

FARM WORKFORCE MODERNIZATION ACT OF 2019

DECEMBER 9, 2019.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. NADLER, from the Committee on the Judiciary,  
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 5038]

The Committee on the Judiciary, to whom was referred the bill (H.R. 5038) to amend the Immigration and Nationality Act to provide for terms and conditions for nonimmigrant workers performing agricultural labor or services, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

Purpose and Summary .....	Page 56
Background and Need for the Legislation .....	57
Hearings .....	65
Committee Consideration .....	65
Committee Votes .....	66
Committee Oversight Findings .....	78
New Budget Authority and Tax Expenditures and Congressional Budget Office Cost Estimate .....	78
Duplication of Federal Programs .....	78
Performance Goals and Objectives .....	78
Advisory on Earmarks .....	78
Section-by-Section Analysis .....	79
Changes in Existing Law Made by the Bill, as Reported .....	105
Dissenting Views .....	256

The amendment is as follows:  
Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) **SHORT TITLE.**—This Act may be cited as the “Farm Workforce Modernization Act of 2019”.

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

Sec. 1. Short title; table of contents.

**TITLE I—SECURING THE DOMESTIC AGRICULTURAL WORKFORCE**

**Subtitle A—Temporary Status for Certified Agricultural Workers**

Sec. 101. Certified agricultural worker status.  
 Sec. 102. Terms and conditions of certified status.  
 Sec. 103. Extensions of certified status.  
 Sec. 104. Determination of continuous presence.  
 Sec. 105. Employer obligations.  
 Sec. 106. Administrative and judicial review.

**Subtitle B—Optional Earned Residence for Long-term Workers**

Sec. 111. Optional adjustment of status for long-term agricultural workers.  
 Sec. 112. Payment of taxes.  
 Sec. 113. Adjudication and decision; review.

**Subtitle C—General Provisions**

Sec. 121. Definitions.  
 Sec. 122. Rulemaking; Fees.  
 Sec. 123. Background checks.  
 Sec. 124. Protection for children.  
 Sec. 125. Limitation on removal.  
 Sec. 126. Documentation of agricultural work history.  
 Sec. 127. Employer protections.  
 Sec. 128. Correction of social security records.  
 Sec. 129. Disclosures and privacy.  
 Sec. 130. Penalties for false statements in applications.  
 Sec. 131. Dissemination of information.  
 Sec. 132. Exemption from numerical limitations.  
 Sec. 133. Reports to Congress.  
 Sec. 134. Grant program to assist eligible applicants.  
 Sec. 135. Authorization of appropriations.

**TITLE II—ENSURING AN AGRICULTURAL WORKFORCE FOR THE FUTURE**

**Subtitle A—Reforming the H-2A Temporary Worker Program**

Sec. 201. Comprehensive and streamlined electronic h-2a platform.  
 Sec. 202. H-2a program requirements.  
 Sec. 203. Agency roles and responsibilities.  
 Sec. 204. Worker protection and compliance.  
 Sec. 205. Report on wage protections.  
 Sec. 206. Portable h-2a visa pilot program.  
 Sec. 207. Improving access to permanent residence.

**Subtitle B—Preservation and Construction of Farmworker Housing**

Sec. 220. Short title.  
 Sec. 221. Permanent establishment of housing preservation and revitalization program.  
 Sec. 222. Eligibility for rural housing vouchers.  
 Sec. 223. Amount of voucher assistance.  
 Sec. 224. Rental assistance contract authority.  
 Sec. 225. Funding for multifamily technical improvements.  
 Sec. 226. Plan for preserving affordability of rental projects.  
 Sec. 227. Covered housing programs.  
 Sec. 228. New farmworker housing.  
 Sec. 229. Loan and grant limitations.  
 Sec. 230. Operating assistance subsidies.  
 Sec. 231. Eligibility of certified workers.

**Subtitle C—Foreign Labor Recruiter Accountability**

Sec. 251. Registration of foreign labor recruiters.  
 Sec. 252. Enforcement.  
 Sec. 253. Appropriations.  
 Sec. 254. Definitions.

**TITLE III—ELECTRONIC VERIFICATION OF EMPLOYMENT ELIGIBILITY**

Sec. 301. Electronic employment eligibility verification system.  
 Sec. 302. Mandatory electronic verification for the agricultural industry.  
 Sec. 303. Coordination with E-Verify Program.  
 Sec. 304. Fraud and misuse of documents.  
 Sec. 305. Technical and conforming amendments.  
 Sec. 306. Protection of Social Security Administration programs.  
 Sec. 307. Report on the implementation of the electronic employment verification system.  
 Sec. 308. Modernizing and streamlining the employment eligibility verification process.  
 Sec. 309. Rulemaking and Paperwork Reduction Act.

## TITLE I—SECURING THE DOMESTIC AGRICULTURAL WORKFORCE

### Subtitle A—Temporary Status for Certified Agricultural Workers

#### SEC. 101. CERTIFIED AGRICULTURAL WORKER STATUS.

##### (a) REQUIREMENTS FOR CERTIFIED AGRICULTURAL WORKER STATUS.—

(1) **PRINCIPAL ALIENS.**—The Secretary may grant certified agricultural worker status to an alien who submits a completed application, including the required processing fees, before the end of the period set forth in subsection (c) and who—

(A) performed agricultural labor or services in the United States for at least 1,035 hours (or 180 work days) during the 2-year period preceding the date of the introduction of this Act;

(B) is inadmissible or deportable from the United States on the date of the introduction of this Act;

(C) subject to section 104, has been continuously present in the United States since the date of the introduction of this Act and until the date on which the alien is granted certified agricultural worker status; and

(D) is not otherwise ineligible for certified agricultural worker status as provided in subsection (b).

(2) **DEPENDENT SPOUSE AND CHILDREN.**—The Secretary may grant certified agricultural dependent status to the spouse or child of an alien granted certified agricultural worker status under paragraph (1) if the spouse or child is not ineligible for certified agricultural dependent status as provided in subsection (b).

##### (b) GROUNDS FOR INELIGIBILITY.—

(1) **GROUNDS OF INADMISSIBILITY.**—Except as provided in paragraph (3), an alien is ineligible for certified agricultural worker or certified agricultural dependent status if the Secretary determines that the alien is inadmissible under section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)), except that in determining inadmissibility—

(A) paragraphs (4), (5), (7), and (9)(B) of such section shall not apply;

(B) subparagraphs (A), (C), (D), (F), and (G) of such section 212(a)(6) and paragraphs (9)(C) and (10)(B) of such section 212(a) shall not apply unless based on the act of unlawfully entering the United States after the date of introduction of this Act; and

(C) paragraphs (6)(B) and (9)(A) of such section 212(a) shall not apply unless the relevant conduct began on or after the date of filing of the application for certified agricultural worker status.

(2) **ADDITIONAL CRIMINAL BARS.**—Except as provided in paragraph (3), an alien is ineligible for certified agricultural worker or certified agricultural dependent status if the Secretary determines that, excluding any offense under State law for which an essential element is the alien's immigration status and any minor traffic offense, the alien has been convicted of—

(A) any felony offense;

(B) an aggravated felony (as defined in section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)) at the time of the conviction);

(C) two misdemeanor offenses involving moral turpitude, as described in section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)(A)(i)(I)), unless an offense is waived by the Secretary under paragraph (3)(B); or

(D) three or more misdemeanor offenses not occurring on the same date, and not arising out of the same act, omission, or scheme of misconduct.

(3) **WAIVERS FOR CERTAIN GROUNDS OF INADMISSIBILITY.**—For humanitarian purposes, family unity, or if otherwise in the public interest, the Secretary may waive the grounds of inadmissibility under—

(A) paragraph (1), (6)(E), or (10)(D) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)); or

(B) subparagraphs (A) and (D) of section 212(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)), unless inadmissibility is based on a conviction that would otherwise render the alien ineligible under subparagraph (A), (B), or (D) of paragraph (2).

##### (c) APPLICATION.—

(1) APPLICATION PERIOD.—Except as provided in paragraph (2), the Secretary shall accept initial applications for certified agricultural worker status during the 18-month period beginning on the date on which the interim final rule is published in the Federal Register pursuant to section 122(a).

(2) EXTENSION.—If the Secretary determines, during the initial period described in paragraph (1), that additional time is required to process initial applications for certified agricultural worker status or for other good cause, the Secretary may extend the period for accepting applications for up to an additional 12 months.

(3) SUBMISSION OF APPLICATIONS.—

(A) IN GENERAL.—An alien may file an application with the Secretary under this section with the assistance of an attorney or a nonprofit religious, charitable, social service, or similar organization recognized by the Board of Immigration Appeals under section 292.2 of title 8, Code of Federal Regulations. The Secretary shall also create a procedure for accepting applications filed by qualified designated entities with the consent of the applicant.

(B) FARM SERVICE AGENCY OFFICES.—The Secretary, in consultation with the Secretary of Agriculture, shall establish a process for the filing of applications under this section at Farm Service Agency offices throughout the United States.

(4) EVIDENCE OF APPLICATION FILING.—As soon as practicable after receiving an application for certified agricultural worker status, the Secretary shall provide the applicant with a document acknowledging the receipt of such application. Such document shall serve as interim proof of the alien's authorization to accept employment in the United States and shall be accepted by an employer as evidence of employment authorization under section 274A(b)(1)(C) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)(1)(C)), pending a final administrative decision on the application.

(5) EFFECT OF PENDING APPLICATION.—During the period beginning on the date on which an alien applies for certified agricultural worker status under this subtitle, and ending on the date on which the Secretary makes a final administrative decision regarding such application, the alien and any dependents included in the application—

(A) may apply for advance parole, which shall be granted upon demonstrating a legitimate need to travel outside the United States for a temporary purpose;

(B) may not be detained by the Secretary or removed from the United States unless the Secretary makes a prima facie determination that such alien is, or has become, ineligible for certified agricultural worker status;

(C) may not be considered unlawfully present under section 212(a)(9)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(9)(B)); and

(D) may not be considered an unauthorized alien (as defined in section 274A(h)(3) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(3))).

(6) WITHDRAWAL OF APPLICATION.—The Secretary shall, upon receipt of a request from the applicant to withdraw an application for certified agricultural worker status under this subtitle, cease processing of the application, and close the case. Withdrawal of the application shall not prejudice any future application filed by the applicant for any immigration benefit under this Act or under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(d) ADJUDICATION AND DECISION.—

(1) IN GENERAL.—Subject to section 123, the Secretary shall render a decision on an application for certified agricultural worker status not later than 180 days after the date the application is filed.

(2) NOTICE.—Prior to denying an application for certified agricultural worker status, the Secretary shall provide the alien with—

(A) written notice that describes the basis for ineligibility or the deficiencies in the evidence submitted; and

(B) at least 90 days to contest ineligibility or submit additional evidence.

(3) AMENDED APPLICATION.—An alien whose application for certified agricultural worker status is denied under this section may submit an amended application for such status to the Secretary if the amended application is submitted within the application period described in subsection (c) and contains all the required information and fees that were missing from the initial application.

(e) ALTERNATIVE H-2A STATUS.—An alien who has not met the required period of agricultural labor or services under subsection (a)(1)(A), but is otherwise eligible for certified agricultural worker status under such subsection, shall be eligible for classification as a nonimmigrant described in section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)) upon approval of a petition

submitted by a sponsoring employer, if the alien has performed at least 575 hours (or 100 work days) of agricultural labor or services during the 3-year period preceding the date of the introduction of this Act. The Secretary shall create a procedure to provide for such classification without requiring the alien to depart the United States and obtain a visa abroad.

**SEC. 102. TERMS AND CONDITIONS OF CERTIFIED STATUS.**

(a) **IN GENERAL.**—

(1) **APPROVAL.**—Upon approval of an application for certified agricultural worker status, or an extension of such status pursuant to section 103, the Secretary shall issue—

(A) documentary evidence of such status to the applicant; and

(B) documentary evidence of certified agricultural dependent status to any qualified dependent included on such application.

(2) **DOCUMENTARY EVIDENCE.**—In addition to any other features and information as the Secretary may prescribe, the documentary evidence described in paragraph (1)—

(A) shall be machine-readable and tamper-resistant;

(B) shall contain a digitized photograph;

(C) shall serve as a valid travel and entry document for purposes of applying for admission to the United States; and

(D) shall be accepted during the period of its validity by an employer as evidence of employment authorization and identity under section 274A(b)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)(1)(B)).

(3) **VALIDITY PERIOD.**—Certified agricultural worker and certified agricultural dependent status shall be valid for five and one-half years beginning on the date of approval.

(4) **TRAVEL AUTHORIZATION.**—An alien with certified agricultural worker or certified agricultural dependent status may—

(A) travel within and outside of the United States, including commuting to the United States from a residence in a foreign country; and

(B) be admitted to the United States upon return from travel abroad without first obtaining a visa if the alien is in possession of—

(i) valid, unexpired documentary evidence of certified agricultural worker or certified agricultural worker dependent status as described in subsection (a); or

(ii) a travel document that has been approved by the Secretary and was issued to the alien after the alien's original documentary evidence was lost, stolen, or destroyed.

(b) **ABILITY TO CHANGE STATUS.**—

(1) **CHANGE TO CERTIFIED AGRICULTURAL WORKER STATUS.**—Notwithstanding section 101(a), an alien with valid certified agricultural dependent status may apply to change to certified agricultural worker status, at any time, if the alien—

(A) submits a completed application, including the required processing fees; and

(B) is not ineligible for certified agricultural worker status under section 101(b).

(2) **CLARIFICATION.**—Nothing in this title prohibits an alien granted certified agricultural worker or certified agricultural dependent status from changing status to any other nonimmigrant classification for which the alien may be eligible.

(c) **PROHIBITION ON PUBLIC BENEFITS, TAX BENEFITS, AND HEALTH CARE SUBSIDIES.**—Aliens granted certified agricultural worker or certified agricultural dependent status shall be considered lawfully present in the United States for all purposes for the duration of their status, except that such aliens—

(1) shall be ineligible for Federal means-tested public benefits to the same extent as other individuals who are not qualified aliens under section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641);

(2) are not entitled to the premium assistance tax credit authorized under section 36B of the Internal Revenue Code of 1986 (26 U.S.C. 36B), and shall be subject to the rules applicable to individuals who are not lawfully present set forth in subsection (e) of such section;

(3) shall be subject to the rules applicable to individuals who are not lawfully present set forth in section 1402(e) of the Patient Protection and Affordable Care Act (42 U.S.C. 18071(e)); and

(4) shall be subject to the rules applicable to individuals not lawfully present set forth in section 5000A(d)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 5000A(d)(3)).

(d) REVOCATION OF STATUS.—

(1) IN GENERAL.—The Secretary may revoke certified agricultural worker or certified agricultural dependent status if, after providing notice to the alien and the opportunity to provide evidence to contest the proposed revocation, the Secretary determines that the alien no longer meets the eligibility requirements for such status under section 101(b).

(2) INVALIDATION OF DOCUMENTATION.—Upon the Secretary's final determination to revoke an alien's certified agricultural worker or certified agricultural dependent status, any documentation issued by the Secretary to such alien under subsection (a) shall automatically be rendered invalid for any purpose except for departure from the United States.

**SEC. 103. EXTENSIONS OF CERTIFIED STATUS.**

(a) REQUIREMENTS FOR EXTENSIONS OF STATUS.—

(1) PRINCIPAL ALIENS.—The Secretary may extend certified agricultural worker status for additional periods of five and one-half years to an alien who submits a completed application, including the required processing fees, within the 120-day period beginning 60 days before the expiration of the fifth year of the immediately preceding grant of certified agricultural worker status, if the alien—

(A) except as provided in subsection (b), has performed agricultural labor or services in the United States for at least 575 hours (or 100 work days) for each of the prior five years in which the alien held certified agricultural worker status; and

(B) has not become ineligible for certified agricultural worker status under section 101(b).

(2) DEPENDENT SPOUSE AND CHILDREN.—The Secretary may grant or extend certified agricultural dependent status to the spouse or child of an alien granted an extension of certified agricultural worker status under paragraph (1) if the spouse or child is not ineligible for certified agricultural dependent status under section 101(b).

(3) WAIVER FOR LATE FILINGS.—The Secretary may waive an alien's failure to timely file before the expiration of the 120-day period described in paragraph (1) if the alien demonstrates that the delay was due to extraordinary circumstances beyond the alien's control or for other good cause.

(b) STATUS FOR WORKERS WITH PENDING APPLICATIONS.—

(1) IN GENERAL.—Certified agricultural worker status of an alien who timely files an application to extend such status under subsection (a) (and the status of the alien's dependents) shall be automatically extended through the date on which the Secretary makes a final administrative decision regarding such application.

(2) DOCUMENTATION OF EMPLOYMENT AUTHORIZATION.—As soon as practicable after receipt of an application to extend certified agricultural worker status under subsection (a), the Secretary shall issue a document to the alien acknowledging the receipt of such application. An employer of the worker may not refuse to accept such document as evidence of employment authorization under section 274A(b)(1)(C) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)(1)(C)), pending a final administrative decision on the application.

(c) NOTICE.—Prior to denying an application to extend certified agricultural worker status, the Secretary shall provide the alien with—

(1) written notice that describes the basis for ineligibility or the deficiencies of the evidence submitted; and

(2) at least 90 days to contest ineligibility or submit additional evidence.

**SEC. 104. DETERMINATION OF CONTINUOUS PRESENCE.**

(a) EFFECT OF NOTICE TO APPEAR.—The continuous presence in the United States of an applicant for certified agricultural worker status under section 101 shall not terminate when the alien is served a notice to appear under section 239(a) of the Immigration and Nationality Act (8 U.S.C. 1229(a)).

(b) TREATMENT OF CERTAIN BREAKS IN PRESENCE.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), an alien shall be considered to have failed to maintain continuous presence in the United States under this subtitle if the alien departed the United States for any period exceeding 90 days, or for any periods, in the aggregate, exceeding 180 days.

(2) EXTENSIONS FOR EXTENUATING CIRCUMSTANCES.—The Secretary may extend the time periods described in paragraph (1) for an alien who demonstrates that the failure to timely return to the United States was due to extenuating

circumstances beyond the alien's control, including the serious illness of the alien, or death or serious illness of a spouse, parent, son or daughter, grandparent, or sibling of the alien.

(3) TRAVEL AUTHORIZED BY THE SECRETARY.—Any period of travel outside of the United States by an alien that was authorized by the Secretary shall not be counted toward any period of departure from the United States under paragraph (1).

#### **SEC. 105. EMPLOYER OBLIGATIONS.**

(a) RECORD OF EMPLOYMENT.—An employer of an alien in certified agricultural worker status shall provide such alien with a written record of employment each year during which the alien provides agricultural labor or services to such employer as a certified agricultural worker.

(b) CIVIL PENALTIES.—

(1) IN GENERAL.—If the Secretary determines, after notice and an opportunity for a hearing, that an employer of an alien with certified agricultural worker status has knowingly failed to provide the record of employment required under subsection (a), or has provided a false statement of material fact in such a record, the employer shall be subject to a civil penalty in an amount not to exceed \$500 per violation.

(2) LIMITATION.—The penalty under paragraph (1) for failure to provide employment records shall not apply unless the alien has provided the employer with evidence of employment authorization described in section 102 or 103.

(3) DEPOSIT OF CIVIL PENALTIES.—Civil penalties collected under this paragraph shall be deposited into the Immigration Examinations Fee Account under section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)).

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

(a) ADMINISTRATIVE REVIEW.—The Secretary shall establish a process by which an applicant may seek administrative review of a denial of an application for certified agricultural worker status under this subtitle, an application to extend such status, or a revocation of such status.

(b) ADMISSIBILITY IN IMMIGRATION COURT.—Each record of an alien's application for certified agricultural worker status under this subtitle, application to extend such status, revocation of such status, and each record created pursuant to the administrative review process under subsection (a) is admissible in immigration court, and shall be included in the administrative record.

(c) JUDICIAL REVIEW.—Notwithstanding any other provision of law, judicial review of the Secretary's decision to deny an application for certified agricultural worker status, an application to extend such status, or the decision to revoke such status, shall be limited to the review of an order of removal under section 242 of the Immigration and Nationality Act (8 U.S.C. 1252).

## **Subtitle B—Optional Earned Residence for Long-term Workers**

#### **SEC. 111. OPTIONAL ADJUSTMENT OF STATUS FOR LONG-TERM AGRICULTURAL WORKERS.**

(a) REQUIREMENTS FOR ADJUSTMENT OF STATUS.—

(1) PRINCIPAL ALIENS.—The Secretary may adjust the status of an alien from that of a certified agricultural worker to that of a lawful permanent resident if the alien submits a completed application, including the required processing and penalty fees, and the Secretary determines that—

(A) except as provided in section 126(c), the alien performed agricultural labor or services for not less than 575 hours (or 100 work days) each year—

(i) for at least 10 years prior to the date of the enactment of this Act and for at least 4 years in certified agricultural worker status; or

(ii) for fewer than 10 years prior to the date of the enactment of this Act and for at least 8 years in certified agricultural worker status; and

(B) the alien has not become ineligible for certified agricultural worker status under section 101(b).

(2) DEPENDENT ALIENS.—

(A) IN GENERAL.—The spouse and each child of an alien described in paragraph (1) whose status has been adjusted to that of a lawful permanent resident may be granted lawful permanent residence under this subtitle if—

(i) the qualifying relationship to the principal alien existed on the date on which such alien was granted adjustment of status under this subtitle; and

(ii) the spouse or child is not ineligible for certified agricultural worker dependent status under section 101(b).

(B) PROTECTIONS FOR SPOUSES AND CHILDREN.—The Secretary of Homeland Security shall establish procedures to allow the spouse or child of a certified agricultural worker to self-petition for lawful permanent residence under this subtitle in cases involving—

(i) the death of the certified agricultural worker, so long as the spouse or child submits a petition not later than 2 years after the date of the worker's death; or

(ii) the spouse or a child being battered or subjected to extreme cruelty by the certified agricultural worker.

(3) DOCUMENTATION OF WORK HISTORY.—An applicant for adjustment of status under this section shall not be required to resubmit evidence of work history that has been previously submitted to the Secretary in connection with an approved extension of certified agricultural worker status.

(b) PENALTY FEE.—In addition to any processing fee that the Secretary may assess in accordance with section 122(b), a principal alien seeking adjustment of status under this subtitle shall pay a \$1,000 penalty fee, which shall be deposited into the Immigration Examinations Fee Account pursuant to section 286(m) of the Immigration and Nationality Act (8 U.S.C.1356(m)).

(c) EFFECT OF PENDING APPLICATION.—During the period beginning on the date on which an alien applies for adjustment of status under this subtitle, and ending on the date on which the Secretary makes a final administrative decision regarding such application, the alien and any dependents included on the application—

(1) may apply for advance parole, which shall be granted upon demonstrating a legitimate need to travel outside the United States for a temporary purpose;

(2) may not be detained by the Secretary or removed from the United States unless the Secretary makes a prima facie determination that such alien is, or has become, ineligible for adjustment of status under subsection (a);

(3) may not be considered unlawfully present under section 212(a)(9)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(9)(B)); and

(4) may not be considered an unauthorized alien (as defined in section 274A(h)(3) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(3))).

(d) EVIDENCE OF APPLICATION FILING.—As soon as practicable after receiving an application for adjustment of status under this subtitle, the Secretary shall provide the applicant with a document acknowledging the receipt of such application. Such document shall serve as interim proof of the alien's authorization to accept employment in the United States and shall be accepted by an employer as evidence of employment authorization under section 274A(b)(1)(C) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)(1)(C)), pending a final administrative decision on the application.

(e) WITHDRAWAL OF APPLICATION.—The Secretary shall, upon receipt of a request to withdraw an application for adjustment of status under this subtitle, cease processing of the application, and close the case. Withdrawal of the application shall not prejudice any future application filed by the applicant for any immigration benefit under this Act or under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

#### SEC. 112. PAYMENT OF TAXES.

(a) IN GENERAL.—An alien may not be granted adjustment of status under this subtitle unless the applicant has satisfied any applicable Federal tax liability.

(b) COMPLIANCE.—An alien may demonstrate compliance with subsection (a) by submitting such documentation as the Secretary, in consultation with the Secretary of the Treasury, may require by regulation.

#### SEC. 113. ADJUDICATION AND DECISION; REVIEW.

(a) IN GENERAL.—Subject to the requirements of section 123, the Secretary shall render a decision on an application for adjustment of status under this subtitle not later than 180 days after the date on which the application is filed.

(b) NOTICE.—Prior to denying an application for adjustment of status under this subtitle, the Secretary shall provide the alien with—

(1) written notice that describes the basis for ineligibility or the deficiencies of the evidence submitted; and

(2) at least 90 days to contest ineligibility or submit additional evidence.

(c) ADMINISTRATIVE REVIEW.—The Secretary shall establish a process by which an applicant may seek administrative review of a denial of an application for adjustment of status under this subtitle.

(d) JUDICIAL REVIEW.—Notwithstanding any other provision of law, an alien may seek judicial review of a denial of an application for adjustment of status under this title in an appropriate United States district court.



## Subtitle C—General Provisions

### SEC. 121. DEFINITIONS.

In this title:

(1) **IN GENERAL.**—Except as otherwise provided, any term used in this title that is used in the immigration laws shall have the meaning given such term in the immigration laws (as such term is defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)).

(2) **AGRICULTURAL LABOR OR SERVICES.**—The term “agricultural labor or services” means—

(A) agricultural labor or services as such term is used in section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)), without regard to whether the labor or services are of a seasonal or temporary nature; and

(B) agricultural employment as such term is defined in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1802), without regard to whether the specific service or activity is temporary or seasonal.

(3) **APPLICABLE FEDERAL TAX LIABILITY.**—The term “applicable Federal tax liability” means all Federal income taxes assessed in accordance with section 6203 of the Internal Revenue Code of 1986 beginning on the date on which the applicant was authorized to work in the United States as a certified agricultural worker.

(4) **APPROPRIATE UNITED STATES DISTRICT COURT.**—The term “appropriate United States district court” means the United States District Court for the District of Columbia or the United States district court with jurisdiction over the alien’s principal place of residence.

(5) **CHILD.**—The term “child” has the meaning given such term in section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1)).

(6) **CONVICTED OR CONVICTION.**—The term “convicted” or “conviction” does not include a judgment that has been expunged or set aside, that resulted in a rehabilitative disposition, or the equivalent.

(7) **EMPLOYER.**—The term “employer” means any person or entity, including any labor contractor or any agricultural association, that employs workers in agricultural labor or services.

(8) **QUALIFIED DESIGNATED ENTITY.**—The term “qualified designated entity” means—

(A) a qualified farm labor organization or an association of employers designated by the Secretary; or

(B) any other entity that the Secretary designates as having substantial experience, demonstrated competence, and a history of long-term involvement in the preparation and submission of application for adjustment of status under title II of the Immigration and Nationality Act (8 U.S.C. 1151 et seq.).

(9) **SECRETARY.**—The term “Secretary” means the Secretary of Homeland Security.

(10) **WORK DAY.**—The term “work day” means any day in which the individual is employed 5.75 or more hours in agricultural labor or services.

### SEC. 122. RULEMAKING; FEES.

(a) **RULEMAKING.**—Not later than 180 days after the date of the enactment of this Act, the Secretary shall publish in the Federal Register, an interim final rule implementing this title. Notwithstanding section 553 of title 5, United States Code, the rule shall be effective, on an interim basis, immediately upon publication, but may be subject to change and revision after public notice and opportunity for comment. The Secretary shall finalize such rule not later than 1 year after the date of the enactment of this Act.

(b) **FEES.**—

(1) **IN GENERAL.**—The Secretary may require an alien applying for any benefit under this title to pay a reasonable fee that is commensurate with the cost of processing the application.

(2) **FEE WAIVER; INSTALLMENTS.**—

(A) **IN GENERAL.**—The Secretary shall establish procedures to allow an alien to—

(i) request a waiver of any fee that the Secretary may assess under this title if the alien demonstrates to the satisfaction of the Secretary that the alien is unable to pay the prescribed fee; or

(ii) pay any fee or penalty that the Secretary may assess under this title in installments.

(B) CLARIFICATION.—Nothing in this section shall be read to prohibit an employer from paying any fee or penalty that the Secretary may assess under this title on behalf of an alien and the alien's spouse or children.

**SEC. 123. BACKGROUND CHECKS.**

(a) SUBMISSION OF BIOMETRIC AND BIOGRAPHIC DATA.—The Secretary may not grant or extend certified agricultural worker or certified agricultural dependent status under subtitle A, or grant adjustment of status to that of a lawful permanent resident under subtitle B, unless the alien submits biometric and biographic data, in accordance with procedures established by the Secretary. The Secretary shall provide an alternative procedure for aliens who cannot provide all required biometric or biographic data because of a physical impairment.

(b) BACKGROUND CHECKS.—The Secretary shall use biometric, biographic, and other data that the Secretary determines appropriate to conduct security and law enforcement background checks and to determine whether there is any criminal, national security, or other factor that would render the alien ineligible for status under this title. An alien may not be granted any such status under this title unless security and law enforcement background checks are completed to the satisfaction of the Secretary.

**SEC. 124. PROTECTION FOR CHILDREN.**

(a) IN GENERAL.—Except as provided in subsection (b), for purposes of eligibility for certified agricultural dependent status or lawful permanent resident status under this title, a determination of whether an alien is a child shall be made using the age of the alien on the date on which the initial application for certified agricultural worker status is filed with the Secretary of Homeland Security.

(b) LIMITATION.—Subsection (a) shall apply for no more than 10 years after the date on which the initial application for certified agricultural worker status is filed with the Secretary of Homeland Security.

**SEC. 125. LIMITATION ON REMOVAL.**

(a) IN GENERAL.—An alien who appears to be prima facie eligible for status under this title shall be given a reasonable opportunity to apply for such status and shall not be placed in removal proceedings or removed from the United States until a final administrative decision establishing ineligibility for such status is rendered.

(b) ALIENS IN REMOVAL PROCEEDINGS.—Notwithstanding any other provision of the law, the Attorney General shall (upon motion by the Secretary with the consent of the alien, or motion by the alien) terminate removal proceedings, without prejudice, against an alien who appears to be prima facie eligible for status under this title, and provide such alien a reasonable opportunity to apply for such status.

(c) EFFECT OF FINAL ORDER.—An alien present in the United States who has been ordered removed or has been permitted to depart voluntarily from the United States may, notwithstanding such order or permission to depart, apply for status under this title. Such alien shall not be required to file a separate motion to reopen, reconsider, or vacate the order of removal. If the Secretary approves the application, the Secretary shall notify the Attorney General of such approval, and the Attorney General shall cancel the order of removal. If the Secretary renders a final administrative decision to deny the application, the order of removal or permission to depart shall be effective and enforceable to the same extent as if the application had not been made, only after all available administrative and judicial remedies have been exhausted.

(d) EFFECT OF DEPARTURE.—Section 101(g) of the Immigration and Nationality Act (8 U.S.C. 1101(g)) shall not apply to an alien who departs the United States—

(1) with advance permission to return to the United States granted by the Secretary under this title; or

(2) after having been granted certified agricultural worker status or lawful permanent resident status under this title.

**SEC. 126. DOCUMENTATION OF AGRICULTURAL WORK HISTORY.**

(a) BURDEN OF PROOF.—An alien applying for certified agricultural worker status under subtitle A or adjustment of status under subtitle B shall provide evidence that the alien has worked the requisite number of hours or days required under section 101, 103, or 111, as applicable. The Secretary shall establish special procedures to properly credit work in cases in which an alien was employed under an assumed name.

(b) EVIDENCE.—An alien may meet the burden of proof under subsection (a) by producing sufficient evidence to show the extent of such employment as a matter of just and reasonable inference. Such evidence may include—

- (1) an annual record of certified agricultural worker employment as described in section 105(a), or other employment records from employers;
  - (2) employment records maintained by collective bargaining associations;
  - (3) tax records or other government records;
  - (4) sworn affidavits from individuals who have direct knowledge of the alien's work history; or
  - (5) any other documentation designated by the Secretary for such purpose.
- (c) EXCEPTION FOR EXTRAORDINARY CIRCUMSTANCES.—
- (1) IN GENERAL.—In determining whether an alien has met the requirement under section 103(a)(1)(A) or 111(a)(1)(A), the Secretary may credit the alien with not more than 575 hours (or 100 work days) of agricultural labor or services in the United States if the alien was unable to perform the required agricultural labor or services due to—
    - (A) pregnancy, illness, disease, disabling injury, or physical limitation of the alien;
    - (B) injury, illness, disease, or other special needs of the alien's child or spouse;
    - (C) severe weather conditions that prevented the alien from engaging in agricultural labor or services; or
    - (D) termination from agricultural employment, if the Secretary determines that—
      - (i) the termination was without just cause; and
      - (ii) the alien was unable to find alternative agricultural employment after a reasonable job search.
  - (2) EFFECT OF DETERMINATION.—A determination under paragraph (1)(D) shall not be conclusive, binding, or admissible in a separate or subsequent judicial or administrative action or proceeding between the alien and a current or prior employer of the alien or any other party.

#### SEC. 127. EMPLOYER PROTECTIONS.

- (a) CONTINUING EMPLOYMENT.—An employer that continues to employ an alien knowing that the alien intends to apply for certified agricultural worker status under subtitle A shall not violate section 274A(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1324a(a)(2)) by continuing to employ the alien for the duration of the application period under section 101(c), and with respect to an alien who applies for certified agricultural status, for the duration of the period during which the alien's application is pending final determination.
- (b) USE OF EMPLOYMENT RECORDS.—Copies of employment records or other evidence of employment provided by an alien or by an alien's employer in support of an alien's application for certified agricultural worker or adjustment of status under this title may not be used in a civil or criminal prosecution or investigation of that employer under section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) or the Internal Revenue Code of 1986 for the prior unlawful employment of that alien regardless of the outcome of such application.
- (c) ADDITIONAL PROTECTIONS.—Employers that provide unauthorized aliens with copies of employment records or other evidence of employment in support of an application for certified agricultural worker status or adjustment of status under this title shall not be subject to civil and criminal liability pursuant to such section 274A for employing such unauthorized aliens. Records or other evidence of employment provided by employers in response to a request for such records for the purpose of establishing eligibility for status under this title may not be used for any purpose other than establishing such eligibility.
- (d) LIMITATION ON PROTECTION.—The protections for employers under this section shall not apply if the employer provides employment records to the alien that are determined to be fraudulent.

#### SEC. 128. CORRECTION OF SOCIAL SECURITY RECORDS.

- (a) IN GENERAL.—Section 208(e)(1) of the Social Security Act (42 U.S.C. 408(e)(1)) is amended—
  - (1) in subparagraph (B)(ii), by striking “or” at the end;
  - (2) in subparagraph (C), by inserting “or” at the end;
  - (3) by inserting after subparagraph (C) the following:
 

“(D) who is granted certified agricultural worker status, certified agricultural dependent status, or lawful permanent resident status under title I of the Farm Work Modernization Act of 2019,”; and
  - (4) in the undesignated matter following subparagraph (D), as added by paragraph (3), by striking “1990.” and inserting “1990, or in the case of an alien described in subparagraph (D), if such conduct is alleged to have occurred before the date on which the alien was granted status under title I of the Farm Work Modernization Act of 2019.”.

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall take effect on the first day of the seventh month that begins after the date of the enactment of this Act.

**SEC. 129. DISCLOSURES AND PRIVACY.**

(a) **IN GENERAL.**—The Secretary may not disclose or use information provided in an application for certified agricultural worker status or adjustment of status under this title (including information provided during administrative or judicial review) for the purpose of immigration enforcement.

(b) **REFERRALS PROHIBITED.**—The Secretary, based solely on information provided in an application for certified agricultural worker status or adjustment of status under this title (including information provided during administrative or judicial review), may not refer an applicant to U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, or any designee of either such entity.

(c) **EXCEPTIONS.**—Notwithstanding subsections (a) and (b), information provided in an application for certified agricultural worker status or adjustment of status under this title may be shared with Federal security and law enforcement agencies—

- (1) for assistance in the consideration of an application under this title;
- (2) to identify or prevent fraudulent claims or schemes;
- (3) for national security purposes; or
- (4) for the investigation or prosecution of any felony not related to immigration status.

(d) **PENALTY.**—Any person who knowingly uses, publishes, or permits information to be examined in violation of this section shall be fined not more than \$10,000.

(e) **PRIVACY.**—The Secretary shall ensure that appropriate administrative and physical safeguards are in place to protect the security, confidentiality, and integrity of personally identifiable information collected, maintained, and disseminated pursuant to this title.

**SEC. 130. PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.**

(a) **CRIMINAL PENALTY.**—Any person who—

- (1) files an application for certified agricultural worker status or adjustment of status under this title and knowingly falsifies, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry; or
- (2) creates or supplies a false writing or document for use in making such an application,

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

(b) **INADMISSIBILITY.**—An alien who is convicted under subsection (a) shall be deemed inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(C)(i)).

(c) **DEPOSIT.**—Fines collected under subsection (a) shall be deposited into the Immigration Examinations Fee Account pursuant to section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)).

**SEC. 131. DISSEMINATION OF INFORMATION.**

(a) **IN GENERAL.**—Beginning not later than the first day of the application period described in section 101(c)—

- (1) the Secretary of Homeland Security, in cooperation with qualified designated entities, shall broadly disseminate information described in subsection (b); and
- (2) the Secretary of Agriculture, in consultation with the Secretary of Homeland Security, shall disseminate to agricultural employers a document containing the information described in subsection (b) for posting at employer worksites.

(b) **INFORMATION DESCRIBED.**—The information described in this subsection shall include—

- (1) the benefits that aliens may receive under this title; and
- (2) the requirements that an alien must meet to receive such benefits.

**SEC. 132. EXEMPTION FROM NUMERICAL LIMITATIONS.**

The numerical limitations under title II of the Immigration and Nationality Act (8 U.S.C. 1151 et seq.) shall not apply to the adjustment of aliens to lawful permanent resident status under this title, and such aliens shall not be counted toward any such numerical limitation.

**SEC. 133. REPORTS TO CONGRESS.**

Not later than 180 days after the publication of the final rule under section 122(a), and annually thereafter for the following 10 years, the Secretary shall submit a report to Congress that identifies, for the previous fiscal year—

- (1) the number of principal aliens who applied for certified agricultural worker status under subtitle A, and the number of dependent spouses and children included in such applications;
- (2) the number of principal aliens who were granted certified agricultural worker status under subtitle A, and the number of dependent spouses and children who were granted certified agricultural dependent status;
- (3) the number of principal aliens who applied for an extension of their certified agricultural worker status under subtitle A, and the number of dependent spouses and children included in such applications;
- (4) the number of principal aliens who were granted an extension of certified agricultural worker status under subtitle A, and the number of dependent spouses and children who were granted certified agricultural dependent status under such an extension;
- (5) the number of principal aliens who applied for adjustment of status under subtitle B, and the number of dependent spouses and children included in such applications;
- (6) the number of principal aliens who were granted lawful permanent resident status under subtitle B, and the number of spouses and children who were granted such status as dependents;
- (7) the number of principal aliens included in petitions described in section 101(e), and the number of dependent spouses and children included in such applications; and
- (8) the number of principal aliens who were granted H-2A status pursuant to petitions described in section 101(e), and the number of dependent spouses and children who were granted H-4 status.

**SEC. 134. GRANT PROGRAM TO ASSIST ELIGIBLE APPLICANTS.**

(a) **ESTABLISHMENT.**—The Secretary shall establish a program to award grants, on a competitive basis, to eligible nonprofit organizations to assist eligible applicants under this title by providing them with the services described in subsection (c).

(b) **ELIGIBLE NONPROFIT ORGANIZATION.**—For purposes of this section, the term “eligible nonprofit organization” means an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 (excluding a recipient of funds under title X of the Economic Opportunity Act of 1964 (42 U.S.C. 2996 et seq.)) that has demonstrated qualifications, experience, and expertise in providing quality services to farm workers or aliens.

(c) **USE OF FUNDS.**—Grant funds awarded under this section may be used for the design and implementation of programs that provide—

- (1) information to the public regarding the eligibility and benefits of certified agricultural worker status authorized under this title; and
- (2) assistance, within the scope of authorized practice of immigration law, to individuals submitting applications for certified agricultural worker status or adjustment of status under this title, including—
  - (A) screening prospective applicants to assess their eligibility for such status;
  - (B) completing applications, including providing assistance in obtaining necessary documents and supporting evidence; and
  - (C) providing any other assistance that the Secretary determines useful to assist aliens in applying for certified agricultural worker status or adjustment of status under this title.

(d) **SOURCE OF FUNDS.**—In addition to any funds appropriated to carry out this section, the Secretary may use up to \$10,000,000 from the Immigration Examinations Fee Account under section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) to carry out this section.

(e) **ELIGIBILITY FOR SERVICES.**—Section 504(a)(11) of Public Law 104–134 (110 Stat. 1321–53 et seq.) shall not be construed to prevent a recipient of funds under title X of the Economic Opportunity Act of 1964 (42 U.S.C. 2996 et seq.) from providing legal assistance directly related to an application for status under this title or to an alien granted such status.

**SEC. 135. AUTHORIZATION OF APPROPRIATIONS.**

There is authorized to be appropriated to the Secretary, such sums as may be necessary to implement this title, including any amounts needed for costs associated with the initiation of such implementation, for each of fiscal years 2020 through 2022.

## TITLE II—ENSURING AN AGRICULTURAL WORKFORCE FOR THE FUTURE

### Subtitle A—Reforming the H-2A Temporary Worker Program

#### SEC. 201. COMPREHENSIVE AND STREAMLINED ELECTRONIC H-2A PLATFORM.

##### (a) STREAMLINED H-2A PLATFORM.—

(1) IN GENERAL.—Not later than 12 months after the date of the enactment of this Act, the Secretary of Homeland Security, in consultation with the Secretary of Labor, the Secretary of Agriculture, the Secretary of State, and United States Digital Service, shall ensure the establishment of an electronic platform through which a petition for an H-2A worker may be filed. Such platform shall—

(A) serve as a single point of access for an employer to input all information and supporting documentation required for obtaining labor certification from the Secretary of Labor and the adjudication of the H-2A petition by the Secretary of Homeland Security;

(B) serve as a single point of access for the Secretary of Homeland Security, the Secretary of Labor, and State workforce agencies to concurrently perform their respective review and adjudicatory responsibilities in the H-2A process;

(C) facilitate communication between employers and agency adjudicators, including by allowing employers to—

(i) receive and respond to notices of deficiency and requests for information;

(ii) submit requests for inspections and licensing;

(iii) receive notices of approval and denial; and

(iv) request reconsideration or appeal of agency decisions; and

(D) provide information to the Secretary of State and U.S. Customs and Border Protection necessary for the efficient and secure processing of H-2A visas and applications for admission.

(2) OBJECTIVES.—In developing the platform described in paragraph (1), the Secretary of Homeland Security, in consultation with the Secretary of Labor, the Secretary of Agriculture, the Secretary of State, and United States Digital Service, shall streamline and improve the H-2A process, including by—

(A) eliminating the need for employers to submit duplicate information and documentation to multiple agencies;

(B) eliminating redundant processes, where a single matter in a petition is adjudicated by more than one agency;

(C) reducing the occurrence of common petition errors, and otherwise improving and expediting the processing of H-2A petitions; and

(D) ensuring compliance with H-2A program requirements and the protection of the wages and working conditions of workers.

(b) ONLINE JOB REGISTRY.—The Secretary of Labor shall maintain a national, publicly-accessible online job registry and database of all job orders submitted by H-2A employers. The registry and database shall—

(1) be searchable using relevant criteria, including the types of jobs needed to be filled, the date(s) and location(s) of need, and the employer(s) named in the job order;

(2) provide an interface for workers in English, Spanish, and any other language that the Secretary of Labor determines to be appropriate; and

(3) provide for public access of job orders approved under section 218(h)(2) of the Immigration and Nationality Act.

#### SEC. 202. H-2A PROGRAM REQUIREMENTS.

Section 218 of the Immigration and Nationality Act (8 U.S.C. 1188) is amended to read as follows:

##### “SEC. 218. ADMISSION OF TEMPORARY H-2A WORKERS.

“(a) LABOR CERTIFICATION CONDITIONS.—The Secretary of Homeland Security may not approve a petition to admit an H-2A worker unless the Secretary of Labor has certified that—

“(1) there are not sufficient United States workers who are able, willing and qualified, and who will be available at the time and place needed, to perform the agricultural labor or services described in the petition; and

“(2) the employment of the H-2A worker in such labor or services will not adversely affect the wages and working conditions of workers in the United States who are similarly employed.

“(b) H-2A PETITION REQUIREMENTS.—An employer filing a petition for an H-2A worker to perform agricultural labor or services shall attest to and demonstrate compliance, as and when appropriate, with all applicable requirements under this section, including the following:

“(1) NEED FOR LABOR OR SERVICES.—The employer has described the need for agricultural labor or services in a job order that includes a description of the nature and location of the work to be performed, the anticipated period or periods (expected start and end dates) for which the workers will be needed, and the number of job opportunities in which the employer seeks to employ the workers.

“(2) NONDISPLACEMENT OF UNITED STATES WORKERS.—The employer has not and will not displace United States workers employed by the employer during the period of employment of the H-2A worker and during the 60-day period immediately preceding such period of employment in the job for which the employer seeks approval to employ the H-2A worker.

“(3) STRIKE OR LOCKOUT.—Each place of employment described in the petition is not, at the time of filing the petition and until the petition is approved, subject to a strike or lockout in the course of a labor dispute.

“(4) RECRUITMENT OF UNITED STATES WORKERS.—The employer shall engage in the recruitment of United States workers as described in subsection (c) and shall hire such workers who are able, willing and qualified, and who will be available at the time and place needed, to perform the agricultural labor or services described in the petition. The employer may reject a United States worker only for lawful, job-related reasons.

“(5) WAGES, BENEFITS, AND WORKING CONDITIONS.—The employer shall offer and provide, at a minimum, the wages, benefits, and working conditions required by this section to the H-2A worker and all United States workers who are similarly employed. The employer—

“(A) shall offer such United States workers not less than the same benefits, wages, and working conditions that the employer is offering or will provide to the H-2A worker; and

“(B) may not impose on such United States workers any restrictions or obligations that will not be imposed on the H-2A worker.

“(6) WORKERS’ COMPENSATION.—If the job opportunity is not covered by or is exempt from the State workers’ compensation law, the employer shall provide, at no cost to the worker, insurance covering injury and disease arising out of, and in the course of, the worker’s employment which will provide benefits at least equal to those provided under the State workers’ compensation law.

“(7) COMPLIANCE WITH LABOR AND EMPLOYMENT LAWS.—The employer shall comply with all applicable Federal, State and local employment-related laws and regulations.

“(c) RECRUITING REQUIREMENTS.—

“(1) IN GENERAL.—The employer may satisfy the recruitment requirement described in subsection (b)(4) by satisfying all of the following:

“(A) JOB ORDER.—As provided in subsection (h)(1), the employer shall complete a job order for posting on the electronic job registry maintained by the Secretary of Labor and for distribution by the appropriate State workforce agency. Such posting shall remain on the job registry as an active job order through the period described in paragraph (2)(B).

“(B) FORMER WORKERS.—At least 45 days before each start date identified in the petition, the employer shall—

“(i) make reasonable efforts to contact any United States worker the employer employed in the previous year in the same occupation and area of intended employment for which an H-2A worker is sought (excluding workers who were terminated for cause or abandoned the work-site); and

“(ii) post such job opportunity in a conspicuous location or locations at the place of employment.

“(C) POSITIVE RECRUITMENT.—During the period of recruitment, the employer shall complete any other positive recruitment steps within a multi-State region of traditional or expected labor supply where the Secretary of Labor finds that there are a significant number of qualified United States workers who, if recruited, would be willing to make themselves available for work at the time and place needed.

“(2) PERIOD OF RECRUITMENT.—

“(A) IN GENERAL.—For purposes of this subsection, the period of recruitment begins on the date on which the job order is posted on the online job registry and ends on the date that H-2A workers depart for the employer’s place of employment. For a petition involving more than 1 start date under subsection (h)(1)(C), the end of the period of recruitment shall be determined by the date of departure of the H-2A workers for the final start date identified in the petition.

“(B) REQUIREMENT TO HIRE US WORKERS.—

“(i) IN GENERAL.—Notwithstanding the limitations of subparagraph (A), the employer will provide employment to any qualified United States worker who applies to the employer for any job opportunity included in the petition until the later of—

“(I) the date that is 30 days after the date on which work begins;

or

“(II) the date on which—

“(aa) 33 percent of the work contract for the job opportunity has elapsed; or

“(bb) if the employer is a labor contractor, 50 percent of the work contract for the job opportunity has elapsed.

“(ii) STAGGERED ENTRY.—For a petition involving more than 1 start date under subsection (h)(1)(C), each start date designated in the petition shall establish a separate job opportunity. An employer may not reject a United States worker because the worker is unable or unwilling to fill more than 1 job opportunity included in the petition.

“(iii) EXCEPTION.—Notwithstanding clause (i), the employer may offer a job opportunity to an H-2A worker instead of an alien granted certified agricultural worker status under title I of the Farm Workforce Modernization Act of 2019 if the H-2A worker was employed by the employer in each of 3 years during the most recent 4-year period.

“(3) RECRUITMENT REPORT.—

“(A) IN GENERAL.—The employer shall maintain a recruitment report through the applicable period described in paragraph (2)(B) and submit regular updates through the electronic platform on the results of recruitment. The employer shall retain the recruitment report, and all associated recruitment documentation, for a period of 3 years from the date of certification.

“(B) BURDEN OF PROOF.—If the employer asserts that any eligible individual who has applied or been referred is not able, willing or qualified, the employer bears the burden of proof to establish that the individual is not able, willing or qualified because of a lawful, employment-related reason.

“(d) WAGE REQUIREMENTS.—

“(1) IN GENERAL.—Each employer under this section will offer the worker, during the period of authorized employment, wages that are at least the greatest of—

“(A) the agreed-upon collective bargaining wage;

“(B) the adverse effect wage rate (or any successor wage established under paragraph (7));

“(C) the prevailing wage (hourly wage or piece rate); or

“(D) the Federal or State minimum wage.

“(2) ADVERSE EFFECT WAGE RATE DETERMINATIONS.—

“(A) IN GENERAL.—Except as provided under subparagraph (B), the applicable adverse effect wage rate for each State and occupational classification for a calendar year shall be as follows:

“(i) The annual average hourly wage for the occupational classification in the State or region as reported by the Secretary of Agriculture based on a wage survey conducted by such Secretary.

“(ii) If a wage described in clause (i) is not reported, the national annual average hourly wage for the occupational classification as reported by the Secretary of Agriculture based on a wage survey conducted by such Secretary.

“(iii) If a wage described in clause (i) or (ii) is not reported, the State-wide annual average hourly wage for the standard occupational classification as reported by the Secretary of Labor based on a wage survey conducted by such Secretary.

“(iv) If a wage described in clause (i), (ii), or (iii) is not reported, the national average hourly wage for the occupational classification as reported by the Secretary of Labor based on a wage survey conducted by such Secretary.

“(B) LIMITATIONS ON WAGE FLUCTUATIONS.—



“(i) WAGE FREEZE FOR CALENDAR YEAR 2020.—For calendar year 2020, the adverse effect wage rate for each State and occupational classification under this subsection shall be the adverse effect wage rate that was in effect for H-2A workers in the applicable State in calendar year 2019.

“(ii) CALENDAR YEARS 2021 THROUGH 2029.—For each of calendar years 2021 through 2029, the adverse effect wage rate for each State and occupational classification under this subsection shall be the wage calculated under subparagraph (A), except that such wage may not—

“(I) be more than 1.5 percent lower than the wage in effect for H-2A workers in the applicable State and occupational classification in the immediately preceding calendar year;

“(II) except as provided in clause (III), be more than 3.25 percent higher than the wage in effect for H-2A workers in the applicable State and occupational classification in the immediately preceding calendar year; and

“(III) if the application of clause (II) results in a wage that is lower than 110 percent of the applicable Federal or State minimum wage, be more than 4.25 percent higher than the wage in effect for H-2A workers in the applicable State and occupational classification in the immediately preceding calendar year.

“(iii) CALENDAR YEARS AFTER 2029.—For any calendar year after 2029, the applicable wage rate described in paragraph (1)(B) shall be the wage rate established pursuant to paragraph (7)(D). Until such wage rate is effective, the adverse effect wage rate for each State and occupational classification under this subsection shall be the wage calculated under subparagraph (A), except that such wage may not be more than 1.5 percent lower or 3.25 percent higher than the wage in effect for H-2A workers in the applicable State and occupational classification in the immediately preceding calendar year.

“(3) MULTIPLE OCCUPATIONS.—If the primary job duties for the job opportunity described in the petition do not fall within a single occupational classification, the applicable wage rates under subparagraphs (B) and (C) of paragraph (1) for the job opportunity shall be based on the highest such wage rates for all applicable occupational classifications.

“(4) PUBLICATION; WAGES IN EFFECT.—

“(A) PUBLICATION.—Prior to the start of each calendar year, the Secretary of Labor shall publish the applicable adverse effect wage rate (or successor wage rate, if any), and prevailing wage if available, for each State and occupational classification through notice in the Federal Register.

“(B) JOB ORDERS IN EFFECT.—Except as provided in subparagraph (C), publication by the Secretary of Labor of an updated adverse effect wage rate or prevailing wage for a State and occupational classification shall not affect the wage rate guaranteed in any approved job order for which recruitment efforts have commenced at the time of publication.

“(C) EXCEPTION FOR YEAR-ROUND JOBS.—If the Secretary of Labor publishes an updated adverse effect wage rate or prevailing wage for a State and occupational classification concerning a petition described in subsection (i), and the updated wage is higher than the wage rate guaranteed in the work contract, the employer shall pay the updated wage not later than 14 days after publication of the updated wage in the Federal Register.

“(5) WORKERS PAID ON A PIECE RATE OR OTHER INCENTIVE BASIS.—If an employer pays by the piece rate or other incentive method and requires 1 or more minimum productivity standards as a condition of job retention, such standards shall be specified in the job order and shall be no more than those normally required (at the time of the first petition for H-2A workers) by other employers for the activity in the area of intended employment, unless the Secretary of Labor approves a higher minimum standard resulting from material changes in production methods.

“(6) GUARANTEE OF EMPLOYMENT.—

“(A) OFFER TO WORKER.—The employer shall guarantee the worker employment for the hourly equivalent of at least three-fourths of the work days of the total period of employment, beginning with the first work day after the arrival of the worker at the place of employment and ending on the date specified in the job offer. For purposes of this subparagraph, the hourly equivalent means the number of hours in the work days as stated in the job offer and shall exclude the worker’s Sabbath and Federal holidays. If the employer affords the worker less employment than that required under this paragraph, the employer shall pay the worker the

amount which the worker would have earned had the worker, in fact, worked for the guaranteed number of hours.

“(B) FAILURE TO WORK.—Any hours which the worker fails to work, up to a maximum of the number of hours specified in the job offer for a work day, when the worker has been offered an opportunity to do so, and all hours of work actually performed (including voluntary work in excess of the number of hours specified in the job offer in a work day, on the worker’s Sabbath, or on Federal holidays) may be counted by the employer in calculating whether the period of guaranteed employment has been met.

“(C) ABANDONMENT OF EMPLOYMENT; TERMINATION FOR CAUSE.—If the worker voluntarily abandons employment without good cause before the end of the contract period, or is terminated for cause, the worker is not entitled to the guarantee of employment described in subparagraph (A).

“(D) CONTRACT IMPOSSIBILITY.—If, before the expiration of the period of employment specified in the job offer, the services of the worker are no longer required for reasons beyond the control of the employer due to any form of natural disaster before the guarantee in subparagraph (A) is fulfilled, the employer may terminate the worker’s employment. In the event of such termination, the employer shall fulfill the employment guarantee in subparagraph (A) for the work days that have elapsed from the first work day after the arrival of the worker to the termination of employment. The employer shall make efforts to transfer a United States worker to other comparable employment acceptable to the worker. If such transfer is not affected, the employer shall provide the return transportation required in subsection (f)(2).

“(7) WAGE STANDARDS AFTER 2029.—

“(A) STUDY OF ADVERSE EFFECT WAGE RATE.—Beginning in fiscal year 2026, the Secretary of Agriculture and Secretary of Labor shall jointly conduct a study that addresses—

“(i) whether the employment of H-2A workers has depressed the wages of United States farm workers;

“(ii) whether an adverse effect wage rate is necessary to protect the wages of United States farm workers in occupations in which H-2A workers are employed;

“(iii) whether alternative wage standards would be sufficient to prevent wages in occupations in which H-2A workers are employed from falling below the wage level that would have prevailed in the absence of H-2A employment;

“(iv) whether any changes are warranted in the current methodologies for calculating the adverse effect wage rate and the prevailing wage rate; and

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

“(B) FINAL REPORT.—Not later than October 1, 2027, the Secretary of Agriculture and Secretary of Labor shall jointly prepare and submit a report to the Congress setting forth the findings of the study conducted under subparagraph (A) and recommendations for future wage protections under this section.

“(C) CONSULTATION.—In conducting the study under subparagraph (A) and preparing the report under subparagraph (B), the Secretary of Agriculture and Secretary of Labor shall consult with representatives of agricultural employers and an equal number of representatives of agricultural workers, at the national, State and local level.

“(D) WAGE DETERMINATION AFTER 2029.—Upon publication of the report described in subparagraph (B), the Secretary of Labor, in consultation with and the approval of the Secretary of Agriculture, shall make a rule to establish a process for annually determining the wage rate for purposes of paragraph (1)(B) for fiscal years after 2029. Such process shall be designed to ensure that the employment of H-2A workers does not undermine the wages and working conditions of similarly employed United States workers.

“(e) HOUSING REQUIREMENTS.—Employers shall furnish housing in accordance with regulations established by the Secretary of Labor. Such regulations shall be consistent with the following:

“(1) IN GENERAL.—The employer shall be permitted at the employer’s option to provide housing meeting applicable Federal standards for temporary labor camps or to secure housing which meets the local standards for rental and/or public accommodations or other substantially similar class of habitation: Provided, That in the absence of applicable local standards, State standards for rental and/or public accommodations or other substantially similar class of habi-

tation shall be met: Provided further, That in the absence of applicable local or State standards, Federal temporary labor camp standards shall apply.

“(2) FAMILY HOUSING.—Except as otherwise provided in subsection (i)(5), the employer shall provide family housing to workers with families who request it when it is the prevailing practice in the area and occupation of intended employment to provide family housing.

“(3) UNITED STATES WORKERS.—Notwithstanding paragraphs (1) and (2), an employer is not required to provide housing to United States workers who are reasonably able to return to their residence within the same day.

“(4) TIMING OF INSPECTION.—

“(A) IN GENERAL.—The Secretary of Labor or designee shall make a determination as to whether the housing furnished by an employer for a worker meets the requirements imposed by this subsection prior to the date on which the Secretary of Labor is required to make a certification with respect to a petition for the admission of such worker.

“(B) TIMELY INSPECTION.—The Secretary of Labor shall provide a process for—

“(i) an employer to request inspection of housing up to 60 days before the date on which the employer will file a petition under this section; and

“(ii) annual inspection of housing for workers who are engaged in agricultural employment that is not of a seasonal or temporary nature.

“(f) TRANSPORTATION REQUIREMENTS.—

“(1) TRAVEL TO PLACE OF EMPLOYMENT.—A worker who completes 50 percent of the period of employment specified in the job order shall be reimbursed by the employer for the cost of the worker’s transportation and subsistence from the place from which the worker came to work for the employer (or place of last employment, if the worker traveled from such place) to the place of employment.

“(2) TRAVEL FROM PLACE OF EMPLOYMENT.—For a worker who completes the period of employment specified in the job order or who is terminated without cause, the employer shall provide or pay for the worker’s transportation and subsistence from the place of employment to the place from which the worker, disregarding intervening employment, came to work for the employer, or to the place of next employment, if the worker has contracted with a subsequent employer who has not agreed to provide or pay for the worker’s transportation and subsistence to such subsequent employer’s place of employment.

“(3) LIMITATION.—

“(A) AMOUNT OF REIMBURSEMENT.—Except as provided in subparagraph (B), the amount of reimbursement provided under paragraph (1) or (2) to a worker need not exceed the lesser of—

“(i) the actual cost to the worker of the transportation and subsistence involved; or

“(ii) the most economical and reasonable common carrier transportation charges and subsistence costs for the distance involved.

“(B) DISTANCE TRAVELED.—For travel to or from the worker’s home country, if the travel distance between the worker’s home and the relevant consulate is 50 miles or less, reimbursement for transportation and subsistence may be based on transportation to or from the consulate.

“(g) HEAT ILLNESS PREVENTION PLAN.—The employer shall maintain a reasonable plan that describes the employer’s procedures for the prevention of heat illness, including appropriate training, access to water and shade, the provision of breaks, and the protocols for emergency response. Such plan shall—

“(1) be in writing in English and, to the extent necessary, any language common to a significant portion of the workers if they are not fluent in English; and

“(2) be posted at a conspicuous location at the worksite and provided to employees prior to the commencement of labor or services.

“(h) H-2A PETITION PROCEDURES.—

“(1) SUBMISSION OF PETITION AND JOB ORDER.—

“(A) IN GENERAL.—The employer shall submit information required for the adjudication of the H-2A petition, including a job order, through the electronic platform no more than 75 calendar days and no fewer than 60 calendar days before the employer’s first date of need specified in the petition.

“(B) FILING BY AGRICULTURAL ASSOCIATIONS.—An association of agricultural producers that use agricultural services may file an H-2A petition under subparagraph (A). If an association is a joint or sole employer of workers who perform agricultural labor or services, H-2A workers may be

used for the approved job opportunities of any of the association's producer members and such workers may be transferred among its producer members to perform the agricultural labor or services for which the petition was approved.

“(C) PETITIONS INVOLVING STAGGERED ENTRY.—

“(i) IN GENERAL.—Except as provided in clause (ii), an employer may file a petition involving employment in the same occupational classification and same area of intended employment with multiple start dates if—

“(I) the petition involves temporary or seasonal employment and no more than 10 start dates;

“(II) the multiple start dates share a common end date that is no longer than 1 year after the first start date;

“(III) no more than 120 days separate the first start date and the final start date listed in the petition; and

“(IV) the need for multiple start dates arises from variations in labor needs associated with the job opportunity identified in the petition.

“(ii) LABOR CONTRACTORS.—A labor contractor may not file a petition described in clause (i) unless the labor contractor—

“(I) is filing as a joint employer with its contractees, or is operating in a State in which joint employment and liability between the labor contractor and its contractees is otherwise established; or

“(II) has posted and is maintaining a premium surety bond as described in subsection (1)(1).

“(2) LABOR CERTIFICATION.—

“(A) REVIEW OF JOB ORDER.—

“(i) IN GENERAL.—The Secretary of Labor, in consultation with the relevant State workforce agency, shall review the job order for compliance with this section and notify the employer through the electronic platform of any deficiencies not later than 7 business days from the date the employer submits the necessary information required under paragraph (1)(A). The employer shall be provided 5 business days to respond to any such notice of deficiency.

“(ii) STANDARD.—The job order must include all material terms and conditions of employment, including the requirements of this section, and must be otherwise consistent with the minimum standards provided under Federal, State or local law. In considering the question of whether a specific qualification is appropriate in a job order, the Secretary of Labor shall apply the normal and accepted qualification required by non-H-2A employers in the same or comparable occupations and crops.

“(iii) EMERGENCY PROCEDURES.—The Secretary of Labor shall establish emergency procedures for the curing of deficiencies that cannot be resolved during the period described in clause (i).

“(B) APPROVAL OF JOB ORDER.—

“(i) IN GENERAL.—Upon approval of the job order, the Secretary of Labor shall immediately place for public examination a copy of the job order on the online job registry, and the State workforce agency serving the area of intended employment shall commence the recruitment of United States workers.

“(ii) REFERRAL OF UNITED STATES WORKERS.—The Secretary of Labor and State workforce agency shall keep the job order active until the end of the period described in subsection (c)(2) and shall refer to the employer each United States worker who applies for the job opportunity.

“(C) REVIEW OF INFORMATION FOR DEFICIENCIES.—Within 7 business days of the approval of the job order, the Secretary of Labor shall review the information necessary to make a labor certification and notify the employer through the electronic platform if such information does not meet the standards for approval. Such notification shall include a description of any deficiency, and the employer shall be provided 5 business days to cure such deficiency.

“(D) CERTIFICATION AND AUTHORIZATION OF WORKERS.—Not later than 30 days before the date that labor or services are first required to be performed, the Secretary of Labor shall issue the requested labor certification if the Secretary determines that the requirements for certification set forth in this section have been met.

“(E) EXPEDITED ADMINISTRATIVE APPEALS OF CERTAIN DETERMINATIONS.—The Secretary of Labor shall by regulation establish a procedure for an employer to request the expedited review of a denial of a labor certification under this section, or the revocation of such a certification. Such procedure shall require the Secretary to expeditiously, but no later than 72 hours after expedited review is requested, issue a de novo determination on a labor certification that was denied in whole or in part because of the availability of able, willing and qualified workers if the employer demonstrates, consistent with subsection (c)(3)(B), that such workers are not actually available at the time or place such labor or services are required.

“(3) PETITION DECISION.—

“(A) IN GENERAL.—Not later than 7 business days after the Secretary of Labor issues the certification, the Secretary of Homeland Security shall issue a decision on the petition and shall transmit a notice of action to the petitioner via the electronic platform.

“(B) APPROVAL.—Upon approval of a petition under this section, the Secretary of Homeland Security shall ensure that such approval is noted in the electronic platform and is available to the Secretary of State and U.S. Customs and Border Protection, as necessary, to facilitate visa issuance and admission.

“(C) PARTIAL APPROVAL.—A petition for multiple named beneficiaries may be partially approved with respect to eligible beneficiaries notwithstanding the ineligibility, or potential ineligibility, of one or more other beneficiaries.

“(D) POST-CERTIFICATION AMENDMENTS.—The Secretary of Labor shall provide a process for amending a request for labor certification in conjunction with an H-2A petition, subsequent to certification by the Secretary of Labor, in cases in which the requested amendment does not materially change the petition (including the job order).

“(4) ROLES OF AGRICULTURAL ASSOCIATIONS.—

“(A) MEMBER’S VIOLATION DOES NOT NECESSARILY DISQUALIFY ASSOCIATION OR OTHER MEMBERS.—If an individual producer member of a joint employer association is determined to have committed an act that results in the denial of a petition with respect to the member, the denial shall apply only to that member of the association unless the Secretary of Labor determines that the association or other member participated in, had knowledge of, or reason to know of, the violation.

“(B) ASSOCIATION’S VIOLATION DOES NOT NECESSARILY DISQUALIFY MEMBERS.—

“(i) If an association representing agricultural producers as a joint employer is determined to have committed an act that results in the denial of a petition with respect to the association, the denial shall apply only to the association and does not apply to any individual producer member of the association unless the Secretary of Labor determines that the member participated in, had knowledge of, or reason to know of, the violation.

“(ii) If an association of agricultural producers certified as a sole employer is determined to have committed an act that results in the denial of a petition with respect to the association, no individual producer member of such association may be the beneficiary of the services of H-2A workers in the commodity and occupation in which such aliens were employed by the association which was denied during the period such denial is in force, unless such producer member employs such aliens in the commodity and occupation in question directly or through an association which is a joint employer of such workers with the producer member.

“(5) SPECIAL PROCEDURES.—The Secretary of Labor, in consultation with the Secretary of Agriculture and Secretary of Homeland Security, may by regulation establish alternate procedures that reasonably modify program requirements under this section, when the Secretary determines that such modifications are required due to the unique nature of the work involved.

“(6) CONSTRUCTION OCCUPATIONS.—An employer may not file a petition under this section on behalf of a worker if the majority of the worker’s duties will fall within a construction or extraction occupational classification.

“(i) NON-TEMPORARY OR -SEASONAL NEEDS.—

“(1) IN GENERAL.—Notwithstanding the requirement in section 101(a)(15)(H)(ii)(a) that the agricultural labor or services performed by an H-2A worker be of a temporary or seasonal nature, the Secretary of Homeland Security may, consistent with the provisions of this subsection, approve a petition

for an H-2A worker to perform agricultural services or labor that is not of a temporary or seasonal nature.

“(2) NUMERICAL LIMITATIONS.—

“(A) FIRST 3 FISCAL YEARS.—The total number of aliens who may be issued visas or otherwise provided H-2A nonimmigrant status under paragraph (1) for the first fiscal year during which the first visa is issued under such paragraph and for each of the following two fiscal years may not exceed 20,000.

“(B) FISCAL YEARS 4 THROUGH 10.—

“(i) IN GENERAL.—The total number of aliens who may be issued visas or otherwise provided H-2A nonimmigrant status under paragraph (1) for the first fiscal year following the fiscal years referred to in subparagraph (A) and for each of the following six fiscal years may not exceed a numerical limitation jointly imposed by the Secretary of Agriculture and Secretary of Labor in accordance with clause (ii).

“(ii) ANNUAL ADJUSTMENTS.—For each fiscal year referred to in clause (i), the Secretary of Agriculture and Secretary of Labor, in consultation with the Secretary of Homeland Security, shall establish a numerical limitation for purposes of clause (i). Such numerical limitation may not be lower than 20,000 and may not vary by more than 12.5 percent compared to the numerical limitation applicable to the immediately preceding fiscal year. In establishing such numerical limitation, the Secretaries shall consider appropriate factors, including—

“(I) a demonstrated shortage of agricultural workers;

“(II) the level of unemployment and underemployment of agricultural workers during the preceding fiscal year;

“(III) the number of H-2A workers sought by employers during the preceding fiscal year to engage in agricultural labor or services not of a temporary or seasonal nature;

“(IV) the number of such H-2A workers issued a visa in the most recent fiscal year who remain in the United States in compliance with the terms of such visa;

“(V) the estimated number of United States workers, including workers who obtained certified agricultural worker status under title I of the Farm Workforce Modernization Act of 2019, who worked during the preceding fiscal year in agricultural labor or services not of a temporary or seasonal nature;

“(VI) the number of such United States workers who accepted jobs offered by employers using the online job registry during the preceding fiscal year;

“(VII) any growth or contraction of the United States agricultural industry that has increased or decreased the demand for agricultural workers; and

“(VIII) any changes in the real wages paid to agricultural workers in the United States as an indication of a shortage or surplus of agricultural labor.

“(C) SUBSEQUENT FISCAL YEARS.—For each fiscal year following the fiscal years referred to in subparagraph (B), the Secretary of Agriculture and Secretary of Labor shall jointly determine, in consultation with the Secretary of Homeland Security, and after considering appropriate factors, including those factors listed in subclauses (I) through (VIII) of subparagraph (B)(ii), whether to establish a numerical limitation for that fiscal year. If a numerical limitation is so established—

“(i) such numerical limitation may not be lower than highest number of aliens admitted under this subsection in any of the three fiscal years immediately preceding the fiscal year for which the numerical limitation is to be established; and

“(ii) the total number of aliens who may be issued visas or otherwise provided H-2A nonimmigrant status under paragraph (1) for that fiscal year may not exceed such numerical limitation.

“(D) EMERGENCY PROCEDURES.—The Secretary of Agriculture and Secretary of Labor, in consultation with the Secretary of Homeland Security, shall jointly establish by regulation procedures for immediately adjusting a numerical limitation imposed under subparagraph (B) or (C) to account for significant labor shortages.

“(3) ALLOCATION OF VISAS.—

“(A) BI-ANNUAL ALLOCATION.—The annual allocation of visas described in paragraph (2) shall be evenly allocated between two halves of the fiscal year unless the Secretary of Homeland Security, in consultation with the

Secretary of Agriculture and Secretary of Labor, determines that an alternative allocation would better accommodate demand for visas. Any unused visas in the first half of the fiscal year shall be added to the allocation for the subsequent half of the same fiscal year.

“(B) RESERVE FOR DAIRY LABOR OR SERVICES.—

“(i) IN GENERAL.—Of the visa numbers made available in each half of the fiscal year pursuant to subparagraph (A), 50 percent of such visas shall be reserved for employers filing petitions seeking H-2A workers to engage in agricultural labor or services in the dairy industry.

“(ii) EXCEPTION.—If, after four months have elapsed in one half of the fiscal year, the Secretary of Homeland Security determines that application of clause (i) will result in visas going unused during that half of the fiscal year, clause (i) shall not apply to visas under this paragraph during the remainder of such calendar half.

“(4) ANNUAL ROUND TRIP HOME.—

“(A) IN GENERAL.—In addition to the other requirements of this section, an employer shall provide H-2A workers employed under this subsection, at no cost to such workers, with annual round trip travel, including transportation and subsistence during travel, to their homes in their communities of origin. The employer must provide such travel within 14 months of the initiation of the worker’s employment, and no more than 14 months can elapse between each required period of travel.

“(B) LIMITATION.—The cost of travel under subparagraph (A) need not exceed the lesser of—

“(i) the actual cost to the worker of the transportation and subsistence involved; or

“(ii) the most economical and reasonable common carrier transportation charges and subsistence costs for the distance involved.

“(5) FAMILY HOUSING.—An employer seeking to employ an H-2A worker pursuant to this subsection shall offer family housing to workers with families if such workers are engaged in agricultural employment that is not of a seasonal or temporary nature. The worker may reject such an offer. The employer may not charge the worker for the worker’s housing, except that if the worker accepts family housing, a prorated rent based on the fair market value for such housing may be charged for the worker’s family members.

“(6) WORKPLACE SAFETY PLAN FOR DAIRY EMPLOYEES.—

“(A) IN GENERAL.—If an employer is seeking to employ a worker in agricultural labor or services in the dairy industry pursuant to this subsection, the employer must report incidents consistent with the requirements under section 1904.39 of title 29, Code of Federal Regulations, and maintain an effective worksite safety and compliance plan to prevent workplace accidents and otherwise ensure safety. Such plan shall—

“(i) be in writing in English and, to the extent necessary, any language common to a significant portion of the workers if they are not fluent in English; and

“(ii) be posted at a conspicuous location at the worksite and provided to employees prior to the commencement of labor or services.

“(B) CONTENTS OF PLAN.—The Secretary of Labor, in consultation with the Secretary of Agriculture, shall establish by regulation the minimum requirements for the plan described in subparagraph (A). Such plan shall include measures to—

“(i) require workers (other than the employer’s family members) whose positions require contact with animals to complete animal care training, including animal handling and job-specific animal care;

“(ii) protect against sexual harassment and violence, resolve complaints involving harassment or violence, and protect against retaliation against workers reporting harassment or violence; and

“(iii) contain other provisions necessary for ensuring workplace safety, as determined by the Secretary of Labor, in consultation with the Secretary of Agriculture.

“(j) ELIGIBILITY FOR H-2A STATUS AND ADMISSION TO THE UNITED STATES.—

“(1) DISQUALIFICATION.—An alien shall be ineligible for admission to the United States as an H-2A worker pursuant to a petition filed under this section if the alien was admitted to the United States as an H-2A worker within the past 5 years of the date the petition was filed and—

“(A) violated a material provision of this section, including the requirement to promptly depart the United States when the alien’s authorized pe-

riod of admission has expired, unless the alien has good cause for such failure to depart; or

“(B) otherwise violated a term or condition of admission into the United States as an H-2A worker.

“(2) VISA VALIDITY.—A visa issued to an H-2A worker shall be valid for three years and shall allow for multiple entries during the approved period of admission.

“(3) PERIOD OF AUTHORIZED STAY; ADMISSION.—

“(A) IN GENERAL.—An alien admissible as an H-2A worker shall be authorized to stay in the United States for the period of employment specified in the petition approved by the Secretary of Homeland Security under this section. The maximum continuous period of authorized stay for an H-2A worker is 36 months.

“(B) REQUIREMENT TO REMAIN OUTSIDE THE UNITED STATES.—In the case of an H-2A worker whose maximum continuous period of authorized stay (including any extensions) has expired, the alien may not again be eligible for such stay until the alien remains outside the United States for a cumulative period of at least 45 days.

“(C) EXCEPTIONS.—The Secretary of Homeland Security shall deduct absences from the United States that take place during an H-2A worker's period of authorized stay from the period that the alien is required to remain outside the United States under subparagraph (B), if the alien or the alien's employer requests such a deduction, and provides clear and convincing proof that the alien qualifies for such a deduction. Such proof shall consist of evidence including, but not limited to, arrival and departure records, copies of tax returns, and records of employment abroad.

“(D) ADMISSION.—In addition to the maximum continuous period of authorized stay, an H-2A worker's authorized period of admission shall include an additional period of 10 days prior to the beginning of the period of employment for the purpose of traveling to the place of employment and 45 days at the end of the period of employment for the purpose of traveling home or seeking an extension of status based on a subsequent offer of employment if the worker has not reached the maximum continuous period of authorized stay under subparagraph (A) (subject to the exceptions in subparagraph (C)).

“(4) CONTINUING H-2A WORKERS.—

“(A) SUCCESSIVE EMPLOYMENT.—An H-2A worker is authorized to start new or concurrent employment upon the filing of a nonfrivolous H-2A petition, or as of the requested start date, whichever is later if—

“(i) the petition to start new or concurrent employment was filed prior to the expiration of the H-2A worker's period of admission as defined in paragraph (3)(D); and

“(ii) the H-2A worker has not been employed without authorization in the United States from the time of last admission to the United States in H-2A status through the filing of the petition for new employment.

“(B) PROTECTION DUE TO IMMIGRANT VISA BACKLOGS.—Notwithstanding the limitations on the period of authorized stay described in paragraph (3), any H-2A worker who—

“(i) is the beneficiary of an approved petition, filed under section 204(a)(1)(E) or (F) for preference status under section 203(b)(3)(A)(iii); and

“(ii) is eligible to be granted such status but for the annual limitations on visas under section 203(b)(3)(A),

may apply for, and the Secretary of Homeland Security may grant, an extension of such nonimmigrant status until the Secretary of Homeland Security issues a final administrative decision on the alien's application for adjustment of status or the Secretary of State issues a final decision on the alien's application for an immigrant visa.

“(5) ABANDONMENT OF EMPLOYMENT.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), an H-2A worker who abandons the employment which was the basis for the worker's authorized stay, without good cause, shall be considered to have failed to maintain H-2A status and shall depart the United States or be subject to removal under section 237(a)(1)(C)(i).

“(B) GRACE PERIOD TO SECURE NEW EMPLOYMENT.—An H-2A worker shall not be considered to have failed to maintain H-2A status solely on the basis of a cessation of the employment on which the alien's classification was based for a period of 45 consecutive days, or until the end of the authorized



validity period, whichever is shorter, once during each authorized validity period.

“(k) REQUIRED DISCLOSURES.—

“(1) DISCLOSURE OF WORK CONTRACT.—Not later than the time the H-2A worker applies for a visa, the employer shall provide the worker with a copy of the work contract that includes the disclosures and rights under this section (or in the absence of such a contract, a copy of the job order and proof of the certification described in subparagraphs (B) and (D) of subsection (h)(2)). An H-2A worker moving from one H-2A employer to a subsequent H-2A employer shall be provided with a copy of the new employment contract no later than the time an offer of employment is made by the subsequent employer.

“(2) HOURS AND EARNINGS STATEMENTS.—The employer shall furnish to H-2A workers, on or before each payday, in 1 or more written statements—

“(A) the worker’s total earnings for the pay period;

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

“(C) the hours of employment offered to the worker and the hours of employment actually worked;

“(D) if piece rates of pay are used, the units produced daily;

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

“(F) any other information required by Federal, State or local law.

“(3) NOTICE OF WORKER RIGHTS.—The employer must post and maintain in a conspicuous location at the place of employment, a poster provided by the Secretary of Labor in English, and, to the extent necessary, any language common to a significant portion of the workers if they are not fluent in English, which sets out the rights and protections for workers employed pursuant to this section.

“(l) LABOR CONTRACTORS; FOREIGN LABOR RECRUITERS; PROHIBITION ON FEES.—

“(1) LABOR CONTRACTORS.—

“(A) SURETY BOND.—An employer that is a labor contractor who seeks to employ H-2A workers shall maintain a surety bond in an amount required under subparagraph (B). Such bond shall be payable to the Secretary of Labor or pursuant to the resolution of a civil or criminal proceeding, for the payment of wages and benefits, including any assessment of interest, owed to an H-2A worker or a similarly employed United States worker, or a United States worker who has been rejected or displaced in violation of this section.

“(B) AMOUNT OF BOND.—The Secretary of Labor shall annually publish in the Federal Register a schedule of required bond amounts that are determined by such Secretary to be sufficient for labor contractors to discharge financial obligations under this section based on the number of workers the labor contractor seeks to employ and the wages such workers are required to be paid.

“(C) PREMIUM BOND.—A labor contractor seeking to file a petition involving more than 1 start date under subsection (h)(1)(C) shall maintain a surety bond that is at least 15 percent higher than the applicable bond amount determined by the Secretary under subparagraph (B).

“(D) USE OF FUNDS.—Any sums paid to the Secretary under subparagraph (A) that are not paid to a worker because of the inability to do so within a period of 5 years following the date of a violation giving rise to the obligation to pay shall remain available to the Secretary without further appropriation until expended to support the enforcement of this section.

“(2) FOREIGN LABOR RECRUITING.—If the employer has retained the services of a foreign labor recruiter, the employer shall use a foreign labor recruiter registered under section 251 of the Farm Workforce Modernization Act of 2019.

“(3) PROHIBITION AGAINST EMPLOYEES PAYING FEES.—Neither the employer nor its agents shall seek or receive payment of any kind from any worker for any activity related to the H-2A process, including payment of the employer’s attorneys’ fees, application fees, or recruitment costs. An employer and its agents may receive reimbursement for costs that are the responsibility and primarily for the benefit of the worker, such as government-required passport fees.

“(4) THIRD PARTY CONTRACTS.—The contract between an employer and any labor contractor or any foreign labor recruiter (or any agent of such labor contractor or foreign labor recruiter) whom the employer engages shall include a term providing for the termination of such contract for cause if the contractor or recruiter, either directly or indirectly, in the placement or recruitment of H-2A workers seeks or receives payments or other compensation from prospective employees. Upon learning that a labor contractor or foreign labor recruiter has

sought or collected such payments, the employer shall so terminate any contracts with such contractor or recruiter.

“(m) ENFORCEMENT AUTHORITY.—

“(1) IN GENERAL.—The Secretary of Labor is authorized to take such actions against employers, including imposing appropriate penalties and seeking monetary and injunctive relief and specific performance of contractual obligations, as may be necessary to ensure compliance with the requirements of this section and with the applicable terms and conditions of employment.

“(2) COMPLAINT PROCESS.—

“(A) PROCESS.—The Secretary of Labor shall establish a process for the receipt, investigation, and disposition of complaints alleging failure of an employer to comply with the requirements under this section and with the applicable terms and conditions of employment.

“(B) FILING.—A complaint referred to in subparagraph (A) may be filed not later than 2 years after the date of the conduct that is the subject of the complaint.

“(C) COMPLAINT NOT EXCLUSIVE.—A complaint filed under this paragraph is not an exclusive remedy and the filing of such a complaint does not waive any rights or remedies of the aggrieved party under this law or other laws.

“(D) DECISION AND REMEDIES.—If the Secretary of Labor finds, after notice and opportunity for a hearing, that the employer failed to comply with the requirements of this section or the terms and conditions of employment, the Secretary of Labor may require payment of unpaid wages, unpaid benefits, fees assessed in violation of this section, damages, and civil money penalties. The Secretary is also authorized to impose other administrative remedies, including disqualification of the employer from utilizing the H-2A program for a period of up to 5 years in the event of willful or multiple material violations. The Secretary is authorized to permanently disqualify an employer from utilizing the H-2A program upon a subsequent finding involving willful or multiple material violations.

“(E) DISPOSITION OF PENALTIES.—Civil penalties collected under this paragraph shall be deposited into the H-2A Labor Certification Fee Account established under section 203 of the Farm Workforce Modernization Act of 2019.

