

115TH CONGRESS  
2D SESSION

# H. R. 6536

To amend the Immigration and Nationality Act to provide for an H-2C nonimmigrant classification, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 25, 2018

Mr. SMUCKER (for himself and Mr. FRANCIS ROONEY of Florida) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Ways and Means, and Oversight and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Immigration and Nationality Act to provide for an H-2C nonimmigrant classification, 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.**

4 This Act may be cited as the “Workforce for an Ex-  
5 panding Economy Act”.

1 **SEC. 2. NONIMMIGRANT CLASSIFICATION FOR H-2C NON-**  
 2 **IMMIGRANTS.**

3 Section 101(a)(15)(H)(ii) of the Immigration and  
 4 Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)) is amended  
 5 by inserting “(c) who is coming temporarily to the United  
 6 States to perform services or labor for a registered non-  
 7 agricultural employer in a registered position (as those  
 8 terms are defined in section 219A(a)) in accordance with  
 9 the requirements under section 219A; or” before “(iii)  
 10 have a residence”.

11 **SEC. 3. ADMISSION OF H-2C NONIMMIGRANT WORKERS.**

12 (a) ADMISSION OF H-2C NONIMMIGRANT WORK-  
 13 ERS.—

14 (1) IN GENERAL.—Chapter 2 of title II of the  
 15 Immigration and Nationality Act (8 U.S.C. 1181 et  
 16 seq.) is amended by adding at the end the following:  
 17 **“SEC. 219A. ADMISSION OF H-2C NONIMMIGRANT WORK-**  
 18 **ERS.**

19 “(a) DEFINITIONS.—In this section:

20 “(1) DEPARTMENT.—Except as otherwise spe-  
 21 cifically provided, the term ‘Department’ means the  
 22 Department of Homeland Security.

23 “(2) ELIGIBLE OCCUPATION.—The term ‘eligi-  
 24 ble occupation’ means an eligible occupation de-  
 25 scribed in subsection (e)(3).

26 “(3) EMPLOYER.—

1           “(A) IN GENERAL.—The term ‘employer’  
2           means any person or operational unit of a for-  
3           profit or nonprofit entity that is operating inde-  
4           pendently in a county or metropolitan statistical  
5           area and who hires an individual for employ-  
6           ment in the United States.

7           “(B) TREATMENT OF SINGLE EM-  
8           PLOYER.—For purposes of determining the  
9           number of employees or United States workers  
10          employed by an employer, a single entity shall  
11          be treated as 1 employer.

12          “(4) ENDURING JOB OPENING.—The term ‘en-  
13          during job opening’ refers to a job opening that—

14               “(A) remains unfilled on the first day of  
15               the month for 3 consecutive months; or

16               “(B) is unfilled for more than 60 days in  
17               a period of 90 consecutive days.

18          “(5) FULL EMPLOYMENT AREA.—The term ‘full  
19          employment area’ refers to any county or metropoli-  
20          tan statistical area where the unemployment rate  
21          during the fiscal quarter during which an application  
22          is submitted by an employer is equal to or less than  
23          4.9 percent.

1           “(6) H-2C NONIMMIGRANT.—The term ‘H-2C  
2           nonimmigrant’ means an alien admitted as a non-  
3           immigrant pursuant to section 101(a)(15)(H)(ii)(c).

4           “(7) H-2C NONIMMIGRANT STATUS.—The term  
5           ‘H-2C nonimmigrant status’ means status granted  
6           to an alien admitted as a nonimmigrant pursuant to  
7           section 101(a)(15)(H)(ii)(c).

8           “(8) INITIAL H-2C NONIMMIGRANT.—The term  
9           ‘initial H-2C nonimmigrant’ means an alien—

10           “(A) issued an H-2C-nonimmigrant visa  
11           by the Secretary of State authorizing the ad-  
12           mission of that alien to the United States for  
13           the first time as an H-2C nonimmigrant; and

14           “(B) does not include an alien on or after  
15           the date the alien commences employment in  
16           H-2C nonimmigrant status with a registered  
17           employer in a registered position.

18           “(9) LAY OFF.—The term ‘lay off’—

19           “(A) means to cause a worker to lose em-  
20           ployment, other than through a discharge for  
21           inadequate performance, violation of workplace  
22           rules, cause, voluntary departure, voluntary re-  
23           tirement, or the expiration of a grant or con-  
24           tract; and

1           “(B) does not include any situation in  
2           which the worker is offered and refused to ac-  
3           cept, as an alternative to such loss of employ-  
4           ment, a similar employment opportunity with  
5           the same employer at equivalent or higher com-  
6           pensation and benefits than the position from  
7           which the employee was discharged.

8           “(10) METROPOLITAN STATISTICAL AREA.—

9           The term ‘metropolitan statistical area’ means a ge-  
10          ographic area designated as a metropolitan statis-  
11          tical area by the Director of the Office of Manage-  
12          ment and Budget.

13          “(11) REGISTERED EMPLOYER.—The term

14          ‘registered employer’ means an operational business  
15          unit of a nonagricultural employer that is operating  
16          independently in a full employment area and is des-  
17          ignated by the Secretary as a registered employer  
18          under subsection (d).

19          “(12) REGISTERED POSITION.—The term ‘reg-

20          istered position’ means a position designated as a  
21          registered position under subsection (e).

22          “(13) SCARCITY RECRUITMENT FEE.—The

23          term ‘scarcity recruitment fee’ refers to a payment  
24          equal to 5 percent of an H-2C immigrant’s esti-  
25          mated annual compensation that a registered em-

1        employer remits to the Secretary as part of the employ-  
2        er’s application for a registered position in order to  
3        demonstrate said employer’s inability to recruit a  
4        United States worker for the position.

5            “(14) SECRETARY.—Except as otherwise spe-  
6        cifically provided, the term ‘Secretary’ means the  
7        Secretary of Homeland Security.

8            “(15) SINGLE ENTITY.—The term ‘single enti-  
9        ty’ means any group treated as a single employer  
10       under subsection (b), (c), (m), or (o) of section 414  
11       of the Internal Revenue Code of 1986.

12           “(16) SMALL BUSINESS.—The term ‘small busi-  
13       ness’ means an employer that employs 50 or fewer  
14       full-time equivalent employees.

15           “(17) UNITED STATES WORKER.—The term  
16       ‘United States worker’ means an individual who is—

17            “(A) lawfully employed or seeking employ-  
18       ment in the United States; and

19            “(B)(i) a national of the United States;

20            “(ii) an alien lawfully admitted for perma-  
21       nent residence; or

22            “(iii) any other alien authorized to work in  
23       the United States with no limitation as to the  
24       alien’s employer.

1           “(18) ZONE 1 OCCUPATION.—The term ‘zone 1  
2           occupation’ means an occupation that requires little  
3           or no preparation and is classified as a zone 1 occu-  
4           pation on—

5                   “(A) the Occupational Information Net-  
6                   work Database (O\*NET) on the date of the en-  
7                   actment of this section; or

8                   “(B) such Database or a similar successor  
9                   database, as designated by the Secretary of  
10                  Labor, after the date of the enactment of this  
11                  section.

12           “(19) ZONE 2 OCCUPATION.—The term ‘zone 2  
13           occupation’ means an occupation that requires some  
14           preparation and is classified as a zone 2 occupation  
15           on—

16                   “(A) the Occupational Information Net-  
17                   work Database (O\*NET) on the date of the en-  
18                   actment of this section; or

19                   “(B) such Database or a similar successor  
20                   database, as designated by the Secretary of  
21                   Labor, after the date of the enactment of this  
22                   section.

23           “(20) ZONE 3 OCCUPATION.—The term ‘zone 3  
24           occupation’ means an occupation that requires me-

1       dium preparation and is classified as a zone 3 occu-  
2       pation on—

3               “(A) the Occupational Information Net-  
4       work Database (O\*NET) on the date of the en-  
5       actment of this section; or

6               “(B) such Database or a similar successor  
7       database, as designated by the Secretary of  
8       Labor, after the date of the enactment of this  
9       section.

