

## FARMWORKERS' SPECIAL NEEDS REQUIRE ADMINISTRATION ATTENTION TO ENSURE THAT ELIGIBLE LEGAL IMMIGRANTS OBTAIN FOOD STAMPS

The new welfare legislation denies public benefits to most legal immigrants but creates eligibility for lawful permanent resident aliens who have 40 quarters of qualifying work as defined by the Social Security Act and the welfare bill itself. Contrary to popular belief, most farmworkers are legal immigrants and have been working legally in the United States for at least the last 10 years (i.e. forty quarters). Farmworkers will face unique difficulties in gathering proof of that employment, however, due to the nature of their work. The Administration must anticipate these difficulties so that eligible farmworkers do not suffer delays and denials when applying for food stamps.

### **Legal Immigrant Farmworkers Dominate the Agricultural Labor Force**

There are about 1.6 million migrant and seasonal farmworkers in the United States. Most (about 70-75%) are lawful resident permanent aliens,<sup>1</sup> partly because about 1.1 million farmworkers were legalized under the 1986 immigration reform. IRCA's "special agricultural worker" or "SAW" program granted temporary and later permanent legal status to persons who showed that they had worked at least 90 days in seasonal agricultural work during the one year ending May 1, 1986. 8 U.S.C. § 1160; 8

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<sup>1</sup> The Department of Labor estimates that about 25% of migrant and seasonal farmworkers are unauthorized. Other farmworkers are United States citizens. See written testimony of Deputy Administrator John Fraser, Wage and Hour Division, U.S. Department of Labor, Guest Worker Programs, Hearing before subcommittee on Immigration and Claims of the Committee on the Judiciary, House of Representatives, Dec. 7, 1995 at 12; U.S. Department of Labor, U.S. Farmworkers in the Post-IRCA Period: Based on Data from the National Agricultural Workers Survey (NAWS) (March 1993) ("NAWS").

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C.F.R. Part 210. Although the SAWs are now eligible for citizenship, educational and economic barriers depress their naturalization rates.

Most farmworkers have been working in the United States for at least 10 years or the equivalent of forty quarters. A major study, based on data from 1989-91, found that farmworkers had "a median of eight years experience in [seasonal farmwork]." NAWS (1993) at 11. Most farmworkers who legalized as SAWs have remained in agriculture and, consequently, have been working in the United States for at least 10 years. Report of the Commission on Agricultural Workers, pp. 1, xxi. Of course, many farmworkers also worked in undocumented status and deserve credit for such quarters.

#### **Farm Jobs Pay So Poorly That Many Farmworkers Need Public Benefits**

Nearly half (46%) of farmworkers live below the poverty line, with average annual earnings of \$6,500. NAWS (1993) at 13; Report of Commission on Agricultural Workers at 100. The majority of farmworkers are males who are accompanied by a spouse and/or child (NAWS at 11). Yet 71% of the farmworker households living in poverty do not use public benefits (food stamps, WIC, AFDC, General Assistance, subsidized housing).

The program most used by farmworkers is food stamps: approximately 17% of farmworker households report receiving food stamps during the past two years. Farmworkers typically only apply for food stamps on a seasonal basis, often in emergencies when expedited agency procedures are critically important.

#### **The Importance of Work Quarters**

The welfare bill provides that a permanent resident alien is not barred from

receiving public benefits if he or she has "worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act or can be credited with such qualifying quarters as provided under section 435 [of this Act]." § 402(a)(2)(B), 402(b)(2)(B). Under section 435 of the welfare bill, applicants may include not only their own quarters of employment, but also those of their spouse and, while they were minors, of their parents.

The Social Security Act's lenient definition of "qualifying quarters" will mean that most farmworkers, despite low wages and frequent periods of unemployment, will satisfy the standard. At the average farmworker's yearly earnings of \$6,500, most farmworkers would be credited with four quarters of coverage each year. Because most farmworkers have been working in the United States since at least 1985-86, they will have worked forty qualifying quarters or the equivalent.

