(Mrs. MCCASKILL) was added as a cosponsor of amendment No. 1096 intended to be proposed to H.R. 627, a bill to amend the Truth in Lending Act to establish fair and transparent practices relating to the extension of credit under an open end consumer credit plan, and for other purposes.

AMENDMENT NO. 1099

At the request of Mrs. FEINSTEIN, the names of the Senator from New Jersey (Mr. MENENDEZ) and the Senator from Wisconsin (Mr. KOHL) were added as cosponsors of amendment No. 1099 intended to be proposed to H.R. 627, a bill to amend the Truth in Lending Act to establish fair and transparent practices relating to the extension of credit under an open end consumer credit plan, and for other purposes.

AMENDMENT NO. 1106

At the request of Mrs. MURRAY, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of amendment No. 1106 intended to be proposed to H.R. 627, a bill to amend the Truth in Lending Act to establish fair and transparent practices relating to the extension of credit under an open end consumer credit plan, and for other purposes.

AMENDMENT NO. 1107

At the request of Ms. COLLINS, the names of the Senator from Arizona (Mr. KYL) and the Senator from Arkansas (Mr. PRYOR) were added as cosponsors of amendment No. 1107 proposed to H.R. 627, a bill to amend the Truth in Lending Act to establish fair and transparent practices relating to the extension of credit under an open end consumer credit plan, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By 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):

S. 1038. A bill to improve agricultural job opportunities, benefits, and security for aliens in the United States and for other purposes; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, I believe it is fair to say that there is a farm emergency in this country. Some of it is caused by drought, including out West where California has had, for 3 years, a very serious drought. But most of it is caused by the absence of farm labor—labor to help plant, prune, and harvest.

Many of us have listened to farm bureaus throughout the country, spoken with farmers who are losing land, fallowing land, and leasing land abroad. I think the time has come to do something about it.

Today, with 16 cosponsors, I am introducing an agricultural worker bill known as AgJOBS. This bill is cosponsored by Senators LEAHY, SCHUMER, KENNEDY, KOHL, BOXER, DODD, LIEBERMAN, BINGAMAN, FEINGOLD, MURRAY, KERRY, BILL NELSON, KAUFMAN, CASEY, Cantwell, and Levin. It would provide farmers with the stable, legal workforce they deserve by reforming the broken H–2A seasonal worker program and offering a pathway to citizenship for hard-working, law-abiding immigrants already employed or who have been employed on American farms.

This bill is supported by more than 200 agricultural coalition and immigration reform groups throughout the Nation.

Since I last came to the floor to talk about a solution to this crisis, it has only grown. The bill is necessary, and I believe Congress must act now to save America's agriculture industry.

Today across the United States, there are not enough agricultural workers to do the pruning, picking, packing, and harvesting of our country's crops. With an inadequate supply of workers, farmers from Maine to California, from Washington State to Georgia, have watched their produce rot in fields, and have been forced to fallow close to half a million acres of land, and billions of dollars are being drained out of our economy as a result.

Farmers are downsizing their operations. Many are buying or leasing land in Mexico. Others are going out of business. Quite clearly, the labor situation facing the American farmer is an emergency.

So some ask: Why don't American farmers hire Americans to do their work? The unemployment rate is high. People are looking for jobs. So why don't they hire Americans?

The fact is, they have tried and tried and tried. But there are very few Americans who are willing to take the job in a hot field, doing backbreaking labor, in temperatures that often exceed 100 degrees. That is a fact.

The other fact is that immigrant workers are the backbone of America's agricultural industry—a huge industry and a proud industry, which is now dying due to the lack of steady labor supply.

Farmers are departing the country in order to stay in business, leaving devastated farm communities behind. In California, in the Great Central Valley, farmers who once tended ''America's breadbasket'' are now standing in bread lines, with unemployment rates in their communities that are as high as 45 percent. Topsoil from fallowed land turning into dust now blows up in sandstorms and has caused periodic shutdowns of Interstate 5, the State's main north-south freeway.

As a result of Congress's inaction, between 2007 and 2008—1 year—1.56 million acres of farmland, once rich with crops, are now dormant. That is 1.5 million acres dormant in a year. In California alone, in the past 5 years, that amount—1.5 million acres—of production has been lost.

American farmers have moved at least 84,155 acres of production to Mexico. This is what we know of: Over 84,000 acres of farm production now in Mexico. This has resulted in the growth of farm labor jobs in Mexico; namely, 22,285 jobs to cultivate crops that vary in diversity from avocados to green onions to watermelons.

This shortage of workers is devastating American agriculture, and we need to wake up and understand what is happening. In the next 1 to 2 years, the United States stands to lose $5 billion to $9 billion in agricultural sales to foreign competition if Congress does not act to provide a workforce for the American farming community.

California has already lost almost $1 billion from 2005 to 2006. It is estimated we will lose between $1.7 and $3.1 billion in the next year. The California farm industry—the largest in America—was almost a $40 billion-a-year industry. It is deteriorating every year.

We are witnessing nothing less than the slow vanishing of American agriculture.

Ayron Moiola, the executive director of the Imperial Valley Vegetable Growers Association, predicts that California's asparagus crops will disappear completely in the Imperial Valley if their demand for specialized asparagus planters and harvesters is not met.

Colorado farmers have estimated their State's fruit and vegetable industry will disappear completely in the next 5 to 10 years without some program to provide a sustainable workforce.

As of February 2008, 35 to 45 New Hampshire farm operations have been at risk of going out of business or being forced to severely cut back operations due to labor shortages.

This reduction in farm production would result in an estimated loss of 22,000 acres of farmland and $58 million of agricultural production for New Hampshire alone. In addition, over 600 full-time farm jobs and 4,300 jobs in agriculture-related businesses could be in jeopardy.

I say to the Presiding Officer, I hear this from your apple growers in New York, and I hear it from the dairy industry throughout America.

The situation is dire from coast to coast, and urgent action is required to halt these trends. I do not think we can afford to lose our entire agricultural industry because this has always been a central and sustainable part of our national economy. Our food is clean; there are strong pesticide controls in this country. I think most of us believe we would much prefer to buy American produce than foreign produce. Yet we may not have that opportunity.

When farmers suffer, there is a ripple effect felt throughout the economy: in farm equipment manufacturing, packaging, processing, transportation, marketing, lending, and insurance. Jobs are being lost, and our economy is going to decline further as a result. Low-producing farms mean a lowered

local tax base—as farms no longer generate income and create jobs.

As can be seen from this graphic I have in the Chamber, for every job lost on a farm and ranch, the country loses approximately three jobs in related sectors that are supported by having the agricultural community in this country.

I have received a letter from the Port of Oakland, which depends heavily on agribusiness for its survival. According to the port, last year more than 750 metric tons of agricultural products, worth approximately $2.6 billion, were shipped through the port, representing 40 percent of the port's exports.

As these farms disappear, port jobs, basic jobs for people, also disappear. The central issue is not immigration; it is the bottom line of the American economy. I think Congress should be doing everything we can to prevent U.S. farms from closing down.

There is a solution, and it is this bill. This bill is well known, and this bill has been well supported in the past with a majority of votes. It is bipartisan. We can take it up and pass it today, and that would immediately help American farmers bolster the U.S. economy at a critical time.

The AgJOBS bill has two parts. The first meets the immediate needs of our farmers by creating a program that would provide an opportunity for experienced agricultural workers to earn the right to apply for legal status in this country.

The second part meets the long-term needs of farmers by reforming the H–2A program—that is the temporary worker program for the farm industry—so that if new workers are needed, farmers and growers have a legal path to bring workers in to harvest their crops.

The first step of the program requires that undocumented agricultural workers apply for a blue card if they can demonstrate they have worked in American agriculture in the United States for at least 150 workdays within the previous 2 years before December 31, 2008.

The second step requires that a blue cardholder work in the U.S. agricultural industry for an additional 150 workdays per year for at least 3 years, or 100 workdays per year for 5 years.

At the end of this time, a worker can obtain a green card and can continue to work in agriculture.

Workers participating in the program will be required to pay a fine of $500, show that they are current on their taxes, and that they have not been convicted of any crime that involves bodily injury, the threat of bodily injury or harm to property.

Employment is verified through employer-issued itemized statements, pay stubs, W–2 forms, employer letters, contracts or agreements, employer-sponsored health care, timecards or payment of taxes.

At the end of 5 years, those workers will be able to gain citizenship in this country.

The blue card visa program will be capped at 1.35 million blue cards over 5 years and sunsets after 5 years.

All blue cards will have encrypted, biometric identifiers, and contain other anticounterfeiting protections. This provides, in effect, a biometric identifier for 1.35 million people who are undocumented but in the country today.

AgJOBS would also streamline the current guest worker program, known as the H–2A program, which is currently unwieldy and ineffective.

Among other things, the bill will shorten the labor certification process, which now often takes 60 days, reducing the approval process to between 48 to 72 hours.

Advertising and positive recruitment for U.S. workers in the local labor market is required by filing a job notification with the local office of the State employment security agency.

Petitions for admission of H–2A workers must be processed and the consulate or port of entry notified within 7 days of receipt.

The adverse effect wage rate would be frozen for 3 years, to be gradually replaced with a prevailing wage standard.

H–2A visas will be secure and counterfeit resistant.

The reforms to the H–2A agricultural worker program are especially important to meet the needs of year-round agricultural industries, such as dairy, which are not covered by the seasonal program.

Many say that dairy should use the seasonal H–2A program—but it does not work for that industry. They need workers 24/7, 365 days a year.

The National Milk Producers recently shared with me an economic study done by researchers at Texas A&M that will be released next week on the economic impacts of immigration on U.S. dairy farms. Over 5,000 dairy farms, surveyed nationally, with responses from 47 States, are in this study. Of these, 50 percent use immigrant labor. Immigrant labor now accounts for 62 percent of milk production in 47 States.

As can be seen from this chart I have in the Chamber, eliminating immigrant labor would reduce the U.S. dairy herd by 1.34 million, milk production by 29.5 billion pounds, and the number of farms by 4,532. Retail milk prices would increase by an estimated 61 percent.

This will be the result if we do not recognize what is a basic reality that farm and dairy communities depend on undocumented workers, who are the only workers who will do this kind of work.

This is hard for people to believe. However, a while back, we posted notices in the welfare departments of all 58 california counties that said: Agricultural worker jobs available. Please sign up here.

However, do you know how many workers came from this? Not a single one.

When I drive down the highway, down to Monterey, along the coast, and I go through the great Salinas Valley, I watch the row crops either being planted or sprayed or harvested. You see the workers in the field stooped over, hour after hour, in the sun, when it is 100 degrees or more in temperature, and you can see the specific nature of this type of work.

People think of this work as unskilled labor, but it is not. It is a learned skill. These workers have to move fast and be trained to use the farm equipment. They know how to work skillfully with their hands and move row after row, after row, down the field.

Last summer, a young pregnant woman working in the field collapsed from heat exhaustion and was taken to the hospital, where she died. Working in the field is back breaking, difficult work, and there are very few Americans who are willing to do this work.

The backbone of the agriculture industry in my State is the undocumented workforce and it is time to recognize that reality. I can't have—and Mr. President, you can't have—farmers standing in bread lines because they can't get the labor to plant or harvest their crops. The fields across America are increasingly being fallowed and this does not make sense.

Congress must stand tall and acknowledge that the basic workforce in the American agricultural community is undocumented farm labor. Undocumented workers take these jobs because they are professional and proud of the work that they do. I believe that is desirable.

This bill has previously passed with more than a majority in comprehensive immigration reform. It recognizes that the American farm industry is in crisis; that the industry is deteriorating; and that America is losing its produce. This bill stands up for American farmers and provides them with the workforce they deserve—American farmers like Toni Scully, a pear farmer from Lake County, CA.

Toni Scully experienced a devastating harvest that left much of her pear crop rotting on the ground because she could not find workers in time for the harvest.

Early last year, I heard from Dewey Zabka, an onion and potato farmer in northern Colorado who, for the first time in his company's 50-year history, had to downsize 25 percent of his production.

In the State of New York, 800 farms and $700 million in sales may be forced to go out of business or scale back their farm operations if labor shortages continue. For the first time since 1991, Jim Bittner, the owner of Singer Farms in Appleton, NY, razed 10 percent of his sweet cherry and peach orchards last year because he could not get farm labor.

For the 2009 season, California growers who anticipate a shortage of reliable labor are deciding to move away

from planting permanent tree crops, including peach, plumb, nectarine, almond, pomegranate, and olive trees. Many of these farmers are supplementing these crops with pistachios, which can be harvested mechanically.

In June 2008, The Oregonian reported that Oregon's pear and onion industries are at risk of not being able to sustain production without consistent labor.

In Yuma County, AZ, where agricultural workers earn between $10 and $19 per hour, U.S. lettuce producers were unable to find enough laborers to harvest the spring crop of lettuce for 2008.

The truth is Americans will not do the work that sustains agriculture. It is hard, stooped labor requiring long and unpredictable hours. As a result, the labor shortage will be persistent. It is not going to get better next year, unless we have the courage and the guts to stand up for a major industry in America which deserves a steady labor base, particularly during these difficult economic times. And there are examples all over the nation that Americans simply won't fill these jobs.

H. Lee Showalter, a member of the Pennsylvania Apple Marketing Board, points to the example of the largest Macintosh apple producer in New York, who is required to advertise for local labor before joining a migrant labor program. Of the 300 workers he needed to fill, only 1 American worker applied.

Willoway Nurseries, Inc. has been in business in northern Ohio since 1954. Willoway Nurseries has attempted to recruit local workers, though to no avail. General nursery workers on this farm earn a starting wage of $9.93 per hour. Yet it has been impossible for the nursery to recruit American help.

The Washington Farm Bureau reported that nearly 500 tons of apples were not picked in Washington State's apple harvests last year due to picker shortages. As Valoria H. Loveland, director of the Washington State Department of Agriculture, stated in a letter to me:

> The reality of our local labor market [is that] local people who want to work are already employed, or are not interested in doing the seasonal and physically demanding work that characterizes our specialty crop production.

Experts estimate that nearly 80 percent of Florida's approximately 150,000 agricultural workers are undocumented immigrants. This is a $1.6 billion a year business that produces up to 90 percent of the fresh domestic tomatoes that Americans eat between the months of December and May.

Many farmers have been in business for generations. Many farm the land that their parents and their grandparents farmed before them. California farms produce approximately 350 different crops: pears, walnuts, raisins, lettuce, onions, strawberries, and apricots, just to name a few. Without reform, we will continue to see the deterioration of American farms nationwide. This includes the possibility that certain vegetables and fruits will no longer grow in our Nation, where we have stricter rules and regulations for safety.

Once the trees are gone, they are replaced by crops that do not require manual labor. As a result, our pears, our apples, our oranges will be increasingly coming from foreign sources. This is not what America wants, but it is what Congress's inaction compels.

The trend is quite clear. If there is not a means to grow and harvest our produce in this country, we will import produce from China, from Mexico, and from other countries that have sufficient labor. If our farmers want to stay in business, they will continue to go to Mexico and lease land and grow crops there. We are not doing our duty if we let this continue.

Steve Scaroni has been in the California lettuce and broccoli industry for over three decades. In recent years he has moved 2,000 acres and 500 jobs from his $50 million operation in Heber, CA, to Guanajuato, Mexico. Steve wants his business to survive, and he can't hire or plant. If he can't plant, he can't pick. If he can't pick, he can't pack, and he won't be able to deliver a harvest. As a result, today Steve exports to the United States about 2 million pounds of lettuce a week. He has spent thousands of dollars to start up the new farms and to train workers to ensure that his crops meet U.S. food safety standards.

In Wilcox, AZ, Eurofresh Farms has transferred tomato crops and 150 workers to Sonora, Mexico, where tomatoes are grown and shipped to the U.S. on a daily basis.

Reforming the system means that we not only protect the agricultural industry, but also the health of this Nation. This past July, the Food and Drug Administration confirmed that a variety of jalapeno and serrano peppers grown in Mexico caused an outbreak of salmonella in the United States. This outbreak was first thought to have originated in tomatoes.

The repercussions of the outbreak were felt on farms from coast to coast. In Georgia alone, it is estimated that the tomato scare cost local farmers about $14 million in total production value. Nationwide, the tomato industry lost at least $100 million due to lower prices and reduced demand. At the same time, over the last 15 years, imports of tomatoes have increased 179 percent. Right now, almost 40 percent of the tomatoes that we eat are grown in a foreign country. Yet tomato farmers are being forced to close shop.

The agriculture industry has been seeking a resolution for the labor crisis for the past 10 years. Mr. President, I have received over 50 letters of support for AgJOBS.

I am committed to working with the Obama administration, and Senators LEAHY, SCHUMER, and KENNEDY, as well as the House champions, Representatives BERMAN and PUTNAM, and others, to support U.S. farmers and the workers who provide the skilled labor needed to plant, tend and harvest our crops.

The time is now, and the solution is before us. I urge my colleagues to join me in support of AgJOBS and help restore America's farms before it is too late.

Mr. President, I ask unanimous consent that the text of the bill, letters of support, and list of supporters be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1038

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

SECTION 1. SHORT TITLE, TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Agricultural Job Opportunities, Benefits, and Security Act of 2009'' or the ''AgJOBS Act of 2009''.

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

SEC. 2. DEFINITIONS.

In this Act:

(1) AGRICULTURAL EMPLOYMENT.—The term ''agricultural employment'' means any service or activity that is considered to be agricultural under section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)) or agricultural labor under section 3121(g) of the Internal Revenue Code of 1986 or the performance of agricultural labor or services described in section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)).

(2) BLUE CARD STATUS.—The term ''blue card status'' means the status of an alien who has been lawfully admitted into the United States for temporary residence under section 101(a).

(3) DEPARTMENT.—The term ''Department'' means the Department of Homeland Security.

(4) EMPLOYER.—The term ''employer'' means any person or entity, including any farm labor contractor and any agricultural association, that employs workers in agricultural employment.

(5) SECRETARY.—Except as otherwise provided, the term ''Secretary'' means the Secretary of Homeland Security.

(6) WORK DAY.—The term ''work day'' means any day in which the individual is employed 5.75 or more hours in agricultural employment.

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

Subtitle A—Blue Card Status

SEC. 101. REQUIREMENTS FOR BLUE CARD STATUS.

(a) REQUIREMENT TO GRANT BLUE CARD STATUS.—Notwithstanding any other provision of law, the Secretary shall, pursuant to the requirements of this section, grant blue card status to an alien who qualifies under this section if the Secretary determines that the alien—

(1) has performed agricultural employment in the United States for at least 863 hours or 150 work days during the 24-month period ending on December 31, 2008;

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

(3) is otherwise admissible to the United States under section 212 of the Immigration and Nationality Act (8 U.S.C. 1182), except as otherwise provided under section 105(b); and

(4) has not been convicted of any felony or a misdemeanor, an element of which involves bodily injury, threat of serious bodily injury, or harm to property in excess of $500.

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

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

(d) TERMINATION OF BLUE CARD STATUS.—

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

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

(A) the Secretary finds, by a preponderance of the evidence, that the adjustment to blue card status was the result of fraud or willful misrepresentation, as described in section 212(a)(6)(C)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(C)(i)); or

(B) the alien—

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

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

(iii) is convicted of an offense, an element of which involves bodily injury, threat of serious bodily injury, or harm to property in excess of $500; or

(iv) fails to perform the agricultural employment required under paragraph (1)(A) of section 103(a) unless the alien was unable to work in agricultural employment due to the extraordinary circumstances described in paragraph (3) of such section.

(e) RECORD OF EMPLOYMENT.—

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

(A) provide a written record of employment to the alien; and

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

(2) CIVIL PENALTIES.—

(A) IN GENERAL.—If the Secretary finds, after notice and opportunity for a hearing, that an employer of an alien granted blue card status has failed to provide the record of employment required under paragraph (1) or has provided a false statement of material fact in such a record, the employer shall be subject to a civil penalty in an amount not to exceed $1,000 per violation.

(B) LIMITATION.—The penalty applicable under subparagraph (A) for failure to provide records shall not apply unless the alien has provided the employer with evidence of employment authorization granted under this section.

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

(f) REQUIRED FEATURES OF IDENTITY CARD.—The Secretary shall provide each alien granted blue card status, and the spouse and any child of each such alien residing 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;

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

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

(g) FINE.—An alien granted blue card status shall 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.

SEC. 102. TREATMENT OF ALIENS GRANTED BLUE CARD 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 child of the alien granted derivative status) shall not be eligible, by reason of such status, for any form of assistance or benefit described in section 403(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613(a)) until 5 years after the date on which the alien is granted an adjustment of status under section 103.

SEC. 103. ADJUSTMENT TO PERMANENT RESIDENCE.

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

(1) QUALIFYING EMPLOYMENT.—

(A) IN GENERAL.—Subject to subparagraph (B), the alien has performed at least—

(i) 5 years of agricultural employment in the United States for at least 100 work days per year, during the 5-year period beginning on the date of the enactment of this Act; or

(ii) 3 years of agricultural employment in the United States for at least 150 work days per year, during the 3-year period beginning on the date of the enactment of this Act.

(B) 4-YEAR PERIOD OF EMPLOYMENT.—An alien shall be considered to meet the requirements of subparagraph (A) if the alien has performed 4 years of agricultural employment in the United States for at least 150 work days during 3 years of those 4 years and at least 100 work days during the remaining year, during the 4-year period beginning on the date of the enactment of this Act.

