

November XX, 2017

The Honorable Paul D. Ryan
Speaker
U.S. House of Representatives
H-232, The Capitol
Washington, D.C. 20515

The Honorable Nancy Pelosi
Minority Leader
U.S. House of Representatives
H-204, The Capitol
Washington, D.C. 20515

Dear Speaker Ryan and Leader Pelosi:

We write on behalf of the seasonal small businesses throughout the United States, which rely on the H-2B workforce for their continued operations. The H-2B program is designed to be a last resort for U.S. businesses that, despite extensive efforts to recruit U.S. workers, are unable, because of geography and the seasonal nature of the jobs, to fill all their positions with U.S. workers. With a statutory cap of 66,000 visas per year, seasonal businesses require clarity and consistency in order to accurately plan for their unique demands.

The H-2B visa program addresses a critical workforce issue, providing small businesses with the certainty they require for historical gaps in seasonal demand. The application process for securing an H-2B visa worker is lengthy, cumbersome, and expensive. Before turning to the H-2B program, employers conduct extensive advertising to recruit U.S. workers, including attending job fairs, developing domestic training programs, and working with federal and local unemployment programs. Ultimately, businesses pay as much as \$3000 per H-2B worker before factoring-in wages; so despite a clear incentive to reduce costs and hire American workers, many employers are unable to recruit and retain a sufficient workforce for seasonal demands. Further, H-2B workers do not undercut the wages of U.S. workers; instead, wages are set by the Department of Labor (DOL) often well above the federal minimum wage, and similarly employed U.S. workers are paid the same. Finally, each H-2B worker creates and sustains, on average, 4.64 American jobs, making their impact vital for employers needing to meet their demand, U.S. workers employed by these businesses, and communities aiming for full employment and economic growth. If seasonal businesses could meet all their labor needs with U.S. workers, they would.

On May 5, 2017, President Trump signed H.R. 244, the Consolidated Appropriations Act of 2017, into Public Law No. 115-31. The law included a provision that offered much needed relief to seasonal small businesses by authorizing an additional 70,000 H-2B visas to be issued for FY17. The provision maintained the requirement in current law that no additional H-2B visas were to be issued unless U.S. workers could not be found. After months of bureaucratic inaction, the Departments of Homeland Security and Labor agreed, without explanation, on a set number of additional visas (15,000) to alleviate the demand for temporary staff. Unfortunately, many of these additional H-2B visas for summer-season workers were not processed until after Labor Day, leaving jobs unfilled, causing layoffs of U.S. workers, and harming the economic health of our communities.

Year to year changes in the program's allocation of visas does not allow employers to adequately plan for the future. The uncertainty for 2018 has caused businesses to postpone capital investments, while some may permanently eliminate U.S. jobs or close entirely. Although Congress authorized DHS and DOL to issue additional visas in 2017, such broad discretion ultimately created unnecessary inefficiencies and detrimental delays. It is Congress's responsibility to direct this program through narrowly tailored and responsibly targeted policies that protect American jobs, promote economic growth, and mitigate bureaucratic interpretation.

In an effort to provide American businesses with the resources they need to operate, we urge you to include a returning worker exemption (RWE) with a three-year lookback for the H-2B visa program in the fiscal year 2018 (FY18) spending bill that Congress will consider in December. Used previously in fiscal years 2005, 2006, 2007, and 2016 to address seasonal worker shortages, a RWE with a three-year lookback gives employers the opportunity to assemble a temporary workforce when seasonal demands exceed domestic capabilities. Returning workers have previously passed the necessary security checks, returned to their home countries as required, and served businesses designated by the Department of Labor as demonstrating the need for a supplemental workforce. A returning worker exemption in the FY18 spending bill will ensure employers have the flexibility they need to plan for next year and adapt accordingly.

We thank you for your immediate attention to this issue. Should you have any questions or concerns, please do not hesitate to contact our offices.

CC: The Honorable Kevin McCarthy, House Majority Leader
The Honorable Steve Scalise, House Majority Whip
The Honorable Steny Hoyer, House Minority Whip