To ensure that the provision of foreign assistance does not contribute to human trafficking and to combat human trafficking by requiring greater transparency in the recruitment of foreign workers.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 28, 2013

Mr. ROYCE introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committees on Foreign Affairs and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

A BILL

To ensure that the provision of foreign assistance does not contribute to human trafficking and to combat human trafficking by requiring greater transparency in the recruitment of foreign workers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Fraudulent Overseas Recruitment and Trafficking Elimination Act of 2013”.

SECTION 2. DEFINITIONS.

As used in this Act, the following definitions apply:
(1) FOREIGN LABOR CONTRACTING ACTIVITY.—

The term “foreign labor contracting activity” means recruiting, soliciting, or related activities with respect to an individual who resides outside of the United States in furtherance of employment in the United States, including when such activity occurs wholly outside of the United States.

(2) FOREIGN LABOR CONTRACTOR.—The term “foreign labor contractor” means any person who performs foreign labor contracting activity, including any person who performs foreign labor contracting activity wholly outside of the United States, except that the term does not include any entity of the United States Government.

(3) PERSON.—The term “person” means any natural person or any corporation, company, firm, partnership, joint stock company or association or other organization or entity (whether organized under law or not), including municipal corporations.

(4) SECRETARY.—Except as otherwise specified, the term “Secretary” means the Secretary of Labor.

(5) WORKER.—The term “worker” means an individual who is the subject of foreign labor contracting activity and does not include an exchange
visitor (as defined in section 62.2 of title 22, Code of Federal Regulations, or any similar successor regulation).

SEC. 3. ENSURING THAT FOREIGN ASSISTANCE DOES NOT CONTRIBUTE TO HUMAN TRAFFICKING.

Section 106 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7104) is amended—

(1) by redesignating subsections (i) and (j) as subsections (j) and (k), respectively; and

(2) by inserting after subsection (h) the following:

“(i) PREVENTION OF TRAFFICKING IN CONJUNCTION WITH FOREIGN ASSISTANCE.—The United States Agency for International Development and the Department of State shall make reasonable efforts to incorporate anti-trafficking and anti-slavery priorities into other aspects of foreign assistance, including the maintenance of systems, such as appropriate supply chain monitoring, to ensure that assistance programs do not contribute to vulnerability to, or the prevalence of, human trafficking and slavery, consistent with this Act.”.

SEC. 4. TRANSPARENCY IN FOREIGN RECRUITING.

(a) REQUIREMENT FOR DISCLOSURE.—Any foreign labor contractor shall ascertain and disclose to each worker in writing in English and in the primary language of
the worker at the time of the worker’s recruitment, the following information:

(1) The identity and address of the employer and the identity and address of the person conducting the recruiting on behalf of the employer, including any subcontractor or agent involved in such recruiting.

(2) All assurances and terms and conditions of employment, from the prospective employer for whom the worker is being recruited, including the work hours, level of compensation to be paid, the place and period of employment, a description of the type and nature of employment activities, and any penalties for terminating employment.

(3) An itemized list of any costs or expenses to be charged to the worker and any deductions to be taken from wages, including any costs for housing or accommodation, transportation to and from the worksite, meals, health insurance, workers’ compensation, costs of benefits provided, medical examinations, health care, tools, or safety equipment costs.

(4) A signed copy of the work contract between the worker and the employer.
(5) The type of visa under which the foreign worker is to be employed, the length of time for which the visa will be valid, the terms and conditions under which the visa may be renewed, and a clear statement of any expenses associated with securing or renewing the visa.

(6) Whether and the extent to which workers will be compensated through workers’ compensation, private insurance, or otherwise for injuries or death, including work-related injuries and death, during the period of employment and, if so, the name of the State workers’ compensation insurance carrier or the name of the policyholder of the private insurance, the name and the telephone number of each person who must be notified of an injury or death, and the time period within which such notice must be given.

(7) A statement, in a form specified by the Secretary—

(A) stating that—

(i) no foreign labor contractor, agent, or employee of a foreign labor contractor, may lawfully assess any fee (including visa fees, processing fees, transportation fees, legal expenses, placement fees, and other
costs) to a worker for any foreign labor contracting activity; and

(ii) the employer may bear such costs or fees for the foreign labor contractor, but that these fees cannot be passed along to the worker;

(B) explaining that—

(i) no additional significant requirements or changes may be made to the original contract signed by the worker without at least 24 hours to consider such changes and the specific consent of the worker, obtained voluntarily and without threat of penalty; and

(ii) any significant changes made to the original contract that do not comply with clause (i) shall be a violation of this Act and be subject to the provisions of section 10 of this Act; and

(C) describing the protections afforded the worker by this section and by section 202 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (8 U.S.C. 1375b) and any applicable visa program, including—
(i) relevant information about the procedure for filing a complaint provided for in section 10; and

(ii) the telephone number for the national human trafficking resource center hotline number.