(2) PROOF.—An alien may demonstrate compliance with the requirement under paragraph (1) by submitting—

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

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

(3) EXTRAORDINARY CIRCUMSTANCES.—

(A) IN GENERAL.—In determining whether an alien has met the requirement of paragraph (1)(A), the Secretary may credit the alien with not more than 12 additional months of agricultural employment in the United States to meet such requirement if the alien was unable to work in agricultural employment due to—

(i) pregnancy, injury, or disease, if the alien can establish such pregnancy, disabling injury, or disease through medical records;

(ii) illness, disease, or other special needs of a minor child, if the alien can establish such illness, disease, or special needs through medical records;

(iii) severe weather conditions that prevented the alien from engaging in agricultural employment for a significant period of time; or

(iv) termination from agricultural employment, if the Secretary finds that the termination was without just cause and that the alien was unable to find alternative agricultural employment after a reasonable job search.

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

(i) be conclusive, binding, or admissible in a separate or subsequent judicial or administrative action or proceeding between the alien and a current or prior employer of the alien or any other party; or

(ii) subject the alien's employer to the payment of attorney fees incurred by the alien in seeking to obtain a finding under subparagraph (A)(iv).

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

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

(b) GROUNDS FOR DENIAL OF ADJUSTMENT OF STATUS.—The Secretary shall deny an alien granted blue card status an adjustment of status under this section if—

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

(2) the alien—

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

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

(C) is convicted of an offense, an element of which involves bodily injury, threat of serious bodily injury, or harm to property in excess of $500; or

(D) failed to perform the agricultural employment required under paragraph (1)(A) of subsection (a) unless the alien was unable to work in agricultural employment due to the extraordinary circumstances described in paragraph (3) of such subsection.

(c) GROUNDS FOR REMOVAL.—Any alien granted blue card status who does not apply for adjustment of status under this section before the expiration of the application period described in subsection (a)(4) or who fails to meet the other requirements of subsection (a) by the end of the application period, is deportable and may be removed under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a).

(d) PAYMENT OF TAXES.—

(1) IN GENERAL.—Not later than the date on which an alien's status is adjusted under this section, the alien shall establish that the alien does not owe any applicable Federal tax liability by establishing that—

(A) no such tax liability exists;

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

(C) the alien has entered into an agreement for payment of all outstanding liabilities with the Internal Revenue Service.

(2) APPLICABLE FEDERAL TAX LIABILITY.—In paragraph (1) the term ''applicable Federal tax liability'' means liability for Federal taxes, including penalties and interest, owed for any year during the period of employment required under subsection (a)(1) for which the statutory period for assessment of any deficiency for such taxes has not expired.

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

(e) SPOUSES AND MINOR CHILDREN.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary shall confer the status of lawful permanent resident on the spouse and minor child of an alien granted any adjustment of status under subsection (a), including any individual who was a minor child on the date such alien was granted blue card status, if the spouse or minor child applies for such status, or if the principal alien includes the spouse or minor child in an application for adjustment of status to that of a lawful permanent resident.

(2) TREATMENT OF SPOUSES AND MINOR CHILDREN.—

(A) GRANTING OF STATUS AND REMOVAL.—The Secretary shall grant derivative status to the alien spouse and any minor child residing in the United States of an alien granted blue card status and shall not remove such derivative spouse or child during the period that the alien granted blue card status maintains such status, except as provided in paragraph (3). A grant of derivative status to such a spouse or child under this subparagraph shall not decrease the number of aliens who may receive blue card status under subsection (h) of section 101.

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

(C) EMPLOYMENT.—The derivative spouse of an alien granted blue card status may apply to the Secretary for a work permit to authorize such spouse to engage in any lawful employment in the United States while such alien maintains blue card status.

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

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

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

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

SEC. 104. APPLICATIONS.

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

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

(A) to the Secretary if the applicant is represented by an attorney or a nonprofit religious, charitable, social service, or similar organization recognized by the Board of Immigration Appeals under section 292.2 of title 8, Code of Federal Regulations; or

(B) to a qualified designated entity if the applicant consents to the forwarding of the application to the Secretary; and

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

(b) QUALIFIED DESIGNATED ENTITY DEFINED.—In this section, the term ''qualified designated entity'' means—

(1) a qualified farm labor organization or an association of employers designated by the Secretary; 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 work in cases in which an alien was employed under an assumed name.

(2) DOCUMENTATION OF WORK HISTORY.—

(A) BURDEN OF PROOF.—An alien applying for status under section 101(a) or 103(a) has the burden of proving by a preponderance of the evidence that the alien has worked the requisite number of hours or days required under section 101(a)(1) or 103(a)(1), as applicable.

(B) TIMELY PRODUCTION OF RECORDS.—If an employer or farm labor contractor employing such an alien has kept proper and adequate records respecting such employment, the alien's burden of proof under subparagraph (A) may be met by securing timely production of those records under regulations to be promulgated by the Secretary.

(C) SUFFICIENT EVIDENCE.—An alien may meet the burden of proof under subparagraph (A) to establish that the alien has performed the days or hours of work required by section 101(a)(1) or 103(a)(1) by producing sufficient evidence to show the extent of that employment as a matter of just and reasonable inference.

(d) APPLICATIONS SUBMITTED TO QUALIFIED DESIGNATED ENTITIES.—

(1) REQUIREMENTS.—Each qualified designated entity shall agree—

(A) to forward to the Secretary an application submitted to that entity pursuant to subsection (a)(1)(B) if the applicant has consented to such forwarding;

(B) not to forward to the Secretary any such application if the applicant has not consented to such forwarding; and

(C) to assist an alien in obtaining documentation of the alien's work history, if the alien requests such assistance.

(2) NO AUTHORITY TO MAKE DETERMINATIONS.—No qualified designated entity may make a determination required by this subtitle to be made by the Secretary.

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

(f) CONFIDENTIALITY OF INFORMATION.—

(1) IN GENERAL.—Except as otherwise provided in this section, the Secretary or any other official or employee of the Department or a bureau or agency of the Department is prohibited from—

(A) using information furnished by the applicant pursuant to an application filed under this title, the information provided by an applicant to a qualified designated entity, or any information provided by an employer or former employer for any purpose other than to make a determination on the application or for imposing the penalties described in subsection (g);

(B) making any publication in which the information furnished by any particular individual can be identified; or

(C) permitting a person other than a sworn officer or employee of the Department or a bureau or agency of the Department or, with respect to applications filed with a qualified designated entity, that qualified designated entity, to examine individual applications.

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

(A) a duly recognized law enforcement entity in connection with a criminal investigation or prosecution, if such information is requested in writing by such entity; or

(B) an official coroner, for purposes of affirmatively identifying a deceased individual, whether or not the death of such individual resulted from a crime.

(3) CONSTRUCTION.—

(A) IN GENERAL.—Nothing in this subsection shall be construed to limit the use, or release, for immigration enforcement purposes or law enforcement purposes, of information contained in files or records of the Department pertaining to an application filed under this section, other than information furnished by an applicant pursuant to the application, or any other information derived from the application, that is not available from any other source.

(B) CRIMINAL CONVICTIONS.—Notwithstanding any other provision of this subsection, information concerning whether the alien applying for blue card status or an adjustment of status under section 103 has been convicted of a crime at any time may be used or released for immigration enforcement or law enforcement purposes.

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

(g) PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.—

(1) CRIMINAL PENALTY.—Any person who—

(A) files an application for blue card status or an adjustment of status under section 103 and knowingly and willfully falsifies, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry; or

(B) creates or supplies a false writing or document for use in making such an application,

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

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

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

(i) APPLICATION FEES.—

(1) FEE SCHEDULE.—The Secretary shall provide for a schedule of fees that—

(A) shall be charged for the filing of an application for blue card status or for an adjustment of status under section 103; and

(B) may be charged by qualified designated entities to help defray the costs of services provided to such applicants.

(2) PROHIBITION ON EXCESS FEES BY QUALIFIED DESIGNATED ENTITIES.—A qualified designated entity may not charge any fee in excess of, or in addition to, the fees authorized under paragraph (1)(B) for services provided to applicants.

(3) DISPOSITION OF FEES.—

(A) IN GENERAL.—There is established in the general fund of the Treasury a separate account, which shall be known as the ''Agricultural Worker Immigration Status Adjustment Account''. Notwithstanding any other provision of law, there shall be deposited as offsetting receipts into the account all fees collected under paragraph (1)(A).

(B) USE OF FEES FOR APPLICATION PROCESSING.—Amounts deposited in the ''Agricultural Worker Immigration Status Adjustment Account'' shall remain available to the Secretary until expended for processing applications for blue card status or an adjustment of status under section 103.

SEC. 105. WAIVER OF NUMERICAL LIMITATIONS AND CERTAIN GROUNDS FOR INADMISSIBILITY.

(a) NUMERICAL LIMITATIONS DO NOT APPLY.—The numerical limitations of sections 201 and 202 of the Immigration and Nationality Act (8 U.S.C. 1151 and 1152) shall not apply to the adjustment of aliens to lawful permanent resident status under section 103.

(b) WAIVER OF CERTAIN GROUNDS OF INADMISSIBILITY.—In the determination of an alien's eligibility for status under section 101(a) or an alien's eligibility for adjustment of status under section 103(b)(2)(A) the following rules shall apply:

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

(2) WAIVER OF OTHER GROUNDS.—

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

(B) GROUNDS THAT MAY NOT BE WAIVED.—Subparagraphs (A), (B), (C), (D), (G), (H), and (I) of paragraph (2) and paragraphs (3) and (4) of such section 212(a) may not be waived by the Secretary under subparagraph (A).

(C) CONSTRUCTION.—Nothing in this paragraph shall be construed as affecting the authority of the Secretary other than under this subparagraph to waive provisions of such section 212(a).

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

(c) TEMPORARY STAY OF REMOVAL AND WORK AUTHORIZATION FOR CERTAIN APPLICANTS.—

(1) BEFORE APPLICATION PERIOD.—Effective on the date of enactment of this Act, the Secretary shall provide that, in the case of an alien who is apprehended before the beginning of the application period described in section 101(a)(2) and who can establish a nonfrivolous case of eligibility for blue card status (but for the fact that the alien may not apply for such status until the beginning of such period), until the alien has had the opportunity during the first 30 days of the application period to complete the filing of an application for blue card status, the alien—

(A) may not be removed; and

(B) shall be granted authorization to engage in employment in the United States and be provided an employment authorized endorsement or other appropriate work permit for such purpose.

(2) DURING APPLICATION PERIOD.—The Secretary shall provide that, in the case of an alien who presents a nonfrivolous application for blue card status during the application period described in section 101(a)(2), including an alien who files such an application within 30 days of the alien's apprehension, and until a final determination on the application has been made in accordance with this section, the alien—

(A) may not be removed; and

(B) shall be granted authorization to engage in employment in the United States and be provided an employment authorized endorsement or other appropriate work permit for such purpose.

SEC. 106. ADMINISTRATIVE AND JUDICIAL REVIEW.

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

(b) ADMINISTRATIVE REVIEW.—

(1) SINGLE LEVEL OF ADMINISTRATIVE APPELLATE REVIEW.—The Secretary shall establish an appellate authority to provide for a single level of administrative appellate review of such a determination.

(2) STANDARD FOR REVIEW.—Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination on the application and upon such additional or newly discovered evidence as may not have been available at the time of the determination.

(c) JUDICIAL REVIEW.—

(1) LIMITATION TO REVIEW OF REMOVAL.—There shall be judicial review of such a determination only in the judicial review of an order of removal under section 242 of the Immigration and Nationality Act (8 U.S.C. 1252).

(2) STANDARD FOR JUDICIAL REVIEW.—Such judicial review shall be based solely upon the administrative record established at the time of the review by the appellate authority and the findings of fact and determinations contained in such record shall be conclusive unless the applicant can establish abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record considered as a whole.

SEC. 107. USE OF INFORMATION.

Beginning not later than the first day of the application period described in section 101(a)(2), the Secretary, in cooperation with qualified designated entities (as that term is defined in section 104(b)), shall broadly disseminate information respecting the benefits that aliens may receive under this subtitle and the requirements that an alien is required to meet to receive such benefits.

SEC. 108. REGULATIONS, EFFECTIVE DATE, AUTHORIZATION OF APPROPRIATIONS.

(a) REGULATIONS.—The Secretary shall issue regulations to implement this subtitle not later than the first day of the seventh month that begins after the date of enactment of this Act.

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

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary to implement this subtitle, including any sums needed for costs associated with the initiation of such implementation, for fiscal years 2009 and 2010.

Subtitle B—Correction of Social Security Records

SEC. 111. CORRECTION OF SOCIAL SECURITY RECORDS.

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

(1) in subparagraph (B)(ii), by striking ''or'' at the end;

(2) in subparagraph (C), by inserting ''or'' at the end;

(3) by inserting after subparagraph (C) the following:

''(D) who is granted blue card status under the Agricultural Job Opportunities, Benefits, and Security Act of 2009''; and

(4) by striking ''1990.'' and inserting ''1990, or in the case of an alien described in subparagraph (D), if such conduct is alleged to have occurred before the date on which the alien was granted blue card status.''.

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

TITLE II—REFORM OF H–2A WORKER PROGRAM

SEC. 201. AMENDMENTS TO THE IMMIGRATION AND NATIONALITY ACT.

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

''SEC. 218. H–2A EMPLOYER APPLICATIONS.

''(a) APPLICATIONS TO THE SECRETARY OF LABOR.—

''(1) IN GENERAL.—No alien may be admitted to the United States as an H–2A worker, or otherwise provided status as an H–2A worker, unless the employer has filed with the Secretary of Labor an application containing—

''(A) the assurances described in subsection (b);

''(B) a description of the nature and location of the work to be performed;

''(C) the anticipated period (expected beginning and ending dates) for which the workers will be needed; and

''(D) the number of job opportunities in which the employer seeks to employ the workers.

''(2) ACCOMPANIED BY JOB OFFER.—Each application filed under paragraph (1) shall be accompanied by a copy of the job offer describing the wages and other terms and conditions of employment and the bona fide occupational qualifications that shall be possessed by a worker to be employed in the job opportunity in question.

''(b) ASSURANCES FOR INCLUSION IN APPLICATIONS.—The assurances referred to in subsection (a)(1) are the following:

''(1) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.—With respect to a job opportunity that is covered under a collective bargaining agreement:

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

''(B) STRIKE OR LOCKOUT.—The specific job opportunity for which the employer is requesting 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.

''(C) NOTIFICATION OF BARGAINING REPRESENTATIVES.—The employer, at the time of filing the application, has provided notice of the filing under this paragraph to the bargaining representative of the employer's employees in the occupational classification at the place or places of employment for which aliens are sought.

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

''(E) OFFERS TO UNITED STATES WORKERS.—The employer has offered or will offer the job to any eligible United States worker who applies and is equally or better qualified for the job for which the nonimmigrant is, or the nonimmigrants are, sought and who will be available at the time and place of need.

''(F) PROVISION OF INSURANCE.—If the 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 under subsection (a) and to all other workers in the same occupation at the place of employment.

''(D) NONDISPLACEMENT OF UNITED STATES WORKERS.—The employer did not displace and will not displace a United States worker employed by the employer during the period of employment and for a period of 30 days preceding the period of employment in the occupation at the place of employment for which the employer has applied for an H–2A worker.

''(E) REQUIREMENTS FOR PLACEMENT OF THE NONIMMIGRANT WITH OTHER EMPLOYERS.—The employer will not place the nonimmigrant with another employer unless—

''(i) the nonimmigrant performs duties in whole or in part at 1 or more worksites owned, operated, or controlled by such other employer;

''(ii) there are indicia of an employment relationship between the nonimmigrant and such other employer; and

''(iii) the employer has inquired of the other employer as to whether, and has no actual knowledge or notice that, during the period of employment and for a period of 30 days preceding the period of employment, the other employer has displaced or intends to displace a United States worker employed by the other employer in the occupation at the place of employment for which the employer seeks approval to employ H–2A workers.

''(F) STATEMENT OF LIABILITY.—The application form shall include a clear statement explaining the liability under subparagraph (E) of an employer if the other employer described in such subparagraph displaces a United States worker as described in such subparagraph.

''(G) PROVISION OF INSURANCE.—If the 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.

''(H) EMPLOYMENT OF UNITED STATES WORKERS.—

''(i) RECRUITMENT.—The employer has taken or will take the following steps to recruit United States workers for the job opportunities for which the H–2A nonimmigrant is, or H–2A nonimmigrants are, sought:

''(I) CONTACTING FORMER WORKERS.—The employer shall make reasonable efforts through the sending of a letter by United States Postal Service mail, or otherwise, to contact any United States worker the employer employed during the previous season in the occupation at the place of intended employment for which the employer is applying for workers and has made the availability of the employer's job opportunities in the occupation at the place of intended employment known to such previous workers, unless the worker was terminated from employment by the employer for a lawful job-related reason or abandoned the job before the worker completed the period of employment of the job opportunity for which the worker was hired.

''(II) FILING A JOB OFFER WITH THE LOCAL OFFICE OF THE STATE EMPLOYMENT SECURITY AGENCY.—Not later than 28 days before the date on which the employer desires to employ an H–2A worker in a temporary or seasonal agricultural job opportunity, the employer shall submit a copy of the job offer described in subsection (a)(2) to the local office of the State employment security agency which serves the area of intended employment and authorize the posting of the job opportunity on 'America's Job Bank' or other electronic job registry, except that nothing in this subclause shall require the employer to file an interstate job order under section 653 of title 20, Code of Federal Regulations.

''(III) ADVERTISING OF JOB OPPORTUNITIES.—Not later than 14 days before the date on which the employer desires to employ an H–2A worker in a temporary or seasonal agricultural job opportunity, the employer shall advertise the availability of the job opportunities for which the employer is seeking workers in a publication in the local labor market that is likely to be patronized by potential farm workers.

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

''(ii) JOB OFFERS.—The employer has offered or will offer the job to any eligible United States worker who applies and is equally or better qualified for the job for which the nonimmigrant is, or nonimmigrants are, sought and who will be available at the time and place of need.

''(iii) PERIOD OF EMPLOYMENT.—The employer will provide employment to any qualified United States worker who applies to the employer during the period beginning on the date on which the H–2A worker departs for the employer's place of employment and ending on the date on which 50 percent of the period of employment for which the H–2A worker who is in the job was hired has elapsed, subject to the following requirements:

''(I) PROHIBITION.—No person or entity shall willfully and knowingly withhold United States workers before the arrival of H–2A workers in order to force the hiring of United States workers under this clause.

''(II) COMPLAINTS.—Upon receipt of a complaint by an employer that a violation of subclause (I) has occurred, the Secretary of Labor shall immediately investigate. The Secretary 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 to the type of job that are normal or customary to the type of job involved so long as such criteria are not applied in a discriminatory manner.

''(c) APPLICATIONS BY ASSOCIATIONS ON BEHALF OF EMPLOYER MEMBERS.—

''(1) IN GENERAL.—An agricultural association may file an application under subsection (a) on behalf of 1 or more of its employer members that the association certifies in its application has or have agreed in writing to comply with the requirements of this section and sections 218A, 218B, and 218C.

''(2) TREATMENT OF ASSOCIATIONS ACTING AS EMPLOYERS.—If an association filing an application under paragraph (1) is a joint or sole employer of the temporary or seasonal agricultural workers requested on the application, the certifications granted under subsection (e)(2)(B) to the association may be used for the certified job opportunities of any of its producer members named on the application, and such workers may be transferred among such producer members to perform the agricultural services of a temporary or seasonal nature for which the certifications were granted.

''(d) WITHDRAWAL OF APPLICATIONS.—

''(1) IN GENERAL.—An employer may withdraw an application filed pursuant to subsection (a), except that if the employer is an agricultural association, the association may withdraw an application filed pursuant to subsection (a) with respect to 1 or more of its members. To withdraw an application, the employer or association shall notify the Secretary of Labor in writing, and the Secretary of Labor shall acknowledge in writing the receipt of such withdrawal notice. An employer who withdraws an application under subsection (a), or on whose behalf an application is withdrawn, is relieved of the obligations undertaken in the application.

''(2) LIMITATION.—An application may not be withdrawn while any alien provided status under section 101(a)(15)(H)(ii)(a) pursuant to such application is employed by the employer.

''(3) OBLIGATIONS UNDER OTHER STATUTES.—Any obligation incurred by an employer under any other law or regulation as a result of the recruitment of United States workers or H–2A workers under an offer of terms and conditions of employment required as a result of making an application under subsection (a) is unaffected by withdrawal of such application.

''(e) REVIEW AND APPROVAL OF APPLICATIONS.—

''(1) RESPONSIBILITY OF EMPLOYERS.—The employer shall make available for public examination, within 1 working day after the date on which an application under subsection (a) is filed, at the employer's principal place of business or worksite, a copy of each such application (and such accompanying documents as are necessary).

''(2) RESPONSIBILITY OF THE SECRETARY OF LABOR.—

''(A) COMPILATION OF LIST.—The Secretary of Labor shall compile, on a current basis, a list (by employer and by occupational classification) of the applications filed under subsection (a). Such list shall include the wage rate, number of workers sought, period of intended employment, and date of need. The Secretary of Labor shall make such list available for examination in the District of Columbia.

''(B) REVIEW OF APPLICATIONS.—The Secretary of Labor shall review such an application only for completeness and obvious inaccuracies. Unless the Secretary of Labor finds that the application is incomplete or obviously inaccurate, the Secretary of Labor shall certify that the intending employer has filed with the Secretary of Labor an application as described in subsection (a). Such certification shall be provided within 7 days of the filing of the application.''

''SEC. 218A. H–2A EMPLOYMENT REQUIREMENTS.

''(a) PREFERENTIAL TREATMENT OF ALIENS PROHIBITED.—Employers seeking to hire United States workers shall offer the United States workers no less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to H–2A workers. Conversely, no job offer may impose on United States workers any restrictions or obligations which will not be imposed on the employer's H–2A workers.

