

111TH CONGRESS
1ST SESSION

S. 1038

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

IN THE SENATE OF THE UNITED STATES

MAY 14, 2009

Mrs. FEINSTEIN (for herself, Mr. LEAHY, Mr. SCHUMER, Mr. KENNEDY, Mr. KOHL, Mrs. BOXER, Mr. DODD, Mr. LIEBERMAN, Mr. BINGAMAN, Mr. FEINGOLD, Mrs. MURRAY, Mr. KERRY, Mr. NELSON of Florida, Mr. KAUFMAN, Mr. CASEY, Ms. CANTWELL, and Mr. LEVIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

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

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

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

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

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

Sec. 1. Short title, table of contents.

Sec. 2. Definitions.

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

Subtitle A—Blue Card Status

Sec. 101. Requirements for blue card status.

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

Sec. 103. Adjustment to permanent residence.

Sec. 104. Applications.

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

Sec. 106. Administrative and judicial review.

Sec. 107. Use of information.

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

Subtitle B—Correction of Social Security Records

Sec. 111. Correction of Social Security records.

TITLE II—REFORM OF H-2A WORKER PROGRAM

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

TITLE III—MISCELLANEOUS PROVISIONS

Sec. 301. Determination and use of user fees.

Sec. 302. Regulations.

Sec. 303. Reports to Congress.

Sec. 304. Effective date.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

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

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) WORK DAY.—The term “work day” means
17 any day in which the individual is employed 5.75 or
18 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, 2008;

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) DEPORTABLE ALIENS.—The Secretary shall
15 terminate blue card status granted to an alien if the
16 Secretary determines that the alien is deportable.

17 (2) OTHER GROUNDS FOR TERMINATION.—The
18 Secretary shall terminate blue card status granted to
19 an alien if—

20 (A) the Secretary finds, by a preponder-
21 ance of the evidence, that the adjustment to
22 blue card status was the result of fraud or will-
23 ful misrepresentation, as described in section
24 212(a)(6)(C)(i) of the Immigration and Nation-
25 ality Act (8 U.S.C. 1182(a)(6)(C)(i)); or

1 (B) the alien—

2 (i) commits an act that makes the
3 alien inadmissible to the United States
4 under section 212 of the Immigration and
5 Nationality Act (8 U.S.C. 1182), except as
6 provided under section 105(b);

7 (ii) is convicted of a felony or 3 or
8 more misdemeanors committed in the
9 United States;

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

14 (iv) fails to perform the agricultural
15 employment required under paragraph
16 (1)(A) of section 103(a) unless the alien
17 was unable to work in agricultural employ-
18 ment due to the extraordinary cir-
19 cumstances described in paragraph (3) of
20 such section.

21 (e) RECORD OF EMPLOYMENT.—

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

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

1 (B) provide a copy of such record to the
2 Secretary.

3 (2) CIVIL PENALTIES.—

4 (A) IN GENERAL.—If the Secretary finds,
5 after notice and opportunity for a hearing, that
6 an employer of an alien granted blue card sta-
7 tus has failed to provide the record of employ-
8 ment required under paragraph (1) or has pro-
9 vided a false statement of material fact in such
10 a record, the employer shall be subject to a civil
11 penalty in an amount not to exceed \$1,000 per
12 violation.

13 (B) LIMITATION.—The penalty applicable
14 under subparagraph (A) for failure to provide
15 records shall not apply unless the alien has pro-
16 vided the employer with evidence of employment
17 authorization granted under this section.

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

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

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

4 (2) biometric identifiers, including fingerprints
5 and a digital photograph; and

(3) physical security features designed to prevent tampering, counterfeiting, or duplication of the card for fraudulent purposes.

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

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

14 SEC. 102. TREATMENT OF ALIENS GRANTED BLUE CARD
15 STATUS.

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

(b) DELAYED ELIGIBILITY FOR CERTAIN FEDERAL PUBLIC BENEFITS.—Except as otherwise provided in law, an alien granted blue card status (including a spouse or

1 child of the alien granted derivative status) shall not be
 2 eligible, by reason of such status, for any form of assist-
 3 ance or benefit described in section 403(a) of the Personal
 4 Responsibility and Work Opportunity Reconciliation Act
 5 of 1996 (8 U.S.C. 1613(a)) until 5 years after the date
 6 on which the alien is granted an adjustment of status
 7 under section 103.

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

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

14 (1) QUALIFYING EMPLOYMENT.—

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

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

22 (ii) 3 years of agricultural employ-
 23 ment in the United States for at least 150
 24 work days per year, during the 3-year pe-

1 riod beginning on the date of the enact-
2 ment of this Act.

3 (B) 4-YEAR PERIOD OF EMPLOYMENT.—

4 An alien shall be considered to meet the re-
5 quirements of subparagraph (A) if the alien has
6 performed 4 years of agricultural employment
7 in the United States for at least 150 work days
8 during 3 years of those 4 years and at least
9 100 work days during the remaining year, dur-
10 ing the 4-year period beginning on the date of
11 the enactment of this Act.

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

15 (A) the record of employment described in
16 section 101(e); or

17 (B) documentation that may be submitted
18 under section 104(c).

19 (3) EXTRAORDINARY CIRCUMSTANCES.—

20 (A) IN GENERAL.—In determining whether
21 an alien has met the requirement of paragraph
22 (1)(A), the Secretary may credit the alien with
23 not more than 12 additional months of agricul-
24 tural employment in the United States to meet

1 such requirement if the alien was unable to
2 work in agricultural employment due to—

3 (i) pregnancy, injury, or disease, if the
4 alien can establish such pregnancy, dis-
5 abling injury, or disease through medical
6 records;

7 (ii) illness, disease, or other special
8 needs of a minor child, if the alien can es-
9 tablish such illness, disease, or special
10 needs through medical records;

11 (iii) severe weather conditions that
12 prevented the alien from engaging in agri-
13 cultural employment for a significant pe-
14 riod of time; or

15 (iv) termination from agricultural em-
16 ployment, if the Secretary finds that the
17 termination was without just cause and
18 that the alien was unable to find alter-
19 native agricultural employment after a rea-
20 sonable job search.

21 (B) EFFECT OF FINDING.—A finding
22 made under subparagraph (A)(iv), with respect
23 to an alien, shall not—

24 (i) be conclusive, binding, or admis-
25 sible in a separate or subsequent judicial

1 or administrative action or proceeding be-
2 tween the alien and a current or prior em-
3 ployer of the alien or any other party; or
4 (ii) subject the alien's employer to the
5 payment of attorney fees incurred by the
6 alien in seeking to obtain a finding under
7 subparagraph (A)(iv).

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

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

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

16 (1) the Secretary finds, by a preponderance of
17 the evidence, that the adjustment to blue card status
18 was the result of fraud or willful misrepresentation,
19 as described in section 212(a)(6)(C)(i) of the Immi-
20 gration and Nationality Act (8 U.S.C.
21 1182(a)(6)(C)(i)); or

22 (2) the alien—

23 (A) commits an act that makes the alien
24 inadmissible to the United States under section
25 212 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 (C) is convicted of an offense, an element
6 of which involves bodily injury, threat of serious
7 bodily injury, or harm to property in excess of
8 \$500; or

9 (D) failed to perform the agricultural em-
10 ployment required under paragraph (1)(A) of
11 subsection (a) unless the alien was unable to
12 work in agricultural employment due to the ex-
13 traordinary circumstances described in para-
14 graph (3) of such subsection.

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

23 (d) PAYMENT OF TAXES.—

24 (1) IN GENERAL.—Not later than the date on
25 which an alien's status is adjusted under this sec-

1 tion, the alien shall establish that the alien does not
2 owe any applicable Federal tax liability by estab-
3 lishing that—

4 (A) no such tax liability exists;

5 (B) all such outstanding tax liabilities have
6 been paid; or

7 (C) the alien has entered into an agree-
8 ment for payment of all outstanding liabilities
9 with the Internal Revenue Service.

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

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

23 (e) SPOUSES AND MINOR CHILDREN.—

24 (1) IN GENERAL.—Notwithstanding any other
25 provision of law, the Secretary shall confer the sta-

1 tus of lawful permanent resident on the spouse and
2 minor child of an alien granted any adjustment of
3 status under subsection (a), including any individual
4 who was a minor child on the date such alien was
5 granted blue card status, if the spouse or minor
6 child applies for such status, or if the principal alien
7 includes the spouse or minor child in an application
8 for adjustment of status to that of a lawful perma-
9 nent resident.

10 (2) TREATMENT OF SPOUSES AND MINOR CHIL-
11 DREN.—

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

1 (B) TRAVEL.—The derivative spouse and
2 any minor child of an alien granted blue card
3 status may travel outside the United States in
4 the same manner as an alien lawfully admitted
5 for permanent residence.

6 (C) EMPLOYMENT.—The derivative spouse
7 of an alien granted blue card status may apply
8 to the Secretary for a work permit to authorize
9 such spouse to engage in any lawful employ-
10 ment in the United States while such alien
11 maintains blue card status.

