

## **Comparing the Ag Labor Working Group recommendations to the Securing Agriculture’s Workforce Act**

*Recommendations adopted with unanimous support*

1. Single Portal for Filing H-2A Applications
  - Reflected in Section 4 of SAWA (page 30, line 12).
2. Allow H-2A Employers to Apply for Staggered Worker Entry
  - Found on page 6, beginning on line 22
3. Streamline Recruiting for H-2A
  - Stipulates the Secretary of Labor maintain an online job registry and database of job offers (page 21, line 14).
4. Streamline H-2A Hiring Processes
  - Authority for the Secretary of State to waive interview requirements is found on page 22, line 3.
5. Expediting Review of Delayed H-2A Worker Applications
  - SAWA provides 7 days for the notification of a deficiency in an application for a labor certification and grants the employer 7 days to correct and resubmit such application (page 3, line 5).
  - The Secretary of Homeland Security is required to respond within 15 days after receiving a petition for an H-2A worker from an employer (page 20, line 3).
  - Creation of the online portal in Sec. 4 will also help expedite the application process.
6. USDA Consultation Requirement
  - Rather than providing USDA a mere consultative role, SAWA grants authority to the Secretary of Agriculture to define “agriculture labor or services” for the purposes of H-2A eligibility.
7. GAO Report on H-2A Program Integrity
  - See recommendation #9.
8. GAO Report on H-2A Worker Protections and Enforcement
  - See recommendation #9.
9. GAO Report on H-2A Process Related to COVID-19 and Temporary Changes
  - Between the time of the adoptions of the recommendations and the drafting of SAWA, GAO published several reports examining H-2A.
  - Sec. 5 requires GAO produce a report within two years that examines remaining questions that were not reflected in previously published work (page 33).

10. Adopt a *De Minimus* Exemption from the Adverse Effect Wage Rate (AEWR)
  - The recommendation called for an exemption for work performed for less than 25% of the time, however technical assistance from DOL indicated this would not fully address the problem for workers who are conducting more than one task and would be difficult to track and enforce.
  - As a similar alternative, SAWA stipulates that an occupation classification should reflect the duties and tasks that constitute the greatest percentage of the worker's working hours (page 27, line 10).
11. Eliminate Mid-Contract Wage Adjustments
  - SAWA establishes that the AEWR that is in effect when the job opportunity is posted remains in effect for the duration of the contract, which cannot exceed 350 days (page 23, line 3).
12. Federal Heat Standard for H-2A Workers
  - Requires that each employer have a heat illness prevention plan in place and that it be clearly communicated to workers in the language they understand if they are not fluent in English (page 12, line 6).
13. Codify Special Procedures that are Currently in Regulation
  - Page 11, line 19.
14. Wage Reform of the H-2A Program
  - See recommendation #20.
15. Granting Year-Round Industries Access to the H-2A Program
  - SAWA address this recommendation through definitional changes to Section 101 of the Immigration and Nationality Act.
  - Sec. 3, strikes language that limited access to H-2A to seasonal work, and instead establishes that access is provided to aliens performing agriculture labor and services of a temporary nature (page 28).
  - Defines temporary as meaning work performed under a job contract of 350 days or less, regardless of the underlying nature of the job (page 30, line 7).
  - SAWA transfers the authority to define agriculture labor and services to the Secretary of Agriculture and per the ALWG recommendations ensures that dairy, livestock markets, indoor agriculture, forestry, and meat processors are eligible (page 28, line 20).
  - To limit the expansion, eligible meat processing activities are limited to the "harvest" of livestock, i.e. the slaughter of the animal and breakdown of the carcass, and does not include value added activities.

*Recommendations adopted with majority support*

16. H-2A Pilot Program

- Rather than create a separate multi-year H-2A visa, SAWA is focused on keeping consistent rules for all H-2A workers, however the concept of a multi-year pilot is addressed by:
  - i. Providing DOL with authority to offer 3-year labor certifications (page 4, line 10) and housing inspections which are subject to audit (page 5, line 4).
  - ii. Establishing expedited procedures for employers to petition for a subsequent contract period for an existing H-2A worker (page 7, line 18).

17. Secretary of Labor Waiver Exemption of AEWR for Small Farms

- This recommendation was not included in SAWA due to challenges of implementing such a waiver and the interaction with other reforms to the AEWR that will limit its negative impact on farming operations.

18. Allow Joint Employment of H-2A Workers

- SAWA amends section 218 of the INA to include joint employers as permitted filers of a joint application for labor certification (page 9, line 9).
- Ensures that the only hourly requirement DOL may place on such arrangements is that a jointly employed worker must perform at least 1 hour per month for each employer in a 30-day period (page 11, line 10).

19. Adopt a Permanent Solution to Adverse Effect Wage Rate Increases

- See recommendation #20.

20. Reform the Department of Labor's Adverse Effect Wage Rate Calculation

- The ALWG adopted 3 separate recommendations related to wages that conflicted with one another. Recommendation #14 was lifted straight from the Farm Workforce Modernization Act (FWMA), which relied upon data from the Farm Labor Survey (FLS) and was initially negotiated prior to the 2023 AEWR rule.
- During drafting of SAWA several dynamics made sticking to the recommendations as adopted impossible. In August of 2025 USDA discontinued the FLS and the 2023 AEWR rule was vacated and permanently enjoined as a result of litigation by a coalition of agricultural employers. This required DOL revert back to the 2010 AEWR methodology, which was calculated using the now discontinued FLS data, making implementation impossible.

- As a result, DOL issued an interim final rule (IFR) on September 30, 2025 that modified the AEWB methodology to utilize wage survey data from the Bureau of Labor Statistics (BLS), establish separate wage rate classifications based on experience required for the positions, and institute a downward compensation adjustment to the AEWB for housing to level the playing field between H-2A workers who had previously received housing for free and domestic workers who pay for their own housing.
- SAWA codifies the general wage rate methodology in the IFR with some modifications to provide additional stability to wage growth, not penalize workers performing more than 40 hours per week (by turning the housing adjustment into a flat daily rate instead of hourly rate), limit mid-contract changes (per recommendation 11), and establish a primary duties standard (per recommendation 10).

#### 21. Reducing Housing Costs of the H-2A Program

- Due to the housing compensation factor included in the IFR and provisions in appropriations that have made H-2A housing eligible for USDA 514 and 516 grant programs, this recommendation was not included in SAWA.

*Excluded recommendation that is included in SAWA*

#### Providing a Waiver of Certain Grounds of Inadmissibility

- Section 212 of the INA places a bar on admissibility for aliens who have been unlawfully present in the United States. For aliens with an unlawful presence of 180 days to one year, they are prohibited from being admitted to the U.S. for a period of 3 years and aliens with more than 1 year of unlawful presence are barred for 10 years.
- Due to significant concerns from stakeholders about the transition to H-2A program for existing workers and fear of disruptions to the food supply, an issue of national security, SAWA contains a limited provision for a waiver of the bar. This will ensure that aliens who have self-deported or those who are here and currently working in agriculture but whose only crime is unlawfully obtaining employment will be eligible to apply for H-2A status.
- The waiver does not grant any alien status automatically, they must still apply for the visa and will have to meet the standards of the program, including background checks and interview requirements.
- SAWA includes safe harbor provisions for employers who may need to provide documentation to support an alien's application for H-2A status.