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Amy DeBisschop
Director
Division of Regulations, Legislation and Interpretation
Wage and Hour Division
Department of Labor
200 Constitution Ave NW
Washington, D.C. 20210

Re: Notice of Proposed Rulemaking on “Improving Protections for Workers in Temporary Agricultural Employment in the United States”, DOL Docket No. ETA-2023-0003, 88 FR 63750

Dear Director DeBisschop:

Catholic Charities USA (CCUSA) and the United States Conference of Catholic Bishops (USCCB) respectfully submit these comments on the Department of Labor’s (DOL or “the Department”) Notice of Proposed Rulemaking on “Improving Protections for Workers in Temporary Agricultural Employment in the United States” (the “Proposed Rule”), published on September 15, 2023. We applaud the Department’s efforts to improve protections for foreign agricultural workers and appreciate this opportunity to submit comments on the proposed changes.

CCUSA is the voluntary, national membership organization for Catholic Charities agencies throughout the United States and its territories. Each agency is a separate legal entity under the auspices of its bishop. CCUSA’s 168 member agencies operate in over 3,500 service sites across 50 states, Washington D.C., and the U.S. territories and have a long history of serving local communities, including farm communities, and working to alleviate poverty.

The USCCB is a nonprofit corporation whose members are the active bishops of the United States, representing nearly 200 autonomous dioceses in all 50 states and the U.S. Virgin Islands. For almost sixty years, the USCCB’s Department of Migration and Refugee Services has advanced the Church’s concern for the life and dignity of immigrants, refugees, victims of trafficking, and others on the move through direct-service programs, advocacy, and outreach. This work is supported by the USCCB’s Subcommittee on Pastoral Care of Migrants, Refugees and Travelers, which promotes pastoral outreach to immigrant and temporary agricultural workers throughout the country.

Our organizations' collective commitment to serving and advocating on behalf of those who are poor and vulnerable is guided by Scripture and Catholic social teaching, which call us to respond to those in need with compassion and respect for each person's God-given dignity. Consistent with this, the U.S. bishops have affirmed that "[a]ll people have the right to economic initiative, to productive work, to just wages and benefits, to decent working conditions, as well as to organize and join unions or other associations."¹ With regard to migrant workers in particular, the Second Vatican Council held:

When workers come from another country or district and contribute to the economic advancement of a nation or region by their labor, all discrimination as regards wages and working conditions must be carefully avoided. All the people, moreover, above all the public authorities, must treat them not as mere tools of production but as persons, and must help them to bring their families to live with them and to provide themselves with a decent dwelling; they must also see to it that these workers are incorporated into the social life of the country or region that receives them.²

As discussed in the Proposed Rule's preamble, H-2A workers face unique vulnerabilities, given the temporary nature of their status, reliance on their employer for basic needs, the fear of reprisal, language barriers, and other factors. While acknowledging that not all employers who participate in the H-2A program are engaged in harmful or illegal practices, and employers may also struggle at times with vague or complex requirements, our constituencies report the regular and widespread occurrence of illicit and unjust practices. We appreciate DOL's efforts to identify and address ongoing violations, abuse, and exploitation of workers within the H-2A program, as well as its proposals to strengthen protections for temporary agricultural workers.

Issues Commonly Experienced by H-2A Workers

As noted, Catholic Charities agencies across the United States serve migrant farmworkers and their families by providing basic needs, such as food and housing assistance, healthcare services, legal aid, cultural orientation, and more. Several Catholic Charities agencies report employer abuse and exploitation of migrant farmworkers, including wage theft, unsanitary housing, and dangerous working conditions. The agencies report that some employers violate state and federal laws by forcing employees to work long hours, and others charge fees for basic services related to workers' rights and responsibilities. Employer-provided housing sometimes lacks basic utilities. Some employers neglect to train workers on heavy machinery or provide instructions in an unfamiliar language, increasing employees' risk of injury.

Those engaged in pastoral outreach to migrant farmworkers report similar issues as those described above, as well as the following patterns:

¹ USCCB, A Catholic Framework for Economic Life: A Statement of the U.S. Catholic Bishops, no. 5 (Nov. 1996), <https://www.usccb.org/resources/catholic-framework-economic-life.pdf>.

² *Gaudium et spes*, no. 66 (1965).