“(3) STATUTORY CONSTRUCTION.—Nothing in this subsection may be construed as limiting the authority of the Secretary of Labor to conduct an investigation—

“(A) under any other law, including any law affecting migrant and seasonal agricultural workers; or

“(B) in the absence of a complaint.

“(4) RETALIATION PROHIBITED.—It is a violation of this subsection for any person who has filed a petition under this section to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other manner discriminate against, or to cause any person to intimidate, threaten, restrain, coerce, blacklist, or in any manner discriminate against, an employee, including a former employee or an applicant for employment, because the employee—

“(A) has disclosed information to the employer, or to any other person, that the employee reasonably believes evidences a violation under this section, or any rule or regulation relating to this section;

“(B) has filed a complaint concerning the employer’s compliance with the requirements under this section or any rule or regulation pertaining to this section;

“(C) cooperates or seeks to cooperate in an investigation or other proceeding concerning the employer’s compliance with the requirements under this section or any rule or regulation pertaining to this section; or

“(D) has taken steps to exercise or assert any right or protection under the provisions of this section, or any rule or regulation pertaining to this section, or any other relevant Federal, State, or local law.

“(5) INTERAGENCY COMMUNICATION.—The Secretary of Labor, in consultation with the Secretary of Homeland Security, Secretary of State and the Equal Employment Opportunity Commission, shall establish mechanisms by which the agencies and their components share information, including by public electronic means, regarding complaints, studies, investigations, findings and remedies regarding compliance by employers with the requirements of the H-2A program and other employment-related laws and regulations.

“(n) DEFINITIONS.—In this section:

“(1) DISPLACE.—The term ‘displace’ means to lay off a similarly employed United States worker, other than for lawful job-related reasons, in the occupation and area of intended employment for the job for which H-2A workers are sought.

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

“(3) JOB ORDER.—The term ‘job order’ means the document containing the material terms and conditions of employment, including obligations and assurances required under this section or any other law.

“(4) ONLINE JOB REGISTRY.—The term ‘online job registry’ means the online job registry of the Secretary of Labor required under section 201(b) of the Farm Workforce Modernization Act of 2019 (or similar successor registry).

“(5) SIMILARLY EMPLOYED.—The term ‘similarly employed’, in the case of a worker, means a worker in the same occupational classification as the classification or classifications for which the H-2A worker is sought.

“(6) UNITED STATES WORKER.—The term ‘United States worker’ means any worker who is—

“(A) a citizen or national of the United States;

“(B) an alien who is lawfully admitted for permanent residence, is admitted as a refugee under section 207, is granted asylum under section 208, or is an immigrant otherwise authorized to be employed in the United States;

“(C) an alien granted certified agricultural worker status under title I of the Farm Workforce Modernization Act of 2019; or

“(D) an individual who is not an unauthorized alien (as defined in section 274A(h)(3)) with respect to the employment in which the worker is engaging.

“(o) FEES; AUTHORIZATION OF APPROPRIATIONS.—

“(1) FEES.—

“(A) IN GENERAL.—The Secretary of Homeland Security shall impose a fee to process petitions under this section. Such fee shall be set at a level that is sufficient to recover the reasonable costs of processing the petition, including the reasonable costs of providing labor certification by the Secretary of Labor.

“(B) DISTRIBUTION.—Fees collected under subparagraph (A) shall be deposited as offsetting receipts into the immigration examinations fee account in section 286(m), except that the portion of fees assessed for the Secretary of Labor shall be deposited into the H-2A Labor Certification Fee Account established pursuant to section 203(c) of the Farm Workforce Modernization Act of 2019 .

“(2) APPROPRIATIONS.—There are authorized to be appropriated for each fiscal year such sums as necessary for the purposes of—

“(A) recruiting United States workers for labor or services which might otherwise be performed by H-2A workers, including by ensuring that State workforce agencies are sufficiently funded to fulfill their functions under this section;

“(B) enabling the Secretary of Labor to make determinations and certifications under this section and under section 212(a)(5)(A)(i);

“(C) monitoring the terms and conditions under which H-2A workers (and United States workers employed by the same employers) are employed in the United States; and

“(D) enabling the Secretary of Agriculture to carry out the Secretary of Agriculture’s duties and responsibilities under this section.”.

#### SEC. 203. AGENCY ROLES AND RESPONSIBILITIES.

(a) RESPONSIBILITIES OF THE SECRETARY OF LABOR.—With respect to the administration of the H-2A program, the Secretary of Labor shall be responsible for—

(1) consulting with State workforce agencies to—

(A) review and process job orders;

(B) facilitate the recruitment and referral of able, willing and qualified United States workers who will be available at the time and place needed;

(C) determine prevailing wages and practices; and

(D) conduct timely inspections to ensure compliance with applicable Federal, State, or local housing standards and Federal regulations for H-2A housing;

(2) determining whether the employer has met the conditions for approval of the H-2A petition described in section 218(a) of the Immigration and Nationality Act (8 U.S.C. 1188(a));

(3) determining, in consultation with the Secretary of Agriculture, whether a job opportunity is of a seasonal or temporary nature;

(4) determining whether the employer has complied or will comply with the H-2A program requirements set forth in section 218 of the Immigration and Nationality Act (8 U.S.C. 1188);

- (5) processing and investigating complaints consistent with section 218(m) of the Immigration and Nationality Act (8 U.S.C. 1188(m)); and
  - (6) ensuring that guidance to State workforce agencies to conduct wage surveys is regularly updated.
- (b) RESPONSIBILITIES OF THE SECRETARY OF HOMELAND SECURITY.—With respect to the administration of the H-2A program, the Secretary of Homeland Security shall be responsible for—

- (1) adjudicating petitions for the admission of H-2A workers, which shall include an assessment as to whether each beneficiary will be employed in accordance with the terms and conditions of the certification and whether any named beneficiaries qualify for such employment;
- (2) transmitting a copy of the final decision on the petition to the employer, and in the case of approved petitions, ensuring that the petition approval is reflected in the electronic platform to facilitate the prompt issuance of a visa by the Department of State (if required) and the admission of the H-2A workers to the United States; and
- (3) establishing a reliable and secure method through which H-2A workers can access information about their H-2A visa status, including information on pending, approved, or denied petitions to extend such status.

(c) ESTABLISHMENT OF ACCOUNT AND USE OF FUNDS.—

- (1) ESTABLISHMENT OF ACCOUNT.—There is established in the general fund of the Treasury a separate account, which shall be known as the “H-2A Labor Certification Fee Account”. Notwithstanding any other provisions of law, there shall be deposited as offsetting receipts into the account all amounts—

- (A) collected as a civil penalty under section 218(m)(2)(E) of the Immigration and Nationality Act; and

- (B) collected as a fee under section 218(o)(1)(B) of the Immigration and Nationality Act.

- (2) USE OF FEES.—Amounts deposited into the H-2A Labor Certification Fee Account shall be available (except as otherwise provided in this paragraph) without fiscal year limitation and without the requirement for specification in appropriations Acts to the Secretary of Labor for use, directly or through grants, contracts, or other arrangements, in such amounts as the Secretary of Labor determines are necessary for the costs of Federal and State administration in carrying out activities in connection with labor certification under section 218 of the Immigration and Nationality Act. Such costs may include personnel salaries and benefits, equipment and infrastructure for adjudication and customer service processes, the operation and maintenance of an on-line job registry, and program integrity activities. The Secretary, in determining what amounts to transfer to States for State administration in carrying out activities in connection with labor certification under section 218 of the Immigration and Nationality Act shall consider the number of H-2A workers employed in that State and shall adjust the amount transferred to that State accordingly. In addition, 10 percent of the amounts deposited into the H-2A Labor Certification Fee Account shall be available to the Office of Inspector General of the Department of Labor to conduct audits and criminal investigations relating to such foreign labor certification programs.

- (3) ADDITIONAL FUNDS.—Amounts available under paragraph (1) shall be available in addition to any other funds appropriated or made available to the Department of Labor under other laws, including section 218(o)(2) of the Immigration and Nationality Act.

**SEC. 204. WORKER PROTECTION AND COMPLIANCE.**

- (a) EQUALITY OF TREATMENT.—H-2A workers shall not be denied any right or remedy under any Federal, State, or local labor or employment law applicable to United States workers engaged in agricultural employment.

(b) APPLICABILITY OF OTHER LAWS.—

- (1) MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT.—H-2A workers shall be considered migrant agricultural workers for purposes of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801 et seq.).

- (2) WAIVER OF RIGHTS PROHIBITED.—Agreements by H-2A workers to waive or modify any rights or protections under this Act or section 218 of the Immigration and Nationality Act (8 U.S.C. 1188) shall be considered void or contrary to public policy except as provided in a collective bargaining agreement with a bona fide labor organization.

(3) MEDIATION.—

- (A) FREE MEDIATION SERVICES.—The Federal Mediation and Conciliation Service shall be available to assist in resolving disputes arising under this

section between H-2A workers and agricultural employers without charge to the parties.

(B) COMPLAINT.—If an H-2A worker files a civil lawsuit alleging one or more violations of section 218 of the Immigration and Nationality Act (8 U.S.C. 1188), the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.), or the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801 et seq.), not later than 60 days after the filing of proof of service of the complaint, a party to the lawsuit may file a request with the Federal Mediation and Conciliation Service to assist the parties in reaching a satisfactory resolution of all issues involving all parties to the dispute.

(C) NOTICE.—Upon filing a request under subparagraph (B) and giving of notice to the parties, the parties shall attempt mediation within the period specified in subparagraph (D), except that nothing in this paragraph shall limit the ability of a court to order preliminary injunctive relief to protect health and safety.

(D) 90-DAY LIMIT.—The Federal Mediation and Conciliation Service may conduct mediation or other nonbinding dispute resolution activities for a period not to exceed 90 days beginning on the date on which the Federal Mediation and Conciliation Service receives a request for assistance under subparagraph (B) unless the parties agree to an extension of such period.

(E) AUTHORIZATION OF APPROPRIATIONS.—

(i) IN GENERAL.—Subject to clause (ii), there is authorized to be appropriated to the Federal Mediation and Conciliation Service, \$500,000 for each fiscal year to carry out this subparagraph.

(ii) MEDIATION.—Notwithstanding any other provision of law, the Director of the Federal Mediation and Conciliation Service is authorized—

(I) to conduct the mediation or other dispute resolution activities from any other account containing amounts available to the Director; and

(II) to reimburse such account with amounts appropriated pursuant to clause (i).

(F) PRIVATE MEDIATION.—If all parties agree, a private mediator may be employed as an alternative to the Federal Mediation and Conciliation Service.

(c) FARM LABOR CONTRACTOR REQUIREMENTS.—

(1) SURETY BONDS.—

(A) REQUIREMENT.—Section 101 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1811), is amended by adding at the end the following:

“(e) A farm labor contractor shall maintain a surety bond in an amount determined by the Secretary to be sufficient for ensuring the ability of the farm labor contractor to discharge its financial obligations, including payment of wages and benefits to employees. Such a bond shall be available to satisfy any amounts ordered to be paid by the Secretary or by court order for failure to comply with the obligations of this Act. The Secretary of Labor shall annually publish in the Federal Register a schedule of required bond amounts that are determined by such Secretary to be sufficient for farm labor contractors to discharge financial obligations based on the number of workers to be covered.”.

(B) REGISTRATION DETERMINATIONS.—Section 103(a) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1813(a)), is amended—

(i) in paragraph (4), by striking “or” at the end;

(ii) in paragraph (5)(B), by striking “or” at the end;

(iii) in paragraph (6), by striking the period at the end and inserting “,”; and

(iv) by adding at the end the following:

“(7) has failed to maintain a surety bond in compliance with section 101(e); or

“(8) has been disqualified by the Secretary of Labor from importing non-immigrants described in section 101(a)(15)(H)(ii) of the Immigration and Nationality Act.”.

(2) SUCCESSORS IN INTEREST.—

(A) DECLARATION.—Section 102 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1812), is amended—

(i) in paragraph (4), by striking “and” at the end;

(ii) in paragraph (5), by striking the period at the end and inserting “; and”; and

(iii) by adding at the end the following:

“(6) a declaration, subscribed and sworn to by the applicant, stating whether the applicant has a familial, contractual, or employment relationship with, or shares vehicles, facilities, property, or employees with, a person who has been refused issuance or renewal of a certificate, or has had a certificate suspended or revoked, pursuant to section 103.”.

(B) REBUTTABLE PRESUMPTION.—Section 103 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1813), as amended by this Act, is further amended by inserting after subsection (a) the following new subsection (and by redesignating the subsequent subsections accordingly):

“(b)(1) There shall be a rebuttable presumption that an applicant for issuance or renewal of a certificate is not the real party in interest in the application if the applicant—

“(A) is the immediate family member of any person who has been refused issuance or renewal of a certificate, or has had a certificate suspended or revoked; and

“(B) identifies a vehicle, facility, or real property under paragraph (2) or (3) of section 102 that has been previously listed by a person who has been refused issuance or renewal of a certificate, or has had a certificate suspended or revoked.

“(2) An applicant described in paragraph (1) bears the burden of demonstrating to the Secretary’s satisfaction that the applicant is the real party in interest in the application.”.

#### SEC. 205. REPORT ON WAGE PROTECTIONS.

(a) Not later than 3 years after the date of the enactment of this Act, and every 3 years thereafter, the Secretary of Labor and Secretary of Agriculture shall prepare and transmit to the Committees on the Judiciary of the House of Representatives and Senate, a report that addresses—

(1) whether, and the manner in which, the employment of H–2A workers in the United States has impacted the wages, working conditions, or job opportunities of United States farm workers;

(2) whether, and the manner in which, the adverse effect wage rate increases or decreases wages on United States farms, broken down by geographic region and farm size;

(3) whether any potential impact of the adverse effect wage rate varies based on the percentage of workers in a geographic region that are H–2A workers;

(4) the degree to which the adverse effect wage rate is affected by the inclusion in wage surveys of piece rate compensation, bonus payments, and other pay incentives, and whether such forms of incentive compensation should be surveyed and reported separately from hourly base rates;

(5) whether, and the manner in which, other factors may artificially affect the adverse effect wage rate, including factors that may be specific to a region, State, or region within a State;

(6) whether, and the manner in which, the H–2A program affects the ability of United States farms to compete with agricultural commodities imported from outside the United States;

(7) the number and percentage of farmworkers in the United States whose incomes are below the poverty line;

(8) whether alternative wage standards would be sufficient to prevent wages in occupations in which H–2A workers are employed from falling below the wage level that would have prevailed in the absence of the H–2A program;

(9) whether any changes are warranted in the current methodologies for calculating the adverse effect wage rate and the prevailing wage; and

(10) recommendations for future wage protection under this section.

(b) In preparing the report described in subsection (a), the Secretary of Labor and Secretary of Agriculture shall engage with equal numbers of representatives of agricultural employers and agricultural workers, both locally and nationally.

#### SEC. 206. PORTABLE H-2A VISA PILOT PROGRAM.

(a) ESTABLISHMENT OF PILOT PROGRAM.—

(1) IN GENERAL.—Not later than 18 months after the date of the enactment of this Act, the Secretary of Homeland Security, in consultation with the Secretary of Labor and Secretary of Agriculture, shall establish through regulation a 6-year pilot program to facilitate the free movement and employment of temporary or seasonal H–2A workers to perform agricultural labor or services for agricultural employers registered with the Secretary of Agriculture. Notwithstanding the requirements of section 218 of the Immigration and Nationality Act, such regulation shall establish the requirements for the pilot program, consistent with subsection (b). For purposes of this section, such a worker shall be

referred to as a portable H-2A worker, and status as such a worker shall be referred to as portable H-2A status.

(2) **ONLINE PLATFORM.**—The Secretary of Homeland Security, in consultation with the Secretary of Labor and the Secretary of Agriculture, shall maintain an online electronic platform to connect portable H-2A workers with registered agricultural employers seeking workers to perform temporary or seasonal agricultural labor or services. Employers shall post on the platform available job opportunities, including a description of the nature and location of the work to be performed, the anticipated period or periods of need, and the terms and conditions of employment. Such platform shall allow portable H-2A workers to search for available job opportunities using relevant criteria, including the types of jobs needed to be filled and the dates and locations of need.

(3) **LIMITATION.**—Notwithstanding the issuance of the regulation described in paragraph (1), the Secretary of State may not issue a portable H-2A visa and the Secretary of Homeland Security may not confer portable H-2A status on any alien until the Secretary of Homeland Security, in consultation with the Secretary of Labor and Secretary of Agriculture, has determined that a sufficient number of employers have been designated as registered agricultural employers under subsection (b)(1) and that such employers have sufficient job opportunities to employ a reasonable number of portable H-2A workers to initiate the pilot program.

(b) **PILOT PROGRAM ELEMENTS.**—The pilot program in subsection (a) shall contain the following elements:

(1) **REGISTERED AGRICULTURAL EMPLOYERS.**—

(A) **DESIGNATION.**—Agricultural employers shall be provided the ability to seek designation as registered agricultural employers. Reasonable fees may be assessed commensurate with the cost of processing applications for designation. A designation shall be valid for a period of up to 3 years unless revoked for failure to comply with program requirements. Registered employers that comply with program requirements may apply to renew such designation for additional periods of up to 3 years for the duration of the pilot program.

(B) **LIMITATIONS.**—Registered agricultural employers may employ aliens with portable H-2A status without filing a petition. Such employers shall pay such aliens at least the wage required under section 218(d) of the Immigration and Nationality Act (8 U.S.C. 1188(d)).

(C) **WORKERS' COMPENSATION.**—If a job opportunity is not covered by or is exempt from the State workers' compensation law, a registered agricultural employer shall provide, at no cost to the worker, insurance covering injury and disease arising out of, and in the course of, the worker's employment, which will provide benefits at least equal to those provided under the State workers' compensation law.

(2) **DESIGNATED WORKERS.**—

(A) **IN GENERAL.**—Individuals who have been previously admitted to the United States in H-2A status, and maintained such status during the period of admission, shall be provided the opportunity to apply for portable H-2A status. Portable H-2A workers shall be subject to the provisions on visa validity and periods of authorized stay and admission for H-2A workers described in paragraphs (2) and (3) of section 218(j) of the Immigration and Nationality Act (8 U.S.C. 1188(j)(2) and (3)).

(B) **LIMITATIONS ON AVAILABILITY OF PORTABLE H-2A STATUS.**—

(i) **INITIAL OFFER OF EMPLOYMENT REQUIRED.**—No alien may be granted portable H-2A status without an initial valid offer of employment to perform temporary or agricultural labor or services from a registered agricultural employer.

(ii) **NUMERICAL LIMITATIONS.**—The total number of aliens who may hold valid portable H-2A status at any one time may not exceed 10,000. Notwithstanding such limitation, the Secretary of Homeland Security may further limit the number of aliens with valid portable H-2A status if the Secretary determines that there are an insufficient number of registered agricultural employers or job opportunities to support the employment of all such portable H-2A workers.

(C) **SCOPE OF EMPLOYMENT.**—During the period of admission, a portable H-2A worker may perform temporary or seasonal agricultural labor or services for any employer in the United States that is designated as a registered agricultural employer pursuant to paragraph (1). An employment arrangement under this section may be terminated by either the portable H-2A worker or the registered agricultural employer at any time.

(D) **TRANSFER TO NEW EMPLOYMENT.**—At the cessation of employment with a registered agricultural employer, a portable H–2A worker shall have 60 days to secure new employment with a registered agricultural employer.

(E) **MAINTENANCE OF STATUS.**—A portable H–2A worker who does not secure new employment with a registered agricultural employer within 60 days shall be considered to have failed to maintain such status and shall depart the United States or be subject to removal under section 237(a)(1)(C)(i) of the Immigration and Nationality Act (8 U.S.C. 1188(a)(1)(C)(i)).

(3) **ENFORCEMENT.**—The Secretary of Labor shall be responsible for conducting investigations and random audits of employers to ensure compliance with the employment-related requirements of this section, consistent with section 218(m) of the Immigration and Nationality Act (8 U.S.C. 1188(m)). The Secretary of Labor shall have the authority to collect reasonable civil penalties for violations, which shall be utilized by the Secretary for the administration and enforcement of the provisions of this section.

(4) **ELIGIBILITY FOR SERVICES.**—Section 305 of Public Law 99–603 (100 Stat. 3434) is amended by striking “other employment rights as provided in the worker’s specific contract under which the nonimmigrant was admitted” and inserting “employment-related rights”.

(c) **REPORT.**—Not later than 6 months before the end of the third fiscal year of the pilot program, the Secretary of Homeland Security, in consultation with the Secretary of Labor and the Secretary of Agriculture, shall prepare and submit to the Committees on the Judiciary of the House of Representatives and the Senate, a report that provides—

(1) the number of employers designated as registered agricultural employers, broken down by geographic region, farm size, and the number of job opportunities offered by such employers;

(2) the number of employers whose designation as a registered agricultural employer was revoked;

(3) the number of individuals granted portable H–2A status in each fiscal year, along with the number of such individuals who maintained portable H–2A status during all or a portion of the 3-year period of the pilot program;

(4) an assessment of the impact of the pilot program on the wages and working conditions of United States farm workers;

(5) the results of a survey of individuals granted portable H–2A status, detailing their experiences with and feedback on the pilot program;

(6) the results of a survey of registered agricultural employers, detailing their experiences with and feedback on the pilot program;

(7) an assessment as to whether the program should be continued and if so, any recommendations for improving the program; and

(8) findings and recommendations regarding effective recruitment mechanisms, including use of new technology to match workers with employers and ensure compliance with applicable labor and employment laws and regulations.

#### **SEC. 207. IMPROVING ACCESS TO PERMANENT RESIDENCE.**

(a) **WORLDWIDE LEVEL.**—Section 201(d)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1151(d)(1)(A)) is amended by striking “140,000” and inserting “180,000”.

(b) **VISAS FOR FARMWORKERS.**—Section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)) is amended—

(1) in paragraph (1) by striking “28.6 percent of such worldwide level” and inserting “40,040”;

(2) in paragraph (2)(A) by striking “28.6 percent of such worldwide level” and inserting “40,040”;

(3) in paragraph (3)—

(A) in subparagraph (A)—

(i) in the matter before clause (i), by striking “28.6 percent of such worldwide level” and inserting “80,040”; and

(ii) by amending clause (iii) to read as follows:

“(iii) **OTHER WORKERS.**—Other qualified immigrants who, at the time of petitioning for classification under this paragraph—

“(I) are capable of performing unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States; or

“(II) can demonstrate employment in the United States as an H–2A nonimmigrant worker for at least 100 days in each of at least 10 years.”;

(B) by amending subparagraph (B) to read as follows:



“(B) VISAS ALLOCATED FOR OTHER WORKERS.—

“(i) IN GENERAL.—Except as provided in clauses (ii) and (iii), 50,000 of the visas made available under this paragraph shall be reserved for qualified immigrants described in subparagraph (A)(iii).

“(ii) PREFERENCE FOR AGRICULTURAL WORKERS.—Subject to clause (iii), not less than four-fifths of the visas described in clause (i) shall be reserved for—

“(I) qualified immigrants described in subparagraph (A)(iii)(I) who will be performing agricultural labor or services in the United States; and

“(II) qualified immigrants described in subparagraph (A)(iii)(II).

“(iii) EXCEPTION.—If because of the application of clause (ii), the total number of visas available under this paragraph for a calendar quarter exceeds the number of qualified immigrants who otherwise may be issued such a visa, clause (ii) shall not apply to visas under this paragraph during the remainder of such calendar quarter.

“(iv) NO PER COUNTRY LIMITS.—Visas described under clause (ii) shall be issued without regard to the numerical limitation under section 202(a)(2).”; and

(C) by amending subparagraph (C) by striking “An immigrant visa” and inserting “Except for qualified immigrants petitioning for classification under subparagraph (A)(iii)(II), an immigrant visa”;

(4) in paragraph (4), by striking “7.1 percent of such worldwide level” and inserting “9,940”; and

(5) in paragraph (5)(A), in the matter before clause (i), by striking “7.1 percent of such worldwide level” and inserting “9,940”.

(c) PETITIONING PROCEDURE.—Section 204(a)(1)(E) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(E)) is amended by inserting “or 203(b)(3)(A)(iii)(II)” after “203(b)(1)(A)”.

(d) DUAL INTENT.—Section 214(b) of the Immigration and Nationality Act (8 U.S.C. 1184(b)) is amended by striking “section 101(a)(15)(H)(i) except subclause (b1) of such section” and inserting “clause (i), except subclause (b1), or (ii)(a) of section 101(a)(15)(H)”.

## Subtitle B—Preservation and Construction of Farmworker Housing

### SEC. 220. SHORT TITLE.

This subtitle may be cited as the “Strategy and Investment in Rural Housing Preservation Act of 2019”.

### SEC. 221. PERMANENT ESTABLISHMENT OF HOUSING PRESERVATION AND REVITALIZATION PROGRAM.

Title V of the Housing Act of 1949 (42 U.S.C. 1471 et seq.) is amended by adding at the end the following new section:

#### “SEC. 545. HOUSING PRESERVATION AND REVITALIZATION PROGRAM.

“(a) ESTABLISHMENT.—The Secretary shall carry out a program under this section for the preservation and revitalization of multifamily rental housing projects financed under section 515 or both sections 514 and 516.

#### “(b) NOTICE OF MATURING LOANS.—

“(1) TO OWNERS.—On an annual basis, the Secretary shall provide written notice to each owner of a property financed under section 515 or both sections 514 and 516 that will mature within the 4-year period beginning upon the provision of such notice, setting forth the options and financial incentives that are available to facilitate the extension of the loan term or the option to decouple a rental assistance contract pursuant to subsection (f).

#### “(2) TO TENANTS.—

“(A) IN GENERAL.—For each property financed under section 515 or both sections 514 and 516, not later than the date that is 2 years before the date that such loan will mature, the Secretary shall provide written notice to each household residing in such property that informs them of the date of the loan maturity, the possible actions that may happen with respect to the property upon such maturity, and how to protect their right to reside in Federally assisted housing after such maturity.

“(B) LANGUAGE.—Notice under this paragraph shall be provided in plain English and shall be translated to other languages in the case of any prop-

erty located in an area in which a significant number of residents speak such other languages.

“(c) LOAN RESTRUCTURING.—Under the program under this section, the Secretary may restructure such existing housing loans, as the Secretary considers appropriate, for the purpose of ensuring that such projects have sufficient resources to preserve the projects to provide safe and affordable housing for low-income residents and farm laborers, by—

“(1) reducing or eliminating interest;

“(2) deferring loan payments;

“(3) subordinating, reducing, or reamortizing loan debt; and

“(4) providing other financial assistance, including advances, payments, and incentives (including the ability of owners to obtain reasonable returns on investment) required by the Secretary.

“(d) RENEWAL OF RENTAL ASSISTANCE.—When the Secretary offers to restructure a loan pursuant to subsection (c), the Secretary shall offer to renew the rental assistance contract under section 521(a)(2) for a 20-year term that is subject to annual appropriations, provided that the owner agrees to bring the property up to such standards that will ensure its maintenance as decent, safe, and sanitary housing for the full term of the rental assistance contract.

“(e) RESTRICTIVE USE AGREEMENTS.—

“(1) REQUIREMENT.—As part of the preservation and revitalization agreement for a project, the Secretary shall obtain a restrictive use agreement that obligates the owner to operate the project in accordance with this title.

“(2) TERM.—

“(A) NO EXTENSION OF RENTAL ASSISTANCE CONTRACT.—Except when the Secretary enters into a 20-year extension of the rental assistance contract for the project, the term of the restrictive use agreement for the project shall be consistent with the term of the restructured loan for the project.

“(B) EXTENSION OF RENTAL ASSISTANCE CONTRACT.—If the Secretary enters into a 20-year extension of the rental assistance contract for a project, the term of the restrictive use agreement for the project shall be for 20 years.

“(C) TERMINATION.—The Secretary may terminate the 20-year use restrictive use agreement for a project prior to the end of its term if the 20-year rental assistance contract for the project with the owner is terminated at any time for reasons outside the owner’s control.

“(f) DECOUPLING OF RENTAL ASSISTANCE.—

“(1) RENEWAL OF RENTAL ASSISTANCE CONTRACT.—If the Secretary determines that a maturing loan for a project cannot reasonably be restructured in accordance with subsection (c) and the project was operating with rental assistance under section 521, the Secretary may renew the rental assistance contract, notwithstanding any provision of section 521, for a term, subject to annual appropriations, of at least 10 years but not more than 20 years.

“(2) RENTS.—Any agreement to extend the term of the rental assistance contract under section 521 for a project shall obligate the owner to continue to maintain the project as decent, safe and sanitary housing and to operate the development in accordance with this title, except that rents shall be based on the lesser of—

“(A) the budget-based needs of the project; or

“(B) the operating cost adjustment factor as a payment standard as provided under section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437 note).

“(g) MULTIFAMILY HOUSING TRANSFER TECHNICAL ASSISTANCE.—Under the program under this section, the Secretary may provide grants to qualified non-profit organizations and public housing agencies to provide technical assistance, including financial and legal services, to borrowers under loans under this title for multifamily housing to facilitate the acquisition of such multifamily housing properties in areas where the Secretary determines there is a risk of loss of affordable housing.

“(h) TRANSFER OF RENTAL ASSISTANCE.—After the loan or loans for a rental project originally financed under section 515 or both sections 514 and 516 have matured or have been prepaid and the owner has chosen not to restructure the loan pursuant to subsection (c), a tenant residing in such project shall have 18 months prior to loan maturation or prepayment to transfer the rental assistance assigned to the tenant’s unit to another rental project originally financed under section 515 or both sections 514 and 516, and the owner of the initial project may rent the tenant’s previous unit to a new tenant without income restrictions.

“(i) ADMINISTRATIVE EXPENSES.—Of any amounts made available for the program under this section for any fiscal year, the Secretary may use not more than \$1,000,000 for administrative expenses for carrying out such program.

“(j) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for the program under this section \$200,000,000 for each of fiscal years 2020 through 2024.”.

**SEC. 222. ELIGIBILITY FOR RURAL HOUSING VOUCHERS.**

Section 542 of the Housing Act of 1949 (42 U.S.C. 1490r) is amended by adding at the end the following new subsection:

“(c) ELIGIBILITY OF HOUSEHOLDS IN SECTIONS 514, 515, AND 516 PROJECTS.—The Secretary may provide rural housing vouchers under this section for any low-income household (including those not receiving rental assistance) residing, for a term longer than the remaining term of their lease in effect just prior to prepayment, in a property financed with a loan made or insured under section 514 or 515 (42 U.S.C. 1484, 1485) which has been prepaid without restrictions imposed by the Secretary pursuant to section 502(c)(5)(G)(ii)(I) (42 U.S.C. 1472(c)(5)(G)(ii)(I)), has been foreclosed, or has matured after September 30, 2005, or residing in a property assisted under section 514 or 516 that is owned by a nonprofit organization or public agency.”.

**SEC. 223. AMOUNT OF VOUCHER ASSISTANCE.**

Notwithstanding any other provision of law, in the case of any rural housing voucher provided pursuant to section 542 of the Housing Act of 1949 (42 U.S.C. 1490r), the amount of the monthly assistance payment for the household on whose behalf such assistance is provided shall be determined as provided in subsection (a) of such section 542.

**SEC. 224. RENTAL ASSISTANCE CONTRACT AUTHORITY.**

Subsection (d) of section 521 of the Housing Act of 1949 (42 U.S.C. 1490a(d)) is amended—

(1) in paragraph (1), by inserting after subparagraph (A) the following new subparagraph (and by redesignating the subsequent subparagraphs accordingly):

“(B) upon request of an owner of a project financed under section 514 or 515, the Secretary is authorized to enter into renewal of such agreements for a period of 20 years or the term of the loan, whichever is shorter, subject to amounts made available in appropriations Acts;” and

(2) by adding at the end the following new paragraph:

“(3) In the case of any rental assistance contract authority that becomes available because of the termination of assistance on behalf of an assisted family—

“(A) at the option of the owner of the rental project, the Secretary shall provide the owner a period of 6 months before such assistance is made available pursuant to subparagraph (B) during which the owner may use such assistance authority to provide assistance of behalf of an eligible unassisted family that—

“(i) is residing in the same rental project that the assisted family resided in prior to such termination; or

“(ii) newly occupies a dwelling unit in such rental project during such period; and

“(B) except for assistance used as provided in subparagraph (A), the Secretary shall use such remaining authority to provide such assistance on behalf of eligible families residing in other rental projects originally financed under section 515 or both sections 514 and 516 of this Act.”.

**SEC. 225. FUNDING FOR MULTIFAMILY TECHNICAL IMPROVEMENTS.**

There is authorized to be appropriated to the Secretary of Agriculture \$50,000,000 for fiscal year 2020 for improving the technology of the Department of Agriculture used to process loans for multifamily housing and otherwise managing such housing. Such improvements shall be made within the 5-year period beginning upon the appropriation of such amounts and such amount shall remain available until the expiration of such 5-year period.

**SEC. 226. PLAN FOR PRESERVING AFFORDABILITY OF RENTAL PROJECTS.**

(a) PLAN.—The Secretary of Agriculture (in this section referred to as the “Secretary”) shall submit a written plan to the Congress, not later than the expiration of the 6-month period beginning on the date of the enactment of this Act, for preserving the affordability for low-income families of rental projects for which loans were made under section 515 or made to nonprofit or public agencies under section 514 and avoiding the displacement of tenant households, which shall—

(1) set forth specific performance goals and measures;

(2) set forth the specific actions and mechanisms by which such goals will be achieved;

(3) set forth specific measurements by which progress towards achievement of each goal can be measured;

- (4) provide for detailed reporting on outcomes; and
  - (5) include any legislative recommendations to assist in achievement of the goals under the plan.
- (b) ADVISORY COMMITTEE.—
- (1) ESTABLISHMENT; PURPOSE.—The Secretary shall establish an advisory committee whose purpose shall be to assist the Secretary in preserving section 515 properties and section 514 properties owned by nonprofit or public agencies through the multifamily housing preservation and revitalization program under section 545 and in implementing the plan required under subsection (a).
  - (2) MEMBER.—The advisory committee shall consist of 16 members, appointed by the Secretary, as follows:
    - (A) A State Director of Rural Development for the Department of Agriculture.
    - (B) The Administrator for Rural Housing Service of the Department of Agriculture.
    - (C) Two representatives of for-profit developers or owners of multifamily rural rental housing.
    - (D) Two representatives of non-profit developers or owners of multifamily rural rental housing.
    - (E) Two representatives of State housing finance agencies.
    - (F) Two representatives of tenants of multifamily rural rental housing.
    - (G) One representative of a community development financial institution that is involved in preserving the affordability of housing assisted under sections 514, 515, and 516 of the Housing Act of 1949.
    - (H) One representative of a nonprofit organization that operates nationally and has actively participated in the preservation of housing assisted by the Rural Housing Service by conducting research regarding, and providing financing and technical assistance for, preserving the affordability of such housing.
    - (I) One representative of low-income housing tax credit investors.
    - (J) One representative of regulated financial institutions that finance affordable multifamily rural rental housing developments.
    - (K) Two representatives from non-profit organizations representing farmworkers, including one organization representing farmworker women.
  - (3) MEETINGS.—The advisory committee shall meet not less often than once each calendar quarter.
  - (4) FUNCTIONS.—In providing assistance to the Secretary to carry out its purpose, the advisory committee shall carry out the following functions:
    - (A) Assisting the Rural Housing Service of the Department of Agriculture to improve estimates of the size, scope, and condition of rental housing portfolio of the Service, including the time frames for maturity of mortgages and costs for preserving the portfolio as affordable housing.
    - (B) Reviewing current policies and procedures of the Rural Housing Service regarding preservation of affordable rental housing financed under sections 514, 515, 516, and 538 of the Housing Act of 1949, the Multifamily Preservation and Revitalization Demonstration program (MPR), and the rental assistance program and making recommendations regarding improvements and modifications to such policies and procedures.
    - (C) Providing ongoing review of Rural Housing Service program results.
    - (D) Providing reports to the Congress and the public on meetings, recommendations, and other findings of the advisory committee.
  - (5) TRAVEL COSTS.—Any amounts made available for administrative costs of the Department of Agriculture may be used for costs of travel by members of the advisory committee to meetings of the committee.

#### SEC. 227. COVERED HOUSING PROGRAMS.

Paragraph (3) of section 41411(a) of the Violence Against Women Act of 1994 (34 U.S.C. 12491(a)(3)) is amended—

- (1) in subparagraph (I), by striking “and” at the end;
- (2) by redesignating subparagraph (J) as subparagraph (K); and
- (3) by inserting after subparagraph (I) the following new subparagraph:
  - “(J) rural development housing voucher assistance provided by the Secretary of Agriculture pursuant to section 542 of the Housing Act of 1949 (42 U.S.C. 1490r), without regard to subsection (b) of such section, and applicable appropriation Acts; and”.

#### SEC. 228. NEW FARMWORKER HOUSING.

Section 513 of the Housing Act of 1949 (42 U.S.C. 1483) is amended by adding at the end the following new subsection:

“(f) FUNDING FOR FARMWORKER HOUSING.—

“(1) SECTION 514 FARMWORKER HOUSING LOANS.—

“(A) INSURANCE AUTHORITY.—The Secretary of Agriculture may, to the extent approved in appropriation Acts, insure loans under section 514 (42 U.S.C. 1484) during each of fiscal years 2020 through 2029 in an aggregate amount not to exceed \$200,000,000.

“(B) AUTHORIZATION OF APPROPRIATIONS FOR COSTS.—There is authorized to be appropriated \$75,000,000 for each of fiscal years 2020 through 2029 for costs (as such term is defined in section 502 of the Congressional Budget Act of 1974 (2 U.S.C. 661a)) of loans insured pursuant the authority under subparagraph (A).

“(2) SECTION 516 GRANTS FOR FARMWORKER HOUSING.—There is authorized to be appropriated \$30,000,000 for each of fiscal years 2020 through 2029 for financial assistance under section 516 (42 U.S.C. 1486).

“(3) SECTION 521 HOUSING ASSISTANCE.—There is authorized to be appropriated \$2,700,000,000 for each of fiscal years 2020 through 2029 for rental assistance agreements entered into or renewed pursuant to section 521(a)(2) (42 U.S.C. 1490a(a)(2)) or agreements entered into in lieu of debt forgiveness or payments for eligible households as authorized by section 502(c)(5)(D).”.

**SEC. 229. LOAN AND GRANT LIMITATIONS.**

Section 514 of the Housing Act of 1949 (42 U.S.C. 1484) is amended by adding at the end the following:

“(j) PER PROJECT LIMITATIONS ON ASSISTANCE.—If the Secretary, in making available assistance in any area under this section or section 516 (42 U.S.C. 1486), establishes a limitation on the amount of assistance available per project, the limitation on a grant or loan award per project shall not be less than \$5 million.”.

**SEC. 230. OPERATING ASSISTANCE SUBSIDIES.**

Subsection (a)(5) of section 521 of the Housing Act of 1949 (42 U.S.C. 1490a(a)(5)) is amended—

(1) in subparagraph (A) by inserting “or domestic farm labor legally admitted to the United States and authorized to work in agriculture” after “migrant farmworkers”;

(2) in subparagraph (B)—

(A) by striking “AMOUNT.—In any fiscal year” and inserting “AMOUNT.—(i) HOUSING FOR MIGRANT FARMWORKERS.—In any fiscal year”;

(B) by inserting “providing housing for migrant farmworkers” after “any project”; and

(C) by inserting at the end the following:

“(ii) HOUSING FOR OTHER FARM LABOR.—In any fiscal year, the assistance provided under this paragraph for any project providing housing for domestic farm labor legally admitted to the United States and authorized to work in agriculture shall not exceed an amount equal to 50 percent of the operating costs for the project for the year, as determined by the Secretary. The owner of such project shall not qualify for operating assistance unless the Secretary certifies that the project was unoccupied or underutilized before making units available to such farm labor, and that a grant under this section will not displace any farm worker who is a United States worker.”; and

(3) in subparagraph (D), by adding at the end the following:

“(iii) The term ‘domestic farm labor’ has the same meaning given such term in section 514(f)(3) (42 U.S.C. 1484(f)(3)), except that subparagraph (A) of such section shall not apply for purposes this section.”.

**SEC. 231. ELIGIBILITY OF CERTIFIED WORKERS.**

Subsection (a) of section 214 of the Housing and Community Development Act of 1980 (42 U.S.C. 1436a) is amended—

(1) in paragraph (6), by striking “or” at the end;

(2) by redesignating paragraph (7) as paragraph (8); and

(3) by inserting after paragraph (6) the following:

“(7) an alien granted certified agricultural worker or certified agricultural dependent status under title I of the Farm Workforce Modernization Act of 2019, but solely for financial assistance made available pursuant to section 521 or 542 of the Housing Act of 1949 (42 U.S.C. 1490a, 1490r); or”.

## Subtitle C—Foreign Labor Recruiter Accountability

### SEC. 251. REGISTRATION OF FOREIGN LABOR RECRUITERS.

(a) **IN GENERAL.**—Not later than 1 year after the date of the enactment of this Act, the Secretary of Labor, in consultation with the Secretary of State and the Secretary of Homeland Security, shall establish procedures for the electronic registration of foreign labor recruiters engaged in the recruitment of nonimmigrant workers described in section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)) to perform agricultural labor or services in the United States.

(b) **PROCEDURAL REQUIREMENTS.**—The procedures described in subsection (a) shall—

(1) require the applicant to submit a sworn declaration—

(A) stating the applicant's permanent place of residence or principal place of business, as applicable;

(B) describing the foreign labor recruiting activities in which the applicant is engaged; and

(C) including such other relevant information as the Secretary of Labor and the Secretary of State may require;

(2) include an expeditious means to update and renew registrations;

(3) include a process, which shall include the placement of personnel at each United States diplomatic mission in accordance with subsection (g)(2), to receive information from the public regarding foreign labor recruiters who have allegedly engaged in a foreign labor recruiting activity that is prohibited under this subtitle;

(4) include procedures for the receipt and processing of complaints against foreign labor recruiters and for remedies, including the revocation of a registration or the assessment of fines upon a determination by the Secretary of Labor that the foreign labor recruiter has violated the requirements of this subtitle;

(5) require the applicant to post a bond in an amount sufficient to ensure the ability of the applicant to discharge its responsibilities and ensure protection of workers, including payment of wages; and

(6) allow the Secretary of Labor and the Secretary of State to consult with other appropriate Federal agencies to determine whether any reason exists to deny registration to a foreign labor recruiter or revoke such registration.

(c) **ATTESTATIONS.**—Foreign labor recruiters registering under this subtitle shall attest and agree to abide by the following requirements:

(1) **PROHIBITED FEES.**—The foreign labor recruiter, including any agent or employee of such foreign labor recruiter, shall not assess any recruitment fees on a worker for any foreign labor recruiting activity.

(2) **PROHIBITION ON FALSE AND MISLEADING INFORMATION.**—The foreign labor recruiter shall not knowingly provide materially false or misleading information to any worker concerning any matter required to be disclosed under this subtitle.

(3) **REQUIRED DISCLOSURES.**—The foreign labor recruiter shall ascertain and disclose to the worker in writing in English and in the primary language of the worker at the time of the worker's recruitment, the following information:

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

(B) A copy of the approved job order or work contract under section 218 of the Immigration and Nationality Act, including all assurances and terms and conditions of employment.

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

(i) describing the general terms and conditions associated with obtaining an H-2A visa and maintaining H-2A status;

(ii) affirming the prohibition on the assessment of fees described in paragraph (1), and explaining that such fees, if paid by the employer, may not be passed on to the worker;

(iii) describing the protections afforded the worker under this subtitle, including procedures for reporting violations to the Secretary of State, filing a complaint with the Secretary of Labor, or filing a civil action; and

(iv) describing the protections afforded the worker by section 202 of the William Wilberforce Trafficking Victims Protection Reauthorization

Act of 2008 (8 U.S.C. 1375b), including the telephone number for the national human trafficking resource center hotline number.

(4) BOND.—The foreign labor recruiter shall agree to maintain a bond sufficient to ensure the ability of the foreign labor recruiter to discharge its responsibilities and ensure protection of workers, and to forfeit such bond in an amount determined by the Secretary under subsections (b)(1)(C)(ii) or (c)(2)(C) of section 252 for failure to comply with the provisions of this subtitle.

(5) COOPERATION IN INVESTIGATION.—The foreign labor recruiter shall agree to cooperate in any investigation under section 252 of this subtitle by the Secretary or other appropriate authorities.

(6) NO RETALIATION.—The foreign labor recruiter shall agree to refrain from intimidating, threatening, restraining, coercing, discharging, blacklisting or in any other manner discriminating or retaliating against any worker or their family members (including a former worker or an applicant for employment) because such worker disclosed information to any person based on a reason to believe that the foreign labor recruiter, or any agent or subcontractee of such foreign labor recruiter, is engaging or has engaged in a foreign labor recruiting activity that does not comply with this subtitle.

(7) EMPLOYEES, AGENTS, AND SUBCONTRACTEES.—The foreign labor recruiter shall consent to be liable for the conduct of any agents or subcontractees of any level in relation to the foreign labor recruiting activity of the agent or subcontractee to the same extent as if the foreign labor recruiter had engaged in such conduct.

(8) ENFORCEMENT.—If the foreign labor recruiter is conducting foreign labor recruiting activity wholly outside the United States, such foreign labor recruiter shall establish a registered agent in the United States who is authorized to accept service of process on behalf of the foreign labor recruiter for the purpose of any administrative proceeding under this title or any Federal court civil action, if such service is made in accordance with the appropriate Federal rules for service of process.

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

(e) APPLICATION FEE.—The Secretary shall require a foreign labor recruiter that submits an application for registration under this section to pay a reasonable fee, sufficient to cover the full costs of carrying out the registration activities under this subtitle.

(f) NOTIFICATION.—

(1) EMPLOYER NOTIFICATION.—

(A) IN GENERAL.—Not less frequently than once every year, an employer of H-2A workers shall provide the Secretary with the names and addresses of all foreign labor recruiters engaged to perform foreign labor recruiting activity on behalf of the employer, whether the foreign labor recruiter is to receive any economic compensation for such services, and, if so, the identity of the person or entity who is paying for the services.

(B) AGREEMENT TO COOPERATE.—In addition to the requirements of subparagraph (A), the employer shall—

(i) provide to the Secretary the identity of any foreign labor recruiter whom the employer has reason to believe is engaging in foreign labor recruiting activities that do not comply with this subtitle; and

(ii) promptly respond to any request by the Secretary for information regarding the identity of a foreign labor recruiter with whom the employer has a contract or other agreement.

(2) FOREIGN LABOR RECRUITER NOTIFICATION.—A registered foreign labor recruiter shall notify the Secretary, not less frequently than once every year, of the identity of any subcontractee, agent, or foreign labor recruiter employee involved in any foreign labor recruiting activity for, or on behalf of, the foreign labor recruiter.

(g) ADDITIONAL RESPONSIBILITIES OF THE SECRETARY OF STATE.—

(1) LISTS.—The Secretary of State, in consultation with the Secretary of Labor shall maintain and make publicly available in written form and on the websites of United States embassies in the official language of that country, and on websites maintained by the Secretary of Labor, regularly updated lists—

(A) of foreign labor recruiters who hold valid registrations under this section, including—

(i) the name and address of the foreign labor recruiter;

(ii) the countries in which such recruiters conduct recruitment;

(iii) the employers for whom recruiting is conducted;

(iv) the occupations that are the subject of recruitment;

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

- (vi) the name and address of the registered agent in the United States who is authorized to accept service of process on behalf of the foreign labor recruiter; and
- (B) of foreign labor recruiters whose registration the Secretary has revoked.
- (2) PERSONNEL.—The Secretary of State shall ensure that each United States diplomatic mission is staffed with a person who shall be responsible for receiving information from members of the public regarding potential violations of the requirements applicable to registered foreign labor recruiters and ensuring that such information is conveyed to the Secretary of Labor for evaluation and initiation of an enforcement action, if appropriate.
- (3) VISA APPLICATION PROCEDURES.—The Secretary shall ensure that consular officers issuing visas to nonimmigrants under section 101(a)(1)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 11001(a)(1)(H)(ii)(a))—
  - (A) provide to and review 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);
  - (B) ensure that the applicant has a copy of the approved job offer or work contract;
  - (C) note in the visa application file whether the foreign labor recruiter has a valid registration under this section; and
  - (D) if the foreign labor recruiter holds a valid registration, review and include in the visa application file, the foreign labor recruiter's disclosures required by subsection (c)(3).
- (4) DATA.—The Secretary of State shall make publicly available online, on an annual basis, data disclosing the gender, country of origin (and State, county, or province, if available), age, wage, level of training, and occupational classification, disaggregated by State, of nonimmigrant workers described in section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act.

#### SEC. 252. ENFORCEMENT.

- (a) DENIAL OR REVOCATION OF REGISTRATION.—
  - (1) GROUNDS FOR DENIAL OR REVOCATION.—The Secretary shall deny an application for registration, or revoke a registration, if the Secretary determines that the foreign labor recruiter, or any agent or subcontractor of such foreign labor recruiter—
    - (A) knowingly made a material misrepresentation in the registration application;
    - (B) materially failed to comply with one or more of the attestations provided under section 251(c); or
    - (C) is not the real party in interest.
  - (2) NOTICE.—Prior to denying an application for registration or revoking a registration under this subsection, the Secretary shall provide written notice of the intent to deny or revoke the registration to the foreign labor recruiter. Such notice shall—
    - (A) articulate with specificity all grounds for denial or revocation; and
    - (B) provide the foreign labor recruiter with not less than 60 days to respond.
  - (3) RE-REGISTRATION.—A foreign labor recruiter whose registration was revoked under subsection (a) may re-register if the foreign labor recruiter demonstrates to the Secretary's satisfaction that the foreign labor recruiter has not violated this subtitle in the 5 years preceding the date an application for registration is filed and has taken sufficient steps to prevent future violations of this subtitle.
- (b) ADMINISTRATIVE ENFORCEMENT.—
  - (1) COMPLAINT PROCESS.—
    - (A) FILING.—A complaint may be filed with the Secretary of Labor, in accordance with the procedures established under section 251(b)(4) not later than 2 years after the earlier of—
      - (i) the date of the last action which constituted the conduct that is the subject of the complaint took place; or
      - (ii) the date on which the aggrieved party had actual knowledge of such conduct.
    - (B) DECISION AND PENALTIES.—If the Secretary of Labor finds, after notice and an opportunity for a hearing, that a foreign labor recruiter failed to comply with any of the requirements of this subtitle, the Secretary of Labor may—



(i) levy a fine against the foreign labor recruiter in an amount not more than—

(I) \$10,000 per violation; and

(II) \$25,000 per violation, upon the third violation;

(ii) order the forfeiture (or partial forfeiture) of the bond and release of as much of the bond as the Secretary determines is necessary for the worker to recover prohibited recruitment fees;

(iii) refuse to issue or renew a registration, or revoke a registration; or

(iv) disqualify the foreign labor recruiter from registration for a period of up to 5 years, or in the case of a subsequent finding involving willful or multiple material violations, permanently disqualify the foreign labor recruiter from registration.

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

(3) STATUTORY CONSTRUCTION.—Nothing in this subsection may be construed as limiting the authority of the Secretary of Labor to conduct an investigation—

(A) under any other law, including any law affecting migrant and seasonal agricultural workers; or

(B) in the absence of a complaint.

(c) CIVIL ACTION.—

(1) IN GENERAL.—The Secretary of Labor or any person aggrieved by a violation of this subtitle may bring a civil action against any foreign labor recruiter, or any employer that does not meet the requirements under subsection (d)(1), in any court of competent jurisdiction—

(A) to seek remedial action, including injunctive relief; and

(B) for damages in accordance with the provisions of this subsection.

(2) AWARD FOR CIVIL ACTION FILED BY AN INDIVIDUAL.—

(A) IN GENERAL.—If the court finds in a civil action filed by an individual under this section that the defendant has violated any provision of this subtitle, 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 subtitle (or of a regulation under this subtitle) shall constitute only 1 violation for purposes of this subsection 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 as necessary to effectuate the purposes of this subtitle.

(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 paragraph, the Secretary shall release as much of the bond held pursuant to section 251(c)(4) as necessary.

(3) SUMS RECOVERED IN ACTIONS BY THE SECRETARY OF LABOR.—

(A) ESTABLISHMENT OF ACCOUNT.—There is established in the general fund of the Treasury a separate account, which shall be known as the "H-2A Foreign Labor Recruiter Compensation Account". Notwithstanding any other provisions of law, there shall be deposited as offsetting receipts into the account, all sums recovered in an action by the Secretary of Labor under this subsection.

(B) USE OF FUNDS.—Amounts deposited into the H-2A Foreign Labor Recruiter Compensation Account and shall be paid 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 following the date such funds are deposited into

the account shall remain available to the Secretary until expended. The Secretary may transfer all or a portion of such remaining sums to appropriate agencies to support the enforcement of the laws prohibiting the trafficking and exploitation of persons or programs that aid trafficking victims.

(d) **EMPLOYER SAFE HARBOR.**—

(1) **IN GENERAL.**—An employer that hires workers referred by a foreign labor recruiter with a valid registration at the time of hiring shall not be held jointly liable for a violation committed solely by a foreign labor recruiter under this subtitle—

(A) in any administrative action initiated by the Secretary concerning such violation; or

(B) in any Federal or State civil court action filed against the foreign labor recruiter by or on behalf of such workers or other aggrieved party under this subtitle.

(2) **CLARIFICATION.**—Nothing in this subtitle shall be construed to prohibit an aggrieved party or parties from bringing a civil action for violations of this subtitle or any other Federal or State law against any employer who hired workers referred by a foreign labor recruiter—

(A) without a valid registration at the time of hire; or

(B) with a valid registration if the employer knew or learned of the violation and failed to report such violation to the Secretary.

(e) **PAROLE TO PURSUE RELIEF.**—If other immigration relief is not available, the Secretary of Homeland Security may grant parole to permit an individual 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 subsection (b) or (c).

(f) **WAIVER OF RIGHTS.**—Agreements by employees purporting to waive or to modify their rights under this subtitle shall be void as contrary to public policy.

(g) **LIABILITY FOR AGENTS.**—Foreign labor recruiters shall be subject to the provisions of this section for violations committed by the foreign labor recruiter's agents or subcontractees of any level in relation to their foreign labor recruiting activity to the same extent as if the foreign labor recruiter had committed the violation.

**SEC. 253. APPROPRIATIONS.**

There is authorized to be appropriated such sums as may be necessary for the Secretary of Labor and Secretary of State to carry out the provisions of this subtitle.

**SEC. 254. DEFINITIONS.**

For purposes of this subtitle:

(1) **FOREIGN LABOR RECRUITER.**—The term “foreign labor recruiter” means any person who performs foreign labor recruiting activity in exchange for money or other valuable consideration paid or promised to be paid, to recruit individuals to work as nonimmigrant workers described in section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)), including any person who performs foreign labor recruiting activity wholly outside of the United States. Such term does not include any entity of the United States Government or an employer, or employee of an employer, who engages in foreign labor recruiting activity solely to find employees for that employer's own use, and without the participation of any other foreign labor recruiter.

(2) **FOREIGN LABOR RECRUITING ACTIVITY.**—The term “foreign labor recruiting 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.

(3) **RECRUITMENT FEES.**—The term “recruitment fees” has the meaning given to such term under section 22.1702 of title 22 of the Code of Federal Regulations, as in effect on the date of enactment of this Act.

(4) **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.

## **TITLE III—ELECTRONIC VERIFICATION OF EMPLOYMENT ELIGIBILITY**

**SEC. 301. ELECTRONIC EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.**

(a) **IN GENERAL.**—Chapter 8 of title II of the Immigration and Nationality Act (8 U.S.C. 1321 et seq.) is amended by inserting after section 274D the following:

**“SEC. 274E. REQUIREMENTS FOR THE ELECTRONIC VERIFICATION OF EMPLOYMENT ELIGIBILITY.**

**“(a) EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.—**

“(1) IN GENERAL.—The Secretary of Homeland Security (referred to in this section as the ‘Secretary’) shall establish and administer an electronic verification system (referred to in this section as the ‘System’), patterned on the E-Verify Program described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) (as in effect on the day before the effective date described in section 303(a)(4) of the Farm Workforce Modernization Act of 2019), and using the employment eligibility confirmation system established under section 404 of such Act (8 U.S.C. 1324a note) (as so in effect) as a foundation, through which the Secretary shall—

“(A) respond to inquiries made by persons or entities seeking to verify the identity and employment authorization of individuals that such persons or entities seek to hire, or to recruit or refer for a fee, for employment in the United States; and

“(B) maintain records of the inquiries that were made, and of verifications provided (or not provided) to such persons or entities as evidence of compliance with the requirements of this section.

“(2) INITIAL RESPONSE DEADLINE.—The System shall provide confirmation or a tentative nonconfirmation of an individual’s identity and employment authorization as soon as practicable, but not later than 3 calendar days after the initial inquiry.

“(3) GENERAL DESIGN AND OPERATION OF SYSTEM.—The Secretary shall design and operate the System—

“(A) using responsive web design and other technologies to maximize its ease of use and accessibility for users on a variety of electronic devices and screen sizes, and in remote locations;

“(B) to maximize the accuracy of responses to inquiries submitted by persons or entities;

“(C) to maximize the reliability of the System and to register each instance when the System is unable to receive inquiries;

“(D) to protect the privacy and security of the personally identifiable information maintained by or submitted to the System;

“(E) to provide direct notification of an inquiry to an individual with respect to whom the inquiry is made, including the results of such inquiry, and information related to the process for challenging the results; and

“(F) to maintain appropriate administrative, technical, and physical safeguards to prevent misuse of the System and unfair immigration-related employment practices.

“(4) MEASURES TO PREVENT IDENTITY THEFT AND OTHER FORMS OF FRAUD.—To prevent identity theft and other forms of fraud, the Secretary shall design and operate the System with the following attributes:

“(A) PHOTO MATCHING TOOL.—The System shall display the digital photograph of the individual, if any, that corresponds to the document presented by an individual to establish identity and employment authorization so that the person or entity that makes an inquiry can compare the photograph displayed by the System to the photograph on the document presented by the individual.

“(B) INDIVIDUAL MONITORING AND SUSPENSION OF IDENTIFYING INFORMATION.—The System shall enable individuals to establish user accounts, after authentication of an individual’s identity, that would allow an individual to—

“(i) confirm the individual’s own employment authorization;

“(ii) receive electronic notification when the individual’s social security account number or other personally identifying information has been submitted to the System;

“(iii) monitor the use history of the individual’s personally identifying information in the System, including the identities of all persons or entities that have submitted such identifying information to the System, the date of each query run, and the System response for each query run;

“(iv) suspend or limit the use of the individual’s social security account number or other personally identifying information for purposes of the System; and

“(v) provide notice to the Department of Homeland Security of any suspected identity fraud or other improper use of personally identifying information.

“(C) BLOCKING MISUSED SOCIAL SECURITY ACCOUNT NUMBERS.—

“(i) IN GENERAL.—The Secretary, in consultation with the Commissioner of Social Security (referred to in this section as the ‘Commissioner’), shall develop, after publication in the Federal Register and an opportunity for public comment, a process in which social security account numbers that have been identified to be subject to unusual multiple use in the System or that are otherwise suspected or determined to have been compromised by identity fraud or other misuse, shall be blocked from use in the System unless the individual using such number is able to establish, through secure and fair procedures, that the individual is the legitimate holder of the number.

“(ii) NOTICE.—If the Secretary blocks or suspends a social security account number under this subparagraph, the Secretary shall provide notice to the persons or entities that have made inquiries to the System using such account number that the identity and employment authorization of the individual who provided such account number must be re-verified.

“(D) ADDITIONAL IDENTITY AUTHENTICATION TOOL.—The Secretary shall develop, after publication in the Federal Register and an opportunity for public comment, additional security measures to adequately verify the identity of an individual whose identity may not be verified using the photo tool described in subparagraph (A). Such additional security measures—

“(i) shall be kept up-to-date with technological advances; and

“(ii) shall be designed to provide a high level of certainty with respect to identity authentication.

“(E) CHILD-LOCK PILOT PROGRAM.—The Secretary, in consultation with the Commissioner, shall establish a reliable, secure program through which parents or legal guardians may suspend or limit the use of the social security account number or other personally identifying information of a minor under their care for purposes of the System. The Secretary may implement the program on a limited pilot basis before making it fully available to all individuals.

“(5) RESPONSIBILITIES OF THE COMMISSIONER OF SOCIAL SECURITY.—The Commissioner, in consultation with the Secretary, shall establish a reliable, secure method, which, within the time periods specified in paragraph (2) and subsection (b)(4)(D)(i)(II), compares the name and social security account number provided in an inquiry against such information maintained by the Commissioner in order to validate (or not validate) the information provided by the person or entity with respect to an individual whose identity and employment authorization the person or entity seeks to confirm, the correspondence of the name and number, and whether the individual has presented a social security account number that is not valid for employment. The Commissioner shall not disclose or release social security information (other than such confirmation or nonconfirmation) under the System except as provided under this section or section 205(c)(2)(I) of the Social Security Act (42 U.S.C. 405).

“(6) RESPONSIBILITIES OF THE SECRETARY OF HOMELAND SECURITY.—

“(A) IN GENERAL.—The Secretary of Homeland Security shall establish a reliable, secure method, which, within the time periods specified in paragraph (2) and subsection (b)(4)(D)(i)(II), compares the name and identification or other authorization number (or any other information determined relevant by the Secretary) which are provided in an inquiry against such information maintained or accessed by the Secretary in order to validate (or not validate) the information provided, the correspondence of the name and number, and whether the individual is authorized to be employed in the United States.

“(B) TRAINING.—The Secretary shall provide and regularly update training materials on the use of the System for persons and entities making inquiries.

“(C) AUDIT.—The Secretary shall provide for periodic auditing of the System to detect and prevent misuse, discrimination, fraud, and identity theft, to protect privacy and assess System accuracy, and to preserve the integrity and security of the information in the System.

“(D) NOTICE OF SYSTEM CHANGES.—The Secretary shall provide appropriate notification to persons and entities registered in the System of any change made by the Secretary or the Commissioner related to permitted and prohibited documents, and use of the System.

“(7) RESPONSIBILITIES OF THE SECRETARY OF STATE.—As part of the System, the Secretary of State shall provide to the Secretary of Homeland Security access to passport and visa information as needed to confirm that a passport or passport card presented under subsection (b)(3)(A)(i) confirms the employment

authorization and identity of the individual presenting such document, and that a passport, passport card, or visa photograph matches the Secretary of State's records, and shall provide such assistance as the Secretary of Homeland Security may request in order to resolve tentative nonconfirmations or final nonconfirmations relating to such information.

"(8) UPDATING INFORMATION.—The Commissioner, the Secretary of Homeland Security, and the Secretary of State shall update records in their custody in a manner that promotes maximum accuracy of the System and shall provide a process for the prompt correction of erroneous information, including instances in which it is brought to their attention through the secondary verification process under subsection (b)(4)(D).

"(9) MANDATORY AND VOLUNTARY SYSTEM USES.—

"(A) MANDATORY USERS.—Except as otherwise provided under Federal or State law, such as sections 302 and 303 of the Farm Workforce Modernization Act of 2019, nothing in this section shall be construed as requiring the use of the System by any person or entity hiring, recruiting, or referring for a fee, an individual for employment in the United States.

"(B) VOLUNTARY USERS.—Beginning after the date that is 30 days after the date on which final rules are published under section 309(a) of the Farm Workforce Modernization Act of 2019, a person or entity may use the System on a voluntary basis to seek verification of the identity and employment authorization of individuals the person or entity is hiring, recruiting, or referring for a fee for employment in the United States

"(C) PROCESS FOR NON-USERS.—The employment verification process for any person or entity hiring, recruiting, or referring for a fee, an individual for employment in the United States shall be governed by section 274A(b) unless the person or entity—

"(i) is required by Federal or State law to use the System; or

"(ii) has opted to use the System voluntarily in accordance with subparagraph (B).

"(10) NO FEE FOR USE.—The Secretary may not charge a fee to an individual, person, or entity related to the use of the System.

"(b) NEW HIRES, RECRUITMENT, AND REFERRAL.—Notwithstanding section 274A(b), the requirements referred to in paragraphs (1)(B) and (3) of section 274A(a) are, in the case of a person or entity that uses the System for the hiring, recruiting, or referring for a fee, an individual for employment in the United States, the following:

"(1) INDIVIDUAL ATTESTATION OF EMPLOYMENT AUTHORIZATION.—During the period beginning on the date on which an offer of employment is accepted and ending on the date of hire, the individual shall attest, under penalty of perjury on a form designated by the Secretary, that the individual is authorized to be employed in the United States by providing on such form—

"(A) the individual's name and date of birth;

"(B) the individual's social security account number (unless the individual has applied for and not yet been issued such a number);

"(C) whether the individual is—

"(i) a citizen or national of the United States;

"(ii) an alien lawfully admitted for permanent residence; or

"(iii) an alien who is otherwise authorized by the Secretary to be hired, recruited, or referred for employment in the United States; and

"(D) if the individual does not attest to United States citizenship or nationality, such identification or other authorization number established by the Department of Homeland Security for the alien as the Secretary may specify.

"(2) EMPLOYER ATTESTATION AFTER EXAMINATION OF DOCUMENTS.—Not later than 3 business days after the date of hire, the person or entity shall attest, under penalty of perjury on the form designated by the Secretary for purposes of paragraph (1), that it has verified that the individual is not an unauthorized alien by—

"(A) obtaining from the individual the information described in paragraph (1) and recording such information on the form;

"(B) examining—

"(i) a document described in paragraph (3)(A); or

"(ii) a document described in paragraph (3)(B) and a document described in paragraph (3)(C); and

"(C) attesting that the information recorded on the form is consistent with the documents examined.

"(3) ACCEPTABLE DOCUMENTS.—

"(A) DOCUMENTS ESTABLISHING EMPLOYMENT AUTHORIZATION AND IDENTITY.—A document described in this subparagraph is an individual's—

“(i) United States passport or passport card;

“(ii) permanent resident card that contains a photograph;

“(iii) foreign passport containing temporary evidence of lawful permanent residence in the form of an official I-551 (or successor) stamp from the Department of Homeland Security or a printed notation on a machine-readable immigrant visa;

“(iv) unexpired employment authorization card that contains a photograph;

“(v) in the case of a nonimmigrant alien authorized to engage in employment for a specific employer incident to status, a foreign passport with Form I-94, Form I-94A, or other documentation as designated by the Secretary specifying the alien's nonimmigrant status as long as such status has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified in the documentation;

“(vi) passport from the Federated States of Micronesia or the Republic of the Marshall Islands with Form I-94, Form I-94A, or other documentation as designated by the Secretary, indicating nonimmigrant admission under the Compact of Free Association Between the United States and the Federated States of Micronesia or the Republic of the Marshall Islands; or

“(vii) other document designated by the Secretary, by notice published in the Federal Register, if the document—

“(I) contains a photograph of the individual, biometric identification data, and other personal identifying information relating to the individual;

“(II) is evidence of authorization for employment in the United States; and

“(III) contains security features to make it resistant to tampering, counterfeiting, and fraudulent use.

“(B) DOCUMENTS ESTABLISHING EMPLOYMENT AUTHORIZATION.—A document described in this subparagraph is—

“(i) an individual's social security account number card (other than such a card which specifies on the face that the issuance of the card does not authorize employment in the United States); or

“(ii) a document establishing employment authorization that the Secretary determines, by notice published in the Federal Register, to be acceptable for purposes of this subparagraph, provided that such documentation contains security features to make it resistant to tampering, counterfeiting, and fraudulent use.

“(C) DOCUMENTS ESTABLISHING IDENTITY.—A document described in this subparagraph is—

“(i) an individual's driver's license or identification card if it was issued by a State or one of the outlying possessions of the United States and contains a photograph and personal identifying information relating to the individual;

“(ii) an individual's unexpired United States military identification card;

“(iii) an individual's unexpired Native American tribal identification document issued by a tribal entity recognized by the Bureau of Indian Affairs;

“(iv) in the case of an individual under 18 years of age, a parent or legal guardian's attestation under penalty of law as to the identity and age of the individual; or

“(v) a document establishing identity that the Secretary determines, by notice published in the Federal Register, to be acceptable for purposes of this subparagraph, if such documentation contains a photograph of the individual, biometric identification data, and other personal identifying information relating to the individual, and security features to make it resistant to tampering, counterfeiting, and fraudulent use.

“(D) AUTHORITY TO PROHIBIT USE OF CERTAIN DOCUMENTS.—If the Secretary finds that any document or class of documents described in subparagraph (A), (B), or (C) does not reliably establish identity or employment authorization or is being used fraudulently to an unacceptable degree, the Secretary may, by notice published in the Federal Register, prohibit or place conditions on the use of such document or class of documents for purposes of this section.

“(4) USE OF THE SYSTEM TO SCREEN IDENTITY AND EMPLOYMENT AUTHORIZATION.—

“(A) IN GENERAL.—In the case of a person or entity that uses the System for the hiring, recruiting, or referring for a fee an individual for employment in the United States, during the period described in subparagraph (B), the person or entity shall submit an inquiry through the System described in subsection (a) to seek verification of the identity and employment authorization of the individual.

“(B) VERIFICATION PERIOD.—

“(i) IN GENERAL.—Except as provided in clause (ii), and subject to subsection (d), the verification period shall begin on the date of hire and end on the date that is 3 business days after the date of hire, or such other reasonable period as the Secretary may prescribe.

“(ii) SPECIAL RULE.—In the case of an alien who is authorized to be employed in the United States and who provides evidence from the Social Security Administration that the alien has applied for a social security account number, the verification period shall end 3 business days after the alien receives the social security account number.

“(C) CONFIRMATION.—If a person or entity receives confirmation of an individual’s identity and employment authorization, the person or entity shall record such confirmation on the form designated by the Secretary for purposes of paragraph (1).

“(D) TENTATIVE NONCONFIRMATION.—

“(i) IN GENERAL.—In cases of tentative nonconfirmation, the Secretary shall provide, in consultation with the Commissioner, a process for—

“(I) an individual to contest the tentative nonconfirmation not later than 10 business days after the date of the receipt of the notice described in clause (ii); and

“(II) the Secretary to issue a confirmation or final nonconfirmation of an individual’s identity and employment authorization not later than 30 calendar days after the Secretary receives notice from the individual contesting a tentative nonconfirmation.

“(ii) NOTICE.—If a person or entity receives a tentative nonconfirmation of an individual’s identity or employment authorization, the person or entity shall, not later than 3 business days after receipt, notify such individual in writing in a language understood by the individual and on a form designated by the Secretary, that shall include a description of the individual’s right to contest the tentative nonconfirmation. The person or entity shall attest, under penalty of perjury, that the person or entity provided (or attempted to provide) such notice to the individual, and the individual shall acknowledge receipt of such notice in a manner specified by the Secretary.

“(iii) NO CONTEST.—

“(I) IN GENERAL.—A tentative nonconfirmation shall become final if, upon receiving the notice described in clause (ii), the individual—

“(aa) refuses to acknowledge receipt of such notice;

“(bb) acknowledges in writing, in a manner specified by the Secretary, that the individual will not contest the tentative nonconfirmation; or

“(cc) fails to contest the tentative nonconfirmation within the 10-business-day period beginning on the date the individual received such notice.

“(II) RECORD OF NO CONTEST.—The person or entity shall indicate in the System that the individual did not contest the tentative nonconfirmation and shall specify the reason the tentative nonconfirmation became final under subclause (I).

“(III) EFFECT OF FAILURE TO CONTEST.—An individual’s failure to contest a tentative nonconfirmation shall not be considered an admission of any fact with respect to any violation of this Act or any other provision of law.

“(iv) CONTEST.—

“(I) IN GENERAL.—An individual may contest a tentative nonconfirmation by using the process for secondary verification under clause (i), not later than 10 business days after receiving the notice described in clause (ii). Except as provided in clause (iii), the nonconfirmation shall remain tentative until a confirmation or final nonconfirmation is provided by the System.

“(II) PROHIBITION ON TERMINATION.—In no case shall a person or entity terminate employment or take any adverse employment action against an individual for failure to obtain confirmation of the individual’s identity and employment authorization until the person or entity receives a notice of final nonconfirmation from the System. Nothing in this subclause shall prohibit an employer from terminating the employment of the individual for any other lawful reason.

“(III) CONFIRMATION OR FINAL NONCONFIRMATION.—The Secretary, in consultation with the Commissioner, shall issue notice of a confirmation or final nonconfirmation of the individual’s identity and employment authorization not later than 30 calendar days after the date the Secretary receives notice from the individual contesting the tentative nonconfirmation.

“(E) FINAL NONCONFIRMATION.—

“(i) NOTICE.—If a person or entity receives a final nonconfirmation of an individual’s identity or employment authorization, the person or entity shall, not later than 3 business days after receipt, notify such individual of the final nonconfirmation in writing, on a form designated by the Secretary, which shall include information regarding the individual’s right to appeal the final nonconfirmation as provided under subparagraph (F). The person or entity shall attest, under penalty of perjury, that the person or entity provided (or attempted to provide) the notice to the individual, and the individual shall acknowledge receipt of such notice in a manner designated by the Secretary.

“(ii) TERMINATION OR NOTIFICATION OF CONTINUED EMPLOYMENT.—If a person or entity receives a final nonconfirmation regarding an individual, the person or entity may terminate employment of the individual. If the person or entity does not terminate such employment pending appeal of the final nonconfirmation, the person or entity shall notify the Secretary of such fact through the System. Failure to notify the Secretary in accordance with this clause shall be deemed a violation of section 274A(a)(1)(A).

“(iii) PRESUMPTION OF VIOLATION FOR CONTINUED EMPLOYMENT.—If a person or entity continues to employ an individual after receipt of a final nonconfirmation, there shall be a rebuttable presumption that the person or entity has violated paragraphs (1)(A) and (a)(2) of section 274A(a).

“(F) APPEAL OF FINAL NONCONFIRMATION.—

“(i) ADMINISTRATIVE APPEAL.—The Secretary, in consultation with the Commissioner, shall develop a process by which an individual may seek administrative review of a final nonconfirmation. Such process shall—

“(I) permit the individual to submit additional evidence establishing identity or employment authorization;

“(II) ensure prompt resolution of an appeal (but in no event shall there be a failure to respond to an appeal within 30 days); and

“(III) permit the Secretary to impose a civil money penalty (not to exceed \$500) on an individual upon finding that an appeal was frivolous or filed for purposes of delay.

“(ii) COMPENSATION FOR LOST WAGES RESULTING FROM GOVERNMENT ERROR OR OMISSION.—

“(I) IN GENERAL.—If, upon consideration of an appeal of a final nonconfirmation, the Secretary determines that the final nonconfirmation was issued in error, the Secretary shall further determine whether the final nonconfirmation was the result of government error or omission. If the Secretary determines that the final nonconfirmation was solely the result of government error or omission and the individual was terminated from employment, the Secretary shall compensate the individual for lost wages.

“(II) CALCULATION OF LOST WAGES.—Lost wages shall be calculated based on the wage rate and work schedule that were in effect prior to the individual’s termination. The individual shall be compensated for lost wages beginning on the first scheduled work day after employment was terminated and ending 90 days after completion of the administrative review process described in this subparagraph or the day the individual is reinstated or obtains other employment, whichever occurs first.



“(III) LIMITATION ON COMPENSATION.—No compensation for lost wages shall be awarded for any period during which the individual was not authorized for employment in the United States.

“(IV) SOURCE OF FUNDS.—There is established in the general fund of the Treasury, a separate account which shall be known as the ‘Electronic Verification Compensation Account’. Fees collected under subsections (f) and (g) shall be deposited in the Electronic Verification Compensation Account and shall remain available for purposes of providing compensation for lost wages under this subclause.

“(iii) JUDICIAL REVIEW.—Not later than 30 days after the dismissal of an appeal under this subparagraph, an individual may seek judicial review of such dismissal in the United States District Court in the jurisdiction in which the employer resides or conducts business.

“(5) RETENTION OF VERIFICATION RECORDS.—

“(A) IN GENERAL.—After completing the form designated by the Secretary in accordance with paragraphs (1) and (2), the person or entity shall retain the form in paper, microfiche, microfilm, electronic, or other format deemed acceptable by the Secretary, and make it available for inspection by officers of the Department of Homeland Security, the Department of Justice, or the Department of Labor during the period beginning on the date the verification is completed and ending on the later of—

“(i) the date that is 3 years after the date of hire; or

“(ii) the date that is 1 year after the date on which the individual’s employment is terminated.

“(B) COPYING OF DOCUMENTATION PERMITTED.—Notwithstanding any other provision of law, a person or entity may copy a document presented by an individual pursuant to this section and may retain the copy, but only for the purpose of complying with the requirements of this section.

“(c) REVERIFICATION OF PREVIOUSLY HIRED INDIVIDUALS.—

“(1) MANDATORY REVERIFICATION.—In the case of a person or entity that uses the System for the hiring, recruiting, or referring for a fee an individual for employment in the United States, the person or entity shall submit an inquiry using the System to verify the identity and employment authorization of—

“(A) an individual with a limited period of employment authorization, within 3 business days before the date on which such employment authorization expires; and

“(B) an individual, not later than 10 days after receiving a notification from the Secretary requiring the verification of such individual pursuant to subsection (a)(4)(C).

“(2) REVERIFICATION PROCEDURES.—The verification procedures under subsection (b) shall apply to reverifications under this subsection, except that employers shall—

“(A) use a form designated by the Secretary for purposes of this paragraph; and

“(B) retain the form in paper, microfiche, microfilm, electronic, or other format deemed acceptable by the Secretary, and make it available for inspection by officers of the Department of Homeland Security, the Department of Justice, or the Department of Labor during the period beginning on the date the reverification commences and ending on the later of—

“(i) the date that is 3 years after the date of reverification; or

“(ii) the date that is 1 year after the date on which the individual’s employment is terminated.

“(3) LIMITATION ON REVERIFICATION.—Except as provided in paragraph (1), a person or entity may not otherwise reverify the identity and employment authorization of a current employee, including an employee continuing in employment.

“(d) GOOD FAITH COMPLIANCE.—

“(1) IN GENERAL.—Except as otherwise provided in this subsection, a person or entity that uses the System is considered to have complied with the requirements of this section notwithstanding a technical failure of the System, or other technical or procedural failure to meet such requirement if there was a good faith attempt to comply with the requirement.

“(2) EXCEPTION FOR FAILURE TO CORRECT AFTER NOTICE.—Paragraph (1) shall not apply if—

“(A) the failure is not de minimis;

“(B) the Secretary has provided notice to the person or entity of the failure, including an explanation as to why it is not de minimis;

“(C) the person or entity has been provided a period of not less than 30 days (beginning after the date of the notice) to correct the failure; and

“(D) the person or entity has not corrected the failure voluntarily within such period.

“(3) EXCEPTION FOR PATTERN OR PRACTICE VIOLATORS.—Paragraph (1) shall not apply to a person or entity that has engaged or is engaging in a pattern or practice of violations of paragraph (1)(A) or (2) of section 274A(a).

“(4) DEFENSE.—In the case of a person or entity that uses the System for the hiring, recruiting, or referring for a fee an individual for employment in the United States, the person or entity shall not be liable to a job applicant, an employee, the Federal Government, or a State or local government, under Federal, State, or local criminal or civil law, for any employment-related action taken with respect to an employee in good-faith reliance on information provided by the System. Such person or entity shall be deemed to have established compliance with its obligations under this section, absent a showing by the Secretary, by clear and convincing evidence, that the employer had knowledge that an employee is an unauthorized alien.

“(e) LIMITATIONS.—

“(1) NO NATIONAL IDENTIFICATION CARD.—Nothing in this section shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.

“(2) USE OF RECORDS.—Notwithstanding any other provision of law, nothing in this section shall be construed to permit or allow any department, bureau, or other agency of the United States Government to utilize any information, database, or other records assembled under this section for any purpose other than the verification of identity and employment authorization of an individual or to ensure the secure, appropriate, and non-discriminatory use of the System.

“(f) PENALTIES.—

“(1) IN GENERAL.—Except as provided in this subsection, the provisions of subsections (e) through (g) of section 274A shall apply with respect to compliance with the provisions of this section and penalties for non-compliance for persons or entities that use the System.

“(2) CEASE AND DESIST ORDER WITH CIVIL MONEY PENALTIES FOR HIRING, RECRUITING, AND REFERRAL VIOLATIONS.—Notwithstanding the civil money penalties set forth in section 274A(e)(4), with respect to a violation of paragraph (1)(A) or (2) of section 274A(a) by a person or entity that has hired, recruited, or referred for a fee, an individual for employment in the United States, a cease and desist order—

“(A) shall require the person or entity to pay a civil penalty in an amount, subject to subsection (d), of—

“(i) not less than \$2,500 and not more than \$5,000 for each unauthorized alien with respect to whom a violation of either such subsection occurred;

“(ii) not less than \$5,000 and not more than \$10,000 for each such alien in the case of a person or entity previously subject to one order under this paragraph; or

“(iii) not less than \$10,000 and not more than \$25,000 for each such alien in the case of a person or entity previously subject to more than one order under this paragraph; and

“(B) may require the person or entity to take such other remedial action as appropriate.

“(3) ORDER FOR CIVIL MONEY PENALTY FOR VIOLATIONS.—With respect to a violation of section 274A(a)(1)(B), the order under this paragraph shall require the person or entity to pay a civil penalty in an amount, subject to paragraphs (4), (5), and (6), of not less than \$1,000 and not more than \$25,000 for each individual with respect to whom such violation occurred. Failure by a person or entity to utilize the System as required by law or providing information to the System that the person or entity knows or reasonably believes to be false, shall be treated as a violation of section 274A(a)(1)(A).

“(4) EXEMPTION FROM PENALTY FOR GOOD FAITH VIOLATION.—

“(A) IN GENERAL.—A person or entity that uses the System is presumed to have acted with knowledge for purposes of paragraphs (1)(A) and (2) of section 274A(a) if the person or entity fails to make an inquiry to verify the identity and employment authorization of the individual through the System.

“(B) GOOD FAITH EXEMPTION.—In the case of imposition of a civil penalty under paragraph (2)(A) with respect to a violation of paragraph (1)(A) or (2) of section 274A(a) for hiring or continuation of employment or recruitment or referral by a person or entity, and in the case of imposition of a

civil penalty under paragraph (3) for a violation of section 274A(a)(1)(B) for hiring or recruitment or referral by a person or entity, the penalty otherwise imposed may be waived or reduced if the person or entity establishes that the person or entity acted in good faith.

“(5) MITIGATION ELEMENTS.—For purposes of paragraphs (2)(A) and (3), when assessing the level of civil money penalties, in addition to the good faith of the person or entity being charged, due consideration shall be given to the size of the business, the seriousness of the violation, whether or not the individual was an unauthorized alien, and the history of previous violations.

“(6) CRIMINAL PENALTY.—Notwithstanding section 274A(f)(1) and the provisions of any other Federal law relating to fine levels, any person or entity that is required to comply with the provisions of this section and that engages in a pattern or practice of violations of paragraph (1) or (2) of section 274A(a), shall be fined not more than \$5,000 for each unauthorized alien with respect to whom such a violation occurs, imprisoned for not more than 18 months, or both.

“(7) ELECTRONIC VERIFICATION COMPENSATION ACCOUNT.—Civil money penalties collected under this subsection shall be deposited in the Electronic Verification Compensation Account for the purpose of compensating individuals for lost wages as a result of a final nonconfirmation issued by the System that was based on government or employer error or omission, as set forth in subsection (b)(4)(F)(ii)(IV).

“(8) DEBARMENT.—

“(A) IN GENERAL.—If a person or entity is determined by the Secretary to be a repeat violator of paragraph (1)(A) or (2) of section 274A(a) or is convicted of a crime under section 274A, such person or entity may be considered for debarment from the receipt of Federal contracts, grants, or cooperative agreements in accordance with the debarment standards and pursuant to the debarment procedures set forth in the Federal Acquisition Regulation.

