

AMENDMENT TO H.R. 6228
OFFERED BY MR. GARAMENDI OF CALIFORNIA
(Farm Bill Extension Bill)

Designate the existing sections as title I and add at the end the following new title:

1 **TITLE II—AGRICULTURAL JOB**
2 **OPPORTUNITIES, BENEFITS,**
3 **AND SECURITY**

4 **SEC. 201. SHORT TITLES.**

5 This title may be cited as the “Agricultural Job Op-
6 portunities, Benefits, and Security Act of 2012” or the
7 “AgJOBS Act of 2012”.

8 **SEC. 202. AUTHORIZATION OF APPROPRIATIONS.**

9 There are authorized to be appropriated to carry out
10 this title \$20,000,000 for fiscal year 2013.

11 **Subtitle A—Blue Card Status**

12 **SEC. 211. REQUIREMENTS FOR BLUE CARD STATUS.**

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

1 (1) has performed agricultural employment in
2 the United States for at least 863 hours or 150
3 work days during the 24-month period ending on
4 December 31, 2010;

5 (2) applied for such status during the 18-month
6 application period beginning on the first day of the
7 seventh month that begins after the date of the en-
8 actment of this Act;

9 (3) is otherwise admissible to the United States
10 under section 212 of the Immigration and Nation-
11 ality Act (8 U.S.C. 1182), except as otherwise pro-
12 vided under section 214(a)(2) of this Act; and

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

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

22 (c) **AUTHORIZED EMPLOYMENT.**—The Secretary
23 shall provide an alien who is granted blue card status an
24 employment authorized endorsement or other appropriate

1 work permit, in the same manner as an alien lawfully ad-
2 mitted for permanent residence.

3 (d) TERMINATION OF BLUE CARD STATUS.—

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

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

10 (A) the Secretary finds, by a preponder-
11 ance of the evidence, that the adjustment to
12 blue card status was the result of fraud or will-
13 ful misrepresentation, as described in section
14 212(a)(6)(C)(i) of the Immigration and Nation-
15 ality Act (8 U.S.C. 1182(a)(6)(C)(i)); or

16 (B) the alien—

17 (i) commits an act that makes the
18 alien inadmissible to the United States
19 under section 212 of the Immigration and
20 Nationality Act (8 U.S.C. 1182), except as
21 provided under section 214(a)(2) of this
22 Act;

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

1 (iii) is convicted of an offense, an ele-
2 ment of which involves bodily injury, threat
3 of serious bodily injury, or harm to prop-
4 erty in excess of \$500; or

5 (iv) fails to perform the agricultural
6 employment required under paragraph
7 (1)(A) of section 213(a) unless the alien
8 was unable to work in agricultural employ-
9 ment due to the extraordinary cir-
10 cumstances described in paragraph (3) of
11 such section.

12 (e) RECORD OF EMPLOYMENT.—

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

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

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

19 (2) CIVIL PENALTIES.—

20 (A) IN GENERAL.—If the Secretary deter-
21 mines, after notice and opportunity for a hear-
22 ing, that an employer of an alien granted blue
23 card status has failed to provide the record of
24 employment required under paragraph (1) or
25 has provided a false statement of material fact

1 in such a record, the employer shall be subject
2 to a civil penalty in an amount not to exceed
3 \$1,000 per violation.

4 (B) LIMITATION.—The penalty applicable
5 under subparagraph (A) for failure to provide
6 records shall not apply unless the alien has pro-
7 vided the employer with evidence of employment
8 authorization granted under this section.

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

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

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

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

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

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

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

4 (i) TREATMENT OF ALIENS GRANTED BLUE CARD
5 STATUS.—

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

14 (2) DELAYED ELIGIBILITY FOR CERTAIN FED-
15 ERAL PUBLIC BENEFITS.—Except as otherwise pro-
16 vided in law, an alien granted blue card status (in-
17 cluding a spouse or child of the alien granted deriva-
18 tive status) shall not be eligible, by reason of such
19 status, for any form of assistance or benefit de-
20 scribed in section 403(a) of the Personal Responsi-
21 bility and Work Opportunity Reconciliation Act of
22 1996 (8 U.S.C. 1613(a)) until 5 years after the date
23 on which the alien is granted an adjustment of sta-
24 tus under section 213.