(8) Any education or training to be provided or required, including—

(A) the nature, timing, and cost of such training;

(B) the person who will pay such costs;

(C) whether the training is a condition of employment, continued employment, or future employment; and

(D) whether the worker will be paid or remunerated during the training period, including the rate of pay.

(b) Relationship to Labor and Employment Laws.—Nothing in the disclosure required by subsection (a) shall constitute a legal conclusion as to the worker’s status or rights under any labor or employment law.

(c) Prohibition on False and Misleading Information.—No foreign labor contractor or employer who engages in any foreign labor contracting activity shall knowingly provide materially false or misleading informa-
tion to any worker concerning any matter required to be
disclosed under subsection (a). The disclosure required by
this section is a document concerning the proper adminis-
tration of a matter within the jurisdiction of a department
or agency of the United States for the purposes of section
1519 of title 18, United States Code.

SEC. 5. RECRUITMENT FEES.

No employer, foreign labor contractor, or agent or
employee of a foreign labor contractor, shall assess any
fee (including visa fees, processing fees, transportation
fees, legal expenses, placement fees, and other costs) to
a worker for any foreign labor contracting activity.

SEC. 6. REGISTRATION.

(a) REQUIREMENT TO REGISTER.—

(1) IN GENERAL.—Subject to paragraph (2),
prior to engaging in any foreign labor contracting
activity, any person who is a foreign labor contractor
or who, for any money or other valuable consider-
ation paid or promised to be paid, performs a for-

eign labor contracting activity on behalf of a foreign

labor contractor, shall obtain a certificate of reg-

istration from the Secretary of Labor pursuant to

regulations promulgated by the Secretary under sub-

section (c).
(2) Exception for certain employers.—An employer, or employee of an employer, who engages in foreign labor contracting activity solely to find workers for that employer’s own use, and without the participation of any other foreign labor contractor, shall not be required to register under this section.

(b) Notification.—

(1) Annual employer notification.—Each employer shall notify the Secretary, not less frequently than once every year, of the identity of any foreign labor contractor involved in any foreign labor contracting activity for, or on behalf of, the employer, including at a minimum, the name and address of the foreign labor contractor, a description of the services for which the foreign labor contractor is being used, whether the foreign labor contractor is to receive any economic compensation for the services, and, if so, the identity of the person or entity who is paying for the services.

(2) Annual foreign labor contractor notification.—Each foreign labor contractor shall notify the Secretary, not less frequently than once every year, of the identity of any subcontractor, agent, or foreign labor contractor employee involved
in any foreign labor contracting activity for, or on behalf of, the foreign labor contractor.

(3) **Noncompliance Notification.**—An employer shall notify the Secretary of the identity of a foreign labor contractor whose activities do not comply with this Act.

(4) **Agreement.**—Not later than 7 days after receiving a request from the Secretary, an employer shall provide the Secretary with the identity of any foreign labor contractor with which the employer has a contract or other agreement.

(c) **Regulations.**—Not later than 180 days after the date of enactment of this Act, the Secretary shall promulgate regulations to establish an efficient electronic process for the timely investigation and approval of an application for a certificate of registration of foreign labor contractors, including—

(1) a declaration, subscribed and sworn to by the applicant, stating the applicant’s permanent place of residence, the foreign labor contracting activities for which the certificate is requested, and such other relevant information as the Secretary may require;

(2) a set of fingerprints of the applicant;
(3) an expeditious means to update registrations and renew certificates;

(4) providing for the consent of any foreign labor contractor to the designation by a court of the Secretary as an agent available to accept service of summons in any action against the applicant, if the applicant has left the jurisdiction in which the action is commenced, otherwise has become unavailable to accept service, or is subject to personal jurisdiction in no State;

(5) providing for the consent of any foreign labor contractor to jurisdiction in any Federal or State court in the United States for any action brought by any aggrieved individual or worker;

(6) providing for cooperation in any investigation by the Secretary or other appropriate authorities;

(7) providing for consent to the forfeiture of any bond for failure to cooperate with these provisions;

(8) providing for consent to be liable for violations of this Act by any agents or subcontractors of any level in relation to the foreign labor contracting activity of the agent or subcontractor to the same
extent as if the foreign labor contractor had com-
mited the violation; and

(9) providing for consultation with other appro-
priate Federal agencies to determine whether any
reason exists to deny registration to a foreign labor
contractor.

