

Congress should vote against overturning an updated rule that protects farmworkers from being underpaid

Fact Sheet • By [Daniel Costa](#) • June 6, 2023

The Congressional Review Act (CRA) is a law that gives members of Congress the ability to pass resolutions to overturn many rules and regulations made by federal agencies. As early as this week, members of Congress are likely to begin voting on a resolution to derail a wage rule for migrant farmworkers in the H-2A visa program that was recently updated by the U.S. Department of Labor, known as the Adverse Effect Wage Rule (AEWR).

The intent of the AEWR is to protect wages and working conditions for all farmworkers and prevent farm employers from using the H-2A visa program as a loophole to underpay their workers.

The AEWR might seem like a wonky topic that few care about, but it's a live issue on the Hill that many policymakers are considering acting on. Last week, the Senate Judiciary Committee held a hearing on immigrant workers, and the AEWR was one of the main topics of discussion among the senators and witnesses.¹ The AEWR is again set to take center stage in Congress—votes to rescind DOL's new AEWR will likely happen soon in the House and Senate, perhaps as early as this week. Members of Congress should vote no on S.J.Res.25 and H.J.Res.59, the two proposed resolutions that would rescind the AEWR.²

A vote to rescind the AEWR would be a terrible outcome. Why? It will hurt the farmworkers that help put food on all our tables by cutting their pay—even though most already earn very low wages, and many are living in poverty.

What is the Adverse Effect Wage Rule?

The AEWR is the required wage rate for migrant farmworkers who are hired through the H-2A visa program, which is a temporary work visa that permits agricultural employers to hire from abroad for seasonal and temporary positions that last less than one year. AEWR is designed to reflect the current wages in the farm labor market, and to do so, is based on data from a survey of farm employers across the country conducted by the U.S. Department of Agriculture (USDA) known as the Farm Labor Survey (FLS).

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The wages employers report to USDA then set the AEWL wages for each state the following year, with the intention of protecting wage standards for all U.S. and migrant farmworkers employed across the United States. The AEWL methodology, before it was updated this year, was in place since 2010.

What recent action did DOL take on the AEWL?

The updated 2023 AEWL made only a slight change to the previous AEWL methodology from 2010 and is a slight improvement that will benefit a small number of farmworkers. The methodology change requires that a different data source—DOL’s Occupational and Employment Wage Statistics (OEWS) survey—be utilized for some H-2A jobs that do not fall under the agricultural occupations surveyed in the FLS. The jobs whose wages will be set by OEWS data include farmworkers who are supervisors and farmworkers with other specialized skills, including those working on construction, logging, and truck driving.³ The OEWS data set is more appropriate and accurate for these jobs, which are not primarily agricultural jobs.

What is the impact of DOL’s new AEWL for H-2A farmworkers?

It is important to remember that under DOL’s new AEWL, the vast majority of H-2A farmworkers will continue to have their wages set under the existing methodology from 2010 using the FLS data set, which, as noted above, is a survey of what farm employers are paying their farmworkers.

The farmworkers in occupations that will now have their wages set by the more appropriate data set, the OEWS, represent a very small share of H-2A farmworkers relative to the size of the entire H-2A program. DOL explains this in the preamble to the final rule, in which they note that based on their estimates “98 percent of H-2A job opportunities” fall under the job codes which are covered by the FLS.⁴ In other words, for 98% of H-2A workers, the AEWL methodology remains the same as it was under the previous AEWL rule, which was in place from 2010 to early 2023. As a result, only 2% of roughly 300,000 H-2A farmworkers will be covered under the new wage rates set by the OEWS—about 6,000 H-2A workers.

In the preamble to the AEWL final rule, DOL also estimates the value of the wage impact for farmworkers under the updated AEWL methodology. The analysis in the preamble to the 2023 AEWL rule estimates that there will be a ten-year average transfer of \$38 million from employers to workers, per year—meaning that H-2A farmworkers would be set to lose \$38 million on average per year if the final rule is rescinded (see the table at Exhibit 8 in the final rule).

To be clear: members of Congress who vote in favor of repealing the 2023 AEWB final rule will be voting to give migrant H-2A farmworkers a pay cut of \$38 million per year.

What is the impact of DOL's new AEWB for farm employers?

To understand how the few farm employers that employ the 2% of H-2A farmworkers who will now have their wages set by a different and more accurate data set (OEWS) will be impacted, we can consider the value of the \$38 million pay cut for farmworkers in relation to the profits earned by farmers and their total labor costs. In 2023, net farm income is forecast to be \$136.9 billion.⁵ The \$38 million pay cut that the CRA resolution to rescind the AEWB would lead to would constitute 0.03% of total net farm income.

Labor expenses are forecasted to cost farmers \$42.1 billion in 2023.⁶ Thus, \$38 million in wages represents just 0.09% of total farm labor expenses forecasted for 2023.⁷ If Congress cuts farmworkers pay by \$38 million, it will result in savings for farm employers of less than one-tenth of 1% of their total labor costs.

A yes vote to rescind the new AEWB means a pay cut for farmworkers

In sum, DOL's 2023 AEWB final rule is a slight change from the previous methodology that applies to a miniscule share of H-2A workers and represents less than one-tenth of 1% of all money spent on labor by farm employers.

If the Congressional Review Act is used to give H-2A farmworkers a \$38 million pay cut, who would be hurt more? Low-paid farmworkers, who last year earned a national average hourly wage of \$16.62? Or farm employers, who last year earned nearly \$137 billion in profits and received \$15.6 billion in assistance aid in the form of direct government payments?⁸

The answer is clear: It would be fundamentally unfair for Congress to give farmers another corporate subsidy that lowers wages for the farmworkers who grow and pick the food that stocks the shelves at our local supermarkets—food that farmworkers can barely afford with the shockingly low wages they earn.

Senators and members of the House of Representatives should consider these factors before voting on the CRA resolutions to rescind the AEWB. A yes vote on the CRA resolution is a vote to give farmworkers an unnecessary and undeserved pay cut.

Notes

1. See U.S. Congress, Senate, Committee on the Judiciary, *From Farm to Table: Immigrant Workers Get the Job Done*, 118th Cong., 2023.
2. See the Senate and House versions respectively on Congress.gov at [S.J.Res.25](#) and [H.J.Res.59](#).
3. Some of these jobs arguably should not be certified by the Office of Foreign Labor Certification because they fall outside the scope of the H-2A program.
4. Employment and Training Association, *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, 88 Fed. Reg. 12670 (February 28, 2023).
5. Economic Research Service, “[Farm Sector Income & Finances: Highlights from the Farm Income Forecast](#),” February 7, 2023.
6. Economic Research Service, “[Production expenses by category, 2014-2023F](#)” [data tables], accessed May 27, 2023.
7. The actual amount of the H-2A farmworker pay cut in 2023 estimated by DOL will be \$14.57 million because the new AEWR methodology will only be in place for half of the year, and in 2024, the pay cut will be \$30.98 million, but the ten-year average of \$38 million has been used in this example for consistency.
8. Economic Research Service, “[Farm Sector Income & Finances: Highlights from the Farm Income Forecast](#),” February 7, 2023.