“(B) NO CONTRACT, GRANT, AGREEMENT.—If the Secretary or the Attorney General wishes to have a person or entity considered for debarment in accordance with this paragraph, and such a person or entity does not hold a Federal contract, grant or cooperative agreement, the Secretary or Attorney General shall refer the matter to the Administrator of General Services to determine whether to list the person or entity on the List of Parties Excluded from Federal Procurement, and if so, for what duration and under what scope.

“(C) CONTRACT, GRANT, AGREEMENT.—If the Secretary or the Attorney General wishes to have a person or entity considered for debarment in accordance with this paragraph, and such person or entity holds a Federal contract, grant, or cooperative agreement, the Secretary or Attorney General shall advise all agencies or departments holding a contract, grant, or cooperative agreement with the person or entity of the Government’s interest in having the person or entity considered for debarment, and after soliciting and considering the views of all such agencies and departments, the Secretary or Attorney General may refer the matter to the appropriate lead agency to determine whether to list the person or entity on the List of Parties Excluded from Federal Procurement, and if so, for what duration and under what scope.

“(D) REVIEW.—Any decision to debar a person or entity in accordance with this subsection shall be reviewable pursuant to part 9.4 of the Federal Acquisition Regulation.

“(9) PREEMPTION.—The provisions of this section preempt any State or local law, ordinance, policy, or rule, including any criminal or civil fine or penalty structure, relating to the hiring, continued employment, or status verification for employment eligibility purposes, of unauthorized aliens, except that a State, locality, municipality, or political subdivision may exercise its authority over business licensing and similar laws as a penalty for failure to use the System as required under this section.

“(g) UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES AND THE SYSTEM.—

“(1) IN GENERAL.—In addition to the prohibitions on discrimination set forth in section 274B, it is an unfair immigration-related employment practice for a person or entity, in the course of utilizing the System—

“(A) to use the System for screening an applicant prior to the date of hire;

“(B) to terminate the employment of an individual or take any adverse employment action with respect to that individual due to a tentative nonconfirmation issued by the System;

“(C) to use the System to screen any individual for any purpose other than confirmation of identity and employment authorization as provided in this section;

“(D) to use the System to verify the identity and employment authorization of a current employee, including an employee continuing in employment, other than reverification authorized under subsection (c);

“(E) to use the System to discriminate based on national origin or citizenship status;

“(F) to willfully fail to provide an individual with any notice required under this title;

“(G) to require an individual to make an inquiry under the self-verification procedures described in subsection (a)(4)(B) or to provide the results of such an inquiry as a condition of employment, or hiring, recruiting, or referring; or

“(H) to terminate the employment of an individual or take any adverse employment action with respect to that individual based upon the need to verify the identity and employment authorization of the individual as required by subsection (b).

“(2) **PREEMPLOYMENT SCREENING AND BACKGROUND CHECK.**—Nothing in paragraph (1)(A) shall be construed to preclude a preemployment screening or background check that is required or permitted under any other provision of law.

“(3) **CIVIL MONEY PENALTIES FOR DISCRIMINATORY CONDUCT.**—Notwithstanding section 274B(g)(2)(B)(iv), the penalties that may be imposed by an administrative law judge with respect to a finding that a person or entity has engaged in an unfair immigration-related employment practice described in paragraph (1) are—

“(A) not less than \$1,000 and not more than \$4,000 for each individual discriminated against;

“(B) in the case of a person or entity previously subject to a single order under this paragraph, not less than \$4,000 and not more than \$10,000 for each individual discriminated against; and

“(C) in the case of a person or entity previously subject to more than one order under this paragraph, not less than \$6,000 and not more than \$20,000 for each individual discriminated against.

“(4) **ELECTRONIC VERIFICATION COMPENSATION ACCOUNT.**—Civil money penalties collected under this subsection shall be deposited in the Electronic Verification Compensation Account for the purpose of compensating individuals for lost wages as a result of a final nonconfirmation issued by the System that was based on government error or omission, as set forth in subsection (b)(4)(F)(ii)(IV).

“(h) **CLARIFICATION.**—All rights and remedies provided under any Federal, State, or local law relating to workplace rights, including but not limited to back pay, are available to an employee despite—

“(1) the employee’s status as an unauthorized alien during or after the period of employment; or

“(2) the employer’s or employee’s failure to comply with the requirements of this section.

“(i) **DEFINITION.**—In this section, the term ‘date of hire’ means the date on which employment for pay or other remuneration commences.”

(b) **CONFORMING AMENDMENT.**—The table of contents for the Immigration and Nationality Act is amended by inserting after the item relating to section 274D the following:

“Sec. 274E. Requirements for the electronic verification of employment eligibility.”.

#### **SEC. 302. MANDATORY ELECTRONIC VERIFICATION FOR THE AGRICULTURAL INDUSTRY.**

(a) **IN GENERAL.**—The requirements for the electronic verification of identity and employment authorization described in section 274E of the Immigration and Nationality Act, as inserted by section 301 of this Act, shall apply to a person or entity hiring, recruiting, or referring for a fee an individual for agricultural employment in the United States in accordance with the effective dates set forth in subsection (b).

(b) **EFFECTIVE DATES.**—

(1) **HIRING.**—Subsection (a) shall apply to a person or entity hiring an individual for agricultural employment in the United States as follows:

(A) With respect to employers having 500 or more employees in the United States on the date of the enactment of this Act, on the date that is 6 months after completion of the application period described in section 101(c).

(B) With respect to employers having 100 or more employees in the United States (but less than 500 such employees) on the date of the enactment of this Act, on the date that is 9 months after completion of the application period described in section 101(c).

(C) With respect to employers having 20 or more employees in the United States (but less than 100 such employees) on the date of the enactment of this Act, on the date that is 12 months after completion of the application period described in section 101(c).

(D) With respect to employers having 1 or more employees in the United States, (but less than 20 such employees) on the date of the enactment of this Act, on the date that is 15 months after completion of the application period described in section 101(c).

(2) **RECRUITING AND REFERRING.**—Subsection (a) shall apply to a person or entity recruiting or referring an individual for agricultural employment in the United States on the date that is 12 months after completion of the application period described in section 101(c).

(3) **TRANSITION RULE.**—Except as required under subtitle A of title IV of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) (as in effect on the day before the effective date described in section 303(a)(4)), Executive Order 13465 (8 U.S.C. 1324a note; relating to Government procurement), or any State law requiring persons or entities to use the E-Verify Program described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) (as in effect on the day before the effective date described in section 303(a)(4)), sections 274A and 274B of the Immigration and Nationality Act (8 U.S.C. 1324a and 1324b) shall apply to a person or entity hiring, recruiting, or referring an individual for employment in the United States until the applicable effective date under this subsection.

(4) **E-VERIFY VOLUNTARY USERS AND OTHERS DESIRING EARLY COMPLIANCE.**—Nothing in this subsection shall be construed to prohibit persons or entities, including persons or entities that have voluntarily elected to participate in the E-Verify Program described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) (as in effect on the day before the effective date described in section 303(a)(4)), from seeking early compliance on a voluntary basis.

(c) **RURAL ACCESS TO SECONDARY REVIEW PROCESS.**—

(1) **IN GENERAL.**—The Secretary of Homeland Security and the Commissioner of Social Security shall coordinate with the Secretary of Agriculture to create an alternate process for an individual to contest a tentative nonconfirmation as described in section 274E(b)(4)(D) of the Immigration and Nationality Act, as inserted by section 301 of this Act, by appearing in-person at a local office or service center of the U.S. Department of Agriculture or at a local office of the U.S. Social Security Administration.

(2) **STAFFING AND RESOURCES.**—The Secretary of Agriculture and Commissioner of Social Security shall ensure that local offices and service centers of the U.S. Department of Agriculture and local offices of the U.S. Social Security Administration are staffed appropriately and have the resources necessary to receive in-person requests for secondary review of a tentative nonconfirmation under paragraph (1) from individuals and to facilitate the secondary review process by serving as a single point of contact between the individual and the Department of Homeland Security and the Social Security Administration.

(d) **DOCUMENT ESTABLISHING EMPLOYMENT AUTHORIZATION AND IDENTITY.**—In accordance with section 274E(b)(3)(A)(vii) of the Immigration and Nationality Act, as inserted by section 301 of this Act, and not later than 12 months after the completion of the application period described in section 101(c) of this Act, the Secretary of Homeland Security shall recognize documentary evidence of certified agricultural worker status described in section 102(a)(2) of this Act as valid proof of employment authorization and identity for purposes of section 274E(b)(3)(A) of the Immigration and Nationality Act, as inserted by section 301 of this Act.

(e) **AGRICULTURAL EMPLOYMENT.**—For purposes of this section, the term “agricultural employment” means agricultural labor or services, as defined by section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)), as amended by this Act.

#### **SEC. 303. COORDINATION WITH E-VERIFY PROGRAM.**

(a) **REPEAL.**—

(1) **IN GENERAL.**—Subtitle A of title IV of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is repealed.

(2) **CLERICAL AMENDMENT.**—The table of sections, in section 1(d) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, is amended by striking the items relating to subtitle A of title IV.

(3) **REFERENCES.**—Any reference in any Federal, State, or local law, Executive order, rule, regulation, or delegation of authority, or any document of, or pertaining to, the Department of Homeland Security, Department of Justice, or the Social Security Administration, to the E-Verify Program described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note), or to the employment eligibility confirmation system established under section 404 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note), is deemed to refer to the employment eligibility confirmation system established under section 274E of the Immigration and Nationality Act, as inserted by section 301 of this Act.

(4) **EFFECTIVE DATE.**—This subsection, and the amendments made by this subsection, shall take effect on the date that is 30 days after the date on which final rules are published under section 309(a).

(b) **FORMER E-VERIFY MANDATORY USERS, INCLUDING FEDERAL CONTRACTORS.**—Beginning on the effective date in subsection (a)(4), the Secretary of Homeland Security shall require employers required to participate in the E-Verify Program described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) by reason of any Federal, State, or local law, Executive order, rule, regulation, or delegation of authority, including employers required to participate in such program by reason of Federal acquisition laws (and regulations promulgated under those laws, including the Federal Acquisition Regulation), to comply with the requirements of section 274E of the Immigration and Nationality Act, as inserted by section 301 of this Act (and any additional requirements of such Federal acquisition laws and regulation) in lieu of any requirement to participate in the E-Verify Program.

(c) **FORMER E-VERIFY VOLUNTARY USERS.**—Beginning on the effective date in subsection (a)(4), the Secretary of Homeland Security shall provide for the voluntary compliance with the requirements of section 274E of the Immigration and Nationality Act, as inserted by section 301 of this Act, by employers voluntarily electing to participate in the E-Verify Program described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) before such date.

#### **SEC. 304. FRAUD AND MISUSE OF DOCUMENTS.**

Section 1546(b) of title 18, United States Code, is amended—

(1) in paragraph (1), by striking “identification document,” and inserting “identification document or document meant to establish employment authorization,”;

(2) in paragraph (2), by striking “identification document” and inserting “identification document or document meant to establish employment authorization,”; and

(3) in the matter following paragraph (3) by inserting “or section 274E(b)” after “section 274A(b)”.

#### **SEC. 305. TECHNICAL AND CONFORMING AMENDMENTS.**

(a) **UNLAWFUL EMPLOYMENT OF ALIENS.**—Section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) is amended—

(1) in paragraph (1)(B)(ii) of subsection (a), by striking “subsection (b).” and inserting “section 274B.”; and

(2) in the matter preceding paragraph (1) of subsection (b), by striking “The requirements referred” and inserting “Except as provided in section 274E, the requirements referred”.

(b) **UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES.**—Section 274B(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1324b(a)(1)) is amended in the matter preceding subparagraph (A), by inserting “including misuse of the verification system as described in section 274E(g)” after “referral for a fee.”

#### **SEC. 306. PROTECTION OF SOCIAL SECURITY ADMINISTRATION PROGRAMS.**

(a) **FUNDING UNDER AGREEMENT.**—Effective for fiscal years beginning on or after October 1, 2020, the Commissioner and the Secretary shall enter into and maintain an agreement which shall—

(1) provide funds to the Commissioner for the full costs of the responsibilities of the Commissioner under section 274E(a)(5) of the Immigration and Nationality Act, as inserted by section 301 of this Act, including—

(A) acquiring, installing, and maintaining technological equipment and systems necessary for the fulfillment of the responsibilities of the Commis-

sioner under such section, but only that portion of such costs that are attributable exclusively to such responsibilities; and

(B) responding to individuals who contest a tentative nonconfirmation or administratively appeal a final nonconfirmation provided by the electronic employment eligibility verification system established under such section;

(2) provide such funds annually in advance of the applicable quarter based on an estimating methodology agreed to by the Commissioner and the Secretary (except in such instances where the delayed enactment of an annual appropriation may preclude such quarterly payments); and

(3) require an annual accounting and reconciliation of the actual costs incurred and the funds provided under the agreement, which shall be reviewed by the Inspectors General of the Social Security Administration and the Department of Homeland Security.

(b) **CONTINUATION OF EMPLOYMENT VERIFICATION IN ABSENCE OF TIMELY AGREEMENT.**—In any case in which the agreement required under subsection (a) for any fiscal year beginning on or after October 1, 2020, has not been reached as of October 1 of such fiscal year, the latest agreement between the Commissioner and the Secretary providing for funding to cover the costs of the responsibilities of the Commissioner under section 274E(a)(5) of the Immigration and Nationality Act, as inserted by section 301 of this Act, shall be deemed in effect on an interim basis for such fiscal year until such time as an agreement required under subsection (a) is subsequently reached, except that the terms of such interim agreement shall be modified by the Director of the Office of Management and Budget to adjust for inflation and any increase or decrease in the volume of requests under the employment eligibility verification system. In any case in which an interim agreement applies for any fiscal year under this subsection, the Commissioner and the Secretary shall, not later than October 1 of such fiscal year, notify the Committee on Ways and Means, the Committee on the Judiciary, and the Committee on Appropriations of the House of Representatives and the Committee on Finance, the Committee on the Judiciary, and the Committee on Appropriations of the Senate of the failure to reach the agreement required under subsection (a) for such fiscal year. Until such time as the agreement required under subsection (a) has been reached for such fiscal year, the Commissioner and the Secretary shall, not later than the end of each 90-day period after October 1 of such fiscal year, notify such Committees of the status of negotiations between the Commissioner and the Secretary in order to reach such an agreement.

**SEC. 307. REPORT ON THE IMPLEMENTATION OF THE ELECTRONIC EMPLOYMENT VERIFICATION SYSTEM.**

Not later than 24 months after the date on which final rules are published under section 309(a), and annually thereafter, the Secretary shall submit to Congress a report that includes the following:

(1) An assessment of the accuracy rates of the responses of the electronic employment verification system established under section 274E of the Immigration and Nationality Act, as inserted by section 301 of this Act (referred to in this section as the “System”), including tentative and final nonconfirmation notices issued to employment-authorized individuals and confirmation notices issued to individuals who are not employment-authorized.

(2) An assessment of any challenges faced by persons or entities (including small employers) in utilizing the System.

(3) An assessment of any challenges faced by employment-authorized individuals who are issued tentative or final nonconfirmation notices.

(4) An assessment of the incidence of unfair immigration-related employment practices, as described in section 274E(g) of the Immigration and Nationality Act, as inserted by section 301 of this Act, related to the use of the System.

(5) An assessment of the photo matching and other identity authentication tools, as described in section 274E(a)(4) of the Immigration and Nationality Act, as inserted by section 301 of this Act, including—

(A) an assessment of the accuracy rates of such tools;

(B) an assessment of the effectiveness of such tools at preventing identity fraud and other misuse of identifying information;

(C) an assessment of any challenges faced by persons, entities, or individuals utilizing such tools; and

(D) an assessment of operation and maintenance costs associated with such tools.

(6) A summary of the activities and findings of the U.S. Citizenship and Immigration Services E-Verify Monitoring and Compliance Branch, or any successor office, including—

(A) the number, types and outcomes of audits, investigations, and other compliance activities initiated by the Branch in the previous year;

(B) the capacity of the Branch to detect and prevent violations of section 274E(g) of the Immigration and Nationality Act, as inserted by this Act; and

(C) an assessment of the degree to which persons and entities misuse the System, including—

- (i) use of the System before an individual's date of hire;
- (ii) failure to provide required notifications to individuals;
- (iii) use of the System to interfere with or otherwise impede individuals' assertions of their rights under other laws; and
- (iv) use of the System for unauthorized purposes; and

(7) An assessment of the impact of implementation of the System in the agricultural industry and the use of the verification system in agricultural industry hiring and business practices.

**SEC. 308. MODERNIZING AND STREAMLINING THE EMPLOYMENT ELIGIBILITY VERIFICATION PROCESS.**

Not later than 12 months after the date of the enactment of this Act, the Secretary, in consultation with the Commissioner, shall submit to Congress a plan to modernize and streamline the employment eligibility verification process that shall include—

- (1) procedures to allow persons and entities to verify the identity and employment authorization of newly hired individuals where the in-person, physical examination of identity and employment authorization documents is not practicable;
- (2) a proposal to create a simplified employment verification process that allows employers that utilize the employment eligibility verification system established under section 274E of the Immigration and Nationality Act, as inserted by section 301 of this Act, to verify the identity and employment authorization of individuals without also having to complete and retain Form I-9, Employment Eligibility Verification, or any subsequent replacement form; and
- (3) any other proposal that the Secretary determines would simplify the employment eligibility verification process without compromising the integrity or security of the system.

**SEC. 309. RULEMAKING AND PAPERWORK REDUCTION ACT.**

(a) **IN GENERAL.**—Not later than 180 days prior to the end of the application period defined in section 101(c) of this Act, the Secretary shall publish in the Federal Register proposed rules implementing this title and the amendments made by this title. The Secretary shall finalize such rules not later than 180 days after the date of publication.

(b) **PAPERWORK REDUCTION ACT.**—

(1) **IN GENERAL.**—The requirements under chapter 35 of title 44, United States Code, (commonly known as the “Paperwork Reduction Act”) shall apply to any action to implement this title or the amendments made by this title.

(2) **ELECTRONIC FORMS.**—All forms designated or established by the Secretary that are necessary to implement this title and the amendments made by this title shall be made available in paper and electronic formats, and shall be designed in such a manner to facilitate electronic completion, storage, and transmittal.

(3) **LIMITATION ON USE OF FORMS.**—All forms designated or established by the Secretary that are necessary to implement this title, and the amendments made by this title, and any information contained in or appended to such forms, may not be used for purposes other than for enforcement of this Act and any other provision of Federal criminal law.

## **Purpose and Summary**

H.R. 5038, the “Farm Workforce Modernization Act of 2019,” addresses long-standing labor issues in our country’s agricultural sector through targeted immigration-related and other reforms. First, the bill creates a process for certain workers with significant and recent agricultural experience to apply for temporary immigration status, known as certified agricultural worker (CAW) status. Workers with CAW status may remain on that temporary status indefinitely, but they also have the option to earn lawful permanent resident (LPR) status through continued agricultural work and the payment of penalties. Second, the bill streamlines and modernizes



the existing H-2A temporary agricultural worker visa program to make it more cost-effective and user-friendly for employers, while strengthening protections for all agricultural workers. Among other things, the bill creates a unified portal and application process for hiring H-2A workers, reforms wage requirements to control sharp wage fluctuations, opens the H-2A program to year-round occupations, and expands the availability of affordable farmworker housing. At the same time, the bill ensures that both domestic and H-2A workers have access to critical protections against exploitation and abuse. Third, once the legalization and H-2A reforms are fully implemented, the bill mandates the use of the electronic employment verification system (currently known as E-Verify) by agricultural employers. Taken together, these provisions will ensure that the U.S. agricultural sector has access to a stable, reliable, and authorized workforce for the future.

### Background and Need for the Legislation

A robust and reliable domestic food supply is a matter of national security. The more the country is forced to rely on imported agricultural products, the greater the risks to the nation. Among these risks are increased exposure to food contamination or epidemic; without a sufficient volume of food exports, risks also include fluctuating market prices, reduced productivity, job loss, and increased debt.<sup>1</sup> From 2004 to 2014, food imports rose by nearly 60 percent and now account for nearly one-fifth of the U.S. food supply, including approximately 49 percent of all consumed fruits and nuts.<sup>2</sup> Although the increase in imported food can be partially attributed to changing consumer demands and other factors, systemic labor challenges in the agricultural sector are a major contributor to this developing crisis.<sup>3</sup>

The U.S. agricultural workforce “has long-consisted of a mixture of self-employed farm operators and their family members, and hired workers.”<sup>4</sup> However, from 1950 to 2000, the number of self-employed and family farm workers declined by 73 percent.<sup>5</sup> Most experts believe this decline is due to an increasingly educated U.S. workforce.<sup>6</sup> While at least half of native-born workers lacked a high school diploma through the 1950s, the share of the workforce without such a diploma has steadily declined, dropping to about 4.5 percent in 2016.<sup>7</sup> Over the same period, the agricultural sector also ex-

<sup>1</sup>See, e.g., Renée Johnson, *Food Safety Issues for the 114th Congress*, Cong. Research Service, Report R42885 at 19–20 (Apr. 10, 2015), <http://www.crs.gov/reports/pdf/R42885>; Mark A. McMinimy, *Major Agricultural Trade Issues in the 115th Congress*, Cong. Research Service, Report R43905 (Jan. 30, 2017), <https://www.crs.gov/Reports/R43905?source=search&guid=e0a6f4384c27464784f7f64aa8e71055&index=5>; Wayne Campbell, *Your View by State Grange: Pennsylvania's Farmers Desperately Need New Trade Deal*, THE MORNING CALL (Nov. 23, 2019), <https://www.mcall.com/opinion/mc-opi-pa-grange-favors-usmca-trade-deal-20191123-vmjnaypqgncunm4tp27ukvwd2a-story.html>.

<sup>2</sup>*Efforts to Address the Safety of FDA-Regulated Food Imports*, Cong. Research Service, IF10403 (May 5, 2016), <https://www.crs.gov/reports/pdf/IF10403>.

<sup>3</sup>New American Economy, *Agriculture*, <https://www.newamericaneconomy.org/issues/agriculture/>.

<sup>4</sup>U.S. Dep't of Agriculture, *Farm Labor* (Dec. 20, 2018), <https://www.ers.usda.gov/topics/farm-economy/farm-labor/>.

<sup>5</sup>*Id.*

<sup>6</sup>Immigration Policy Center, *Facts About Farmworkers*, at 2 (May 2009), <https://www.americanimmigrationcouncil.org/sites/default/files/research/Farmworkers%20Fact%20Sheet.pdf>.

<sup>7</sup>See U.S. Bureau of Labor Statistics, *Foreign-Born Workers: Labor Force Characteristics Summary*, U.S. Dep't of Labor (May 18, 2017), <https://www.bls.gov/news.release/forbrn.nr0.htm>; see

perienced a decline of 52 percent in hired labor, primarily due to mechanization. However, because the decline in self-employed and family workers was greater, the relative proportion of hired farm labor across the industry has increased. As of 2016, hired workers and contract laborers represented 41 percent of agricultural labor in the United States.<sup>8</sup> The majority of farm laborers are foreign born.<sup>9</sup>

Despite the country's increased reliance on hired farmworkers, the legal channels for hiring foreign farmworkers have not changed in several decades. The H-2A temporary agricultural worker program has seen significant growth in recent years, but the program is often criticized by farmers and ranchers as outdated, overly-burdensome, and expensive.<sup>10</sup> Moreover, certain agricultural industries are unable to fully use the program in its current form. America's dairies, mushroom growers, and other specialty crop farmers that have year-round labor needs are prohibited from using the H-2A program, which is currently limited to industries with seasonal or temporary needs.<sup>11</sup> The program is also often criticized by labor advocates for failing to adequately protect foreign workers from abusive practices and to protect the wages and working conditions of domestic workers.<sup>12</sup>

Moreover, while the Immigration and Nationality Act (INA) makes immigrant visas, or "green cards," available for employers to sponsor foreign workers for permanent labor needs, restrictive visa caps have made this program effectively unavailable for decades. Currently, the INA provides less than 10,000 immigrant visas per year for workers who engage in year-round, lower-skilled labor—across all sectors of the U.S. economy.<sup>13</sup> Because demand for these visas far outweighs supply, the program has been oversubscribed for years, resulting in long backlogs for new sponsor petitions.<sup>14</sup> And, as noted above, these visas are unavailable to fill temporary or seasonal needs.

also U.S. Census Bureau, *Educational Attainment in the United States: 2015*, at 2–3 (Mar. 2016), <https://www.census.gov/content/dam/Census/library/publications/2016/demo/p20-578.pdf>.

<sup>8</sup>U.S. Dep't of Agriculture, *Farm Labor* (Dec. 20, 2018), <https://www.ers.usda.gov/topics/farm-economy/farm-labor/>.

<sup>9</sup>Of the more than 5,000 crop workers interviewed through the Department of Labor's National Agricultural Workers Survey (NAWS) during fiscal years (FY) 2015 and 2016, an estimated 75 percent were born outside the United States or Puerto Rico. See U.S. Dep't of Labor, *Findings from the National Agricultural Worker Survey (NAWS) 2015–2016*, at i (Jan. 23 2019), <https://wdr.doleta.gov/research/details.cfm?q=&id=2616>. See also U.S. Dep't of Agriculture, *Farm Labor* (Dec. 20, 2018) (estimating that 53 percent of farm laborers in 2017 were foreign born), <https://www.ers.usda.gov/topics/farm-economy/farm-labor/>.

<sup>10</sup>*Id.*

<sup>11</sup>See 29 C.F.R. § 501.3(c).

<sup>12</sup>See, e.g., *Summary of the Final 2010 H-2A Regulations*, Agriculture Coalition for Immigration Reform [http://njinla.weebly.com/uploads/1/4/0/9/1409189/summary\\_of\\_final\\_obama\\_h-2a\\_regulations\\_3-3-10.pdf](http://njinla.weebly.com/uploads/1/4/0/9/1409189/summary_of_final_obama_h-2a_regulations_3-3-10.pdf); Nicholas C. Geale, *Back to Indentured Servitude*, WASHINGTON TIMES (May 10, 2009), <http://www.washingtontimes.com/news/2009/may/10/back-to-indentured-servitude/>.

<sup>13</sup>Since FY 2002, up to 5,000 of these visas have been allocated to individuals receiving lawful permanent resident status under section 203 of the Nicaraguan and Cuban Adjustment Relief Act of 1997 (NACARA), Pub. Law 105–100, 111 Stat. 2160 (Nov. 19, 1997). However, in FY 2017, the most recent year for which data is available, approximately 700 visa numbers were offset from the 5,000 set-aside, as NACARA programs continue to wind down. See U.S. Dep't of Homeland Security, *Yearbook of Immigration Statistics* (2017), at Table 7, <https://www.dhs.gov/immigration-statistics/yearbook/2017>. The Department of State states that in FY 2020, "this reduction will be limited to approximately 350." U.S. Dep't of State, *Visa Bulletin* (Dec. 2019), [https://travel.state.gov/content/dam/visas/Bulletins/visabulletin\\_december2019.pdf](https://travel.state.gov/content/dam/visas/Bulletins/visabulletin_december2019.pdf).

<sup>14</sup>See William A. Kandel, *Permanent legal Immigration to the United States: Policy Overview*, Cong. Research Service, Report R42866 at Fig. 4: Approved LPR Visa Petitions Pending as of November 1, 2017 (May 11, 2018), [https://www.crs.gov/Reports/R42866?source=search&guid=df336568dc134449b8a6a56b122ee66e&index=0#\\_Toc514080628](https://www.crs.gov/Reports/R42866?source=search&guid=df336568dc134449b8a6a56b122ee66e&index=0#_Toc514080628).

Due to these and other reasons, U.S. farmers have found it difficult to keep American farms running. In the face of problematic and potentially unavailable visa programs, many have turned to an unauthorized workforce. Without reforms to our immigration laws, these difficulties will only compound. Many U.S. agricultural producers are already experiencing decreased productivity and earnings.<sup>15</sup> Some farms and ranches have been forced to close, while others have simply off-shored production to Mexico or other nations where agricultural workers are in greater supply.

The lack of an adequate labor supply damages more than the agricultural economy. Productivity losses also have a ripple effect on other sectors, including the domestic workers in those sectors. According to the U.S. Department of Agriculture, for every on-farm job, there are about 3.1 “upstream” and “downstream” jobs—jobs that support and are created by agricultural production.<sup>16</sup> The vast majority of these complementary jobs are held by U.S. workers, who would also face unemployment if on-farm jobs are eliminated or moved out of the country.<sup>17</sup> With respect to the dairy industry, a 2015 report by Texas A&M AgriLife Research and the Center for North American Studies found the following:

A 50 percent labor loss [in milk producing farms] would be expected to reduce fluid milk sales by dairies by \$5.8 billion while the economic loss throughout the U.S. economy would [be] \$16.0 billion. . . . The majority of the losses occurring off the dairy farm (\$10.2 billion), would be due to declining purchases by dairies from sectors that support dairy farm operations, such as input supply (fuel and feed), transportation, real estate and wholesale trade.<sup>18</sup>

The deleterious effects on the U.S. economy, and the workers that support agriculture, will only increase as the agricultural labor situation continues to worsen.

#### THE UNDOCUMENTED AGRICULTURAL WORKFORCE

Since the onset of World War I, when migration from Europe slowed significantly, Mexican laborers have played an increasingly important role in sustaining the American agricultural sector.<sup>19</sup> The migration of Mexican farmworkers was at first unregulated, and later formalized when the “Bracero program” was created in

<sup>15</sup> See, e.g., Erin Anthony, *With Fewer Hands in the Field, More Food Goes to Waste*, American Farm Bureau Federation (Sep. 18, 2019), <https://www.fb.org/viewpoints/with-fewer-hands-in-the-field-more-food-goes-to-waste>; Megan Henney, *California farms are suffering from a labor shortage. Here's why*, FOX BUSINESS (May 1, 2019), <https://www.foxbusiness.com/economy/california-farms-are-suffering-from-a-labor-shortage-heres-why>; Bruce Talbott, *Our fruit is rotting in the trees as laborers are kept out of the country*, WASHINGTON POST (Aug. 24, 2018), [https://www.washingtonpost.com/opinions/our-fruit-is-rotting-in-the-trees-as-laborers-are-kept-out-of-the-country/2018/08/24/bf119ad6-a6e6-11e8-8fac-12e98c13528d\\_story.html](https://www.washingtonpost.com/opinions/our-fruit-is-rotting-in-the-trees-as-laborers-are-kept-out-of-the-country/2018/08/24/bf119ad6-a6e6-11e8-8fac-12e98c13528d_story.html).

<sup>16</sup> *Hearing to Review the Labor Needs of American Agriculture Before the H. Comm on Agriculture*, 110th Cong. 5 (2007) (statement of James Holt, Agricultural Labor Economist), <https://www.govinfo.gov/content/pkg/CHRG-110hhrg48999/html/CHRG-110hhrg48999.htm>.

<sup>17</sup> *Id.*

<sup>18</sup> Texas A&M AgriLife Research and the Center for North American Studies, *The Economic Impacts of Immigrant Labor on U.S. Dairy Farms* at 16 (Aug. 2015), <https://www.nmpf.org/wp-content/uploads/immigration-survey-090915.pdf>.

<sup>19</sup> Southern Poverty Law Center, *Close to Slavery: Guestworker Programs in the United States*, 2013 Ed. (2013), [https://www.splcenter.org/sites/default/files/d6\\_legacy\\_files/downloads/publication/SPLC-Close-to-Slavery-2013.pdf](https://www.splcenter.org/sites/default/files/d6_legacy_files/downloads/publication/SPLC-Close-to-Slavery-2013.pdf).

1942.<sup>20</sup> The Bracero program, however, grew to be controversial, leading to its eventual termination in 1965. Without an authorized channel to import farmworkers, the number of undocumented Mexican workers then began to grow, given that “the jobs were here, the relationships existed between Mexico and the United States, and there was limited enforcement across the Southwest border.”<sup>21</sup>

In the 1980s, the unauthorized workforce grew at unprecedented levels, as an economic crisis in Mexico and a booming U.S. economy sent more young Mexican workers north in pursuit of work.<sup>22</sup> By 2001, the undocumented agricultural workforce had grown to nearly 55 percent.<sup>23</sup> Since then, it has hovered around 50 percent, with the Department of Labor estimating that as of the end of fiscal year (FY) 2016, about half of the nation’s 2.4 million farm workers lacked work authorization.<sup>24</sup> More recently, because of an improved Mexican economy and an increasing emphasis on border and interior enforcement, the number of Mexican workers crossing the U.S.-Mexico border in pursuit of agricultural opportunities has decreased significantly.<sup>25</sup>

On average, foreign-born farmworkers in the United States have resided here for an average of 18 years.<sup>26</sup> These workers have developed knowledge and skills crucial to the continued viability of America’s farms, and they cannot simply be replaced without significant cost to American agricultural producers and consumers. It is estimated that “[i]f agriculture were to lose access to all undocumented workers, agricultural output would fall by \$30 to \$60 billion.”<sup>27</sup> Moreover, notwithstanding the indispensable role that these farmworkers play in sustaining the domestic food supply, their jobs are among the most difficult and least compensated in the country. Without legal status, farmworkers are at even greater risk of abuse and exploitation.

#### THE H-2A TEMPORARY AGRICULTURAL WORKER PROGRAM

Created by the Immigration Reform and Control Act of 1986 (IRCA), the H-2A program provides for the temporary admission of foreign workers to perform agricultural work of a seasonal or temporary nature.<sup>28</sup> In recent years, as U.S. workers continue to turn to other professions and the number of undocumented farmworkers has begun to decline, use of the H-2A program has grown significantly. Between FYs 1992 and 2012, no more than 65,000 visas

<sup>20</sup> *Id.* at 3.

<sup>21</sup> *How Did We Get to 11 Million Unauthorized Immigrants?*, NATIONAL PUBLIC RADIO (Mar. 7, 2017), <https://www.npr.org/2017/03/07/518201210/how-did-we-get-to-11-million-unauthorized-immigrants>.

<sup>22</sup> *Id.*

<sup>23</sup> U.S. Dep’t of Agriculture, *Farm Labor* (Dec. 20, 2018), <https://www.ers.usda.gov/topics/farm-economy/farm-labor/>.

<sup>24</sup> U.S. Dep’t of Labor, *Findings from the National Agricultural Worker Survey (NAWS) 2015–2016*, at i (Jan. 23 2019), <https://wdr.doleta.gov/research/details.cfm?q=&id=2616>.

<sup>25</sup> *What we Know About Illegal Immigration from Mexico*, Pew Research Center (Dec. 3, 2018), <https://www.pewresearch.org/fact-tank/2018/12/03/what-we-know-about-illegal-immigration-from-mexico/>.

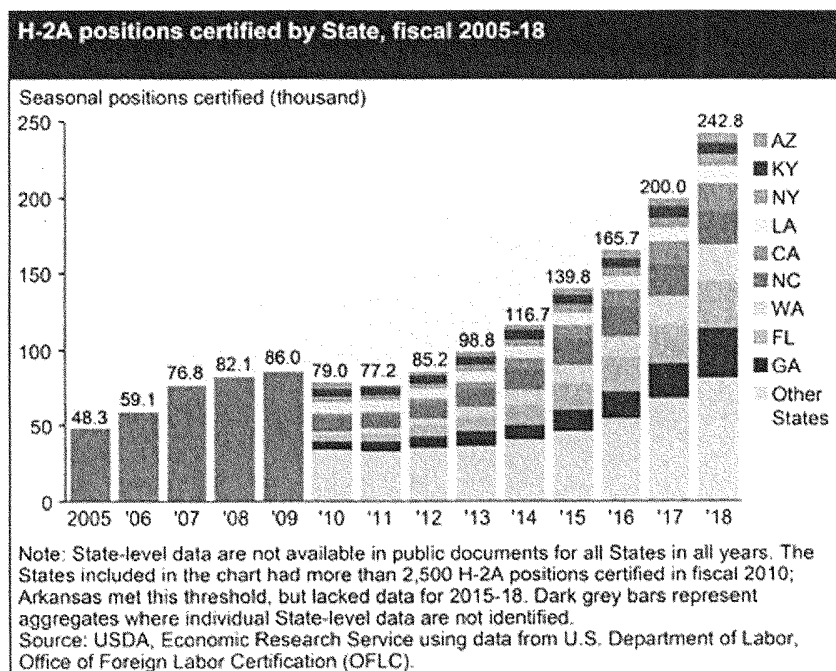
<sup>26</sup> U.S. Dep’t of Labor, *Findings from the National Agricultural Worker Survey (NAWS) 2015–2016*, at i (Jan. 23 2019), <https://wdr.doleta.gov/research/details.cfm?q=&id=2616>.

<sup>27</sup> *Economic Impact of Immigration*, American Farm Bureau Federation, <https://www.fb.org/issues/immigration-reform/agriculture-labor-reform/economic-impact-of-immigration>.

<sup>28</sup> Act of Nov. 6, 1986, Pub. L. 99–603; 100 Stat. 3359.

were issued in any one fiscal year.<sup>29</sup> As of FY 2018, the number of visas issued has more than tripled to almost 200,000.<sup>30</sup> H-2A visas are not subject to numerical limit.

The following chart further illustrates the growth in H-2A program utilization using data from the Department of Labor. While the Department of Labor certified just over 48,000 H-2A positions in FY 2005, that number has since increased five-fold, with nearly 243,000 positions certified in FY 2018, with employers in Georgia, Florida, Washington, North Carolina, and California receiving the highest volume of H-2A certifications.<sup>31</sup>



Both farmers and labor advocates, however, find that the H-2A program has serious deficiencies. A small sample of these deficiencies are outlined in the following sections.

### *H-2A Processing*

Among the most criticized aspects of the H-2A program is the outdated process for seeking labor certification and filing petitions for H-2A workers. This process requires multiple, duplicative fil-

<sup>29</sup> Andorra Bruno, *H-2A and H-2B Temporary Worker Visas: Policy and Related Issues*, Cong. Research Service, Report R44849 (May 10, 2017), <https://www.crs.gov/Reports/R44849?source=search&guid=734a5b71a6134bbb8baaf9275470cc1c&index=0>.

<sup>30</sup> U.S. Dep't of State, *Report of the Visa Office 2018, Nonimmigrant Visas Issued by Classification (Including Border Crossing Cards) Fiscal Years 2014-2018*, <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2018AnnualReport/FY18AnnualReport%20-%20TableXVIB.pdf>.

<sup>31</sup> "There are more H-2A-certified jobs than workers because some employers do not hire an H-2A worker after a job has been certified and some workers fill two or more jobs. Each worker requires a visa, and the ratio of visas issued to jobs certified has been falling, which suggests that there are fewer H-2A workers filling several jobs." *The H-2A Farm Guestworker Program is Expanding Rapidly: Here Are the Numbers You Need to Know*, Economic Policy Institute (Apr. 13, 2017), <https://www.epi.org/blog/h-2a-farm-guestworker-program-expanding-rapidly/>.

ings with several government agencies, and it is often disparaged by users as expensive, time-consuming, and overly bureaucratic. Specifically, the current H-2A process involves, at minimum, the following four steps:<sup>32</sup>

*Step 1:* The employer must first submit a detailed document describing the job opportunity, known as a “job order,” with the State Workforce Agency (SWA) in the state where the requested agricultural work will be performed.<sup>33</sup> The SWA then reviews the job order to determine whether the job opportunity qualifies under the H-2A program and to initiate recruitment.

*Step 2:* If the job order is approved by the SWA, the employer must then file an application for temporary labor certification, along with the job order and other supporting documentation, with the Department of Labor. The Department of Labor then reviews the application to further determine whether the job opportunity qualifies for the H-2A program, including by certifying that there are no qualified U.S. workers available to perform the work and that hiring H-2A workers will not adversely affect the wages and working conditions of similarly employed U.S. workers.

*Step 3:* If the Department of Labor issues the labor certification, the employer must then file a petition with U.S. Citizenship and Immigration Services within the Department of Homeland Security. Along with the petition, the employer must provide the labor certification and proof that the position is seasonal or temporary and that any named beneficiaries meet the minimum job requirements. The petition and supporting documentation are largely duplicative of the labor certification application and supporting documentation filed with the Department of Labor.

*Step 4:* If U.S. Citizenship and Immigration Services approves the petition and the prospective workers are outside the United States, the H-2A workers must apply for visas with the Department of State and then admission with U.S. Customs and Border Protection at a port of entry. If a visa is not required, the workers may directly seek admission in H-2A status at a port of entry.

As described above, this process requires the filing of largely duplicative filings with different agencies, and certain factors are subject to redundant adjudication. Moreover, employers with varied labor needs throughout the year must engage in this process multiple times. For example, a strawberry grower may first need 10 workers to plant seeds, an additional 10 workers in a few weeks to tend the plants, and an additional 20 workers near the end of the season for harvest. Under current practice, that employer must engage in the full H-2A process—and each of the steps described above—at least three times—once for each distinct labor need.

<sup>32</sup> See generally, U.S. Dep’t of Labor, *Employer Guide to Participation in the H-2A Temporary Agricultural Program* (Jan. 2012), [https://www.foreignlaborcert.doleta.gov/pdf/H-2A\\_Employer\\_Handbook.pdf](https://www.foreignlaborcert.doleta.gov/pdf/H-2A_Employer_Handbook.pdf).

<sup>33</sup> A job order is a document containing the material terms and conditions of employment relating to wages, working conditions, worksite, and other benefits. 20 C.F.R. § 651.10.

These multiple application points significantly increase the cost and complexity of the H-2A petition process for employers.

#### *H-2A Wage Requirements*

The H-2A program's wage requirements are also often criticized, particularly the wage standard known as the adverse effect wage rate, or "AEWR." Current H-2A regulations require employers to pay H-2A workers, and workers in corresponding employment (*i.e.*, workers who are similarly employed), at least the highest of: (1) the AEWR; (2) the prevailing wage rate; (iii) the prevailing piece rate; (iv) the agreed-upon collective bargaining wage; or (5) the applicable Federal or State minimum wage.<sup>34</sup>

For the vast majority of H-2A employers, the AEWR is the highest—and thus, governing—wage rate. The AEWR is derived from the Farm Labor Survey, which is conducted by the National Agricultural Statistics Service of the Department of Agriculture.<sup>35</sup> The Department of Agriculture surveys U.S. farms and ranches on a rolling basis to compile employment and wage data for farmworkers in the United States as a whole, and in each of 15 multi-state labor regions as well as the single-state regions of California, Florida, and Hawaii.<sup>36</sup>

Although the Department of Agriculture collects information on all types of farm occupations (e.g., crop picking, machine operating, and supervising), survey data is aggregated to arrive at a single AEWR for field and livestock workers (combined) in each state or region. The AEWR is generally set at the rate that is equal to the annual weighted average hourly wage rate (*i.e.*, arithmetic mean) as derived from the surveyed data. Although the AEWR is derived from aggregated data, the resulting single wage rate is applicable to all H-2A workers (except for certain workers engaged in herding or production of livestock on the range).

As noted above, the AEWR has been the subject of debate for years. According to a 2017 Congressional Research Service report:

Policy differences about H-2A wage requirements center on the AEWR; the H-2A visa is the only nonimmigrant visa subject to it. Farm labor advocates have argued that the AEWR is necessary to protect U.S. agricultural workers from a possible depression of wages resulting from the hiring of foreign workers. Employers have long maintained that the AEWR, as traditionally calculated using USDA's Farm Labor Survey data, results in inflated wage rates.<sup>37</sup>

Due in part to such concerns, the current Administration has proposed regulatory changes to the H-2A program, including a modification to the current AEWR methodology to provide for more specific wage rates.<sup>38</sup> Specifically, the rule would disaggregate the Department of Agriculture's surveyed wage data and report out dis-

<sup>34</sup> 20 CFR § 655.120(l).

<sup>35</sup> See generally, Nat'l Agricultural Statistics Service, *Surveys—Farm Labor*, U.S. Dep't of Agriculture, <https://www.nass.usda.gov/>.

<sup>36</sup> See *id.*

<sup>37</sup> Andorra Bruno, *H-2A and H-2B Temporary Worker Visas: Policy and Related Issues*, Cong. Research Service, Report R44849 (May 10, 2017), <https://www.crs.gov/Reports/R44849?source=search&guid=734a5b71a6134bbb8baaf9275470cc1c&index=0>.

<sup>38</sup> U.S. Dep't of Labor, *Temporary Agricultural Employment of H-2A Nonimmigrants in the United States* (July 26, 2019), <https://www.federalregister.gov/documents/2019/07/26/2019-15307/temporary-agricultural-employment-of-h-2a-nonimmigrants-in-the-united-states>.

tinct wage rates for each of the various farm-related occupations in which H-2A workers are hired.<sup>39</sup> In other words, under the proposed rule, the administration would set an AEW for crop workers based on wage data about crop workers; an AEW for machine operators based on wage data about machine operators; and an AEW for supervisors based on wage data about supervisors.

#### *H-2A Labor Protections*

Labor advocates have long stated that labor protections in the H-2A program need to be strengthened and better enforced. Many have raised serious questions as to whether the wage requirements described above, along with labor market tests and other H-2A program requirements, are sufficient to actually protect the wages and working conditions of domestic workers.<sup>40</sup>

To protect domestic workers, the H-2A program currently requires employers to affirmatively recruit U.S. workers and to hire any qualified U.S. worker who applies for a job until 50 percent of the work contract has elapsed.<sup>41</sup> H-2A workers are also entitled to free housing for the period of the contract, a guarantee of receiving at least three-fourths of the total hours promised in the contract, reimbursement for certain travel costs, and workers' compensation coverage.<sup>42</sup> However, because H-2A workers can work only for petitioning employers and those workers are dependent on the employers for their status and their ability to return in future seasons, labor advocates contend that existing protections are—for all practical purposes—largely diminished.<sup>43</sup>

Many U.S. employers also use private agencies to find and recruit temporary workers in their home countries, mostly in Mexico and Central America. These foreign labor recruiters may charge fees to workers and require them to leave collateral to ensure that they fulfill the terms of their contract. Consequently, labor advocates argue that many H-2A workers come to the United States with large debts and virtually no possibility of repaying these debts during their authorized work periods. This leaves such workers in a precarious economic state and further vulnerable to abuse and exploitation.

#### E-VERIFY AND THE AGRICULTURAL SECTOR

E-Verify is a web-based system, administered by USCIS, that allows enrolled users (employers and recruiters) to confirm the identity and work authorization of individuals they are seeking to hire or recruit (or refer for a fee) for employment in the United States.<sup>44</sup> The E-Verify system is used to confirm the identity and employment authorization of an employee by electronically matching information provided by the employee against records held by the Social

<sup>39</sup>*Id.*, at proposed 20 C.F.R. § 655.120.

<sup>40</sup>*Close to Slavery: Guestworker Programs in the United States*, 2013 Edition (2013), [https://www.splcenter.org/sites/default/files/d6\\_legacy\\_files/downloads/publication/SPLC-Close-to-Slavery-2013.pdf](https://www.splcenter.org/sites/default/files/d6_legacy_files/downloads/publication/SPLC-Close-to-Slavery-2013.pdf); Ruth Ellen Wasem, *Immigration of Foreign Workers: Labor Market Tests and Protections*, Cong. Research Service, Report RL33977 (Dec. 20, 2010), <https://www.crs.gov/Reports/RL33977?source=search>.

<sup>41</sup>20 C.F.R. § 655.135(d).

<sup>42</sup>*See generally*, 20 C.F.R. § 655.135.

<sup>43</sup>Ruth Ellen Wasem, *Immigration of Foreign Workers: Labor Market Tests and Protections*, Cong. Research Service, Report RL33977 (Dec. 20, 2010), <https://www.crs.gov/Reports/RL33977?source=search>.

<sup>44</sup>*See generally*, USCIS E-Verify, <https://www.e-verify.gov/>.



Security Administration, the Department of Homeland Security, and the Department of State.<sup>45</sup> If the information fails to match the information at the appropriate federal agency, the employee will receive a tentative nonconfirmation (TNC). The employee has 8 business days to challenge the TNC, and if the employee fails to do so, or if work authorization is not confirmed after a challenge, E-Verify will issue a final nonconfirmation (FNC). E-Verify is currently voluntary for most employers, but is mandatory for some, including Federal government agencies, certain Federal government contractors, and employers in certain states that have mandated the use of E-Verify for some or all employers.

Given that roughly half of all farmworkers in the United States are undocumented, an E-Verify mandate without an accompanying legalization component would devastate the agricultural sector.<sup>46</sup> The American Farm Bureau Federation, for example, has estimated that mandatory E-Verify without stabilization of the agricultural workforce would reduce fruit production 30 to 61 percent and vegetable production 15 to 31 percent.<sup>47</sup>

### Hearings

For the purposes of section 103(i) of H. Res. 6 of the 116th Congress, the following hearing was used to develop H.R. 5038: “Securing the Future of American Agriculture,” held before the Subcommittee on Immigration and Citizenship on April 3, 2019. The Subcommittee heard testimony from: Arturo S. Rodriguez, former President of the United Farm Workers; Tom Nassif, President and CEO of Western Growers; Areli Arteaga, former dairy worker and child of farmworkers; and Bill Brim, President of Lewis Taylor Farms, Inc. in Tifton, Georgia. Witnesses shared their personal stories and experiences with respect to the current state of the U.S. agricultural industry, highlighting the urgent need to address the growing labor crisis impacting America’s farms.

### Committee Consideration

On November 20, 2019, the Committee met in open session on H.R. 5038. An amendment in the nature of a substitute was offered by Mr. Nadler, and two amendments to the amendment in the nature of a substitute passed by voice vote: (1) an amendment offered by Ms. Lofgren to correct various typographical errors and variances in the underlying bill; and (2) an amendment offered by Ms. Jackson Lee to expand eligibility for certified agricultural worker (CAW) status under section 101 to individuals in the United States pursuant to deferred enforced departure (DED) or temporary protected status (TPS). On November 21, 2019, the Committee ordered the bill, H.R. 5038, favorably reported with an amendment in the nature of a substitute by a rollcall vote of 18 to 12, a quorum being present.

<sup>45</sup>*Id.*

<sup>46</sup>U.S. Dep’t of Labor, *Findings from the National Agricultural Worker Survey (NAWS) 2015–2016*, at i (Jan. 23 2019), <https://wdr.doleta.gov/research/details.cfm?q=&id=2616>; *Mandatory E-Verify Too Costly for Employers, Workers, and Taxpayers*, National Immigration Law Center (June 2015), <https://www.nilc.org/wp-content/uploads/2015/11/E-Verify-issue-brief-2015-06-26.pdf>.

<sup>47</sup>*Agricultural Labor—E-Verify*, American Farm Bureau Federation (Feb. 2018), [https://www.fb.org/files/E-Verify\\_2018.pdf](https://www.fb.org/files/E-Verify_2018.pdf).

**Committee Votes**

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following rollcall votes occurred during the Committee's consideration of H.R. 5038:

1. An amendment by Mr. Collins to strike subsections (a) and (b) of section 204, which ensures that H-2A workers are protected by existing labor laws, including the Migrant and Seasonal Agricultural Worker Protection Act, was defeated by a rollcall vote of 8 to 16.

Roll Call No.

Date: 11/20/2019

## COMMITTEE ON THE JUDICIARY

House of Representatives

116<sup>th</sup> Congress

Amendment #3 ( ) to ANS HR 5088 offered by Rep. Collins

☐ PASSED☒ FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)		✓	
Zoe Lofgren (CA-19)		✓	
Sheila Jackson Lee (TX-18)		✓	
Steve Cohen (TN-09)			
Hank Johnson (GA-04)		✓	
Ted Deutch (FL-22)			
Karen Bass (CA-37)			
Cedric Richmond (LA-02)			
Hakeem Jeffries (NY-08)			
David Cicilline (RI-01)		✓	
Eric Swalwell (CA-15)			
Ted Lieu (CA-33)		✓	
Jamie Raskin (MD-08)		✓	
Pramila Jayapal (WA-07)		✓	
Val Demings (FL-10)			
Lou Correa (CA-46)		✓	
Mary Gay Scanlon (PA-05)		✓	
Sylvia Garcia (TX-29)		✓	
Joseph Neguse (CO-02)			
Lucy McBath (GA-06)		✓	
Greg Stanton (AZ-09)		✓	
Madeleine Dean (PA-04)		✓	
Debbie Mucarsel-Powell (FL-26)		✓	
Veronica Escobar (TX-16)		✓	
	AYES	NOS	PRES.
Doug Collins (GA-27)	✓		
James F. Sensenbrenner (WI-05)			
Steve Chabot (OH-01)	✓		
Louie Gohmert (TX-01)	✓		
Jim Jordan (OH-04)			
Ken Buck (CO-04)			
John Ratcliffe (TX-04)			
Martha Roby (AL-02)	✓		
Matt Gaetz (FL-01)			
Mike Johnson (LA-04)			
Andy Biggs (AZ-05)			
Tom McClintock (CA-04)			
Debbie Lesko (AZ-08)			
Guy Reschenthaler (PA-14)	✓		
Ben Cline (VA-06)	✓		
Kelly Armstrong (ND-AL)	✓		
Greg Steube (FL-17)	✓		
	AYES	NOS	PRES.
TOTAL	✓	16	

2. An amendment by Mr. Collins to amend section 204(b) to authorize courts to dismiss complaints filed by H-2A workers alleging a violation of the Migrant and Seasonal Agricultural Worker Protection Act, if, not later than five days after receiving service of the complaint, the employer files documentation with the court demonstrating that the action giving rise to the complaint has been remedied, was defeated by a rollcall vote of 9 to 16.

Roll Call No.

Date: 11/20/2019

## COMMITTEE ON THE JUDICIARY

House of Representatives

116<sup>th</sup> CongressAmendment # 5 ( ) to ANS HR 5038 offered by Rep. Collins☐ PASSED☒ FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)		✓	
Zoe Lofgren (CA-19)		✓	
Sheila Jackson Lee (TX-18)		✓	
Steve Cohen (TN-09)		✓	
Hank Johnson (GA-04)		✓	
Ted Deutch (FL-22)			
Karen Bass (CA-37)			
Cedric Richmond (LA-02)			
Hakeem Jeffries (NY-08)			
David Cicilline (RI-01)		✓	
Eric Swalwell (CA-15)			
Ted Lieu (CA-33)		✓	
Jamie Raskin (MD-08)		✓	
Pramila Jayapal (WA-07)		✓	
Val Demings (FL-10)			
Lou Correa (CA-46)		✓	
Mary Gay Scanlon (PA-05)			
Sylvia Garcia (TX-29)		✓	
Joseph Neguse (CO-02)			
Lucy McBath (GA-06)		✓	
Greg Stanton (AZ-09)		✓	
Madeleine Dean (PA-04)		✓	
Debbie Mucarsel-Powell (FL-26)		✓	
Veronica Escobar (TX-16)		✓	
	AYES	NOS	PRES
Doug Collins (GA-27)	✓		
James F. Sensenbrenner (WI-05)			
Steve Chabot (OH-01)	✓		
Louie Gohmert (TX-01)	✓		
Jim Jordan (OH-04)			
Ken Buck (CO-04)	✓		
John Ratcliffe (TX-04)			
Martha Roby (AL-02)	✓		
Matt Gaetz (FL-01)			
Mike Johnson (LA-04)			
Andy Biggs (AZ-05)			
Tom McClintock (CA-04)			
Debbie Lesko (AZ-08)			
Guy Reschenthaler (PA-14)	✓		
Ben Cline (VA-06)	✓		
Kelly Armstrong (ND-AL)	✓		
Greg Steube (FL-17)	✓		
	AYES	NOS	PRES.
TOTAL	9	16	

3. An amendment by Mr. Chabot to amend section 101(b) by adding a new bar to eligibility for certified agricultural worker status or optional earned lawful permanent resident status based on either: (1) a single conviction for driving while intoxicated causing serious bodily injury or the death of another person; or (2) two or more convictions for driving while intoxicated, was defeated by a rollcall vote of 7 to 16.

Roll Call No.

Date: 11/20/2019

## COMMITTEE ON THE JUDICIARY

House of Representatives

116<sup>th</sup> Congress

Amendment # 7 ( ) to ANS HR 5038 offered by Rep. Chabot

☐ PASSED☒ FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)		✓	
Zoe Lofgren (CA-19)		✓	
Sheila Jackson Lee (TX-18)		✓	
Steve Cohen (TN-09)		✓	
Hank Johnson (GA-04)		✓	
Ted Deutch (FL-22)			
Karen Bass (CA-37)			
Cedric Richmond (LA-02)			
Hakeem Jeffries (NY-08)			
David Cicilline (RI-01)		✓	
Eric Swalwell (CA-15)			
Ted Lieu (CA-33)		✓	
Jamie Raskin (MD-08)		✓	
Pramila Jayapal (WA-07)		✓	
Val Demings (FL-10)			
Lou Correa (CA-46)		✓	
Mary Gay Scanlon (PA-05)			
Sylvia Garcia (TX-29)		✓	
Joseph Neguse (CO-02)			
Lucy McBath (GA-06)		✓	
Greg Stanton (AZ-09)		✓	
Madeleine Dean (PA-04)		✓	
Debbie Mucarsel-Powell (FL-26)		✓	
Veronica Escobar (TX-16)		✓	
	AYES	NOS	PRES.
Doug Collins (GA-27)	✓		
James F. Sensenbrenner (WI-05)			
Steve Chabot (OH-01)	✓		
Louie Gohmert (TX-01)	✓		
Jim Jordan (OH-04)			
Ken Buck (CO-04)	✓		
John Ratcliffe (TX-04)			
Martha Roby (AL-02)	✓		
Matt Gaetz (FL-01)			
Mike Johnson (LA-04)			
Andy Biggs (AZ-05)			
Tom McClintock (CA-04)			
Debbie Lesko (AZ-08)			
Guy Reschenthaler (PA-14)			
Ben Cline (VA-06)	✓		
Kelly Armstrong (ND-AL)			
Greg Steube (FL-17)	✓		
	AYES	NOS	PRES.
TOTAL	7	16	

4. An amendment by Ms. Lesko to amend section 111 to condition the Secretary of Homeland Security's approval of a self-petition for lawful permanent resident status filed by a dependent spouse or child who has been battered or subjected to extreme cruelty on such Secretary's denial of any pending adjustment of status application and revocation of certified agricultural worker status, was defeated by a rollcall vote of 7 to 12.



Roll Call No.

Date: 11/20/2019

## COMMITTEE ON THE JUDICIARY

House of Representatives

116<sup>th</sup> CongressAmendment # 10 ( ) to ANS ~~HR 508~~ offered by Rep. Lesko☐ PASSED☒ FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)		✓	
Zoe Lofgren (CA-19)		✓	
Sheila Jackson Lee (TX-18)			
Steve Cohen (TN-09)			
Hank Johnson (GA-04)		✓	
Ted Deutch (FL-22)			
Karen Bass (CA-37)		✓	
Cedric Richmond (LA-02)			
Hakeem Jeffries (NY-08)			
David Cicilline (RI-01)		✓	
Eric Swalwell (CA-15)			
Ted Lieu (CA-33)			
Jamie Raskin (MD-08)		✓	
Pramila Jayapal (WA-07)		✓	
Val Demings (FL-10)			
Lou Correa (CA-46)		✓	
Mary Gay Scanlon (PA-05)		✓	
Sylvia Garcia (TX-29)		✓	
Joseph Neguse (CO-02)			
Lucy McBath (GA-06)		✓	
Greg Stanton (AZ-09)		✓	
Madeleine Dean (PA-04)			
Debbie Mucarsel-Powell (FL-26)			
Veronica Escobar (TX-16)			
	AYES	NOS	PRES
Doug Collins (GA-27)			
James F. Sensenbrenner (WI-05)			
Steve Chabot (OH-01)	✓		
Louie Gohmert (TX-01)	✓		
Jim Jordan (OH-04)			
Ken Buck (CO-04)			
John Ratcliffe (TX-04)			
Martha Roby (AL-02)			
Matt Gaetz (FL-01)			
Mike Johnson (LA-04)			
Andy Biggs (AZ-05)	✓		
Tom McClintock (CA-04)	✓		
Debbie Lesko (AZ-08)	✓		
Guy Reschenthaler (PA-14)			
Ben Cline (VA-06)	✓		
Kelly Armstrong (ND-AL)	✓		
Greg Steube (FL-17)	✓		
	AYES	NOS	PRES.
TOTAL	7	12	

5. An amendment by Mr. Steube to amend section 202 of the bill to replace the bill's wage provisions with provisions requiring employers to offer wages that are equal to the greatest of: (1) the applicable State or local minimum wage; (2) 115 percent of the Federal minimum wage; or (3) the actual wage paid by the employer to all other individuals in the job, was defeated by a rollcall vote of 8 to 15.

Roll Call No.

Date: 11/20/2019

## COMMITTEE ON THE JUDICIARY

House of Representatives

116<sup>th</sup> Congress

Amendment #13 ( ) to H.R. 5038 offered by Rep. Steube

☐ PASSED☒ FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)		✓	
Zoe Lofgren (CA-19)		✓	
Sheila Jackson Lee (TX-18)		✓	
Steve Cohen (TN-09)			
Hank Johnson (GA-04)		✓	
Ted Deutch (FL-22)			
Karen Bass (CA-37)		✓	
Cedric Richmond (LA-02)			
Hakeem Jeffries (NY-08)			
David Cicilline (RI-01)		✓	
Eric Swalwell (CA-15)			
Ted Lieu (CA-33)			
Jamie Raskin (MD-08)		✓	
Pramila Jayapal (WA-07)		✓	
Val Demings (FL-10)			
Lou Correa (CA-46)		✓	
Mary Gay Scanlon (PA-05)		✓	
Sylvia Garcia (TX-29)		✓	
Joseph Neguse (CO-02)			
Lucy McBath (GA-06)		✓	
Greg Stanton (AZ-09)		✓	
Madeleine Dean (PA-04)		✓	
Debbie Mucarsel-Powell (FL-26)		✓	
Veronica Escobar (TX-16)			
	AYES	NOS	PRES.
Doug Collins (GA-27)			
James F. Sensenbrenner (WI-05)			
Steve Chabot (OH-01)	✓		
Louie Gohmert (TX-01)	✓		
Jim Jordan (OH-04)			
Ken Buck (CO-04)			
John Ratcliffe (TX-04)			
Martha Roby (AL-02)			
Matt Gaetz (FL-01)			
Mike Johnson (LA-04)			
Andy Biggs (AZ-05)			
Tom McClintock (CA-04)	✓		
Debbie Lesko (AZ-08)	✓		
Guy Reschenthaler (PA-14)	✓		
Ben Cline (VA-06)	✓		
Kelly Armstrong (ND-AL)	✓		
Greg Steube (FL-17)	✓		
	AYES	NOS	PRES.
TOTAL	8	15	

6. Motion to report H.R. 5038, as amended, favorably was agreed to by a vote of 18 to 12.

Roll Call No.

Date: 11/21/2019

## COMMITTEE ON THE JUDICIARY

House of Representatives  
116<sup>th</sup> Congress

Final Passage on

HR 5038

☒ PASSED☐ FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)	✓		
Zoe Lofgren (CA-19)	✓		
Sheila Jackson Lee (TX-18)			
Steve Cohen (TN-09)			
Hank Johnson (GA-04)	✓		
Ted Deutch (FL-22)	✓		
Karen Bass (CA-37)	✓		
Cedric Richmond (LA-02)			
Hakeem Jeffries (NY-08)			
David Cicilline (RI-01)	✓		
Eric Swalwell (CA-15)			
Ted Lieu (CA-33)	✓		
Jamie Raskin (MD-08)	✓		
Pramila Jayapal (WA-07)	✓		
Val Demings (FL-10)	✓		
Lou Correa (CA-46)	✓		
Mary Gay Scanlon (PA-05)			
Sylvia Garcia (TX-29)	✓		
Joseph Neguse (CO-02)	✓		
Lucy McBath (GA-06)	✓		
Greg Stanton (AZ-09)	✓		
Madeleine Dean (PA-04)	✓		
Debbie Mucarsel-Powell (FL-26)	✓		
Veronica Escobar (TX-16)	✓		
	AYES	NOS	PRES.
Doug Collins (GA-27)		✓	
James F. Sensenbrenner (WI-05)			
Steve Chabot (OH-01)		✓	
Louie Gohmert (TX-01)		✓	
Jim Jordan (OH-04)			
Ken Buck (CO-04)		✓	
John Ratcliffe (TX-04)			
Martha Roby (AL-02)		✓	
Matt Gaetz (FL-01)			
Mike Johnson (LA-04)		✓	
Andy Biggs (AZ-05)		✓	
Tom McClintock (CA-04)		✓	
Debbie Lesko (AZ-08)		✓	
Guy Reschenthaler (PA-14)		✓	
Ben Cline (VA-06)			
Kelly Armstrong (ND-AL)		✓	
Greg Steube (FL-17)		✓	
	AYES	NOS	PRES.
TOTAL	18	12	

### **Committee Oversight Findings**

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

### **New Budget Authority and Tax Expenditures and Congressional Budget Office Cost Estimate**

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this bill from the Director of Congressional Budget Office. The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

### **Duplication of Federal Programs**

No provision of H.R. 5038 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

### **Performance Goals and Objectives**

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 5038 would address longstanding labor issues in our country's agricultural sector by: (1) creating a program for undocumented agricultural workers to apply for temporary immigration status, with an option for long-term workers to earn lawful permanent resident status through continued agricultural employment and the payment of penalties; (2) reforming the H–2A temporary agricultural worker program to make it more streamlined, user-friendly, and cost-effective for employers, while strengthening labor protections for all farmworkers; and (3) phasing in mandatory use of an electronic employment eligibility verification system (patterned on E–Verify) for the agricultural sector.

### **Advisory on Earmarks**

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 5038 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

### Section-by-Section Analysis

The following discussion describes the bill as reported by the Committee.

*Title I. Securing the Domestic Agricultural Workforce.* Title I generally establishes two programs for experienced agricultural workers in the United States to earn immigration status through continued agricultural employment.

*Subtitle A. Temporary Status for Certified Agricultural Workers.* Subtitle A creates a new temporary immigration status, known as Certified Agricultural Worker (CAW) status, for certain farmworkers in the United States.

*Sec. 101. Certified Agricultural Worker Status.* Section 101(a) sets forth the criteria for farmworkers in the United States to receive CAW status for themselves, and dependent status for their spouses and minor children. To be eligible, workers must: (1) have worked at least 180 days in agriculture in the two years prior to the date of the bill's introduction (November 12, 2019); (2) be inadmissible or deportable from the United States, or under a grant of deferred enforced departure or temporary protected status, on November 12, 2019; and (3) have been continuously present in the United States from that date until the date they are granted CAW status.

Section 101(b) sets forth the grounds for ineligibility for CAW (and dependent) status. Applicants and any dependents must generally be "admissible" under section 212(a) of the Immigration and Nationality Act (INA), except that: (1) certain grounds are excused (e.g., public charge, labor certification, unlawful presence); (2) certain grounds are waived unless the relevant conduct occurred after the date of the bill's introduction (e.g., misrepresenting immigration status, being a stowaway, violating a student visa); and (3) certain grounds are waived unless the relevant conduct occurred after the date of application for CAW status (e.g., failing to attend proceedings, receiving a removal order).

In addition to the normal criminal and security bars that apply to all applicants for admission, the bill also contains new catch-all criminal bars. Applicants are ineligible for CAW (or dependent) status if they have been convicted of: (1) any felony (excluding State offenses involving immigration status); (2) an aggravated felony, as defined in section 101(a)(43) of the INA; (3) two misdemeanor offenses of moral turpitude (generally, crimes involving the intent to injure or steal); or (4) more than two misdemeanor offenses of any kind (excluding offenses involving immigration status or minor traffic offenses), not occurring on the same date or arising out of the same misconduct. The Department of Homeland Security is provided the discretion to waive certain grounds of inadmissibility, but not the bars related to convictions for felonies, aggravated felonies, or more than two misdemeanors.

Section 101(c) delineates the application process for CAW status, including an 18-month period for taking applications. Applications may be filed with the Department of Homeland Security with the assistance of an attorney or an organization recognized by the Board of Immigration Appeals as able to provide services to immigrants. The Department of Homeland Security shall also establish a process with the Department of Agriculture to allow individuals

to submit applications at Farm Service Agency offices throughout the United States. This provision is intended to make it easier for individuals in rural areas to physically submit applications, including by allowing Department of Homeland Security personnel to use Farm Service Agency space during the application process. There is no intent to shift processing or adjudicatory responsibilities to the Department of Agriculture; those are intended to remain with the Department of Homeland Security. The agencies are expected to cooperate to ensure that this provision does not inhibit the ability of Farm Service Agency employees to fulfill their primary missions.

Once an application is submitted, applicants receive interim proof of employment authorization and the ability to apply for travel permission, if needed. Applicants may not be detained or removed while the application is pending unless the Department of Homeland Security makes a *prima facie* determination that the applicant is ineligible for CAW status. Applicants may also withdraw their applications without prejudice.

Section 101(d) requires the Department of Homeland Security to adjudicate applications for CAW status within 180 days (unless background checks and security clearances are still pending). Prior to issuing a denial, the Department must provide written notice to the applicant and allow the applicant at least 90 days to correct any deficiencies in the application.

Section 101(e) states that farmworkers who do not qualify for CAW status because they cannot demonstrate sufficient past agricultural work, may be eligible for H-2A status if they have performed at least 100 days of agricultural work in the three years prior to November 12, 2019. Such individuals shall be eligible for H-2A status without having to depart the United States.

*Sec. 102. Terms and Conditions of Certified Status.* Section 102(a) provides that CAW status is valid for five and one-half years beginning on the date of approval. The Department of Homeland Security shall issue documentary evidence of status to workers and their dependents, and such documents shall serve as evidence of travel and work authorization (for workers and dependents). The validity period of five and one-half years is intended to provide recipients with sufficient time to satisfy the five-year agricultural work requirement and facilitate the efficient processing of applications to renew CAW status.

Section 102(b) allows spouses and children with dependent status to apply for principal CAW status if they are not ineligible due to criminal and other bars to eligibility. Upon receiving principal CAW status, such individuals would be required to satisfy the applicable agricultural work requirements to apply for renewal of such status or to apply for lawful permanent resident status under Subtitle B. Section 102(b) also clarifies that nothing prevents workers or dependents from changing to any other nonimmigrant classification for which they may be eligible.

Section 102(c) provides that individuals holding CAW or dependent status shall be considered lawfully present for all purposes, except that they are ineligible to receive: (1) federal means-tested public benefits to the same extent as other individuals who are not “qualified aliens” as defined in section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996; and (2)



premium assistance tax credits, under section 36B of the Internal Revenue Code of 1996, for the maintenance of health care coverage. Such individuals shall also be subject to the rules applicable to individuals who are not lawfully present for purposes of certain requirements of the Patient Protection and Affordable Care Act.

Section 102(d) authorizes the Department of Homeland Security to revoke CAW or dependent status, after notice and opportunity to contest the revocation, upon a finding that the recipient no longer meets the eligibility requirements for such status under section 101(b).

*Sec. 103. Extension of Certified Status.* Section 103(a) establishes the procedures for obtaining extensions of CAW and dependent status, which may be extended indefinitely if applicants comply with the requirements of this section during each five-and-one-half-year period in CAW status. Absent extraordinary circumstances, applicants must apply to extend status within a 120-day window straddling the end of the fifth year of CAW status. Specifically, the 120-day application window begins 60 days before the expiration of the fifth year of CAW status and is intended to provide applicants with ample opportunity to satisfy the agricultural work requirements necessary for renewal. Applicants must demonstrate that they worked in agriculture for at least 100 work days for each of the 5 years in CAW status (except as otherwise provided), and that they are not ineligible due to criminal or other bars to eligibility. Section 103(a) further allows the Department of Homeland Security to waive an applicant's failure to timely file before the expiration of the 120-day window if the applicant demonstrates that the delay resulted from extraordinary circumstances or other good cause.

Section 103(b) automatically extends CAW status and employment authorization based on a timely filed extension application, until a final decision is made on the application.

Section 103(c) provides that, prior to denying an extension application, the Department of Homeland Security must provide written notice to the applicant along with 90 days to respond.

*Sec. 104. Determination of Continuous Presence.* Section 104(a) provides that an applicant's "continuous presence" in the United States is not terminated based simply upon the service of a notice to appear to initiate removal proceedings.

Section 104(b) states that absent extenuating circumstances or prior approval for travel by the Department of Homeland Security, applicants will fail to maintain continuous presence if they depart the United States for any period exceeding 90 days, or any periods exceeding 180 days in the aggregate.

*Sec. 105. Employer Obligations.* Section 105 requires employers to provide workers with written records of employment for each year such workers were employed in CAW status. Employers are subject to civil penalties of up to \$500 per violation if they knowingly fail to provide, or make false statements of material fact in, such records.

*Sec. 106. Administrative and Judicial Review.* Section 106 requires the Department of Homeland Security to establish a process for administrative review of the denial or revocation of CAW status, and limits judicial review to review of a final order of removal. All records related to an individual's application for CAW status (including an extension or revocation of such status) shall be in-

cluded in the administrative record and are admissible in immigration court. Judicial review of the denial or revocation of CAW status is limited to judicial review of a final order of removal.

*Subtitle B. Optional Earned Residence for Long-Term Workers.* Subtitle B recognizes the contribution of farmworkers to the economy and vibrancy of U.S. agriculture by providing an option to earn lawful permanent resident (LPR) status through additional agricultural work and the payment of penalties. As noted previously, workers in CAW status are not required to seek LPR status at any point. Workers in CAW status can renew such status indefinitely by complying with the requirements of Subtitle A, and they may return to their home country at any point if they so choose.

*Sec. 111. Optional Adjustment of Status for Long-Term Agricultural Workers.* Section 111(a) authorizes the Department of Homeland Security to adjust the status of a worker in CAW status to LPR status if the worker remains eligible for CAW status, the worker pays the penalty under section 111(b), and the worker demonstrates completion of one of the following work requirements: (1) if the applicant worked in U.S. agriculture for 10 or more years prior to the date of the bill's enactment, the applicant must demonstrate another 4 years of agricultural work in CAW status; or (2) if the applicant worked in U.S. agriculture for less than 10 years prior to the date of enactment, the applicant must demonstrate another 8 years of agricultural work in CAW status. The Committee intends that workers be eligible to apply for LPR status with either 4 or 8 years of additional work in CAW status, as appropriate based on their prior work history. A spouse or child may also adjust to LPR status if the qualifying relationship exists at the time of adjudication and the spouse or child is not ineligible based on criminal or other bars listed in section 101(b). The bill includes protections for dependents in cases involving the death of the worker or severe domestic violence. The bill also provides that when applying for LPR status, workers are not required to resubmit evidence of work history that has been previously submitted and accepted by the Department of Homeland Security.

Section 111(b) requires applicants for LPR status to pay a penalty fee of \$1,000.

Section 111(c) provides that upon filing for adjustment of status, applicants may apply for travel permission, if needed. Applicants are not considered unlawfully present, and may not be detained or removed, while the application is pending unless the Department of Homeland Security makes a prima facie determination that the applicant is ineligible for LPR status.

Section 111(d) states that applicants shall be provided proof of filing, which shall serve as interim proof of work authorization.

Section 111(e) allows applicants to withdraw applications without prejudice.

*Sec. 112. Payment of Taxes.* Section 112 prohibits adjustment to LPR status unless the applicant has satisfied any applicable Federal tax liabilities incurred since the date on which the applicant was provided CAW status.

*Sec. 113. Adjudication and Decision; Review.* Section 113 requires the Department of Homeland Security to adjudicate applications for LPR status within 180 days (unless background checks and se-

curity clearances are still pending). Prior to issuing a denial, the Department must provide applicants with written notice and 90 days to correct any deficiencies. The Department must also establish an administrative review process. Judicial review of the denial of an application for LPR status may be sought in an appropriate United States district court.

*Subtitle C. General Provisions.*

*Sec. 121. Definitions.* Section 121 defines the following terms for the purposes of Title I of the bill: agricultural labor or services; applicable Federal tax liability; appropriate United States district court; child; convicted or conviction; employer; qualified designated entity; Secretary; and work day.

*Sec. 122. Rulemaking; Fees.* Section 122 requires the Department of Homeland Security to publish interim final rules within 180 days of the date of the bill's enactment and to finalize such rules within one year of such enactment. The Department is authorized to charge reasonable filing fees commensurate with the costs of processing applications under Title I, and it must establish procedures for: (1) the waiver of fees, and (2) the payment of fees or penalties in installments. Section 122 also clarifies that nothing in the bill prevents employers from paying such fees or penalties on behalf of workers or their spouses and minor children.

*Sec. 123. Background Checks.* Section 123 requires the Department of Homeland Security to collect biometric and biographic data from applicants and prohibits the granting of benefits unless security and background checks are completed to the Department's satisfaction.

*Sec. 124. Protection for Children.* Section 124 sets a child's age, for purposes of obtaining CAW or LPR status as a dependent, on the filing date of the parent's first application for CAW status. This age-out protection applies for no more than 10 years after that filing date.

*Sec. 125. Limitation on Removal.* Section 125(a) requires that individuals who are prima facie eligible for status under Title I be given a reasonable opportunity to apply for such status. This section also prohibits individuals who are prima facie eligible from being placed in removal proceedings, or removed, until a final decision on the application is rendered.

Section 125(b) requires termination of removal proceedings against individuals who are prima facie eligible for status under Title I. Such individuals must be provided a reasonable opportunity to apply for such status.

Section 125(c) allows an individual ordered removed, or granted voluntary departure, to apply for status without first having to file a motion with the relevant immigration court. If the application is approved, the order of removal or voluntary departure is cancelled; if the application is denied, the order remains in effect.

Section 125(d) clarifies that individuals with orders of removal shall not be deemed to have executed these orders as a result of departing the United States if the individuals have been granted status or have obtained advance permission to travel abroad from the Secretary.

*Sec. 126. Documentation of Agricultural Work History.* Section 126(a) requires applicants for CAW or LPR status to provide evidence that they satisfied any agricultural work requirements. Sec-

tion 126(b) sets forth the types of evidence that may be submitted. These include employment records maintained by employers and collective bargaining organizations, tax records and other government records, sworn affidavits from persons who have direct knowledge of the applicant's work history, and other documentation designated by the Department of Homeland Security for such purpose. This section is intended to allow applicants for status under Title I to satisfy the agricultural work requirement through the submission of various types of evidence considering the difficulty many undocumented individuals are likely to have proving employment, and the duration of such employment, as far back as 10 years ago.

Section 126(c) allows the Department of Homeland Security to credit an applicant with not more than 575 hours (or 100 work days) of agricultural labor or services if the applicant was unable to perform such services due to extraordinary circumstances, including: pregnancy, illness, disabling injury, or physical limitation of the applicant; injury, illness, or special needs of the applicant's spouse or child; severe weather conditions; or termination from employment if the Department of Homeland Security determines that such termination was without just cause and the applicant was unable to find alternative agricultural employment after a reasonable job search. This section recognizes that there are certain situations in which a worker may be unable to satisfy all of the applicable agricultural work requirements due to circumstances beyond the worker's control.

*Sec. 127. Employer Protections.* Section 127 provides that an employer that continues to employ an individual during the initial application window in section 101(c), knowing that such individual intends to apply for CAW status, shall not be held liable for continuing to employ that individual. Documents provided by an employer in support of an application for CAW or LPR status cannot be used to investigate or prosecute such employers under the immigration laws or tax code. When records or other evidence of employment are provided by employers in response to a request to establish eligibility for status under this title, such documents may not be used for any purpose other than establishing such eligibility. These employer protections shall not apply if the employer-provided documents are determined to be fraudulent.

*Sec. 128. Correction of Social Security Records.* Section 128 protects individuals with CAW (or dependent) status from certain penalties under the Social Security Act if such individuals worked under an assumed social security number prior to applying for such status.

*Sec. 129. Disclosures and Privacy.* Section 129 prohibits the Department of Homeland Security from disclosing or using application information under Title I for general immigration enforcement purposes and may not refer applicants for immigration enforcement based solely on information provided in such applications. However, application information may be shared with federal law enforcement agencies for assistance in the consideration of an application, to identify or prevent fraud, for national security purposes, or for the investigation or prosecution of a felony not related to immigration status. A person who knowingly violates these provisions shall be fined up to \$10,000. The Department shall also take steps

to ensure that all personally identifiable information collected is protected, secure, and remains confidential.

*Sec. 130. Penalties for False Statements in Applications.* Section 130 makes it a crime to knowingly make false statements, conceal a material fact, or use any false document in an application for CAW or LPR status, or to create or supply false documents for such purposes. Individuals may be fined, sentenced to a maximum of 5 years imprisonment, or both. An individual convicted of such a crime shall be deemed inadmissible under section 212(a)(6)(C)(i) of the INA for misrepresentation.

*Sec. 131. Dissemination of Information.* Section 131 requires the Department of Homeland Security to cooperate with qualified designated entities to broadly disseminate information on benefits and eligibility requirements under this title. As defined in section 121, qualified designated entities include farm labor organizations, employer associations, and other entities that the Department of Homeland Security designates as having substantial experience and demonstrated competence in the preparation and submission of applications for adjustment of status. This section also requires the Department of Agriculture to disseminate to agricultural employers a document with information about the requirements and benefits under Title I for posting at employer worksites.

*Sec. 132. Exemption from Numerical Limitations.* Section 132 clarifies that there is no numerical limitation on the number of individuals who may be granted CAW status, dependent status, or LPR status under this title.

*Sec. 133. Reports to Congress.* Section 133 requires annual reporting for 10 years on the number of applicants for CAW, LPR, and H-2A status (as well as dependents) under this title, and the number of those approved in these statuses.

*Sec. 134. Grant Program to Assist Eligible Applicants.* Section 134 helps ensure that eligible individuals have access to information and assistance under this title. Among other things, the section establishes a grant program for nonprofit organizations with demonstrated experience in providing quality services to farmworkers or immigrants in publicizing information about benefits under this title, and assisting individuals applying for and receiving such benefits.

*Sec. 135. Authorization of Appropriations.* Section 135 authorizes appropriations necessary to implement this title.

*Title II. Ensuring an Agricultural Workforce for the Future.* Title II contains reforms to modernize the H-2A temporary agricultural worker program. Subtitle A reforms the H-2A program to streamline processing, reduce costs, and provide more flexibility for employers, while providing protections for H-2A and domestic workers. Subtitle B reforms existing farmworker and rural housing programs to improve current housing stock and incentivize the construction of additional, affordable farmworker housing. Subtitle C establishes a program to register and provide oversight and enforcement over foreign labor recruiters engaged in the recruitment of workers for the H-2A program.

*Subtitle A. Reforming the H-2A Temporary Worker Program.*

*Sec. 201. Comprehensive and Streamlined Electronic H-2A Platform.* Section 201(a) replaces the current 4-step H-2A application and petition process with a single electronic platform for com-

pleting most of the H-2A process. The platform will serve as a single point of access for: (1) employers to input all information and supporting documentation for completing the H-2A petition process, including obtaining labor certification and petition approval; (2) all applicable agencies—including the Department of Homeland Security, the Department of Labor, and State workforce agencies (SWAs)—to concurrently perform their responsibilities relating to labor certification and petition approval; and (3) facilitating communication between employers and agency adjudicators. The Department of State and U.S. Customs and Border Protection may access the platform to facilitate H-2A visa issuance and the admission of workers.

The purpose of the single electronic platform is to streamline and improve the H-2A process, including by: (1) eliminating the need for employers to submit duplicate information and documentation to multiple agencies; (2) eliminating redundant bureaucratic processes, where a single matter in a petition is adjudicated by more than one agency; (3) reducing the occurrence of common petition errors, and otherwise improving and expediting the processing of H-2A petitions; and (4) ensuring compliance with H-2A program requirements and the protection of the wages and working conditions of workers.