''(b) MINIMUM BENEFITS, WAGES, AND WORKING CONDITIONS.—Except in cases where higher benefits, wages, or working conditions are required by the provisions of subsection (a), in order to protect similarly employed United States workers from adverse effects with respect to benefits, wages, and working conditions, every job offer which shall accompany an application under section 218(b)(2) shall include each of the following benefit, wage, and working condition provisions:

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

''(A) IN GENERAL.—An employer applying under section 218(a) for H–2A workers shall offer to provide housing at no cost to all workers in job opportunities for which the employer has applied under that section and to all other workers in the same occupation at the place of employment, whose place of residence is beyond normal commuting distance.

''(B) TYPE OF HOUSING.—In complying with subparagraph (A), an employer may, at the employer's election, provide housing that meets applicable Federal standards for temporary labor camps or secure housing that meets applicable local standards for rental or public accommodation housing or other substantially similar class of habitation, or in the absence of applicable local standards, State standards for rental or public accommodation housing or other substantially similar class of habitation. In the absence of applicable local or State standards, Federal temporary labor camp standards shall apply.

''(C) FAMILY HOUSING.—If it is the prevailing practice in the occupation and area of intended employment to provide family housing, family housing shall be provided to workers with families who request it.

''(D) WORKERS ENGAGED IN THE RANGE PRODUCTION OF LIVESTOCK.—The Secretary of Labor shall issue regulations that address the specific requirements for the provision of housing to workers engaged in the range production of livestock.

''(E) LIMITATION.—Nothing in this paragraph shall be construed to require an employer to provide or secure housing for persons who were not entitled to such housing under the temporary labor certification regulations in effect on June 1, 1986.

''(F) CHARGES FOR HOUSING.—

''(i) CHARGES FOR PUBLIC HOUSING.—If public housing provided for migrant agricultural workers under the auspices of a local, county, or State government is secured by an employer, and use of the public housing unit normally requires charges from migrant workers, such charges shall be paid by the employer directly to the appropriate individual or entity affiliated with the housing's management.

''(ii) DEPOSIT CHARGES.—Charges in the form of deposits for bedding or other similar incidentals related to housing shall not be levied upon workers by employers who provide housing for their workers. An employer may require a worker found to have been responsible for damage to such housing which is not the result of normal wear and tear related to habitation to reimburse the employer for the reasonable cost of repair of such damage.

''(G) HOUSING ALLOWANCE AS ALTERNATIVE.—

''(i) IN GENERAL.—If the requirement set out in clause (ii) is satisfied, the employer may provide a reasonable housing allowance instead of offering housing under subparagraph (A). Upon the request of a worker seeking assistance in locating housing, the employer shall make a good faith effort to assist the worker in identifying and locating housing in the area of intended employment. An employer who offers a housing allowance to a worker, or assists a worker in locating housing which the worker occupies, pursuant to this clause shall not be deemed a housing provider under section 203 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1823) solely by virtue of providing such housing allowance. No housing allowance may be used for housing which is owned or controlled by the employer.

''(ii) CERTIFICATION.—The requirement of this clause is satisfied if the Governor of the State certifies to the Secretary of Labor that there is adequate housing available in the area of intended employment for migrant farm workers and H–2A workers who are seeking temporary housing while employed in agricultural work. Such certification shall expire after 3 years unless renewed by the Governor of the State.

''(iii) AMOUNT OF ALLOWANCE.—

''(I) NONMETROPOLITAN COUNTIES.—If the place of employment of the workers provided an allowance under this subparagraph is a nonmetropolitan county, the amount of the housing allowance under this subparagraph shall be equal to the statewide average fair market rental for existing housing for nonmetropolitan counties for the State, as established by the Secretary of Housing and Urban Development pursuant to section 8(c) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)), based on a 2-bedroom dwelling unit and an assumption of 2 persons per bedroom.

''(II) METROPOLITAN COUNTIES.—If the place of employment of the workers provided an allowance under this paragraph is in a metropolitan county, the amount of the housing allowance under this subparagraph shall be equal to the statewide average fair market rental for existing housing for metropolitan counties for the State, as established by the Secretary of Housing and Urban Development pursuant to section 8(c) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)), based on a 2-bedroom dwelling unit and an assumption of 2 persons per bedroom.

''(2) REIMBURSEMENT OF TRANSPORTATION.—

''(A) TO PLACE OF EMPLOYMENT.—A worker who completes 50 percent of the period of employment of the job opportunity for which the worker was hired shall be reimbursed by the employer for the cost of the worker's transportation and subsistence from the place from which the worker came to work for the employer (or place of last employment, if the worker traveled from such place) to the place of employment.

''(B) FROM PLACE OF EMPLOYMENT.—A worker who completes the period of employment for the job opportunity involved shall be reimbursed by the employer for the cost of the worker's transportation and subsistence from the place of employment to the place from which the worker, disregarding intervening employment, came to work for the employer, or to the place of next employment, if the worker has contracted with a subsequent employer who has not agreed to provide or pay for the worker's transportation and subsistence to such subsequent employer's place of employment.

''(C) LIMITATION.—

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

''(I) the actual cost to the worker or alien of the transportation and subsistence involved; or

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

''(ii) DISTANCE TRAVELED.—No reimbursement under subparagraph (A) or (B) shall be required if the distance traveled is 100 miles or less, or the worker is not residing in employer-provided housing or housing secured through an allowance as provided in paragraph (1)(G).

''(D) EARLY TERMINATION.—If the worker is laid off or employment is terminated for contract impossibility (as described in paragraph (4)(D)) before the anticipated ending date of employment, the employer shall provide the transportation and subsistence required by subparagraph (B) and, notwithstanding whether the worker has completed 50 percent of the period of employment, shall

provide the transportation reimbursement required by subparagraph (A).

''(E) TRANSPORTATION BETWEEN LIVING QUARTERS AND WORKSITE.—The employer shall provide transportation between the worker's living quarters and the employer's worksite without cost to the worker, and such transportation will be in accordance with applicable laws and regulations.

''(3) REQUIRED WAGES.—

''(A) IN GENERAL.—An employer applying for workers under section 218(a) shall offer to pay, and shall pay, all workers in the occupation for which the employer has applied for workers, not less (and is not required to pay more) than the greater of the prevailing wage in the occupation in the area of intended employment or the adverse effect wage rate. No worker shall be paid less than the greater of the hourly wage prescribed under section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or the applicable State minimum wage.

''(B) LIMITATION.—Effective on the date of the enactment of the Agricultural Job Opportunities, Benefits, and Security Act of 2009 and continuing for 3 years thereafter, no adverse effect wage rate for a State may be more than the adverse effect wage rate for that State in effect on January 1, 2009, as established by section 655.107 of title 20, Code of Federal Regulations.

''(C) REQUIRED WAGES AFTER 3-YEAR FREEZE.—

''(i) FIRST ADJUSTMENT.—If Congress does not set a new wage standard applicable to this section before the first March 1 that is not less than 3 years after 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 and December of the preceding year; and

''(II) 4 percent.

''(D) DEDUCTIONS.—The employer shall make only those deductions from the worker's wages that are authorized by law or are reasonable and customary in the occupation and area of employment. The job offer shall specify all deductions not required by law which the employer will make from the worker's wages.

''(E) FREQUENCY OF PAY.—The employer shall pay the worker not less frequently than twice monthly, or in accordance with the prevailing practice in the area of employment, whichever is more frequent.

''(F) HOURS AND EARNINGS STATEMENTS.—The employer shall furnish to the worker, on or before each payday, in 1 or more written statements—

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

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

''(iii) the hours of employment which have been offered to the worker (broken out by hours offered in accordance with and over and above the ¾ guarantee described in paragraph (4);

''(iv) the hours actually worked by the worker;

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

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

''(G) REPORT ON WAGE PROTECTIONS.—Not later than December 31, 2011, the Comptroller General of the United States shall prepare and transmit to the Secretary of Labor, the Committee on the Judiciary of the Senate, and Committee on the Judiciary of the House of Representatives, a report that addresses—

''(i) whether the employment of H–2A or unauthorized aliens in the United States agricultural workforce has depressed United States farm worker wages below the levels that would otherwise have prevailed if alien farm workers had not been employed in the United States;

''(ii) whether an adverse effect wage rate is necessary to prevent wages of United States farm workers in occupations in which H–2A workers are employed from falling below the wage levels that would have prevailed in the absence of the employment of H–2A workers in those occupations;

''(iii) whether alternative wage standards, such as a prevailing wage standard, would be sufficient to prevent wages in occupations in which H–2A workers are employed from falling below the wage level that would have prevailed in the absence of H–2A employment;

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

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

''(H) COMMISSION ON WAGE STANDARDS.—

''(i) ESTABLISHMENT.—There is established the Commission on Agricultural Wage Standards under the H–2A program (in this subparagraph referred to as the 'Commission').

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

''(I) Four representatives of agricultural employers and 1 representative of the Department of Agriculture, each appointed by the Secretary of Agriculture.

''(II) Four representatives of agricultural workers and 1 representative of the Department of Labor, each appointed by the Secretary of Labor.

''(iii) FUNCTIONS.—The Commission shall conduct a study that shall address—

''(I) whether the employment of H–2A or unauthorized aliens in the United States agricultural workforce has depressed United States farm worker wages below the levels that would otherwise have prevailed if alien farm workers had not been employed in the United States;

''(II) whether an adverse effect wage rate is necessary to prevent wages of United States farm workers in occupations in which H–2A workers are employed from falling below the wage levels that would have prevailed in the absence of the employment of H–2A workers in those occupations;

''(III) whether alternative wage standards, such as a prevailing wage standard, would be sufficient to prevent wages in occupations in which H–2A workers are employed from falling below the wage level that would have prevailed in the absence of H–2A employment;

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

''(V) recommendations for future wage protection under this section.

''(iv) FINAL REPORT.—Not later than December 31, 2011, the Commission shall submit a report to the Congress setting forth the findings of the study conducted under clause (iii).

''(v) TERMINATION DATE.—The Commission shall terminate upon submitting its final report.

''(4) GUARANTEE OF EMPLOYMENT.—

''(A) OFFER TO WORKER.—The employer shall guarantee to offer the worker employment for the hourly equivalent of at least ¾ of the work days of the total period of employment, beginning with the first work day after the arrival of the worker at the place of employment and ending on the expiration date specified in the job offer. For purposes of this subparagraph, the hourly equivalent means the number of hours in the work days as stated in the job offer and shall exclude the worker's Sabbath and Federal holidays. If the employer affords the United States or H–2A worker less employment than that required under this paragraph, the employer shall pay such worker the amount which the worker would have earned had the worker, in fact, worked for the guaranteed number of hours.

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

''(C) ABANDONMENT OF EMPLOYMENT, TERMINATION FOR CAUSE.—If the worker voluntarily abandons employment before the end of the contract period, or is terminated for cause, the worker is not entitled to the '¾ guarantee' described in subparagraph (A).

''(D) CONTRACT IMPOSSIBILITY.—If, before the expiration of the period of employment specified in the job offer, the services of the worker are no longer required for reasons beyond the control of the employer due to any form of natural disaster, including a flood, hurricane, freeze, earthquake, fire, drought, plant or animal disease or pest infestation, or regulatory drought, before the guarantee in subparagraph (A) is fulfilled, the employer may terminate the worker's employment. In the event of such termination, the employer shall fulfill the employment guarantee in subparagraph (A) for the work days that have elapsed from the first work day after the arrival of the worker to the termination of employment. In such cases, the employer will make efforts to transfer the United States worker to other comparable employment acceptable to the worker. If such transfer is not effected, the employer shall provide the return transportation required in paragraph (2)(D).

''(5) MOTOR VEHICLE SAFETY.—

''(A) MODE OF TRANSPORTATION SUBJECT TO COVERAGE.—

''(i) IN GENERAL.—Except as provided in clauses (iii) and (iv), this subsection applies to any H–2A employer that uses or causes to be used any vehicle to transport an H–2A worker within the United States.

''(ii) DEFINED TERM.—In this paragraph, the term 'uses or causes to be used'—

''(I) applies only to transportation provided by an H–2A employer to an H–2A worker, or by a farm labor contractor to an H–2A worker at the request or direction of an H–2A employer; and

''(II) does not apply to—

''(aa) transportation provided, or transportation arrangements made, by an H–2A

worker, unless the employer specifically requested or arranged such transportation; or

''(bb) car pooling arrangements made by H–2A workers themselves, using 1 of the workers' own vehicles, unless specifically requested by the employer directly or through a farm labor contractor.

''(iii) CLARIFICATION.—Providing a job offer to an H–2A worker that causes the worker to travel to or from the place of employment, or the payment or reimbursement of the transportation costs of an H–2A worker by an H–2A employer, shall not constitute an arrangement of, or participation in, such transportation.

''(iv) AGRICULTURAL MACHINERY AND EQUIPMENT EXCLUDED.—This subsection does not apply to the transportation of an H–2A worker on a tractor, combine, harvester, picker, or other similar machinery or equipment while such worker is actually engaged in the planting, cultivating, or harvesting of agricultural commodities or the care of livestock or poultry or engaged in transportation incidental thereto.

''(v) COMMON CARRIERS EXCLUDED.—This subsection does not apply to common carrier motor vehicle transportation in which the provider holds itself out to the general public as engaging in the transportation of passengers for hire and holds a valid certification of authorization for such purposes from an appropriate Federal, State, or local agency.

''(B) APPLICABILITY OF STANDARDS, LICENSING, AND INSURANCE REQUIREMENTS.—

''(i) IN GENERAL.—When using, or causing to be used, any vehicle for the purpose of providing transportation to which this subparagraph applies, each employer shall—

''(I) ensure that each such vehicle conforms to the standards prescribed by the Secretary of Labor under section 401(b) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1841(b)) and other applicable Federal and State safety standards;

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

''(III) have an insurance policy or a liability bond that is in effect which insures the employer against liability for damage to persons or property arising from the ownership, operation, or causing to be operated, of any vehicle used to transport any H–2A worker.

''(ii) AMOUNT OF INSURANCE REQUIRED.—The level of insurance required shall be determined by the Secretary of Labor pursuant to regulations to be issued under this subsection.

''(iii) EFFECT OF WORKERS' COMPENSATION COVERAGE.—If the employer of any H–2A worker provides workers' compensation coverage for such worker in the case of bodily injury or death as provided by State law, the following adjustments in the requirements of subparagraph (B)(i)(III) relating to having an insurance policy or liability bond apply:

''(I) No insurance policy or liability bond shall be required of the employer, if such workers are transported only under circumstances for which there is coverage under such State law.

''(II) An insurance policy or liability bond shall be required of the employer for circumstances under which coverage for the transportation of such workers is not provided under such State law.

''(c) COMPLIANCE WITH LABOR LAWS.—An employer shall assure that, except as otherwise provided in this section, the employer will comply with all applicable Federal, State, and local labor laws, including laws affecting migrant and seasonal agricultural workers, with respect to all United States workers and alien workers employed by the employer, except that a violation of this assurance shall not constitute a violation of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801 et seq.).

''(d) COPY OF JOB OFFER.—The employer shall provide to the worker, not later than the day the work commences, a copy of the employer's application and job offer described in section 218(a), or, if the employer will require the worker to enter into a separate employment contract covering the employment in question, such separate employment contract.

''(e) RANGE PRODUCTION OF LIVESTOCK.—Nothing in this section, section 218, or section 218B shall preclude the Secretary of Labor and the Secretary from continuing to apply special procedures and requirements to the admission and employment of aliens in occupations involving the range production of livestock.

''SEC. 218B. PROCEDURE FOR ADMISSION AND EXTENSION OF STAY OF H–2A WORKERS.

''(a) PETITIONING FOR ADMISSION.—An employer, or an association acting as an agent or joint employer for its members, that seeks the admission into the United States of an H–2A worker may file a petition with the Secretary. The petition shall be accompanied by an accepted and currently valid certification provided by the Secretary of Labor under section 218(e)(2)(B) covering the petitioner.

''(b) EXPEDITED ADJUDICATION BY THE SECRETARY.—The Secretary shall establish a procedure for expedited adjudication of petitions filed under subsection (a) and within 7 working days shall, by fax, cable, or other means assuring expedited delivery, transmit a copy of notice of action on the petition to the petitioner and, in the case of approved petitions, to the appropriate immigration officer at the port of entry or United States consulate (as the case may be) where the petitioner has indicated that the alien beneficiary (or beneficiaries) will apply for a visa or admission to the United States.

''(c) CRITERIA FOR ADMISSIBILITY.—

''(1) IN GENERAL.—An H–2A worker shall be considered admissible to the United States if the alien is otherwise admissible under this section, section 218, and section 218A, and the alien is not ineligible under paragraph (2).

''(2) DISQUALIFICATION.—An alien shall be considered inadmissible to the United States and ineligible for nonimmigrant status under section 101(a)(15)(H)(ii)(a) if the alien has, at any time during the past 5 years—

''(A) violated a material provision of this section, including the requirement to promptly depart the United States when the alien's authorized period of admission under this section has expired; or

''(B) otherwise violated a term or condition of admission into the United States as a nonimmigrant, including overstaying the period of authorized admission as such a nonimmigrant.

''(3) WAIVER OF INELIGIBILITY FOR UNLAWFUL PRESENCE.—

''(A) IN GENERAL.—An alien who has not previously been admitted into the United States pursuant to this section, and who is otherwise eligible for admission in accordance with paragraphs (1) and (2), shall not be deemed inadmissible by virtue of section 212(a)(9)(B). If an alien described in the preceding sentence is present in the United States, the alien may apply from abroad for H–2A status, but may not be granted that status in the United States.

''(B) MAINTENANCE OF WAIVER.—An alien provided an initial waiver of ineligibility pursuant to subparagraph (A) shall remain eligible for such waiver unless the alien violates the terms of this section or again becomes ineligible under section 212(a)(9)(B) by virtue of unlawful presence in the United States after the date of the initial waiver of ineligibility pursuant to subparagraph (A).

''(d) PERIOD OF ADMISSION.—

''(1) IN GENERAL.—The alien shall be admitted for the period of employment in the application certified by the Secretary of Labor pursuant to section 218(e)(2)(B), not to exceed 10 months, supplemented by a period of not more than 1 week before the beginning of the period of employment for the purpose of travel to the worksite and a period of 14 days following the period of employment for the purpose 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.

''(3) REMOVAL BY THE SECRETARY.—The Secretary shall promptly remove from the United States any H–2A worker who violates any term or condition of the worker's nonimmigrant status.

''(4) VOLUNTARY TERMINATION.—Notwithstanding paragraph (1), an alien may voluntarily terminate his or her employment if the alien promptly departs the United States upon termination of such employment.

''(f) REPLACEMENT OF ALIEN.—

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

''(A) who abandons or prematurely terminates employment; or

''(B) whose employment is terminated after a United States worker is employed pursuant to section 218(b)(2)(H)(iii), if the United States worker voluntarily departs before the end of the period of intended employment or if the employment termination is for a lawful job-related reason.

''(2) CONSTRUCTION.—Nothing in this subsection is intended to limit any preference required to be accorded United States workers under any other provision of this Act.

''(g) IDENTIFICATION DOCUMENT.—

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

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

''(A) The document shall be capable of reliably determining whether—

''(i) the individual with the identification and employment eligibility document whose eligibility is being verified is in fact eligible for employment;

''(ii) the individual whose eligibility is being verified is claiming the identity of another person; and

''(iii) the individual whose eligibility is being verified is authorized to be admitted into, and employed in, the United States as an H–2A worker.

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

''(C) The document shall—

''(i) be compatible with other databases of the Secretary for the purpose of excluding aliens from benefits for which they are not eligible and determining whether the alien is unlawfully present in the United States; and

''(ii) be compatible with law enforcement databases to determine if the alien has been convicted of criminal offenses.

''(h) EXTENSION OF STAY OF H–2A ALIENS IN THE UNITED STATES.—

''(1) EXTENSION OF STAY.—If an employer seeks approval to employ an H–2A alien who is lawfully present in the United States, the petition filed by the employer or an association pursuant to subsection (a), shall request an extension of the alien's stay and a change in the alien's employment.

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

''(A) for a period of more than 10 months; or

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

''(3) WORK AUTHORIZATION UPON FILING A PETITION FOR EXTENSION OF STAY.—

''(A) IN GENERAL.—An alien who is lawfully present in the United States may commence the employment described in a petition under paragraph (1) on the date on which the petition is filed.

''(B) DEFINITION.—For purposes of subparagraph (A), the term 'file' means sending the petition by certified mail via the United States Postal Service, return receipt requested, or delivered by guaranteed commercial delivery which will provide the employer with a documented acknowledgment of the date of receipt of the petition.

''(C) HANDLING OF PETITION.—The employer shall provide a copy of the employer's petition to the alien, who shall keep the petition with the alien's identification and employment eligibility document as evidence that the petition 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.—

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

''(B) REQUIREMENT TO REMAIN OUTSIDE THE UNITED STATES.—

''(i) IN GENERAL.—Subject to clause (ii), in the case of an alien outside the United States whose period of authorized status as an H–2A worker (including any extensions) has expired, the alien may not again apply for admission to the United States as an H–2A worker unless the alien has remained outside the United States for a continuous period equal to at least ⅓ the duration of the alien's previous period of authorized status as an H–2A worker (including any extensions).

''(ii) EXCEPTION.—Clause (i) shall not apply in the case of an alien if the alien's period of authorized status as an H–2A worker (including any extensions) was for a period of not more than 10 months and such alien has been outside the United States for at least 2 months during the 12 months preceding the date the alien again is applying for admission to the United States as an H–2A worker.

