

105TH CONGRESS  
1ST SESSION

# S. 1563

To amend the Immigration and Nationality Act to establish a 24-month pilot program permitting certain aliens to be admitted into the United States to provide temporary or seasonal agricultural services pursuant to a labor condition attestation.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 13, 1997

Mr. SMITH of Oregon (for himself, Mr. CRAIG, Mr. GORTON, Mr. ROBERTS, and Mr. GRAMS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend the Immigration and Nationality Act to establish a 24-month pilot program permitting certain aliens to be admitted into the United States to provide temporary or seasonal agricultural services pursuant to a labor condition attestation.

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.**

4       This Act may be cited as the “Temporary Agricul-  
5       tural Worker Act of 1997”.

1 **SEC. 2. NEW NONIMMIGRANT CATEGORY FOR PILOT PRO-**  
 2 **GRAM TEMPORARY AND SEASONAL AGRICUL-**  
 3 **TURAL WORKERS.**

4 (a) ESTABLISHMENT OF NEW CLASSIFICATION.—  
 5 Section 101(a)(15)(H)(ii) of the Immigration and Nation-  
 6 ality Act (8 U.S.C. 1101(a)(15)(H)(ii)) is amended—

7 (1) by striking “or (b)” and inserting “(b)”;  
 8 and

9 (2) by adding at the end the following:

10 “ or (c) having a residence in a foreign country  
 11 which he has no intention of abandoning who is  
 12 coming temporarily to the United States pursuant to  
 13 section 218A to perform such agricultural labor or  
 14 services of a temporary or seasonal nature;”.

15 (b) NO FAMILY MEMBERS PERMITTED.—Section  
 16 101(a)(15)(H) of the Immigration and Nationality Act (8  
 17 U.S.C. 1101(a)(15)(H)) is amended by striking “specified  
 18 in this paragraph” and inserting “specified in this sub-  
 19 paragraph (other than in clause (ii)(c))”.

20 **SEC. 3. PILOT PROGRAM FOR ALTERNATIVE AGRICUL-**  
 21 **TURAL TEMPORARY WORKER PROCESS**  
 22 **USING ATTESTATION.**

23 (a) IN GENERAL.—The Immigration and Nationality  
 24 Act is amended by inserting after section 218 the follow-  
 25 ing:

1 “ALTERNATIVE AGRICULTURAL TEMPORARY WORKER  
2 PROGRAM

3 “SEC. 218A. (a) CONDITION FOR EMPLOYMENT OF  
4 PILOT PROGRAM ALIENS.—

5 “(1) ESTABLISHMENT OF PILOT PROGRAM; RE-  
6 STRICTION OF ADMISSIONS TO PILOT PROGRAM PE-  
7 RIOD.—

8 “(A) IN GENERAL.—The Attorney General  
9 shall establish a pilot program for the admis-  
10 sion of aliens classified as a nonimmigrant  
11 under section 101(a)(15)(H)(ii)(c) to perform  
12 temporary or seasonal agricultural services pur-  
13 suant to a labor condition attestation filed by  
14 an employer or an association for the occupa-  
15 tion in which the alien will be employed. No  
16 alien may be admitted or provided status as a  
17 pilot program alien under this section after the  
18 last day of the pilot program period specified in  
19 subparagraph (B).

20 “(B) PILOT PROGRAM PERIOD.—The pilot  
21 program period under this subparagraph is the  
22 24-month period beginning 6 months after the  
23 date of the enactment of the Temporary Agri-  
24 cultural Worker Act of 1997.

1           “(2) ADMISSION OF ALIENS.—No alien may be  
2 admitted to the United States or provided status as  
3 a pilot program alien (as defined in subsection  
4 (n)(4)) unless—

5           “(A) the employment of the alien is cov-  
6 ered by a currently valid labor condition attes-  
7 tation which—

8           “(i) is filed by the employer, or by an  
9 association on behalf of the employer, for  
10 the occupation in which the alien will be  
11 employed;

12           “(ii) has been accepted by the State  
13 employment security agency having juris-  
14 diction over the area of intended employ-  
15 ment; and

16           “(iii) states each of the items de-  
17 scribed in paragraph (2) and includes in-  
18 formation identifying the employer or asso-  
19 ciation and agricultural job opportunities  
20 involved;

21           “(B) the employer is not disqualified from  
22 employing pilot program aliens pursuant to sub-  
23 section (h); and

24           “(C) the employer has not, during the pilot  
25 program period, been found by the Attorney

1           General to have employed any aliens in violation  
2           of section 274A(a) or this section.

3           “(3) CONTENTS OF LABOR CONDITION ATTES-  
4           TATION.—Each labor condition attestation filed by  
5           or on behalf of, an employer shall state the follow-  
6           ing:

7                   “(A) WAGE RATE.—The employer will pay  
8                   pilot program aliens and all other workers in  
9                   the occupation not less than the prevailing wage  
10                  for similarly employed workers in the area of  
11                  employment, and not less than the applicable  
12                  Federal, State or local statutory minimum  
13                  wage.

14                  “(B) WORKING CONDITIONS.—The em-  
15                  ployment of pilot program aliens will not ad-  
16                  versely affect the working conditions of simi-  
17                  larly employed workers in the area of employ-  
18                  ment.

19                  “(C) LIMITATION ON EMPLOYMENT.—A  
20                  pilot program alien will not be employed in any  
21                  job opportunity which is not temporary or sea-  
22                  sonal, and will not be employed by the employer  
23                  in any job opportunity for more than 10  
24                  months in any 12-consecutive-month period.

1           “(D) NO LABOR DISPUTE.—No pilot pro-  
2 gram alien will be employed in any job oppor-  
3 tunity which is vacant because its former occu-  
4 pant is involved in a strike, lockout or work  
5 stoppage in the course of a labor dispute in the  
6 occupation at the place of employment.

7           “(E) NOTICE.—The employer, at the time  
8 of filing the attestation, has provided notice of  
9 the attestation to its workers employed in the  
10 occupation in which, and at the place of em-  
11 ployment where, pilot program aliens will be  
12 employed.

13           “(F) JOB ORDERS.—The employer will file  
14 one or more job orders for the occupation (or  
15 occupations) covered by the attestation with the  
16 State employment security agency no later than  
17 the day on which the employer first employs  
18 any pilot program aliens in the occupation.

19           “(G) PREFERENCE TO DOMESTIC WORK-  
20 ERS.—The employer will give preference to  
21 able, willing and qualified United States work-  
22 ers who apply to the employer and are available  
23 at the time and place needed, for the first 25  
24 days after the filing of the job order in an occu-  
25 pation or until 5 days before the date employ-

1           ment of workers in the occupation begins,  
2           whichever occurs later.

3           “(4) LIMITATION ON NUMBER OF VISAS.—In no  
4           case may the number of aliens who are admitted or  
5           provided status as a pilot program alien in a fiscal  
6           year exceed 25,000.

7           “(5) OPERATION OF PROGRAM IN NOT LESS  
8           THAN 5 AREAS.—Alien admissions under this section  
9           shall be allocated equally to employers in not less  
10          than 5 geographically and agriculturally diverse  
11          areas designated by the Secretary of Agriculture.  
12          The entire United States shall be encompassed with-  
13          in such areas.