(d) TERM OF REGISTRATION.—Unless suspended or
revoked, a certificate under this section shall be valid for
2 years.

(e) APPLICATION FEE.—

(1) REQUIREMENT FOR FEE.—In addition to
any other fees authorized by law, the Secretary shall
impose a fee, to be deposited in the general fund of
the Treasury, on a foreign labor contractor that sub-
mits an application for a certificate of registration
under this section.

(2) AMOUNT OF FEE.—The amount of the fee
required by paragraph (1) shall be set at a level that
the Secretary determines sufficient to cover the full
costs of carrying out foreign labor contract registra-
tion activities under this Act, including worker edu-
cation and any additional costs associated with the
administration of the fees collected.

(f) REFUSAL TO ISSUE; REVOCATION.—In accord-
ance with regulations promulgated by the Secretary, the
Secretary shall refuse to issue or renew, or shall revoke and debar from eligibility to obtain a certificate of registration for a period of not greater than 5 years, after notice and an opportunity for a hearing, a certificate of registration under this section if—

(1) the applicant for, or holder of, the certification has knowingly made a material misrepresentation in the application for such certificate;

(2) the applicant for, or holder of, the certification is not the real party in interest in the application or certificate of registration and the real party in interest—

(A) is a person who has been refused issuance or renewal of a certificate;

(B) has had a certificate revoked; or

(C) does not qualify for a certificate under this section;

(3) the applicant for, or holder of, the certification has been convicted within the preceding 5 years of—

(A) any felony under State or Federal law or crime involving robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts
grievous bodily injury, prostitution, peonage, or
smuggling or harboring individuals who have
entered the United States illegally; or

(B) any crime relating to gambling, or to
the sale, distribution or possession of alcoholic
beverages, in connection with or incident to any
labor contracting activities; or

(4) the applicant for, or holder of, the certifi-
cation has materially failed to comply with this sec-
tion.

(g) RE-REGISTRATION OF VIOLATORS.—The Sec-
retary shall establish a procedure by which a foreign labor
contractor that has had its registration revoked under sub-
section (f) may seek to re-register under this subsection
by demonstrating to the Secretary’s satisfaction that the
foreign labor contractor has not violated this Act in the
previous 5 years and that the foreign labor contractor has
taken sufficient steps to prevent future violations of this
Act.

(h) BONDING REQUIREMENT.—The Secretary is au-
thorized to require a foreign labor contractor to post a
bond in an amount sufficient to ensure the protection of
workers recruited by the foreign labor contractor, and to
establish, by regulation, the conditions under which the
bond amount is determined, paid, and forfeited. Any bond
requirements or the forfeiture of any bond under this subsection are in addition to other remedies under this Act or any other law.

SEC. 7. MAINTENANCE AND POSTING OF LISTS.

(a) IN GENERAL.—The Secretary shall maintain—

(1) a list of all foreign labor contractors registered under this subsection, including—

(A) the countries from which the contractors recruit;

(B) the employers for whom the contractors recruit;

(C) the visa categories and occupations for which the contractors recruit; and

(D) the States where recruited workers are employed; and

(2) a list of all foreign labor contractors whose certificate of registration the Secretary has revoked.

(b) UPDATES AND AVAILABILITY.—The Secretary shall—

(1) update the lists required by subsection (a) on an ongoing basis, not less frequently than every 6 months;

(2) make such lists publicly available, including through continuous publication on Internet websites; and
(3) provide such lists to the Secretary of State, who shall make such lists available in written format, and on the websites of, each United States diplomatic mission in the official language of the host country.

SEC. 8. OBLIGATIONS OF UNITED STATES CONSULAR OFFICERS.

Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is amended by adding at the end the following:

“(s) A visa shall not be issued under the subparagraph (A)(iii), (B)(i) (but only for domestic servants described in clause (i) or (ii) of section 274a.12(c)(17) of title 8, Code of Federal Regulations (as in effect on December 4, 2007)), (G)(v), (H), (J), (L), (Q), or (R) of section 101(a)(15) until the consular officer—

“(1) has provided to and reviewed with the applicant, in the applicant’s language (or a language the applicant understands), a copy of the information and resources pamphlet required by section 202 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (8 U.S.C. 1375b); and

“(2) has reviewed and made a part of the visa file the foreign labor recruiter disclosures required
by section 4 of the Fraudulent Overseas Recruitment and Trafficking Elimination Act of 2013, as well as a notation of whether the foreign labor recruiter is registered pursuant section 6 of that Act.”.

