

NASI Social Security Innovative Policy Program

Strengthening Social Security for Farm Workers: The Fragile Retirement Prospects for Hispanic¹ Farm Worker Families

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Abstract

As the Latino population in the U.S. continues to grow, research on the wealth and retirement status of this target population has focused almost entirely upon data sources such as the Survey of Consumer Finances (Federal Reserve System), Survey of Income and Program Participation (Census Bureau) and the Health and Retirement Survey (National Institute on Aging) with no explicit assessment of the former occupational status of Latino workers. The Latino proportion of farm workers in the agricultural sector has ranged from 70% to 38% of the total farm worker population in the U.S. between 1975 and 2006 (BLS Historical Data). Of the 2.1 million hired farm workers in the U.S., 38% are Hispanic farm workers. Mexican origin farm workers account for 92% of all Hispanic farm laborers (Current Population Survey, 2007). Given the historical participation of Latino workers in the agricultural sector, an overview of the last 25 years is presented. Two significant issues emerge from an assessment of Latino hired farm workers: (1) misclassification of employee status and (2) less utilization of social security benefits compared to other industry wage workers. Analysis of Hispanic farm worker tax filing and retirement issues using data from a regional data set on tax and financial behaviors indicate that Hispanic farm worker retirement position is inadequate. This has significant ramifications for current and future national tax burdens.

Keywords: Latino farm workers, independent contractors, tax policy, employee misclassification, labor laws and tax codes enforcement, financial behaviors and retirement prospects

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Executive Summary

This study investigates the consequences of worker misclassification on Hispanic farm worker families (including Hispanic migrant families) and the spillover effects on Latino farm worker retirement well-being. The misclassification of employees as independent contractors decreases the employers' statutory payroll contributions and subsequent revenue streams to federal and state unemployment insurance, workers' compensation, Social Security and Medicare. State revenue and employment security departments have commissioned several studies to assess the growth in the tax gap attributed to worker misclassification and the social and economic costs to state programs (Neuhauser et al, 2007; Kelsay et al, 2006; Bernard et al, 2005; and Coopers and Lybrand, 1994). The Government Accountability Office reported that loss in revenues from noncompliance ranged between \$312 and \$353 billion in 2001 (GAO, 2005). Reducing the tax gap will require a variety of strategies and recognition that misclassification of workers as independent contractors is a growing contributing factor to the tax revenue gap (GAO, 2005 and 1993). Between 1987 and 1989, the IRS reported that the rate of tax noncompliance specifically related to misclassification of workers as independent contractors in the Agricultural sector was 16.7 percent (IRS Strategic Initiative on Withholding Noncompliance, SVC-1, Treasury Department, March 1991).

The importance of worker misclassification for Hispanic farm worker and migrant farm families has significant economic mobility and retirement security consequences: (1) the inability of farm workers to provide documentation of 40 quarters of earnings in order to qualify for Social Security benefits at the end of their work life, (2) the lack of knowledge of self-employment status and subsequent tax obligations of farm workers concerning tax filing responsibilities exposes farm workers to charges of noncompliance, and (3) the inability of farm worker families to demonstrate earnings documentation (due to cash payments by crew bosses and labor contractors) when attempting to file tax returns disadvantages their ability to file taxes and limits their participation in family supports administered through the tax code.

The 2006 current dollar gross output of the U.S. farm sector was \$255 billion (Bureau of Economic Analysis, 2008). In 2007, the Bureau of Labor Statistics reported 2.1 million

agriculture and related industries workers in the U.S. (CPS, 2007). The Hispanic agricultural worker population comprised 20.3 percent of the broad agricultural sector while comprising 28.8 percent of crop production and 37.1 percent of support activities. Total average hours per week worked in the agricultural sector were reported at 49.1 hours compared to 42.7 hours for all other industries. Of the 426 thousand Hispanic farm workers enumerated in 2007, Mexican origin workers comprised 93 percent of the Hispanic agricultural work force. In 2006, approximately 31 percent of the Hispanic agricultural work force was 55 years and older (CPS, Annual Social and Economic Supplement). The Department of Agriculture and the Department of Labor administer separate surveys that indicate the number of farm workers in crop production and animal production sectors have higher representation of Latino workers.

Social Security retirement benefits are a fundamental source of income for elder Hispanics. For 51% of Hispanic men and 64% of Hispanic women 65 years and older receiving Social Security benefits, ninety percent of their income source is derived from Social Security benefits (Wu, 2007). Hispanic farm workers from Texas, New Mexico, Arizona and California border counties indicate that they want to know more about retirement planning (16.1%, n=209) compared to 6.9% of Hispanic elders 65 years and over (n=473) and 14.7% of all Border families (n=5968) from the same region (Frontera Asset Building Network, Financial Behaviors and Decisions Survey, Tax Year 2007/Tax Season 2008).

Pending Congressional legislation would provide a variety of different remedies to the growing issue of worker misclassification, increasing tax enforcement and reducing the tax gap. HR 6111, the Employee Misclassification Prevention Act which amends the Fair Labor Standards Act was sponsored by Rep. Rob Andrews (D-NJ) and introduced in June 2008. It is currently in the Subcommittee on Income Security and Family Support. The corresponding Senate bill S. 3648 introduced by Senator T. Kennedy in September 2008 is currently in the Committee on Health, Education, Labor and Pensions. HR 5804, the Taxpayer Responsibility, Accountability, and Consistency Act, sponsored by Rep. Jim McDermott (WA) introduced in April 2008 is currently at the Committee on Ways and Means. S. 2044 sponsored by Senator B. Obama and introduced in September 2007 is currently in the Finance Committee. The combined passage of the bills addresses the

discrepancies surrounding enforcement of worker misclassification under IRS provisions and Department of Labor standards. Implementing passage of this legislation allows both the IRS and DOL to audit and levy penalties, increasing tax compliance and recapturing payroll taxes. The cost of enforcement would be more than offset by the recaptured revenues as well as the multiplier effects of increasing dedicated receipts to Social Security, Medicare and Unemployment Insurance programs.