14          “(6) GENERAL ACCOUNTING OFFICE REPORT.—

15                  “(A) IN GENERAL.—The Comptroller Gen-  
16                  eral of the United States shall, concurrently  
17                  with the operation of the pilot program estab-  
18                  lished by this section, review the implementa-  
19                  tion and enforcement of the pilot program for  
20                  the purpose of determining if—

21                          “(i) the program has ensured an ade-  
22                          quate and timely supply of qualified, eligi-  
23                          ble workers at the time and place needed  
24                          for employers;

1           “(ii) the program has ensured that  
2           pilot program aliens are employed only in  
3           authorized employment and that they time-  
4           ly depart the United States when their au-  
5           thorized stay ends;

6           “(iii) the program has ensured that  
7           implementation of the program is not dis-  
8           placing United States agricultural workers  
9           or diminishing the terms and conditions of  
10          employment of United States agricultural  
11          workers; and

12          “(iv) an unnecessary regulatory bur-  
13          den has been created for employers hiring  
14          workers admitted under this section.

15          “(B) REPORT.—Not later than 90 days  
16          after the termination of the pilot program es-  
17          tablished by this section, the Comptroller Gen-  
18          eral of the United States shall submit a report  
19          to Congress setting forth the conclusions of the  
20          Comptroller General from the review conducted  
21          under subparagraph (A).

22          “(b) FILING A LABOR CONDITION ATTESTATION.—

23                 “(1) FILING BY EMPLOYERS—Any employer in  
24          the United States is eligible to file a labor condition  
25          attestation.



1           “(2) FILING BY ASSOCIATIONS ON BEHALF OF  
2           EMPLOYER MEMBERS.—An agricultural association  
3           may file a labor condition attestation as an agent on  
4           behalf of its members. Such an attestation filed by  
5           an agricultural association acting as an agent for its  
6           members, when accepted, shall apply to those em-  
7           ployer members of the association that the associa-  
8           tion certifies to the State employment security agen-  
9           cy are members of the association and have agreed  
10          in writing to comply with the requirements of this  
11          section.

12          “(3) PERIOD OF VALIDITY.—A labor condition  
13          attestation is valid from the date on which it is ac-  
14          cepted by the State employment security agency for  
15          the period of time requested by the employer, but  
16          not to exceed 12 months.

17          “(4) WHERE TO FILE.—A labor condition attes-  
18          tation shall be filed with the State employment secu-  
19          rity agency having jurisdiction over the area of in-  
20          tended employment of the workers covered by the at-  
21          testation. If an employer, or the members of an as-  
22          sociation of employers, will be employing workers in  
23          an area or areas covered by more than one such  
24          agency, the attestation shall be filed with each such

1 agency having jurisdiction over an area where the  
2 workers will be employed.

3 “(5) DEADLINE FOR FILING.—A labor condi-  
4 tion attestation may be filed at any time up to 12  
5 months prior to the date of the employer’s antici-  
6 pated need for workers in the occupation (or occupa-  
7 tions) covered by the attestation.

8 “(6) FILING FOR MULTIPLE OCCUPATIONS.—A  
9 labor condition attestation may be filed for one or  
10 more occupations and cover one or more periods of  
11 employment.

12 “(7) MAINTAINING REQUIRED DOCUMENTA-  
13 TION.—

14 “(A) BY EMPLOYERS.—Each employer cov-  
15 ered by an accepted labor condition attestation  
16 must maintain a file of the documentation re-  
17 quired in subsection (c) for each occupation in-  
18 cluded in an accepted attestation covering the  
19 employer. The documentation shall be retained  
20 for a period of one year following the expiration  
21 of an accepted attestation. The employer shall  
22 make the documentation available to represent-  
23 atives of the Secretary during normal business  
24 hours.

1           “(B) BY ASSOCIATIONS.—In complying  
2 with subparagraph (A), documentation main-  
3 tained by an association filing a labor condition  
4 attestation on behalf of an employer shall be  
5 deemed to be maintained by the employer.

6           “(8) WITHDRAWAL.—

7           “(A) COMPLIANCE WITH ATTESTATION OB-  
8 LIGATIONS.—An employer covered by an ac-  
9 cepted labor condition attestation for an occu-  
10 pation shall comply with the terms and condi-  
11 tions of the attestation from the date the attes-  
12 tation is accepted and continuing throughout  
13 the period any persons are employed in an occu-  
14 pation covered by such an accepted attestation,  
15 whether or not pilot program aliens are em-  
16 ployed in the occupation, unless the attestation  
17 is withdrawn.

18           “(B) TERMINATION OF OBLIGATIONS.—An  
19 employer may withdraw a labor condition attes-  
20 tation in total, or with respect to a particular  
21 occupation covered by the attestation. An asso-  
22 ciation may withdraw such an attestation with  
23 respect to one or more of its members. To with-  
24 draw an attestation the employer or association  
25 must notify in writing the State employment se-

1           curity agency office with which the attestation  
2           was filed of the withdrawal of the attestation.  
3           An employer who withdraws an attestation, or  
4           on whose behalf an attestation is withdrawn by  
5           an association, is relieved of the obligations un-  
6           dertaken in the attestation with respect to the  
7           occupation (or occupations) with respect to  
8           which the attestation was withdrawn, upon ac-  
9           knowledgement by the appropriate State em-  
10          ployment security agency of receipt of the with-  
11          drawal notice. An attestation may not be with-  
12          drawn with respect to any occupation while any  
13          pilot program alien covered by that attestation  
14          is employed in the occupation.

15                 “(C) OBLIGATIONS UNDER OTHER STAT-  
16                 UTES.—Any obligation incurred by the em-  
17                 ployer under any other law or regulation as a  
18                 result of recruitment of United States workers  
19                 under an offer of terms and conditions of em-  
20                 ployment required by the pilot program under  
21                 this section is unaffected by withdrawal of a  
22                 labor condition attestation.

23                 “(c) EMPLOYER RESPONSIBILITIES AND REQUIRE-  
24                 MENTS FOR EMPLOYING PILOT PROGRAM ALIENS.—

1           “(1) REQUIREMENT TO PAY THE PREVAILING  
2 WAGE.—

3           “(A) EFFECT OF THE ATTESTATION.—

4           Employers shall pay each worker in an occupa-  
5 tion covered by an accepted labor condition at-  
6 testation at least the prevailing wage in the oc-  
7 cupation in the area of intended employment.  
8           The preceding sentence does not require em-  
9 ployers to pay all workers in the occupation the  
10 same wage. The employer may, in the sole dis-  
11 cretion of the employer, maintain pay differen-  
12 tials based on experience, tenure with the em-  
13 ployer, skill, or any other work-related factor, if  
14 the differential is not based on a criterion for  
15 which discrimination is prohibited by the law  
16 and all workers in the covered occupation re-  
17 ceive at least the prevailing wage.

