



December 22, 2015

Honorable Paul Ryan
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Re: Increase in the Number of H-2B Workers Under Section 565 of the Department of Homeland Security Appropriations Act, 2016

Dear Mr. Speaker:

As you requested, CBO is providing information about its analysis of section 565 of the Department of Homeland Security Appropriations Act, 2016 (Division F of H.R. 2029, the Consolidated Appropriations Act, 2016), as signed into law on December 18, 2015. CBO estimates that in fiscal year 2016, section 565 will increase the number of workers in the United States in H-2B status by about 8,000, and will increase direct spending in that year by \$1 million.

Section 565 exempts aliens who received H-2B nonimmigrant status in fiscal years 2013, 2014, or 2015 from counting against the annual cap on people receiving that status in fiscal year 2016. H-2B is a temporary status for nonagricultural workers (for example, workers in landscaping and forestry). In general, the Immigration and Nationality Act (INA) caps the number of individuals receiving H-2B status at 66,000 per year.¹ As amended by section 565, the INA now specifies that “an alien who has already been counted toward the numerical limitation...during fiscal year 2013, 2014, or 2015 shall not again be counted toward such limitation during fiscal year 2016.”²

1. Certain workers were already exempt from the cap, notably fish-roe workers and workers in the Commonwealth of the Northern Mariana Islands and/or Guam. See United States Citizenship and Immigration Services, “Cap Count for H-2B Nonimmigrants,” <http://www.uscis.gov/working-united-states/temporary-workers/cap-count-h-2b-nonimmigrants>.

2. 8 U.S.C. 1184(g)(9)(A).

Individuals Exempt from the H-2B Cap in Fiscal Year 2016

The change in the INA will allow additional workers to be in the United States with H-2B status in 2016. CBO considers it extremely unlikely that the number of additional workers would reach the theoretical maximum of 198,000 (three times 66,000). Such a result would require that:

- The United States provided status to 66,000 people in each of the three years from 2013 to 2015;
- None of those people counted against the cap in two or three of those years;
- None of those people are still in the United States—in either H-2B status or any other status;
- All of those people are willing and able to return to the United States in fiscal year 2016;
- Employers need to fill an additional 198,000 temporary jobs in fiscal year 2016 for which no suitable American workers exist; and
- Those employers can find and hire all of the aliens who are not subject to the fiscal year 2016 cap in the remaining nine months of fiscal year 2016.

Based on data from the Department of State, CBO estimates that the United States issued about 175,000 H-2B visas over the 2013-2015 period.³ People who receive H-2B status can stay in the United States in that status for up to three years. Based on information from the Department of Labor, CBO expects that about one-half of the individuals with H-2B status stay for a second year and one-quarter stay for a third year.⁴ Thus, many of the workers who received H-2B status from 2013 through 2015 and would thus not count against the cap in 2016 are still in the United States in H-2B status: they will not be seeking H-2B status during the remainder of fiscal years 2016.⁵

3. The number of nonimmigrant visas issued by the Department of State is similar but not identical to the number of people who receive H-2B status: a few hundred per year either adjust status from another nonimmigrant visa class within the United States (a process that is conducted by United States Citizenship and Immigration Services), or are admitted into the United States without requiring a visa (a process that is conducted by Customs and Border Patrol). At the time of writing, CBO had not obtained exact counts of individuals who received H-2B status in fiscal years 2013 through 2015.

4. Department of Labor and Department of Homeland Security, "Temporary Non-Agricultural Employment of H-2B Aliens in the United States; Interim Final Rule," Federal Register, April 29, 2015, Volume 80, Number 82, Page 24091.

5. Additionally, some of the aliens who are not currently in H-2B status could be in the United States in another status.

Of the workers who received H-2B status from 2013 through 2015 and are not currently in the United States, CBO expects that many would be unwilling or unable to return to the United States during the remaining nine months of fiscal year 2016. For example, many amusement and recreation attendants are young adults who probably returned to their home country to begin or resume university education and are unlikely to return to the United States in 2016. “Amusement and recreation attendant” was the occupation that received the third highest number of applications for labor certification under the H-2B program in 2015.

Employers’ Demand for Additional H-2B Workers

In addition, although employers’ demand for H-2B workers in fiscal year 2016 is highly uncertain, CBO expects that it is unlikely to be high enough to accommodate an additional 100,000 workers. Over the past six years, employers applied for labor certifications for about 105,000 positions per year and the Department of Labor certified about 90,000 positions per year. But not all certified positions result in a worker receiving H-2B status. In fiscal years 2013 and 2014, for example, when the number of people granted H-2B status was less than the statutory cap of 66,000, the number of people who received H-2B status was about 70 percent of the number of positions certified.

Based on those recent trends, CBO estimates that in fiscal year 2016 the Department of Labor will certify about 110,000 positions. Under the amended section of the INA, CBO expects roughly 75,000 people (about 70 percent of the total number of certified positions) will receive H-2B status—about 10,000 more than the statutory cap of 66,000. However, because section 565 was not enacted until nearly a quarter of the way through fiscal year 2016, and because certain occupations and geographic regions that employ large numbers of H-2B workers experience their peak periods in the autumn and early winter, CBO estimated that only about 8,000 additional workers would be in the United States in 2016 as a result of enacting section 565.

Direct Spending Costs Associated with Additional H-2B Workers

H-2B workers are not eligible for most federal benefits, though they are eligible (if they otherwise qualify) for exchange subsidies under the Affordable Care Act and emergency benefits provided through Medicaid. Based on the number of additional people, their expected length of stay,

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and the expected average cost of providing health care services, CBO estimated that federal direct spending would increase by \$1 million in 2016 and by less than \$500,000 in years after 2016 as a result of enacting section 565.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Sam Papenfuss.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith Hall". The signature is fluid and cursive, with the first name "Keith" and last name "Hall" clearly distinguishable.

Keith Hall
Director

cc: Honorable Harold Rogers
Chairman
Committee on Appropriations

Honorable Nita M. Lowey
Ranking Member