1 **SEC. 212. APPLICATION FOR BLUE CARD STATUS.**

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

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

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

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

14 (2) applications for adjustment of status under
15 section 213 shall be filed directly with the Secretary.

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

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

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

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

12 (c) PROOF OF ELIGIBILITY.—

13 (1) IN GENERAL.—An alien may establish that
14 the alien meets the requirements under section
15 211(a)(1) or 213(a)(1) through government employ-
16 ment records or records supplied by employers or
17 collective bargaining organizations, and other reli-
18 able documentation as the alien may provide. The
19 Secretary shall establish special procedures to prop-
20 erly credit work in cases in which an alien was em-
21 ployed under an assumed name.

22 (2) DOCUMENTATION OF WORK HISTORY.—

23 (A) BURDEN OF PROOF.—An alien apply-
24 ing for status under section 211(a) or 213(a)
25 has the burden of proving by a preponderance

1 of the evidence that the alien has worked the
2 requisite number of hours or days required
3 under section 211(a)(1) or 213(a)(1), as appli-
4 cable.

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

13 (C) SUFFICIENT EVIDENCE.—An alien
14 may meet the burden of proof under subpara-
15 graph (A) to establish that the alien has per-
16 formed the days or hours of work required by
17 section 211(a)(1) or 213(a)(1) by producing
18 sufficient evidence to show the extent of that
19 employment as a matter of just and reasonable
20 inference.

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

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

1 (A) to forward to the Secretary an applica-
2 tion submitted to that entity pursuant to sub-
3 section (a)(1)(B) if the applicant has consented
4 to such forwarding;

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

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

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

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

22 (f) CONFIDENTIALITY OF INFORMATION.—

23 (1) IN GENERAL.—Except as otherwise pro-
24 vided in this section, the Secretary or any other offi-

1 cial or employee of the Department or a bureau or
2 agency of the Department is prohibited from—

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

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

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

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

24 (A) a duly recognized law enforcement en-
25 tity in connection with a criminal investigation

1 or prosecution, if such information is requested
2 in writing by such entity; or

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

7 (3) CONSTRUCTION.—

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

18 (B) CRIMINAL CONVICTIONS.—Notwith-
19 standing any other provision of this subsection,
20 information concerning whether the alien apply-
21 ing for blue card status or an adjustment of
22 status under section 213 has been convicted of
23 a crime at any time may be used or released for
24 immigration enforcement or law enforcement
25 purposes.

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

5 (g) PENALTIES FOR FALSE STATEMENTS IN APPLI-
6 CATIONS.—

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

8 (A) files an application for blue card status
9 under this section or for adjustment of status
10 under section 213 and knowingly and willfully
11 falsifies, conceals, or covers up a material fact
12 or makes any false, fictitious, or fraudulent
13 statements or representations, or makes or uses
14 any false writing or document knowing the
15 same to contain any false, fictitious, or fraudu-
16 lent statement or entry; or

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

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

23 (2) INADMISSIBILITY.—An alien who is con-
24 victed of a crime under paragraph (1) shall be con-
25 sidered to be inadmissible to the United States on

1 the grounds described in section 212(a)(6)(C)(i) of
2 the Immigration and Nationality Act (8 U.S.C.
3 1182(a)(6)(C)(i)).

4 (h) ELIGIBILITY FOR LEGAL SERVICES.—Section
5 114(a)(11) of Public Law 104–134 (110 Stat. 1321–53
6 et seq.) may not be construed to prevent a recipient of
7 funds under the Legal Services Corporation Act (42
8 U.S.C. 2996 et seq.) from providing legal assistance di-
9 rectly related to an application for blue card status under
10 this section or for adjustment of status under section 213.