18           “(B) PAYMENT OF STATE EMPLOYMENT  
19 SECURITY AGENCY DETERMINED WAGE SUFFI-  
20 CIENT.—The employer may request and obtain  
21 a prevailing wage determination from the State  
22 employment security agency. If the employer re-  
23 quests such a determination, and pays the wage  
24 determined, such payment shall be considered

1 sufficient to meet the requirement of this para-  
2 graph if the pilot program aliens—

3 “(i) are employed in the occupation  
4 for which the employer possesses an ac-  
5 cepted labor condition attestation, and for  
6 which the employer or association pos-  
7 sesses a prevailing wage determination by  
8 the State employment security agency, and

9 “(ii) are being paid at least the pre-  
10 vailing wage so determined.

11 “(C) RELIANCE ON WAGE SURVEY.—In  
12 lieu of the procedures of subparagraph (B), an  
13 employer may rely on other information, such  
14 as an employer generated prevailing wage sur-  
15 vey and determination, which meets criteria  
16 specified by the Secretary by regulation. In the  
17 event of a complaint that the employer has  
18 failed to pay the required wage, the Secretary  
19 shall investigate to determine if the information  
20 upon which the employer relied complied with  
21 the criteria for prevailing wage determinations.

22 “(D) ALTERNATE METHODS OF PAYMENT  
23 PERMITTED.—

24 “(i) IN GENERAL.—A prevailing wage  
25 may be expressed as an hourly wage, a

1 piece rate, a task rate (described in clause  
2 (ii)), or other incentive pay system, includ-  
3 ing a group rate (described in clause (iii)).  
4 The requirement to pay at least the pre-  
5 vailing wage in the occupation and area of  
6 intended employment does not require an  
7 employer to pay by the method of pay in  
8 which the prevailing rate is expressed.  
9 However, if the employer adopts a method  
10 of pay other than the prevailing rate, the  
11 burden of proof is on the employer to dem-  
12 onstrate that the employer's method of pay  
13 is designed to produce earnings equivalent  
14 to the earnings that would result from pay-  
15 ment of the prevailing rate.

16 “(ii) TASK RATE.—For purposes of  
17 this subparagraph, a task rate is an incen-  
18 tive payment based on a unit of work per-  
19 formed such that the incentive rate varies  
20 with the level of effort required to perform  
21 individual units of work.

22 “(iii) GROUP RATE.—For purposes of  
23 this subparagraph, a group rate is an in-  
24 centive payment system in which the pay-

1           ment is shared among a group of workers  
2           working together to perform the task.

3           “(E) REQUIRED DOCUMENTATION.—The  
4           employer or association shall document compli-  
5           ance with this paragraph by retaining on file  
6           the employer or association’s request for a de-  
7           termination by a State employment security  
8           agency and the prevailing wage determination  
9           received from such agency or other information  
10          upon which the employer or association relied to  
11          assure compliance with the prevailing wage re-  
12          quirement.

13          “(2) REQUIREMENT TO PROVIDE HOUSING AND  
14          TRANSPORTATION.—

15          “(A) EFFECT OF THE ATTESTATION.—The  
16          employment of pilot program aliens shall not  
17          adversely affect the working conditions of Unit-  
18          ed States workers similarly employed in the  
19          area of intended employment. The employer’s  
20          obligation not to adversely affect working condi-  
21          tions shall continue for the duration of the pe-  
22          riod of employment by the employer of any pilot  
23          program aliens in the occupation and area of  
24          intended employment. An employer will be  
25          deemed to be in compliance with this attesta-



1           tion if the employer offers at least the benefits  
2           required by subparagraphs (B) through (D).  
3           The previous sentence does not require an em-  
4           ployer to offer more than such benefits.

5           “(B) HOUSING REQUIRED.—

6           “(i) HOUSING OFFER.—The employer  
7           must offer to pilot program aliens and  
8           United States workers recruited from be-  
9           yond normal recruiting distance housing,  
10          or a housing allowance, if it is prevailing  
11          practice in the occupation and area of in-  
12          tended employment to offer housing or a  
13          housing allowance to workers who are re-  
14          cruited from beyond normal commuting  
15          distance.

16          “(ii) HOUSING STANDARDS.—If the  
17          employer offers housing to such workers,  
18          the housing shall meet (at the option of  
19          the employer) applicable Federal farm  
20          labor housing standards or applicable local  
21          or State standards for rental, public ac-  
22          commodation, or other substantially simi-  
23          lar class of habitation.

24          “(iii) CHARGES FOR HOUSING.—An  
25          employer who offers housing to such work-

1           ers may charge an amount equal to the  
2           fair market value (but not greater than the  
3           employer’s actual cost) for utilities and  
4           maintenance, or such lesser amount as per-  
5           mitted by law.

6           “(iv) HOUSING ALLOWANCE AS AL-  
7           TERNATIVE.—In lieu of offering housing to  
8           such workers, at the employer’s sole discre-  
9           tion on an individual basis, the employer  
10          may provide a reasonable housing allow-  
11          ance. An employer who offers a housing al-  
12          lowance to such a worker under this sub-  
13          paragraph shall not be deemed to be a  
14          housing provider under section 203 of the  
15          Migrant and Seasonal Agricultural Worker  
16          Protection Act (29 U.S.C. 1823) merely by  
17          virtue of providing such housing allowance.

18          “(v) SECURITY DEPOSIT.—The re-  
19          quirement, if any, to offer housing to such  
20          a worker under this subparagraph shall  
21          not preclude an employer from requiring a  
22          reasonable deposit to protect against gross  
23          negligence or willful destruction of prop-  
24          erty, as a condition for providing such  
25          housing.

1                   “(vi) DAMAGES.—An employer who  
2                   offers housing to such a worker shall not  
3                   be precluded from requiring a worker  
4                   found to have been responsible for damage  
5                   to such housing which is not the result of  
6                   normal wear and tear related to habitation  
7                   to reimburse the employer for the reason-  
8                   able cost of repair of such damage.

9                   “(C) TRANSPORTATION.—If the employer  
10                  provides transportation arrangements or assist-  
11                  ance to pilot program aliens, the employer must  
12                  offer to provide the same transportation ar-  
13                  rangements or assistance (generally comparable  
14                  in expense and scope) for other individuals em-  
15                  ployed by the employer in the occupation at the  
16                  place of employment who were recruited from  
17                  beyond normal commuting distance.

18                  “(D) WORKERS’ COMPENSATION.—If the  
19                  employment covered by a labor condition attes-  
20                  tation is not covered by the State workers’ com-  
21                  pensation law, the employer must provide, at no  
22                  cost to the worker, insurance covering injury  
23                  and disease arising out of and in the course of  
24                  the workers’ employment which will provide  
25                  benefits at least equal to those provided under

1 the State workers' compensation law for com-  
2 parable employment.

3 “(E) REQUIRED DOCUMENTATION.—

4 “(i) HOUSING AND TRANSPOR-  
5 TATION.—No specific documentation is re-  
6 quired to be maintained to evidence com-  
7 pliance with the requirements of subpara-  
8 graphs (B) and (C). In the event of a com-  
9 plaint alleging a failure to comply with  
10 such a requirement, the burden of proof  
11 shall be on the employer to show that the  
12 employer offered the required benefit to  
13 the complainant, or that the employer was  
14 not required by the terms of this para-  
15 graph to offer such benefit to the com-  
16 plainant.