''(i) SPECIAL RULES FOR ALIENS EMPLOYED AS SHEEPHERDERS, GOAT HERDERS, OR DAIRY WORKERS.—Notwithstanding any provision of the Agricultural Job Opportunities, Benefits, and Security Act of 2009, an alien admitted under section 101(a)(15)(H)(ii)(a) for employment as a sheepherder, goat herder, or dairy worker—

''(1) may be admitted for an initial period of 12 months;

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

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

''(j) ADJUSTMENT TO LAWFUL PERMANENT RESIDENT STATUS FOR ALIENS EMPLOYED AS SHEEPHERDERS, GOAT HERDERS, OR DAIRY WORKERS.—

''(1) ELIGIBLE ALIEN.—For purposes of this subsection, the term 'eligible alien' means an alien—

''(A) having nonimmigrant status under section 101(a)(15)(H)(ii)(a) based on employment as a sheepherder, goat herder, or dairy worker;

''(B) who has maintained such nonimmigrant status in the United States for a cumulative total of 36 months (excluding any period of absence from the United States); and

''(C) who is seeking to receive an immigrant visa under section 203(b)(3)(A)(iii).

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

''(A) the alien's employer on behalf of the eligible alien; or

''(B) the eligible alien.

''(3) NO LABOR CERTIFICATION REQUIRED.—Notwithstanding section 203(b)(3)(C), no determination under section 212(a)(5)(A) is required with respect to an immigrant visa described in paragraph (1)(C) for an eligible alien.

''(4) EFFECT OF PETITION.—The filing of a petition described in paragraph (2) or an application for adjustment of status based on the approval of such a petition shall not constitute evidence of an alien's ineligibility for nonimmigrant status under section 101(a)(15)(H)(ii)(a).

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

''(6) CONSTRUCTION.—Nothing in this subsection shall be construed to prevent an eligible alien from seeking adjustment of status in accordance with any other provision of law.

''SEC. 218C. WORKER PROTECTIONS AND LABOR STANDARDS ENFORCEMENT.

''(a) ENFORCEMENT AUTHORITY.—

''(1) INVESTIGATION OF COMPLAINTS.—

''(A) AGGRIEVED PERSON OR THIRD-PARTY COMPLAINTS.—The Secretary of Labor shall establish a process for the receipt, investigation, and disposition of complaints respecting a petitioner's failure to meet a condition specified in section 218(b), or an employer's misrepresentation of material facts in an application under section 218(a). Complaints may be filed by any aggrieved person or organization (including bargaining representatives). No investigation or hearing shall be conducted on a complaint concerning such a failure or misrepresentation unless the complaint was filed not later than 12 months after the date of the failure, or misrepresentation, respectively. The Secretary of Labor shall conduct an investigation under this subparagraph if there is reasonable cause to believe that such a failure or misrepresentation has occurred.

''(B) DETERMINATION ON COMPLAINT.—Under such process, the Secretary of Labor shall provide, within 30 days after the date such a complaint is filed, for a determination as to whether or not a reasonable basis exists to make a finding described in subparagraph (C), (D), (E), or (G). If the Secretary of Labor determines that such a reasonable basis exists, the Secretary of Labor shall provide for notice of such determination to the interested parties and an opportunity for a hearing on the complaint, in accordance with section 556 of title 5, United States Code, within 60 days after the date of the determination. If such a hearing is requested, the Secretary of Labor shall make a finding concerning the matter not later than 60 days after the date of the hearing. In the case of similar complaints respecting the same applicant, the Secretary of Labor may consolidate the hearings under this subparagraph on such complaints.

''(C) FAILURES TO MEET CONDITIONS.—If the Secretary of Labor finds, after notice and opportunity for a hearing, a failure to meet a condition of paragraph (1)(A), (1)(B), (1)(D), (1)(F), (2)(A), (2)(B), or (2)(G) of section 218(b), a substantial failure to meet a condition of paragraph (1)(C), (1)(E), (2)(C), (2)(D), (2)(E), or (2)(H) of section 218(b), or a material misrepresentation of fact in an application under section 218(a)—

''(i) the Secretary of Labor shall notify the Secretary of such finding and may, in addition, impose such other administrative remedies (including civil money penalties in an amount not to exceed $1,000 per violation) as the Secretary of Labor determines to be appropriate; and

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

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

''(i) the Secretary of Labor shall notify the Secretary of such finding and may, in addition, impose such other administrative remedies (including civil money penalties in an amount not to exceed $5,000 per violation) as

the Secretary of Labor determines to be appropriate;

''(ii) the Secretary of Labor may seek appropriate legal or equitable relief to effectuate the purposes of subsection (d)(1); and

''(iii) the Secretary may disqualify the employer from the employment of H–2A workers for a period of 2 years.

''(E) DISPLACEMENT OF UNITED STATES WORKERS.—If the Secretary of Labor finds, after notice and opportunity for hearing, a willful failure to meet a condition of section 218(b) or a willful misrepresentation of a material fact in an application under section 218(a), in the course of which failure or misrepresentation the employer displaced a United States worker employed by the employer during the period of employment on the employer's application under section 218(a) or during the period of 30 days preceding such period of employment—

''(i) the Secretary of Labor shall notify the Secretary of such finding and may, in addition, impose such other administrative remedies (including civil money penalties in an amount not to exceed $15,000 per violation) as the Secretary of Labor determines to be appropriate; and

''(ii) the Secretary may disqualify the employer from the employment of H–2A workers for a period of 3 years.

''(F) LIMITATIONS ON CIVIL MONEY PENALTIES.—The Secretary of Labor shall not impose total civil money penalties with respect to an application under section 218(a) in excess of $90,000.

''(G) FAILURES TO PAY WAGES OR REQUIRED BENEFITS.—If the Secretary of Labor finds, after notice and opportunity for a hearing, that the employer has failed to pay the wages, or provide the housing allowance, transportation, subsistence reimbursement, or guarantee of employment, required under section 218A(b), the Secretary of Labor shall assess payment of back wages, or other required benefits, due any United States worker or H–2A worker employed by the employer in the specific employment in question. The back wages or other required benefits under section 218A(b) shall be equal to the difference between the amount that should have been paid and the amount that actually was paid to such worker.

''(2) STATUTORY CONSTRUCTION.—Nothing in this section shall be construed as limiting the authority of the Secretary of Labor to conduct any compliance investigation under any other labor law, including any law affecting migrant and seasonal agricultural workers, or, in the absence of a complaint under this section, under section 218 or 218A.

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

''(1) The providing of housing or a housing allowance as required under section 218A(b)(1).

''(2) The reimbursement of transportation as required under section 218A(b)(2).

''(3) The payment of wages required under section 218A(b)(3) when due.

''(4) The benefits and material terms and conditions of employment expressly provided in the job offer described in section 218(a)(2), not including the assurance to comply with other Federal, State, and local labor laws described in section 218A(c), compliance with which shall be governed by the provisions of such laws.

''(5) The guarantee of employment required under section 218A(b)(4).

''(6) The motor vehicle safety requirements under section 218A(b)(5).

''(7) The prohibition of discrimination under subsection (d)(2).

''(c) PRIVATE RIGHT OF ACTION.—

''(1) MEDIATION.—Upon the filing of a complaint by an H–2A worker aggrieved by a violation of rights enforceable under subsection (b), and within 60 days of the filing of proof of service of the complaint, a party to the action may file a request with the Federal Mediation and Conciliation Service to assist the parties in reaching a satisfactory resolution of all issues involving all parties to the dispute. Upon a filing of such request and giving of notice to the parties, the parties shall attempt mediation within the period specified in subparagraph (B).

''(A) MEDIATION SERVICES.—The Federal Mediation and Conciliation Service shall be available to assist in resolving disputes arising under subsection (b) between H–2A workers and agricultural employers without charge to the parties.

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

''(C) AUTHORIZATION.—

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

''(ii) MEDIATION.—Notwithstanding any other provision of law, the Director of the Federal Mediation and Conciliation Service is authorized to conduct the mediation or other dispute resolution activities from any other appropriated funds available to the Director and to reimburse such appropriated funds when the funds are appropriated pursuant to this authorization, such reimbursement to be credited to appropriations currently available at the time of receipt.

''(2) MAINTENANCE OF CIVIL ACTION IN DISTRICT COURT BY AGGRIEVED PERSON.—An H–2A worker aggrieved by a violation of rights enforceable under subsection (b) by an agricultural employer or other person may file suit in any district court of the United States having jurisdiction over the parties, without regard to the amount in controversy, without regard to the citizenship of the parties, and without regard to the exhaustion of any alternative administrative remedies under this Act, not later than 3 years after the date the violation occurs.

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

''(4) PREEMPTION OF STATE CONTRACT RIGHTS.—Nothing in this Act shall be construed to diminish the rights and remedies of an H–2A worker under any other Federal or State law or regulation or under any collective bargaining agreement, except that no court or administrative action shall be available under any State contract law to enforce the rights created by this Act.

''(5) WAIVER OF RIGHTS PROHIBITED.—Agreements by employees purporting to waive or modify their rights under this Act shall be void as contrary to public policy, except that a waiver or modification of the rights or obligations in favor of the Secretary of Labor shall be valid for purposes of the enforcement of this Act. The preceding sentence may not be construed to prohibit agreements to settle private disputes or litigation.

''(6) AWARD OF DAMAGES OR OTHER EQUITABLE RELIEF.—

''(A) If the court finds that the respondent has intentionally violated any of the rights enforceable under subsection (b), it shall award actual damages, if any, or equitable relief.

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

''(7) WORKERS' COMPENSATION BENEFITS; EXCLUSIVE REMEDY.—

''(A) Notwithstanding any other provision of this section, where a State's workers' compensation law is applicable and coverage is provided for an H–2A worker, the workers' compensation benefits shall be the exclusive remedy for the loss of such worker under this section in the case of bodily injury or death in accordance with such State's workers' compensation law.

''(B) The exclusive remedy prescribed in subparagraph (A) precludes the recovery under paragraph (6) of actual damages for loss from an injury or death but does not preclude other equitable relief, except that such relief shall not include back or front pay or in any manner, directly or indirectly, expand or otherwise alter or affect—

''(i) a recovery under a State workers' compensation law; or

''(ii) rights conferred under a State workers' compensation law.

''(8) TOLLING OF STATUTE OF LIMITATIONS.—If it is determined under a State workers' compensation law that the workers' compensation law is not applicable to a claim for bodily injury or death of an H–2A worker, the statute of limitations for bringing an action for actual damages for such injury or death under subsection (c) shall be tolled for the period during which the claim for such injury or death under such State workers' compensation law was pending. The statute of limitations for an action for actual damages or other equitable relief arising out of the same transaction or occurrence as the injury or death of the H–2A worker shall be tolled for the period during which the claim for such injury or death was pending under the State workers' compensation law.

''(9) PRECLUSIVE EFFECT.—Any settlement by an H–2A worker and an H–2A employer or any person reached through the mediation process required under subsection (c)(1) shall preclude any right of action arising out of the same facts between the parties in any Federal or State court or administrative proceeding, unless specifically provided otherwise in the settlement agreement.

''(10) SETTLEMENTS.—Any settlement by the Secretary of Labor with an H–2A employer on behalf of an H–2A worker of a complaint filed with the Secretary of Labor under this section or any finding by the Secretary of Labor under subsection (a)(1)(B) shall preclude any right of action arising out of the same facts between the parties under any Federal or State court or administrative proceeding, unless specifically provided otherwise in the settlement agreement.

''(d) DISCRIMINATION PROHIBITED.—

''(1) IN GENERAL.—It is a violation of this subsection for any person who has filed an application under section 218(a), to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other manner discriminate against an employee (which term, for purposes of this subsection, includes a former employee and an applicant for employment) because the employee has disclosed information to the employer, or to any other person, that the employee reasonably believes evidences a violation of section 218 or 218A or any rule or regulation pertaining to section 218 or 218A, or because the

employee cooperates or seeks to cooperate in an investigation or other proceeding concerning the employer's compliance with the requirements of section 218 or 218A or any rule or regulation pertaining to either of such sections.

''(2) DISCRIMINATION AGAINST H–2A WORKERS.—It is a violation of this subsection for any person who has filed an application under section 218(a), to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against an H–2A employee because such worker has, with just cause, filed a complaint with the Secretary of Labor regarding a denial of the rights enumerated and enforceable under subsection (b) or instituted, or caused to be instituted, a private right of action under subsection (c) regarding the denial of the rights enumerated under subsection (b), or has testified or is about to testify in any court proceeding brought under subsection (c).

''(e) AUTHORIZATION TO SEEK OTHER APPROPRIATE EMPLOYMENT.—The Secretary of Labor and the Secretary shall establish a process under which an H–2A worker who files a complaint regarding a violation of subsection (d) and is otherwise eligible to remain and work in the United States may be allowed to seek other appropriate employment in the United States for a period not to exceed the maximum period of stay authorized for such nonimmigrant classification.

''(f) ROLE OF ASSOCIATIONS.—

''(1) VIOLATION BY A MEMBER OF AN ASSOCIATION.—An employer on whose behalf an application is filed by an association acting as its agent is fully responsible for such application, and for complying with the terms and conditions of sections 218 and 218A, as though the employer had filed the application itself. If such an employer is determined, under this section, to have committed a violation, the penalty for such violation shall apply only to that member of the association unless the Secretary of Labor determines that the association or other member participated in, had knowledge, or reason to know, of the violation, in which case the penalty shall be invoked against the association or other association member as well.

''(2) VIOLATIONS BY AN ASSOCIATION ACTING AS AN EMPLOYER.—If an association filing an application as a sole or joint employer is determined to have committed a violation under this section, the penalty for such violation shall apply only to the association unless the Secretary of Labor determines that an association member or members participated in or had knowledge, or reason to know of the violation, in which case the penalty shall be invoked against the association member or members as well.

''SEC. 218D. DEFINITIONS.

''For purposes of this section and section 218, 218A, 218B, and 218C:

''(1) AGRICULTURAL EMPLOYMENT.—The term 'agricultural employment' means any service or activity that is considered to be agricultural under section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)) or agricultural labor under section 3121(g) of the Internal Revenue Code of 1986 or the performance of agricultural labor or services described in section 101(a)(15)(H)(ii)(a).

''(2) BONA FIDE UNION.—The term 'bona fide union' means any organization in which employees participate and which exists for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other terms and conditions of work for agricultural employees. Such term does not include an organization formed, created, administered, supported, dominated, financed, or controlled by an employer or employer association or its agents or representatives.

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

''(4) ELIGIBLE.—The term 'eligible', when used with respect to an individual, means an individual who is not an unauthorized alien (as defined in section 274A).

''(5) EMPLOYER.—The term 'employer' means any person or entity, including any farm labor contractor and any agricultural association, that employs workers in agricultural employment.

''(6) H–2A EMPLOYER.—The term 'H–2A employer' means an employer who seeks to hire 1 or more nonimmigrant aliens described in section 101(a)(15)(H)(ii)(a).

''(7) H–2A WORKER.—The term 'H–2A worker' means a nonimmigrant described in section 101(a)(15)(H)(ii)(a).

''(8) JOB OPPORTUNITY.—The term 'job opportunity' means a job opening for temporary or seasonal full-time employment at a place in the United States to which United States workers can be referred.

''(9) LAYING OFF.—

''(A) IN GENERAL.—The term 'laying off', with respect to a worker—

''(i) means to cause the worker's loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, contract impossibility (as described in section 218A(b)(4)(D)), or temporary suspension of employment due to weather, markets, or other temporary conditions; but

''(ii) does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer (or, in the case of a placement of a worker with another employer under section 218(b)(2)(E), with either employer described in such section) at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.

''(B) STATUTORY CONSTRUCTION.—Nothing in this paragraph is intended to limit an employee's rights under a collective bargaining agreement or other employment contract.

''(10) REGULATORY DROUGHT.—The term 'regulatory drought' means a decision subsequent to the filing of the application under section 218 by an entity not under the control of the employer making such filing which restricts the employer's access to water for irrigation purposes and reduces or limits the employer's ability to produce an agricultural commodity, thereby reducing the need for labor.

''(11) SEASONAL.—Labor is performed on a 'seasonal' basis if—

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

''(B) from its nature, it may not be continuous or carried on throughout the year.

''(12) SECRETARY.—Except as otherwise provided, the term 'Secretary' means the Secretary of Homeland Security.

''(13) TEMPORARY.—A worker is employed on a 'temporary' basis where the employment is intended not to exceed 10 months.

''(14) UNITED STATES WORKER.—The term 'United States worker' means any worker, whether a national of the United States, an alien lawfully admitted for permanent residence, or any other alien, who is authorized to work in the job opportunity within the United States, except an alien admitted or otherwise provided status under section 101(a)(15)(H)(ii)(a).''.

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

TITLE III—MISCELLANEOUS PROVISIONS

SEC. 301. DETERMINATION AND USE OF USER FEES.

(a) SCHEDULE OF FEES.—The Secretary shall establish and periodically adjust a schedule of fees for the employment of aliens pursuant to the amendment made by section 201(a) of this Act and a collection process for such fees from employers. Such fees shall be the only fees chargeable to employers for services provided under such amendment.

(b) DETERMINATION OF SCHEDULE.—

(1) IN GENERAL.—The schedule under subsection (a) shall reflect a fee rate based on the number of job opportunities indicated in the employer's application under section 218 of the Immigration and Nationality Act, as amended by section 201 of this Act, and sufficient to provide for the direct costs of providing services related to an employer's authorization to employ aliens pursuant to the amendment made by section 201(a) of this Act, to include the certification of eligible employers, the issuance of documentation, and the admission of eligible aliens.

(2) PROCEDURE.—

(A) IN GENERAL.—In establishing and adjusting such a schedule, the Secretary shall comply with Federal cost accounting and fee setting standards.

(B) PUBLICATION AND COMMENT.—The Secretary shall publish in the Federal Register an initial fee schedule and associated collection process and the cost data or estimates upon which such fee schedule is based, and any subsequent amendments thereto, pursuant to which public comment shall be sought and a final rule issued.

(c) USE OF PROCEEDS.—Notwithstanding any other provision of law, all proceeds resulting from the payment of the fees pursuant to the amendment made by section 201(a) of this Act shall be available without further appropriation and shall remain available without fiscal year limitation to reimburse the Secretary, the Secretary of State, and the Secretary of Labor for the costs of carrying out—

(1) sections 218 and 218B of the Immigration and Nationality Act, as amended and added, respectively, by section 201 of this Act; and

(2) the provisions of this Act.

SEC. 302. REGULATIONS.

(a) REQUIREMENT FOR THE SECRETARY TO CONSULT.—The Secretary shall consult with the Secretary of Labor and the Secretary of Agriculture during the promulgation of all regulations to implement the duties of the Secretary under this Act and the amendments made by this Act.

(b) REQUIREMENT FOR THE SECRETARY OF STATE TO CONSULT.—The Secretary of State shall consult with the Secretary, the Secretary of Labor, and the Secretary of Agriculture on all regulations to implement the duties of the Secretary of State under this Act and the amendments made by this Act.

(c) REQUIREMENT FOR THE SECRETARY OF LABOR TO CONSULT.—The Secretary of Labor shall consult with the Secretary of Agriculture and the Secretary on all regulations to implement the duties of the Secretary of Labor under this Act and the amendments made by this Act.

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

SEC. 303. REPORTS TO CONGRESS.

(a) ANNUAL REPORT.—Not later than September 30 of each year, the Secretary shall submit a report to Congress that identifies, for the previous year—

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

(2) the number of such aliens reported to have abandoned employment pursuant to subsection (e)(2) of section 218B of such Act, as added by section 201;

(3) the number of such aliens who departed the United States within the period specified in subsection (d) of such section 218B;

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

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

(6) the number of aliens who applied for an adjustment of status pursuant to section 103(a); and

(7) the number of aliens who received an adjustment of status pursuant section 103(a).

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

SEC. 304. EFFECTIVE DATE.

The amendments made by section 201 and section 301 shall take effect 1 year after the date of the enactment of this Act.

CHANGE TO WIN,
Washington, DC, May 14, 2009.

Hon. DIANNE FEINSTEIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR FEINSTEIN: The seven affiliated unions and six million members of Change to Win write to thank you for your continued leadership in reintroducing the ''AgJOBS'' bill (the Agricultural Job Opportunities, Benefits, and Security Act of 2009), and to pledge our full support for its enactment.

The effects of our broken immigration system on the labor market must be addressed. Farm workers and their families live in fear of deportation, and agricultural growers across the country face worker shortages. AgJOBS would enable farm workers to bargain for better working and living conditions and provide growers a legal stable labor supply by offering undocumented farm workers the chance to come out of the shadows and earn legal status by meeting stringent agricultural-work requirements. It is important that AgJOBS would also revise the H–2A agricultural guestworker program in a balanced manner.

This bipartisan bill is the product of congressional negotiations and an historic compromise between the United Farm Workers and major agribusiness employers. It also has the full support of hundreds of farmer, worker, and immigrant organizations. Its passage would be a substantial down payment on the kind of comprehensive immigration reform our country needs.

Sincerely,

Anna Burger, Chair, Change to Win,
International Secretary-Treasurer, Service Employees International Union (SEIU);
Edgar Romney, Secretary-Treasurer, Change to Win, Executive Vice President, UNITE HERE;
Joseph Hansen, International President, United Food and Commerical Workers, International Union, UFCW);
James Hoffa, General President, International Brotherhood of Teamsters (IBT);
Geralyn Lutty, United Food and Commerical Workers International Union (UFCW).
Douglas J. McCarron, General President, United Brotherhood of Carpenters and Joiners of America (UBC);
Terence M. O'Sullivan, General President, Laborer's International Union of North America (LIUNA);
Bruce Raynor, General President, Unite Here;
Arturo S. Rodriguez, President, United Farm Workers (UFW);
Andrew L. Stern, International President, Service Employees International Union (SEIU).