11 (i) APPLICATION FEES.—

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

14 (A) shall be charged for the filing of an
15 application for blue card status under this sec-
16 tion or for adjustment of status under section
17 213; and

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

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

1 (3) DISPOSITION OF FEES.—

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

10 (B) USE OF FEES FOR APPLICATION PROC-
11 ESSING.—Amounts deposited in the “Agricul-
12 tural Worker Immigration Status Adjustment
13 Account” shall remain available to the Sec-
14 retary until expended for processing applica-
15 tions for blue card status under this section or
16 for adjustment of status under section 213.

17 **SEC. 213. ADJUSTMENT TO PERMANENT RESIDENCE.**

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

23 (1) QUALIFYING EMPLOYMENT.—

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

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

6 (ii) 3 years of agricultural employ-
7 ment in the United States for at least 150
8 work days per year, during the 3-year pe-
9 riod beginning on the date of the enact-
10 ment of this Act.

11 (B) 4-YEAR PERIOD OF EMPLOYMENT.—
12 An alien shall be considered to meet the re-
13 quirements of subparagraph (A) if the alien has
14 performed, during the 4-year period beginning
15 on the date of the enactment of this Act—

16 (i) agricultural employment in the
17 United States for at least 150 work days
18 during 3 of such years; and

19 (ii) at least 100 work days during the
20 remaining year.

21 (2) PROOF.—An alien may demonstrate compli-
22 ance with the requirement under paragraph (1) by
23 submitting—

24 (A) the record of employment described in
25 section 211(e); or

1 (B) documentation that may be submitted
2 under section 212(c).

3 (3) EXTRAORDINARY CIRCUMSTANCES.—

4 (A) IN GENERAL.—In determining whether
5 an alien has met the requirement under para-
6 graph (1)(A), the Secretary may credit the alien
7 with not more than 12 additional months of agri-
8 cultural employment in the United States to
9 meet such requirement if the alien was unable
10 to work in agricultural employment due to—

11 (i) pregnancy, injury, or disease, if the
12 alien can establish such pregnancy, dis-
13 abling injury, or disease through medical
14 records;

15 (ii) illness, disease, or other special
16 needs of a minor child, if the alien can es-
17 tablish such illness, disease, or special
18 needs through medical records;

19 (iii) severe weather conditions that
20 prevented the alien from engaging in agri-
21 cultural employment for a significant pe-
22 riod of time; or

23 (iv) termination from agricultural em-
24 ployment, if the Secretary finds that the
25 termination was without just cause and

1 that the alien was unable to find alter-
2 native agricultural employment after a rea-
3 sonable job search.

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

7 (i) be conclusive, binding, or admis-
8 sible in a separate or subsequent judicial
9 or administrative action or proceeding be-
10 tween the alien and a current or prior em-
11 ployer of the alien or any other party; or

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

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

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

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

24 (1) the Secretary finds, by a preponderance of
25 the evidence, that the adjustment to blue card status

1 was the result of fraud or willful misrepresentation,
2 as described in section 212(a)(6)(C)(i) of the Immig-
3 ration and Nationality Act (8 U.S.C.
4 1182(a)(6)(C)(i)); or

5 (2) the alien—

6 (A) commits an act that makes the alien
7 inadmissible to the United States under section
8 212 of the Immigration and Nationality Act (8
9 U.S.C. 1182), except as provided under section
10 214(a)(2);

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

13 (C) is convicted of an offense, an element
14 of which involves bodily injury, threat of serious
15 bodily injury, or harm to property in excess of
16 \$500; or

17 (D) failed to perform the agricultural em-
18 ployment required under paragraph (1)(A) of
19 subsection (a) unless the alien was unable to
20 work in agricultural employment due to the ex-
21 traordinary circumstances described in para-
22 graph (3) of such subsection.