17 “(ii) WORKERS' COMPENSATION.—

18 The employer shall maintain copies of cer-  
19 tificates of insurance evidencing compli-  
20 ance with subparagraph (D) throughout  
21 the period of validity of the labor condition  
22 attestation.

23 “(3) REQUIREMENT TO EMPLOY ALIENS IN  
24 TEMPORARY OR SEASONAL AGRICULTURAL JOB OP-  
25 PORTUNITIES.—

1           “(A) LIMITATIONS.—

2                   “(i) IN GENERAL.—The employer may  
3           employ pilot program aliens only in agri-  
4           cultural employment which is temporary or  
5           seasonal.

6                   “(ii) SEASONAL BASIS.—For purposes  
7           of this section, labor is performed on a sea-  
8           sonal basis where, ordinarily, the employ-  
9           ment pertains to or is of the kind exclu-  
10          sively performed at certain seasons or peri-  
11          ods of the year and which, from its nature,  
12          may not be continuous or carried on  
13          throughout the year.

14                  “(iii) TEMPORARY BASIS.—For pur-  
15          poses of this section, a worker is employed  
16          on a temporary basis where the employ-  
17          ment is intended not to exceed 10 months.

18                  “(B) REQUIRED DOCUMENTATION.—No  
19          specific documentation is required to dem-  
20          onstrate compliance with the requirement of  
21          subparagraph (A). In the event of a complaint,  
22          the burden of proof shall fall on the employer  
23          to show that the employment meets such re-  
24          quirement.

1           “(4) REQUIREMENT NOT TO EMPLOY ALIENS IN  
2 JOB OPPORTUNITIES VACANT BECAUSE OF A LABOR  
3 DISPUTE.—

4           “(A) IN GENERAL.—No pilot program  
5 alien may be employed in any job opportunity  
6 which is vacant because its former occupant is  
7 involved in a strike, lockout, or work stoppage  
8 in the course of a labor dispute in the occupa-  
9 tion at the place of employment.

10           “(B) REQUIRED DOCUMENTATION.—No  
11 specific documentation is required to dem-  
12 onstrate compliance with the requirement of  
13 subparagraph (A). In the event of a complaint,  
14 the burden of proof shall fall on the employer  
15 to show that the job opportunity in which the  
16 pilot program alien was employed was not va-  
17 cant because the former occupant was on strike,  
18 locked out, or participating in a work stoppage  
19 in the course of a labor dispute in the occupa-  
20 tion at the place of employment.

21           “(5) NOTICE OF FILING OF LABOR CONDITION  
22 ATTESTATION AND SUPPORTING DOCUMENTATION.—

23           “(A) IN GENERAL.—The employer shall—

24           “(i) provide notice of the filing of a  
25 labor condition attestation to the appro-

1            appropriate certified bargaining agent (if any)  
2            which represents workers of the employer  
3            in the occupation (or occupations) at the  
4            place of employment covered by the attes-  
5            tation; or

6            “(ii) in the case where no such bar-  
7            gaining agent exists, post notice of the fil-  
8            ing of such an attestation in at least two  
9            conspicuous locations where applications  
10           for employment are accepted.

11           “(B) PERIOD FOR POSTING.—The require-  
12           ment for a posting under subparagraph (A)(ii)  
13           begins on the day the attestation is filed, and  
14           continues through the period during which the  
15           employer’s job order is required to remain ac-  
16           tive pursuant to paragraph (6)(A).

17           “(C) REQUIRED DOCUMENTATION.—The  
18           employer shall maintain a copy of the notice  
19           provided to the bargaining agent (if any), to-  
20           gether with evidence that the notice was pro-  
21           vided (such as a signed receipt of evidence of  
22           attempt to send the notice by certified or reg-  
23           istered mail). In the case where no certified  
24           bargaining agent described in subparagraph  
25           (A)(i) exists, the employer shall retain a copy of

1 the posted notice, together with information as  
2 to the dates and locations where the notice was  
3 displayed.

4 “(6) REQUIREMENT TO FILE A JOB ORDER.—

5 “(A) EFFECT OF THE ATTESTATION.—The  
6 employer, or an association acting as agent for  
7 its members, shall file the information nec-  
8 essary to complete a local job order for each oc-  
9 cupation covered by an accepted labor condition  
10 attestation with the appropriate local office of  
11 the State employment security agency having  
12 jurisdiction over the area of intended employ-  
13 ment, or with the State office of such an agency  
14 if workers will be employed in an area within  
15 the jurisdiction of more than one local office of  
16 such an agency. The job orders shall remain on  
17 file for 25 calendar days or until 5 calendar  
18 days before the anticipated date of need for  
19 workers in the occupation covered by the job  
20 order, whichever occurs later. The job order  
21 shall provide at least the minimum terms and  
22 conditions of employment required for partici-  
23 pation in the pilot program.

24 “(B) DEADLINE FOR FILING.—A job order  
25 shall be filed under subparagraph (A) no later



1 than the date on which the employer files a pe-  
2 tition with the Attorney General for admission  
3 or extension of stay for aliens to be employed  
4 in the occupation for which the order is filed.

5 “(C) REQUIRED DOCUMENTATION.—The  
6 office of the State employment security agency  
7 which the employer or association provides with  
8 information necessary to file a local job order  
9 shall provide the employer with evidence that  
10 the information was provided in a timely man-  
11 ner as required by this paragraph, and the em-  
12 ployer or association shall retain such evidence  
13 for each occupation in which pilot program  
14 aliens are employed.

15 “(7) REQUIREMENT TO GIVE PREFERENCE TO  
16 QUALIFIED UNITED STATES WORKERS.—

17 “(A) FILING 30 DAYS OR MORE BEFORE  
18 DATE OF NEED.—If a job order is filed 30 days  
19 or more before the anticipated date of need for  
20 workers in an occupation covered by a labor  
21 condition attestation and for which the job  
22 order has been filed, the employer shall offer to  
23 employ able, willing, and qualified United  
24 States workers who apply to the employer and  
25 who will be available at the time and place

1 needed for the job opportunities covered by the  
2 attestation until 5 calendar days before the an-  
3 ticipated date of need for workers in the occu-  
4 pation, or until the employer's job opportunities  
5 in the occupation are filled with qualified Unit-  
6 ed States workers, if that occurs more than 5  
7 days before the anticipated date of need for  
8 workers in the occupation.

9 “(B) FILING FEWER THAN 30 DAYS BE-  
10 FORE DATE OF NEED.—If a job order is filed  
11 fewer than 30 days before the anticipated date  
12 of need for workers in an occupation covered by  
13 such an attestation and for which a job order  
14 has been filed, the employer shall offer to em-  
15 ploy able, willing, and qualified United States  
16 workers who are or will be available at the time  
17 and place needed during the first 25 days after  
18 the job order is filed or until the employer's job  
19 opportunities in the occupation are filled with  
20 United States workers, regardless of whether  
21 any of the job opportunities may already be oc-  
22 cupied by pilot program aliens.