LEADERSHIP CONFERENCE
ON CIVIL RIGHTS,
Washington, DC, May 14, 2009.

Hon. DIANNE FEINSTEIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR FEINSTEIN: On behalf of the Leadership Conference on Civil Rights (LCCR), the nation's oldest, largest, and most diverse civil and human rights coalition, we thank you for introducing the Agricultural Job Opportunities, Benefits and Security Act (''AgJOBS'') of 2009. We have strongly supported virtually identical versions of the AgJOBS bill in previous Congresses, and we look forward to working with your office and our other allies in the effort to move it forward in the 111th Congress.

AgJOBS would provide a legal, stable agricultural labor supply and, at the same time, give undocumented farmworkers the chance to come out of the shadows and earn legal immigration status a) by meeting a past-work requirement in American agriculture and b) through stringent future agricultural-work requirements. Giving farmworkers the ability to legalize their status is critical to enabling them to bargain for better working and living conditions. AgJOBS represents a balanced approach and is a tremendous improvement over the current H–2A agricultural guestworker program, thanks to the concessions made by all sides in this debate.

The treatment of farmworkers is a matter of great importance to the civil rights community. Whether it was Chinese immigrants in the 19th century, the 4.5 million braceros brought into the United States during the World War II era, or H–2A workers under the current program, guestworkers have long been the most vulnerable and poorly treated workers among us. Even today, they are subject to below poverty-level wages and a lack of coverage by basic labor standards that other American workers take for granted—and they lack the political and economic power to improve these conditions on their own. It is because of this that we speak up today for their rights, and strongly urge the enactment of AgJOBS.

Sincerely,

WADE HENDERSON,
President & CEO.
NANCY ZIRKIN,
Executive Vice President.

DAIRY FARMERS OF AMERICA,
May 12, 2009.

Hon. DIANNE FEINSTEIN,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR FEINSTEIN: Last Congress, you showed extraordinary leadership in authoring the Agricultural Jobs, Opportunity, Benefits and Security Act (AgJobs), a bill which restructures and reforms the current H–2A temporary agricultural worker program to ensure a reliable and legal workforce for the agricultural community. On behalf of the nearly 18,000 members of Dairy Farmers of America, Inc. (DFA) we applaud your decision to reintroduce this important measure in the 111th Congress.

Dairy Farmers of America is a dairy marketing cooperative that serves and is owned by dairy farmers in 48 states. Our cooperative's success is built on the success of its producer-members, who raise their dairy herds and their families on family farms across the nation.

Immigrant labor plays a crucial role in contributing to the success of our members and the dairy industry as a whole. A large percentage of the hired workers on dairy farms of all sizes are immigrants. Unfortunately, unlike most other immigrant-dependent agricultural sectors, the dairy industry is currently blocked by the Department of Labor (DOL) from using the H–2A program because of the program's requirement that the worker and job both be temporary or seasonal. This seasonality aspect of the H–2A program has prevented dairy farmers from using the program to attract and maintain needed workers. In order to survive, our industry needs reform in the system now.

Once again, on behalf of DFA members across the country, we appreciate your leadership on this matter and stand ready to fight for its passage.

Sincerely,

JOHN WILSON,
Senior Vice President, Marketing and Industry Affairs.

U.S. APPLE ASSOCIATION,
Vienna, VA, May 11, 2009.

Hon. DIANNE FEINSTEIN,
Hart Building, U.S. Senate,
Washington, DC.

DEAR SENATOR FEINSTEIN, thank you for standing up for the U.S. apple industry and other labor intensive agriculture by reintroducing the AgJOBS bill in the Senate.

Apple production and harvesting is highly labor-intensive. The cost and availability of a predictable, consistent and legal supply of labor is critically important to the U.S. apple industry.

The past few years have brought great uncertainty to our industry. Labor shortages coupled with increased enforcement and a cumbersome, unworkable H–2A guest worker program have meant that, even in good crop years, growers' livelihoods are in jeopardy when they cannot get all of their apples off the tree. This has lead many in the industry to delay or cancel plans to expand and in some cases to get out of the fruit business altogether.

We need AgJOBS! Without this critical legislation, the U.S. could lose much of our domestic apple industry and with it over $2 billion in farm gate value. Our apples would have to be imported, most likely from China, the world's largest producer of apples. We've seen what dependence on foreign oil has been like. Can you imagine dependence on foreign food? This is not what American consumers want.

USApple and our industry leaders stand ready to work with you and your staff to pass AgJOBS. We have supported the legislation since the first year it was introduced and it is our top legislative priority.

Thank you again for your leadership on this critical issue.

Sincerely,

NANCY E. FOSTER,
President & CEO.

SOCIETY OF AMERICAN FLORISTS,
MAY 12, 2009.

Hon. DIANNE FEINSTEIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR FEINSTEIN: On behalf of the members of the Society of American Florists (SAF), I understand that you plan to reintroduce the Agricultural Job Opportunities, Benefits and Security Act (AgJOBS) this week. We applaud you for your courageous leadership and tenacity in working to advance agricultural labor reform. AgJOBS reflects years of negotiations on complex and contentious issues and will achieve historic and critical reforms to our nation's labor and immigration laws.

The bipartisan AgJOBS legislation recognizes the unique and urgent need of labor intensive agricultural industries—ranging from floral and nursery to fruits and vegetables, meat and dairy farms—to have access to a legal workforce. Thank you for recognizing these needs and taking the lead to change the untenable status quo. Your efforts on behalf of agriculture will go far to preserve one of our country's strategic commodities—a stable and reliable labor supply that produces our food and helps to sustain our economy.

An estimated two-thirds of farm workers lack proper work authorization. No other segment of the economy is so dependent upon a foreign-born workforce. Our industry is also vulnerable to the increased workplace immigration enforcement focused on employers. In addition, several pending regulatory enforcement mechanisms like the ''no-match'' rule and ''E-Verify'' mandate an immediate legislative solution to the labor problems of agriculture.

Agricultural economists estimate that three non-farm jobs in the upstream and downstream economy are sustained by every farm worker job. Absent the reforms of AgJOBS, many of these jobs will be lost because agricultural producers will have no choice but to cut back or send some of their production offshore.

In addition, AgJOBS will contribute to increasing national security by enhancing the rule of law. In the short term, those eligible to earn legal status must come forward, submit to a background check and make substantial commitment to agricultural work prospectively. This ability to retain our trained workforce will lead to a long-term solution so that capacity can be built to allow greater participation in a reformed H–2A program.

Finally, the bipartisan AgJOBS continues to have the endorsement and support of organized labor, agriculture, immigrant rights and religious community groups, and general business, through three Congresses.

Thank you for your leadership and vision on this vital issue. We look forward to working with you in the months ahead to enact AgJOBS.

The Society of American Florists is the national trade association representing the entire floriculture industry, a $21 billion component of the U.S. economy at retail. Membership includes about 10,000 small businesses, including growers, wholesalers, retailers, importers and related organizations, located in communities nationwide and abroad. The industry produces and sells cut flowers and foliage, foliage plants, potted flowering plants, and bedding plants.

Sincerely,

KEVIN PRIEST,
Chairman, Government Relations Committee.

AMERICAN NURSERY &
LANDSCAPE ASSOCIATION,
Washington, DC, May 12, 2009.

Hon. DIANNE FEINSTEIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR FEINSTEIN: The American Nursery & Landscape Association commends you for your steadfast leadership toward resolving the labor crisis that threatens every labor-intensive sector of agriculture in America. ANLA represents 2000 active member firms and an additional 20,000 grassroots network participants who grow, sell, and install landscape plants. ANLA members also produce the orchard and vineyard planting stock that sustains farms in California and across the nation. At farmgate, our industry was valued by the U.S. Department of Agriculture at over $16 billion in 2007. California is of course the nation's leading nursery stock producer, but nurseries are an important agricultural component from coast to coast. Nursery and greenhouse production ranks among the top five sectors of agriculture in 28 states, and in the top 10 in all 50 states!

Nursery farming is inherently labor intensive and requires specialized skills. As with the rest of agriculture, much of the nursery workforce is comprised of foreign workers; their labor here contributes immensely to the American economy and secures the continued employment of hundreds of thousands of nursery farm managers, office, marketing, sales, and other staff—good American jobs that will move to Canada or Mexico or China if we do not have a stable and legal workforce performing the nursery work that cannot be readily mechanized.

ANLA has long supported AgJOBS because its bipartisan, common-sense reforms reflect how our country and our Congress must confront and solve myriad tough challenges. AgJOBS recognizes the unique experience and talent of the farm labor force that is here, now, feeding America, and encourages these workers to continue contributing to the well-being of our nation as they earn their way to a brighter future. AgJOBS also provides a lasting solution through a sweeping overhaul of the H–2A program. Indeed, we could not support a bill that fails to provide a lasting solution. Many ANLA members now use H–2A and many more will be able to when the reforms of AgJOBS are enacted.

Senator, we have shared a difficult journey, and the journey is far from complete. We look forward to the enactment of the urgently-needed reforms of AgJOBS, whether as part of a much broader effort to reform America's failing immigration system, or as part of a strategic first step. Again, thank you for your leadership.

Sincerely,

ROBERT J. DOLIBOIS, CAE,
Executive Vice President.
CRAIG J. REGELBRUGGE,
Vice President for Government Relations.

AMERICAS MAJORITY,
Overland Park, KS, May 11, 2009.

Hon. DIANNE FEINSTEIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR FEINSTEIN: I would like to commend you on the AgJobs Act of 2009, a piece of legislation crucial to maintaining America's position in an increasingly internationalized market in vegetables, fruits, and grains. The bill is a paradigm of what immigration reform should be—friendly alike to families and businesses, but mindful of the needs of public safety.

It is well known to those who represent agricultural constituents that foreign migrant workers are crucial to American farmers, ranchers, and foresters. What is less understood is the vast network of white collar jobs that depend on maintaining access to guest workers in America. Roughly one half of the agricultural labor force consists of those who work with crops in field, nurseries, and greenhouses. The rest, as the Bureau of Labor Statistics NAICS codes reveal, represent a cross section of American skills: Managers in production, finance, transportation, and sales; computer programmers and systems analysts; accountants and auditors; life scientists and agricultural engineers; pilots and truck drivers, riggers and diesel mechanics; salesmen, secretaries and receptionists—an entire world of white collar jobs on American soil, much of it dependent on the competitive nature of our operations in the fields, nurseries, and greenhouses.

It has become fashionable in some circles to pretend that the exclusion of foreign workers from America's farms will relieve American farmers of their competition. This is not so. It is possible, had one the heart for it, to remove Mexican nationals from American fields—but we cannot remove Argentinians from Argentina, Brazilians from Brazil, or Malaysians from Malaysia. A healthy agricultural industry requires access to all types of labor, including field labor, on a competitive basis, here in America.

We hope you will succeed in moving AgJobs 2009 to keep American agriculture competitive.

Best,

RICHARD NADLER,
President.

MAY 11, 2009.

Senator DIANNE FEINSTEIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR FEINSTEIN: I am writing out of deep concern for the future of the agricultural industry in California, and the U.S. generally. For reasons set forth more fully below, it is imperative that Congress pass legislation this year, such as AgJOBS, that will provide agriculture with a stable, reliable and legal workforce.

As you know, California agriculture relies upon a large immigrant workforce. The current economic crisis and rampant unemployment has only confirmed what you and our industry have been saying for years: American workers will not do these jobs. Despite staggering job losses, there has been no perceptible shift in the demographic makeup of our workforce. Today, as always, our industry relies on a community of talented immigrant farmworkers. They are the best farmworkers in the world, and our industry would cease to exist without them.

Honest employers who do not intend to hire illegal immigrants, but unknowingly do when employees provide them with false but genuine-appearing employment verification documents, stand beneath the proverbial Sword of Damocles, never knowing if their workforce—or they themselves—will be hauled off by federal agents. Where should agricultural employers look to find labor when Americans won't do the job and the ones that will are largely falsely documented? The answer is not the current H–2A program, which is notoriously cumbersome, uneconomical and prone to litigation.

I submit that the best opportunity to solve the farm labor issues in California and the U.S. is AgJOBS. AgJOBS would provide workable and fair legal channels for farmworkers to enter the country, work, and return home after completing the season. At the same time, there is a clear and compelling need for experienced farmworkers who lack legal status to be given a chance to earn legal status over time, subject to reasonable conditions.

California's $32 billion dollar agricultural industry produces one-half of the nation's fruits, vegetables and tree nuts. Without the passage and implementation of AgJOBS, California and the nation will continue to export farms along with the field jobs and three to four upstream and downstream jobs that are created in the agricultural industry. Furthering U.S. dependency on imported crops from countries such as China is not only dangerous for our health, it is devastating to our economy.

It is imperative that AgJOBS pass this year. On behalf of Western Growers, I urge you to introduce AgJOBS in the Senate as soon as possible, as this legislation must not be delayed any longer.

Sincerely,

THOMAS A. NASSIF,
President and CEO,
Western Growers.

UNITED FARM WORKERS,
Keene, CA, May 14, 2009.

Hon. DIANNE FEINSTEIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR FEINSTEIN: Thank you for your leadership on the Agricultural Job Opportunities, Benefits, and Security Act (''AgJOBS'').

As you are well-aware, the status quo for farmworkers and agricultural employers is untenable and must be reformed. The majority of farmworkers lack immigration status. Because they live and work in the shadows, undocumented farmworkers are too fearful to complain about violations of their wages and working conditions and are vulnerable to exploitation by labor contractors and growers. The wages of all farmworkers are depressed by the presence of so many employees who lack any meaningful bargaining power. The ability to legalize the immigration status of farmworkers under AgJOBS is key to enabling farmworkers to bargain for better working and living conditions.

With this letter are just a few stories of farmworkers and their families who will be helped by the passage of AgJOBS. The United Farm Workers collected these stories from farmworkers and farmworker groups and unions throughout the country. There are thousands more like them.

Thank you for your continued leadership and commitment to AgJOBS. We look forward to working with you to achieve this desperately needed reform.

Sincerely,

ARTURO S. RODRIGUEZ,
President

THE NATIONAL ASSOCIATION OF STATE DEPARTMENTS OF AGRICULTURE,
Washington, DC, May 11, 2009.

Hon. DIANNE FEINSTEIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR FEINSTEIN: The National Association of State Departments of Agriculture (NASDA) is a nonprofit nonpartisan association that represents the Commissioners, Secretaries and Directors of Agriculture in the 50 states and for US territories. NASDA supports the Agricultural Job Opportunity, Benefits and Security Act of 2009 (AgJOBS).

As leaders in agriculture, we recognize that a critical workforce need exists today in agriculture. Millions of American jobs depend on agricultural production and will be enhanced with legislation that can secure a legal work force for agriculture as well as regularize the status of current agricultural workers through an adjustment program problem. Farmers in most regions of the United States have faced critical shortages of entry level workers for many years. AgJOBS is a solution for workers and agriculture producers.

NASDA has carefully considered the farm labor issue and has concluded that Congress needs to enact immigration reform legislation that provides workable and fair legal channels for farmworkers to enter the country, work, and return home when the season is over. The best opportunity to achieve both of these goals is the bipartisan and time-tested AgJOBS.

NASDA's current policy on agricultural labor is consistent with the objectives of the AgJOBS legislation. NASDA policy addresses four areas of concern to all agricultural industries: concern for the basic rights of all agricultural workers, recognition that the current H2A program does not serve as a viable means for addressing gaps in the local workforce, the need for a trustworthy identification system for non-citizen workers, and the need to regularize the status of the existing workforce during a transition to a more transparent and enforceable means of meeting basic workforce needs.

We greatly appreciate your support and reintroduction of this important legislation.

RON SPARKS,
NASDA President, Commissioner,
Alabama Department of Agriculture & Industries.

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA,
Washington, DC, May 14, 2009.

TO THE MEMBERS OF THE UNITED STATES SENATE: The U.S. Chamber of Commerce, the world's largest business federation representing more than three million businesses and organizations of every size, sector, and region, supports the ''Agricultural Job Opportunity, Benefits, and Security Act of 2009'' (AgJOBS), which is expected to be introduced today.

The Chamber supports a comprehensive solution to fixing America's broken immigration system and believes that AgJOBS is a step towards that goal and one that can be taken now. One of the bill's most important attributes is that it provides a reasonable mechanism for the most experienced, but unauthorized agricultural workers to earn legal status subject to strict conditions.

Agriculture is a sector that is highly sensitive to foreign competition. Forcing much of U.S. agricultural production offshore through an enforcement-only approach to immigration policy is resulting in significant loss of American jobs and leaving the United States less secure. The U.S. agriculture sector is the most reliant on the foreign-born labor supply. However, each farmworker sustains jobs in the upstream and downstream economy—equipment, supplies and services, packaging and distribution, lending and insurance.

The bipartisan AgJOBS is the fruit of years of hard work by business and labor, conservatives and liberals, Republicans and Democrats alike. The Chamber urges your support for enactment of AgJOBS, this year.

Sincerely,

R. BRUCE JOSTEN,
Executive Vice President, Government Affairs.

AGRICULTURE COALITION FOR IMMIGRATION REFORM—MEMBERS AND SUPPORTERS

AgriMark Inc; Agri-Placement Services; Allied Federated Co-Ops, Inc; Allied Grape Growers; Almond Hullers and Processors; American Agri-Women; American Frozen Foods Institute; American Horse Council; American Mushroom Institute; American Nursery & Landscape Association; American Sheep Industry Association; CoBank; Council of Northeast Farmer Cooperatives; Dairy Farmers of America; Dairylea Cooperative, Incorporated; Farwest Equipment Dealers Association; Federation of Employers and Workers of America; Gulf Citrus Growers Association; Irrigation Association; Land O' Lakes.

National Association of State Departments of Agriculture; National Cattlemen's Beef Association; National Christmas Tree Association; National Cotton Ginners Association; National Council of Agricultural Employers; National Council of Farmer Cooperatives; National Farmers Union; National Greenhouse Manufacturers Association; National Milk Producers Federation; National Potato Council; National Watermelon Association; New England Apple Council; Nisei Farmers League; Northeast Dairy Producers; Northern Christmas Tree Growers; Northeast Farm Credit; Northwest Farm Credit Services; Northwest Horticultural Council; OFA—An Association of Floriculture Professionals; Pacific Northwest Christmas Tree Association.

Pacific Tomato Growers; Perennial Plant Association; Produce Marketing Association; Pro-Fac Cooperative; Raisin Bargaining Association; Rocky Mountain Farmers Union; Senseny South Corporation; Snake River Farmers Association; Society of American Florists; Southeast Cotton Ginners Association, Inc; Southeast Dairy Farmers Association; Southern Christmas Tree Association; Southern Cotton Ginners Association; Southern Nursery Association; Turfgrass Producers International; United Agribusiness League; United Egg Association; United Egg Producers; United Fresh Produce Association; U.S. Apple Association.

U.S. Custom Harvesters Association; Western Growers; Western Plant Health Association; Western Range Association; Western United Dairymen; WineAmerica; Wine Grape Growers of America; Wine Institute; Agricultural Affiliates (New York); Agricultural Council of California; Alabama Nursery & Landscape Association; Alabama Watermelon Association; Arizona Nursery Association; Arkansas Green Industry Association; Blue Diamond Growers; California Apple Commission; California-Arizona Watermelon Association; California Avocado Commission; California Association of Nurseries and Garden Centers; California Association of Wine Grape Growers.

California Canning Peach Association; California Citrus Mutual; California Dairies Inc; California Dried Plum Board; California Farm Bureau Federation; California Fig Institute; California Floral Council; California Grain and Feed Association; California Grape and Tree Fruit League; California League of Food Processors; California Pear Growers Association; California Seed Association; California Strawberry Commission; California Strawberry Nurserymens' Association; California Walnut Commission; California Women for Agriculture; Nursery Growers Association (CA); Olive Grower Council of California; Pacific Egg and Poultry Association; Sunmaid Growers of California.

Sunsweet Growers Inc.; Valley Fig; Ventura County Agricultural Association; Associated Landscape Contractors of Colorado; Colorado Nursery & Greenhouse Association; Colorado Potato Administrative Committee; Colorado Sugarbeet Growers Association; Colorado Wine Industry Development Board; Connecticut Nursery & Landscape Association; Florida Citrus Mutual; Florida Citrus Packers; Florida Fruit and Vegetable Association; Florida Nursery, Growers & Landscape Association; Florida Watermelon Association; Georgia Green Industry Association; Georgia Milk Producers; Georgia Watermelon Association; Winegrowers Association

of Georgia; Idaho Apple Commission; Idaho Dairymen's Association.

Idaho Dairy Producers Assn.; Idaho Grower Shippers Association; Idaho Nursery & Landscape Association; Idaho-Oregon Fruit and Vegetable Association; Potato Growers of Idaho; Illinois Grape Growers and Vintners Association; Illinois Landscape Contractors Association; Illinois Nurserymen's Association; Illinois Specialty Growers Association; Indiana-Illinois Watermelon Association; Indiana Nursery & Landscape Association; Iowa Nursery and Landscape Association; Kansas Nursery and Landscape Association; Kentucky Nursery & Landscape Association; Farm Credit of Maine; Maine Nursery & Landscape Association; Maryland-Delaware Watermelon Association; Maryland Nursery & Landscape Association; Associated Landscape Contractors of Massachusetts; Massachusetts Nursery & Landscape Association.