10       “(b) ADMISSION INTO THE UNITED STATES.—An  
11    alien is eligible to be admitted as an H–2C nonimmigrant  
12    if the alien—

13               “(1) has received an offer of employment from  
14    a registered employer; and

15               “(2) otherwise meets the requirements of this  
16    section.

17       “(c) H–2C NONIMMIGRANTS.—

18               “(1) APPLICATION.—An alien seeking to be an  
19    H–2C nonimmigrant shall submit an application to  
20    the Secretary.

21               “(2) ATTESTATION.—Each application sub-  
22    mitted under paragraph (1) for an alien shall in-  
23    clude an attestation as follows:

24               “(A) That the H–2C nonimmigrant will re-  
25    port to such nonimmigrant’s initial employment

1 in a registered position not later than 14 days  
2 after such nonimmigrant is admitted.

3 “(B) That the H-2C nonimmigrant will  
4 accept only registered positions and abide by all  
5 terms and conditions of H-2C nonimmigrant  
6 status.

7 “(C) That the H-2C nonimmigrant will  
8 not bring a family member to the United States  
9 in violation of any provision of this Act.

10 “(3) APPLICATION REVIEW.—The Secretary  
11 shall adjudicate an application submitted under  
12 paragraph (1) not later than 45 days after the re-  
13 ceipt of such application.

14 “(4) FEES.—

15 “(A) IN GENERAL.—Each application sub-  
16 mitted under paragraph (1) shall include a fee  
17 in the amount determined by the Secretary ad-  
18 judicating such application to be necessary to  
19 cover the cost of adjudicating the application  
20 within 45 days.

21 “(B) PREMIUM PROCESSING.—The Sec-  
22 retary and the Secretary of State shall create  
23 an expedited process to review an application  
24 submitted under paragraph (1) for an addi-

1           tional fee, in an amount determined by such  
2           Secretaries.

3           “(5) ELIGIBILITY FOR H-2C NONIMMIGRANT  
4           STATUS.—No alien may be admitted as an H-2C  
5           nonimmigrant if the alien—

6                   “(A) is inadmissible under this Act;

7                   “(B) fails to pass a criminal background  
8           check or a national security background check;

9                   “(C) is from a country determined by the  
10          Secretary of State to have repeatedly provided  
11          support for acts of international terrorism pur-  
12          suant to—

13                   “(i) section 6(j)(1)(A) of the Export  
14          Administration Act of 1979 (50 U.S.C.  
15          App. 2405(j)(1)(A)) (or successor statute);

16                   “(ii) section 40(d) of the Arms Export  
17          Control Act (22 U.S.C. 2780(d)); or

18                   “(iii) section 620A(a) of the Foreign  
19          Assistance Act of 1961 (22 U.S.C.  
20          2371(a)); or

21                   “(D) has not received an offer of employ-  
22          ment from a registered employer in a registered  
23          position.

24          “(6) EMPLOYMENT.—

25                   “(A) INITIAL EMPLOYMENT.—

1 “(i) REPORTING TO EMPLOYMENT.—

2 An initial H-2C nonimmigrant shall report  
3 to such nonimmigrant’s initial employment  
4 in a registered position not later than 14  
5 days after such nonimmigrant is admitted  
6 to the United States.

7 “(ii) REPORTING TO THE SEC-  
8 RETARY.—An initial H-2C nonimmigrant  
9 shall maintain contact with the Secretary  
10 after such H-2C nonimmigrant is admit-  
11 ted to the United States but before report-  
12 ing to the initial employment at an interval  
13 that is determined by the Secretary, but  
14 not less than every 7 days.

15 “(B) PERIODS OF UNEMPLOYMENT.—An  
16 H-2C nonimmigrant—

17 “(i) may be unemployed for a period  
18 of not more than 45 consecutive days of  
19 presence in the United States; and

20 “(ii) shall depart the United States if  
21 such H-2C nonimmigrant is unable to ob-  
22 tain employment during such period.

23 “(7) INITIAL PERIOD OF AUTHORIZED PRES-  
24 ENCE.—An H-2C nonimmigrant may be physically

1 present in the United States for an initial period of  
2 not more than a total of 36 months.

3 “(8) RENEWAL.—An H-2C nonimmigrant may  
4 renew his or her H-2C nonimmigrant status for not  
5 more than 2 additional consecutive periods of au-  
6 thorized presence.

7 “(9) TRAVEL.—An H-2C nonimmigrant may  
8 travel outside the United States and be readmitted  
9 to the United States.

10 “(10) PENALTIES.—If an H-2C nonimmigrant  
11 fails to comply with any other term or condition of  
12 H-2C nonimmigrant status or remains in the  
13 United States for 10 days after the date of the expi-  
14 ration of his or her period of authorized presence  
15 without status under the immigration laws, then the  
16 Secretary shall mandatorily—

17 “(A) subject such nonimmigrant to the  
18 revocation of employment authorization; and

19 “(B) initiate and pursue removal under  
20 section 237(a)(1)(C)(i).

21 “(d) REGISTERED EMPLOYER.—

22 “(1) APPLICATION.—An employer seeking to be  
23 a registered employer may submit an application to  
24 the Secretary. Each such application shall include  
25 the following:

1           “(A) Documentation to establish that the  
2           employer is a bona fide employer operating in  
3           a full employment area.

4           “(B) Evidence that the employer is current  
5           in payment of payroll taxes.

6           “(C) The employer’s Federal tax identifica-  
7           tion number or employer identification number  
8           issued by the Internal Revenue Service.

9           “(D) The number of H-2C nonimmigrants  
10          the employer estimates the employer will seek  
11          to employ annually.

12          “(2) REFERRAL FOR FRAUD INVESTIGATION.—  
13          The Secretary may refer an application submitted  
14          under paragraph (1) or subsection (e)(1)(A) to the  
15          Fraud Detection and National Security Directorate  
16          of U.S. Citizenship and Immigration Services for po-  
17          tential investigation if there is evidence of fraud par-  
18          ticular to such application.

19          “(3) INELIGIBLE EMPLOYERS.—

20                 “(A) IN GENERAL.—Notwithstanding any  
21                 other applicable penalties under law, the Sec-  
22                 retary shall deny an employer’s application to  
23                 be a registered employer if the Secretary deter-  
24                 mines, after notice and an opportunity for a

1 hearing, that the employer submitting such ap-  
2 plication—

3 “(i) has, in such application (includ-  
4 ing any attestations required by law)—

5 “(I) knowingly misrepresented a  
6 material fact;

7 “(II) knowingly made a fraudu-  
8 lent statement; or

9 “(III) knowingly failed to comply  
10 with the terms of such attestations;

11 “(ii) failed to cooperate in the process  
12 established pursuant to subsection (m);

13 “(iii) has been convicted of an offense  
14 under chapter 77 of title 18, United States  
15 Code, any conspiracy to commit such an  
16 offense, or any human trafficking offense  
17 under State or territorial law;

18 “(iv) has, within 2 years prior to the  
19 date of the application—

20 “(I) been finally adjudicated as  
21 having committed any hazardous oc-  
22 cupation orders violation resulting in  
23 injury or death under the child labor  
24 provisions contained in section 12 of  
25 the Fair Labor Standards Act of

1 1938 (29 U.S.C. 212) or any perti-  
2 nent regulation;

3 “(II) received a final adjudication  
4 assessing a civil monetary penalty for  
5 a pattern and practice of willful viola-  
6 tion of the minimum wage provisions  
7 of section 6 of the Fair Labor Stand-  
8 ards Act of 1938 (29 U.S.C. 206); or

9 “(III) received a final adjudica-  
10 tion assessing a civil monetary penalty  
11 for a pattern and practice of willful  
12 violation of the overtime provisions of  
13 section 7 of the Fair Labor Standards  
14 Act of 1938 (29 U.S.C. 207) or any  
15 regulations thereunder; or

16 “(v) has, within 2 years prior to the  
17 date of application, received a final adju-  
18 dication for a willful violation involving in-  
19 jury or death—

20 “(I) of section 5 of the Occupa-  
21 tional Safety and Health Act of 1970  
22 (29 U.S.C. 654);

23 “(II) of any standard, rule, or  
24 order promulgated pursuant to section  
25 6 of the Occupational Safety and

1 Health Act of 1970 (29 U.S.C. 655);  
2 or

3 “(III) of a plan approved under  
4 section 18 of the Occupational Safety  
5 and Health Act of 1970 (29 U.S.C.  
6 667).