23 (c) GROUNDS FOR REMOVAL.—Any alien granted
24 blue card status who does not apply for adjustment of sta-
25 tus under this section before the expiration of the applica-

1 tion period described in subsection (a)(4) or who fails to
2 meet the other requirements of subsection (a) by the end
3 of the application period, is deportable and may be re-
4 moved under section 240 of the Immigration and Nation-
5 ality Act (8 U.S.C. 1229a).

6 (d) PAYMENT OF TAXES.—

7 (1) IN GENERAL.—Not later than the date on
8 which an alien’s status is adjusted under this sec-
9 tion, the alien shall establish that the alien does not
10 owe any applicable Federal tax liability by estab-
11 lishing that—

12 (A) no such tax liability exists;

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

15 (C) the alien has entered into an agree-
16 ment for payment of all outstanding liabilities
17 with the Internal Revenue Service.

18 (2) APPLICABLE FEDERAL TAX LIABILITY.—In
19 paragraph (1), the term “applicable Federal tax li-
20 ability” means liability for Federal taxes, including
21 penalties and interest, owed for any year during the
22 period of employment required under subsection
23 (a)(1) for which the statutory period for assessment
24 of any deficiency for such taxes has not expired.

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

7 (e) SPOUSES AND MINOR CHILDREN.—

8 (1) IN GENERAL.—Notwithstanding any other
9 provision of law, the Secretary shall confer the sta-
10 tus of lawful permanent resident on the spouse and
11 minor child of an alien granted any adjustment of
12 status under subsection (a), including any individual
13 who was a minor child on the date such alien was
14 granted blue card status, if the spouse or minor
15 child applies for such status, or if the principal alien
16 includes the spouse or minor child in an application
17 for adjustment of status to that of a lawful perma-
18 nent resident.

19 (2) TREATMENT OF SPOUSES AND MINOR CHIL-
20 DREN.—

21 (A) GRANTING OF STATUS AND RE-
22 MOVAL.—The Secretary shall grant derivative
23 status to the alien spouse and any minor child
24 residing in the United States of an alien grant-
25 ed blue card status and shall not remove such

1 derivative spouse or child during the period that
2 the alien granted blue card status maintains
3 such status, except as provided in paragraph
4 (3). A grant of derivative status to such a
5 spouse or child under this subparagraph shall
6 not decrease the number of aliens who may re-
7 ceive blue card status under section 211(h).

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

13 (C) EMPLOYMENT.—The derivative spouse
14 of an alien granted blue card status may apply
15 to the Secretary for a work permit to authorize
16 such spouse to engage in any lawful employ-
17 ment in the United States while such alien
18 maintains blue card status.

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

1 (A) commits an act that makes the alien
2 spouse or child inadmissible to the United
3 States under section 212 of such Act (8 U.S.C.
4 1182), except as provided under section
5 214(a)(2);

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

9 (C) is convicted of an offense, an element
10 of which involves bodily injury, threat of serious
11 bodily injury, or harm to property in excess of
12 \$500.

13 **SEC. 214. OTHER PROVISIONS.**

14 (a) WAIVER OF NUMERICAL LIMITATIONS AND CER-
15 TAIN GROUNDS FOR INADMISSIBILITY.—

16 (1) NUMERICAL LIMITATIONS DO NOT APPLY.—

17 The numerical limitations of sections 201 and 202
18 of the Immigration and Nationality Act (8 U.S.C.
19 1151 and 1152) shall not apply to the adjustment
20 of aliens to lawful permanent resident status under
21 section 213.

22 (2) WAIVER OF CERTAIN GROUNDS OF INAD-
23 MISSIBILITY.—In the determination of an alien's eli-
24 gibility for status under section 101(a) or an alien's

1 eligibility for adjustment of status under section
2 213(b)(2)(A) the following rules shall apply:

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

8 (B) WAIVER OF OTHER GROUNDS.—

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

15 (ii) GROUNDS THAT MAY NOT BE
16 WAIVED.—Subparagraphs (A), (B), (C),
17 (D), (G), (H), and (I) of paragraph (2)
18 and paragraphs (3) and (4) of such section
19 212(a) may not be waived by the Secretary
20 under subparagraph (A).