Michigan Apple Committee; Michigan Blueberry Growers; Michigan Christmas Tree Association; Michigan Green Industry Association; Michigan Horticultural Society; Michigan Nursery and Landscape Association; Michigan Vegetable Council; WineMichigan; Minnesota Nursery & Landscape Association; Mississippi Nursery Association; Missouri-Arkansas Watermelon Association; Missouri Landscape & Nursery Association; Montana Nursery & Landscape Association; Nebraska Nursery & Landscape Association; New England Nursery Association; New Jersey Nursery & Landscape Association; Dairy Producers of New Mexico; Cayuga Marketing; Farm Credit of Western New York; First Pioneer Farm Credit.

New York Apple Association; New York Horticulture Society; New York State Nursery & Landscape Association; New York State Vegetable Growers Association; ProFac Cooperative; Yankee Farm Credit; North Carolina Association of Nurserymen; North Carolina Christmas Tree Association; North Carolina Commercial Flower Growers Association; North Carolina Farm Bureau Federation; North Carolina Greenhouse Vegetable Growers Association; North Carolina Green Industry Association; North Carolina Potato Association; North Carolina Strawberry Association; North Carolina Watermelon Association; North Carolina Wine & Grape Council; Northern California Growers Association; North Dakota Nursery & Greenhouse Association; Northern Ohio Growers Association; Nursery Growers of Lake County Ohio, Inc.

Ohio Fruit Growers Society; Ohio Nursery & Landscape Association; Ohio Vegetable & Potato Growers Association; Oklahoma Greenhouse Growers Association; Oklahoma State Nursery & Landscape Association; Hood River Grower-Shipper Association; Oregon Association of Nurseries; Oregon Wine Board; Pennsylvania Landscape & Nursery Association; State Horticultural Association of Pennsylvania;

Raisin Bargaining Association; Rhode Island Nursery and Landscape Association; Snake River Farmers Association; South Carolina Greenhouse Growers Association; South Carolina Nursery & Landscape Association; South Carolina Watermelon Association; South Dakota Nursery & Landscape Association; Tennessee Nursery & Landscape Association; Lonestar Milk Producers; Plains Cotton Growers.

Select Milk Producers (TX); South Texas Cotton and Grain Association; Texas Agricultural Cooperative Council; Texas AgriWomen; Texas Association of Dairymen; Texas Cattle Feeders Association; Texas Citrus Mutual; Texas Cotton Ginners Association; Texas Grain Sorghum Producers Association; Texas Nursery & Landscape Association; Texas-Oklahoma Watermelon Association; Texas Poultry Federation; Texas Produce Export Association; Texas Produce Association; Texas Turf Producers Association; Texas Vegetable Association; Western Peanut Growers; Utah Dairymen's Association; Utah Nursery & Landscape Association; Vermont Apple Marketing Board.

Vermont Association of Professional Horticulturists; Frederick County Fruit Growers' Association (Virginia); Northern Virginia Nursery & Landscape Association; Southwest Virginia Nursery & Landscape Association; Virginia Apple Growers Association; Virginia Christmas Tree Growers Association; Virginia Nursery and Landscape Association; Wasco County Fruit & Produce League; Washington Association of Wine Grape Growers; Washington Growers Clearing House Association; Washington Growers League; Washington Potato & Onion Association; Washington State Potato Commission; Washington State Nursery & Landscape Association; Washington Wine Institute; West Virginia Nursery and Landscape Association; Wisconsin Christmas Tree Growers Association; Wisconsin Nursery Association; Wisconsin Landscape Federation; Wisconsin Sod Producers Association.

Mr. LEAHY. Mr. President, once again I am pleased to join Senator FEINSTEIN to introduce the Agricultural Job Opportunities, Benefits, and Security Act AgJOBS. Senator FEINSTEIN has been pursuing these important reforms for several years now, and I commend her dedication to this legislation, and to America's farmers. I join her and the other cosponsors of this legislation in strong support of America's agricultural industry and the men and women who work hard every day to keep our farms running.

In Vermont, as in many States across the country, farmers are feeling the effects of a scarce labor pool. This problem is particularly acute for the dairy industry, where the employment needs are year-round and require a significant investment from the farmer in terms of training and development. I have long been concerned about the dairy farmers' difficulties in trying to use the agricultural visa program. It simply makes no sense that the visa program dedicated to agriculture cannot be used by such an important arm of the industry.

I have long advocated for the dairy-specific provisions in the AgJOBS bill. I worked to include these protections for dairy farmers during Congress's last two debates on comprehensive reform, and it is time for the immigration law to accommodate the legitimate needs of the Nation's dairy farmers. The AgJOBS bill will change this. It would give dairy farmers needing workers the opportunity to lawfully hire foreign workers who can remain with their employers for a meaningful period of time.

The AgJOBS legislation contains other important reforms that will help all of America's farmers. The creation of a blue card for undocumented agricultural workers who have been working to keep our farms running and fields planted and harvested is the right thing to do. It is a targeted and limited proposal that will serve to help farmers and farm workers. I have said before that no American farmer should be forced to choose between his or her livelihood and obeying the law. In Vermont it is estimated that as many as 2000 undocumented workers work on dairy farms in the State. We can all agree that this is not an ideal situation—not for the farmer and not for the worker, and not for an overall immigration system that is in need of substantial repair.

By providing a mechanism for loyal undocumented foreign workers to come out of the shadows and into the sunlight of the protection of the law and the rights it will provide them, Congress can help begin a new day in American agriculture. No longer will farmers endure the waste and heartbreak of watching fields of crops rot for lack of workers to harvest. Workers will be able to contribute lawfully and openly to our Nation's agricultural industry, and integrate into their surrounding communities, adding to the fabric of our diverse American life. The need for this legislation is clear and present, and I hope that some who have stood in opposition to sensible immigration reform will recognize that hardworking farmers and their communities are as much the victims of their misguided obstructionism as are the immigrants they seek to punish. We will need the strong support in the Senate and from the Obama administration if we are to make these and other reforms to our immigration system. President Obama recognized the need for this legislation as a Senator when he was an original cosponsor last Congress. His leadership will be critical as we move forward.

Our bill contains other sensible provisions concerning the rights of workers, fair wages, and a streamlined process for farmers using the H–2A process. These are all important reforms that I am proud to support. Senator FEINSTEIN is committed to the Nation's farmers and those who work for them, and I am pleased to join her in support of these needed reforms.

Mr. SCHUMER. Mr. President, I also rise today in strong support of the Agricultural Jobs, Opportunity, Benefits, and Security Act of 2009, also known as AgJOBS.

The distinguished Senator from California has already eloquently explained what the AgJOBS bill is, what it seeks to accomplish and why America needs this Congress to pass AgJOBS as soon as possible.

I simply wish to briefly explain to the people of my home State of New York—as, their Senator—and to all of the American people, as chairman of the Senate Immigration Subcommittee, why I support AgJOBS and why I think they should support AgJOBS too.

Simply put, the status quo in our agricultural industry is unsustainable.

What is the status quo? All around my home State of New York, and across the country, family farmers are trying to do the right thing and operate lawful and successful farms.

Virtually every family farmer I have met in my travels across New York has aggressively tried to hire Americans to work in their nurseries, orchards, farms, and vineyards.

For instance, my friends in the Long Island Farm Bureau can tell you that more than half of their members pay more than $12–$15 per hour per worker, and actively seek to hire American workers, often arranging buses to recruit Americans into Long Island to work.

But what these family farmers are finding is that—even in this bad economy, even if they offer Americans twice or sometime three times the minimum wage and provide benefits—American workers simply won't stay in these jobs for more than a few days.

Why don't Americans want to stay in many of these agricultural jobs? Let me share with you the description of the working conditions for agricultural workers as provided by the Bureau of Labor Statistics in their 2008–2009 Occupational Outlook Handbook. Here is their description:

Much of the work of farmworkers and laborers on farms and ranches is physically strenuous and takes place outdoors in all kinds of weather.

Harvesting fruits and vegetables, for example, may require much bending, stooping, and lifting. Workers may have limited access to sanitation facilities while working in the field and drinking water may also be limited.

Farm work does not lend itself to a regular 40-hour workweek. Work cannot be delayed when crops must be planted or harvested or when animals must be sheltered and fed.

Long hours and weekend work is common in these jobs. For example, farmworkers and agricultural equipment operators may work 6- or 7-days a week during planting and harvesting seasons.

Many agricultural worker jobs are seasonal in nature, so some workers also do other jobs during slow seasons. Migrant farmworkers, who move from location to location as crops ripen, live an unsettled lifestyle, which can be stressful.

Farmworkers risk exposure to pesticides and other hazardous chemicals sprayed on crops or plants.

This is certainly not the description of a life most Americans would want for themselves, much less for their children. And so what the family farmers in New York experience is that even when Americans take these jobs, the vast majority quit after only a few days.

So who is stepping in to take many of these difficult agricultural jobs? Immigrants who need these jobs to support the families they left behind in their native country.

But the vast majority of the immigrants working in agricultural jobs are undocumented. For this reason, family farmers are often required to choose between hiring undocumented workers or going out of business.

AgJOBS solves this problem in a way that is fair to everyone.

AgJOBS requires current undocumented agricultural workers to pay a fine, pay their taxes, undergo thorough background checks, and legalize their status in order to keep their jobs. If these workers refuse to legalize their status, or have any kind of criminal record, they will be deported.

AgJOBS provides America's family farmers with access to legal workers and removes the burden on farmers to perform the role of Federal immigration enforcement officials.

But just as importantly, AgJOBS places increased penalties on farmers who hire illegal aliens and places penalties on farmers who provide poor working conditions for their employees. This will make it far likelier that Americans who want these jobs will stay in these jobs for longer periods of time.

For this reason, AgJOBS is supported by hundreds of agriculture, business, labor, religious, and ethnic affinity groups.

It is my profound belief that Americans are pro-legal immigration and anti-illegal immigration, and will support policies that are consistent with this basic principle.

AgJOBS fits this description. It severely penalizes farmers who will continue to hire illegal immigrants and who choose to exploit their workers. But it also provides farmers with the ability to hire Americans and legal immigrants who will take these jobs.

The current situation is simply untenable. Every day, American farms are closing and America has to import more and more food from abroad because it is far cheaper to buy foreign food than it is to produce food here.

For every farmworker job we lose to another country, America loses three to four other American jobs in packaging, processing, supplies, equipment, and other related sectors.

Failure to pass AgJOBS will continue to result in devastating consequences for our economy.

In New York alone, the Farm Credit Association of New York estimates that if AgJOBS is not passed, New York State could lose in excess of 900 farms, $195 million in value of agricultural production, and over 200,000 acres in production in agriculture over the next 24 months.

Finally, our national security is threatened when we no longer are able to ensure that we can sufficiently feed our people with American food. Without AgJOBS, we place our Nation's food security at risk from those who might seek to do harm to America.

This situation can and should be remedied. AgJOBS provides the remedy, and I am therefore proud to be an original cosponsor of AgJOBS and strongly support its passage.

By Ms. MURKOWSKI (for herself and Mr. BEGICH):

S. 1041. A bill to amend the Oil Pollution Act of 1990 to modify the applicability of certain requirements to double hulled tankers transporting oil in bulk in Prince William Sound, Alaska; to the Committee on Commerce, Science, and Transportation.

Ms. MURKOWSKI. Mr. President, today I am introducing a bill, with my colleague from Alaska Senator MARK BEGICH, that will require all oil laden tankers in Prince William Sound to be escorted by at least two towing vessels or other vessels considered appropriate by the Secretary of the Department of Homeland Security.

At 12:04 a.m. on March 24, 1989, the Exxon Valdez, carrying over 53 million gallons of crude oil, failed to turn back into the shipping lane after detouring to avoid ice, and ran aground on Bligh Reef. Alaskans will never forget that morning, waking up to hear about the worst oil spill and environmental disaster in U.S. history and living with the lasting impacts it has had on our State and residents.

The National Transportation Safety Board investigated the accident and determined probable causes for the accident. While it determined that it was primarily caused by human error of the captain and crew, it is my belief that we had also become complacent. It had been 12 years since we had begun to tanker oil out of Valdez and there had not been an incident. However, when the spill occurred, we became acutely aware of how woefully unprepared we were. The few prevention measures that were available were inadequate and the spill response and clean-up resources were seriously deficient. The oil eventually fouled some 1,300 miles of shoreline, stretching almost 500 miles, and covered an area of 11,000 square miles.

While the captain and crew were found at fault for the immediate cause of the spill, the incident also highlighted huge gaps in regulatory oversight of the oil industry. The response of Congress to the spill was passage of the Oil Spill Pollution Act of 1990 or OPA90. The law overhauled shipping regulations, imposed new liability on the industry, required detailed response plans and added extra safeguards for shipping in Prince William Sound. Since the law took effect, annual oil spills were greatly reduced and lawmakers, marine experts, the oil industry and environmentalists credit the law for major improvements in U.S. oil and shipping industries.

Oil spill prevention and response have been greatly improved in Prince William Sound since the passage of OPA90. The U.S. Coast Guard now monitors fully laden tankers all the way through Prince William Sound. Specially trained marine pilots ride the ships for 25 of the 70 mile journey through the Sound and there are weather criteria for safe navigation. Contingency plans, skimmers, dispersants, oil barges and containment booms are all now readily available. An advanced ice-detecting radar system is also in place to monitor the icebergs that flow off of the mighty Columbia Glacier.

Two escort tugs accompany each tanker while passing through the Sound and are capable of assisting the tanker in the case of an emergency. This world class safety system recently

saw the 11,000th fully loaded tanker safely escorted through Prince William Sound. It is estimated that if the Exxon Valdez would have been double-hulled, the amount of the spill would have been reduced by more than half. While double hulled tankers are a huge improvement over single hulls, they do not prevent oil spills.

The legislation that Senator BEGICH and I are introducing today will maintain the existing escort system in place for all tankers. Presently, the federal requirement that every loaded tanker be accompanied through the Sound by two tugs applies only to single-hulled tankers. Even though, right now, double-hulled tankers are escorted by two vessels, federal law does not require them to be. The last single hulled tanker in the Prince William Sound fleet is expected to be retired from service by August 2012 and our legislation ensures all double hulled tankers will always be escorted by two tugs.

Although there have been a number of marine incidents and near misses since the Exxon Valdez oil spill in 1989, over the past 20 years, through the efforts of the U.S. Coast Guard, industry, the State of Alaska, and the Prince William Sound Citizens Advisory Council to implement the requirements of OPA 90, there have been no major oil spills. Today, as a result, the marine transportation safety system established for Prince William Sound is regarded as among the most effective in the world. A key reason for that accomplishment is, in part, because of the safety benefits resulting from having dual escort vessels available to assist oil laden tankers transiting the Sound.

Section 4116 (c) of OPA 90 requires that single hulled tankers over 5,000 gross tons transporting oil in bulk in Prince William Sound, Alaska be escorted by at least two towing vessels or other vessels considered appropriate by the Secretary.

Subsection (a) makes applicable to double hulled tankers the requirement in existing law including regulations in 33 CFR Part 168 issued to implement that dual escort vessel requirement for single hulled tankers. The subsection leaves the dual escort vessel requirement in place for single hulled tankers. By making those cited regulations applicable to double hulled tankers, the U.S. Coast Guard would not need to issue new regulations as a result of the amendment to section 4116(c) of OPA 90. Rather, the Secretary is authorized and directed to ''carry out subparagraph (A)'' by order without notice and hearing, and without issuing new regulations, under section 553 of title 5 of the U.S. Code.

The dual escort plan, as it was constituted and in effect as of March 1, 2009 for Prince William Sound, is described in a document entitled, ''Vessel Emergency Response Plan'' or ''VERP'', and is on file with the House Transportation and Infrastructure Committee and the Senate Commerce, Science, and Transportation Committee.

It is envisioned that, as advancements in technology are made in the future, any appropriate and warranted modifications to the VERP cited above implementing the dual escort practice as in effect as of March 1, 2009 and implementing the dual escort requirement in this section, including implementing regulations, will be made by the Prince William Sound Tanker Owners/Operators in consultation with the U.S. Coast Guard, the State of Alaska, and the PWSRCAC and ratified and endorsed by the U.S. Coast Guard before being implemented.

The success of this escort system over the past 20 years has shown us that it must not be compromised. We cannot forget the lessons of the Exxon Valdez oil spill and allow ourselves to become complacent.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was orderd to be printed in the RECORD, as follows:

S. 1041

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

SECTION 1. DUAL ESCORT VESSELS FOR DOUBLE HULLED TANKERS IN PRINCE WILLIAM SOUND, ALASKA.

(a) IN GENERAL.—Section 4116(c) of the Oil Pollution Act of 1990 (46 U.S.C. 3703 note; Public Law 101–380) is amended—

(1) by striking ''Not later than 6 months'' and inserting the following:

''(1) IN GENERAL.—Not later than 180 days''; and

(2) by adding at the end the following:

''(2) PRINCE WILLIAM SOUND, ALASKA.—

''(A) IN GENERAL.—The requirement in paragraph (1) relating to single hulled tankers in Prince William Sound, Alaska, described in that paragraph being escorted by at least 2 towing vessels or other vessels considered to be appropriate by the Secretary (including regulations promulgated in accordance with section 3703(a)(3) of title 46, United States Code, as set forth in part 168 of title 33, Code of Federal Regulations (as in effect on March 1, 2009) implementing this subsection with respect to those tankers) shall apply to double hulled tankers over 5,000 gross tons transporting oil in bulk in Prince William Sound, Alaska.

''(B) IMPLEMENTATION OF REQUIREMENTS.—The Secretary of the Federal agency with jurisdiction over the Coast Guard shall carry out subparagraph (A) by order without notice and hearing pursuant to section 553 of title 5 of the United States Code.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) take effect on the date that is 90 days after the date of enactment of this Act.

By Mr. HARKIN (for himself, Mr. KENNEDY, Mrs. GILLIBRAND, and Mr. REED):

S. 1048. A bill to amend the Federal Food, Drug, and Cosmetic Act to extend the food labeling requirements of the Nutrition Labeling and Education Act of 1990 to enable customers to make informed choices about the nutritional content of standard menu items in large chain restaurants; to the Committee on Health, Education, Labor, and Pensions.

Mr. HARKIN. Mr. President, I rise to introduce a bill, the Menu Education and Labeling Act, on behalf of myself and my colleagues, Senator KENNEDY of Massachusetts, Senator REED of Rhode Island, and Senator GILLIBRAND of New York.

It is by now well established that poor diet and obesity, as well as related conditions such as heart disease, have reached epidemic levels. The majority of the U.S. population is either overweight or obese. The incidence of type II diabetes has reached levels not even imaginable 20 years ago, with some research suggesting that one in three children will develop the disease by adulthood.

There is no single solution to this complex issue of poor nutrition and diet related diseases. Policymakers looking for a silver bullet will be disappointed. But inaction is not an option. We must start taking meaningful steps to address this growing problem by giving people the tools necessary to live healthier lifestyles. That is why my colleagues and I are introducing this bill today to extend nutrition labeling beyond packaged foods to include foods at chain restaurants with 20 or more locations, as well as food in vending machines. This common-sense idea will give consumers a needed tool to make wiser choices and achieve a healthier lifestyle. It is a positive step toward addressing the obesity epidemic.

In 1990, Congress passed the Nutrition Labeling and Education Act, NLEA, requiring food manufacturers to provide nutrition information on nearly all packaged foods. The impact has been tremendous. Not only do nearly three-quarters of adults use the food labels on packaged foods, but studies indicate that consumers who read labels have healthier diets.

Unfortunately, when Congress first passed the NLEA, it excluded restaurants from any labeling requirements. Since that time, restaurants have become more and more important to Americans' diet and health. Americans consume a third of their calories and spend half of their food dollars at restaurants at the very time when nutrition and health experts say that rising caloric consumption and growing portion sizes are causes of obesity. We also know that when children eat in restaurants, they consume twice as many calories as when they eat at home. Consumers say that they would like nutrition information provided when they order their food at restaurants, yet, while they have good nutrition information in supermarkets, at restaurants they can only guess.

In recent years, some states and cities have led the way on menu labeling. New York City has already implemented a menu labeling initiative that requires the disclosure of calories on menus and menu boards at chain restaurants. Consumer surveys show that

the residents of New York are enthusiastic about the initiative. The experience in New York has also underscored the feasibility and practicality of the endeavor. Despite earlier concerns about implementation, the vast majority of restaurants in New York City complied with the law quickly and without incident. Those with particular challenges were assisted by the New York City Health Department to enable them to comply with the law.

But New York City is not the only such initiative. Other cities such as Philadelphia, Seattle, Portland, and San Francisco have followed suit. Just last fall, the State of California became the first State in the Nation to enact a statewide menu labeling law, and Massachusetts became the second yesterday. Clearly there is not only a public health rationale for menu labeling, but consumer demand as well.

As I already stated, I harbor no illusions that any one policy will turn the tide on obesity and poor diet in our country, but if we are ever to reorient our society and our health care system in the U.S. away from treatment and towards a stronger focus on prevention, we must build prevention into the very fabric of society. We must provide consumers with the tools and the support that they need to make the healthy choice the right choice. The MEAL Act is one means by which to accomplish that goal, and I urge my colleagues to join me in supporting this important legislation.

By Mr. REID (for Mr. ROCKEFELLER (for himself, Mr. KOHL, and Mr. LEVIN)):

S. 1050. A bill–amend title XXVII of the Public Health Service Act to establish Federal standards for health insurance forms, quality, fair marketing, and honesty in out-of-network coverage in the group and individual health insurance markets, to improve transparency and accountability in those markets, and to establish a Federal Office of Health Insurance Oversight to monitor performance in those markets, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. ROCKEFELLER. Mr. President, I rise today—with my colleagues Congresswoman ROSA DELAURO and Congresswoman ALYSON SCHWARTZ—to introduce the Informed Consumer Choices in Health Care Act, legislation to hold insurance companies accountable by increasing transparency in insurance coverage and to provide consumers critical information about their health care so they can make informed decisions.