Section 201(b) requires the Department of Labor to maintain a public online job registry and searchable database of all job orders submitted by H-2A employers. The registry and database are intended to facilitate the ability of domestic workers to easily search and apply for available job opportunities.

*Sec. 202. H-2A Program Requirements.* Section 202 amends section 218 of the INA in its entirety, as follows:

New Section 218(a) preserves the existing requirement that the Department of Homeland Security may not approve a petition unless the Department of Labor certifies that there are no able, willing, and qualified workers to perform the agricultural work that is the subject of the H-2A petition, and that such employment of H-2A workers will not adversely affect the wages and working conditions of similarly employed individuals.

New Section 218(b) requires the employer to attest to and demonstrate compliance, as appropriate, with the following:

- That there is a need for agricultural labor or services, including a description and location of the work, the dates of need, and the number of job opportunities in which the employer seeks to employ workers.
- That the employer has not displaced and will not displace similarly situated U.S. workers during the period of employment, and the 60-days preceding such period.
- That there is no strike or lockout at the place of employment.
- That the employer will engage in the recruitment of U.S. workers and will hire such workers who are able, willing, qualified, and available. The employer may reject a U.S. worker only for lawful, job related reasons.
- That the employer will offer and provide the required minimum wages, benefits, and working conditions to H-2A workers and all similarly employed workers; that similarly employed workers will not be offered less than what is offered to

H-2A workers; and that similarly employed workers will not be subject to restrictions or obligations that are not also imposed on H-2A workers

- That the employer will provide appropriate workers' compensation insurance, at no cost to the worker, if the job is not covered by State workers' compensation laws.
- That the employer will comply with all applicable Federal, State, and local labor- and employment-related laws.

New Section 218(c) modernizes the recruitment requirements for the H-2A program, including by eliminating a requirement to post classified ads. Under the new requirements, an employer will be required to: (1) post the job opportunity on the electronic job registry and at the place of employment; (2) make reasonable efforts to contact any U.S. worker employed by the employer in the previous year in the same job and area of employment (excluding workers who were terminated for cause or abandoned the worksite); and (3) fulfill other positive recruitment steps ordered, if any.

The period of recruitment is defined as starting when the job order is posted and ending when the H-2A workers depart for the place of employment. For petitions involving staggered entry (i.e., petitions seeking H-2A workers for more than one start date), the recruitment period ends with the departure of the worker with the last start date.

The specific requirement to hire U.S. workers who apply for the job opportunity extends beyond the recruitment period and ends on the later of: (1) the 30th day after work begins, or the date on which 33% (50% for labor contractors) of the work contract has elapsed. For petitions involving staggered entry, each start date establishes a separate job opportunity. It is the intent of the Committee that each job opportunity within a staggered entry petition will be independently searchable in the public online job registry so that U.S. workers can easily identify and apply for such opportunities. An employer may not reject a U.S. worker because the worker is unable or unwilling to fill more than one job opportunity included in the petition. For the purpose of recruitment, workers with CAW status are considered U.S. workers, except that an employer may petition for and hire an H-2A worker over a worker with CAW status if the employer previously employed the H-2A worker in each of three years during the most recent four-year period.

Employers must maintain a report on recruitment efforts and must submit regular updates on the results of recruitment through the electronic portal. Recruitment reports and supporting documents must be maintained for three years from the date of labor certification. If the employer denies employment to an applicant as not able, willing, or qualified, the employer maintains the burden of proof of establishing that the applicant was not able, willing, or qualified because of a lawful, employment-related reason.

New Section 218(d) sets the wage requirements for H-2A workers and similarly employed workers. New Section 218(d)(1) requires employers to offer workers the highest of: (1) the agreed-upon collective bargaining wage, if any; (2) the Adverse Effect Wage Rate (AEWR) (or any successor rate that may be established under a later provision in this subsection); (3) the prevailing hourly wage or piece rate; or (4) the Federal or State minimum wage.

New Section 218(d)(2) sets out to comprehensively reform AEWWR determinations for future years. First, the Department of Labor is required to set and report distinct AEWWR wages at the occupational classification level (i.e., based on the type of agricultural work involved), rather than as a single, aggregate wage applicable to all agricultural workers. If available, the AEWWR would be set as the annual average hourly wage for the occupation based on regional wage data for the occupation collected in a wage survey conducted by the Department of Agriculture (commonly known as the “Farm Labor Survey”). If sufficient regional data is unavailable, the AEWWR for the occupation would be set based on national wage data collected from that survey. However, if the survey data obtained by the Department of Agriculture is insufficient to set the AEWWR for the occupation, the AEWWR may then be set based on wage data collected in a wage survey conducted by the Department of Labor (commonly known as the “Occupational Employment Survey”). The Department of Labor would first be required to set the wage based on regional wage data. If sufficient regional data is unavailable, the Department could set the AEWWR based on national wage data.

Second, new Section 218(d)(2) addresses wage fluctuations in the AEWWR from 2020 through 2029. Specifically, for calendar year 2020, the AEWWR remains set at 2019 levels. For each of calendar years 2021 through 2029, the AEWWR cannot decrease by more than 1.5% or increase by more than 3.25% based on the AEWWR from the immediately preceding year. However, if the result of this calculation is lower than 110% of the applicable Federal or State minimum wage, the calculation is adjusted so that the AEWWR cannot increase by more than 4.25%. For 2030 and subsequent years, a successor wage rate is established as provided under new Section 218(d)(7). Until this new wage standard is effective, the AEWWR cannot decrease by more than 1.5% or increase by more than 3.25% based on the AEWWR from the immediately preceding year.

New Section 218(d)(3) clarifies that if the primary job duties of a worker fall into multiple occupational classifications, the applicable wage rates shall be based on the highest wage rate of any of the applicable occupational classifications for the worker.

New Section 218(d)(4) requires the Department of Labor to publish the AEWWR and any available prevailing wage rates in the Federal Register prior to the start of each calendar year, but also protects employers with seasonal or temporary needs from having required wage rates increase mid-contract. Specifically, upon an update of the AEWWR, an employer of seasonal or temporary H-2A workers will not be required to pay the new wage if recruitment efforts have already commenced at the time of publication of the new AEWWR. However, for year-round positions, if the wage is higher than that which is guaranteed in the work contract, an employer must pay the new wage within 14 days of publication.

New Section 218(d)(5) requires employers who pay by a piece rate or other incentive method to specify in the job order any productivity standards that are a condition of job retention, and such standards must be consistent with what other employers in the area of intended employment normally require. The Department of Labor, however, may approve a higher minimum standard if that standard results from material changes in production methods.



New Section 218(d)(6) requires employers to guarantee employment for three-fourths of the work days in the contract, unless: (1) the worker fails to work (up to a maximum of hours specified in the job offer for a work day) when the worker has been offered an opportunity to do so, abandons employment without good cause, or is terminated for cause; or (2) the contract cannot be completed for reasons beyond the control of the employer. In the event of contract impossibility, the employer has to fulfill the employment guarantee for the days that have elapsed and must make efforts to transfer the worker to comparable employment acceptable to the worker.

New Section 218(d)(7) establishes the procedures for determining the wage rate to replace the AEWL beginning in calendar year 2030. Beginning in 2026, the Departments of Agriculture and Labor are first required to jointly conduct a study of the AEWL and determine: (1) whether the employment of H-2A workers has depressed the wages of U.S. farmworkers; (2) whether the AEWL is necessary to protect the wages of U.S. farmworkers or whether alternative wage standards would be sufficient for this purpose; and (3) whether any changes are warranted in the current methodologies for calculating required wages for the H-2A program. The Departments are then required, by October 1, 2027, to jointly prepare and submit a report to Congress setting forth the findings of the study and any recommendations for future wage protections. Upon publication of this report, the Department of Labor, in consultation with and with the approval of the Department of Agriculture, shall make a rule to establish a process for annually determining a subsequent wage standard for years beginning in 2030. That process must be designed to ensure that the employment of H-2A workers does not undermine the wages and working conditions of similarly employed U.S. workers.

New Section 218(e) preserves the current requirement that employers furnish housing that meets applicable standards, at no cost to the worker, in accordance with Department of Labor regulations. Employers must provide family housing where it is the prevailing practice to provide such housing in the area and occupation of intended employment. The employer, however, is not required to provide housing to U.S. workers who live within a reasonable commuting distance. The Department of Labor must ensure housing inspections are completed prior to the date that labor certification is required. To better ensure timely inspections, employers may request housing inspection up to 60 days before filing the H-2A petition. Housing provided to H-2A workers engaged in year-round employment shall be subject to an annual inspection.

New Section 218(f) requires that for a worker who completes 50 percent of the work contract, the employer is required to reimburse the worker for reasonable transportation and subsistence costs to the place of employment. If the worker completes the contract, the employer must also provide or pay for reasonable transportation and subsistence back home or to the next place of employment (unless the worker's subsequent employer agrees to provide transportation and subsistence to such worker). In either case, the amount of reimbursement need not exceed the lesser of: (1) the actual costs of travel, or (2) the most economical and reasonable common carrier transportation charges and subsistence costs for the distance involved. Finally, for travel to and from the worker's home country,

if the travel distance between the worker's home and the relevant consulate is 50 miles or less, travel reimbursement may be based on transportation to or from the consulate.

New Section 218(g) requires all employers to maintain a reasonable heat illness prevention plan, including appropriate training, access to water and shade, the provision of breaks, and the protocols for emergency response. Such plan must be in a language understood by a significant portion of workers, and it must be posted in a conspicuous location at the worksite and provided to workers prior to the commencement of labor or services.

New Section 218(h) sets forth the procedures for employers to request H-2A workers through the electronic platform. The process begins when the employer submits a completed H-2A petition (including a job order) through the electronic platform 75 to 60 calendar days before the first date of need. An agricultural association may file a petition as either a joint or sole employer. When filing the petition, an employer may seek temporary or seasonal workers for more than one start date ("staggered entry") if: (1) the petition contains no more than 10 start dates, all of which share a common end date that is no longer than one year after the first start date; (2) no more than 120 days separate the first and last start dates; (3) the petition involves the same occupational classification and area of intended employment; and (4) the need for staggered entry arises from normal variations in labor needs. The Committee clarifies, however, that this provision is not intended to reflect a view on the definition of "temporary or seasonal." A labor contractor may not file such a petition involving staggered entry unless the labor contractor: (1) files jointly with its farmer customers or otherwise operates in a state with joint liability, or (2) posts a premium surety bond (i.e., a bond that is at least 15 percent higher than the normally required bond for labor contractors).

Once the petition is filed, the Department of Labor, in consultation with the relevant State workforce agency (SWA), must review the job order and notify the employer of any deficiencies through the electronic platform within 7 business days. Employers are provided 5 business days to respond. The job order must include all material terms and conditions of employment, including the requirements of new Section 218, and must be otherwise consistent with the minimum standards provided under Federal, State, or local law. The Department of Labor must also establish emergency procedures for the curing of deficiencies that cannot be resolved quickly. If the job order is approved, the Department of Labor must post it on the online job registry and notify the appropriate SWA to commence recruitment of U.S. workers. The SWA shall refer qualified U.S. workers who apply for the job opportunity during the recruitment period.

Within 7 business days of the approval of the job order, the Department of Labor must notify the employer of any deficiencies in the information required for labor certification. Employers are provided 5 business days to respond. The Department of Labor is required to issue the labor certification, if the requirements under new Section 218 are met, not later than 30 days before the first date of need. Employers may appeal denials or partial certifications, and the Department of Labor must respond to an appeal within 72 hours.

Within 7 days of the issuance of a labor certification, the Department of Homeland Security must issue a decision on the petition. If approved, the electronic platform is updated and available to the Department of State for visa issuance and to Customs and Border Protection for the purpose of determining admission. A petition for multiple named beneficiaries may be partially approved for the eligible beneficiaries, even if one or more of the other beneficiaries are potentially ineligible. Post-certification amendments are permitted if they do not materially change the petition, including the job order.

New Section 218(h)(4) simply retains the current statutory language governing the roles of agricultural associations and its individual producer members. No changes were made to these provisions.

New Section 218(h)(5) authorizes the Department of Labor, in consultation with the Departments of Agriculture and Homeland Security, to issue regulations reasonably modifying H-2A program requirements to accommodate specific agricultural occupations due to the unique nature of the work involved. This provision is intended to codify the Department of Labor's longstanding use of "special procedures" for certain industries when strict adherence to program requirements would be impractical or impossible.

New Section 218(h)(6) prohibits employers from hiring H-2A workers when the majority of duties fall within an occupational classification designated by the Department of Labor as a construction or extraction occupation.

New Section 218(i) accommodates the need for workers engaged in labor or services that are not of a temporary or seasonal nature by making 3-year H-2A visas available for workers engaged in such year-round employment. Unlike traditional H-2A visas for temporary or seasonal jobs, which are not subject to numerical limitation, the H-2A visas for year-round employment are subject to such limitation. For the first three fiscal years, year-round H-2A visas are capped at 20,000 per year. For the next seven fiscal years, the Departments of Agriculture and Labor, in consultation with the Department of Homeland Security, shall jointly determine the appropriate visa cap after considering appropriate factors related to labor needs. Such cap, however, cannot be set lower than 20,000 and cannot increase or decrease by more than 12.5% from the cap set in the immediately preceding fiscal year.

After the tenth year, the Departments of Agriculture and Labor, in consultation with the Department of Homeland Security, shall jointly determine, after considering appropriate factors, whether to set a cap and, if so, what the cap should be. The Departments shall also jointly establish emergency procedures for immediately adjusting the numerical limit in any fiscal year (after the first three fiscal years) if such adjustment is necessary to account for significant labor shortages.

New Section 218(i) additionally requires that 3-year H-2A visas be evenly allocated between the two halves of the fiscal year, unless it is determined that an alternative allocation would better accommodate demand. Unused visas from the first half of the fiscal year are added to the allocation for the second half of the fiscal year. Additionally, 50 percent of the visa numbers made available in each half of the fiscal year shall be allocated to dairy-related

jobs, except that any unused visas can later be made available for non-dairy jobs.

Additionally, employers must provide year-round H-2A workers with annual round trip travel home, with no more than 14 months elapsing between each period of travel. Employers must also offer family housing to year-round workers with families, but workers can reject such an offer. If a worker accepts such housing, the employer may not charge the worker for the housing, but the employer may charge a pro-rated rent based on the fair market value of the housing for the worker's family members.

Finally, to be eligible for year-round H-2A workers, dairy employers must report serious safety-related incidents consistent with federal safety regulations. Dairy employers must also maintain a workplace safety plan to prevent workplace accidents, including by providing animal care training; protecting against sexual harassment and violence, as well as retaliation; and complying with other safety regulations issued by the Department of Labor, in consultation with the Department of Agriculture. Such plan must be in a language understood by a significant portion of workers, and it must be provided to workers prior to the commencement of labor or services.

New Section 218(j) sets forth the conditions for eligibility and admission of a worker in H-2A status. Workers who previously violated H-2A status are disqualified from such status for 5 years. H-2A visas shall be valid for three years and shall allow for multiple entries, except that an H-2A worker's authorized period of stay shall be based on the period of employment specified in the approved petition. Upon reaching the maximum continuous period of authorized stay (36 months), H-2A workers must depart and remain outside the United States for at least 45 days before they can reenter in H-2A status. Any periods in which an H-2A worker has departed the United States during the worker's period of authorized stay may be used to offset or partially offset the 45-day absence requirement.

In addition to the period of authorized stay (up to 36 months), an H-2A worker's period of admission shall include an additional 10 days prior to the beginning of the work contract and 45 days at the end of employment for the purpose of traveling home or seeking an extension of status based on a new offer of employment. H-2A workers in the United States may start new employment with another employer if a non-frivolous petition is timely filed and the H-2A worker has not worked without authorization. Moreover, H-2A workers who are sponsored for immigrant visas (i.e., lawful permanent residence) can continue working in H-2A status (notwithstanding the 36-month maximum) until their immigrant visas become available. Those workers who abandon employment without good cause will generally be considered to have failed to maintain H-2A status. H-2A workers are provided a reasonable grace period, once during each period of authorized stay.

New Section 218(k) governs required disclosures that employers must make to H-2A workers. First, employers must provide a prospective H-2A worker with a copy of the work contract (or job order and labor certification), including the disclosures and rights under the H-2A program, before the H-2A worker is required to apply for a visa (or, for a worker moving from one H-2A employer

to another, by the time the subsequent offer of employment is made). Employers must provide H-2A workers with detailed earnings statements on or before each pay day. Finally, employers must post a notice of worker rights, in one or more languages common to a significant portion of the workers, at the worksite.

New Section 218(l) requires labor contractors seeking to hire H-2A workers to maintain surety bonds. The Department of Labor shall set bond amounts based on the number of workers sought, and labor contractors that want to file petitions involving staggered entry must maintain premium surety bonds, which are defined as bonds that are 15 percent higher than the otherwise applicable bond amount.

New Section 218(l) also requires employers that use foreign labor recruiters to use a recruiter registered with the Department of Labor consistent with Subtitle C of Title II. In addition, employers and their agents are prohibited from collecting fees or seeking payment from workers for any activity associated with the H-2A petition process, except for costs that are primarily for the worker's benefit. Employers must also contractually forbid labor contractors and foreign labor recruiters, and any agents of such contractors or recruiters, from seeking or receiving prohibited payments from prospective employees.

New Section 218(m) specifies the Department of Labor's enforcement authority over the H-2A program, including the authority to impose penalties and other sanctions and to seek monetary and injunctive relief and specific performance of contractual obligations. The Department of Labor is required to maintain a process for receiving, investigating, and resolving complaints, which may be filed up to 2 years after the date of the alleged violation. If, after notice and the opportunity for a hearing, the Department of Labor finds that an employer failed to comply with H-2A program requirements, the Department may order the payment of back wages, unpaid benefits, or illegally assessed fees, as well as damages and civil money penalties. The Department may also debar employers for up to 5 years for willful or multiple material violations, and permanently upon subsequent findings involving willful or multiple material violations. This subsection is not to be construed as limiting the Department of Labor's authority to conduct an investigation under any other law or in the absence of a complaint. Finally, employers are prohibited from retaliating against any person who has: (1) disclosed information that the person reasonably believes evidences a violation, (2) filed a complaint or otherwise taken steps to report violations of the H-2A program, (3) cooperated in any investigation or other proceeding concerning H-2A program compliance; or (4) exercised or asserted any right or protection under this section.

New Section 218(n) defines the following terms: displace; H-2A worker; job order; online job registry; similarly employed; and United States worker.

New Section 218(o) directs the Department of Homeland Security to impose a fee to cover the reasonable costs of processing H-2A petitions, including the costs of providing labor certification. The portion of fees collected to offset the costs of labor certification shall be deposited into an account maintained by the Department of

Labor. New Section 218(o) also authorizes appropriations necessary for administering and enforcing the H-2A program.

*Sec. 203. Agency Roles and Responsibilities.* Section 203(a) sets forth the Department of Labor's responsibilities in the H-2A process. These responsibilities include consulting with State workforce agencies (SWAs) on processes related to the recruitment and protection of workers. The Department of Labor must also: (1) determine whether the employer has met the conditions for issuance of a labor certification, including whether the employer has complied or will comply with H-2A program requirements; (2) determine, in consultation with the Department of Agriculture, whether job opportunities are of a seasonal or temporary nature; and (3) process and investigate complaints. Finally, the Department of Labor must regularly update guidance to the SWAs to ensure that prevailing wage rates accomplish the statutory requirements and accurately reflect the wages paid for particular labor or services in specific crops throughout the season.

Section 203(b) sets forth the Department of Homeland Security's responsibilities in the H-2A process. These responsibilities include: (1) adjudicating H-2A petitions, including the assessment of whether the beneficiary will be employed in accordance with the terms and conditions of the labor certification, (2) transmitting final decisions to the employer, (3) notifying the Department of State and U.S. Customs and Border Protection of petition approvals, and (4) providing H-2A workers with access to information about their status, including the status of petitions.

Section 203(c) establishes an H-2A Labor Certification Fee Account, funded by H-2A program application fees and enforcement penalties, for use by the Department of Labor to carry out activities in connection with the labor certification process and the enforcement of the H-2A program. Account funds shall be provided by the Department of Labor to States for activities conducted by State workforce agencies in connection with the H-2A program. Funds are also made available to the Department of Labor's Office of Inspector General to conduct audits and investigations related to H-2A program compliance.

*Sec. 204. Worker Protection and Compliance.* Section 204(a) provides that H-2A workers shall have the same rights and remedies as U.S. agricultural workers under Federal, State, and local labor laws.

Section 204(b) ensures that H-2A workers are covered by the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), and it prohibits any agreements to waive or modify any rights or protections provided by MSPA or the H-2A program. While the bill makes H-2A workers eligible for MSPA protection, it also provides for free mediation services to resolve disputes prior to litigation. As provided in the bill, if an H-2A worker files a civil lawsuit alleging one or more violations of the H-2A program, MSPA, or the Fair Labor Standards Act, either party to the lawsuit may, within 60 days of service of the complaint, request mediation. Upon such a request, the parties must attempt mediation for up to 90 days, except that the mediation period may be extended if both parties agree. The bill authorizes appropriations to support free mediation services, and it also allows for parties to use private mediators if all parties agree.

Section 204(c) amends MSPA to better ensure compliance by farm labor contractors. First, the bill codifies the current regulatory requirement for farm labor contractors to maintain surety bonds, while also requiring the Department of Labor to annually set and publish surety bond schedules in an amount sufficient for farm labor contractors to discharge financial obligations based on the number of workers sought to be covered. MSPA is also amended to expressly allow the Department of Labor to revoke a farm labor contractor license based on the failure to maintain the required surety bond or on being disbarred from participating in the H-2A program. Finally, Section 204(c) further amends MSPA to better prevent violators with revoked licenses from serving as the actual successors in interest in another entity that seeks to obtain a license to continue contracting activities. The bill both: (1) requires applicants for licenses to disclose relationships with persons who have had licenses suspended or revoked, and (2) creates a rebuttable presumption that the applicant is not the real party in interest when the applicant is closely associated with such a person.

*Sec. 205. Report on Wage Protections.* Section 205 requires the Departments of Labor and Agriculture to submit a report to Congress every three years on H-2A wage protections, including: whether the use of H-2A workers depresses the wages of U.S. workers; the impact of the AEWR on wages; factors that may artificially impact wage rates; and recommendations on whether there should be changes to wage methodologies in the H-2A program. In preparing these reports, the Departments of Labor and Agriculture must engage with agricultural stakeholders, including an equal number of employer representatives and worker representatives.

*Sec. 206. Portable H-2A Visa Pilot Program.* Section 206 requires the Department of Homeland Security, in consultation with the Departments of Labor and Agriculture, to establish through regulation a 6-year pilot program to facilitate the free movement and employment of temporary or seasonal H-2A workers (known herein as “portable H-2A workers”) with registered agricultural employers. The Department of Homeland Security is authorized to set program rules and requirements for this special class of H-2A workers, consistent with the following:

- Employers that wish to participate in the pilot program must register with the Department of Homeland Security, which will maintain an online platform to connect portable H-2A workers with registered employers. Workers who have been previously admitted in H-2A status, and maintained such status during the period of admission, are eligible to apply for portable H-2A status.
- Registered employers may employ portable H-2A workers at will and without filing an H-2A petition, so long as the wage requirements that apply to H-2A workers are met. Workers may work for any registered employer during the period of admission, which shall be for up to 3 years, and either party can terminate employment at any time. Workers shall also have a 60-day grace period at the conclusion of employment to secure new employment with a subsequent registered employer.

- If the job opportunity is not covered or is exempt from the State workers' compensation law, the employer must provide commensurate insurance at no cost to the worker.
- The total number of individuals who may hold portable H-2A status at any one time may not exceed 10,000, except that the Department of Homeland Security may further reduce this number if the Department determines that there are an insufficient number of registered employers or job opportunities to support the employment of the full number of portable H-2A workers. Moreover, no worker may be admitted in portable H-2A status until the Department has determined that a sufficient number of employers have been registered to support a reasonable number of portable H-2A workers to initiate the pilot program, and no individual may initially be granted portable H-2A status without an offer of employment from a registered employer.

In addition, the Department of Labor is responsible for enforcement of the pilot program's employment-related requirements, including conducting investigations and audits of employers to ensure compliance. And the Department of Homeland Security, in consultation with the Departments of Labor and Agriculture, must submit a report to Congress on the pilot program, including its impact on U.S. workers and recommended improvements, not later than six months before the end of the third fiscal year of the pilot program.

*Sec. 207. Improving Access to Permanent Residence.* Section 207 further accommodates the need for workers in year-round agriculture by adding 40,000 new immigrant visas to the employment-based third preference (EB-3) category for "unskilled" labor. These additional immigrant visas are available for employer sponsorship of workers, except that H-2A workers may self-petition for one of these visas once they have worked in the United States in H-2A status for at least 10 years (and for at least 100 days in each of those years). Preference for the additional 40,000 visas is given to agricultural employers seeking to petition for year-round workers and for H-2A workers who are eligible to self-petition. These visas are also not subject to the "per country" limitations described in section 202(a)(2) of the INA. Finally, H-2A workers are provided dual intent so that they do not become ineligible to remain in temporary status due solely to being the beneficiary of an immigrant visa petition.

*Subtitle B. Preservation and Construction of Farmworker Housing.* Subtitle B improves the availability of farmworker and other rural housing, while lowering employer costs related to such housing.

*Sec. 220. Short Title.* Section 220 sets forth the short title of Subtitle B as the "Strategy and Investment in Rural Housing Preservation Act of 2019."

*Sec. 221. Permanent Establishment of Housing Preservation and Revitalization Program.* Section 221 amends the Housing Act of 1949 to establish a program to revitalize and preserve existing farmworker and rural housing financed under section 515 ("515 housing"), or both sections 514 and 516 ("514/516 housing"), of the Housing Act. Under the program, the Department of Agriculture may offer loan restructuring to owners of 515 or 514/516 housing to preserve and refurbish such properties. The Department may re-



duce or eliminate interest, defer payments, re-amortize existing debt, or provide other financial assistance. If the Department offers to restructure a loan, it shall also offer to renew for a 20-year term a rental assistance contract under section 521 of the Housing Act. Properties that obtain 20-year extensions of the rental assistance contract must agree to a restrictive use agreement that obligates the owner to continue operating the project as farmworker or rural housing as provided in the Housing Act.

If the Department determines that a maturing loan cannot reasonably be restructured and the project was operating with rental assistance under section 521 of the Housing Act, the Department may nevertheless renew the rental assistance contract for a 10- to 20-year term so long as the owner agrees to continue operating the project as farmworker or rural housing. Owners of 515 or 514/516 housing whose loans have matured must give tenants 18 months prior to loan maturation or prepayment to transfer their rental assistance to another rental project. The bill also authorizes \$200,000,000 in appropriations for each of FY 2020 through 2024 for such purposes.

*Sec. 222. Eligibility for Rural Housing Vouchers.* Section 222 amends section 542 of the Housing Act of 1949 to authorize the Department of Agriculture to provide rural housing vouchers to low income households residing in properties that are financed: (1) under sections 514 or 516 if such property is owned by a non-profit organization or public agency; or (2) with a loan made or insured under sections 514 or 515 that has been prepaid without restrictions, has been foreclosed, or has matured after September 30, 2005.

*Sec. 223. Amount of Voucher Assistance.* Section 223 caps the value of a rural housing voucher in an amount equal to the greater of: (1) the difference between the fair market rental rate for the area in which the family is living and 30% of the family's monthly adjusted income; or (2) the difference between the rent of the dwelling unit in which the voucher recipient lives and 10% of the family's monthly gross income.

*Sec. 224. Rental Assistance Contract Authority.* Section 224 allows the owner of a project financed under section 514 or 515 of the Housing Act to request renewal of a rental assistance contract for up to an additional 20 years. The bill also allows such an owner who terminates a rental assistance contract for a family (presumably because the family moves away or is no longer eligible) to make that assistance available for 6 months to another eligible family residing in the same rental unit or newly occupying a unit in the rental property.

*Sec. 225. Funding for Multifamily Technical Improvements.* Section 225 authorizes an additional \$50,000,000 in appropriations for FY 2020 for the Department of Agriculture to improve its technology for processing loans for and managing multifamily housing.

*Sec. 226. Plan for Preserving Affordability of Rental Projects.* Section 226 requires the Department of Agriculture to submit a plan to Congress on the preservation of affordable housing financed under section 514 or 515 of the Housing Act. The bill also establishes an advisory committee, consisting of 16 members representing a range of stakeholders in farming and rural commu-

nities, to assist the Department of Agriculture in managing its rural housing programs.

*Sec. 227. Covered Housing Programs.* Section 227 amends the definition of “covered housing program” to clarify that recipients of rural development housing vouchers are also part of a covered housing program under the Housing Act.

*Sec. 228. New Farmworker Housing.* Section 228 amends section 513 of the Housing Act to further incentivize the financing and construction of new farmworker housing. Specifically, section 228: (1) increases the Department of Agriculture’s authority to insure loans made under section 514, up to an aggregate amount of \$200,000,000 during each of FYs 2020 through 2029; (2) triples funding for the section 514 loan program by authorizing \$75,000,000 in appropriations for each of FYs 2020 through 2029; (3) triples funding for the section 516 grant program by authorizing \$30,000,000 in appropriations for each of FYs 2020 through 2029; and approximately doubles funding for section 521 rental assistance (or operating assistance) payments by authorizing \$2.7 billion in appropriations for each of FYs 2020 through 2029.

*Sec. 229. Loan and Grant Limitations.* Section 229 requires the Department of Agriculture’s per project loan and grant limitation under sections 514 and 516 to be set at no lower than \$5 million. The current per project loan and grant limitation is \$3 million.

*Sec. 230. Operating Assistance Subsidies.* Section 230 authorizes operating assistance payments to owners of section 514/516 housing that house H–2A workers. Payments are capped at 50 percent of operating costs for the housing project, and the Department of Agriculture may only authorize such payments upon certification that: (1) the project was previously unoccupied or underutilized; and (2) provision of operating assistance will not displace domestic farm workers.

*Sec. 231. Eligibility of Certified Workers.* Section 231 makes holders of CAW status eligible for rental assistance under section 521 and housing vouchers under section 542 of the Housing Act of 1949.

*Subtitle C. Foreign Labor Recruiter Accountability.*

*Sec. 251. Registration of Foreign Labor Recruiters.* Sections 251(a) and (b) require the Department of Labor, in consultation with the Departments of State and Homeland Security, to set up an electronic registration process for foreign labor recruiters seeking to hire H–2A workers. The process shall include a mechanism for obtaining information about foreign labor recruiting activities from persons and entities seeking to register; maintaining surety bonds to protect workers, including by ensuring the ability of labor recruiters to discharge their financial responsibilities; renewing registrations; receiving information at diplomatic missions; receiving and processing complaints, conducting investigations, and assessing penalties; and consulting with other agencies when revocation might be necessary.

Section 251(c) provides that foreign labor recruiters must attest to and abide by a series of requirements. Sections 251(d) and (e) provide that a foreign labor recruiter registration shall be valid for 2 years, unless suspended or revoked. Foreign labor recruiters must pay a reasonable application fee for registration.

Section 251(f) provides that at least once per year, an H-2A employer must provide the Department of Labor with the names and addresses of all foreign labor recruiters engaged in recruiting activity on behalf of the employer and whether such persons are to receive compensation for such services. Such an employer must notify the Department of Labor if the employer has reason to believe that a foreign labor recruiter is violating this subtitle and must promptly respond to any Departmental request for information about a foreign labor recruiter with whom the employer has an agreement. Foreign labor recruiters must also annually notify the Department of Labor of the identity of its subcontractees, agents, and employees.

Section 251(g) requires the Department of State, in consultation with the Department of Labor, to maintain publicly available lists of foreign labor recruiters with valid registrations and those with revoked registrations. The Department of State shall also ensure that: (1) diplomatic missions are staffed with persons responsible for receiving information regarding potential violations of this subtitle; (2) consular officers take steps during consular interviews to ensure that applicants for H-2A visas are accurately informed of the job opportunity and any other disclosures required by law, including by reviewing required disclosures with the visa applicants; and (3) information is made available online on the characteristics of H-2A workers.

*Sec. 252. Enforcement.* Section 252(a) requires the Department of Labor to deny an application for registration, or to revoke registration, if it determines that a foreign labor recruiter, or an agent or subcontractee of such a recruiter, knowingly made a material misrepresentation in the registration application, materially failed to comply with an attestation required under section 251(c), or is not the real party in interest. Prior to such a denial, the Department of Labor must notify the foreign labor recruiter of the intent to deny or revoke the registration and provide the recruiter with at least 60 days to respond. A foreign labor recruiter whose registration has been revoked may apply to reregister upon demonstrating that it has not violated this subtitle for 5 years.

Section 252(b) establishes a complaint process at the Department of Labor. Foreign labor recruiters found in violation of the subtitle may: (1) be fined not more than \$10,000 per violation, or \$25,000 per violation upon a third violation; (2) be ordered to forfeit or partially forfeit a surety bond; (3) have their registration revoked, or their renewal application denied; or (4) be disqualified for up to five years (or permanently disqualified with the subsequent finding involving willful or multiple material violations). The Department of Labor may also take other actions, including issuing subpoenas and seeking injunctive relief, to secure compliance with this subtitle. This subsection does not limit the Department of Labor's authority to conduct an investigation under any other law or in the absence of a complaint.

Section 252(c) allows the Department of Labor or any aggrieved person to bring a civil action against a foreign labor recruiter that violates this subtitle or an employer that fails to use a registered recruiter. The reviewing court may award actual damages and statutory damages up to \$1,000 per plaintiff per violation, equitable relief, attorneys' fees and costs, and other relief as necessary. Dam-

ages recovered by the Department of Labor shall be deposited in a separate Treasury account. Amounts deposited in this fund shall be paid directly to affected workers, except that remaining funds shall be remain available to the Department of Labor, and may be transferred to other agencies to support the enforcement of anti-trafficking laws.

Section 252(d) provides a safe harbor for employers that use foreign labor recruiters registered under this section. Employers that utilize registered recruiters will not be held jointly liable in administrative or judicial proceedings for violations committed solely by the recruiter. Employers, however, may be liable if they employed a recruiter without a valid registration at the time of hire or the employer knew or learned of a violation and failed to report it to the Department of Labor.

Section 252(e) authorizes the Department of Homeland Security to grant parole to individuals to participate in administrative or judicial proceedings against foreign labor recruiters.

Section 252(f) voids agreements by employers purporting to waive or modify rights under this subtitle.

Section 252(g) clarifies that foreign labor recruiters are liable for violations committed by agents or subcontractees at any level in relation to the foreign labor recruiting activity to the same extent as if the foreign labor recruiter had committed the violation.

*Sec. 253. Appropriations.* Section 253 authorizes necessary appropriations to implement this subtitle.

*Sec. 254. Definitions.* Section 254 defines the following terms: foreign labor recruiter; foreign labor recruiting activity; recruitment fees; and person.

*Title III. Electronic Verification of the Agricultural Workforce.* Title III phases in mandatory use of an electronic employment eligibility verification system, patterned on E-Verify, for agricultural employment, but only after the reforms in Titles I and II have been implemented. Title III also includes necessary due process protections for authorized workers who are incorrectly rejected by the system to challenge such determinations. This serves as the last necessary piece to ensure a legal workforce for the agricultural sector.

*Sec. 301. Electronic Employment Eligibility Verification System.* Section 301 amends chapter 8 of title II of the INA by inserting after section 274D a new section 274E:

New Section 274E(a) requires the Department of Homeland Security to establish an electronic employment eligibility verification system (the “System”) patterned on E-Verify for: (1) checking identity and employment authorization; and (2) maintaining records of past inquiries and whether identity and employment authorization were confirmed. Such System shall: (1) provide a confirmation or tentative nonconfirmation (TNC) of identity and employment authorization not later than 3 days after the initial inquiry; (2) be designed to maximize reliability and accessibility across devices and in remote locations; and (3) include safeguards to prevent misuse, data and identity theft, fraud, and violations of privacy.

New Section 274E(a)(4) requires the System to include various features that prevent identity theft and fraud. The System shall include a photo matching tool, a mechanism to permit individuals to monitor and suspend the use of their social security numbers in the

System, and a process to block misused social security numbers. The Department of Homeland Security shall establish a pilot program that allows parents or legal guardians to suspend use of a child's social security number in the System.

New Section 274E(a)(5) sets forth the responsibilities of the Social Security Administration with respect to the System. The Social Security Administration is primarily tasked with comparing information submitted in a System inquiry against information maintained by the Social Security Administration.

New Section 274E(a)(6) sets forth the responsibilities of the Department of Homeland Security with respect to the System. The Department of Homeland Security is primarily tasked with comparing information submitted in a System inquiry against information maintained by the Department. The Department of Homeland Security must also: (1) provide and regularly update System training materials; (2) periodically conduct audits of the System to detect and prevent violations; and (3) appropriately notify System users of any changes to the System or its use.

New Section 274E(a)(7) sets forth the responsibilities of the Department of State with respect to the System. The Department of State is primarily tasked with comparing information submitted in a System inquiry, particularly when passport or visa information is used, against information maintained by the Department of State.

New Section 274E(a)(8) requires the Social Security Administration, the Department of Homeland Security, and the Department of State to: (1) update individual records in their custody to ensure maximum accuracy of the System, and (2) provide a process to correct erroneous information.

New Section 274E(a)(9) clarifies that nothing in this section should be construed as mandating use of the System, unless such use is otherwise required under Federal or State law.

New Section 274E(a)(10) states that no fee may be charged to use the System.

New Section 274E(b) sets forth the employment eligibility verification process for employers that utilize the System, as follows:

- An individual who has accepted an offer of employment must attest to employment authorization and provide a social security number (or proof that the individual has applied for a social security number). If the individual does not attest to U.S. citizenship or nationality, the individual must also provide an identification or other authorization number as provided by the Department of Homeland Security.
- The employer must then attest that it has verified that the individual is not unauthorized by examining acceptable documents confirming the individual's identity and employment authorization. The bill requires the individual to present the employer with either: (1) one document listed in New Section 274E(b)(3)(A), which lists documents acceptable for establishing both identity and employment authorization; or (2) one document listed in New Section 274E(b)(3)(B), which lists documents acceptable for establishing employment authorization, and one document listed in New Section 274E(b)(3)(C), which lists documents acceptable for establishing identity. The De-

partment of Homeland Security is also authorized to prohibit or place conditions on any document or class of documents if it finds that such document or documents are unreliable or being used fraudulently to an unacceptable degree.

- Upon examining the document or documents presented by the individual, the employer must then submit an inquiry through the System to seek verification of the individual's identity and employment authorization. The employer is generally required to submit this inquiry during the period beginning on the date of hire and ending three business days later.

- *Confirmation*. If the System issues a confirmation of identity and employment authorization, the employer may continue employing the individual.

- *Tentative nonconfirmation (TNC)*. If the System generates a TNC, the employer must provide notice to the individual that explains the individual's right to contest the TNC within 10 business days. A TNC becomes final if the individual refuses to acknowledge receipt of such notice, elects not to contest the TNC, or fails to contest the TNC within 10 business days. An individual who contests a TNC cannot be terminated unless and until a final nonconfirmation is issued. The Department of Homeland Security must make a final determination not later than 30 days after the date that the Department receives notice from the individual contesting the TNC.

- *Final nonconfirmation (FNC)*. If the System generates an FNC, the employer must notify the individual within three business days of receipt of the FNC, and the employer may terminate the individual. If the employer does not terminate the individual, it must so notify the Department of Homeland Security. The individual may appeal an FNC through procedures developed by the Department of Homeland Security. If the FNC was due to government error, the worker may be compensated for lost wages. Such wages shall be paid through the collection of penalties assessed against employers for violations of this section.

- Employers are required to retain verification records beginning on the date the verification is completed and ending on the later of three years after the date of hire or one year after the date the individual's employment is terminated.

New Section 274E(c) limits re-verification of existing employees to: (1) individuals with a limited period of work authorization; and (2) individuals who are using a Social Security Number identified by the Department of Homeland Security as subject to potential misuse. Employers are required to retain reverification records beginning on the date the reverification commences and ending on the later of three years after the date of reverification or one year after the date the individual's employment is terminated.

New Section 274E(d) deems employers compliant with the System if they made a good faith attempt to comply, even if a technical or procedural failure prevented them from doing so. The good faith presumption does not apply if: (1) the failure is not de minimis; (2) the Department of Homeland Security provides notice of the failure to the employer; and (3) the employer fails to voluntarily correct the failure within a 30-day period beginning on the date of notification. The presumption also does not apply if the employer has en-

gaged in a pattern or practice of violations. An employer that relies in good faith on the System in taking an employment-related action shall not be liable in any action by the employee or the Federal, State, or local government.

New Section 274E(e) clarifies that the bill does not authorize: (1) the creation of a national identification card, or (2) use of the System for anything other than verification of employment authorization.

New Sections 274E(f) sets forth the civil penalties for violations by employers subject to this Title. Such penalties for violations regarding hiring, recruiting or referring for a fee are: (1) \$2,500 to \$5,000 per unauthorized individual; (2) \$5,000 to \$10,000 if the employer previously received one cease and desist order; or (3) \$10,000 to \$25,000 if the employer previously received more than one such order. Penalties for failing to comply with the verification requirements in general range from \$1,000 to \$25,000 for each violation.

Penalties may be waived or reduced if the violator acted in good faith, and, in assessing penalties, consideration shall be given to the size of the business, the severity of the violation, whether the individual was an unauthorized alien, and the history of previous violations. Criminal penalties may also be imposed against employers that engage in a pattern or practice of violations. Penalties collected under this subsection are made available to compensate individuals for lost wages as a result of erroneous FNCs issued by the System. Repeat violators, and employers convicted of a crime under section 274A of the INA, may be debarred from receipt of Federal contracts, grants, or cooperative agreements. Finally, the bill preempts State or local laws relating to the hiring or employment of individuals, except that States and localities may continue to exercise authority over business licenses and similar laws as a penalty for failure to use the System as required.

New Section 274E(g) establishes the unfair immigration-related employment practices with respect to the use of the System. Such employment practices include: (1) screening applicants prior to the date of hire; (2) terminating employment due to the issuance of a TNC; (3) using the System for any purpose other than confirming employment authorization; (4) using the System to reverify a current employee other than as allowed in this section; (5) using the System to discriminate based on national origin or citizenship status; (6) willfully failing to provide individuals with notice as required under this section; (7) requiring individuals to use the self-verification procedures as a condition of employment; and (8) terminating or taking other adverse employment action with respect to an individual based on the need to verify that individual. Penalties for unfair immigration-related employment practices are: (1) \$1,000 to \$4,000 for each individual discriminated against; (2) \$4,000 to \$10,000 if the employer was previously subject to one order; and (3) \$6,000 to \$20,000 if the employer was previously subject to multiple orders. Collected penalties are deposited into an account for the purpose of compensating individuals for lost wages based on the erroneous issuance of a final nonconfirmation due to government error or omission.

New Section 274E(h) clarifies that all rights and remedies available under Federal, State, or local law remain available to an em-

ployee despite the employee's status as an unauthorized alien or the employer or employee's failure to comply with the requirements of this section.

New Section 274E(i) defines the term date of hire as the date on which employment for pay or other remuneration commences.

*Sec. 302. Mandatory Electronic Verification for the Agricultural Industry.* Section 302(a) makes use of the System mandatory for agricultural employers as defined in Section 302(e). Section 302(b) sets forth the dates by which agricultural employers must use the System based on workforce size: employers with 500 or more employees must use the System within 6 months after the completion of the application period for CAW status; within 9 months for employers with 100 to 499 employees; within 12 months for employers with 20 to 99 employees; and within 15 months for all other employers. Entities that recruit or refer farm workers for a fee must use the System within 12 months after the completion of the CAW application period.

Section 302(c) requires the Department of Homeland Security and the Social Security Administration to coordinate with the Department of Agriculture to create an alternative process for an individual to contest a TNC by appearing in-person at a local office or service center of the Department of Agriculture, or at a local office of the Social Security Administration. The Department of Homeland Security and the Social Security Administration shall ensure that such local offices are sufficiently staffed and resourced to provide such services. There is no intent to shift responsibilities related to the System to the Department of Agriculture; those are intended to remain with the Department of Homeland Security and the Social Security Administration. The agencies are expected to cooperate to ensure that this provision does not inhibit the ability of the Department of Agriculture to fulfill its primary missions.

Section 302(d) requires the Department of Homeland Security to recognize documentary evidence of CAW status as valid proof of employment authorization and identity for purposes of employment verification.

Section 302(e) defines "agricultural employment" to mean agricultural labor or services as defined for purposes of the H-2A program. This definition is not intended to impose the requirements of this section on any entity that does not employ workers for such agricultural labor or services, including entities that are members of associations or cooperatives with other entities that do employ such workers.

*Sec. 303. Coordination With E-Verify Program.* Section 303 repeals the provisions of the Illegal Immigration Reform and Immigrant Responsibility Act that established the employment eligibility verification pilot programs. This section also includes technical amendments to ensure that current E-Verify users are transitioned to the System.

*Sec. 304. Fraud and Misuse of Documents.* Section 304 amends 18 U.S.C. 1546(b) to clarify that fines or a term of imprisonment up to five years may be imposed for use of false documents to satisfy the employment eligibility verification requirements under this title.



*Sec. 305. Technical and Conforming Amendments.* Section 305 provides technical and conforming amendments to sections 274A and 274B of the INA.

*Sec. 306. Protection of Social Security Administration Programs.* Section 306 requires the Department of Homeland Security and the Social Security Administration to enter into an agreement to provide the Social Security Administration with the funds needed to carry out its responsibilities under this title. The Social Security Administration is also required to provide an annual accounting and cost reconciliation for review by the Inspector General of the Social Security Administration and the Department of Homeland Security.

*Sec. 307. Report on the Implementation of the Verification System.* Section 307 requires annual reporting on the System, to start within 24 months of implementation.

*Sec. 308. Modernizing and Streamlining the Employment Eligibility Verification Process.* Section 308 requires the Department of Homeland Security to submit a plan to Congress, 12 months after enactment, to modernize the System and the employment eligibility verification process, including procedures to allow employers to verify remote hires and to complete the process without also having to complete the current, paper-based Form I-9 process.

*Sec. 309. Rulemaking and Paperwork Reduction Act.* Section 309 requires the Department of Homeland Security to propose rules not later than 180 days prior to the end of the application period for CAW status, and to finalize the rules not later than 180 days later.

### **Changes in Existing Law Made by the Bill, as Reported**

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, H.R. 5038, as reported, are shown as follows:

#### **CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED**

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

### **SOCIAL SECURITY ACT**

\* \* \* \* \*

#### **TITLE II—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS**

\* \* \* \* \*

#### **PENALTIES**

SEC. 208. (a) Whoever—

(1) for the purpose of causing an increase in any payment authorized to be made under this title, or for the purpose of causing any payment to be made where no payment is authorized under this title, shall make or cause to be made any false

statement or representation (including any false statement or representation in connection with any matter arising under subchapter E of chapter 1, or subchapter A or E of chapter 9 of the Internal Revenue Code of 1939, or chapter 2 or 21 or subtitle F of the Internal Revenue Code of 1954) as to—

(A) whether wages were paid or received for employment (as said terms are defined in this title and the Internal Revenue Code), or the amount of wages or the period during which paid or the person to whom paid; or

(B) whether net earnings from self-employment (as such term is defined in this title and in the Internal Revenue Code) were derived, or as to the amount of such net earnings or the period during which or the person by whom derived; or

(C) whether a person entitled to benefits under this title had earnings in or for a particular period (as determined under section 203(f) of this title for purposes of deductions from benefits), or as to the amount thereof; or

(2) makes or causes to be made any false statement or representation of a material fact in any application for any payment or for a disability determination under this title; or

(3) at any time makes or causes to be made any false statement or representation of a material fact for use in determining rights to payment under this title; or

(4) having knowledge of the occurrence of any event affecting (1) his initial or continued right to any payment under this title, or (2) the initial or continued right to any payment of any other individual in whose behalf he has applied for or is receiving such payment, conceals or fails to disclose such event with an intent fraudulently to secure payment either in a greater amount than is due or when no payment is authorized; or

(5) having made application to receive payment under this title for the use and benefit of another and having received such a payment, knowingly and willfully converts such a payment, or any part thereof, to a use other than for the use and benefit of such other person; or

(6) willfully, knowingly, and with intent to deceive the Commissioner of Social Security as to his true identity (or the true identity of any other person) furnishes or causes to be furnished false information to the Commissioner of Social Security with respect to any information required by the Commissioner of Social Security in connection with the establishment and maintenance of the records provided for in section 205(c)(2); or

(7) for the purpose of causing an increase in any payment authorized under this title (or any other program financed in whole or in part from Federal funds), or for the purpose of causing a payment under this title (or any such other program) to be made when no payment is authorized thereunder, or for the purpose of obtaining (for himself or any other person) any payment or any other benefit to which he (or such other person) is not entitled, or for the purpose of obtaining anything of value from any person, or for any other purpose—

(A) willfully, knowingly, and with intent to deceive, uses a social security account number, assigned by the Commis-

sioner of Social Security (in the exercise of the Commissioner's authority under section 205(c)(2) to establish and maintain records) on the basis of false information furnished to the Commissioner of Social Security by him or by any other person; or

(B) with intent to deceive, falsely represents a number to be the social security account number assigned by the Commissioner of Social Security to him or to another person, when in fact such number is not the social security account number assigned by the Commissioner of Social Security to him or to such other person; or

(C) knowingly alters a social security card issued by the Commissioner of Social Security, buys or sells a card that is, or purports to be, a card so issued, counterfeits a social security card, or possesses a social security card or counterfeit social security card with intent to sell or alter it;

(8) discloses, uses, or compels the disclosure of the social security number of any person in violation of the laws of the United States; or

(9) conspires to commit any offense described in any of paragraphs (1) through (4),

shall be guilty of a felony and upon conviction thereof shall be fined under title 18, United States Code, or imprisoned for not more than five years, or both, except that in the case of a person who receives a fee or other income for services performed in connection with any determination with respect to benefits under this title (including a claimant representative, translator, or current or former employee of the Social Security Administration), or who is a physician or other health care provider who submits, or causes the submission of, medical or other evidence in connection with any such determination, such person shall be guilty of a felony and upon conviction thereof shall be fined under title 18, United States Code, or imprisoned for not more than ten years, or both.

(b)(1) Any Federal court, when sentencing a defendant convicted of an offense under subsection (a), may order, in addition to or in lieu of any other penalty authorized by law, that the defendant make restitution to the victims of such offense specified in paragraph (4).

(2) Sections 3612, 3663, and 3664 of title 18, United States Code, shall apply with respect to the issuance and enforcement of orders of restitution to victims of such offense under this subsection.

(3) If the court does not order restitution, or orders only partial restitution, under this subsection, the court shall state on the record the reasons therefor.

(4) For purposes of paragraphs (1) and (2), the victims of an offense under subsection (a) are the following:

(A) Any individual who suffers a financial loss as a result of the defendant's violation of subsection (a).

(B) The Commissioner of Social Security, to the extent that the defendant's violation of subsection (a) results in—

(i) the Commissioner of Social Security making a benefit payment that should not have been made; or

(ii) an individual suffering a financial loss due to the defendant's violation of subsection (a) in his or her capacity

as the individual's representative payee appointed pursuant to section 205(j).

(5)(A) Except as provided in subparagraph (B), funds paid to the Commissioner of Social Security as restitution pursuant to a court order shall be deposited in the Federal Old-Age and Survivors Insurance Trust Fund, or the Federal Disability Insurance Trust Fund, as appropriate.

(B) In the case of funds paid to the Commissioner of Social Security pursuant to paragraph (4)(B)(ii), the Commissioner of Social Security shall certify for payment to the individual described in such paragraph an amount equal to the lesser of the amount of the funds so paid or the individual's outstanding financial loss, except that such amount may be reduced by the amount of any overpayments of benefits owed under this title, title VIII, or title XVI by the individual.

(c) Any person or other entity who is convicted of a violation of any of the provisions of this section, if such violation is committed by such person or entity in his role as, or in applying to become, a certified payee under section 205(j) on behalf of another individual (other than such person's spouse), upon his second or any subsequent such conviction shall, in lieu of the penalty set forth in the preceding provisions of this section, be guilty of a felony and shall be fined under title 18, United States Code, or imprisoned for not more than five years, or both.

(d) Any individual or entity convicted of a felony under this section or under section 1632(b) may not be certified as a payee under section 205(j). For the purpose of subsection (a)(7), the terms "social security number" and "social security account number" mean such numbers as are assigned by the Commissioner of Social Security under section 205(c)(2) whether or not, in actual use, such numbers are called social security numbers.

(e)(1) Except as provided in paragraph (2), an alien—

(A) whose status is adjusted to that of lawful temporary resident under section 210 or 245A of the Immigration and Nationality Act or under section 902 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989,

(B) whose status is adjusted to that of permanent resident—

(i) under section 202 of the Immigration Reform and Control Act of 1986, or

(ii) pursuant to section 249 of the Immigration and Nationality Act, **[or]**

(C) who is granted special immigrant status under section 101(a)(27)(I) of the Immigration and Nationality Act, or

(D) *who is granted certified agricultural worker status, certified agricultural dependent status, or lawful permanent resident status under title I of the Farm Work Modernization Act of 2019,*

shall not be subject to prosecution for any alleged conduct described in paragraph (6) or (7) of subsection (a) if such conduct is alleged to have occurred prior to 60 days after the date of the enactment of the Omnibus Budget Reconciliation Act of **[1990.]** 1990, *or in the case of an alien described in subparagraph (D), if such conduct is alleged to have occurred before the date on which the alien was granted status under title I of the Farm Work Modernization Act of 2019.*

(2) Paragraph (1) shall not apply with respect to conduct (described in subsection (a)(7)(C)) consisting of—

(A) selling a card that is, or purports to be, a social security card issued by the Commissioner of Social Security,

(B) possessing a social security card with intent to sell it, or

(C) counterfeiting a social security card with intent to sell it.

(3) Paragraph (1) shall not apply with respect to any criminal conduct involving both the conduct described in subsection (a)(7) to which paragraph (1) applies and any other criminal conduct if such other conduct would be criminal conduct if the conduct described in subsection (a)(7) were not committed.

\* \* \* \* \*

## IMMIGRATION AND NATIONALITY ACT

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That this Act, divided into titles, chapters, and sections according to the following table of contents, may be cited as the “Immigration and Nationality Act”.

### TABLE OF CONTENTS

#### TITLE I—GENERAL

Sec. 101. Definitions.

\* \* \* \* \*

#### CHAPTER 8—GENERAL PENALTY PROVISIONS

\* \* \* \* \*

Sec. 274E. *Requirements for the electronic verification of employment eligibility.*

\* \* \* \* \*

### TITLE II—IMMIGRATION

#### CHAPTER 1—SELECTION SYSTEM

\* \* \* \* \*

SEC. 201. (a) IN GENERAL.—Exclusive of aliens described in subsection (b), aliens born in a foreign state or dependent area who may be issued immigrant visas or who may otherwise acquire the status of an alien lawfully admitted to the United States for permanent residence are limited to—

(1) family-sponsored immigrants described in section 203(a) (or who are admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(a)) in a number not to exceed in any fiscal year the number specified in subsection (c) for that year, and not to exceed in any of the first 3 quarters of any fiscal year 27 percent of the worldwide level under such subsection for all of such fiscal year;

(2) employment-based immigrants described in section 203(b) (or who are admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(b)), in a number not to exceed in any fiscal year the number specified in subsection (d) for that year, and not

to exceed in any of the first 3 quarters of any fiscal year 27 percent of the worldwide level under such subsection for all of such fiscal year; and

(3) for fiscal years beginning with fiscal year 1995, diversity immigrants described in section 203(c) (or who are admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent under section 203(c)) in a number not to exceed in any fiscal year the number specified in subsection (e) for that year, and not to exceed in any of the first 3 quarters of any fiscal year 27 percent of the worldwide level under such subsection for all of such fiscal year.

(b) ALIENS NOT SUBJECT TO DIRECT NUMERICAL LIMITATIONS.—Aliens described in this subsection, who are not subject to the worldwide levels or numerical limitations of subsection (a), are as follows:

(1)(A) Special immigrants described in subparagraph (A) or (B) of section 101(a)(27).

(B) Aliens who are admitted under section 207 or whose status is adjusted under section 209.

(C) Aliens whose status is adjusted to permanent residence under section 210 or 245A.

(D) Aliens whose removal is cancelled under section 240A(a).

(E) Aliens provided permanent resident status under section 249.

(2)(A)(i) IMMEDIATE RELATIVES.—For purposes of this subsection, the term “immediate relatives” means the children, spouses, and parents of a citizen of the United States, except that, in the case of parents, such citizens shall be at least 21 years of age. In the case of an alien who was the spouse of a citizen of the United States and was not legally separated from the citizen at the time of the citizen’s death, the alien (and each child of the alien) shall be considered, for purposes of this subsection, to remain an immediate relative after the date of the citizen’s death but only if the spouse files a petition under section 204(a)(1)(A)(ii) within 2 years after such date and only until the date the spouse remarries. For purposes of this clause, an alien who has filed a petition under clause (iii) or (iv) of section 204(a)(1)(A) of this Act remains an immediate relative in the event that the United States citizen spouse or parent loses United States citizenship on account of the abuse.

(ii) Aliens admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent who is such an immediate relative.

(B) Aliens born to an alien lawfully admitted for permanent residence during a temporary visit abroad.

(c) WORLDWIDE LEVEL OF FAMILY-SPONSORED IMMIGRANTS.—(1)(A) The worldwide level of family-sponsored immigrants under this subsection for a fiscal year is, subject to subparagraph (B), equal to—

(i) 480,000, minus

(ii) the sum of the number computed under paragraph (2) and the number computed under paragraph (4), plus

(iii) the number (if any) computed under paragraph (3).

(B)(i) For each of fiscal years 1992, 1993, and 1994, 465,000 shall be substituted for 480,000 in subparagraph (A)(i).

(ii) In no case shall the number computed under subparagraph (A) be less than 226,000.

(2) The number computed under this paragraph for a fiscal year is the sum of the number of aliens described in subparagraphs (A) and (B) of subsection (b)(2) who were issued immigrant visas or who otherwise acquired the status of aliens lawfully admitted to the United States for permanent residence in the previous fiscal year.

(3)(A) The number computed under this paragraph for fiscal year 1992 is zero.

(B) The number computed under this paragraph for fiscal year 1993 is the difference (if any) between the worldwide level established under paragraph (1) for the previous fiscal year and the number of visas issued under section 203(a) during that fiscal year.

(C) The number computed under this paragraph for a subsequent fiscal year is the difference (if any) between the maximum number of visas which may be issued under section 203(b) (relating to employment-based immigrants) during the previous fiscal year and the number of visas issued under that section during that year.

(4) The number computed under this paragraph for a fiscal year (beginning with fiscal year 1999) is the number of aliens who were paroled into the United States under section 212(d)(5) in the second preceding fiscal year—

(A) who did not depart from the United States (without advance parole) within 365 days; and

(B) who (i) did not acquire the status of aliens lawfully admitted to the United States for permanent residence in the two preceding fiscal years, or (ii) acquired such status in such years under a provision of law (other than section 201(b)) which exempts such adjustment from the numerical limitation on the worldwide level of immigration under this section.

(5) If any alien described in paragraph (4) (other than an alien described in paragraph (4)(B)(ii)) is subsequently admitted as an alien lawfully admitted for permanent residence, such alien shall not again be considered for purposes of paragraph (1).

(d) WORLDWIDE LEVEL OF EMPLOYMENT-BASED IMMIGRANTS.—(1) The worldwide level of employment-based immigrants under this subsection for a fiscal year is equal to—

(A) **[140,000]** 180,000, plus

(B) the number computed under paragraph (2).

(2)(A) The number computed under this paragraph for fiscal year 1992 is zero.

(B) The number computed under this paragraph for fiscal year 1993 is the difference (if any) between the worldwide level established under paragraph (1) for the previous fiscal year and the number of visas issued under section 203(b) during that fiscal year.

(C) The number computed under this paragraph for a subsequent fiscal year is the difference (if any) between the maximum number of visas which may be issued under section 203(a) (relating to family-sponsored immigrants) during the previous fiscal year and the number of visas issued under that section during that year.

(e) WORLDWIDE LEVEL OF DIVERSITY IMMIGRANTS.—The worldwide level of diversity immigrants is equal to 55,000 for each fiscal year.

(f) RULES FOR DETERMINING WHETHER CERTAIN ALIENS ARE IMMEDIATE RELATIVES.—

(1) AGE ON PETITION FILING DATE.—Except as provided in paragraphs (2) and (3), for purposes of subsection (b)(2)(A)(i), a determination of whether an alien satisfies the age requirement in the matter preceding subparagraph (A) of section 101(b)(1) shall be made using the age of the alien on the date on which the petition is filed with the Attorney General under section 204 to classify the alien as an immediate relative under subsection (b)(2)(A)(i).

(2) AGE ON PARENT'S NATURALIZATION DATE.—In the case of a petition under section 204 initially filed for an alien child's classification as a family-sponsored immigrant under section 203(a)(2)(A), based on the child's parent being lawfully admitted for permanent residence, if the petition is later converted, due to the naturalization of the parent, to a petition to classify the alien as an immediate relative under subsection (b)(2)(A)(i), the determination described in paragraph (1) shall be made using the age of the alien on the date of the parent's naturalization.

(3) AGE ON MARRIAGE TERMINATION DATE.—In the case of a petition under section 204 initially filed for an alien's classification as a family-sponsored immigrant under section 203(a)(3), based on the alien's being a married son or daughter of a citizen, if the petition is later converted, due to the legal termination of the alien's marriage, to a petition to classify the alien as an immediate relative under subsection (b)(2)(A)(i) or as an unmarried son or daughter of a citizen under section 203(a)(1), the determination described in paragraph (1) shall be made using the age of the alien on the date of the termination of the marriage.

(4) APPLICATION TO SELF-PETITIONS.—Paragraphs (1) through (3) shall apply to self-petitioners and derivatives of self-petitioners.

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#### ALLOCATION OF IMMIGRANT VISAS

SEC. 203. (a) PREFERENCE ALLOCATION FOR FAMILY-SPONSORED IMMIGRANTS.—Aliens subject to the worldwide level specified in section 201(c) for family-sponsored immigrants shall be allotted visas as follows:

(1) UNMARRIED SONS AND DAUGHTERS OF CITIZENS.—Qualified immigrants who are the unmarried sons or daughters of citizens of the United States shall be allocated visas in a number not to exceed 23,400, plus any visas not required for the class specified in paragraph (4).

(2) SPOUSES AND UNMARRIED SONS AND UNMARRIED DAUGHTERS OF PERMANENT RESIDENT ALIENS.—Qualified immigrants—

(A) who are the spouses or children of an alien lawfully admitted for permanent residence, or

(B) who are the unmarried sons or unmarried daughters (but are not the children) of an alien lawfully admitted for permanent residence,



shall be allocated visas in a number not to exceed 114,200, plus the number (if any) by which such worldwide level exceeds 226,000, plus any visas not required for the class specified in paragraph (1); except that not less than 77 percent of such visa numbers shall be allocated to aliens described in subparagraph (A).

(3) MARRIED SONS AND MARRIED DAUGHTERS OF CITIZENS.—Qualified immigrants who are the married sons or married daughters of citizens of the United States shall be allocated visas in a number not to exceed 23,400, plus any visas not required for the classes specified in paragraphs (1) and (2).

(4) BROTHERS AND SISTERS OF CITIZENS.—Qualified immigrants who are the brothers or sisters of citizens of the United States, if such citizens are at least 21 years of age, shall be allocated visas in a number not to exceed 65,000, plus any visas not required for the classes specified in paragraphs (1) through (3).

(b) PREFERENCE ALLOCATION FOR EMPLOYMENT-BASED IMMIGRANTS.—Aliens subject to the worldwide level specified in section 201(d) for employment-based immigrants in a fiscal year shall be allotted visas as follows:

(1) PRIORITY WORKERS.—Visas shall first be made available in a number not to exceed [28.6 percent of such worldwide level] 40,040, plus any visas not required for the classes specified in paragraphs (4) and (5), to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) ALIENS WITH EXTRAORDINARY ABILITY.—An alien is described in this subparagraph if—

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

(B) OUTSTANDING PROFESSORS AND RESEARCHERS.—An alien is described in this subparagraph if—

- (i) the alien is recognized internationally as outstanding in a specific academic area,
- (ii) the alien has at least 3 years of experience in teaching or research in the academic area, and
- (iii) the alien seeks to enter the United States—
  - (I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,
  - (II) for a comparable position with a university or institution of higher education to conduct research in the area, or
  - (III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department,

division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

(C) CERTAIN MULTINATIONAL EXECUTIVES AND MANAGERS.—An alien is described in this subparagraph if the alien, in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and the alien seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

(2) ALIENS WHO ARE MEMBERS OF THE PROFESSIONS HOLDING ADVANCED DEGREES OR ALIENS OF EXCEPTIONAL ABILITY.—

(A) IN GENERAL.—Visas shall be made available, in a number not to exceed [28.6 percent of such worldwide level] 40,040, plus any visas not required for the classes specified in paragraph (1), to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B)(i) Subject to clause (ii), the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

(ii)(I) The Attorney General shall grant a national interest waiver pursuant to clause (i) on behalf of any alien physician with respect to whom a petition for preference classification has been filed under subparagraph (A) if—

(aa) the alien physician agrees to work full time as a physician in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs; and

(bb) a Federal agency or a department of public health in any State has previously determined that the alien physician's work in such an area or at such facility was in the public interest.

(II) No permanent resident visa may be issued to an alien physician described in subclause (I) by the Secretary of State under section 204(b), and the Attorney General may not adjust the status of such an alien physician from that of a nonimmigrant alien to that of a permanent resident alien under section 245, until such time as the alien has worked full time as a physician for an aggregate of 5 years (not including the time served in the status of an alien described in sec-

tion 101(a)(15)(J)), in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs.

(III) Nothing in this subparagraph may be construed to prevent the filing of a petition with the Attorney General for classification under section 204(a), or the filing of an application for adjustment of status under section 245, by an alien physician described in subclause (I) prior to the date by which such alien physician has completed the service described in subclause (II).

(IV) The requirements of this subsection do not affect waivers on behalf of alien physicians approved under section 203(b)(2)(B) before the enactment date of this subsection. In the case of a physician for whom an application for a waiver was filed under section 203(b)(2)(B) prior to November 1, 1998, the Attorney General shall grant a national interest waiver pursuant to section 203(b)(2)(B) except that the alien is required to have worked full time as a physician for an aggregate of 3 years (not including time served in the status of an alien described in section 101(a)(15)(J)) before a visa can be issued to the alien under section 204(b) or the status of the alien is adjusted to permanent resident under section 245.

(C) DETERMINATION OF EXCEPTIONAL ABILITY.—In determining under subparagraph (A) whether an immigrant has exceptional ability, the possession of a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning or a license to practice or certification for a particular profession or occupation shall not by itself be considered sufficient evidence of such exceptional ability.

(3) SKILLED WORKERS, PROFESSIONALS, AND OTHER WORKERS.—

(A) IN GENERAL.—Visas shall be made available, in a number not to exceed [28.6 percent of such worldwide level] 80,040, plus any visas not required for the classes specified in paragraphs (1) and (2), to the following classes of aliens who are not described in paragraph (2):

(i) SKILLED WORKERS.—Qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least 2 years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

(ii) PROFESSIONALS.—Qualified immigrants who hold baccalaureate degrees and who are members of the professions.

[(iii) OTHER WORKERS.—Other qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing unskilled labor, not of a temporary or seasonal nature, for which

qualified workers are not available in the United States.】

(iii) *OTHER WORKERS.*—*Other qualified immigrants who, at the time of petitioning for classification under this paragraph—*

*(I) are capable of performing unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States; or*

*(II) can demonstrate employment in the United States as an H-2A nonimmigrant worker for at least 100 days in each of at least 10 years.*

【(B) *LIMITATION ON OTHER WORKERS.*—Not more than 10,000 of the visas made available under this paragraph in any fiscal year may be available for qualified immigrants described in subparagraph (A)(iii).】

(B) *VISAS ALLOCATED FOR OTHER WORKERS.*—

(i) *IN GENERAL.*—*Except as provided in clauses (ii) and (iii), 50,000 of the visas made available under this paragraph shall be reserved for qualified immigrants described in subparagraph (A)(iii).*

(ii) *PREFERENCE FOR AGRICULTURAL WORKERS.*—*Subject to clause (iii), not less than four-fifths of the visas described in clause (i) shall be reserved for—*

*(I) qualified immigrants described in subparagraph (A)(iii)(I) who will be performing agricultural labor or services in the United States; and*

*(II) qualified immigrants described in subparagraph (A)(iii)(II).*

(iii) *EXCEPTION.*—*If because of the application of clause (ii), the total number of visas available under this paragraph for a calendar quarter exceeds the number of qualified immigrants who otherwise may be issued such a visa, clause (ii) shall not apply to visas under this paragraph during the remainder of such calendar quarter.*

(iv) *NO PER COUNTRY LIMITS.*—*Visas described under clause (ii) shall be issued without regard to the numerical limitation under section 202(a)(2).*

(C) *LABOR CERTIFICATION REQUIRED.*—【An immigrant visa】*Except for qualified immigrants petitioning for classification under subparagraph (A)(iii)(II), an immigrant visa may not be issued to an immigrant under subparagraph (A) until the consular officer is in receipt of a determination made by the Secretary of Labor pursuant to the provisions of section 212(a)(5)(A).*

(4) *CERTAIN SPECIAL IMMIGRANTS.*—Visas shall be made available, in a number not to exceed 【7.1 percent of such worldwide level】 9,940, to qualified special immigrants described in section 101(a)(27) (other than those described in subparagraph (A) or (B) thereof), of which not more than 5,000 may be made available in any fiscal year to special immigrants described in subclause (II) or (III) of section 101(a)(27)(C)(ii), and not more than 100 may be made available in any fiscal

year to special immigrants, excluding spouses and children, who are described in section 101(a)(27)(M).

(5) EMPLOYMENT CREATION.—

(A) IN GENERAL.—Visas shall be made available, in a number not to exceed ~~7.1 percent of such worldwide level~~ 9,940, to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise (including a limited partnership)—

(i) in which such alien has invested (after the date of the enactment of the Immigration Act of 1990) or, is actively in the process of investing, capital in an amount not less than the amount specified in subparagraph (C), and

(ii) which will benefit the United States economy and create full-time employment for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the immigrant and the immigrant's spouse, sons, or daughters).

(B) SET-ASIDE FOR TARGETED EMPLOYMENT AREAS.—

(i) IN GENERAL.—Not less than 3,000 of the visas made available under this paragraph in each fiscal year shall be reserved for qualified immigrants who invest in a new commercial enterprise described in subparagraph (A) which will create employment in a targeted employment area.

(ii) TARGETED EMPLOYMENT AREA DEFINED.—In this paragraph, the term “targeted employment area” means, at the time of the investment, a rural area or an area which has experienced high unemployment (of at least 150 percent of the national average rate).

(iii) RURAL AREA DEFINED.—In this paragraph, the term “rural area” means any area other than an area within a metropolitan statistical area or within the outer boundary of any city or town having a population of 20,000 or more (based on the most recent decennial census of the United States).

(C) AMOUNT OF CAPITAL REQUIRED.—

(i) IN GENERAL.—Except as otherwise provided in this subparagraph, the amount of capital required under subparagraph (A) shall be \$1,000,000. The Attorney General, in consultation with the Secretary of Labor and the Secretary of State, may from time to time prescribe regulations increasing the dollar amount specified under the previous sentence.

(ii) ADJUSTMENT FOR TARGETED EMPLOYMENT AREAS.—The Attorney General may, in the case of investment made in a targeted employment area, specify an amount of capital required under subparagraph (A) that is less than (but not less than  $\frac{1}{2}$  of) the amount specified in clause (i).

(iii) ADJUSTMENT FOR HIGH EMPLOYMENT AREAS.—In the case of an investment made in a part of a metro-

politan statistical area that at the time of the investment—

(I) is not a targeted employment area, and

(II) is an area with an unemployment rate significantly below the national average unemployment rate,

the Attorney General may specify an amount of capital required under subparagraph (A) that is greater than (but not greater than 3 times) the amount specified in clause (i).

(D) FULL-TIME EMPLOYMENT DEFINED.—In this paragraph, the term “full-time employment” means employment in a position that requires at least 35 hours of service per week at any time, regardless of who fills the position.

(6) SPECIAL RULES FOR “K” SPECIAL IMMIGRANTS.—

(A) NOT COUNTED AGAINST NUMERICAL LIMITATION IN YEAR INVOLVED.—Subject to subparagraph (B), the number of immigrant visas made available to special immigrants under section 101(a)(27)(K) in a fiscal year shall not be subject to the numerical limitations of this subsection or of section 202(a).

(B) COUNTED AGAINST NUMERICAL LIMITATIONS IN FOLLOWING YEAR.—

(i) REDUCTION IN EMPLOYMENT-BASED IMMIGRANT CLASSIFICATIONS.—The number of visas made available in any fiscal year under paragraphs (1), (2), and (3) shall each be reduced by  $\frac{1}{3}$  of the number of visas made available in the previous fiscal year to special immigrants described in section 101(a)(27)(K).

(ii) REDUCTION IN PER COUNTRY LEVEL.—The number of visas made available in each fiscal year to natives of a foreign state under section 202(a) shall be reduced by the number of visas made available in the previous fiscal year to special immigrants described in section 101(a)(27)(K) who are natives of the foreign state.

(iii) REDUCTION IN EMPLOYMENT-BASED IMMIGRANT CLASSIFICATIONS WITHIN PER COUNTRY CEILING.—In the case of a foreign state subject to section 202(e) in a fiscal year (and in the previous fiscal year), the number of visas made available and allocated to each of paragraphs (1) through (3) of this subsection in the fiscal year shall be reduced by  $\frac{1}{3}$  of the number of visas made available in the previous fiscal year to special immigrants described in section 101(a)(27)(K) who are natives of the foreign state.

(c) DIVERSITY IMMIGRANTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), aliens subject to the worldwide level specified in section 201(e) for diversity immigrants shall be allotted visas each fiscal year as follows:

(A) DETERMINATION OF PREFERENCE IMMIGRATION.—The Attorney General shall determine for the most recent previous 5-fiscal-year period for which data are available, the

total number of aliens who are natives of each foreign state and who (i) were admitted or otherwise provided lawful permanent resident status (other than under this subsection) and (ii) were subject to the numerical limitations of section 201(a) (other than paragraph (3) thereof) or who were admitted or otherwise provided lawful permanent resident status as an immediate relative or other alien described in section 201(b)(2).

(B) IDENTIFICATION OF HIGH-ADMISSION AND LOW-ADMISSION REGIONS AND HIGH-ADMISSION AND LOW-ADMISSION STATES.—The Attorney General—

(i) shall identify—

(I) each region (each in this paragraph referred to as a “high-admission region”) for which the total of the numbers determined under subparagraph (A) for states in the region is greater than  $\frac{1}{6}$  of the total of all such numbers, and

(II) each other region (each in this paragraph referred to as a “low-admission region”); and

(ii) shall identify—

(I) each foreign state for which the number determined under subparagraph (A) is greater than 50,000 (each such state in this paragraph referred to as a “high-admission state”), and

(II) each other foreign state (each such state in this paragraph referred to as a “low-admission state”).

(C) DETERMINATION OF PERCENTAGE OF WORLDWIDE IMMIGRATION ATTRIBUTABLE TO HIGH-ADMISSION REGIONS.—The Attorney General shall determine the percentage of the total of the numbers determined under subparagraph (A) that are numbers for foreign states in high-admission regions.

(D) DETERMINATION OF REGIONAL POPULATIONS EXCLUDING HIGH-ADMISSION STATES AND RATIOS OF POPULATIONS OF REGIONS WITHIN LOW-ADMISSION REGIONS AND HIGH-ADMISSION REGIONS.—The Attorney General shall determine—

(i) based on available estimates for each region, the total population of each region not including the population of any high-admission state;

(ii) for each low-admission region, the ratio of the population of the region determined under clause (i) to the total of the populations determined under such clause for all the low-admission regions; and

(iii) for each high-admission region, the ratio of the population of the region determined under clause (i) to the total of the populations determined under such clause for all the high-admission regions.

(E) DISTRIBUTION OF VISAS.—

(i) NO VISAS FOR NATIVES OF HIGH-ADMISSION STATES.—The percentage of visas made available under this paragraph to natives of a high-admission state is 0.

(ii) FOR LOW-ADMISSION STATES IN LOW-ADMISSION REGIONS.—Subject to clauses (iv) and (v), the percentage of visas made available under this paragraph to natives (other than natives of a high-admission state) in a low-admission region is the product of—

(I) the percentage determined under subparagraph (C), and

(II) the population ratio for that region determined under subparagraph (D)(ii).

(iii) FOR LOW-ADMISSION STATES IN HIGH-ADMISSION REGIONS.—Subject to clauses (iv) and (v), the percentage of visas made available under this paragraph to natives (other than natives of a high-admission state) in a high-admission region is the product of—

(I) 100 percent minus the percentage determined under subparagraph (C), and

(II) the population ratio for that region determined under subparagraph (D)(iii).

(iv) REDISTRIBUTION OF UNUSED VISA NUMBERS.—If the Secretary of State estimates that the number of immigrant visas to be issued to natives in any region for a fiscal year under this paragraph is less than the number of immigrant visas made available to such natives under this paragraph for the fiscal year, subject to clause (v), the excess visa numbers shall be made available to natives (other than natives of a high-admission state) of the other regions in proportion to the percentages otherwise specified in clauses (ii) and (iii).

(v) LIMITATION ON VISAS FOR NATIVES OF A SINGLE FOREIGN STATE.—The percentage of visas made available under this paragraph to natives of any single foreign state for any fiscal year shall not exceed 7 percent.

(F) REGION DEFINED.—Only for purposes of administering the diversity program under this subsection, Northern Ireland shall be treated as a separate foreign state, each colony or other component or dependent area of a foreign state overseas from the foreign state shall be treated as part of the foreign state, and the areas described in each of the following clauses shall be considered to be a separate region:

(i) Africa.

(ii) Asia.

(iii) Europe.

(iv) North America (other than Mexico).

(v) Oceania.

(vi) South America, Mexico, Central America, and the Caribbean.

(2) REQUIREMENT OF EDUCATION OR WORK EXPERIENCE.—An alien is not eligible for a visa under this subsection unless the alien—

(A) has at least a high school education or its equivalent,  
or

(B) has, within 5 years of the date of application for a visa under this subsection, at least 2 years of work experi-



ence in an occupation which requires at least 2 years of training or experience.

(3) MAINTENANCE OF INFORMATION.—The Secretary of State shall maintain information on the age, occupation, education level, and other relevant characteristics of immigrants issued visas under this subsection.

(d) TREATMENT OF FAMILY MEMBERS.—A spouse or child as defined in subparagraph (A), (B), (C), (D), or (E) of section 101(b)(1) shall, if not otherwise entitled to an immigrant status and the immediate issuance of a visa under subsection (a), (b), or (c), be entitled to the same status, and the same order of consideration provided in the respective subsection, if accompanying or following to join, the spouse or parent.

(e) ORDER OF CONSIDERATION.—(1) Immigrant visas made available under subsection (a) or (b) shall be issued to eligible immigrants in the order in which a petition in behalf of each such immigrant is filed with the Attorney General (or in the case of special immigrants under section 101(a)(27)(D), with the Secretary of State) as provided in section 204(a).

(2) Immigrant visa numbers made available under subsection (c) (relating to diversity immigrants) shall be issued to eligible qualified immigrants strictly in a random order established by the Secretary of State for the fiscal year involved.

(3) Waiting lists of applicants for visas under this section shall be maintained in accordance with regulations prescribed by the Secretary of State.

(f) AUTHORIZATION FOR ISSUANCE.—In the case of any alien claiming in his application for an immigrant visa to be described in section 201(b)(2) or in subsection (a), (b), or (c) of this section, the consular officer shall not grant such status until he has been authorized to do so as provided by section 204.

(g) LISTS.—For purposes of carrying out the Secretary's responsibilities in the orderly administration of this section, the Secretary of State may make reasonable estimates of the anticipated numbers of visas to be issued during any quarter of any fiscal year within each of the categories under subsections (a), (b), and (c) and to rely upon such estimates in authorizing the issuance of visas. The Secretary of State shall terminate the registration of any alien who fails to apply for an immigrant visa within one year following notification to the alien of the availability of such visa, but the Secretary shall reinstate the registration of any such alien who establishes within 2 years following the date of notification of the availability of such visa that such failure to apply was due to circumstances beyond the alien's control.

(h) RULES FOR DETERMINING WHETHER CERTAIN ALIENS ARE CHILDREN.—

(1) IN GENERAL.—For purposes of subsections (a)(2)(A) and (d), a determination of whether an alien satisfies the age requirement in the matter preceding subparagraph (A) of section 101(b)(1) shall be made using—

(A) the age of the alien on the date on which an immigrant visa number becomes available for such alien (or, in the case of subsection (d), the date on which an immigrant visa number became available for the alien's parent), but only if the alien has sought to acquire the status of an

alien lawfully admitted for permanent residence within one year of such availability; reduced by

(B) the number of days in the period during which the applicable petition described in paragraph (2) was pending.

(2) PETITIONS DESCRIBED.—The petition described in this paragraph is—

(A) with respect to a relationship described in subsection (a)(2)(A), a petition filed under section 204 for classification of an alien child under subsection (a)(2)(A); or

(B) with respect to an alien child who is a derivative beneficiary under subsection (d), a petition filed under section 204 for classification of the alien's parent under subsection (a), (b), or (c).

(3) RETENTION OF PRIORITY DATE.—If the age of an alien is determined under paragraph (1) to be 21 years of age or older for the purposes of subsections (a)(2)(A) and (d), the alien's petition shall automatically be converted to the appropriate category and the alien shall retain the original priority date issued upon receipt of the original petition.

(4) APPLICATION TO SELF-PETITIONS.—Paragraphs (1) through (3) shall apply to self-petitioners and derivatives of self-petitioners.

#### PROCEDURE FOR GRANTING IMMIGRANT STATUS

SEC. 204. (a)(1)(A)(i) Except as provided in clause (viii), any citizen of the United States claiming that an alien is entitled to classification by reason of a relationship described in paragraph (1), (3), or (4) of section 203(a) or to an immediate relative status under section 201(b)(2)(A)(i) may file a petition with the Attorney General for such classification.

(ii) An alien spouse described in the second sentence of section 201(b)(2)(A)(i) also may file a petition with the Attorney General under this subparagraph for classification of the alien (and the alien's children) under such section.

(iii)(I) An alien who is described in subclause (II) may file a petition with the Attorney General under this clause for classification of the alien (and any child of the alien) if the alien demonstrates to the Attorney General that—

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

(II) For purposes of subclause (I), an alien described in this subclause is an alien—

(aa)(AA) who is the spouse of a citizen of the United States;

(BB) who believed that he or she had married a citizen of the United States and with whom a marriage ceremony was actually performed and who otherwise meets any applicable requirements under this Act to establish the existence of and bona fides of a marriage, but whose marriage is not legitimate solely because of the bigamy of such citizen of the United States; or

(CC) who was a bona fide spouse of a United States citizen within the past 2 years and—

(aaa) whose spouse died within the past 2 years;

(bbb) whose spouse lost or renounced citizenship status within the past 2 years related to an incident of domestic violence; or

(ccc) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse;

(bb) who is a person of good moral character;

(cc) who is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) or who would have been so classified but for the bigamy of the citizen of the United States that the alien intended to marry; and

(dd) who has resided with the alien's spouse or intended spouse.