SEC. 9. RESPONSIBILITIES OF THE SECRETARY OF STATE.

(a) Overseas Availability of Foreign Labor Contractor Lists.—The Secretary of State shall make the lists required by section 7(a) publicly available in written form at, and on the websites of, each United States diplomatic and consular post in the official language of the host country.

(b) Designation of Personnel To Receive Complaints Overseas.—The Secretary of State shall—

(1) designate personnel at each such post who are responsible for receiving information regarding alleged violations of this Act by foreign labor contractors, and for conveying such information to the Secretary of Labor for potential use in a complaint or investigation pursuant to section 10; and

(2) make publicly available on the website of each such post, in the official language of the host country, information on how to contact the personnel designated at that mission pursuant to paragraph (1).
SEC. 10. ENFORCEMENT PROVISIONS.

(a) Complaints and Investigations.—The Secretary—

1. (1) shall establish a process for the receipt, investigation, and disposition of complaints filed by any person regarding the compliance of any employer or foreign labor contractor with this Act; and

2. (2) either pursuant to the process required by paragraph (1) or otherwise, may investigate employers or foreign labor contractors, including actions occurring in a foreign country, as necessary to determine compliance with this Act.

(b) Enforcement.—

1. (1) In general.—A worker who believes that he or she has suffered harm from a violation of section 4 or 5 may seek relief from an employer or foreign labor contractor by—

2. (A) filing a complaint with the Secretary within 3 years after the date on which the violation occurred or date on which the worker became aware of the violation; or

3. (B) if the Secretary has not issued a final decision within 120 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, bringing an action at law or equity for de novo
review in the appropriate district court of the
United States, which shall have jurisdiction
over such an action without regard to the
amount in controversy.

(2) Procedure.—

(A) In general.—Unless otherwise pro-
vided herein, a complaint under paragraph
(1)(A) shall be governed under the rules and
procedures set forth in paragraphs (1) and
(2)(A) of section 42121(b) of title 49, United
States Code.

(B) Exception.—Notification of a com-
plaint under paragraph (1)(A) shall be made to
each person or entity named in the complaint
as a defendant and to the employer.

(C) Statute of limitations.—An action
filed in a district court of the United States
under paragraph (1)(B) shall be commenced
not later than 180 days after the last day of the
120-day period referred to in that paragraph.

(D) Jury trial.—A party to an action
brought under paragraph (1)(B) shall be enti-
tled to trial by jury.

(c) Administrative Enforcement.—
(1) IN GENERAL.—If the Secretary finds, after notice and an opportunity for a hearing, that any foreign labor contractor or employer failed to comply with any of the requirements of this Act, the Secretary may impose the following against such contractor or employer—

(A) a fine in an amount not more than $10,000 per violation; and

(B) upon the occasion of a third violation or a failure to comply with representations, a fine of not more than $25,000 per violation.

(d) AUTHORITY TO ENSURE COMPLIANCE.—The Secretary is authorized to take other such actions, including issuing subpoenas and seeking appropriate injunctive relief and recovery of damages, as may be necessary to assure compliance with the terms and conditions of this Act.

(e) BONDING.—Pursuant to any bond required pursuant to section 6(h), bond liquidation and forfeitures shall be in addition to other remedies under this section or any other law.

(f) CIVIL ACTION.—

(1) IN GENERAL.—The Secretary or any person aggrieved by a violation of this Act may bring a civil action against any foreign labor contractor that does
not meet the requirements under subsection (g)(2) in any court of competent jurisdiction—
(A) to seek remedial action, including injunctive relief;
(B) to recover damages on behalf of any worker harmed by a violation of section 4 or 5; and
(C) to ensure compliance with requirements of this section.

(2) ACTIONS BY THE SECRETARY.—
(A) Sums recovered.—Any sums recovered by the Secretary on behalf of a worker under paragraph (1) or through liquidation of any bond held pursuant to section 6(h) shall be held in a special deposit account and shall be paid, on order of the Secretary, directly to each worker affected. Any such sums not paid to a worker because of inability to do so within a period of 5 years shall be credited as an offsetting collection to the appropriations account of the Secretary for expenses for the administration of this section and shall remain available to the Secretary until expended or may be used for enforcement of the laws within the jurisdiction of the wage and hour division or may be trans-
ferred to the Secretary of Health and Human Services for the purpose of providing support to programs that provide assistance to victims of trafficking in persons or other exploited persons. The Secretary shall work with any attorney or organization representing workers to locate workers owed sums under this section.