- Recruitment abuses: Many farmworkers have recounted paying recruitment fees, contrary to the existing prohibition on third-party contractors seeking payments from prospective employees. Additionally, misinformation or lack of information about the work performed is prevalent in foreign recruitment practices.
- Mobility restrictions: One of the most repeated abuses encountered is the lack of freedom to leave the worker residence due to restrictions established by the employer, including by restricting access to workers' passports and other documents, and a lack of transportation.
- Insufficient health care: Accidents and illnesses in some cases are treated by returning the worker to his or her country of origin or with minimal financial compensation. Local churches and nonprofits at times provide treatment or cover the costs of treatment.
- Worker isolation: In some cases, work schedules and restricted mobility keep workers isolated from the surrounding community. The problem is exacerbated when employers attempt to restrict visitors from interacting with the workers.

Recently, Catholic ministries have observed employers bringing a group of workers for one or two months at a time (without days off) before returning them to their country of origin and replacing them with another group of workers shortly thereafter. This is part of a weakening relationship observed between workers and some employers. Previously, seasonal worker-employer relationships fostered a sense of identity, belonging, and co-responsibility over time.

These issues are observed across several states where Catholic ministries serve H-2A workers, including Arizona, California, Georgia, Louisiana, Michigan, New York, Ohio, Washington, and Virginia. At times, these offenses may even rise to the level of human trafficking, based on the definition enshrined in federal law by the Trafficking Victims Protection Act of 2000.

In light of these issues, we believe that the Proposed Rule, overall, is a step in the right direction and would bring several positive outcomes, such as preventing incidents of human trafficking, increasing identification of trafficked workers and employers who do not treat their workers with dignity and respect, barring these employers from participating in the H-2A program, and increasing awareness of workers' rights, among other things. With this in mind, we offer the following comments on specific aspects of the Proposed Rule.

Feedback on Proposed Rule

A. Housing and Delays in Start Dates (Section 653.501(c)(5))

The proposed regulation clarifies the employer's duties and responsibilities in the event of a delayed start time. The regulation explains that when a delay occurs the employer must either notify the worker ten business days in advance, or, for those already *en route* or when notice is not feasible, provide subsistence, housing, and payment of wages for a longer period than currently required. This is to ensure that the worker is not deprived of basic needs because of delays.

We support this proposal and believe DOL should adopt it as proposed. CCUSA and the USCCB believe that this provision will respect the reliance interests of workers and protect against financial hardships beyond their control.

B. Disclosure of Foreign Worker Recruitment (Sections 655.137 and 655.135(p))

The Department proposes a new Section 655.137, *Disclosure of foreign worker recruitment*, and a new Section 655.135(p), *Foreign worker recruitment*, which are similar to Sections 655.9 and 655.20(aa) governing disclosure of foreign worker recruitment in the H-2B program. These provisions would require an employer to provide a copy of all agreements with any agent or recruiter that the employer engages, regardless of the agent's location.

We support this proposal and believe DOL should adopt it as proposed. Increased oversight of the H-2A recruitment process through the proposed provisions is commendable, as it aims to provide more protection to prospective workers through enhanced transparency. These measures are an important step toward enhancing the overall integrity of the recruitment process and enabling a more informed and transparent hiring process for foreign nationals.

C. Document Withholding (Section 655.135(o))

To better protect workers from labor trafficking, employers would be prohibited from confiscating a worker's passport, visa, or other immigration or government identification documents, independent of any other requirements under other federal, state, or local laws. Under the regulatory proposal, an exception exists if a worker requests in writing that the employer safeguard his or her documents. Such workers would be guaranteed access to their documents under certain conditions (i.e., specific locations, during regular business hours). This is intended to be more specific than the existing protections at Section 655.135(e), which require compliance with the TVPA and other applicable laws.

Consistent with concerns about trafficking, CCUSA and the USCCB welcome proposed Section 655.135(o) and believe DOL should adopt it as proposed. This more direct approach would be easier for the Department to enforce, including through potential debarment, and would provide clearer expectations for employers and workers alike.

D. Definition of "Key Service Provider" (Section 655.103(b))

The Department is proposing to define "key service provider" in its regulations. CCUSA and the USCCB wish to express particular gratitude for the inclusion of "a member of the clergy" within the definition of "key service provider", which the Proposed Rule would add at Section 655.103(b). While DOL acknowledges that the included list of service providers is illustrative, not exhaustive, explicit recognition of the important role played by clergy and religious representatives in the lives of H-2A workers is commendable. We support the proposal and believe DOL should adopt it as proposed.