The agricultural sector in the United States remains an important component of current and future food security as well as recently spawning a small-growers cooperative movement and an increasingly important organic growers sector (Pollan, 2008). Both of these emerging sectors within the agricultural industry lay claim to more intensive labor demands as well as generating more industry profits. As we continue to treat our agricultural sector differently from other industries due to its historical significance, our labor standards and employer enforcement capacities for this industry must reflect 21st century changes. Future research should include a more comprehensive approach to work-life-cycle social and economic characteristics of agricultural workers. In order to fully ascertain the retirement status of America's agricultural laborers and Hispanic farm workers in particular, we should undertake:

- An IRS audit that captures industry specific worker misclassification (both intentional and unintentional);
- A cost-analysis study of the worker misclassification payroll tax gap that includes the spillover effects impacting the viability of state and federal worker benefits programs as well as an estimate of affected farm workers;
- An ethnographic survey of farm worker home-base communities in an ongoing five or ten year cycle similar to Griffith and Kissam (1995) that trace the linkages of farm worker markets (demand) to farm worker family labor force supply in order to assess family economic mobility and elder well-being; and
- A baseline study that links race/ethnicity and gender with occupation (former occupation) and social security retirement benefits in order to fully document which workers retiring from which industry receive the full benefits of program coverage.

I. Introduction

Misclassification of worker or employees in the hired farm laborer occupation category has grown rapidly in the last 25 years. A worker is considered misclassified as an independent contractor (self-employed) by an employer when he or she should be treated as a wage or salaried employee. Employers are not required to pay social security taxes, withholding taxes, unemployment insurance, workers compensation, and pension and health benefits for workers classified as independent contractors (Kelsay et al, 2006). In 2007, the self-employed category comprised 40.9 % of the total 2.1 million U.S. agricultural workers (BLS, 2007). Farmers and ranchers are projected to have the highest levels of self-employment in 2016 (BLS, Editor's Desk, Dec. 31, 2007).

Currently, there are several different approaches used to ascertain employee versus independent contractor status in the agricultural sector with an increasing use of crew bosses as mediators and facilitators that create additional worker-categorization confusion. For example, worker classification rules differ for federal tax purposes versus labor enforcement laws such as the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) and the Fair Labor Standards Act (FLSA). Worker misclassification is especially rampant in low-skill, low-educational employment occupations where enforcement of minimum wage and wage reporting is poverty-averting for employees with a high eligibility for participation in the Earned Income Tax Credit. In the agricultural sector with the dual migratory stream of farm workers and place-based seasonal farm workers, complexity of worker movement coupled with worker reluctance to challenge crew bosses and farm owners due to short harvest seasons and fear of job loss contributes to non-enforcement of employee-status. The result is that significant number of farm workers are left with no social security benefits at the end of their work-life years (St. George, 1992 and Bove, 2003).

Worker misclassification has not been addressed at the federal level despite the growing consequences for federal social insurance programs and federal budget revenue losses. Recent studies in Maine, Massachusetts, New York and Illinois indicate the misclassification issue is growing in significance and economic impact (Donahue, L. et al, 2007; Kelsay et al, 2006; and Carré and Wilson, 2005). Pending Congressional legislation addresses the issue of worker misclassification (HR 6111, Employee Misclassification Prevention Act, Sponsor: Rep. Rob Andrews and the Taxpayer Responsibility, Accountability, and Consistency Act, HR 5804,

Sponsor: Rep. Jim McDermott) and protects employee status in particular sectors and industries, significantly, those industries with low-skill, low-wage occupations where employees have limited human capital. Implementing passage of this legislation allows both the IRS and DOL to audit and levy penalties, increasing tax compliance and recapturing payroll taxes. The cost of enforcement would be more than off-set by the recaptured revenues as well as the multiplier effects of increasing dedicated receipts to Social Security, Medicare and Unemployment Insurance programs.

This study investigates the consequences of worker misclassification on Hispanic hired farm worker (as well as Hispanic migrant farm worker) families and the spillover effects on Latino farm worker retirement well-being. The paper is organized as follows: Section II describes the last 25 years of Latino hired farm worker participation in the U.S. agricultural sector and lays the foundations for the fragility and vulnerability of this group in preparing for their retirement years. Section III presents evidence of the rise of the independent contractor category in agriculture and the subsequent tax implications of employee misclassification in hired farm labor occupations. Section IV, provides an overview of pending congressional legislation that seeks to rectify the magnitude of the employee misclassification issue and how that would impact Latino farm workers' retirement status. Section V, assesses the home-based Border migrant farm worker tax profile and provides a financial snapshot of farm worker families using a 4 year, 4 state survey administered during tax season.² The study concludes with a discussion of future research issues relating to the rise of organic farming and food security which projects an increase in farm labor demand. An increase in Latino farm workers has spillover effects on the retirement preparedness of a growing Latino farm worker labor force and the need to increase retirement education and planning outreach to the Latino community.

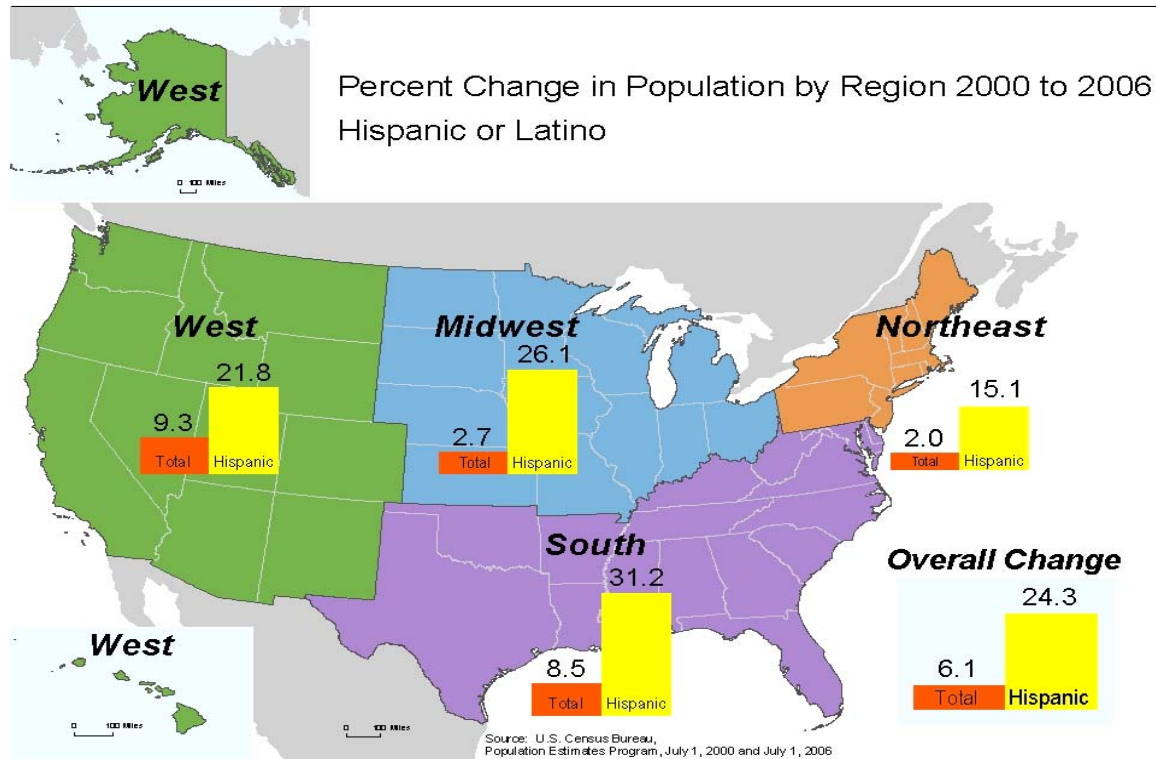
II. Latino Farm Workers: A 25 Year Retrospective