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

18 (A) commits an act that makes the alien
19 spouse or child inadmissible to the United
20 States under section 212 of such Act (8 U.S.C.
21 1182), except as provided under section 105(b);

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

1 (C) is convicted of an offense, an element
 2 of which involves bodily injury, threat of serious
 3 bodily injury, or harm to property in excess of
 4 \$500.

5 **SEC. 104. APPLICATIONS.**

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

7 (1) applications for blue card status may be
 8 submitted—

9 (A) to the Secretary if the applicant is rep-
 10 resented by an attorney or a nonprofit religious,
 11 charitable, social service, or similar organization
 12 recognized by the Board of Immigration Ap-
 13 peals under section 292.2 of title 8, Code of
 14 Federal Regulations; or

15 (B) to a qualified designated entity if the
 16 applicant consents to the forwarding of the ap-
 17 plication to the Secretary; and

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

20 (b) QUALIFIED DESIGNATED ENTITY DEFINED.—In
 21 this section, the term “qualified designated entity”
 22 means—

23 (1) a qualified farm labor organization or an
 24 association of employers designated by the Sec-
 25 retary; or

(2) any such other person designated by the Secretary if that Secretary determines such person is qualified and has substantial experience, demonstrated competence, and has a history of long-term involvement in the preparation and submission of applications for adjustment of status under section 209, 210, or 245 of the Immigration and Nationality Act (8 U.S.C. 1159, 1160, and 1255), the Act entitled “An Act to adjust the status of Cuban refugees to that of lawful permanent residents of the United States, and for other purposes”, approved November 2, 1966 (Public Law 89–732; 8 U.S.C. 1255 note), Public Law 95–145 (8 U.S.C. 1255 note), or the Immigration Reform and Control Act of 1986 (Public Law 99–603; 100 Stat. 3359) or any amendment made by that Act.

(c) PROOF OF ELIGIBILITY.—

(1) IN GENERAL.—An alien may establish that the alien meets the requirement of section 101(a)(1) or 103(a)(1) through government employment records or records supplied by employers or collective bargaining organizations, and other reliable documentation as the alien may provide. The Secretary shall establish special procedures to properly credit

1 work in cases in which an alien was employed under
2 an assumed name.

3 (2) DOCUMENTATION OF WORK HISTORY.—

4 (A) BURDEN OF PROOF.—An alien apply-
5 ing for status under section 101(a) or 103(a)
6 has the burden of proving by a preponderance
7 of the evidence that the alien has worked the
8 requisite number of hours or days required
9 under section 101(a)(1) or 103(a)(1), as appli-
10 cable.

11 (B) TIMELY PRODUCTION OF RECORDS.—

12 If an employer or farm labor contractor employ-
13 ing such an alien has kept proper and adequate
14 records respecting such employment, the alien's
15 burden of proof under subparagraph (A) may
16 be met by securing timely production of those
17 records under regulations to be promulgated by
18 the Secretary.

19 (C) SUFFICIENT EVIDENCE.—An alien

20 may meet the burden of proof under subpara-
21 graph (A) to establish that the alien has per-
22 formed the days or hours of work required by
23 section 101(a)(1) or 103(a)(1) by producing
24 sufficient evidence to show the extent of that

1 employment as a matter of just and reasonable
2 inference.

3 (d) APPLICATIONS SUBMITTED TO QUALIFIED DES-
4 IGNATED ENTITIES.—

5 (1) REQUIREMENTS.—Each qualified des-
6 ignated entity shall agree—

7 (A) to forward to the Secretary an applica-
8 tion submitted to that entity pursuant to sub-
9 section (a)(1)(B) if the applicant has consented
10 to such forwarding;

11 (B) not to forward to the Secretary any
12 such application if the applicant has not con-
13 sented to such forwarding; and

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

17 (2) NO AUTHORITY TO MAKE DETERMINA-
18 TIONS.—No qualified designated entity may make a
19 determination required by this subtitle to be made
20 by the Secretary.

21 (e) LIMITATION ON ACCESS TO INFORMATION.—Files
22 and records collected or compiled by a qualified designated
23 entity for the purposes of this section are confidential and
24 the Secretary shall not have access to such a file or record
25 relating to an alien without the consent of the alien, except

1 as allowed by a court order issued pursuant to subsection
2 (f).

3 (f) CONFIDENTIALITY OF INFORMATION.—

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

8 (A) using information furnished by the ap-
9 plicant pursuant to an application filed under
10 this title, the information provided by an appli-
11 cant to a qualified designated entity, or any in-
12 formation provided by an employer or former
13 employer for any purpose other than to make a
14 determination on the application or for impos-
15 ing the penalties described in subsection (g);

16 (B) making any publication in which the
17 information furnished by any particular indi-
18 vidual can be identified; or

19 (C) permitting a person other than a
20 sworn officer or employee of the Department or
21 a bureau or agency of the Department or, with
22 respect to applications filed with a qualified
23 designated entity, that qualified designated en-
24 tity, to examine individual applications.

1 (2) REQUIRED DISCLOSURES.—The Secretary
2 shall provide the information furnished under this
3 title or any other information derived from such fur-
4 nished information to—

5 (A) a duly recognized law enforcement en-
6 tity in connection with a criminal investigation
7 or prosecution, if such information is requested
8 in writing by such entity; or

9 (B) an official coroner, for purposes of af-
10 firmatively identifying a deceased individual,
11 whether or not the death of such individual re-
12 sulted from a crime.

13 (3) CONSTRUCTION.—

14 (A) IN GENERAL.—Nothing in this sub-
15 section shall be construed to limit the use, or
16 release, for immigration enforcement purposes
17 or law enforcement purposes, of information
18 contained in files or records of the Department
19 pertaining to an application filed under this sec-
20 tion, other than information furnished by an
21 applicant pursuant to the application, or any
22 other information derived from the application,
23 that is not available from any other source.

24 (B) CRIMINAL CONVICTIONS.—Notwith-
25 standing any other provision of this subsection,

1 information concerning whether the alien apply-
 2 ing for blue card status or an adjustment of
 3 status under section 103 has been convicted of
 4 a crime at any time may be used or released for
 5 immigration enforcement or law enforcement
 6 purposes.

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

11 (g) PENALTIES FOR FALSE STATEMENTS IN APPLI-
 12 CATIONS.—

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

14 (A) files an application for blue card status
 15 or an adjustment of status under section 103
 16 and knowingly and willfully falsifies, conceals,
 17 or covers up a material fact or makes any false,
 18 fictitious, or fraudulent statements or represen-
 19 tations, or makes or uses any false writing or
 20 document knowing the same to contain any
 21 false, fictitious, or fraudulent statement or
 22 entry; or

23 (B) creates or supplies a false writing or
 24 document for use in making such an applica-
 25 tion,

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

4 (2) INADMISSIBILITY.—An alien who is con-
5 victed of a crime under paragraph (1) shall be con-
6 sidered to be inadmissible to the United States on
7 the ground described in section 212(a)(6)(C)(i) of
8 the Immigration and Nationality Act (8 U.S.C.
9 1182(a)(6)(C)(i)).

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

17 (i) APPLICATION FEES.—

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

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

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

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

6 (3) DISPOSITION OF FEES.—

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

15 (B) USE OF FEES FOR APPLICATION PROC-
 16 ESSING.—Amounts deposited in the “Agricul-
 17 tural Worker Immigration Status Adjustment
 18 Account” shall remain available to the Sec-
 19 retary until expended for processing applica-
 20 tions for blue card status or an adjustment of
 21 status under section 103.

22 **SEC. 105. WAIVER OF NUMERICAL LIMITATIONS AND CER-**
 23 **TAIN GROUNDS FOR INADMISSIBILITY.**

24 (a) NUMERICAL LIMITATIONS DO NOT APPLY.—The
 25 numerical limitations of sections 201 and 202 of the Im-

1 migration and Nationality Act (8 U.S.C. 1151 and 1152)
 2 shall not apply to the adjustment of aliens to lawful per-
 3 manent resident status under section 103.

4 (b) WAIVER OF CERTAIN GROUNDS OF INADMISS-
 5 SIBILITY.—In the determination of an alien’s eligibility for
 6 status under section 101(a) or an alien’s eligibility for ad-
 7 justment of status under section 103(b)(2)(A) the fol-
 8 lowing rules shall apply:

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

13 (2) WAIVER OF OTHER GROUNDS.—

14 (A) IN GENERAL.—Except as provided in
 15 subparagraph (B), the Secretary may waive any
 16 other provision of such section 212(a) in the
 17 case of individual aliens for humanitarian pur-
 18 poses, to ensure family unity, or if otherwise in
 19 the public interest.

20 (B) GROUNDS THAT MAY NOT BE
 21 WAIVED.—Subparagraphs (A), (B), (C), (D),
 22 (G), (H), and (I) of paragraph (2) and para-
 23 graphs (3) and (4) of such section 212(a) may
 24 not be waived by the Secretary under subpara-
 25 graph (A).

1 (C) CONSTRUCTION.—Nothing in this
2 paragraph shall be construed as affecting the
3 authority of the Secretary other than under this
4 subparagraph to waive provisions of such sec-
5 tion 212(a).