23 “(C) FILING VACANCIES.—An employer  
24 may fill a job opportunity in an occupation cov-  
25 ered by an accepted labor condition attestation

1 which remains or becomes vacant after expira-  
2 tion of the required preference period specified  
3 in subparagraph (A) or (B) of paragraph (6)  
4 without regard to such preference.

5 “(D) JOB-RELATED REQUIREMENTS.—No  
6 employer shall be required to initially employ a  
7 worker who fails to meet lawful job-related em-  
8 ployment criteria, nor to continue the employ-  
9 ment of a worker who fails to meet lawful job-  
10 related standards of conduct and performance,  
11 including failure to meet minimum productivity  
12 standards after a 3-day break-in period.

13 “(E) REQUIRED DOCUMENTATION.—No  
14 specific documentation is required to dem-  
15 onstrate compliance with the requirements of  
16 this paragraph. In the event of a complaint, the  
17 burden of proof shall be on the complainant to  
18 show that the complainant applied for the job  
19 and was available at the time and place needed.  
20 If the complainant makes such a showing, the  
21 burden of proof shall be on the employer to  
22 show that the complainant was not qualified or  
23 that the preference period had expired.

24 “(d) REQUIREMENTS OF NOTICE OF CERTAIN  
25 BREAKS IN EMPLOYMENT.—

1           “(1) IN GENERAL.—The employer (or the asso-  
2           ciation acting as agent for the employer) shall notify  
3           the Attorney General within 7 days if a pilot pro-  
4           gram alien prematurely abandons the alien’s employ-  
5           ment.

6           “(2) OUT-OF-STATUS.—A pilot program alien  
7           who abandons the alien’s employment shall be con-  
8           sidered to have failed to maintain nonimmigrant sta-  
9           tus as an alien described in section  
10          101(a)(15)(H)(ii)(c) and shall leave the United  
11          States or be subject to removal under section  
12          237(a)(1)(C)(i).

13          “(e) ACCEPTANCE BY STATE EMPLOYMENT SECUR-  
14          RITY AGENCY.—The State employment security agency  
15          shall review labor condition attestations submitted by em-  
16          ployers or associations pursuant to this section only for  
17          completeness and obvious inaccuracies. Unless such an  
18          agency finds that the application is incomplete or obvi-  
19          ously inaccurate, the agency shall accept the attestation  
20          within 7 days of the date of filing of the attestation, and  
21          return a copy to the applicant marked ‘accepted’.

22          “(f) PUBLIC REGISTRY.—The Secretary shall main-  
23          tain a registry of all accepted labor condition attestations  
24          and make such registry available for public inspection.

1       “(g) RESPONSIBILITIES OF THE STATE EMPLOY-  
2   MENT SECURITY AGENCIES.—

3               “(1) DISSEMINATION OF LABOR MARKET IN-  
4   FORMATION.—The Secretary shall direct State em-  
5   ployment security agencies to disseminate non-em-  
6   ployer-specific information about potential labor  
7   needs based on accepted attestations filed by em-  
8   ployers. Such dissemination shall be separate from  
9   the clearance of job orders through the Interstate  
10   and Intrastate Clearance Systems, and shall create  
11   no obligations for employers except as provided in  
12   this section.

13              “(2) REFERRAL OF WORKERS ON STATE EM-  
14   PLOYMENT SECURITY AGENCY JOB ORDERS.—

15               “(A) IN GENERAL.—Such agencies holding  
16   job orders filed by employers covered by ap-  
17   proved labor condition attestations shall be au-  
18   thorized to refer any able, willing, and qualified  
19   eligible job applicant who will be available at  
20   the time and place needed and who is author-  
21   ized to work in the United States, including  
22   pilot program aliens who are seeking additional  
23   work in the United States and whose eligibility  
24   to remain in the United States pursuant to sub-

1 section (i) has not expired, on job orders filed  
2 by holders of accepted attestations.

3 “(B) PROCEDURES.—A State employment  
4 agency that refers any individuals for employ-  
5 ment pursuant to subsection (g)(2)(A) shall  
6 comply with the procedures specified in sub-  
7 section (b) of section 274A. For purposes of the  
8 attestation requirement in subsection (b)(1),  
9 the agency employee who is primarily involved  
10 in the referral of the individual shall make the  
11 attestation on behalf of the agency. The agency  
12 shall retain the completed forms and make  
13 them available for inspection as required in sub-  
14 section (b)(3) of section 274A.

15 “(C) EMPLOYMENT VERIFICATION.—For  
16 purposes of complying with subsection (b) of  
17 section 274A with respect to an individual re-  
18 ferred by a State employment agency, a pilot  
19 program employer may, at the employer’s op-  
20 tion, fulfill the requirements of subsection (b) of  
21 this section in lieu of retaining the documenta-  
22 tion described in section 274A(a)(5).

23 “(h) ENFORCEMENT AND PENALTIES.—

24 “(1) ENFORCEMENT AUTHORITY.—

1           “(A) INVESTIGATION OF COMPLAINTS.—

2           The Secretary shall establish a process for the  
3           receipt, investigation, and disposition of com-  
4           plaints respecting an employer’s failure to meet  
5           a condition specified in subsection (a) or an em-  
6           ployer’s misrepresentation of material facts in  
7           such an application. Complaints may be filed by  
8           any aggrieved person or organizations (includ-  
9           ing bargaining representatives). No investiga-  
10          tion or hearing shall be conducted on a com-  
11          plaint concerning such a failure or misrepresen-  
12          tation unless the complaint was filed not later  
13          than 2 years after the date of the failure or  
14          misrepresentation, respectively. The Secretary  
15          shall conduct an investigation under this sub-  
16          paragraph if there is reasonable cause to believe  
17          that such a failure or misrepresentation has oc-  
18          curred.

19           “(B) WRITTEN NOTICE OF FINDINGS AND

20          OPPORTUNITY FOR APPEAL.—After an inves-  
21          tigation has been conducted, the Secretary shall  
22          issue a written determination as to whether or  
23          not any violation described in subparagraph (A)  
24          has been committed. The Secretary’s deter-  
25          mination shall be served on the complainant

1 and the employer, and shall provide an oppor-  
2 tunity for an appeal of the Secretary's decision  
3 to an administrative law judge, who may con-  
4 duct a de novo hearing.

5 “(2) REMEDIES.—

6 “(A) BACK WAGES.—Upon a final deter-  
7 mination that the employer has failed to pay  
8 wages as required under this section, the Sec-  
9 retary may assess payment of back wages due  
10 to any United States worker or pilot program  
11 alien employed by the employer in the specific  
12 employment in question. The back wages shall  
13 be equal to the difference between the amount  
14 that should have been paid and the amount  
15 that actually was paid to such worker.

16 “(B) FAILURE TO PAY WAGES.—Upon a  
17 final determination that the employer has failed  
18 to pay the wages required under this section,  
19 the Secretary may assess a civil money penalty  
20 up to \$1,000 for each failure, and may rec-  
21 ommend to the Attorney General the disquali-  
22 fication of the employer from the employment  
23 of pilot program aliens for a period of time de-  
24 termined by the Secretary not to exceed 1 year.