(iv) An alien who is the child of a citizen of the United States, or who was a child of a United States citizen parent who within the past 2 years lost or renounced citizenship status related to an incident of domestic violence, and who is a person of good moral character, who is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i), and who resides, or has resided in the past, with the citizen parent may file a petition with the Attorney General under this subparagraph for classification of the alien (and any child of the alien) under such section if the alien demonstrates to the Attorney General that the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's citizen parent. For purposes of this clause, residence includes any period of visitation.

(v) An alien who—

(I) is the spouse, intended spouse, or child living abroad of a citizen who—

(aa) is an employee of the United States Government;

(bb) is a member of the uniformed services (as defined in section 101(a) of title 10, United States Code); or

(cc) has subjected the alien or the alien's child to battery or extreme cruelty in the United States; and

(II) is eligible to file a petition under clause (iii) or (iv), shall file such petition with the Attorney General under the procedures that apply to self-petitioners under clause (iii) or (iv), as applicable.

(vi) For the purposes of any petition filed under clause (iii) or (iv), the denaturalization, loss or renunciation of citizenship, death of the abuser, divorce, or changes to the abuser's citizenship status after filing of the petition shall not adversely affect the approval of the petition, and for approved petitions shall not preclude the classification of the eligible self-petitioning spouse or child as an immediate relative or affect the alien's ability to adjust status under subsections (a) and (c) of section 245 or obtain status as a lawful permanent resident based on the approved self-petition under such clauses.

(vii) An alien may file a petition with the Secretary of Homeland Security under this subparagraph for classification of the alien under section 201(b)(2)(A)(i) if the alien—

(I) is the parent of a citizen of the United States or was a parent of a citizen of the United States who, within the past 2 years, lost or renounced citizenship status related to an incident of domestic violence or died;

(II) is a person of good moral character;

(III) is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i);

(IV) resides, or has resided, with the citizen daughter or son; and

(V) demonstrates that the alien has been battered or subject to extreme cruelty by the citizen daughter or son.

(viii)(I) Clause (i) shall not apply to a citizen of the United States who has been convicted of a specified offense against a minor, unless the Secretary of Homeland Security, in the Secretary's sole and unreviewable discretion, determines that the citizen poses no risk to the alien with respect to whom a petition described in clause (i) is filed.

(II) For purposes of subclause (I), the term "specified offense against a minor" is defined as in section 111 of the Adam Walsh Child Protection and Safety Act of 2006.

(B)(i)(I) Except as provided in subclause (II), any alien lawfully admitted for permanent residence claiming that an alien is entitled to a classification by reason of the relationship described in section 203(a)(2) may file a petition with the Attorney General for such classification.

(I) Subclause (I) shall not apply in the case of an alien lawfully admitted for permanent residence who has been convicted of a specified offense against a minor (as defined in subparagraph (A)(viii)(II)), unless the Secretary of Homeland Security, in the Secretary's sole and unreviewable discretion, determines that such person poses no risk to the alien with respect to whom a petition described in subclause (I) is filed.

(ii)(I) An alien who is described in subclause (II) may file a petition with the Attorney General under this clause for classification of the alien (and any child of the alien) if such a child has not been classified under clause (iii) of section 203(a)(2)(A) and if the alien demonstrates to the Attorney General that—

(aa) the marriage or the intent to marry the lawful permanent resident was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

(II) For purposes of subclause (I), an alien described in this paragraph is an alien—

(aa)(AA) who is the spouse of a lawful permanent resident of the United States; or

(BB) who believed that he or she had married a lawful permanent resident of the United States and with whom a marriage ceremony was actually performed and who otherwise meets any applicable requirements under this Act to establish the existence of and bona fides of a marriage, but whose mar-

riage is not legitimate solely because of the bigamy of such lawful permanent resident of the United States; or

(CC) who was a bona fide spouse of a lawful permanent resident within the past 2 years and—

(aaa) whose spouse lost status within the past 2 years due to an incident of domestic violence; or

(bbb) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the lawful permanent resident spouse;

(bb) who is a person of good moral character;

(cc) who is eligible to be classified as a spouse of an alien lawfully admitted for permanent residence under section 203(a)(2)(A) or who would have been so classified but for the bigamy of the lawful permanent resident of the United States that the alien intended to marry; and

(dd) who has resided with the alien's spouse or intended spouse.

(iii) An alien who is the child of an alien lawfully admitted for permanent residence, or who was the child of a lawful permanent resident who within the past 2 years lost lawful permanent resident status due to an incident of domestic violence, and who is a person of good moral character, who is eligible for classification under section 203(a)(2)(A), and who resides, or has resided in the past, with the alien's permanent resident alien parent may file a petition with the Attorney General under this subparagraph for classification of the alien (and any child of the alien) under such section if the alien demonstrates to the Attorney General that the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's permanent resident parent.

(iv) An alien who—

(I) is the spouse, intended spouse, or child living abroad of a lawful permanent resident who—

(aa) is an employee of the United States Government;

(bb) is a member of the uniformed services (as defined in section 101(a) of title 10, United States Code); or

(cc) has subjected the alien or the alien's child to battery or extreme cruelty in the United States; and

(II) is eligible to file a petition under clause (ii) or (iii),

shall file such petition with the Attorney General under the procedures that apply to self-petitioners under clause (ii) or (iii), as applicable.

(v)(I) For the purposes of any petition filed or approved under clause (ii) or (iii), divorce, or the loss of lawful permanent resident status by a spouse or parent after the filing of a petition under that clause shall not adversely affect approval of the petition, and, for an approved petition, shall not affect the alien's ability to adjust status under subsections (a) and (c) of section 245 or obtain status as a lawful permanent resident based on an approved self-petition under clause (ii) or (iii).

(II) Upon the lawful permanent resident spouse or parent becoming or establishing the existence of United States citizenship through naturalization, acquisition of citizenship, or other means, any petition filed with the Immigration and Naturalization Service and pending or approved under clause (ii) or (iii) on behalf of an

alien who has been battered or subjected to extreme cruelty shall be deemed reclassified as a petition filed under subparagraph (A) even if the acquisition of citizenship occurs after divorce or termination of parental rights.

(C) Notwithstanding section 101(f), an act or conviction that is waivable with respect to the petitioner for purposes of a determination of the petitioner's admissibility under section 212(a) or deportability under section 237(a) shall not bar the Attorney General from finding the petitioner to be of good moral character under subparagraph (A)(iii), (A)(iv), (B)(ii), or (B)(iii) if the Attorney General finds that the act or conviction was connected to the alien's having been battered or subjected to extreme cruelty.

(D)(i)(I) Any child who attains 21 years of age who has filed a petition under clause (iv) of section 204(a)(1)(A) or section 204(a)(1)(B)(iii) that was filed or approved before the date on which the child attained 21 years of age shall be considered (if the child has not been admitted or approved for lawful permanent residence by the date the child attained 21 years of age) a petitioner for preference status under paragraph (1), (2), or (3) of section 203(a), whichever paragraph is applicable, with the same priority date assigned to the self-petition filed under clause (iv) of section 204(a)(1)(A) or section 204(a)(1)(B)(iii). No new petition shall be required to be filed.

(II) Any individual described in subclause (I) is eligible for deferred action and work authorization.

(III) Any derivative child who attains 21 years of age who is included in a petition described in clause (ii) that was filed or approved before the date on which the child attained 21 years of age shall be considered (if the child has not been admitted or approved for lawful permanent residence by the date the child attained 21 years of age) a VAWA self-petitioner with the same priority date as that assigned to the petitioner in any petition described in clause (ii). No new petition shall be required to be filed.

(IV) Any individual described in subclause (III) and any derivative child of a petition described in clause (ii) is eligible for deferred action and work authorization.

(ii) The petition referred to in clause (i)(III) is a petition filed by an alien under subparagraph (A)(iii), (A)(iv), (B)(ii) or (B)(iii) in which the child is included as a derivative beneficiary.

(iii) Nothing in the amendments made by the Child Status Protection Act shall be construed to limit or deny any right or benefit provided under this subparagraph.

(iv) Any alien who benefits from this subparagraph may adjust status in accordance with subsections (a) and (c) of section 245 as an alien having an approved petition for classification under subparagraph (A)(iii), (A)(iv), (B)(ii), or (B)(iii).

(v) For purposes of this paragraph, an individual who is not less than 21 years of age, who qualified to file a petition under subparagraph (A)(iv) or (B)(iii) as of the day before the date on which the individual attained 21 years of age, and who did not file such a petition before such day, shall be treated as having filed a petition under such subparagraph as of such day if a petition is filed for the status described in such subparagraph before the individual attains 25 years of age and the individual shows that the abuse was at least one central reason for the filing delay. Clauses (i) through

(iv) of this subparagraph shall apply to an individual described in this clause in the same manner as an individual filing a petition under subparagraph (A)(iv).

(E) Any alien desiring to be classified under section 203(b)(1)(A) or 203(b)(3)(A)(iii)(II), or any person on behalf of such an alien, may file a petition with the Attorney General for such classification.

(F) Any employer desiring and intending to employ within the United States an alien entitled to classification under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or 203(b)(3) may file a petition with the Attorney General for such classification.

(G)(i) Any alien (other than a special immigrant under section 101(a)(27)(D)) desiring to be classified under section 203(b)(4), or any person on behalf of such an alien, may file a petition with the Attorney General for such classification.

(ii) Aliens claiming status as a special immigrant under section 101(a)(27)(D) may file a petition only with the Secretary of State and only after notification by the Secretary that such status has been recommended and approved pursuant to such section.

(H) Any alien desiring to be classified under section 203(b)(5) may file a petition with the Attorney General for such classification.

(I)(i) Any alien desiring to be provided an immigrant visa under section 203(c) may file a petition at the place and time determined by the Secretary of State by regulation. Only one such petition may be filed by an alien with respect to any petitioning period established. If more than one petition is submitted all such petitions submitted for such period by the alien shall be voided.

(ii)(I) The Secretary of State shall designate a period for the filing of petitions with respect to visas which may be issued under section 203(c) for the fiscal year beginning after the end of the period.

(II) Aliens who qualify, through random selection, for a visa under section 203(c) shall remain eligible to receive such visa only through the end of the specific fiscal year for which they were selected.

(III) The Secretary of State shall prescribe such regulations as may be necessary to carry out this clause.

(iii) A petition under this subparagraph shall be in such form as the Secretary of State may by regulation prescribe and shall contain such information and be supported by such documentary evidence as the Secretary of State may require.

(iv) Each petition to compete for consideration for a visa under section 1153(c) of this title shall be accompanied by a fee equal to \$30. All amounts collected under this clause shall be deposited into the Treasury as miscellaneous receipts.

(J) In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B), or in making determinations under subparagraphs (C) and (D), the Attorney General shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Attorney General.

(K) Upon the approval of a petition as a VAWA self-petitioner, the alien—

- (i) is eligible for work authorization; and
- (ii) may be provided an “employment authorized” endorsement or appropriate work permit incidental to such approval.

(L) Notwithstanding the previous provisions of this paragraph, an individual who was a VAWA petitioner or who had the status of a nonimmigrant under subparagraph (T) or (U) of section 101(a)(15) may not file a petition for classification under this section or section 214 to classify any person who committed the battery or extreme cruelty or trafficking against the individual (or the individual’s child) which established the individual’s (or individual’s child) eligibility as a VAWA petitioner or for such nonimmigrant status.

(2)(A) The Attorney General may not approve a spousal second preference petition for the classification of the spouse of an alien if the alien, by virtue of a prior marriage, has been accorded the status of an alien lawfully admitted for permanent residence as the spouse of a citizen of the United States or as the spouse of an alien lawfully admitted for permanent residence, unless—

- (i) a period of 5 years has elapsed after the date the alien acquired the status of an alien lawfully admitted for permanent residence, or

- (ii) the alien establishes to the satisfaction of the Attorney General by clear and convincing evidence that the prior marriage (on the basis of which the alien obtained the status of an alien lawfully admitted for permanent residence) was not entered into for the purpose of evading any provision of the immigration laws.

In this subparagraph, the term “spousal second preference petition” refers to a petition, seeking preference status under section 203(a)(2), for an alien as a spouse of an alien lawfully admitted for permanent residence.

(B) Subparagraph (A) shall not apply to a petition filed for the classification of the spouse of an alien if the prior marriage of the alien was terminated by the death of his or her spouse.

(b) After an investigation of the facts in each case, and after consultation with the Secretary of Labor with respect to petitions to accord a status under section 203(b)(2) or 203(b)(3), the Attorney General shall, if he determines that the facts stated in the petition are true and that the alien in behalf of whom the petition is made is an immediate relative specified in section 201(b) or is eligible for preference under subsection (a) or (b) of section 203, approve the petition and forward one copy thereof to the Department of State. The Secretary of State shall then authorize the consular officer concerned to grant the preference status.

(c) Notwithstanding the provisions of subsection (b) no petition shall be approved if (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws or (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.



(d)(1) Notwithstanding the provisions of subsections (a) and (b) no petition may be approved on behalf of a child defined in subparagraph (F) or (G) of section 101(b)(1) unless a valid home-study has been favorably recommended by an agency of the State of the child's proposed residence, or by an agency authorized by that State to conduct such a study, or, in the case of a child adopted abroad, by an appropriate public or private adoption agency which is licensed in the United States.

(2) Notwithstanding the provisions of subsections (a) and (b), no petition may be approved on behalf of a child defined in section 101(b)(1)(G) unless the Secretary of State has certified that the central authority of the child's country of origin has notified the United States central authority under the convention referred to in such section 101(b)(1)(G) that a United States citizen habitually resident in the United States has effected final adoption of the child, or has been granted custody of the child for the purpose of emigration and adoption, in accordance with such convention and the Intercountry Adoption Act of 2000.

(e) Nothing in this section shall be construed to entitle an immigrant, in behalf of whom a petition under this section is approved, to be admitted the United States as an immigrant under subsection (a), (b), or (c) of section 203 or as an immediate relative under section 201(b) if upon his arrival at a port of entry in the United States he is found not to be entitled to such classification.

(f)(1) Any alien claiming to be an alien described in paragraph (2)(A) of this subsection (or any person on behalf of such an alien) may file a petition with the Attorney General for classification under section 201(b), 203(a)(1), or 203(a)(3), as appropriate. After an investigation of the facts of each case the Attorney General shall, if the conditions described in paragraph (2) are met, approve the petition and forward one copy to the Secretary of State.

(2) The Attorney General may approve a petition for an alien under paragraph (1) if—

(A) he has reason to believe that the alien (i) was born in Korea, Vietnam, Laos, Kampuchea, or Thailand after 1950 and before the date of the enactment of this subsection, and (ii) was fathered by a United States citizen;

(B) he has received an acceptable guarantee of legal custody and financial responsibility described in paragraph (4); and

(C) in the case of an alien under eighteen years of age, (i) the alien's placement with a sponsor in the United States has been arranged by an appropriate public, private, or State child welfare agency licensed in the United States and actively involved in the intercountry placement of children and (ii) the alien's mother or guardian has in writing irrevocably released the alien for emigration.

(3) In considering petitions filed under paragraph (1), the Attorney General shall—

(A) consult with appropriate governmental officials and officials of private voluntary organizations in the country of the alien's birth in order to make the determinations described in subparagraphs (A) and (C)(ii) of paragraph (2); and

(B) consider the physical appearance of the alien and any evidence provided by the petitioner, including birth and baptismal certificates, local civil records, photographs of, and let-

ters or proof of financial support from, a putative father who is a citizen of the United States, and the testimony of witnesses, to the extent it is relevant or probative.

(4)(A) A guarantee of legal custody and financial responsibility for an alien described in paragraph (2) must—

(i) be signed in the presence of an immigration officer or consular officer by an individual (hereinafter in this paragraph referred to as the “sponsor”) who is twenty-one years of age or older, is of good moral character, and is a citizen of the United States or alien lawfully admitted for permanent residence, and

(ii) provide that the sponsor agrees (I) in the case of an alien under eighteen years of age, to assume legal custody for the alien after the alien’s departure to the United States and until the alien becomes eighteen years of age, in accordance with the laws of the State where the alien and the sponsor will reside, and (II) to furnish, during the five-year period beginning on the date of the alien’s acquiring the status of an alien lawfully admitted for permanent residence, or during the period beginning on the date of the alien’s acquiring the status of an alien lawfully admitted for permanent residence and ending on the date on which the alien becomes twenty-one years of age, whichever period is longer, such financial support as is necessary to maintain the family in the United States of which the alien is a member at a level equal to at least 125 per centum of the current official poverty line (as established by the Director of the Office of Management and Budget, under section 673(2) of the Omnibus Budget Reconciliation Act of 1981 and as revised by the Secretary of Health and Human Services under the second and third sentences of such section) for a family of the same size as the size of the alien’s family.

(B) A guarantee of legal custody and financial responsibility described in subparagraph (A) may be enforced with respect to an alien against his sponsor in a civil suit brought by the Attorney General in the United States district court for the district in which the sponsor resides, except that a sponsor or his estate shall not be liable under such a guarantee if the sponsor dies or is adjudicated a bankrupt under title 11, United States Code.

(g) Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status or preference status by reason of a marriage which was entered into during the period described in section 245(e)(2), until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

(h) The legal termination of a marriage may not be the sole basis for revocation under section 205 of a petition filed under subsection (a)(1)(A)(iii) or a petition filed under subsection (a)(1)(B)(ii) pursuant to conditions described in subsection (a)(1)(A)(iii)(I). Remarriage of an alien whose petition was approved under section 204(a)(1)(B)(ii) or 204(a)(1)(A)(iii) or marriage of an alien described in clause (iv) or (vi) of section 204(a)(1)(A) or in section 204(a)(1)(B)(iii) shall not be the basis for revocation of a petition approval under section 205.

(i) PROFESSIONAL ATHLETES.—

(1) IN GENERAL.—A petition under subsection (a)(4)(D) for classification of a professional athlete shall remain valid for

the athlete after the athlete changes employers, if the new employer is a team in the same sport as the team which was the employer who filed the petition.

(2) DEFINITION.—For purposes of paragraph (1), the term “professional athlete” means an individual who is employed as an athlete by—

(A) a team that is a member of an association of 6 or more professional sports teams whose total combined revenues exceed \$10,000,000 per year, if the association governs the conduct of its members and regulates the contests and exhibitions in which its member teams regularly engage; or

(B) any minor league team that is affiliated with such an association.

(j) JOB FLEXIBILITY FOR LONG DELAYED APPLICANTS FOR ADJUSTMENT OF STATUS TO PERMANENT RESIDENCE.—A petition under subsection (a)(1)(D) for an individual whose application for adjustment of status pursuant to section 245 has been filed and remained unadjudicated for 180 days or more shall remain valid with respect to a new job if the individual changes jobs or employers if the new job is in the same or a similar occupational classification as the job for which the petition was filed.

(k) PROCEDURES FOR UNMARRIED SONS AND DAUGHTERS OF CITIZENS.—

(1) IN GENERAL.—Except as provided in paragraph (2), in the case of a petition under this section initially filed for an alien unmarried son or daughter’s classification as a family-sponsored immigrant under section 203(a)(2)(B), based on a parent of the son or daughter being an alien lawfully admitted for permanent residence, if such parent subsequently becomes a naturalized citizen of the United States, such petition shall be converted to a petition to classify the unmarried son or daughter as a family-sponsored immigrant under section 203(a)(1).

(2) EXCEPTION.—Paragraph (1) does not apply if the son or daughter files with the Attorney General a written statement that he or she elects not to have such conversion occur (or if it has occurred, to have such conversion revoked). Where such an election has been made, any determination with respect to the son or daughter’s eligibility for admission as a family-sponsored immigrant shall be made as if such naturalization had not taken place.

(3) PRIORITY DATE.—Regardless of whether a petition is converted under this subsection or not, if an unmarried son or daughter described in this subsection was assigned a priority date with respect to such petition before such naturalization, he or she may maintain that priority date.

(4) CLARIFICATION.—This subsection shall apply to a petition if it is properly filed, regardless of whether it was approved or not before such naturalization.

(l) SURVIVING RELATIVE CONSIDERATION FOR CERTAIN PETITIONS AND APPLICATIONS.—

(1) IN GENERAL.—An alien described in paragraph (2) who resided in the United States at the time of the death of the qualifying relative and who continues to reside in the United States shall have such petition described in paragraph (2), or

an application for adjustment of status to that of a person admitted for lawful permanent residence based upon the family relationship described in paragraph (2), and any related applications, adjudicated notwithstanding the death of the qualifying relative, unless the Secretary of Homeland Security determines, in the unreviewable discretion of the Secretary, that approval would not be in the public interest.

(2) ALIEN DESCRIBED.—An alien described in this paragraph is an alien who, immediately prior to the death of his or her qualifying relative, was—

(A) the beneficiary of a pending or approved petition for classification as an immediate relative (as described in section 201(b)(2)(A)(i));

(B) the beneficiary of a pending or approved petition for classification under section 203 (a) or (d);

(C) a derivative beneficiary of a pending or approved petition for classification under section 203(b) (as described in section 203(d));

(D) the beneficiary of a pending or approved refugee/asylee relative petition under section 207 or 208;

(E) an alien admitted in “T” nonimmigrant status as described in section 101(a)(15)(T)(ii) or in “U” nonimmigrant status as described in section 101(a)(15)(U)(ii);

(F) a child of an alien who filed a pending or approved petition for classification or application for adjustment of status or other benefit specified in section 101(a)(51) as a VAWA self-petitioner; or

(G) an asylee (as described in section 208(b)(3)).

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## CHAPTER 2—QUALIFICATIONS FOR ADMISSION OF ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

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### ADMISSION OF NONIMMIGRANTS

SEC. 214. (a)(1) The admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the Attorney General may by regulations prescribe, including when he deems necessary the giving of a bond with sufficient surety in such sum and containing such conditions as the Attorney General shall prescribe, to insure that at the expiration of such time or upon failure to maintain the status under which he was admitted, or to maintain any status subsequently acquired under section 248, such alien will depart from the United States. No alien admitted to Guam or the Commonwealth of the Northern Mariana Islands without a visa pursuant to section 212(l) may be authorized to enter or stay in the United States other than in Guam or the Commonwealth of the Northern Mariana Islands or to remain in Guam or the Commonwealth of the Northern Mariana Islands for a period exceeding 45 days from date of admission to Guam or the Commonwealth of the Northern Mariana Islands. No alien admitted to the United States without a visa pursuant to section 217 may be authorized to remain in the United States as a non-

immigrant visitor for a period exceeding 90 days from the date of admission.

(2)(A) The period of authorized status as a nonimmigrant described in section 101(a)(15)(O) shall be for such period as the Attorney General may specify in order to provide for the event (or events) for which the nonimmigrant is admitted.

(B) The period of authorized status as a nonimmigrant described in section 101(a)(15)(P) shall be for such period as the Attorney General may specify in order to provide for the competition, event, or performance for which the nonimmigrant is admitted. In the case of nonimmigrants admitted as individual athletes under section 101(a)(15)(P), the period of authorized status may be for an initial period (not to exceed 5 years) during which the nonimmigrant will perform as an athlete and such period may be extended by the Attorney General for an additional period of up to 5 years.

(b) Every alien (other than a nonimmigrant described in subparagraph (L) or (V) of section 101(a)(15), and other than a nonimmigrant described in any provision of [section 101(a)(15)(H)(i) except subclause (b1) of such section] *clause (i), except subclause (b1), or (ii)(a) of section 101(a)(15)(H)*) shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer, at the time of application for a visa, and the immigration officers, at the time of application for admission, that he is entitled to a nonimmigrant status under section 101(a)(15). An alien who is an officer or employee of any foreign government or of any international organization entitled to enjoy privileges, exemptions, and immunities under the International Organizations Immunities Act, or an alien who is the attendant, servant, employee, or member of the immediate family of any such alien shall not be entitled to apply for or receive an immigrant visa, or to enter the United States as an immigrant unless he executes a written waiver in the same form and substance as is prescribed by section 247(b).

(c)(1) The question of importing any alien as a nonimmigrant under subparagraph (H), (L), (O), or (P)(i) of section 101(a)(15) (excluding nonimmigrants under section 101(a)(15)(H)(i)(b1)) in any specific case or specific cases shall be determined by the Attorney General, after consultation with appropriate agencies of the Government, upon petition of the importing employer. Such petition shall be made and approved before the visa is granted. The petition shall be in such form and contain such information as the Attorney General shall prescribe. The approval of such a petition shall not, of itself, be construed as establishing that the alien is a nonimmigrant. For purposes of this subsection with respect to nonimmigrants described in section 101(a)(15)(H)(ii)(a), the term “appropriate agencies of Government” means the Department of Labor and includes the Department of Agriculture. The provisions of section 218 shall apply to the question of importing any alien as a nonimmigrant under section 101(a)(15)(H)(ii)(a).

(2)(A) The Attorney General shall provide for a procedure under which an importing employer which meets requirements established by the Attorney General may file a blanket petition to import aliens as nonimmigrants described in section 101(a)(15)(L) instead of filing individual petitions under paragraph (1) to import

such aliens. Such procedure shall permit the expedited processing of visas for admission of aliens covered under such a petition.

(B) For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

(C) The Attorney General shall provide a process for reviewing and acting upon petitions under this subsection with respect to nonimmigrants described in section 101(a)(15)(L) within 30 days after the date a completed petition has been filed.

(D) The period of authorized admission for—

(i) a nonimmigrant admitted to render services in a managerial or executive capacity under section 101(a)(15)(L) shall not exceed 7 years, or

(ii) a nonimmigrant admitted to render services in a capacity that involves specialized knowledge under section 101(a)(15)(L) shall not exceed 5 years.

(E) In the case of an alien spouse admitted under section 101(a)(15)(L), who is accompanying or following to join a principal alien admitted under such section, the Attorney General shall authorize the alien spouse to engage in employment in the United States and provide the spouse with an “employment authorized” endorsement or other appropriate work permit.

(F) An alien who will serve in a capacity involving specialized knowledge with respect to an employer for purposes of section 101(a)(15)(L) and will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent shall not be eligible for classification under section 101(a)(15)(L) if—

(i) the alien will be controlled and supervised principally by such unaffiliated employer; or

(ii) the placement of the alien at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.

(3) The Attorney General shall approve a petition—

(A) with respect to a nonimmigrant described in section 101(a)(15)(O)(i) only after consultation in accordance with paragraph (6) or, with respect to aliens seeking entry for a motion picture or television production, after consultation with the appropriate union representing the alien’s occupational peers and a management organization in the area of the alien’s ability, or

(B) with respect to a nonimmigrant described in section 101(a)(15)(O)(ii) after consultation in accordance with paragraph (6) or, in the case of such an alien seeking entry for a motion picture or television production, after consultation with such a labor organization and a management organization in the area of the alien’s ability.

In the case of an alien seeking entry for a motion picture or television production, (i) any opinion under the previous sentence shall

only be advisory, (ii) any such opinion that recommends denial must be in writing, (iii) in making the decision the Attorney General shall consider the exigencies and scheduling of the production, and (iv) the Attorney General shall append to the decision any such opinion. The Attorney General shall provide by regulation for the waiver of the consultation requirement under subparagraph (A) in the case of aliens who have been admitted as nonimmigrants under section 101(a)(15)(O)(i) because of extraordinary ability in the arts and who seek readmission to perform similar services within 2 years after the date of a consultation under such subparagraph. Not later than 5 days after the date such a waiver is provided, the Attorney General shall forward a copy of the petition and all supporting documentation to the national office of an appropriate labor organization.

(4)(A) For purposes of section 101(a)(15)(P)(i)(a), an alien is described in this subparagraph if the alien—

(i)(I) performs as an athlete, individually or as part of a group or team, at an internationally recognized level of performance;

(II) is a professional athlete, as defined in section 204(i)(2);

(III) performs as an athlete, or as a coach, as part of a team or franchise that is located in the United States and a member of a foreign league or association of 15 or more amateur sports teams, if—

(aa) the foreign league or association is the highest level of amateur performance of that sport in the relevant foreign country;

(bb) participation in such league or association renders players ineligible, whether on a temporary or permanent basis, to earn a scholarship in, or participate in, that sport at a college or university in the United States under the rules of the National Collegiate Athletic Association; and

(cc) a significant number of the individuals who play in such league or association are drafted by a major sports league or a minor league affiliate of such a sports league;

or

(IV) is a professional athlete or amateur athlete who performs individually or as part of a group in a theatrical ice skating production; and

(ii) seeks to enter the United States temporarily and solely for the purpose of performing—

(I) as such an athlete with respect to a specific athletic competition; or

(II) in the case of an individual described in clause (i)(IV), in a specific theatrical ice skating production or tour.

(B)(i) For purposes of section 101(a)(15)(P)(i)(b), an alien is described in this subparagraph if the alien—

(I) performs with or is an integral and essential part of the performance of an entertainment group that has (except as provided in clause (ii)) been recognized internationally as being outstanding in the discipline for a sustained and substantial period of time,

(II) in the case of a performer or entertainer, except as provided in clause (iii), has had a sustained and substantial rela-

tionship with that group (ordinarily for at least one year) and provides functions integral to the performance of the group, and

(III) seeks to enter the United States temporarily and solely for the purpose of performing as such a performer or entertainer or as an integral and essential part of a performance.

(ii) In the case of an entertainment group that is recognized nationally as being outstanding in its discipline for a sustained and substantial period of time, the Attorney General may, in consideration of special circumstances, waive the international recognition requirement of clause (i)(I).

(iii)(I) The one-year relationship requirement of clause (i)(II) shall not apply to 25 percent of the performers and entertainers in a group.

(II) The Attorney General may waive such one-year relationship requirement for an alien who because of illness or unanticipated and exigent circumstances replaces an essential member of the group and for an alien who augments the group by performing a critical role.

(iv) The requirements of subclauses (I) and (II) of clause (i) shall not apply to alien circus personnel who perform as part of a circus or circus group or who constitute an integral and essential part of the performance of such circus or circus group, but only if such personnel are entering the United States to join a circus that has been recognized nationally as outstanding for a sustained and substantial period of time or as part of such a circus.

(C) A person may petition the Attorney General for classification of an alien as a nonimmigrant under section 101(a)(15)(P).

(D) The Attorney General shall approve petitions under this subsection with respect to nonimmigrants described in clause (i) or (iii) of section 101(a)(15)(P) only after consultation in accordance with paragraph (6).

(E) The Attorney General shall approve petitions under this subsection for nonimmigrants described in section 101(a)(15)(P)(ii) only after consultation with labor organizations representing artists and entertainers in the United States.

(F)(i) No nonimmigrant visa under section 101(a)(15)(P)(i)(a) shall be issued to any alien who is a national of a country that is a state sponsor of international terrorism unless the Secretary of State determines, in consultation with the Secretary of Homeland Security and the heads of other appropriate United States agencies, that such alien does not pose a threat to the safety, national security, or national interest of the United States. In making a determination under this subparagraph, the Secretary of State shall apply standards developed by the Secretary of State, in consultation with the Secretary of Homeland Security and the heads of other appropriate United States agencies, that are applicable to the nationals of such states.

(ii) In this subparagraph, the term “state sponsor of international terrorism” means any country the government of which has been determined by the Secretary of State under any of the laws specified in clause (iii) to have repeatedly provided support for acts of international terrorism.

(iii) The laws specified in this clause are the following:



(I) Section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1)(A)) (or successor statute).

(II) Section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)).

(III) Section 620A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2371(a)).

(G) The Secretary of Homeland Security shall permit a petition under this subsection to seek classification of more than 1 alien as a nonimmigrant under section 101(a)(15)(P)(i)(a).

(H) The Secretary of Homeland Security shall permit an athlete, or the employer of an athlete, to seek admission to the United States for such athlete under a provision of this Act other than section 101(a)(15)(P)(i) if the athlete is eligible under such other provision.

(5)(A) In the case of an alien who is provided nonimmigrant status under section 101(a)(15)(H)(i)(b) or 101(a)(15)(H)(ii)(b) and who is dismissed from employment by the employer before the end of the period of authorized admission, the employer shall be liable for the reasonable costs of return transportation of the alien abroad.

(B) In the case of an alien who is admitted to the United States in nonimmigrant status under section 101(a)(15)(O) or 101(a)(15)(P) and whose employment terminates for reasons other than voluntary resignation, the employer whose offer of employment formed the basis of such nonimmigrant status and the petitioner are jointly and severally liable for the reasonable cost of return transportation of the alien abroad. The petitioner shall provide assurance satisfactory to the Attorney General that the reasonable cost of that transportation will be provided.

(6)(A)(i) To meet the consultation requirement of paragraph (3)(A) in the case of a petition for a nonimmigrant described in section 101(a)(15)(O)(i) (other than with respect to aliens seeking entry for a motion picture or television production), the petitioner shall submit with the petition an advisory opinion from a peer group (or other person or persons of its choosing, which may include a labor organization) with expertise in the specific field involved.

(ii) To meet the consultation requirement of paragraph (3)(B) in the case of a petition for a nonimmigrant described in section 101(a)(15)(O)(ii) (other than with respect to aliens seeking entry for a motion picture or television production), the petitioner shall submit with the petition an advisory opinion from a labor organization with expertise in the skill area involved.

(iii) To meet the consultation requirement of paragraph (4)(D) in the case of a petition for a nonimmigrant described in section 101(a)(15)(P)(i) or 101(a)(15)(P)(iii), the petitioner shall submit with the petition an advisory opinion from a labor organization with expertise in the specific field of athletics or entertainment involved.

(B) To meet the consultation requirements of subparagraph (A), unless the petitioner submits with the petition an advisory opinion from an appropriate labor organization, the Attorney General shall forward a copy of the petition and all supporting documentation to the national office of an appropriate labor organization within 5 days of the date of receipt of the petition. If there is a collective bargaining representative of an employer's employees in the occu-

pational classification for which the alien is being sought, that representative shall be the appropriate labor organization.

(C) In those cases in which a petitioner described in subparagraph (A) establishes that an appropriate peer group (including a labor organization) does not exist, the Attorney General shall adjudicate the petition without requiring an advisory opinion.

(D) Any person or organization receiving a copy of a petition described in subparagraph (A) and supporting documents shall have no more than 15 days following the date of receipt of such documents within which to submit a written advisory opinion or comment or to provide a letter of no objection. Once the 15-day period has expired and the petitioner has had an opportunity, where appropriate, to supply rebuttal evidence, the Attorney General shall adjudicate such petition in no more than 14 days. The Attorney General may shorten any specified time period for emergency reasons if no unreasonable burden would be thus imposed on any participant in the process.

(E)(i) The Attorney General shall establish by regulation expedited consultation procedures in the case of nonimmigrant artists or entertainers described in section 101(a)(15)(O) or 101(a)(15)(P) to accommodate the exigencies and scheduling of a given production or event.

(ii) The Attorney General shall establish by regulation expedited consultation procedures in the case of nonimmigrant athletes described in section 101(a)(15)(O)(i) or 101(a)(15)(P)(i) in the case of emergency circumstances (including trades during a season).

(F) No consultation required under this subsection by the Attorney General with a nongovernmental entity shall be construed as permitting the Attorney General to delegate any authority under this subsection to such an entity. The Attorney General shall give such weight to advisory opinions provided under this section as the Attorney General determines, in his sole discretion, to be appropriate.

(7) If a petition is filed and denied under this subsection, the Attorney General shall notify the petitioner of the determination and the reasons for the denial and of the process by which the petitioner may appeal the determination.

(8) The Attorney General shall submit annually to the Committees on the Judiciary of the House of Representatives and of the Senate a report describing, with respect to petitions under each subcategory of subparagraphs (H), (O), (P), and (Q) of section 101(a)(15) the following:

(A) The number of such petitions which have been filed.

(B) The number of such petitions which have been approved and the number of workers (by occupation) included in such approved petitions.

(C) The number of such petitions which have been denied and the number of workers (by occupation) requested in such denied petitions.

(D) The number of such petitions which have been withdrawn.

(E) The number of such petitions which are awaiting final action.

(9)(A) The Attorney General shall impose a fee on an employer (excluding any employer that is a primary or secondary education

institution, an institution of higher education, as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a), a nonprofit entity related to or affiliated with any such institution, a nonprofit entity which engages in established curriculum-related clinical training of students registered at any such institution, a nonprofit research organization, or a governmental research organization) filing before a petition under paragraph (1)—

- (i) initially to grant an alien nonimmigrant status described in section 101(a)(15)(H)(i)(b);
- (ii) to extend the stay of an alien having such status (unless the employer previously has obtained an extension for such alien); or
- (iii) to obtain authorization for an alien having such status to change employers.

(B) The amount of the fee shall be \$1,500 for each such petition except that the fee shall be half the amount for each such petition by any employer with not more than 25 full-time equivalent employees who are employed in the United States (determined by including any affiliate or subsidiary of such employer).

(C) Fees collected under this paragraph shall be deposited in the Treasury in accordance with section 286(s).

(10) An amended H-1B petition shall not be required where the petitioning employer is involved in a corporate restructuring, including but not limited to a merger, acquisition, or consolidation, where a new corporate entity succeeds to the interests and obligations of the original petitioning employer and where the terms and conditions of employment remain the same but for the identity of the petitioner.

(11)(A) Subject to subparagraph (B), the Secretary of Homeland Security or the Secretary of State, as appropriate, shall impose a fee on an employer who has filed an attestation described in section 212(t)—

- (i) in order that an alien may be initially granted nonimmigrant status described in section 101(a)(15)(H)(i)(b1); or
- (ii) in order to satisfy the requirement of the second sentence of subsection (g)(8)(C) for an alien having such status to obtain certain extensions of stay.

(B) The amount of the fee shall be the same as the amount imposed by the Secretary of Homeland Security under paragraph (9), except that if such paragraph does not authorize such Secretary to impose any fee, no fee shall be imposed under this paragraph.

(C) Fees collected under this paragraph shall be deposited in the Treasury in accordance with section 286(s).

(12)(A) In addition to any other fees authorized by law, the Secretary of Homeland Security shall impose a fraud prevention and detection fee on an employer filing a petition under paragraph (1)—

- (i) initially to grant an alien nonimmigrant status described in subparagraph (H)(i)(b) or (L) of section 101(a)(15); or
- (ii) to obtain authorization for an alien having such status to change employers.

(B) In addition to any other fees authorized by law, the Secretary of State shall impose a fraud prevention and detection fee on an alien filing an application abroad for a visa authorizing admission to the United States as a nonimmigrant described in section

101(a)(15)(L), if the alien is covered under a blanket petition described in paragraph (2)(A).

(C) The amount of the fee imposed under subparagraph (A) or (B) shall be \$500.

(D) The fee imposed under subparagraph (A) or (B) shall only apply to principal aliens and not to the spouses or children who are accompanying or following to join such principal aliens.

(E) Fees collected under this paragraph shall be deposited in the Treasury in accordance with section 286(v).

(13)(A) In addition to any other fees authorized by law, the Secretary of Homeland Security shall impose a fraud prevention and detection fee on an employer filing a petition under paragraph (1) for nonimmigrant workers described in section 101(a)(15)(H)(ii)(b).

(B) The amount of the fee imposed under subparagraph (A) shall be \$150.

(14)(A) If the Secretary of Homeland Security finds, after notice and an opportunity for a hearing, a substantial failure to meet any of the conditions of the petition to admit or otherwise provide status to a nonimmigrant worker under section 101(a)(15)(H)(ii)(b) or a willful misrepresentation of a material fact in such petition—

(i) the Secretary of Homeland Security may, in addition to any other remedy authorized by law, impose such administrative remedies (including civil monetary penalties in an amount not to exceed \$10,000 per violation) as the Secretary of Homeland Security determines to be appropriate; and

(ii) the Secretary of Homeland Security may deny petitions filed with respect to that employer under section 204 or paragraph (1) of this subsection during a period of at least 1 year but not more than 5 years for aliens to be employed by the employer.

(B) The Secretary of Homeland Security may delegate to the Secretary of Labor, with the agreement of the Secretary of Labor, any of the authority given to the Secretary of Homeland Security under subparagraph (A)(i).

(C) In determining the level of penalties to be assessed under subparagraph (A), the highest penalties shall be reserved for willful failures to meet any of the conditions of the petition that involve harm to United States workers.

(D) In this paragraph, the term “substantial failure” means the willful failure to comply with the requirements of this section that constitutes a significant deviation from the terms and conditions of a petition.

(d)(1) A visa shall not be issued under the provisions of section 101(a)(15)(K)(i) until the consular officer has received a petition filed in the United States by the fiancée or fiancé of the applying alien and approved by the Secretary of Homeland Security. The petition shall be in such form and contain such information as the Secretary of Homeland Security shall, by regulation, prescribe. Such information shall include information on any criminal convictions of the petitioner for any specified crime described in paragraph (3)(B) and information on any permanent protection or restraining order issued against the petitioner related to any specified crime described in paragraph (3)(B)(i). It shall be approved only after satisfactory evidence is submitted by the petitioner to establish that the parties have previously met in person within 2

years before the date of filing the petition, have a bona fide intention to marry, and are legally able and actually willing to conclude a valid marriage in the United States within a period of ninety days after the alien's arrival, except that the Secretary of Homeland Security in his discretion may waive the requirement that the parties have previously met in person. In the event the marriage with the petitioner does not occur within three months after the admission of the said alien and minor children, they shall be required to depart from the United States and upon failure to do so shall be removed in accordance with sections 240 and 241.

(2)(A) Subject to subparagraphs (B) and (C), the Secretary of Homeland Security may not approve a petition under paragraph (1) unless the Secretary has verified that—

(i) the petitioner has not, previous to the pending petition, petitioned under paragraph (1) with respect to two or more applying aliens; and

(ii) if the petitioner has had such a petition previously approved, 2 years have elapsed since the filing of such previously approved petition.

(B) The Secretary of Homeland Security may, in the Secretary's discretion, waive the limitations in subparagraph (A) if justification exists for such a waiver. Except in extraordinary circumstances and subject to subparagraph (C), such a waiver shall not be granted if the petitioner has a record of violent criminal offenses against a person or persons.

(C)(i) The Secretary of Homeland Security is not limited by the criminal court record and shall grant a waiver of the condition described in the second sentence of subparagraph (B) in the case of a petitioner described in clause (ii).

(ii) A petitioner described in this clause is a petitioner who has been battered or subjected to extreme cruelty and who is or was not the primary perpetrator of violence in the relationship upon a determination that—

(I) the petitioner was acting in self-defense;

(II) the petitioner was found to have violated a protection order intended to protect the petitioner; or

(III) the petitioner committed, was arrested for, was convicted of, or pled guilty to committing a crime that did not result in serious bodily injury and where there was a connection between the crime and the petitioner's having been battered or subjected to extreme cruelty.

(iii) In acting on applications under this subparagraph, the Secretary of Homeland Security shall consider any credible evidence relevant to the application. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Secretary.

(3) In this subsection:

(A) The terms "domestic violence", "sexual assault", "child abuse and neglect", "dating violence", "elder abuse", and "stalking" have the meaning given such terms in section 3 of the Violence Against Women and Department of Justice Reauthorization Act of 2005.

(B) The term "specified crime" means the following:

(i) Domestic violence, sexual assault, child abuse and neglect, dating violence, elder abuse, stalking, or an attempt to commit any such crime.

(ii) Homicide, murder, manslaughter, rape, abusive sexual contact, sexual exploitation, incest, torture, trafficking, peonage, holding hostage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, or an attempt to commit any of the crimes described in this clause.

(iii) At least three convictions for crimes relating to a controlled substance or alcohol not arising from a single act.

(e)(1) Notwithstanding any other provision of this Act, an alien who is a citizen of Canada and seeks to enter the United States under and pursuant to the provisions of Annex 1502.1 (United States of America), Part C—Professionals, of the United States–Canada Free–Trade Agreement to engage in business activities at a professional level as provided for therein may be admitted for such purpose under regulations of the Attorney General promulgated after consultation with the Secretaries of State and Labor.

(2) An alien who is a citizen of Canada or Mexico, and the spouse and children of any such alien if accompanying or following to join such alien, who seeks to enter the United States under and pursuant to the provisions of Section D of Annex 1603 of the North American Free Trade Agreement (in this subsection referred to as “NAFTA”) to engage in business activities at a professional level as provided for in such Annex, may be admitted for such purpose under regulations of the Attorney General promulgated after consultation with the Secretaries of State and Labor. For purposes of this Act, including the issuance of entry documents and the application of subsection (b), such alien shall be treated as if seeking classification, or classifiable, as a nonimmigrant under section 101(a)(15). The admission of an alien who is a citizen of Mexico shall be subject to paragraphs (3), (4), and (5). For purposes of this paragraph and paragraphs (3), (4), and (5), the term “citizen of Mexico” means “citizen” as defined in Annex 1608 of NAFTA.

(3) The Attorney General shall establish an annual numerical limit on admissions under paragraph (2) of aliens who are citizens of Mexico, as set forth in Appendix 1603.D.4 of Annex 1603 of the NAFTA. Subject to paragraph (4), the annual numerical limit—

(A) beginning with the second year that NAFTA is in force, may be increased in accordance with the provisions of paragraph 5(a) of Section D of such Annex, and

(B) shall cease to apply as provided for in paragraph 3 of such Appendix.

(4) The annual numerical limit referred to in paragraph (3) may be increased or shall cease to apply (other than by operation of paragraph 3 of such Appendix) only if—

(A) the President has obtained advice regarding the proposed action from the appropriate advisory committees established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155);

(B) the President has submitted a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that sets forth—

- (i) the action proposed to be taken and the reasons therefor, and
  - (ii) the advice obtained under subparagraph (A);
  - (C) a period of at least 60 calendar days that begins on the first day on which the President has met the requirements of subparagraphs (A) and (B) with respect to such action has expired; and
  - (D) the President has consulted with such committees regarding the proposed action during the period referred to in subparagraph (C).
- (5) During the period that the provisions of Appendix 1603.D.4 of Annex 1603 of the NAFTA apply, the entry of an alien who is a citizen of Mexico under and pursuant to the provisions of Section D of Annex 1603 of NAFTA shall be subject to the attestation requirement of section 212(m), in the case of a registered nurse, or the application requirement of section 212(n), in the case of all other professions set out in Appendix 1603.D.1 of Annex 1603 of NAFTA, and the petition requirement of subsection (c), to the extent and in the manner prescribed in regulations promulgated by the Secretary of Labor, with respect to sections 212(m) and 212(n), and the Attorney General, with respect to subsection (c).
- (6) In the case of an alien spouse admitted under section 101(a)(15)(E), who is accompanying or following to join a principal alien admitted under such section, the Attorney General shall authorize the alien spouse to engage in employment in the United States and provide the spouse with an “employment authorized” endorsement or other appropriate work permit.
- (f)(1) Except as provided in paragraph (3), no alien shall be entitled to nonimmigrant status described in section 101(a)(15)(D) if the alien intends to land for the purpose of performing service on board a vessel of the United States (as defined in section 2101(46) of title 46, United States Code) or on an aircraft of an air carrier (as defined in section 40102(a)(2) of title 49, United States Code) during a labor dispute where there is a strike or lockout in the bargaining unit of the employer in which the alien intends to perform such service.
- (2) An alien described in paragraph (1)—
- (A) may not be paroled into the United States pursuant to section 212(d)(5) unless the Attorney General determines that the parole of such alien is necessary to protect the national security of the United States; and
  - (B) shall be considered not to be a bona fide crewman for purposes of section 252(b).
- (3) Paragraph (1) shall not apply to an alien if the air carrier or owner or operator of such vessel that employs the alien provides documentation that satisfies the Attorney General that the alien—
- (A) has been an employee of such employer for a period of not less than 1 year preceding the date that a strike or lawful lockout commenced;
  - (B) has served as a qualified crewman for such employer at least once in each of 3 months during the 12-month period preceding such date; and
  - (C) shall continue to provide the same services that such alien provided as such a crewman.

(g)(1) The total number of aliens who may be issued visas or otherwise provided nonimmigrant status during any fiscal year (beginning with fiscal year 1992)—

(A) under section 101(a)(15)(H)(i)(b), may not exceed—

- (i) 65,000 in each fiscal year before fiscal year 1999;
- (ii) 115,000 in fiscal year 1999;
- (iii) 115,000 in fiscal year 2000;
- (iv) 195,000 in fiscal year 2001;
- (v) 195,000 in fiscal year 2002;
- (vi) 195,000 in fiscal year 2003; and
- (vii) 65,000 in each succeeding fiscal year; or

(B) under section 101(a)(15)(H)(ii)(b) may not exceed 66,000.

(2) The numerical limitations of paragraph (1) shall only apply to principal aliens and not to the spouses or children of such aliens.

(3) Aliens who are subject to the numerical limitations of paragraph (1) shall be issued visas (or otherwise provided nonimmigrant status) in the order in which petitions are filed for such visas or status. If an alien who was issued a visa or otherwise provided nonimmigrant status and counted against the numerical limitations of paragraph (1) is found to have been issued such visa or otherwise provided such status by fraud or willfully misrepresenting a material fact and such visa or nonimmigrant status is revoked, then one number shall be restored to the total number of aliens who may be issued visas or otherwise provided such status under the numerical limitations of paragraph (1) in the fiscal year in which the petition is revoked, regardless of the fiscal year in which the petition was approved.

(4) In the case of a nonimmigrant described in section 101(a)(15)(H)(i)(b), the period of authorized admission as such a nonimmigrant may not exceed 6 years.

(5) The numerical limitations contained in paragraph (1)(A) shall not apply to any nonimmigrant alien issued a visa or otherwise provided status under section 101(a)(15)(H)(i)(b) who—

(A) is employed (or has received an offer of employment) at an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))), or a related or affiliated nonprofit entity;

(B) is employed (or has received an offer of employment) at a nonprofit research organization or a governmental research organization; or

(C) has earned a master's or higher degree from a United States institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))), until the number of aliens who are exempted from such numerical limitation during such year exceeds 20,000.

(6) Any alien who ceases to be employed by an employer described in paragraph (5)(A) shall, if employed as a nonimmigrant alien described in section 101(a)(15)(H)(i)(b), who has not previously been counted toward the numerical limitations contained in paragraph (1)(A), be counted toward those limitations the first time the alien is employed by an employer other than one described in paragraph (5).

(7) Any alien who has already been counted, within the 6 years prior to the approval of a petition described in subsection (c), toward the numerical limitations of paragraph (1)(A) shall not again



be counted toward those limitations unless the alien would be eligible for a full 6 years of authorized admission at the time the petition is filed. Where multiple petitions are approved for 1 alien, that alien shall be counted only once.

(8)(A) The agreements referred to in section 101(a)(15)(H)(i)(b1) are—

- (i) the United States-Chile Free Trade Agreement; and
- (ii) the United States-Singapore Free Trade Agreement.

(B)(i) The Secretary of Homeland Security shall establish annual numerical limitations on approvals of initial applications by aliens for admission under section 101(a)(15)(H)(i)(b1).

(ii) The annual numerical limitations described in clause (i) shall not exceed—

(I) 1,400 for nationals of Chile (as defined in article 14.9 of the United States-Chile Free Trade Agreement) for any fiscal year; and

(II) 5,400 for nationals of Singapore (as defined in Annex 1A of the United States-Singapore Free Trade Agreement) for any fiscal year.

(iii) The annual numerical limitations described in clause (i) shall only apply to principal aliens and not to the spouses or children of such aliens.

(iv) The annual numerical limitation described in paragraph (1)(A) is reduced by the amount of the annual numerical limitations established under clause (i). However, if a numerical limitation established under clause (i) has not been exhausted at the end of a given fiscal year, the Secretary of Homeland Security shall adjust upwards the numerical limitation in paragraph (1)(A) for that fiscal year by the amount remaining in the numerical limitation under clause (i). Visas under section 101(a)(15)(H)(i)(b) may be issued pursuant to such adjustment within the first 45 days of the next fiscal year to aliens who had applied for such visas during the fiscal year for which the adjustment was made.

(C) The period of authorized admission as a nonimmigrant under section 101(a)(15)(H)(i)(b1) shall be 1 year, and may be extended, but only in 1-year increments. After every second extension, the next following extension shall not be granted unless the Secretary of Labor had determined and certified to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed with the Secretary of Labor an attestation under section 212(t)(1) for the purpose of permitting the nonimmigrant to obtain such extension.

(D) The numerical limitation described in paragraph (1)(A) for a fiscal year shall be reduced by one for each alien granted an extension under subparagraph (C) during such year who has obtained 5 or more consecutive prior extensions.

(9)(A) Subject to subparagraphs (B) and (C), an alien who has already been counted toward the numerical limitation of paragraph (1)(B) during fiscal year 2013, 2014, or 2015 shall not again be counted toward such limitation during fiscal year 2016. Such an alien shall be considered a returning worker.

(B) A petition to admit or otherwise provide status under section 101(a)(15)(H)(ii)(b) shall include, with respect to a returning worker—

(i) all information and evidence that the Secretary of Homeland Security determines is required to support a petition for status under section 101(a)(15)(H)(ii)(b);

(ii) the full name of the alien; and

(iii) a certification to the Department of Homeland Security that the alien is a returning worker.

(C) An H-2B visa or grant of nonimmigrant status for a returning worker shall be approved only if the alien is confirmed to be a returning worker by—

(i) the Department of State; or

(ii) if the alien is visa exempt or seeking to change to status under section 101 (a)(15)(H)(ii)(b), the Department of Homeland Security.

(10) The numerical limitations of paragraph (1)(B) shall be allocated for a fiscal year so that the total number of aliens subject to such numerical limits who enter the United States pursuant to a visa or are accorded nonimmigrant status under section 101(a)(15)(H)(ii)(b) during the first 6 months of such fiscal year is not more than 33,000.

(11)(A) The Secretary of State may not approve a number of initial applications submitted for aliens described in section 101(a)(15)(E)(iii) that is more than the applicable numerical limitation set out in this paragraph.

(B) The applicable numerical limitation referred to in subparagraph (A) is 10,500 for each fiscal year.

(C) The applicable numerical limitation referred to in subparagraph (A) shall only apply to principal aliens and not to the spouses or children of such aliens.

(h) The fact that an alien is the beneficiary of an application for a preference status filed under section 204 or has otherwise sought permanent residence in the United States shall not constitute evidence of an intention to abandon a foreign residence for purposes of obtaining a visa as a nonimmigrant described in subparagraph (H)(i)(b) or (c), (L), or (V) of section 101(a)(15) or otherwise obtaining or maintaining the status of a nonimmigrant described in such subparagraph, if the alien had obtained a change of status under section 248 to a classification as such a nonimmigrant before the alien's most recent departure from the United States.

(i)(1) Except as provided in paragraph (3), for purposes of section 101(a)(15)(H)(i)(b), section 101(a)(15)(E)(iii), and paragraph (2), the term "specialty occupation" means an occupation that requires—

(A) theoretical and practical application of a body of highly specialized knowledge, and

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

(2) For purposes of section 101(a)(15)(H)(i)(b), the requirements of this paragraph, with respect to a specialty occupation, are—

(A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,

(B) completion of the degree described in paragraph (1)(B) for the occupation, or

(C)(i) experience in the specialty equivalent to the completion of such degree, and (ii) recognition of expertise in the specialty

through progressively responsible positions relating to the specialty.

(3) For purposes of section 101(a)(15)(H)(i)(b1), the term “specialty occupation” means an occupation that requires—

(A) theoretical and practical application of a body of specialized knowledge; and

(B) attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

(j)(1) Notwithstanding any other provision of this Act, an alien who is a citizen of Canada or Mexico who seeks to enter the United States under and pursuant to the provisions of Section B, Section C, or Section D of Annex 1603 of the North American Free Trade Agreement, shall not be classified as a nonimmigrant under such provisions if there is in progress a strike or lockout in the course of a labor dispute in the occupational classification at the place or intended place of employment, unless such alien establishes, pursuant to regulations promulgated by the Attorney General, that the alien’s entry will not affect adversely the settlement of the strike or lockout or the employment of any person who is involved in the strike or lockout. Notice of a determination under this paragraph shall be given as may be required by paragraph 3 of article 1603 of such Agreement. For purposes of this paragraph, the term “citizen of Mexico” means “citizen” as defined in Annex 1608 of such Agreement.

(2) Notwithstanding any other provision of this Act except section 212(t)(1), and subject to regulations promulgated by the Secretary of Homeland Security, an alien who seeks to enter the United States under and pursuant to the provisions of an agreement listed in subsection (g)(8)(A), and the spouse and children of such an alien if accompanying or following to join the alien, may be denied admission as a nonimmigrant under subparagraph (E), (L), or (H)(i)(b1) of section 101(a)(15) if there is in progress a labor dispute in the occupational classification at the place or intended place of employment, unless such alien establishes, pursuant to regulations promulgated by the Secretary of Homeland Security after consultation with the Secretary of Labor, that the alien’s entry will not affect adversely the settlement of the labor dispute or the employment of any person who is involved in the labor dispute. Notice of a determination under this paragraph shall be given as may be required by such agreement.

(k)(1) The number of aliens who may be provided a visa as nonimmigrants under section 101(a)(15)(S)(i) in any fiscal year may not exceed 200. The number of aliens who may be provided a visa as nonimmigrants under section 101(a)(15)(S)(ii) in any fiscal year may not exceed 50.

(2) The period of admission of an alien as such a nonimmigrant may not exceed 3 years. Such period may not be extended by the Attorney General.

(3) As a condition for the admission, and continued stay in lawful status, of such a nonimmigrant, the nonimmigrant—

(A) shall report not less often than quarterly to the Attorney General such information concerning the alien’s whereabouts and activities as the Attorney General may require;

(B) may not be convicted of any criminal offense punishable by a term of imprisonment of 1 year or more after the date of such admission;

(C) must have executed a form that waives the nonimmigrant's right to contest, other than on the basis of an application for withholding of removal, any action for removal of the alien instituted before the alien obtains lawful permanent resident status; and

(D) shall abide by any other condition, limitation, or restriction imposed by the Attorney General.

(4) The Attorney General shall submit a report annually to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate concerning—

(A) the number of such nonimmigrants admitted;

(B) the number of successful criminal prosecutions or investigations resulting from cooperation of such aliens;

(C) the number of terrorist acts prevented or frustrated resulting from cooperation of such aliens;

(D) the number of such nonimmigrants whose admission or cooperation has not resulted in successful criminal prosecution or investigation or the prevention or frustration of a terrorist act; and

(E) the number of such nonimmigrants who have failed to report quarterly (as required under paragraph (3)) or who have been convicted of crimes in the United States after the date of their admission as such a nonimmigrant.

(1)(1) In the case of a request by an interested State agency, or by an interested Federal agency, for a waiver of the 2-year foreign residence requirement under section 212(e) on behalf of an alien described in clause (iii) of such section, the Attorney General shall not grant such waiver unless—

(A) in the case of an alien who is otherwise contractually obligated to return to a foreign country, the government of such country furnishes the Director of the United States Information Agency with a statement in writing that it has no objection to such waiver;

(B) in the case of a request by an interested State agency, the grant of such waiver would not cause the number of waivers allotted for that State for that fiscal year to exceed 30;

(C) in the case of a request by an interested Federal agency or by an interested State agency—

(i) the alien demonstrates a bona fide offer of full-time employment at a health facility or health care organization, which employment has been determined by the Attorney General to be in the public interest; and

(ii) the alien agrees to begin employment with the health facility or health care organization within 90 days of receiving such waiver, and agrees to continue to work for a total of not less than 3 years (unless the Attorney General determines that extenuating circumstances exist, such as closure of the facility or hardship to the alien, which would justify a lesser period of employment at such health facility or health care organization, in which case the alien must demonstrate another bona fide offer of employment

at a health facility or health care organization for the remainder of such 3-year period); and

(D) in the case of a request by an interested Federal agency (other than a request by an interested Federal agency to employ the alien full-time in medical research or training) or by an interested State agency, the alien agrees to practice primary care or specialty medicine in accordance with paragraph (2) for a total of not less than 3 years only in the geographic area or areas which are designated by the Secretary of Health and Human Services as having a shortage of health care professionals, except that—

(i) in the case of a request by the Department of Veterans Affairs, the alien shall not be required to practice medicine in a geographic area designated by the Secretary;

(ii) in the case of a request by an interested State agency, the head of such State agency determines that the alien is to practice medicine under such agreement in a facility that serves patients who reside in one or more geographic areas so designated by the Secretary of Health and Human Services (without regard to whether such facility is located within such a designated geographic area), and the grant of such waiver would not cause the number of the waivers granted on behalf of aliens for such State for a fiscal year (within the limitation in subparagraph (B)) in accordance with the conditions of this clause to exceed 10; and

(iii) in the case of a request by an interested Federal agency or by an interested State agency for a waiver for an alien who agrees to practice specialty medicine in a facility located in a geographic area so designated by the Secretary of Health and Human Services, the request shall demonstrate, based on criteria established by such agency, that there is a shortage of health care professionals able to provide services in the appropriate medical specialty to the patients who will be served by the alien.

(2)(A) Notwithstanding section 248(a)(2), the Attorney General may change the status of an alien who qualifies under this subsection and section 212(e) to that of an alien described in section 101(a)(15)(H)(i)(b). The numerical limitations contained in subsection (g)(1)(A) shall not apply to any alien whose status is changed under the preceding sentence, if the alien obtained a waiver of the 2-year foreign residence requirement upon a request by an interested Federal agency or an interested State agency.

(B) No person who has obtained a change of status under subparagraph (A) and who has failed to fulfill the terms of the contract with the health facility or health care organization named in the waiver application shall be eligible to apply for an immigrant visa, for permanent residence, or for any other change of nonimmigrant status, until it is established that such person has resided and been physically present in the country of his nationality or his last residence for an aggregate of at least 2 years following departure from the United States.

(3) Notwithstanding any other provision of this subsection, the 2-year foreign residence requirement under section 212(e)

shall apply with respect to an alien described in clause (iii) of such section, who has not otherwise been accorded status under section 101(a)(27)(H), if—

(A) at any time the alien ceases to comply with any agreement entered into under subparagraph (C) or (D) of paragraph (1); or

(B) the alien's employment ceases to benefit the public interest at any time during the 3-year period described in paragraph (1)(C).

(m)(1) An alien may not be accorded status as a nonimmigrant under clause (i) or (iii) of section 101(a)(15)(F) in order to pursue a course of study—

(A) at a public elementary school or in a publicly funded adult education program; or

(B) at a public secondary school unless—

(i) the aggregate period of such status at such a school does not exceed 12 months with respect to any alien, and  
(ii) the alien demonstrates that the alien has reimbursed the local educational agency that administers the school for the full, unsubsidized per capita cost of providing education at such school for the period of the alien's attendance.

(2) An alien who obtains the status of a nonimmigrant under clause (i) or (iii) of section 101(a)(15)(F) in order to pursue a course of study at a private elementary or secondary school or in a language training program that is not publicly funded shall be considered to have violated such status, and the alien's visa under section 101(a)(15)(F) shall be void, if the alien terminates or abandons such course of study at such a school and undertakes a course of study at a public elementary school, in a publicly funded adult education program, in a publicly funded adult education language training program, or at a public secondary school (unless the requirements of paragraph (1)(B) are met).

(n)(1) A nonimmigrant alien described in paragraph (2) who was previously issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) is authorized to accept new employment upon the filing by the prospective employer of a new petition on behalf of such nonimmigrant as provided under subsection (a). Employment authorization shall continue for such alien until the new petition is adjudicated. If the new petition is denied, such authorization shall cease.

(2) A nonimmigrant alien described in this paragraph is a nonimmigrant alien—

(A) who has been lawfully admitted into the United States;

(B) on whose behalf an employer has filed a nonfrivolous petition for new employment before the date of expiration of the period of stay authorized by the Attorney General; and

(C) who, subsequent to such lawful admission, has not been employed without authorization in the United States before the filing of such petition.

(o)(1) No alien shall be eligible for admission to the United States under section 101(a)(15)(T) if there is substantial reason to believe that the alien has committed an act of a severe form of trafficking in persons (as defined in section 103 of the Trafficking Victims Protection Act of 2000).

(2) The total number of aliens who may be issued visas or otherwise provided nonimmigrant status during any fiscal year under section 101(a)(15)(T) may not exceed 5,000.

(3) The numerical limitation of paragraph (2) shall only apply to principal aliens and not to the spouses, sons, daughters, siblings, or parents of such aliens.

(4) An unmarried alien who seeks to accompany, or follow to join, a parent granted status under section 101(a)(15)(T)(i), and who was under 21 years of age on the date on which such parent applied for such status, shall continue to be classified as a child for purposes of section 101(a)(15)(T)(ii), if the alien attains 21 years of age after such parent's application was filed but while it was pending.

(5) An alien described in clause (i) of section 101(a)(15)(T) shall continue to be treated as an alien described in clause (ii)(I) of such section if the alien attains 21 years of age after the alien's application for status under such clause (i) is filed but while it is pending.

(6) In making a determination under section 101(a)(15)(T)(i)(III)(aa) with respect to an alien, statements from State and local law enforcement officials that the alien has complied with any reasonable request for assistance in the investigation or prosecution of crimes such as kidnapping, rape, slavery, or other forced labor offenses, where severe forms of trafficking in persons (as defined in section 103 of the Trafficking Victims Protection Act of 2000) appear to have been involved, shall be considered.

(7)(A) Except as provided in subparagraph (B), an alien who is issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(T) may be granted such status for a period of not more than 4 years.

(B) An alien who is issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(T) may extend the period of such status beyond the period described in subparagraph (A) if—

(i) a Federal, State, or local law enforcement official, prosecutor, judge, or other authority investigating or prosecuting activity relating to human trafficking or certifies that the presence of the alien in the United States is necessary to assist in the investigation or prosecution of such activity;

(ii) the alien is eligible for relief under section 245(l) and is unable to obtain such relief because regulations have not been issued to implement such section; or

(iii) the Secretary of Homeland Security determines that an extension of the period of such nonimmigrant status is warranted due to exceptional circumstances.

(C) Nonimmigrant status under section 101(a)(15)(T) shall be extended during the pendency of an application for adjustment of status under section 245(l).

(p) REQUIREMENTS APPLICABLE TO SECTION 101(a)(15)(U) VISAS.—

(1) PETITIONING PROCEDURES FOR SECTION 101(a)(15)(U) VISAS.—The petition filed by an alien under section 101(a)(15)(U)(i) shall contain a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 101(a)(15)(U)(iii). This certification may also be provided by an official of the Service whose ability

to provide such certification is not limited to information concerning immigration violations. This certification shall state that the alien “has been helpful, is being helpful, or is likely to be helpful” in the investigation or prosecution of criminal activity described in section 101(a)(15)(U)(iii).

(2) NUMERICAL LIMITATIONS.—

(A) The number of aliens who may be issued visas or otherwise provided status as nonimmigrants under section 101(a)(15)(U) in any fiscal year shall not exceed 10,000.

(B) The numerical limitations in subparagraph (A) shall only apply to principal aliens described in section 101(a)(15)(U)(i), and not to spouses, children, or, in the case of alien children, the alien parents of such children.

(3) DUTIES OF THE ATTORNEY GENERAL WITH RESPECT TO “U” VISA NONIMMIGRANTS.—With respect to nonimmigrant aliens described in subsection (a)(15)(U)—

(A) the Attorney General and other government officials, where appropriate, shall provide those aliens with referrals to nongovernmental organizations to advise the aliens regarding their options while in the United States and the resources available to them; and

(B) the Attorney General shall, during the period those aliens are in lawful temporary resident status under that subsection, provide the aliens with employment authorization.

(4) CREDIBLE EVIDENCE CONSIDERED.—In acting on any petition filed under this subsection, the consular officer or the Attorney General, as appropriate, shall consider any credible evidence relevant to the petition.

(5) NONEXCLUSIVE RELIEF.—Nothing in this subsection limits the ability of aliens who qualify for status under section 101(a)(15)(U) to seek any other immigration benefit or status for which the alien may be eligible.

(6) DURATION OF STATUS.—The authorized period of status of an alien as a nonimmigrant under section 101(a)(15)(U) shall be for a period of not more than 4 years, but shall be extended upon certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating or prosecuting criminal activity described in section 101(a)(15)(U)(iii) that the alien’s presence in the United States is required to assist in the investigation or prosecution of such criminal activity. The Secretary of Homeland Security may extend, beyond the 4-year period authorized under this section, the authorized period of status of an alien as a nonimmigrant under section 101(a)(15)(U) if the Secretary determines that an extension of such period is warranted due to exceptional circumstances. Such alien’s nonimmigrant status shall be extended beyond the 4-year period authorized under this section if the alien is eligible for relief under section 245(m) and is unable to obtain such relief because regulations have not been issued to implement such section and shall be extended during the pendency of an application for adjustment of status under section 245(m). The Secretary may grant work authorization to any alien who has a pending, bona fide application for nonimmigrant status under section 101(a)(15)(U).



## (7) AGE DETERMINATIONS.—

(A) CHILDREN.—An unmarried alien who seeks to accompany, or follow to join, a parent granted status under section 101(a)(15)(U)(i), and who was under 21 years of age on the date on which such parent petitioned for such status, shall continue to be classified as a child for purposes of section 101(a)(15)(U)(ii), if the alien attains 21 years of age after such parent's petition was filed but while it was pending.

(B) PRINCIPAL ALIENS.—An alien described in clause (i) of section 101(a)(15)(U) shall continue to be treated as an alien described in clause (ii)(I) of such section if the alien attains 21 years of age after the alien's application for status under such clause (i) is filed but while it is pending.

(q)(1) In the case of a nonimmigrant described in section 101(a)(15)(V)—

(A) the Attorney General shall authorize the alien to engage in employment in the United States during the period of authorized admission and shall provide the alien with an "employment authorized" endorsement or other appropriate document signifying authorization of employment; and

(B) the period of authorized admission as such a nonimmigrant shall terminate 30 days after the date on which any of the following is denied:

(i) The petition filed under section 204 to accord the alien a status under section 203(a)(2)(A) (or, in the case of a child granted nonimmigrant status based on eligibility to receive a visa under section 203(d), the petition filed to accord the child's parent a status under section 203(a)(2)(A)).

(ii) The alien's application for an immigrant visa pursuant to the approval of such petition.

(iii) The alien's application for adjustment of status under section 245 pursuant to the approval of such petition.

(2) In determining whether an alien is eligible to be admitted to the United States as a nonimmigrant under section 101(a)(15)(V), the grounds for inadmissibility specified in section 212(a)(9)(B) shall not apply.

(3) The status of an alien physically present in the United States may be adjusted by the Attorney General, in the discretion of the Attorney General and under such regulations as the Attorney General may prescribe, to that of a nonimmigrant under section 101(a)(15)(V), if the alien—

(A) applies for such adjustment;

(B) satisfies the requirements of such section; and

(C) is eligible to be admitted to the United States, except in determining such admissibility, the grounds for inadmissibility specified in paragraphs (6)(A), (7), and (9)(B) of section 212(a) shall not apply.

(r)(1) A visa shall not be issued under the provisions of section 101(a)(15)(K)(ii) until the consular officer has received a petition filed in the United States by the spouse of the applying alien and approved by the Attorney General. The petition shall be in such form and contain such information as the Attorney General shall, by regulation, prescribe. Such information shall include informa-

tion on any criminal convictions of the petitioner for any specified crime described in paragraph (5)(B) and information on any permanent protection or restraining order issued against the petitioner related to any specified crime described in subsection (5)(B)(i).

(2) In the case of an alien seeking admission under section 101(a)(15)(K)(ii) who concluded a marriage with a citizen of the United States outside the United States, the alien shall be considered inadmissible under section 212(a)(7)(B) if the alien is not at the time of application for admission in possession of a valid non-immigrant visa issued by a consular officer in the foreign state in which the marriage was concluded.

(3) In the case of a nonimmigrant described in section 101(a)(15)(K)(ii), and any child of such a nonimmigrant who was admitted as accompanying, or following to join, such a non-immigrant, the period of authorized admission shall terminate 30 days after the date on which any of the following is denied:

(A) The petition filed under section 204 to accord the principal alien status under section 201(b)(2)(A)(i).

(B) The principal alien's application for an immigrant visa pursuant to the approval of such petition.

(C) The principal alien's application for adjustment of status under section 245 pursuant to the approval of such petition.

(4)(A) The Secretary of Homeland Security shall create a database for the purpose of tracking multiple visa petitions filed for fiancé(e)s and spouses under clauses (i) and (ii) of section 101(a)(15)(K). Upon approval of a second visa petition under section 101(a)(15)(K) for a fiancé(e) or spouse filed by the same United States citizen petitioner, the petitioner shall be notified by the Secretary that information concerning the petitioner has been entered into the multiple visa petition tracking database. All subsequent fiancé(e) or spouse nonimmigrant visa petitions filed by that petitioner under such section shall be entered in the database.

(B)(i) Once a petitioner has had two fiancé(e) or spousal petitions approved under clause (i) or (ii) of section 101(a)(15)(K), if a subsequent petition is filed under such section less than 10 years after the date the first visa petition was filed under such section, the Secretary of Homeland Security shall notify both the petitioner and beneficiary of any such subsequent petition about the number of previously approved fiancé(e) or spousal petitions listed in the database.

(ii) To notify the beneficiary as required by clause (i), the Secretary of Homeland Security shall provide such notice to the Secretary of State for inclusion in the mailing to the beneficiary described in section 833(a)(5)(A)(i) of the International Marriage Broker Regulation Act of 2005 (8 U.S.C. 1375a(a)(5)(A)(i)).

(5) In this subsection:

(A) The terms "domestic violence", "sexual assault", "child abuse and neglect", "dating violence", "elder abuse", and "stalking" have the meaning given such terms in section 3 of the Violence Against Women and Department of Justice Reauthorization Act of 2005.

(B) The term "specified crime" means the following:

(i) Domestic violence, sexual assault, child abuse and neglect, dating violence, elder abuse, stalking, or an attempt to commit any such crime.

(ii) Homicide, murder, manslaughter, rape, abusive sexual contact, sexual exploitation, incest, torture, trafficking, peonage, holding hostage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment, or an attempt to commit any of the crimes described in this clause.

(iii) At least three convictions for crimes relating to a controlled substance or alcohol not arising from a single act.

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#### 【ADMISSION OF TEMPORARY H-2A WORKERS

【SEC. 218. (a) CONDITIONS FOR APPROVAL OF H-2A PETITIONS.—  
(1) A petition to import an alien as an H-2A worker (as defined in subsection (i)(2)) may not be approved by the Attorney General unless the petitioner has applied to the Secretary of Labor for a certification that—

【(A) there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition, and

【(B) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.

【(2) The Secretary of Labor may require by regulation, as a condition of issuing the certification, the payment of a fee to recover the reasonable costs of processing applications for certification.

【(b) CONDITIONS FOR DENIAL OF LABOR CERTIFICATION.—The Secretary of Labor may not issue a certification under subsection (a) with respect to an employer if the conditions described in that subsection are not met or if any of the following conditions are met:

【(1) There is a strike or lockout in the course of a labor dispute which, under the regulations, precludes such certification.

【(2)(A) The employer during the previous two-year period employed H-2A workers and the Secretary of Labor has determined, after notice and opportunity for a hearing, that the employer at any time during that period substantially violated a material term or condition of the labor certification with respect to the employment of domestic or nonimmigrant workers.

【(B) No employer may be denied certification under subparagraph (A) for more than three years for any violation described in such subparagraph.

【(3) The employer has not provided the Secretary with satisfactory assurances that if the employment for which the certification is sought is not covered by State workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker's employment which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment.

【(4) The Secretary determines that the employer has not made positive recruitment efforts within a multi-state region of traditional or expected labor supply where the Secretary finds that there are a significant number of qualified United States

workers who, if recruited, would be willing to make themselves available for work at the time and place needed. Positive recruitment under this paragraph is in addition to, and shall be conducted within the same time period as, the circulation through the interstate employment service system of the employer's job offer. The obligation to engage in positive recruitment under this paragraph shall terminate on the date the H-2A workers depart for the employer's place of employment.

[(c) SPECIAL RULES FOR CONSIDERATION OF APPLICATIONS.—The following rules shall apply in the case of the filing and consideration of an application for a labor certification under this section:

[(1) DEADLINE FOR FILING APPLICATIONS.—The Secretary of Labor may not require that the application be filed more than 45 days before the first date the employer requires the labor or services of the H-2A worker.

[(2) NOTICE WITHIN SEVEN DAYS OF DEFICIENCIES.—(A) The employer shall be notified in writing within seven days of the date of filing if the application does not meet the standards (other than that described in subsection (a)(1)(A)) for approval.

[(B) If the application does not meet such standards, the notice shall include the reasons therefor and the Secretary shall provide an opportunity for the prompt resubmission of a modified application.

[(3) ISSUANCE OF CERTIFICATION.—(A) The Secretary of Labor shall make, not later than 30 days before the date such labor or services are first required to be performed, the certification described in subsection (a)(1) if—

[(i) the employer has complied with the criteria for certification (including criteria for the recruitment of eligible individuals as prescribed by the Secretary), and

[(ii) the employer does not actually have, or has not been provided with referrals of, qualified eligible individuals who have indicated their availability to perform such labor or services on the terms and conditions of a job offer which meets the requirements of the Secretary.

In considering the question of whether a specific qualification is appropriate in a job offer, the Secretary shall apply the normal and accepted qualifications required by non-H-2A-employers in the same or comparable occupations and crops.

[(B)(i) For a period of 3 years subsequent to the effective date of this section, labor certifications shall remain effective only if, from the time the foreign worker departs for the employer's place of employment, the employer will provide employment to any qualified United States worker who applies to the employer until 50 percent of the period of the work contract, under which the foreign worker who is in the job was hired, has elapsed. In addition, the employer will offer to provide benefits, wages and working conditions required pursuant to this section and regulations.

[(ii) The requirement of clause (i) shall not apply to any employer who—

[(I) did not, during any calendar quarter during the preceding calendar year, use more than 500 man-days of agricultural labor, as defined in section 3(u) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(u)),

[(II) is not a member of an association which has petitioned for certification under this section for its members, and

[(III) has not otherwise associated with other employers who are petitioning for temporary foreign workers under this section.

[(iii) Six months before the end of the 3-year period described in clause (i), the Secretary of Labor shall consider the findings of the report mandated by section 403(a)(4)(D) of the Immigration Reform and Control Act of 1986 as well as other relevant materials, including evidence of benefits to United States workers and costs to employers, addressing the advisability of continuing a policy which requires an employer, as a condition for certification under this section, to continue to accept qualified, eligible United States workers for employment after the date the H-2A workers depart for work with the employer. The Secretary's review of such findings and materials shall lead to the issuance of findings in furtherance of the Congressional policy that aliens not be admitted under this section unless there are not sufficient workers in the United States who are able, willing, and qualified to perform the labor or service needed and that the employment of the aliens in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed. In the absence of the enactment of Federal legislation prior to three months before the end of the 3-year period described in clause (i) which addresses the subject matter of this subparagraph, the Secretary shall immediately publish the findings required by this clause, and shall promulgate, on an interim or final basis, regulations based on his findings which shall be effective no later than three years from the effective date of this section.

[(iv) In complying with clause (i) of this subparagraph, an association shall be allowed to refer or transfer workers among its members: *Provided*, That for purposes of this section an association acting as an agent for its members shall not be considered a joint employer merely because of such referral or transfer.

[(v) United States workers referred or transferred pursuant to clause (iv) of this subparagraph shall not be treated separately.

[(vi) An employer shall not be liable for payments under section 655.202(b)(6) of title 20, Code of Federal Regulations (or any successor regulation) with respect to an H-2A worker who is displaced due to compliance with the requirement of this subparagraph, if the Secretary of Labor certifies that the H-2A worker was displaced because of the employer's compliance with clause (i) of this subparagraph.

[(vii)(I) No person or entity shall willfully and knowingly withhold domestic workers prior to the arrival of H-2A workers in order to force the hiring of domestic workers under clause (i).

[(II) Upon the receipt of a complaint by an employer that a violation of subclause (I) has occurred the Secretary shall immediately investigate. He shall within 36 hours of the receipt

of the complaint issue findings concerning the alleged violation. Where the Secretary finds that a violation has occurred, he shall immediately suspend the application of clause (i) of this subparagraph with respect to that certification for that date of need.

[(4) HOUSING.—Employers shall furnish housing in accordance with regulations. The employer shall be permitted at the employer's option to provide housing meeting applicable Federal standards for temporary labor camps or to secure housing which meets the local standards for rental and/or public accommodations or other substantially similar class of habitation: *Provided*, That in the absence of applicable local standards, State standards for rental and/or public accommodations or other substantially similar class of habitation shall be met: *Provided further*, That in the absence of applicable local or State standards, Federal temporary labor camp standards shall apply: *Provided further*, That the Secretary of Labor shall issue regulations which address the specific requirements of housing for employees principally engaged in the range production of livestock: *Provided further*, That when it is the prevailing practice in the area and occupation of intended employment to provide family housing, family housing shall be provided to workers with families who request it: *And provided further*, That nothing in this paragraph shall require an employer to provide or secure housing for workers who are not entitled to it under the temporary labor certification regulations in effect on June 1, 1986. The determination as to whether the housing furnished by an employer for an H-2A worker meets the requirements imposed by this paragraph must be made prior to the date specified in paragraph (3)(A) by which the Secretary of Labor is required to make a certification described in subsection (a)(1) with respect to a petition for the importation of such worker.

[(d) ROLES OF AGRICULTURAL ASSOCIATIONS.—

[(1) PERMITTING FILING BY AGRICULTURAL ASSOCIATIONS.—A petition to import an alien as a temporary agricultural worker, and an application for a labor certification with respect to such a worker, may be filed by an association of agricultural producers which use agricultural services.

[(2) TREATMENT OF ASSOCIATIONS ACTING AS EMPLOYERS.—If an association is a joint or sole employer of temporary agricultural workers, the certifications granted under this section to the association may be used for the certified job opportunities of any of its producer members and such workers may be transferred among its producer members to perform agricultural services of a temporary or seasonal nature for which the certifications were granted.

[(3) TREATMENT OF VIOLATIONS.—

[(A) MEMBER'S VIOLATION DOES NOT NECESSARILY DISQUALIFY ASSOCIATION OR OTHER MEMBERS.—If an individual producer member of a joint employer association is determined to have committed an act that under subsection (b)(2) results in the denial of certification with respect to the member, the denial shall apply only to that member of the association unless the Secretary determines

that the association or other member participated in, had knowledge of, or reason to know of, the violation.

[(B) ASSOCIATION'S VIOLATION DOES NOT NECESSARILY DISQUALIFY MEMBERS.—(i) If an association representing agricultural producers as a joint employer is determined to have committed an act that under subsection (b)(2) results in the denial of certification with respect to the association, the denial shall apply only to the association and does not apply to any individual producer member of the association unless the Secretary determines that the member participated in, had knowledge of, or reason to know of, the violation.

[(ii) If an association of agricultural producers certified as a sole employer is determined to have committed an act that under subsection (b)(2) results in the denial of certification with respect to the association, no individual producer member of such association may be the beneficiary of the services of temporary alien agricultural workers admitted under this section in the commodity and occupation in which such aliens were employed by the association which was denied certification during the period such denial is in force, unless such producer member employs such aliens in the commodity and occupation in question directly or through an association which is a joint employer of such workers with the producer member.

[(e) EXPEDITED ADMINISTRATIVE APPEALS OF CERTAIN DETERMINATIONS.—(1) Regulations shall provide for an expedited procedure for the review of a denial of certification under subsection (a)(1) or a revocation of such a certification or, at the applicant's request, for a de novo administrative hearing respecting the denial or revocation.

[(2) The Secretary of Labor shall expeditiously, but in no case later than 72 hours after the time a new determination is requested, make a new determination on the request for certification in the case of an H-2A worker if able, willing, and qualified eligible individuals are not actually available at the time such labor or services are required and a certification was denied in whole or in part because of the availability of qualified workers. If the employer asserts that any eligible individual who has been referred is not able, willing, or qualified, the burden of proof is on the employer to establish that the individual referred is not able, willing, or qualified because of employment-related reasons.

[(f) VIOLATORS DISQUALIFIED FOR 5 YEARS.—An alien may not be admitted to the United States as a temporary agricultural worker if the alien was admitted to the United States as such a worker within the previous five-year period and the alien during that period violated a term or condition of such previous admission.