21 (iii) CONSTRUCTION.—Nothing in this
22 paragraph may be construed as affecting
23 the authority of the Secretary other than
24 under this subparagraph to waive provi-
25 sions under such section 212(a).

1 (C) SPECIAL RULE FOR DETERMINATION
2 OF PUBLIC CHARGE.—An alien is not ineligible
3 for blue card status or an adjustment of status
4 under section 213 by reason of a ground of in-
5 admissibility under section 212(a)(4) of the Im-
6 migration and Nationality Act (8 U.S.C.
7 1182(a)(4)) if the alien demonstrates a history
8 of employment in the United States evidencing
9 self-support without reliance on public cash as-
10 sistance.

11 (3) TEMPORARY STAY OF REMOVAL AND WORK
12 AUTHORIZATION FOR CERTAIN APPLICANTS.—

13 (A) BEFORE APPLICATION PERIOD.—Ef-
14 fective on the date of the enactment of this Act,
15 the Secretary shall provide that, in the case of
16 an alien who is apprehended before the begin-
17 ning of the application period described in sec-
18 tion 211(a)(2) and who can establish a non-
19 frivolous case of eligibility for blue card status
20 (but for the fact that the alien may not apply
21 for such status until the beginning of such pe-
22 riod), until the alien has had the opportunity
23 during the first 30 days of the application pe-
24 riod to complete the filing of an application for
25 blue card status, the alien—

1 (i) may not be removed; and

2 (ii) shall be granted authorization to
3 engage in employment in the United States
4 and be provided an employment authorized
5 endorsement or other appropriate work
6 permit for such purpose.

7 (B) DURING APPLICATION PERIOD.—The
8 Secretary shall provide that, in the case of an
9 alien who presents a nonfrivolous application
10 for blue card status during the application pe-
11 riod described in section 211(a)(2), including
12 an alien who files such an application within 30
13 days of the alien’s apprehension, and until a
14 final determination on the application has been
15 made in accordance with this section, the
16 alien—

17 (i) may not be removed; and

18 (ii) shall be granted authorization to
19 engage in employment in the United States
20 and be provided an employment authorized
21 endorsement or other appropriate work
22 permit for such purpose.

23 (b) ADMINISTRATIVE AND JUDICIAL REVIEW.—

24 (1) IN GENERAL.—There shall be no adminis-
25 trative or judicial review of a determina-

1 ing an application for blue card status or adjustment
2 of status under section 213 except in accordance
3 with this section.

4 (2) ADMINISTRATIVE REVIEW.—

5 (A) SINGLE LEVEL OF ADMINISTRATIVE
6 APPELLATE REVIEW.—The Secretary shall es-
7 tablish an appellate authority to provide for a
8 single level of administrative appellate review of
9 such a determination.

10 (B) STANDARD FOR REVIEW.—Such ad-
11 ministrative appellate review shall be based
12 solely upon the administrative record estab-
13 lished at the time of the determination on the
14 application and upon such additional or newly
15 discovered evidence as may not have been avail-
16 able at the time of the determination.

17 (3) JUDICIAL REVIEW.—

18 (A) LIMITATION TO REVIEW OF RE-
19 MOVAL.—There shall be judicial review of such
20 a determination only in the judicial review of an
21 order of removal under section 242 of the Im-
22 migration and Nationality Act (8 U.S.C. 1252).

23 (B) STANDARD FOR JUDICIAL REVIEW.—
24 Such judicial review shall be based solely upon
25 the administrative record established at the

1 time of the review by the appellate authority
2 and the findings of fact and determinations
3 contained in such record shall be conclusive un-
4 less the applicant can establish abuse of discre-
5 tion or that the findings are directly contrary to
6 clear and convincing facts contained in the
7 record considered as a whole.