1           “(C) OTHER VIOLATIONS.—If the Sec-  
2           retary, as a result of an investigation pursuant  
3           to a complaint, determines that an employer  
4           covered by an accepted labor condition attesta-  
5           tion has—

6                   “(i) filed an attestation which mis-  
7                   represents a material fact; or

8                   “(ii) failed to meet a condition speci-  
9                   fied in subsection (a),

10           the Secretary may assess a civil money penalty  
11           not to exceed \$1,000 for each violation. In de-  
12           termining the amount of civil money penalty to  
13           be assessed, the Secretary shall consider the se-  
14           riousness of the violation, the good faith of the  
15           employer, the size of the business of the em-  
16           ployer being charged, the history of previous  
17           violations by the employer, whether the em-  
18           ployer obtained a financial gain from the viola-  
19           tion, whether the violation was willful, and  
20           other relevant factors.

21           “(D) PROGRAM DISQUALIFICATION.—Upon  
22           a second final determination that an employer  
23           has failed to pay the wages required under this  
24           section, the Secretary shall report such deter-  
25           mination to the Attorney General and the At-

1           torney General shall disqualify the employer  
2           from any subsequent employment of pilot pro-  
3           gram aliens.

4           “(3) ROLE OF ASSOCIATIONS.—

5                   “(A) VIOLATION BY AN ASSOCIATION.—An  
6           employer on whose behalf a labor condition at-  
7           testation is filed by an association acting as its  
8           agent is fully responsible for such attestation,  
9           and for complying with the terms and condi-  
10          tions of this section, as though the employer  
11          had filed the attestation itself. If such an em-  
12          ployer is determined to have violated a require-  
13          ment of this section, the penalty for such viola-  
14          tion shall be assessed against the employer who  
15          committed the violation and not against the as-  
16          sociation or other members of the association.

17                   “(B) VIOLATION BY AN ASSOCIATION ACT-  
18          ING AS AN EMPLOYER.—If an association filing  
19          a labor condition attestation on its own behalf  
20          as an employer is determined to have commit-  
21          ted a violation under this subsection which re-  
22          sults in disqualification from the program under  
23          paragraph (2)(D), no individual member of  
24          such association may be the beneficiary of the  
25          services of a pilot program alien in an occupa-

1           tion in which such alien was employed by the  
2           association during the period such disqualifica-  
3           tion is in effect, unless such member files a  
4           labor condition attestation as an individual em-  
5           ployer or such an attestation is filed on the em-  
6           ployer's behalf by an association with which the  
7           employer has an agreement that the employer  
8           will comply with the requirements of this sec-  
9           tion.

10           “(i) PROCEDURE FOR ADMISSION OR EXTENSION OF  
11 PILOT PROGRAM ALIENS.—

12           “(1) ALIENS WHO ARE OUTSIDE THE UNITED  
13 STATES.—

14           “(A) PETITIONING FOR ADMISSION.—An  
15 employer or an association acting as agent for  
16 its members who seeks the admission into the  
17 United States of pilot program aliens may file  
18 a petition with the District Director of the Im-  
19 migration and Naturalization Service having ju-  
20 risdiction over the location where the aliens will  
21 be employed. The petition shall be accompanied  
22 by an accepted and currently valid labor condi-  
23 tion attestation covering the petitioner. The pe-  
24 tition may be for named or unnamed individual  
25 or multiple beneficiaries.

1           “(B) EXPEDITED ADJUDICATION BY DIS-  
2           TRICT DIRECTOR.—If an employer’s petition for  
3           admission of pilot program aliens is correctly  
4           filled out, and the employer is not ineligible to  
5           employ pilot program aliens, the District Direc-  
6           tor (or the Director’s designee) shall approve  
7           the petition within 3 working days of receipt of  
8           the petition and accepted labor condition attes-  
9           tation and immediately (by fax, cable, or other  
10          means assuring expedited delivery) transmit a  
11          copy of the approved petition to the petitioner  
12          and to the appropriate immigration officer at  
13          the port of entry or United States consulate (as  
14          the case may be) where the petitioner has indi-  
15          cated that the alien beneficiary (or bene-  
16          ficiaries) will apply for a visa or admission to  
17          the United States.

18          “(C) UNNAMED BENEFICIARIES SELECTED  
19          BY PETITIONER.—The petitioning employer or  
20          association or its representative shall approve  
21          the issuance of visas to beneficiaries who are  
22          unnamed on a petition for admission granted to  
23          the employer or association.

24          “(D) CRITERIA FOR ADMISSIBILITY.—

1           “(i) IN GENERAL.—An alien shall be  
2           admissible under this section if the alien is  
3           otherwise admissible under this Act and  
4           the alien is not debarred pursuant to the  
5           provisions of clause (ii).

6           “(ii) DISQUALIFICATION.—An alien  
7           shall be debarred from admission or being  
8           provided status as a pilot program alien  
9           under this section if the alien has, at any  
10          time during the past 5 years—

11           “(I) violated a material provision  
12          of this section, including the require-  
13          ment to promptly depart the United  
14          States when the alien’s authorized pe-  
15          riod of admission under this section  
16          has expired; or

17           “(II) otherwise violated a term or  
18          condition of admission to the United  
19          States as a nonimmigrant, including  
20          overstaying the period of authorized  
21          admission as such a nonimmigrant.

22           “(E) PERIOD OF ADMISSION.—The alien  
23          shall be admitted for the period requested by  
24          the petitioner not to exceed 10 months, or the  
25          remaining validity period of the petitioner’s ap-

1           proved labor condition attestation, whichever is  
2           less, plus an additional period of 14 days, dur-  
3           ing which the alien shall seek authorized em-  
4           ployment in the United States. During the 14-  
5           day period following the expiration of the alien’s  
6           work authorization, the alien is not authorized  
7           to be employed unless the original petitioner or  
8           a subsequent petitioner has filed an extension  
9           of stay on behalf of the alien pursuant to para-  
10          graph (2).

11                   “(F) ISSUANCE OF IDENTIFICATION AND  
12          EMPLOYMENT ELIGIBILITY DOCUMENT.—

13                           “(i) IN GENERAL.—The Attorney  
14                           General shall cause to be issued to each  
15                           pilot program alien a card in a form which  
16                           is resistant to counterfeiting and tamper-  
17                           ing for the purpose of providing proof of  
18                           identity and employment eligibility under  
19                           section 274A.

20                                   “(ii) DESIGN OF CARD.—Each card  
21                                   issued pursuant to clause (i) shall be de-  
22                                   signed in such a manner and contain a  
23                                   photograph and other identifying informa-  
24                                   tion (such as date of birth, sex, and distin-  
25                                   guishing marks) that would allow an em-

1           ployer to determine with reasonable cer-  
2           tainty that the bearer is not claiming the  
3           identity of another individual, and shall—

4                   “(I) contain a fingerprint or  
5                   other biometric identifying data (or  
6                   both);

7                   “(II) specify the date of the  
8                   alien’s authorization as a pilot pro-  
9                   gram alien;

10                  “(III) specify the expiration date  
11                  of the alien’s work authorization; and

12                  “(IV) specify the alien’s admis-  
13                  sion number or alien file number.