6 (3) SPECIAL RULE FOR DETERMINATION OF
7 PUBLIC CHARGE.—An alien is not ineligible for blue
8 card status or an adjustment of status under section
9 103 by reason of a ground of inadmissibility under
10 section 212(a)(4) of the Immigration and Nation-
11 ality Act (8 U.S.C. 1182(a)(4)) if the alien dem-
12 onstrates a history of employment in the United
13 States evidencing self-support without reliance on
14 public cash assistance.

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

17 (1) BEFORE APPLICATION PERIOD.—Effective
18 on the date of enactment of this Act, the Secretary
19 shall provide that, in the case of an alien who is ap-
20 prehended before the beginning of the application
21 period described in section 101(a)(2) and who can
22 establish a nonfrivolous case of eligibility for blue
23 card status (but for the fact that the alien may not
24 apply for such status until the beginning of such pe-
25 riod), until the alien has had the opportunity during

1 the first 30 days of the application period to com-
2 plete the filing of an application for blue card status,
3 the alien—

4 (A) may not be removed; and

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

10 (2) DURING APPLICATION PERIOD.—The Sec-
11 retary shall provide that, in the case of an alien who
12 presents a nonfrivolous application for blue card sta-
13 tus during the application period described in section
14 101(a)(2), including an alien who files such an ap-
15 plication within 30 days of the alien’s apprehension,
16 and until a final determination on the application
17 has been made in accordance with this section, the
18 alien—

19 (A) may not be removed; and

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

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

2 (a) IN GENERAL.—There shall be no administrative
3 or judicial review of a determination respecting an applica-
4 tion for blue card status or adjustment of status under
5 section 103 except in accordance with this section.

6 (b) ADMINISTRATIVE REVIEW.—

7 (1) SINGLE LEVEL OF ADMINISTRATIVE APPEL-
8 LATE REVIEW.—The Secretary shall establish an ap-
9 pellate authority to provide for a single level of ad-
10 ministrative appellate review of such a determina-
11 tion.

12 (2) STANDARD FOR REVIEW.—Such administra-
13 tive appellate review shall be based solely upon the
14 administrative record established at the time of the
15 determination on the application and upon such ad-
16 ditional or newly discovered evidence as may not
17 have been available at the time of the determination.

18 (c) JUDICIAL REVIEW.—

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

24 (2) STANDARD FOR JUDICIAL REVIEW.—Such
25 judicial review shall be based solely upon the admin-
26 istrative record established at the time of the review

1 by the appellate authority and the findings of fact
2 and determinations contained in such record shall be
3 conclusive unless the applicant can establish abuse
4 of discretion or that the findings are directly con-
5 trary to clear and convincing facts contained in the
6 record considered as a whole.

7 **SEC. 107. USE OF INFORMATION.**

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

15 **SEC. 108. REGULATIONS, EFFECTIVE DATE, AUTHORIZA-**
16 **TION OF APPROPRIATIONS.**

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

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

1 (c) AUTHORIZATION OF APPROPRIATIONS.—There
 2 are authorized to be appropriated to the Secretary such
 3 sums as may be necessary to implement this subtitle, in-
 4 cluding any sums needed for costs associated with the ini-
 5 tiation of such implementation, for fiscal years 2009 and
 6 2010.

7 **Subtitle B—Correction of Social** 8 **Security Records**

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

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

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

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

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

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

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

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

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

7 **SEC. 201. AMENDMENTS TO THE IMMIGRATION AND NA-**
 8 **TIONALITY ACT.**

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

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

13 “(a) APPLICATIONS TO THE SECRETARY OF
 14 LABOR.—

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

20 “(A) the assurances described in sub-
 21 section (b);

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

1 “(C) the anticipated period (expected be-
 2 ginning and ending dates) for which the work-
 3 ers will be needed; and

4 “(D) the number of job opportunities in
 5 which the employer seeks to employ the work-
 6 ers.

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

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

17 “(1) JOB OPPORTUNITIES COVERED BY COL-
 18 LECTIVE BARGAINING AGREEMENTS.—With respect
 19 to a job opportunity that is covered under a collec-
 20 tive bargaining agreement:

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

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

6 “(C) NOTIFICATION OF BARGAINING REP-
7 RESENTATIVES.—The employer, at the time of
8 filing the application, has provided notice of the
9 filing under this paragraph to the bargaining
10 representative of the employer’s employees in
11 the occupational classification at the place or
12 places of employment for which aliens are
13 sought.

14 “(D) TEMPORARY OR SEASONAL JOB OP-
15 PORTUNITIES.—The job opportunity is tem-
16 porary or seasonal.

17 “(E) OFFERS TO UNITED STATES WORK-
18 ERS.—The employer has offered or will offer
19 the job to any eligible United States worker
20 who applies and is equally or better qualified
21 for the job for which the nonimmigrant is, or
22 the nonimmigrants are, sought and who will be
23 available at the time and place of need.

24 “(F) PROVISION OF INSURANCE.—If the
25 job opportunity is not covered by the State

workers' compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of, and in the course of, the worker's employment which will provide benefits at least equal to those provided under the State's workers' compensation law for comparable employment.

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

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

“(B) TEMPORARY OR SEASONAL JOB OPPORTUNITIES.—The job opportunity is temporary or seasonal.

“(C) BENEFIT, WAGE, AND WORKING CONDITIONS.—The employer will provide, at a minimum, the benefits, wages, and working conditions required by section 218A to all workers employed in the job opportunities for which the employer has applied for an H-2A worker

1 under subsection (a) and to all other workers in
2 the same occupation at the place of employ-
3 ment.

4 “(D) NONDISPLACEMENT OF UNITED
5 STATES WORKERS.—The employer did not dis-
6 place and will not displace a United States
7 worker employed by the employer during the
8 period of employment and for a period of 30
9 days preceding the period of employment in the
10 occupation at the place of employment for
11 which the employer has applied for an H-2A
12 worker.

13 “(E) REQUIREMENTS FOR PLACEMENT OF
14 THE NONIMMIGRANT WITH OTHER EMPLOY-
15 ERS.—The employer will not place the non-
16 immigrant with another employer unless—

17 “(i) the nonimmigrant performs du-
18 ties in whole or in part at 1 or more work-
19 sites owned, operated, or controlled by
20 such other employer;

21 “(ii) there are indicia of an employ-
22 ment relationship between the non-
23 immigrant and such other employer; and

24 “(iii) the employer has inquired of the
25 other employer as to whether, and has no

1 actual knowledge or notice that, during the
2 period of employment and for a period of
3 30 days preceding the period of employ-
4 ment, the other employer has displaced or
5 intends to displace a United States worker
6 employed by the other employer in the oc-
7 cupation at the place of employment for
8 which the employer seeks approval to em-
9 ploy H-2A workers.

10 “(F) STATEMENT OF LIABILITY.—The ap-
11 plication form shall include a clear statement
12 explaining the liability under subparagraph (E)
13 of an employer if the other employer described
14 in such subparagraph displaces a United States
15 worker as described in such subparagraph.

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

1 “(H) EMPLOYMENT OF UNITED STATES
2 WORKERS.—

3 “(i) RECRUITMENT.—The employer
4 has taken or will take the following steps
5 to recruit United States workers for the
6 job opportunities for which the H–2A non-
7 immigrant is, or H–2A nonimmigrants are,
8 sought:

9 “(I) CONTACTING FORMER
10 WORKERS.—The employer shall make
11 reasonable efforts through the sending
12 of a letter by United States Postal
13 Service mail, or otherwise, to contact
14 any United States worker the em-
15 ployer employed during the previous
16 season in the occupation at the place
17 of intended employment for which the
18 employer is applying for workers and
19 has made the availability of the em-
20 ployer’s job opportunities in the occu-
21 pation at the place of intended em-
22 ployment known to such previous
23 workers, unless the worker was termi-
24 nated from employment by the em-
25 ployer for a lawful job-related reason

1 or abandoned the job before the work-
2 er completed the period of employ-
3 ment of the job opportunity for which
4 the worker was hired.

5 “(II) FILING A JOB OFFER WITH
6 THE LOCAL OFFICE OF THE STATE
7 EMPLOYMENT SECURITY AGENCY.—

8 Not later than 28 days before the
9 date on which the employer desires to
10 employ an H-2A worker in a tem-
11 porary or seasonal agricultural job op-
12 portunity, the employer shall submit a
13 copy of the job offer described in sub-
14 section (a)(2) to the local office of the
15 State employment security agency
16 which serves the area of intended em-
17 ployment and authorize the posting of
18 the job opportunity on ‘America’s Job
19 Bank’ or other electronic job registry,
20 except that nothing in this subclause
21 shall require the employer to file an
22 interstate job order under section 653
23 of title 20, Code of Federal Regula-
24 tions.

1 “(III) ADVERTISING OF JOB OP-
2 PORTUNITIES.—Not later than 14
3 days before the date on which the em-
4 ployer desires to employ an H-2A
5 worker in a temporary or seasonal ag-
6 ricultural job opportunity, the em-
7 ployer shall advertise the availability
8 of the job opportunities for which the
9 employer is seeking workers in a pub-
10 lication in the local labor market that
11 is likely to be patronized by potential
12 farm workers.

