

110TH CONGRESS  
1ST SESSION

# S. 340

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

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## IN THE SENATE OF THE UNITED STATES

JANUARY 18, 2007

Mrs. FEINSTEIN (for herself, Mr. CRAIG, Mr. KENNEDY, Mr. MARTINEZ, Mrs. BOXER, Mr. VOINOVICH, Mr. LEAHY, Mr. SPECTER, Mrs. CLINTON, Mr. MCCAIN, Mr. OBAMA, Mr. HAGEL, Mr. SCHUMER, Mr. DOMENICI, Mr. KOHL, Mr. SALAZAR, and Mrs. MURRAY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

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

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

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

4       (a) **SHORT TITLE.**—This Act may be cited as the  
5       “**Agricultural Job Opportunities, Benefits, and Security**  
6       **Act of 2007**” or the “**AgJOBS Act of 2007**”.

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

Sec. 1. Short title, table of contents.

Sec. 2. Definitions.

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

Subtitle A—Blue Card Status

Sec. 101. Requirements for blue card status.

Sec. 102. Treatment of aliens granted blue card status.

Sec. 103. Adjustment to permanent residence.

Sec. 104. Applications.

Sec. 105. Waiver of numerical limitations and certain grounds for inadmissibility.

Sec. 106. Administrative and judicial review.

Sec. 107. Use of information.

Sec. 108. Regulations, effective date, authorization of appropriations.

Subtitle B—Correction of Social Security Records

Sec. 111. Correction of Social Security records.

TITLE II—REFORM OF H-2A WORKER PROGRAM

Sec. 201. Amendment to the Immigration and Nationality Act.

TITLE III—MISCELLANEOUS PROVISIONS

Sec. 301. Determination and use of user fees.

Sec. 302. Regulations.

Sec. 303. Reports to Congress.

Sec. 304. Effective date.

**1 SEC. 2. DEFINITIONS.**

2 In this Act:

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

1 migration and Nationality Act (8 U.S.C.  
2 1101(a)(15)(H)(ii)(a)).

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

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

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

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

16 (6) TEMPORARY.—A worker is employed on a  
17 “temporary” basis when the employment is intended  
18 not to exceed 10 months.

19 (7) WORK DAY.—The term “work day” means  
20 any day in which the individual is employed 5.75 or  
21 more hours in agricultural employment.

1 **TITLE I—PILOT PROGRAM FOR**  
2 **EARNED STATUS ADJUST-**  
3 **MENT OF AGRICULTURAL**  
4 **WORKERS**

5 **Subtitle A—Blue Card Status**

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

7 (a) REQUIREMENT TO GRANT BLUE CARD STA-  
8 TUS.—Notwithstanding any other provision of law, the  
9 Secretary shall, pursuant to the requirements of this sec-  
10 tion, grant blue card status to an alien who qualifies under  
11 this section if the Secretary determines that the alien—

12 (1) has performed agricultural employment in  
13 the United States for at least 863 hours or 150  
14 work days during the 24-month period ending on  
15 December 31, 2006;

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

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

24 (4) has not been convicted of any felony or a  
25 misdemeanor, an element of which involves bodily in-

1 jury, threat of serious bodily injury, or harm to  
2 property in excess of \$500.

3 (b) AUTHORIZED TRAVEL.—An alien who is granted  
4 blue card status is authorized to travel outside the United  
5 States (including commuting to the United States from  
6 a residence in a foreign country) in the same manner as  
7 an alien lawfully admitted for permanent residence.

8 (c) AUTHORIZED EMPLOYMENT.—The Secretary  
9 shall provide an alien who is granted blue card status an  
10 employment authorized endorsement or other appropriate  
11 work permit, in the same manner as an alien lawfully ad-  
12 mitted for permanent residence.

13 (d) TERMINATION OF BLUE CARD STATUS.—

14 (1) IN GENERAL.—The Secretary may termi-  
15 nate blue card status granted to an alien under this  
16 section only if the Secretary determines that the  
17 alien is deportable.

18 (2) GROUNDS FOR TERMINATION OF BLUE  
19 CARD STATUS.—Before any alien becomes eligible  
20 for adjustment of status under section 103, the Sec-  
21 retary may deny adjustment to permanent resident  
22 status and provide for termination of the blue card  
23 status granted such alien under paragraph (1) if—

24 (A) the Secretary finds, by a preponder-  
25 ance of the evidence, that the adjustment to

1 blue card status was the result of fraud or will-  
2 ful misrepresentation (as described in section  
3 212(a)(6)(C)(i) of the Immigration and Nation-  
4 ality Act (8 U.S.C. 1182(a)(6)(C)(i)); or

5 (B) the alien—

6 (i) commits an act that makes the  
7 alien inadmissible to the United States as  
8 an immigrant, except as provided under  
9 section 105(b);

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

13 (iii) is convicted of an offense, an ele-  
14 ment of which involves bodily injury, threat  
15 of serious bodily injury, or harm to prop-  
16 erty in excess of \$500; or

17 (iv) fails to perform the agricultural  
18 employment required under section  
19 103(a)(1)(A) unless the alien was unable  
20 to work in agricultural employment due to  
21 the extraordinary circumstances described  
22 in section 103(a)(3).

23 (e) RECORD OF EMPLOYMENT.—

1           (1) IN GENERAL.—Each employer of an alien  
2           granted blue card status under this section shall an-  
3           nually—

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

6                   (B) provide a copy of such record to the  
7                   Secretary.

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

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

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

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

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

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

1 (h) MAXIMUM NUMBER.—The Secretary may not  
2 issue more than 1,500,000 blue cards during the 5-year  
3 period beginning on the date of the enactment of this Act.

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

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

12 (b) DELAYED ELIGIBILITY FOR CERTAIN FEDERAL  
13 PUBLIC BENEFITS.—An alien granted blue card status  
14 shall not be eligible, by reason of such status, for any form  
15 of assistance or benefit described in section 403(a) of the  
16 Personal Responsibility and Work Opportunity Reconcili-  
17 ation Act of 1996 (8 U.S.C. 1613(a)) until 5 years after  
18 the date on which the alien is granted an adjustment of  
19 status under section 103.

20 (c) TERMS OF EMPLOYMENT.—

21 (1) PROHIBITION.—No alien granted blue card  
22 status may be terminated from employment by any  
23 employer during the period of blue card status ex-  
24 cept for just cause.

25 (2) TREATMENT OF COMPLAINTS.—

1           (A) ESTABLISHMENT OF PROCESS.—The  
2 Secretary shall establish a process for the re-  
3 ceipt, initial review, and disposition of com-  
4 plaints by aliens granted blue card status who  
5 allege that they have been terminated without  
6 just cause. No proceeding shall be conducted  
7 under this paragraph with respect to a termi-  
8 nation unless the Secretary determines that the  
9 complaint was filed not later than 6 months  
10 after the date of the termination.

11           (B) INITIATION OF ARBITRATION.—If the  
12 Secretary finds that an alien has filed a com-  
13 plaint in accordance with subparagraph (A) and  
14 there is reasonable cause to believe that the  
15 alien was terminated from employment without  
16 just cause, the Secretary shall initiate binding  
17 arbitration proceedings by requesting the Fed-  
18 eral Mediation and Conciliation Service to ap-  
19 point a mutually agreeable arbitrator from the  
20 roster of arbitrators maintained by such Service  
21 for the geographical area in which the employer  
22 is located. The procedures and rules of such  
23 Service shall be applicable to the selection of  
24 such arbitrator and to such arbitration pro-  
25 ceedings. The Secretary shall pay the fee and

1 expenses of the arbitrator, subject to the avail-  
2 ability of appropriations for such purpose.

3 (C) ARBITRATION PROCEEDINGS.—The ar-  
4 bitrator shall conduct the proceeding under this  
5 paragraph in accordance with the policies and  
6 procedures promulgated by the American Arbi-  
7 tration Association applicable to private arbitra-  
8 tion of employment disputes. The arbitrator  
9 shall make findings respecting whether the ter-  
10 mination was for just cause. The arbitrator  
11 may not find that the termination was for just  
12 cause unless the employer so demonstrates by a  
13 preponderance of the evidence. If the arbitrator  
14 finds that the termination was not for just  
15 cause, the arbitrator shall make a specific find-  
16 ing of the number of days or hours of work lost  
17 by the employee as a result of the termination.  
18 The arbitrator shall have no authority to order  
19 any other remedy, including reinstatement,  
20 back pay, or front pay to the affected employee.  
21 Not later than 30 days after the date of the  
22 conclusion of the arbitration proceeding, the ar-  
23 bitrator shall transmit the findings in the form  
24 of a written opinion to the parties to the arbi-  
25 tration and the Secretary. Such findings shall

1 be final and conclusive, and no official or court  
2 of the United States shall have the power or ju-  
3 risdiction to review any such findings.

4 (D) EFFECT OF ARBITRATION FIND-  
5 INGS.—If the Secretary receives a finding of an  
6 arbitrator that an employer has terminated the  
7 employment of an alien who is granted blue  
8 card status without just cause, the Secretary  
9 shall credit the alien for the number of days or  
10 hours of work not performed during such period  
11 of termination for the purpose of determining if  
12 the alien meets the qualifying employment re-  
13 quirement of section 103(a).

14 (E) TREATMENT OF ATTORNEY'S FEES.—  
15 Each party to an arbitration under this para-  
16 graph shall bear the cost of their own attorney's  
17 fees for the arbitration.

18 (F) NONEXCLUSIVE REMEDY.—The com-  
19 plaint process provided for in this paragraph is  
20 in addition to any other rights an employee may  
21 have in accordance with applicable law.

22 (G) EFFECT ON OTHER ACTIONS OR PRO-  
23 CEEDINGS.—Any finding of fact or law, judg-  
24 ment, conclusion, or final order made by an ar-  
25 bitrator in the proceeding before the Secretary

1 shall not be conclusive or binding in any sepa-  
2 rate or subsequent action or proceeding between  
3 the employee and the employee's current or  
4 prior employer brought before an arbitrator, ad-  
5 ministrative agency, court, or judge of any  
6 State or the United States, regardless of wheth-  
7 er the prior action was between the same or re-  
8 lated parties or involved the same facts, except  
9 that the arbitrator's specific finding of the  
10 number of days or hours of work lost by the  
11 employee as a result of the employment termi-  
12 nation may be referred to the Secretary pursu-  
13 ant to subparagraph (D).

14 (3) CIVIL PENALTIES.—

15 (A) IN GENERAL.—If the Secretary finds,  
16 after notice and opportunity for a hearing, that  
17 an employer of an alien granted blue card sta-  
18 tus has failed to provide the record of employ-  
19 ment required under section 101(e) or has pro-  
20 vided a false statement of material fact in such  
21 a record, the employer shall be subject to a civil  
22 money penalty in an amount not to exceed  
23 \$1,000 per violation.

24 (B) LIMITATION.—The penalty applicable  
25 under subparagraph (A) for failure to provide

1 records shall not apply unless the alien has pro-  
2 vided the employer with evidence of employment  
3 authorization granted under this section.

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

5 (a) IN GENERAL.—Except as provided in subsection  
6 (b), the Secretary shall adjust the status of an alien grant-  
7 ed blue card status to that of an alien lawfully admitted  
8 for permanent residence if the Secretary determines that  
9 the following requirements are satisfied:

10 (1) QUALIFYING EMPLOYMENT.—

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

13 (i) 5 years of agricultural employment  
14 in the United States for at least 100 work  
15 days per year, during the 5-year period be-  
16 ginning on the date of the enactment of  
17 this Act; or

18 (ii) 3 years of agricultural employ-  
19 ment in the United States for at least 150  
20 work days per year, during the 3-year pe-  
21 riod beginning on the date of the enact-  
22 ment of this Act.