14           “(2) EXTENSION OF STAY.—

15                   “(A) APPLICATION FOR EXTENSION OF  
16                   STAY.—If a petitioner seeks to employ a pilot  
17                   program alien already in the United States, the  
18                   petitioner shall file with the Attorney General  
19                   an application for an extension of the alien’s  
20                   stay. The application for extension of stay shall  
21                   be accompanied by a currently valid labor con-  
22                   dition attestation.

23                   “(B) LIMITATION ON FILING AN APPLICA-  
24                   TION FOR EXTENSION OF STAY.—An applica-  
25                   tion may not be filed for an extension of an

1 alien's stay for a period of more than 10  
2 months, or later than a date which is 2 years  
3 from the date of the alien's last admission to  
4 the United States as a pilot program alien,  
5 whichever occurs first. An application for exten-  
6 sion of stay may not be filed during the pend-  
7 ency of an alien's previous authorized period of  
8 employment, nor after the alien's authorized  
9 stay in the United States has expired.

10 “(C) WORK AUTHORIZATION UPON FILING  
11 AN APPLICATION FOR EXTENSION OF STAY.—  
12 An employer may begin employing an alien al-  
13 ready in the United States in pilot program  
14 alien status on the day the employer files its  
15 application for extension of stay. For the pur-  
16 pose of this requirement, the term ‘filing’  
17 means sending the application by certified mail  
18 via the United States Postal Service, return re-  
19 ceipt requested, or delivered by guaranteed  
20 commercial delivery which will provide the em-  
21 ployer with a documented acknowledgment of  
22 the date of sending and receipt of the applica-  
23 tion. The employer shall provide a copy of the  
24 employer's application for extension of stay to  
25 the alien, who shall keep the application with



1 the alien's identification and employment eligi-  
2 bility document as evidence that the extension  
3 has been filed and that the alien is authorized  
4 to work in the United States. Upon approval of  
5 an application for extension of stay, the Attor-  
6 ney General shall provide a new or updated em-  
7 ployment eligibility document to the alien indi-  
8 cating the new validity date, after which the  
9 alien is not required to retain a copy of the ap-  
10 plication for extension of stay.

11 “(D) LIMITATION ON EMPLOYMENT AU-  
12 THORIZATION OF PILOT PROGRAM ALIENS  
13 WITHOUT VALID IDENTIFICATION AND EMPLOY-  
14 MENT ELIGIBILITY CARD.—An expired identi-  
15 fication and employment eligibility document,  
16 together with a copy of an application for ex-  
17 tension of stay, shall constitute a valid work au-  
18 thorization document for a period of not more  
19 than 60 days from the date of application for  
20 the extension of stay, after which time only a  
21 currently valid identification and employment  
22 eligibility document shall be acceptable.

23 “(3) LIMITATION ON AN INDIVIDUAL'S STAY IN  
24 PILOT PROGRAM STATUS.—An alien having status as  
25 a pilot program alien may not have the status ex-

1 tended for a continuous period longer than 2 years  
2 unless the alien remains outside the United States  
3 for an uninterrupted period of 6 months. An absence  
4 from the United States may break the continuity of  
5 the period for which a nonimmigrant visa issued  
6 under section 101(a)(15)(H)(ii)(c) is valid. If the  
7 alien has resided in the United States 10 months or  
8 less, an absence breaks the continuity of the period  
9 if its lasts for at least 2 months. If the alien has re-  
10 sided in the United States 10 months or more, an  
11 absence breaks the continuity of the period if it lasts  
12 for at least one-fifth the duration of the stay.

13 “(j) TRUST FUND TO ASSURE WORKER RETURN.—

14 “(1) ESTABLISHMENT.—There is established in  
15 the Treasury of the United States a trust fund (in  
16 this section referred to as the ‘Trust Fund’) for the  
17 purpose of providing a monetary incentive for pilot  
18 program aliens to return to their country of origin  
19 upon expiration of their visas under this section.

20 “(2) WITHHOLDING OF WAGES; PAYMENT INTO  
21 THE TRUST FUND.—

22 “(A) IN GENERAL.—Employers of pilot  
23 program aliens shall—

24 “(i) withhold from the wages of their  
25 pilot program alien workers an amount

1 equivalent to 25 percent of the wages of  
2 each pilot program alien worker and pay  
3 such withheld amount into the Trust Fund  
4 in accordance with paragraph (3); and

5 “(ii) pay to the Trust Fund an  
6 amount equivalent to the Federal tax on  
7 the wages paid to pilot program aliens that  
8 the employer would be obligated to pay  
9 under the Federal Unemployment Tax Act  
10 and the Federal Insurance Contributions  
11 Act.

12 Amounts withheld under clause (i) shall be  
13 maintained in such interest bearing account  
14 with such a financial institution as the Attorney  
15 General shall specify.

16 “(3) DISTRIBUTION OF FUNDS.—Amounts paid  
17 into the Trust Fund on behalf of a worker, and held  
18 pursuant to paragraph (2)(A)(i) and interest earned  
19 thereon, shall be paid by the Attorney General to the  
20 worker if—

21 “(A) the worker applies to the Attorney  
22 General (or the designee of the Attorney Gen-  
23 eral) for payment within 30 days of the expira-  
24 tion of the alien’s last authorized stay in the  
25 United States as a pilot program alien;

1           “(B) in such application the worker estab-  
2           lishes that the worker has complied with the  
3           terms and conditions of this section; and

4           “(C) in connection with the application,  
5           the worker tenders the identification and em-  
6           ployment authorization card issued to the work-  
7           er pursuant to subsection (i)(1)(F) and estab-  
8           lishes that the worker is identified as the per-  
9           son to whom the card was issued based on the  
10          biometric identification information contained  
11          on the card.

12          “(4)       ADMINISTRATIVE       EXPENSES.—The  
13          amounts paid into the Trust Fund and held pursu-  
14          ant to paragraph (2)(A)(ii), and interest earned  
15          thereon, shall be paid to the Attorney General, the  
16          Secretary of Labor, and the Secretary of State in  
17          amounts equivalent to the expenses incurred by such  
18          officials in the administration of section  
19          101(a)(15)(H)(ii)(c) and this section.

20          “(5)       REGULATIONS.—The Attorney General  
21          shall prescribe regulations to carry out this sub-  
22          section.

23          “(k) INVESTMENT OF TRUST FUND.—

24               “(1) IN GENERAL.—It shall be the duty of the  
25          Secretary of the Treasury to invest such portion of

1 the Trust Fund as is not, in the Secretary's judg-  
2 ment, required to meet current withdrawals. Such  
3 investments may be made only in interest-bearing  
4 obligations of the United States or in obligations  
5 guaranteed as to both principal and interest by the  
6 United States. For such purpose, such obligations  
7 may be acquired—

8 “(A) on original issue at the price; or

9 “(B) by purchase of outstanding obliga-  
10 tions at the market price.