13 “(IV) EMERGENCY PROCE-
14 DURES.—The Secretary of Labor
15 shall, by regulation, provide a proce-
16 dure for acceptance and approval of
17 applications in which the employer
18 has not complied with the provisions
19 of this subparagraph because the em-
20 ployer’s need for H-2A workers could
21 not reasonably have been foreseen.

22 “(ii) JOB OFFERS.—The employer has
23 offered or will offer the job to any eligible
24 United States worker who applies and is
25 equally or better qualified for the job for

1 which the nonimmigrant is, or non-
2 immigrants are, sought and who will be
3 available at the time and place of need.

4 “(iii) PERIOD OF EMPLOYMENT.—The
5 employer will provide employment to any
6 qualified United States worker who applies
7 to the employer during the period begin-
8 ning on the date on which the H-2A work-
9 er departs for the employer’s place of em-
10 ployment and ending on the date on which
11 50 percent of the period of employment for
12 which the H-2A worker who is in the job
13 was hired has elapsed, subject to the fol-
14 lowing requirements:

15 “(I) PROHIBITION.—No person
16 or entity shall willfully and knowingly
17 withhold United States workers before
18 the arrival of H-2A workers in order
19 to force the hiring of United States
20 workers under this clause.

21 “(II) COMPLAINTS.—Upon re-
22 ceipt of a complaint by an employer
23 that a violation of subclause (I) has
24 occurred, the Secretary of Labor shall
25 immediately investigate. The Sec-

retary of Labor shall, within 36 hours of the receipt of the complaint, issue findings concerning the alleged violation. If the Secretary of Labor finds that a violation has occurred, the Secretary of Labor shall immediately suspend the application of this clause with respect to that certification for that date of need.

“(III) PLACEMENT OF UNITED STATES WORKERS.—Before referring a United States worker to an employer during the period described in the matter preceding subclause (I), the Secretary of Labor shall make all reasonable efforts to place the United States worker in an open job acceptable to the worker, if there are other job offers pending with the job service that offer similar job opportunities in the area of intended employment.

“(iv) STATUTORY CONSTRUCTION.—Nothing in this subparagraph shall be construed to prohibit an employer from using such legitimate selection criteria relevant

1 to the type of job that are normal or cus-
 2 tomary to the type of job involved so long
 3 as such criteria are not applied in a dis-
 4 criminatory manner.

5 “(c) APPLICATIONS BY ASSOCIATIONS ON BEHALF
 6 OF EMPLOYER MEMBERS.—

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

13 “(2) TREATMENT OF ASSOCIATIONS ACTING AS
 14 EMPLOYERS.—If an association filing an application
 15 under paragraph (1) is a joint or sole employer of
 16 the temporary or seasonal agricultural workers re-
 17 quested on the application, the certifications granted
 18 under subsection (e)(2)(B) to the association may be
 19 used for the certified job opportunities of any of its
 20 producer members named on the application, and
 21 such workers may be transferred among such pro-
 22 ducer members to perform the agricultural services
 23 of a temporary or seasonal nature for which the cer-
 24 tifications were granted.

25 “(d) WITHDRAWAL OF APPLICATIONS.—

1 “(1) IN GENERAL.—An employer may withdraw
2 an application filed pursuant to subsection (a), ex-
3 cept that if the employer is an agricultural associa-
4 tion, the association may withdraw an application
5 filed pursuant to subsection (a) with respect to 1 or
6 more of its members. To withdraw an application,
7 the employer or association shall notify the Sec-
8 retary of Labor in writing, and the Secretary of
9 Labor shall acknowledge in writing the receipt of
10 such withdrawal notice. An employer who withdraws
11 an application under subsection (a), or on whose be-
12 half an application is withdrawn, is relieved of the
13 obligations undertaken in the application.

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

18 “(3) OBLIGATIONS UNDER OTHER STATUTES.—
19 Any obligation incurred by an employer under any
20 other law or regulation as a result of the recruit-
21 ment of United States workers or H-2A workers
22 under an offer of terms and conditions of employ-
23 ment required as a result of making an application
24 under subsection (a) is unaffected by withdrawal of
25 such application.

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

2 “(1) RESPONSIBILITY OF EMPLOYERS.—The
3 employer shall make available for public examina-
4 tion, within 1 working day after the date on which
5 an application under subsection (a) is filed, at the
6 employer’s principal place of business or worksite, a
7 copy of each such application (and such accom-
8 panying documents as are necessary).

9 “(2) RESPONSIBILITY OF THE SECRETARY OF
10 LABOR.—

11 “(A) COMPILATION OF LIST.—The Sec-
12 retary of Labor shall compile, on a current
13 basis, a list (by employer and by occupational
14 classification) of the applications filed under
15 subsection (a). Such list shall include the wage
16 rate, number of workers sought, period of in-
17 tended employment, and date of need. The Sec-
18 retary of Labor shall make such list available
19 for examination in the District of Columbia.

20 “(B) REVIEW OF APPLICATIONS.—The
21 Secretary of Labor shall review such an applica-
22 tion only for completeness and obvious inac-
23 curacies. Unless the Secretary of Labor finds
24 that the application is incomplete or obviously
25 inaccurate, the Secretary of Labor shall certify

1 that the intending employer has filed with the
2 Secretary of Labor an application as described
3 in subsection (a). Such certification shall be
4 provided within 7 days of the filing of the appli-
5 cation.”

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

7 “(a) PREFERENTIAL TREATMENT OF ALIENS PRO-
8 HIBITED.—Employers seeking to hire United States work-
9 ers shall offer the United States workers no less than the
10 same benefits, wages, and working conditions that the em-
11 ployer is offering, intends to offer, or will provide to H-
12 2A workers. Conversely, no job offer may impose on
13 United States workers any restrictions or obligations
14 which will not be imposed on the employer’s H-2A work-
15 ers.

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

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

3 “(A) IN GENERAL.—An employer applying
4 under section 218(a) for H-2A workers shall
5 offer to provide housing at no cost to all work-
6 ers in job opportunities for which the employer
7 has applied under that section and to all other
8 workers in the same occupation at the place of
9 employment, whose place of residence is beyond
10 normal commuting distance.

11 “(B) TYPE OF HOUSING.—In complying
12 with subparagraph (A), an employer may, at
13 the employer’s election, provide housing that
14 meets applicable Federal standards for tem-
15 porary labor camps or secure housing that
16 meets applicable local standards for rental or
17 public accommodation housing or other sub-
18 stantially similar class of habitation, or in the
19 absence of applicable local standards, State
20 standards for rental or public accommodation
21 housing or other substantially similar class of
22 habitation. In the absence of applicable local or
23 State standards, Federal temporary labor camp
24 standards shall apply.

1 “(C) FAMILY HOUSING.—If it is the pre-
 2 vailing practice in the occupation and area of
 3 intended employment to provide family housing,
 4 family housing shall be provided to workers
 5 with families who request it.

6 “(D) WORKERS ENGAGED IN THE RANGE
 7 PRODUCTION OF LIVESTOCK.—The Secretary of
 8 Labor shall issue regulations that address the
 9 specific requirements for the provision of hous-
 10 ing to workers engaged in the range production
 11 of livestock.

12 “(E) LIMITATION.—Nothing in this para-
 13 graph shall be construed to require an employer
 14 to provide or secure housing for persons who
 15 were not entitled to such housing under the
 16 temporary labor certification regulations in ef-
 17 fect on June 1, 1986.

18 “(F) CHARGES FOR HOUSING.—

19 “(i) CHARGES FOR PUBLIC HOUS-
 20 ING.—If public housing provided for mi-
 21 grant agricultural workers under the aus-
 22 pices of a local, county, or State govern-
 23 ment is secured by an employer, and use of
 24 the public housing unit normally requires
 25 charges from migrant workers, such

1 charges shall be paid by the employer di-
2 rectly to the appropriate individual or enti-
3 ty affiliated with the housing's manage-
4 ment.

5 “(ii) DEPOSIT CHARGES.—Charges in
6 the form of deposits for bedding or other
7 similar incidentals related to housing shall
8 not be levied upon workers by employers
9 who provide housing for their workers. An
10 employer may require a worker found to
11 have been responsible for damage to such
12 housing which is not the result of normal
13 wear and tear related to habitation to re-
14 imburse the employer for the reasonable
15 cost of repair of such damage.

16 “(G) HOUSING ALLOWANCE AS ALTER-
17 NATIVE.—

18 “(i) IN GENERAL.—If the requirement
19 set out in clause (ii) is satisfied, the em-
20 ployer may provide a reasonable housing
21 allowance instead of offering housing
22 under subparagraph (A). Upon the request
23 of a worker seeking assistance in locating
24 housing, the employer shall make a good
25 faith effort to assist the worker in identi-

1 fying and locating housing in the area of
2 intended employment. An employer who of-
3 fers a housing allowance to a worker, or
4 assists a worker in locating housing which
5 the worker occupies, pursuant to this
6 clause shall not be deemed a housing pro-
7 vider under section 203 of the Migrant and
8 Seasonal Agricultural Worker Protection
9 Act (29 U.S.C. 1823) solely by virtue of
10 providing such housing allowance. No
11 housing allowance may be used for housing
12 which is owned or controlled by the em-
13 ployer.