### **Farmworkers' Obstacles in Proving Their Employment Histories**

Many farmworkers, unlike members of other occupational groups, will not be able to prove their forty quarters of employment merely by requesting an earnings report from the Social Security Administration. Records from Social Security, the Internal Revenue Service and Unemployment Insurance are likely to be incomplete.

*First*, many farmworkers who legalized under the 1986 law lacked a valid Social Security number prior to filing their immigration applications in 1987-88. Thus, quarters worked prior to that time are unlikely to have been reported.

*Second*, agricultural employers are notorious for failing to provide workers with earnings statements, neglecting to prepare or maintain pay records, and failing to

report workers' income to Social Security and the IRS. Indeed, agricultural employers are at least three times as likely as other employers not to report or to under report their employees' earnings to Social Security. U.S. General Accounting Office, Hired Farmworkers: Health at Risk, p. 5 (1992).<sup>2</sup>

Women farmworkers who wish to prove their employment record suffer disproportionately because many employers' payrolls only list the pay of an entire family or crew in the name of a single worker, usually a male. See, e.g., Antunez v. G & C Farms, 126 Labor Cases (CCH) ¶ 33,015 (D.N.M. 1993).

These problems are especially true for workers employed through farm labor contractors, or "crewleaders." An increasing portion of the farm labor force, now about 28% of farmworkers nationally, is employed through farm labor contractors. NAWS (1993) at 59; Commission on Agricultural Workers at 120--25. Many crewleaders are financially insolvent and difficult to locate. Crewleaders are known for failing to keep proper records and to pay into funds established for the benefit of workers, such as Social Security and Unemployment. Philip Martin & J. Edward Taylor, "Merchants of Labor: Farm Labor Contractors and Immigration Reform," (Urban Institute, May 1995) at 12, 17 n. 6. In California in 1990, the Employment Development Department logged

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<sup>2</sup> Some of the many lawsuits caused by these problems include, Calderon v. Witvoet, 999 F.2d 1101, 1105 (7th Cir. 1993) (employer failed to deduct or pay Social Security taxes); Beliz v. McCleod, 756 F.2d 1317 (5th Cir. 1985) (employer failed to pay Social Security taxes); Antunez v. G&C Farms, 126 Labor Cases (CCH) ¶ 33,015 (D.N.M. 1993) (same); Sanchez v. Overmyer, 845 F. Supp. 1183, 1188 (N.D. Ohio 1993) (same); Bresgal v. Brock, 637 F. Supp. 271, 277 (D.Ore. 1985), aff'd, 843 F.2d 1163 (9th Cir. 1987) (same); Certilus v. Peeples, 101 Lab. Ca. (CCH) ¶ 34,587 (M.D. Fla. 1984) (same).

nearly 5,000 claims for unemployment benefits linked to unlicensed contractors who failed to pay into the fund. Special Report: Fields of Pain, Part II, Sacramento Bee, Monday Dec. 9, 1991 p. 7; Martin & Taylor at 12. See also, Castillo v. Givens, 704 F.2d 181 (5th Cir. 1983), cert. denied 464 U.S. 850 (1983) (illiterate crewleader assigned task of keeping records failed to do so).

It will be difficult and time-consuming for farmworkers to prove their past employment, just as it was during the SAW application process when they were obligated to prove their work history during the 1985-86 period. Even when farmworkers have been provided with pay records, most lack the space and other resources needed to retain those records during their frequent relocations.

To secure other evidence of their past employment -- records, statements of witnesses, etc. -- farmworkers will be hampered by inadequate education and English language ability, geographic isolation, limited access to telephones, and lack of legal counsel. Moreover, the sheer number of former employers is daunting. Farmworkers usually make their living each year by patching together a series of relatively short-term jobs. NAWS at 27-28. This is particularly true for hundreds of thousands of harvest jobs. About four out of five harvest workers piece together three or more short-term jobs in a year. Id. at 60, 27.

