

111TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

To improve agricultural job opportunities, benefits, and security for aliens  
in the United States and for other purposes.

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IN THE SENATE OF THE UNITED STATES

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Mrs. FEINSTEIN introduced the following bill; which was read twice and  
referred to the Committee on \_\_\_\_\_

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## A BILL

To improve agricultural job opportunities, benefits, and security for aliens in the United States and for other purposes.

1        *Be it enacted by the Senate and House of Representa-*  
2        *tives of the United States of America in Congress assembled,*

3        **SECTION 1. SHORT TITLE, TABLE OF CONTENTS.**

4        (a) SHORT TITLE.—This Act may be cited as the  
5        “Agricultural Job Opportunities, Benefits, and Security  
6        Act of 2009” or the “AgJOBS Act of 2009”.

7        (b) TABLE OF CONTENTS.—The table of contents for  
8        this Act is as follows:

Sec. 1. Short title, table of contents.

Sec. 2. Definitions.

## 2

TITLE I—PILOT PROGRAM FOR EARNED STATUS ADJUSTMENT  
OF AGRICULTURAL WORKERS

## Subtitle A—Blue Card Status

- Sec. 101. Requirements for blue card status.
- Sec. 102. Treatment of aliens granted blue card status.
- Sec. 103. Adjustment to permanent residence.
- Sec. 104. Applications.
- Sec. 105. Waiver of numerical limitations and certain grounds for inadmissibility.
- Sec. 106. Administrative and judicial review.
- Sec. 107. Use of information.
- Sec. 108. Regulations, effective date, authorization of appropriations.

## Subtitle B—Correction of Social Security Records

- Sec. 111. Correction of Social Security records.

## TITLE II—REFORM OF H-2A WORKER PROGRAM

- Sec. 201. Amendments to the Immigration and Nationality Act.

## TITLE III—MISCELLANEOUS PROVISIONS

- Sec. 301. Determination and use of user fees.
- Sec. 302. Regulations.
- Sec. 303. Reports to Congress.
- Sec. 304. Effective date.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

- 3 (1) **AGRICULTURAL EMPLOYMENT.**—The term  
4 “agricultural employment” means any service or ac-  
5 tivity that is considered to be agricultural under sec-  
6 tion 3(f) of the Fair Labor Standards Act of 1938  
7 (29 U.S.C. 203(f)) or agricultural labor under sec-  
8 tion 3121(g) of the Internal Revenue Code of 1986  
9 or the performance of agricultural labor or services  
10 described in section 101(a)(15)(H)(ii)(a) of the Im-  
11 migration and Nationality Act (8 U.S.C.  
12 1101(a)(15)(H)(ii)(a)).

1           (2) BLUE CARD STATUS.—The term “blue card  
2 status” means the status of an alien who has been  
3 lawfully admitted into the United States for tem-  
4 porary residence under section 101(a).

5           (3) DEPARTMENT.—The term “Department”  
6 means the Department of Homeland Security.

7           (4) EMPLOYER.—The term “employer” means  
8 any person or entity, including any farm labor con-  
9 tractor and any agricultural association, that em-  
10 ploys workers in agricultural employment.

11           (5) SECRETARY.—Except as otherwise provided,  
12 the term “Secretary” means the Secretary of Home-  
13 land Security.

14           (6) WORK DAY.—The term “work day” means  
15 any day in which the individual is employed 5.75 or  
16 more hours in agricultural employment.

17 **TITLE I—PILOT PROGRAM FOR**  
18 **EARNED STATUS ADJUST-**  
19 **MENT OF AGRICULTURAL**  
20 **WORKERS**

21 **Subtitle A—Blue Card Status**

22 **SEC. 101. REQUIREMENTS FOR BLUE CARD STATUS.**

23           (a) REQUIREMENT TO GRANT BLUE CARD STA-  
24 TUS.—Notwithstanding any other provision of law, the  
25 Secretary shall, pursuant to the requirements of this sec-

1 tion, grant blue card status to an alien who qualifies under  
2 this section if the Secretary determines that the alien—

3 (1) has performed agricultural employment in  
4 the United States for at least 863 hours or 150  
5 work days during the 24-month period ending on  
6 December 31, 2008;

7 (2) applied for such status during the 18-month  
8 application period beginning on the first day of the  
9 seventh month that begins after the date of enact-  
10 ment of this Act;

11 (3) is otherwise admissible to the United States  
12 under section 212 of the Immigration and Nation-  
13 ality Act (8 U.S.C. 1182), except as otherwise pro-  
14 vided under section 105(b); and

15 (4) has not been convicted of any felony or a  
16 misdemeanor, an element of which involves bodily in-  
17 jury, threat of serious bodily injury, or harm to  
18 property in excess of \$500.

19 (b) **AUTHORIZED TRAVEL.**—An alien who is granted  
20 blue card status is authorized to travel outside the United  
21 States (including commuting to the United States from  
22 a residence in a foreign country) in the same manner as  
23 an alien lawfully admitted for permanent residence.

24 (c) **AUTHORIZED EMPLOYMENT.**—The Secretary  
25 shall provide an alien who is granted blue card status an

1 employment authorized endorsement or other appropriate  
2 work permit, in the same manner as an alien lawfully ad-  
3 mitted for permanent residence.

4 (d) TERMINATION OF BLUE CARD STATUS.—

5 (1) DEPORTABLE ALIENS.—The Secretary shall  
6 terminate blue card status granted to an alien if the  
7 Secretary determines that the alien is deportable.

8 (2) OTHER GROUNDS FOR TERMINATION.—The  
9 Secretary shall terminate blue card status granted to  
10 an alien if—

11 (A) the Secretary finds, by a preponder-  
12 ance of the evidence, that the adjustment to  
13 blue card status was the result of fraud or will-  
14 ful misrepresentation, as described in section  
15 212(a)(6)(C)(i) of the Immigration and Nation-  
16 ality Act (8 U.S.C. 1182(a)(6)(C)(i)); or

17 (B) the alien—

18 (i) commits an act that makes the  
19 alien inadmissible to the United States  
20 under section 212 of the Immigration and  
21 Nationality Act (8 U.S.C. 1182), except as  
22 provided under section 105(b);

23 (ii) is convicted of a felony or 3 or  
24 more misdemeanors committed in the  
25 United States;

1 (iii) is convicted of an offense, an ele-  
2 ment of which involves bodily injury, threat  
3 of serious bodily injury, or harm to prop-  
4 erty in excess of \$500; or

5 (iv) fails to perform the agricultural  
6 employment required under paragraph  
7 (1)(A) of section 103(a) unless the alien  
8 was unable to work in agricultural employ-  
9 ment due to the extraordinary cir-  
10 cumstances described in paragraph (3) of  
11 such section.

12 (e) RECORD OF EMPLOYMENT.—

13 (1) IN GENERAL.—Each employer of an alien  
14 granted blue card status shall annually—

15 (A) provide a written record of employ-  
16 ment to the alien; and

17 (B) provide a copy of such record to the  
18 Secretary.

19 (2) CIVIL PENALTIES.—

20 (A) IN GENERAL.—If the Secretary finds,  
21 after notice and opportunity for a hearing, that  
22 an employer of an alien granted blue card sta-  
23 tus has failed to provide the record of employ-  
24 ment required under paragraph (1) or has pro-  
25 vided a false statement of material fact in such

1 a record, the employer shall be subject to a civil  
2 penalty in an amount not to exceed \$1,000 per  
3 violation.

4 (B) LIMITATION.—The penalty applicable  
5 under subparagraph (A) for failure to provide  
6 records shall not apply unless the alien has pro-  
7 vided the employer with evidence of employment  
8 authorization granted under this section.

9 (3) SUNSET.—The obligation under paragraph  
10 (1) shall terminate on the date that is 6 years after  
11 the date of the enactment of this Act.

12 (f) REQUIRED FEATURES OF IDENTITY CARD.—The  
13 Secretary shall provide each alien granted blue card sta-  
14 tus, and the spouse and any child of each such alien resid-  
15 ing in the United States, with a card that contains—

16 (1) an encrypted, machine-readable, electronic  
17 identification strip that is unique to the alien to  
18 whom the card is issued;

19 (2) biometric identifiers, including fingerprints  
20 and a digital photograph; and

21 (3) physical security features designed to pre-  
22 vent tampering, counterfeiting, or duplication of the  
23 card for fraudulent purposes.

24 (g) FINE.—An alien granted blue card status shall  
25 pay a fine of \$100 to the Secretary.

1 (h) MAXIMUM NUMBER.—The Secretary may not  
2 issue more than 1,350,000 blue cards during the 5-year  
3 period beginning on the date of the enactment of this Act.

4 **SEC. 102. TREATMENT OF ALIENS GRANTED BLUE CARD**  
5 **STATUS.**

6 (a) IN GENERAL.—Except as otherwise provided  
7 under this section, an alien granted blue card status (in-  
8 cluding a spouse or child of the alien granted derivative  
9 status) shall be considered to be an alien lawfully admitted  
10 for permanent residence for purposes of any law other  
11 than any provision of the Immigration and Nationality Act  
12 (8 U.S.C. 1101 et seq.).

13 (b) DELAYED ELIGIBILITY FOR CERTAIN FEDERAL  
14 PUBLIC BENEFITS.—Except as otherwise provided in law,  
15 an alien granted blue card status (including a spouse or  
16 child of the alien granted derivative status) shall not be  
17 eligible, by reason of such status, for any form of assist-  
18 ance or benefit described in section 403(a) of the Personal  
19 Responsibility and Work Opportunity Reconciliation Act  
20 of 1996 (8 U.S.C. 1613(a)) until 5 years after the date  
21 on which the alien is granted an adjustment of status  
22 under section 103.

23 **SEC. 103. ADJUSTMENT TO PERMANENT RESIDENCE.**

24 (a) IN GENERAL.—Except as provided in subsection  
25 (b), the Secretary shall adjust the status of an alien grant-

1 ed blue card status to that of an alien lawfully admitted  
2 for permanent residence if the Secretary determines that  
3 the following requirements are satisfied:

4 (1) QUALIFYING EMPLOYMENT.—

5 (A) IN GENERAL.—Subject to subpara-  
6 graph (B), the alien has performed at least—

7 (i) 5 years of agricultural employment  
8 in the United States for at least 100 work  
9 days per year, during the 5-year period be-  
10 ginning on the date of the enactment of  
11 this Act; or

12 (ii) 3 years of agricultural employ-  
13 ment in the United States for at least 150  
14 work days per year, during the 3-year pe-  
15 riod beginning on the date of the enact-  
16 ment of this Act.

17 (B) 4-YEAR PERIOD OF EMPLOYMENT.—

18 An alien shall be considered to meet the re-  
19 quirements of subparagraph (A) if the alien has  
20 performed 4 years of agricultural employment  
21 in the United States for at least 150 work days  
22 during 3 years of those 4 years and at least  
23 100 work days during the remaining year, dur-  
24 ing the 4-year period beginning on the date of  
25 the enactment of this Act.

1           (2) PROOF.—An alien may demonstrate compli-  
2           ance with the requirement under paragraph (1) by  
3           submitting—

4                   (A) the record of employment described in  
5                   section 101(e); or

6                   (B) documentation that may be submitted  
7                   under section 104(c).

8           (3) EXTRAORDINARY CIRCUMSTANCES.—

9                   (A) IN GENERAL.—In determining whether  
10                  an alien has met the requirement of paragraph  
11                  (1)(A), the Secretary may credit the alien with  
12                  not more than 12 additional months of agricul-  
13                  tural employment in the United States to meet  
14                  such requirement if the alien was unable to  
15                  work in agricultural employment due to—

16                           (i) pregnancy, injury, or disease, if the  
17                           alien can establish such pregnancy, dis-  
18                           abling injury, or disease through medical  
19                           records;

20                           (ii) illness, disease, or other special  
21                           needs of a minor child, if the alien can es-  
22                           tablish such illness, disease, or special  
23                           needs through medical records;

24                           (iii) severe weather conditions that  
25                           prevented the alien from engaging in agri-

1 cultural employment for a significant pe-  
2 riod of time; or

3 (iv) termination from agricultural em-  
4 ployment, if the Secretary finds that the  
5 termination was without just cause and  
6 that the alien was unable to find alter-  
7 native agricultural employment after a rea-  
8 sonable job search.

9 (B) EFFECT OF FINDING.—A finding  
10 made under subparagraph (A)(iv), with respect  
11 to an alien, shall not—

12 (i) be conclusive, binding, or admis-  
13 sible in a separate or subsequent judicial  
14 or administrative action or proceeding be-  
15 tween the alien and a current or prior em-  
16 ployer of the alien or any other party; or

17 (ii) subject the alien's employer to the  
18 payment of attorney fees incurred by the  
19 alien in seeking to obtain a finding under  
20 subparagraph (A)(iv).

21 (4) APPLICATION PERIOD.—The alien applies  
22 for adjustment of status not later than 7 years after  
23 the date of the enactment of this Act.

24 (5) FINE.—The alien pays a fine of \$400 to the  
25 Secretary.

1 (b) GROUNDS FOR DENIAL OF ADJUSTMENT OF STA-  
2 TUS.—The Secretary shall deny an alien granted blue card  
3 status an adjustment of status under this section if—

4 (1) the Secretary finds, by a preponderance of  
5 the evidence, that the adjustment to blue card status  
6 was the result of fraud or willful misrepresentation,  
7 as described in section 212(a)(6)(C)(i) of the Immi-  
8 gration and Nationality Act (8 U.S.C.  
9 1182(a)(6)(C)(i)); or

10 (2) the alien—

11 (A) commits an act that makes the alien  
12 inadmissible to the United States under section  
13 212 of the Immigration and Nationality Act (8  
14 U.S.C. 1182), except as provided under section  
15 105(b);

16 (B) is convicted of a felony or 3 or more  
17 misdemeanors committed in the United States;

18 (C) is convicted of an offense, an element  
19 of which involves bodily injury, threat of serious  
20 bodily injury, or harm to property in excess of  
21 \$500; or

22 (D) failed to perform the agricultural em-  
23 ployment required under paragraph (1)(A) of  
24 subsection (a) unless the alien was unable to  
25 work in agricultural employment due to the ex-

1           traordinary circumstances described in para-  
2           graph (3) of such subsection.

3           (c) GROUND FOR REMOVAL.—Any alien granted  
4 blue card status who does not apply for adjustment of sta-  
5 tus under this section before the expiration of the applica-  
6 tion period described in subsection (a)(4) or who fails to  
7 meet the other requirements of subsection (a) by the end  
8 of the application period, is deportable and may be re-  
9 moved under section 240 of the Immigration and Nation-  
10 ality Act (8 U.S.C. 1229a).