All Americans deserve affordable, meaningful health care coverage that meets their needs when they need it. However, there is an unsettling trend in America that is growing at an alarming rate—hardworking Americans are suffering from serious economic hardship because of medical bills. There countless consumers all across the country who thought they were safe because they had health insurance coverage. Health insurance is meant to protect against the risk that, if you get sick, severely injured or require extensive medical care for one reason or another, it would not bankrupt you. However, the exact opposite is happening. People who thought they had coverage for health care events—small and large—found out much too late that they were not protected at all. The lack of insurance transparency leads consumers to purchase coverage that actually does not meet their needs and leads to disaster for them financially.

In June 2008, the Senate Finance Committee held a hearing on health insurance reform where we heard devastating testimony from Mrs. Lisa Kelly, who purchased a limited benefit plan that did not provide adequate coverage when she needed treatment for leukemia. Mrs. Kelly paid a monthly premium of $185 for AARP's Medical Advantage plan, underwritten by UnitedHealth Group, only to be told that she had to pay M.D. Anderson $105,000 up front, prior to starting her chemotherapy treatment. This situation left Ms. Kelly in the untenable situation of leaving her cancer untreated or finding a way to pay on a limited budget.

Medical bills are the second highest cause of bankruptcy in our country. It is estimated that 50 percent of all bankruptcies are a result of medical expenses. Sixty-one percent of the 72 million adults under age 65 who had problems paying medical bills or were paying off medical debt in 2007 were insured at the time health care was provided. An additional 1.5 million families lose their homes every single year due to medical costs. This is simply unacceptable.

This is not just a coincidence. Plans that provide bare-bones coverage may be fine if you live in a bubble, but that is not the reality most Americans live in. If we as a nation are serious about protecting all Americans from the devastating financial consequences of serious illness, then Congress must hold the insurance industry accountable by arming consumers with comprehensive information about the benefits covered and not covered under their health plan, the true cost of their coverage, and the cost-sharing they are responsible for. This information should not be shrouded in the legalese of health insurance companies, but in clear language that is easy for consumers to understand. As we seek to give consumers greater coverage choices, we should also give them the necessary tools to understand those choices.

Another example of where the lack of insurance transparency has hurt consumers is in the experience of the Medicare prescription drug benefit. Seniors and individuals with disabilities have simply been overwhelmed by the number of prescription drug plans offered—without any meaningful way to decipher the differences between plans in terms of benefits covered or cost-sharing. Over the last recess, I held a health care roundtable discussion in Charleston, which has more than 50 Medicare prescription drug plans for seniors and individuals with disabilities to choose from. I heard from countless West Virginians about the extreme difficulty they have wading through their prescription drug coverage options each and every plan year. The most compelling stories came from a retired chemical engineer and a retired attorney—both very smart individuals—who have had major problems determining what is and is not offered and how much they will have to pay out of their pockets for it.

When consumers buy cars, computers, or even cereal, they generally know what they are buying and how much it will cost. But, when it comes to making choices about health care coverage, it is often very difficult for consumers to tell what is actually covered and how much they will have to pay out-of-pocket in case of a serious illness or injury. Consumers cannot make meaningful choices if details about coverage are obscure or if the definitions of key terms such as ''hospitalization'', ''outpatient care'', or ''out-of-pocket limit'' vary from plan to plan.

The lack of health insurance transparency also contributes to administrative waste and complexity. According to the American Medical Association, more than half of health insurers do not provide physicians with the transparency necessary for an efficient claims processing system. Physicians and hospitals must divert substantial resources away from patient care to accurately determine patient insurance eligibility and benefit structure.

The black box in which insurers operate also provides them with the opportunity to use flawed payment structures, like the Ingenix database, to underpay patients who choose to get health care out of network. An investigation by the New York Attorney General and hearings conducted this spring by the Senate Commerce Committee revealed American consumers have been paying billions of dollars out of their own pockets for health care that the insurance companies should have been paying. The numbers the insurance industry relied on justify these under-payments came from a secretive health care data company called Ingenix. Insurers refused to tell patients or doctors how Ingenix came up with their payment amounts. And they didn't disclose that Ingenix was a wholly owned subsidiary of UnitedHealth Group, the Nation's second largest health insurance company. The Ingenix investigations show tat the health insurance industry is willing to go to great lengths to withhold accurate, objective health care payment information from American consumers. While they talk about transparency, they spent hundreds of millions of dollars

creating a reimbursement system that kept patients and doctors in the dark.

The U.S. Department of Labor currently lacks the capacity to oversee insurance industry compliance with federal health insurance laws and to provide states with the technical assistance necessary to effectively enforce federal standards for health insurance. These federal standards include crucial protections like the Genetic Information and Nondiscrimination Act, GINA, the Health Insurance Portability and Accountability Act, HIPAA, the Newborns' and Mothers' Health Protection Act, the Women's Health and Cancer Rights Act of 1998, Michelle's Law, and mental health parity. As states continue to be overwhelmed by the increasing pressure of the recession and cost-cutting measures by insurers, state regulators are in desperate need for additional resources. In a 21st Century health system where there will be even greater health insurance choices, adequate federal oversight is absolutely critical.

There is no excuse for limiting access to information that has such widespread consequences for consumers. The Informed Consumer Choices in Health Care Act is the type of transformative legislation we need to address the very significant issues stemming from the lack of health insurance transparency. First, this legislation promotes transparency in coverage by providing crucial data and assistance to consumers and health care providers. This includes new ''Coverage Facts'' labels for insurance, similar to nutrition labels, which accurately portray the financial obligations of patients in a given year under various medical scenarios. The legislation also requires the development of consistent standards for insurance, including standard definitions of key insurance terms to be used in descriptions of plan benefits, so that consumers can make ''apples to apples'' comparisons of coverage options. Lastly, it strengthens insurance accountability and oversight by creating a new Office of Health Insurance Oversight within the Department of Health and Human Services, and provides new resources for states to help enforce federal standards.

In the most recent Presidential election, the voice of American voters was clear—they want medical care they can afford and health care coverage they can trust. The traditional role of insurers to hide or misrepresent insurance coverage options can longer be tolerated; therefore, I urge my colleagues to stand up for informed consumer decisions in health care and support this bill.

Mr. President, I ask unanimous consent that the text of the bill and support material be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 1050

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Informed Consumer Choices in Health Care Act of 2009''.

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

SEC. 2. FINDINGS.

Congress finds the following:

(1) Effective competition in private health insurance markets requires that consumers must have extensive and meaningful information about what health insurance covers, what it costs, and how it works.

(2) Based on the information currently provided by health insurers, patients are unable to predict what their health insurance coverage limits or out-of-pocket costs would be if they had a serious illness. 72 million adults under age 65 had problems paying medical bills or were paying off medical debt in 2007, and 61 percent of those were insured at the time care was provided.

(3) It is difficult to impossible for consumers to obtain a copy of a health insurance policy from an insurance company before they purchase it.

(4) Consumers often find it difficult to navigate and evaluate their choices in today's health insurance markets and many select a sub-optimal plan as a result.

(5) The Institute of Medicine of the National Academy of Sciences has estimated that nearly half of all American adults—90 million people—have difficulty understanding and using health information.

(6) The Office of Disease Prevention and Health Promotion in the Department of Health and Human Services reports that only 12 percent of the population using a table can calculate an employee's share of health insurance costs for a year.

(7) A RAND Corporation study found that making it easier to get information about insurance products and simplifying the applications process would increase purchase rates as much as modest subsidies would, and all these reports prove the need for a fundamental improvement in the way insurance choices are made available to consumers.

(8) Insurance forms provided to patients and providers are often confusing, difficult to reconcile with medical bills, and vary widely from insurer to insurer, thereby adding complexity and administrative waste to the health care system.

(9) Research indicates that physicians divert substantial resources, as much as 14 percent of their total revenue, to ensure accurate insurance payments for their services. Hospitals spend as much as 11 percent of their total revenue on billing and insurance-related costs. These include time spent determining patient insurance eligibility and benefit structure. One study found that paperwork adds at least 30 minutes to every hour of patient care.

(10) According to the American Medical Association, there is wide variation in how often health insurers pay nothing in response to a physician claim and in how they explain the reason for the denial. There is no consistency in the application of codes used to explain the denials, making it extremely expensive for physician practices to determine how to respond.

(11) According to the American Medical Association, more than half of health insurers in a recent study did not provide physicians with the transparency necessary for an efficient claims processing system.

(12) According to the American Medical Association, payers vary widely on how often they use proprietary rather than public claims edits to reduce payments (ranging from zero to as high as nearly 72 percent). The use of undisclosed proprietary edits inhibits the flow of transparent information to physicians, adding additional administrative costs to reconcile claims.

(13) The Federal government currently lacks capacity to carry out responsibility for oversight and enforcement of current law requirements on health insurance issuers and to provide States with technical assistance in effectively enforcing Federal minimum standards for health insurance.

(14) In order to improve the functioning of the private health insurance market, assure the application of existing requirements to health insurance coverage, and reduce administrative hassles for patients and providers, there is a need for periodic examinations and audits of such coverage, for greater disclosure of information regarding the terms and conditions of such coverage, and for the establishment of a Federal oversight office to ensure enforcement of standards.

SEC. 3. NEW MINIMUM FEDERAL STANDARDS FOR HEALTH INSURANCE FORMS, QUALITY, FAIR MARKETING, AND HONESTY IN OUT-OF-NETWORK COVERAGE.

(a) GROUP HEALTH INSURANCE.—Title XXVII of the Public Health Service Act is amended by inserting after section 2707 the following new section:

''SEC. 2708. STANDARDS FOR HEALTH INSURANCE FORMS, QUALITY, FAIR MARKETING, AND HONESTY IN OUT-OF-NETWORK COVERAGE.

''(a) DEFINING INSURANCE TERMS; STANDARDIZING INSURANCE FORMS.—

''(1) IN GENERAL.—The Secretary shall provide for the development of standards for the information that health insurance issuers are required to provide to group health plans to promote informed choice of health insurance coverage by such plans.

''(2) STANDARD DEFINITIONS OF INSURANCE AND MEDICAL TERMS.—

''(A) IN GENERAL.—The Secretary shall provide for the development of standards for the definitions of terms used in group health insurance coverage, including insurance-related terms (including the insurance-related terms described in subparagraph (B)) and medical terms (including the medical terms described in subparagraph (C)).

''(B) INSURANCE-RELATED TERMS.—The insurance-related terms described in this subparagraph are premium, deductible, co-insurance, co-payment, out-of-pocket limit, preferred provider, non-preferred provider, out-of-network co-payments, UCR (usual, customary and reasonable) fees, excluded services, grievance and appeals, and such other terms as the Secretary determines are important to define so that consumers may compare health insurance coverage and understand the terms of their coverage.

''(C) MEDICAL TERMS.—The medical terms described in this subparagraph are hospitalization, hospital outpatient care, emergency room care, physician services, prescription drug coverage, durable medical equipment, home health care, skilled nursing care, rehabilitation services, hospice

services, emergency medical transportation, and such other terms as the Secretary determines are important to define so that consumers may compare the medical benefits offered by insurance health insurance and understand the extent of those medical benefits (or exceptions to those benefits).

''(3) STANDARDIZATION OF INSURANCE FORMS.—The Secretary shall provide for the development of standards for the forms used in connection with group health insurance coverage, including for—

''(A) applications for health insurance coverage;

''(B) explanations of benefits for such coverage;

''(C) filing of complaints, grievances, and appeals respecting such coverage; and

''(D) other common functions relating to such coverage as the Secretary deems appropriate.

''(4) COVERAGE FACTS LABELS FOR PATIENT CLAIMS SCENARIOS.—The Secretary shall develop standards for coverage facts labels based on the patient claims scenarios described in section 2794(b)(4), which include information on estimated out-of-pocket cost-sharing and significant exclusions or benefit limits for such scenarios.

''(5) PERSONALIZED STATEMENT.—The Secretary shall develop standards for an annual personalized statement that summarizes use of health care services and payment of claims with respect to an enrollee (and covered dependents) under group health insurance coverage in the preceding year.

''(6) APPLICATION OF STANDARDS.—No group health insurance coverage may be offered for sale after the date that is two years after date of the enactment of this section unless—

''(A) the benefits and other terms of coverage are consistent with the definitional standards developed under paragraph (2);

''(B) the application and form of coverage and related forms are consistent with the standardized forms developed under paragraph (3); and

''(C) there is provided coverage facts labels described in paragraph (4) with respect to the coverage.

''(7) PERIODIC REVIEW AND UPDATING.—The Secretary shall periodically review and update, as appropriate, the standards developed under this subsection.

''(8) EVALUATION OF INFORMATION RESOURCES.—In developing, reviewing, and updating standards under this subsection, the Secretary shall provide for testing and evaluation of information resources in general and to specific audiences including those with low literacy skills.

''(9) CONSULTATION.—In developing reviewing, and updating standards under this subsection, the Secretary shall consult with, among others, the National Association of Insurance Commissioners, health care professionals, researchers, health insurance issuers, group health plans, patient advocates, and literacy experts.

''(b) QUALITY ASSURANCES FOR HEALTH INSURANCE.—

''(1) IN GENERAL.—The Secretary shall provide for the development of standards to assure the quality of benefits under group health insurance coverage. Such standards shall include standards relating to at least—

''(A) network adequacy and stability;

''(B) guaranteed coverage for one year of contracted benefits;

''(C) adequacy and stability of prescription drug networks;

''(D) utilization control systems; and

''(E) grievances and appeals.

''(2) APPLICATION OF PROVISIONS.—The provisions of paragraphs (5) through (9) of subsection (a) apply to standards developed under this subsection in the same manner as such provisions apply to standards developed under subsection (a).

''(c) MARKETING.—

''(1) IN GENERAL.—The Secretary shall provide for the development of standards for the marketing of group health insurance coverage. Such standards shall include standards for at least—

''(A) marketing materials; and

''(B) sales commissions.

''(2) NONDISCRIMINATION.—No group health insurance coverage may be offered for sale after the date that is two years after date of the enactment of this section unless the issuer provides the Secretary with a written certification that all marketing materials, seminars, and other outreach efforts in connection with the offering of such coverage do not discriminate on the basis of income, race, gender, ethnicity, or other demographic factors as determined by the Secretary.

''(3) APPLICATION OF PROVISIONS.—The provisions of paragraphs (7) through (9) of subsection (a) apply to standards developed under this subsection in the same manner as such provisions apply to standards developed under subsection (a).

''(d) HONESTY IN COVERAGE OF OUT-OF-NETWORK PROVIDERS.—The Secretary shall provide for the development of standards for the accuracy and clarity of coverage for out-of-network providers, including cost sharing and payments to such providers, for health insurance issuers in group health insurance coverage that provide such coverage.''.

(b) APPLICATION IN THE INDIVIDUAL MARKET.—Such title is further amended by inserting after section 2745 the following new section:

''SEC. 2746. STANDARDS FOR HEALTH INSURANCE INSURANCE FORMS, QUALITY, FAIR MARKETING, AND HONESTY IN OUT-OF-NETWORK COVERAGE.

''The provisions of section 2708 shall apply under this part to individual health insurance coverage and enrollees in such coverage in the same manner as such provisions apply under part A in the case of group health insurance coverage and group health plans and participants and beneficiaries.''.

(c) APPLICATION TO THE MEDICARE ADVANTAGE PROGRAM AND THE MEDICARE PRESCRIPTION DRUG PROGRAM.—

(1) MEDICARE ADVANTAGE PROGRAM.—Section 1852 of the Social Security Act (42 U.S.C. 1395w–22) is amended by adding at the end the following new subsection:

''(m) STANDARDS FOR HEALTH INSURANCE FORMS, QUALITY, FAIR MARKETING, AND HONESTY IN OUT-OF-NETWORK COVERAGE.—The provisions of section 2708(a) of the Public Health Service Act shall apply to Medicare Advantage organizations, Medicare Advantage plans, and enrollees in such plans in the same manner as such provisions apply under such section to group health insurance coverage and group health plans and participants and beneficiaries.''.

(2) MEDICARE PRESCRIPTION DRUG PROGRAM.—Section 1860D–4 of the Social Security Act (42 U.S.C. 1395w–104) is amended by adding at the end the following new subsection:

''(m) STANDARDS FOR HEALTH INSURANCE FORMS, QUALITY, FAIR MARKETING, AND HONESTY IN OUT-OF-NETWORK COVERAGE.—The provisions of section 2708(a) of the Public Health Service Act shall apply to PDP sponsors, prescription drug plans, and enrollees in such plans in the same manner as such provisions apply under such section to group health insurance coverage and group health plans and participants and beneficiaries.''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to plan years beginning after the date that is 2 years after the date of the enactment of this Act.

(d) APPLICATION TO FEHBP.—The provisions of section 2708(a) of the Public Health Service Act shall apply to the Federal Employees Health Benefits Program under chapter 89 of title 5, United States Code, and to contractors, health plans, and enrollees in such plans in the same manner as such provisions apply under such section to group health insurance coverage and group health plans and participants and beneficiaries.

SEC. 4. HEALTH INSURANCE ACCOUNTABILITY INITIATIVES.

(a) IMPROVED HEALTH INSURANCE ACCOUNTABILITY.—Title XXVII of the Public Health Service Act is amended by adding at the end the following new section:

''SEC. 2793. ACCOUNTABILITY INITIATIVES.

''(a) IN GENERAL.—The Secretary, acting through the Office of Health Insurance Oversight established under section 2795, shall undertake activities in accordance with this section to promote accountability of health insurance issuers in meeting Federal health insurance requirements, regardless of whether this relates to health insurance in the individual or group market.

''(b) COMPLIANCE EXAMINATIONS AND AUDITS.—

''(1) IN GENERAL.—Without regard to whether or not there is a determination under section 2722(a)(2) or 2761(a)(2) with respect to a health insurance issuer, in carrying out this section, the Secretary shall conduct independent market conduct examinations and audits to monitor and verify the compliance of an health insurance issuer with Federal health insurance requirements. Such audits may include random compliance audits and targeted audits in response to complaints or other suspected non-compliance.

''(2) RECOUPMENT OF COSTS.—In connection with such examinations and audits, the Secretary is authorized to recoup from health insurance issuers reimbursement for the costs of such examinations and audits of such issuers.

''(3) RELATION TO OTHER AUTHORITY.—The authorities under this section are in addition to any authorities of the Secretary, including authorities under sections 2722(b) and 2761(b).

''(c) DATA COLLECTION AND REVIEW.—

''(1) IN GENERAL.—The Secretary shall collect and review data from health insurance issuers on health insurance coverage to monitor compliance with Federal health insurance requirements applicable to such issuers and coverage. Upon request by the Secretary, such issuers shall provide such data to the Secretary on a timely basis.

''(2) ELEMENTS TO REVIEW.—In carrying out this subsection, the Secretary shall review at least the following:

''(A) Underwriting guidelines to ensure compliance with applicable Federal health insurance requirements.

''(B) Rating practices to ensure compliance with such requirements.

''(C) Enrollment and disenrollment data, including information the Secretary may need to detect patterns of discrimination against individuals based on health status or other characteristics, to ensure compliance with such requirements (including nondiscrimination in group coverage, guaranteed issue, guaranteed renewability requirements applicable in all markets).

''(D) Post-claims underwriting and rescission practices to ensure compliance with such requirements relating to guaranteed renewability.

''(E) Marketing materials and agent guidelines to ensure compliance with applicable Federal health insurance requirements.

''(F) Data on the imposition of pre-existing condition exclusion periods and claims subjected to such exclusion periods.

''(G) Information on issuance of certificates of creditable coverage.

''(H) Information on cost-sharing and payments with respect to any out-of-network coverage.

''(I) Such other information as the Secretary may determine to be necessary to verify compliance with requirements of this title.

''(J) The application to issuers of penalties for violation of such requirements, including the failure to produce requested information.

''(3) TREATMENT OF PROPRIETARY INFORMATION.—The Secretary may request under this subsection information that is proprietary or that reveals a trade secret, but such information shall not be subject to further disclosure to the general public in a manner that reveals proprietary information or a trade secret.

''(4) FORM AND MANNER OF INFORMATION.—Information under paragraph (1) shall be provided—

''(A) in a form and manner specified by the Secretary; and

''(B) within 30 days of the date of receipt of the request for the information, or within such longer time period as the Secretary deems appropriate.

''(5) ENFORCEMENT.—The Secretary shall have the same authority in relation to enforcement of requests for data under paragraph (1) as the Secretary has under section 2722(b).

''(6) COORDINATION WITH STATES.—

''(A) IN GENERAL.—The Secretary shall coordinate with State insurance regulators so that data with respect to health insurance issuers and coverage are collected and reported in a common format.

''(B) CLEARINGHOUSE.—The Secretary shall establish a clearinghouse for the sharing of data reported by health insurance issuers and for the findings from audits and investigations. Such clearinghouse may be established in conjunction with the National Association of Insurance Commissioners.

''(7) COORDINATION WITH DEPARTMENTS OF LABOR AND TREASURY.—The Secretary shall coordinate with the Secretaries of Labor and Treasury with respect to requirements to report data that affect health insurance coverage sold in connection with group health plans.

''(d) HEALTH INSURANCE ACCOUNTABILITY GRANTS TO STATES.—

''(1) IN GENERAL.—The Secretary shall provide for grants to Departments of Insurance in States to strengthen their enforcement of Federal health insurance requirements with respect to health insurance issuers operating in such States. Such a grant shall only be made pursuant to an application made to the Secretary.