The limited information in the public domain related to Latino retired farm workers signals a significant research gap in our understanding of how this population manages their end-of-work years. Interestingly, we have a significant amount of data concerning aggregate Hispanic labor-force participation and employment status by a variety of characteristics including educational attainment, age and sex. Latino population change and dispersion in United States is also well documented. The Latino population between 2006 and 2007 increased

3.3 percent making Latinos the fastest growing population in the U.S. and the largest minority population at 16% of the total U.S. population (CPS, 2007). The last decade has also seen new settlement patterns for the Latino population in areas with little historical legacy of a Latino presence in visible numbers.

Since WWII and the passage and implementation of the various agricultural guest worker³ programs, the U.S. agricultural sector has changed significantly both in terms of a

Figure 1: Regional Population Change of the Latino Community, 2000-2006



structural shift towards mechanization with larger farms (agribusiness) and a declining number of total farms (small family farms) while labor inputs have shifted to hired farm workers and away from the traditional family farm labor inputs (Ilg, 1995; Kandel, 2008). By 1980, Hispanic farm labor outpaced the number of hired Black farm labor and the movement away from large acreage farming concentrated in the Midwest and South expanded to the West and Southwest (Ilg, 1995). In Table 1, there were 3.46 million farm workers with 19.8 percent of women farm labor while blacks comprised 7.1 percent and Latinos, 6.6 percent in 1979. By 1991, the total

number of farm workers had declined to 3.23 million and women were 21.1 percent of total farm labor, blacks were 5 percent and Latinos comprised 14 percent (Statistical Abstract, Table 679 (1980) and Table 632 (1992)).

Table 1: Employment by Agricultural Sector and Sub-Sector

Sector	2007				
	Total Employed (thousands)	Women as % of Total	Black as % of Total	Asian as a % of Total	Latino as a % of Total
Total Agriculture*	2,095	23.4	11.0	4.7	20.3
Crop Production	896	22.0	3.0	1.5	28.8
Animal Production	854	25.4	1.3	.9	11.8
Support activities(1)	141	36.5	1.3	1.7	37.1

*=Agriculture, forestry, fishing and hunting; (1) = Support activities for agriculture and forestry

Source: Household Data, Annual Averages, Table 18. Employed persons by detailed industry, sex, race and Hispanic or Latino Ethnicity, Bureau of Labor Statistics data based on Current Population Data (<http://www.bls.gov/cps/tables.htm#annual>)

The continuous waves of Latino immigration from Mexico's rural areas and the succeeding waves of immigration from Central America, the Caribbean and South America, created a large Latino foreign-born component adding to the numbers of authorized and native-born Latino farm workers. The Latino foreign-born segment (including those with work authorization and the unauthorized) have compounded the problem of enumeration and estimates of the number of hired Latino farm workers.⁴ Several governmental sponsored surveys attempt to capture the hired farm labor segment: Farm Labor Survey (FLS) of the National Agricultural Statistics Service (NASS), the Current Population Survey (CPS), and the National Agricultural Workers Survey (NAWS). All contain limitations of one type or another and none provide a clear indication of hired farm workers as an employee on the grower's payroll or an employee on a sub-contractor's (crew boss) payroll or a hired farm worker with contingent worker (independent contractor or self-employed) status. The issue remains unresolved and contributes to the lack of clarity in assessing the number of Latino farm worker retirees with little or no supports.

From the data in Table 2, we find that hired farm workers are young, predominantly male, with more than half being married, forty percent foreign-born and thirty percent with less than a 9th grade education. Sixty percent have U.S. citizenship and 21 percent have some college

education. The non-supervisory hired farm workers earn a median hourly wage of \$6.75 whereas in the crop farm worker category, workers are being paid by piece-rate (piece-rate work implies that wages are paid by a specific number of produce harvested either by pound, bushel or set number) reducing farm workers' imputed hourly wages to lower than the \$6.75 median hourly wage.

Table 2: Farm Workers Compared to All Wage & Salary Workers

Item	Farm workers	All wage and salary workers
Percent male	80.9	52.1
Median age in years	34.0	40.0
Percent under age 25	15.1	6.9
Percent over age 44	28.1	38.4
Percent married	52.7	55.7
Percent White (race)	91.7	81.6
Percent Hispanic (ethnicity)	43.0	13.7
Percent foreign-born	42.2	16.4
Percent with U.S. citizenship	62.2	90.8
Percent with less than 9th grade education	30.0	3.5
Percent with some college education	20.7	58.3

Source: USDA-ERS using data from the U.S. Census Bureau, 2006 Current Population Survey Earnings File; Hispanics may be of any race (<http://www.ers.usda.gov/Briefing/LaborAndEducation/farmlabor.htm>).

Griffith and Kissam (1995) investigated the enumeration of agricultural workers for the Department of Labor and found that all surveys reporting agricultural workers displayed significant undercounts. Due to the seasonality of crop production combined with the changing nature of the agricultural sector and the difficulty of tracking a mobile labor force, capturing the number of agricultural workers and their social and economic characteristics without ethnographic methods creates a gap in our knowledge of the sector and its workforce.

A review of the last ten years (1997 and 2007) of the top 10 states with a significant agricultural sector as a percent of gross state product and by absolute receipts generated in the agricultural sector provide a deeper understanding of issues driving the farm worker labor segment (see Table 3).