7 “(B) LENGTH OF INELIGIBILITY.—

8 “(i) TEMPORARY INELIGIBILITY.—An  
9 employer described in clause (i) or (ii) of  
10 subparagraph (A) whose application is de-  
11 nied shall not be eligible to be a registered  
12 employer for a period that is not less than  
13 1 year or a time period determined by the  
14 Secretary, whichever is greater, and not  
15 more than 2 years.

16 “(ii) PERMANENT INELIGIBILITY.—  
17 An employer described in clause (iii), (iv),  
18 or (v) of subparagraph (A) shall be perma-  
19 nently ineligible to be a registered em-  
20 ployer.

21 “(4) TERM OF REGISTRATION.—The Secretary  
22 may approve an application only for a term, begin-  
23 ning on the date of approval, and ending on the  
24 later of—

25 “(A) the date that is 3 years thereafter; or

1 “(B) the date that is 3 months after the  
2 date on which the employer has no registered  
3 positions.

4 “(5) RENEWAL.—

5 “(A) IN GENERAL.—An employer may sub-  
6 mit an application to renew the employer’s sta-  
7 tus as a registered employer for additional peri-  
8 ods under paragraph (4).

9 “(B) ATTESTATION.—An application for  
10 renewal under subparagraph (A) shall include  
11 an attestation described in paragraph (7)(A).

12 “(6) FEE.—At the time an employer’s applica-  
13 tion to be a registered employer is approved, such  
14 employer shall pay a fee of \$500, and shall pay such  
15 fee every 3 years thereafter while the employer re-  
16 mains a registered employer.

17 “(7) CONTINUED ELIGIBILITY.—

18 “(A) ATTESTATION.—Each registered em-  
19 ployer shall attest to the Secretary each year—

20 “(i) that the registered employer has  
21 provided the wages and working conditions  
22 the registered employer agreed to provide  
23 to its H-2C nonimmigrant employees  
24 under paragraph (5)(B);

1 “(ii) that the registered employer re-  
2 mains a bona fide employer operating in a  
3 full employment area; and

4 “(iii) to the number of H-2C non-  
5 immigrants the employer employed the  
6 prior year.

7 “(B) NO LONGER A FULL EMPLOYMENT  
8 AREA.—An employer is ineligible to file an ap-  
9 plication for a new permit or to renew an exist-  
10 ing permit if the unemployment rate in the  
11 county or metropolitan statistical area where  
12 the business said employer operates rises so  
13 that the area is no longer designated as a full  
14 employment area.

15 “(8) NOTICE OF FAILURE OF H-2C NON-  
16 IMMIGRANT TO APPEAR.—An employer shall inform  
17 the Secretary if an H-2C nonimmigrant does not  
18 appear for employment with the employer during the  
19 time period specified in subsection (c)(6)(A)(i).

20 “(e) REGISTERED POSITIONS.—

21 “(1) IN GENERAL.—

22 “(A) APPLICATION.—Each employer may  
23 submit with an application or renewal under  
24 subsection (d) for adjudication to the Secretary  
25 an application to designate a registered position

1 for which the employer is seeking to hire an H–  
2 2C nonimmigrant at any time during the year  
3 without regard to the date the employer needs  
4 each position to be filled.

5 “(B) ATTESTATION.—An application sub-  
6 mitted under subparagraph (A) shall include a  
7 general description of each such position and an  
8 attestation to each of the following:

9 “(i) The number of full-time equiva-  
10 lent employees of the employer.

11 “(ii) The occupational category, as  
12 classified by Bureau of Labor Statistics,  
13 for which each registered position is  
14 sought.

15 “(iii) That the wages to be paid to H–  
16 2C nonimmigrants employed by the em-  
17 ployer in each registered position will be  
18 the greater of—

19 “(I) the actual wage level paid by  
20 the employer to other employees with  
21 similar experience and qualifications  
22 for such position in the same location;  
23 or

24 “(II) the prevailing wage level for  
25 the occupational classification of the

1 position in the metropolitan statistical  
2 area of the employment, based on the  
3 best information available as of the  
4 time of filing the application.

5 “(iv) That the employer has carried  
6 out the recruiting activities required by  
7 paragraph (2)(B).

8 “(v) That, subject to subparagraphs  
9 (B) and (C) of paragraph (2)—

10 “(I) there is no equally or better  
11 qualified United States worker who  
12 has applied for the position and who  
13 is ready, willing, and able to fill such  
14 position; or

15 “(II) such position qualifies as  
16 an enduring job opening.

17 “(vi) That there is not a strike, lock-  
18 out, or work stoppage in the course of a  
19 labor dispute in the occupation at the place  
20 of employment at which the H-2C non-  
21 immigrant will be employed. If such strike,  
22 lockout, or work stoppage occurs following  
23 submission of the application, the employer  
24 will provide notification in accordance with  
25 all applicable regulations.

1           “(vii)(I) The employer has not laid off  
2           and will not lay off a United States worker  
3           during the period beginning 45 days prior  
4           to and ending 45 days after the date the  
5           employer files an application for designa-  
6           tion of a position for which the H-2C non-  
7           immigrant is sought or hires such H-2C  
8           nonimmigrant, unless the employer has  
9           made a reasonable effort to contact and  
10          offer such United States worker the posi-  
11          tion, or documented the legitimate reasons  
12          that such United States worker is not  
13          qualified or available for the position.

14          “(II) A United States worker is not  
15          laid off for purposes of this clause if—

16               “(aa) at the time such worker’s  
17               employment is terminated, such work-  
18               er is not employed in the same occu-  
19               pation and in the same metropolitan  
20               statistical area where the registered  
21               position is located. A United States  
22               worker is not laid off for purposes of  
23               this clause if, in the 45 calendar days  
24               before the hiring of an H-2C non-  
25               immigrant, the employer adds another

1 United States worker so that the total  
2 number of United States workers em-  
3 ployed by such employer in the same  
4 occupation as such H-2C non-  
5 immigrant and in the same metropoli-  
6 tan statistical area where the reg-  
7 istered position is located has not de-  
8 creased; or

9 “(bb) in the 45 calendar days  
10 after the hiring of an H-2C non-  
11 immigrant, the employer adds another  
12 United States worker within 5 busi-  
13 ness days after laying off a United  
14 States worker so that the total num-  
15 ber of United States workers em-  
16 ployed by such employer in the same  
17 occupation as such H-2C non-  
18 immigrant and in the same metropoli-  
19 tan statistical area where the reg-  
20 istered position is located has not de-  
21 creased.

22 “(C) DEFINITIONS.—

23 “(i) BEST INFORMATION AVAIL-  
24 ABLE.—In subparagraph (B)(iii)(II), the  
25 term ‘best information available’, with re-

1           spect to determining the prevailing wage  
2           for a position, means—

3                   “(I) a controlling collective bar-  
4                   gaining agreement, to which the em-  
5                   ployer is a signatory and which sets  
6                   wages for work performed by H-2C  
7                   nonimmigrants;

8                   “(II) if there is no controlling  
9                   collective bargaining agreement as set  
10                  forth in subclause (I), the local, State,  
11                  or Federal prevailing wage laws or or-  
12                  dinances, for any time period during  
13                  which the H-2C nonimmigrant per-  
14                  forms work on a project for which  
15                  payment of such wages is required by  
16                  such laws or ordinances, and the em-  
17                  ployer has signed a contract agreeing  
18                  to pay such wages on that project; or

19                  “(III) if there is no controlling  
20                  collective bargaining agreement as set  
21                  forth in subclause (I) and the H-2C  
22                  nonimmigrant is not performing work  
23                  on a project governed by a prevailing  
24                  wage law or ordinance as set forth in  
25                  subclause (II)—

1                   “(aa) the wage level com-  
2                   mensurate with the experience,  
3                   training, and supervision re-  
4                   quired for the job based on Bu-  
5                   reau of Labor Statistics data; or

6                   “(bb) a legitimate private  
7                   wage survey of the wages paid  
8                   for such positions in the metro-  
9                   politan statistical area.