''(2) FUNDING.—

''(A) IN GENERAL.—Of the funds appropriated under subparagraph (B) for grants under this subsection, the Secretary shall provide a grant to each State with an application approved under paragraph (1).

''(B) ALLOCATION.—Funds so appropriated for any fiscal year shall be apportioned among the States in accordance with a formula determined by the Secretary that takes into account the scope of health insurance subject to regulation under this title in each State and such other factors as the Secretary may specify.

''(C) APPROPRIATIONS AND AUTHORIZATIONS.—There is hereby appropriated, out of any funds in the Treasury not otherwise appropriated for the first fiscal year in which this section is in effect, $10,000,000 for grants under this subsection, to be available until expended. For each subsequent fiscal year there is authorized to be appropriated such sums as may be necessary for such grants.

''(e) FEDERAL HEALTH INSURANCE REQUIREMENTS DEFINED.—In this part, the term 'Federal health insurance requirements' means the requirements under this title insofar as they relate to health insurance issuers and health insurance coverage, whether in the individual or group market, and includes other requirements imposed under Federal law specifically in relation to the offering of health insurance coverage by health insurance issuers.''.

SEC. 5. HEALTH INSURANCE TRANSPARENCY INITIATIVES.

(a) IN GENERAL.—Title XXVII of the Public Health Service Act, as amended by section 3, is further amended by adding at the end the following new section:

''SEC. 2794. TRANSPARENCY INITIATIVES.

''(a) IN GENERAL.—The Secretary, acting through the Office of Health Insurance Oversight established under section 2795, shall undertake activities in accordance with this section to promote transparency in costs, market practices, and other factors for health insurance coverage, regardless of whether the coverage is offered or in effect in the individual or group market.

''(b) DEVELOPMENT AND DISCLOSURE OF STANDARDIZED INFORMATION.—

''(1) IN GENERAL.—In carrying out this section, the Secretary shall provide for the development of—

''(A) standards for information about health insurance issuers, their health insurance policies, and their market practices with respect to such policies; and

''(B) standards for the disclosure of such information in a timely, consistent, and accurate manner by health insurance issuers about each health insurance policy marketed and in force.

''(2) INFORMATION TO BE DISCLOSED.—

''(A) IN GENERAL.—In carrying out this section, the Secretary shall require health insurance issuers to disclose to enrollees, potential enrollees, in-network health care providers, and others through a publicly available Internet website and other appropriate means at least the following concerning each policy of health insurance coverage marketed or in force, in such standardized manner as the Secretary specifies:

''(i) Full policy contract language.

''(ii) A summary of the information described in paragraph (3).

''(iii) For each of the scenarios developed under paragraph (4), the coverage facts label information developed under section 2709(a)(4).

''(B) PERSONALIZED STATEMENT.—In carrying out this section, the Secretary shall require health insurance issuers to disclose to enrollees, in such standardized manner as the Secretary specifies, an annual personalized statement described in section 2708(a)(5).

''(3) INFORMATION TO BE DISCLOSED.—The information described in this paragraph is at least the following:

''(A) Data on the price of each new policy of health insurance coverage and renewal rating practices.

''(B) Information on claims payment policies and practices, including how many and how quickly claims were paid.

''(C) Information on provider fee schedules and usual, customary, and reasonable fees (for both network and out-of-network providers).

''(D) Information on provider participation and provider directories.

''(E) Information on loss ratios, including detailed information about amount and type of non-claims expenses.

''(F) Information on covered benefits, cost-sharing, and amount of payment provided toward each type of service identified as a covered benefit, including preventive care services recommended by the United States Preventive Services Task Force.

''(G) Information on civil or criminal actions successfully concluded against the issuer by any governmental entity.

''(H) Benefit exclusions and limits.

''(4) DEVELOPMENT OF PATIENT CLAIMS SCENARIOS.—

''(A) IN GENERAL.—In order to improve the ability of individuals and group health plans to compare the coverage and value provided under different health insurance coverage, the Secretary shall develop a series of patient claims scenarios under which benefits (including out-of-pocket costs) under such coverage can be simulated for certain common or expensive conditions or courses of treatment, such as maternity care, breast cancer, heart disease, diabetes management, and well-child visits.

''(B) CONSULTATION AND BASIS.—The Secretary shall develop the scenarios under this paragraph—

''(i) in consultation with the National Institutes of Health, the Centers for Disease Control and Prevention, the Agency for Healthcare Research and Quality, health professional societies, patient advocates, and others as deemed necessary by the Secretary; and

''(ii) based upon recognized clinical practice guidelines.

''(5) MANNER OF DISCLOSURE.—

''(A) IN GENERAL.—The standards under paragraph (1)(B) shall provide for health insurance issuers to disclose the information under this subsection—

''(i) with all marketing materials;

''(ii) on the web site of the issuer; and

''(iii) at other times upon request.

''(B) CONTRACT LANGUAGE.—Such standards also shall require the disclosure of full policy contract language in printed form upon request.

''(c) APPLICATION OF ENFORCEMENT PROVISIONS.—The provisions of sections 2722 and 2671 shall apply to enforcement of the requirements of this section in the same manner as such provisions apply to the provisions of part A or part B, respectively. Under such provisions the States shall have initial (and primary) enforcement authority with respect to such requirements, except that the Secretary under section 2793 may directly monitor compliance with such provisions as well.''.

(b) CONFORMING AMENDMENTS REGARDING DISCLOSURE OF INFORMATION.—

(1) REFERENCE IN THE GROUP MARKET.—Section 2713 of the Public Health Service Act (42 U.S.C. 300gg–13)) is amended by adding at the end the following new subsection:

''(c) REFERENCE TO DISCLOSURE OF INFORMATION.—For provision requiring disclosure of information by health insurance issuers, see section 2794(d).''.

(2) REFERENCE IN THE INDIVIDUAL MARKET.—Section 2761 of the Public Health Service Act is amended by adding at the end the following new subsection:

''(c) REFERENCE TO DISCLOSURE OF INFORMATION.—For provision requiring disclosure of information by health insurance issuers, see section 2794(d).''.

SEC. 6. OFFICE OF HEALTH INSURANCE OVERSIGHT.

(a) IN GENERAL.—Title XXVII of the Public Health Service Act, as amended by sections 3 and 4, is amended by adding at the end of part C the following new section:

''SEC. 2795. OFFICE OF HEALTH INSURANCE OVERSIGHT.

''(a) ESTABLISHMENT.—There is established within the Department of Health and Human Services an Office of Health Insurance Oversight (referred to in this section as the 'Office'). The Office shall be headed by a Director of Health Insurance Oversight (referred

to in this section as the 'Director') who shall be appointed by and report directly to the Secretary.

''(b) DUTIES.—

''(1) PROMOTION OF ACCOUNTABILITY IN HEALTH INSURANCE.—

''(A) IN GENERAL.—The Director shall implement accountability initiatives under section 2793.

''(B) CLEARINGHOUSE.—The Director shall provide, in consultation with the National Association of Insurance Commissioners, for a clearinghouse for State health insurance regulators to share information concerning, and help them to enact and enforce, Federal health insurance requirements.

''(2) PROMOTE TRANSPARENCY IN HEALTH INSURANCE.—The Director shall implement transparency initiatives under section 2794.

''(3) CONSUMER INFORMATION, ASSISTANCE.—

''(A) IN GENERAL.—The Director shall provide for consumer information assistance on health insurance coverage, and Federal health insurance consumer protections under this title, including through carrying out activities under this paragraph.

''(B) INFORMATION RESOURCES.—The Director shall develop health insurance information resources for consumers, including coverage facts labels for patient claims scenarios developed under section 2794(b)(4) and web-based information on average price ranges for out-of-network services based on geography.

''(C) SERVICE.—The Director shall establish a consumer assistance service that, directly or in coordination with State health insurance regulators and consumer assistance organizations, receives and responds to inquiries and complaints concerning health insurance coverage with respect to Federal health insurance requirements and under State law.

''(4) HEALTH INSURANCE CONSUMER ASSISTANCE GRANTS.—

''(A) IN GENERAL.—The Director shall provide for grants to public, private or not-for-profit consumer assistance organizations to develop, support, and evaluate consumer assistance programs related to selecting and navigating health care coverage. Such a grant shall only be made pursuant to an application made to the Director. In making such grants, the Director shall attempt to ensure regional and geographic equity.

''(B) GRANT REQUIREMENT.—As a condition of receiving such a grant, an organization shall be required to collect and report data to the Director on the types of problems and inquiries encountered by consumers they serve. Data shall be used by the Director to inform enforcement activities and be shared with State insurance regulators, the Department of Labor, and the Secretary of the Treasury.

''(C) APPROPRIATIONS AND AUTHORIZATIONS.—There is hereby appropriated, out of any funds in the Treasury not otherwise appropriated for the first fiscal year in which this section is in effect, $30,000,000 for grants under this paragraph, to be available until expended. For each subsequent fiscal year there are authorized to be appropriated such sums as may be necessary for such grants.

''(5) ADMINISTRATION OF HIGH RISK POOL.—The Director shall administer the high risk pool program under section 2745.

''(6) ADMINISTRATION OF GRANTS TO STATE INSURANCE DEPARTMENTS.—The Director shall administer the program of grants to State insurance departments under section 2793(d).

''(c) PERIODIC REPORTS.—The Director shall submit periodic reports to Congress on the Office's activities.

''(d) COORDINATION.—

''(1) FEDERAL OFFICIALS.—The Director shall coordinate, with the Secretaries of Labor and Treasury, activities under this section with respect to requirements that affect health insurance coverage offered in connection with group health plans, including coordination in —

''(A) development and dissemination of information; and

''(B) consumer inquiries and complaints relating to Federal health insurance requirements.

''(2) STATE HEALTH INSURANCE REGULATORS.—In carrying out the Office's activities, the Director shall—

''(A) coordinate with State health insurance regulators regarding data collection and disclosure and audit and enforcement activities in order to avoid duplication and to use regulatory resources most efficiently;

''(B) monitor State efforts to implement and enforce consumer protections consistent with Federal health insurance requirements;

''(C) provide technical assistance to States seeking to implement and enforce consumer protections consistent with such requirements; and

''(D) provide for regular communication with such regulators to coordinate enforcement efforts and sharing of information

''(e) TRANSFER OF PERSONNEL AND RESOURCES.—The Secretary shall provide for the transfer to the Office of those personnel and resources within the Department of Health and Human Services that, as of the date of the enactment of this section, relate directly to the responsibilities of the Director under this section.

''(f) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts made available under subsection (b)(4)(C), there are authorized to be appropriated to carry out this section $20,000,000 for the first fiscal year beginning after the date of the enactment of this section and such sums as may be necessary for subsequent fiscal years.''.

(b) CONFORMING AMENDMENTS REGARDING ADDITIONAL AUTHORITY.—

(1) GROUP MARKET.—Section 2722 of such Act (42 U.S.C. 300gg–22) is amended by adding at the end the following new subsection:

''(c) REFERENCE TO ADDITIONAL AUTHORITY.—For additional Secretarial authorities with respect to requirements under this part, see sections 2793 and 2794.''.

(2) INDIVIDUAL MARKET.—Section 2761 of such Act (42 U.S.C. 300gg–61) is amended by adding at the end the following new subsection:

''(c) REFERENCE TO ADDITIONAL AUTHORITY.—For additional Secretarial authorities with respect to requirements under this part, see sections 2793 and 2794.''.

SEC. 7. STANDARDS AND ACCOUNTABILITY AND TRANSPARENCY INITIATIVES FOR GROUP HEALTH PLANS THROUGH DEPARTMENTS OF LABOR AND THE TREASURY.

(a) STANDARDS.—In coordination with the Secretary of Health and Human Services, the Secretaries of Labor and the Treasury shall establish for group health plans standards comparable to the standards developed by the Secretary of Health and Human Services for group health insurance coverage under section 2708 of the Public Health Service Act, as added by section 3(a), in order to promote quality, fair marketing, and honesty in out-of-network coverage under such plans and to permit participants to make an informed decision in cases where they are offered a choice of coverage under such a plan.

(b) ACCOUNTABILITY AND TRANSPARENCY INITIATIVES.—In coordination with the Secretary of Health and Human Services, the Secretaries of Labor and the Treasury shall jointly undertake accountability and transparency initiatives with respect to group health plans similar to those undertaken by the Secretary of Health and Human Services with respect to group and individual health insurance coverage under sections 2793 and 2794 of the Public Health Service Act, as added by sections 4 and 5 of this Act.

(c) GROUP HEALTH PLAN DEFINED.—In this section, with respect to the Secretary of Labor and the Secretary of the Treasury, the term ''group health plan'' has the meaning such term for purposes of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 and chapter 100 of the Internal Revenue Code of 1986, respectively.

Sample "Coverage Facts" Label for Health Insurance

Coverage Facts

Individually Purchased Health Insurance, 2008

Policy A (California)

Monthly Premium (age 55) †	**$211**
Annual deductible	**$1,500**
Annual OOP limit	**$1,500**
Cost sharing not subject to annual OOP	**None**
Significant exclusions, benefit limits	**Mental health limit of 20 visits, Wigs**

Breast Cancer Scenario ‡
(May 1 diagnosis, 87 weeks active treatment)

Estimated allowed charges for all treatment	$97,298
Estimated paid by patient	**$3,602 (4%)**

Care type	# billed	Total allowed charges ($)	$ paid out of pocket	% paid out of pocket
Office Visit	48	3,120	505	16%
Office Procedure	47	524	248	47%
Radiology	12	6,356	195	3%
Laboratory	40	1,632	149	9%
Surgery	1	2,777	487	18%
Hospital	1	3,205	0	0%
Inpat Med Care	1	136	0	0%
Rx Drugs	36	5,315	502	9%
Prostheses	1	200	200	100%
Chemotherapy	36	63,320	0	0%
Mental Health	36	2,574	140	5%
Radiation Therapy	35	8,140	1175	14%

* signifies less than 1/2 of 1%

Source of patient costs	Number encountered	Amount
Annual medical deductibles	3	$3,332
Co-pays	n/a	$0
Co-insurance	n/a	$0
Non-covered care	2	$270

† Monthly premium reflects rate quoted on ehealthinsurance.com for applicant in Sacramento in excellent health. ***Individual premiums may vary based on health status, age, and other factors.***

‡ Breast Cancer Scenario includes outpatient lumpectomy, 4 two-week cycles each of two chemotherapy regimens, 7 weeks of daily radiation therapy, one year of Herceptin therapy, short term mental health counseling, various diagnostic lab and imaging services and prescription drugs. Scenario based on treatment guidelines published by NCCN. ***Individual patient care needs may vary.***

All care assumed to be received from in-network providers following all plan rules for prior authorization. Receipt of care by non-plan providers or without required authorizations can result in substantially higher out-of-pocket costs.

Active treatment over 87 weeks beginning in May assumes patient faces annual deductibles and other cost sharing in three plan years. Diagnosis at different time during calendar year could produce different cost sharing results.

Source: Karen Pollitz et al, "Coverage when it Counts: How much protection does health insurance offer and how can consumers know?" May 8, 2009.
http://www.americanprogressaction.org/issues/2009/05/health_coverage.html

By Ms. MURKOWSKI:

S. 1053. A bill to amend the National Law Enforcement Museum Act to extend the termination date; to the Committee on Energy and Natural Resources.

Ms. MURKOWSKI. Mr. President, this week is National Police Week, the one week each year when tens of thousands of law enforcement officers from around the U.S. and some from foreign lands descend upon Washington, DC to pay homage to the fallen officers who gave their lives in the service of our communities.

All around Washington we see police cars and motorcycles from jurisdictions far and wide. Honor guards and drill teams. And many uniformed law enforcement officers with their families and kids.

At a hotel in Alexandria, VA, thousands of surviving families and coworkers of fallen law enforcement officers are gathered for the 2009 National Police Survivors Conference, sponsored by Concerns of Police Survivors. Today marks the 25th anniversary of the founding of Concerns of Police Survivors. I thank all of our colleagues for supporting S. Res. 138 commending that organization on the occasion of this significant anniversary. Tomorrow we observe Peace Officers Memorial Day with services at the U.S. Capitol.

Last evening the National Law Enforcement Officers Memorial Fund conducted its annual candlelight vigil at the memorial on Judiciary Square. I had the privilege of reading the name of a fallen officer, John Patrick Watson of the Kenai Police Department, at the 2004 candlelight vigil. I can attest that this annual event does justice to the memory of the 18,662 names inscribed on the memorial walls.

For fifty-one weeks out of every year those memorial walls display names. Just names. There is a story of heroism behind each of these names. Yet for 51 weeks out of each year, those stories are hidden from public view. Visitors to the memorial can discover but a few of these stories by viewing the displays at the Memorial Fund's tiny visitor's center.

During National Police Week the memorial comes alive with news clippings, photographs and patches—even the door of a police car—placed at the memorial by law enforcement agencies and friends and family members of the fallen officers. These ad hoc memorials are removed at the end of Police Week. Those that are left behind become part of the National Law Enforcement Officers Memorial Fund's permanent collection. Someday more substantial parts of that collection will be displayed to the public at the National Law Enforcement Museum.

In 2000, Congress passed the National Law Enforcement Museum Act, Public Law 106–492, which set aside land across from the National Law Enforcement Officers Memorial for a National Law Enforcement Museum. The museum is to be operated by the National Law Enforcement Officers Memorial Fund.

This National Law Enforcement Museum will tell the story of our law enforcement heroes. It will help ensure that visitors to the Law Enforcement Officers Memorial have an opportunity to reflect on the ways that our fallen officers lived their lives, rather than the way those officers died.

Our colleagues may be interested to know that it was Vivian Eney-Cross, the surviving spouse of a fallen U.S. Capitol Police officer, who coined the phrase, ''It is not how these officers died that made them heroes, it is how they lived.''

The National Law Enforcement Museum Act requires that the museum be financed with private contributions. The National Law Enforcement Officers Memorial Fund has been diligent in seeking private financing and hopes to break ground on the museum in November 2010 with a 2013 opening date.

I am hopeful that construction of the new museum will begin in 2010 but I am also realistic about the difficulties of raising private funds for worthy projects given current world economic conditions.

Fortunately, these economic conditions have neither deterred the Memorial Fund from asking for donations nor have they deterred prospective contributors with the ability to give, from giving. On May 4, the Memorial Fund announced a $1.5 million grant from the Verizon Foundation to develop educational and interactive technology programs at the planned museum.

However, I must call the attention of our colleagues to a critical deadline in the National Law Enforcement Museum Act. The act provides that the authority to construct a museum terminates on November 9, 2010 if construction has not begun by that date. Today, I offer legislation that will push the termination date out to November 9, 2013. This legislation will provide a cushion for the Memorial Fund to continue their fundraising efforts.

Our law enforcement officers put their lives on the line every day to protect our communities. Giving the National Law Enforcement Officers Memorial Fund a bit more time to arrange financing, if they need it, is a small price to pay. A small price to pay for the sacrifices our law enforcement officers and their families make every day.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 1053

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

SECTION 1. NATIONAL LAW ENFORCEMENT MUSEUM ACT.

Section 4(f) of the National Law Enforcement Museum Act (Public Law 106–492) is amended by striking ''10 years'' and inserting ''13 years''.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 149—EXPRESSING SOLIDARITY WITH THE WRITERS, JOURNALISTS, AND LIBRARIANS OF CUBA ON WORLD PRESS FREEDOM DAY AND CALLING FOR THE IMMEDIATE RELEASE OF CITIZENS OF CUBA IMPRISONED FOR EXERCISING RIGHTS ASSOCIATED WITH FREEDOM OF THE PRESS

Mr. MARTINEZ (for himself, Mr. MENENDEZ, Mr. GRAHAM, Mr. ENSIGN, Mr. NELSON of Florida, Mr. VOINOVICH, and Mr. LUGAR) submitted the following resolution; which was considered and agreed to:

S. RES. 149

Whereas Article 19 of the Universal Declaration of Human Rights provides, ''Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.'';

Whereas the United Nations General Assembly declared May 3 of each year to be ''World Press Freedom Day'' to raise awareness of the importance of freedom of expression and to remind governments of their obligation to respect the rights of free expression and of a free press;

Whereas the United States Department of State, in its 2008 report on human rights in Cuba, notes, ''The government [of Cuba] subjected independent journalists to travel bans, detentions, harassment of family and friends, equipment seizures, imprisonment, and threats of imprisonment. State Security agents posed as independent journalists to gather information on activists and spread misinformation and mistrust within independent journalist circles.'';

Whereas Reporters Without Borders, an international nongovernmental organization, continues to rank Cuba as one of the most repressive countries in the world, and the most repressive country in the Western Hemisphere, with respect to freedom of the press;

Whereas the International Press Institute, a global network of journalists, editors, and media executives, concludes that Cuba ''remains a leading jailer of journalists'';

Whereas International PEN, an international network of writers, has reported that 22 writers, journalists, and librarians were among the individuals arrested and tried during the crackdown by the Government of Cuba on independent civil society activists in the spring of 2003, and subsequently imprisoned;

Whereas International PEN further reports that ''the majority of the detained writers, journalists and librarians are suffering from health complaints caused or exacerbated by the harsh conditions and treatment they are exposed to in prison. Despite their deteriorating health status, access to adequate medical treatment is often limited.''; and

Whereas the Committee to Protect Journalists, a nonpartisan international organization of journalists, has identified more than 20 writers, journalists, and librarians in Cuba who remain imprisoned by the Government of Cuba: Now, therefore, be it

Resolved, That the Senate—

(1) expresses solidarity with—

(A) the citizens of Cuba who are suffering harassment, deprivation, or imprisonment for exercising rights associated with freedom