**Table 3. Growth in Agricultural Sector and Gross State Product, 1997-2007
(2004 real dollars)**

Rank 1997	State	AgSec (\$mil)	GSP (\$mil)	1997 Ag as % GSP	Rank 2007	State	AgSec (\$mil)	GSP (\$mil)	2007 Ag as % GSP	% Change in AG 1997-2007	% Change in GSP 1997-2007	2007 Ranking Ag Employee Compensation
1	CA	17153	929469	1.8%	1	CA	25769	1653434	1.6%	50.2%	77.9%	1) CA
2	TX	6102	546739	1.1%	2	TX	8802	1041477	0.8%	44.2%	90.5%	2) FL
3	FL	5156	357005	1.4%	3	IA	7092	117672	6.0%	45.2%	57.5%	3) WA
4	IA	4884	74714	6.5%	4	WA	6275	283880	2.2%	56.6%	74.5%	4) TX
5	WA	4006	162641	2.5%	5	FL	6126	669884	0.9%	18.8%	87.6%	5) OR
6	NC	3893	208725	1.9%	6	NC	5645	364296	1.5%	45.0%	74.5%	6) NC
7	IL	3461	368433	0.9%	7	MN	5429	232534	2.3%	93.4%	63.5%	7) WI
8	NE	3094	46095	6.7%	8	IL	4769	555930	0.9%	37.8%	50.9%	8) MI
9	GA	2980	216572	1.4%	9	OR	4141	144309	2.9%	44.6%	63.8%	9) MN
10	OR	2864	88091	3.3%	10	GA	3972	361613	1.1%	33.3%	67.0%	10) NY

Source: BEA Regional Gross State Product and Sectors and Agricultural Sector Employee Compensation taken from Kandall (2008).

Even as agricultural sectors across states have shrunk over time, the economic restructuring of these sectors in term of agribusiness practices such as increased mechanization, use of pesticides to increase yields and market vertical integration, we also see an increasing place-based movement in the short-distance supplier market for perishables and organic produce. The former agribusiness model depends on year-round farm labor but the latter specialty crop market depends upon a labor-intensive model to preserve produce integrity in seasonal harvest cycles. This means that we have two differing crop produce markets within the agricultural sector: one that minimizes the use of labor and the other that increasingly requires a large supply of seasonal as well as year-round workers. Both changes within the agricultural sector have contributed to increased profits and an ongoing need for a ready supply of manual labor.

Despite agricultural receipts having increased, their proportion contributing to gross state product has declined or remained virtually unchanged over the ten-year span (see Table 3). Kandall (2008) reports that for certain specialty⁵ crop production, labor costs are 30 to 40 percent of production expenses and these growers remain invested in a readily available labor supply and the continued use of crew bosses and labor contractors as mediators in the hired farm worker markets.

Farm workers remain difficult to enumerate precisely because of the nature of the harvest cycle, the manual labor intensiveness of crop produce harvesting and the continued stop-start nature of federal policy towards a coherent agricultural guest worker program that would

comprehensively set the appropriate labor compensation and standards in a consistent and enforceable manner. In 1938, the enactment of the Fair Labor Standards Act (FLSA) *exempted* the majority of farms and ranches with range livestock from the minimum wage requirements.⁶ This exemption also applies to farms with less than 7 employees who presumably work for 13 weeks or less (peak harvest season). The FLSA was meant to remedy worker abuses and employer reporting responsibilities related overtime, workers' compensation, minimum wage and child labor.

III. Employer Non-Payment of Social Security Taxes Due to Worker Misclassification

Historical legacies and the rise of strong agri-business lobbying efforts have created a lack of will among the key oversight agencies (state and federal) tasked with enforcing agricultural sector employers to withhold payroll taxes and report social security wages. Despite the passage of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) of 1983⁷ and its subsequent amendment in 1997, we continue to see a high degree of cash-based work compensation with no or minimal wage reporting in the agricultural sector. Over time, as the number of workers in the agricultural sector has declined and the use of crew-bosses and independent contractors has increased, farm operators often prefer to litigate given the low penalties for violations. The model that has arisen between employer, mediator and farm worker is one in which the farm worker as self-employed has increased.⁸

Employers benefit from reduced paper work and non-compliance with paying their share of federal and state program taxes based on wages. The reduced costs of compliance allows for a lower labor overhead cost in operating their business and increases their competitive product advantage in the market place (State of Michigan, Unemployment Insurance Agency, 2007). Farm workers receive cash and find the tax consequences confusing. Amaya (1997) describes a class action case he litigated for a group of farm workers during his time as a Texas Rural Legal Aid attorney.⁹ The workers only realize what their tax responsibilities are when the Internal Revenue Service contacts them. State and local governments have begun to assess the loss in revenues from employer misclassification of employees. A report produced by the Labor Relations Institute at Cornell University by Donahue, L et al (2007) for the State of New York estimates that a statewide approximation of \$4.7 billion in unemployment insurance (UI) wages

for audited industries are underreported with an average of 704,785 workers misclassified (10.3% of the private sector workforce) and the average annual underreported UI taxable wage per employee over \$6,000. The Government Accountability Office (GAO) reports that IRS estimated \$2.7 billion in lost revenues in 2006 (2006 real dollars) from worker misclassification (Statement of S. Nielson, 2007).

Rucklehaus, C. and B. Goldstein (2002) indicate that the issue of contingent work abuse is widespread and has spillovers effects in a variety of related sectors. For farm workers, the classification of being an independent business person has yearly tax consequences and substantial end-of-work life retirement repercussions: social security benefits have not accrued and/or social security benefits do not reflect the full the work profile of the farm worker. Additionally, the use of crew-bosses and labor contractors to hire farm workers insulates the farm owner or corporate agribusiness from repercussions of immigration law violations and IRS sanctions (Rucklehaus and Goldstein, 2002). There have been no state-by-state assessments of the economic impact of state and federal revenue losses from contingent worker and independent contractor misclassification specifically targeting farm labor. The loss in social security wages appears only as an indirect issue when states and federal low-income assistance programs are accessed by farm workers during their retirement years and only if retired workers are aware that they may qualify for benefits.

IV. The Policy Response: Pending Legislation

Pending Congressional legislation would provide a variety of different remedies to the growing issue of worker misclassification, increasing tax enforcement and reducing the tax gap. The Employee Misclassification Prevention Act (HR 6111) was sponsored by Rep. Rob Andrews (D-NJ) and introduced in June 2008. It is currently in the subcommittee on Income Security and Family Support. The corresponding Senate bill (S. 3648- Employee Misclassification Prevention Act) introduced by Senator T. Kennedy in September 2008 is currently in the Committee on Health, Education, Labor and Pensions. The Employee Misclassification Act amends the Fair Labor Standards Act by requiring employers to keep records of non-employees who perform labor or services for remuneration (independent contractors or sub-contractors) and levies a penalty of \$10,000 per worker misclassified on the

employer. Additionally, it requires the Department of Labor to actively audit employers in industries that frequently misclassify employees for violations of recordkeeping and informing their independent contractors of their status as independent contractors and providing employees and non-employees with information concerning their right to challenge their worker classification. Further, this bill allows DOL and IRS to share information on cases where employers misclassify employees, requires state unemployment insurance agencies to conduct audits on employers and to assess states' effectiveness in tracking employers that misclassify workers.