11          (d) PAYMENT OF TAXES.—

12           (1) IN GENERAL.—Not later than the date on  
13 which an alien’s status is adjusted under this sec-  
14 tion, the alien shall establish that the alien does not  
15 owe any applicable Federal tax liability by estab-  
16 lishing that—

17                   (A) no such tax liability exists;

18                   (B) all such outstanding tax liabilities have  
19 been paid; or

20                   (C) the alien has entered into an agree-  
21 ment for payment of all outstanding liabilities  
22 with the Internal Revenue Service.

23           (2) APPLICABLE FEDERAL TAX LIABILITY.—In  
24 paragraph (1) the term “applicable Federal tax li-  
25 ability” means liability for Federal taxes, including

1 penalties and interest, owed for any year during the  
2 period of employment required under subsection  
3 (a)(1) for which the statutory period for assessment  
4 of any deficiency for such taxes has not expired.

5 (3) IRS COOPERATION.—The Secretary of the  
6 Treasury shall establish rules and procedures under  
7 which the Commissioner of Internal Revenue shall  
8 provide documentation to an alien upon request to  
9 establish the payment of all taxes required by this  
10 subsection.

11 (e) SPOUSES AND MINOR CHILDREN.—

12 (1) IN GENERAL.—Notwithstanding any other  
13 provision of law, the Secretary shall confer the sta-  
14 tus of lawful permanent resident on the spouse and  
15 minor child of an alien granted any adjustment of  
16 status under subsection (a), including any individual  
17 who was a minor child on the date such alien was  
18 granted blue card status, if the spouse or minor  
19 child applies for such status, or if the principal alien  
20 includes the spouse or minor child in an application  
21 for adjustment of status to that of a lawful perma-  
22 nent resident.

23 (2) TREATMENT OF SPOUSES AND MINOR CHIL-  
24 DREN.—

1           (A) GRANTING OF STATUS AND RE-  
2           MOVAL.—The Secretary shall grant derivative  
3           status to the alien spouse and any minor child  
4           residing in the United States of an alien grant-  
5           ed blue card status and shall not remove such  
6           derivative spouse or child during the period that  
7           the alien granted blue card status maintains  
8           such status, except as provided in paragraph  
9           (3). A grant of derivative status to such a  
10          spouse or child under this subparagraph shall  
11          not decrease the number of aliens who may re-  
12          ceive blue card status under subsection (h) of  
13          section 101.

14          (B) TRAVEL.—The derivative spouse and  
15          any minor child of an alien granted blue card  
16          status may travel outside the United States in  
17          the same manner as an alien lawfully admitted  
18          for permanent residence.

19          (C) EMPLOYMENT.—The derivative spouse  
20          of an alien granted blue card status may apply  
21          to the Secretary for a work permit to authorize  
22          such spouse to engage in any lawful employ-  
23          ment in the United States while such alien  
24          maintains blue card status.

1           (3) GROUNDS FOR DENIAL OF ADJUSTMENT OF  
2 STATUS AND REMOVAL.—The Secretary shall deny  
3 an alien spouse or child adjustment of status under  
4 paragraph (1) and may remove such spouse or child  
5 under section 240 of the Immigration and Nation-  
6 ality Act (8 U.S.C. 1229a) if the spouse or child—

7           (A) commits an act that makes the alien  
8 spouse or child inadmissible to the United  
9 States under section 212 of such Act (8 U.S.C.  
10 1182), except as provided under section 105(b);

11           (B) is convicted of a felony or 3 or more  
12 misdemeanors committed in the United States;  
13 or

14           (C) is convicted of an offense, an element  
15 of which involves bodily injury, threat of serious  
16 bodily injury, or harm to property in excess of  
17 \$500.

18 **SEC. 104. APPLICATIONS.**

19           (a) SUBMISSION.—The Secretary shall provide that—

20           (1) applications for blue card status may be  
21 submitted—

22           (A) to the Secretary if the applicant is rep-  
23 resented by an attorney or a nonprofit religious,  
24 charitable, social service, or similar organization  
25 recognized by the Board of Immigration Ap-

1 peals under section 292.2 of title 8, Code of  
2 Federal Regulations; or

3 (B) to a qualified designated entity if the  
4 applicant consents to the forwarding of the ap-  
5 plication to the Secretary; and

6 (2) applications for adjustment of status under  
7 section 103 shall be filed directly with the Secretary.

8 (b) QUALIFIED DESIGNATED ENTITY DEFINED.—In  
9 this section, the term “qualified designated entity”  
10 means—

11 (1) a qualified farm labor organization or an  
12 association of employers designated by the Sec-  
13 retary; or

14 (2) any such other person designated by the  
15 Secretary if that Secretary determines such person  
16 is qualified and has substantial experience, dem-  
17 onstrated competence, and has a history of long-  
18 term involvement in the preparation and submission  
19 of applications for adjustment of status under sec-  
20 tion 209, 210, or 245 of the Immigration and Na-  
21 tionality Act (8 U.S.C. 1159, 1160, and 1255), the  
22 Act entitled “An Act to adjust the status of Cuban  
23 refugees to that of lawful permanent residents of the  
24 United States, and for other purposes”, approved  
25 November 2, 1966 (Public Law 89–732; 8 U.S.C.

1 1255 note), Public Law 95–145 (8 U.S.C. 1255  
2 note), or the Immigration Reform and Control Act  
3 of 1986 (Public Law 99–603; 100 Stat. 3359) or  
4 any amendment made by that Act.

5 (c) PROOF OF ELIGIBILITY.—

6 (1) IN GENERAL.—An alien may establish that  
7 the alien meets the requirement of section 101(a)(1)  
8 or 103(a)(1) through government employment  
9 records or records supplied by employers or collec-  
10 tive bargaining organizations, and other reliable doc-  
11 umentation as the alien may provide. The Secretary  
12 shall establish special procedures to properly credit  
13 work in cases in which an alien was employed under  
14 an assumed name.

15 (2) DOCUMENTATION OF WORK HISTORY.—

16 (A) BURDEN OF PROOF.—An alien apply-  
17 ing for status under section 101(a) or 103(a)  
18 has the burden of proving by a preponderance  
19 of the evidence that the alien has worked the  
20 requisite number of hours or days required  
21 under section 101(a)(1) or 103(a)(1), as appli-  
22 cable.

23 (B) TIMELY PRODUCTION OF RECORDS.—

24 If an employer or farm labor contractor employ-  
25 ing such an alien has kept proper and adequate

1 records respecting such employment, the alien's  
2 burden of proof under subparagraph (A) may  
3 be met by securing timely production of those  
4 records under regulations to be promulgated by  
5 the Secretary.

6 (C) SUFFICIENT EVIDENCE.—An alien  
7 may meet the burden of proof under subpara-  
8 graph (A) to establish that the alien has per-  
9 formed the days or hours of work required by  
10 section 101(a)(1) or 103(a)(1) by producing  
11 sufficient evidence to show the extent of that  
12 employment as a matter of just and reasonable  
13 inference.

14 (d) APPLICATIONS SUBMITTED TO QUALIFIED DES-  
15 IGNATED ENTITIES.—

16 (1) REQUIREMENTS.—Each qualified des-  
17 ignated entity shall agree—

18 (A) to forward to the Secretary an applica-  
19 tion submitted to that entity pursuant to sub-  
20 section (a)(1)(B) if the applicant has consented  
21 to such forwarding;

22 (B) not to forward to the Secretary any  
23 such application if the applicant has not con-  
24 sented to such forwarding; and

1           (C) to assist an alien in obtaining docu-  
2           mentation of the alien's work history, if the  
3           alien requests such assistance.

4           (2) NO AUTHORITY TO MAKE DETERMINA-  
5           TIONS.—No qualified designated entity may make a  
6           determination required by this subtitle to be made  
7           by the Secretary.

8           (e) LIMITATION ON ACCESS TO INFORMATION.—Files  
9           and records collected or compiled by a qualified designated  
10          entity for the purposes of this section are confidential and  
11          the Secretary shall not have access to such a file or record  
12          relating to an alien without the consent of the alien, except  
13          as allowed by a court order issued pursuant to subsection  
14          (f).

15          (f) CONFIDENTIALITY OF INFORMATION.—

16               (1) IN GENERAL.—Except as otherwise pro-  
17               vided in this section, the Secretary or any other offi-  
18               cial or employee of the Department or a bureau or  
19               agency of the Department is prohibited from—

20                       (A) using information furnished by the ap-  
21                       plicant pursuant to an application filed under  
22                       this title, the information provided by an appli-  
23                       cant to a qualified designated entity, or any in-  
24                       formation provided by an employer or former  
25                       employer for any purpose other than to make a

1 determination on the application or for impos-  
2 ing the penalties described in subsection (g);

3 (B) making any publication in which the  
4 information furnished by any particular indi-  
5 vidual can be identified; or

6 (C) permitting a person other than a  
7 sworn officer or employee of the Department or  
8 a bureau or agency of the Department or, with  
9 respect to applications filed with a qualified  
10 designated entity, that qualified designated en-  
11 tity, to examine individual applications.

12 (2) REQUIRED DISCLOSURES.—The Secretary  
13 shall provide the information furnished under this  
14 title or any other information derived from such fur-  
15 nished information to—

16 (A) a duly recognized law enforcement en-  
17 tity in connection with a criminal investigation  
18 or prosecution, if such information is requested  
19 in writing by such entity; or

20 (B) an official coroner, for purposes of af-  
21 firmatively identifying a deceased individual,  
22 whether or not the death of such individual re-  
23 sulted from a crime.

24 (3) CONSTRUCTION.—

1 (A) IN GENERAL.—Nothing in this sub-  
2 section shall be construed to limit the use, or  
3 release, for immigration enforcement purposes  
4 or law enforcement purposes, of information  
5 contained in files or records of the Department  
6 pertaining to an application filed under this sec-  
7 tion, other than information furnished by an  
8 applicant pursuant to the application, or any  
9 other information derived from the application,  
10 that is not available from any other source.

11 (B) CRIMINAL CONVICTIONS.—Notwith-  
12 standing any other provision of this subsection,  
13 information concerning whether the alien apply-  
14 ing for blue card status or an adjustment of  
15 status under section 103 has been convicted of  
16 a crime at any time may be used or released for  
17 immigration enforcement or law enforcement  
18 purposes.

19 (4) CRIME.—Any person who knowingly uses,  
20 publishes, or permits information to be examined in  
21 violation of this subsection shall be subject to a fine  
22 in an amount not to exceed \$10,000.

23 (g) PENALTIES FOR FALSE STATEMENTS IN APPLI-  
24 CATIONS.—

25 (1) CRIMINAL PENALTY.—Any person who—

1 (A) files an application for blue card status  
2 or an adjustment of status under section 103  
3 and knowingly and willfully falsifies, conceals,  
4 or covers up a material fact or makes any false,  
5 fictitious, or fraudulent statements or represen-  
6 tations, or makes or uses any false writing or  
7 document knowing the same to contain any  
8 false, fictitious, or fraudulent statement or  
9 entry; or

10 (B) creates or supplies a false writing or  
11 document for use in making such an applica-  
12 tion,

13 shall be fined in accordance with title 18, United  
14 States Code, imprisoned not more than 5 years, or  
15 both.

16 (2) INADMISSIBILITY.—An alien who is con-  
17 victed of a crime under paragraph (1) shall be con-  
18 sidered to be inadmissible to the United States on  
19 the ground described in section 212(a)(6)(C)(i) of  
20 the Immigration and Nationality Act (8 U.S.C.  
21 1182(a)(6)(C)(i)).

22 (h) ELIGIBILITY FOR LEGAL SERVICES.—Section  
23 504(a)(11) of Public Law 104–134 (110 Stat. 1321–53  
24 et seq.) shall not be construed to prevent a recipient of  
25 funds under the Legal Services Corporation Act (42

1 U.S.C. 2996 et seq.) from providing legal assistance di-  
2 rectly related to an application for blue card status or an  
3 adjustment of status under section 103.

4 (i) APPLICATION FEES.—

5 (1) FEE SCHEDULE.—The Secretary shall pro-  
6 vide for a schedule of fees that—

7 (A) shall be charged for the filing of an  
8 application for blue card status or for an ad-  
9 justment of status under section 103; and

10 (B) may be charged by qualified des-  
11 ignated entities to help defray the costs of serv-  
12 ices provided to such applicants.

13 (2) PROHIBITION ON EXCESS FEES BY QUALI-  
14 FIED DESIGNATED ENTITIES.—A qualified des-  
15 ignated entity may not charge any fee in excess of,  
16 or in addition to, the fees authorized under para-  
17 graph (1)(B) for services provided to applicants.

18 (3) DISPOSITION OF FEES.—

19 (A) IN GENERAL.—There is established in  
20 the general fund of the Treasury a separate ac-  
21 count, which shall be known as the “Agricul-  
22 tural Worker Immigration Status Adjustment  
23 Account”. Notwithstanding any other provision  
24 of law, there shall be deposited as offsetting re-

1            receipts into the account all fees collected under  
2            paragraph (1)(A).

3            (B) USE OF FEES FOR APPLICATION PROC-  
4            ESSING.—Amounts deposited in the “Agricultural  
5            Worker Immigration Status Adjustment  
6            Account” shall remain available to the Sec-  
7            retary until expended for processing applica-  
8            tions for blue card status or an adjustment of  
9            status under section 103.

10 **SEC. 105. WAIVER OF NUMERICAL LIMITATIONS AND CER-**  
11 **TAIN GROUNDS FOR INADMISSIBILITY.**

12            (a) NUMERICAL LIMITATIONS DO NOT APPLY.—The  
13 numerical limitations of sections 201 and 202 of the Im-  
14 migration and Nationality Act (8 U.S.C. 1151 and 1152)  
15 shall not apply to the adjustment of aliens to lawful per-  
16 manent resident status under section 103.

17            (b) WAIVER OF CERTAIN GROUNDS OF INADMIS-  
18 SIBILITY.—In the determination of an alien’s eligibility for  
19 status under section 101(a) or an alien’s eligibility for ad-  
20 justment of status under section 103(b)(2)(A) the fol-  
21 lowing rules shall apply:

22            (1) GROUNDS OF EXCLUSION NOT APPLICA-  
23 BLE.—The provisions of paragraphs (5), (6)(A), (7),  
24 and (9) of section 212(a) of the Immigration and  
25 Nationality Act (8 U.S.C. 1182(a)) shall not apply.

1 (2) WAIVER OF OTHER GROUNDS.—

2 (A) IN GENERAL.—Except as provided in  
3 subparagraph (B), the Secretary may waive any  
4 other provision of such section 212(a) in the  
5 case of individual aliens for humanitarian pur-  
6 poses, to ensure family unity, or if otherwise in  
7 the public interest.

