



USA FARMERS Legislative Update from Washington, DC....

This year will surely go down as one of the most unique and challenging years many of us have ever seen. We truly hope that you and your family are healthy and that each of you remain well during this difficult year.

The fall election is just a few weeks away and it promises to bring unique challenges regardless of the outcome, both in the Presidential election and in the House and Senate elections. The stakes are high so Leon and I thought this would be an opportune time to update you on the latest developments in Washington, especially regarding the H-2A program and economic relief legislation in response to the pandemic.

Coronavirus

As you know, early this year Congress passed, and the President signed into law, a couple of rounds of emergency economic aid in response to the pandemic. Although members of Congress and the President have indicated interest in another round of economic relief, they have been unable to agree on the size or scope of another relief bill.

USA FARMERS, along with other agriculture groups, sent a letter to the White House and Congress asking them to include financial assistance for farmers in the next coronavirus relief bill to help fund the increased costs associated with testing and other protective measures for our farm workforce. At this point, however, it is unclear if those provisions will be included in the next relief bill and it does not appear that a bill will be enacted before the election.

H-2A

At the beginning of the summer, there was significant speculation that the President might issue an Executive Order changing H-2A wage rates in response to difficulties farmers faced because of the pandemic. Ultimately, no such Executive Order materialized. Recent events indicate that the Administration may be finally poised to revise H-2A wages.

The USDA recently published a Notice in the Federal Register canceling its quarterly Farm Labor Survey. The results of this survey have been used by DOL to set the AEWL each year. By cancelling the survey, DOL will presumably be unable to establish the 2021 AEWL based as no data was collected in the 2020 Farm Labor Survey. The BIG question is “how will DOL set the 2021 AEWL?”

As you may recall, DOL proposed significant changes to the H-2A regulations in 2109, including changes to the calculation of the AEWL. The public comment period on DOL’s proposal ended last September. Although DOL included some proposed H-2A changes that would be positive, many other proposed changes were very concerning. We filed detailed comments responding to DOL’s proposal offering constructive criticism and alternative ideas. In total, DOL received more than 83,000 comments on the proposed changes to the H-2A program with the overwhelming majority criticizing the Department’s approach.

Now more than a year later, DOL is overdue in publishing a final rule. With the election approaching and the possibility of a change in Presidential administrations, we believe DOL intends to publish final H-2A rules in the coming weeks. Given USDA’s announcement cancelling the farm labor survey, we expect that, at a minimum, DOL will publish new rules describing how the AEWL will be calculated for 2021.



There are several possibilities for a new AEWB methodology if DOL no longer uses the USDA survey data. While we will not know for certain how the AEWB will be calculated until DOL publishes its decision, we think the following scenarios are the most likely, as they were suggested by the Department and/or commenters during the rulemaking:

- 1) tie the AEWB to the federal minimum wage plus some additional percentage; or
- 2) use the 2020 AEWB (or an earlier year) as the beginning wage and then adjust the wage annually based on the rate of inflation; or
- 3) set the AEWB for specific agricultural occupations using alternative wage data from the Bureau of Labor Statistics.

These are just educated guesses about what DOL may do. Of course, they may pursue one of these options, some combination of these options, or pursue something else entirely. We will be eagerly awaiting news from DOL on the 2021 AEWB and, rest assured, it will be passed along to you as soon as possible.

The Election

The Presidential election appears to be extremely close based on recent national polling. In Congress, the Democrats are expected to retain their majority in the House. Republicans currently hold a 53-47 majority in the Senate. Many more Republican-held Senate seats are on the ballot this fall, giving Democrats an opportunity to expand their numbers and potentially achieve a Senate majority. Several Republican Senate races are competitive, and Democrats need to net 4 additional seats to obtain a Senate majority. Alternatively, if Joe Biden is elected President, the Democrats will effectively have a Senate majority if they net just 3 Senate seats because the Vice President serves as a tie-breaking vote.

Regardless of the outcome of the election, we expect immigration reform legislation will be on the table again in 2021. The Democratic House is already on record supporting legislation focused on legalizing the illegal workforce and providing very little relief for employers in the H-2A program. We can expect them to pursue similar legislation next year.

If the Democrats obtain a Senate majority, their chances of moving a similar bill through the Senate will obviously increase. Although, the Senate's procedural rules could prevent automatic passage of Democratic legislative priorities so there will likely be increasing calls for the Democrats to abolish the filibuster. If Republicans keep their Senate majority, the Democrats will have to negotiate with Republicans if they hope to move a bill through the Senate. The Senate dynamics will ultimately be influenced by who wins the Presidency.

As always, USAF will remain engaged at all levels especially in the event opportunities arise to improve the H-2A program. We will provide an additional update following the election and as soon as DOL publishes additional information on the H-2A wage rates for 2021. In the meantime, ***do not forget to vote!***