
3. Wenson Fung, Kimberly Prado, Amanda Gold, Andrew Padovani, Daniel Carroll, and Emily Finchum-Mason, *Findings from the National Agricultural Workers Survey (NAWS) 2021–2022: A Demographic and Employment Profile of United States Crop Workers*, Research Report no. 17, JBS International for the Employment and Training Administration, U.S. Department of Labor. September 2023.
4. See National Agricultural Statistics Service, “[Agricultural \(Farm\) Labor](#),” for more background and to access Farm Labor Reports, U.S. Department of Agriculture.
5. Federal Policy Watch, “[USDA ends the Agricultural \(Farm\) Labor Survey, the U.S.’s only survey of agricultural employers](#),” Economic Policy Institute, September 3, 2025.
6. Economic Policy Institute, [State of Working America Data Library](#), “Hourly wage, average – Average real hourly wage (2024\$),” 2025.
7. Economic Research Service, “[Wages of Hired Farmworkers](#)” in “Farm Labor,” U.S. Department of Agriculture, Updated November 18, 2025.
8. Wenson Fung, Kimberly Prado, Amanda Gold, Andrew Padovani, Daniel Carroll, and Emily Finchum-Mason, *Findings from the National Agricultural Workers Survey (NAWS) 2021–2022: A Demographic and Employment Profile of United States Crop Workers*,

Research Report no. 17, JBS International for the Employment and Training Administration, U.S. Department of Labor. September 2023.

9. Veronica Nigh, “[AEWR Methodology Change a Blow to Growers](#),” Market Intel, American Farm Bureau, March 30, 2023; American Hort, “[Why You Can Expect Steep H-2A Wage Increases in 2022](#),” Greenhouse Grower, December 11, 2021.

10. Employment and Training Administration, [Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States](#), U.S. Department of Labor, Interim Final Rule, 90 Fed. Reg. 47914, at 47923 (October 2, 2025).

11. Comments of Craig Regelbrugge in American Hort, “[Why You Can Expect Steep H-2A Wage Increases in 2022](#),” Greenhouse Grower, December 11, 2021.

12. EPI analysis of Adverse Effect Wage Rates for 2021 and 2022 for the listed states; AEWRs are from the Employment and Training Administration, U.S. Department of Labor. All values have been adjusted to constant 2022 dollars using the Consumer Price Index (CPI-U). See also discussion and tables in Daniel Costa, “[Testimony prepared for the U.S. Senate Committee on the Judiciary for a hearing on ‘From Farm to Table, Immigrant Workers Get the Job Done’](#),” Economic Policy Institute, May 31, 2023.

13. U.S. Bureau of Labor Statistics, [Consumer Price Index for All Urban Consumers: Food in U.S. City Average \[CPIUFDSL\]](#), retrieved from FRED, Federal Reserve Bank of St. Louis, last accessed November 26, 2025.

14. Economic Research Service, “[Wages of Hired Farmworkers](#)” in “Farm Labor,” U.S. Department of Agriculture, Updated November 18, 2025.

15. 5 U.S.C. § 553(b)(B)

16. *Sorenson Commc’ns Inc. v. FCC*, 755 F.3d 702, 706 (D.C. Cir. 2014).

17. *Mack Trucks, Inc. v. EPA*, 682 F.3d 87, 93 (D.C. Cir. 2012).

18. Wenson Fung, Kimberly Prado, Amanda Gold, Andrew Padovani, Daniel Carroll, and Emily Finchum-Mason, [Findings from the National Agricultural Workers Survey \(NAWS\) 2021–2022: A Demographic and Employment Profile of United States Crop Workers](#), Research Report no. 17, JBS International for the Employment and Training Administration, U.S. Department of Labor. September 2023.

19. Jake Traylor, Myah Ward and Samuel Benson, “[‘I really feel for her’: Brooke Rollins’ impossible Trump administration mandate](#),” *Politico*, July 10, 2025; Marcia Brown, “[Ag secretary says able-bodied Medicaid recipients should replace immigrant farm workforce](#),” *Politico*, July 8, 2025.

20. Joseph Gedeon, “[US agriculture secretary says Medicaid recipients can replace deported farm workers](#),” *The Guardian*, July 9, 2025.

21. See National Agricultural Statistics Service, “[NASS discontinues select data collection](#)”

programs and reports,” United States Department of Agriculture, August 28, 2025; for additional background see Federal Policy Watch, “[USDA ends the Agricultural \(Farm\) Labor Survey, the U.S.’s only survey of agricultural employers](#),” Economic Policy Institute, September 2, 2025.

22. See Rural Migration News, “[California: FLC Employment Down and Wages Up in 2020](#),” U.C. Davis, July 16, 2021. According to the latest data available from DOL’s [Quarterly Census of Employment and Wages](#), in 2024, directly hired crop farmworkers in California earned \$905 per week, as compared to crop farmworkers employed by farm labor contractors (FLCs) who earned \$649, or 72% of what directly-employed crop farmworkers earned. Nationwide in 2024, FLC employees earned 76% of what directly-employed crop farmworkers earned: \$862 vs \$655. See industry codes 111 (Crop production) and 115115 (Farm labor contractors and crew leaders).