10                  “(ii) LEGITIMATE PRIVATE WAGE  
11                  SURVEY.—In this paragraph, the term ‘le-  
12                  gitimate private wage survey’ means, in  
13                  the case of an application under subpara-  
14                  graph (A), a survey of wages by an entity  
15                  other than the Federal Government—

16                   “(I) for which the data has been  
17                   collected during the 2-year period im-  
18                   mediately preceding the date of the  
19                   application;

20                   “(II) that, if a published survey,  
21                   has been published during the 2-year  
22                   period immediately preceding the date  
23                   of the application;

24                   “(III) that is of the industry or  
25                   occupation of intended employment;

1 “(IV) in which the employer job  
2 description is similar to the survey job  
3 description;

4 “(V) that is across industries  
5 that employ workers in the occupa-  
6 tion;

7 “(VI) for which the wage deter-  
8 mination is based on a weighted or  
9 straight average of the relevant wages,  
10 or another valid measure of central  
11 tendency determined by the Secretary  
12 of Labor of relevant wage levels; and

13 “(VII) that identifies a statis-  
14 tically valid methodology that was  
15 used to collect the data.

16 “(D) PERMIT.—The Secretary shall pro-  
17 vide each registered employer whose application  
18 submitted under subparagraph (A) is approved  
19 with a permit that includes the number and de-  
20 scription of such employer’s approved registered  
21 positions at the time of such approval.

22 “(E) REGISTRY OF REGISTERED POSI-  
23 TIONS.—

1 “(i) MAINTENANCE OF REGISTRY.—

2 The Secretary shall develop and maintain  
3 a registry of registered positions.

4 “(ii) AVAILABILITY ON WEBSITE.—

5 Such registry shall be accessible on a  
6 website maintained by the Secretary.

7 “(iii) AVAILABILITY ON STATE WORK-

8 FORCE AGENCY WEBSITES.—Each work-  
9 force agency of each State shall be linked  
10 to such registry.

11 “(iv) CONDITIONS OF AVAILABILITY  
12 ON WEBSITE.—

13 “(I) REGISTERED POSITIONS.—

14 Each registered position shall be in-  
15 cluded in the registry of registered po-  
16 sitions maintained by the Secretary  
17 and shall remain available for viewing  
18 on such registry throughout the pe-  
19 riod of approval under paragraph (5).

20 “(II) AVAILABILITY AND ELIGI-

21 BILITY.—The Secretary shall ensure  
22 that the registry indicates whether  
23 each registered position in the registry  
24 is filled or unfilled.

25 “(2) REQUIREMENTS.—

1           “(A) ELIGIBLE OCCUPATION.—Each reg-  
 2           istered position shall be for a position in an eli-  
 3           gible occupation as described in paragraph (3).

4           “(B) RECRUITMENT OF UNITED STATES  
 5           WORKERS.—

6           “(i) REQUIREMENTS.—A position may  
 7           not be a registered position unless the reg-  
 8           istered employer—

9                   “(I) advertises the position for a  
 10                   period of 30 days, including the wage  
 11                   range, location or locations, and pro-  
 12                   posed start date—

13                           “(aa) on the Internet  
 14                           website maintained by the Sec-  
 15                           retary of Labor for the purpose  
 16                           of such advertising; and

17                           “(bb) with the workforce  
 18                           agency of the State where the po-  
 19                           sition will be located; and

20                   “(II) except as provided for in  
 21                   subsection (f)(4)(A)(ii), carries out  
 22                   not less than 3 of the recruiting ac-  
 23                   tivities described in subparagraph (C).

24           “(ii) DURATION OF ADVERTISING.—  
 25           The 30-day periods required by items (aa)

1 and (bb) of clause (i)(I) may occur at the  
2 same time.

3 “(C) RECRUITING ACTIVITIES.—Recruiting  
4 activities described in this subparagraph shall  
5 take place no earlier than 60 days before an  
6 employer files an application for a permit to  
7 hire an H–2C nonimmigrant and may be con-  
8 current with the requirements of subsection  
9 (e)(2)(B). A recruiting activity is any of the fol-  
10 lowing:

11 “(i) Advertising such position at a job  
12 fair.

13 “(ii) Advertising such position on the  
14 employer’s external website.

15 “(iii) Advertising such position on a  
16 job search Internet website.

17 “(iv) Advertising such position using a  
18 presentation or posting at a vocational  
19 school, career technical school, community  
20 college, high school, or other educational or  
21 training site.

22 “(v) Posting such position with a  
23 trade association.

24 “(vi) Utilizing a search firm to seek  
25 applicants for such position.

1           “(vii) Advertising such position  
2 through a recruitment program with a  
3 placement office at a vocational school, ca-  
4 reer technical school, community college,  
5 high school, or other educational or train-  
6 ing site.

7           “(viii) Advertising such position with  
8 a local library, journal, or newspaper.

9           “(ix) Seeking a candidate for such po-  
10 sition through an employee referral pro-  
11 gram with incentives.

12           “(x) Advertising such position on  
13 radio or television.

14           “(xi) Advertising such position  
15 through an advertising, posting, or presen-  
16 tation with a newspaper, Internet website,  
17 job fair, or community event targeted to  
18 constituencies designed to increase em-  
19 ployee diversity.

20           “(xii) Advertising such position  
21 through a career day presentation at a  
22 local high school or community organiza-  
23 tion.

24           “(xiii) Providing in-house training for  
25 such position.

1                   “(xiv) Providing third-party training  
2                   for such position.

3                   “(xv) Advertising such position  
4                   through recruitment, educational, or other  
5                   cooperative programs offered by the em-  
6                   ployer and a local economic development  
7                   authority.

8                   “(xvi) Advertising such position twice  
9                   in a Sunday edition in a primary daily cir-  
10                  culation newspaper.

11               “(3) ELIGIBLE OCCUPATION.—

12               “(A) IN GENERAL.—An occupation is an  
13               eligible occupation if the occupation—

14               “(i) is a zone 1 occupation, a zone 2  
15               occupation, or zone 3 occupation; and

16               “(ii) is not an excluded occupation  
17               under subparagraph (B).

18               “(B) OCCUPATIONS REQUIRING COLLEGE  
19               DEGREES.—An occupation that is listed in the  
20               Occupational Outlook Handbook published by  
21               the Bureau of Labor Statistics (or similar suc-  
22               cessor publication) that is classified as requir-  
23               ing an individual with a bachelor’s degree or  
24               higher level of education may not be an eligible  
25               occupation.

1           “(C) PUBLICATION.—The Secretary of  
2           Labor shall publicize the eligible occupations,  
3           designated as zone 1 occupations, zone 2 occu-  
4           pations, or zone 3 occupations, on an ongoing  
5           basis on a publicly available Internet website.

6           “(4) FILLING OF VACANCIES.—If an H-2C  
7           nonimmigrant terminates employment in a reg-  
8           istered position or is terminated from such employ-  
9           ment by the registered employer, such employer may  
10          fill that vacancy by hiring an H-2C nonimmigrant  
11          other than an initial H-2C nonimmigrant.

12          “(5) PERIOD OF APPROVAL.—

13               “(A) IN GENERAL.—Except as provided in  
14               subparagraph (B), a registered position shall be  
15               approved by the Secretary for a period that be-  
16               gins on the date of such approval and ends on  
17               the earliest of—

18                       “(i) the date the employer’s status as  
19                       a registered employer is terminated;

20                       “(ii) 3 years after the date of such ap-  
21                       proval;

22                       “(iii) 240 days after the date of such  
23                       approval if such position has not been  
24                       filled by an H-2C nonimmigrant at any  
25                       point during such time; or

1                   “(iv) upon termination of the reg-  
2                   istered position by the employer.