8 (B) GROUNDS THAT MAY NOT BE  
9 WAIVED.—Subparagraphs (A), (B), (C), (D),  
10 (G), (H), and (I) of paragraph (2) and para-  
11 graphs (3) and (4) of such section 212(a) may  
12 not be waived by the Secretary under subpara-  
13 graph (A).

14 (C) CONSTRUCTION.—Nothing in this  
15 paragraph shall be construed as affecting the  
16 authority of the Secretary other than under this  
17 subparagraph to waive provisions of such sec-  
18 tion 212(a).

19 (3) SPECIAL RULE FOR DETERMINATION OF  
20 PUBLIC CHARGE.—An alien is not ineligible for blue  
21 card status or an adjustment of status under section  
22 103 by reason of a ground of inadmissibility under  
23 section 212(a)(4) of the Immigration and Nation-  
24 ality Act (8 U.S.C. 1182(a)(4)) if the alien dem-  
25 onstrates a history of employment in the United

1 States evidencing self-support without reliance on  
2 public cash assistance.

3 (c) TEMPORARY STAY OF REMOVAL AND WORK AU-  
4 THORIZATION FOR CERTAIN APPLICANTS.—

5 (1) BEFORE APPLICATION PERIOD.—Effective  
6 on the date of enactment of this Act, the Secretary  
7 shall provide that, in the case of an alien who is ap-  
8 prehended before the beginning of the application  
9 period described in section 101(a)(2) and who can  
10 establish a nonfrivolous case of eligibility for blue  
11 card status (but for the fact that the alien may not  
12 apply for such status until the beginning of such pe-  
13 riod), until the alien has had the opportunity during  
14 the first 30 days of the application period to com-  
15 plete the filing of an application for blue card status,  
16 the alien—

17 (A) may not be removed; and

18 (B) shall be granted authorization to en-  
19 gage in employment in the United States and  
20 be provided an employment authorized endorse-  
21 ment or other appropriate work permit for such  
22 purpose.

23 (2) DURING APPLICATION PERIOD.—The Sec-  
24 retary shall provide that, in the case of an alien who  
25 presents a nonfrivolous application for blue card sta-

1       tus during the application period described in section  
2       101(a)(2), including an alien who files such an ap-  
3       plication within 30 days of the alien’s apprehension,  
4       and until a final determination on the application  
5       has been made in accordance with this section, the  
6       alien—

7               (A) may not be removed; and

8               (B) shall be granted authorization to en-  
9       gage in employment in the United States and  
10       be provided an employment authorized endorse-  
11       ment or other appropriate work permit for such  
12       purpose.

13 **SEC. 106. ADMINISTRATIVE AND JUDICIAL REVIEW.**

14       (a) **IN GENERAL.**—There shall be no administrative  
15       or judicial review of a determination respecting an applica-  
16       tion for blue card status or adjustment of status under  
17       section 103 except in accordance with this section.

18       (b) **ADMINISTRATIVE REVIEW.**—

19               (1) **SINGLE LEVEL OF ADMINISTRATIVE APPEL-**  
20       **LATE REVIEW.**—The Secretary shall establish an ap-  
21       pellate authority to provide for a single level of ad-  
22       ministrative appellate review of such a determina-  
23       tion.

24               (2) **STANDARD FOR REVIEW.**—Such administra-  
25       tive appellate review shall be based solely upon the

1 administrative record established at the time of the  
2 determination on the application and upon such ad-  
3 ditional or newly discovered evidence as may not  
4 have been available at the time of the determination.

5 (c) JUDICIAL REVIEW.—

6 (1) LIMITATION TO REVIEW OF REMOVAL.—

7 There shall be judicial review of such a determina-  
8 tion only in the judicial review of an order of re-  
9 moval under section 242 of the Immigration and  
10 Nationality Act (8 U.S.C. 1252).

11 (2) STANDARD FOR JUDICIAL REVIEW.—Such

12 judicial review shall be based solely upon the admin-  
13 istrative record established at the time of the review  
14 by the appellate authority and the findings of fact  
15 and determinations contained in such record shall be  
16 conclusive unless the applicant can establish abuse  
17 of discretion or that the findings are directly con-  
18 trary to clear and convincing facts contained in the  
19 record considered as a whole.

20 **SEC. 107. USE OF INFORMATION.**

21 Beginning not later than the first day of the applica-  
22 tion period described in section 101(a)(2), the Secretary,  
23 in cooperation with qualified designated entities (as that  
24 term is defined in section 104(b)), shall broadly dissemi-  
25 nate information respecting the benefits that aliens may

1 receive under this subtitle and the requirements that an  
2 alien is required to meet to receive such benefits.

3 **SEC. 108. REGULATIONS, EFFECTIVE DATE, AUTHORIZA-**  
4 **TION OF APPROPRIATIONS.**

5 (a) REGULATIONS.—The Secretary shall issue regula-  
6 tions to implement this subtitle not later than the first  
7 day of the seventh month that begins after the date of  
8 enactment of this Act.

9 (b) EFFECTIVE DATE.—This subtitle shall take effect  
10 on the date that regulations required by subsection (a) are  
11 issued, regardless of whether such regulations are issued  
12 on an interim basis or on any other basis.

13 (c) AUTHORIZATION OF APPROPRIATIONS.—There  
14 are authorized to be appropriated to the Secretary such  
15 sums as may be necessary to implement this subtitle, in-  
16 cluding any sums needed for costs associated with the ini-  
17 tiation of such implementation, for fiscal years 2009 and  
18 2010.

19 **Subtitle B—Correction of Social**  
20 **Security Records**

21 **SEC. 111. CORRECTION OF SOCIAL SECURITY RECORDS.**

22 (a) IN GENERAL.—Section 208(e)(1) of the Social  
23 Security Act (42 U.S.C. 408(e)(1)) is amended—

24 (1) in subparagraph (B)(ii), by striking “or” at  
25 the end;

1           (2) in subparagraph (C), by inserting “or” at  
2           the end;

3           (3) by inserting after subparagraph (C) the fol-  
4           lowing:

5           “(D) who is granted blue card status under the  
6           Agricultural Job Opportunities, Benefits, and Secu-  
7           rity Act of 2009”; and

8           (4) by striking “1990.” and inserting “1990, or  
9           in the case of an alien described in subparagraph  
10          (D), if such conduct is alleged to have occurred be-  
11          fore the date on which the alien was granted blue  
12          card status.”.

13          (b) EFFECTIVE DATE.—The amendments made by  
14          subsection (a) shall take effect on the first day of the sev-  
15          enth month that begins after the date of the enactment  
16          of this Act.

17           **TITLE II—REFORM OF H-2A**  
18           **WORKER PROGRAM**

19          **SEC. 201. AMENDMENTS TO THE IMMIGRATION AND NA-**  
20          **TIONALITY ACT.**

21          (a) IN GENERAL.—Title II of the Immigration and  
22          Nationality Act (8 U.S.C. 1151 et seq.) is amended by  
23          striking section 218 and inserting the following:

1 **“SEC. 218. H-2A EMPLOYER APPLICATIONS.**

2 “(a) APPLICATIONS TO THE SECRETARY OF  
3 LABOR.—

4 “(1) IN GENERAL.—No alien may be admitted  
5 to the United States as an H-2A worker, or other-  
6 wise provided status as an H-2A worker, unless the  
7 employer has filed with the Secretary of Labor an  
8 application containing—

9 “(A) the assurances described in sub-  
10 section (b);

11 “(B) a description of the nature and loca-  
12 tion of the work to be performed;

13 “(C) the anticipated period (expected be-  
14 ginning and ending dates) for which the work-  
15 ers will be needed; and

16 “(D) the number of job opportunities in  
17 which the employer seeks to employ the work-  
18 ers.

19 “(2) ACCOMPANIED BY JOB OFFER.—Each ap-  
20 plication filed under paragraph (1) shall be accom-  
21 panied by a copy of the job offer describing the  
22 wages and other terms and conditions of employ-  
23 ment and the bona fide occupational qualifications  
24 that shall be possessed by a worker to be employed  
25 in the job opportunity in question.

1           “(b) ASSURANCES FOR INCLUSION IN APPLICA-  
2 TIONS.—The assurances referred to in subsection (a)(1)  
3 are the following:

4           “(1) JOB OPPORTUNITIES COVERED BY COL-  
5 LECTIVE BARGAINING AGREEMENTS.—With respect  
6 to a job opportunity that is covered under a collec-  
7 tive bargaining agreement:

8           “(A) UNION CONTRACT DESCRIBED.—The  
9 job opportunity is covered by a union contract  
10 which was negotiated at arm’s length between a  
11 bona fide union and the employer.

12           “(B) STRIKE OR LOCKOUT.—The specific  
13 job opportunity for which the employer is re-  
14 questing an H-2A worker is not vacant because  
15 the former occupant is on strike or being locked  
16 out in the course of a labor dispute.

17           “(C) NOTIFICATION OF BARGAINING REP-  
18 RESENTATIVES.—The employer, at the time of  
19 filing the application, has provided notice of the  
20 filing under this paragraph to the bargaining  
21 representative of the employer’s employees in  
22 the occupational classification at the place or  
23 places of employment for which aliens are  
24 sought.

1           “(D) TEMPORARY OR SEASONAL JOB OP-  
2           PORTUNITIES.—The job opportunity is tem-  
3           porary or seasonal.

4           “(E) OFFERS TO UNITED STATES WORK-  
5           ERS.—The employer has offered or will offer  
6           the job to any eligible United States worker  
7           who applies and is equally or better qualified  
8           for the job for which the nonimmigrant is, or  
9           the nonimmigrants are, sought and who will be  
10          available at the time and place of need.

11          “(F) PROVISION OF INSURANCE.—If the  
12          job opportunity is not covered by the State  
13          workers’ compensation law, the employer will  
14          provide, at no cost to the worker, insurance cov-  
15          ering injury and disease arising out of, and in  
16          the course of, the worker’s employment which  
17          will provide benefits at least equal to those pro-  
18          vided under the State’s workers’ compensation  
19          law for comparable employment.

20          “(2) JOB OPPORTUNITIES NOT COVERED BY  
21          COLLECTIVE BARGAINING AGREEMENTS.—With re-  
22          spect to a job opportunity that is not covered under  
23          a collective bargaining agreement:

24                 “(A) STRIKE OR LOCKOUT.—The specific  
25                 job opportunity for which the employer has ap-

1           plied for an H-2A worker is not vacant because  
2           the former occupant is on strike or being locked  
3           out in the course of a labor dispute.

4           “(B) TEMPORARY OR SEASONAL JOB OP-  
5           PORTUNITIES.—The job opportunity is tem-  
6           porary or seasonal.

7           “(C) BENEFIT, WAGE, AND WORKING CON-  
8           DITIONS.—The employer will provide, at a min-  
9           imum, the benefits, wages, and working condi-  
10          tions required by section 218A to all workers  
11          employed in the job opportunities for which the  
12          employer has applied for an H-2A worker  
13          under subsection (a) and to all other workers in  
14          the same occupation at the place of employ-  
15          ment.

16          “(D) NONDISPLACEMENT OF UNITED  
17          STATES WORKERS.—The employer did not dis-  
18          place and will not displace a United States  
19          worker employed by the employer during the  
20          period of employment and for a period of 30  
21          days preceding the period of employment in the  
22          occupation at the place of employment for  
23          which the employer has applied for an H-2A  
24          worker.

1           “(E) REQUIREMENTS FOR PLACEMENT OF  
2           THE NONIMMIGRANT WITH OTHER EMPLOY-  
3           ERS.—The employer will not place the non-  
4           immigrant with another employer unless—

5                   “(i) the nonimmigrant performs du-  
6                   ties in whole or in part at 1 or more work-  
7                   sites owned, operated, or controlled by  
8                   such other employer;

9                   “(ii) there are indicia of an employ-  
10                  ment relationship between the non-  
11                  immigrant and such other employer; and

12                  “(iii) the employer has inquired of the  
13                  other employer as to whether, and has no  
14                  actual knowledge or notice that, during the  
15                  period of employment and for a period of  
16                  30 days preceding the period of employ-  
17                  ment, the other employer has displaced or  
18                  intends to displace a United States worker  
19                  employed by the other employer in the oc-  
20                  cupation at the place of employment for  
21                  which the employer seeks approval to em-  
22                  ploy H-2A workers.

23           “(F) STATEMENT OF LIABILITY.—The ap-  
24           plication form shall include a clear statement  
25           explaining the liability under subparagraph (E)

1 of an employer if the other employer described  
2 in such subparagraph displaces a United States  
3 worker as described in such subparagraph.

4 “(G) PROVISION OF INSURANCE.—If the  
5 job opportunity is not covered by the State  
6 workers’ compensation law, the employer will  
7 provide, at no cost to the worker, insurance cov-  
8 ering injury and disease arising out of and in  
9 the course of the worker’s employment which  
10 will provide benefits at least equal to those pro-  
11 vided under the State’s workers’ compensation  
12 law for comparable employment.

13 “(H) EMPLOYMENT OF UNITED STATES  
14 WORKERS.—

15 “(i) RECRUITMENT.—The employer  
16 has taken or will take the following steps  
17 to recruit United States workers for the  
18 job opportunities for which the H-2A non-  
19 immigrant is, or H-2A nonimmigrants are,  
20 sought:

21 “(I) CONTACTING FORMER  
22 WORKERS.—The employer shall make  
23 reasonable efforts through the sending  
24 of a letter by United States Postal  
25 Service mail, or otherwise, to contact

1 any United States worker the em-  
2 ployer employed during the previous  
3 season in the occupation at the place  
4 of intended employment for which the  
5 employer is applying for workers and  
6 has made the availability of the em-  
7 ployer's job opportunities in the occu-  
8 pation at the place of intended em-  
9 ployment known to such previous  
10 workers, unless the worker was termi-  
11 nated from employment by the em-  
12 ployer for a lawful job-related reason  
13 or abandoned the job before the work-  
14 er completed the period of employ-  
15 ment of the job opportunity for which  
16 the worker was hired.

17 “(II) FILING A JOB OFFER WITH  
18 THE LOCAL OFFICE OF THE STATE  
19 EMPLOYMENT SECURITY AGENCY.—  
20 Not later than 28 days before the  
21 date on which the employer desires to  
22 employ an H-2A worker in a tem-  
23 porary or seasonal agricultural job op-  
24 portunity, the employer shall submit a  
25 copy of the job offer described in sub-

1 section (a)(2) to the local office of the  
2 State employment security agency  
3 which serves the area of intended em-  
4 ployment and authorize the posting of  
5 the job opportunity on ‘America’s Job  
6 Bank’ or other electronic job registry,  
7 except that nothing in this subclause  
8 shall require the employer to file an  
9 interstate job order under section 653  
10 of title 20, Code of Federal Regula-  
11 tions.