E. Consulting with Key Service Providers (Section 655.135(h))

The Department proposes to broaden the range of service providers and advocates with whom consultation regarding the terms and conditions of employment under the H-2A program is explicitly protected. The Department believes that clarifying protections for workers' consultation with such providers would increase the likelihood that workers will receive necessary services and help prevent the frequent isolation that renders workers more vulnerable to H-2A violations and other forms of labor exploitation, including worsening working conditions.

CCUSA and the USCCB appreciate the change offered by the Proposed Rule and the codification of workers' right to receive guests and services outside of work hours. Human trafficking violates the sanctity, dignity, and fundamental rights of the human person. Geographic isolation and employer-imposed limitations on workers' movements and communication exacerbate opportunities for trafficking and other forms of exploitation. We support the proposal and believe DOL should adopt it as proposed.

F. Proposed Revisions to 20 CFR Part 658, Subpart F

DOL is proposing strengthening the legal requirements for debaring employers who do not comply with the legal requirements of the H-2A program. DOL is clarifying that state workforce agencies (SWAs) must initiate discontinuation of services when the Department or a SWA receives notification from an appropriate enforcement agency of a final determination that includes a violation of an employment-related law.

Ensuring compliance with legal requirements and promoting worker protection are crucial to maintaining the integrity of the H-2A temporary agricultural program. CCUSA and the USCCB welcome the proposed strengthening of employers' obligations to their employees. In addition to the proposed actions, CCUSA and the USCCB propose that, as one further practical approach to tackling the issue of wage theft and other misconduct, DOL, SWAs, and other responsible agencies should increase the frequency of unannounced site inspections. These inspections can help identify and address any instances of noncompliance and provide a stronger deterrent to employers who might otherwise be tempted to exploit their workers. These unannounced inspections of work sites and housing accommodations would also help expose the hazardous conditions to which employees are at times subjected. Furthermore, providing information regarding workers' rights and workplace safety is critical to protecting migrant farmworkers. Employers should be required to provide this information to their employees in languages they understand to ensure their safety.

G. Protections for Workers Who Advocate for Better Working Conditions (Section 655.135)

The Department proposes revisions to Section 655.135 that will provide stronger protections for workers who advocate for better working conditions for themselves and their coworkers, including through labor organizing, and prevent employers from suppressing this activity.

While we do not comment on specific proposals in this area, CCUSA and the USCCB generally welcome DOL’s efforts to codify labor rights for H-2A workers, who are otherwise excluded from the protections of the National Labor Relations Act. Catholic teaching upholds the fundamental right of workers to organize, as underscored by the U.S. bishops:

The [Catholic] Church fully supports the right of workers to form unions or other associations to secure their rights to fair wages and working conditions. This is a specific application of the more general right to associate. In the words of Pope John Paul II, ‘The experience of history teaches that organizations of this type are an indispensable element of social life, especially in modern industrialized societies.’ No one may deny the right to organize without attacking human dignity itself. . . . Migrant agricultural workers today are particularly in need of protection, including the right to organize and bargain collectively.³

This right is accompanied by the collective responsibility of workers, owners, employers, and unions “to work together to create decent jobs, build a more just economy, and advance the common good.”⁴

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We again commend DOL for its efforts to improve protections afforded to both prospective and existing H-2A workers. We also appreciate efforts to clarify expectations placed on employers to aid in their compliance with program requirements. Our organizations remain committed to working with a wide range of stakeholders, including employers and labor organizations, to improve working conditions and the quality of life for those who labor in our nation’s fields, orchards, greenhouses, and other essential areas of our food supply chain.

Respectfully submitted,



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³ USCCB, Economic Justice for All: Pastoral Letter on Catholic Social Teaching and the U.S. Economy, no. 104. (1986), https://www.usccb.org/upload/economic_justice_for_all.pdf.

⁴ USCCB, Forming Consciences for Faithful Citizenship, no. 73 (2020), <https://www.usccb.org/issues-and-action/faithful-citizenship/upload/forming-consciences-for-faithful-citizenship.pdf>.