14 “(ii) CERTIFICATION.—The require-
15 ment of this clause is satisfied if the Gov-
16 ernor of the State certifies to the Secretary
17 of Labor that there is adequate housing
18 available in the area of intended employ-
19 ment for migrant farm workers and H-2A
20 workers who are seeking temporary hous-
21 ing while employed in agricultural work.
22 Such certification shall expire after 3 years
23 unless renewed by the Governor of the
24 State.

25 “(iii) AMOUNT OF ALLOWANCE.—

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

18 “(II) METROPOLITAN COUN-
19 TIES.—If the place of employment of
20 the workers provided an allowance
21 under this paragraph is in a metro-
22 politan county, the amount of the
23 housing allowance under this subpara-
24 graph shall be equal to the statewide
25 average fair market rental for existing

1 housing for metropolitan counties for
 2 the State, as established by the Sec-
 3 retary of Housing and Urban Devel-
 4 opment pursuant to section 8(c) of
 5 the United States Housing Act of
 6 1937 (42 U.S.C. 1437f(c)), based on
 7 a 2-bedroom dwelling unit and an as-
 8 sumption of 2 persons per bedroom.

9 “(2) REIMBURSEMENT OF TRANSPORTATION.—

10 “(A) TO PLACE OF EMPLOYMENT.—A
 11 worker who completes 50 percent of the period
 12 of employment of the job opportunity for which
 13 the worker was hired shall be reimbursed by the
 14 employer for the cost of the worker’s transpor-
 15 tation and subsistence from the place from
 16 which the worker came to work for the em-
 17 ployer (or place of last employment, if the
 18 worker traveled from such place) to the place of
 19 employment.

20 “(B) FROM PLACE OF EMPLOYMENT.—A
 21 worker who completes the period of employment
 22 for the job opportunity involved shall be reim-
 23 bursed by the employer for the cost of the
 24 worker’s transportation and subsistence from
 25 the place of employment to the place from

1 which the worker, disregarding intervening em-
 2 ployment, came to work for the employer, or to
 3 the place of next employment, if the worker has
 4 contracted with a subsequent employer who has
 5 not agreed to provide or pay for the worker's
 6 transportation and subsistence to such subse-
 7 quent employer's place of employment.

8 “(C) LIMITATION.—

9 “(i) AMOUNT OF REIMBURSEMENT.—

10 Except as provided in clause (ii), the
 11 amount of reimbursement provided under
 12 subparagraph (A) or (B) to a worker or
 13 alien shall not exceed the lesser of—

14 “(I) the actual cost to the worker

15 or alien of the transportation and sub-
 16 sistence involved; or

17 “(II) the most economical and

18 reasonable common carrier transpor-
 19 tation charges and subsistence costs
 20 for the distance involved.

21 “(ii) DISTANCE TRAVELED.—No reim-

22 bursement under subparagraph (A) or (B)
 23 shall be required if the distance traveled is
 24 100 miles or less, or the worker is not re-
 25 siding in employer-provided housing or

1 housing secured through an allowance as
2 provided in paragraph (1)(G).

3 “(D) EARLY TERMINATION.—If the worker
4 is laid off or employment is terminated for con-
5 tract impossibility (as described in paragraph
6 (4)(D)) before the anticipated ending date of
7 employment, the employer shall provide the
8 transportation and subsistence required by sub-
9 paragraph (B) and, notwithstanding whether
10 the worker has completed 50 percent of the pe-
11 riod of employment, shall provide the transpor-
12 tation reimbursement required by subparagraph
13 (A).

14 “(E) TRANSPORTATION BETWEEN LIVING
15 QUARTERS AND WORKSITE.—The employer
16 shall provide transportation between the work-
17 er’s living quarters and the employer’s worksite
18 without cost to the worker, and such transpor-
19 tation will be in accordance with applicable laws
20 and regulations.

21 “(3) REQUIRED WAGES.—

22 “(A) IN GENERAL.—An employer applying
23 for workers under section 218(a) shall offer to
24 pay, and shall pay, all workers in the occupa-
25 tion for which the employer has applied for

1 workers, not less (and is not required to pay
2 more) than the greater of the prevailing wage
3 in the occupation in the area of intended em-
4 ployment or the adverse effect wage rate. No
5 worker shall be paid less than the greater of the
6 hourly wage prescribed under section 6(a)(1) of
7 the Fair Labor Standards Act of 1938 (29
8 U.S.C. 206(a)(1)) or the applicable State min-
9 imum wage.

10 “(B) LIMITATION.—Effective on the date
11 of the enactment of the Agricultural Job Op-
12 portunities, Benefits, and Security Act of 2009
13 and continuing for 3 years thereafter, no ad-
14 verse effect wage rate for a State may be more
15 than the adverse effect wage rate for that State
16 in effect on January 1, 2009, as established by
17 section 655.107 of title 20, Code of Federal
18 Regulations.

19 “(C) REQUIRED WAGES AFTER 3-YEAR
20 FREEZE.—

21 “(i) FIRST ADJUSTMENT.—If Con-
22 gress does not set a new wage standard
23 applicable to this section before the first
24 March 1 that is not less than 3 years after
25 the date of enactment of this section, the

adverse effect wage rate for each State beginning on such March 1 shall be the wage rate that would have resulted if the adverse effect wage rate in effect on January 1, 2009, had been annually adjusted, beginning on March 1, 2012, by the lesser of—

“(I) the 12-month percentage change in the Consumer Price Index for All Urban Consumers between December of the second preceding year and December of the preceding year; and

“(II) 4 percent.

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

“(I) the 12-month percentage change in the Consumer Price Index for All Urban Consumers between December of the second preceding year

1 and December of the preceding year;

2 and

3 “(II) 4 percent.

4 “(D) DEDUCTIONS.—The employer shall
5 make only those deductions from the worker’s
6 wages that are authorized by law or are reason-
7 able and customary in the occupation and area
8 of employment. The job offer shall specify all
9 deductions not required by law which the em-
10 ployer will make from the worker’s wages.

11 “(E) FREQUENCY OF PAY.—The employer
12 shall pay the worker not less frequently than
13 twice monthly, or in accordance with the pre-
14 vailing practice in the area of employment,
15 whichever is more frequent.

16 “(F) HOURS AND EARNINGS STATE-
17 MENTS.—The employer shall furnish to the
18 worker, on or before each payday, in 1 or more
19 written statements—

20 “(i) the worker’s total earnings for
21 the pay period;

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

24 “(iii) the hours of employment which
25 have been offered to the worker (broken

1 out by hours offered in accordance with
 2 and over and above the $\frac{3}{4}$ guarantee de-
 3 scribed in paragraph (4);

4 “(iv) the hours actually worked by the
 5 worker;

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

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

10 “(G) REPORT ON WAGE PROTECTIONS.—

11 Not later than December 31, 2011, the Comp-
 12 troller General of the United States shall pre-
 13 pare and transmit to the Secretary of Labor,
 14 the Committee on the Judiciary of the Senate,
 15 and Committee on the Judiciary of the House
 16 of Representatives, a report that addresses—

17 “(i) whether the employment of H-2A
 18 or unauthorized aliens in the United States
 19 agricultural workforce has depressed
 20 United States farm worker wages below
 21 the levels that would otherwise have pre-
 22 vailed if alien farm workers had not been
 23 employed in the United States;

24 “(ii) whether an adverse effect wage
 25 rate is necessary to prevent wages of

1 United States farm workers in occupations
 2 in which H-2A workers are employed from
 3 falling below the wage levels that would
 4 have prevailed in the absence of the em-
 5 ployment of H-2A workers in those occu-
 6 pations;

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

14 “(iv) whether any changes are war-
 15 ranted in the current methodologies for
 16 calculating the adverse effect wage rate
 17 and the prevailing wage; and

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

20 “(H) COMMISSION ON WAGE STAND-
 21 ARDS.—

22 “(i) ESTABLISHMENT.—There is es-
 23 tablished the Commission on Agricultural
 24 Wage Standards under the H-2A program

1 (in this subparagraph referred to as the
2 ‘Commission’).

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

5 “(I) Four representatives of agri-
6 cultural employers and 1 representa-
7 tive of the Department of Agriculture,
8 each appointed by the Secretary of
9 Agriculture.

10 “(II) Four representatives of ag-
11 ricultural workers and 1 representa-
12 tive of the Department of Labor, each
13 appointed by the Secretary of Labor.