8 (c) USE OF INFORMATION.—Beginning not later than
9 the first day of the application period described in section
10 211(a)(2), the Secretary, in cooperation with qualified
11 designated entities (as that term is defined in section
12 212(b)), shall broadly disseminate information respecting
13 the benefits that aliens may receive under this title and
14 the requirements that an alien is required to meet to re-
15 ceive such benefits.

16 (d) REGULATIONS, EFFECTIVE DATE, AUTHORIZA-
17 TION OF APPROPRIATIONS.—

18 (1) REGULATIONS.—The Secretary shall issue
19 regulations to implement this chapter not later than
20 the first day of the seventh month that begins after
21 the date of the enactment of this Act.

22 (2) EFFECTIVE DATE.—This chapter shall take
23 effect on the date that regulations required under
24 subsection (a) are issued, regardless of whether such

1 regulations are issued on an interim basis or on any
2 other basis.

3 (3) AUTHORIZATION OF APPROPRIATIONS.—

4 There are authorized to be appropriated to the Sec-
5 retary such sums as may be necessary to implement
6 this title, including any sums needed for costs asso-
7 ciated with the initiation of such implementation, for
8 fiscal years 2012 and 2013.

9 **SEC. 215. CORRECTION OF SOCIAL SECURITY RECORDS.**

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

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

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

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

18 “(D) who is granted blue card status
19 under the AgJOBS Act of 2012.”; and

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

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

5 **SEC. 216. DETERMINATION AND USE OF USER FEES.**

6 (a) SCHEDULE OF FEES.—The Secretary shall estab-
7 lish and periodically adjust a schedule of fees for the em-
8 ployment of aliens pursuant to the amendment made by
9 section 219 and a collection process for such fees from
10 employers. Such fees shall be the only fees chargeable to
11 employers for services provided under such amendment.

12 (b) DETERMINATION OF SCHEDULE.—

13 (1) IN GENERAL.—The schedule under sub-
14 section (a) shall reflect a fee rate based on the num-
15 ber of job opportunities indicated in the employer's
16 application under section 218 of the Immigration
17 and Nationality Act, as amended by section 219,
18 and sufficient to provide for the direct costs of pro-
19 viding services related to an employer's authorization
20 to employ aliens pursuant to the amendment made
21 by section 219(a), to include the certification of eli-
22 gible employers, the issuance of documentation, and
23 the admission of eligible aliens.

24 (2) PROCEDURE.—

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

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

13 (c) USE OF PROCEEDS.—Notwithstanding any other
14 provision of law, all proceeds resulting from the payment
15 of the fees pursuant to the amendment made by section
16 219 shall be available without further appropriation and
17 shall remain available without fiscal year limitation to re-
18 imburse the Secretary, the Secretary of State, and the
19 Secretary of Labor for the costs of carrying out—

20 (1) sections 218 and 218B of the Immigration
21 and Nationality Act, as added by section 219; and

22 (2) the provisions of this title.

23 (d) EFFECTIVE DATE.—This section and the amend-
24 ments made by section 219 shall take effect 1 year after
25 the date of the enactment of this Act.

1 **SEC. 217. RULEMAKING.**

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

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

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

19 (d) DEADLINE FOR ISSUANCE OF REGULATIONS.—
20 All regulations to implement the duties of the Secretary,
21 the Secretary of State, and the Secretary of Labor created
22 under sections 218, 218A, 218B, 218C, and 218D of the
23 Immigration and Nationality Act, as amended or added
24 by section 219 of this Act—

25 (1) shall take effect on the effective date of sec-
26 tion 219; and

1 (2) shall be issued not later than 1 year after
2 the date of the enactment of this Act.

3 **SEC. 218. REPORTS TO CONGRESS.**

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

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

13 (2) the number of such aliens reported to have
14 abandoned employment pursuant to section
15 218B(e)(2) of such Act;

16 (3) the number of such aliens who departed the
17 United States within the period specified in section
18 218B(d) of such Act;

19 (4) the number of aliens who applied for blue
20 card status pursuant to section 211(a);

21 (5) the number of aliens who were granted such
22 status pursuant section 211(a);

23 (6) the number of aliens who applied for an ad-
24 justment of status pursuant to section 213(a); and

1 (7) the number of aliens who received an ad-
2 justment of status pursuant section 213(a).