23. See just one of many examples of reporting on this phenomenon: Felicia Mello and Wendy Fry, “[State inspectors are supposed to visit all farmworker housing to ensure its safety. Sometimes they used FaceTime instead](#),” July 1, 2024.

24. Office of Foreign Labor Certification, [Performance Data](#), Employment and Training Administration, U.S. Department of Labor [fiscal year [2024 data file for H-2A](#)], last accessed November 25, 2025.

25. Wenson Fung, Kimberly Prado, Amanda Gold, Andrew Padovani, Daniel Carroll, and Emily Finchum-Mason, [Findings from the National Agricultural Workers Survey \(NAWS\) 2021–2022: A Demographic and Employment Profile of United States Crop Workers](#), Research Report no. 17, JBS International for the Employment and Training Administration, U.S. Department of Labor. September 2023.

26. Zachariah Rutledge, Marcelo Castillo, Timothy J. Richards, Philip Martin, “[H-2A Adverse Effect Wage Rates and U.S. farm wages](#),” *American Journal of Agricultural Economics*, first published June 9, 2025, <https://doi.org/10.1111/ajae.12557>.

27. For the full methodology, see the appendix in Daniel Costa and Ben Zipperer, “[Trump’s new H-2A wage rule will radically cut the wages of all farmworkers: New estimates show farmworkers stand to lose \\$4.4 to \\$5.4 billion annually under DOL’s updated Adverse Effect Wage Rate](#),” *Working Economics* blog (Economic Policy Institute), November 26, 2025.

28. Given that U.S. workers typically do not experience nominal wage reductions, employers may implement the new lower pay rates for U.S. workers through wage freezes that are gradually eroded by inflation. At the same time, the high degree of churn and seasonality of farmworker jobs and the presence of a large contractor workforce may allow employers the opportunity to reduce U.S. wages more rapidly than would be the case in other sectors.

29. See discussion in Daniel Costa, [The H-2B temporary foreign worker program: For labor shortages or cheap, temporary labor?](#) Economic Policy Institute, January 19, 2016.

30. 90 Fed. Reg. 47941.
31. 90 Fed. Reg. 47955.
32. 7 U.S.C. § 2204
33. USDA, Farm Employment Estimates, 1910 Census: Volume 5, Agriculture (1913).
34. See *Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States*, 86 Fed. Reg. at 68178; *Temporary Agricultural Employment of H-2A Aliens in the United States*, Final Rule, 75 Fed. Reg. at 6898.
35. The most recent edition of the [National Agricultural Workers Survey](#) showed that in 2021-22, 78% of non-H-2A crop farmworkers worked directly for a farm employer (see page 25).
36. See Rural Migration News, “[California: FLC Employment Down and Wages Up in 2020](#),” U.C. Davis, July 16, 2021. According to the latest data available from DOL’s [Quarterly Census of Employment and Wages](#), in 2024, directly hired crop farmworkers in California earned \$905 per week, as compared to crop farmworkers employed by farm labor contractors (FLCs) who earned \$649, or 72% of what directly-employed crop farmworkers earned. Nationwide in 2024, FLC employees earned 76% of what directly-employed crop farmworkers earned: \$862 vs \$655. See industry codes 111 (Crop production) and 115115 (Farm labor contractors and crew leaders).
37. A number of studies show a wage penalty for subcontracted/outsourced workers. For example, see Arindrajit Dube and Ethan Kaplan, “[Does Outsourcing Reduce Wages in the Low-Wage Service Occupations? Evidence from Janitors and Guards](#),” Cornell University ILR Review. January 1, 2010); Deborah Goldschmidt and Johannes Schmieder, “[The Rise of Domestic Outsourcing and the Evolution of the German Wage Structure](#),” The Quarterly Journal of Economics, Oxford University Press, vol. 132(3), 2017, pages 1165-1217; Andres Drenik, Simon Jäger, Pascuel Plotkin, and Benjamin Schoefer “[Paying Outsourced Labor: Direct Evidence from Linked Temp Agency-Worker-Client Data](#),” Econometrics Laboratory, University of California, Berkeley, September 2020.
38. Daniel Costa, Philip Martin, and Zachariah Rutledge, *Federal Labor Standards Enforcement in Agriculture: Data Reveal the Biggest Violators and Raise New Questions About How to Improve and Target Efforts to Protect Farmworkers*, Economic Policy Institute, December 2020.
39. Congressional Budget Office, data supplement for CBO’s September 2025 report, *CBO’s Current View of the Economy From 2025 to 2028*, available at <https://www.cbo.gov/system/files/2025-09/51135-2025-09-Economic-Projections.xlsx>
40. See Figure A in Daniel Costa and Philip Martin, *Coronavirus and farmworkers: Farm employment, safety issues, and the H-2A guestworker program*, Economic Policy Institute, March 24, 2020.