The Taxpayer Responsibility, Accountability, and Consistency Act (HR 5804) sponsored by Rep. Jim McDermott (D-WA) was introduced in April 2008 and is currently in the House Committee on Ways and Means. This House bill amends the Internal Revenue Act of 1986 by modifying the rules relating to the treatment of individuals as independent contractors or employees. The Independent Contractor Proper Classification Act (S. 2044) sponsored by Senator B. Obama was introduced in September 2007 and is currently in the Senate Committee on Finance. The Taxpayer Responsibility, Accountability, and Consistency Act (HR 5804) parallels S. 2044 but allows the IRS to levy an additional \$10,000 penalty per misclassified worker in addition to repealing the 'industry practice' standard argument used by companies claiming an exemption. The 'industry practice' litmus test has been employed successfully in litigating IRS worker misclassification cases.

The combined passage of these bills addresses the discrepancies surrounding enforcement of worker misclassification under IRS provisions and Department of Labor standards. Implementing passage of this legislation allows *both* the IRS and DOL to audit and levy penalties, increasing tax compliance and recapturing payroll taxes as well as being able to share information on particular cases. Currently, both bills appear to have 'floor vote' support by the majority Democratic congress. However, scheduled votes must await the conclusion of an economic stimulus package as the 111th Congress convenes in January 2009 (see Appendix B).

Legislation favorable to employee classification clarity has consistently been modified to incorporate small business interests and exempt particular industries and occupations (e.g. agriculture, domestic workers, etc.). The cost of enforcement has increased over time, requiring steady increases in budget appropriations to enforcement activities by the IRS. Tax enforcement budget allocations have increased from \$3.4 billion in FY2000 (enacted) to a requested FY2009

IRS Tax Enforcement budget of \$5.1 billion. Additionally, state revenues would be captured as well since many state income tax policies work in tandem with federal income tax policies. The Joint Committee on Taxation scores pending legislation at the request of the House or Senate to indicate revenue impacts (gains or losses) from any tax modification over a ten-year federal budget window. However, to date there has been no scoring of the pending Worker Misclassification legislation.

The IRS has introduced new forms placing the responsibility of erroneous employer wage reporting (or non-reporting) on the employee's side of the misclassification equation (Form SS8 and Form 8919). However, the assumptions made about taxpayer sophistication and knowledge related to tax obligations and responsibilities implies that this new procedure to rectify back-taxes from the employer's share of social security wages would be utilized by workers. For farm workers using low-income tax preparation VITA sites, the volunteer tax preparers are not trained in Schedule C or Schedule SE forms nor would they be trained on the new form for previously misclassified independent contractors. The new form was introduced for Tax Year 2007 (Tax Season 2008).

Understanding income tax responsibilities and rights are often overlooked as a component in financial and retirement education outreach. Studies and research indicate that the Earned Income Tax Credit (EITC) has been successful in providing substantial economic relief to a growing segment of the U.S. population, low-income workers.¹⁰ In 2005, the EITC provided an estimated \$48 billion in refundable credits to low-income working families.¹¹ Additional research indicates that the EITC contributes to increased asset accumulation among low-income families and contributes to capacity building for working poor communities.

Findings from the 1997 National Survey of America's Families (NSAF)¹² indicate that Hispanic families have a higher incidence of low-income status than do non-Hispanic White families. From all indicators employed by researchers, Latinos lag behind other population groups in filing for the EITC and being informed about the EITC.¹³ Latinos, on average have larger families with an estimated 3.4 mean persons compared to 2.4 persons for non-Hispanic households.¹⁴ Recent research indicates that families with more dependents have a higher payroll and income tax burden (despite dependent exemptions) than do those families with two or less children.¹⁵ Since a large proportion of Latino families have more than two children, the nature of the tax exemption features of annual income taxes often place these families in the non-filing population resulting in a zero tax

liability position. Cilke (1998) constructed profiles for the non-tax filing racial and ethnic populations (e.g., non-filers) in the U.S. His findings indicate the likelihood of filing a tax return even if the respondent is not legally required to file:¹⁶

- People with means-tested government transfer income are less likely to file a return;
- Persons with an education level at or below 10th grade are less likely to file a tax return;
- Minorities are less likely to file a tax return than whites; and
- Married people that are not required to file a return are more likely than unmarried people to file.

Many Latino working poor generate self-employment income from seasonal work and farm labor increasing the degree of complexity of tax filing. Free tax assistance sites sponsored by the IRS (Volunteer Individual Tax Assistance, VITA) for low-income, limited-English speaking populations and elderly tax filers do not train volunteers on more complicated tax forms such as those forms that include business or self-employment income (Schedules C and SE). Thus, for the farm working population, access to information about tax responsibilities (paying one's own payroll taxes in the form of self-employment taxes, Social Security and Medicare deductions) is non-existent outside of crew bosses and labor contractors for field and harvest work who often pay workers in cash and do not bother issuing 1099 forms (The New Yorker, 2003 and Seattle Times, 1992).

The Hispanic farm worker population would benefit in three significant ways from passage of legislation that correctly places the responsibility of worker misclassification on the employer accompanied by rigorous enforcement : (1) wage-reporting allows Hispanic farm worker tax filers to claim and participate in the Earned Income Tax Credit by establishing a paper-trail of earnings, (2) Social Security payroll taxes would reflect the full amount of yearly farm worker wages leading to an increased retirement benefit and (3) children of farm workers that are first-generation college-educated would not have the triple burden of school-debt, family formation and total financial support of parents.

V. The Implications of a Latino Farm Worker Retirement Gap: Findings

The Department of Labor through its National Agricultural Workers Survey (NASW), asks farm workers in the field (at their place of work) whether anyone in their family has received social security benefits in the last 2 years. In 1997, the response rate for this question was 4% and in 2002, the latest survey administered, the response was 2%. The NASW tells us

something about the farm worker's household receiving benefits, yet it tells us little of the farm worker's receipt of benefits individually and generates more questions concerning the retirement prospects for farm workers. For 51% of Hispanic men and 64% of Hispanic women 65 years and older receiving Social Security benefits, ninety percent of their income source is derived from Social Security benefits (Wu, AARP Public Policy Institute, 2006). The Social Security Administration does not report benefits by former occupation.

A unique regional data source collected in the southwest border states of California, Arizona, New Mexico and Texas counties where a significant portion of Latino (migrant-family) farm workers have permanent domicile sheds light on the poverty status of farm workers and retired Latino elderly. The panel data consists of over 24,000 survey respondents covering tax years: 2004, 2005, 2006 and 2007. It includes information on Hispanic farm labor (~800 respondents) and retiree populations (~1,400 respondents) as well as tax filing status, adjusted gross income, earned income tax credit refund amount, federal tax refund amount, Schedule SE and C income, and a variety of financial behaviors, and desire to know more about financial products and retirement planning.