23 (B) 4-YEAR PERIOD OF EMPLOYMENT.—

24 An alien shall be considered to meet the re-  
25 quirements of subparagraph (A) if the alien has

1 performed 4 years of agricultural employment  
2 in the United States for at least 150 work days  
3 during 3 years of those 4 years and at least  
4 100 work days during the remaining year, dur-  
5 ing the 4-year period beginning on the date of  
6 the enactment of this Act.

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

10 (A) the record of employment described in  
11 section 101(e); or

12 (B) such documentation as may be sub-  
13 mitted under section 104(c).

14 (3) EXTRAORDINARY CIRCUMSTANCES.—In de-  
15 termining whether an alien has met the requirement  
16 of paragraph (1)(A), the Secretary may credit the  
17 alien with not more than 12 additional months to  
18 meet the requirement of that subparagraph if the  
19 alien was unable to work in agricultural employment  
20 due to—

21 (A) pregnancy, injury, or disease, if the  
22 alien can establish such pregnancy, disabling in-  
23 jury, or disease through medical records;

24 (B) illness, disease, or other special needs  
25 of a minor child, if the alien can establish such

1 illness, disease, or special needs through med-  
2 ical records; or

3 (C) severe weather conditions that pre-  
4 vented the alien from engaging in agricultural  
5 employment for a significant period of time.

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

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

11 (b) GROUNDS FOR DENIAL OF ADJUSTMENT OF STA-  
12 TUS.—The Secretary may deny an alien granted blue card  
13 status an adjustment of status under this section and pro-  
14 vide for termination of such blue card status if—

15 (1) the Secretary finds by a preponderance of  
16 the evidence that the adjustment to blue card status  
17 was the result of fraud or willful misrepresentation,  
18 as described in section 212(a)(6)(C)(i) of the Immi-  
19 gration and Nationality Act (8 U.S.C.  
20 1182(a)(6)(C)(i)); or

21 (2) the alien—

22 (A) commits an act that makes the alien  
23 inadmissible to the United States under section  
24 212 of the Immigration and Nationality Act (8

1 U.S.C. 1182), except as provided under section  
2 105(b);

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

6 (C) is convicted of an offense, an element  
7 of which involves bodily injury, threat of serious  
8 bodily injury, or harm to property in excess of  
9 \$500.

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

18 (d) PAYMENT OF TAXES.—

19 (1) IN GENERAL.—Not later than the date on  
20 which an alien's status is adjusted under this sec-  
21 tion, the alien shall establish that the alien does not  
22 owe any applicable Federal tax liability by estab-  
23 lishing that—

24 (A) no such tax liability exists;

1 (B) all such outstanding tax liabilities have  
2 been paid; or

3 (C) the alien has entered into an agree-  
4 ment for payment of all outstanding liabilities  
5 with the Internal Revenue Service.

6 (2) APPLICABLE FEDERAL TAX LIABILITY.—In  
7 paragraph (1) the term “applicable Federal tax li-  
8 ability” means liability for Federal taxes, including  
9 penalties and interest, owed for any year during the  
10 period of employment required under subsection  
11 (a)(1) for which the statutory period for assessment  
12 of any deficiency for such taxes has not expired.

13 (3) IRS COOPERATION.—The Secretary of the  
14 Treasury shall establish rules and procedures under  
15 which the Commissioner of Internal Revenue shall  
16 provide documentation to an alien upon request to  
17 establish the payment of all taxes required by this  
18 subsection.

19 (e) SPOUSES AND MINOR CHILDREN.—

20 (1) IN GENERAL.—Notwithstanding any other  
21 provision of law, the Secretary shall confer the sta-  
22 tus of lawful permanent resident on the spouse and  
23 minor child of an alien granted any adjustment of  
24 status under subsection (a), including any individual  
25 who was a minor child on the date such alien was

1 granted blue card status, if the spouse or minor  
2 child applies for such status, or if the principal alien  
3 includes the spouse or minor child in an application  
4 for adjustment of status to that of a lawful perma-  
5 nent resident.

6 (2) TREATMENT OF SPOUSES AND MINOR CHIL-  
7 DREN.—

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

21 (B) TRAVEL.—The derivative spouse and  
22 any minor child of an alien granted blue card  
23 status may travel outside the United States in  
24 the same manner as an alien lawfully admitted  
25 for permanent residence.

1 (C) EMPLOYMENT.—The derivative spouse  
2 of an alien granted blue card status may apply  
3 to the Secretary for a work permit to authorize  
4 such spouse to engage in any lawful employ-  
5 ment in the United States while such alien  
6 maintains blue card status.

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

13 (A) commits an act that makes the alien  
14 spouse or child inadmissible to the United  
15 States under section 212 of such Act (8 U.S.C.  
16 1182), except as provided under section 105(b);

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

20 (C) is convicted of an offense, an element  
21 of which involves bodily injury, threat of serious  
22 bodily injury, or harm to property in excess of  
23 \$500.

24 **SEC. 104. APPLICATIONS.**

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

1           (1) applications for blue card status under sec-  
2           tion 101 may be submitted—

3                   (A) to the Secretary if the applicant is rep-  
4                   resented by an attorney or a nonprofit religious,  
5                   charitable, social service, or similar organization  
6                   recognized by the Board of Immigration Ap-  
7                   peals under section 292.2 of title 8, Code of  
8                   Federal Regulations; or

9                   (B) to a qualified designated entity if the  
10                  applicant consents to the forwarding of the ap-  
11                  plication to the Secretary; and

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

14           (b) QUALIFIED DESIGNATED ENTITY DEFINED.—In  
15           this section, the term “qualified designated entity”  
16           means—

17                   (1) a qualified farm labor organization or an  
18                   association of employers designated by the Sec-  
19                   retary; or

20                   (2) any such other person designated by the  
21                   Secretary if that Secretary determines such person  
22                   is qualified and has substantial experience, dem-  
23                   onstrated competence, and has a history of long-  
24                   term involvement in the preparation and submission  
25                   of applications for adjustment of status under sec-

1 tion 209, 210, or 245 of the Immigration and Na-  
2 tionality Act (8 U.S.C. 1159, 1160, and 1255), the  
3 Act entitled “An Act to adjust the status of Cuban  
4 refugees to that of lawful permanent residents of the  
5 United States, and for other purposes”, approved  
6 November 2, 1966 (Public Law 89–732; 8 U.S.C.  
7 1255 note), Public Law 95–145 (8 U.S.C. 1255  
8 note), or the Immigration Reform and Control Act  
9 of 1986 (Public Law 99–603; 100 Stat. 3359) or  
10 any amendment made by that Act.

11 (c) PROOF OF ELIGIBILITY.—

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

21 (2) DOCUMENTATION OF WORK HISTORY.—

22 (A) BURDEN OF PROOF.—An alien apply-  
23 ing for status under section 101(a) or 103(a)  
24 has the burden of proving by a preponderance  
25 of the evidence that the alien has worked the

1            requisite number of hours or days required  
2            under section 101(a)(1) or 103(a)(1), as appli-  
3            cable.

4            (B) TIMELY PRODUCTION OF RECORDS.—  
5            If an employer or farm labor contractor employ-  
6            ing such an alien has kept proper and adequate  
7            records respecting such employment, the alien’s  
8            burden of proof under subparagraph (A) may  
9            be met by securing timely production of those  
10           records under regulations to be promulgated by  
11           the Secretary.

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

20           (d) APPLICATIONS SUBMITTED TO QUALIFIED DES-  
21           IGNATED ENTITIES.—

22           (1) REQUIREMENTS.—Each qualified des-  
23           ignated entity shall agree—

24           (A) to forward to the Secretary an applica-  
25           tion submitted to that entity pursuant to sub-

1 section (a)(1)(B) if the applicant has consented  
2 to such forwarding;

3 (B) not to forward to the Secretary any  
4 such application if the applicant has not con-  
5 sented to such forwarding; and

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

9 (2) NO AUTHORITY TO MAKE DETERMINA-  
10 TIONS.—No qualified designated entity may make a  
11 determination required by this subtitle to be made  
12 by the Secretary.

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

20 (f) CONFIDENTIALITY OF INFORMATION.—

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

1 (A) using information furnished by the ap-  
2 plicant pursuant to an application filed under  
3 this title, the information provided by an appli-  
4 cant to a qualified designated entity, or any in-  
5 formation provided by an employer or former  
6 employer for any purpose other than to make a  
7 determination on the application or for impos-  
8 ing the penalties described in subsection (g);

9 (B) making any publication in which the  
10 information furnished by any particular indi-  
11 vidual can be identified; or

12 (C) permitting a person other than a  
13 sworn officer or employee of the Department or  
14 a bureau or agency of the Department or, with  
15 respect to applications filed with a qualified  
16 designated entity, that qualified designated en-  
17 tity, to examine individual applications.

18 (2) REQUIRED DISCLOSURES.—The Secretary  
19 shall provide the information furnished under this  
20 title or any other information derived from such fur-  
21 nished information to—

22 (A) a duly recognized law enforcement en-  
23 tity in connection with a criminal investigation  
24 or prosecution, if such information is requested  
25 in writing by such entity; or

1 (B) an official coroner, for purposes of af-  
2 firmatively identifying a deceased individual,  
3 whether or not the death of such individual re-  
4 sulted from a crime.

5 (3) CONSTRUCTION.—

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

16 (B) CRIMINAL CONVICTIONS.—Notwith-  
17 standing any other provision of this subsection,  
18 information concerning whether the alien apply-  
19 ing for blue card status under section 101 or an  
20 adjustment of status under section 103 has  
21 been convicted of a crime at any time may be  
22 used or released for immigration enforcement  
23 or law enforcement purposes.

24 (4) CRIME.—Any person who knowingly uses,  
25 publishes, or permits information to be examined in

1 violation of this subsection shall be subject to a fine  
2 in an amount not to exceed \$10,000.

3 (g) PENALTIES FOR FALSE STATEMENTS IN APPLI-  
4 CATIONS.—

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

6 (A) files an application for blue card status  
7 under section 101 or an adjustment of status  
8 under section 103 and knowingly and willfully  
9 falsifies, conceals, or covers up a material fact  
10 or makes any false, fictitious, or fraudulent  
11 statements or representations, or makes or uses  
12 any false writing or document knowing the  
13 same to contain any false, fictitious, or fraudu-  
14 lent statement or entry; or

15 (B) creates or supplies a false writing or  
16 document for use in making such an applica-  
17 tion,

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

21 (2) INADMISSIBILITY.—An alien who is con-  
22 victed of a crime under paragraph (1) shall be con-  
23 sidered to be inadmissible to the United States on  
24 the ground described in section 212(a)(6)(C)(i) of

1 the Immigration and Nationality Act (8 U.S.C.  
2 1182(a)(6)(C)(i)).

3 (h) ELIGIBILITY FOR LEGAL SERVICES.—Section  
4 504(a)(11) of Public Law 104–134 (110 Stat. 1321–53  
5 et seq.) shall not be construed to prevent a recipient of  
6 funds under the Legal Services Corporation Act (42  
7 U.S.C. 2996 et seq.) from providing legal assistance di-  
8 rectly related to an application for blue card status under  
9 section 101 or an adjustment of status under section 103.

10 (i) APPLICATION FEES.—

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

13 (A) shall be charged for the filing of an  
14 application for blue card status under section  
15 101 or for an adjustment of status under sec-  
16 tion 103; and

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

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

25 (3) DISPOSITION OF FEES.—

1 (A) IN GENERAL.—There is established in  
2 the general fund of the Treasury a separate ac-  
3 count, which shall be known as the “Agricul-  
4 tural Worker Immigration Status Adjustment  
5 Account”. Notwithstanding any other provision  
6 of law, there shall be deposited as offsetting re-  
7 cepts into the account all fees collected under  
8 paragraph (1)(A).