3                   “(B) RENEWAL.—An approval under sub-  
4                   paragraph (A) shall be renewed for not more  
5                   than 2 additional periods at the request of the  
6                   registered employer as provided in this subpara-  
7                   graph if such registered employer fulfills the re-  
8                   quirements of paragraphs (1)(C) and (2).

9                   “(C) RENEWING EMPLOYER EXEMPTION.—  
10                  Renewals of registered positions by employers  
11                  shall not be counted toward the limits estab-  
12                  lished under paragraph (1)(A) or (2)(D) of sub-  
13                  section (f) or counted for the purposes of a nu-  
14                  merical limitation under subparagraph (B) or  
15                  (C) of subsection (f)(2).

16                  “(D) SECRETARY AUTHORITY TO TERMI-  
17                  NATE REGISTERED POSITION.—The Secretary  
18                  shall terminate a registered position if the Sec-  
19                  retary determines—

20                         “(i) that an employer has purposefully  
21                         allowed a registered position to be used for  
22                         an alien to gain admission to the United  
23                         States as an H-2C nonimmigrant with no  
24                         intention of such alien working for such  
25                         registered employer; or

1 “(ii) that there exists a pattern and  
2 practice of initial H-2C nonimmigrants  
3 failing to report in accordance with the  
4 time period specified in subsection  
5 (c)(6)(A)(i).

6 “(6) FEES.—

7 “(A) REGISTRATION FEE.—

8 “(i) IN GENERAL.—At the time an ap-  
9 plication to register a position is approved  
10 and after each renewal of such position,  
11 each registered employer shall pay a fee in  
12 an amount determined by the Secretary.

13 “(ii) USE OF FEE.—Except as other-  
14 wise provided in this section, a fee col-  
15 lected under clause (i) shall be used to  
16 fund any action to carry out this section,  
17 except for subsection (q) and subsection  
18 (p)(2).

19 “(B) PROHIBITION ON OTHER FEES.—A  
20 registered employer may not be required to pay  
21 an additional fee other than any fees specified  
22 in this Act.

23 “(7) INITIAL REVIEW OF APPLICATIONS.—

24 “(A) IN GENERAL.—For applications filed  
25 and considered under paragraph (1)—

1 “(i) unless the Secretary determines  
2 that the application is incomplete, facially  
3 invalid, or obviously inaccurate, the Sec-  
4 retary, not later than 10 business days  
5 after the date on which such application  
6 was filed, shall either approve or reject the  
7 application and provide the applicant with  
8 notice of such action by means ensuring  
9 same or next day delivery; and

10 “(ii) if the Secretary determines that  
11 the application is incomplete, facially in-  
12 valid, or obviously inaccurate, the Sec-  
13 retary shall—

14 “(I) not later than 10 business  
15 days after the date on which such ap-  
16 plication was filed, notify the appli-  
17 cant of the deficiencies to be corrected  
18 by means ensuring same or next day  
19 delivery; and

20 “(II) not later than 10 business  
21 days after receipt of the corrected ap-  
22 plication, approve or deny the applica-  
23 tion and provide the applicant with  
24 notice of such action by means ensur-  
25 ing same or next day delivery.

1           “(B) PREMIUM PROCESSING.—The Sec-  
2           retary shall establish a process for expedited  
3           processing of applications under this section,  
4           subject to the payment of an additional fee, as  
5           determined by the Secretary.

6           “(C) FEE REDUCTION.—The Secretary  
7           shall reduce the registration fee under para-  
8           graph (6) by 5 percent for each day the applica-  
9           tion is delayed beyond the required review peri-  
10          ods under subparagraph (A).

11          “(8) EXPEDITED REVIEW.—Not later than 1  
12          year after the date of enactment of the Workforce  
13          for an Expanding Economy Act, the Secretary shall  
14          promulgate regulations to provide for an expedited  
15          procedure for the review of a denial of an application  
16          under this section by the Secretary.

17          “(f) NUMERICAL LIMITATION.—

18                 “(1) REGISTERED POSITIONS.—Subject to  
19                 paragraphs (3), (4), and (5), the maximum number  
20                 of registered positions that may be approved by the  
21                 Secretary for a fiscal year is as follows:

22                         “(A) For the first full fiscal year after the  
23                         effective date of the Workforce for an Expand-  
24                         ing Economy Act that aliens are admitted as  
25                         H–2C nonimmigrants, 65,000.

1           “(B) For each fiscal year after that first  
2           fiscal year, the level calculated for that fiscal  
3           year under paragraph (2).

4           “(2) SUBSEQUENT FISCAL YEARS.—

5           “(A) DEFINITION OF CURRENT FISCAL  
6           YEAR AND PRECEDING FISCAL YEAR.—In this  
7           paragraph:

8                   “(i) CURRENT FISCAL YEAR.—The  
9                   term ‘current fiscal year’ means the fiscal  
10                  year for which the calculation of the nu-  
11                  merical limits under this paragraph is  
12                  being performed.

13                  “(ii) PRECEDING FISCAL YEAR.—The  
14                  term ‘preceding fiscal year’ means the fis-  
15                  cal year immediately preceding the current  
16                  fiscal year.

17           “(B) NUMERICAL LIMITATION.—Subject to  
18           subparagraph (D), the maximum number of  
19           registered positions that may be approved by  
20           the Secretary for a fiscal year after the first fis-  
21           cal year referred to in paragraph (1)(A) shall  
22           be equal to—

23                   “(i) 65,000 for the first fiscal year in  
24                   which the program is implemented; and

25                   “(ii) in any subsequent fiscal year—

1           “(I) if the total number of reg-  
2 istered positions allocated for that fis-  
3 cal year are allotted within the first  
4 quarter of that fiscal year, then an  
5 additional 20 percent of the allocated  
6 number shall be made available imme-  
7 diately and the allocated amount for  
8 the following fiscal year shall increase  
9 by 20 percent of the original allocated  
10 amount in the prior fiscal year;

11           “(II) if the total number of reg-  
12 istered positions allocated for that fis-  
13 cal year are allotted within the second  
14 quarter of that fiscal year, then an  
15 additional 15 percent of the allocated  
16 number shall be made available imme-  
17 diately and the allocated amount for  
18 the following fiscal year shall increase  
19 by 15 percent of the original allocated  
20 amount in the prior fiscal year;

21           “(III) if the total number of reg-  
22 istered positions allocated for that fis-  
23 cal year are allotted within the third  
24 quarter of that fiscal year, then an  
25 additional 10 percent of the allocated

1 number shall be made available imme-  
2 diately and the allocated amount for  
3 the following fiscal year shall increase  
4 by 10 percent of the original allocated  
5 amount in the prior fiscal year;

6 “(IV) if the total number of reg-  
7 istered positions allocated for that fis-  
8 cal year are allotted within the last  
9 quarter of that fiscal year, then the  
10 allocated amount for the following fis-  
11 cal year shall increase by 10 percent  
12 of the original allocated amount in the  
13 prior fiscal year; and

14 “(V) with the exception of the  
15 first subsequent fiscal year to the fis-  
16 cal year in which the program is im-  
17 plemented, if fewer registered posi-  
18 tions were allotted the previous fiscal  
19 year than the number of registered  
20 positions allocated for that year and  
21 the reason was not due to processing  
22 delays or delays in promulgating regu-  
23 lations, then the allocated amount for  
24 the following fiscal year shall decrease

1 by 10 percent of the allocated amount  
2 in the prior fiscal year.

3 “(C) MINIMUM AND MAXIMUM LEVELS.—  
4 Notwithstanding the number of registered posi-  
5 tions calculated under subparagraph (B), the  
6 number of registered positions made available  
7 for a fiscal year under this paragraph may not  
8 be less than 45,000 or more than 85,000.