12 “(III) ADVERTISING OF JOB OP-  
13 PORTUNITIES.—Not later than 14  
14 days before the date on which the em-  
15 ployer desires to employ an H-2A  
16 worker in a temporary or seasonal ag-  
17 ricultural job opportunity, the em-  
18 ployer shall advertise the availability  
19 of the job opportunities for which the  
20 employer is seeking workers in a pub-  
21 lication in the local labor market that  
22 is likely to be patronized by potential  
23 farm workers.

24 “(IV) EMERGENCY PROCE-  
25 DURES.—The Secretary of Labor

1 shall, by regulation, provide a proce-  
2 dure for acceptance and approval of  
3 applications in which the employer  
4 has not complied with the provisions  
5 of this subparagraph because the em-  
6 ployer's need for H-2A workers could  
7 not reasonably have been foreseen.

8 “(ii) JOB OFFERS.—The employer has  
9 offered or will offer the job to any eligible  
10 United States worker who applies and is  
11 equally or better qualified for the job for  
12 which the nonimmigrant is, or non-  
13 immigrants are, sought and who will be  
14 available at the time and place of need.

15 “(iii) PERIOD OF EMPLOYMENT.—The  
16 employer will provide employment to any  
17 qualified United States worker who applies  
18 to the employer during the period begin-  
19 ning on the date on which the H-2A work-  
20 er departs for the employer's place of em-  
21 ployment and ending on the date on which  
22 50 percent of the period of employment for  
23 which the H-2A worker who is in the job  
24 was hired has elapsed, subject to the fol-  
25 lowing requirements:

1                   “(I) PROHIBITION.—No person  
2 or entity shall willfully and knowingly  
3 withhold United States workers before  
4 the arrival of H-2A workers in order  
5 to force the hiring of United States  
6 workers under this clause.

7                   “(II) COMPLAINTS.—Upon re-  
8 ceipt of a complaint by an employer  
9 that a violation of subclause (I) has  
10 occurred, the Secretary of Labor shall  
11 immediately investigate. The Sec-  
12 retary of Labor shall, within 36 hours  
13 of the receipt of the complaint, issue  
14 findings concerning the alleged viola-  
15 tion. If the Secretary of Labor finds  
16 that a violation has occurred, the Sec-  
17 retary of Labor shall immediately sus-  
18 pend the application of this clause  
19 with respect to that certification for  
20 that date of need.

21                   “(III) PLACEMENT OF UNITED  
22 STATES WORKERS.—Before referring  
23 a United States worker to an em-  
24 ployer during the period described in  
25 the matter preceding subclause (I),

1 the Secretary of Labor shall make all  
2 reasonable efforts to place the United  
3 States worker in an open job accept-  
4 able to the worker, if there are other  
5 job offers pending with the job service  
6 that offer similar job opportunities in  
7 the area of intended employment.

8 “(iv) STATUTORY CONSTRUCTION.—  
9 Nothing in this subparagraph shall be con-  
10 strued to prohibit an employer from using  
11 such legitimate selection criteria relevant  
12 to the type of job that are normal or cus-  
13 tomary to the type of job involved so long  
14 as such criteria are not applied in a dis-  
15 criminatory manner.

16 “(c) APPLICATIONS BY ASSOCIATIONS ON BEHALF  
17 OF EMPLOYER MEMBERS.—

18 “(1) IN GENERAL.—An agricultural association  
19 may file an application under subsection (a) on be-  
20 half of 1 or more of its employer members that the  
21 association certifies in its application has or have  
22 agreed in writing to comply with the requirements of  
23 this section and sections 218A, 218B, and 218C.

24 “(2) TREATMENT OF ASSOCIATIONS ACTING AS  
25 EMPLOYERS.—If an association filing an application

1 under paragraph (1) is a joint or sole employer of  
2 the temporary or seasonal agricultural workers re-  
3 quested on the application, the certifications granted  
4 under subsection (e)(2)(B) to the association may be  
5 used for the certified job opportunities of any of its  
6 producer members named on the application, and  
7 such workers may be transferred among such pro-  
8 ducer members to perform the agricultural services  
9 of a temporary or seasonal nature for which the cer-  
10 tifications were granted.

11 “(d) WITHDRAWAL OF APPLICATIONS.—

12 “(1) IN GENERAL.—An employer may withdraw  
13 an application filed pursuant to subsection (a), ex-  
14 cept that if the employer is an agricultural associa-  
15 tion, the association may withdraw an application  
16 filed pursuant to subsection (a) with respect to 1 or  
17 more of its members. To withdraw an application,  
18 the employer or association shall notify the Sec-  
19 retary of Labor in writing, and the Secretary of  
20 Labor shall acknowledge in writing the receipt of  
21 such withdrawal notice. An employer who withdraws  
22 an application under subsection (a), or on whose be-  
23 half an application is withdrawn, is relieved of the  
24 obligations undertaken in the application.

1           “(2) LIMITATION.—An application may not be  
2           withdrawn while any alien provided status under sec-  
3           tion 101(a)(15)(H)(ii)(a) pursuant to such applica-  
4           tion is employed by the employer.

5           “(3) OBLIGATIONS UNDER OTHER STATUTES.—  
6           Any obligation incurred by an employer under any  
7           other law or regulation as a result of the recruit-  
8           ment of United States workers or H-2A workers  
9           under an offer of terms and conditions of employ-  
10          ment required as a result of making an application  
11          under subsection (a) is unaffected by withdrawal of  
12          such application.

13          “(e) REVIEW AND APPROVAL OF APPLICATIONS.—

14                 “(1) RESPONSIBILITY OF EMPLOYERS.—The  
15                 employer shall make available for public examina-  
16                 tion, within 1 working day after the date on which  
17                 an application under subsection (a) is filed, at the  
18                 employer’s principal place of business or worksite, a  
19                 copy of each such application (and such accom-  
20                 panying documents as are necessary).

21                 “(2) RESPONSIBILITY OF THE SECRETARY OF  
22                 LABOR.—

23                         “(A) COMPILATION OF LIST.—The Sec-  
24                         retary of Labor shall compile, on a current  
25                         basis, a list (by employer and by occupational

1 classification) of the applications filed under  
2 subsection (a). Such list shall include the wage  
3 rate, number of workers sought, period of in-  
4 tended employment, and date of need. The Sec-  
5 retary of Labor shall make such list available  
6 for examination in the District of Columbia.

7 “(B) REVIEW OF APPLICATIONS.—The  
8 Secretary of Labor shall review such an applica-  
9 tion only for completeness and obvious inac-  
10 curacies. Unless the Secretary of Labor finds  
11 that the application is incomplete or obviously  
12 inaccurate, the Secretary of Labor shall certify  
13 that the intending employer has filed with the  
14 Secretary of Labor an application as described  
15 in subsection (a). Such certification shall be  
16 provided within 7 days of the filing of the appli-  
17 cation.”

18 **“SEC. 218A. H-2A EMPLOYMENT REQUIREMENTS.**

19 “(a) PREFERENTIAL TREATMENT OF ALIENS PRO-  
20 HIBITED.—Employers seeking to hire United States work-  
21 ers shall offer the United States workers no less than the  
22 same benefits, wages, and working conditions that the em-  
23 ployer is offering, intends to offer, or will provide to H-  
24 2A workers. Conversely, no job offer may impose on  
25 United States workers any restrictions or obligations

1 which will not be imposed on the employer’s H–2A work-  
2 ers.

3 “(b) MINIMUM BENEFITS, WAGES, AND WORKING  
4 CONDITIONS.—Except in cases where higher benefits,  
5 wages, or working conditions are required by the provi-  
6 sions of subsection (a), in order to protect similarly em-  
7 ployed United States workers from adverse effects with  
8 respect to benefits, wages, and working conditions, every  
9 job offer which shall accompany an application under sec-  
10 tion 218(b)(2) shall include each of the following benefit,  
11 wage, and working condition provisions:

12 “(1) REQUIREMENT TO PROVIDE HOUSING OR A  
13 HOUSING ALLOWANCE.—

14 “(A) IN GENERAL.—An employer applying  
15 under section 218(a) for H–2A workers shall  
16 offer to provide housing at no cost to all work-  
17 ers in job opportunities for which the employer  
18 has applied under that section and to all other  
19 workers in the same occupation at the place of  
20 employment, whose place of residence is beyond  
21 normal commuting distance.

22 “(B) TYPE OF HOUSING.—In complying  
23 with subparagraph (A), an employer may, at  
24 the employer’s election, provide housing that  
25 meets applicable Federal standards for tem-

1           porary labor camps or secure housing that  
2           meets applicable local standards for rental or  
3           public accommodation housing or other sub-  
4           stantially similar class of habitation, or in the  
5           absence of applicable local standards, State  
6           standards for rental or public accommodation  
7           housing or other substantially similar class of  
8           habitation. In the absence of applicable local or  
9           State standards, Federal temporary labor camp  
10          standards shall apply.

11           “(C) FAMILY HOUSING.—If it is the pre-  
12          vailing practice in the occupation and area of  
13          intended employment to provide family housing,  
14          family housing shall be provided to workers  
15          with families who request it.

16           “(D) WORKERS ENGAGED IN THE RANGE  
17          PRODUCTION OF LIVESTOCK.—The Secretary of  
18          Labor shall issue regulations that address the  
19          specific requirements for the provision of hous-  
20          ing to workers engaged in the range production  
21          of livestock.

22           “(E) LIMITATION.—Nothing in this para-  
23          graph shall be construed to require an employer  
24          to provide or secure housing for persons who  
25          were not entitled to such housing under the

1 temporary labor certification regulations in ef-  
2 fect on June 1, 1986.

3 “(F) CHARGES FOR HOUSING.—

4 “(i) CHARGES FOR PUBLIC HOUS-  
5 ING.—If public housing provided for mi-  
6 grant agricultural workers under the aus-  
7 pices of a local, county, or State govern-  
8 ment is secured by an employer, and use of  
9 the public housing unit normally requires  
10 charges from migrant workers, such  
11 charges shall be paid by the employer di-  
12 rectly to the appropriate individual or enti-  
13 ty affiliated with the housing’s manage-  
14 ment.

15 “(ii) DEPOSIT CHARGES.—Charges in  
16 the form of deposits for bedding or other  
17 similar incidentals related to housing shall  
18 not be levied upon workers by employers  
19 who provide housing for their workers. An  
20 employer may require a worker found to  
21 have been responsible for damage to such  
22 housing which is not the result of normal  
23 wear and tear related to habitation to re-  
24 imburse the employer for the reasonable  
25 cost of repair of such damage.

1                   “(G) HOUSING ALLOWANCE AS ALTER-  
2 NATIVE.—

3                   “(i) IN GENERAL.—If the requirement  
4 set out in clause (ii) is satisfied, the em-  
5 ployer may provide a reasonable housing  
6 allowance instead of offering housing  
7 under subparagraph (A). Upon the request  
8 of a worker seeking assistance in locating  
9 housing, the employer shall make a good  
10 faith effort to assist the worker in identi-  
11 fying and locating housing in the area of  
12 intended employment. An employer who of-  
13 fers a housing allowance to a worker, or  
14 assists a worker in locating housing which  
15 the worker occupies, pursuant to this  
16 clause shall not be deemed a housing pro-  
17 vider under section 203 of the Migrant and  
18 Seasonal Agricultural Worker Protection  
19 Act (29 U.S.C. 1823) solely by virtue of  
20 providing such housing allowance. No  
21 housing allowance may be used for housing  
22 which is owned or controlled by the em-  
23 ployer.

24                   “(ii) CERTIFICATION.—The require-  
25 ment of this clause is satisfied if the Gov-

1           ernor of the State certifies to the Secretary  
2           of Labor that there is adequate housing  
3           available in the area of intended employ-  
4           ment for migrant farm workers and H-2A  
5           workers who are seeking temporary hous-  
6           ing while employed in agricultural work.  
7           Such certification shall expire after 3 years  
8           unless renewed by the Governor of the  
9           State.

10           “(iii) AMOUNT OF ALLOWANCE.—

11           “(I) NONMETROPOLITAN COUN-  
12           TRIES.—If the place of employment of  
13           the workers provided an allowance  
14           under this subparagraph is a non-  
15           metropolitan county, the amount of  
16           the housing allowance under this sub-  
17           paragraph shall be equal to the state-  
18           wide average fair market rental for  
19           existing housing for nonmetropolitan  
20           counties for the State, as established  
21           by the Secretary of Housing and  
22           Urban Development pursuant to sec-  
23           tion 8(c) of the United States Hous-  
24           ing Act of 1937 (42 U.S.C. 1437f(c)),  
25           based on a 2-bedroom dwelling unit

1 and an assumption of 2 persons per  
2 bedroom.

3 “(II) METROPOLITAN COUN-  
4 TIES.—If the place of employment of  
5 the workers provided an allowance  
6 under this paragraph is in a metro-  
7 politan county, the amount of the  
8 housing allowance under this subpara-  
9 graph shall be equal to the statewide  
10 average fair market rental for existing  
11 housing for metropolitan counties for  
12 the State, as established by the Sec-  
13 retary of Housing and Urban Devel-  
14 opment pursuant to section 8(c) of  
15 the United States Housing Act of  
16 1937 (42 U.S.C. 1437f(c)), based on  
17 a 2-bedroom dwelling unit and an as-  
18 sumption of 2 persons per bedroom.

19 “(2) REIMBURSEMENT OF TRANSPORTATION.—

20 “(A) TO PLACE OF EMPLOYMENT.—A  
21 worker who completes 50 percent of the period  
22 of employment of the job opportunity for which  
23 the worker was hired shall be reimbursed by the  
24 employer for the cost of the worker’s transpor-  
25 tation and subsistence from the place from

1           which the worker came to work for the em-  
2           ployer (or place of last employment, if the  
3           worker traveled from such place) to the place of  
4           employment.

5           “(B) FROM PLACE OF EMPLOYMENT.—A  
6           worker who completes the period of employment  
7           for the job opportunity involved shall be reim-  
8           bursed by the employer for the cost of the  
9           worker’s transportation and subsistence from  
10          the place of employment to the place from  
11          which the worker, disregarding intervening em-  
12          ployment, came to work for the employer, or to  
13          the place of next employment, if the worker has  
14          contracted with a subsequent employer who has  
15          not agreed to provide or pay for the worker’s  
16          transportation and subsistence to such subse-  
17          quent employer’s place of employment.