9 (B) USE OF FEES FOR APPLICATION PROC-  
10 ESSING.—Amounts deposited in the “Agricul-  
11 tural Worker Immigration Status Adjustment  
12 Account” shall remain available to the Sec-  
13 retary until expended for processing applica-  
14 tions for blue card status under section 101 or  
15 an adjustment of status under section 103.

16 **SEC. 105. WAIVER OF NUMERICAL LIMITATIONS AND CER-**  
17 **TAIN GROUNDS FOR INADMISSIBILITY.**

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

23 (b) WAIVER OF CERTAIN GROUNDS OF INADMIS-  
24 SIBILITY.—In the determination of an alien’s eligibility for  
25 status under section 101(a) or an alien’s eligibility for ad-

1 justment of status under section 103(b)(2)(A) the fol-  
2 lowing rules shall apply:

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

7 (2) WAIVER OF OTHER GROUNDS.—

8 (A) IN GENERAL.—Except as provided in  
9 subparagraph (B), the Secretary may waive any  
10 other provision of such section 212(a) in the  
11 case of individual aliens for humanitarian pur-  
12 poses, to ensure family unity, or if otherwise in  
13 the public interest.

14 (B) GROUNDS THAT MAY NOT BE  
15 WAIVED.—Paragraphs (2)(A), (2)(B), (2)(C),  
16 (3), and (4) of such section 212(a) may not be  
17 waived by the Secretary under subparagraph  
18 (A).

19 (C) CONSTRUCTION.—Nothing in this  
20 paragraph shall be construed as affecting the  
21 authority of the Secretary other than under this  
22 subparagraph to waive provisions of such sec-  
23 tion 212(a).

24 (3) SPECIAL RULE FOR DETERMINATION OF  
25 PUBLIC CHARGE.—An alien is not ineligible for blue

1 card status under section 101 or an adjustment of  
2 status under section 103 by reason of a ground of  
3 inadmissibility under section 212(a)(4) of the Immi-  
4 gration and Nationality Act (8 U.S.C. 1182(a)(4)) if  
5 the alien demonstrates a history of employment in  
6 the United States evidencing self-support without re-  
7 liance on public cash assistance.

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

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

22 (A) may not be removed; and

23 (B) shall be granted authorization to en-  
24 gage in employment in the United States and  
25 be provided an employment authorized endorse-

1           ment or other appropriate work permit for such  
2           purpose.

3           (2) DURING APPLICATION PERIOD.—The Sec-  
4           retary shall provide that, in the case of an alien who  
5           presents a nonfrivolous application for blue card sta-  
6           tus during the application period described in section  
7           101(a)(2), including an alien who files such an ap-  
8           plication within 30 days of the alien’s apprehension,  
9           and until a final determination on the application  
10          has been made in accordance with this section, the  
11          alien—

12                       (A) may not be removed; and

13                       (B) shall be granted authorization to en-  
14                       gage in employment in the United States and  
15                       be provided an employment authorized endorse-  
16                       ment or other appropriate work permit for such  
17                       purpose.

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

19           (a) IN GENERAL.—There shall be no administrative  
20           or judicial review of a determination respecting an applica-  
21           tion for blue card status under section 101 or adjustment  
22           of status under section 103 except in accordance with this  
23           section.

24           (b) ADMINISTRATIVE REVIEW.—

1           (1) SINGLE LEVEL OF ADMINISTRATIVE APPEL-  
2           LATE REVIEW.—The Secretary shall establish an ap-  
3           pellate authority to provide for a single level of ad-  
4           ministrative appellate review of such a determina-  
5           tion.

6           (2) STANDARD FOR REVIEW.—Such administra-  
7           tive appellate review shall be based solely upon the  
8           administrative record established at the time of the  
9           determination on the application and upon such ad-  
10          ditional or newly discovered evidence as may not  
11          have been available at the time of the determination.

12          (c) JUDICIAL REVIEW.—

13           (1) LIMITATION TO REVIEW OF REMOVAL.—  
14          There shall be judicial review of such a determina-  
15          tion only in the judicial review of an order of re-  
16          moval under section 242 of the Immigration and  
17          Nationality Act (8 U.S.C. 1252).

18           (2) STANDARD FOR JUDICIAL REVIEW.—Such  
19          judicial review shall be based solely upon the admin-  
20          istrative record established at the time of the review  
21          by the appellate authority and the findings of fact  
22          and determinations contained in such record shall be  
23          conclusive unless the applicant can establish abuse  
24          of discretion or that the findings are directly con-

1 trary to clear and convincing facts contained in the  
2 record considered as a whole.

3 **SEC. 107. USE OF INFORMATION.**

4 Beginning not later than the first day of the applica-  
5 tion period described in section 101(a)(2), the Secretary,  
6 in cooperation with qualified designated entities (as that  
7 term is defined in section 104(b)), shall broadly dissemi-  
8 nate information respecting the benefits that aliens may  
9 receive under this subtitle and the requirements that an  
10 alien is required to meet to receive such benefits.

11 **SEC. 108. REGULATIONS, EFFECTIVE DATE, AUTHORIZA-**  
12 **TION OF APPROPRIATIONS.**

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

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

21 (c) AUTHORIZATION OF APPROPRIATIONS.—There  
22 are authorized to be appropriated to the Secretary such  
23 sums as may be necessary to implement this subtitle, in-  
24 cluding any sums needed for costs associated with the ini-

1 tiation of such implementation, for fiscal years 2007 and  
2 2008.

## 3 **Subtitle B—Correction of Social** 4 **Security Records**

### 5 **SEC. 111. CORRECTION OF SOCIAL SECURITY RECORDS.**

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

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

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

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

14 “(D) who is granted blue card status under the  
15 Agricultural Job Opportunity, Benefits, and Security  
16 Act of 2007,”; and

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

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

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

3   **SEC. 201. AMENDMENT TO THE IMMIGRATION AND NATION-**  
4                           **ALITY ACT.**

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

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

9           “(a) APPLICATIONS TO THE SECRETARY OF  
10 LABOR.—

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

16                   “(A) the assurances described in sub-  
17 section (b);

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

20                   “(C) the anticipated period (expected be-  
21 ginning and ending dates) for which the work-  
22 ers will be needed; and

23                   “(D) the number of job opportunities in  
24 which the employer seeks to employ the work-  
25 ers.

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

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

11           “(1) JOB OPPORTUNITIES COVERED BY COL-  
12          LECTIVE BARGAINING AGREEMENTS.—With respect  
13          to a job opportunity that is covered under a collec-  
14          tive bargaining agreement:

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

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

24           “(C) NOTIFICATION OF BARGAINING REP-  
25          RESENTATIVES.—The employer, at the time of

1 filing the application, has provided notice of the  
2 filing under this paragraph to the bargaining  
3 representative of the employer's employees in  
4 the occupational classification at the place or  
5 places of employment for which aliens are  
6 sought.

7 “(D) TEMPORARY OR SEASONAL JOB OP-  
8 PORTUNITIES.—The job opportunity is tem-  
9 porary or seasonal.

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

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

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

5           “(A) STRIKE OR LOCKOUT.—The specific  
6 job opportunity for which the employer has ap-  
7 plied for an H-2A worker is not vacant because  
8 the former occupant is on strike or being locked  
9 out in the course of a labor dispute.

10           “(B) TEMPORARY OR SEASONAL JOB OP-  
11 PORTUNITIES.—The job opportunity is tem-  
12 porary or seasonal.

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

22           “(D) NONDISPLACEMENT OF UNITED  
23 STATES WORKERS.—The employer did not dis-  
24 place and will not displace a United States  
25 worker employed by the employer during the

1 period of employment and for a period of 30  
2 days preceding the period of employment in the  
3 occupation at the place of employment for  
4 which the employer has applied for an H-2A  
5 worker.

6 “(E) REQUIREMENTS FOR PLACEMENT OF  
7 THE NONIMMIGRANT WITH OTHER EMPLOY-  
8 ERS.—The employer will not place the non-  
9 immigrant with another employer unless—

10 “(i) the nonimmigrant performs du-  
11 ties in whole or in part at 1 or more work-  
12 sites owned, operated, or controlled by  
13 such other employer;

14 “(ii) there are indicia of an employ-  
15 ment relationship between the non-  
16 immigrant and such other employer; and

17 “(iii) the employer has inquired of the  
18 other employer as to whether, and has no  
19 actual knowledge or notice that, during the  
20 period of employment and for a period of  
21 30 days preceding the period of employ-  
22 ment, the other employer has displaced or  
23 intends to displace a United States worker  
24 employed by the other employer in the oc-  
25 cupation at the place of employment for

1           which the employer seeks approval to em-  
2           ploy H-2A workers.

3           “(F) STATEMENT OF LIABILITY.—The ap-  
4           plication form shall include a clear statement  
5           explaining the liability under subparagraph (E)  
6           of an employer if the other employer described  
7           in such subparagraph displaces a United States  
8           worker as described in such subparagraph.

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

18          “(H) EMPLOYMENT OF UNITED STATES  
19          WORKERS.—

20                 “(i) RECRUITMENT.—The employer  
21                 has taken or will take the following steps  
22                 to recruit United States workers for the  
23                 job opportunities for which the H-2A non-  
24                 immigrant is, or H-2A nonimmigrants are,  
25                 sought:

1                   “(I)     CONTACTING     FORMER  
2                   WORKERS.—The employer shall make  
3                   reasonable efforts through the sending  
4                   of a letter by United States Postal  
5                   Service mail, or otherwise, to contact  
6                   any United States worker the em-  
7                   ployer employed during the previous  
8                   season in the occupation at the place  
9                   of intended employment for which the  
10                  employer is applying for workers and  
11                  has made the availability of the em-  
12                  ployer’s job opportunities in the occu-  
13                  pation at the place of intended em-  
14                  ployment known to such previous  
15                  workers, unless the worker was termi-  
16                  nated from employment by the em-  
17                  ployer for a lawful job-related reason  
18                  or abandoned the job before the work-  
19                  er completed the period of employ-  
20                  ment of the job opportunity for which  
21                  the worker was hired.

22                   “(II) FILING A JOB OFFER WITH  
23                   THE LOCAL OFFICE OF THE STATE  
24                   EMPLOYMENT SECURITY AGENCY.—  
25                   Not later than 28 days before the

1 date on which the employer desires to  
2 employ an H-2A worker in a tem-  
3 porary or seasonal agricultural job op-  
4 portunity, the employer shall submit a  
5 copy of the job offer described in sub-  
6 section (a)(2) to the local office of the  
7 State employment security agency  
8 which serves the area of intended em-  
9 ployment and authorize the posting of  
10 the job opportunity on ‘America’s Job  
11 Bank’ or other electronic job registry,  
12 except that nothing in this subclause  
13 shall require the employer to file an  
14 interstate job order under section 653  
15 of title 20, Code of Federal Regula-  
16 tions.

17 “(III) ADVERTISING OF JOB OP-  
18 PORTUNITIES.—Not later than 14  
19 days before the date on which the em-  
20 ployer desires to employ an H-2A  
21 worker in a temporary or seasonal ag-  
22 ricultural job opportunity, the em-  
23 ployer shall advertise the availability  
24 of the job opportunities for which the  
25 employer is seeking workers in a pub-

1           lication in the local labor market that  
2           is likely to be patronized by potential  
3           farm workers.

4           “(IV) EMERGENCY PROCEDURE.—The Secretary of Labor  
5           shall, by regulation, provide a procedure for acceptance and approval of  
6           applications in which the employer  
7           has not complied with the provisions  
8           of this subparagraph because the employer’s need for H–2A workers could  
9           not reasonably have been foreseen.