9 “(D) SUBSEQUENT ALLOCATIONS.—  
10 “(i) IN GENERAL.—Subject to the  
11 limitations under subparagraph (C)—

12 “(I) the maximum number of  
13 registered positions available for the  
14 current fiscal year calculated under  
15 subparagraph (B) may be increased  
16 for the 6-month period beginning on  
17 the first day of the current fiscal year  
18 by 5 percent of the maximum number  
19 of registered positions allocated for  
20 that 6-month period under subsection  
21 (h)(1), if all such allocated registered  
22 positions have been approved prior to  
23 the 6th month of that 6-month period;  
24 and

1                   “(II) the maximum number of  
2                   registered positions available for the  
3                   current fiscal year calculated under  
4                   subparagraph (B) may be increased  
5                   for the 6-month period ending on the  
6                   last day of the current fiscal year by  
7                   5 percent of the maximum number of  
8                   registered positions allocated for that  
9                   6-month period under subsection  
10                  (h)(2), if all such allocated registered  
11                  positions have been approved prior to  
12                  the 6th month of that 6-month period.

13                  “(ii) LOTTERY ALLOCATION.—Addi-  
14                  tional registered positions made available  
15                  under clause (i) during a 6-month period  
16                  shall be allocated 3 weeks prior to the last  
17                  day of that 6-month period by lottery  
18                  among registered employers that submit  
19                  applications in accordance with this section  
20                  for such positions.

21                  “(3) SPECIAL ALLOCATIONS OF REGISTERED  
22                  POSITIONS.—

23                  “(A) AUTHORITY TO MAKE AVAILABLE.—  
24                  In addition to the number of registered posi-  
25                  tions made available for a fiscal year under

1 paragraphs (1) and (3), the Secretary shall  
2 make additional registered positions available,  
3 up to the maximum number of registered posi-  
4 tions specified in paragraph (3)(C), for the fis-  
5 cal year for a specific registered employer as  
6 described in this paragraph, if—

7 “(i)(I) the maximum number of reg-  
8 istered positions available under paragraph  
9 (2)(B) have been approved for the fiscal  
10 year and none remain available for alloca-  
11 tion; or

12 “(II) such registered employer is lo-  
13 cated in a full employment area;

14 “(ii) such registered employer has  
15 paid a scarcity recruitment fee; or

16 “(iii) in the case of registered employ-  
17 ers with 50 or fewer employees, such reg-  
18 istered employer has carried out not less  
19 than 7 of the recruiting activities described  
20 in subsection (e)(2)(C) and posts the posi-  
21 tion, including the wage range, location,  
22 and initial date of employment, for not less  
23 than 30 days—

24 “(I) on the Internet website  
25 maintained by the Secretary of Labor

1 for the purpose of such advertising;  
2 and

3 “(II) with the workforce agency  
4 of the State where the position will be  
5 located.

6 “(B) RECRUITMENT.—

7 “(i) LIMITATION FOR INITIAL H-2C  
8 NONIMMIGRANTS.—Except as provided in  
9 clause (ii), an initial H-2C nonimmigrant  
10 may only enter the United States for ini-  
11 tial employment pursuant to a special allo-  
12 cation under this paragraph if the reg-  
13 istered employer has carried out at least 7  
14 of the recruiting activities described in sub-  
15 section (e)(2)(C) or has paid a scarcity re-  
16 cruitment fee.

17 “(ii) EXCEPTION.—A registered em-  
18 ployer may register a position pursuant to  
19 a special allocation under this paragraph  
20 by conducting at least 3 of the recruiting  
21 activities described in subsection (e)(2)(C),  
22 however a position registered pursuant to  
23 this clause may not be filled by an initial  
24 H-2C nonimmigrant.

25 “(iii) ADVERTISING THE POSITION.—

1                   “(I) REQUIREMENT.—Any reg-  
2                   istered employer registering any posi-  
3                   tion under the special allocation au-  
4                   thority shall post the position, includ-  
5                   ing the wage range, location or loca-  
6                   tions, and initial date of employment,  
7                   for not less than 30 days—

8                   “(aa) on the Internet  
9                   website maintained by the Sec-  
10                  retary of Labor for the purpose  
11                  of such advertising; and

12                  “(bb) with the workforce  
13                  agency of the State where the po-  
14                  sition will be located.

15                  “(II) TIMING.—The 30-day peri-  
16                  ods required by items (aa) and (bb) of  
17                  subclause (I) may occur at the same  
18                  time.

19                  “(4) UNFILLED POSITIONS.—If an H-2C non-  
20                  immigrant has not been employed in registered posi-  
21                  tion during any portion of the 240-day period after  
22                  the date of the approval of the position, the reg-  
23                  istered position shall be terminated and added to the  
24                  number of positions made available for the next 6-

1 month allocation period under paragraph (1) or (2)  
2 of subsection (i).

3 “(g) FEDERAL PUBLIC BENEFITS.—

4 “(1) IN GENERAL.—H–2C nonimmigrants—

5 “(A) are not entitled to the premium as-  
6 sistance tax credit authorized under section  
7 36B of the Internal Revenue Code of 1986;

8 “(B) shall be subject to the rules applica-  
9 ble to individuals who are not lawfully present  
10 as set forth in subsection (e) of such section;  
11 and

12 “(C) shall not be allowed any credit under  
13 section 24 or 32 of the Internal Revenue Code  
14 of 1986, and, in the case of a joint return, no  
15 credit shall be allowed under either such section  
16 if both spouses are H–2C nonimmigrants.

17 “(2) EMPLOYER FEE.—For purposes of sub-  
18 sections (a)(2), (b)(1)(B), and (c)(2)(A) of section  
19 4980H of the Internal Revenue Code of 1986, the  
20 H–2C nonimmigrant shall be treated as a full-time  
21 employee certified as having enrolled in a qualified  
22 health plan with respect to which an applicable pre-  
23 mium tax credit or cost-sharing reduction is allowed  
24 or paid with respect to the employee.

25 “(h) ALLOCATION OF REGISTERED POSITIONS.—

1 “(1) IN GENERAL.—

2 “(A) FIRST 6-MONTH PERIOD.—The num-  
3 ber of registered positions available under para-  
4 graph (2) of subsection (f) (except those made  
5 available under subparagraph (E) of such para-  
6 graph) for the 6-month period beginning on the  
7 first day of a year is 50 percent of the max-  
8 imum number of registered positions available  
9 for such year under paragraph (1)(A)(i) or  
10 (2)(B) of subsection (f). Such registered posi-  
11 tions shall be allocated as described in this sub-  
12 section.

13 “(B) SECOND 6-MONTH PERIOD.—The  
14 number of registered positions available under  
15 paragraph (2) of subsection (f) (except those  
16 made available under subparagraph (E) of such  
17 paragraph) for the 6-month period ending on  
18 the last day of a year is the maximum number  
19 of registered positions available for such year  
20 under paragraph (1)(A)(i) or (2)(B) of sub-  
21 section (f) minus the number of registered posi-  
22 tions approved during the 6-month period re-  
23 ferred to in subparagraph (A). Such registered  
24 positions shall be allocated as described in this  
25 subsection.

1 “(2) SMALL BUSINESSES.—

2 “(A) IN GENERAL.—The Secretary shall  
3 reserve not less than one quarter of the number  
4 of registered positions initially allocated for  
5 each 6-month period under subsection (f)(2)(B)  
6 only for a registered employer that is a small  
7 business unless—

8 “(i) any such registered positions are  
9 not approved in the first 4 months of each  
10 6-month period; or

11 “(ii) less than one quarter of the reg-  
12 istered positions initially allocated for the  
13 6-month period remain available after the  
14 first month.

15 “(B) CONDITION MET.—If a condition re-  
16 ferred to in clause (i) or (ii) of subparagraph  
17 (A) is met, any remaining registered positions  
18 shall be available for any registered employer.

19 “(i) PORTABILITY.—

20 “(1) NONIMMIGRANT PORTABILITY.—An H-2C  
21 nonimmigrant who is employed in a registered posi-  
22 tion may—

23 “(A) be employed at any worksite if the  
24 registered employer advertised such location

1 under subsection (e)(2)(B)(i)(I) or  
2 (f)(3)(B)(iii);

3 “(B) terminate such employment at any  
4 time, for any reason; and

5 “(C) seek and accept employment with an-  
6 other registered employer in any other reg-  
7 istered position within the terms and conditions  
8 of the H-2C nonimmigrant visa.

