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Susan Frazier
Acting Assistant Secretary
Employment and Training Administration
U.S. Department of Labor

Brian Pasternak
Administrator
Office of Foreign Labor Certification
Employment and Training Administration
U.S. Department of Labor

submitted through: <https://www.regulations.gov/document/ETA-2025-0008-0001>

Comment in response to ETA Doc. No. 90 FR 47914 Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States; Docket No. ETA-2025-0008; RIN 1205-AC24.

Dear Ms. Frazier and Mr. Pasternak:

Centro de los Derechos del Migrante writes to strongly oppose ETA-2025-0008, Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States (hereinafter “Interim Final Rule” or “IFR”), to ensure that the Department of Labor (“the Department”) maintains livable wages for agricultural workers. Undermining the wages of H-2A workers would harm immigrant, migrant, and U.S.-based workers alike.

For two decades, Centro de los Derechos del Migrante (“CDM”) has worked alongside migrant and immigrant families and communities to ensure that borders are not a barrier to justice and migrant workers’ voices, experiences, and priorities shape labor migration policies. CDM has partnered with researchers to publish reports on structural flaws in U.S. work visa programs that endanger the safety of working people and undercut their wages—including *Ripe*

for Reform, a groundbreaking report on structural flaws in the H-2A program that harm workers.¹ CDM has also partnered with workers, advocates, unions, and anti-trafficking organizations to defend people’s rights to fair wages, safe working conditions, and good jobs. CDM co-founded and chairs Migration that Works—a coalition of labor, migration, civil rights, and anti-trafficking organizations and academics advancing an alternative labor migration model that respects the human rights of workers, families, and communities. Since 2006, CDM has convened the Comité de Defensa del Migrante (Migrant Defense Committee, or “Comité”), a group of current and former migrant workers in the H-2A and other temporary work visa programs and their family members. The Comité works to empower and organize migrant workers in the United States and in their home communities, creating a culture of informed migration and centering migrant workers’ perspectives in policy conversations. Working in partnership with the Comité and other worker leaders, CDM conducts extensive outreach in H-2A workers’ home communities and regions of employment each year, building relationships that guide our policy priorities.

The Interim Final Rule revises the methodology used to determine the hourly Adverse Effect Wage Rate (“AEWR”) for all occupations other than the herding and production of livestock on the range (“non-range occupations”). The AEWR is a standardized wage for H-2A and corresponding local workers.² The updated AEWR will be determined using wage data reported by the Department’s Bureau of Labor Statistics Occupational Employment and Wage Statistics (“OEWS”) survey, as opposed to the previously used U.S. Department of Agriculture’s Farm Labor Survey (“FLS”). The Department will also now divide the AEWR into two skill-based categories, with lower wage rates for Skill Level I, and will categorize workers into wage-determinant Standard Occupational Classification (“SOC”) codes based on their “primary” duties rather than the reality of their work. Finally, the Department will put in place a standardized deduction for H-2A workers in employer-provided housing. The resulting AEWRs, as posted by the Department,³ are significantly lower than in previous years. Lowering wages for H-2A and corresponding workers will seriously harm the migrant workers CDM represents and

¹ Exhibit A, CDM, *Ripe for Reform: Abuse of Agricultural Workers in the H-2A Visa Program* (2020), <https://cdmigrante.org/ripe-for-reform/>. CDM’s other research and publications can be found at <https://cdmigrante.org/publications>.

² Non-H-2A workers who perform work listed in an H-2A job order or any agricultural work performed alongside H-2A workers are considered to be in “corresponding employment,” and are entitled to the same wage rates as H-2A workers. 20 C.F.R. § 655.103(b); *id.* § 655.120(a).

³ Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States, 90 Fed. Reg. 47,914, 47,927 (proposed Oct. 2, 2025) (to be codified at 20 C.F.R. pt. 655).

organizes with. Other farmworker advocates have already presented legal challenges to the IFR's significant undercutting of wages for H-2A and corresponding workers.⁴

The depressed wages for H-2A and corresponding workers resulting from this Interim Final Rule will worsen the conditions of economic coercion already faced by these workers, who often incur significant employer-driven debt. Employer-driven debt prevents workers from reporting labor abuses, which are widespread in the program, and thus hinders the Department in investigating these violations. Additionally, workers frequently deal with overcrowded and unsanitary conditions in employer-provided housing. Because the IFR incentivizes an expansion of the H-2A program without a corresponding increase in enforcement mechanisms to ensure that employers provide suitable housing to workers, these conditions are likely to become even worse.

For these reasons, and those explained more in detail below, CDM strongly opposes the Department's decision to alter the AEWR methodology. CDM urges the Department to rescind the Interim Final Rule and reinstate the previous AEWR methodology.

1. The new AEWR methodology will result in lower wages for H-2A and corresponding workers.

The new AEWR methodology will depress wages for H-2A and corresponding local workers. In the Interim Final Rule, the Department provided a table demonstrating the effect of the new methodology on resulting AEWRs.⁵ As one example, in California, the most recent 2024 AEWR was \$19.97 per hour.⁶ The updated AEWR for H-2A workers in California under this Interim Final Rule, taking into account the standardized housing deduction, would be \$13.45, representing a decrease in wages of approximately thirty-three percent.⁷ This decrease may cause confusion for farmworkers about what wage they are entitled to. For example, if an updated AEWR falls below the state minimum wage, workers may not know that they are actually entitled to the higher rate set by state minimum wage.⁸

⁴ Exhibit B, UFW Foundation, *U.S. Farmworkers Sue Trump Administration to Save American Farm Jobs and Wages* (Nov. 21, 2025), <https://ufwfoundation.org/u-s-farm-workers-sue-trump-administration-to-save-american-farm-jobs-and-wages/>.

⁵ Adverse Effect Wage Rate Methodology, 90 Fed. Reg. at 47,927.

⁶ Labor Certification Process for the Temporary Employment of Foreign Workers in Agriculture in the United States: Adverse Effect Wage Rates for Non-Range Occupations, 89 Fed. Reg. 101,628, 101,629 (Dec. 16, 2024).

⁷ Adverse Effect Wage Rate Methodology, 90 Fed. Reg. at 47,927.

⁸ H-2A employers are required to pay a wage that is the highest of: the AEWR, a prevailing wage rate, the agreed-upon collective bargaining wage, the Federal minimum wage, the State minimum wage; or any other wage rate the employer intends to pay. 20 C.F.R. § 655.120(a)(1).

Agricultural workers already face severe economic instability. Farmworkers' mean and median personal incomes are less than \$25,000, and nine percent of workers earn less than \$10,000 per year.⁹ Twenty-one percent of crop workers have family incomes below the poverty line.¹⁰ In contrast, the top employers of H-2A workers are large growers' associations and corporations that employ thousands of workers.¹¹ Any decrease in wages will push agricultural workers further into poverty and increase the wealth gap between employers and workers.

The Department's reliance on the OEWS survey, rather than the FLS, will lead to artificially lower wages. In contrast to the FLS, which surveys workers directly employed by farms, the OEWS collects data only about nonfarm employers such as farm-labor contractors ("FLCs").¹² Workers hired by FLCs tend to have lower average hourly earnings than workers who are hired directly by farm employers.¹³ Workers employed by FLCs are also more vulnerable to abuse.¹⁴ Using data from these employers results in average wage estimates that skew lower.