To sum up:

1. These and other obstacles mean that when eligible, legal-immigrant farmworkers apply for food stamps many of them will not possess proof of their forty quarters of employment.

2. When such farmworkers seek records from the Social Security Administration and other government agencies, those records will often be incomplete.

3. Farmworkers will need the opportunity and the time to supplement government records with other evidence, including statements by the applicants and witnesses regarding their past employment. Reconstruction of farmworkers' employment histories is difficult and time-consuming.

4. Eligible farmworkers with urgent needs for food stamps should not be prevented from promptly obtaining them due to delays associated with securing employment records to corroborate the applicants' claims. Applicants should not be penalized for their employers' unlawful conduct or carelessness.

### **Solutions to Ensure That Eligible Farmworkers**

#### **Receive Food Stamps in a Timely Manner**

The Administration has significant flexibility in establishing the procedural and evidentiary rules for workers seeking to prove that they have forty quarters of qualifying employment.<sup>3</sup> It must ensure that eligible farmworkers -- many of whom proved their employment ten years ago to secure lawful permanent resident alien status -- secure food stamps. It is especially important, in light of the seasonality and low pay of farmworkers' employment, that food stamps be issued promptly. We offer the following outline of solutions:

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<sup>3</sup> Fortunately, the welfare bill does not contain the Social Security Act's sometimes-onerous procedural provisions, evidentiary presumptions and statutory limitations for correcting Social Security records. See 42 U.S.C. § 405(c); Breeden v. Weinberger, 493 F.2d 1002 (4th Cir. 1974) (approving farmworkers' claim of qualifying employment despite absence from Social Security records).

1. Food stamp officials should accept Social Security earnings reports as conclusive evidence of employment, but should not reject applications solely because such reports lack evidence of employment. The USDA should stress to officials that government records often do not contain evidence of all farmworkers' employment.

2. USDA should emphasize to food stamp officials that four quarters in a year shall be credited, as required by the Social Security statute and the welfare bill, if a person has earned the minimum amount set by the Social Security Administration for that year (e.g., \$2,560 in 1996), regardless of how many quarters were actually worked in that year.

3. Officials should be informed of the need to credit quarters of work performed by the applicant's spouse, and of the applicant's parents when the applicant was a minor, even if that results in more than four quarters of credit in a single year. Many farmworkers worked as children and should be credited with their own work and their parents' work.

4. Officials should be informed that the Social Security Administration often has a one to two year delay in recording earnings information that it has received. This lag time means that some SSA records may not reveal 4 to 8 quarters of the farmworkers' most recent employment.

5. Farmworkers who lack adequate records should be permitted to submit statements -- of themselves and of other witnesses, including family members, co-workers, crewleaders and growers -- to show that they have worked the requisite amount of quarters.

5. *An applicant's submission of information should be judged based on whether it is "more probable than not" that an applicant earned the required amount of wages over the period in question. The applicant need not show proof "beyond a reasonable doubt" or to "a substantial certainty." There should be no penalty for farmworkers who supply evidence to supplement inadequate government records.*

6. *Farmworkers who were granted lawful immigrant status under the Special Agricultural Worker ("SAW") program of the Immigration Reform and Control Act of 1986, and who state that they have continued working in the United States since that time, should be presumed to have worked forty quarters.*

7. *Applicants who have previously provided food stamp officials in one state or area shall not be required to prove repeatedly that they have worked forty quarters when applying in other states or areas. Local officials must seek such records from other offices.*

8. *Agency officials should be informed that farmworkers often need temporary, emergency food stamps at the beginning of a crop season before work has begun or before the amount of work has become substantial enough to provide enough earnings to purchase food. In such urgent circumstances, food stamp officials should consider that adequate employment has been proved if the applicant provides credible information about past employment and states that he or she will secure additional evidence to show such employment.*

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