14 “(iii) FUNCTIONS.—The Commission
15 shall conduct a study that shall address—

16 “(I) whether the employment of
17 H-2A or unauthorized aliens in the
18 United States agricultural workforce
19 has depressed United States farm
20 worker wages below the levels that
21 would otherwise have prevailed if alien
22 farm workers had not been employed
23 in the United States;

24 “(II) whether an adverse effect
25 wage rate is necessary to prevent

1 wages of United States farm workers
2 in occupations in which H-2A work-
3 ers are employed from falling below
4 the wage levels that would have pre-
5 vailed in the absence of the employ-
6 ment of H-2A workers in those occu-
7 pations;

8 “(III) whether alternative wage
9 standards, such as a prevailing wage
10 standard, would be sufficient to pre-
11 vent wages in occupations in which
12 H-2A workers are employed from fall-
13 ing below the wage level that would
14 have prevailed in the absence of H-2A
15 employment;

16 “(IV) whether any changes are
17 warranted in the current methodolo-
18 gies for calculating the adverse effect
19 wage rate and the prevailing wage
20 rate; and

21 “(V) recommendations for future
22 wage protection under this section.

23 “(iv) FINAL REPORT.—Not later than
24 December 31, 2011, the Commission shall
25 submit a report to the Congress setting

1 forth the findings of the study conducted
2 under clause (iii).

3 “(v) TERMINATION DATE.—The Com-
4 mission shall terminate upon submitting
5 its final report.

6 “(4) GUARANTEE OF EMPLOYMENT.—

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

1 “(B) FAILURE TO WORK.—Any hours
2 which the worker fails to work, up to a max-
3 imum of the number of hours specified in the
4 job offer for a work day, when the worker has
5 been offered an opportunity to do so, and all
6 hours of work actually performed (including vol-
7 untary work in excess of the number of hours
8 specified in the job offer in a work day, on the
9 worker’s Sabbath, or on Federal holidays) may
10 be counted by the employer in calculating
11 whether the period of guaranteed employment
12 has been met.

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

19 “(D) CONTRACT IMPOSSIBILITY.—If, be-
20 fore the expiration of the period of employment
21 specified in the job offer, the services of the
22 worker are no longer required for reasons be-
23 yond the control of the employer due to any
24 form of natural disaster, including a flood, hur-
25 ricane, freeze, earthquake, fire, drought, plant

1 or animal disease or pest infestation, or regu-
2 latory drought, before the guarantee in sub-
3 paragraph (A) is fulfilled, the employer may
4 terminate the worker's employment. In the
5 event of such termination, the employer shall
6 fulfill the employment guarantee in subpara-
7 graph (A) for the work days that have elapsed
8 from the first work day after the arrival of the
9 worker to the termination of employment. In
10 such cases, the employer will make efforts to
11 transfer the United States worker to other com-
12 parable employment acceptable to the worker. If
13 such transfer is not effected, the employer shall
14 provide the return transportation required in
15 paragraph (2)(D).

16 “(5) MOTOR VEHICLE SAFETY.—

17 “(A) MODE OF TRANSPORTATION SUBJECT
18 TO COVERAGE.—

19 “(i) IN GENERAL.—Except as pro-
20 vided in clauses (iii) and (iv), this sub-
21 section applies to any H-2A employer that
22 uses or causes to be used any vehicle to
23 transport an H-2A worker within the
24 United States.

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

4 “(I) applies only to transpor-
5 tation provided by an H-2A employer
6 to an H-2A worker, or by a farm
7 labor contractor to an H-2A worker
8 at the request or direction of an H-
9 2A employer; and

10 “(II) does not apply to—

11 “(aa) transportation pro-
12 vided, or transportation arrange-
13 ments made, by an H-2A work-
14 er, unless the employer specifi-
15 cally requested or arranged such
16 transportation; or

17 “(bb) car pooling arrange-
18 ments made by H-2A workers
19 themselves, using 1 of the work-
20 ers’ own vehicles, unless specifi-
21 cally requested by the employer
22 directly or through a farm labor
23 contractor.

24 “(iii) CLARIFICATION.—Providing a
25 job offer to an H-2A worker that causes

1 the worker to travel to or from the place
2 of employment, or the payment or reim-
3 bursement of the transportation costs of
4 an H-2A worker by an H-2A employer,
5 shall not constitute an arrangement of, or
6 participation in, such transportation.

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

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

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

3 “(i) IN GENERAL.—When using, or
4 causing to be used, any vehicle for the pur-
5 pose of providing transportation to which
6 this subparagraph applies, each employer
7 shall—

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

16 “(II) ensure that each driver has
17 a valid and appropriate license, as
18 provided by State law, to operate the
19 vehicle; and

20 “(III) have an insurance policy
21 or a liability bond that is in effect
22 which insures the employer against li-
23 ability for damage to persons or prop-
24 erty arising from the ownership, oper-
25 ation, or causing to be operated, of

1 any vehicle used to transport any H-
2 2A worker.

3 “(ii) AMOUNT OF INSURANCE RE-
4 QUIRED.—The level of insurance required
5 shall be determined by the Secretary of
6 Labor pursuant to regulations to be issued
7 under this subsection.

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

17 “(I) No insurance policy or liabil-
18 ity bond shall be required of the em-
19 ployer, if such workers are trans-
20 ported only under circumstances for
21 which there is coverage under such
22 State law.

23 “(II) An insurance policy or li-
24 ability bond shall be required of the
25 employer for circumstances under

1 which coverage for the transportation
2 of such workers is not provided under
3 such State law.

4 “(c) COMPLIANCE WITH LABOR LAWS.—An em-
5 ployer shall assure that, except as otherwise provided in
6 this section, the employer will comply with all applicable
7 Federal, State, and local labor laws, including laws affect-
8 ing migrant and seasonal agricultural workers, with re-
9 spect to all United States workers and alien workers em-
10 ployed by the employer, except that a violation of this as-
11 surance shall not constitute a violation of the Migrant and
12 Seasonal Agricultural Worker Protection Act (29 U.S.C.
13 1801 et seq.).

14 “(d) COPY OF JOB OFFER.—The employer shall pro-
15 vide to the worker, not later than the day the work com-
16 mences, a copy of the employer’s application and job offer
17 described in section 218(a), or, if the employer will require
18 the worker to enter into a separate employment contract
19 covering the employment in question, such separate em-
20 ployment contract.

21 “(e) RANGE PRODUCTION OF LIVESTOCK.—Nothing
22 in this section, section 218, or section 218B shall preclude
23 the Secretary of Labor and the Secretary from continuing
24 to apply special procedures and requirements to the ad-

1 mission and employment of aliens in occupations involving
2 the range production of livestock.

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

5 “(a) PETITIONING FOR ADMISSION.—An employer,
6 or an association acting as an agent or joint employer for
7 its members, that seeks the admission into the United
8 States of an H-2A worker may file a petition with the
9 Secretary. The petition shall be accompanied by an accept-
10 ed and currently valid certification provided by the Sec-
11 retary of Labor under section 218(e)(2)(B) covering the
12 petitioner.

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

24 “(c) CRITERIA FOR ADMISSIBILITY.—

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

6 “(2) DISQUALIFICATION.—An alien shall be
7 considered inadmissible to the United States and in-
8 eligible for nonimmigrant status under section
9 101(a)(15)(H)(ii)(a) if the alien has, at any time
10 during the past 5 years—

11 “(A) violated a material provision of this
12 section, including the requirement to promptly
13 depart the United States when the alien’s au-
14 thorized period of admission under this section
15 has expired; or

16 “(B) otherwise violated a term or condition
17 of admission into the United States as a non-
18 immigrant, including overstaying the period of
19 authorized admission as such a nonimmigrant.

20 “(3) WAIVER OF INELIGIBILITY FOR UNLAW-
21 FUL PRESENCE.—

22 “(A) IN GENERAL.—An alien who has not
23 previously been admitted into the United States
24 pursuant to this section, and who is otherwise
25 eligible for admission in accordance with para-

1 graphs (1) and (2), shall not be deemed inad-
2 missible by virtue of section 212(a)(9)(B). If an
3 alien described in the preceding sentence is
4 present in the United States, the alien may
5 apply from abroad for H-2A status, but may
6 not be granted that status in the United States.

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

16 “(d) PERIOD OF ADMISSION.—

17 “(1) IN GENERAL.—The alien shall be admitted
18 for the period of employment in the application cer-
19 tified by the Secretary of Labor pursuant to section
20 218(e)(2)(B), not to exceed 10 months, supple-
21 mented by a period of not more than 1 week before
22 the beginning of the period of employment for the
23 purpose of travel to the worksite and a period of 14
24 days following the period of employment for the pur-

pose of departure or extension based on a subsequent offer of employment, except that—

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

“(B) the total period of employment, including such 14-day period, may not exceed 10 months.

“(2) CONSTRUCTION.—Nothing in this subsection shall limit the authority of the Secretary to extend the stay of the alien under any other provision of this Act.

“(e) ABANDONMENT OF EMPLOYMENT.—

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

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

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

5 “(4) VOLUNTARY TERMINATION.—Notwith-
 6 standing paragraph (1), an alien may voluntarily
 7 terminate his or her employment if the alien prompt-
 8 ly departs the United States upon termination of
 9 such employment.