The new AEW methodological divides workers into two skill-based categories: Skill Level I and Skill Level II. The AEWs for Skill Level I workers are set at the seventeenth percentile of wages for the relevant sector. Importantly, the skill category will be determined by the Department based on the contents of the job offer, rather than a worker's specific experience. Employers will therefore be incentivized to characterize workers as lower-skill to avoid paying higher wages. Fraud in job offers is already common in the H-2A program, with workers

⁹ Exhibit C, Findings from the National Agricultural Workers Survey (NAWS) 2021–2022: A Demographic and Employment Profile of United States Crop Workers, Rsch. Report No. 17, U.S. Dep't of Agric. (Sept. 2023), <https://www.dol.gov/sites/dolgov/files/ETA/naaws/pdfs/NAWS%20Research%20Report%202017.pdf>.

¹⁰ *Id.* at 4.

¹¹ The top three H-2A employers in 2024 employed 10,425, 5,448, and 5,259 H-2A workers, respectively. Exhibit D, Off. of Foreign Lab. Certification, *H-2A Temporary Agricultural Program – Selected Statistics, Fiscal Year (FY) 2024* (2024), https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/H-2A_Selected_Statistics_FY2024_Q4.pdf.

¹² Exhibit E, U.S. Bureau of Lab. Stat., Occupational Employment and Wage Statistics (last updated Apr. 2, 2025), https://www.bls.gov/oes/oes_emp.htm; see also Exhibit F, Rural Migration News, *Blog 253: AEWs, FLS, and OEWS* (Dec. 2021), <https://migrationfiles.ucdavis.edu/uploads/rmn/blog/2021/12/Rural%20Migration%20News%20Blog%20253.pdf>.

¹³ Rural Migration News, *supra* note 12.

¹⁴ Exhibit G, Southern Poverty Law Center, *Close to Slavery: Guestworker Programs in the United States* 28-30 (2013), https://www.splcenter.org/wp-content/uploads/files/d6_legacy_files/downloads/publication/SPLC-Close-to-Slavery-2013.pdf.

reporting high rates of misrepresentation about wages and labor conditions.¹⁵ Bifurcating the AEWR into two categories, purely based on information provided by employers, will give low-road employers the opportunity to mischaracterize and exploit workers in order to pay them less.

Under the Interim Final Rule, farmworkers will receive the AEWR for the SOC code corresponding to the majority of duties outlined in the job offer, even if a significant amount of their work falls under an SOC code with a higher rate. The previous AEWR determination rules outlined that, when duties identified in the job order could not be encompassed within a single SOC code, a worker was entitled to receive the highest AEWR across all applicable job codes.¹⁶ The Department's new methodology will allow workers to be paid wages lower than they are entitled to based on their work performed, and further incentivizes employer misrepresentation in job offers.

Finally, the housing deduction in the Interim Final Rule will substantially lower workers' wages. Under the H-2A regulations, employers are required to provide housing to H-2A workers and workers in corresponding employment at no cost to the workers.¹⁷ However, the IFR establishes a standardized wage deduction for housing costs, effectively charging workers for housing that is legally required to be provided free of charge. The housing deduction will not apply to local workers in corresponding employment. This means that it will be cheaper for employers to hire H-2A workers whose wages can be reduced for housing costs. This discrepancy in deductions will create a downward pressure on wages for all agricultural workers.

The lower wages resulting from the new methodology will result in a massive wealth transfer away from workers. The Department itself predicts that the IFR will generate \$2.46 billion in annual transfers from H-2A workers to H-2A employers.¹⁸ Given the economic precarity of agricultural workers in comparison to their employers, the Department should ensure their income security, rather than facilitate their further marginalization.

2. Decreased wages for H-2A and corresponding workers will facilitate economic exploitation.

¹⁵ CDM, *supra* note 1, at 21.

¹⁶ Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States, 88 Fed. Reg. 12,760, 12,764 (Feb. 28, 2023).

¹⁷ 20 C.F.R. § 655.122(d)(1).

¹⁸ Adverse Effect Wage Rate Methodology, 90 Fed. Reg. at 47,952.

