



The Real Estate Roundtable



October 23, 2023

The Honorable Dick Durbin, Chair
Senate Judiciary Committee
U.S. Senate
Washington, DC 20510

The Honorable Lindsey Graham, Ranking Member
Senate Judiciary Committee
U.S. Senate
Washington, DC 20510

The Honorable Jim Jordan, Chair
House Judiciary Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Jerry Nadler, Ranking Member
House Judiciary Committee
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Durbin, Chairman Jordan, Ranking Member Graham, and Ranking Member Nadler:

As leading organizations in the U.S. construction industry, we write to express our strong opposition to the “Seasonal Employer Protection Act of 2023,” introduced by Senators Padilla (D-CA) and Graham (R-SC) which would impose harmful and unjustified restrictions on access to the H-2B temporary seasonal visa program by employers in the construction industry. This type of arbitrary ban from a legal workforce program harms employers who are trying to do the right thing when hiring workers, and it also sets a broader negative precedent for how Congress treats U.S. employers in workforce programs.

Given the severe workforce shortages in the construction industry, our organizations have long supported the development of fair, efficient, and workable temporary visa programs that will create legal pathways for temporary workers to enter the U.S., as well as a robust process by which all employers can apply to hire those workers. The H-2B temporary visa program is presently the only legal program that construction industry employers can use. We are shocked that Congress would ever consider telling employers in any industry who are trying to do the right thing by using a *legal* program to apply for and hire *legal* foreign-born workers that they may not even apply to do the right thing.

This deal was struck by a business entity that in no way understands or represents the interests of the construction sector of the economy. The agreement was arbitrarily determined based on no conversation with the construction industry, and without any data or justification. Most importantly, it would permanently block in statute the ability of entire swaths of construction industry employers from ever again hiring workers through the only legal program available to them.

It defies all logic that Congress would ever consider such a provision viable given the serious border issues faced by the U.S. Instead of encouraging employers and potential workers to use a legal program, Congress would instead block access to it, and do so permanently in statute regardless of what we know will be more severe workforce challenges for the construction industry in the future. Rather than arbitrarily banning employers in key economic sectors from even trying to hire *legal* foreign-born workers, Congress should be insisting that all employers in all industries make use of legal programs to ensure their qualification to hire legal foreign-born workers.

The multifamily and commercial construction sectors are particularly targeted for exclusion in this legislation, which would arbitrarily harm such businesses, increase costs and ultimately exacerbate the affordable housing problems already ravaging the market, 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 by further drying up the pipeline of workers needed to construct new buildings and renovate older properties for higher energy performance and lower carbon footprints.

The current H-2B program has many challenges and our organizations have long-supported a serious conversation about making critical updates and reforms. However, this current legislation allowed for no input from the construction industry, while choosing to arbitrarily punish its employers, and the many thousands of U.S. workers whose workflow and continued employment often depend on the supplemental H-2B workers who fill out their teams during high-demand periods and peak seasons. Seasonal workers support many upstream and downstream American jobs and add to economic growth in all industries, including the construction industry.

While the H-2B program is complicated and costly to navigate, many construction employers turn to it because it is the only program 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 continue to hope to be part of a constructive dialogue that makes progress on this issue in a way that supports all U.S. employers and workers.

This 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, sending a message to employers in that industry who are also trying to do the right thing by using a legal program that they cannot even apply to participate. Outside of construction and meatpacking, 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. Yet with an aging workforce, the low U.S. birthrate and other demographic challenges, workforce shortages are one of the most difficult impediments to construction industry growth and prosperity, and thus access to the H-2B program remains critical. This legislation

would 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 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 millions of employees who work hard to make American homes and businesses safer, more productive, and more energy-efficient every day. If you have any questions about our concern over this provision, and others in the legislation, please contact Jenna Hamilton with Leading Builders of America at jenna.hamilton@leadingbuildersofamerica.org.

Sincerely,

Associated Builders and Contractors
Associated General Contractors of America
American Seniors Housing Association
Independent Electrical Contractors
Leading Builders of America
National Apartment Association
National Association of Home Builders
National Multifamily Housing Council
National Roofing Contractors Association
The Real Estate Roundtable
Tile Roofing Industry Alliance
Vinyl Siding Institute

CC: Members, Senate Judiciary Committee
Members, House Judiciary Committee
Leadership Offices, United States Senate
Leadership Offices, United States House of Representatives