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

8 **Subtitle B—Reform of H-2A**
9 **Worker Program**

10 **SEC. 221. AMENDMENTS TO THE IMMIGRATION AND NA-**
11 **TIONALITY ACT.**

12 (a) IN GENERAL.—Title II (8 U.S.C. 1151 et seq.)
13 is amended by striking section 218 and inserting the fol-
14 lowing:

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

16 “(a) APPLICATIONS TO THE SECRETARY OF
17 LABOR.—

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

23 “(A) the assurances described in sub-
24 section (b);

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

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

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

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

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

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

23 “(A) UNION CONTRACT DESCRIBED.—The
24 job opportunity is covered by a union contract

1 which was negotiated at arm's length between a
2 bona fide union and the employer.

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

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

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

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

1 “(F) PROVISION OF INSURANCE.—If the
2 job opportunity is not covered by the State
3 workers’ compensation law, the employer will
4 provide, at no cost to the worker, insurance cov-
5 ering injury and disease arising out of, and in
6 the course of, the worker’s employment which
7 will provide benefits at least equal to those pro-
8 vided under the State’s workers’ compensation
9 law for comparable employment.

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

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

19 “(B) TEMPORARY OR SEASONAL JOB OP-
20 PORTUNITIES.—The job opportunity is tem-
21 porary or seasonal.

22 “(C) BENEFIT, WAGE, AND WORKING CON-
23 DITIONS.—The employer will provide, at a min-
24 imum, the benefits, wages, and working condi-
25 tions required by section 218A to all workers

1 employed in the job opportunities for which the
2 employer has applied for an H-2A worker
3 under subsection (a) and to all other workers in
4 the same occupation at the place of employ-
5 ment.

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

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

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

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

1 “(iii) the employer has inquired of the
2 other employer as to whether, and has no
3 actual knowledge or notice that, during the
4 period of employment and for a period of
5 30 days preceding the period of employ-
6 ment, the other employer has displaced or
7 intends to displace a United States worker
8 employed by the other employer in the oc-
9 cupation at the place of employment for
10 which the employer seeks approval to em-
11 ploy H-2A workers.

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

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

1 vided under the State’s workers’ compensation
2 law for comparable employment.

3 “(H) EMPLOYMENT OF UNITED STATES
4 WORKERS.—

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

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

1 related reason or abandoned the job
2 before the worker completed the pe-
3 riod of employment of the job oppor-
4 tunity for which the worker was hired.

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

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

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

22 “(ii) JOB OFFERS.—The employer has
23 offered or will offer the job to any eligible
24 United States worker who—

1 “(I) applies and is equally or bet-
2 ter qualified for the job for which the
3 nonimmigrant is, or nonimmigrants
4 are, sought; and

5 “(II) will be available at the time
6 and place of need.

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

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

24 “(II) COMPLAINTS.—Upon re-
25 ceipt of a complaint by an employer

1 that a violation of subclause (I) has
2 occurred, the Secretary of Labor shall
3 immediately investigate the complaint.
4 The Secretary of Labor shall, within
5 36 hours of the receipt of the com-
6 plaint, issue findings concerning the
7 alleged violation. If the Secretary of
8 Labor finds that a violation has oc-
9 curred, the Secretary of Labor shall
10 immediately suspend the application
11 of this clause with respect to that cer-
12 tification for that date of need.

13 “(III) PLACEMENT OF UNITED
14 STATES WORKERS.—Before referring
15 a United States worker to an em-
16 ployer during the period described in
17 the matter preceding subclause (I),
18 the Secretary of Labor shall make all
19 reasonable efforts to place the United
20 States worker in an open job accept-
21 able to the worker, if there are other
22 job offers pending with the job service
23 that offer similar job opportunities in
24 the area of intended employment.