(B) REPRESENTATION.—Except as provided in section 518(a) of title 28, United States Code, the Attorney General may appear for and represent the Secretary in any civil litigation brought under this paragraph. All such litigation shall be subject to the direction and control of the Attorney General.

(3) ACTIONS BY INDIVIDUALS.—

(A) AWARD.—If the court finds in a civil action filed by an individual under this section that the defendant has violated any provision of this Act (or any regulation issued pursuant to this Act), the court may award—

(i) damages, up to and including an amount equal to the amount of actual damages, and statutory damages of up to $1,000 per plaintiff per violation, or other
equitable relief, except that with respect to statutory damages—

(I) multiple infractions of a single provision of this Act (or of a regulation under this Act) shall constitute only 1 violation for purposes of section 3(a) to determine the amount of statutory damages due a plaintiff; and

(II) if such complaint is certified as a class action the court may award—

(aa) damages up to an amount equal to the amount of actual damages; and

(bb) statutory damages of not more than the lesser of up to $1,000 per class member per violation, or up to $500,000; and other equitable relief;

(ii) reasonable attorneys’ fees and costs; and

(iii) such other and further relief, including declaratory and injunctive relief, as necessary to effectuate the purposes of this Act.
(B) Criteria.—In determining the amount of statutory damages to be awarded under subparagraph (A), the court is authorized to consider whether an attempt was made to resolve the issues in dispute before the resort to litigation.

(C) Bond.—To satisfy the damages, fees, and costs found owing under this subparagraph, the Secretary shall release as much of any bond held pursuant to section 6(h) as necessary.

(D) Appeal.—Any civil action brought under this section shall be subject to appeal as provided in chapter 83 of title 28, United States Code (28 U.S.C. 1291 et seq.).

(E) Access to Legal Services Corporation.—Notwithstanding any other provision of law, the Legal Services Corporation and recipients of its funding may provide legal assistance on behalf of any alien with respect to any provision of this Act.

(g) Agency Liability.—

(1) In General.—Beginning 180 days after the Secretary has promulgated regulations pursuant to section 6(c), an employer who retains the services of a foreign labor contractor shall only use those for-
eign labor contractors who are registered under sec-

(2) Safe Harbor.—An employer shall not have any liability under this section if—

(A) each worker claiming harm for any violation of this Act was referred to the em-
ployer by a foreign labor contractor that had a valid registration with the Secretary pursuant to section 6 at the time of referral; and

(B) prior to the initiation of any complaint or investigation under subsection (a), the em-
ployer did not fail to notify the Secretary of any violation of this Act by a foreign labor con-
tractor of which the employer had actual knowl-
edge.

(3) Liability for Agents.—Foreign labor contractors shall be subject to the provisions of this section for violations committed by the foreign labor contractor’s agents or subcontractors of any level in relation to their foreign labor contracting activity to the same extent as if the foreign labor contractor had committed the violation.

(h) Retaliation.—

(1) In General.—No person shall intimidate, threaten, restrain, coerce, discharge, or in any other
manner discriminate or retaliate against any worker or their family members (including a former employee or an applicant for employment) because such worker disclosed information to any person that the worker reasonably believes evidences a violation of this section (or any rule or regulation pertaining to this section), including seeking legal assistance of counsel or cooperating with an investigation or other proceeding concerning compliance with this section (or any rule or regulation pertaining to this section).

(2) ENFORCEMENT.—An individual who is subject to any conduct described in paragraph (1) may, in a civil action, recover appropriate relief, including reasonable attorneys’ fees and costs, with respect to that violation. Any civil action under this subparagraph shall be stayed during the pendency of any criminal action arising out of the violation.

(i) WAIVER OF RIGHTS.—Agreements by workers purporting to waive or to modify their rights under this Act shall be void as contrary to public policy.

(j) PRESENCE DURING PENDENCY OF ACTIONS.—

(1) IN GENERAL.—If other immigration relief is not available, the Attorney General and the Secretary shall grant advance parole to permit a non-immigrant to remain legally in the United States for
time sufficient to fully and effectively participate in all legal proceedings related to any action taken pursuant to this section.

(2) REGULATIONS.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall promulgate regulations to carry out paragraph (1).

SEC. 11. RULE OF CONSTRUCTION.

Nothing in this Act shall be construed to preempt or alter any other rights or remedies, including any causes of action, available under any other Federal or State law.

SEC. 12. REGULATIONS.

The Secretary is authorized to prescribe regulations to implement this Act and to develop policies and procedures to enforce the provisions of this Act.