United States Senate
WASHINGTON, DC 20510

March 14, 2012

The Honorable Hilda Solis
Department of Labor Secretary
U.S. Department of Labor
Washington, DC 20528

Dear Madame Secretary:

We write to express concerns with the administration of the H-2A visa system and its serious implications on producers and our nation's food supply.

The success of American agriculture is a testament to the ingenuity, commitment and work ethic of our farmers and ranchers. U.S. agricultural practices have evolved, with technological innovations that maximize production and make the best use of limited resources. In 2010, U.S. farms and ranches produced $369 billion in goods and the food and fiber industry supported 21 million American jobs. American agriculture has the largest trade surplus of any business sector in the country with a surplus of $30.5 billion. For the American people, this means having access to high quality, reasonably priced food. Americans spend roughly 9.5% of their disposable income on food, which is the lowest such percentage in the world.

As you know, the current H-2A program is authorized under the Immigration and Nationality Act of 1952 (8 U.S.C. § 1101) and was created to help fill agriculture related labor shortages by allowing for the admission of guest workers of a temporary or seasonal nature. This program has been a critical lifeline to producers unable to find local labor for short-lived work that can be rigorous and intensive.

Unfortunately, we have heard growing concerns from producers and others that are familiar with the H-2A program about problems with how it is administered. Producers increasingly criticize the timeliness with which applications are processed and visas ultimately issued. They have brought forward numerous cases in which unnecessary administrative delays resulted in not having enough labor to perform needed work at various intervals throughout the season, diminishing output and resulting in considerable losses. These claims are supported by data from the Department of Labor (hereinafter, "DOL") related to its performance in meeting statutory timeframes for processing H-2A applications. In FY2006 and 2007, the DOL set a 95% target for issuing timely decisions on these applications; the actual compliance rate for those years were 57% and 56% respectively. DOL has since lowered its goals substantially, setting a compliance target rate of just 57% in 2011 and 2012.

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We are also concerned by what appears to be a lack of uniformity in the application of various regulations related to the H-2A program. H-2A users routinely bring to our attention cases where applications are delayed or denied due to minor discrepancies related to language or officers applying an unreasonable degree of scrutiny that results in costly appeals to taxpayers. Since 2008, appeals of denied H-2A applications have grown by 800%. This substantial increase underscores mounting producer frustrations with the program.

It is clear that these issues have strained the relationship between producers and the three federal agencies that manage the H-2A program. While we believe that the primary goal of these agencies should be to protect American workers, ensure the safety and security of our communities and manage a responsible visa process that meets the needs of business; we also believe that this can be done without sacrificing the trust and goodwill of American farmers and ranchers.

We applaud some of the steps that the Department of Labor has taken to improve program access such as how-to webinars on H-2A applications. However, we think such efforts must be expanded through increased communication with the intent of improving and streamlining the administration of the program and fostering better relationships with producers. As the H-2A program is managed by three separate federal agencies, we urge DOL to work with the Department of Homeland Security and the Department of State to host joint regional meetings with producers across the country on the H-2A program. These meetings will provide an opportunity for the agencies to address concerns related to the administration of H-2A and identify solutions where possible.

While such measures will not solve for some of the most fundamental workforce issues facing agriculture nor minimize the need for larger reform, it is critical that we provide relief for producers where possible.

Sincerely,

Michael F. Bennet
United States Senator

Sherrod Brown
United States Senator

Michael B. Enzi
United States Senator

Mike Crapo
United States Senator

Bill Nelson
United States Senator

James E. Risch
United States Senator

Cc: The Honorable Janet Napolitano, U.S. Department of Homeland Security
Cc: The Honorable Hillary Clinton, U.S. Department of State