



December 17, 2022

The Honorable Nancy Pelosi  
Speaker  
U.S. House of Representative  
Washington, DC 20515

The Honorable Kevin McCarthy  
Minority Leader  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Charles Schumer  
Majority Leader  
U.S. Senate  
Washington, DC 20510

The Honorable Mitch McConnell  
Minority Leader  
U.S. Senate  
Washington, DC 20510

Dear Speaker Pelosi and Leaders Schumer, McConnell and McCarthy:

As leading organizations in the U.S. construction industry, we write in strong opposition to the so-called “Seasonal Employer Protection Act” proposal which would impose harmful and unjustified restrictions on the access of the construction industry to the H-2B seasonal guest worker program. We urge you to reject the inclusion of this proposal in the emerging FY 2023 Omnibus appropriations bill.

Given the severe workforce shortages in the construction industry that have reached crisis proportions, accepting any H-2B “deal” hastily drafted in secret by two business organizations that do not in any way represent the larger construction industry would be extremely irresponsible. While the current outdated program has many problems and is in need of reform, it nevertheless is critical to employers in the construction industry who too often cannot find local workers to fill job openings during peak season. It provides an opportunity for businesses to retain their full-time workers at maximum capacity as economic conditions warrant to meet consumer demand, thus enabling them to fully contribute to local and state economies. Seasonal workers support many upstream and downstream American jobs and add to economic growth.

The H-2B program is complicated, however, many construction employers turn to it because it is the primary option available for hiring legal workers to meet peak seasonal needs. The program already requires employers to undertake extensive recruitment of American workers, gain approval from four government agencies and pay premium wages. The statutory cap of 66,000 annual visas is woefully inadequate to meet current demand in today’s economy in which workforce shortages are becoming ever more acute. As such we support sensible reforms to make the program more effective and we are disappointed recent efforts failed to achieve progress in this regard.

Under the text of the “deal” first circulated on Dec. 16, Congress is inexplicably asked to make a determination that entire segments of the construction industry will be permanently banned from future eligibility in the H-2B program. The multifamily and commercial construction sectors are particularly targeted for exclusion, which would arbitrarily harm such businesses, increase costs and ultimately exacerbate the affordable housing problems already ravaging the market and further disadvantaging low- and moderate-income consumers. In a time of critical affordability concerns, further hindering the ability of the multifamily industry to find workers to supplement the U.S. workforce stands to harm thousands of American families. Further, at a time when economic forces are leading policy makers to consider the need to convert potentially underutilized commercial real estate assets to multifamily buildings, we will need workers more than ever to accomplish that goal. The proposed H-2B measure will only add to the uncertainty of commercial real estate and larger economic conditions if it further dries up the pipeline of workers needed to construct new buildings and renovate older properties for higher energy performance and lower carbon footprints.

Importantly, the language as written in this poorly crafted proposal appears to ban not only construction employers but other employers regardless of industry, such as recreational resorts, who may need H-2B workers who happen to be in “construction occupations.” As all industries struggle to fill key labor shortages, this focus on banning future “construction occupations” from participation in the program is likely to cause significant challenges for many industries outside of construction employers. This last minute proposal also entirely bans the meatpacking industry from any future use of a program designed to provide employers with access to legal foreign-born workers. Beyond that, every other economic sector is allowed to use the program as all industries do now—by applying, meeting the requirements, and proving need. Such arbitrary picking of winners and losers by Congress is, to put it mildly, very poor public policy.

Our organizations work very hard to educate Americans about the rewarding, family-sustaining careers in the construction industry. Collectively and individually, we are making large investments in recruitment, education, training and certification programs to bring more young people into these rewarding yet physically demanding careers. But with an aging workforce, the low U.S. birthrate and other demographic challenges, workforce shortages are the most difficult impediment to construction industry growth and prosperity, and thus access to the H-2B program remains critical. This H-2B “deal” would only hinder the efforts of construction industry employers, especially small businesses, striving to meet the current difficult workforce development challenges they face everyday in today’s economy.

Congress should not be in the business of banning any industry employers from making the right decision to use an approved government program to help meet the needs of employees and customers. We strongly urge you to reject this hastily-crafted, harmful proposal that would condemn construction industry businesses to permanent exclusion from the H-2B program. We stand ready to work with lawmakers and other stakeholders on sensible reforms of this program and other aspects of immigration policy to meet U.S economic needs.

Thank you for your careful consideration of our views on behalf of thousands of construction employers and employees that work hard to make American homes and businesses safer, productive and more energy-efficient every day.

Sincerely,

Associated General Contractors of America  
Associated Builders and Contractors  
Independent Electrical Contractors  
Leading Builders of America  
National Association of Home Builders  
National Apartment Association  
National Roofing Contractors Association  
National Multifamily Housing Council  
Tile Roofing Industry Alliance