The wage depression resulting from the AEWB methodology change will make H-2A and corresponding workers more vulnerable to labor abuse. The H-2A program is already rife with violations. In a survey of H-2A workers conducted in 2020, CDM found that 100% of those interviewed reported experiencing at least one serious legal violation during their time in the U.S.¹⁹ Many workers do not report violations to government agencies due to economic coercion and fear of retaliation.²⁰

Many H-2A workers incur significant employer-driven debt to secure their positions, relying on continued work to pay off this debt. Although recruitment fees are illegal under U.S. law, recruiters routinely charge high fees in exchange for employment under the temporary work visa programs.²¹ Twenty-six percent of H-2A workers surveyed by CDM in 2020 reported paying a recruitment fee just to be selected to come to the U.S.²² Additionally, employers may require workers to pay for the costs of inbound travel from their country of origin to the worksite, including for visas, flights, and hotels.²³ Workers report that some employers also charge illegal fees for items such as work equipment and tools.²⁴ Workers borrow high-interest loans from predatory lenders to pay these fees and costs. Interest rates for these loans are reported to reach as high as sixty percent.²⁵ Once workers arrive at a worksite, they are primarily working to pay off this debt. The following story, shared by an H-2A worker, illustrates the ways in which employer-driven debt exacerbates financial precarity:

A Nahuatl speaker from Pachuca, Hidalgo, Abel heard about the opportunity to work at a California company from a few friends. Although he was excited about the opportunity at the time, Abel now recalls his first season as financially disastrous. “I went just to pay back the money I borrowed,” he shared. Between recruitment fees, visa costs, buses,

¹⁹ Serious legal violations included: workers paying recruitment fees; workers not receiving full travel reimbursements to or from the United States; significant wage violations; not receiving a contract or not receiving a contract in the worker’s native language; sexual harassment; verbal threats based on race, gender, or national origin or related to the use of force or deportation; the seizure of identity documents; overcrowded or seriously substandard housing; and the failure to provide essential safety equipment.” CDM, *supra* note 1, at 4.

²⁰ CDM, *supra* note 1, at 37.

²¹ Exhibit H, CDM, *Recruitment Revealed: Fundamental Flaws in the H-2 Temporary Worker Program and Recommendations for Change* 16 (2018), https://www.cdmigrante.org/wp-content/uploads/2018/02/Recruitment_Revealed.pdf.

²² CDM, *supra* note 1, at 5.

²³ *Id.* at 19.

²⁴ *Id.* at 21.

²⁵ CDM, *supra* note 21, at 18-19.

accommodations, and other travel expenses, Abel paid over \$7,000 Mexican pesos, or about \$370 USD. “First of all, I had to pay for transportation to Nuevo Laredo from Pachuca. Then, we paid for the hotel as we obtained our visa—four nights. Eight hundred pesos per night. We also had to pay for the visa.” To pay for the recruitment costs and to leave his family with some money, Abel took out a loan of \$10,000 pesos at a 20% interest rate. Abel’s employers did not provide any reimbursement for any of his travel or other costs. Instead, they charged him and his coworkers \$1,500 USD for recruiting him. “We had to pay that amount little by little every week. For me, it was a lot of money. I had taken out a loan with interest.”²⁶

As H-2A workers are trapped in this debt and feel the financial pressure to send what little funds they have back home, they are disincentivized to report labor abuses. Workers encountering unsafe or abusive conditions may choose to continue working rather than risk being fired and having to face the consequences of defaulting on loans or failing to support family members in their countries of origin.²⁷ Lowering wages will increase this economic pressure, increasing the stakes for workers who have to choose between asserting their rights and staying afloat. Workers facing this economic pressure will be less inclined to report any program violations to the Department. To ensure workers feel secure to speak up about workplace abuse, they must receive fair wages based on the FLS survey.

3. The housing deduction will exacerbate already overcrowded and substandard housing conditions.

The housing deduction violates the H-2A program rules and is unjustified given the actual conditions of worker housing. As stated above, H-2A regulations require that employers provide workers housing free of charge.²⁸ This is an essential guarantee of the H-2A program that allows workers to relocate to a new community where they may not have sufficient resources or networks to secure housing. The housing deduction, which effectively charges workers for this housing, strips workers of this codified right.