41. *Temporary Agricultural Employment of H-2A Aliens in the United States*, 74 Fed. Reg. 45905, 45911 (proposed Sept. 4, 2009).
42. Immigration and Nationality Act (INA) §212(p)(4).
43. See *CATA v Solis*, p. 36-37, AILA Infonet Doc No. 10100169. (Posted 10/01/10).
44. Immigration and Nationality Act (INA) §212(p)(4).
45. Daniel Costa and Ron Hira, *H-1B visas and prevailing wage levels: A majority of H-1B employers—including major U.S. tech firms—use the program to pay migrant workers well below market wages*, Economic Policy Institute, May 4, 2020.
46. Daniel Costa and Ron Hira, *H-1B visas and prevailing wage levels: A majority of H-1B employers—including major U.S. tech firms—use the program to pay migrant workers well below market wages*, Economic Policy Institute, May 4, 2020.
47. 75 Fed. Reg. 61580.
48. 75 Fed. Reg. 61580, see n.2.
49. 75 Fed. Reg. 61580.
50. 75 Fed. Reg. 61580.
51. Congressional Budget Office, data supplement for CBO’s September 2025 report, *CBO’s Current View of the Economy From 2025 to 2028*, available at <https://www.cbo.gov/system/files/2025-09/51135-2025-09-Economic-Projections.xlsx>
52. 90 Fed. Reg. 47963.
53. See Figure B and discussion in Daniel Costa and Ron Hira, “[EPI comment on DOL’s RFI regarding Schedule A modernization](#),” Economic Policy Institute, Public Comments, May 13, 2024. Submitted online via <https://www.federalregister.gov/documents/2024/02/15/2024-03187/labor-certification-for-permanent-employment-of-foreign-workers-in-the-united-states-modernizing>
54. See Wage and Hour Division, “[Agriculture](#)” [data tables], U.S. Department of Labor, accessed November 2025, and discussion of previous years in Daniel Costa and Philip Martin, *Record-low number of federal wage and hour investigations of farms in 2022: Congress must increase funding for labor standards enforcement to protect farmworkers*, Economic Policy Institute, August 22, 2023.
55. Jake Barnes, Janice Fine, Daniel J. Galvin, Jenn Round, Hana Shepherd, *To Help U.S. Workers, We Need Labor Standards Enforcement, Not Mass Deportations*, Data Brief, Workplace Justice Lab, Rutgers University, May 2025.
56. Daniel Costa and Philip Martin, *Record-low number of federal wage and hour investigations of farms in 2022: Congress must increase funding for labor standards enforcement to protect farmworkers*, Economic Policy Institute, August 22, 2023.

57. See *Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States*, 86 Fed. Reg. at 68178; *Temporary Agricultural Employment of H-2A Aliens in the United States*; Final Rule, 75 Fed. Reg. at 6898.

58. Daniel Costa and Ron Hira, “EPI comments on DOL Request for Information on determining prevailing wage levels for H-1B visas and permanent labor certifications for green cards,” Economic Policy Institute, June 1, 2021, public comment submitted for *Request for Information on Data Sources and Methods for Determining Prevailing Wage Levels for the Temporary and Permanent Employment of Certain Immigrants and Non-Immigrants in the United States*, Request for Information, DOL Docket No. ETA-2021-0003, RIN: 1205-AC00. Regarding the OEWS and agricultural wages, see Daniel Costa, “EPI comments on DOL’s proposed changes to the Adverse Effect Wage Rate methodology for H-2A visas for temporary migrant farmworkers,” Economic Policy Institute, January 31, 2022, public comment submitted for *Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States*, RIN: 1205-AC05, DOL Docket No. ETA-ETA-2021-0006.

59. Immigration and Nationality Act (INA) §212(p)(4).

60. Congressional Budget Office, data supplement for CBO’s September 2025 report, *CBO’s Current View of the Economy From 2025 to 2028*, available at <https://www.cbo.gov/system/files/2025-09/51135-2025-09-Economic-Projections.xlsx>

61. Employment and Training Administration, *Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States*, U.S. Department of Labor, 20 CFR Part 655, DOL Docket No. ETA-2019-0007, RIN 1205-AB89 (November 5, 2020).

62. Employment and Training Administration, *Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States*, U.S. Department of Labor, final rule, 20 CFR Part 655, DOL Docket No. ETA-2021-0006, RIN 1205-AC05 (February 28, 2023).

63. Judgment, *Teche Vermilion Sugar Cane Growers Ass’n Inc. v. Su*, No. 6:23-cv-00831-RRS-CBW (W.D.La. Aug. 21, 2025), ECF No. 87.

64. OEWS data for 2024: <https://data.bls.gov/oes/#/area/0600000>

65. Economic Research Service, “Labor Cost Share of Total Gross Revenues,” in “Farm Labor,” U.S. Department of Agriculture, Updated November 18, 2025.