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

17           “(iii) PERIOD OF EMPLOYMENT.—The  
18           employer will provide employment to any  
19           qualified United States worker who applies  
20           to the employer during the period beginning  
21           on the date on which the H–2A worker  
22           departs for the employer’s place of em-  
23           ployment.  
24             
25

1           employment and ending on the date on which  
2           50 percent of the period of employment for  
3           which the H-2A worker who is in the job  
4           was hired has elapsed, subject to the fol-  
5           lowing requirements:

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

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

1                   “(III) PLACEMENT OF UNITED  
2 STATES WORKERS.—Before referring  
3 a United States worker to an em-  
4 ployer during the period described in  
5 the matter preceding subclause (I),  
6 the Secretary of Labor shall make all  
7 reasonable efforts to place the United  
8 States worker in an open job accept-  
9 able to the worker, if there are other  
10 job offers pending with the job service  
11 that offer similar job opportunities in  
12 the area of intended employment.

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

21                   “(c) APPLICATIONS BY ASSOCIATIONS ON BEHALF  
22 OF EMPLOYER MEMBERS.—

23                   “(1) IN GENERAL.—An agricultural association  
24 may file an application under subsection (a) on be-  
25 half of 1 or more of its employer members that the

1 association certifies in its application has or have  
2 agreed in writing to comply with the requirements of  
3 this section and sections 218A, 218B, and 218C.

4 “(2) TREATMENT OF ASSOCIATIONS ACTING AS  
5 EMPLOYERS.—If an association filing an application  
6 under paragraph (1) is a joint or sole employer of  
7 the temporary or seasonal agricultural workers re-  
8 quested on the application, the certifications granted  
9 under subsection (e)(2)(B) to the association may be  
10 used for the certified job opportunities of any of its  
11 producer members named on the application, and  
12 such workers may be transferred among such pro-  
13 ducer members to perform the agricultural services  
14 of a temporary or seasonal nature for which the cer-  
15 tifications were granted.

16 “(d) WITHDRAWAL OF APPLICATIONS.—

17 “(1) IN GENERAL.—An employer may withdraw  
18 an application filed pursuant to subsection (a), ex-  
19 cept that if the employer is an agricultural associa-  
20 tion, the association may withdraw an application  
21 filed pursuant to subsection (a) with respect to 1 or  
22 more of its members. To withdraw an application,  
23 the employer or association shall notify the Sec-  
24 retary of Labor in writing, and the Secretary of  
25 Labor shall acknowledge in writing the receipt of

1 such withdrawal notice. An employer who withdraws  
2 an application under subsection (a), or on whose be-  
3 half an application is withdrawn, is relieved of the  
4 obligations undertaken in the application.

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

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

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

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

1           “(2) RESPONSIBILITY OF THE SECRETARY OF  
2 LABOR.—

3           “(A) COMPILATION OF LIST.—The Sec-  
4 retary of Labor shall compile, on a current  
5 basis, a list (by employer and by occupational  
6 classification) of the applications filed under  
7 subsection (a). Such list shall include the wage  
8 rate, number of workers sought, period of in-  
9 tended employment, and date of need. The Sec-  
10 retary of Labor shall make such list available  
11 for examination in the District of Columbia.

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

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

24           “(a) PREFERENTIAL TREATMENT OF ALIENS PRO-  
25 HIBITED.—Employers seeking to hire United States work-

1 ers shall offer the United States workers no less than the  
 2 same benefits, wages, and working conditions that the em-  
 3 ployer is offering, intends to offer, or will provide to H-  
 4 2A workers. Conversely, no job offer may impose on  
 5 United States workers any restrictions or obligations  
 6 which will not be imposed on the employer's H-2A work-  
 7 ers.

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

17               “(1) REQUIREMENT TO PROVIDE HOUSING OR A  
 18 HOUSING ALLOWANCE.—

19               “(A) IN GENERAL.—An employer applying  
 20 under section 218(a) for H-2A workers shall  
 21 offer to provide housing at no cost to all work-  
 22 ers in job opportunities for which the employer  
 23 has applied under that section and to all other  
 24 workers in the same occupation at the place of

1 employment, whose place of residence is beyond  
2 normal commuting distance.

3 “(B) TYPE OF HOUSING.—In complying  
4 with subparagraph (A), an employer may, at  
5 the employer’s election, provide housing that  
6 meets applicable Federal standards for tem-  
7 porary labor camps or secure housing that  
8 meets applicable local standards for rental or  
9 public accommodation housing or other sub-  
10 stantially similar class of habitation, or in the  
11 absence of applicable local standards, State  
12 standards for rental or public accommodation  
13 housing or other substantially similar class of  
14 habitation. In the absence of applicable local or  
15 State standards, Federal temporary labor camp  
16 standards shall apply.

17 “(C) FAMILY HOUSING.—If it is the pre-  
18 vailing practice in the occupation and area of  
19 intended employment to provide family housing,  
20 family housing shall be provided to workers  
21 with families who request it.

22 “(D) WORKERS ENGAGED IN THE RANGE  
23 PRODUCTION OF LIVESTOCK.—The Secretary of  
24 Labor shall issue regulations that address the  
25 specific requirements for the provision of hous-

1           ing to workers engaged in the range production  
2           of livestock.

3           “(E) LIMITATION.—Nothing in this para-  
4           graph shall be construed to require an employer  
5           to provide or secure housing for persons who  
6           were not entitled to such housing under the  
7           temporary labor certification regulations in ef-  
8           fect on June 1, 1986.

9           “(F) CHARGES FOR HOUSING.—

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

21           “(ii) DEPOSIT CHARGES.—Charges in  
22           the form of deposits for bedding or other  
23           similar incidentals related to housing shall  
24           not be levied upon workers by employers  
25           who provide housing for their workers. An

1 employer may require a worker found to  
2 have been responsible for damage to such  
3 housing which is not the result of normal  
4 wear and tear related to habitation to re-  
5 imburse the employer for the reasonable  
6 cost of repair of such damage.

7 “(G) HOUSING ALLOWANCE AS ALTER-  
8 NATIVE.—

9 “(i) IN GENERAL.—If the requirement  
10 set out in clause (ii) is satisfied, the em-  
11 ployer may provide a reasonable housing  
12 allowance instead of offering housing  
13 under subparagraph (A). Upon the request  
14 of a worker seeking assistance in locating  
15 housing, the employer shall make a good  
16 faith effort to assist the worker in identi-  
17 fying and locating housing in the area of  
18 intended employment. An employer who of-  
19 fers a housing allowance to a worker, or  
20 assists a worker in locating housing which  
21 the worker occupies, pursuant to this  
22 clause shall not be deemed a housing pro-  
23 vider under section 203 of the Migrant and  
24 Seasonal Agricultural Worker Protection  
25 Act (29 U.S.C. 1823) solely by virtue of

1 providing such housing allowance. No  
2 housing allowance may be used for housing  
3 which is owned or controlled by the em-  
4 ployer.

5 “(ii) CERTIFICATION.—The require-  
6 ment of this clause is satisfied if the Gov-  
7 ernor of the State certifies to the Secretary  
8 of Labor that there is adequate housing  
9 available in the area of intended employ-  
10 ment for migrant farm workers and H-2A  
11 workers who are seeking temporary hous-  
12 ing while employed in agricultural work.  
13 Such certification shall expire after 3 years  
14 unless renewed by the Governor of the  
15 State.

16 “(iii) AMOUNT OF ALLOWANCE.—

17 “(I) NONMETROPOLITAN COUN-  
18 TIES.—If the place of employment of  
19 the workers provided an allowance  
20 under this subparagraph is a non-  
21 metropolitan county, the amount of  
22 the housing allowance under this sub-  
23 paragraph shall be equal to the state-  
24 wide average fair market rental for  
25 existing housing for nonmetropolitan

1 counties for the State, as established  
2 by the Secretary of Housing and  
3 Urban Development pursuant to sec-  
4 tion 8(c) of the United States Hous-  
5 ing Act of 1937 (42 U.S.C. 1437f(c)),  
6 based on a 2-bedroom dwelling unit  
7 and an assumption of 2 persons per  
8 bedroom.

9 “(II) METROPOLITAN COUN-  
10 TIES.—If the place of employment of  
11 the workers provided an allowance  
12 under this paragraph is in a metro-  
13 politan county, the amount of the  
14 housing allowance under this subpara-  
15 graph shall be equal to the statewide  
16 average fair market rental for existing  
17 housing for metropolitan counties for  
18 the State, as established by the Sec-  
19 retary of Housing and Urban Devel-  
20 opment pursuant to section 8(c) of  
21 the United States Housing Act of  
22 1937 (42 U.S.C. 1437f(c)), based on  
23 a 2-bedroom dwelling unit and an as-  
24 sumption of 2 persons per bedroom.

25 “(2) REIMBURSEMENT OF TRANSPORTATION.—

1           “(A) TO PLACE OF EMPLOYMENT.—A  
2 worker who completes 50 percent of the period  
3 of employment of the job opportunity for which  
4 the worker was hired shall be reimbursed by the  
5 employer for the cost of the worker’s transpor-  
6 tation and subsistence from the place from  
7 which the worker came to work for the em-  
8 ployer (or place of last employment, if the  
9 worker traveled from such place) to the place of  
10 employment.

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

24           “(C) LIMITATION.—

1                   “(i) AMOUNT OF REIMBURSEMENT.—  
2                   Except as provided in clause (ii), the  
3                   amount of reimbursement provided under  
4                   subparagraph (A) or (B) to a worker or  
5                   alien shall not exceed the lesser of—

6                                 “(I) the actual cost to the worker  
7                                 or alien of the transportation and sub-  
8                                 sistence involved; or

9                                 “(II) the most economical and  
10                                reasonable common carrier transpor-  
11                                tation charges and subsistence costs  
12                                for the distance involved.

13                   “(ii) DISTANCE TRAVELED.—No reim-  
14                   bursement under subparagraph (A) or (B)  
15                   shall be required if the distance traveled is  
16                   100 miles or less, or the worker is not re-  
17                   siding in employer-provided housing or  
18                   housing secured through an allowance as  
19                   provided in paragraph (1)(G).

20                   “(D) EARLY TERMINATION.—If the worker  
21                   is laid off or employment is terminated for con-  
22                   tract impossibility (as described in paragraph  
23                   (4)(D)) before the anticipated ending date of  
24                   employment, the employer shall provide the  
25                   transportation and subsistence required by sub-

1 paragraph (B) and, notwithstanding whether  
2 the worker has completed 50 percent of the pe-  
3 riod of employment, shall provide the transpor-  
4 tation reimbursement required by subparagraph  
5 (A).

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

13 “(3) REQUIRED WAGES.—

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

1 U.S.C. 206(a)(1)) or the applicable State min-  
2 imum wage.

3 “(B) LIMITATION.—Effective on the date  
4 of the enactment of the Agricultural Job Op-  
5 portunities, Benefits, and Security Act of 2007  
6 and continuing for 3 years thereafter, no ad-  
7 verse effect wage rate for a State may be more  
8 than the adverse effect wage rate for that State  
9 in effect on January 1, 2003, as established by  
10 section 655.107 of title 20, Code of Federal  
11 Regulations.

12 “(C) REQUIRED WAGES AFTER 3-YEAR  
13 FREEZE.—

14 “(i) FIRST ADJUSTMENT.—If Con-  
15 gress does not set a new wage standard  
16 applicable to this section before the first  
17 March 1 that is not less than 3 years after  
18 the date of enactment of this section, the  
19 adverse effect wage rate for each State be-  
20 ginning on such March 1 shall be the wage  
21 rate that would have resulted if the ad-  
22 verse effect wage rate in effect on January  
23 1, 2003, had been annually adjusted, be-  
24 ginning on March 1, 2006, by the lesser  
25 of—

1           “(I) the 12-month percentage  
2           change in the Consumer Price Index  
3           for All Urban Consumers between De-  
4           cember of the second preceding year  
5           and December of the preceding year;  
6           and

7           “(II) 4 percent.