9 “(2) EMPLOYER PORTABILITY.—A registered  
10 employer who employs an H-2C nonimmigrant  
11 may—

12 “(A) employ such nonimmigrant at any  
13 worksite if the registered employer advertised  
14 such location under subsection (e)(2)(B)(i)(I)  
15 or (f)(3)(B)(iii);

16 “(B) terminate such employment at any  
17 time for any reason if such reason is lawful for  
18 United States workers; and

19 “(C) seek and hire another H-2C non-  
20 immigrant in accordance with subsection (e)(4).

21 “(3) AT-WILL EMPLOYMENT.—Notwithstanding  
22 any other provision of law, employment pursuant to  
23 this section shall be considered at-will unless speci-  
24 fied by a contract agreed to by the H-2C non-  
25 immigrant and the registered employer.

1       “(j) PROMOTION.—A registered employer may pro-  
2 mote an H-2C nonimmigrant if the H-2C nonimmigrant  
3 has been employed with that employer for a period of not  
4 less than 12 months. Such a promotion shall not increase  
5 the total number of registered positions available to that  
6 employer.

7       “(k) ASSESSING THE IMPACT OF THE H-2C PRO-  
8 GRAM.—

9               “(1) STUDY.—The Director of the Bureau of  
10 the Census, jointly with the Secretary, the Secretary  
11 of Energy, the Secretary of Health and Human  
12 Services, the Secretary of Housing and Urban De-  
13 velopment, the Secretary of the Interior, the Sec-  
14 retary of Labor, the Secretary of Transportation,  
15 the Secretary of the Treasury, and the Attorney  
16 General, shall undertake a study examining the im-  
17 pacts of this section as well as a possible future per-  
18 manent H-2C program on the infrastructure of, and  
19 quality of life in, the participating metropolitan sta-  
20 tistical areas and counties.

21               “(2) REPORT.—Not later than 3 years after the  
22 date of the enactment of the Workforce for an Ex-  
23 panding Economy Act, the Director of the Bureau  
24 of the Census shall submit to Congress a report on

1 the findings of the study required by paragraph (1),  
2 including the following information:

3 “(A) An estimate of legal and illegal immi-  
4 grants in participating counties and metropoli-  
5 tan statistical areas, the estimated change in  
6 those populations since commencement of the  
7 program, and the estimated change to the num-  
8 ber of United States workers in such counties  
9 and metropolitan statistical areas.

10 “(B) The impact of H-2C nonimmigrants  
11 on employment and wage rates for United  
12 States workers in State labor markets affected  
13 by worker inflows into the full employment  
14 areas where the program operates. The study  
15 should pay particular attention to the industries  
16 and services in which H-2C nonimmigrants are  
17 concentrated. It should take into consideration  
18 equilibrating labor flows in and out of said full  
19 employment areas, and it should consider asso-  
20 ciated costs and benefits, including those re-  
21 lated to public services, infrastructure mainte-  
22 nance, business startups, investment, and over-  
23 all economic activity.

24 “(C) The impact of H-2C nonimmigrants  
25 on home ownership rates, housing prices, and

1 the demand for low-income and subsidized  
2 housing in participating counties and metropoli-  
3 tan statistical areas and the public expenditures  
4 required to maintain current median standards  
5 in these areas and the degree to which those  
6 standards will deteriorate if such expenditures  
7 are not forthcoming.

8 “(D) The impact of H-2C nonimmigrants  
9 on access to quality health care in participating  
10 counties and metropolitan statistical areas, on  
11 the cost of health care and health insurance,  
12 and an estimate of the public expenditures re-  
13 quired to maintain current median standards  
14 and the degree to which those standards will  
15 deteriorate if such expenditures are not forth-  
16 coming.

17 “(E) The impact of H-2C nonimmigrants  
18 on the criminal justice system in participating  
19 counties and metropolitan statistical areas, and  
20 an estimate of associated public costs.

21 “(F) The impact of permitting non-sea-  
22 sonal low skilled workers that currently do not  
23 qualify for H-2C nonimmigrant status to qual-  
24 ify for H-2C nonimmigrant status or of cre-  
25 ating a new program to provide nonimmigrant

status for such non-seasonal low skilled workers, including—

“(i) any impact on United States workers;

“(ii) any impact on employers that are utilizing H-2C nonimmigrants;

“(iii) any impact on employers that do not qualify to employ H-2C nonimmigrants; and

“(iv) any impact on H-2C nonimmigrants.

“(l) H-2C NONIMMIGRANT PROTECTIONS.—

“(1) WAIVER OF RIGHTS PROHIBITED.—

“(A) IN GENERAL.—An H-2C nonimmigrant may not be required to waive any substantive rights or protections under this Act.

“(B) CONSTRUCTION.—Nothing in this paragraph may be construed to affect the interpretation of any other law.

“(2) PROHIBITION ON TREATMENT AS INDEPENDENT CONTRACTORS.—

“(A) IN GENERAL.—Notwithstanding any other provision of law—

“(i) an H-2C nonimmigrant is prohibited from being treated as an independent

1 contractor under any Federal or State law;  
2 and

3 “(ii) no person, including any em-  
4 ployer, labor contractor, or any person who  
5 is affiliated with or contracts with an em-  
6 ployer or labor contractor, may treat an  
7 H–2C nonimmigrant as an independent  
8 contractor.

9 “(B) CONSTRUCTION.—Subparagraph (A)  
10 may not be construed to prevent registered em-  
11 ployers who operate as independent contractors  
12 from employing H–2C nonimmigrants.

13 “(3) PAYMENT OF FEES.—A fee related to the  
14 hiring of an H–2C nonimmigrant required to be paid  
15 by an employer under this Act shall be paid by the  
16 employer and may not be deducted from the wages  
17 or other compensation paid to an H–2C non-  
18 immigrant.

19 “(4) TAX RESPONSIBILITIES.—An employer  
20 shall comply with all applicable Federal, State, and  
21 local tax laws with respect to each H–2C non-  
22 immigrant employed by the employer.

23 “(5) WHISTLEBLOWER PROTECTION.—It shall  
24 be unlawful for an employer of an H–2C non-  
25 immigrant to intimidate, threaten, restrain, coerce,

1       retaliate, discharge, or in any other manner discrimi-  
2       nate against an employee or former employee be-  
3       cause the employee or former employee—

4               “(A) discloses information to the employer  
5       or any other person that the employee or  
6       former employee reasonably believes that the  
7       employer or other person has committed a vio-  
8       lation of this section; or

9               “(B) cooperates or seeks to cooperate in an  
10       investigation or other proceeding concerning  
11       compliance with the requirements of this sec-  
12       tion.

13       “(m) ENFORCEMENT.—

14               “(1) COMPLAINT PROCESS.—The Secretary  
15       shall, by rule, establish a process for the receipt, in-  
16       vestigation, and disposition of complaints by an ag-  
17       grieved employee, applicant, or H-2C nonimmigrant  
18       respecting a violation of this section.

19               “(2) FILING DEADLINE.—No investigation or  
20       hearing shall be conducted on a complaint con-  
21       cerning a violation under this section unless the  
22       complaint was filed not later than 3 months after  
23       the date of such violation.

24               “(3) REASONABLE BASIS.—The Secretary shall  
25       conduct an investigation under this subsection if

1       there is reasonable basis to believe that a violation  
2       of this section has occurred. The process established  
3       under this subsection shall provide that, not later  
4       than 30 days after a complaint is filed, the Sec-  
5       retary shall determine if there is reasonable cause to  
6       find such a violation.

7               “(4) NOTICE AND HEARING.—

8               “(A) IN GENERAL.—Not later than 30  
9       days after the Secretary finds a reasonable  
10      basis under paragraph (3), the Secretary shall  
11      issue a notice to the interested parties and offer  
12      an opportunity for a hearing on the complaint,  
13      in accordance with section 556 of title 5,  
14      United States Code.

15              “(B) HEARING DEADLINE.—Not later than  
16      60 days after the date of a hearing under this  
17      paragraph, the Secretary shall make a finding  
18      on the matter.