18          “(C) LIMITATION.—

19                 “(i) AMOUNT OF REIMBURSEMENT.—  
20                 Except as provided in clause (ii), the  
21                 amount of reimbursement provided under  
22                 subparagraph (A) or (B) to a worker or  
23                 alien shall not exceed the lesser of—

1                   “(I) the actual cost to the worker  
2                   or alien of the transportation and sub-  
3                   sistence involved; or

4                   “(II) the most economical and  
5                   reasonable common carrier transpor-  
6                   tation charges and subsistence costs  
7                   for the distance involved.

8                   “(ii) DISTANCE TRAVELED.—No reim-  
9                   bursement under subparagraph (A) or (B)  
10                  shall be required if the distance traveled is  
11                  100 miles or less, or the worker is not re-  
12                  siding in employer-provided housing or  
13                  housing secured through an allowance as  
14                  provided in paragraph (1)(G).

15                  “(D) EARLY TERMINATION.—If the worker  
16                  is laid off or employment is terminated for con-  
17                  tract impossibility (as described in paragraph  
18                  (4)(D)) before the anticipated ending date of  
19                  employment, the employer shall provide the  
20                  transportation and subsistence required by sub-  
21                  paragraph (B) and, notwithstanding whether  
22                  the worker has completed 50 percent of the pe-  
23                  riod of employment, shall provide the transpor-  
24                  tation reimbursement required by subparagraph  
25                  (A).

1           “(E) TRANSPORTATION BETWEEN LIVING  
2           QUARTERS AND WORKSITE.—The employer  
3           shall provide transportation between the work-  
4           er’s living quarters and the employer’s worksite  
5           without cost to the worker, and such transpor-  
6           tation will be in accordance with applicable laws  
7           and regulations.

8           “(3) REQUIRED WAGES.—

9           “(A) IN GENERAL.—An employer applying  
10          for workers under section 218(a) shall offer to  
11          pay, and shall pay, all workers in the occupa-  
12          tion for which the employer has applied for  
13          workers, not less (and is not required to pay  
14          more) than the greater of the prevailing wage  
15          in the occupation in the area of intended em-  
16          ployment or the adverse effect wage rate. No  
17          worker shall be paid less than the greater of the  
18          hourly wage prescribed under section 6(a)(1) of  
19          the Fair Labor Standards Act of 1938 (29  
20          U.S.C. 206(a)(1)) or the applicable State min-  
21          imum wage.

22          “(B) LIMITATION.—Effective on the date  
23          of the enactment of the Agricultural Job Op-  
24          portunities, Benefits, and Security Act of 2009  
25          and continuing for 3 years thereafter, no ad-

1           verse effect wage rate for a State may be more  
2           than the adverse effect wage rate for that State  
3           in effect on January 1, 2009, as established by  
4           section 655.107 of title 20, Code of Federal  
5           Regulations.

6                   “(C) REQUIRED WAGES AFTER 3-YEAR  
7           FREEZE.—

8                           “(i) FIRST ADJUSTMENT.—If Con-  
9                           gress does not set a new wage standard  
10                           applicable to this section before the first  
11                           March 1 that is not less than 3 years after  
12                           the date of enactment of this section, the  
13                           adverse effect wage rate for each State be-  
14                           ginning on such March 1 shall be the wage  
15                           rate that would have resulted if the ad-  
16                           verse effect wage rate in effect on January  
17                           1, 2009, had been annually adjusted, be-  
18                           ginning on March 1, 2012, by the lesser  
19                           of—

20                                   “(I) the 12-month percentage  
21                                   change in the Consumer Price Index  
22                                   for All Urban Consumers between De-  
23                                   cember of the second preceding year  
24                                   and December of the preceding year;  
25                                   and

1 “(II) 4 percent.

2 “(ii) SUBSEQUENT ANNUAL ADJUST-  
3 MENTS.—Beginning on the first March 1  
4 that is not less than 4 years after the date  
5 of enactment of this section, and each  
6 March 1 thereafter, the adverse effect  
7 wage rate then in effect for each State  
8 shall be adjusted by the lesser of—

9 “(I) the 12-month percentage  
10 change in the Consumer Price Index  
11 for All Urban Consumers between De-  
12 cember of the second preceding year  
13 and December of the preceding year;  
14 and

15 “(II) 4 percent.

16 “(D) DEDUCTIONS.—The employer shall  
17 make only those deductions from the worker’s  
18 wages that are authorized by law or are reason-  
19 able and customary in the occupation and area  
20 of employment. The job offer shall specify all  
21 deductions not required by law which the em-  
22 ployer will make from the worker’s wages.

23 “(E) FREQUENCY OF PAY.—The employer  
24 shall pay the worker not less frequently than  
25 twice monthly, or in accordance with the pre-

1 vailing practice in the area of employment,  
2 whichever is more frequent.

3 “(F) HOURS AND EARNINGS STATE-  
4 MENTS.—The employer shall furnish to the  
5 worker, on or before each payday, in 1 or more  
6 written statements—

7 “(i) the worker’s total earnings for  
8 the pay period;

9 “(ii) the worker’s hourly rate of pay,  
10 piece rate of pay, or both;

11 “(iii) the hours of employment which  
12 have been offered to the worker (broken  
13 out by hours offered in accordance with  
14 and over and above the  $\frac{3}{4}$  guarantee de-  
15 scribed in paragraph (4);

16 “(iv) the hours actually worked by the  
17 worker;

18 “(v) an itemization of the deductions  
19 made from the worker’s wages; and

20 “(vi) if piece rates of pay are used,  
21 the units produced daily.

22 “(G) REPORT ON WAGE PROTECTIONS.—  
23 Not later than December 31, 2011, the Comp-  
24 troller General of the United States shall pre-  
25 pare and transmit to the Secretary of Labor,

1           the Committee on the Judiciary of the Senate,  
2           and Committee on the Judiciary of the House  
3           of Representatives, a report that addresses—

4                   “(i) whether the employment of H–2A  
5                   or unauthorized aliens in the United States  
6                   agricultural workforce has depressed  
7                   United States farm worker wages below  
8                   the levels that would otherwise have pre-  
9                   vailed if alien farm workers had not been  
10                  employed in the United States;

11                   “(ii) whether an adverse effect wage  
12                   rate is necessary to prevent wages of  
13                   United States farm workers in occupations  
14                   in which H–2A workers are employed from  
15                   falling below the wage levels that would  
16                   have prevailed in the absence of the em-  
17                   ployment of H–2A workers in those occu-  
18                   pations;

19                   “(iii) whether alternative wage stand-  
20                   ards, such as a prevailing wage standard,  
21                   would be sufficient to prevent wages in oc-  
22                   cupations in which H–2A workers are em-  
23                   ployed from falling below the wage level  
24                   that would have prevailed in the absence of  
25                   H–2A employment;

1           “(iv) whether any changes are war-  
2           ranted in the current methodologies for  
3           calculating the adverse effect wage rate  
4           and the prevailing wage; and

5           “(v) recommendations for future wage  
6           protection under this section.

7           “(H) COMMISSION ON WAGE STAND-  
8           ARDS.—

9           “(i) ESTABLISHMENT.—There is es-  
10          tablished the Commission on Agricultural  
11          Wage Standards under the H-2A program  
12          (in this subparagraph referred to as the  
13          ‘Commission’).

14          “(ii) COMPOSITION.—The Commission  
15          shall consist of 10 members as follows:

16                 “(I) Four representatives of agri-  
17                 cultural employers and 1 representa-  
18                 tive of the Department of Agriculture,  
19                 each appointed by the Secretary of  
20                 Agriculture.

21                 “(II) Four representatives of ag-  
22                 ricultural workers and 1 representa-  
23                 tive of the Department of Labor, each  
24                 appointed by the Secretary of Labor.

1                   “(iii) FUNCTIONS.—The Commission  
2 shall conduct a study that shall address—

3                   “(I) whether the employment of  
4 H–2A or unauthorized aliens in the  
5 United States agricultural workforce  
6 has depressed United States farm  
7 worker wages below the levels that  
8 would otherwise have prevailed if alien  
9 farm workers had not been employed  
10 in the United States;

11                   “(II) whether an adverse effect  
12 wage rate is necessary to prevent  
13 wages of United States farm workers  
14 in occupations in which H–2A work-  
15 ers are employed from falling below  
16 the wage levels that would have pre-  
17 vailed in the absence of the employ-  
18 ment of H–2A workers in those occu-  
19 pations;

20                   “(III) whether alternative wage  
21 standards, such as a prevailing wage  
22 standard, would be sufficient to pre-  
23 vent wages in occupations in which  
24 H–2A workers are employed from fall-  
25 ing below the wage level that would

1 have prevailed in the absence of H-2A  
2 employment;

3 “(IV) whether any changes are  
4 warranted in the current methodolo-  
5 gies for calculating the adverse effect  
6 wage rate and the prevailing wage  
7 rate; and

8 “(V) recommendations for future  
9 wage protection under this section.

10 “(iv) FINAL REPORT.—Not later than  
11 December 31, 2011, the Commission shall  
12 submit a report to the Congress setting  
13 forth the findings of the study conducted  
14 under clause (iii).

15 “(v) TERMINATION DATE.—The Com-  
16 mission shall terminate upon submitting  
17 its final report.

18 “(4) GUARANTEE OF EMPLOYMENT.—

19 “(A) OFFER TO WORKER.—The employer  
20 shall guarantee to offer the worker employment  
21 for the hourly equivalent of at least  $\frac{3}{4}$  of the  
22 work days of the total period of employment,  
23 beginning with the first work day after the ar-  
24 rival of the worker at the place of employment  
25 and ending on the expiration date specified in

1           the job offer. For purposes of this subpara-  
2           graph, the hourly equivalent means the number  
3           of hours in the work days as stated in the job  
4           offer and shall exclude the worker's Sabbath  
5           and Federal holidays. If the employer affords  
6           the United States or H-2A worker less employ-  
7           ment than that required under this paragraph,  
8           the employer shall pay such worker the amount  
9           which the worker would have earned had the  
10          worker, in fact, worked for the guaranteed  
11          number of hours.

12                 “(B) FAILURE TO WORK.—Any hours  
13           which the worker fails to work, up to a max-  
14           imum of the number of hours specified in the  
15           job offer for a work day, when the worker has  
16           been offered an opportunity to do so, and all  
17           hours of work actually performed (including vol-  
18           untary work in excess of the number of hours  
19           specified in the job offer in a work day, on the  
20           worker's Sabbath, or on Federal holidays) may  
21           be counted by the employer in calculating  
22           whether the period of guaranteed employment  
23           has been met.

24                 “(C) ABANDONMENT OF EMPLOYMENT,  
25           TERMINATION FOR CAUSE.—If the worker vol-

1           untarily abandons employment before the end  
2           of the contract period, or is terminated for  
3           cause, the worker is not entitled to the ‘ $\frac{3}{4}$   
4           guarantee’ described in subparagraph (A).

5           “(D) CONTRACT IMPOSSIBILITY.—If, be-  
6           fore the expiration of the period of employment  
7           specified in the job offer, the services of the  
8           worker are no longer required for reasons be-  
9           yond the control of the employer due to any  
10          form of natural disaster, including a flood, hur-  
11          ricane, freeze, earthquake, fire, drought, plant  
12          or animal disease or pest infestation, or regu-  
13          latory drought, before the guarantee in sub-  
14          paragraph (A) is fulfilled, the employer may  
15          terminate the worker’s employment. In the  
16          event of such termination, the employer shall  
17          fulfill the employment guarantee in subpara-  
18          graph (A) for the work days that have elapsed  
19          from the first work day after the arrival of the  
20          worker to the termination of employment. In  
21          such cases, the employer will make efforts to  
22          transfer the United States worker to other com-  
23          parable employment acceptable to the worker. If  
24          such transfer is not effected, the employer shall

1 provide the return transportation required in  
2 paragraph (2)(D).

3 “(5) MOTOR VEHICLE SAFETY.—

4 “(A) MODE OF TRANSPORTATION SUBJECT  
5 TO COVERAGE.—

6 “(i) IN GENERAL.—Except as pro-  
7 vided in clauses (iii) and (iv), this sub-  
8 section applies to any H-2A employer that  
9 uses or causes to be used any vehicle to  
10 transport an H-2A worker within the  
11 United States.

12 “(ii) DEFINED TERM.—In this para-  
13 graph, the term ‘uses or causes to be  
14 used’—

15 “(I) applies only to transpor-  
16 tation provided by an H-2A employer  
17 to an H-2A worker, or by a farm  
18 labor contractor to an H-2A worker  
19 at the request or direction of an H-  
20 2A employer; and

21 “(II) does not apply to—

22 “(aa) transportation pro-  
23 vided, or transportation arrange-  
24 ments made, by an H-2A work-  
25 er, unless the employer specifi-

1 cally requested or arranged such  
2 transportation; or

3 “(bb) car pooling arrange-  
4 ments made by H-2A workers  
5 themselves, using 1 of the work-  
6 ers’ own vehicles, unless specifi-  
7 cally requested by the employer  
8 directly or through a farm labor  
9 contractor.

10 “(iii) CLARIFICATION.—Providing a  
11 job offer to an H-2A worker that causes  
12 the worker to travel to or from the place  
13 of employment, or the payment or reim-  
14 bursement of the transportation costs of  
15 an H-2A worker by an H-2A employer,  
16 shall not constitute an arrangement of, or  
17 participation in, such transportation.

18 “(iv) AGRICULTURAL MACHINERY AND  
19 EQUIPMENT EXCLUDED.—This subsection  
20 does not apply to the transportation of an  
21 H-2A worker on a tractor, combine, har-  
22 vester, picker, or other similar machinery  
23 or equipment while such worker is actually  
24 engaged in the planting, cultivating, or  
25 harvesting of agricultural commodities or

1 the care of livestock or poultry or engaged  
2 in transportation incidental thereto.

3 “(v) COMMON CARRIERS EX-  
4 CLUDED.—This subsection does not apply  
5 to common carrier motor vehicle transpor-  
6 tation in which the provider holds itself out  
7 to the general public as engaging in the  
8 transportation of passengers for hire and  
9 holds a valid certification of authorization  
10 for such purposes from an appropriate  
11 Federal, State, or local agency.

12 “(B) APPLICABILITY OF STANDARDS, LI-  
13 CENSING, AND INSURANCE REQUIREMENTS.—

14 “(i) IN GENERAL.—When using, or  
15 causing to be used, any vehicle for the pur-  
16 pose of providing transportation to which  
17 this subparagraph applies, each employer  
18 shall—

19 “(I) ensure that each such vehi-  
20 cle conforms to the standards pre-  
21 scribed by the Secretary of Labor  
22 under section 401(b) of the Migrant  
23 and Seasonal Agricultural Worker  
24 Protection Act (29 U.S.C. 1841(b))

1 and other applicable Federal and  
2 State safety standards;

3 “(II) ensure that each driver has  
4 a valid and appropriate license, as  
5 provided by State law, to operate the  
6 vehicle; and

7 “(III) have an insurance policy  
8 or a liability bond that is in effect  
9 which insures the employer against li-  
10 ability for damage to persons or prop-  
11 erty arising from the ownership, oper-  
12 ation, or causing to be operated, of  
13 any vehicle used to transport any H-  
14 2A worker.