11 The purposes for which obligations of the United  
12 States may be issued under chapter 31 of title 31,  
13 United States Code, are hereby extended to author-  
14 ize the issuance at par of special obligations exclu-  
15 sively to the Trust Fund. Such special obligations  
16 shall bear interest at a rate equal to the average  
17 rate of interest, computed as to the end of the cal-  
18 endar month next preceding the date of such issue,  
19 borne by all marketable interest-bearing obligations  
20 of the United States then forming a part of the pub-  
21 lic debt, except that where such average rate is not  
22 a multiple of one-eighth of 1 percent next lower than  
23 such average rate. Such special obligations shall be  
24 issued only if the Secretary of the Treasury deter-  
25 mines that the purchase of other interest-bearing ob-

1       ligations of the United States, or of obligations  
2       guaranteed as to both principal and interest by the  
3       United States on original issue or at the market  
4       price, is not in the public interest.

5               “(2) SALE OF OBLIGATION.—Any obligation ac-  
6       quired by the Trust Fund (except special obligations  
7       issued exclusively to the Trust Fund) may be sold by  
8       the Secretary of the Treasury at the market price,  
9       and such special obligations may be redeemed at par  
10      plus accrued interest.

11              “(3) CREDITS TO TRUST FUND.—The interest  
12      on, and the proceeds from the sale or redemption of,  
13      any obligations held in the Trust Fund shall be  
14      credited to and form a part of the Trust Fund.

15              “(4) REPORT TO CONGRESS.—It shall be the  
16      duty of the Secretary of the Treasury to hold the  
17      Trust Fund, and (after consultation with the Attor-  
18      ney General) to report to the Congress each year on  
19      the financial condition and the results of the oper-  
20      ations of the Trust Fund during the preceding fiscal  
21      year and on its expected condition and operations  
22      during the next fiscal year. Such report shall be  
23      printed as both a House and a Senate document of  
24      the session of the Congress to which the report is  
25      made.

1 “(1) MISCELLANEOUS PROVISIONS.—

2 “(1) APPLICABILITY OF LABOR LAWS.—Except  
3 as provided in paragraphs (2), (3), and (4), all Fed-  
4 eral, State, and local labor laws (including laws af-  
5 fecting migrant farm workers) applicable to United  
6 States workers shall also apply to pilot program  
7 aliens.

8 “(2) LIMITATION OF WRITTEN DISCLOSURE IM-  
9 POSED UPON RECRUITERS.—Any disclosure required  
10 of recruiters under section of 201(a) of the Migrant  
11 and Seasonal Agricultural Worker Protection Act  
12 (29 U.S.C. 1821(a)) need not be given to pilot pro-  
13 gram aliens prior to the time their visa is issued per-  
14 mitting entry into the United States.

15 “(3) EXEMPTION FROM FICA AND FUTA  
16 TAXES.—The wages paid to pilot program aliens  
17 shall be excluded from wages subject to taxation  
18 under the Federal Unemployment Tax Act and  
19 under the Federal Insurance Contributions Act.

20 “(4) INELIGIBILITY FOR CERTAIN PUBLIC BEN-  
21 EFITS PROGRAMS.—

22 “(A) IN GENERAL.—Notwithstanding any  
23 other provision of law and except as provided in  
24 subparagraph (B), any alien provided status as  
25 a pilot program alien shall not be eligible for

1 any Federal or State or local means-tested pub-  
2 lic benefit program.

3 “(B) EXCEPTIONS.—Subparagraph (A)  
4 shall not apply to the following:

5 “(i) EMERGENCY MEDICAL SERV-  
6 ICES.—The provision of emergency medical  
7 services (as defined by the Attorney Gen-  
8 eral in consultation with the Secretary of  
9 Health and Human Services).

10 “(ii) PUBLIC HEALTH IMMUNIZA-  
11 TIONS.—Public health assistance for im-  
12 munizations with respect to immunizable  
13 diseases and for testing and treatment for  
14 communicable diseases.

15 “(iii) SHORT-TERM EMERGENCY DIS-  
16 ASTER RELIEF.—The provision of non-  
17 cash, in-kind, short-term emergency disas-  
18 ter relief.

19 “(m) REGULATIONS.—

20 “(1) SELECTION OF AREAS.—The Secretary of  
21 Agriculture shall select the areas under subsection  
22 (a)(4) not later than 60 days after the date of the  
23 enactment of the Temporary Agricultural Worker  
24 Act of 1997.



1           “(2) REGULATIONS OF THE SECRETARY.—The  
2 Secretary shall consult with the Secretary of Agri-  
3 culture, and the Attorney General shall approve, all  
4 regulations dealing with the approval of labor condi-  
5 tion attestations for pilot program aliens and en-  
6 forcement of the requirements for employing pilot  
7 program aliens under an approved attestation. The  
8 Secretary shall promulgate, and the Attorney Gen-  
9 eral shall approve, such regulations not later than  
10 90 days after the date of the enactment of the Tem-  
11 porary Agricultural Worker Act of 1997.

12           “(3) REGULATIONS OF THE ATTORNEY GEN-  
13 ERAL.—The Attorney General shall consult with the  
14 Secretary of Agriculture on all regulations dealing  
15 with the approval of petitions for admission or ex-  
16 tension of stay of pilot program aliens and the re-  
17 quirements for employing pilot program aliens and  
18 the enforcement of such requirements. The Attorney  
19 General shall promulgate such regulations not later  
20 than 90 days after the date of the enactment of the  
21 Temporary Agricultural Worker Act of 1997.

22           “(n) DEFINITIONS.—For the purpose of this section:

23           “(1) AGRICULTURAL ASSOCIATION.—The term  
24 ‘agricultural association’ means any nonprofit or co-  
25 operative association of farmers, growers, or ranch-

1       ers incorporated or qualified under applicable State  
2       law, which recruits, solicits, hires, employs, fur-  
3       nishes, or transports any agricultural workers.

4               “(2) AGRICULTURAL EMPLOYMENT.—The term  
5       ‘agricultural employment’ means any service or ac-  
6       tivity included within the provisions of section 3(f)  
7       of the Fair Labor Standards Act of 1938 (29 U.S.C.  
8       203(f)) or section 3121(g) of the Internal Revenue  
9       Code of 1986 and the handling, planting, drying,  
10      packing, packaging, processing, freezing, or grading  
11      prior to delivery for storage of any agricultural or  
12      horticultural commodity in its unmanufactured  
13      state.

14              “(3) EMPLOYER.—The term ‘employer’ means  
15      any person or entity, including any independent con-  
16      tractor and any agricultural association, that em-  
17      ploys workers.

18              “(4) PILOT PROGRAM ALIEN.—The term ‘pilot  
19      program alien’ means an alien admitted to the Unit-  
20      ed States or provided status as a nonimmigrant  
21      under section 101(a)(15)(H)(ii)(c).

22              “(5) SECRETARY.—The term ‘Secretary’ means  
23      the Secretary of Labor.

24              “(6) UNITED STATES WORKER.—The term  
25      ‘United States worker’ means any worker, whether

1 a United States citizen, a United States national, or  
2 an alien, who is legally permitted to work in the job  
3 opportunity within the United States other than an  
4 alien admitted pursuant to this section.”.

5 (b) CLERICAL AMENDMENT.—The table of contents  
6 of the Immigration and Nationality Act is amended by in-  
7 serting after the item relating to section 218 the following  
8 new item:

“Sec. 218A. Alternative agricultural worker program.”.

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