10 “(f) REPLACEMENT OF ALIEN.—

11 “(1) IN GENERAL.—Upon presentation of the
 12 notice to the Secretary required by subsection (e)(2),
 13 the Secretary of State shall promptly issue a visa to,
 14 and the Secretary shall admit into the United
 15 States, an eligible alien designated by the employer
 16 to replace an H-2A worker—

17 “(A) who abandons or prematurely termi-
 18 nates employment; or

19 “(B) whose employment is terminated
 20 after a United States worker is employed pur-
 21 suant to section 218(b)(2)(H)(iii), if the United
 22 States worker voluntarily departs before the
 23 end of the period of intended employment or if
 24 the employment termination is for a lawful job-
 25 related reason.

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

5 “(g) IDENTIFICATION DOCUMENT.—

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

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

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

16 “(i) the individual with the identifica-
17 tion and employment eligibility document
18 whose eligibility is being verified is in fact
19 eligible for employment;

20 “(ii) the individual whose eligibility is
21 being verified is claiming the identity of
22 another person; and

23 “(iii) the individual whose eligibility is
24 being verified is authorized to be admitted

1 into, and employed in, the United States
2 as an H-2A worker.

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

5 “(C) The document shall—

6 “(i) be compatible with other data-
7 bases of the Secretary for the purpose of
8 excluding aliens from benefits for which
9 they are not eligible and determining
10 whether the alien is unlawfully present in
11 the United States; and

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

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

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

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

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

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

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

8 “(A) IN GENERAL.—An alien who is law-
9 fully present in the United States may com-
10 mence the employment described in a petition
11 under paragraph (1) on the date on which the
12 petition is filed.

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

21 “(C) HANDLING OF PETITION.—The em-
22 ployer shall provide a copy of the employer’s pe-
23 tition to the alien, who shall keep the petition
24 with the alien’s identification and employment
25 eligibility document as evidence that the peti-

tion has been filed and that the alien is authorized to work in the United States.

“(D) APPROVAL OF PETITION.—Upon approval of a petition for an extension of stay or change in the alien’s authorized employment, the Secretary shall provide a new or updated employment eligibility document to the alien indicating the new validity date, after which the alien is not required to retain a copy of the petition.

“(4) LIMITATION ON EMPLOYMENT AUTHORIZATION OF ALIENS WITHOUT VALID IDENTIFICATION AND EMPLOYMENT ELIGIBILITY DOCUMENT.—An expired identification and employment eligibility document, together with a copy of a petition for extension of stay or change in the alien’s authorized employment that complies with the requirements of paragraph (1), shall constitute a valid work authorization document for a period of not more than 60 days beginning on the date on which such petition is filed, after which time only a currently valid identification and employment eligibility document shall be acceptable.

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

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

5 “(B) REQUIREMENT TO REMAIN OUTSIDE
6 THE UNITED STATES.—

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

19 “(ii) EXCEPTION.—Clause (i) shall
20 not apply in the case of an alien if the
21 alien’s period of authorized status as an
22 H-2A worker (including any extensions)
23 was for a period of not more than 10
24 months and such alien has been outside
25 the United States for at least 2 months

1 during the 12 months preceding the date
 2 the alien again is applying for admission to
 3 the United States as an H-2A worker.

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

10 “(1) may be admitted for an initial period of 12
 11 months;

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

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

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

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

23 “(A) having nonimmigrant status under
 24 section 101(a)(15)(H)(ii)(a) based on employ-

1 ment as a shepherd, goat herder, or dairy
2 worker;

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

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

9 “(2) CLASSIFICATION PETITION.—In the case
10 of an eligible alien, the petition under section 204
11 for classification under section 203(b)(3)(A)(iii) may
12 be filed by—

13 “(A) the alien’s employer on behalf of the
14 eligible alien; or

15 “(B) the eligible alien.

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

21 “(4) EFFECT OF PETITION.—The filing of a pe-
22 tition described in paragraph (2) or an application
23 for adjustment of status based on the approval of
24 such a petition shall not constitute evidence of an

1 alien's ineligibility for nonimmigrant status under
2 section 101(a)(15)(H)(ii)(a).

3 “(5) EXTENSION OF STAY.—The Secretary
4 shall extend the stay of an eligible alien having a
5 pending or approved classification petition described
6 in paragraph (2) in 1-year increments until a final
7 determination is made on the alien's eligibility for
8 adjustment of status to that of an alien lawfully ad-
9 mitted for permanent residence.

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

14 **“SEC. 218C. WORKER PROTECTIONS AND LABOR STAND-**
15 **ARDS ENFORCEMENT.**

16 “(a) ENFORCEMENT AUTHORITY.—

17 “(1) INVESTIGATION OF COMPLAINTS.—

18 “(A) AGGRIEVED PERSON OR THIRD-PARTY
19 COMPLAINTS.—The Secretary of Labor shall es-
20 tablish a process for the receipt, investigation,
21 and disposition of complaints respecting a peti-
22 tioner's failure to meet a condition specified in
23 section 218(b), or an employer's misrepresenta-
24 tion of material facts in an application under
25 section 218(a). Complaints may be filed by any

1 aggrieved person or organization (including bar-
2 gaining representatives). No investigation or
3 hearing shall be conducted on a complaint con-
4 cerning such a failure or misrepresentation un-
5 less the complaint was filed not later than 12
6 months after the date of the failure, or mis-
7 representation, respectively. The Secretary of
8 Labor shall conduct an investigation under this
9 subparagraph if there is reasonable cause to be-
10 lieve that such a failure or misrepresentation
11 has occurred.

12 “(B) DETERMINATION ON COMPLAINT.—

13 Under such process, the Secretary of Labor
14 shall provide, within 30 days after the date
15 such a complaint is filed, for a determination as
16 to whether or not a reasonable basis exists to
17 make a finding described in subparagraph (C),
18 (D), (E), or (G). If the Secretary of Labor de-
19 termines that such a reasonable basis exists,
20 the Secretary of Labor shall provide for notice
21 of such determination to the interested parties
22 and an opportunity for a hearing on the com-
23 plaint, in accordance with section 556 of title 5,
24 United States Code, within 60 days after the
25 date of the determination. If such a hearing is

1 requested, the Secretary of Labor shall make a
2 finding concerning the matter not later than 60
3 days after the date of the hearing. In the case
4 of similar complaints respecting the same appli-
5 cant, the Secretary of Labor may consolidate
6 the hearings under this subparagraph on such
7 complaints.

8 “(C) FAILURES TO MEET CONDITIONS.—If
9 the Secretary of Labor finds, after notice and
10 opportunity for a hearing, a failure to meet a
11 condition of paragraph (1)(A), (1)(B), (1)(D),
12 (1)(F), (2)(A), (2)(B), or (2)(G) of section
13 218(b), a substantial failure to meet a condition
14 of paragraph (1)(C), (1)(E), (2)(C), (2)(D),
15 (2)(E), or (2)(H) of section 218(b), or a mate-
16 rial misrepresentation of fact in an application
17 under section 218(a)—

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

1 “(ii) the Secretary may disqualify the
2 employer from the employment of aliens
3 described in section 101(a)(15)(H)(ii)(a)
4 for a period of 1 year.

5 “(D) WILLFUL FAILURES AND WILLFUL
6 MISREPRESENTATIONS.—If the Secretary of
7 Labor finds, after notice and opportunity for
8 hearing, a willful failure to meet a condition of
9 section 218(b), a willful misrepresentation of a
10 material fact in an application under section
11 218(a), or a violation of subsection (d)(1)—

12 “(i) the Secretary of Labor shall no-
13 tify the Secretary of such finding and may,
14 in addition, impose such other administra-
15 tive remedies (including civil money pen-
16 alties in an amount not to exceed \$5,000
17 per violation) as the Secretary of Labor
18 determines to be appropriate;

19 “(ii) the Secretary of Labor may seek
20 appropriate legal or equitable relief to ef-
21 fectuate the purposes of subsection (d)(1);
22 and

23 “(iii) the Secretary may disqualify the
24 employer from the employment of H-2A
25 workers for a period of 2 years.

1 “(E) DISPLACEMENT OF UNITED STATES
 2 WORKERS.—If the Secretary of Labor finds,
 3 after notice and opportunity for hearing, a will-
 4 ful failure to meet a condition of section 218(b)
 5 or a willful misrepresentation of a material fact
 6 in an application under section 218(a), in the
 7 course of which failure or misrepresentation the
 8 employer displaced a United States worker em-
 9 ployed by the employer during the period of em-
 10 ployment on the employer’s application under
 11 section 218(a) or during the period of 30 days
 12 preceding such period of employment—

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 \$15,000
 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 H-2A
 22 workers for a period of 3 years.

23 “(F) LIMITATIONS ON CIVIL MONEY PEN-
 24 ALTIES.—The Secretary of Labor shall not im-
 25 pose total civil money penalties with respect to

1 an application under section 218(a) in excess of
2 \$90,000.

3 “(G) FAILURES TO PAY WAGES OR RE-
4 QUIRED BENEFITS.—If the Secretary of Labor
5 finds, after notice and opportunity for a hear-
6 ing, that the employer has failed to pay the
7 wages, or provide the housing allowance, trans-
8 portation, subsistence reimbursement, or guar-
9 antee of employment, required under section
10 218A(b), the Secretary of Labor shall assess
11 payment of back wages, or other required bene-
12 fits, due any United States worker or H-2A
13 worker employed by the employer in the specific
14 employment in question. The back wages or
15 other required benefits under section 218A(b)
16 shall be equal to the difference between the
17 amount that should have been paid and the
18 amount that actually was paid to such worker.