The median adjusted gross income (AGI) for farm workers in the region ranges from \$6,734 to \$12,327 over the 4-year period (Table 4). Farm workers also have a higher reporting incidence of dependent exemptions compared to all respondents. The use of Individual Taxpayer Identification Numbers (ITINs) is also higher among farm worker filers but not substantially so. The retired respondents of the region have very low levels of AGI and a significant degree of dependent exemption reporting ranging from 19.9% to 32.3% with dependents. Additionally, the retired respondents have consistent self-employment income over the four-year period, which appears to be a growing trend among the retiree populations.

Aside from collecting tax status and filing information, the regional survey queries respondents on their financial transactions, behaviors and decision-making. Table 5 indicates the financial behaviors of all three respondent groups. The financial question shedding light on the degree of interest in the wanting to know more about retirement information and planning indicates that despite low income, farm workers are aware of needing to plan for their future. Additionally, farm workers indicate a higher degree of interest in Children's Savings Accounts and in Individual Development Accounts (IDAs) which are a matched savings account

Table 4. Frontera Asset Building Network, Financial Behaviors and Decisions Survey

Frontera Asset Building Network (FABN) Financial Behaviors and Decisions Survey, Tax Season January 15-April 15												
	TY2004			TY2005			TY2006			TY2007		
	Border	Farm Workers	Retired	Border	Farm Workers	Retired	Border	Farm Workers	Retired	Border	Farm Workers	Retired
	n=4550	n=158	n=275	n=7068	n=156	n=344	n=6450	n=284	n=303	n=5968	n=209	n=473
Tax Filing Status:												
Single	51.6%	37.4%	54.9%	48.2%	39.1%	51.8%	43.6%	29.5%	54.2%	53.7%	42.2%	63.2%
Married Joint	22.3%	34.2%	37.3%	25.4%	34.5%	42.3%	30.0%	46.8%	39.9%	25.8%	34.1%	34.3%
Married Separate	1.5%	1.3%	1.6%	1.5%	2.0%	1.2%	0.8%	1.1%	0.0%	1.4%	1.5%	1.3%
Head of Household	24.0%	26.5%	4.3%	24.6%	24.0%	3.6%	21.6%	19.6%	2.7%	21.4%	21.5%	1.1%
Widow/er	0.5%	0.7%	1.2%	0.6%	0.0%	2.1%	0.3%	0.0%	1.3%	0.5%	0.0%	1.1%
w/Dependents	33.2%	53.2%	19.9%	45.5%	64.7%	28.7%	48.6%	34.9%	32.3%	43.7%	60.4%	22.8%
SSN	86.3%	88.6%	77.4%	95.6%	96.4%	100.0%	88.7%	80.6%	99.3%	86.7%	86.5%	99.6%
ITIN	3.1%	5.7%	0.0%	3.4%	2.9%	0.0%	8.3%	17.3%	0.7%	6.9%	13.5%	0.5%
Average AGI	\$ 12,210	\$ 12,327	\$ 8,626	\$ 13,995	\$ 11,410	\$ 11,614	\$ 13,309	\$ 9,230	\$ 7,896	\$15,002	\$ 11,304	\$ 6,053
Median AGI	\$ 10,126	\$ 9,955	\$ 6,701	\$ 11,272	\$ 10,715	\$ 8,778	\$ 11,082	\$ 6,734	\$ 3,988	\$12,456	\$ 9,143	\$ 90
Average EITC	\$ 768	\$ 834	\$ 166	\$ 1,185	\$ 1,424	\$ 359	\$ 881	\$ 594	\$ 120	\$ 1,257	\$ 1,445	\$ 52
Max EITC	\$11,647	\$ 4,300	\$ 4,003	\$12,518	\$ 4,493	\$ 3,530	\$16,666	\$ 6,821	\$ 5,861	\$13,682	\$ 8,954	\$ 2,853
Average Refund	\$ 1,348	\$ 1,501	\$ 351	\$ 1,634	\$ 1,556	\$ 598	\$ 1,247	\$ 857	\$ 280	\$ 1,513	\$ 1,395	\$ 285
Median Refund	\$ 550	\$ 520	\$ 236	\$ 749	\$ 770	\$ 290	\$ 549	\$ 172	\$ 40	\$ 697	\$ 621	\$ 189
Max Refund	\$ 7,650	\$ 6,250	\$ 4,190	\$13,931	\$ 5,992	\$ 8,733	\$ 3,486	\$ 6,572	\$ 5,491	\$12,582	\$ 6,295	\$ 4,824
Avgerage Sch C/SE				\$ 482	\$ 26	\$ 140	\$ 322	\$ 83	\$ 116	\$ 423	\$ 382	\$ 73
Max Sch C/SE				\$ 9,543	\$ 495	\$ 2,475	\$ 1,000	\$ 4,528	\$ 5,764	\$10,480	\$ 10,425	\$ 4,800

Source: Frontera Asset Building Network, Regional Data, for Tax Seasons: 2005, 2006, 2007 and 2008 collected in California, Arizona, New Mexico, and Texas rural and metro sites.

instrument that helps working poor families save for a major asset such as a home, a small business or for higher education.

Perhaps the most compelling information derived from the regional survey is the use of lump-sum tax refunds for asset building among farm workers. The higher incidence of using tax refunds to pay property taxes indicates that farm workers own mobile homes and or bricks-and-mortar homes with either more equity or complete equity compared to other respondents. Farm workers also have higher use of tax refunds for auto insurance, which corresponds to the need for transportation when migrating to farm work opportunities. Use of tax refunds for small, micro- or self-employment activities also indicates the variety of income or job creating activities engaged in by farm workers. Farm workers report a higher incidence of informal savings (participation in savings circles outside of mainstream financial institutions where rapid accumulation of funds can occur in cooperative savings arrangements compared to individual savings accounts)

VI. . Future Research Issues

Several policy implications related to findings reported here require more thoughtful assessment given the current issues facing the low-wage Latino work force and in particular the Latino farm worker population as they age and reach their end-of-work years. Financial education that incorporates tax and retirement knowledge in an easily accessible manner is urgently needed in the Latino community for all age cohorts. Additionally, given the decline in employer-sponsored benefits for workers, we have seen a rapid rise of contingent, multiple-employment, part-time, flexible-time, independent contractors, home and micro businesses to fill in the gaps left by the lack of living-wage jobs. Our policies continue to reflect a 20th century well-rounded fringe-benefit oriented model of employment held by the majority of American workers. This is no longer the case for the majority of low-skilled employees. An updated worker and family-friendly policy correcting this labor market reality is clearly required.