15 “(ii) AMOUNT OF INSURANCE RE-  
16 QUIRED.—The level of insurance required  
17 shall be determined by the Secretary of  
18 Labor pursuant to regulations to be issued  
19 under this subsection.

20 “(iii) EFFECT OF WORKERS’ COM-  
21 PENSATION COVERAGE.—If the employer  
22 of any H-2A worker provides workers’  
23 compensation coverage for such worker in  
24 the case of bodily injury or death as pro-  
25 vided by State law, the following adjust-

1                   ments in the requirements of subparagraph  
2                   (B)(i)(III) relating to having an insurance  
3                   policy or liability bond apply:

4                                 “(I) No insurance policy or liabil-  
5                                 ity bond shall be required of the em-  
6                                 ployer, if such workers are trans-  
7                                 ported only under circumstances for  
8                                 which there is coverage under such  
9                                 State law.

10                                “(II) An insurance policy or li-  
11                                ability bond shall be required of the  
12                                employer for circumstances under  
13                                which coverage for the transportation  
14                                of such workers is not provided under  
15                                such State law.

16           “(c) COMPLIANCE WITH LABOR LAWS.—An em-  
17   ployer shall assure that, except as otherwise provided in  
18   this section, the employer will comply with all applicable  
19   Federal, State, and local labor laws, including laws affect-  
20   ing migrant and seasonal agricultural workers, with re-  
21   spect to all United States workers and alien workers em-  
22   ployed by the employer, except that a violation of this as-  
23   surance shall not constitute a violation of the Migrant and  
24   Seasonal Agricultural Worker Protection Act (29 U.S.C.  
25   1801 et seq.).

1           “(d) COPY OF JOB OFFER.—The employer shall pro-  
2 vide to the worker, not later than the day the work com-  
3 mences, a copy of the employer’s application and job offer  
4 described in section 218(a), or, if the employer will require  
5 the worker to enter into a separate employment contract  
6 covering the employment in question, such separate em-  
7 ployment contract.

8           “(e) RANGE PRODUCTION OF LIVESTOCK.—Nothing  
9 in this section, section 218, or section 218B shall preclude  
10 the Secretary of Labor and the Secretary from continuing  
11 to apply special procedures and requirements to the ad-  
12 mission and employment of aliens in occupations involving  
13 the range production of livestock.

14 **“SEC. 218B. PROCEDURE FOR ADMISSION AND EXTENSION**  
15 **OF STAY OF H-2A WORKERS.**

16           “(a) PETITIONING FOR ADMISSION.—An employer,  
17 or an association acting as an agent or joint employer for  
18 its members, that seeks the admission into the United  
19 States of an H-2A worker may file a petition with the  
20 Secretary. The petition shall be accompanied by an accept-  
21 ed and currently valid certification provided by the Sec-  
22 retary of Labor under section 218(e)(2)(B) covering the  
23 petitioner.

24           “(b) EXPEDITED ADJUDICATION BY THE SEC-  
25 RETARY.—The Secretary shall establish a procedure for

1 expedited adjudication of petitions filed under subsection  
2 (a) and within 7 working days shall, by fax, cable, or other  
3 means assuring expedited delivery, transmit a copy of no-  
4 tice of action on the petition to the petitioner and, in the  
5 case of approved petitions, to the appropriate immigration  
6 officer at the port of entry or United States consulate (as  
7 the case may be) where the petitioner has indicated that  
8 the alien beneficiary (or beneficiaries) will apply for a visa  
9 or admission to the United States.

10 “(c) CRITERIA FOR ADMISSIBILITY.—

11 “(1) IN GENERAL.—An H-2A worker shall be  
12 considered admissible to the United States if the  
13 alien is otherwise admissible under this section, sec-  
14 tion 218, and section 218A, and the alien is not in-  
15 eligible under paragraph (2).

16 “(2) DISQUALIFICATION.—An alien shall be  
17 considered inadmissible to the United States and in-  
18 eligible for nonimmigrant status under section  
19 101(a)(15)(H)(ii)(a) if the alien has, at any time  
20 during the past 5 years—

21 “(A) violated a material provision of this  
22 section, including the requirement to promptly  
23 depart the United States when the alien’s au-  
24 thorized period of admission under this section  
25 has expired; or

1           “(B) otherwise violated a term or condition  
2 of admission into the United States as a non-  
3 immigrant, including overstaying the period of  
4 authorized admission as such a nonimmigrant.

5           “(3) WAIVER OF INELIGIBILITY FOR UNLAW-  
6 FUL PRESENCE.—

7           “(A) IN GENERAL.—An alien who has not  
8 previously been admitted into the United States  
9 pursuant to this section, and who is otherwise  
10 eligible for admission in accordance with para-  
11 graphs (1) and (2), shall not be deemed inad-  
12 missible by virtue of section 212(a)(9)(B). If an  
13 alien described in the preceding sentence is  
14 present in the United States, the alien may  
15 apply from abroad for H-2A status, but may  
16 not be granted that status in the United States.

17           “(B) MAINTENANCE OF WAIVER.—An  
18 alien provided an initial waiver of ineligibility  
19 pursuant to subparagraph (A) shall remain eli-  
20 gible for such waiver unless the alien violates  
21 the terms of this section or again becomes ineli-  
22 gible under section 212(a)(9)(B) by virtue of  
23 unlawful presence in the United States after  
24 the date of the initial waiver of ineligibility pur-  
25 suant to subparagraph (A).

1 “(d) PERIOD OF ADMISSION.—

2 “(1) IN GENERAL.—The alien shall be admitted  
3 for the period of employment in the application cer-  
4 tified by the Secretary of Labor pursuant to section  
5 218(e)(2)(B), not to exceed 10 months, supple-  
6 mented by a period of not more than 1 week before  
7 the beginning of the period of employment for the  
8 purpose of travel to the worksite and a period of 14  
9 days following the period of employment for the pur-  
10 pose of departure or extension based on a subse-  
11 quent offer of employment, except that—

12 “(A) the alien is not authorized to be em-  
13 ployed during such 14-day period except in the  
14 employment for which the alien was previously  
15 authorized; and

16 “(B) the total period of employment, in-  
17 cluding such 14-day period, may not exceed 10  
18 months.

19 “(2) CONSTRUCTION.—Nothing in this sub-  
20 section shall limit the authority of the Secretary to  
21 extend the stay of the alien under any other provi-  
22 sion of this Act.

23 “(e) ABANDONMENT OF EMPLOYMENT.—

24 “(1) IN GENERAL.—An alien admitted or pro-  
25 vided status under section 101(a)(15)(H)(ii)(a) who

1       abandons the employment which was the basis for  
2       such admission or status shall be considered to have  
3       failed to maintain nonimmigrant status as an H-2A  
4       worker and shall depart the United States or be sub-  
5       ject to removal under section 237(a)(1)(C)(i).

6               “(2) REPORT BY EMPLOYER.—The employer, or  
7       association acting as agent for the employer, shall  
8       notify the Secretary not later than 7 days after an  
9       H-2A worker prematurely abandons employment.

10              “(3) REMOVAL BY THE SECRETARY.—The Sec-  
11       retary shall promptly remove from the United States  
12       any H-2A worker who violates any term or condi-  
13       tion of the worker’s nonimmigrant status.

14              “(4) VOLUNTARY TERMINATION.—Notwith-  
15       standing paragraph (1), an alien may voluntarily  
16       terminate his or her employment if the alien prompt-  
17       ly departs the United States upon termination of  
18       such employment.

19              “(f) REPLACEMENT OF ALIEN.—

20              “(1) IN GENERAL.—Upon presentation of the  
21       notice to the Secretary required by subsection (e)(2),  
22       the Secretary of State shall promptly issue a visa to,  
23       and the Secretary shall admit into the United  
24       States, an eligible alien designated by the employer  
25       to replace an H-2A worker—

1           “(A) who abandons or prematurely termi-  
2 nates employment; or

3           “(B) whose employment is terminated  
4 after a United States worker is employed pur-  
5 suant to section 218(b)(2)(H)(iii), if the United  
6 States worker voluntarily departs before the  
7 end of the period of intended employment or if  
8 the employment termination is for a lawful job-  
9 related reason.

10          “(2) CONSTRUCTION.—Nothing in this sub-  
11 section is intended to limit any preference required  
12 to be accorded United States workers under any  
13 other provision of this Act.

14          “(g) IDENTIFICATION DOCUMENT.—

15           “(1) IN GENERAL.—Each alien authorized to be  
16 admitted under section 101(a)(15)(H)(ii)(a) shall be  
17 provided an identification and employment eligibility  
18 document to verify eligibility for employment in the  
19 United States and verify the alien’s identity.

20           “(2) REQUIREMENTS.—No identification and  
21 employment eligibility document may be issued  
22 which does not meet the following requirements:

23           “(A) The document shall be capable of re-  
24 liably determining whether—

1           “(i) the individual with the identifica-  
2           tion and employment eligibility document  
3           whose eligibility is being verified is in fact  
4           eligible for employment;

5           “(ii) the individual whose eligibility is  
6           being verified is claiming the identity of  
7           another person; and

8           “(iii) the individual whose eligibility is  
9           being verified is authorized to be admitted  
10          into, and employed in, the United States  
11          as an H-2A worker.

12          “(B) The document shall be in a form that  
13          is resistant to counterfeiting and to tampering.

14          “(C) The document shall—

15               “(i) be compatible with other data-  
16               bases of the Secretary for the purpose of  
17               excluding aliens from benefits for which  
18               they are not eligible and determining  
19               whether the alien is unlawfully present in  
20               the United States; and

21               “(ii) be compatible with law enforce-  
22               ment databases to determine if the alien  
23               has been convicted of criminal offenses.

24          “(h) EXTENSION OF STAY OF H-2A ALIENS IN THE  
25          UNITED STATES.—

1           “(1) EXTENSION OF STAY.—If an employer  
2 seeks approval to employ an H-2A alien who is law-  
3 fully present in the United States, the petition filed  
4 by the employer or an association pursuant to sub-  
5 section (a), shall request an extension of the alien’s  
6 stay and a change in the alien’s employment.

7           “(2) LIMITATION ON FILING A PETITION FOR  
8 EXTENSION OF STAY.—A petition may not be filed  
9 for an extension of an alien’s stay—

10                   “(A) for a period of more than 10 months;

11                   or

12                   “(B) to a date that is more than 3 years  
13 after the date of the alien’s last admission to  
14 the United States under this section.

15           “(3) WORK AUTHORIZATION UPON FILING A  
16 PETITION FOR EXTENSION OF STAY.—

17                   “(A) IN GENERAL.—An alien who is law-  
18 fully present in the United States may com-  
19 mence the employment described in a petition  
20 under paragraph (1) on the date on which the  
21 petition is filed.

22                   “(B) DEFINITION.—For purposes of sub-  
23 paragraph (A), the term ‘file’ means sending  
24 the petition by certified mail via the United  
25 States Postal Service, return receipt requested,

1 or delivered by guaranteed commercial delivery  
2 which will provide the employer with a docu-  
3 mented acknowledgment of the date of receipt  
4 of the petition.

5 “(C) HANDLING OF PETITION.—The em-  
6 ployer shall provide a copy of the employer’s pe-  
7 tition to the alien, who shall keep the petition  
8 with the alien’s identification and employment  
9 eligibility document as evidence that the peti-  
10 tion has been filed and that the alien is author-  
11 ized to work in the United States.

12 “(D) APPROVAL OF PETITION.—Upon ap-  
13 proval of a petition for an extension of stay or  
14 change in the alien’s authorized employment,  
15 the Secretary shall provide a new or updated  
16 employment eligibility document to the alien in-  
17 dicating the new validity date, after which the  
18 alien is not required to retain a copy of the pe-  
19 tition.

20 “(4) LIMITATION ON EMPLOYMENT AUTHORIZA-  
21 TION OF ALIENS WITHOUT VALID IDENTIFICATION  
22 AND EMPLOYMENT ELIGIBILITY DOCUMENT.—An ex-  
23 pired identification and employment eligibility docu-  
24 ment, together with a copy of a petition for exten-  
25 sion of stay or change in the alien’s authorized em-

1       ployment that complies with the requirements of  
2       paragraph (1), shall constitute a valid work author-  
3       ization document for a period of not more than 60  
4       days beginning on the date on which such petition  
5       is filed, after which time only a currently valid iden-  
6       tification and employment eligibility document shall  
7       be acceptable.

8               “(5) LIMITATION ON AN INDIVIDUAL’S STAY IN  
9       STATUS.—

10              “(A) MAXIMUM PERIOD.—The maximum  
11       continuous period of authorized status as an  
12       H–2A worker (including any extensions) is 3  
13       years.

14              “(B) REQUIREMENT TO REMAIN OUTSIDE  
15       THE UNITED STATES.—

16              “(i) IN GENERAL.—Subject to clause  
17       (ii), in the case of an alien outside the  
18       United States whose period of authorized  
19       status as an H–2A worker (including any  
20       extensions) has expired, the alien may not  
21       again apply for admission to the United  
22       States as an H–2A worker unless the alien  
23       has remained outside the United States for  
24       a continuous period equal to at least  $\frac{1}{5}$   
25       the duration of the alien’s previous period

1 of authorized status as an H-2A worker  
2 (including any extensions).

3 “(ii) EXCEPTION.—Clause (i) shall  
4 not apply in the case of an alien if the  
5 alien’s period of authorized status as an  
6 H-2A worker (including any extensions)  
7 was for a period of not more than 10  
8 months and such alien has been outside  
9 the United States for at least 2 months  
10 during the 12 months preceding the date  
11 the alien again is applying for admission to  
12 the United States as an H-2A worker.

13 “(i) SPECIAL RULES FOR ALIENS EMPLOYED AS  
14 SHEEPHERDERS, GOAT HERDERS, OR DAIRY WORK-  
15 ERS.—Notwithstanding any provision of the Agricultural  
16 Job Opportunities, Benefits, and Security Act of 2009, an  
17 alien admitted under section 101(a)(15)(H)(ii)(a) for em-  
18 ployment as a shepherd, goat herder, or dairy worker—

19 “(1) may be admitted for an initial period of 12  
20 months;

21 “(2) subject to subsection (j)(5), may have such  
22 initial period of admission extended for a period of  
23 up to 3 years; and

1           “(3) shall not be subject to the requirements of  
2           subsection (h)(5) (relating to periods of absence  
3           from the United States).

