September 12, 2011

To Members of the House Judiciary Committee:

I write on behalf of the National Restaurant Association in preparation for the markup of the Legal Workforce Act, H.R. 2885, and the American Specialty Agriculture Act, H.R. 2847. As stated in our testimony on June 15, 2011, before the House Judiciary Subcommittee on Immigration Policy and Enforcement, the Association supports the Legal Workforce Act, as introduced, as an excellent balance of many competing interests.

The National Restaurant Association is the leading business association for the restaurant and food service industry. Our industry is the nation's second-largest private-sector employer comprised of 960,000 restaurant and foodservice outlets employing 12.8 million people—nine percent of the U.S. workforce. Despite its size, small businesses dominate the industry; even larger chains are often collections of smaller franchised businesses.

Many of our members are early adopters of E-Verify. Together, we agree in the need for certainty with regard to the responsibilities employers have under employment verification laws. These requirements should apply to everyone, but must be identical regardless of where the restaurant is located.

Also, we welcome the new provision included in the version of the Legal Workforce Act reintroduced today, H.R. 2885, which allows the Secretary of Homeland Security the ability to extend each deadline by six months, if the program is not fully operational six months after enactment of the Legal Workforce Act.

While the Association opposes any major changes to the language found in the Legal Workforce Act, H.R. 2885, we would like to highlight two concerns with its implementation:

1) The program needs adequate resources, both with regard to funding and staffing, if it is to increase from less than 300,000 currently enrolled employers to over six million in two years. The Association's current users have integrated E-Verify into their hiring practices and disruption because the system is overwhelmed would interrupt their operations in a critical manner;

2) The Association continues to support the inclusion of a strictly voluntary reverification provision. However, triggering a reverification requirement for the entire workforce because one employee is reverified, as currently drafted, would discourage any reverification because of the cost and time required to conduct such an undertaking. Furthermore, it creates potential liability for a well-meaning employer trying to make sure that his workforce is legally authorize to work, if he reverifies workers with good reason, but still fails to reverify "all individuals so employed."

With regard to the American Specialty Agriculture Act, H.R. 2847, the Association does not have a position on this legislation, but understands the vital role U.S. agriculture plays in

providing our members with a fresh, safe and reliable domestic food supply. Thus, we agree with the idea of treating the agriculture industry separately from other business sectors. At the same time, we are very concerned with regulatory changes coming out of the Department of Labor to the H-2B visa program. Thus, the Association would support an amendment to H.R. 2847 to rescind the rules mentioned in the attached bipartisan/bicameral letter signed by some members of the House Judiciary Committee.

As you may know, the H-2B program is a lifeline for many small and seasonal businesses in the restaurant and lodging industries. As stated in the attached letter, these businesses "are frequently unable to find enough local workers to fill their temporary and seasonal job openings, even in today's tough economic climate."

Thank you for your attention to the industry's concerns regarding H.R. 2885, as well as regarding the need for a legislative intervention to prevent the obliteration of the H-2B legal immigration program for temporary and seasonal workers. We remain committed to support and defend the Legal Workforce Act's language and, then, resolve any impediments to passage.

Sincerely,

Angelo I. Amador, Esq.
Vice President
Labor and Workforce Policy

Congress of the United States
Washington, DC 20515

September 7, 2011

The Honorable Hilda Solis
Secretary of Labor
U.S. Department of Labor
Francis Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

Dear Secretary Solis:

The H-2B program is a lifeline for scores of small and seasonal businesses around the country. These companies, upon which so many of our constituents rely for their livelihoods, are frequently unable to find enough local workers to fill their temporary and seasonal job openings, even in today's tough economic climate. As elected officials, we continue to hear from small and seasonal businesses in our states about their concerns with the Department of Labor's January 19, 2011 final H-2B wage methodology rule. This economic hardship is further exacerbated by the recently announced October 1, 2011 implementation date. The rule's impact will be even more dramatic if the Department moves forward with its March 18, 2011 proposed H-2B rule. While we appreciate the Department of Labor's attention to the H-2B program and agree with the intent of the reforms, we believe that the impact of these rules could threaten the economic survival of many small and seasonal businesses.

