FACT SHEET ON NEW RULES FOR THE H-2B GUESTWORKERS PROGRAM  
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What is the H-2B guestworker program and how do guestworker programs fit into immigration reform proposals?

The H-2B program is a guestworker program that U.S. employers use to employ temporary workers in non-agricultural labor or services. 8 U.S.C. 1101(a)(15)(H)(ii)(b). To bring in foreign workers under the H-2B visa program, employers must certify that (1) no U.S. workers are available for the work; (2) hiring H-2B workers will not negatively affect the wages and working conditions of U.S. workers doing similar work; and (3) the employer and any recruiters and temporary staffing agencies he uses will follow the rules of the program which protect guestworkers from exploitation while helping secure the wages and job security of U.S. workers.

The H-2B program is currently capped at 66,000 new workers every year.

H-2B workers are employed across many industries including landscaping, hospitality, food processing, and construction. States with the largest numbers of H-2B workers include Texas, Florida, Colorado, Virginia, Louisiana, New York, Maryland, Pennsylvania, North Carolina and Utah.

There are currently more than 1 million guestworkers working in the United States. Amid lack of political agreement on shifts in federal immigration policy and state laws undocumented immigrants in Arizona, Alabama, Georgia, Indiana, South Carolina, and Utah, there has been one point of consensus: guestworker programs. Mayors from New York’s Michael Bloomberg to Charleston’s Joseph Riley have praised federal guestworker programs—which bring foreign workers to the U.S. on temporary visas, bind them to a single employer, and offer no path to permanent residency or citizenship—as necessary for businesses. Every serious immigration reform proposal over the last 20 years has included guestworker programs. And now, Kansas and other states are following Utah’s lead in pursuing state-level guestworker programs.

The precarious situation of guestworkers today shows the potential fate of all U.S. workers if the shift from permanent jobs to temporary ones continues. Guestworker programs are no substitute for dignity at work and a meaningful path to citizenship for immigrants. But as long as politicians and policymakers are heeding businesses’ call to expand guestworker programs, they need to press just as hard for real worker protections and the right to organize.

What problems have U.S. workers and guestworkers faced under the Bush administration’s 2009 program rules?

Guestworkers routinely report that under the 2009 program rules, U.S. companies and recruiters lure guestworkers with promises of the American Dream, then subject them to exploitation in the workplace, and threaten deportation if workers try to access basic civil and labor rights. As a result, guestworkers face severe exploitation—and the U.S. workers that remain working alongside them face lower wages and poorer conditions. In critical American industries, from low-wage to high tech, employers are using guestworker programs to turn permanent jobs into temporary jobs.
There have been a number of credible reports of labor trafficking and forced labor by H-2B employers.

**How will the 2012 H-2B rule changes by the Department of Labor protect guestworkers from exploitation while helping secure the wages and job security of U.S. workers?**

The DOL’s changes to the guestworker program follow years of organizing, advocacy, litigation, and Congressional testimony by the NGA and its members.

The new regulations contain crucial protections to secure the wages and job security of local workers:

- The new rules eliminate debt servitude among guestworkers by prohibiting employers and recruiters from charging recruitment fees. Currently, guestworkers enter the United States with exorbitant debt from recruitment fees and travel costs. This allows employers to use threats of firing to repress workplace complaints, knowing that workers would face deportation into crushing debt they cannot repay back home. 20 CFR 655.20(o), 29 CFR 503.16(o); 20 CFR 655.20(p), 29 CFR 503.16(p)

- The new rules prohibit employers and recruiters from retaliating against workers who file a complaint, exercise their rights, or help other workers to do so. Guestworkers must be guaranteed the right to organize and to access basic civil and labor rights under U.S. law. At present, employers use threats of deportation to retaliate against workers who blow the whistle on abuse. Guestworkers lose their legal status when their employment with the sponsoring employer ends, even if their termination is retaliatory. The new rule ensures that when employers or recruiters do violate the program rules, U.S. workers and guestworkers have the same rights to speak up and organize to protect themselves. 20 CFR 655.20(n), 29 CFR 503.16(n)

- The new rules require employers to provide at least 75% of the hours promised to guestworkers in their contracts. This ensures employers do not over-recruit guestworkers to build a captive, desperate work force that employers can use to undercut U.S. workers. 20 CFR 655.20(f), 29 CFR 503.16(f)

- The new rules make bar temporary staffing agencies and job contractors except in narrow circumstances. Temporary staffing agencies and the employers they source must both have a temporary or seasonal need. Under separate DOL rules, they must both agree to be jointly responsible and follow H-2B program rules. This helps to ensure employers do not use the guestworker program to turn permanent jobs into temporary work.

These and other rules help protect U.S. workers by leveling the playing field with guestworkers: no employer will prefer hiring guestworkers to U.S. workers because they are more exploitable.

**Where to find more information?**

For more information, please see the NGA’s H-2B policy resource page at [www.guestworkeralliance.org](http://www.guestworkeralliance.org) or contact NGA’s legal director: Jennifer Rosenbaum, jjrosenbaum@guestworkeralliance.org, (504) 309-5165.