4           “(j) ADJUSTMENT TO LAWFUL PERMANENT RESI-  
5           DENT STATUS FOR ALIENS EMPLOYED AS SHEEP-  
6           HERDERS, GOAT HERDERS, OR DAIRY WORKERS.—

7           “(1) ELIGIBLE ALIEN.—For purposes of this  
8           subsection, the term ‘eligible alien’ means an alien—

9                   “(A) having nonimmigrant status under  
10                   section 101(a)(15)(H)(ii)(a) based on employ-  
11                   ment as a shepherd, goat herder, or dairy  
12                   worker;

13                   “(B) who has maintained such non-  
14                   immigrant status in the United States for a cu-  
15                   mulative total of 36 months (excluding any pe-  
16                   riod of absence from the United States); and

17                   “(C) who is seeking to receive an immi-  
18                   grant visa under section 203(b)(3)(A)(iii).

19           “(2) CLASSIFICATION PETITION.—In the case  
20           of an eligible alien, the petition under section 204  
21           for classification under section 203(b)(3)(A)(iii) may  
22           be filed by—

23                   “(A) the alien’s employer on behalf of the  
24                   eligible alien; or

25                   “(B) the eligible alien.

1           “(3) NO LABOR CERTIFICATION REQUIRED.—  
2           Notwithstanding section 203(b)(3)(C), no deter-  
3           mination under section 212(a)(5)(A) is required with  
4           respect to an immigrant visa described in paragraph  
5           (1)(C) for an eligible alien.

6           “(4) EFFECT OF PETITION.—The filing of a pe-  
7           tition described in paragraph (2) or an application  
8           for adjustment of status based on the approval of  
9           such a petition shall not constitute evidence of an  
10          alien’s ineligibility for nonimmigrant status under  
11          section 101(a)(15)(H)(ii)(a).

12          “(5) EXTENSION OF STAY.—The Secretary  
13          shall extend the stay of an eligible alien having a  
14          pending or approved classification petition described  
15          in paragraph (2) in 1-year increments until a final  
16          determination is made on the alien’s eligibility for  
17          adjustment of status to that of an alien lawfully ad-  
18          mitted for permanent residence.

19          “(6) CONSTRUCTION.—Nothing in this sub-  
20          section shall be construed to prevent an eligible alien  
21          from seeking adjustment of status in accordance  
22          with any other provision of law.

23       **“SEC. 218C. WORKER PROTECTIONS AND LABOR STAND-**  
24       **ARDS ENFORCEMENT.**

25       “(a) ENFORCEMENT AUTHORITY.—

1           “(1) INVESTIGATION OF COMPLAINTS.—

2                   “(A) AGGRIEVED PERSON OR THIRD-PARTY  
3           COMPLAINTS.—The Secretary of Labor shall es-  
4           tablish a process for the receipt, investigation,  
5           and disposition of complaints respecting a peti-  
6           tioner’s failure to meet a condition specified in  
7           section 218(b), or an employer’s misrepresenta-  
8           tion of material facts in an application under  
9           section 218(a). Complaints may be filed by any  
10          aggrieved person or organization (including bar-  
11          gaining representatives). No investigation or  
12          hearing shall be conducted on a complaint con-  
13          cerning such a failure or misrepresentation un-  
14          less the complaint was filed not later than 12  
15          months after the date of the failure, or mis-  
16          representation, respectively. The Secretary of  
17          Labor shall conduct an investigation under this  
18          subparagraph if there is reasonable cause to be-  
19          lieve that such a failure or misrepresentation  
20          has occurred.

21                   “(B) DETERMINATION ON COMPLAINT.—

22          Under such process, the Secretary of Labor  
23          shall provide, within 30 days after the date  
24          such a complaint is filed, for a determination as  
25          to whether or not a reasonable basis exists to

1           make a finding described in subparagraph (C),  
2           (D), (E), or (G). If the Secretary of Labor de-  
3           termines that such a reasonable basis exists,  
4           the Secretary of Labor shall provide for notice  
5           of such determination to the interested parties  
6           and an opportunity for a hearing on the com-  
7           plaint, in accordance with section 556 of title 5,  
8           United States Code, within 60 days after the  
9           date of the determination. If such a hearing is  
10          requested, the Secretary of Labor shall make a  
11          finding concerning the matter not later than 60  
12          days after the date of the hearing. In the case  
13          of similar complaints respecting the same appli-  
14          cant, the Secretary of Labor may consolidate  
15          the hearings under this subparagraph on such  
16          complaints.

17                 “(C) FAILURES TO MEET CONDITIONS.—If  
18                 the Secretary of Labor finds, after notice and  
19                 opportunity for a hearing, a failure to meet a  
20                 condition of paragraph (1)(A), (1)(B), (1)(D),  
21                 (1)(F), (2)(A), (2)(B), or (2)(G) of section  
22                 218(b), a substantial failure to meet a condition  
23                 of paragraph (1)(C), (1)(E), (2)(C), (2)(D),  
24                 (2)(E), or (2)(H) of section 218(b), or a mate-



1 per violation) as the Secretary of Labor  
2 determines to be appropriate;

3 “(ii) the Secretary of Labor may seek  
4 appropriate legal or equitable relief to ef-  
5 fectuate the purposes of subsection (d)(1);  
6 and

7 “(iii) the Secretary may disqualify the  
8 employer from the employment of H-2A  
9 workers for a period of 2 years.

10 “(E) DISPLACEMENT OF UNITED STATES  
11 WORKERS.—If the Secretary of Labor finds,  
12 after notice and opportunity for hearing, a will-  
13 ful failure to meet a condition of section 218(b)  
14 or a willful misrepresentation of a material fact  
15 in an application under section 218(a), in the  
16 course of which failure or misrepresentation the  
17 employer displaced a United States worker em-  
18 ployed by the employer during the period of em-  
19 ployment on the employer’s application under  
20 section 218(a) or during the period of 30 days  
21 preceding such period of employment—

22 “(i) the Secretary of Labor shall no-  
23 tify the Secretary of such finding and may,  
24 in addition, impose such other administra-  
25 tive remedies (including civil money pen-

1           alties in an amount not to exceed \$15,000  
2           per violation) as the Secretary of Labor  
3           determines to be appropriate; and

4                   “(ii) the Secretary may disqualify the  
5           employer from the employment of H-2A  
6           workers for a period of 3 years.

7                   “(F) LIMITATIONS ON CIVIL MONEY PEN-  
8           ALTIES.—The Secretary of Labor shall not im-  
9           pose total civil money penalties with respect to  
10          an application under section 218(a) in excess of  
11          \$90,000.

12                   “(G) FAILURES TO PAY WAGES OR RE-  
13          QUIRED BENEFITS.—If the Secretary of Labor  
14          finds, after notice and opportunity for a hear-  
15          ing, that the employer has failed to pay the  
16          wages, or provide the housing allowance, trans-  
17          portation, subsistence reimbursement, or guar-  
18          antee of employment, required under section  
19          218A(b), the Secretary of Labor shall assess  
20          payment of back wages, or other required bene-  
21          fits, due any United States worker or H-2A  
22          worker employed by the employer in the specific  
23          employment in question. The back wages or  
24          other required benefits under section 218A(b)  
25          shall be equal to the difference between the

1 amount that should have been paid and the  
2 amount that actually was paid to such worker.

3 “(2) STATUTORY CONSTRUCTION.—Nothing in  
4 this section shall be construed as limiting the au-  
5 thority of the Secretary of Labor to conduct any  
6 compliance investigation under any other labor law,  
7 including any law affecting migrant and seasonal ag-  
8 ricultural workers, or, in the absence of a complaint  
9 under this section, under section 218 or 218A.

10 “(b) RIGHTS ENFORCEABLE BY PRIVATE RIGHT OF  
11 ACTION.—H-2A workers may enforce the following rights  
12 through the private right of action provided in subsection  
13 (c), and no other right of action shall exist under Federal  
14 or State law to enforce such rights:

15 “(1) The providing of housing or a housing al-  
16 lowance as required under section 218A(b)(1).

17 “(2) The reimbursement of transportation as  
18 required under section 218A(b)(2).

19 “(3) The payment of wages required under sec-  
20 tion 218A(b)(3) when due.

21 “(4) The benefits and material terms and con-  
22 ditions of employment expressly provided in the job  
23 offer described in section 218(a)(2), not including  
24 the assurance to comply with other Federal, State,  
25 and local labor laws described in section 218A(c),

1 compliance with which shall be governed by the pro-  
2 visions of such laws.

3 “(5) The guarantee of employment required  
4 under section 218A(b)(4).

5 “(6) The motor vehicle safety requirements  
6 under section 218A(b)(5).

7 “(7) The prohibition of discrimination under  
8 subsection (d)(2).

9 “(c) PRIVATE RIGHT OF ACTION.—

10 “(1) MEDIATION.—Upon the filing of a com-  
11 plaint by an H-2A worker aggrieved by a violation  
12 of rights enforceable under subsection (b), and with-  
13 in 60 days of the filing of proof of service of the  
14 complaint, a party to the action may file a request  
15 with the Federal Mediation and Conciliation Service  
16 to assist the parties in reaching a satisfactory reso-  
17 lution of all issues involving all parties to the dis-  
18 pute. Upon a filing of such request and giving of no-  
19 tice to the parties, the parties shall attempt medi-  
20 ation within the period specified in subparagraph  
21 (B).

22 “(A) MEDIATION SERVICES.—The Federal  
23 Mediation and Conciliation Service shall be  
24 available to assist in resolving disputes arising  
25 under subsection (b) between H-2A workers

1           and agricultural employers without charge to  
2           the parties.

3           “(B) 90-DAY LIMIT.—The Federal Medi-  
4           ation and Conciliation Service may conduct me-  
5           diation or other nonbinding dispute resolution  
6           activities for a period not to exceed 90 days be-  
7           ginning on the date on which the Federal Medi-  
8           ation and Conciliation Service receives the re-  
9           quest for assistance unless the parties agree to  
10          an extension of this period of time.

11          “(C) AUTHORIZATION.—

12           “(i) IN GENERAL.—Subject to clause  
13           (ii), there are authorized to be appro-  
14           priated to the Federal Mediation and Con-  
15           ciliation Service \$500,000 for each fiscal  
16           year to carry out this section.

17           “(ii) MEDIATION.—Notwithstanding  
18           any other provision of law, the Director of  
19           the Federal Mediation and Conciliation  
20           Service is authorized to conduct the medi-  
21           ation or other dispute resolution activities  
22           from any other appropriated funds avail-  
23           able to the Director and to reimburse such  
24           appropriated funds when the funds are ap-  
25           propriated pursuant to this authorization,

1           such reimbursement to be credited to ap-  
2           propriations currently available at the time  
3           of receipt.

4           “(2) MAINTENANCE OF CIVIL ACTION IN DIS-  
5           TRICT COURT BY AGGRIEVED PERSON.—An H-2A  
6           worker aggrieved by a violation of rights enforceable  
7           under subsection (b) by an agricultural employer or  
8           other person may file suit in any district court of the  
9           United States having jurisdiction over the parties,  
10          without regard to the amount in controversy, with-  
11          out regard to the citizenship of the parties, and  
12          without regard to the exhaustion of any alternative  
13          administrative remedies under this Act, not later  
14          than 3 years after the date the violation occurs.

15          “(3) ELECTION.—An H-2A worker who has  
16          filed an administrative complaint with the Secretary  
17          of Labor may not maintain a civil action under  
18          paragraph (2) unless a complaint based on the same  
19          violation filed with the Secretary of Labor under  
20          subsection (a)(1) is withdrawn before the filing of  
21          such action, in which case the rights and remedies  
22          available under this subsection shall be exclusive.

23          “(4) PREEMPTION OF STATE CONTRACT  
24          RIGHTS.—Nothing in this Act shall be construed to  
25          diminish the rights and remedies of an H-2A worker

1 under any other Federal or State law or regulation  
2 or under any collective bargaining agreement, except  
3 that no court or administrative action shall be avail-  
4 able under any State contract law to enforce the  
5 rights created by this Act.

6 “(5) WAIVER OF RIGHTS PROHIBITED.—Agree-  
7 ments by employees purporting to waive or modify  
8 their rights under this Act shall be void as contrary  
9 to public policy, except that a waiver or modification  
10 of the rights or obligations in favor of the Secretary  
11 of Labor shall be valid for purposes of the enforce-  
12 ment of this Act. The preceding sentence may not  
13 be construed to prohibit agreements to settle private  
14 disputes or litigation.

15 “(6) AWARD OF DAMAGES OR OTHER EQUI-  
16 TABLE RELIEF.—

17 “(A) If the court finds that the respondent  
18 has intentionally violated any of the rights en-  
19 forceable under subsection (b), it shall award  
20 actual damages, if any, or equitable relief.

21 “(B) Any civil action brought under this  
22 section shall be subject to appeal as provided in  
23 chapter 83 of title 28, United States Code.

24 “(7) WORKERS’ COMPENSATION BENEFITS; EX-  
25 CLUSIVE REMEDY.—

1           “(A) Notwithstanding any other provision  
2 of this section, where a State’s workers’ com-  
3 pensation law is applicable and coverage is pro-  
4 vided for an H-2A worker, the workers’ com-  
5 pensation benefits shall be the exclusive remedy  
6 for the loss of such worker under this section  
7 in the case of bodily injury or death in accord-  
8 ance with such State’s workers’ compensation  
9 law.

10           “(B) The exclusive remedy prescribed in  
11 subparagraph (A) precludes the recovery under  
12 paragraph (6) of actual damages for loss from  
13 an injury or death but does not preclude other  
14 equitable relief, except that such relief shall not  
15 include back or front pay or in any manner, di-  
16 rectly or indirectly, expand or otherwise alter or  
17 affect—

18                   “(i) a recovery under a State workers’  
19 compensation law; or

20                   “(ii) rights conferred under a State  
21 workers’ compensation law.

22           “(8) TOLLING OF STATUTE OF LIMITATIONS.—  
23 If it is determined under a State workers’ compensa-  
24 tion law that the workers’ compensation law is not  
25 applicable to a claim for bodily injury or death of an

1 H-2A worker, the statute of limitations for bringing  
2 an action for actual damages for such injury or  
3 death under subsection (c) shall be tolled for the pe-  
4 riod during which the claim for such injury or death  
5 under such State workers' compensation law was  
6 pending. The statute of limitations for an action for  
7 actual damages or other equitable relief arising out  
8 of the same transaction or occurrence as the injury  
9 or death of the H-2A worker shall be tolled for the  
10 period during which the claim for such injury or  
11 death was pending under the State workers' com-  
12 pensation law.