[(g) AUTHORIZATIONS OF APPROPRIATIONS.—(1) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1987, \$10,000,000 for the purposes—

[(A) of recruiting domestic workers for temporary labor and services which might otherwise be performed by non-immigrants described in section 101(a)(15)(H)(ii)(a), and

[(B) of monitoring terms and conditions under which such nonimmigrants (and domestic workers employed by the same employers) are employed in the United States.

[(2) The Secretary of Labor is authorized to take such actions, including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with terms and conditions of employment under this section.

[(3) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1987, such sums as may be necessary for the purpose of enabling the Secretary of Labor to make determinations and certifications under this section and under section 212(a)(5)(A)(i).

[(4) There are authorized to be appropriated for each fiscal year, beginning with fiscal year 1987, such sums as may be necessary for the purposes of enabling the Secretary of Agriculture to carry out the Secretary's duties and responsibilities under this section.

[(h) MISCELLANEOUS PROVISIONS.—(1) The Attorney General shall provide for such endorsement of entry and exit documents of nonimmigrants described in section 101(a)(15)(H)(ii) as may be necessary to carry out this section and to provide notice for purposes of section 274A.

[(2) The provisions of subsections (a) and (c) of section 214 and the provisions of this section preempt any State or local law regulating admissibility of nonimmigrant workers.

[(i) DEFINITIONS.—For purposes of this section:

[(1) The term “eligible individual” means, with respect to employment, an individual who is not an unauthorized alien (as defined in section 274A(h)(3) with respect to that employment.

[(2) The term “H-2A worker” means a nonimmigrant described in section 101(a)(15)(H)(ii)(a).]

**SEC. 218. ADMISSION OF TEMPORARY H-2A WORKERS.**

(a) *LABOR CERTIFICATION CONDITIONS.*—*The Secretary of Homeland Security may not approve a petition to admit an H-2A worker unless the Secretary of Labor has certified that—*

*(1) there are not sufficient United States workers who are able, willing and qualified, and who will be available at the time and place needed, to perform the agricultural labor or services described in the petition; and*

*(2) the employment of the H-2A worker in such labor or services will not adversely affect the wages and working conditions of workers in the United States who are similarly employed.*

(b) *H-2A PETITION REQUIREMENTS.*—*An employer filing a petition for an H-2A worker to perform agricultural labor or services shall attest to and demonstrate compliance, as and when appropriate, with all applicable requirements under this section, including the following:*

*(1) NEED FOR LABOR OR SERVICES.*—*The employer has described the need for agricultural labor or services in a job order that includes a description of the nature and location of the work to be performed, the anticipated period or periods (expected start and end dates) for which the workers will be needed, and the number of job opportunities in which the employer seeks to employ the workers.*



(2) *NONDISPLACEMENT OF UNITED STATES WORKERS.*—The employer has not and will not displace United States workers employed by the employer during the period of employment of the H-2A worker and during the 60-day period immediately preceding such period of employment in the job for which the employer seeks approval to employ the H-2A worker.

(3) *STRIKE OR LOCKOUT.*—Each place of employment described in the petition is not, at the time of filing the petition and until the petition is approved, subject to a strike or lockout in the course of a labor dispute.

(4) *RECRUITMENT OF UNITED STATES WORKERS.*—The employer shall engage in the recruitment of United States workers as described in subsection (c) and shall hire such workers who are able, willing and qualified, and who will be available at the time and place needed, to perform the agricultural labor or services described in the petition. The employer may reject a United States worker only for lawful, job-related reasons.

(5) *WAGES, BENEFITS, AND WORKING CONDITIONS.*—The employer shall offer and provide, at a minimum, the wages, benefits, and working conditions required by this section to the H-2A worker and all United States workers who are similarly employed. The employer—

(A) shall offer such United States workers not less than the same benefits, wages, and working conditions that the employer is offering or will provide to the H-2A worker; and

(B) may not impose on such United States workers any restrictions or obligations that will not be imposed on the H-2A worker.

(6) *WORKERS' COMPENSATION.*—If the job opportunity is not covered by or is exempt from the State workers' compensation law, the employer shall provide, at no cost to the worker, insurance covering injury and disease arising out of, and in the course of, the worker's employment which will provide benefits at least equal to those provided under the State workers' compensation law.

(7) *COMPLIANCE WITH LABOR AND EMPLOYMENT LAWS.*—The employer shall comply with all applicable Federal, State and local employment-related laws and regulations.

(c) *RECRUITING REQUIREMENTS.*—

(1) *IN GENERAL.*—The employer may satisfy the recruitment requirement described in subsection (b)(4) by satisfying all of the following:

(A) *JOB ORDER.*—As provided in subsection (h)(1), the employer shall complete a job order for posting on the electronic job registry maintained by the Secretary of Labor and for distribution by the appropriate State workforce agency. Such posting shall remain on the job registry as an active job order through the period described in paragraph (2)(B).

(B) *FORMER WORKERS.*—At least 45 days before each start date identified in the petition, the employer shall—

(i) make reasonable efforts to contact any United States worker the employer employed in the previous year in the same occupation and area of intended em-

ployment for which an H-2A worker is sought (excluding workers who were terminated for cause or abandoned the worksite); and

(ii) post such job opportunity in a conspicuous location or locations at the place of employment.

(C) *POSITIVE RECRUITMENT.*—During the period of recruitment, the employer shall complete any other positive recruitment steps within a multi-State region of traditional or expected labor supply where the Secretary of Labor finds that there are a significant number of qualified United States workers who, if recruited, would be willing to make themselves available for work at the time and place needed.

(2) *PERIOD OF RECRUITMENT.*—

(A) *IN GENERAL.*—For purposes of this subsection, the period of recruitment begins on the date on which the job order is posted on the online job registry and ends on the date that H-2A workers depart for the employer's place of employment. For a petition involving more than 1 start date under subsection (h)(1)(C), the end of the period of recruitment shall be determined by the date of departure of the H-2A workers for the final start date identified in the petition.

(B) *REQUIREMENT TO HIRE US WORKERS.*—

(i) *IN GENERAL.*—Notwithstanding the limitations of subparagraph (A), the employer will provide employment to any qualified United States worker who applies to the employer for any job opportunity included in the petition until the later of—

(I) the date that is 30 days after the date on which work begins; or

(II) the date on which—

(aa) 33 percent of the work contract for the job opportunity has elapsed; or

(bb) if the employer is a labor contractor, 50 percent of the work contract for the job opportunity has elapsed.

(ii) *STAGGERED ENTRY.*—For a petition involving more than 1 start date under subsection (h)(1)(C), each start date designated in the petition shall establish a separate job opportunity. An employer may not reject a United States worker because the worker is unable or unwilling to fill more than 1 job opportunity included in the petition.

(iii) *EXCEPTION.*—Notwithstanding clause (i), the employer may offer a job opportunity to an H-2A worker instead of an alien granted certified agricultural worker status under title I of the Farm Workforce Modernization Act of 2019 if the H-2A worker was employed by the employer in each of 3 years during the most recent 4-year period.

(3) *RECRUITMENT REPORT.*—

(A) *IN GENERAL.*—The employer shall maintain a recruitment report through the applicable period described in paragraph (2)(B) and submit regular updates through the electronic platform on the results of recruitment. The em-

ployer shall retain the recruitment report, and all associated recruitment documentation, for a period of 3 years from the date of certification.

(B) *BURDEN OF PROOF.*—If the employer asserts that any eligible individual who has applied or been referred is not able, willing or qualified, the employer bears the burden of proof to establish that the individual is not able, willing or qualified because of a lawful, employment-related reason.

(d) *WAGE REQUIREMENTS.*—

(1) *IN GENERAL.*—Each employer under this section will offer the worker, during the period of authorized employment, wages that are at least the greatest of—

(A) the agreed-upon collective bargaining wage;

(B) the adverse effect wage rate (or any successor wage established under paragraph (7));

(C) the prevailing wage (hourly wage or piece rate); or

(D) the Federal or State minimum wage.

(2) *ADVERSE EFFECT WAGE RATE DETERMINATIONS.*—

(A) *IN GENERAL.*—Except as provided under subparagraph (B), the applicable adverse effect wage rate for each State and occupational classification for a calendar year shall be as follows:

(i) The annual average hourly wage for the occupational classification in the State or region as reported by the Secretary of Agriculture based on a wage survey conducted by such Secretary.

(ii) If a wage described in clause (i) is not reported, the national annual average hourly wage for the occupational classification as reported by the Secretary of Agriculture based on a wage survey conducted by such Secretary.

(iii) If a wage described in clause (i) or (ii) is not reported, the Statewide annual average hourly wage for the standard occupational classification as reported by the Secretary of Labor based on a wage survey conducted by such Secretary.

(iv) If a wage described in clause (i), (ii), or (iii) is not reported, the national average hourly wage for the occupational classification as reported by the Secretary of Labor based on a wage survey conducted by such Secretary.

(B) *LIMITATIONS ON WAGE FLUCTUATIONS.*—

(i) *WAGE FREEZE FOR CALENDAR YEAR 2020.*—For calendar year 2020, the adverse effect wage rate for each State and occupational classification under this subsection shall be the adverse effect wage rate that was in effect for H-2A workers in the applicable State in calendar year 2019.

(ii) *CALENDAR YEARS 2021 THROUGH 2029.*—For each of calendar years 2021 through 2029, the adverse effect wage rate for each State and occupational classification under this subsection shall be the wage calculated under subparagraph (A), except that such wage may not—

(I) be more than 1.5 percent lower than the wage in effect for H-2A workers in the applicable State and occupational classification in the immediately preceding calendar year;

(II) except as provided in clause (III), be more than 3.25 percent higher than the wage in effect for H-2A workers in the applicable State and occupational classification in the immediately preceding calendar year; and

(III) if the application of clause (II) results in a wage that is lower than 110 percent of the applicable Federal or State minimum wage, be more than 4.25 percent higher than the wage in effect for H-2A workers in the applicable State and occupational classification in the immediately preceding calendar year.

(iii) **CALENDAR YEARS AFTER 2029.**—For any calendar year after 2029, the applicable wage rate described in paragraph (1)(B) shall be the wage rate established pursuant to paragraph (7)(D). Until such wage rate is effective, the adverse effect wage rate for each State and occupational classification under this subsection shall be the wage calculated under subparagraph (A), except that such wage may not be more than 1.5 percent lower or 3.25 percent higher than the wage in effect for H-2A workers in the applicable State and occupational classification in the immediately preceding calendar year.

(3) **MULTIPLE OCCUPATIONS.**—If the primary job duties for the job opportunity described in the petition do not fall within a single occupational classification, the applicable wage rates under subparagraphs (B) and (C) of paragraph (1) for the job opportunity shall be based on the highest such wage rates for all applicable occupational classifications.

(4) **PUBLICATION; WAGES IN EFFECT.**—

(A) **PUBLICATION.**—Prior to the start of each calendar year, the Secretary of Labor shall publish the applicable adverse effect wage rate (or successor wage rate, if any), and prevailing wage if available, for each State and occupational classification through notice in the Federal Register.

(B) **JOB ORDERS IN EFFECT.**—Except as provided in subparagraph (C), publication by the Secretary of Labor of an updated adverse effect wage rate or prevailing wage for a State and occupational classification shall not affect the wage rate guaranteed in any approved job order for which recruitment efforts have commenced at the time of publication.

(C) **EXCEPTION FOR YEAR-ROUND JOBS.**—If the Secretary of Labor publishes an updated adverse effect wage rate or prevailing wage for a State and occupational classification concerning a petition described in subsection (i), and the updated wage is higher than the wage rate guaranteed in the work contract, the employer shall pay the updated wage

not later than 14 days after publication of the updated wage in the Federal Register.

(5) **WORKERS PAID ON A PIECE RATE OR OTHER INCENTIVE BASIS.**—If an employer pays by the piece rate or other incentive method and requires 1 or more minimum productivity standards as a condition of job retention, such standards shall be specified in the job order and shall be no more than those normally required (at the time of the first petition for H-2A workers) by other employers for the activity in the area of intended employment, unless the Secretary of Labor approves a higher minimum standard resulting from material changes in production methods.

(6) **GUARANTEE OF EMPLOYMENT.**—

(A) **OFFER TO WORKER.**—The employer shall guarantee the worker employment for the hourly equivalent of at least three-fourths of the work days of the total period of employment, beginning with the first work day after the arrival of the worker at the place of employment and ending on the date specified in the job offer. For purposes of this subparagraph, the hourly equivalent means the number of hours in the work days as stated in the job offer and shall exclude the worker's Sabbath and Federal holidays. If the employer affords the worker less employment than that required under this paragraph, the employer shall pay the worker the amount which the worker would have earned had the worker, in fact, worked for the guaranteed number of hours.

(B) **FAILURE TO WORK.**—Any hours which the worker fails to work, up to a maximum of the number of hours specified in the job offer for a work day, when the worker has been offered an opportunity to do so, and all hours of work actually performed (including voluntary work in excess of the number of hours specified in the job offer in a work day, on the worker's Sabbath, or on Federal holidays) may be counted by the employer in calculating whether the period of guaranteed employment has been met.

(C) **ABANDONMENT OF EMPLOYMENT; TERMINATION FOR CAUSE.**—If the worker voluntarily abandons employment without good cause before the end of the contract period, or is terminated for cause, the worker is not entitled to the guarantee of employment described in subparagraph (A).

(D) **CONTRACT IMPOSSIBILITY.**—If, before the expiration of the period of employment specified in the job offer, the services of the worker are no longer required for reasons beyond the control of the employer due to any form of natural disaster before the guarantee in subparagraph (A) is fulfilled, the employer may terminate the worker's employment. In the event of such termination, the employer shall fulfill the employment guarantee in subparagraph (A) for the work days that have elapsed from the first work day after the arrival of the worker to the termination of employment. The employer shall make efforts to transfer a United States worker to other comparable employment acceptable to the worker. If such transfer is not affected, the employer shall

*provide the return transportation required in subsection (f)(2).*

**(7) WAGE STANDARDS AFTER 2029.—**

**(A) STUDY OF ADVERSE EFFECT WAGE RATE.**—*Beginning in fiscal year 2026, the Secretary of Agriculture and Secretary of Labor shall jointly conduct a study that addresses—*

*(i) whether the employment of H-2A workers has depressed the wages of United States farm workers;*

*(ii) whether an adverse effect wage rate is necessary to protect the wages of United States farm workers in occupations in which H-2A workers are employed;*

*(iii) whether alternative wage standards would be sufficient to prevent wages in occupations in which H-2A workers are employed from falling below the wage level that would have prevailed in the absence of H-2A employment;*

*(iv) whether any changes are warranted in the current methodologies for calculating the adverse effect wage rate and the prevailing wage rate; and*

*(v) recommendations for future wage protection under this section.*

**(B) FINAL REPORT.**—*Not later than October 1, 2027, the Secretary of Agriculture and Secretary of Labor shall jointly prepare and submit a report to the Congress setting forth the findings of the study conducted under subparagraph (A) and recommendations for future wage protections under this section.*

**(C) CONSULTATION.**—*In conducting the study under subparagraph (A) and preparing the report under subparagraph (B), the Secretary of Agriculture and Secretary of Labor shall consult with representatives of agricultural employers and an equal number of representatives of agricultural workers, at the national, State and local level.*

**(D) WAGE DETERMINATION AFTER 2029.**—*Upon publication of the report described in subparagraph (B), the Secretary of Labor, in consultation with and the approval of the Secretary of Agriculture, shall make a rule to establish a process for annually determining the wage rate for purposes of paragraph (1)(B) for fiscal years after 2029. Such process shall be designed to ensure that the employment of H-2A workers does not undermine the wages and working conditions of similarly employed United States workers.*

**(e) HOUSING REQUIREMENTS.**—*Employers shall furnish housing in accordance with regulations established by the Secretary of Labor. Such regulations shall be consistent with the following:*

**(1) IN GENERAL.**—*The employer shall be permitted at the employer's option to provide housing meeting applicable Federal standards for temporary labor camps or to secure housing which meets the local standards for rental and/or public accommodations or other substantially similar class of habitation: Provided, That in the absence of applicable local standards, State standards for rental and/or public accommodations or other substantially similar class of habitation shall be met: Provided further, That in the absence of applicable local or State*

*standards, Federal temporary labor camp standards shall apply.*

(2) *FAMILY HOUSING.*—Except as otherwise provided in subsection (i)(5), the employer shall provide family housing to workers with families who request it when it is the prevailing practice in the area and occupation of intended employment to provide family housing.

(3) *UNITED STATES WORKERS.*—Notwithstanding paragraphs (1) and (2), an employer is not required to provide housing to United States workers who are reasonably able to return to their residence within the same day.

(4) *TIMING OF INSPECTION.*—

(A) *IN GENERAL.*—The Secretary of Labor or designee shall make a determination as to whether the housing furnished by an employer for a worker meets the requirements imposed by this subsection prior to the date on which the Secretary of Labor is required to make a certification with respect to a petition for the admission of such worker.

(B) *TIMELY INSPECTION.*—The Secretary of Labor shall provide a process for—

(i) an employer to request inspection of housing up to 60 days before the date on which the employer will file a petition under this section; and

(ii) annual inspection of housing for workers who are engaged in agricultural employment that is not of a seasonal or temporary nature.

(f) *TRANSPORTATION REQUIREMENTS.*—

(1) *TRAVEL TO PLACE OF EMPLOYMENT.*—A worker who completes 50 percent of the period of employment specified in the job order shall be reimbursed by the employer for the cost of the worker's transportation and subsistence from the place from which the worker came to work for the employer (or place of last employment, if the worker traveled from such place) to the place of employment.

(2) *TRAVEL FROM PLACE OF EMPLOYMENT.*—For a worker who completes the period of employment specified in the job order or who is terminated without cause, the employer shall provide or pay for the worker's transportation and subsistence from the place of employment to the place from which the worker, disregarding intervening employment, came to work for the employer, or to the place of next employment, if the worker has contracted with a subsequent employer who has not agreed to provide or pay for the worker's transportation and subsistence to such subsequent employer's place of employment.

(3) *LIMITATION.*—

(A) *AMOUNT OF REIMBURSEMENT.*—Except as provided in subparagraph (B), the amount of reimbursement provided under paragraph (1) or (2) to a worker need not exceed the lesser of—

(i) the actual cost to the worker of the transportation and subsistence involved; or

(ii) the most economical and reasonable common carrier transportation charges and subsistence costs for the distance involved.

(B) *DISTANCE TRAVELED.*—For travel to or from the worker's home country, if the travel distance between the worker's home and the relevant consulate is 50 miles or less, reimbursement for transportation and subsistence may be based on transportation to or from the consulate.

(g) *HEAT ILLNESS PREVENTION PLAN.*—The employer shall maintain a reasonable plan that describes the employer's procedures for the prevention of heat illness, including appropriate training, access to water and shade, the provision of breaks, and the protocols for emergency response. Such plan shall—

(1) be in writing in English and, to the extent necessary, any language common to a significant portion of the workers if they are not fluent in English; and

(2) be posted at a conspicuous location at the worksite and provided to employees prior to the commencement of labor or services.

(h) *H-2A PETITION PROCEDURES.*—

(1) *SUBMISSION OF PETITION AND JOB ORDER.*—

(A) *IN GENERAL.*—The employer shall submit information required for the adjudication of the H-2A petition, including a job order, through the electronic platform no more than 75 calendar days and no fewer than 60 calendar days before the employer's first date of need specified in the petition.

(B) *FILING BY AGRICULTURAL ASSOCIATIONS.*—An association of agricultural producers that use agricultural services may file an H-2A petition under subparagraph (A). If an association is a joint or sole employer of workers who perform agricultural labor or services, H-2A workers may be used for the approved job opportunities of any of the association's producer members and such workers may be transferred among its producer members to perform the agricultural labor or services for which the petition was approved.

(C) *PETITIONS INVOLVING STAGGERED ENTRY.*—

(i) *IN GENERAL.*—Except as provided in clause (ii), an employer may file a petition involving employment in the same occupational classification and same area of intended employment with multiple start dates if—

(I) the petition involves temporary or seasonal employment and no more than 10 start dates;

(II) the multiple start dates share a common end date that is no longer than 1 year after the first start date;

(III) no more than 120 days separate the first start date and the final start date listed in the petition; and

(IV) the need for multiple start dates arises from variations in labor needs associated with the job opportunity identified in the petition.

(ii) *LABOR CONTRACTORS.*—A labor contractor may not file a petition described in clause (i) unless the labor contractor—

(I) is filing as a joint employer with its contractees, or is operating in a State in which



*joint employment and liability between the labor contractor and its contractees is otherwise established; or*

*(II) has posted and is maintaining a premium surety bond as described in subsection (l)(1).*

(2) **LABOR CERTIFICATION.**—

(A) **REVIEW OF JOB ORDER.**—

(i) **IN GENERAL.**—*The Secretary of Labor, in consultation with the relevant State workforce agency, shall review the job order for compliance with this section and notify the employer through the electronic platform of any deficiencies not later than 7 business days from the date the employer submits the necessary information required under paragraph (1)(A). The employer shall be provided 5 business days to respond to any such notice of deficiency.*

(ii) **STANDARD.**—*The job order must include all material terms and conditions of employment, including the requirements of this section, and must be otherwise consistent with the minimum standards provided under Federal, State or local law. In considering the question of whether a specific qualification is appropriate in a job order, the Secretary of Labor shall apply the normal and accepted qualification required by non-H-2A employers in the same or comparable occupations and crops.*

(iii) **EMERGENCY PROCEDURES.**—*The Secretary of Labor shall establish emergency procedures for the curing of deficiencies that cannot be resolved during the period described in clause (i).*

(B) **APPROVAL OF JOB ORDER.**—

(i) **IN GENERAL.**—*Upon approval of the job order, the Secretary of Labor shall immediately place for public examination a copy of the job order on the online job registry, and the State workforce agency serving the area of intended employment shall commence the recruitment of United States workers.*

(ii) **REFERRAL OF UNITED STATES WORKERS.**—*The Secretary of Labor and State workforce agency shall keep the job order active until the end of the period described in subsection (c)(2) and shall refer to the employer each United States worker who applies for the job opportunity.*

(C) **REVIEW OF INFORMATION FOR DEFICIENCIES.**—*Within 7 business days of the approval of the job order, the Secretary of Labor shall review the information necessary to make a labor certification and notify the employer through the electronic platform if such information does not meet the standards for approval. Such notification shall include a description of any deficiency, and the employer shall be provided 5 business days to cure such deficiency.*

(D) **CERTIFICATION AND AUTHORIZATION OF WORKERS.**—*Not later than 30 days before the date that labor or services are first required to be performed, the Secretary of Labor shall issue the requested labor certification if the Secretary*

*determines that the requirements for certification set forth in this section have been met.*

*(E) EXPEDITED ADMINISTRATIVE APPEALS OF CERTAIN DETERMINATIONS.—The Secretary of Labor shall by regulation establish a procedure for an employer to request the expedited review of a denial of a labor certification under this section, or the revocation of such a certification. Such procedure shall require the Secretary to expeditiously, but no later than 72 hours after expedited review is requested, issue a de novo determination on a labor certification that was denied in whole or in part because of the availability of able, willing and qualified workers if the employer demonstrates, consistent with subsection (c)(3)(B), that such workers are not actually available at the time or place such labor or services are required.*

**(3) PETITION DECISION.—**

*(A) IN GENERAL.—Not later than 7 business days after the Secretary of Labor issues the certification, the Secretary of Homeland Security shall issue a decision on the petition and shall transmit a notice of action to the petitioner via the electronic platform.*

*(B) APPROVAL.—Upon approval of a petition under this section, the Secretary of Homeland Security shall ensure that such approval is noted in the electronic platform and is available to the Secretary of State and U.S. Customs and Border Protection, as necessary, to facilitate visa issuance and admission.*

*(C) PARTIAL APPROVAL.—A petition for multiple named beneficiaries may be partially approved with respect to eligible beneficiaries notwithstanding the ineligibility, or potential ineligibility, of one or more other beneficiaries.*

*(D) POST-CERTIFICATION AMENDMENTS.—The Secretary of Labor shall provide a process for amending a request for labor certification in conjunction with an H-2A petition, subsequent to certification by the Secretary of Labor, in cases in which the requested amendment does not materially change the petition (including the job order).*

**(4) ROLES OF AGRICULTURAL ASSOCIATIONS.—**

*(A) MEMBER'S VIOLATION DOES NOT NECESSARILY DISQUALIFY ASSOCIATION OR OTHER MEMBERS.—If an individual producer member of a joint employer association is determined to have committed an act that results in the denial of a petition with respect to the member, the denial shall apply only to that member of the association unless the Secretary of Labor determines that the association or other member participated in, had knowledge of, or reason to know of, the violation.*

*(B) ASSOCIATION'S VIOLATION DOES NOT NECESSARILY DISQUALIFY MEMBERS.—*

*(i) If an association representing agricultural producers as a joint employer is determined to have committed an act that results in the denial of a petition with respect to the association, the denial shall apply only to the association and does not apply to any individual producer member of the association unless the*

*Secretary of Labor determines that the member participated in, had knowledge of, or reason to know of, the violation.*

*(ii) If an association of agricultural producers certified as a sole employer is determined to have committed an act that results in the denial of a petition with respect to the association, no individual producer member of such association may be the beneficiary of the services of H-2A workers in the commodity and occupation in which such aliens were employed by the association which was denied during the period such denial is in force, unless such producer member employs such aliens in the commodity and occupation in question directly or through an association which is a joint employer of such workers with the producer member.*

*(5) SPECIAL PROCEDURES.—The Secretary of Labor, in consultation with the Secretary of Agriculture and Secretary of Homeland Security, may by regulation establish alternate procedures that reasonably modify program requirements under this section, when the Secretary determines that such modifications are required due to the unique nature of the work involved.*

*(6) CONSTRUCTION OCCUPATIONS.—An employer may not file a petition under this section on behalf of a worker if the majority of the worker's duties will fall within a construction or extraction occupational classification.*

*(i) NON-TEMPORARY OR -SEASONAL NEEDS.—*

*(1) IN GENERAL.—Notwithstanding the requirement in section 101(a)(15)(H)(ii)(a) that the agricultural labor or services performed by an H-2A worker be of a temporary or seasonal nature, the Secretary of Homeland Security may, consistent with the provisions of this subsection, approve a petition for an H-2A worker to perform agricultural services or labor that is not of a temporary or seasonal nature.*

*(2) NUMERICAL LIMITATIONS.—*

*(A) FIRST 3 FISCAL YEARS.—The total number of aliens who may be issued visas or otherwise provided H-2A non-immigrant status under paragraph (1) for the first fiscal year during which the first visa is issued under such paragraph and for each of the following two fiscal years may not exceed 20,000.*

*(B) FISCAL YEARS 4 THROUGH 10.—*

*(i) IN GENERAL.—The total number of aliens who may be issued visas or otherwise provided H-2A non-immigrant status under paragraph (1) for the first fiscal year following the fiscal years referred to in subparagraph (A) and for each of the following six fiscal years may not exceed a numerical limitation jointly imposed by the Secretary of Agriculture and Secretary of Labor in accordance with clause (ii).*

*(ii) ANNUAL ADJUSTMENTS.—For each fiscal year referred to in clause (i), the Secretary of Agriculture and Secretary of Labor, in consultation with the Secretary of Homeland Security, shall establish a numerical limitation for purposes of clause (i). Such numerical limi-*

tation may not be lower 20,000 and may not vary by more than 12.5 percent compared to the numerical limitation applicable to the immediately preceding fiscal year. In establishing such numerical limitation, the Secretaries shall consider appropriate factors, including—

(I) a demonstrated shortage of agricultural workers;

(II) the level of unemployment and underemployment of agricultural workers during the preceding fiscal year;

(III) the number of H-2A workers sought by employers during the preceding fiscal year to engage in agricultural labor or services not of a temporary or seasonal nature;

(IV) the number of such H-2A workers issued a visa in the most recent fiscal year who remain in the United States in compliance with the terms of such visa;

(V) the estimated number of United States workers, including workers who obtained certified agricultural worker status under title I of the Farm Workforce Modernization Act of 2019, who worked during the preceding fiscal year in agricultural labor or services not of a temporary or seasonal nature;

(VI) the number of such United States workers who accepted jobs offered by employers using the online job registry during the preceding fiscal year;

(VII) any growth or contraction of the United States agricultural industry that has increased or decreased the demand for agricultural workers; and

(VIII) any changes in the real wages paid to agricultural workers in the United States as an indication of a shortage or surplus of agricultural labor.

(C) **SUBSEQUENT FISCAL YEARS.**—For each fiscal year following the fiscal years referred to in subparagraph (B), the Secretary of Agriculture and Secretary of Labor shall jointly determine, in consultation with the Secretary of Homeland Security, and after considering appropriate factors, including those factors listed in subclauses (I) through (VIII) of subparagraph (B)(ii), whether to establish a numerical limitation for that fiscal year. If a numerical limitation is so established—

(i) such numerical limitation may not be lower than highest number of aliens admitted under this subsection in any of the three fiscal years immediately preceding the fiscal year for which the numerical limitation is to be established; and

(ii) the total number of aliens who may be issued visas or otherwise provided H-2A nonimmigrant status under paragraph (1) for that fiscal year may not exceed such numerical limitation.

(D) *EMERGENCY PROCEDURES.*—The Secretary of Agriculture and Secretary of Labor, in consultation with the Secretary of Homeland Security, shall jointly establish by regulation procedures for immediately adjusting a numerical limitation imposed under subparagraph (B) or (C) to account for significant labor shortages.

(3) *ALLOCATION OF VISAS.*—

(A) *BI-ANNUAL ALLOCATION.*—The annual allocation of visas described in paragraph (2) shall be evenly allocated between two halves of the fiscal year unless the Secretary of Homeland Security, in consultation with the Secretary of Agriculture and Secretary of Labor, determines that an alternative allocation would better accommodate demand for visas. Any unused visas in the first half of the fiscal year shall be added to the allocation for the subsequent half of the same fiscal year.

(B) *RESERVE FOR DAIRY LABOR OR SERVICES.*—

(i) *IN GENERAL.*—Of the visa numbers made available in each half of the fiscal year pursuant to subparagraph (A), 50 percent of such visas shall be reserved for employers filing petitions seeking H-2A workers to engage in agricultural labor or services in the dairy industry.

(ii) *EXCEPTION.*—If, after four months have elapsed in one half of the fiscal year, the Secretary of Homeland Security determines that application of clause (i) will result in visas going unused during that half of the fiscal year, clause (i) shall not apply to visas under this paragraph during the remainder of such calendar half.

(4) *ANNUAL ROUND TRIP HOME.*—

(A) *IN GENERAL.*—In addition to the other requirements of this section, an employer shall provide H-2A workers employed under this subsection, at no cost to such workers, with annual round trip travel, including transportation and subsistence during travel, to their homes in their communities of origin. The employer must provide such travel within 14 months of the initiation of the worker's employment, and no more than 14 months can elapse between each required period of travel.

(B) *LIMITATION.*—The cost of travel under subparagraph

(A) need not exceed the lesser of—

(i) the actual cost to the worker of the transportation and subsistence involved; or

(ii) the most economical and reasonable common carrier transportation charges and subsistence costs for the distance involved.

(5) *FAMILY HOUSING.*—An employer seeking to employ an H-2A worker pursuant to this subsection shall offer family housing to workers with families if such workers are engaged in agricultural employment that is not of a seasonal or temporary nature. The worker may reject such an offer. The employer may not charge the worker for the worker's housing, except that if the worker accepts family housing, a prorated rent based on the

fair market value for such housing may be charged for the worker's family members.

(6) *WORKPLACE SAFETY PLAN FOR DAIRY EMPLOYEES.*—

(A) *IN GENERAL.*—If an employer is seeking to employ a worker in agricultural labor or services in the dairy industry pursuant to this subsection, the employer must report incidents consistent with the requirements under section 1904.39 of title 29, Code of Federal Regulations, and maintain an effective worksite safety and compliance plan to prevent workplace accidents and otherwise ensure safety. Such plan shall—

(i) be in writing in English and, to the extent necessary, any language common to a significant portion of the workers if they are not fluent in English; and

(ii) be posted at a conspicuous location at the worksite and provided to employees prior to the commencement of labor or services.

(B) *CONTENTS OF PLAN.*—The Secretary of Labor, in consultation with the Secretary of Agriculture, shall establish by regulation the minimum requirements for the plan described in subparagraph (A). Such plan shall include measures to—

(i) require workers (other than the employer's family members) whose positions require contact with animals to complete animal care training, including animal handling and job-specific animal care;

(ii) protect against sexual harassment and violence, resolve complaints involving harassment or violence, and protect against retaliation against workers reporting harassment or violence; and

(iii) contain other provisions necessary for ensuring workplace safety, as determined by the Secretary of Labor, in consultation with the Secretary of Agriculture.

(j) *ELIGIBILITY FOR H-2A STATUS AND ADMISSION TO THE UNITED STATES.*—

(1) *DISQUALIFICATION.*—An alien shall be ineligible for admission to the United States as an H-2A worker pursuant to a petition filed under this section if the alien was admitted to the United States as an H-2A worker within the past 5 years of the date the petition was filed and—

(A) violated a material provision of this section, including the requirement to promptly depart the United States when the alien's authorized period of admission has expired, unless the alien has good cause for such failure to depart; or

(B) otherwise violated a term or condition of admission into the United States as an H-2A worker.

(2) *VISA VALIDITY.*—A visa issued to an H-2A worker shall be valid for three years and shall allow for multiple entries during the approved period of admission.

(3) *PERIOD OF AUTHORIZED STAY; ADMISSION.*—

(A) *IN GENERAL.*—An alien admissible as an H-2A worker shall be authorized to stay in the United States for the period of employment specified in the petition approved by

*the Secretary of Homeland Security under this section. The maximum continuous period of authorized stay for an H-2A worker is 36 months.*

*(B) REQUIREMENT TO REMAIN OUTSIDE THE UNITED STATES.—In the case of an H-2A worker whose maximum continuous period of authorized stay (including any extensions) has expired, the alien may not again be eligible for such stay until the alien remains outside the United States for a cumulative period of at least 45 days.*

*(C) EXCEPTIONS.—The Secretary of Homeland Security shall deduct absences from the United States that take place during an H-2A worker's period of authorized stay from the period that the alien is required to remain outside the United States under subparagraph (B), if the alien or the alien's employer requests such a deduction, and provides clear and convincing proof that the alien qualifies for such a deduction. Such proof shall consist of evidence including, but not limited to, arrival and departure records, copies of tax returns, and records of employment abroad.*

*(D) ADMISSION.—In addition to the maximum continuous period of authorized stay, an H-2A worker's authorized period of admission shall include an additional period of 10 days prior to the beginning of the period of employment for the purpose of traveling to the place of employment and 45 days at the end of the period of employment for the purpose of traveling home or seeking an extension of status based on a subsequent offer of employment if the worker has not reached the maximum continuous period of authorized stay under subparagraph (A) (subject to the exceptions in subparagraph (C)).*

**(4) CONTINUING H-2A WORKERS.—**

*(A) SUCCESSIVE EMPLOYMENT.—An H-2A worker is authorized to start new or concurrent employment upon the filing of a nonfrivolous H-2A petition, or as of the requested start date, whichever is later if—*

*(i) the petition to start new or concurrent employment was filed prior to the expiration of the H-2A worker's period of admission as defined in paragraph (3)(D); and*

*(ii) the H-2A worker has not been employed without authorization in the United States from the time of last admission to the United States in H-2A status through the filing of the petition for new employment.*

*(B) PROTECTION DUE TO IMMIGRANT VISA BACKLOGS.—Notwithstanding the limitations on the period of authorized stay described in paragraph (3), any H-2A worker who—*

*(i) is the beneficiary of an approved petition, filed under section 204(a)(1)(E) or (F) for preference status under section 203(b)(3)(A)(iii); and*

*(ii) is eligible to be granted such status but for the annual limitations on visas under section 203(b)(3)(A), may apply for, and the Secretary of Homeland Security may grant, an extension of such nonimmigrant status until the Secretary of Homeland Security issues a final administrative decision on the alien's application for adjustment of*

*status or the Secretary of State issues a final decision on the alien's application for an immigrant visa.*

**(5) ABANDONMENT OF EMPLOYMENT.—**

*(A) IN GENERAL.—Except as provided in subparagraph (B), an H-2A worker who abandons the employment which was the basis for the worker's authorized stay, without good cause, shall be considered to have failed to maintain H-2A status and shall depart the United States or be subject to removal under section 237(a)(1)(C)(i).*

*(B) GRACE PERIOD TO SECURE NEW EMPLOYMENT.—An H-2A worker shall not be considered to have failed to maintain H-2A status solely on the basis of a cessation of the employment on which the alien's classification was based for a period of 45 consecutive days, or until the end of the authorized validity period, whichever is shorter, once during each authorized validity period.*

**(k) REQUIRED DISCLOSURES.—**

*(1) DISCLOSURE OF WORK CONTRACT.—Not later than the time the H-2A worker applies for a visa, the employer shall provide the worker with a copy of the work contract that includes the disclosures and rights under this section (or in the absence of such a contract, a copy of the job order and proof of the certification described in subparagraphs (B) and (D) of subsection (h)(2)). An H-2A worker moving from one H-2A employer to a subsequent H-2A employer shall be provided with a copy of the new employment contract no later than the time an offer of employment is made by the subsequent employer.*

*(2) HOURS AND EARNINGS STATEMENTS.—The employer shall furnish to H-2A workers, on or before each payday, in 1 or more written statements—*

*(A) the worker's total earnings for the pay period;*

*(B) the worker's hourly rate of pay, piece rate of pay, or both;*

*(C) the hours of employment offered to the worker and the hours of employment actually worked;*

*(D) if piece rates of pay are used, the units produced daily;*

*(E) an itemization of the deductions made from the worker's wages; and*

*(F) any other information required by Federal, State or local law.*

*(3) NOTICE OF WORKER RIGHTS.—The employer must post and maintain in a conspicuous location at the place of employment, a poster provided by the Secretary of Labor in English, and, to the extent necessary, any language common to a significant portion of the workers if they are not fluent in English, which sets out the rights and protections for workers employed pursuant to this section.*

**(l) LABOR CONTRACTORS; FOREIGN LABOR RECRUITERS; PROHIBITION ON FEES.—**

**(1) LABOR CONTRACTORS.—**

*(A) SURETY BOND.—An employer that is a labor contractor who seeks to employ H-2A workers shall maintain a surety bond in an amount required under subparagraph (B). Such bond shall be payable to the Secretary of Labor*



or pursuant to the resolution of a civil or criminal proceeding, for the payment of wages and benefits, including any assessment of interest, owed to an H-2A worker or a similarly employed United States worker, or a United States worker who has been rejected or displaced in violation of this section.

(B) **AMOUNT OF BOND.**—The Secretary of Labor shall annually publish in the Federal Register a schedule of required bond amounts that are determined by such Secretary to be sufficient for labor contractors to discharge financial obligations under this section based on the number of workers the labor contractor seeks to employ and the wages such workers are required to be paid.

(C) **PREMIUM BOND.**—A labor contractor seeking to file a petition involving more than 1 start date under subsection (h)(1)(C) shall maintain a surety bond that is at least 15 percent higher than the applicable bond amount determined by the Secretary under subparagraph (B).

(D) **USE OF FUNDS.**—Any sums paid to the Secretary under subparagraph (A) that are not paid to a worker because of the inability to do so within a period of 5 years following the date of a violation giving rise to the obligation to pay shall remain available to the Secretary without further appropriation until expended to support the enforcement of this section.

(2) **FOREIGN LABOR RECRUITING.**—If the employer has retained the services of a foreign labor recruiter, the employer shall use a foreign labor recruiter registered under section 251 of the Farm Workforce Modernization Act of 2019.

(3) **PROHIBITION AGAINST EMPLOYEES PAYING FEES.**—Neither the employer nor its agents shall seek or receive payment of any kind from any worker for any activity related to the H-2A process, including payment of the employer's attorneys' fees, application fees, or recruitment costs. An employer and its agents may receive reimbursement for costs that are the responsibility and primarily for the benefit of the worker, such as government-required passport fees.

(4) **THIRD PARTY CONTRACTS.**—The contract between an employer and any labor contractor or any foreign labor recruiter (or any agent of such labor contractor or foreign labor recruiter) whom the employer engages shall include a term providing for the termination of such contract for cause if the contractor or recruiter, either directly or indirectly, in the placement or recruitment of H-2A workers seeks or receives payments or other compensation from prospective employees. Upon learning that a labor contractor or foreign labor recruiter has sought or collected such payments, the employer shall so terminate any contracts with such contractor or recruiter.

(m) **ENFORCEMENT AUTHORITY.**—

(1) **IN GENERAL.**—The Secretary of Labor is authorized to take such actions against employers, including imposing appropriate penalties and seeking monetary and injunctive relief and specific performance of contractual obligations, as may be necessary to ensure compliance with the requirements of this sec-

tion and with the applicable terms and conditions of employment.

(2) COMPLAINT PROCESS.—

(A) PROCESS.—The Secretary of Labor shall establish a process for the receipt, investigation, and disposition of complaints alleging failure of an employer to comply with the requirements under this section and with the applicable terms and conditions of employment.

(B) FILING.—A complaint referred to in subparagraph (A) may be filed not later than 2 years after the date of the conduct that is the subject of the complaint.

(C) COMPLAINT NOT EXCLUSIVE.—A complaint filed under this paragraph is not an exclusive remedy and the filing of such a complaint does not waive any rights or remedies of the aggrieved party under this law or other laws.

(D) DECISION AND REMEDIES.—If the Secretary of Labor finds, after notice and opportunity for a hearing, that the employer failed to comply with the requirements of this section or the terms and conditions of employment, the Secretary of Labor may require payment of unpaid wages, unpaid benefits, fees assessed in violation of this section, damages, and civil money penalties. The Secretary is also authorized to impose other administrative remedies, including disqualification of the employer from utilizing the H-2A program for a period of up to 5 years in the event of willful or multiple material violations. The Secretary is authorized to permanently disqualify an employer from utilizing the H-2A program upon a subsequent finding involving willful or multiple material violations.

(E) DISPOSITION OF PENALTIES.—Civil penalties collected under this paragraph shall be deposited into the H-2A Labor Certification Fee Account established under section 203 of the Farm Workforce Modernization Act of 2019.

(3) STATUTORY CONSTRUCTION.—Nothing in this subsection may be construed as limiting the authority of the Secretary of Labor to conduct an investigation—

(A) under any other law, including any law affecting migrant and seasonal agricultural workers; or

(B) in the absence of a complaint.

(4) RETALIATION PROHIBITED.—It is a violation of this subsection for any person who has filed a petition under this section to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other manner discriminate against, or to cause any person to intimidate, threaten, restrain, coerce, blacklist, or in any manner discriminate against, an employee, including a former employee or an applicant for employment, because the employee—

(A) has disclosed information to the employer, or to any other person, that the employee reasonably believes evidences a violation under this section, or any rule or regulation relating to this section;

(B) has filed a complaint concerning the employer's compliance with the requirements under this section or any rule or regulation pertaining to this section;

(C) cooperates or seeks to cooperate in an investigation or other proceeding concerning the employer's compliance with the requirements under this section or any rule or regulation pertaining to this section; or

(D) has taken steps to exercise or assert any right or protection under the provisions of this section, or any rule or regulation pertaining to this section, or any other relevant Federal, State, or local law.

(5) *INTERAGENCY COMMUNICATION.*—The Secretary of Labor, in consultation with the Secretary of Homeland Security, Secretary of State and the Equal Employment Opportunity Commission, shall establish mechanisms by which the agencies and their components share information, including by public electronic means, regarding complaints, studies, investigations, findings and remedies regarding compliance by employers with the requirements of the H-2A program and other employment-related laws and regulations.

(n) *DEFINITIONS.*—In this section:

(1) *DISPLACE.*—The term “displace” means to lay off a similarly employed United States worker, other than for lawful job-related reasons, in the occupation and area of intended employment for the job for which H-2A workers are sought.

(2) *H-2A WORKER.*—The term “H-2A worker” means a non-immigrant described in section 101(a)(15)(H)(ii)(a).

(3) *JOB ORDER.*—The term “job order” means the document containing the material terms and conditions of employment, including obligations and assurances required under this section or any other law.

(4) *ONLINE JOB REGISTRY.*—The term “online job registry” means the online job registry of the Secretary of Labor required under section 201(b) of the Farm Workforce Modernization Act of 2019 (or similar successor registry).

(5) *SIMILARLY EMPLOYED.*—The term “similarly employed”, in the case of a worker, means a worker in the same occupational classification as the classification or classifications for which the H-2A worker is sought.

(6) *UNITED STATES WORKER.*—The term “United States worker” means any worker who is—

(A) a citizen or national of the United States;

(B) an alien who is lawfully admitted for permanent residence, is admitted as a refugee under section 207, is granted asylum under section 208, or is an immigrant otherwise authorized to be employed in the United States;

(C) an alien granted certified agricultural worker status under title I of the Farm Workforce Modernization Act of 2019; or

(D) an individual who is not an unauthorized alien (as defined in section 274A(h)(3)) with respect to the employment in which the worker is engaging.

(o) *FEES; AUTHORIZATION OF APPROPRIATIONS.*—

(1) *FEES.*—

(A) *IN GENERAL.*—The Secretary of Homeland Security shall impose a fee to process petitions under this section. Such fee shall be set at a level that is sufficient to recover the reasonable costs of processing the petition, including the

*reasonable costs of providing labor certification by the Secretary of Labor.*

*(B) DISTRIBUTION.—Fees collected under subparagraph (A) shall be deposited as offsetting receipts into the immigration examinations fee account in section 286(m), except that the portion of fees assessed for the Secretary of Labor shall be deposited into the H-2A Labor Certification Fee Account established pursuant to section 203(c) of the Farm Workforce Modernization Act of 2019.*

*(2) APPROPRIATIONS.—There are authorized to be appropriated for each fiscal year such sums as necessary for the purposes of—*

*(A) recruiting United States workers for labor or services which might otherwise be performed by H-2A workers, including by ensuring that State workforce agencies are sufficiently funded to fulfill their functions under this section;*

*(B) enabling the Secretary of Labor to make determinations and certifications under this section and under section 212(a)(5)(A)(i);*

*(C) monitoring the terms and conditions under which H-2A workers (and United States workers employed by the same employers) are employed in the United States; and*

*(D) enabling the Secretary of Agriculture to carry out the Secretary of Agriculture's duties and responsibilities under this section.*

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## CHAPTER 8—GENERAL PENALTY PROVISIONS

\* \* \* \* \*

### UNLAWFUL EMPLOYMENT OF ALIENS

#### SEC. 274A. (a) MAKING EMPLOYMENT OF UNAUTHORIZED ALIENS UNLAWFUL.—

*(1) IN GENERAL.—It is unlawful for a person or other entity—*

*(A) to hire, or to recruit or refer for a fee, for employment in the United States an alien knowing the alien is an unauthorized alien (as defined in subsection (h)(3)) with respect to such employment, or*

*(B)(i) to hire for employment in the United States an individual without complying with the requirements of subsection (b) or (ii) if the person or entity is an agricultural association, agricultural employer, or farm labor contractor (as defined in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act), to hire, or to recruit or refer for a fee, for employment in the United States an individual without complying with the requirements of [subsection (b).] section 274B.*

*(2) CONTINUING EMPLOYMENT.—It is unlawful for a person or other entity, after hiring an alien for employment in accordance with paragraph (1), to continue to employ the alien in the United States knowing the alien is (or has become) an unauthorized alien with respect to such employment.*

*(3) DEFENSE.—A person or entity that establishes that it has complied in good faith with the requirements of subsection (b)*

with respect to the hiring, recruiting, or referral for employment of an alien in the United States has established an affirmative defense that the person or entity has not violated paragraph (1)(A) with respect to such hiring, recruiting, or referral.

(4) USE OF LABOR THROUGH CONTRACT.—For purposes of this section, a person or other entity who uses a contract, subcontract, or exchange, entered into, renegotiated, or extended after the date of the enactment of this section, to obtain the labor of an alien in the United States knowing that the alien is an unauthorized alien (as defined in subsection (h)(3)) with respect to performing such labor, shall be considered to have hired the alien for employment in the United States in violation of paragraph (1)(A).

(5) USE OF STATE EMPLOYMENT AGENCY DOCUMENTATION.—For purposes of paragraphs (1)(B) and (3), a person or entity shall be deemed to have complied with the requirements of subsection (b) with respect to the hiring of an individual who was referred for such employment by a State employment agency (as defined by the Attorney General), if the person or entity has and retains (for the period and in the manner described in subsection (b)(3)) appropriate documentation of such referral by that agency, which documentation certifies that the agency has complied with the procedures specified in subsection (b) with respect to the individual's referral.

(6) TREATMENT OF DOCUMENTATION FOR CERTAIN EMPLOYEES.—

(A) IN GENERAL.—For purposes of this section, if—

(i) an individual is a member of a collective-bargaining unit and is employed, under a collective bargaining agreement entered into between one or more employee organizations and an association of two or more employers, by an employer that is a member of such association, and

(ii) within the period specified in subparagraph (B), another employer that is a member of the association (or an agent of such association on behalf of the employer) has complied with the requirements of subsection (b) with respect to the employment of the individual,

the subsequent employer shall be deemed to have complied with the requirements of subsection (b) with respect to the hiring of the employee and shall not be liable for civil penalties described in subsection (e)(5).

(B) PERIOD.—The period described in this subparagraph is 3 years, or, if less, the period of time that the individual is authorized to be employed in the United States.

(C) LIABILITY.—

(i) IN GENERAL.—If any employer that is a member of an association hires for employment in the United States an individual and relies upon the provisions of subparagraph (A) to comply with the requirements of subsection (b) and the individual is an alien not authorized to work in the United States, then for the purposes of paragraph (1)(A), subject to clause (ii), the

employer shall be presumed to have known at the time of hiring or afterward that the individual was an alien not authorized to work in the United States.

(ii) REBUTTAL OF PRESUMPTION.—The presumption established by clause (i) may be rebutted by the employer only through the presentation of clear and convincing evidence that the employer did not know (and could not reasonably have known) that the individual at the time of hiring or afterward was an alien not authorized to work in the United States.

(iii) EXCEPTION.—Clause (i) shall not apply in any prosecution under subsection (f)(1).

(7) APPLICATION TO FEDERAL GOVERNMENT.—For purposes of this section, the term “entity” includes an entity in any branch of the Federal Government.

(b) EMPLOYMENT VERIFICATION SYSTEM.—[The requirements referred] *Except as provided in section 274E, the requirements referred* to in paragraphs (1)(B) and (3) of subsection (a) are, in the case of a person or other entity hiring, recruiting, or referring an individual for employment in the United States, the requirements specified in the following three paragraphs:

(1) ATTESTATION AFTER EXAMINATION OF DOCUMENTATION.—

(A) IN GENERAL.—The person or entity must attest, under penalty of perjury and on a form designated or established by the Attorney General by regulation, that it has verified that the individual is not an unauthorized alien by examining—

(i) a document described in subparagraph (B), or

(ii) a document described in subparagraph (C) and a document described in subparagraph (D).

A person or entity has complied with the requirement of this paragraph with respect to examination of a document if the document reasonably appears on its face to be genuine. If an individual provides a document or combination of documents that reasonably appears on its face to be genuine and that is sufficient to meet the requirements of the first sentence of this paragraph, nothing in this paragraph shall be construed as requiring the person or entity to solicit the production of any other document or as requiring the individual to produce such another document.

(B) DOCUMENTS ESTABLISHING BOTH EMPLOYMENT AUTHORIZATION AND IDENTITY.—A document described in this subparagraph is an individual’s—

(i) United States passport;

(ii) resident alien card, alien registration card, or other document designated by the Attorney General, if the document—

(I) contains a photograph of the individual and such other personal identifying information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this subsection,

(II) is evidence of authorization of employment in the United States, and

(III) contains security features to make it resistant to tampering, counterfeiting, and fraudulent use.

(C) DOCUMENTS EVIDENCING EMPLOYMENT AUTHORIZATION.—A document described in this subparagraph is an individual's—

(i) social security account number card (other than such a card which specifies on the face that the issuance of the card does not authorize employment in the United States); or

(ii) other documentation evidencing authorization of employment in the United States which the Attorney General finds, by regulation, to be acceptable for purposes of this section.

(D) DOCUMENTS ESTABLISHING IDENTITY OF INDIVIDUAL.—A document described in this subparagraph is an individual's—

(i) driver's license or similar document issued for the purpose of identification by a State, if it contains a photograph of the individual or such other personal identifying information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this section; or

(ii) in the case of individuals under 16 years of age or in a State which does not provide for issuance of an identification document (other than a driver's license) referred to in clause (i), documentation of personal identity of such other type as the Attorney General finds, by regulation, provides a reliable means of identification.

(E) AUTHORITY TO PROHIBIT USE OF CERTAIN DOCUMENTS.—If the Attorney General finds, by regulation, that any document described in subparagraph (B), (C), or (D) as establishing employment authorization or identity does not reliably establish such authorization or identity or is being used fraudulently to an unacceptable degree, the Attorney General may prohibit or place conditions on its use for purposes of this subsection.

(2) INDIVIDUAL ATTESTATION OF EMPLOYMENT AUTHORIZATION.—The individual must attest, under penalty of perjury on the form designated or established for purposes of paragraph (1), that the individual is a citizen or national of the United States, an alien lawfully admitted for permanent residence, or an alien who is authorized under this Act or by the Attorney General to be hired, recruited, or referred for such employment.

(3) RETENTION OF VERIFICATION FORM.—After completion of such form in accordance with paragraphs (1) and (2), the person or entity must retain the form and make it available for inspection by officers of the Service, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor during a period beginning on the date of the hiring, recruiting, or referral of the individual and ending—

(A) in the case of the recruiting or referral for a fee (without hiring) of an individual, three years after the date of the recruiting or referral, and

(B) in the case of the hiring of an individual—

(i) three years after the date of such hiring, or

(ii) one year after the date the individual's employment is terminated,

whichever is later.

(4) COPYING OF DOCUMENTATION PERMITTED.—Notwithstanding any other provision of law, the person or entity may copy a document presented by an individual pursuant to this subsection and may retain the copy, but only (except as otherwise permitted under law) for the purpose of complying with the requirements of this subsection.

(5) LIMITATION ON USE OF ATTESTATION FORM.—A form designated or established by the Attorney General under this subsection and any information contained in or appended to such form, may not be used for purposes other than for enforcement of this Act and sections 1001, 1028, 1546, and 1621 of title 18, United States Code.

(6) GOOD FAITH COMPLIANCE.—

(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), a person or entity is considered to have complied with a requirement of this subsection notwithstanding a technical or procedural failure to meet such requirement if there was a good faith attempt to comply with the requirement.

(B) EXCEPTION IF FAILURE TO CORRECT AFTER NOTICE.—Subparagraph (A) shall not apply if—

(i) the Service (or another enforcement agency) has explained to the person or entity the basis for the failure,

(ii) the person or entity has been provided a period of not less than 10 business days (beginning after the date of the explanation) within which to correct the failure, and

(iii) the person or entity has not corrected the failure voluntarily within such period.

(C) EXCEPTION FOR PATTERN OR PRACTICE VIOLATORS.—Subparagraph (A) shall not apply to a person or entity that has or is engaging in a pattern or practice of violations of subsection (a)(1)(A) or (a)(2).

(c) NO AUTHORIZATION OF NATIONAL IDENTIFICATION CARDS.—Nothing in this section shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.

(d) EVALUATION AND CHANGES IN EMPLOYMENT VERIFICATION SYSTEM.—

(1) PRESIDENTIAL MONITORING AND IMPROVEMENTS IN SYSTEM.—

(A) MONITORING.—The President shall provide for the monitoring and evaluation of the degree to which the employment verification system established under subsection (b) provides a secure system to determine employment eligibility in the United States and shall examine the suit-



ability of existing Federal and State identification systems for use for this purpose.

(B) IMPROVEMENTS TO ESTABLISH SECURE SYSTEM.—To the extent that the system established under subsection (b) is found not to be a secure system to determine employment eligibility in the United States, the President shall, subject to paragraph (3) and taking into account the results of any demonstration projects conducted under paragraph (4), implement such changes in (including additions to) the requirements of subsection (b) as may be necessary to establish a secure system to determine employment eligibility in the United States. Such changes in the system may be implemented only if the changes conform to the requirements of paragraph (2).

(2) RESTRICTIONS ON CHANGES IN SYSTEM.—Any change the President proposes to implement under paragraph (1) in the verification system must be designed in a manner so the verification system, as so changed, meets the following requirements:

(A) RELIABLE DETERMINATION OF IDENTITY.—The system must be capable of reliably determining whether—

- (i) a person with the identity claimed by an employee or prospective employee is eligible to work, and
- (ii) the employee or prospective employee is claiming the identity of another individual.

(B) USING OF COUNTERFEIT-RESISTANT DOCUMENTS.—If the system requires that a document be presented to or examined by an employer, the document must be in a form which is resistant to counterfeiting and tampering.

(C) LIMITED USE OF SYSTEM.—Any personal information utilized by the system may not be made available to Government agencies, employers, and other persons except to the extent necessary to verify that an individual is not an unauthorized alien.

(D) PRIVACY OF INFORMATION.—The system must protect the privacy and security of personal information and identifiers utilized in the system.

(E) LIMITED DENIAL OF VERIFICATION.—A verification that an employee or prospective employee is eligible to be employed in the United States may not be withheld or revoked under the system for any reason other than that the employee or prospective employee is an unauthorized alien.

(F) LIMITED USE FOR LAW ENFORCEMENT PURPOSES.—The system may not be used for law enforcement purposes, other than for enforcement of this Act or sections 1001, 1028, 1546, and 1621 of title 18, United States Code.

(G) RESTRICTION ON USE OF NEW DOCUMENTS.—If the system requires individuals to present a new card or other document (designed specifically for use for this purpose) at the time of hiring, recruitment, or referral, then such document may not be required to be presented for any purpose other than under this Act (or enforcement of sections 1001, 1028, 1546, and 1621 of title 18, United States Code) nor to be carried on one's person.

## (3) NOTICE TO CONGRESS BEFORE IMPLEMENTING CHANGES.—

(A) IN GENERAL.—The President may not implement any change under paragraph (1) unless at least—

- (i) 60 days,
- (ii) one year, in the case of a major change described in subparagraph (D)(iii), or
- (iii) two years, in the case of a major change described in clause (i) or (ii) of subparagraph (D),

before the date of implementation of the change, the President has prepared and transmitted to the Committee on the Judiciary of the House of Representatives and to the Committee on the Judiciary of the Senate a written report setting forth the proposed change. If the President proposes to make any change regarding social security account number cards, the President shall transmit to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate a written report setting forth the proposed change. The President promptly shall cause to have printed in the Federal Register the substance of any major change (described in subparagraph (D)) proposed and reported to Congress.

(B) CONTENTS OF REPORT.—In any report under subparagraph (A) the President shall include recommendations for the establishment of civil and criminal sanctions for unauthorized use or disclosure of the information or identifiers contained in such system.

## (C) CONGRESSIONAL REVIEW OF MAJOR CHANGES.—

(i) HEARINGS AND REVIEW.—The Committees on the Judiciary of the House of Representatives and of the Senate shall cause to have printed in the Congressional Record the substance of any major change described in subparagraph (D), shall hold hearings respecting the feasibility and desirability of implementing such a change, and, within the two year period before implementation, shall report to their respective Houses findings on whether or not such a change should be implemented.

(ii) CONGRESSIONAL ACTION.—No major change may be implemented unless the Congress specifically provides, in an appropriations or other Act, for funds for implementation of the change.

(D) MAJOR CHANGES DEFINED.—As used in this paragraph, the term “major change” means a change which would—

- (i) require an individual to present a new card or other document (designed specifically for use for this purpose) at the time of hiring, recruitment, or referral,
- (ii) provide for a telephone verification system under which an employer, recruiter, or referrer must transmit to a Federal official information concerning the immigration status of prospective employees and the official transmits to the person, and the person must record, a verification code, or
- (iii) require any change in any card used for accounting purposes under the Social Security Act, in-

cluding any change requiring that the only social security account number cards which may be presented in order to comply with subsection (b)(1)(C)(i) are such cards as are in a counterfeit-resistant form consistent with the second sentence of section 205(c)(2)(D) of the Social Security Act.

(E) GENERAL REVENUE FUNDING OF SOCIAL SECURITY CARD CHANGES.—Any costs incurred in developing and implementing any change described in subparagraph (D)(iii) for purposes of this subsection shall not be paid for out of any trust fund established under the Social Security Act.

(4) DEMONSTRATION PROJECTS.—

(A) AUTHORITY.—The President may undertake demonstration projects (consistent with paragraph (2)) of different changes in the requirements of subsection (b). No such project may extend over a period of longer than five years.

(B) REPORTS ON PROJECTS.—The President shall report to the Congress on the results of demonstration projects conducted under this paragraph.

(e) COMPLIANCE.—

(1) COMPLAINTS AND INVESTIGATIONS.—The Attorney General shall establish procedures—

(A) for individuals and entities to file written, signed complaints respecting potential violations of subsection (a) or (g)(1),

(B) for the investigation of those complaints which, on their face, have a substantial probability of validity,

(C) for the investigation of such other violations of subsection (a) or (g)(1) as the Attorney General determines to be appropriate, and

(D) for the designation in the Service of a unit which has, as its primary duty, the prosecution of cases of violations of subsection (a) or (g)(1) under this subsection.

(2) AUTHORITY IN INVESTIGATIONS.—In conducting investigations and hearings under this subsection—

(A) immigration officers and administrative law judges shall have reasonable access to examine evidence of any person or entity being investigated,

(B) administrative law judges, may, if necessary, compel by subpoena the attendance of witnesses and the production of evidence at any designated place or hearing, and

(C) immigration officers designated by the Commissioner may compel by subpoena the attendance of witnesses and the production of evidence at any designated place prior to the filing of a complaint in a case under paragraph (2).

In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph and upon application of the Attorney General, an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such order may be punished by such court as a contempt thereof.

(3) HEARING.—

(A) IN GENERAL.—Before imposing an order described in paragraph (4), (5), or (6) against a person or entity under

this subsection for a violation of subsection (a) or (g)(1), the Attorney General shall provide the person or entity with notice and, upon request made within a reasonable time (of not less than 30 days, as established by the Attorney General) of the date of the notice, a hearing respecting the violation.

(B) CONDUCT OF HEARING.—Any hearing so requested shall be conducted before an administrative law judge. The hearing shall be conducted in accordance with the requirements of section 554 of title 5, United States Code. The hearing shall be held at the nearest practicable place to the place where the person or entity resides or of the place where the alleged violation occurred. If no hearing is so requested, the Attorney General's imposition of the order shall constitute a final and unappealable order.

(C) ISSUANCE OF ORDERS.—If the administrative law judge determines, upon the preponderance of the evidence received, that a person or entity named in the complaint has violated subsection (a) or (g)(1), the administrative law judge shall state his findings of fact and issue and cause to be served on such person or entity an order described in paragraph (4), (5), or (6).

(4) CEASE AND DESIST ORDER WITH CIVIL MONEY PENALTY FOR HIRING, RECRUITING, AND REFERRAL VIOLATIONS.—With respect to a violation of subsection (a)(1)(A) or (a)(2), the order under this subsection—

(A) shall require the person or entity to cease and desist from such violations and to pay a civil penalty in an amount of—

(i) not less than \$250 and not more than \$2,000 for each unauthorized alien with respect to whom a violation of either such subsection occurred,

(ii) not less than \$2,000 and not more than \$5,000 for each such alien in the case of a person or entity previously subject to one order under this paragraph, or

(iii) not less than \$3,000 and not more than \$10,000 for each such alien in the case of a person or entity previously subject to more than one order under this paragraph; and

(B) may require the person or entity—

(i) to comply with the requirements of subsection (b) (or subsection (d) if applicable) with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years, and

(ii) to take such other remedial action as is appropriate.

In applying this subsection in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and not under the control of or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

(5) ORDER FOR CIVIL MONEY PENALTY FOR PAPERWORK VIOLATIONS.—With respect to a violation of subsection (a)(1)(B), the order under this subsection shall require the person or entity to pay a civil penalty in an amount of not less than \$100 and not more than \$1,000 for each individual with respect to whom such violation occurred. In determining the amount of the penalty, due consideration shall be given to the size of the business of the employer being charged, the good faith of the employer, the seriousness of the violation, whether or not the individual was an unauthorized alien, and the history of previous violations.

(6) ORDER FOR PROHIBITED INDEMNITY BONDS.—With respect to a violation of subsection (g)(1), the order under this subsection may provide for the remedy described in subsection (g)(2).

(7) ADMINISTRATIVE APPELLATE REVIEW.—The decision and order of an administrative law judge shall become the final agency decision and order of the Attorney General unless either (A) within 30 days, an official delegated by regulation to exercise review authority over the decision and order modifies or vacates the decision and order, or (B) within 30 days of the date of such a modification or vacation (or within 60 days of the date of decision and order of an administrative law judge if not so modified or vacated) the decision and order is referred to the Attorney General pursuant to regulations, in which case the decision and order of the Attorney General shall become the final agency decision and order under this subsection. The Attorney General may not delegate the Attorney General's authority under this paragraph to any entity which has review authority over immigration-related matters.

(8) JUDICIAL REVIEW.—A person or entity adversely affected by a final order respecting an assessment may, within 45 days after the date the final order is issued, file a petition in the Court of Appeals for the appropriate circuit for review of the order.

(9) ENFORCEMENT OF ORDERS.—If a person or entity fails to comply with a final order issued under this subsection against the person or entity, the Attorney General shall file a suit to seek compliance with the order in any appropriate district court of the United States. In any such suit, the validity and appropriateness of the final order shall not be subject to review.

(f) CRIMINAL PENALTIES AND INJUNCTIONS FOR PATTERN OR PRACTICE VIOLATIONS.—

(1) CRIMINAL PENALTY.—Any person or entity which engages in a pattern or practice of violations of subsection (a)(1)(A) or (a)(2) shall be fined not more than \$3,000 for each unauthorized alien with respect to whom such a violation occurs, imprisoned for not more than six months for the entire pattern or practice, or both, notwithstanding the provisions of any other Federal law relating to fine levels.

(2) ENJOINING OF PATTERN OR PRACTICE VIOLATIONS.—Whenever the Attorney General has reasonable cause to believe that a person or entity is engaged in a pattern or practice of employment, recruitment, or referral in violation of paragraph

(1)(A) or (2) of subsection (a), the Attorney General may bring a civil action in the appropriate district court of the United States requesting such relief, including a permanent or temporary injunction, restraining order, or other order against the person or entity, as the Attorney General deems necessary.

(g) PROHIBITION OF INDEMNITY BONDS.—

(1) PROHIBITION.—It is unlawful for a person or other entity, in the hiring, recruiting, or referring for employment of any individual, to require the individual to post a bond or security, to pay or agree to pay an amount, or otherwise to provide a financial guarantee or indemnity, against any potential liability arising under this section relating to such hiring, recruiting, or referring of the individual.

(2) CIVIL PENALTY.—Any person or entity which is determined, after notice and opportunity for an administrative hearing under subsection (e), to have violated paragraph (1) shall be subject to a civil penalty of \$1,000 for each violation and to an administrative order requiring the return of any amounts received in violation of such paragraph to the employee or, if the employee cannot be located, to the general fund of the Treasury.

(h) MISCELLANEOUS PROVISIONS.—

(1) DOCUMENTATION.—In providing documentation or endorsement of authorization of aliens (other than aliens lawfully admitted for permanent residence) authorized to be employed in the United States, the Attorney General shall provide that any limitations with respect to the period or type of employment or employer shall be conspicuously stated on the documentation or endorsement.

(2) PREEMPTION.—The provisions of this section preempt any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens.

(3) DEFINITION OF UNAUTHORIZED ALIEN.—As used in this section, the term “unauthorized alien” means, with respect to the employment of an alien at a particular time, that the alien is not at that time either (A) an alien lawfully admitted for permanent residence, or (B) authorized to be so employed by this Act or by the Attorney General.

UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES

SEC. 274B. (a) PROHIBITION OF DISCRIMINATION BASED ON NATIONAL ORIGIN OR CITIZENSHIP STATUS.—

(1) GENERAL RULE.—It is an unfair immigration-related employment practice for a person or other entity to discriminate against any individual (other than an unauthorized alien, as defined in section 274A(h)(3)) with respect to the hiring, or recruitment or referral for a fee, *including misuse of the verification system as described in section 274E(g)* of the individual for employment or the discharging of the individual from employment—

(A) because of such individual’s national origin, or

(B) in the case of a protected individual (as defined in paragraph (3)), because of such individual's citizenship status.

(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

(A) a person or other entity that employs three or fewer employees,

(B) a person's or entity's discrimination because of an individual's national origin if the discrimination with respect to that person or entity and that individual is covered under section 703 of the Civil Rights Act of 1964, or

(C) discrimination because of citizenship status which is otherwise required in order to comply with law, regulation, or executive order, or required by Federal, State, or local government contract, or which the Attorney General determines to be essential for an employer to do business with an agency or department of the Federal, State, or local government.

(3) DEFINITION OF PROTECTED INDIVIDUAL.—As used in paragraph (1), the term “protected individual” means an individual who—

(A) is a citizen or national of the United States, or

(B) is an alien who is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence under section 210(a) or 245A(a)(1), is admitted as a refugee under section 207, or is granted asylum under section 208; but does not include (i) an alien who fails to apply for naturalization within six months of the date the alien first becomes eligible (by virtue of period of lawful permanent residence) to apply for naturalization or, if later, within six months after the date of the enactment of this section and (ii) an alien who has applied on a timely basis, but has not been naturalized as a citizen within 2 years after the date of the application, unless the alien can establish that the alien is actively pursuing naturalization, except that time consumed in the Service's processing the application shall not be counted toward the 2-year period.

(4) ADDITIONAL EXCEPTION PROVIDING RIGHT TO PREFER EQUALLY QUALIFIED CITIZENS.—Notwithstanding any other provision of this section, it is not an unfair immigration-related employment practice for a person or other entity to prefer to hire, recruit, or refer an individual who is a citizen or national of the United States over another individual who is an alien if the two individuals are equally qualified.

(5) PROHIBITION OF INTIMIDATION OR RETALIATION.—It is also an unfair immigration-related employment practice for a person or other entity to intimidate, threaten, coerce, or retaliate against any individual for the purpose of interfering with any right or privilege secured under this section or because the individual intends to file or has filed a charge or a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this section. An individual so intimidated, threatened, coerced, or retaliated against shall be considered, for purposes of subsections (d) and (g), to have been discriminated against.

(6) TREATMENT OF CERTAIN DOCUMENTARY PRACTICES AS EMPLOYMENT PRACTICES.—A person's or other entity's request, for purposes of satisfying the requirements of section 274A(b), for more or different documents than are required under such section or refusing to honor documents tendered that on their face reasonably appear to be genuine shall be treated as an unfair immigration-related employment practice if made for the purpose or with the intent of discriminating against an individual in violation of paragraph (1).

(b) CHARGES OF VIOLATIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), any person alleging that the person is adversely affected directly by an unfair immigration-related employment practice (or a person on that person's behalf) or an officer of the Service alleging that an unfair immigration-related employment practice has occurred or is occurring may file a charge respecting such practice or violation with the Special Counsel (appointed under subsection (c)). Charges shall be in writing under oath or affirmation and shall contain such information as the Attorney General requires. The Special Counsel by certified mail shall serve a notice of the charge (including the date, place, and circumstances of the alleged unfair immigration-related employment practice) on the person or entity involved within 10 days.

(2) NO OVERLAP WITH EEOC COMPLAINTS.—No charge may be filed respecting an unfair immigration-related employment practice described in subsection (a)(1)(A) if a charge with respect to that practice based on the same set of facts has been filed with the Equal Employment Opportunity Commission under title VII of the Civil Rights Act of 1964, unless the charge is dismissed as being outside the scope of such title. No charge respecting an employment practice may be filed with the Equal Employment Opportunity Commission under such title if a charge with respect to such practice based on the same set of facts has been filed under this subsection, unless the charge is dismissed under this section as being outside the scope of this section.

(c) SPECIAL COUNSEL.—

(1) APPOINTMENT.—The President shall appoint, by and with the advice and consent of the Senate, a Special Counsel for Immigration-Related Unfair Employment Practices (hereinafter in this section referred to as the "Special Counsel") within the Department of Justice to serve for a term of four years. In the case of a vacancy in the office of the Special Counsel the President may designate the officer or employee who shall act as Special Counsel during such vacancy.

(2) DUTIES.—The Special Counsel shall be responsible for investigation of charges and issuance of complaints under this section and in respect of the prosecution of all such complaints before administrative law judges and the exercise of certain functions under subsection (j)(1).

(3) COMPENSATION.—The Special Counsel is entitled to receive compensation at a rate not to exceed the rate now or hereafter provided for grade GS-17 of the General Schedule, under section 5332 of title 5, United States Code.



(4) REGIONAL OFFICES.—The Special Counsel, in accordance with regulations of the Attorney General, shall establish such regional offices as may be necessary to carry out his duties.

(d) INVESTIGATION OF CHARGES.—

(1) BY SPECIAL COUNSEL.—The Special Counsel shall investigate each charge received and, within 120 days of the date of the receipt of the charge, determine whether or not there is reasonable cause to believe that the charge is true and whether or not to bring a complaint with respect to the charge before an administrative law judge. The Special Counsel may, on his own initiative, conduct investigations respecting unfair immigration-related employment practices and, based on such an investigation and subject to paragraph (3), file a complaint before such a judge.

(2) PRIVATE ACTIONS.—If the Special Counsel, after receiving such a charge respecting an unfair immigration-related employment practice which alleges knowing and intentional discriminatory activity or a pattern or practice of discriminatory activity, has not filed a complaint before an administrative law judge with respect to such charge within such 120-day period, the Special Counsel shall notify the person making the charge of the determination not to file such a complaint during such period and the person making the charge may (subject to paragraph (3)) file a complaint directly before such a judge within 90 days after the date of receipt of the notice. The Special Counsel's failure to file such a complaint within such 120-day period shall not affect the right of the Special Counsel to investigate the charge or to bring a complaint before an administrative law judge during such 90-day period.

(3) TIME LIMITATIONS ON COMPLAINTS.—No complaint may be filed respecting any unfair immigration-related employment practice occurring more than 180 days prior to the date of the filing of the charge with the Special Counsel. This subparagraph shall not prevent the subsequent amending of a charge or complaint under subsection (e)(1).

(e) HEARINGS.—

(1) NOTICE.—Whenever a complaint is made that a person or entity has engaged in or is engaging in any such unfair immigration-related employment practice, an administrative law judge shall have power to issue and cause to be served upon such person or entity a copy of the complaint and a notice of hearing before the judge at a place therein fixed, not less than five days after the serving of the complaint. Any such complaint may be amended by the judge conducting the hearing, upon the motion of the party filing the complaint, in the judge's discretion at any time prior to the issuance of an order based thereon. The person or entity so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint.

(2) JUDGES HEARING CASES.—Hearings on complaints under this subsection shall be considered before administrative law judges who are specially designated by the Attorney General as having special training respecting employment discrimination

and, to the extent practicable, before such judges who only consider cases under this section.

(3) COMPLAINANT AS PARTY.—Any person filing a charge with the Special Counsel respecting an unfair immigration-related employment practice shall be considered a party to any complaint before an administrative law judge respecting such practice and any subsequent appeal respecting that complaint. In the discretion of the judge conducting the hearing, any other person may be allowed to intervene in the proceeding and to present testimony.

(f) TESTIMONY AND AUTHORITY OF HEARING OFFICERS.—

(1) TESTIMONY.—The testimony taken by the administrative law judge shall be reduced to writing. Thereafter, the judge, in his discretion, upon notice may provide for the taking of further testimony or hear argument.

(2) AUTHORITY OF ADMINISTRATIVE LAW JUDGES.—In conducting investigations and hearings under this subsection and in accordance with regulations of the Attorney General, the Special Counsel and administrative law judges shall have reasonable access to examine evidence of any person or entity being investigated. The administrative law judges by subpoena may compel the attendance of witnesses and the production of evidence at any designated place or hearing. In case of contumacy or refusal to obey a subpoena lawfully issued under this paragraph and upon application of the administrative law judge, an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such order may be punished by such court as a contempt thereof.

(g) DETERMINATIONS.—

(1) ORDER.—The administrative law judge shall issue and cause to be served on the parties to the proceeding an order, which shall be final unless appealed as provided under subsection (i).

(2) ORDERS FINDING VIOLATIONS.—

(A) IN GENERAL.—If, upon the preponderance of the evidence, an administrative law judge determines that any person or entity named in the complaint has engaged in or is engaging in any such unfair immigration-related employment practice, then the judge shall state his findings of fact and shall issue and cause to be served on such person or entity an order which requires such person or entity to cease and desist from such unfair immigration-related employment practice.

(B) CONTENTS OF ORDER.—Such an order also may require the person or entity—

(i) to comply with the requirements of section 274A(b) with respect to individuals hired (or recruited or referred for employment for a fee) during a period of up to three years;

(ii) to retain for the period referred to in clause (i) and only for purposes consistent with section 274A(b)(5), the name and address of each individual who applies, in person or in writing, for hiring for an

existing position, or for recruiting or referring for a fee, for employment in the United States;

(iii) to hire individuals directly and adversely affected, with or without back pay;

(iv)(I) except as provided in subclauses (II) through (IV), to pay a civil penalty of not less than \$250 and not more than \$2,000 for each individual discriminated against,

(II) except as provided in subclauses (III) and (IV), in the case of a person or entity previously subject to a single order under this paragraph, to pay a civil penalty of not less than \$2,000 and not more than \$5,000 for each individual discriminated against,

(III) except as provided in subclause (IV), in the case of a person or entity previously subject to more than one order under this paragraph, to pay a civil penalty of not less than \$3,000 and not more than \$10,000 for each individual discriminated against, and

(IV) in the case of an unfair immigration-related employment practice described in subsection (a)(6), to pay a civil penalty of not less than \$100 and not more than \$1,000 for each individual discriminated against;

(v) to post notices to employees about their rights under this section and employers' obligations under section 274A;

(vi) to educate all personnel involved in hiring and complying with this section or section 274A about the requirements of this section or such section;

(vii) to remove (in an appropriate case) a false performance review or false warning from an employee's personnel file; and

(viii) to lift (in an appropriate case) any restrictions on an employee's assignments, work shifts, or movements.

(C) LIMITATION ON BACK PAY REMEDY.—In providing a remedy under subparagraph (B)(iii), back pay liability shall not accrue from a date more than two years prior to the date of the filing of a charge with the Special Counsel. Interim earnings or amounts earnable with reasonable diligence by the individual or individuals discriminated against shall operate to reduce the back pay otherwise allowable under such subparagraph. No order shall require the hiring of an individual as an employee or the payment to an individual of any back pay, if the individual was refused employment for any reason other than discrimination on account of national origin or citizenship status.

(D) TREATMENT OF DISTINCT ENTITIES.—In applying this subsection in the case of a person or entity composed of distinct, physically separate subdivisions each of which provides separately for the hiring, recruiting, or referring for employment, without reference to the practices of, and not under the control of or common control with, another subdivision, each such subdivision shall be considered a separate person or entity.

(3) ORDERS NOT FINDING VIOLATIONS.—If upon the preponderance of the evidence an administrative law judge determines that the person or entity named in the complaint has not engaged and is not engaging in any such unfair immigration-related employment practice, then the judge shall state his findings of fact and shall issue an order dismissing the complaint.

(h) AWARDING OF ATTORNEY'S FEES.—In any complaint respecting an unfair immigration-related employment practice, an administrative law judge, in the judge's discretion, may allow a prevailing party, other than the United States, a reasonable attorney's fee, if the losing party's argument is without reasonable foundation in law and fact.

(i) REVIEW OF FINAL ORDERS.—

(1) IN GENERAL.—Not later than 60 days after the entry of such final order, any person aggrieved by such final order may seek a review of such order in the United States court of appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business.

(2) FURTHER REVIEW.—Upon the filing of the record with the court, the jurisdiction of the court shall be exclusive and its judgment shall be final, except that the same shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28, United States Code.

(j) COURT ENFORCEMENT OF ADMINISTRATIVE ORDERS.—

(1) IN GENERAL.—If an order of the agency is not appealed under subsection (i)(1), the Special Counsel (or, if the Special Counsel fails to act, the person filing the charge) may petition the United States district court for the district in which a violation of the order is alleged to have occurred, or in which the respondent resides or transacts business, for the enforcement of the order of the administrative law judge, by filing in such court a written petition praying that such order be enforced.

(2) COURT ENFORCEMENT ORDER.—Upon the filing of such petition, the court shall have jurisdiction to make and enter a decree enforcing the order of the administrative law judge. In such a proceeding, the order of the administrative law judge shall not be subject to review.

(3) ENFORCEMENT DECREE IN ORIGINAL REVIEW.—If, upon appeal of an order under subsection (i)(1), the United States court of appeals does not reverse such order, such court shall have the jurisdiction to make and enter a decree enforcing the order of the administrative law judge.

(4) AWARDING OF ATTORNEY'S FEES.—In any judicial proceeding under subsection (i) or this subsection, the court, in its discretion, may allow a prevailing party, other than the United States, a reasonable attorney's fee as part of costs but only if the losing party's argument is without reasonable foundation in law and fact.

(k) TERMINATION DATES.—

(1) This section shall not apply to discrimination in hiring, recruiting, referring, or discharging of individuals occurring

after the date of any termination of the provisions of section 274A, under subsection (l) of that section.

(2) The provisions of this section shall terminate 30 calendar days after receipt of the last report required to be transmitted under section 274A(j) if—

(A) the Comptroller General determines, and so reports in such report that—

(i) no significant discrimination has resulted, against citizens or nationals of the United States or against any eligible workers seeking employment, from the implementation of section 274A, or

(ii) such section has created an unreasonable burden on employers hiring such workers; and

(B) there has been enacted, within such period of 30 calendar days, a joint resolution stating in substance that the Congress approves the findings of the Comptroller General contained in such report.

The provisions of subsections (m) and (n) of section 274A shall apply to any joint resolution under subparagraph (B) in the same manner as they apply to a joint resolution under subsection (l) of such section.

**(l) DISSEMINATION OF INFORMATION CONCERNING ANTI-DISCRIMINATION PROVISIONS.—**

(1) Not later than 3 months after the date of the enactment of this subsection, the Special Counsel, in cooperation with the chairman of the Equal Employment Opportunity Commission, the Secretary of Labor, and the Administrator of the Small Business Administration, shall conduct a campaign to disseminate information respecting the rights and remedies prescribed under this section and under title VII of the Civil Rights Act of 1964 in connection with unfair immigration-related employment practices. Such campaign shall be aimed at increasing the knowledge of employers, employees, and the general public concerning employer and employee rights, responsibilities, and remedies under this section and such title.

(2) In order to carry out the campaign under this subsection, the Special Counsel—

(A) may, to the extent deemed appropriate and subject to the availability of appropriations, contract with public and private organizations for outreach activities under the campaign, and

(B) shall consult with the Secretary of Labor, the chairman of the Equal Employment Opportunity Commission, and the heads of such other agencies as may be appropriate.

(3) There are authorized to be appropriated to carry out this subsection \$10,000,000 for each fiscal year (beginning with fiscal year 1991).