19              “(5) ATTORNEY’S FEES.—

20              “(A) AWARD.—A complainant who prevails  
21      in an action under this subsection with respect  
22      to a claim related to wages or compensation for  
23      employment shall be entitled to an award of  
24      reasonable attorney’s fees and costs.

1           “(B) FRIVOLOUS COMPLAINTS.—A com-  
 2           plainant who files a frivolous complaint under  
 3           this subsection shall be liable for the reasonable  
 4           attorney’s fees and costs of the person named  
 5           in the complaint.

6           “(6) POWER OF THE SECRETARY.—The Sec-  
 7           retary may bring an action in any court of com-  
 8           petent jurisdiction—

9                   “(A) to seek remedial action, including in-  
 10                  junctive relief;

11                  “(B) to recover the damages described in  
 12                  subsection (n)(2); or

13                  “(C) to ensure compliance with terms and  
 14                  conditions described in subsection (l)(5).

15           “(7) OTHER RIGHTS OF EMPLOYEES.—The  
 16           rights and remedies provided to H-2C non-  
 17           immigrants under this section are in addition to any  
 18           other contractual or statutory rights and remedies of  
 19           the workers, and are not intended to alter or affect  
 20           such rights and remedies.

21           “(8) COMPLIANCE.—De minimis variations  
 22           from the registered position’s duties described in the  
 23           application and related materials or from the posi-  
 24           tion’s general description provided in the attestation  
 25           or the advertising requirements pursuant to sub-

1 section (e), including de minimis work or work inci-  
2 dental to the job, shall be permitted and not be  
3 cause for complaint, referral, investigation, audit, or  
4 penalties.

5 “(n) PENALTIES.—

6 “(1) IN GENERAL.—If, after notice and an op-  
7 portunity for a hearing, the Secretary finds a viola-  
8 tion of this section, the Secretary may impose ad-  
9 ministrative remedies and penalties, including re-  
10 quiring the payment of—

11 “(A) back wages; and

12 “(B) benefits.

13 “(2) CIVIL PENALTIES.—The Secretary may  
14 bring an action for a civil monetary penalty—

15 “(A) for a violation of this section—

16 “(i) in an amount not more than  
17 \$3,000 for the first violation and \$4,000  
18 per violation for each subsequent violation;  
19 or

20 “(ii) if the violation was committed  
21 knowingly, a fine in an amount not more  
22 than \$5,000 per violation;

23 “(B) for intentionally failing to comply  
24 with the protections of United States workers  
25 required under this section or with the protec-

1           tion of whistleblowers under subsection (l)(5), a  
2           fine in an amount not more than \$25,000 per  
3           violation; or

4           “(C) for knowingly failing to materially  
5           comply with the terms of other representations  
6           made in petitions, applications, certifications, or  
7           attestations under this section—

8           “(i) a fine in an amount not more  
9           than \$4,000 per violation; and

10          “(ii) upon the occasion of a third of-  
11          fense of failure to comply with representa-  
12          tions, a fine in an amount not to exceed  
13          \$5,000 per violation and designation as an  
14          ineligible employer, pursuant to subsection  
15          (d)(3)(B)(i).

16          “(3) CRIMINAL PENALTY.—Any H-2C non-  
17          immigrant who intentionally fails to report to a reg-  
18          istered position in the time period specified in sub-  
19          section (c)(6)(A)(i) or a registered employer who  
20          knowingly facilitates an H-2C nonimmigrant to in-  
21          tentionally fail to report in the time period specified  
22          above shall—

23          “(A) for a first offense, be fined in accord-  
24          ance with title 18, United States Code, in an

1 amount up to \$5,000, or imprisoned for not  
2 more than 90 days; and

3 “(B) for each subsequent offense, be fined  
4 in accordance with title 18, United States Code,  
5 in an amount up to \$10,000, or imprisoned for  
6 not more than 1 year, or both.

7 “(o) MONITORING.—

8 “(1) ELECTRONIC MONITORING SYSTEM.—

9 “(A) REQUIREMENT FOR SYSTEM.—The  
10 Secretary, through U.S. Citizenship and Immi-  
11 gration Services, shall implement an electronic  
12 monitoring system to monitor the presence and  
13 employment of H-2C nonimmigrants, including  
14 a requirement that registered employers update  
15 the system when H-2C nonimmigrants start  
16 and end employment in registered positions.  
17 The system shall be operational not later than  
18 6 months following the date of the publication  
19 of the final regulations to carry out this section.

20 “(B) RELATIONSHIP TO SEVIS.—Such sys-  
21 tem shall be modeled on the Student and Ex-  
22 change Visitor Information System (SEVIS)  
23 and SEVIS II tracking system of U.S. Immi-  
24 gration and Customs Enforcement.

1           “(C) INTERACTION WITH REGISTRY.—

2           Such system shall interact with the registry re-  
3           ferred to in subsection (e)(1)(E) to ensure that  
4           the Secretary designates and updates approved  
5           registered positions as being filled or unfilled.

6           “(D) EMPLOYER.—The employer shall no-  
7           tify such system after offering employment to  
8           an H-2C nonimmigrant.

9           “(E) ACCESS FOR SECRETARY OF  
10          STATE.—The Secretary of State shall have ac-  
11          cess to such system to verify an alien’s offer of  
12          employment with a registered employer prior to  
13          admission as an H-2C nonimmigrant.

14          “(2) MANDATORY E-VERIFY USE.—No reg-  
15          istered employer may employ an H-2C non-  
16          immigrant without participating in the E-Verify  
17          Program described in section 403(a) of the Illegal  
18          Immigration Reform and Immigrant Responsibility  
19          Act of 1996 (8 U.S.C. 1324a note) or an employ-  
20          ment eligibility verification system patterned on such  
21          Program’s verification system. Any such system—

22                 “(A) shall respond to inquiries made by  
23                 registered employers by providing an employee’s  
24                 employment eligibility; and

1 “(B) shall not be used, subject to a civil  
2 monetary penalty determined by the Secretary  
3 by rule—

4 “(i) by any department, bureau, or  
5 other agency of the United States Govern-  
6 ment, any other public or private entity, or  
7 any individual to monitor the movement of  
8 United States workers; or

9 “(ii) for inquiries related to a United  
10 States worker other than—

11 “(I) to provide such worker’s eli-  
12 gibility for employment in the United  
13 States; or

14 “(II) to ensure secure, appro-  
15 priate, and nondiscriminatory use of  
16 such system, notwithstanding any  
17 other provision of law.

18 “(p) REQUIREMENT TO COMPLY WITH BIOMETRIC  
19 ENTRY AND EXIT SYSTEM.—Any alien entering the  
20 United States or present in the United States on a visa  
21 issued under section 101(a)(15)(H)(ii)(c) shall comply  
22 with the requirements of the entry and exit data system  
23 required by section 7208 of the Intelligence Reform and  
24 Terrorism Prevention Act of 2004 (8 U.S.C. 1365b), in-

cluding the biometric identification requirements, after such requirements are implemented.

“(q) RULEMAKING.—Not later than 1 year after the date of the enactment of the Workforce for an Expanding Economy Act, the Secretary shall, by rule, provide for a means by which any renewal, attestation, or application filed pursuant to this section may be made electronically.”.

(2) TABLE OF CONTENTS AMENDMENT.—The table of contents in the first section of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by adding after the item relating to section 219 the following:

“Sec. 219A. Admission of H-2C nonimmigrant workers.”.

(b) INTENTION TO ABANDON FOREIGN RESIDENCE.—Section 214(h) of the Immigration and Nationality Act (8 U.S.C. 1184(h)) is amended by inserting “(H)(ii)(d),” after “(H)(i)(b) or (c),”.

(c) PROHIBITION ON FAMILY MEMBERS.—Section 101(a)(15)(H) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)) is amended by striking “him;” at the end and inserting “him, except that the Secretary of State shall not issue a visa under clause (ii)(d) to a spouse or child seeking to enter into the United States under such clause unless such spouse has received an offer of employ-

1 ment by a registered employer as defined in section  
2 219A;”.

○