13 “(9) PRECLUSIVE EFFECT.—Any settlement by  
14 an H-2A worker and an H-2A employer or any per-  
15 son reached through the mediation process required  
16 under subsection (c)(1) shall preclude any right of  
17 action arising out of the same facts between the par-  
18 ties in any Federal or State court or administrative  
19 proceeding, unless specifically provided otherwise in  
20 the settlement agreement.

21 “(10) SETTLEMENTS.—Any settlement by the  
22 Secretary of Labor with an H-2A employer on be-  
23 half of an H-2A worker of a complaint filed with the  
24 Secretary of Labor under this section or any finding  
25 by the Secretary of Labor under subsection

1 (a)(1)(B) shall preclude any right of action arising  
2 out of the same facts between the parties under any  
3 Federal or State court or administrative proceeding,  
4 unless specifically provided otherwise in the settle-  
5 ment agreement.

6 “(d) DISCRIMINATION PROHIBITED.—

7 “(1) IN GENERAL.—It is a violation of this sub-  
8 section for any person who has filed an application  
9 under section 218(a), to intimidate, threaten, re-  
10 strain, coerce, blacklist, discharge, or in any other  
11 manner discriminate against an employee (which  
12 term, for purposes of this subsection, includes a  
13 former employee and an applicant for employment)  
14 because the employee has disclosed information to  
15 the employer, or to any other person, that the em-  
16 ployee reasonably believes evidences a violation of  
17 section 218 or 218A or any rule or regulation per-  
18 taining to section 218 or 218A, or because the em-  
19 ployee cooperates or seeks to cooperate in an inves-  
20 tigation or other proceeding concerning the employ-  
21 er’s compliance with the requirements of section 218  
22 or 218A or any rule or regulation pertaining to ei-  
23 ther of such sections.

24 “(2) DISCRIMINATION AGAINST H-2A WORK-  
25 ERS.—It is a violation of this subsection for any per-

1 son who has filed an application under section  
2 218(a), to intimidate, threaten, restrain, coerce,  
3 blacklist, discharge, or in any manner discriminate  
4 against an H-2A employee because such worker has,  
5 with just cause, filed a complaint with the Secretary  
6 of Labor regarding a denial of the rights enumer-  
7 ated and enforceable under subsection (b) or insti-  
8 tuted, or caused to be instituted, a private right of  
9 action under subsection (c) regarding the denial of  
10 the rights enumerated under subsection (b), or has  
11 testified or is about to testify in any court pro-  
12 ceeding brought under subsection (c).

13 “(e) AUTHORIZATION TO SEEK OTHER APPRO-  
14 PRIATE EMPLOYMENT.—The Secretary of Labor and the  
15 Secretary shall establish a process under which an H-2A  
16 worker who files a complaint regarding a violation of sub-  
17 section (d) and is otherwise eligible to remain and work  
18 in the United States may be allowed to seek other appro-  
19 priate employment in the United States for a period not  
20 to exceed the maximum period of stay authorized for such  
21 nonimmigrant classification.

22 “(f) ROLE OF ASSOCIATIONS.—

23 “(1) VIOLATION BY A MEMBER OF AN ASSOCIA-  
24 TION.—An employer on whose behalf an application  
25 is filed by an association acting as its agent is fully

1 responsible for such application, and for complying  
2 with the terms and conditions of sections 218 and  
3 218A, as though the employer had filed the applica-  
4 tion itself. If such an employer is determined, under  
5 this section, to have committed a violation, the pen-  
6 alty for such violation shall apply only to that mem-  
7 ber of the association unless the Secretary of Labor  
8 determines that the association or other member  
9 participated in, had knowledge, or reason to know,  
10 of the violation, in which case the penalty shall be  
11 invoked against the association or other association  
12 member as well.

13 “(2) VIOLATIONS BY AN ASSOCIATION ACTING  
14 AS AN EMPLOYER.—If an association filing an appli-  
15 cation as a sole or joint employer is determined to  
16 have committed a violation under this section, the  
17 penalty for such violation shall apply only to the as-  
18 sociation unless the Secretary of Labor determines  
19 that an association member or members participated  
20 in or had knowledge, or reason to know of the viola-  
21 tion, in which case the penalty shall be invoked  
22 against the association member or members as well.

23 **“SEC. 218D. DEFINITIONS.**

24 “For purposes of this section and section 218, 218A,  
25 218B, and 218C:

1           “(1) AGRICULTURAL EMPLOYMENT.—The term  
2           ‘agricultural employment’ means any service or ac-  
3           tivity that is considered to be agricultural under sec-  
4           tion 3(f) of the Fair Labor Standards Act of 1938  
5           (29 U.S.C. 203(f)) or agricultural labor under sec-  
6           tion 3121(g) of the Internal Revenue Code of 1986  
7           or the performance of agricultural labor or services  
8           described in section 101(a)(15)(H)(ii)(a).

9           “(2) BONA FIDE UNION.—The term ‘bona fide  
10          union’ means any organization in which employees  
11          participate and which exists for the purpose of deal-  
12          ing with employers concerning grievances, labor dis-  
13          putes, wages, rates of pay, hours of employment, or  
14          other terms and conditions of work for agricultural  
15          employees. Such term does not include an organiza-  
16          tion formed, created, administered, supported, domi-  
17          nated, financed, or controlled by an employer or em-  
18          ployer association or its agents or representatives.

19          “(3) DISPLACE.—The term ‘displace’, in the  
20          case of an application with respect to 1 or more H–  
21          2A workers by an employer, means laying off a  
22          United States worker from a job for which the H–  
23          2A worker or workers is or are sought.

24          “(4) ELIGIBLE.—The term ‘eligible’, when used  
25          with respect to an individual, means an individual

1       who is not an unauthorized alien (as defined in sec-  
2       tion 274A).

3               “(5) EMPLOYER.—The term ‘employer’ means  
4       any person or entity, including any farm labor con-  
5       tractor and any agricultural association, that em-  
6       ploys workers in agricultural employment.

7               “(6) H-2A EMPLOYER.—The term ‘H-2A em-  
8       ployer’ means an employer who seeks to hire 1 or  
9       more nonimmigrant aliens described in section  
10       101(a)(15)(H)(ii)(a).

11              “(7) H-2A WORKER.—The term ‘H-2A worker’  
12       means a nonimmigrant described in section  
13       101(a)(15)(H)(ii)(a).

14              “(8) JOB OPPORTUNITY.—The term ‘job oppor-  
15       tunity’ means a job opening for temporary or sea-  
16       sonal full-time employment at a place in the United  
17       States to which United States workers can be re-  
18       ferred.

19              “(9) LAYING OFF.—

20                      “(A) IN GENERAL.—The term ‘laying off’,  
21       with respect to a worker—

22                              “(i) means to cause the worker’s loss  
23       of employment, other than through a dis-  
24       charge for inadequate performance, viola-  
25       tion of workplace rules, cause, voluntary

1 departure, voluntary retirement, contract  
2 impossibility (as described in section  
3 218A(b)(4)(D)), or temporary suspension  
4 of employment due to weather, markets, or  
5 other temporary conditions; but

6 “(ii) does not include any situation in  
7 which the worker is offered, as an alter-  
8 native to such loss of employment, a simi-  
9 lar employment opportunity with the same  
10 employer (or, in the case of a placement of  
11 a worker with another employer under sec-  
12 tion 218(b)(2)(E), with either employer de-  
13 scribed in such section) at equivalent or  
14 higher compensation and benefits than the  
15 position from which the employee was dis-  
16 charged, regardless of whether or not the  
17 employee accepts the offer.

18 “(B) STATUTORY CONSTRUCTION.—Noth-  
19 ing in this paragraph is intended to limit an  
20 employee’s rights under a collective bargaining  
21 agreement or other employment contract.

22 “(10) REGULATORY DROUGHT.—The term ‘reg-  
23 ulatory drought’ means a decision subsequent to the  
24 filing of the application under section 218 by an en-  
25 tity not under the control of the employer making

1 such filing which restricts the employer's access to  
2 water for irrigation purposes and reduces or limits  
3 the employer's ability to produce an agricultural  
4 commodity, thereby reducing the need for labor.

5 “(11) SEASONAL.—Labor is performed on a  
6 ‘seasonal’ basis if—

7 “(A) ordinarily, it pertains to or is of the  
8 kind exclusively performed at certain seasons or  
9 periods of the year; and

10 “(B) from its nature, it may not be contin-  
11 uous or carried on throughout the year.

12 “(12) SECRETARY.—Except as otherwise pro-  
13 vided, the term ‘Secretary’ means the Secretary of  
14 Homeland Security.

15 “(13) TEMPORARY.—A worker is employed on a  
16 ‘temporary’ basis where the employment is intended  
17 not to exceed 10 months.

18 “(14) UNITED STATES WORKER.—The term  
19 ‘United States worker’ means any worker, whether  
20 a national of the United States, an alien lawfully ad-  
21 mitted for permanent residence, or any other alien,  
22 who is authorized to work in the job opportunity  
23 within the United States, except an alien admitted  
24 or otherwise provided status under section  
25 101(a)(15)(H)(ii)(a).”.

1 (b) TABLE OF CONTENTS.—The table of contents of  
2 the Immigration and Nationality Act (8 U.S.C. 1101 et  
3 seq.) is amended by striking the item relating to section  
4 218 and inserting the following:

“Sec. 218. H-2A employer applications.

“Sec. 218A. H-2A employment requirements.

“Sec. 218B. Procedure for admission and extension of stay of H-2A workers.

“Sec. 218C. Worker protections and labor standards enforcement.

“Sec. 218D. Definitions.”.

## 5 **TITLE III—MISCELLANEOUS** 6 **PROVISIONS**

### 7 **SEC. 301. DETERMINATION AND USE OF USER FEES.**

8 (a) SCHEDULE OF FEES.—The Secretary shall estab-  
9 lish and periodically adjust a schedule of fees for the em-  
10 ployment of aliens pursuant to the amendment made by  
11 section 201(a) of this Act and a collection process for such  
12 fees from employers. Such fees shall be the only fees  
13 chargeable to employers for services provided under such  
14 amendment.

15 (b) DETERMINATION OF SCHEDULE.—

16 (1) IN GENERAL.—The schedule under sub-  
17 section (a) shall reflect a fee rate based on the num-  
18 ber of job opportunities indicated in the employer’s  
19 application under section 218 of the Immigration  
20 and Nationality Act, as amended by section 201 of  
21 this Act, and sufficient to provide for the direct  
22 costs of providing services related to an employer’s  
23 authorization to employ aliens pursuant to the

1 amendment made by section 201(a) of this Act, to  
2 include the certification of eligible employers, the  
3 issuance of documentation, and the admission of eli-  
4 gible aliens.

5 (2) PROCEDURE.—

6 (A) IN GENERAL.—In establishing and ad-  
7 justing such a schedule, the Secretary shall  
8 comply with Federal cost accounting and fee  
9 setting standards.

10 (B) PUBLICATION AND COMMENT.—The  
11 Secretary shall publish in the Federal Register  
12 an initial fee schedule and associated collection  
13 process and the cost data or estimates upon  
14 which such fee schedule is based, and any sub-  
15 sequent amendments thereto, pursuant to which  
16 public comment shall be sought and a final rule  
17 issued.

18 (c) USE OF PROCEEDS.—Notwithstanding any other  
19 provision of law, all proceeds resulting from the payment  
20 of the fees pursuant to the amendment made by section  
21 201(a) of this Act shall be available without further appro-  
22 priation and shall remain available without fiscal year lim-  
23 itation to reimburse the Secretary, the Secretary of State,  
24 and the Secretary of Labor for the costs of carrying out—

1           (1) sections 218 and 218B of the Immigration  
2           and Nationality Act, as amended and added, respec-  
3           tively, by section 201 of this Act; and

4           (2) the provisions of this Act.

5 **SEC. 302. REGULATIONS.**

6           (a) **REQUIREMENT FOR THE SECRETARY TO CON-**  
7 **SULT.**—The Secretary shall consult with the Secretary of  
8 Labor and the Secretary of Agriculture during the promul-  
9 gation of all regulations to implement the duties of the  
10 Secretary under this Act and the amendments made by  
11 this Act.

12          (b) **REQUIREMENT FOR THE SECRETARY OF STATE**  
13 **TO CONSULT.**—The Secretary of State shall consult with  
14 the Secretary, the Secretary of Labor, and the Secretary  
15 of Agriculture on all regulations to implement the duties  
16 of the Secretary of State under this Act and the amend-  
17 ments made by this Act.

18          (c) **REQUIREMENT FOR THE SECRETARY OF LABOR**  
19 **TO CONSULT.**—The Secretary of Labor shall consult with  
20 the Secretary of Agriculture and the Secretary on all regu-  
21 lations to implement the duties of the Secretary of Labor  
22 under this Act and the amendments made by this Act.

23          (d) **DEADLINE FOR ISSUANCE OF REGULATIONS.**—  
24 All regulations to implement the duties of the Secretary,  
25 the Secretary of State, and the Secretary of Labor created

1 under sections 218, 218A, 218B, 218C, and 218D of the  
2 Immigration and Nationality Act, as amended or added  
3 by section 201 of this Act, shall take effect on the effective  
4 date of section 201 and shall be issued not later than 1  
5 year after the date of enactment of this Act.

6 **SEC. 303. REPORTS TO CONGRESS.**

7 (a) ANNUAL REPORT.—Not later than September 30  
8 of each year, the Secretary shall submit a report to Con-  
9 gress that identifies, for the previous year—

10 (1) the number of job opportunities approved  
11 for employment of aliens admitted under section  
12 101(a)(15)(H)(ii)(a) of the Immigration and Nation-  
13 ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)), and the  
14 number of workers actually admitted, disaggregated  
15 by State and by occupation;

16 (2) the number of such aliens reported to have  
17 abandoned employment pursuant to subsection  
18 (e)(2) of section 218B of such Act, as added by sec-  
19 tion 201;

20 (3) the number of such aliens who departed the  
21 United States within the period specified in sub-  
22 section (d) of such section 218B;

23 (4) the number of aliens who applied for blue  
24 card status pursuant to section 101(a);

1           (5) the number of aliens who were granted such  
2           status pursuant section 101(a);

3           (6) the number of aliens who applied for an ad-  
4           justment of status pursuant to section 103(a); and

5           (7) the number of aliens who received an ad-  
6           justment of status pursuant section 103(a).

7           (b) IMPLEMENTATION REPORT.—Not later than 180  
8           days after the date of the enactment of this Act, the Sec-  
9           retary shall prepare and submit to Congress a report that  
10          describes the measures being taken and the progress made  
11          in implementing this Act.

12       **SEC. 304. EFFECTIVE DATE.**

13          The amendments made by section 201 and section  
14          301 shall take effect 1 year after the date of the enact-  
15          ment of this Act.