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

15               “(I) the 12-month percentage  
16               change in the Consumer Price Index  
17               for All Urban Consumers between De-  
18               cember of the second preceding year  
19               and December of the preceding year;  
20               and

21               “(II) 4 percent.

22           “(D) DEDUCTIONS.—The employer shall  
23           make only those deductions from the worker’s  
24           wages that are authorized by law or are reason-  
25           able and customary in the occupation and area

1 of employment. The job offer shall specify all  
2 deductions not required by law which the em-  
3 ployer will make from the worker's wages.

4 “(E) FREQUENCY OF PAY.—The employer  
5 shall pay the worker not less frequently than  
6 twice monthly, or in accordance with the pre-  
7 vailing practice in the area of employment,  
8 whichever is more frequent.

9 “(F) HOURS AND EARNINGS STATE-  
10 MENTS.—The employer shall furnish to the  
11 worker, on or before each payday, in 1 or more  
12 written statements—

13 “(i) the worker's total earnings for  
14 the pay period;

15 “(ii) the worker's hourly rate of pay,  
16 piece rate of pay, or both;

17 “(iii) the hours of employment which  
18 have been offered to the worker (broken  
19 out by hours offered in accordance with  
20 and over and above the  $\frac{3}{4}$  guarantee de-  
21 scribed in paragraph (4);

22 “(iv) the hours actually worked by the  
23 worker;

24 “(v) an itemization of the deductions  
25 made from the worker's wages; and

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

3                   “(G) REPORT ON WAGE PROTECTIONS.—  
4                   Not later than December 31, 2009, the Comp-  
5                   troller General of the United States shall pre-  
6                   pare and transmit to the Secretary of Labor,  
7                   the Committee on the Judiciary of the Senate,  
8                   and Committee on the Judiciary of the House  
9                   of Representatives, a report that addresses—

10                   “(i) whether the employment of H-2A  
11                   or unauthorized aliens in the United States  
12                   agricultural workforce has depressed  
13                   United States farm worker wages below  
14                   the levels that would otherwise have pre-  
15                   vailed if alien farm workers had not been  
16                   employed in the United States;

17                   “(ii) whether an adverse effect wage  
18                   rate is necessary to prevent wages of  
19                   United States farm workers in occupations  
20                   in which H-2A workers are employed from  
21                   falling below the wage levels that would  
22                   have prevailed in the absence of the em-  
23                   ployment of H-2A workers in those occu-  
24                   pations;

1           “(iii) whether alternative wage stand-  
2           ards, such as a prevailing wage standard,  
3           would be sufficient to prevent wages in oc-  
4           cupations in which H-2A workers are em-  
5           ployed from falling below the wage level  
6           that would have prevailed in the absence of  
7           H-2A employment;

8           “(iv) whether any changes are war-  
9           ranted in the current methodologies for  
10          calculating the adverse effect wage rate  
11          and the prevailing wage; and

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

14          “(H) COMMISSION ON WAGE STAND-  
15          ARDS.—

16                 “(i) ESTABLISHMENT.—There is es-  
17                 tablished the Commission on Agricultural  
18                 Wage Standards under the H-2A program  
19                 (in this subparagraph referred to as the  
20                 ‘Commission’).

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

23                         “(I) Four representatives of agri-  
24                         cultural employers and 1 representa-  
25                         tive of the Department of Agriculture,

1 each appointed by the Secretary of  
2 Agriculture.

3 “(II) Four representatives of ag-  
4 ricultural workers and 1 representa-  
5 tive of the Department of Labor, each  
6 appointed by the Secretary of Labor.

7 “(iii) FUNCTIONS.—The Commission  
8 shall conduct a study that shall address—

9 “(I) whether the employment of  
10 H-2A or unauthorized aliens in the  
11 United States agricultural workforce  
12 has depressed United States farm  
13 worker wages below the levels that  
14 would otherwise have prevailed if alien  
15 farm workers had not been employed  
16 in the United States;

17 “(II) whether an adverse effect  
18 wage rate is necessary to prevent  
19 wages of United States farm workers  
20 in occupations in which H-2A work-  
21 ers are employed from falling below  
22 the wage levels that would have pre-  
23 vailed in the absence of the employ-  
24 ment of H-2A workers in those occu-  
25 pations;

1           “(III) whether alternative wage  
2 standards, such as a prevailing wage  
3 standard, would be sufficient to pre-  
4 vent wages in occupations in which  
5 H-2A workers are employed from fall-  
6 ing below the wage level that would  
7 have prevailed in the absence of H-2A  
8 employment;

9           “(IV) whether any changes are  
10 warranted in the current methodolo-  
11 gies for calculating the adverse effect  
12 wage rate and the prevailing wage  
13 rate; and

14           “(V) recommendations for future  
15 wage protection under this section.

16           “(iv) FINAL REPORT.—Not later than  
17 December 31, 2009, the Commission shall  
18 submit a report to the Congress setting  
19 forth the findings of the study conducted  
20 under clause (iii).

21           “(v) TERMINATION DATE.—The Com-  
22 mission shall terminate upon submitting  
23 its final report.

24           “(4) GUARANTEE OF EMPLOYMENT.—

1           “(A) OFFER TO WORKER.—The employer  
2 shall guarantee to offer the worker employment  
3 for the hourly equivalent of at least  $\frac{3}{4}$  of the  
4 work days of the total period of employment,  
5 beginning with the first work day after the ar-  
6 rival of the worker at the place of employment  
7 and ending on the expiration date specified in  
8 the job offer. For purposes of this subpara-  
9 graph, the hourly equivalent means the number  
10 of hours in the work days as stated in the job  
11 offer and shall exclude the worker’s Sabbath  
12 and Federal holidays. If the employer affords  
13 the United States or H-2A worker less employ-  
14 ment than that required under this paragraph,  
15 the employer shall pay such worker the amount  
16 which the worker would have earned had the  
17 worker, in fact, worked for the guaranteed  
18 number of hours.

19           “(B) FAILURE TO WORK.—Any hours  
20 which the worker fails to work, up to a max-  
21 imum of the number of hours specified in the  
22 job offer for a work day, when the worker has  
23 been offered an opportunity to do so, and all  
24 hours of work actually performed (including vol-  
25 untary work in excess of the number of hours

1 specified in the job offer in a work day, on the  
2 worker's Sabbath, or on Federal holidays) may  
3 be counted by the employer in calculating  
4 whether the period of guaranteed employment  
5 has been met.

6 “(C) ABANDONMENT OF EMPLOYMENT,  
7 TERMINATION FOR CAUSE.—If the worker vol-  
8 untarily abandons employment before the end  
9 of the contract period, or is terminated for  
10 cause, the worker is not entitled to the ‘ $\frac{3}{4}$   
11 guarantee’ described in subparagraph (A).

12 “(D) CONTRACT IMPOSSIBILITY.—If, be-  
13 fore the expiration of the period of employment  
14 specified in the job offer, the services of the  
15 worker are no longer required for reasons be-  
16 yond the control of the employer due to any  
17 form of natural disaster, including a flood, hur-  
18 ricane, freeze, earthquake, fire, drought, plant  
19 or animal disease or pest infestation, or regu-  
20 latory drought, before the guarantee in sub-  
21 subparagraph (A) is fulfilled, the employer may  
22 terminate the worker's employment. In the  
23 event of such termination, the employer shall  
24 fulfill the employment guarantee in subpara-  
25 graph (A) for the work days that have elapsed

1 from the first work day after the arrival of the  
2 worker to the termination of employment. In  
3 such cases, the employer will make efforts to  
4 transfer the United States worker to other com-  
5 parable employment acceptable to the worker. If  
6 such transfer is not effected, the employer shall  
7 provide the return transportation required in  
8 paragraph (2)(D).

9 “(5) MOTOR VEHICLE SAFETY.—

10 “(A) MODE OF TRANSPORTATION SUBJECT  
11 TO COVERAGE.—

12 “(i) IN GENERAL.—Except as pro-  
13 vided in clauses (iii) and (iv), this sub-  
14 section applies to any H-2A employer that  
15 uses or causes to be used any vehicle to  
16 transport an H-2A worker within the  
17 United States.

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

21 “(I) applies only to transpor-  
22 tation provided by an H-2A employer  
23 to an H-2A worker, or by a farm  
24 labor contractor to an H-2A worker

1 at the request or direction of an H-  
2 2A employer; and

3 “(II) does not apply to—

4 “(aa) transportation pro-  
5 vided, or transportation arrange-  
6 ments made, by an H-2A work-  
7 er, unless the employer specifi-  
8 cally requested or arranged such  
9 transportation; or

10 “(bb) car pooling arrange-  
11 ments made by H-2A workers  
12 themselves, using 1 of the work-  
13 ers’ own vehicles, unless specifi-  
14 cally requested by the employer  
15 directly or through a farm labor  
16 contractor.

17 “(iii) CLARIFICATION.—Providing a  
18 job offer to an H-2A worker that causes  
19 the worker to travel to or from the place  
20 of employment, or the payment or reim-  
21 bursement of the transportation costs of  
22 an H-2A worker by an H-2A employer,  
23 shall not constitute an arrangement of, or  
24 participation in, such transportation.

1           “(iv) AGRICULTURAL MACHINERY AND  
2           EQUIPMENT EXCLUDED.—This subsection  
3           does not apply to the transportation of an  
4           H-2A worker on a tractor, combine, har-  
5           vester, picker, or other similar machinery  
6           or equipment while such worker is actually  
7           engaged in the planting, cultivating, or  
8           harvesting of agricultural commodities or  
9           the care of livestock or poultry or engaged  
10          in transportation incidental thereto.

11          “(v) COMMON CARRIERS EX-  
12          CLUDED.—This subsection does not apply  
13          to common carrier motor vehicle transpor-  
14          tation in which the provider holds itself out  
15          to the general public as engaging in the  
16          transportation of passengers for hire and  
17          holds a valid certification of authorization  
18          for such purposes from an appropriate  
19          Federal, State, or local agency.

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

22                 “(i) IN GENERAL.—When using, or  
23                 causing to be used, any vehicle for the pur-  
24                 pose of providing transportation to which

1 this subparagraph applies, each employer  
2 shall—

3 “(I) ensure that each such vehi-  
4 cle conforms to the standards pre-  
5 scribed by the Secretary of Labor  
6 under section 401(b) of the Migrant  
7 and Seasonal Agricultural Worker  
8 Protection Act (29 U.S.C. 1841(b))  
9 and other applicable Federal and  
10 State safety standards;

11 “(II) ensure that each driver has  
12 a valid and appropriate license, as  
13 provided by State law, to operate the  
14 vehicle; and

15 “(III) have an insurance policy  
16 or a liability bond that is in effect  
17 which insures the employer against li-  
18 ability for damage to persons or prop-  
19 erty arising from the ownership, oper-  
20 ation, or causing to be operated, of  
21 any vehicle used to transport any H-  
22 2A worker.

23 “(ii) AMOUNT OF INSURANCE RE-  
24 QUIRED.—The level of insurance required  
25 shall be determined by the Secretary of

1 Labor pursuant to regulations to be issued  
2 under this subsection.

3 “(iii) EFFECT OF WORKERS’ COM-  
4 PENSATION COVERAGE.—If the employer  
5 of any H-2A worker provides workers’  
6 compensation coverage for such worker in  
7 the case of bodily injury or death as pro-  
8 vided by State law, the following adjust-  
9 ments in the requirements of subparagraph  
10 (B)(i)(III) relating to having an insurance  
11 policy or liability bond apply:

12 “(I) No insurance policy or liabil-  
13 ity bond shall be required of the em-  
14 ployer, if such workers are trans-  
15 ported only under circumstances for  
16 which there is coverage under such  
17 State law.

18 “(II) An insurance policy or li-  
19 ability bond shall be required of the  
20 employer for circumstances under  
21 which coverage for the transportation  
22 of such workers is not provided under  
23 such State law.