Table 5. Financial Behaviors and Decisions Survey, TY2007

	Border n=5986	Farmwrkrs n=209	Retirees n=473
Race/Ethnicity			
Latino	76.9%	91.1%	74.5%
Native American	4.9%	2.0%	3.9%
African American	4.8%	3.0%	4.8%
White	9.9%	2.5%	14.4%
Asian American	1.4%	0.0%	0.5%
Other	2.4%	1.0%	1.6%
Where Do you Cash Your Paycheck?			
Grocery Store	13.4%	33.9%	7.2%
Check Cashing	7.1%	10.9%	2.8%
Bank	48.6%	41.5%	50.7%
Credit Union	8.4%	4.1%	14.8%
Direct Deposit	24.2%	7.8%	29.6%
Other	4.5%	5.2%	5.1%
Do You Use Money Orders to Pay Bills?			
Yes + Sometimes	46.0%	58.9%	48.9%
No	54.1%	41.7%	50.8%
Have You Heard of IDAs?			
Yes	11.8%	9.9%	11.1%
No	87.9%	89.1%	88.2%
Have You Participated in Savings Circles?			
Yes	3.0%	5.2%	1.6%
No	96.2%	94.3%	98.1%
Max Amount	\$ 2,000	\$ 1,000	\$ 150
Total Savings	\$ 54,705	\$ 2,650	\$ 150
Do You Lend/Borrow From Family Members?			
Yes + Sometimes	47.5%	41.2%	40.8%
No	52.5%	59.3%	58.4%
Do You Send Money to Family Not Living w/You?			
Yes + Sometimes	28.8%	36.9%	32.7%
No	71.4%	63.1%	67.7%
Do You Have a Savings Account?			
Yes	50.5%	50.0%	45.4%
No	48.2%	46.6%	53.1%
Max Amount	\$ 250,000	\$ 100,000	\$ 250,000
Total Savings	\$ 1,051,872	\$ 100,000	\$ 588,090

Table 5. continued

	Border n=5986	Farmwrkrs n=209	Retirees n=473
Have You Ever Used Your Tax Refund For:			
Down Payment on a Home	4.2%	7.1%	2.3%
Down Payment or Purchase of Car/Truck	16.0%	13.0%	5.2%
Home Appliance (washer/dryer/etc.)	13.1%	11.0%	5.7%
Computer	8.1%	8.4%	1.3%
Furniture	13.6%	12.3%	5.5%
Green Card Fees for Family Members	2.5%	7.8%	0.8%
Property Taxes	9.9%	12.3%	9.2%
Medical Bills	13.7%	13.6%	11.0%
Auto Insurance	10.6%	12.5%	5.6%
Small Business	1.3%	3.2%	0.5%
Personal Bills	57.3%	40.5%	37.1%
School Expenses for yourself or dependent	11.5%	8.5%	6.8%
Pay Off Pay Day Loan	4.1%	3.3%	1.3%
Savings	10.7%	9.2%	8.8%
Other	16.3%	23.4%	33.7%
Would You Like to Know More About:			
Buying a Home	26.0%	21.0%	6.9%
Car/Truck Loans	14.5%	13.6%	3.4%
Credit Cards/Debit Cards	10.3%	8.8%	4.2%
Property Taxes	8.3%	8.0%	5.4%
Children's Savings Accounts	11.1%	13.6%	1.2%
Bank/Credit Union Account	7.3%	11.2%	2.3%
Credit/Budgeting	11.1%	5.6%	3.5%
Small or Micro Business/Self-Employment	10.0%	8.8%	3.1%
Matched Savings Accounts/IDAs	19.1%	21.6%	5.0%
Financial Aid (Student Loans/Grants) for Sch	21.3%	9.7%	6.2%
Retirement Accounts	14.7%	16.1%	6.9%
Other	19.4%	28.8%	59.5%
Residential Status			
Homeowner w/Mortgage	19.3%	19.0%	22.9%
Homeowner w/out Mortgage	11.1%	12.0%	13.8%
Mobile Home w/Mortgage	4.8%	8.9%	5.0%
Mobile Home w/out Mortgage	4.3%	10.1%	6.3%
Renter	59.8%	47.5%	47.1%
Average Years of Education	11	9	9
Average Age	42	46	67
Language Used in Answering Survey:			
Spanish	34.9%	73.0%	23%
English	65.1%	27.0%	77%

Source: FABN Survey, Tax Season 2008, data collected in: CA, AZ, NM & TX

Agro-terrorism has become an issue among national security debates as have interventions in commodity market price fluctuations via subsidies, meeting the demand for increased food consumption globally, and the escalation of defective imported foodstuffs. U.S. consumers will be demanding more homegrown food products (Pollan, 2008). This implies that farm labor as an important factor input into American agricultural production has important implications for food security, food price stability and the continuing integration of global food markets. The increasing share of organic and natural foods farming in the U.S. requiring more labor-intensive inputs is projected to grow rapidly within the next ten years. For example, organic foods (sold as packaged groceries) increased from \$652 million in 2000 to \$1.6 billion in 2001 (Dimitri and Greene, 2002). Farmer's Markets have increased with the support of local and state governments with direct marketing and sales to consumers. Community-sponsored agriculture (CSA) has added a dimension to sustainable placed-based fresh food farm-to-market arrangements where local consumers pay the organic farmer in advance for a portion of their produce harvest (Dimitri and Greene, 2002). Recently, food banks have begun to explore owning and running farms as a means to create a sustainable supply network and as a means to provide training-jobs and employment to users of their food banks (Zezima, 2008).

The retirement status of Latino farm workers is fragile and will continue to remain insecure and unstable for this particular vulnerable population in the next decade if no corresponding policy emerges that enforces proper classification of workers by employers (or joint employers), wage reporting to the IRS and to the Social Security Administration and that does not create a national initiative for retirement planning education. Without a better understanding of the actual number of former farm workers now in retirement, we cannot know how this population fares today. Future research should include a more comprehensive approach to work-life-cycle social and economic characteristics of agricultural workers. In order to fully ascertain the retirement status of America's agricultural laborers and Hispanic farm workers in particular, we should undertake:

- An IRS audit that captures industry specific worker misclassification (both intentional and unintentional);

- A cost-analysis study of the worker misclassification payroll tax gap that includes the spillover effects impacting the viability of state and federal worker benefits programs as well as an estimate of affected farm workers;
- An ethnographic survey of farm worker home-base communities in an ongoing five or ten year cycle similar to Griffith and Kissam (1995) that trace the linkages of farm worker markets (demand) to farm worker family labor force supply in order to assess family economic mobility and elder well-being; and
- A baseline study that links race/ethnicity and gender with occupation (former occupation) and social security retirement benefits in order to fully document which workers retiring from which industry receive the full benefits of program coverage.