Many H-2A workers and workers in corresponding employment face squalor in employer-provided housing. Housing is often severely overcrowded. Workers have reported

²⁶ CDM, *supra* note 1, at 20.

²⁷ CDM, *supra* note 21, at 18 (“When these workers encounter abusive or unsafe working conditions, the choice becomes even more critical. If workers leave their employment in the U.S. and return home, they may have even less money than when they initially left to work under the H-2 visa program. The necessity to earn back borrowed money can force workers to continue working in dangerous or abusive conditions”).

²⁸ 20 C.F.R. § 655.122(d)(1).

sleeping four or five people in a small room, men and women, with workers forced to sleep on the floor or share beds.²⁹ Housing conditions are also poor. Workers report non-functioning kitchens and bathrooms, rats, bed-bug infestations, inadequate ventilation, and oppressive heat.³⁰ One worker stated: “I lived in a chicken pen made out of thin metal material that was in bad shape, and it had bunk beds with thirty to forty other people. Anyone was able to enter.”³¹ This worker reports being charged \$1,000 per month for this housing.³² With limited resources for federal and state housing agencies, farmworker housing is rarely investigated.³³ Substandard housing conditions persist, and workers remain in unsafe living situations. The Department should not allow employers to charge workers for such conditions.

The housing deduction does not apply to the AEWR for agricultural workers in corresponding employment, only to H-2A workers. This means that employers will have a financial incentive to hire H-2A workers rather than local corresponding workers, which will have an adverse impact on all farmworkers’ wages—the very impact the AEWR is meant to prevent.³⁴ If agricultural employers find it economically advantageous to hire H-2A workers, they may prefer to hire more H-2A workers. H-2A certifications have increased every year in the last five years; an increased demand will lead to a surge in employer use of the program.³⁵ If this expansion does not correspond to increased housing supply or funding for state authorities charged with inspecting farmworking housing, living conditions will worsen. To ensure safe and dignified work housing, the Department must rescind the housing deduction.

²⁹ CDM, *supra* note 1, at 8.

³⁰ *Id.* at 6, 28-29.

³¹ *Id.* at 24.

³² *Id.*

³³ *Id.* at 27-29.

³⁴ Adverse Effect Wage Rate Methodology, 90 Fed. Reg. at 47,916 (“The AEWR is one of the primary ways the Department has historically met its statutory obligation to certify that the employment of H-2A workers will not have an adverse effect on the wages of agricultural workers in the United States similarly employed, while ensuring that employers can access legal agricultural labor”).

³⁵ Off. of Foreign Lab. Certification, *supra* note 11; Exhibit I, Office of Foreign Labor Certification, *H-2A Temporary Agricultural Program – Selected Statistics, Fiscal Year (FY) 2023* (2023), https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/H-2A_Selected_Statistics_FY2023_Q4.pdf; Exhibit J, Off. of Foreign Lab. Certification, *H-2A Temporary Agricultural Program – Selected Statistics, Fiscal Year (FY) 2022* (2022), https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/H-2A_Selected_Statistics_FY2022_Q4.pdf; Exhibit K, Off. of Foreign Lab. Certification, *H-2A Temporary Agricultural Program – Selected Statistics, Fiscal Year (FY) 2021 EOY* (2021), https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/H-2A_Selected_Statistics_FY2021.pdf; Exhibit L, Off. of Foreign Lab. Certification, *H-2A Temporary Agricultural Program – Selected Statistics, Fiscal Year (FY) 2020 EOY* (2020), https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/H-2A_Selected_Statistics_FY2020.pdf.

Conclusion

For the reasons explained above, Centro de los Derechos del Migrante strongly opposes the Department's alteration of the AEWB methodology.

Sincerely,

Carmen Martínez
Deputy Policy Director
Centro de los Derechos del Migrante