24 “(c) COMPLIANCE WITH LABOR LAWS.—An em-  
25 ployer shall assure that, except as otherwise provided in



1 its members, that seeks the admission into the United  
2 States of an H-2A worker may file a petition with the  
3 Secretary. The petition shall be accompanied by an accept-  
4 ed and currently valid certification provided by the Sec-  
5 retary of Labor under section 218(e)(2)(B) covering the  
6 petitioner.

7       “(b) EXPEDITED ADJUDICATION BY THE SEC-  
8 RETARY.—The Secretary shall establish a procedure for  
9 expedited adjudication of petitions filed under subsection  
10 (a) and within 7 working days shall, by fax, cable, or other  
11 means assuring expedited delivery, transmit a copy of no-  
12 tice of action on the petition to the petitioner and, in the  
13 case of approved petitions, to the appropriate immigration  
14 officer at the port of entry or United States consulate (as  
15 the case may be) where the petitioner has indicated that  
16 the alien beneficiary (or beneficiaries) will apply for a visa  
17 or admission to the United States.

18       “(c) CRITERIA FOR ADMISSIBILITY.—

19               “(1) IN GENERAL.—An H-2A worker shall be  
20 considered admissible to the United States if the  
21 alien is otherwise admissible under this section, sec-  
22 tion 218, and section 218A, and the alien is not in-  
23 eligible under paragraph (2).

24               “(2) DISQUALIFICATION.—An alien shall be  
25 considered inadmissible to the United States and in-

1 eligible for nonimmigrant status under section  
2 101(a)(15)(H)(ii)(a) if the alien has, at any time  
3 during the past 5 years—

4 “(A) violated a material provision of this  
5 section, including the requirement to promptly  
6 depart the United States when the alien’s au-  
7 thorized period of admission under this section  
8 has expired; or

9 “(B) otherwise violated a term or condition  
10 of admission into the United States as a non-  
11 immigrant, including overstaying the period of  
12 authorized admission as such a nonimmigrant.

13 “(3) WAIVER OF INELIGIBILITY FOR UNLAW-  
14 FUL PRESENCE.—

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

1           “(B) MAINTENANCE OF WAIVER.—An  
2           alien provided an initial waiver of ineligibility  
3           pursuant to subparagraph (A) shall remain eli-  
4           gible for such waiver unless the alien violates  
5           the terms of this section or again becomes ineli-  
6           gible under section 212(a)(9)(B) by virtue of  
7           unlawful presence in the United States after  
8           the date of the initial waiver of ineligibility pur-  
9           suant to subparagraph (A).

10          “(d) PERIOD OF ADMISSION.—

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

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

1           “(B) the total period of employment, in-  
2           cluding such 14-day period, may not exceed 10  
3           months.

4           “(2) CONSTRUCTION.—Nothing in this sub-  
5           section shall limit the authority of the Secretary to  
6           extend the stay of the alien under any other provi-  
7           sion of this Act.

8           “(e) ABANDONMENT OF EMPLOYMENT.—

9           “(1) IN GENERAL.—An alien admitted or pro-  
10          vided status under section 101(a)(15)(H)(ii)(a) who  
11          abandons the employment which was the basis for  
12          such admission or status shall be considered to have  
13          failed to maintain nonimmigrant status as an H-2A  
14          worker and shall depart the United States or be sub-  
15          ject to removal under section 237(a)(1)(C)(i).

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

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

24          “(4) VOLUNTARY TERMINATION.—Notwith-  
25          standing paragraph (1), an alien may voluntarily

1 terminate his or her employment if the alien prompt-  
2 ly departs the United States upon termination of  
3 such employment.

4 “(f) REPLACEMENT OF ALIEN.—

5 “(1) IN GENERAL.—Upon presentation of the  
6 notice to the Secretary required by subsection (e)(2),  
7 the Secretary of State shall promptly issue a visa to,  
8 and the Secretary shall admit into the United  
9 States, an eligible alien designated by the employer  
10 to replace an H-2A worker—

11 “(A) who abandons or prematurely termi-  
12 nates employment; or

13 “(B) whose employment is terminated  
14 after a United States worker is employed pur-  
15 suant to section 218(b)(2)(H)(iii), if the United  
16 States worker voluntarily departs before the  
17 end of the period of intended employment or if  
18 the employment termination is for a lawful job-  
19 related reason.

20 “(2) CONSTRUCTION.—Nothing in this sub-  
21 section is intended to limit any preference required  
22 to be accorded United States workers under any  
23 other provision of this Act.

24 “(g) IDENTIFICATION DOCUMENT.—

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

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

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

11           “(i) the individual with the identifica-  
12 tion and employment eligibility document  
13 whose eligibility is being verified is in fact  
14 eligible for employment;

15           “(ii) the individual whose eligibility is  
16 being verified is claiming the identity of  
17 another person; and

18           “(iii) the individual whose eligibility is  
19 being verified is authorized to be admitted  
20 into, and employed in, the United States  
21 as an H-2A worker.

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

24           “(C) The document shall—

1           “(i) be compatible with other data-  
2           bases of the Secretary for the purpose of  
3           excluding aliens from benefits for which  
4           they are not eligible and determining  
5           whether the alien is unlawfully present in  
6           the United States; and

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

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

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

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

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

22           or

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

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

3           “(A) IN GENERAL.—An alien who is law-  
4           fully present in the United States may com-  
5           mence the employment described in a petition  
6           under paragraph (1) on the date on which the  
7           petition is filed.

8           “(B) DEFINITION.—For purposes of sub-  
9           paragraph (A), the term ‘file’ means sending  
10          the petition by certified mail via the United  
11          States Postal Service, return receipt requested,  
12          or delivered by guaranteed commercial delivery  
13          which will provide the employer with a docu-  
14          mented acknowledgment of the date of receipt  
15          of the petition.

16          “(C) HANDLING OF PETITION.—The em-  
17          ployer shall provide a copy of the employer’s pe-  
18          tition to the alien, who shall keep the petition  
19          with the alien’s identification and employment  
20          eligibility document as evidence that the peti-  
21          tion has been filed and that the alien is author-  
22          ized to work in the United States.

23          “(D) APPROVAL OF PETITION.—Upon ap-  
24          proval of a petition for an extension of stay or  
25          change in the alien’s authorized employment,

1           the Secretary shall provide a new or updated  
2           employment eligibility document to the alien in-  
3           dicating the new validity date, after which the  
4           alien is not required to retain a copy of the pe-  
5           tition.

6           “(4) LIMITATION ON EMPLOYMENT AUTHORIZA-  
7           TION OF ALIENS WITHOUT VALID IDENTIFICATION  
8           AND EMPLOYMENT ELIGIBILITY DOCUMENT.—An ex-  
9           pired identification and employment eligibility docu-  
10          ment, together with a copy of a petition for exten-  
11          sion of stay or change in the alien’s authorized em-  
12          ployment that complies with the requirements of  
13          paragraph (1), shall constitute a valid work author-  
14          ization document for a period of not more than 60  
15          days beginning on the date on which such petition  
16          is filed, after which time only a currently valid iden-  
17          tification and employment eligibility document shall  
18          be acceptable.

19          “(5) LIMITATION ON AN INDIVIDUAL’S STAY IN  
20          STATUS.—

21                 “(A) MAXIMUM PERIOD.—The maximum  
22                 continuous period of authorized status as an  
23                 H-2A worker (including any extensions) is 3  
24                 years.

1                   “(B) REQUIREMENT TO REMAIN OUTSIDE  
2 THE UNITED STATES.—

3                   “(i) IN GENERAL.—Subject to clause  
4 (ii), in the case of an alien outside the  
5 United States whose period of authorized  
6 status as an H-2A worker (including any  
7 extensions) has expired, the alien may not  
8 again apply for admission to the United  
9 States as an H-2A worker unless the alien  
10 has remained outside the United States for  
11 a continuous period equal to at least  $\frac{1}{5}$   
12 the duration of the alien’s previous period  
13 of authorized status as an H-2A worker  
14 (including any extensions).

15                   “(ii) EXCEPTION.—Clause (i) shall  
16 not apply in the case of an alien if the  
17 alien’s period of authorized status as an  
18 H-2A worker (including any extensions)  
19 was for a period of not more than 10  
20 months and such alien has been outside  
21 the United States for at least 2 months  
22 during the 12 months preceding the date  
23 the alien again is applying for admission to  
24 the United States as an H-2A worker.

1       “(i) SPECIAL RULES FOR ALIENS EMPLOYED AS  
2 SHEEPHERDERS, GOAT HERDERS, OR DAIRY WORK-  
3 ERS.—Notwithstanding any provision of the Agricultural  
4 Job Opportunities, Benefits, and Security Act of 2007, an  
5 alien admitted under section 101(a)(15)(H)(ii)(a) for em-  
6 ployment as a shepherd, goat herder, or dairy worker—

7           “(1) may be admitted for an initial period of 12  
8 months;

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

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

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

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

20           “(A) having nonimmigrant status under  
21 section 101(a)(15)(H)(ii)(a) based on employ-  
22 ment as a shepherd, goat herder, or dairy  
23 worker;

24           “(B) who has maintained such non-  
25 immigrant status in the United States for a cu-

1           mulative total of 36 months (excluding any pe-  
2           riod of absence from the United States); and

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

5           “(2) CLASSIFICATION PETITION.—In the case  
6           of an eligible alien, the petition under section 204  
7           for classification under section 203(b)(3)(A)(iii) may  
8           be filed by—

9           “(A) the alien’s employer on behalf of the  
10          eligible alien; or

11          “(B) the eligible alien.

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

17          “(4) EFFECT OF PETITION.—The filing of a pe-  
18          tition described in paragraph (2) or an application  
19          for adjustment of status based on the approval of  
20          such a petition shall not constitute evidence of an  
21          alien’s ineligibility for nonimmigrant status under  
22          section 101(a)(15)(H)(ii)(a).

23          “(5) EXTENSION OF STAY.—The Secretary  
24          shall extend the stay of an eligible alien having a  
25          pending or approved classification petition described

1 in paragraph (2) in 1-year increments until a final  
2 determination is made on the alien's eligibility for  
3 adjustment of status to that of an alien lawfully ad-  
4 mitted for permanent residence.

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

9 **“SEC. 218C. WORKER PROTECTIONS AND LABOR STAND-**  
10 **ARDS ENFORCEMENT.**

11 “(a) ENFORCEMENT AUTHORITY.—

12 “(1) INVESTIGATION OF COMPLAINTS.—

13 “(A) AGGRIEVED PERSON OR THIRD-PARTY  
14 COMPLAINTS.—The Secretary of Labor shall es-  
15 tablish a process for the receipt, investigation,  
16 and disposition of complaints respecting a peti-  
17 tioner's failure to meet a condition specified in  
18 section 218(b), or an employer's misrepresenta-  
19 tion of material facts in an application under  
20 section 218(a). Complaints may be filed by any  
21 aggrieved person or organization (including bar-  
22 gaining representatives). No investigation or  
23 hearing shall be conducted on a complaint con-  
24 cerning such a failure or misrepresentation un-  
25 less the complaint was filed not later than 12

1 months after the date of the failure, or mis-  
2 representation, respectively. The Secretary of  
3 Labor shall conduct an investigation under this  
4 subparagraph if there is reasonable cause to be-  
5 lieve that such a failure or misrepresentation  
6 has occurred.