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Appendix A

Independent Contractor or Employee?

Facts and circumstances will determine whether an individual is an employee or an independent contractor. As an employee, the costs of workers' compensation, social security and unemployment insurance (if applicable) as well as state and federal income tax withholding are employer responsibilities. As an independent contractor, these costs and withholdings are the contractor's responsibility. The principal test is the extent of the employer's control over the individual doing the work. If the employer has control over the job to be accomplished and the details and means for accomplishing the job, then an employer/employee relationship exists. Determining factors include:

- a) whether supervision is to the work or merely to the completion of the job;
- b) whether an individual can set his/her own work schedule;
- c) who provides the tools and materials for the job;
- d) whether the individual holds himself/herself out to the public as available to work for others;
- e) skill or expertise needed for the job;
- f) whether the individual is participating in benefits offered by the employer;
- g) method of payment; and,
- h) the termination rights of the parties.

This list is not all-inclusive, but is intended to be a summary of the major factors. The Internal Revenue Service uses 20 different items in making a determination. Typical farm jobs classified as being performed by an independent contractor include custom machine hire including hauling; veterinarian services; accounting and legal services; building construction and repair; and farm drainage installation. Payments to unincorporated independent contractors totaling more than \$600 are reported annually on IRS Form 1099.

Source: Ohio State University, Extension Service, Fact Sheet, <http://ohioline.osu.edu/hrm-fact/0005.htm>

Appendix B – Pending Federal Legislation Addressing Worker Misclassification

Bills	Introduced	Status of Bills
HR 6111- The Employee Misclassification Prevention Act	May 21, 2008 Sponsor: Rep. Robert E. Andrews (NJ-1), Co-sponsors (23)	June 2, 2008 referred to House subcommittee on Income Security and Family Support
S. 3648 - The Employee Misclassification Prevention Act	September 29, 2008 Sponsor: Senator Edward Kennedy (MA), Co-sponsors (2)	September 29, 2008, read twice and referred to the Committee on Health, Education, Labor and Pensions
HR 5804 - The Taxpayer Responsibility, Accountability, and Consistency Act	April 15, 2008 Sponsor: Rep. Jim McDermott (WA-7), Co-sponsors (37)	April 15, 2008 referred to House Committee on Ways and Means
S. 2044-Independent Contractor Proper Classification Act	September 12, 2007 Sponsor Senator Barack Obama (IL), Co-sponsors (6)	September 12, 2007, read twice and referred to Senate Committee on Finance

Endnotes

¹ Hispanic and Latino are used interchangeably in this proposal. Persons of Hispanic or Latino ethnicity include: Mexican origin, Puerto Rican, Cuban, Dominican, Central and South American, Spanish and Other Spanish-speaking origin groups.

² Possible explorations of proprietary public data from the Social Security Administration and the Current Population Survey, Bureau of the Census may shed light on the issue.

³ The Bracero (Spanish for manual hand/arm laborer) Program operated from 1942-1964 and expanded the farm labor supply with the intent of not increasing the number of permanent residents to the U.S. population. The debate over growers' demand for labor for their labor-intensive, perishable crops and the supply of available domestic workers remains a contentious political debate with economic repercussions.

⁴ In 2005, the PEW Hispanic Center released a report by Jeffery Passel on the unauthorized immigrant population in the U.S. Based on Current Population Surveys, 6.2 million unauthorized migrants are of Mexican origin (56% of the unauthorized population). Four percent of all unauthorized migrants were employed in farming. They comprise 24% of all workers employed in farming occupations. This implies there is a substantial 'authorized' worker component in the agricultural sector.

⁵ These specialty crops are vegetables, fruits, nuts and horticultural products (Kandall, 2008).

⁶ The benchmark for exempting farms and ranches with range livestock was the use of 500 man-days of labor or less. Five hundred man-days are equivalent to using 6 or more workers a day for 13 weeks in any given quarter (Kandall 2008).

⁷ MSPA was designed to provide migrant and seasonal farm workers with protections concerning pay, working conditions, and work-related conditions, to require farm labor contractors to register with the U.S. Department of Labor, and to assure necessary protections for farm workers, agricultural associations, and agricultural employers, (Runyan, 1992).

⁸ Interviews with migrant farm worker families and program leaders from various community based organizations offering free tax preparation and Volunteer Individual Tax Assistance (VITA) sites serving high density farm worker rural areas in Texas, Arizona and California.

⁹ J. Amaya, (1997), "Workers or Independent Contractors"? The Differences in Wages and Benefits," *Guild Practitioner*, Vol. 54, pp. 33-37. The employer in this case was Texas A&M University who employed over 400 farm workers on their experimental farm projects and paid them with 1099-Miscellaneous wages. The case was won and the social security accounts were adjusted, (Johnston, David Cay, "University Admits Depriving Workers Paid as Contractors," *New York Times* (August 16, 1995)).

¹⁰ The EITC is the largest single source of federal support for low-income families (Stanfield, R., 2002).

¹¹ Robles, B. J. (September 2007), "Tax Refunds and Microbusinesses: Expanding Family and Community Wealth Building in the Borderlands," *The Annals of the American Academy of Political and Social Sciences*, Vol. 612, pp. 178-191.

¹² NSAF includes survey questions designed to measure knowledge about and receipt of EITC.

¹³ A study by Katherine Phillips at the Urban Institute entitled "Who Knows about the EITC?" (January 2001) indicates that Hispanic low-income families are the least likely to know about and claim the EITC. She reports that fewer than one in three low-income Hispanic parents know about the EITC (32%) and fewer than one in five (18.4%) have ever received the EITC. Contrast these findings with those of low-income non-Hispanic White parents, 75.9% who know about the EITC and 53.1% who have ever received the EITC. The low-income Black community also has higher rates of being informed about the EITC, 72.7% while 48% have ever received the EITC.

¹⁸Consumer Expenditure Survey, 2000, Bureau of Labor Statistics.

¹⁵Kobes, D. and E. Maag, "Tax Burden on Poor Families Has Declined Over Time," **Tax Notes**, February 3, 2003, pg. 749.

¹⁶Cilke, J., "A Profile of Non-Filers," OTA Working Paper, #78, (July 1998), US Department of the Treasury.