\* \* \* \* \*

**SEC. 274E. REQUIREMENTS FOR THE ELECTRONIC VERIFICATION OF EMPLOYMENT ELIGIBILITY.**

**(a) EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.—**

(1) *IN GENERAL.*—The Secretary of Homeland Security (referred to in this section as the “Secretary”) shall establish and

*administer an electronic verification system (referred to in this section as the “System”), patterned on the E-Verify Program described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) (as in effect on the day before the effective date described in section 303(a)(4) of the Farm Workforce Modernization Act of 2019), and using the employment eligibility confirmation system established under section 404 of such Act (8 U.S.C. 1324a note) (as so in effect) as a foundation, through which the Secretary shall—*

*(A) respond to inquiries made by persons or entities seeking to verify the identity and employment authorization of individuals that such persons or entities seek to hire, or to recruit or refer for a fee, for employment in the United States; and*

*(B) maintain records of the inquiries that were made, and of verifications provided (or not provided) to such persons or entities as evidence of compliance with the requirements of this section.*

*(2) INITIAL RESPONSE DEADLINE.—The System shall provide confirmation or a tentative nonconfirmation of an individual’s identity and employment authorization as soon as practicable, but not later than 3 calendar days after the initial inquiry.*

*(3) GENERAL DESIGN AND OPERATION OF SYSTEM.—The Secretary shall design and operate the System—*

*(A) using responsive web design and other technologies to maximize its ease of use and accessibility for users on a variety of electronic devices and screen sizes, and in remote locations;*

*(B) to maximize the accuracy of responses to inquiries submitted by persons or entities;*

*(C) to maximize the reliability of the System and to register each instance when the System is unable to receive inquiries;*

*(D) to protect the privacy and security of the personally identifiable information maintained by or submitted to the System;*

*(E) to provide direct notification of an inquiry to an individual with respect to whom the inquiry is made, including the results of such inquiry, and information related to the process for challenging the results; and*

*(F) to maintain appropriate administrative, technical, and physical safeguards to prevent misuse of the System and unfair immigration-related employment practices.*

*(4) MEASURES TO PREVENT IDENTITY THEFT AND OTHER FORMS OF FRAUD.—To prevent identity theft and other forms of fraud, the Secretary shall design and operate the System with the following attributes:*

*(A) PHOTO MATCHING TOOL.—The System shall display the digital photograph of the individual, if any, that corresponds to the document presented by an individual to establish identity and employment authorization so that the person or entity that makes an inquiry can compare the photograph displayed by the System to the photograph on the document presented by the individual.*

(B) *INDIVIDUAL MONITORING AND SUSPENSION OF IDENTIFYING INFORMATION.*—The System shall enable individuals to establish user accounts, after authentication of an individual's identity, that would allow an individual to—

(i) confirm the individual's own employment authorization;

(ii) receive electronic notification when the individual's social security account number or other personally identifying information has been submitted to the System;

(iii) monitor the use history of the individual's personally identifying information in the System, including the identities of all persons or entities that have submitted such identifying information to the System, the date of each query run, and the System response for each query run;

(iv) suspend or limit the use of the individual's social security account number or other personally identifying information for purposes of the System; and

(v) provide notice to the Department of Homeland Security of any suspected identity fraud or other improper use of personally identifying information.

(C) *BLOCKING MISUSED SOCIAL SECURITY ACCOUNT NUMBERS.*—

(i) *IN GENERAL.*—The Secretary, in consultation with the Commissioner of Social Security (referred to in this section as the "Commissioner"), shall develop, after publication in the Federal Register and an opportunity for public comment, a process in which social security account numbers that have been identified to be subject to unusual multiple use in the System or that are otherwise suspected or determined to have been compromised by identity fraud or other misuse, shall be blocked from use in the System unless the individual using such number is able to establish, through secure and fair procedures, that the individual is the legitimate holder of the number.

(ii) *NOTICE.*—If the Secretary blocks or suspends a social security account number under this subparagraph, the Secretary shall provide notice to the persons or entities that have made inquiries to the System using such account number that the identity and employment authorization of the individual who provided such account number must be re-verified.

(D) *ADDITIONAL IDENTITY AUTHENTICATION TOOL.*—The Secretary shall develop, after publication in the Federal Register and an opportunity for public comment, additional security measures to adequately verify the identity of an individual whose identity may not be verified using the photo tool described in subparagraph (A). Such additional security measures—

(i) shall be kept up-to-date with technological advances; and

(ii) shall be designed to provide a high level of certainty with respect to identity authentication.

(E) *CHILD-LOCK PILOT PROGRAM.*—The Secretary, in consultation with the Commissioner, shall establish a reliable, secure program through which parents or legal guardians may suspend or limit the use of the social security account number or other personally identifying information of a minor under their care for purposes of the System. The Secretary may implement the program on a limited pilot basis before making it fully available to all individuals.

(5) *RESPONSIBILITIES OF THE COMMISSIONER OF SOCIAL SECURITY.*—The Commissioner, in consultation with the Secretary, shall establish a reliable, secure method, which, within the time periods specified in paragraph (2) and subsection (b)(4)(D)(i)(II), compares the name and social security account number provided in an inquiry against such information maintained by the Commissioner in order to validate (or not validate) the information provided by the person or entity with respect to an individual whose identity and employment authorization the person or entity seeks to confirm, the correspondence of the name and number, and whether the individual has presented a social security account number that is not valid for employment. The Commissioner shall not disclose or release social security information (other than such confirmation or nonconfirmation) under the System except as provided under this section or section 205(c)(2)(I) of the Social Security Act (42 U.S.C. 405).

(6) *RESPONSIBILITIES OF THE SECRETARY OF HOMELAND SECURITY.*—

(A) *IN GENERAL.*—The Secretary of Homeland Security shall establish a reliable, secure method, which, within the time periods specified in paragraph (2) and subsection (b)(4)(D)(i)(II), compares the name and identification or other authorization number (or any other information determined relevant by the Secretary) which are provided in an inquiry against such information maintained or accessed by the Secretary in order to validate (or not validate) the information provided, the correspondence of the name and number, and whether the individual is authorized to be employed in the United States.

(B) *TRAINING.*—The Secretary shall provide and regularly update training materials on the use of the System for persons and entities making inquiries.

(C) *AUDIT.*—The Secretary shall provide for periodic auditing of the System to detect and prevent misuse, discrimination, fraud, and identity theft, to protect privacy and assess System accuracy, and to preserve the integrity and security of the information in the System.

(D) *NOTICE OF SYSTEM CHANGES.*—The Secretary shall provide appropriate notification to persons and entities registered in the System of any change made by the Secretary or the Commissioner related to permitted and prohibited documents, and use of the System.

(7) *RESPONSIBILITIES OF THE SECRETARY OF STATE.*—As part of the System, the Secretary of State shall provide to the Secretary of Homeland Security access to passport and visa information as needed to confirm that a passport or passport card



*presented under subsection (b)(3)(A)(i) confirms the employment authorization and identity of the individual presenting such document, and that a passport, passport card, or visa photograph matches the Secretary of State's records, and shall provide such assistance as the Secretary of Homeland Security may request in order to resolve tentative nonconfirmations or final nonconfirmations relating to such information.*

(8) *UPDATING INFORMATION.*—*The Commissioner, the Secretary of Homeland Security, and the Secretary of State shall update records in their custody in a manner that promotes maximum accuracy of the System and shall provide a process for the prompt correction of erroneous information, including instances in which it is brought to their attention through the secondary verification process under subsection (b)(4)(D).*

(9) *MANDATORY AND VOLUNTARY SYSTEM USES.*—

(A) *MANDATORY USERS.*—*Except as otherwise provided under Federal or State law, such as sections 302 and 303 of the Farm Workforce Modernization Act of 2019, nothing in this section shall be construed as requiring the use of the System by any person or entity hiring, recruiting, or referring for a fee, an individual for employment in the United States.*

(B) *VOLUNTARY USERS.*—*Beginning after the date that is 30 days after the date on which final rules are published under section 309(a) of the Farm Workforce Modernization Act of 2019, a person or entity may use the System on a voluntary basis to seek verification of the identity and employment authorization of individuals the person or entity is hiring, recruiting, or referring for a fee for employment in the United States*

(C) *PROCESS FOR NON-USERS.*—*The employment verification process for any person or entity hiring, recruiting, or referring for a fee, an individual for employment in the United States shall be governed by section 274A(b) unless the person or entity—*

*(i) is required by Federal or State law to use the System; or*

*(ii) has opted to use the System voluntarily in accordance with subparagraph (B).*

(10) *NO FEE FOR USE.*—*The Secretary may not charge a fee to an individual, person, or entity related to the use of the System.*

(b) *NEW HIRES, RECRUITMENT, AND REFERRAL.*—*Notwithstanding section 274A(b), the requirements referred to in paragraphs (1)(B) and (3) of section 274A(a) are, in the case of a person or entity that uses the System for the hiring, recruiting, or referring for a fee, an individual for employment in the United States, the following:*

(1) *INDIVIDUAL ATTESTATION OF EMPLOYMENT AUTHORIZATION.*—*During the period beginning on the date on which an offer of employment is accepted and ending on the date of hire, the individual shall attest, under penalty of perjury on a form designated by the Secretary, that the individual is authorized to be employed in the United States by providing on such form—*

*(A) the individual's name and date of birth;*

(B) *the individual's social security account number (unless the individual has applied for and not yet been issued such a number);*

(C) *whether the individual is—*

- (i) *a citizen or national of the United States;*
- (ii) *an alien lawfully admitted for permanent residence; or*
- (iii) *an alien who is otherwise authorized by the Secretary to be hired, recruited, or referred for employment in the United States; and*

(D) *if the individual does not attest to United States citizenship or nationality, such identification or other authorization number established by the Department of Homeland Security for the alien as the Secretary may specify.*

(2) **EMPLOYER ATTESTATION AFTER EXAMINATION OF DOCUMENTS** *Not later than 3 business days after the date of hire, the person or entity shall attest, under penalty of perjury on the form designated by the Secretary for purposes of paragraph (1), that it has verified that the individual is not an unauthorized alien by—*

(A) *obtaining from the individual the information described in paragraph (1) and recording such information on the form;*

(B) *examining—*

- (i) *a document described in paragraph (3)(A); or*
- (ii) *a document described in paragraph (3)(B) and a document described in paragraph (3)(C); and*

(C) *attesting that the information recorded on the form is consistent with the documents examined.*

(3) **ACCEPTABLE DOCUMENTS.—**

(A) **DOCUMENTS ESTABLISHING EMPLOYMENT AUTHORIZATION AND IDENTITY.**—*A document described in this subparagraph is an individual's—*

- (i) *United States passport or passport card;*
- (ii) *permanent resident card that contains a photograph;*
- (iii) *foreign passport containing temporary evidence of lawful permanent residence in the form of an official I-551 (or successor) stamp from the Department of Homeland Security or a printed notation on a machine-readable immigrant visa;*
- (iv) *unexpired employment authorization card that contains a photograph;*
- (v) *in the case of a nonimmigrant alien authorized to engage in employment for a specific employer incident to status, a foreign passport with Form I-94, Form I-94A, or other documentation as designated by the Secretary specifying the alien's nonimmigrant status as long as such status has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified in the documentation;*
- (vi) *passport from the Federated States of Micronesia or the Republic of the Marshall Islands with Form I-94, Form I-94A, or other documentation as designated by the Secretary, indicating nonimmigrant admission*

*under the Compact of Free Association Between the United States and the Federated States of Micronesia or the Republic of the Marshall Islands; or*

*(vii) other document designated by the Secretary, by notice published in the Federal Register, if the document—*

*(I) contains a photograph of the individual, biometric identification data, and other personal identifying information relating to the individual;*

*(II) is evidence of authorization for employment in the United States; and*

*(III) contains security features to make it resistant to tampering, counterfeiting, and fraudulent use.*

**(B) DOCUMENTS ESTABLISHING EMPLOYMENT AUTHORIZATION.**—*A document described in this subparagraph is—*

*(i) an individual's social security account number card (other than such a card which specifies on the face that the issuance of the card does not authorize employment in the United States); or*

*(ii) a document establishing employment authorization that the Secretary determines, by notice published in the Federal Register, to be acceptable for purposes of this subparagraph, provided that such documentation contains security features to make it resistant to tampering, counterfeiting, and fraudulent use.*

**(C) DOCUMENTS ESTABLISHING IDENTITY.**—*A document described in this subparagraph is—*

*(i) an individual's driver's license or identification card if it was issued by a State or one of the outlying possessions of the United States and contains a photograph and personal identifying information relating to the individual;*

*(ii) an individual's unexpired United States military identification card;*

*(iii) an individual's unexpired Native American tribal identification document issued by a tribal entity recognized by the Bureau of Indian Affairs;*

*(iv) in the case of an individual under 18 years of age, a parent or legal guardian's attestation under penalty of law as to the identity and age of the individual; or*

*(v) a document establishing identity that the Secretary determines, by notice published in the Federal Register, to be acceptable for purposes of this subparagraph, if such documentation contains a photograph of the individual, biometric identification data, and other personal identifying information relating to the individual, and security features to make it resistant to tampering, counterfeiting, and fraudulent use.*

**(D) AUTHORITY TO PROHIBIT USE OF CERTAIN DOCUMENTS.**—*If the Secretary finds that any document or class of documents described in subparagraph (A), (B), or (C) does not reliably establish identity or employment authorization or is being used fraudulently to an unacceptable de-*

gree, the Secretary may, by notice published in the Federal Register, prohibit or place conditions on the use of such document or class of documents for purposes of this section.

(4) *USE OF THE SYSTEM TO SCREEN IDENTITY AND EMPLOYMENT AUTHORIZATION.*—

(A) *IN GENERAL.*—*In the case of a person or entity that uses the System for the hiring, recruiting, or referring for a fee an individual for employment in the United States, during the period described in subparagraph (B), the person or entity shall submit an inquiry through the System described in subsection (a) to seek verification of the identity and employment authorization of the individual.*

(B) *VERIFICATION PERIOD.*—

(i) *IN GENERAL.*—*Except as provided in clause (ii), and subject to subsection (d), the verification period shall begin on the date of hire and end on the date that is 3 business days after the date of hire, or such other reasonable period as the Secretary may prescribe.*

(ii) *SPECIAL RULE.*—*In the case of an alien who is authorized to be employed in the United States and who provides evidence from the Social Security Administration that the alien has applied for a social security account number, the verification period shall end 3 business days after the alien receives the social security account number.*

(C) *CONFIRMATION.*—*If a person or entity receives confirmation of an individual's identity and employment authorization, the person or entity shall record such confirmation on the form designated by the Secretary for purposes of paragraph (1).*

(D) *TENTATIVE NONCONFIRMATION.*—

(i) *IN GENERAL.*—*In cases of tentative nonconfirmation, the Secretary shall provide, in consultation with the Commissioner, a process for—*

(I) *an individual to contest the tentative nonconfirmation not later than 10 business days after the date of the receipt of the notice described in clause (ii); and*

(II) *the Secretary to issue a confirmation or final nonconfirmation of an individual's identity and employment authorization not later than 30 calendar days after the Secretary receives notice from the individual contesting a tentative nonconfirmation.*

(ii) *NOTICE.*—*If a person or entity receives a tentative nonconfirmation of an individual's identity or employment authorization, the person or entity shall, not later than 3 business days after receipt, notify such individual in writing in a language understood by the individual and on a form designated by the Secretary, that shall include a description of the individual's right to contest the tentative nonconfirmation. The person or entity shall attest, under penalty of perjury, that the person or entity provided (or attempted to provide) such notice to the individual, and the individual shall*

acknowledge receipt of such notice in a manner specified by the Secretary.

(iii) *NO CONTEST.*—

(I) *IN GENERAL.*—A tentative nonconfirmation shall become final if, upon receiving the notice described in clause (ii), the individual—

(aa) refuses to acknowledge receipt of such notice;

(bb) acknowledges in writing, in a manner specified by the Secretary, that the individual will not contest the tentative nonconfirmation; or

(cc) fails to contest the tentative nonconfirmation within the 10-business-day period beginning on the date the individual received such notice.

(II) *RECORD OF NO CONTEST.*—The person or entity shall indicate in the System that the individual did not contest the tentative nonconfirmation and shall specify the reason the tentative nonconfirmation became final under subclause (I).

(III) *EFFECT OF FAILURE TO CONTEST.*—An individual's failure to contest a tentative nonconfirmation shall not be considered an admission of any fact with respect to any violation of this Act or any other provision of law.

(iv) *CONTEST.*—

(I) *IN GENERAL.*—An individual may contest a tentative nonconfirmation by using the process for secondary verification under clause (i), not later than 10 business days after receiving the notice described in clause (ii). Except as provided in clause (iii), the nonconfirmation shall remain tentative until a confirmation or final nonconfirmation is provided by the System.

(II) *PROHIBITION ON TERMINATION.*—In no case shall a person or entity terminate employment or take any adverse employment action against an individual for failure to obtain confirmation of the individual's identity and employment authorization until the person or entity receives a notice of final nonconfirmation from the System. Nothing in this subclause shall prohibit an employer from terminating the employment of the individual for any other lawful reason.

(III) *CONFIRMATION OR FINAL NONCONFIRMATION.*—The Secretary, in consultation with the Commissioner, shall issue notice of a confirmation or final nonconfirmation of the individual's identity and employment authorization not later than 30 calendar days after the date the Secretary receives notice from the individual contesting the tentative nonconfirmation.

(E) *FINAL NONCONFIRMATION.*—

(i) *NOTICE.*—If a person or entity receives a final nonconfirmation of an individual's identity or employment authorization, the person or entity shall, not later than 3 business days after receipt, notify such individual of the final nonconfirmation in writing, on a form designated by the Secretary, which shall include information regarding the individual's right to appeal the final nonconfirmation as provided under subparagraph (F). The person or entity shall attest, under penalty of perjury, that the person or entity provided (or attempted to provide) the notice to the individual, and the individual shall acknowledge receipt of such notice in a manner designated by the Secretary.

(ii) *TERMINATION OR NOTIFICATION OF CONTINUED EMPLOYMENT.*—If a person or entity receives a final nonconfirmation regarding an individual, the person or entity may terminate employment of the individual. If the person or entity does not terminate such employment pending appeal of the final nonconfirmation, the person or entity shall notify the Secretary of such fact through the System. Failure to notify the Secretary in accordance with this clause shall be deemed a violation of section 274A(a)(1)(A).

(iii) *PRESUMPTION OF VIOLATION FOR CONTINUED EMPLOYMENT.*—If a person or entity continues to employ an individual after receipt of a final nonconfirmation, there shall be a rebuttable presumption that the person or entity has violated paragraphs (1)(A) and (a)(2) of section 274A(a).

**(F) APPEAL OF FINAL NONCONFIRMATION.**—

(i) *ADMINISTRATIVE APPEAL.*—The Secretary, in consultation with the Commissioner, shall develop a process by which an individual may seek administrative review of a final nonconfirmation. Such process shall—

(I) permit the individual to submit additional evidence establishing identity or employment authorization;

(II) ensure prompt resolution of an appeal (but in no event shall there be a failure to respond to an appeal within 30 days); and

(III) permit the Secretary to impose a civil money penalty (not to exceed \$500) on an individual upon finding that an appeal was frivolous or filed for purposes of delay.

(ii) **COMPENSATION FOR LOST WAGES RESULTING FROM GOVERNMENT ERROR OR OMISSION.**—

(I) *IN GENERAL.*—If, upon consideration of an appeal of a final nonconfirmation, the Secretary determines that the final nonconfirmation was issued in error, the Secretary shall further determine whether the final nonconfirmation was the result of government error or omission. If the Secretary determines that the final nonconfirmation was solely the result of government error or omission and the individual was terminated from em-

ployment, the Secretary shall compensate the individual for lost wages.

(II) *CALCULATION OF LOST WAGES.*—Lost wages shall be calculated based on the wage rate and work schedule that were in effect prior to the individual's termination. The individual shall be compensated for lost wages beginning on the first scheduled work day after employment was terminated and ending 90 days after completion of the administrative review process described in this subparagraph or the day the individual is reinstated or obtains other employment, whichever occurs first.

(III) *LIMITATION ON COMPENSATION.*—No compensation for lost wages shall be awarded for any period during which the individual was not authorized for employment in the United States.

(IV) *SOURCE OF FUNDS.*—There is established in the general fund of the Treasury, a separate account which shall be known as the "Electronic Verification Compensation Account". Fees collected under subsections (f) and (g) shall be deposited in the Electronic Verification Compensation Account and shall remain available for purposes of providing compensation for lost wages under this subclause.

(iii) *JUDICIAL REVIEW.*—Not later than 30 days after the dismissal of an appeal under this subparagraph, an individual may seek judicial review of such dismissal in the United States District Court in the jurisdiction in which the employer resides or conducts business.

(5) *RETENTION OF VERIFICATION RECORDS.*—

(A) *IN GENERAL.*—After completing the form designated by the Secretary in accordance with paragraphs (1) and (2), the person or entity shall retain the form in paper, microfiche, microfilm, electronic, or other format deemed acceptable by the Secretary, and make it available for inspection by officers of the Department of Homeland Security, the Department of Justice, or the Department of Labor during the period beginning on the date the verification is completed and ending on the later of—

- (i) the date that is 3 years after the date of hire; or
- (ii) the date that is 1 year after the date on which the individual's employment is terminated.

(B) *COPYING OF DOCUMENTATION PERMITTED.*—Notwithstanding any other provision of law, a person or entity may copy a document presented by an individual pursuant to this section and may retain the copy, but only for the purpose of complying with the requirements of this section.

(c) *REVERIFICATION OF PREVIOUSLY HIRED INDIVIDUALS.*—

(1) *MANDATORY REVERIFICATION.*—In the case of a person or entity that uses the System for the hiring, recruiting, or referring for a fee an individual for employment in the United

*States, the person or entity shall submit an inquiry using the System to verify the identity and employment authorization of—*

*(A) an individual with a limited period of employment authorization, within 3 business days before the date on which such employment authorization expires; and*

*(B) an individual, not later than 10 days after receiving a notification from the Secretary requiring the verification of such individual pursuant to subsection (a)(4)(C).*

*(2) REVERIFICATION PROCEDURES.—The verification procedures under subsection (b) shall apply to reverifications under this subsection, except that employers shall—*

*(A) use a form designated by the Secretary for purposes of this paragraph; and*

*(B) retain the form in paper, microfiche, microfilm, electronic, or other format deemed acceptable by the Secretary, and make it available for inspection by officers of the Department of Homeland Security, the Department of Justice, or the Department of Labor during the period beginning on the date the reverification commences and ending on the later of—*

*(i) the date that is 3 years after the date of reverification; or*

*(ii) the date that is 1 year after the date on which the individual's employment is terminated.*

*(3) LIMITATION ON REVERIFICATION.—Except as provided in paragraph (1), a person or entity may not otherwise reverify the identity and employment authorization of a current employee, including an employee continuing in employment.*

*(d) GOOD FAITH COMPLIANCE.—*

*(1) IN GENERAL.—Except as otherwise provided in this subsection, a person or entity that uses the System is considered to have complied with the requirements of this section notwithstanding a technical failure of the System, or other technical or procedural failure to meet such requirement if there was a good faith attempt to comply with the requirement.*

*(2) EXCEPTION FOR FAILURE TO CORRECT AFTER NOTICE.—Paragraph (1) shall not apply if—*

*(A) the failure is not de minimis;*

*(B) the Secretary has provided notice to the person or entity of the failure, including an explanation as to why it is not de minimis;*

*(C) the person or entity has been provided a period of not less than 30 days (beginning after the date of the notice) to correct the failure; and*

*(D) the person or entity has not corrected the failure voluntarily within such period.*

*(3) EXCEPTION FOR PATTERN OR PRACTICE VIOLATORS.—Paragraph (1) shall not apply to a person or entity that has engaged or is engaging in a pattern or practice of violations of paragraph (1)(A) or (2) of section 274A(a).*

*(4) DEFENSE.—In the case of a person or entity that uses the System for the hiring, recruiting, or referring for a fee an individual for employment in the United States, the person or entity shall not be liable to a job applicant, an employee, the Federal Government, or a State or local government, under Federal,*



*State, or local criminal or civil law, for any employment-related action taken with respect to an employee in good-faith reliance on information provided by the System. Such person or entity shall be deemed to have established compliance with its obligations under this section, absent a showing by the Secretary, by clear and convincing evidence, that the employer had knowledge that an employee is an unauthorized alien.*

**(e) LIMITATIONS.—**

**(1) NO NATIONAL IDENTIFICATION CARD.**—*Nothing in this section shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.*

**(2) USE OF RECORDS.**—*Notwithstanding any other provision of law, nothing in this section shall be construed to permit or allow any department, bureau, or other agency of the United States Government to utilize any information, database, or other records assembled under this section for any purpose other than the verification of identity and employment authorization of an individual or to ensure the secure, appropriate, and non-discriminatory use of the System.*

**(f) PENALTIES.—**

**(1) IN GENERAL.**—*Except as provided in this subsection, the provisions of subsections (e) through (g) of section 274A shall apply with respect to compliance with the provisions of this section and penalties for non-compliance for persons or entities that use the System.*

**(2) CEASE AND DESIST ORDER WITH CIVIL MONEY PENALTIES FOR HIRING, RECRUITING, AND REFERRAL VIOLATIONS.**—*Notwithstanding the civil money penalties set forth in section 274A(e)(4), with respect to a violation of paragraph (1)(A) or (2) of section 274A(a) by a person or entity that has hired, recruited, or referred for a fee, an individual for employment in the United States, a cease and desist order—*

*(A) shall require the person or entity to pay a civil penalty in an amount, subject to subsection (d), of—*

*(i) not less than \$2,500 and not more than \$5,000 for each unauthorized alien with respect to whom a violation of either such subsection occurred;*

*(ii) not less than \$5,000 and not more than \$10,000 for each such alien in the case of a person or entity previously subject to one order under this paragraph; or*

*(iii) not less than \$10,000 and not more than \$25,000 for each such alien in the case of a person or entity previously subject to more than one order under this paragraph; and*

*(B) may require the person or entity to take such other remedial action as appropriate.*

**(3) ORDER FOR CIVIL MONEY PENALTY FOR VIOLATIONS.**—*With respect to a violation of section 274A(a)(1)(B), the order under this paragraph shall require the person or entity to pay a civil penalty in an amount, subject to paragraphs (4), (5), and (6), of not less than \$1,000 and not more than \$25,000 for each individual with respect to whom such violation occurred. Failure by a person or entity to utilize the System as required by law or providing information to the System that the person or entity*

*knows or reasonably believes to be false, shall be treated as a violation of section 274A(a)(1)(A).*

**(4) EXEMPTION FROM PENALTY FOR GOOD FAITH VIOLATION.—**

*(A) IN GENERAL.—A person or entity that uses the System is presumed to have acted with knowledge for purposes of paragraphs (1)(A) and (2) of section 274A(a) if the person or entity fails to make an inquiry to verify the identity and employment authorization of the individual through the System.*

*(B) GOOD FAITH EXEMPTION.—In the case of imposition of a civil penalty under paragraph (2)(A) with respect to a violation of paragraph (1)(A) or (2) of section 274A(a) for hiring or continuation of employment or recruitment or referral by a person or entity, and in the case of imposition of a civil penalty under paragraph (3) for a violation of section 274A(a)(1)(B) for hiring or recruitment or referral by a person or entity, the penalty otherwise imposed may be waived or reduced if the person or entity establishes that the person or entity acted in good faith.*

**(5) MITIGATION ELEMENTS.—***For purposes of paragraphs (2)(A) and (3), when assessing the level of civil money penalties, in addition to the good faith of the person or entity being charged, due consideration shall be given to the size of the business, the seriousness of the violation, whether or not the individual was an unauthorized alien, and the history of previous violations.*

**(6) CRIMINAL PENALTY.—***Notwithstanding section 274A(f)(1) and the provisions of any other Federal law relating to fine levels, any person or entity that is required to comply with the provisions of this section and that engages in a pattern or practice of violations of paragraph (1) or (2) of section 274A(a), shall be fined not more than \$5,000 for each unauthorized alien with respect to whom such a violation occurs, imprisoned for not more than 18 months, or both.*

**(7) ELECTRONIC VERIFICATION COMPENSATION ACCOUNT.—***Civil money penalties collected under this subsection shall be deposited in the Electronic Verification Compensation Account for the purpose of compensating individuals for lost wages as a result of a final nonconfirmation issued by the System that was based on government or employer error or omission, as set forth in subsection (b)(4)(F)(ii)(IV).*

**(8) DEBARMENT.—**

*(A) IN GENERAL.—If a person or entity is determined by the Secretary to be a repeat violator of paragraph (1)(A) or (2) of section 274A(a) or is convicted of a crime under section 274A, such person or entity may be considered for debarment from the receipt of Federal contracts, grants, or cooperative agreements in accordance with the debarment standards and pursuant to the debarment procedures set forth in the Federal Acquisition Regulation.*

*(B) NO CONTRACT, GRANT, AGREEMENT.—If the Secretary or the Attorney General wishes to have a person or entity considered for debarment in accordance with this paragraph, and such a person or entity does not hold a Federal contract, grant or cooperative agreement, the Secretary or*

*Attorney General shall refer the matter to the Administrator of General Services to determine whether to list the person or entity on the List of Parties Excluded from Federal Procurement, and if so, for what duration and under what scope.*

*(C) CONTRACT, GRANT, AGREEMENT.—If the Secretary or the Attorney General wishes to have a person or entity considered for debarment in accordance with this paragraph, and such person or entity holds a Federal contract, grant, or cooperative agreement, the Secretary or Attorney General shall advise all agencies or departments holding a contract, grant, or cooperative agreement with the person or entity of the Government's interest in having the person or entity considered for debarment, and after soliciting and considering the views of all such agencies and departments, the Secretary or Attorney General may refer the matter to the appropriate lead agency to determine whether to list the person or entity on the List of Parties Excluded from Federal Procurement, and if so, for what duration and under what scope.*

*(D) REVIEW.—Any decision to debar a person or entity in accordance with this subsection shall be reviewable pursuant to part 9.4 of the Federal Acquisition Regulation.*

*(9) PREEMPTION.—The provisions of this section preempt any State or local law, ordinance, policy, or rule, including any criminal or civil fine or penalty structure, relating to the hiring, continued employment, or status verification for employment eligibility purposes, of unauthorized aliens, except that a State, locality, municipality, or political subdivision may exercise its authority over business licensing and similar laws as a penalty for failure to use the System as required under this section.*

*(g) UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES AND THE SYSTEM.—*

*(1) IN GENERAL.—In addition to the prohibitions on discrimination set forth in section 274B, it is an unfair immigration-related employment practice for a person or entity, in the course of utilizing the System—*

*(A) to use the System for screening an applicant prior to the date of hire;*

*(B) to terminate the employment of an individual or take any adverse employment action with respect to that individual due to a tentative nonconfirmation issued by the System;*

*(C) to use the System to screen any individual for any purpose other than confirmation of identity and employment authorization as provided in this section;*

*(D) to use the System to verify the identity and employment authorization of a current employee, including an employee continuing in employment, other than reverification authorized under subsection (c);*

*(E) to use the System to discriminate based on national origin or citizenship status;*

*(F) to willfully fail to provide an individual with any notice required under this title;*

(G) to require an individual to make an inquiry under the self-verification procedures described in subsection (a)(4)(B) or to provide the results of such an inquiry as a condition of employment, or hiring, recruiting, or referring; or

(H) to terminate the employment of an individual or take any adverse employment action with respect to that individual based upon the need to verify the identity and employment authorization of the individual as required by subsection (b).

(2) **PREEMPLOYMENT SCREENING AND BACKGROUND CHECK.**—Nothing in paragraph (1)(A) shall be construed to preclude a preemployment screening or background check that is required or permitted under any other provision of law.

(3) **CIVIL MONEY PENALTIES FOR DISCRIMINATORY CONDUCT.**—Notwithstanding section 274B(g)(2)(B)(iv), the penalties that may be imposed by an administrative law judge with respect to a finding that a person or entity has engaged in an unfair immigration-related employment practice described in paragraph (1) are—

(A) not less than \$1,000 and not more than \$4,000 for each individual discriminated against;

(B) in the case of a person or entity previously subject to a single order under this paragraph, not less than \$4,000 and not more than \$10,000 for each individual discriminated against; and

(C) in the case of a person or entity previously subject to more than one order under this paragraph, not less than \$6,000 and not more than \$20,000 for each individual discriminated against.

(4) **ELECTRONIC VERIFICATION COMPENSATION ACCOUNT.**—Civil money penalties collected under this subsection shall be deposited in the Electronic Verification Compensation Account for the purpose of compensating individuals for lost wages as a result of a final nonconfirmation issued by the System that was based on government error or omission, as set forth in subsection (b)(4)(F)(ii)(IV).

(h) **CLARIFICATION.**—All rights and remedies provided under any Federal, State, or local law relating to workplace rights, including but not limited to back pay, are available to an employee despite—

(1) the employee's status as an unauthorized alien during or after the period of employment; or

(2) the employer's or employee's failure to comply with the requirements of this section.

(i) **DEFINITION.**—In this section, the term “date of hire” means the date on which employment for pay or other remuneration commences.

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## MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT

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## TITLE I—FARM LABOR CONTRACTORS

## CERTIFICATE OF REGISTRATION REQUIRED

SEC. 101. (a) No person shall engage in any farm labor contracting activity, unless such person has a certificate of registration from the Secretary specifying which farm labor contracting activities such person is authorized to perform.

(b) A farm labor contractor shall not hire, employ, or use any individual to perform farm labor contracting activities unless such individual has a certificate of registration, or a certificate of registration as an employee of the farm labor contractor employer, which authorizes the activity for which such individual is hired, employed, or used. The farm labor contractor shall be held responsible for violations of this Act or any regulation under this Act by any employee regardless of whether the employee possesses a certificate of registration based on the contractor's certificate of registration.

(c) Each registered farm labor contractor and registered farm labor contractor employee shall carry at all times while engaging in farm labor contracting activities a certificate of registration and, upon request, shall exhibit that certificate to all persons with whom they intend to deal as a farm labor contractor or farm labor contractor employee.

(d) The facilities and the services authorized by the Act of June 6, 1933 (29 U.S.C. 49 et seq.), known as the Wagner-Peyser Act, shall be denied to any farm labor contractor upon refusal or failure to produce, when asked, a certificate of registration.

(e) *A farm labor contractor shall maintain a surety bond in an amount determined by the Secretary to be sufficient for ensuring the ability of the farm labor contractor to discharge its financial obligations, including payment of wages and benefits to employees. Such a bond shall be available to satisfy any amounts ordered to be paid by the Secretary or by court order for failure to comply with the obligations of this Act. The Secretary of Labor shall annually publish in the Federal Register a schedule of required bond amounts that are determined by such Secretary to be sufficient for farm labor contractors to discharge financial obligations based on the number of workers to be covered.*

## ISSUANCE OF CERTIFICATE OF REGISTRATION

SEC. 102. The Secretary, after appropriate investigation and approval, shall issue a certificate of registration (including a certificate of registration as an employee of a farm labor contractor) to any person who has filed with the Secretary a written application containing the following:

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

(2) a statement identifying each vehicle to be used to transport any migrant or seasonal agricultural worker and, if the vehicle is or will be owned or controlled by the applicant, documentation showing that the applicant is in compliance with the requirements of section 401 with respect to each such vehicle;

(3) a statement identifying each facility or real property to be used to house any migrant agricultural worker and, if the facility or real property is or will be owned or controlled by the applicant, documentation showing that the applicant is in compliance with section 203 with respect to each such facility or real property;

(4) a set of fingerprints of the applicant; [and]

(5) a declaration, subscribed and sworn to by the applicant, consenting 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 or otherwise has become unavailable to accept service[.]; and

(6) *a declaration, subscribed and sworn to by the applicant, stating whether the applicant has a familial, contractual, or employment relationship with, or shares vehicles, facilities, property, or employees with, a person who has been refused issuance or renewal of a certificate, or has had a certificate suspended or revoked, pursuant to section 103.*

#### REGISTRATION DETERMINATIONS

SEC. 103. (a) In accordance with regulations, the Secretary may refuse to issue or renew, or may suspend or revoke, a certificate of registration (including a certificate of registration as an employee of a farm labor contractor) if the applicant or holder—

(1) has knowingly made any misrepresentation in the application for such certificate;

(2) is not the real party in interest in the application or certificate of registration and the real party in interest is a person who has been refused issuance or renewal of a certificate, has had a certificate suspended or revoked, or does not qualify under this section for a certificate;

(3) has failed to comply with this Act or any regulation under this Act;

(4) has failed—

(A) to pay any court judgment obtained by the Secretary or any other person under this Act or any regulation under this Act or under the Farm Labor Contractor Registration Act of 1963 or any regulation under such Act, or

(B) to comply with any final order issued by the Secretary as a result of a violation of this Act or any regulation under this Act or a violation of the Farm Labor Contractor Registration Act of 1963 or any regulation under such Act; [or]

(5) has been convicted within the preceding five years—

(A) of any crime under State or Federal law relating to gambling, or to the sale, distribution or possession of alcoholic beverages, in connection with or incident to any farm labor contracting activities; or

(B) of any felony under State or Federal law 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 har-

boring individuals who have entered the United States illegally; **[or]**

(6) has been found to have violated paragraph (1) or (2) of section 274A(a) of the Immigration and Nationality Act**[.];**

(7) *has failed to maintain a surety bond in compliance with section 101(e); or*

(8) *has been disqualified by the Secretary of Labor from importing nonimmigrants described in section 101(a)(15)(H)(ii) of the Immigration and Nationality Act.*

(b)(1) *There shall be a rebuttable presumption that an applicant for issuance or renewal of a certificate is not the real party in interest in the application if the applicant—*

(A) *is the immediate family member of any person who has been refused issuance or renewal of a certificate, or has had a certificate suspended or revoked; and*

(B) *identifies a vehicle, facility, or real property under paragraph (2) or (3) of section 102 that has been previously listed by a person who has been refused issuance or renewal of a certificate, or has had a certificate suspended or revoked.*

(2) *An applicant described in paragraph (1) bears the burden of demonstrating to the Secretary's satisfaction that the applicant is the real party in interest in the application.*

**[(b)]** (c)(1) The person who is refused the issuance or renewal of a certificate or whose certificate is suspended or revoked under subsection (a) shall be afforded an opportunity for agency hearing, upon request made within thirty days after the date of issuance of the notice of the refusal, suspension, or revocation. In such hearing, all issues shall be determined on the record pursuant to section 554 of title 5, United States Code. If no hearing is requested as herein provided, the refusal, suspension, or revocation shall constitute a final and unappealable order.

(2) If a hearing is requested, the initial agency decision shall be made by an administrative law judge, and such decision shall become the final order unless the Secretary modifies or vacates the decision. Notice of intent to modify or vacate the decision of the administrative law judge shall be issued to the parties within thirty days after the decision of the administrative law judge. A final order which takes effect under this paragraph shall be subject to review only as provided under subsection (c).

**[(c)]** (d) Any person against whom an order has been entered after an agency hearing under this section may obtain review by the United States district court for any district in which he is located or the United States District Court for the District of Columbia by filing a notice of appeal in such court within thirty days from the date of such order, and simultaneously sending a copy of such notice by registered mail to the Secretary. The Secretary shall promptly certify and file in such court the record upon which the order was based. The findings of the Secretary shall be set aside only if found to be unsupported by substantial evidence as provided by section 706(2)(E) of title 5, United States Code. Any final decision, order, or judgment of such District Court concerning such review shall be subject to appeal as provided in chapter 83 of title 28, United States Code.

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## SECTION 305 OF PUBLIC LAW 99-603

AN ACT To amend the Immigration and Nationality Act to revise and reform the immigration laws, and for other purposes.

### SEC. 305. ELIGIBILITY OF H-2 AGRICULTURAL WORKERS FOR CERTAIN LEGAL ASSISTANCE.

A nonimmigrant worker admitted to or permitted to remain in the United States under section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)) for agricultural labor or service shall be considered to be an alien described in section 101(a)(20) of such Act (8 U.S.C. 1101(a)(20)) for purposes of establishing eligibility for legal assistance under the Legal Services Corporation Act (42 U.S.C. 2996 et seq.), but only with respect to legal assistance on matters relating to wages, housing, transportation, and [other employment rights as provided in the worker's specific contract under which the nonimmigrant was admitted] *employment-related rights*.

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## HOUSING ACT OF 1949

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### TITLE V—FARM HOUSING

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#### PROGRAM LEVELS AND AUTHORIZATIONS

SEC. 513. (a) IN GENERAL.—(1) The Secretary may, to the extent approved in appropriation Acts, insure and guarantee loans under this title during fiscal years 1993 and 1994, in aggregate amounts not to exceed \$2,446,855,600 and \$2,549,623,535, respectively, as follows:

(A) For insured or guaranteed loans under section 502 on behalf of low-income borrowers receiving assistance under section 521(a)(1), \$1,676,484,000 for fiscal year 1993 and \$1,746,896,328 for fiscal year 1994.

(B) For guaranteed loans under section 502(h) on behalf of low- and moderate-income borrowers, such sums as may be appropriated for fiscal years 1993 and 1994.

(C) For loans under section 504, \$12,400,000 for fiscal year 1993 and \$12,920,800 for fiscal year 1994.

(D) For insured loans under section 514, \$16,821,600 for fiscal year 1993 and \$17,528,107 for fiscal year 1994.

(E) For insured loans under section 515, \$739,500,000 for fiscal year 1993 and \$770,559,000 for fiscal year 1994.

(F) For loans under section 523(b)(1)(B), \$800,000 for fiscal year 1993 and \$833,600 for fiscal year 1994.

(G) For site loans under section 524, \$850,000 for fiscal year 1993 and \$885,700 for fiscal year 1994.

(2) Notwithstanding any other provision of law, insured and guaranteed loan authority in this title for any fiscal year beginning after September 30, 1984, shall not be transferred or used for any purpose not specified in this title.



(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for fiscal years 1993 and 1994, and to remain available until expended, the following amounts:

(1) For grants under section 502(f)(1), \$1,100,000 for fiscal year 1993 and \$1,146,200 for fiscal year 1994.

(2) For grants under section 504, \$21,100,000 for fiscal year 1993 and \$21,986,200 for fiscal year 1994.

(3) For purposes of section 509(c), \$600,000 for fiscal year 1993 and \$625,200 for fiscal year 1994.

(4) For project preparation grants under section 509(f)(6), \$5,300,000 in fiscal year 1993 and \$5,522,600 in fiscal year 1994.

(5) In fiscal years 1993 and 1994, such sums as may be necessary to meet payments on notes or other obligations issued by the Secretary under section 511 equal to—

(A) the aggregate of the contributions made by the Secretary in the form of credits on principal due on loans made pursuant to section 503; and

(B) the interest due on a similar sum represented by notes or other obligations issued by the Secretary.

(6) For grants for service coordinators under section 515(y), \$1,000,000 in fiscal year 1993 and \$1,042,000 in fiscal year 1994.

(7) For financial assistance under section 516—

(A) for low-rent housing and related facilities for domestic farm labor under subsections (a) through (j) of such section, \$21,700,000 for fiscal year 1993 and \$22,611,400 for fiscal year 1994; and

(B) for housing for rural homeless and migrant farmworkers under subsection (k) of such section, \$10,500,000 for fiscal year 1993 and \$10,941,000 for fiscal year 1994.

(8) For grants under section 523(f), \$13,900,000 for fiscal year 1993 and \$14,483,800 for fiscal year 1994.

(9) For grants under section 533, \$30,800,000 for fiscal year 1993 and \$32,093,600 for fiscal year 1994.

(c) RENTAL ASSISTANCE.—(1) The Secretary, to the extent approved in appropriations Acts for fiscal years 1993 and 1994, may enter into rental assistance payment contracts under section 521(a)(2)(A) aggregating \$414,100,000 for fiscal year 1993 and \$431,492,200 for fiscal year 1994.

(2) Any authority approved in appropriation Acts for fiscal year 1988 or any succeeding fiscal year for rental assistance payment contracts under section 521(a)(2)(A) or contracts for operating assistance under section 521(a)(5) shall be used by the Secretary—

(A) to renew rental assistance payment contracts or operating assistance contracts that expire during such fiscal year;

(B) to provide amounts required to continue assistance payments for the remaining period of an existing contract, in any case in which the original amount of assistance is used prior to the end of the term of the contract; and

(C) to make additional rental assistance payment contracts or operating assistance contracts for existing or newly constructed dwelling units.

(d) SUPPLEMENTAL RENTAL ASSISTANCE CONTRACTS.—The Secretary, to the extent approved in appropriations Acts for fiscal

years 1993 and 1994, may enter into 5-year supplemental rental assistance contracts under section 502(c)(5)(D) aggregating \$12,178,000 for fiscal year 1993 and \$12,689,476 for fiscal year 1994.

(e) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated for rural housing vouchers under section 542, \$130,000,000 for fiscal year 1993 and \$140,000,000 for fiscal year 1994.

(f) **FUNDING FOR FARMWORKER HOUSING.**—

(1) **SECTION 514 FARMWORKER HOUSING LOANS.**—

(A) **INSURANCE AUTHORITY.**—*The Secretary of Agriculture may, to the extent approved in appropriation Acts, insure loans under section 514 (42 U.S.C. 1484) during each of fiscal years 2020 through 2029 in an aggregate amount not to exceed \$200,000,000.*

(B) **AUTHORIZATION OF APPROPRIATIONS FOR COSTS.**—*There is authorized to be appropriated \$75,000,000 for each of fiscal years 2020 through 2029 for costs (as such term is defined in section 502 of the Congressional Budget Act of 1974 (2 U.S.C. 661a)) of loans insured pursuant the authority under subparagraph (A).*

(2) **SECTION 516 GRANTS FOR FARMWORKER HOUSING.**—*There is authorized to be appropriated \$30,000,000 for each of fiscal years 2020 through 2029 for financial assistance under section 516 (42 U.S.C. 1486).*

(3) **SECTION 521 HOUSING ASSISTANCE.**—*There is authorized to be appropriated \$2,700,000,000 for each of fiscal years 2020 through 2029 for rental assistance agreements entered into or renewed pursuant to section 521(a)(2) (42 U.S.C. 1490a(a)(2)) or agreements entered into in lieu of debt forgiveness or payments for eligible households as authorized by section 502(c)(5)(D).*

#### INSURANCE OF LOANS FOR THE PROVISION OF HOUSING AND RELATED FACILITIES FOR DOMESTIC FARM LABOR

SEC. 514. (a) The Secretary is authorized to insure and make commitments to insure loans made by lenders other than the United States to the owner of any farm or any association of farmers for the purpose of providing housing and related facilities for domestic farm labor, or to any Indian tribe for such purpose, or to any State (or political subdivision thereof), or any broad-based public or private nonprofit organization, or any limited partnership in which the general partner is a nonprofit entity, or any nonprofit organization of farm workers incorporated within the State for the purpose of providing housing and related facilities for domestic farm labor any place within the State where a need exists. All such loans shall be made in accordance with terms and conditions substantially identical with those specified in section 502, except that—

(1) no such loan shall be insured in an amount in excess of the value of the farm involved less any prior liens in the case of a loan to an individual owner of a farm, or the total estimated value of the structures and facilities with respect to which the loan is made in the case of any other loan;

(2) no such loan shall be insured if it bears interest at a rate in excess of 1 per centum per annum;

(3) out of interest payments by the borrower the Secretary shall retain a charge in an amount not less than one-half of 1 per centum per annum of the unpaid principal balance of the loan;

(4) the insurance contracts and agreements with respect to any loan may contain provisions for servicing the loan by the Secretary or by the lender, and for the purchase by the Secretary of the loan if it is not in default, on such terms and conditions as the Secretary may prescribe; and

(5) the Secretary may take mortgages creating a lien running to the United States for the benefit of the insurance fund referred to in subsection (b) notwithstanding the fact that the note may be held by the lender or his assignee.

(b) The Secretary shall utilize the insurance fund created by section 11 of the Bankhead Jones Farm Tenant Act (7 U.S.C. 1005a) and the provisions of section 13 (a), (b), and (c) of such Act (7 U.S.C. 1005c (a), (b), and (c)) to discharge obligations under insurance contracts made pursuant to this section, and

(1) the Secretary may utilize the insurance fund to pay taxes, insurance, prior liens, and other expenses to protect the security for loans which have been insured hereunder and to acquire such security property at foreclosure sales or otherwise;

(2) the notes and security therefor acquired by the Secretary under insurance contracts made pursuant to this section shall become a part of the insurance fund. Loans insured under this section may be held in the fund and collected in accordance with their terms or may be sold and reinsured. All proceeds from such collections, including the liquidation of security and the proceeds of sales, shall become a part of the insurance fund; and

(3) of the charges retained by the Secretary out of interest payments by the borrower, amounts not less than one-half of 1 per centum per annum of the unpaid principal balance of the loan shall be deposited in and become a part of the insurance fund. The remainder of such charges shall be deposited in the Treasury of the United States and shall be available for administrative expenses of the Farmers Home Administration, to be transferred annually to and become merged with any appropriation for such expenses.

(c) Any contract of insurance executed by the Secretary under this section shall be an obligation of the United States and incontestable except for fraud or misrepresentation of which the holder of the contract has actual knowledge.

(e) Amounts made available pursuant to section 513 of this Act shall be available for administrative expenses incurred under this section.

(f) As used in this section—

(1) the term “housing” means (A) new structures (including household furnishings) suitable for dwelling use by domestic farm labor, and (B) existing structures (including household furnishings) which can be made suitable for dwelling use by domestic farm labor by rehabilitation, alteration, conversion, or improvements;

(2) the term “related facilities” means (A) new structures (including household furnishings) suitable for use as dining halls, community rooms or buildings, or infirmaries, or for other essential services facilities, (B) existing structures (including household furnishings) which can be made suitable for the above uses by rehabilitation, alteration, conversion, or improvement and (C) necessary for an adequate site; and

(3) the term “domestic farm labor” means any person (and the family of such person) who receives a substantial portion of his or her income from primary production of agricultural or aquacultural commodities, the handling of agricultural or aquacultural commodities in the unprocessed stage, or the processing of agricultural or aquacultural commodities, without respect to the source of employment, except that—

(A) such person shall be a citizen of the United States, or a person legally admitted for permanent residence, or a person legally admitted to the United States and authorized to work in agriculture;

(B) such term includes any person (and the family of such person) who is retired or disabled, but who was domestic farm labor at the time of retirement or becoming disabled; and

(C) in applying this paragraph with respect to vacant units in farm labor housing, the Secretary shall make units available for occupancy in the following order of priority:

- (i) to active farm laborers (and their families);
- (ii) to retired or disabled farm laborers (and their families) who were active in the local farm labor market at the time of retiring or becoming disabled; and
- (iii) to other retired or disabled farm laborers (and their families).

(g) The Secretary may waive the interest rate limitation contained in subsection (a)(2) and the requirement of section 501(c)(3) in any case in which the Secretary determines that qualified public or private nonprofit sponsors are not currently available and are not likely to become available within a reasonable period of time and such waiver is necessary to permit farmers to provide housing and related facilities for migrant domestic farm laborers, except that the benefits resulting from such waiver shall accrue to the tenants, and the interest rate on a loan insured under this section and for which the Secretary permits such waiver shall be no less than one-eighth of 1 per centum above the average interest rate on notes or other obligations which are issued under section 511 and have maturities comparable to such a loan.

(h) In making available assistance in any area under this section or section 516, the Secretary shall—

(1) in determining the need for the assistance, take into consideration the housing needs only of domestic farm labor, including migrant farmworkers, in the area; and

(2) in determining whether to provide such assistance, make such determination without regard to the extent or nature of other housing needs in the area.

(i) Housing and related facilities constructed with loans under this section may be used for tenants eligible for occupancy under section 515 if the Secretary determines that—

(1) there is no longer a need in the area for farm labor housing; or

(2) the need for such housing in the area has diminished to the extent that the purpose of the loan, providing housing for domestic farm labor, can no longer be met.

(j) *PER PROJECT LIMITATIONS ON ASSISTANCE.*—If the Secretary, in making available assistance in any area under this section or section 516 (42 U.S.C. 1486), establishes a limitation on the amount of assistance available per project, the limitation on a grant or loan award per project shall not be less than \$5 million.

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#### LOANS TO PROVIDE OCCUPANT-OWNED, RENTAL, AND COOPERATIVE HOUSING FOR LOW- AND MODERATE-INCOME PERSONS AND FAMILIES

SEC. 521. (a)(1)(A) Notwithstanding the provisions of sections 502, 517(a) and 515, loans to persons of low or moderate income under section 502 or 517(a)(1), or 526(a), loans under section 515 or 526(c) to provide rental or cooperative housing and related facilities for persons and families of low or moderate income or elderly persons and elderly families, and loans under section 526 to provide condominium housing for persons and families of low or moderate income, shall bear interest at a rate prescribed by the Secretary at not less than a rate determined by the Secretary of the Treasury upon the request of the Secretary taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods of maturity comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 per centum. Any loan guaranteed under this title shall bear interest at such rate as may be agreed upon by the borrower and the lender.

(B) From the interest rate so determined, the Secretary may provide the borrower with assistance in the form of credits so as to reduce the effective interest rate to a rate not less than 1 per centum per annum for such periods of time as the Secretary may determine for applicants described in subparagraph (A) if without such assistance such applicants could not afford the dwelling or make payments on the indebtedness of the rental or cooperative housing. In the case of assistance provided under this subparagraph with respect to a loan under section 502, the Secretary may not reduce, cancel, or refuse to renew the assistance due to an increase in the adjusted income of the borrower if the reduction, cancellation, or nonrenewal will cause the borrower to be unable to reasonably afford the resulting payments required under the loan.

(C) For persons of low income under section 502 or 517(a) who the Secretary determines are unable to afford a dwelling with the assistance provided under subparagraph (B) and when the Secretary determines that assisted rental housing programs (as authorized under this title, the National Housing Act, and the United States Housing Act of 1937) would be unsuitable in the area in which such persons reside, the Secretary may provide additional assistance, pursuant to amounts approved in appropriation Acts

and for such periods of time as the Secretary may determine, which may be in an amount not to exceed the difference between (i) the amount determined by the Secretary to be necessary to pay the principal indebtedness, interest, taxes, insurance, utilities, and maintenance, and (ii) 25 per centum of the income of such applicant. The amount of such additional assistance which may be approved in appropriation Acts may not exceed an aggregate amount of \$100,000,000. Such additional assistance may not be so approved with respect to any fiscal year beginning on or after October 1, 1981.

(D)(i) With respect to borrowers under section 502 or 517(a) who have received assistance under subparagraph (B) or (C), the Secretary shall provide for the recapture of all or a portion of such assistance rendered upon the disposition or nonoccupancy of the property by the borrower. In providing for such recapture, the Secretary shall make provisions to provide incentives for the borrower to maintain the property in a marketable condition. Notwithstanding any other provisions of law, any such assistance whenever rendered shall constitute a debt secured by the Security instruments given by the borrower to the Secretary to the extent that the Secretary may provide for recapture of such assistance.

(ii) In determining the amount recaptured under this subparagraph with respect to any loan made pursuant to section 502(a)(3) for the purchase of a dwelling located on land owned by a community land trust, the Secretary shall determine any appreciation of the dwelling based on any agreement between the borrower and the community land trust that limits the sale price or appreciation of the dwelling.

(E) Except for Federal or State laws relating to taxation, the assistance rendered to any borrower under subparagraphs (B) and (C) shall not be considered to be income or resources for any purpose under any Federal or State laws including, but not limited to, laws relating to welfare and public assistance programs.

(F) Loans subject to the interest rates and assistance provided under this paragraph (1) may be made only when the Secretary determines the needs of the applicant for necessary housing cannot be met with financial assistance from other sources including assistance under the National Housing Act and the United States Housing Act of 1937.

(G) Interest on loans under section 502 or 517(a) to victims of a natural disaster shall not exceed the rate which would be applicable to such loans under section 502 without regard to this section.

(2)(A) The Secretary shall make and insure loans under this section and sections 514, 515, and 517 to provide rental or cooperative housing and related facilities for persons and families of low income in multifamily housing projects, and shall make, and contract to make, assistance payments to the owners of such rental, congregate, or cooperative housing in order to make available to low-income occupants of such housing rentals at rates commensurate to income and not exceeding the highest of (i) 30 per centum of monthly adjusted income, (ii) 10 per centum of monthly income, or (iii) if the person or family is receiving payments for welfare assistance from a public agency, the portion of such payments which is specifically designated by such agency to meet the person's or family's housing costs. Any rent or contribution of any recipient shall

not increase as a result of this section or any other provision of Federal law or regulation by more than 10 per centum during any twelve-month period, unless the increase above 10 per centum is attributable to increases in income which are unrelated to this subsection or other law or regulation.

(B) The owner of any project assisted under this paragraph or paragraph (5) shall be required to provide at least annually a budget of operating expenses and record of tenants' income. The budget (and the income, in the case of a project assisted under this paragraph) shall be used to determine the amount of the assistance for each project.

(C) The project owner shall accumulate, safeguard, and periodically pay to the Secretary any rental charges collected in excess of basic rental charges as established by the Secretary in conformity with subparagraph (A). These funds may be credited to the appropriation and used by the Secretary for making such assistance payments through the end of the next fiscal year. Notwithstanding the preceding sentence, excess funds received from tenants in projects financed under section 515 during a fiscal year shall be available during the next succeeding fiscal year, together with funds provided under subparagraph (D), to the extent approved in appropriations Acts, to make assistance payments to reduce rent overburden on behalf of tenants of any such project whose rents exceed the levels referred to in subparagraph (A). In providing assistance to relieve rent overburden, the Secretary shall provide assistance with respect to very low-income and low-income families to reduce housing rentals to the levels specified in subparagraph (A).

(D) The Secretary, to the extent approved in appropriation Acts, may enter into rental assistance contracts aggregating not more than \$398,000,000 in carrying out subparagraph (A) with respect to the fiscal year ending on September 30, 1982.

(E) In order to assist elderly or handicapped persons or families who elect to live in a shared housing arrangement in which they benefit as a result of sharing the facilities of a dwelling with others in a manner that effectively and efficiently meets their housing needs and thereby reduces their costs of housing, the Secretary shall permit rental assistance to be used by such persons or families if the shared housing arrangement is in a single-family dwelling. For the purpose of this subparagraph, the Secretary shall prescribe minimum habitability standards to assure decent, safe, and sanitary housing for such families while taking into account the special circumstances of shared housing.

(3)(A) In the case of loans under sections 514 and 515 approved prior to the effective date of this paragraph with respect to which rental assistance is provided, the rent for tenants receiving such assistance shall not exceed the highest of (i) 30 per centum of monthly adjusted income, (ii) 10 per centum of monthly income, or (iii) if the person or family is receiving payments for welfare assistance from a public agency, the portion of such payments which is specifically designated by such agency to meet the person's or family's housing costs.

(B) In the case of a section 515 loan approved prior to the effective date of this paragraph with respect to which interest credits are provided, the tenant's rent shall not exceed the highest of (i) 30 per centum of monthly adjusted income, (ii) 10 per centum of

monthly income, or (iii) if the person or family is receiving payments for welfare assistance from a public agency, the portion of such payments which is specifically designated by such agency to meet the person's or family's housing costs, or, where no rental assistance authority is available, the rent level established on a basis of a 1 per centum interest rate on debt service.

(C) No rent for a unit financed under section 514 or 515 shall be increased as a result of this subsection or other provision of Federal law or Federal regulation by more than 10 per centum in any twelve-month period, unless the increase above 10 per centum is attributable to increases in income which are unrelated to this subsection or other law, or regulation.

(4) In the case of a loan with respect to the purchase of a manufactured home with respect to which rental assistance is provided, the monthly payment for principal and interest on the manufactured home and for lot rental and utilities shall not exceed the highest of (A) 30 per centum of monthly adjusted income, (B) 10 per centum of monthly income, or (C) if the person or family is receiving payments for welfare assistance from a public agency, the portion of such payments which is specifically designated by such agency to meet the person's or family's housing costs.

(5) OPERATING ASSISTANCE FOR MIGRANT FARMWORKER PROJECTS.—

(A) AUTHORITY.—In the case of housing (and related facilities) for migrant farmworkers *or domestic farm labor legally admitted to the United States and authorized to work in agriculture* provided or assisted with a loan under section 514 or a grant under section 516, the Secretary may, at the request of the owner of the project, use amounts provided for rental assistance payments under paragraph (2) to provide assistance for the costs of operating the project. Any tenant or unit assisted under this paragraph may not receive rental assistance under paragraph (2).

(B) AMOUNT.—

(i) *HOUSING FOR MIGRANT FARMWORKERS.*—In any fiscal year, the assistance provided under this paragraph for any project *providing housing for migrant farmworkers* shall not exceed an amount equal to 90 percent of the operating costs for the project for the year, as determined by the Secretary. The amount of assistance to be provided for a project under this paragraph shall be an amount that makes units in the project available to migrant farmworkers in the area of the project at rates not exceeding 30 percent of the monthly adjusted incomes of such farmworkers, based on the prevailing incomes of such farmworkers in the area.

(ii) *HOUSING FOR OTHER FARM LABOR.*—In any fiscal year, the assistance provided under this paragraph for any project *providing housing for domestic farm labor legally admitted to the United States and authorized to work in agriculture* shall not exceed an amount equal to 50 percent of the operating costs for the project for the year, as determined by the Secretary. The owner of such project shall not qualify for operating assistance unless the Secretary certifies that the project was unoccupied or underutilized be-



*fore making units available to such farm labor, and that a grant under this section will not displace any farm worker who is a United States worker.*

(C) SUBMISSION OF INFORMATION.—The owner of a project assisted under this paragraph shall be required to provide to the Secretary, at least annually, a budget of operating expenses and estimated rental income, which the Secretary may use to determine the amount of assistance for the project.

(D) DEFINITIONS.—For purposes of this paragraph, the following definitions shall apply:

(i) The term “migrant farmworker” has the same meaning given such term in section 516(k)(7).

(ii) The term “operating cost” means expenses incurred in operating a project, including expenses for—

(I) administration, maintenance, repair, and security of the project;

(II) utilities, fuel, furnishings, and equipment for the project; and

(III) maintaining adequate reserve funds for the project.

(iii) *The term “domestic farm labor” has the same meaning given such term in section 514(f)(3) (42 U.S.C. 1484(f)(3)), except that subparagraph (A) of such section shall not apply for purposes this section.*

(b) Housing and related facilities provided with loans described in subsection (a) shall be located in rural areas; and applicants eligible for such loans under section 502 or 517(a)(1), or for occupancy of housing provided with such loans under section 515, shall include otherwise qualified nonrural residents who will become rural residents.

(c) There shall be reimbursed to the Rural Housing Insurance Fund by annual appropriations (1) the amounts by which nonprincipal payments made from the fund during each fiscal year to the holders of insured loans described in subsection (a)(1) exceed interest due from the borrowers during each year, and (2) the amount of assistance payments described in subsections (a)(2) and (a)(5). There are authorized to be appropriated to the Rural Housing Insurance Fund such sums as may be necessary to reimburse such fund for the amount of assistance payments described in subsection (a)(1)(C). The Secretary may from time to time issue notes to the Secretary of the Treasury under section 517(h) and section 526 to obtain amounts equal to such unreimbursed payments, pending the annual reimbursement by appropriation.

(d)(1) In utilizing the rental assistance payments authority pursuant to subsection (a)(2)—

(A) the Secretary shall make such assistance available in existing projects for units occupied by low income families or persons to extend expiring contracts or to provide additional assistance when necessary to provide the full amount authorized pursuant to existing contracts;

(B) *upon request of an owner of a project financed under section 514 or 515, the Secretary is authorized to enter into renewal of such agreements for a period of 20 years or the term of the loan, whichever is shorter, subject to amounts made available in appropriations Acts;*

[(B)] (C) any such authority remaining after carrying out subparagraph (A) shall be used in projects receiving commitments under section 514, 515, or 516 after fiscal year 1983 for contracts to assist very low-income families or persons to occupy the units in such projects, except that not more than 5 percent of the units assisted may be occupied by low income families or persons who are not very low-income families or persons; and

[(C)] (D) any such authority remaining after carrying out subparagraphs (A) and (B) may be used to provide further assistance to existing projects under section 514, 515, or 516.

(2) The Secretary shall transfer rental assistance contract authority under this section from projects where such authority is unused after initial rentup and not needed because of a lack of eligible tenants in the area to projects where such authority is needed.

(3) *In the case of any rental assistance contract authority that becomes available because of the termination of assistance on behalf of an assisted family—*

*(A) at the option of the owner of the rental project, the Secretary shall provide the owner a period of 6 months before such assistance is made available pursuant to subparagraph (B) during which the owner may use such assistance authority to provide assistance of behalf of an eligible unassisted family that—*

*(i) is residing in the same rental project that the assisted family resided in prior to such termination; or*

*(ii) newly occupies a dwelling unit in such rental project during such period; and*

*(B) except for assistance used as provided in subparagraph (A), the Secretary shall use such remaining authority to provide such assistance on behalf of eligible families residing in other rental projects originally financed under section 515 or both sections 514 and 516 of this Act.*

(e) Any rent or contribution of any recipient or any tenant in a project assisted under subsection (a)(5) shall not increase as a result of this section, any amendment thereto, or any other provision of Federal law or regulation by more than 10 per centum during any twelve-month period, unless the increase above 10 per centum is attributable to increases in income which are unrelated to this subsection or other law or regulation.

\* \* \* \* \*

#### **SEC. 542. RURAL HOUSING VOUCHER PROGRAM.**

(a) **IN GENERAL.**—To such extent or in such amounts as are approved in appropriation Acts, the Secretary shall carry out a rural housing voucher program to assist very low-income families and persons to reside in rental housing in rural areas. For such purposes, the Secretary may provide assistance using a payment standard based on the fair market rental rate established by the Secretary for the area. The monthly assistance payment for any family shall be the amount by which the payment standard for the area exceeds 30 per centum of the family's monthly adjusted income, except that such monthly assistance payment shall not exceed the amount which the rent for the dwelling unit (including the amount allowed for utilities in the case of a unit with separate util-

ity metering) exceeds 10 per centum of the family's monthly gross income.

(b) **COORDINATION AND LIMITATION.**—In carrying out the rural housing voucher program under this section, the Secretary shall—

(1) coordinate activities under this section with activities assisted under sections 515 and 533 of this title; and

(2) enter into contracts for assistance for not more than 5000 units in any fiscal year.

(c) **ELIGIBILITY OF HOUSEHOLDS IN SECTIONS 514, 515, AND 516 PROJECTS.**—*The Secretary may provide rural housing vouchers under this section for any low-income household (including those not receiving rental assistance) residing, for a term longer than the remaining term of their lease in effect just prior to prepayment, in a property financed with a loan made or insured under section 514 or 515 (42 U.S.C. 1484, 1485) which has been prepaid without restrictions imposed by the Secretary pursuant to section 502(c)(5)(G)(ii)(I) (42 U.S.C. 1472(c)(5)(G)(ii)(I)), has been foreclosed, or has matured after September 30, 2005, or residing in a property assisted under section 514 or 516 that is owned by a nonprofit organization or public agency.*

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**SEC. 545. HOUSING PRESERVATION AND REVITALIZATION PROGRAM.**

(a) **ESTABLISHMENT.**—*The Secretary shall carry out a program under this section for the preservation and revitalization of multifamily rental housing projects financed under section 515 or both sections 514 and 516.*

(b) **NOTICE OF MATURING LOANS.**—

(1) **TO OWNERS.**—*On an annual basis, the Secretary shall provide written notice to each owner of a property financed under section 515 or both sections 514 and 516 that will mature within the 4-year period beginning upon the provision of such notice, setting forth the options and financial incentives that are available to facilitate the extension of the loan term or the option to decouple a rental assistance contract pursuant to subsection (f).*

(2) **TO TENANTS.**—

(A) **IN GENERAL.**—*For each property financed under section 515 or both sections 514 and 516, not later than the date that is 2 years before the date that such loan will mature, the Secretary shall provide written notice to each household residing in such property that informs them of the date of the loan maturity, the possible actions that may happen with respect to the property upon such maturity, and how to protect their right to reside in Federally assisted housing after such maturity.*

(B) **LANGUAGE.**—*Notice under this paragraph shall be provided in plain English and shall be translated to other languages in the case of any property located in an area in which a significant number of residents speak such other languages.*

(c) **LOAN RESTRUCTURING.**—*Under the program under this section, the Secretary may restructure such existing housing loans, as the Secretary considers appropriate, for the purpose of ensuring that such projects have sufficient resources to preserve the projects to pro-*

vide safe and affordable housing for low-income residents and farm laborers, by—

- (1) reducing or eliminating interest;
- (2) deferring loan payments;
- (3) subordinating, reducing, or reamortizing loan debt; and
- (4) providing other financial assistance, including advances, payments, and incentives (including the ability of owners to obtain reasonable returns on investment) required by the Secretary.

(d) **RENEWAL OF RENTAL ASSISTANCE.**—When the Secretary offers to restructure a loan pursuant to subsection (c), the Secretary shall offer to renew the rental assistance contract under section 521(a)(2) for a 20-year term that is subject to annual appropriations, provided that the owner agrees to bring the property up to such standards that will ensure its maintenance as decent, safe, and sanitary housing for the full term of the rental assistance contract.

(e) **RESTRICTIVE USE AGREEMENTS.**—

(1) **REQUIREMENT.**—As part of the preservation and revitalization agreement for a project, the Secretary shall obtain a restrictive use agreement that obligates the owner to operate the project in accordance with this title.

(2) **TERM.**—

(A) **NO EXTENSION OF RENTAL ASSISTANCE CONTRACT.**—Except when the Secretary enters into a 20-year extension of the rental assistance contract for the project, the term of the restrictive use agreement for the project shall be consistent with the term of the restructured loan for the project.

(B) **EXTENSION OF RENTAL ASSISTANCE CONTRACT.**—If the Secretary enters into a 20-year extension of the rental assistance contract for a project, the term of the restrictive use agreement for the project shall be for 20 years.

(C) **TERMINATION.**—The Secretary may terminate the 20-year use restrictive use agreement for a project prior to the end of its term if the 20-year rental assistance contract for the project with the owner is terminated at any time for reasons outside the owner's control.

(f) **DECOUPLING OF RENTAL ASSISTANCE.**—

(1) **RENEWAL OF RENTAL ASSISTANCE CONTRACT.**—If the Secretary determines that a maturing loan for a project cannot reasonably be restructured in accordance with subsection (c) and the project was operating with rental assistance under section 521, the Secretary may renew the rental assistance contract, notwithstanding any provision of section 521, for a term, subject to annual appropriations, of at least 10 years but not more than 20 years.

(2) **RENTS.**—Any agreement to extend the term of the rental assistance contract under section 521 for a project shall obligate the owner to continue to maintain the project as decent, safe and sanitary housing and to operate the development in accordance with this title, except that rents shall be based on the lesser of—

- (A) the budget-based needs of the project; or
- (B) the operating cost adjustment factor as a payment standard as provided under section 524 of the Multifamily

*Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437 note).*

(g) **MULTIFAMILY HOUSING TRANSFER TECHNICAL ASSISTANCE.**—Under the program under this section, the Secretary may provide grants to qualified non-profit organizations and public housing agencies to provide technical assistance, including financial and legal services, to borrowers under loans under this title for multifamily housing to facilitate the acquisition of such multifamily housing properties in areas where the Secretary determines there is a risk of loss of affordable housing.

(h) **TRANSFER OF RENTAL ASSISTANCE.**—After the loan or loans for a rental project originally financed under section 515 or both sections 514 and 516 have matured or have been prepaid and the owner has chosen not to restructure the loan pursuant to subsection (c), a tenant residing in such project shall have 18 months prior to loan maturation or prepayment to transfer the rental assistance assigned to the tenant's unit to another rental project originally financed under section 515 or both sections 514 and 516, and the owner of the initial project may rent the tenant's previous unit to a new tenant without income restrictions.

(i) **ADMINISTRATIVE EXPENSES.**—Of any amounts made available for the program under this section for any fiscal year, the Secretary may use not more than \$1,000,000 for administrative expenses for carrying out such program.

(j) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated for the program under this section \$200,000,000 for each of fiscal years 2020 through 2024.

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## VIOLENCE AGAINST WOMEN ACT OF 1994

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## TITLE IV—VIOLENCE AGAINST WOMEN

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### Subtitle N—Addressing the Housing Needs of Victims of Domestic Violence, Dating Violence, Sexual Assault, and Stalking

\* \* \* \* \*

#### CHAPTER 2—HOUSING RIGHTS

##### SEC. 41411. HOUSING PROTECTIONS FOR VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, AND STALKING.

(a) **DEFINITIONS.**—In this chapter:

(1) **AFFILIATED INDIVIDUAL.**—The term “affiliated individual” means, with respect to an individual—

(A) a spouse, parent, brother, sister, or child of that individual, or an individual to whom that individual stands in loco parentis; or

(B) any individual, tenant, or lawful occupant living in the household of that individual.

(2) APPROPRIATE AGENCY.—The term “appropriate agency” means, with respect to a covered housing program, the Executive department (as defined in section 101 of title 5, United States Code) that carries out the covered housing program.

(3) COVERED HOUSING PROGRAM.—The term “covered housing program” means—

(A) the program under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q);

(B) the program under section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013);

(C) the program under subtitle D of title VIII of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12901 et seq.);

(D) the program under subtitle A of title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11360 et seq.);

(E) the program under subtitle A of title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12741 et seq.);

(F) the program under paragraph (3) of section 221(d) of the National Housing Act (12 U.S.C. 1715l(d)) that bears interest at a rate determined under the proviso under paragraph (5) of such section 221(d);

(G) the program under section 236 of the National Housing Act (12 U.S.C. 1715z-1);

(H) the programs under sections 6 and 8 of the United States Housing Act of 1937 (42 U.S.C. 1437d and 1437f);

(I) rural housing assistance provided under sections 514, 515, 516, 533, and 538 of the Housing Act of 1949 (42 U.S.C. 1484, 1485, 1486, 1490m, and 1490p-2); **[and]**

*(J) rural development housing voucher assistance provided by the Secretary of Agriculture pursuant to section 542 of the Housing Act of 1949 (42 U.S.C. 1490r), without regard to subsection (b) of such section, and applicable appropriation Acts; and*

**[(J)]** (K) the low income housing tax credit program under section 42 of the Internal Revenue Code of 1986.

(b) PROHIBITED BASIS FOR DENIAL OR TERMINATION OF ASSISTANCE OR EVICTION.—

(1) IN GENERAL.—An applicant for or tenant of housing assisted under a covered housing program may not be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.

(2) CONSTRUCTION OF LEASE TERMS.—An incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking shall not be construed as—

(A) a serious or repeated violation of a lease for housing assisted under a covered housing program by the victim or threatened victim of such incident; or

(B) good cause for terminating the assistance, tenancy, or occupancy rights to housing assisted under a covered housing program of the victim or threatened victim of such incident.

(3) TERMINATION ON THE BASIS OF CRIMINAL ACTIVITY.—

(A) DENIAL OF ASSISTANCE, TENANCY, AND OCCUPANCY RIGHTS PROHIBITED.—No person may deny assistance, tenancy, or occupancy rights to housing assisted under a covered housing program to a tenant solely on the basis of criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking that is engaged in by a member of the household of the tenant or any guest or other person under the control of the tenant, if the tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking.

(B) BIFURCATION.—

(i) IN GENERAL.—Notwithstanding subparagraph (A), a public housing agency or owner or manager of housing assisted under a covered housing program may bifurcate a lease for the housing in order to evict, remove, or terminate assistance to any individual who is a tenant or lawful occupant of the housing and who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking against an affiliated individual or other individual, without evicting, removing, terminating assistance to, or otherwise penalizing a victim of such criminal activity who is also a tenant or lawful occupant of the housing.

(ii) EFFECT OF EVICTION ON OTHER TENANTS.—If public housing agency or owner or manager of housing assisted under a covered housing program evicts, removes, or terminates assistance to an individual under clause (i), and the individual is the sole tenant eligible to receive assistance under a covered housing program, the public housing agency or owner or manager of housing assisted under the covered housing program shall provide any remaining tenant or resident an opportunity to establish eligibility for the covered housing program. If a tenant or resident described in the preceding sentence cannot establish eligibility, the public housing agency or owner or manager of the housing shall provide the tenant or resident a reasonable time, as determined by the appropriate agency, to find new housing or to establish eligibility for housing under another covered housing program.

(C) RULES OF CONSTRUCTION.—Nothing in subparagraph

(A) shall be construed—

(i) to limit the authority of a public housing agency or owner or manager of housing assisted under a covered housing program, when notified of a court order, to comply with a court order with respect to—

(I) the rights of access to or control of property, including civil protection orders issued to protect

a victim of domestic violence, dating violence, sexual assault, or stalking; or

(II) the distribution or possession of property among members of a household in a case;

(ii) to limit any otherwise available authority of a public housing agency or owner or manager of housing assisted under a covered housing program to evict or terminate assistance to a tenant for any violation of a lease not premised on the act of violence in question against the tenant or an affiliated person of the tenant, if the public housing agency or owner or manager does not subject an individual who is or has been a victim of domestic violence, dating violence, or stalking to a more demanding standard than other tenants in determining whether to evict or terminate;

(iii) to limit the authority to terminate assistance to a tenant or evict a tenant from housing assisted under a covered housing program if a public housing agency or owner or manager of the housing can demonstrate that an actual and imminent threat to other tenants or individuals employed at or providing service to the property would be present if the assistance is not terminated or the tenant is not evicted; or

(iv) to supersede any provision of any Federal, State, or local law that provides greater protection than this section for victims of domestic violence, dating violence, sexual assault, or stalking.

(c) DOCUMENTATION.—

(1) REQUEST FOR DOCUMENTATION.—If an applicant for, or tenant of, housing assisted under a covered housing program represents to a public housing agency or owner or manager of the housing that the individual is entitled to protection under subsection (b), the public housing agency or owner or manager may request, in writing, that the applicant or tenant submit to the public housing agency or owner or manager a form of documentation described in paragraph (3).

(2) FAILURE TO PROVIDE CERTIFICATION.—

(A) IN GENERAL.—If an applicant or tenant does not provide the documentation requested under paragraph (1) within 14 business days after the tenant receives a request in writing for such certification from a public housing agency or owner or manager of housing assisted under a covered housing program, nothing in this chapter may be construed to limit the authority of the public housing agency or owner or manager to—

(i) deny admission by the applicant or tenant to the covered program;

(ii) deny assistance under the covered program to the applicant or tenant;

(iii) terminate the participation of the applicant or tenant in the covered program; or

(iv) evict the applicant, the tenant, or a lawful occupant that commits violations of a lease.



- (B) EXTENSION.—A public housing agency or owner or manager of housing may extend the 14-day deadline under subparagraph (A) at its discretion.
- (3) FORM OF DOCUMENTATION.—A form of documentation described in this paragraph is—
- (A) a certification form approved by the appropriate agency that—
    - (i) states that an applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking;
    - (ii) states that the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for protection under subsection (b) meets the requirements under subsection (b); and
    - (iii) includes the name of the individual who committed the domestic violence, dating violence, sexual assault, or stalking, if the name is known and safe to provide;
  - (B) a document that—
    - (i) is signed by—
      - (I) an employee, agent, or volunteer of a victim service provider, an attorney, a medical professional, or a mental health professional from whom an applicant or tenant has sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of the abuse; and
      - (II) the applicant or tenant; and
    - (ii) states under penalty of perjury that the individual described in clause (i)(I) believes that the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for protection under subsection (b) meets the requirements under subsection (b);
  - (C) a record of a Federal, State, tribal, territorial, or local law enforcement agency, court, or administrative agency; or
  - (D) at the discretion of a public housing agency or owner or manager of housing assisted under a covered housing program, a statement or other evidence provided by an applicant or tenant.
- (4) CONFIDENTIALITY.—Any information submitted to a public housing agency or owner or manager under this subsection, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking shall be maintained in confidence by the public housing agency or owner or manager and may not be entered into any shared database or disclosed to any other entity or individual, except to the extent that the disclosure is—
- (A) requested or consented to by the individual in writing;
  - (B) required for use in an eviction proceeding under subsection (b); or
  - (C) otherwise required by applicable law.

(5) DOCUMENTATION NOT REQUIRED.—Nothing in this subsection shall be construed to require a public housing agency or owner or manager of housing assisted under a covered housing program to request that an individual submit documentation of the status of the individual as a victim of domestic violence, dating violence, sexual assault, or stalking.

(6) COMPLIANCE NOT SUFFICIENT TO CONSTITUTE EVIDENCE OF UNREASONABLE ACT.—Compliance with subsection (b) by a public housing agency or owner or manager of housing assisted under a covered housing program based on documentation received under this subsection, shall not be sufficient to constitute evidence of an unreasonable act or omission by the public housing agency or owner or manager or an employee or agent of the public housing agency or owner or manager. Nothing in this paragraph shall be construed to limit the liability of a public housing agency or owner or manager of housing assisted under a covered housing program for failure to comply with subsection (b).

(7) RESPONSE TO CONFLICTING CERTIFICATION.—If a public housing agency or owner or manager of housing assisted under a covered housing program receives documentation under this subsection that contains conflicting information, the public housing agency or owner or manager may require an applicant or tenant to submit third-party documentation, as described in subparagraph (B), (C), or (D) of paragraph (3).

(8) PREEMPTION.—Nothing in this subsection shall be construed to supersede any provision of any Federal, State, or local law that provides greater protection than this subsection for victims of domestic violence, dating violence, sexual assault, or stalking.

(d) NOTIFICATION.—

(1) DEVELOPMENT.—The Secretary of Housing and Urban Development shall develop a notice of the rights of individuals under this section, including the right to confidentiality and the limits thereof.

(2) PROVISION.—Each public housing agency or owner or manager of housing assisted under a covered housing program shall provide the notice developed under paragraph (1), together with the form described in subsection (c)(3)(A), to an applicant for or tenants of housing assisted under a covered housing program—

(A) at the time the applicant is denied residency in a dwelling unit assisted under the covered housing program;

(B) at the time the individual is admitted to a dwelling unit assisted under the covered housing program;

(C) with any notification of eviction or notification of termination of assistance; and

(D) in multiple languages, consistent with guidance issued by the Secretary of Housing and Urban Development in accordance with Executive Order 13166 (42 U.S.C. 2000d–1 note; relating to access to services for persons with limited English proficiency).

(e) EMERGENCY TRANSFERS.—Each appropriate agency shall adopt a model emergency transfer plan for use by public housing

agencies and owners or managers of housing assisted under covered housing programs that—

(1) allows tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to transfer to another available and safe dwelling unit assisted under a covered housing program if—

(A) the tenant expressly requests the transfer; and

(B)(i) the tenant reasonably believes that the tenant is threatened with imminent harm from further violence if the tenant remains within the same dwelling unit assisted under a covered housing program; or

(ii) in the case of a tenant who is a victim of sexual assault, the sexual assault occurred on the premises during the 90 day period preceding the request for transfer; and

(2) incorporates reasonable confidentiality measures to ensure that the public housing agency or owner or manager does not disclose the location of the dwelling unit of a tenant to a person that commits an act of domestic violence, dating violence, sexual assault, or stalking against the tenant.

(f) **POLICIES AND PROCEDURES FOR EMERGENCY TRANSFER.**—The Secretary of Housing and Urban Development shall establish policies and procedures under which a victim requesting an emergency transfer under subsection (e) may receive, subject to the availability of tenant protection vouchers, assistance under section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)).

(g) **IMPLEMENTATION.**—The appropriate agency with respect to each covered housing program shall implement this section, as this section applies to the covered housing program.