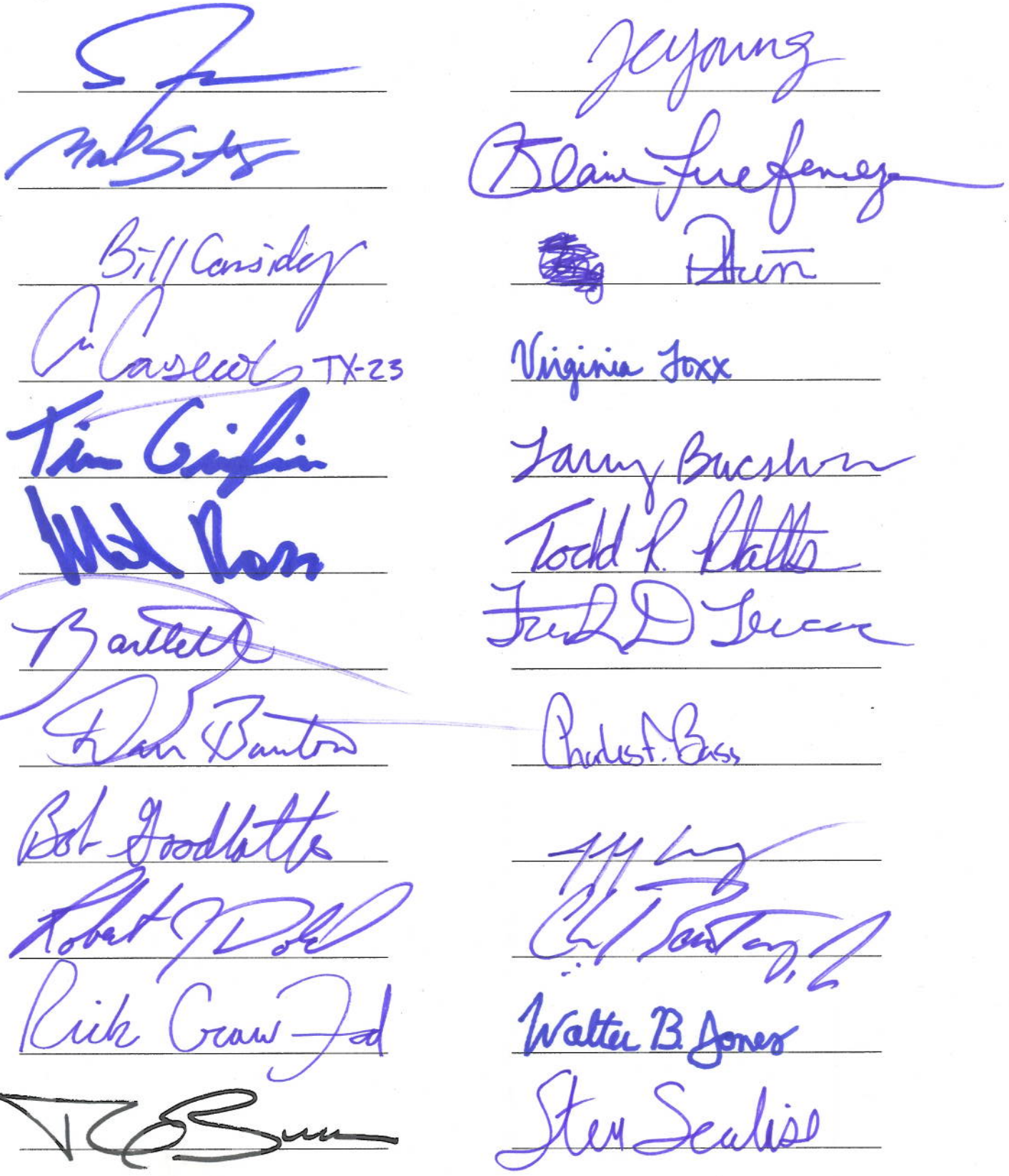
Seasonal businesses rely on the H-2B program to fill temporary vacancies in seafood processing, horse training, hospitality, landscaping, carnivals, agriculture support positions and other occupations. The seasonal nature of these businesses and industries means that they routinely face shortages of local workers during their peak work periods. By filling temporary jobs, H-2B workers not only keep these businesses open; they contribute to the creation of additional, year-round jobs for local workers. In these challenging economic times, we believe the Department should be pursuing policies that help our employers expand their businesses and increase hiring. Unfortunately, the Department's recent H-2B wage rule and the March 18 proposed rule threatens to do just the opposite. The proposals will negatively affect the viability of companies using the H-2B program and could possibly lead to full-time job losses.

Our constituents tell us that the current wage rates for H-2B positions already exceed the local market-based wages. Yet, by the Department's own estimates, the new wage methodology would increase H-2B hourly wages by approximately 50 percent in a manner unrelated to economic realities. Moreover, your proposed H-2B program rule creates a ¾ guarantee for each month's work (instead of for the life of the contract), establishes a new "corresponding employment" concept unrelated to how employees of small businesses share tasks and responsibilities, and mandates that H-2B employers continue to hire and recruit up until 3 days before the H-2B worker is scheduled to begin work. For many seasonal employers who operate on thin profit margins, such a dramatic increase in labor costs so quickly could drive them into bankruptcy. We cannot afford to let that happen.

As the Department knows well, without a fairly administered H-2B program that is workable, many small and seasonal businesses will simply not be able to continue operations. Therefore, we encourage the Department to rescind and revise the January 19, 2011 wage rule and abandon its plans to immediately finalize the March 18, 2011 proposed rule.

We look forward to continuing to work with you on this issue and in supporting businesses that create jobs.

Sincerely,


TX-23
Virginia Foxx

Larry Kissell

Steve Womack

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J Randy Forbes

Sue Myrick

John Fleming

Senator Barbara A. Mikulski
Senator Mary Landrieu
Senator Kelly Ayotte
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Senator Mark L. Pryor
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Representative James Lankford (OK-05)
Representative Andy Harris (MD-01)
Representative John Carter (TX-31)
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Representative Dan Burton (IN-05)
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Representative Sue Myrick (NC-09)
Representative J. Randy Forbes (VA-04)
Representative John Fleming (LA-04)