7 “(B) DETERMINATION ON COMPLAINT.—

8 Under such process, the Secretary of Labor  
9 shall provide, within 30 days after the date  
10 such a complaint is filed, for a determination as  
11 to whether or not a reasonable basis exists to  
12 make a finding described in subparagraph (C),  
13 (D), (E), or (G). If the Secretary of Labor de-  
14 termines that such a reasonable basis exists,  
15 the Secretary of Labor shall provide for notice  
16 of such determination to the interested parties  
17 and an opportunity for a hearing on the com-  
18 plaint, in accordance with section 556 of title 5,  
19 United States Code, within 60 days after the  
20 date of the determination. If such a hearing is  
21 requested, the Secretary of Labor shall make a  
22 finding concerning the matter not later than 60  
23 days after the date of the hearing. In the case  
24 of similar complaints respecting the same appli-  
25 cant, the Secretary of Labor may consolidate

1 the hearings under this subparagraph on such  
2 complaints.

3 “(C) FAILURES TO MEET CONDITIONS.—If  
4 the Secretary of Labor finds, after notice and  
5 opportunity for a hearing, a failure to meet a  
6 condition of paragraph (1)(A), (1)(B), (1)(D),  
7 (1)(F), (2)(A), (2)(B), or (2)(G) of section  
8 218(b), a substantial failure to meet a condition  
9 of paragraph (1)(C), (1)(E), (2)(C), (2)(D),  
10 (2)(E), or (2)(H) of section 218(b), or a mate-  
11 rial misrepresentation of fact in an application  
12 under section 218(a)—

13 “(i) the Secretary of Labor shall no-  
14 tify the Secretary of such finding and may,  
15 in addition, impose such other administra-  
16 tive remedies (including civil money pen-  
17 alties in an amount not to exceed \$1,000  
18 per violation) as the Secretary of Labor  
19 determines to be appropriate; and

20 “(ii) the Secretary may disqualify the  
21 employer from the employment of aliens  
22 described in section 101(a)(15)(H)(ii)(a)  
23 for a period of 1 year.

24 “(D) WILLFUL FAILURES AND WILLFUL  
25 MISREPRESENTATIONS.—If the Secretary of

1 Labor finds, after notice and opportunity for  
2 hearing, a willful failure to meet a condition of  
3 section 218(b), a willful misrepresentation of a  
4 material fact in an application under section  
5 218(a), or a violation of subsection (d)(1)—

6 “(i) the Secretary of Labor shall no-  
7 tify the Secretary of such finding and may,  
8 in addition, impose such other administra-  
9 tive remedies (including civil money pen-  
10 alties in an amount not to exceed \$5,000  
11 per violation) as the Secretary of Labor  
12 determines to be appropriate;

13 “(ii) the Secretary of Labor may seek  
14 appropriate legal or equitable relief to ef-  
15 fectuate the purposes of subsection (d)(1);  
16 and

17 “(iii) the Secretary may disqualify the  
18 employer from the employment of H-2A  
19 workers for a period of 2 years.

20 “(E) DISPLACEMENT OF UNITED STATES  
21 WORKERS.—If the Secretary of Labor finds,  
22 after notice and opportunity for hearing, a will-  
23 ful failure to meet a condition of section 218(b)  
24 or a willful misrepresentation of a material fact  
25 in an application under section 218(a), in the

1 course of which failure or misrepresentation the  
2 employer displaced a United States worker em-  
3 ployed by the employer during the period of em-  
4 ployment on the employer's application under  
5 section 218(a) or during the period of 30 days  
6 preceding such period of employment—

7 “(i) the Secretary of Labor shall no-  
8 tify the Secretary of such finding and may,  
9 in addition, impose such other administra-  
10 tive remedies (including civil money pen-  
11 alties in an amount not to exceed \$15,000  
12 per violation) as the Secretary of Labor  
13 determines to be appropriate; and

14 “(ii) the Secretary may disqualify the  
15 employer from the employment of H-2A  
16 workers for a period of 3 years.

17 “(F) LIMITATIONS ON CIVIL MONEY PEN-  
18 ALTIES.—The Secretary of Labor shall not im-  
19 pose total civil money penalties with respect to  
20 an application under section 218(a) in excess of  
21 \$90,000.

22 “(G) FAILURES TO PAY WAGES OR RE-  
23 QUIRED BENEFITS.—If the Secretary of Labor  
24 finds, after notice and opportunity for a hear-  
25 ing, that the employer has failed to pay the

1 wages, or provide the housing allowance, trans-  
2 portation, subsistence reimbursement, or guar-  
3 antee of employment, required under section  
4 218A(b), the Secretary of Labor shall assess  
5 payment of back wages, or other required bene-  
6 fits, due any United States worker or H-2A  
7 worker employed by the employer in the specific  
8 employment in question. The back wages or  
9 other required benefits under section 218A(b)  
10 shall be equal to the difference between the  
11 amount that should have been paid and the  
12 amount that actually was paid to such worker.

13 “(2) STATUTORY CONSTRUCTION.—Nothing in  
14 this section shall be construed as limiting the au-  
15 thority of the Secretary of Labor to conduct any  
16 compliance investigation under any other labor law,  
17 including any law affecting migrant and seasonal ag-  
18 ricultural workers, or, in the absence of a complaint  
19 under this section, under section 218 or 218A.

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

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

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

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

7           “(4) The benefits and material terms and con-  
8           ditions of employment expressly provided in the job  
9           offer described in section 218(a)(2), not including  
10          the assurance to comply with other Federal, State,  
11          and local labor laws described in section 218A(c),  
12          compliance with which shall be governed by the pro-  
13          visions of such laws.

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

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

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

20          “(c) PRIVATE RIGHT OF ACTION.—

21                 “(1) MEDIATION.—Upon the filing of a com-  
22                 plaint by an H-2A worker aggrieved by a violation  
23                 of rights enforceable under subsection (b), and with-  
24                 in 60 days of the filing of proof of service of the  
25                 complaint, a party to the action may file a request

1 with the Federal Mediation and Conciliation Service  
2 to assist the parties in reaching a satisfactory reso-  
3 lution of all issues involving all parties to the dis-  
4 pute. Upon a filing of such request and giving of no-  
5 tice to the parties, the parties shall attempt medi-  
6 ation within the period specified in subparagraph  
7 (B).

8 “(A) MEDIATION SERVICES.—The Federal  
9 Mediation and Conciliation Service shall be  
10 available to assist in resolving disputes arising  
11 under subsection (b) between H-2A workers  
12 and agricultural employers without charge to  
13 the parties.

14 “(B) 90-DAY LIMIT.—The Federal Medi-  
15 ation and Conciliation Service may conduct me-  
16 diation or other nonbinding dispute resolution  
17 activities for a period not to exceed 90 days be-  
18 ginning on the date on which the Federal Medi-  
19 ation and Conciliation Service receives the re-  
20 quest for assistance unless the parties agree to  
21 an extension of this period of time.

22 “(C) AUTHORIZATION.—

23 “(i) IN GENERAL.—Subject to clause  
24 (ii), there are authorized to be appro-  
25 priated to the Federal Mediation and Con-

1           conciliation Service \$500,000 for each fiscal  
2           year to carry out this section.

3           “(ii)   MEDIATION.—Notwithstanding  
4           any other provision of law, the Director of  
5           the Federal Mediation and Conciliation  
6           Service is authorized to conduct the medi-  
7           ation or other dispute resolution activities  
8           from any other appropriated funds avail-  
9           able to the Director and to reimburse such  
10          appropriated funds when the funds are ap-  
11          propriated pursuant to this authorization,  
12          such reimbursement to be credited to ap-  
13          propriations currently available at the time  
14          of receipt.

15          “(2) MAINTENANCE OF CIVIL ACTION IN DIS-  
16          TRICT COURT BY AGGRIEVED PERSON.—An H-2A  
17          worker aggrieved by a violation of rights enforceable  
18          under subsection (b) by an agricultural employer or  
19          other person may file suit in any district court of the  
20          United States having jurisdiction over the parties,  
21          without regard to the amount in controversy, with-  
22          out regard to the citizenship of the parties, and  
23          without regard to the exhaustion of any alternative  
24          administrative remedies under this Act, not later  
25          than 3 years after the date the violation occurs.

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

9           “(4) PREEMPTION OF STATE CONTRACT  
10 RIGHTS.—Nothing in this Act shall be construed to  
11 diminish the rights and remedies of an H-2A worker  
12 under any other Federal or State law or regulation  
13 or under any collective bargaining agreement, except  
14 that no court or administrative action shall be avail-  
15 able under any State contract law to enforce the  
16 rights created by this Act.

17           “(5) WAIVER OF RIGHTS PROHIBITED.—Agree-  
18 ments by employees purporting to waive or modify  
19 their rights under this Act shall be void as contrary  
20 to public policy, except that a waiver or modification  
21 of the rights or obligations in favor of the Secretary  
22 of Labor shall be valid for purposes of the enforce-  
23 ment of this Act. The preceding sentence may not  
24 be construed to prohibit agreements to settle private  
25 disputes or litigation.

1           “(6) AWARD OF DAMAGES OR OTHER EQUI-  
2           TABLE RELIEF.—

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

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

10          “(7) WORKERS’ COMPENSATION BENEFITS; EX-  
11          CLUSIVE REMEDY.—

12          “(A) Notwithstanding any other provision  
13          of this section, where a State’s workers’ com-  
14          pensation law is applicable and coverage is pro-  
15          vided for an H-2A worker, the workers’ com-  
16          pensation benefits shall be the exclusive remedy  
17          for the loss of such worker under this section  
18          in the case of bodily injury or death in accord-  
19          ance with such State’s workers’ compensation  
20          law.

21          “(B) The exclusive remedy prescribed in  
22          subparagraph (A) precludes the recovery under  
23          paragraph (6) of actual damages for loss from  
24          an injury or death but does not preclude other  
25          equitable relief, except that such relief shall not

1 include back or front pay or in any manner, di-  
 2 rectly or indirectly, expand or otherwise alter or  
 3 affect—

4 “(i) a recovery under a State workers’  
 5 compensation law; or

6 “(ii) rights conferred under a State  
 7 workers’ compensation law.

8 “(8) TOLLING OF STATUTE OF LIMITATIONS.—

9 If it is determined under a State workers’ compensa-  
 10 tion law that the workers’ compensation law is not  
 11 applicable to a claim for bodily injury or death of an  
 12 H-2A worker, the statute of limitations for bringing  
 13 an action for actual damages for such injury or  
 14 death under subsection (c) shall be tolled for the pe-  
 15 riod during which the claim for such injury or death  
 16 under such State workers’ compensation law was  
 17 pending. The statute of limitations for an action for  
 18 actual damages or other equitable relief arising out  
 19 of the same transaction or occurrence as the injury  
 20 or death of the H-2A worker shall be tolled for the  
 21 period during which the claim for such injury or  
 22 death was pending under the State workers’ com-  
 23 pensation law.

24 “(9) PRECLUSIVE EFFECT.—Any settlement by  
 25 an H-2A worker and an H-2A employer or any per-

1 son reached through the mediation process required  
2 under subsection (c)(1) shall preclude any right of  
3 action arising out of the same facts between the par-  
4 ties in any Federal or State court or administrative  
5 proceeding, unless specifically provided otherwise in  
6 the settlement agreement.

7 “(10) SETTLEMENTS.—Any settlement by the  
8 Secretary of Labor with an H-2A employer on be-  
9 half of an H-2A worker of a complaint filed with the  
10 Secretary of Labor under this section or any finding  
11 by the Secretary of Labor under subsection  
12 (a)(1)(B) shall preclude any right of action arising  
13 out of the same facts between the parties under any  
14 Federal or State court or administrative proceeding,  
15 unless specifically provided otherwise in the settle-  
16 ment agreement.