\* \* \* \* \*

## **HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1980**

\* \* \* \* \*

### **RESTRICTION ON USE OF ASSISTED HOUSING**

**SEC. 214.** (a) Notwithstanding any other provision of law, the applicable Secretary may not make financial assistance available for the benefit of any alien unless that alien is a resident of the United States and is—

(1) an alien lawfully admitted for permanent residence as an immigrant as defined by sections 101(a)(15) and 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15) and 8 U.S.C. 1101(a)(20)), excluding, among others, alien visitors, tourists, diplomats, and students who enter the United States temporarily with no intention of abandoning their residence in a foreign country;

(2) an alien who entered the United States prior to June 30, 1948, or such subsequent date as is enacted by law, continuously maintained his or her residence in the United States since then, and is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General pursuant to section 249 of the Immigration and Nationality Act (8 U.S.C. 1259);

(3) an alien who is lawfully present in the United States pursuant to an admission under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157) or pursuant to the granting of asylum (which has not been terminated) under section 208 of such Act (8 U.S.C. 1158);

(4) an alien who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest pursuant to section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5));

(5) an alien who is lawfully present in the United States as a result of the Attorney General's withholding deportation pursuant to section 241(b)(3) of the Immigration and Nationality Act (8 U.S.C. 1253(h));

(6) an alien lawfully admitted for temporary or permanent residence under section 245A of the Immigration and Nationality Act; **[or]**

*(7) an alien granted certified agricultural worker or certified agricultural dependent status under title I of the Farm Workforce Modernization Act of 2019, but solely for financial assistance made available pursuant to section 521 or 542 of the Housing Act of 1949 (42 U.S.C. 1490a, 1490r); or*

**[(7)]** (8) an alien who is lawfully resident in the United States and its territories and possessions under section 141 of the Compacts of Free Association between the Government of the United States and the Governments of the Marshall Islands, the Federated States of Micronesia (48 U.S.C. 1901 note) and Palau (48 U.S.C. 1931 note) while the applicable section is in effect: Provided, That, within Guam any citizen or national of the United States shall be entitled to a preference or priority in receiving financial assistance before any such alien who is otherwise eligible for assistance.

(b)(1) For purposes of this section the term "financial assistance" means financial assistance made available pursuant to the United States Housing Act of 1937, Section 235, or 236 of the National Housing Act, the direct loan program under section 502 of the Housing Act of 1949 or section 502(c)(5)(D), 504, 521(a)(2)(A), or 542 of such Act, subtitle A of title III of the Cranston-Gonzalez National Affordable Housing Act, or section 101 of the Housing and Urban Development Act of 1965.

(2) If the eligibility for financial assistance of at least one member of a family has been affirmatively established under the program of financial assistance and under this section, and the ineligibility of one or more family members has not been affirmatively established under this section, any financial assistance made available to that family by the applicable Secretary shall be prorated, based on the number of individuals in the family for whom eligibility has been affirmatively established under the program of financial assistance and under this section, as compared with the total number of individuals who are members of the family.

(c)(1) If, following completion of the applicable hearing process, financial assistance for any individual receiving such assistance on the date of the enactment of the Housing and Community Development Act of 1987 is to be terminated, the public housing agency or other local governmental entity involved (in the case of public hous-

ing or assistance under section 8 of the United States Housing Act of 1937) or the applicable Secretary (in the case of any other financial assistance) shall take one of the following actions:

(A) Permit the continued provision of financial assistance, if necessary to avoid the division of a family in which the head of household or spouse is a citizen of the United States, a national of the United States, or an alien resident of the United States described in any of paragraphs (1) through (6) of subsection (a). For purposes of this paragraph, the term "family" means a head of household, any spouse, any parents of the head of household, any parents of the spouse, and any children of the head of household or spouse. Financial assistance continued under this subparagraph for a family may be provided only on a prorated basis, under which the amount of financial assistance is based on the percentage of the total number of members of the family that are eligible for that assistance under the program of financial assistance and under this section.

(B)(i) Defer the termination of financial assistance, if necessary to permit the orderly transition of the individual and any family members involved to other affordable housing.

(ii) Except as provided in clause (iii), any deferral under this subparagraph shall be for a 6-month period and may be renewed by the public housing agency or other entity involved for an aggregate period of 18 months. At the beginning of each deferral period, the public housing agency or other entity involved shall inform the individual and family members of their ineligibility for financial assistance and offer them other assistance in finding other affordable housing.

(iii) The time period described in clause (ii) shall not apply in the case of a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of that Act.

(2) Notwithstanding any other provision of law, the applicable Secretary may not make financial assistance available for the benefit of—

(A) any alien who—

(i) has a residence in a foreign country that such alien has no intention of abandoning;

(ii) is a bona fide student qualified to pursue a full course of study; and

(iii) is admitted to the United States temporarily and solely for purposes of pursuing such a course of study at an established institution of learning or other recognized place of study in the United States, particularly designated by such alien and approved by the Attorney General after consultation with the Department of Education of the United States, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student (and if any such institution of learning or place of study fails to make such reports promptly the approval shall be withdrawn); and

(B) the alien spouse and minor children of any alien described in subparagraph (A), if accompanying such alien or following to join such alien.

(d) The following conditions apply with respect to financial assistance being or to be provided for the benefit of an individual:

(1)(A) There must be a declaration in writing by the individual (or, in the case of an individual who is a child, by another on the individual's behalf), under penalty of perjury, stating whether or not the individual is a citizen or national of the United States, and, if that individual is not a citizen or national of the United States, that the individual is in a satisfactory immigration status. If the declaration states that the individual is not a citizen or national of the United States and that the individual is younger than 62 years of age, the declaration shall be verified by the Immigration and Naturalization Service. If the declaration states that the individual is a citizen or national of the United States, the applicable Secretary, or the agency administering assistance covered by this section, may request verification of the declaration by requiring presentation of documentation that the applicable Secretary considers appropriate, including a United States passport, resident alien card, alien registration card, social security card, or other documentation.

(B) In this subsection, the term "satisfactory immigration status" means an immigration status which does not make the individual ineligible for financial assistance.

(2) If such an individual is not a citizen or national of the United States, is not 62 years of age or older, and is receiving financial assistance on the date of enactment of the Use of Assisted Housing by Aliens Act of 1996 or applying for financial assistance on or after that date, there must be presented either—

(A) alien registration documentation or other proof of immigration registration from the Immigration and Naturalization Service that contains the individual's alien admission number or alien file number (or numbers if the individual has more than one number), or

(B) such other documents as the applicable Secretary determines constitutes reasonable evidence indicating a satisfactory immigration status.

In the case of an individual applying for financial assistance on or after the date of enactment of the Use of Assisted Housing by Aliens Act of 1996, the applicable Secretary may not provide any such assistance for the benefit of that individual before documentation is presented and verified under paragraph (3) or (4).

(3) If the documentation described in paragraph (2)(A) is presented, the applicable Secretary shall utilize the individual's alien file or alien admission number to verify with the Immigration and Naturalization Service the individual's immigration status through an automated or other system (designated by the Service for use with States) that—

(A) utilizes the individual's name, file number, admission number, or other means permitting efficient verification, and

(B) protects the individual's privacy to the maximum degree possible.

(4) In the case of such an individual who is not a citizen or national of the United States, is not 62 years of age or older, and is receiving financial assistance on the date of enactment of the Use of Assisted Housing by Aliens Act of 1996 or applying for financial assistance on or after that date, if, at the time of application or recertification for financial assistance, the statement described in paragraph (1) is submitted but the documentation required under paragraph (2) is not presented or if the documentation required under paragraph (2)(A) is presented but such documentation is not verified under paragraph (3)—

(A) the applicable Secretary—

(i) shall provide a reasonable opportunity, not to exceed 30 days, to submit to the applicable Secretary evidence indicating a satisfactory immigration status, or to appeal to the Immigration and Naturalization Service the verification determination of the Immigration and Naturalization Service under paragraph (3),

(ii) in the case of any individual receiving assistance on the date of enactment of the Use of Assisted Housing by Aliens Act of 1996, may not delay, deny, reduce, or terminate the eligibility of that individual for financial assistance on the basis of the immigration status of that individual until the expiration of that 30-day period; and

(iii) in the case of any individual applying for financial assistance on or after the date of enactment of the Use of Assisted Housing by Aliens Act of 1996, may not deny the application for such assistance on the basis of the immigration status of that individual until the expiration of that 30-day period; and

(B) if any documents or additional information are submitted as evidence under subparagraph (A), or if appeal is made to the Immigration and Naturalization Service with respect to the verification determination of the Service under paragraph (3)—

(i) the applicable Secretary shall transmit to the Immigration and Naturalization Service photostatic or other similar copies of such documents or additional information for official verification,

(ii) pending such verification or appeal, the applicable Secretary may not—

(I) in the case of any individual receiving assistance on the date of enactment of the Use of Assisted Housing by Aliens Act of 1996, delay, deny, reduce, or terminate the eligibility of that individual for financial assistance on the basis of the immigration status of that individual; and

(II) in the case of any individual applying for financial assistance on or after the date of enactment of the Use of Assisted Housing by Aliens Act of 1996, deny the application for such assistance

on the basis of the immigration status of that individual; and

(iii) the applicable Secretary shall not be liable for the consequences of any action, delay, or failure of the Service to conduct such verification.

(5) If the applicable Secretary determines, after complying with the requirements of paragraph (4), that such an individual is not in a satisfactory immigration status, the applicable Secretary shall—

(A) deny the application of that individual for financial assistance or terminate the eligibility of that individual for financial assistance, as applicable;

(B) provide that the individual may request a fair hearing during the 30-day period beginning upon receipt of the notice under subparagraph (C); and

(C) provide to the individual written notice of the determination under this paragraph, the right to a fair hearing process, and the time limitation for requesting a hearing under subparagraph (C).

(6) The applicable Secretary shall terminate the eligibility for financial assistance of an individual and the members of the household of the individual, for a period of not less than 24 months, upon determining that such individual has knowingly permitted another individual who is not eligible for such assistance to reside in the public or assisted housing unit of the individual. This provision shall not apply to a family if the ineligibility of the ineligible individual at issue was considered in calculating any proration of assistance provided for the family.

For purposes of this subsection, the term “applicable Secretary” means the applicable Secretary, a public housing agency, or another entity that determines the eligibility of an individual for financial assistance.

(e) The applicable Secretary shall not take any compliance, disallowance, penalty, or other regulatory action against an entity with respect to any error in the entity’s determination to make an individual eligible for financial assistance based on citizenship or immigration status—

(1) if the entity has provided such eligibility based on a verification of satisfactory immigration status by the Immigration and Naturalization Service,

(2) because the entity, under subsection (d)(4)(A)(ii) (or under any alternative system for verifying immigration status with the Immigration and Naturalization Service authorized in the Immigration Reform and Control Act of 1986 (Public Law 99–603)), was required to provide a reasonable opportunity to submit documentation, or

(3) because the entity, under subsection (d)(4)(B)(ii) (or under any alternative system for verifying immigration status with the Immigration and Naturalization Service authorized in the Immigration Reform and Control Act of 1986 (Public Law 99–603)), was required to wait for the response to the Immigration and Naturalization Service to the entity’s request for official verification of the immigration status of the individual, or the



response from the Immigration and Naturalization Service to the appeal of that individual.

(f)(1) Notwithstanding any other provision of law, no agency or official of a State or local government shall have any liability for the design or implementation of the Federal verification system described in subsection (d) if the implementation by the State or local agency or official is in accordance with Federal rules and regulations.

(2) The verification system of the Department of Housing and Urban Development shall not supersede or affect any consent agreement entered into or court decree or court order entered prior to the date of the enactment of the Housing and Community Development Act of 1987.

(g) The applicable Secretary is authorized to pay to each public housing agency or other entity an amount equal to 100 percent of the costs incurred by the public housing agency or other entity in implementing and operating an immigration status verification system under subsection (d) (or under any alternative system for verifying immigration status with the Immigration and Naturalization Service authorized in the Immigration Reform and Control Act of 1986 (Public Law 99-603)).

(h) For purposes of this section, the term “applicable Secretary” means—

(1) the Secretary of Housing and Urban Development, with respect to financial assistance administered by such Secretary and financial assistance under subtitle A of title III of the Cranston-Gonzalez National Affordable Housing Act; and

(2) the Secretary of Agriculture, with respect to financial assistance administered by such Secretary.

(i) VERIFICATION OF ELIGIBILITY.—

(1) IN GENERAL.—No individual or family applying for financial assistance may receive such financial assistance prior to the affirmative establishment and verification of eligibility of at least the individual or one family member under subsection (d) by the applicable Secretary or other appropriate entity.

(2) RULES APPLICABLE TO PUBLIC HOUSING AGENCIES.—A public housing agency (as that term is defined in section 3 of the United States Housing Act of 1937)—

(A) may, notwithstanding paragraph (1) of this subsection, elect not to affirmatively establish and verify eligibility before providing financial assistance

(B) in carrying out subsection (d)—

(i) may initiate procedures to affirmatively establish or verify the eligibility of an individual or family under this section at any time at which the public housing agency determines that such eligibility is in question, regardless of whether or not that individual or family is at or near the top of the waiting list of the public housing agency;

(ii) may affirmatively establish or verify the eligibility of an individual or family under this section in accordance with the procedures set forth in section 274A(b)(1) of the Immigration and Nationality Act; and

(iii) shall have access to any relevant information contained in the SAVE system (or any successor thereto) that relates to any individual or family applying for financial assistance.

(3) **ELIGIBILITY OF FAMILIES.**—For purposes of this subsection, with respect to a family, the term “eligibility” means the eligibility of each family member.

\* \* \* \* \*

## **ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996**

### **DIVISION C—ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996**

#### **SEC. 1. SHORT TITLE OF DIVISION; AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT; APPLICATION OF DEFINITIONS OF SUCH ACT; TABLE OF CONTENTS OF DIVISION; SEVERABILITY.**

(a) **SHORT TITLE.**—This division may be cited as the “Illegal Immigration Reform and Immigrant Responsibility Act of 1996”.

(b) **AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT.**—  
[Omitted amendatory text.]

(1) \* \* \*

\* \* \* \* \*

(c) **APPLICATION OF CERTAIN DEFINITIONS.**—Except as otherwise provided in this division, for purposes of titles I and VI of this division, the terms “alien”, “Attorney General”, “border crossing identification card”, “entry”, “immigrant”, “immigrant visa”, “lawfully admitted for permanent residence”, “national”, “naturalization”, “refugee”, “State”, and “United States” shall have the meaning given such terms in section 101(a) of the Immigration and Nationality Act.

(d) **TABLE OF CONTENTS OF DIVISION.**—The table of contents of this division is as follows:

Sec. 1. Short title of division; amendments to Immigration and Nationality Act; application of definitions of such Act; table of contents of division; severability.

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#### **TITLE IV—ENFORCEMENT OF RESTRICTIONS AGAINST EMPLOYMENT**

##### **[Subtitle A—Pilot Programs for Employment Eligibility Confirmation]**

**[Sec. 401. Establishment of programs.**

**[Sec. 402. Voluntary election to participate in a pilot program.**

**[Sec. 403. Procedures for participants in pilot programs.**

**[Sec. 404. Employment eligibility confirmation system.**

**[Sec. 405. Reports.]**

\* \* \* \* \*

## TITLE IV—ENFORCEMENT OF RESTRICTIONS AGAINST EMPLOYMENT

### [Subtitle A—Pilot Programs for Employment Eligibility Confirmation

#### [(SEC. 401. ESTABLISHMENT OF PROGRAMS.

[(a) IN GENERAL.—The Secretary of Homeland Security shall conduct 3 pilot programs of employment eligibility confirmation under this subtitle.

[(b) IMPLEMENTATION DEADLINE; TERMINATION.—The Secretary of Homeland Security shall implement the pilot programs in a manner that permits persons and other entities to have elections under section 402 of this division made and in effect no later than 1 year after the date of the enactment of this Act. Unless the Congress otherwise provides, the Secretary of Homeland Security shall terminate a pilot program on September 30, 2015.

[(c) SCOPE OF OPERATION OF PILOT PROGRAMS.—The Secretary of Homeland Security shall provide for the operation—

[(1) of the E-Verify Program (described in section 403(a) of this division) in, at a minimum, 5 of the 7 States with the highest estimated population of aliens who are not lawfully present in the United States, and the Secretary of Homeland Security shall expand the operation of the program to all 50 States not later than December 1, 2004;

[(2) of the citizen attestation pilot program (described in section 403(b) of this division) in at least 5 States (or, if fewer, all of the States) that meet the condition described in section 403(b)(2)(A) of this division; and

[(3) of the machine-readable-document pilot program (described in section 403(c) of this division) in at least 5 States (or, if fewer, all of the States) that meet the condition described in section 403(c)(2) of this division.

[(d) REFERENCES IN SUBTITLE.—In this subtitle—

[(1) PILOT PROGRAM REFERENCES.—The terms “program” or “pilot program” refer to any of the 3 pilot programs provided for under this subtitle.

[(2) CONFIRMATION SYSTEM.—The term “confirmation system” means the confirmation system established under section 404 of this division.

[(3) REFERENCES TO SECTION 274A.—Any reference in this subtitle to section 274A (or a subdivision of such section) is deemed a reference to such section (or subdivision thereof) of the Immigration and Nationality Act.

[(4) I-9 OR SIMILAR FORM.—The term “I-9 or similar form” means the form used for purposes of section 274A(b)(1)(A) or such other form as the Secretary of Homeland Security determines to be appropriate.

[(5) LIMITED APPLICATION TO RECRUITERS AND REFERRERS.—Any reference to recruitment or referral (or a recruiter or referrer) in relation to employment is deemed a reference only to such recruitment or referral (or recruiter or referrer) that is subject to section 274A(a)(1)(B)(ii).

[(6) UNITED STATES CITIZENSHIP.—The term “United States citizenship” includes United States nationality.

[(7) STATE.—The term “State” has the meaning given such term in section 101(a)(36) of the Immigration and Nationality Act.

**[SEC. 402. VOLUNTARY ELECTION TO PARTICIPATE IN A PILOT PROGRAM.**

[(a) VOLUNTARY ELECTION.—Subject to subsection (c)(3)(B), any person or other entity that conducts any hiring (or recruitment or referral) in a State in which a pilot program is operating may elect to participate in that pilot program. Except as specifically provided in subsection (e), the Secretary of Homeland Security may not require any person or other entity to participate in a pilot program.

[(b) BENEFIT OF REBUTTABLE PRESUMPTION.—

[(1) IN GENERAL.—If a person or other entity is participating in a pilot program and obtains confirmation of identity and employment eligibility in compliance with the terms and conditions of the program with respect to the hiring (or recruitment or referral) of an individual for employment in the United States, the person or entity has established a rebuttable presumption that the person or entity has not violated section 274A(a)(1)(A) with respect to such hiring (or such recruitment or referral).

[(2) CONSTRUCTION.—Paragraph (1) shall not be construed as preventing a person or other entity that has an election in effect under subsection (a) from establishing an affirmative defense under section 274A(a)(3) if the person or entity complies with the requirements of section 274A(a)(1)(B) but fails to obtain confirmation under paragraph (1).

[(c) GENERAL TERMS OF ELECTIONS.—

[(1) IN GENERAL.—An election under subsection (a) shall be in such form and manner, under such terms and conditions, and shall take effect, as the Secretary of Homeland Security shall specify. The Secretary of Homeland Security may not impose any fee as a condition of making an election or participating in a pilot program.

[(2) SCOPE OF ELECTION.—

[(A) IN GENERAL.—Subject to paragraph (3), any electing person or other entity may provide that the election under subsection (a) shall apply (during the period in which the election is in effect)—

[(i) to all its hiring (and all recruitment or referral) in the State (or States) in which the pilot program is operating, or

[(ii) to its hiring (or recruitment or referral) in one or more pilot program States or one or more places of hiring (or recruitment or referral, as the case may be) in the pilot program States.

[(B) APPLICATION OF PROGRAMS IN NON-PILOT PROGRAM STATES.—In addition, the Secretary of Homeland Security may permit a person or entity electing the citizen attestation pilot program (described in 403(b) of this division) or the machine-readable-document pilot program (described in section 403(c) of this division) to provide that the election applies to its hiring (or recruitment or referral) in one

or more States or places of hiring (or recruitment or referral) in which the pilot program is not otherwise operating but only if such States meet the requirements of 403(b)(2)(A) and 403(c)(2) of this division, respectively.

[(3) TERMINATION OF ELECTIONS.—The Secretary of Homeland Security may terminate an election by a person or other entity under this section because the person or entity has substantially failed to comply with its obligations under the pilot program. A person or other entity may terminate an election in such form and manner as the Secretary of Homeland Security shall specify.

[(d) CONSULTATION, EDUCATION, AND PUBLICITY.—

[(1) CONSULTATION.—The Secretary of Homeland Security shall closely consult with representatives of employers (and recruiters and referrers) in the development and implementation of the pilot programs, including the education of employers (and recruiters and referrers) about such programs.

[(2) PUBLICITY.—The Secretary of Homeland Security shall widely publicize the election process and pilot programs, including the voluntary nature of the pilot programs and the advantages to employers (and recruiters and referrers) of making an election under this section.

[(3) ASSISTANCE THROUGH DISTRICT OFFICES.—The Secretary of Homeland Security shall designate one or more individuals in each District office of the Immigration and Naturalization Service for a Service District in which a pilot program is being implemented—

[(A) to inform persons and other entities that seek information about pilot programs of the voluntary nature of such programs, and

[(B) to assist persons and other entities in electing and participating in any pilot programs in effect in the District, in complying with the requirements of section 274A, and in facilitating confirmation of the identity and employment eligibility of individuals consistent with such section.

[(e) SELECT ENTITIES REQUIRED TO PARTICIPATE IN A PILOT PROGRAM.—

[(1) FEDERAL GOVERNMENT.—

[(A) EXECUTIVE DEPARTMENTS.—

[(i) IN GENERAL.—Each Department of the Federal Government shall elect to participate in a pilot program and shall comply with the terms and conditions of such an election.

[(ii) ELECTION.—Subject to clause (iii), the Secretary of each such Department—

[(I) shall elect the pilot program (or programs) in which the Department shall participate, and

[(II) may limit the election to hiring occurring in certain States (or geographic areas) covered by the program (or programs) and in specified divisions within the Department, so long as all hiring by such divisions and in such locations is covered.

[(iii) ROLE OF ATTORNEY GENERAL.—The Secretary of Homeland Security shall assist and coordinate elec-

tions under this subparagraph in such manner as assures that—

[(I) a significant portion of the total hiring within each Department within States covered by a pilot program is covered under such a program, and

[(II) there is significant participation by the Federal Executive branch in each of the pilot programs.

[(B) LEGISLATIVE BRANCH.—Each Member of Congress, each officer of Congress, and the head of each agency of the legislative branch, that conducts hiring in a State in which a pilot program is operating shall elect to participate in a pilot program, may specify which pilot program or programs (if there is more than one) in which the Member, officer, or agency will participate, and shall comply with the terms and conditions of such an election.

[(2) APPLICATION TO CERTAIN VIOLATORS.—An order under section 274A(e)(4) or section 274B(g) of the Immigration and Nationality Act may require the subject of the order to participate in, and comply with the terms of, a pilot program with respect to the subject's hiring (or recruitment or referral) of individuals in a State covered by such a program.

[(3) CONSEQUENCE OF FAILURE TO PARTICIPATE.—If a person or other entity is required under this subsection to participate in a pilot program and fails to comply with the requirements of such program with respect to an individual—

[(A) such failure shall be treated as a violation of section 274A(a)(1)(B) with respect to that individual, and

[(B) a rebuttable presumption is created that the person or entity has violated section 274A(a)(1)(A).

Subparagraph (B) shall not apply in any prosecution under section 274A(f)(1).

[(f) CONSTRUCTION.—This subtitle shall not affect the authority of the Secretary of Homeland Security under any other law (including section 274A(d)(4)) to conduct demonstration projects in relation to section 274A.

#### **[SEC. 403. PROCEDURES FOR PARTICIPANTS IN PILOT PROGRAMS.]**

[(a) E-VERIFY PROGRAM.—A person or other entity that elects to participate in the E-Verify Program described in this subsection agrees to conform to the following procedures in the case of the hiring (or recruitment or referral) for employment in the United States of each individual covered by the election:

[(1) PROVISION OF ADDITIONAL INFORMATION.—The person or entity shall obtain from the individual (and the individual shall provide) and shall record on the I-9 or similar form—

[(A) the individual's social security account number, if the individual has been issued such a number, and

[(B) if the individual does not attest to United States citizenship under section 274A(b)(2), such identification or authorization number established by the Immigration and Naturalization Service for the alien as the Secretary of Homeland Security shall specify,

and shall retain the original form and make it available for inspection for the period and in the manner required of I-9 forms under section 274A(b)(3).

**[(2) PRESENTATION OF DOCUMENTATION.—**

**[(A) IN GENERAL.—**The person or other entity, and the individual whose identity and employment eligibility are being confirmed, shall, subject to subparagraph (B), fulfill the requirements of section 274A(b) with the following modifications:

**[(i)]** A document referred to in section 274A(b)(1)(B)(ii) (as redesignated by section 412(a) of this division) must be designated by the Secretary of Homeland Security as suitable for the purpose of identification in a pilot program.

**[(ii)]** A document referred to in section 274A(b)(1)(D) must contain a photograph of the individual.

**[(iii)]** The person or other entity has complied with the requirements of section 274A(b)(1) with respect to examination of a document if the document reasonably appears on its face to be genuine and it reasonably appears to pertain to the individual whose identity and work eligibility is being confirmed.

**[(B) LIMITATION OF REQUIREMENT TO EXAMINE DOCUMENTATION.—**If the Secretary of Homeland Security finds that a pilot program would reliably determine with respect to an individual whether—

**[(i)]** the person with the identity claimed by the individual is authorized to work in the United States, and

**[(ii)]** the individual is claiming the identity of another person,

if a person or entity could fulfill the requirement to examine documentation contained in subparagraph (A) of section 274A(b)(1) by examining a document specified in either subparagraph (B) or (D) of such section, the Secretary of Homeland Security may provide that, for purposes of such requirement, only such a document need be examined. In such case, any reference in section 274A(b)(1)(A) to a verification that an individual is not an unauthorized alien shall be deemed to be a verification of the individual's identity.

**[(3) SEEKING CONFIRMATION.—**

**[(A) IN GENERAL.—**The person or other entity shall make an inquiry, as provided in section 404(a)(1) of this division, using the confirmation system to seek confirmation of the identity and employment eligibility of an individual, by not later than the end of 3 working days (as specified by the Secretary of Homeland Security) after the date of the hiring (or recruitment or referral, as the case may be).

**[(B) EXTENSION OF TIME PERIOD.—**If the person or other entity in good faith attempts to make an inquiry during such 3 working days and the confirmation system has registered that not all inquiries were received during such time, the person or entity can make an inquiry in the first subsequent working day in which the confirmation system registers that it has received all inquiries. If the confirma-

tion system cannot receive inquiries at all times during a day, the person or entity merely has to assert that the entity attempted to make the inquiry on that day for the previous sentence to apply to such an inquiry, and does not have to provide any additional proof concerning such inquiry.

[(4) CONFIRMATION OR NONCONFIRMATION.—

[(A) CONFIRMATION UPON INITIAL INQUIRY.—If the person or other entity receives an appropriate confirmation of an individual's identity and work eligibility under the confirmation system within the time period specified under section 404(b) of this division, the person or entity shall record on the I-9 or similar form an appropriate code that is provided under the system and that indicates a final confirmation of such identity and work eligibility of the individual.

[(B) NONCONFIRMATION UPON INITIAL INQUIRY AND SECONDARY VERIFICATION.—

[(i) NONCONFIRMATION.—If the person or other entity receives a tentative nonconfirmation of an individual's identity or work eligibility under the confirmation system within the time period specified under 404(b) of this division, the person or entity shall so inform the individual for whom the confirmation is sought.

[(ii) NO CONTEST.—If the individual does not contest the nonconfirmation within the time period specified in section 404(c) of this division, the nonconfirmation shall be considered final. The person or entity shall then record on the I-9 or similar form an appropriate code which has been provided under the system to indicate a tentative nonconfirmation.

[(iii) CONTEST.—If the individual does contest the nonconfirmation, the individual shall utilize the process for secondary verification provided under section 404(c) of this division. The nonconfirmation will remain tentative until a final confirmation or nonconfirmation is provided by the confirmation system within the time period specified in such section. In no case shall an employer terminate employment of an individual because of a failure of the individual to have identity and work eligibility confirmed under this section until a nonconfirmation becomes final. Nothing in this clause shall apply to a termination of employment for any reason other than because of such a failure.

[(iv) RECORDING OF CONCLUSION ON FORM.—If a final confirmation or nonconfirmation is provided by the confirmation system under section 404(c) of this division regarding an individual, the person or entity shall record on the I-9 or similar form an appropriate code that is provided under the system and that indicates a confirmation or nonconfirmation of identity and work eligibility of the individual.

[(C) CONSEQUENCES OF NONCONFIRMATION.—



[(i) TERMINATION OR NOTIFICATION OF CONTINUED EMPLOYMENT.—If the person or other entity has received a final nonconfirmation regarding an individual under subparagraph (B), the person or entity may terminate employment (or recruitment or referral) of the individual. If the person or entity does not terminate employment (or recruitment or referral) of the individual, the person or entity shall notify the Secretary of Homeland Security of such fact through the confirmation system or in such other manner as the Secretary of Homeland Security may specify.

[(ii) FAILURE TO NOTIFY.—If the person or entity fails to provide notice with respect to an individual as required under clause (i), the failure is deemed to constitute a violation of section 274A(a)(1)(B) with respect to that individual and the applicable civil monetary penalty under section 274A(e)(5) shall be (notwithstanding the amounts specified in such section) no less than \$500 and no more than \$1,000 for each individual with respect to whom such violation occurred.

[(iii) CONTINUED EMPLOYMENT AFTER FINAL NONCONFIRMATION.—If the person or other entity continues to employ (or to recruit or refer) an individual after receiving final nonconfirmation, a rebuttable presumption is created that the person or entity has violated section 274A(a)(1)(A). The previous sentence shall not apply in any prosecution under section 274A(f)(1).

[(b) CITIZEN ATTESTATION PILOT PROGRAM.—

[(1) IN GENERAL.—Except as provided in paragraphs (3) through (5), the procedures applicable under the citizen attestation pilot program under this subsection shall be the same procedures as those under the E-Verify Program under subsection (a).

[(2) RESTRICTIONS.—

[(A) STATE DOCUMENT REQUIREMENT TO PARTICIPATE IN PILOT PROGRAM.—The Secretary of Homeland Security may not provide for the operation of the citizen attestation pilot program in a State unless each driver's license or similar identification document described in section 274A(b)(1)(D)(i) issued by the State—

[(i) contains a photograph of the individual involved, and

[(ii) has been determined by the Secretary of Homeland Security to have security features, and to have been issued through application and issuance procedures, which make such document sufficiently resistant to counterfeiting, tampering, and fraudulent use that it is a reliable means of identification for purposes of this section.

[(B) AUTHORIZATION TO LIMIT EMPLOYER PARTICIPATION.—The Secretary of Homeland Security may restrict the number of persons or other entities that may elect to participate in the citizen attestation pilot program under this subsection as the Secretary of Homeland Security de-

termines to be necessary to produce a representative sample of employers and to reduce the potential impact of fraud.

[(3) NO CONFIRMATION REQUIRED FOR CERTAIN INDIVIDUALS ATTESTING TO U.S. CITIZENSHIP.—In the case of a person or other entity hiring (or recruiting or referring) an individual under the citizen attestation pilot program, if the individual attests to United States citizenship (under penalty of perjury on an I-9 or similar form which form states on its face the criminal and other penalties provided under law for a false representation of United States citizenship)—

[(A) the person or entity may fulfill the requirement to examine documentation contained in subparagraph (A) of section 274A(b)(1) by examining a document specified in either subparagraph (B)(i) or (D) of such section; and

[(B) the person or other entity is not required to comply with respect to such individual with the procedures described in paragraphs (3) and (4) of subsection (a), but only if the person or entity retains the form and makes it available for inspection in the same manner as in the case of an I-9 form under section 274A(b)(3).

[(4) WAIVER OF DOCUMENT PRESENTATION REQUIREMENT IN CERTAIN CASES.—

[(A) IN GENERAL.—In the case of a person or entity that elects, in a manner specified by the Secretary of Homeland Security consistent with subparagraph (B), to participate in the pilot program under this paragraph, if an individual being hired (or recruited or referred) attests (in the manner described in paragraph (3)) to United States citizenship and the person or entity retains the form on which the attestation is made and makes it available for inspection in the same manner as in the case of an I-9 form under section 274A(b)(3), the person or entity is not required to comply with the procedures described in section 274A(b).

[(B) RESTRICTION.—The Secretary of Homeland Security shall restrict the election under this paragraph to no more than 1,000 employers and, to the extent practicable, shall select among employers seeking to make such election in a manner that provides for such an election by a representative sample of employers.

[(5) NONREVIEWABLE DETERMINATIONS.—The determinations of the Secretary of Homeland Security under paragraphs (2) and (4) are within the discretion of the Secretary of Homeland Security and are not subject to judicial or administrative review.

[(c) MACHINE-READABLE-DOCUMENT PILOT PROGRAM.—

[(1) IN GENERAL.—Except as provided in paragraph (3), the procedures applicable under the machine-readable-document pilot program under this subsection shall be the same procedures as those under the E-Verify Program under subsection (a).

[(2) STATE DOCUMENT REQUIREMENT TO PARTICIPATE IN PILOT PROGRAM.—The Secretary of Homeland Security may not provide for the operation of the machine-readable-document pilot

program in a State unless driver's licenses and similar identification documents described in section 274A(b)(1)(D)(i) issued by the State include a machine-readable social security account number.

[(3) USE OF MACHINE-READABLE DOCUMENTS.—If the individual whose identity and employment eligibility must be confirmed presents to the person or entity hiring (or recruiting or referring) the individual a license or other document described in paragraph (2) that includes a machine-readable social security account number, the person or entity must make an inquiry through the confirmation system by using a machine-readable feature of such document. If the individual does not attest to United States citizenship under section 274A(b)(2), the individual's identification or authorization number described in subsection (a)(1)(B) shall be provided as part of the inquiry.

[(d) PROTECTION FROM LIABILITY FOR ACTIONS TAKEN ON THE BASIS OF INFORMATION PROVIDED BY THE CONFIRMATION SYSTEM.—No person or entity participating in a pilot program shall be civilly or criminally liable under any law for any action taken in good faith reliance on information provided through the confirmation system.

**[SEC. 404. EMPLOYMENT ELIGIBILITY CONFIRMATION SYSTEM.]**

[(a) IN GENERAL.—The Secretary of Homeland Security shall establish a pilot program confirmation system through which the Secretary of Homeland Security (or a designee of the Secretary of Homeland Security, which may be a nongovernmental entity)—

[(1) responds to inquiries made by electing persons and other entities (including those made by the transmittal of data from machine-readable documents under the machine-readable pilot program) at any time through a toll-free telephone line or other toll-free electronic media concerning an individual's identity and whether the individual is authorized to be employed, and

[(2) maintains records of the inquiries that were made, of confirmations provided (or not provided), and of the codes provided to inquirers as evidence of their compliance with their obligations under the pilot programs.

To the extent practicable, the Secretary of Homeland Security shall seek to establish such a system using one or more nongovernmental entities.

[(b) INITIAL RESPONSE.—The confirmation system shall provide confirmation or a tentative nonconfirmation of an individual's identity and employment eligibility within 3 working days of the initial inquiry. If providing confirmation or tentative nonconfirmation, the confirmation system shall provide an appropriate code indicating such confirmation or such nonconfirmation.

[(c) SECONDARY VERIFICATION PROCESS IN CASE OF TENTATIVE NONCONFIRMATION.—In cases of tentative nonconfirmation, the Secretary of Homeland Security shall specify, in consultation with the Commissioner of Social Security and the Commissioner of the Immigration and Naturalization Service, an available secondary verification process to confirm the validity of information provided and to provide a final confirmation or nonconfirmation within 10 working days after the date of the tentative nonconfirmation. When

final confirmation or nonconfirmation is provided, the confirmation system shall provide an appropriate code indicating such confirmation or nonconfirmation.

[(d) DESIGN AND OPERATION OF SYSTEM.—The confirmation system shall be designed and operated—

[(1) to maximize its reliability and ease of use by persons and other entities making elections under section 402(a) of this division consistent with insulating and protecting the privacy and security of the underlying information;

[(2) to respond to all inquiries made by such persons and entities on whether individuals are authorized to be employed and to register all times when such inquiries are not received;

[(3) with appropriate administrative, technical, and physical safeguards to prevent unauthorized disclosure of personal information; and

[(4) to have reasonable safeguards against the system's resulting in unlawful discriminatory practices based on national origin or citizenship status, including—

[(A) the selective or unauthorized use of the system to verify eligibility;

[(B) the use of the system prior to an offer of employment; or

[(C) the exclusion of certain individuals from consideration for employment as a result of a perceived likelihood that additional verification will be required, beyond what is required for most job applicants.

[(e) RESPONSIBILITIES OF THE COMMISSIONER OF SOCIAL SECURITY.—As part of the confirmation system, the Commissioner of Social Security, in consultation with the entity responsible for administration of the system, shall establish a reliable, secure method, which, within the time periods specified under subsections (b) and (c), compares the name and social security account number provided in an inquiry against such information maintained by the Commissioner in order to confirm (or not confirm) the validity of the information provided regarding an individual whose identity and employment eligibility must be confirmed, the correspondence of the name and number, and whether the individual has presented a social security account number that is not valid for employment. The Commissioner shall not disclose or release social security information (other than such confirmation or nonconfirmation).

[(f) RESPONSIBILITIES OF THE COMMISSIONER OF THE IMMIGRATION AND NATURALIZATION SERVICE.—As part of the confirmation system, the Commissioner of the Immigration and Naturalization Service, in consultation with the entity responsible for administration of the system, shall establish a reliable, secure method, which, within the time periods specified under subsections (b) and (c), compares the name and alien identification or authorization number described in section 403(a)(1)(B) of this division which are provided in an inquiry against such information maintained by the Commissioner in order to confirm (or not confirm) the validity of the information provided, the correspondence of the name and number, and whether the alien is authorized to be employed in the United States.

[(g) UPDATING INFORMATION.—The Commissioners of Social Security and the Immigration and Naturalization Service shall up-

date their information in a manner that promotes the maximum accuracy and shall provide a process for the prompt correction of erroneous information, including instances in which it is brought to their attention in the secondary verification process described in subsection (c).

**[(h) LIMITATION ON USE OF THE CONFIRMATION SYSTEM AND ANY RELATED SYSTEMS.—**

**[(1) IN GENERAL.—**Notwithstanding any other provision of law, nothing in this subtitle shall be construed to permit or allow any department, bureau, or other agency of the United States Government to utilize any information, data base, or other records assembled under this subtitle for any other purpose other than as provided for under this subtitle.

**[(2) NO NATIONAL IDENTIFICATION CARD.—**Nothing in this subtitle shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.

**[SEC. 405. REPORTS.**

**[(a) IN GENERAL.—**The Secretary of Homeland Security shall submit to the Committees on the Judiciary of the House of Representatives and of the Senate reports on the pilot programs within 3 months after the end of the third and fourth years in which the programs are in effect. Such reports shall—

**[(1)** assess the degree of fraudulent attesting of United States citizenship,

**[(2)** include recommendations on whether or not the pilot programs should be continued or modified, and

**[(3)** assess the benefits of the pilot programs to employers and the degree to which they assist in the enforcement of section 274A.

**[(b) REPORT ON EXPANSION.—**Not later than June 1, 2004, the Secretary of Homeland Security shall submit to the Committees on the Judiciary of the House of Representatives and the Senate a report—

**[(1)** evaluating whether the problems identified by the report submitted under subsection (a) have been substantially resolved; and

**[(2)** describing what actions the Secretary of Homeland Security shall take before undertaking the expansion of the E-Verify Program to all 50 States in accordance with section 401(c)(1), in order to resolve any outstanding problems raised in the report filed under subsection (a).]

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## TITLE 18, UNITED STATES CODE

\* \* \* \* \*

### PART I—CRIMES

\* \* \* \* \*

## CHAPTER 75—PASSPORTS AND VISAS

\* \* \* \* \*

**§ 1546. Fraud and misuse of visas, permits, and other documents**

(a) Whoever knowingly forges, counterfeits, alters, or falsely makes any immigrant or nonimmigrant visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, or utters, uses, attempts to use, possesses, obtains, accepts, or receives any such visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, knowing it to be forged, counterfeited, altered, or falsely made, or to have been procured by means of any false claim or statement, or to have been otherwise procured by fraud or unlawfully obtained; or

Whoever, except under direction of the Attorney General or the Commissioner of the Immigration and Naturalization Service, or other proper officer, knowingly possesses any blank permit, or engraves, sells, brings into the United States, or has in his control or possession any plate in the likeness of a plate designed for the printing of permits, or makes any print, photograph, or impression in the likeness of any immigrant or nonimmigrant visa, permit or other document required for entry into the United States, or has in his possession a distinctive paper which has been adopted by the Attorney General or the Commissioner of the Immigration and Naturalization Service for the printing of such visas, permits, or documents; or

Whoever, when applying for an immigrant or nonimmigrant visa, permit, or other document required for entry into the United States, or for admission to the United States personates another, or falsely appears in the name of a deceased individual, or evades or attempts to evade the immigration laws by appearing under an assumed or fictitious name without disclosing his true identity, or sells or otherwise disposes of, or offers to sell or otherwise dispose of, or utters, such visa, permit, or other document, to any person not authorized by law to receive such document; or

Whoever knowingly makes under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document which contains any such false statement or which fails to contain any reasonable basis in law or fact—

Shall be fined under this title or imprisoned not more than 25 years (if the offense was committed to facilitate an act of international terrorism (as defined in section 2331 of this title)), 20 years (if the offense was committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title)), 10 years (in the case of the first or second such offense, if the offense was not committed to facilitate such an act of international terrorism or a drug

trafficking crime), or 15 years (in the case of any other offense), or both.

(b) Whoever uses—

(1) an **[identification document,]** *identification document or document meant to establish employment authorization*, knowing (or having reason to know) that the document was not issued lawfully for the use of the possessor,

(2) an **[identification document]** *identification document or document meant to establish employment authorization*, knowing (or having reason to know) that the document is false, or

(3) a false attestation,

for the purpose of satisfying a requirement of section 274A(b) or section 274E(b) of the Immigration and Nationality Act, shall be fined under this title, imprisoned not more than 5 years, or both.

(c) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a subdivision of a State, or of an intelligence agency of the United States, or any activity authorized under title V of the Organized Crime Control Act of 1970 (18 U.S.C. note prec. 3481). For purposes of this section, the term “State” means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

\* \* \* \* \*

## DISSENTING VIEWS

H.R. 5038<sup>1</sup> presents itself as a solution to the labor shortages experienced by the American agriculture industry, the increasing reliance by some growers on illegal aliens to fill those positions, a burdensome and bureaucratic H-2A program, and the overarching need to keep American agriculture competitive as production of our nation's food supply continues to move overseas. These are serious concerns that require a durable legislative solution. If Congress does not provide such a solution that ensures a reliable labor supply, America's farms will continue to go out of business and the vast majority of America's food will be grown overseas.

But H.R. 5038 falls far short of such a solution. On top of an amnesty for over a million (the actual number is unknown) illegal immigrant farm laborers and their family members, H.R. 5038's "reforms" to the H-2A program would benefit labor unions and special interest groups at the expense of American farmers. H-2A users and other growers are concerned about rising wages forcing them out of competition with imported agriculture commodities and litigation exposure, yet H.R. 5038 fails to provide relief on either front. Also of concern is that H.R. 5038 could make the agricultural labor crisis even worse as amnestied workers reduce their hours or leave agriculture entirely in search of jobs in other industries.

Republicans at Committee offered several amendments to address major problems in H.R. 5038, specifically the wage rate, additional exposure to federal court litigation for H-2A users, and deficiencies in the amnesty. Although this bill has been portrayed as a "bipartisan" product, it should be noted that Judiciary Republicans were excluded from the bill's long-running negotiations, no Republican amendments were accepted at markup, and the bill did not receive any Republican votes at markup.

### *Labor Shortages and Problems with the H-2A program*

For years, American farmers have struggled to find sufficient numbers of skilled U.S. workers willing to fill positions in the agriculture sector. The Department of Labor (DOL) has concluded that "[a]uthorized workers appear to be leaving farm jobs because of age or opportunities for more stable and higher paying employment outside of agriculture, and are being replaced almost exclusively by foreign-born workers."<sup>2</sup> Philip Martin, professor of agricultural and resource economics at the University of California, Davis, estimates that fruit, vegetable, and horticulture farms hired a total of 1,220,893 individual farmworkers in 2007, 414,542 for more than 150 days and 806,351 for less than 150 days (a common definition

<sup>1</sup> Amendment in the Nature of a Substitute to H.R. 5038, as amended by the Lofgren Manager's Amendment, 116th Cong. (Farm Workforce Modernization Act (FWMA) of 2019).

<sup>2</sup> 73 Fed. Reg. 8540 (2008).



of seasonal worker).<sup>3</sup> With regard to how many of today's agricultural workers are unauthorized aliens, the January 2018 DOL National Agricultural Workers Survey (NAWS)<sup>4</sup> stated, "Fifty-one percent of the hired crop labor force had work authorization in 2015–2016."<sup>5</sup> Thus, NAWS found that 49 percent of those surveyed were not work authorized. And the Department of Agriculture's Economic Research Service has noted that "the share of hired crop farmworkers who were not legally authorized to work in the U.S. grew from roughly 14 percent in 1989–91 to almost 55 percent in 1999–2001. Since then it has fluctuated around 50 percent."<sup>6</sup> This figure, however, is based on self-attestation and is therefore likely much higher in reality. The American Farm Bureau Federation (AFB) believes that "[the NAWS figure] is probably a lower-bound estimate because the figure is based on a response volunteered by individuals to government-authorized questioners . . . it seems reasonable that at least *some* individuals would not, and did not, volunteer the fact that they were not legally authorized to work."<sup>7</sup> In fact, the late agricultural economist James Holt stated that "[w]hen workplace audits are conducted on the ground and the authenticity of documents are examined, the typical experience is more like 75 percent or so."<sup>8</sup>

Farmers seeking a legal labor force have turned to the H–2A program for a supply of highly motivated and legal foreign workers, but have found the program to be unnecessarily burdensome at costly, requiring many steps to obtain and retain workers. James Holt previously testified that:

Farmers seeking to use the program must first apply for a labor certification from [DOL] and attempt to recruit qualified U.S. workers. If the employer's application meets the requirements of [DOL] and sufficient U.S. workers cannot be found, a labor certification is issued. The employer then files a petition with the U.S. Citizenship and Immigration Service . . . for the admission of H–2A aliens. Meanwhile, a supply of alien workers must be recruited. If the employer's petition is granted, it is transmitted to the U.S. consulate where the aliens will apply for visas. The aliens complete visa applications and are interviewed. They must meet the same criteria as any other applicant for a non-immigrant visa. The aliens who are granted visas then travel to the port of entry and apply for admission to the U.S. Those who are admitted travel to the employer's farm. In order for workers to arrive by the employer's date of need, this entire process must take place in 45

<sup>3</sup>Philip Martin, *Farm Exports and Farm Labor*, 2011 Economic Policy Institute at 6 (table 4).

<sup>4</sup>DOL's National Agricultural Workers Survey is the only survey that ascertains the legal status of noncitizen farmworkers. However, NAWS is limited to hired crop farmworkers and excludes hired livestock farmworkers. See <http://www.doleta.gov/agworker/naaws.cfm>.

<sup>5</sup>Findings From the National Agricultural Worker Survey (NAWS) 2015–2016: A Demographic and Employment Profile of United States Farmworkers; Jan. 2018, [https://wdr.doleta.gov/research/FullText\\_Documents/ETAOP\\_2019-01\\_NAWS\\_Research\\_Report\\_13.pdf](https://wdr.doleta.gov/research/FullText_Documents/ETAOP_2019-01_NAWS_Research_Report_13.pdf) At 4.

<sup>6</sup>United States Department of Agriculture, *Farm Labor, Background*, <https://www.ers.usda.gov/topics/farm-economy/farm-labor/#legalstatus>.

<sup>7</sup>*Hearing to Review the Labor Needs of American Agriculture Before the House Comm. On Agriculture*, 110th Cong. 2nd Sess. 110–30 (2007) at 21–22.

<sup>8</sup>*Id.* at 84.

days. Once the workers arrive, H-2A employers face a barrage of compliance monitoring and enforcement officers, outreach workers, social service agencies and legal service activists. Nowhere else are so few monitored by so many. Lawsuits are commonplace.<sup>9</sup>

In addition to the cumbersome and bureaucratic nature of the H-2A program, the program itself fails to meet the needs of agricultural labor in multiple sectors. H-2A visas are only for temporary or seasonal employment, but many agricultural jobs are not temporary or seasonal in nature, including work at dairies, fruit and vegetable packing facilities and processing plants, sugar mills, and in the livestock and meat industry. Jobs in these fields cannot be filled by H-2A workers. Moreover, the H-2A program's definition of agricultural labor or services is restrictive, providing that jobs on a farm "in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation for market, in its unmanufactured state, any agricultural or horticultural commodity" only qualify for the H-2A program if that farm's operator "produced more than one-half of the commodity with respect to which such service is performed."<sup>10</sup>

Despite clear indications that there are insufficient U.S. workers to fill agricultural jobs, under the H-2A program, the Department of Homeland Security (DHS) can approve an employer's petition for an alien only after the employer has applied to DOL for a certification that (A) there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition, and (B) the employment of the alien in such labor or services will not *adversely affect* the wages and working conditions of workers in the United States similarly employed.<sup>11</sup>

Employers in the H-2A program are required to pay a wage that is "at least the Adverse Effect Wage Rate (AEWR), the prevailing hourly wage rate, the prevailing piece rate, the agreed-upon collective bargaining rate, or the Federal or State minimum wage rate, in effect at the time work is performed, whichever is highest, for every hour or portion thereof worked during a pay period."<sup>12</sup> The AEWR is the wage rate that is currently paid to H-2A workers since it is currently the highest. It is the average annual weighted hourly wage rate for field or livestock workers for the region. H-2A employers are also required to offer housing and transportation to all of their workers at the employer's own expense.<sup>13</sup>

Yet, even with AEWRs of \$11.13–\$15.03 an hour (see Table 1),<sup>14</sup> and a requirement (known as the "50 percent rule") that H-2A employers hire any U.S. worker who shows up until the time that 50 percent of the work contract of the DHS-approved foreign workers

<sup>9</sup> *Hearing to Review the Labor Needs of American Agriculture Before the House Comm. On Agriculture*, 110th Cong. 2nd Sess. 110–30 (2007) at 17–18.

<sup>10</sup> 20 C.F.R. sec. 655.103(c)(1)(i)(D).

<sup>11</sup> See sec. 218(a)(1) of the INA (8 U.S.C. 1188(a)(1)) (emphasis added).

<sup>12</sup> 20 C.F.R. sec. 655.122(l)(1).

<sup>13</sup> 20 C.F.R. sec. 1303(g).

<sup>14</sup> 83 Fed. Reg. 66302 (Dec. 26, 2018) (Employment and Training Administration, DOL, *Labor Certification Process for the Temporary Employment of Aliens in Agriculture in the United States: 2019 Adverse Effect Wage Rates*).

has elapsed,<sup>15</sup> many agricultural employers still cannot find enough U.S. workers willing to take the jobs. At the Committee's February 26, 2013, hearing on agricultural labor, Chalmers Carr, President and CEO of Titan Farms of Ridge Spring, South Carolina, relayed his story of attempting to fill job opportunities on his farm with domestic workers:

From 2010 thru the end of 2012, my farm advertised for 2000 job opportunities. Four hundred eighty-three U.S. referrals applied for these jobs and were hired accounting for less than 25% of my workforce need. One hundred nine of the referrals that were hired never showed up to work and 321 of them quit—the vast majority in the first two days! Those who quit and those who never reported to work account for 89% of the workers who accepted the job! Of the 321 who reported to work, only 31 worked the entire season. There is no way I could have produced my peach and vegetable crops with a domestic workforce!<sup>16</sup>

Clearly a solution is needed to ensure that the agricultural industry has a reliable, legal labor force, and the H-2A program is in need of reform. Yet H.R. 5038 will not provide a solution to either problem. H.R. 5038's amnesty ensures that eligible aliens can and will leave the agriculture sector for other industries. H.R. 5038 seeks to streamline the H-2A program, but falls short of its goals. Proponents of the bill promise wage relief for farmers and cost reduction, but the bill in no way guarantees such relief and in fact the opposite could happen. Instead of streamlined access to a steady supply of legal foreign workers, H.R. 5038 subjects H-2A users to a new private right of action that will increase costs for the program's users.

#### *A Flawed Amnesty of Current Illegal Workers and Family Members*

Title I of H.R. 5038 is an amnesty for current illegal agricultural workers and a green card path to citizenship exempt from the numerical caps. The bill is flawed in its approach, and amnestied workers, spouses, and children can and will leave agriculture to work in other industries.

Current illegal aliens (and their spouses and children) are eligible to receive Certified Agricultural Worker ("CAW") status if they:

- (1) performed agricultural labor in the United States for at least 1,035 hours (or 180 work days) during the two-year period preceding October 30, 2019 (the date of introduction)
- (2) are removable from the United States as of October 30, 2019
- (3) are continuously present in the United States as of October 30, 2019 and until the alien is granted CAW status
- (4) are not ineligible on criminal grounds.

Eligible aliens are protected from removal and detention,<sup>17</sup> and those who actually apply receive immediate work authorization<sup>18</sup>

<sup>15</sup> See 20 C.F.R. 655.135(d).

<sup>16</sup> *Agricultural Labor: From H-2A to a Workable Agricultural Guestworker Program* at 20 (written statement of Chalmers Carr).

<sup>17</sup> H.R. 5038, Section 125.

<sup>18</sup> H.R. 5038, Section 101(c)(4).

and the ability to travel outside the United States with permission.<sup>19</sup> CAW status may be extended in 5½ year increments and is renewable indefinitely so long as the primary applicant (i.e. not children or spouse) has worked in agriculture for at least 575 hours (or 100 work days) for each of the prior five years in which the alien was in CAW status.<sup>20</sup>

A CAW worker may adjust to lawful permanent resident (green card holder) if the alien has completed 575 hours (or 100 work days) since the bill defines a work day as having worked 5.75 hours) for at least 10 years prior to the date of enactment of H.R. 5038, and at least 4 years in CAW status, *or* for at least 8 years in CAW status if the worker performed less than 10 years of work prior to the date of enactment.<sup>21</sup> Thus, some workers who receive CAW status will be eligible to receive green cards after working only 4 more years in agriculture. Spouses and children of an alien who adjusts status can also be granted green cards if the qualifying relationship exists on the date the principal alien adjusts status.<sup>22</sup> The principal alien must pay a \$1,000 fee.<sup>23</sup> Spouses and children can also self-petition if they have been subject to extreme cruelty or battery by the principal CAW worker.

Rep. Lesko offered an amendment that would require the DHS to deny green cards and revoke CAW status of the abusers before a self-petition could be granted. This was defeated on a party line vote of 12–7 at markup.

Work authorization qualifies the alien for jobs outside of the agriculture industry, and because the work requirement is only 575 hours per year for aliens who intend to renew their CAW status, CAW workers may immediately begin working in other industries, potentially displacing U.S. workers and undermining wages in those industries. Spouses and children of CAW workers have no agricultural work requirements and are immediately eligible to work in other sectors of the economy. Once a CAW worker has a green card, there is no requirement that the green card holder continue working in agriculture.

Rep. Armstrong offered an amendment during markup which would specify that CAW workers were only eligible to work in agriculture, and not in other industries. This amendment was defeated on a voice vote.

Although the bill purports to require aliens to have “satisfied any applicable Federal tax liability” in order to adjust status to a green card,<sup>24</sup> the bill defines that liability as only the liability that arose “beginning on the date on which the applicant was authorized to work in the United States as a certified agricultural worker.”<sup>25</sup> Thus, a worker can obtain a green card even if they have not satisfied federal tax liability in the years during which they were working illegally.

For either CAW status or adjustment of status to lawful permanent resident, the Secretary can waive 575 hours (100 work days)

<sup>19</sup> H.R. 5038, Section 101(c)(5)(A).

<sup>20</sup> H.R. 5038, Section 103.

<sup>21</sup> H.R. 5038, Section 111(a)(1).

<sup>22</sup> H.R. 5038, Section 111(a)(2).

<sup>23</sup> H.R. 5038, Section 111(b).

<sup>24</sup> H.R. 5038, Section 112(a).

<sup>25</sup> H.R. 5038, Section 121(3).

of agricultural labor if the alien was unable to perform that labor because of pregnancy, illness, disease, injury, or physical limitation of the alien; illness, injury, disease, or special needs of the alien's child or spouse; severe weather conditions; or termination from employment without just cause.<sup>26</sup>

Aliens who adjust status are exempt from the numerical caps contained in the INA, and are not counted toward any numerical limitation.<sup>27</sup> Thus, any green card issued under this bill is not counted against the numerical caps and is in addition to those issued under capped and uncapped categories in any given year.

Under H.R. 5038, the DHS must issue a decision on an application for CAW status or CAW adjustment within 180 days after the application is filed, so long as background checks are completed.<sup>28</sup> However, prior to denying an application, the DHS must give the alien written notice and at least 90 days to contest ineligibility or submit additional evidence.<sup>29</sup> 180 days is likely not enough time to process the amount of applications that will be received by the DHS, especially when considering the potential for fraudulent applications, and especially considering that the DHS has to provide 90 days for the alien to respond before denying the application. This means the DHS as a practical matter has less than 90 days to adjudicate each application.

H.R. 5038 also creates grant programs to assist eligible applicants.<sup>30</sup> Such grants, which in addition to any amount appropriated can include up to \$10,000,000 from the Immigration Examinations Fee Account, are to be distributed to nonprofit organizations such as unions and advocacy groups to disseminate information about benefits under the bill and assist individuals in applying for status, including by completing applications and assisting in obtaining documentary evidence.<sup>31</sup> The Immigration Examinations Fee Account, contains fees collected by USCIS from applicants for immigration benefits (H1B, intercountry adoption, naturalization, employment authorization, etc.) so those who have applied for immigration benefits through legal channels will be subsidizing the costs of the application process for those who chose to violate U.S. law. In addition, whatever funds are appropriated for the grant program will be U.S. taxpayer money which will be used to pay for the application process of legalizing illegal aliens.

Rep. Gohmert offered an amendment eliminating the grant programs, but this amendment was defeated by voice vote.

Aliens are ineligible for CAW status if they have been convicted of:

- (1) Any felony offense;
- (2) An aggravated felony (defined at INA 101(a)(43));
- (3) Two crimes involving moral turpitude (unless one is waived by the Secretary under the waiver authority in the bill); or

<sup>26</sup> H.R. 5038, Section 126(c).

<sup>27</sup> H.R. 5038, Section 132.

<sup>28</sup> H.R. 5038, Section 101(d)(1), Section 113.

<sup>29</sup> H.R. 5038, Section 101(d)(2), Section 113.

<sup>30</sup> H.R. 5038, Section 134.

<sup>31</sup> *Id.*

(4) Three or more misdemeanor offenses not occurring on the same date, and not arising out of the same act, omission, or scheme of misconduct.<sup>32</sup>

Because driving under the influence of alcohol or drugs (“DUI”) offenses are almost never crimes involving moral turpitude,<sup>33</sup> an alien can have two convictions for misdemeanor simple DUI under this bill—and a third pending without a conviction—and still be eligible to file for CAW status<sup>34</sup> with all the benefits that a pending application entails.

Rep. Chabot offered an amendment specifying that individuals convicted of two Driving Under the Influence (“DUI”) offenses or one DUI involving bodily injury were not eligible to receive CAW status under the bill. However, this amendment failed on a party line vote 16–7.

An alien with a serious pending charge—even for a felony or aggravated felony—who has not yet been convicted and is otherwise eligible can file an application and receive all the benefits that application entails, including immediate work authorization<sup>35</sup> and protection from removal and detention.<sup>36</sup> Again, merely filing the application serves as protection from both removal and detention until it is finally adjudicated. An alien cannot be detained under the bill unless a *prima facie* determination is made that the alien is ineligible for CAW status. But an alien who would be denied in the exercise of discretion is still technically eligible for that status, thus an alien with an egregious pending charge who is released from state or local custody before conviction cannot be detained for removal.<sup>37</sup> Any alien who merely appears *prima facie* eligible for CAW status cannot be placed in removal proceedings, or may have their removal proceedings terminated.<sup>38</sup> Even if there are serious pending charges, if there is no conviction making them ineligible, such individual may not be placed in removal proceedings notwithstanding removability from the United States. Aliens with final removal orders may apply for CAW status notwithstanding such removal orders.<sup>39</sup>

<sup>32</sup> H.R. 5038, Section 101(b)(2)(A)–(D).

<sup>33</sup> See *Matter of Torres Varela*, 23 I&N Dec. 78 (BIA 2001) (“We specifically noted [in a prior case] that simple DUI is ordinarily a regulatory offense that requires no culpable mental state, such as intent or knowledge. We therefore found that a conviction for a simple DUI offense under Arizona law was not a conviction for a crime involving moral turpitude because it did not require a showing of a culpable mental state . . . We find that multiple convictions for the same DUI offense, which individually is not a crime involving moral turpitude, do not, by themselves, aggregate into a conviction for a crime involving moral turpitude.”); *Matter of Lopez-Meza*, 22 I&N Dec. 1188 (BIA 1999) (holding that a DUI offense which requires the driver to know that he or she is prohibited from driving under any circumstances is a crime involving moral turpitude); but see *Hernandez-Martinez v. Ashcroft*, 329 F.3d 1117 (9th Cir. 2003) (Arizona’s Aggravated DUI statute is divisible and includes merely having “actual physical control” of a vehicle which does not involve moral turpitude.).

<sup>34</sup> H.R. 5038, Section 101(b)(2)(D).

<sup>35</sup> H.R. 5038, Section 101(c)(4) (“As soon as practicable after receiving an application for certified agricultural worker status, the Secretary shall provide the applicant with a document acknowledging the receipt of such application. Such document shall serve as interim proof of the alien’s authorization to accept employment in the United States . . .”).

<sup>36</sup> H.R. 5038, Section 101(c)(5)(B) (“may not be detained by the Secretary or removed from the United States unless the Secretary makes a *prima facie* determination that such alien is, or has become, ineligible for certified agricultural status”).

<sup>37</sup> *Id.*

<sup>38</sup> H.R. 5038, Section 125(a) and (b).

<sup>39</sup> H.R. 5038, Section 125(c).

H.R. 5038 further provides that several existing grounds of inadmissibility do not even apply to applicants for CAW status.<sup>40</sup> For example, the ground of inadmissibility for individuals who sought to procure or obtained an immigration benefit “by fraud or willfully misrepresenting a material fact” does not apply, nor does the inadmissibility ground for those who falsely claim to be U.S. citizens.<sup>41</sup> Therefore, an individual who committed immigration fraud or who falsely represented themselves as a U.S. Citizen on a Form I-9 is still eligible to apply for CAW status.

The criminal grounds of inadmissibility contained at INA 212(a)(2) still apply, however the bill contains a waiver authority that may be exercised “[f]or humanitarian purposes, family unity, or if otherwise in the public interest” to waive offenses including crimes involving moral turpitude, controlled substance offenses, and inadmissibility for aliens who engage in prostitution or commercialized vice.<sup>42</sup> Note however that the waiver may not be used to excuse an individual from the ineligibility presented by a felony, aggravated felony, or three or more misdemeanor offenses.<sup>43</sup>

Importantly, H.R. 5038 does not define conviction the same way as the INA.<sup>44</sup> Instead, H.R. 5038 provides that a conviction “does not include a judgment that has been expunged or set aside, that resulted in a rehabilitative disposition, or the equivalent,” leaving open the possibility that an alien could have a conviction for a serious criminal offense that would not bar him or her from eligibility for CAW status if they received a rehabilitative sentence or an expungement.

H.R. 5038 also excuses individuals who failed to attend removal proceedings, or who were removed and unlawfully reentered after such removal. Individuals “who without reasonable cause fail[ed] or refus[ed] to attend” removal proceedings—and who would therefore be inadmissible for five years after such alien’s departure or removal—are still eligible to apply for CAW status.<sup>45</sup> Aliens who are inadmissible because they have been previously removed from the United States are eligible to apply for CAW status as well, even if they unlawfully reentered after removal,<sup>46</sup> so long as they illegally reentered before November 12, 2019, the date of introduction.<sup>47</sup> Spouses and children of aliens eligible to apply for CAW status will

<sup>40</sup> H.R. 5038, Section 101(b)(1)(A)–(C).

<sup>41</sup> H.R. 5038, Section 101(b)(1)(B) (“subparagraphs . . . (C) . . . of such section 212(a)(6) . . . shall not apply unless based on the act of unlawfully entering the United States after the date of introduction of this Act.”); INA 212(a)(6)(C).

<sup>42</sup> H.R. 5038, Section 101(b)(3)(B) (“subparagraphs (A) and (D) of section 212(a)(2) of the [INA] . . .”).

<sup>43</sup> *Id.* (“ . . . unless inadmissibility is based on a conviction that would otherwise render the alien ineligible under subparagraph (A), (B), or (D) of paragraph (2)”).

<sup>44</sup> INA 101(a)(48)(A) (“The term ‘conviction’ means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien’s liberty to be imposed.”).

<sup>45</sup> H.R. 5038, Section 101(b)(1)(B) and (C).

<sup>46</sup> H.R. 5038, Section 101(b)(1)(C) (“paragraphs (6)(B) [failure to attend removal proceedings] and (9)(A) [5/10/20 year inadmissibility after removal] of such section 212(a) shall not apply unless the relevant conduct began on or after the date of filing of the application for certified agricultural worker status.”).

<sup>47</sup> H.R. 5038, Section 101(a)(1)(C).

be eligible for such dependent status even if they are living outside the United States subsequent to a prior removal.<sup>48</sup>

H.R. 5038 purports to contain anti-fraud measures,<sup>49</sup> but in fact sets up an adjudications process that incentivizes fraud. As a threshold matter, there is an enormous incentive for an illegal alien to file an application under this bill, even if the individual is not eligible, as the applicant receives immediate work authorization, protection from removal, and the ability to travel outside the United States with permission upon filing. Even if the application contains no false statements, USCIS can expect to receive many applications filed by ineligible individuals merely seeking work authorization and protection from removal.

H.R. 5038 contains several provisions which could incentivize fraudulent applications. For example, it contains a provision which permits the alien to withdraw their application without prejudice to any future application the applicant may file, and requires the DHS to close the case and cease processing the application.<sup>50</sup> The bill also prohibits disclosure or use of information provided in an application for CAW status or adjustment of status “for the purpose of immigration enforcement”.<sup>51</sup> The DHS secretary may not refer an applicant to U.S. Immigration and Customs Enforcement or U.S. Customs and Border Protection for enforcement action based on information provided in an application or during administrative or judicial review of a decision.<sup>52</sup> The only exception is sharing with other federal security and law enforcement agencies for assistance in making a decision on an application, identifying fraudulent claims, for national security purposes, or for investigation or prosecution of a felony not related to immigration status.<sup>53</sup> Any person who violates those provisions can be fined up to \$10,000.<sup>54</sup> Similar confidentiality provisions in the 1986 SAW legalization program incentivized widespread fraud in the program and has hampered law enforcement efforts.

The documentary requirements are also very low. Although employment records from an employer are acceptable evidence under the bill, those are not required. In fact, evidence of work history can be proven merely with “sworn affidavits from individuals who have direct knowledge of the alien’s work history”, which would presumably include the aliens themselves.<sup>55</sup> The bill further directs the DHS secretary to “establish special procedures to properly credit work in cases in which an alien was employed under an assumed name.”<sup>56</sup> The bill provides that the alien merely has to produce “sufficient evidence to show the extent of such employment as a matter of just and reasonable inference.”<sup>57</sup> The “just and reasonable inference” standard, previously used by the IRCA legislation

<sup>48</sup> H.R. 5038, Section 101(a)(2).

<sup>49</sup> H.R. 5038, Sections 130(a) (creating 5-year criminal penalty for anyone who commits fraud in a CAW application or CAW adjustment application), 105(b)(1) (penalty for false statement by employer in record not to exceed \$500 per violation), 127(d) (protections for employers who provide records do not apply if records are fraudulent).

<sup>50</sup> H.R. 5038, Sections 101(c)(6) and 111(e).

<sup>51</sup> H.R. 5038, Section 129(a).

<sup>52</sup> H.R. 5038, Section 129(b).

<sup>53</sup> H.R. 5038, Section 129(c).

<sup>54</sup> H.R. 5038, Section 129(d).

<sup>55</sup> H.R. 5038, Section 126(b)(4).

<sup>56</sup> H.R. 5038, Section 126(a).

<sup>57</sup> H.R. 5038, Section 126(b).



that established the SAW legalization<sup>58</sup> which was rife with fraud, is a low standard used in establishing unpaid work for purposes of the Fair Labor Standards Act. It merely requires an employee to provide evidence that he or she performed work and the amount and extent of that work—including by mere testimonial evidence—and then an employer has the burden to come forward with evidence of the precise amount of work performed or with evidence to negate the reasonableness of the inference to be drawn from the employee's evidence.<sup>59</sup> This is a relaxed burden because employees rarely keep work records as opposed to employers. But in this case, employers are not a required part of the application process, leaving only the employee's word in many cases that they worked the required time and extent of work to be eligible for CAW status.

Rep. Buck offered an amendment raising the documentary evidence standard from “just and reasonable inference” to clear and convincing evidence. This amendment was defeated by voice vote.

#### *H-2A “Reform”*

Title II of H.R. 5038 purports to reform the H-2A program, yet leaves open the possibility of ever increasing wages for growers, and exposes them to new Federal Court litigation.

The bill requires the creation of an electronic platform through which all H-2A applications and documentation will be submitted. The Trump administration is already working on such a platform to streamline the process since at this time those seeking H-2A workers must submit labor certification applications to the Department of Labor and the actual H-2A petition to DHS.<sup>60</sup> The bill also requires an electronic job registry of H-2A jobs—something the Trump Administration has already included in its July 2019, Notice of Proposed Rulemaking (NPRM) aimed at updating the H-2A program.<sup>61</sup>

The bill requires H-2A users to hire U.S. workers up until the later of 30 days after the work begins or when 33 percent of the contract time period has passed.<sup>62</sup> While this is better than the 50 percent contract time period in place currently, it is worse than the administration's NPRM that includes only the 30 day limit.<sup>63</sup>

H.R. 5038 places into statute the current regulatory requirement that an employer pay H-2A workers at least the highest of the following applicable wage rates in effect at the time work is performed: the agreed-upon collective bargaining rate, the adverse effect wage rate (AEWR), the prevailing wage rate (hourly or piece), or the Federal or State minimum wage.<sup>64</sup> The current AEWR is set regionally. But H.R. 5038 requires a process known as disaggregation which sets out that the AEWR is calculated by state and occupational classification (thus instead of one set wage rate

<sup>58</sup> IRCA Section 210(b)(3)(B)(iii) (“An alien can meet such burden of proof if the alien establishes that the alien has in fact performed the work described . . . by producing sufficient evidence to show the extent of that employment as a matter of just and reasonable inference. . .”).

<sup>59</sup> *Anderson v. Mt. Clemens*, 328 U.S. 680, 687 (1946).

<sup>60</sup> H.R. 5038, Section 201.

<sup>61</sup> U.S. Department of Labor Notice of Proposed Rulemaking, Temporary Agricultural Employment of H-2A Nonimmigrants in the United States, 84 FR 36168, at 36210, July 26, 2019.

<sup>62</sup> H.R. 5038, Section 202(c).

<sup>63</sup> U.S. Department of Labor Notice of Proposed Rulemaking, Temporary Agricultural Employment of H-2A Nonimmigrants in the United States, 84 FR 36168, at 36172, July 26, 2019.

<sup>64</sup> H.R. 5038, Section 202(d).

for the entire day, the employer must pay the AEW for the time that the employee was in the field, then the AEW for the time that the employee was driving a type of machinery such as a combine, then the AEW for the time that the employee was driving a truck on site, etc.). The administration's NPRM also proposed disaggregation for the AEW—which is highly opposed by growers who claim that it will be very difficult operationally and will, in practice, result in employers paying the highest wage rate to each employee.

Under the bill, the AEW must be the annual average hourly wage: 1) in the State or region as reported by the USDA based on a wage survey; 2) in the nation as reported by USDA based on a wage survey; 3) in the state as reported by the DOL based on a wage survey; or 4) in the nation as reported by the DOL—which-ever is available first in that order.<sup>65</sup>

The bill places limits on the AEW for FY 2020 through FY 2029 by first freezing the AEW at the FY 2019 level for FY 2020. Then the bill limits any decreases at 1.5 percent each year and limits increases at 3.25 percent each year through FY 2029. However, if the resulting AEW is lower than 110% of minimum wage, the increase is capped as 4.25 percent.<sup>66</sup>

H.R. 5038 then requires the Secretaries of Agriculture and Labor to conduct a study to determine a new wage rate which should be reported and then a regulation issued to put that wage rate in effect for after FY 2029. But there is no requirement that the “new” wage rate be any different than the current AEW and the bill requires the “old” AEW to be kept in place until the “new” wage rate goes into effect.<sup>67</sup> Given likely litigation and the seeming similarity between the “old” wage rate and the “new” wage rate, many growers are extremely concerned that there will be no wage relief and no change in the AEW.

In addition—the bill does not cap any of the other required wage rates. The prevailing wage rate surveys will continue to be conducted and the minimum wage rate could rise; thus many growers see the prevailing wage or minimum wage outpacing the bill's capped AEW. So the entire capped AEW on which the bill's proponents base their claim that they provide wage relief to growers, is tenuous. In addition, farm worker unions like the United Farm Workers (UFW) have stated, “. . .it is morally wrong and un-American to lower the wages of the hardworking men and women who sacrifice to feed the country.”<sup>68</sup> Yet the UFW was one of the main groups negotiating this bill and they support the legislation. Would they ever support a bill that actually provides the wage relief that H-2A growers need?

Growers are concerned that the wage structure in the bill is insufficient to keep wages at a reasonable and consistent level, particularly as only the AEW is subject to a cap, and even then only for ten years. At markup, Rep. Steube offered an amendment specifying that the wage rate paid would be the minimum of 115% of

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> Press Advisory of La Union Del Pueblo Entero and United Farm Workers, *Protest over Rep. Cuellar's Support of Bill that Would Reduce Texas Farmworker Wages by \$3 per Hour*, Sep. 19, 2019.

the federal minimum wage, or the actual wage level paid to all other individuals in the job. This amendment also failed on a party line vote of 15–8.

H.R. 5038 requires employers to provide housing for H–2A employees as does current law. However, the bill also requires that the employer provide family housing upon request—which is not currently a requirement.<sup>69</sup> It is foreseeable that the provision of family housing will increase housing costs.

H.R. 5038 requires employers to cover the costs of the H–2A worker’s transportation from the worker’s home to the consulate and then to the job site, as well as the trip home. This is consistent with current H–2A requirements. The bill provides one exception—if the worker lives within 50 miles of the U.S. consulate, then the employer does not have to pay for travel to the consulate.<sup>70</sup> Thus this bill provides basically no decrease in travel costs to the employer. The administration’s NPRM only requires the employer to cover the costs of travel from the consulate to the job site and back<sup>71</sup>—a decrease in costs that employers appreciate but wish would go further.

H.R. 5038 requires H–2A employers to come up with a heat illness prevention plan.<sup>72</sup> Some growers are concerned that this will lead to litigation. In addition, it is unclear why only H–2A users should have to have such a plan in place as opposed to any agricultural employer—including those who are employing CAW workers who were amnestied.

The bill also requires the H–2A petition to be submitted to the DOL/USDA portal between 75 and 60 days before the date the work is to commence.<sup>73</sup> This “one start date” approach is current law and is problematic for some growers who need additional workers as the season goes on. The bill does permit staggered entry over 120 days but only for seasonal employment and only for certain employers such as those at a fixed site. The NPRM allowed a 14-day start period and staggered entry over 120 days.<sup>74</sup>

Current law requires that if an H–2A labor certification application is incorrect or is otherwise incomplete, the DOL is required to issue a Notice of Deficiency (NOD). The employer can then submit a modified application or request an expedited administrative review or de novo hearing before an Administrative Law Judge (ALJ).<sup>75</sup> The employer is also able to request an expedited administrative review or de novo hearing before an ALJ of a denial of the labor certification application.<sup>76</sup> H.R. 5038 seems to do away with the NOD process and allow only an expedited review of an application that was denied on the basis that DOL believed there were able, willing, and qualified U.S. workers.<sup>77</sup>

<sup>69</sup> H.R. 5038, Section 202(e).

<sup>70</sup> H.R. 5038, Section 202(f).

<sup>71</sup> U.S. Department of Labor Notice of Proposed Rulemaking, Temporary Agricultural Employment of H–2A Nonimmigrants in the United States, 84 FR 36168, at 36194–95, July 26, 2019.

<sup>72</sup> H.R. 5038, Section 202(g).

<sup>73</sup> H.R. 5038, Section 202(h).

<sup>74</sup> U.S. Department of Labor Notice of Proposed Rulemaking, Temporary Agricultural Employment of H–2A Nonimmigrants in the United States, 84 FR 36168, at 36199–200, July 26, 2019.

<sup>75</sup> 20 C.F.R. sec. 655.141.

<sup>76</sup> 20 C.F.R. sec. 655.164.

<sup>77</sup> H.R. 5038, Section 202(h).

H-2A employers have long been concerned that the DOL does not understand the agriculture industry or their farming practices adequately enough to be able to effectively administer the DOL part of the H-2A program. And they have pushed for the entire H-2A program to be moved to USDA. During markup, Rep. Steube offered an amendment to do so, but the amendment was defeated on a voice vote.

Rep. Steube also offered an amendment to require that DOL approve labor certification under the H-2A program for certain workers who perform duties driving trucks as part of the agricultural process. The amendment was withdrawn when the Subcommittee Chair agreed to work on the issue with Rep. Steube.

H.R. 5038 creates two different categories of H-2A visas: an uncapped seasonal visa and a year-round visa which is capped.

For the first three years, the year-round visa is capped at 20,000. After the first three years, the year-round cap is to be determined by the Secretaries of Agriculture and Labor but cannot increase more than 12.5 percent per year.<sup>78</sup> This would place the cap at year ten around 45,000. After year ten, the Secretaries can set a cap but it must be no lower than the highest number in the preceding three years. Note that 50 percent of the year-round visas are reserved for the dairy industry.<sup>79</sup> The year-round visa is good for three years and the employer is required to pay for one trip (including travel and substance during travel) every 14 months. The employer is required to offer family housing to these workers.<sup>80</sup>

The seasonal H-2A (as opposed to the year-round) visa is valid for three years but the authorized work period is only for the period of employment in the H-2A petition—not to exceed 36 months. The H-2A worker must then touch back for a cumulative period of 45 days. The worker can stay in the U.S. for 45 days seeking another job when one job has ended provided that the worker has time left in the 36-month period.<sup>81</sup>

H.R. 5038 allows any person or organization to file a complaint with DOL regarding an H-2A employer's alleged lack of compliance with program requirements. The DOL can then award back wages, penalties, and damages. A complaint filed with DOL does not preclude additional legal remedies.<sup>82</sup>

H.R. 5038 places—for the first time—H-2A employers under the requirements of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA).<sup>83</sup> The sole purpose for this is to subject H-2A employers to the federal private right of action in MSPA.<sup>84</sup> Under MSPA, the court can appoint an attorney for the plaintiffs.<sup>85</sup> And the court can award damages: “up to and including an amount equal to the amount of actual damages, or statutory damages of up to \$500 per plaintiff per violation, or other equitable relief. . . .”<sup>86</sup> In addition, if the complaint is certified as a class action, “the court

<sup>78</sup> H.R. 5038, Section 202(i).

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> H.R. 5038, Section 202(j).

<sup>82</sup> H.R. 5038, Section 202(m).

<sup>83</sup> H.R. 5038, Section 204(b).

<sup>84</sup> 29 U.S.C. sec. 1854.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

shall award no more than the lesser of up to \$500 per plaintiff per violation, or up to \$500,000 or other equitable relief.”<sup>87</sup>

The proponents of the bill claim that employers are not disadvantaged because the lawsuits are subject to “mandatory mediation.” However, a reading of the text proves that it is not mandatory. Any party can request mediation and if requested, the other party must “attempt” mediation.<sup>88</sup> But there is a 90-day limit on the mediation attempt and there is no requirement that the claim be resolved through mediation.

Growers are extremely concerned about the additional Federal Court litigation exposure H-2A users will have under this bill. At markup, Ranking Member Collins offered an amendment to strike the provisions of H.R. 5038 that subjected H-2A users to litigation under MSPA, but that amendment was defeated by a vote of 16–8, with no Democrat support. After that amendment was defeated, Ranking Member Collins offered an amendment which left in the provisions subjecting H-2A users to MSPA, but offered the employer a right to cure the alleged violation and submit evidence of such cure within 5 days of receiving the complaint. If the reviewing court was satisfied that the deficiency had been remedied, the complaint could be dismissed. Again, Democrats defeated this reasonable amendment by a vote of 16–9.

The bill requires the Secretaries of DHS, Agriculture, and Labor to create a six-year pilot program allowing portability of H-2A workers. The program is capped at 10,000.<sup>89</sup>

H.R. 5038 turns the *temporary* agricultural worker visa into a permanent immigration program by providing a new allocation of 40,000 green cards for H-2A per year in perpetuity.<sup>90</sup> These workers must have for at least 575 hours in agriculture in each year of a ten-year period. They can then *self-petition* for their green card as opposed to an employer petitioning for them.<sup>91</sup>

Title II, Subtitle B of H.R. 5038 contains a bill previously introduced by Rep. Clay which is Financial Services jurisdiction, and which amends several rural housing programs. But sections 228–231 are new and authorize millions of new dollars in assistance for farmworker housing. Section 231 also makes CAW workers eligible for rental assistance and housing vouchers.

Title II, Subtitle C creates a foreign labor contractor-type foreign labor recruiting registration and enforcement process that requires the recruiter to register and post bonds, requires the employer to report recruiters it uses and any violations of compliance, creates a complaint process within DOL. It also authorizes a private right of action that allows damages in the amount of actual damages plus \$1000. per plaintiff per violation, and if a class is certified the actual damages plus \$1000. per plaintiff per violation or up to \$500,000. In addition, it authorizes Legal Services Corporation to represent an alien who files suit against an employer. This creates a new area of legal liability for growers based on violations of recruiters that occur abroad.

<sup>87</sup> *Id.*

<sup>88</sup> H.R. 5038, Section 204(b).

<sup>89</sup> H.R. 5038, Section 206.

<sup>90</sup> H.R. 5038, Section 207.

<sup>91</sup> *Id.*

*E-Verify for Agriculture Only*

Title III of H.R. 5038 requires agricultural employers to use E-Verify to determine whether their newly hired employees are eligible to work in the United States. It phases in use in three-month increments for businesses based on the number of employees of the business.

While the bill contains many similar provisions to that of the Legal Workforce Act which this Committee has marked up four times over the last several Congresses, it has many minor and some very significant changes.

For instance, the bill does not allow employers to use E-Verify prior to the date of hire but rather the employer is forced to hire the person and then determine work eligibility. H.R. 5038 allows an employee to appeal a nonconfirmation to federal district court as opposed to just administratively. This means that employer must continue to invest resources into the employee for the entire time the litigation is pending only to have to ultimately fire that individual.

H.R. 5038 also contains a provision that is unworkable—that DHS ensure that E-Verify provides direct notification of an inquiry to an individual with respect to whom the inquiry is made, meaning that DHS must notify the employee *directly*.<sup>92</sup> This proves a fundamental misunderstanding of how E-Verify works. The employer inputs information and makes the inquiry—not the employee. Unless the employee provides direct contact information, DHS cannot provide such notification. Thus, for DHS to be required to provide it, could potentially extensively delay the implementation of E-Verify and thus the ability to use it.

*Conclusion*

Last Congress, House Republicans put forth a bill including agricultural guest worker reform. Rep. McClintock offered this bill as an amendment to H.R. 5038 during the markup. The amendment was withdrawn for germaneness purposes.

Because H.R. 5038 will not provide a durable solution to the problems facing American agriculture, and because it rewards illegal immigrants who have chosen to violate our immigration laws with a green card path to citizenship, I do not support the bill and urge my colleagues to reject it.

Sincerely,

DOUG COLLINS,  
*Ranking Member.*




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<sup>92</sup> H.R. 5038, Section 301(a).