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

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

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

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

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

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

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

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

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

25 “(c) PRIVATE RIGHT OF ACTION.—

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

13 “(A) MEDIATION SERVICES.—The Federal
14 Mediation and Conciliation Service shall be
15 available to assist in resolving disputes arising
16 under subsection (b) between H-2A workers
17 and agricultural employers without charge to
18 the parties.

19 “(B) 90-DAY LIMIT.—The Federal Medi-
20 ation and Conciliation Service may conduct me-
21 diation or other nonbinding dispute resolution
22 activities for a period not to exceed 90 days be-
23 ginning on the date on which the Federal Medi-
24 ation and Conciliation Service receives the re-

1 quest for assistance unless the parties agree to
2 an extension of this period of time.

3 “(C) AUTHORIZATION.—

4 “(i) IN GENERAL.—Subject to clause
5 (ii), there are authorized to be appro-
6 priated to the Federal Mediation and Con-
7 ciliation Service \$500,000 for each fiscal
8 year to carry out this section.

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

21 “(2) MAINTENANCE OF CIVIL ACTION IN DIS-
22 TRICT COURT BY AGGRIEVED PERSON.—An H-2A
23 worker aggrieved by a violation of rights enforceable
24 under subsection (b) by an agricultural employer or
25 other person may file suit in any district court of the

1 United States having jurisdiction over the parties,
2 without regard to the amount in controversy, with-
3 out regard to the citizenship of the parties, and
4 without regard to the exhaustion of any alternative
5 administrative remedies under this Act, not later
6 than 3 years after the date the violation occurs.

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

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

23 “(5) WAIVER OF RIGHTS PROHIBITED.—Agree-
24 ments by employees purporting to waive or modify
25 their rights under this Act shall be void as contrary

1 to public policy, except that a waiver or modification
 2 of the rights or obligations in favor of the Secretary
 3 of Labor shall be valid for purposes of the enforce-
 4 ment of this Act. The preceding sentence may not
 5 be construed to prohibit agreements to settle private
 6 disputes or litigation.

7 “(6) AWARD OF DAMAGES OR OTHER EQUI-
 8 TABLE RELIEF.—

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

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

16 “(7) WORKERS’ COMPENSATION BENEFITS; EX-
 17 CLUSIVE REMEDY.—

18 “(A) Notwithstanding any other provision
 19 of this section, where a State’s workers’ com-
 20 pensation law is applicable and coverage is pro-
 21 vided for an H-2A worker, the workers’ com-
 22 pensation benefits shall be the exclusive remedy
 23 for the loss of such worker under this section
 24 in the case of bodily injury or death in accord-

1 ance with such State’s workers’ compensation
2 law.

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

11 “(i) a recovery under a State workers’
12 compensation law; or

13 “(ii) rights conferred under a State
14 workers’ compensation law.

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

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

1 of the same transaction or occurrence as the injury
2 or death of the H-2A worker shall be tolled for the
3 period during which the claim for such injury or
4 death was pending under the State workers' com-
5 pensation law.

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

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

24 “(d) DISCRIMINATION PROHIBITED.—

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

18 “(2) DISCRIMINATION AGAINST H-2A WORK-
19 ERS.—It is a violation of this subsection for any per-
20 son who has filed an application under section
21 218(a), to intimidate, threaten, restrain, coerce,
22 blacklist, discharge, or in any manner discriminate
23 against an H-2A employee because such worker has,
24 with just cause, filed a complaint with the Secretary
25 of Labor regarding a denial of the rights enumer-

1 ated and enforceable under subsection (b) or insti-
 2 tuted, or caused to be instituted, a private right of
 3 action under subsection (c) regarding the denial of
 4 the rights enumerated under subsection (b), or has
 5 testified or is about to testify in any court pro-
 6 ceeding brought under subsection (c).

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

16 “(f) ROLE OF ASSOCIATIONS.—

17 “(1) VIOLATION BY A MEMBER OF AN ASSOCIA-
 18 TION.—An employer on whose behalf an application
 19 is filed by an association acting as its agent is fully
 20 responsible for such application, and for complying
 21 with the terms and conditions of sections 218 and
 22 218A, as though the employer had filed the applica-
 23 tion itself. If such an employer is determined, under
 24 this section, to have committed a violation, the pen-
 25 alty for such violation shall apply only to that mem-

1 ber of the association unless the Secretary of Labor
 2 determines that the association or other member
 3 participated in, had knowledge, or reason to know,
 4 of the violation, in which case the penalty shall be
 5 invoked against the association or other association
 6 member as well.

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

17 **“SEC. 218D. DEFINITIONS.**

18 “For purposes of this section and section 218, 218A,
 19 218B, and 218C:

20 “(1) AGRICULTURAL EMPLOYMENT.—The term
 21 ‘agricultural employment’ means any service or ac-
 22 tivity that is considered to be agricultural under sec-
 23 tion 3(f) of the Fair Labor Standards Act of 1938
 24 (29 U.S.C. 203(f)) or agricultural labor under sec-
 25 tion 3121(g) of the Internal Revenue Code of 1986

1 or the performance of agricultural labor or services
2 described in section 101(a)(15)(H)(ii)(a).

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

13 “(3) DISPLACE.—The term ‘displace’, in the
14 case of an application with respect to 1 or more H–
15 2A workers by an employer, means laying off a
16 United States worker from a job for which the H–
17 2A worker or workers is or are sought.

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

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

1 “(6) H-2A EMPLOYER.—The term ‘H-2A em-
2 ployer’ means an employer who seeks to hire 1 or
3 more nonimmigrant aliens described in section
4 101(a)(15)(H)(ii)(a).

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

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

13 “(9) LAYING OFF.—

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

16 “(i) means to cause the worker’s loss
17 of employment, other than through a dis-
18 charge for inadequate performance, viola-
19 tion of workplace rules, cause, voluntary
20 departure, voluntary retirement, contract
21 impossibility (as described in section
22 218A(b)(4)(D)), or temporary suspension
23 of employment due to weather, markets, or
24 other temporary conditions; but

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

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

17 “(10) REGULATORY DROUGHT.—The term ‘reg-
 18 ulatory drought’ means a decision subsequent to the
 19 filing of the application under section 218 by an en-
 20 tity not under the control of the employer making
 21 such filing which restricts the employer’s access to
 22 water for irrigation purposes and reduces or limits
 23 the employer’s ability to produce an agricultural
 24 commodity, thereby reducing the need for labor.

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

3 “(A) ordinarily, it pertains to or is of the
4 kind exclusively performed at certain seasons or
5 periods of the year; and

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

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

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

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

22 (b) TABLE OF CONTENTS.—The table of contents of
23 the Immigration and Nationality Act (8 U.S.C. 1101 et
24 seq.) is amended by striking the item relating to section
25 218 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.”.

1 **TITLE III—MISCELLANEOUS** 2 **PROVISIONS**

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

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

11 (b) DETERMINATION OF SCHEDULE.—

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

1 (2) PROCEDURE.—

2 (A) IN GENERAL.—In establishing and ad-
3 justing such a schedule, the Secretary shall
4 comply with Federal cost accounting and fee
5 setting standards.

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

14 (c) USE OF PROCEEDS.—Notwithstanding any other
15 provision of law, all proceeds resulting from the payment
16 of the fees pursuant to the amendment made by section
17 201(a) of this Act shall be available without further appro-
18 priation and shall remain available without fiscal year lim-
19 itation to reimburse the Secretary, the Secretary of State,
20 and the Secretary of Labor for the costs of carrying out—

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

24 (2) the provisions of this Act.

1 **SEC. 302. REGULATIONS.**

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

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

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

19 (d) DEADLINE FOR ISSUANCE OF REGULATIONS.—
20 All regulations to implement the duties of the Secretary,
21 the Secretary of State, and the Secretary of Labor created
22 under sections 218, 218A, 218B, 218C, and 218D of the
23 Immigration and Nationality Act, as amended or added
24 by section 201 of this Act, shall take effect on the effective
25 date of section 201 and shall be issued not later than 1
26 year after the date of enactment of this Act.

1 **SEC. 303. REPORTS TO CONGRESS.**

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

5 (1) the number of job opportunities approved
6 for employment of aliens admitted under section
7 101(a)(15)(H)(ii)(a) of the Immigration and Nation-
8 ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)), and the
9 number of workers actually admitted, disaggregated
10 by State and by occupation;

11 (2) the number of such aliens reported to have
12 abandoned employment pursuant to subsection
13 (e)(2) of section 218B of such Act, as added by sec-
14 tion 201;

15 (3) the number of such aliens who departed the
16 United States within the period specified in sub-
17 section (d) of such section 218B;

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

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

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

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

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

6 **SEC. 304. EFFECTIVE DATE.**

7 The amendments made by section 201 and section
8 301 shall take effect 1 year after the date of the enact-
9 ment of this Act.

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