17 “(d) DISCRIMINATION PROHIBITED.—

18 “(1) IN GENERAL.—It is a violation of this sub-  
19 section for any person who has filed an application  
20 under section 218(a), to intimidate, threaten, re-  
21 strain, coerce, blacklist, discharge, or in any other  
22 manner discriminate against an employee (which  
23 term, for purposes of this subsection, includes a  
24 former employee and an applicant for employment)  
25 because the employee has disclosed information to

1 the employer, or to any other person, that the em-  
2 ployee reasonably believes evidences a violation of  
3 section 218 or 218A or any rule or regulation per-  
4 taining to section 218 or 218A, or because the em-  
5 ployee cooperates or seeks to cooperate in an inves-  
6 tigation or other proceeding concerning the employ-  
7 er's compliance with the requirements of section 218  
8 or 218A or any rule or regulation pertaining to ei-  
9 ther of such sections.

10 “(2) DISCRIMINATION AGAINST H-2A WORK-  
11 ERS.—It is a violation of this subsection for any per-  
12 son who has filed an application under section  
13 218(a), to intimidate, threaten, restrain, coerce,  
14 blacklist, discharge, or in any manner discriminate  
15 against an H-2A employee because such worker has,  
16 with just cause, filed a complaint with the Secretary  
17 of Labor regarding a denial of the rights enumer-  
18 ated and enforceable under subsection (b) or insti-  
19 tuted, or caused to be instituted, a private right of  
20 action under subsection (c) regarding the denial of  
21 the rights enumerated under subsection (b), or has  
22 testified or is about to testify in any court pro-  
23 ceeding brought under subsection (c).

24 “(e) AUTHORIZATION TO SEEK OTHER APPRO-  
25 PRIATE EMPLOYMENT.—The Secretary of Labor and the

1 Secretary shall establish a process under which an H-2A  
2 worker who files a complaint regarding a violation of sub-  
3 section (d) and is otherwise eligible to remain and work  
4 in the United States may be allowed to seek other appro-  
5 priate employment in the United States for a period not  
6 to exceed the maximum period of stay authorized for such  
7 nonimmigrant classification.

8 “(f) ROLE OF ASSOCIATIONS.—

9 “(1) VIOLATION BY A MEMBER OF AN ASSOCIA-  
10 TION.—An employer on whose behalf an application  
11 is filed by an association acting as its agent is fully  
12 responsible for such application, and for complying  
13 with the terms and conditions of sections 218 and  
14 218A, as though the employer had filed the applica-  
15 tion itself. If such an employer is determined, under  
16 this section, to have committed a violation, the pen-  
17 alty for such violation shall apply only to that mem-  
18 ber of the association unless the Secretary of Labor  
19 determines that the association or other member  
20 participated in, had knowledge, or reason to know,  
21 of the violation, in which case the penalty shall be  
22 invoked against the association or other association  
23 member as well.

24 “(2) VIOLATIONS BY AN ASSOCIATION ACTING  
25 AS AN EMPLOYER.—If an association filing an appli-

1 cation as a sole or joint employer is determined to  
2 have committed a violation under this section, the  
3 penalty for such violation shall apply only to the as-  
4 sociation unless the Secretary of Labor determines  
5 that an association member or members participated  
6 in or had knowledge, or reason to know of the viola-  
7 tion, in which case the penalty shall be invoked  
8 against the association member or members as well.

9 **“SEC. 218D. DEFINITIONS.**

10 “For purposes of this section and section 218, 218A,  
11 218B, and 218C:

12 “(1) AGRICULTURAL EMPLOYMENT.—The term  
13 ‘agricultural employment’ means any service or ac-  
14 tivity that is considered to be agricultural under sec-  
15 tion 3(f) of the Fair Labor Standards Act of 1938  
16 (29 U.S.C. 203(f)) or agricultural labor under sec-  
17 tion 3121(g) of the Internal Revenue Code of 1986  
18 or the performance of agricultural labor or services  
19 described in section 101(a)(15)(H)(ii)(a).

20 “(2) BONA FIDE UNION.—The term ‘bona fide  
21 union’ means any organization in which employees  
22 participate and which exists for the purpose of deal-  
23 ing with employers concerning grievances, labor dis-  
24 putes, wages, rates of pay, hours of employment, or  
25 other terms and conditions of work for agricultural

1 employees. Such term does not include an organiza-  
2 tion formed, created, administered, supported, domi-  
3 nated, financed, or controlled by an employer or em-  
4 ployer association or its agents or representatives.

5 “(3) DISPLACE.—The term ‘displace’, in the  
6 case of an application with respect to 1 or more H-  
7 2A workers by an employer, means laying off a  
8 United States worker from a job for which the H-  
9 2A worker or workers is or are sought.

10 “(4) ELIGIBLE.—The term ‘eligible’, when used  
11 with respect to an individual, means an individual  
12 who is not an unauthorized alien (as defined in sec-  
13 tion 274A).

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

18 “(6) H-2A EMPLOYER.—The term ‘H-2A em-  
19 ployer’ means an employer who seeks to hire 1 or  
20 more nonimmigrant aliens described in section  
21 101(a)(15)(H)(ii)(a).

22 “(7) H-2A WORKER.—The term ‘H-2A worker’  
23 means a nonimmigrant described in section  
24 101(a)(15)(H)(ii)(a).

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

6           “(9) LAYING OFF.—

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

9           “(i) means to cause the worker’s loss  
10           of employment, other than through a dis-  
11           charge for inadequate performance, viola-  
12           tion of workplace rules, cause, voluntary  
13           departure, voluntary retirement, contract  
14           impossibility (as described in section  
15           218A(b)(4)(D)), or temporary suspension  
16           of employment due to weather, markets, or  
17           other temporary conditions; but

18           “(ii) does not include any situation in  
19           which the worker is offered, as an alter-  
20           native to such loss of employment, a simi-  
21           lar employment opportunity with the same  
22           employer (or, in the case of a placement of  
23           a worker with another employer under sec-  
24           tion 218(b)(2)(E), with either employer de-  
25           scribed in such section) at equivalent or

1 higher compensation and benefits than the  
2 position from which the employee was dis-  
3 charged, regardless of whether or not the  
4 employee accepts the offer.

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

9 “(10) REGULATORY DROUGHT.—The term ‘reg-  
10 ulatory drought’ means a decision subsequent to the  
11 filing of the application under section 218 by an en-  
12 tity not under the control of the employer making  
13 such filing which restricts the employer’s access to  
14 water for irrigation purposes and reduces or limits  
15 the employer’s ability to produce an agricultural  
16 commodity, thereby reducing the need for labor.

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

19 “(A) ordinarily, it pertains to or is of the  
20 kind exclusively performed at certain seasons or  
21 periods of the year; and

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

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

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

7           “(14) UNITED STATES WORKER.—The term  
8           ‘United States worker’ means any worker, whether  
9           a national of the United States, an alien lawfully ad-  
10          mitted for permanent residence, or any other alien,  
11          who is authorized to work in the job opportunity  
12          within the United States, except an alien admitted  
13          or otherwise provided status under section  
14          101(a)(15)(H)(ii)(a).”.

15          (b) TABLE OF CONTENTS.—The table of contents of  
16          the Immigration and Nationality Act (8 U.S.C. 1101 et  
17          seq.) is amended by striking the item relating to section  
18          218 and inserting the following:

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

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

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

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

“Sec. 218D. Definitions.”.

19           **TITLE III—MISCELLANEOUS**  
20           **PROVISIONS**

21           **SEC. 301. DETERMINATION AND USE OF USER FEES.**

22           (a) SCHEDULE OF FEES.—The Secretary shall estab-  
23           lish and periodically adjust a schedule of fees for the em-

1 ployment of aliens pursuant to the amendment made by  
2 section 201(a) of this Act and a collection process for such  
3 fees from employers. Such fees shall be the only fees  
4 chargeable to employers for services provided under such  
5 amendment.

6 (b) DETERMINATION OF SCHEDULE.—

7 (1) IN GENERAL.—The schedule under sub-  
8 section (a) shall reflect a fee rate based on the num-  
9 ber of job opportunities indicated in the employer’s  
10 application under section 218 of the Immigration  
11 and Nationality Act, as amended by section 201 of  
12 this Act, and sufficient to provide for the direct  
13 costs of providing services related to an employer’s  
14 authorization to employ aliens pursuant to the  
15 amendment made by section 201(a) of this Act, to  
16 include the certification of eligible employers, the  
17 issuance of documentation, and the admission of eli-  
18 gible aliens.

19 (2) PROCEDURE.—

20 (A) IN GENERAL.—In establishing and ad-  
21 justing such a schedule, the Secretary shall  
22 comply with Federal cost accounting and fee  
23 setting standards.

24 (B) PUBLICATION AND COMMENT.—The  
25 Secretary shall publish in the Federal Register

1 an initial fee schedule and associated collection  
2 process and the cost data or estimates upon  
3 which such fee schedule is based, and any sub-  
4 sequent amendments thereto, pursuant to which  
5 public comment shall be sought and a final rule  
6 issued.

7 (c) USE OF PROCEEDS.—Notwithstanding any other  
8 provision of law, all proceeds resulting from the payment  
9 of the fees pursuant to the amendment made by section  
10 201(a) of this Act shall be available without further appro-  
11 priation and shall remain available without fiscal year lim-  
12 itation to reimburse the Secretary, the Secretary of State,  
13 and the Secretary of Labor for the costs of carrying out  
14 sections 218 and 218B of the Immigration and Nation-  
15 ality Act, as amended and added, respectively, by section  
16 201 of this Act, and the provisions of this Act.

17 **SEC. 302. REGULATIONS.**

18 (a) REQUIREMENT FOR THE SECRETARY TO CON-  
19 SULT.—The Secretary shall consult with the Secretary of  
20 Labor and the Secretary of Agriculture during the promul-  
21 gation of all regulations to implement the duties of the  
22 Secretary under this Act and the amendments made by  
23 this Act.

24 (b) REQUIREMENT FOR THE SECRETARY OF STATE  
25 TO CONSULT.—The Secretary of State shall consult with

1 the Secretary, the Secretary of Labor, and the Secretary  
2 of Agriculture on all regulations to implement the duties  
3 of the Secretary of State under this Act and the amend-  
4 ments made by this Act.

5 (c) REQUIREMENT FOR THE SECRETARY OF LABOR  
6 TO CONSULT.—The Secretary of Labor shall consult with  
7 the Secretary of Agriculture and the Secretary on all regu-  
8 lations to implement the duties of the Secretary of Labor  
9 under this Act and the amendments made by this Act.

10 (d) DEADLINE FOR ISSUANCE OF REGULATIONS.—  
11 All regulations to implement the duties of the Secretary,  
12 the Secretary of State, and the Secretary of Labor created  
13 under sections 218, 218A, 218B, 218C, and 218D of the  
14 Immigration and Nationality Act, as amended or added  
15 by section 201 of this Act, shall take effect on the effective  
16 date of section 201 and shall be issued not later than 1  
17 year after the date of enactment of this Act.

18 **SEC. 303. REPORTS TO CONGRESS.**

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

22 (1) the number of job opportunities approved  
23 for employment of aliens admitted under section  
24 101(a)(15)(H)(ii)(a) of the Immigration and Nation-  
25 ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)), and the

1 number of workers actually admitted, disaggregated  
2 by State and by occupation;

3 (2) the number of such aliens reported to have  
4 abandoned employment pursuant to subsection  
5 218B(e)(2) of such Act;

6 (3) the number of such aliens who departed the  
7 United States within the period specified in sub-  
8 section 218B(d) of such Act;

9 (4) the number of aliens who applied for adjust-  
10 ment of status pursuant to section 101(a);

11 (5) the number of such aliens whose status was  
12 adjusted under section 101(a);

13 (6) the number of aliens who applied for perma-  
14 nent residence pursuant to section 103(c); and

15 (7) the number of such aliens who were ap-  
16 proved for permanent residence pursuant section  
17 103(c).

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

1 **SEC. 304. EFFECTIVE DATE.**

2       Except as otherwise provided, sections 201 and 301  
3 shall take effect 1 year after the date of the enactment  
4 of this Act.

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