

October 23, 2015

The Honorable Thad Cochran  
Chairman  
Senate Committee on Appropriations  
Room S128, The Capitol  
Washington, DC 20510

The Honorable Barbara Mikulski  
Vice Chairwoman  
Senate Committee on Appropriations  
Room S146A, The Capitol  
Washington, DC 20510

Dear Chairman Cochran and Vice Chairwoman Mikulski:

As Congress continues to debate funding levels for fiscal year (FY) 2016, we are writing to encourage you to preserve certain provisions regarding the H-2B temporary worker program in any conference report or omnibus appropriations legislation considered.

As you may know, key industries such as seafood, hospitality, forestry, and landscaping depend on the H-2B temporary worker program to supplement their existing American workforce and operate their businesses. However, this past year has been especially challenging for these seasonal industries, as several recent actions taken by both the Department of Homeland Security and the Department of Labor have threatened to put them out of business.

During the past several months, seasonal businesses have had to endure a suspension of the H-2B temporary worker program, lack of transparency by the Department of Homeland Security regarding the availability of H-2B visas, and inexcusably long delays in the Department of Labor's certification process. These avoidable problems have been further compounded as seasonal industries prepare for 2016. Now most recently, the Final Rule jointly issued by the Department of Homeland Security and the Department of Labor have made the H-2B petition process even more cumbersome.

Seasonal businesses rely on H-2B workers to help meet short-term peak demand. They will not be able to continue to operate if we do not restore some stability while we continue to look for a long-term solution that will streamline and bring transparency to the H-2B temporary worker program. That is why it is paramount that we preserve H-2B language contained in the various House and Senate Appropriations bills in any FY 2016 conference report or omnibus appropriations legislation we vote on.

Specifically, we respectfully request that you maintain the following provisions in the various bills passed by the Senate and House Appropriations Committees:

**S. 1695, Department of Labor, Health and Human Services Appropriations Act**

**Prevailing Wage and Use of Private Wage Surveys**

Establishes how prevailing wage is determined by allowing for the use of private wage surveys. This helps ensure that both H-2B and American workers are receiving the most competitive wage for their occupational classification. If an improper determination is made, the perverse effect of the prevailing wage policy—intended

to protect American workers from being displaced by lower wage H-2B workers— would be to produce the terrible outcome where American workers would be paid less in the local labor market, while the same employers would be forced to pay higher wages to the same misclassified H-2B worker.

### **Staggered Crossings for H-2B Workers**

Provides H-2B employers flexibility by allowing them to stagger the entry of their H-2B workers over a certain time period. This allows employers to better align their workforce needs with times of peak demand, rather than bringing all H-2B workers into the country at once, even when they are not all needed at the same time.

### **Defund Burdensome Department of Labor Regulations**

Prohibits the use of funds to implement the “3/4<sup>th</sup> guarantee,” and clarifies definitions for “full-time” workweek and “temporary need.” This makes certain that employers are paying the appropriate wages for the work being completed by H-2B employees.

## **S. 1619, the Department of Homeland Security Appropriations Act**

### **H-2B Program Transparency**

Brings transparency to the H-2B petition process by requiring a study of the methodology used to determine if the H-2B cap is met. This requires the Department of Homeland Security to improve the petition process by adopting a methodology that makes sure that the number of H-2B petitions approved aligns with number of H-2B visas that are issued.

## **H.R. 3128, the Department of Homeland Security Appropriations Act**

### **Returning Worker Exemption**

Allows for a one-year exemption from the statutory cap for H-2B workers who previously worked in the U.S. in one of the three previous fiscal years. This provides employers certainty that they will be able to supplement their existing American workforce force to meet their industry’s demands. It also allows employers to rely on trusted repeat workers who represent the lowest business and national security risk.

Relief for seasonal businesses that use the H-2B temporary worker program is needed urgently. If these provisions are not included as a part of an FY 2016 conference report or omnibus spending bill, it is possible that the businesses that rely on this program will have to close their doors. Thank you for your consideration and we are eager to work with you as your committee finalizes spending measures for FY 2016.

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Thom Tillis  
U.S. Senator

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Mark Warner  
U.S. Senator