1 “(iv) STATUTORY CONSTRUCTION.—

2 Nothing in this subparagraph shall be con-
3 strued to prohibit an employer from using
4 such legitimate selection criteria relevant
5 to the type of job that are normal or cus-
6 tomary to the type of job involved if such
7 criteria are not applied in a discriminatory
8 manner.

9 “(c) APPLICATIONS BY ASSOCIATIONS ON BEHALF
10 OF EMPLOYER MEMBERS.—

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

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

1 ducer members to perform the agricultural services
2 of a temporary or seasonal nature for which the cer-
3 tifications were granted.

4 “(d) WITHDRAWAL OF APPLICATIONS.—

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

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

22 “(3) OBLIGATIONS UNDER OTHER STATUTES.—
23 Any obligation incurred by an employer under any
24 other law or regulation as a result of the recruit-
25 ment of United States workers or H-2A workers

1 under an offer of terms and conditions of employ-
2 ment required as a result of making an application
3 under subsection (a) is unaffected by withdrawal of
4 such application.

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

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

13 “(2) RESPONSIBILITY OF SECRETARY OF
14 LABOR.—

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

24 “(B) REVIEW OF APPLICATIONS.—The
25 Secretary of Labor shall review such an applica-

1 tion only for completeness and obvious inac-
2 curacies. Unless the Secretary of Labor finds
3 that the application is incomplete or obviously
4 inaccurate, the Secretary of Labor shall certify
5 that the intending employer has filed with the
6 Secretary of Labor an application as described
7 in subsection (a). Such certification shall be
8 provided not later than 7 days after the appli-
9 cation is filed.

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

11 “(a) PREFERENTIAL TREATMENT OF ALIENS PRO-
12 HIBITED.—Employers seeking to hire United States work-
13 ers shall offer the United States workers no less than the
14 same benefits, wages, and working conditions that the em-
15 ployer is offering, intends to offer, or will provide to H-
16 2A workers. Conversely, no job offer may impose on
17 United States workers any restrictions or obligations
18 which will not be imposed on the employer’s H-2A work-
19 ers.

20 “(b) MINIMUM BENEFITS, WAGES, AND WORKING
21 CONDITIONS.—Except in cases where higher benefits,
22 wages, or working conditions are required by the provi-
23 sions of subsection (a), in order to protect similarly em-
24 ployed United States workers from adverse effects with
25 respect to benefits, wages, and working conditions, every

1 job offer which shall accompany an application under sec-
2 tion 218(b)(2) shall include each of the following benefit,
3 wage, and working condition provisions:

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

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

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

1 State standards, Federal temporary labor camp
2 standards shall apply.

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

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

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

20 “(F) CHARGES FOR HOUSING.—

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

1 the public housing unit normally requires
2 charges from migrant workers, such
3 charges shall be paid by the employer di-
4 rectly to the appropriate individual or enti-
5 ty affiliated with the housing's manage-
6 ment.

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

18 “(G) HOUSING ALLOWANCE AS ALTER-
19 NATIVE.—

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

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

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

1 unless renewed by the Governor of the
2 State.

3 “(iii) AMOUNT OF ALLOWANCE.—

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

21 “(II) METROPOLITAN COUN-
22 TIES.—If the place of employment of
23 the workers provided an allowance
24 under this paragraph is in a metro-
25 politan county, the amount of the

1 housing allowance under this subpara-
2 graph shall be equal to the statewide
3 average fair market rental for existing
4 housing for metropolitan counties for
5 the State, as established by the Sec-
6 retary of Housing and Urban Devel-
7 opment pursuant to section 8(c) of
8 the United States Housing Act of
9 1937 (42 U.S.C. 1437f(c)), based on
10 a 2-bedroom dwelling unit and an as-
11 sumption of 2 persons per bedroom.

12 “(2) REIMBURSEMENT OF TRANSPORTATION.—

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

23 “(B) FROM PLACE OF EMPLOYMENT.—A
24 worker who completes the period of employment
25 for the job opportunity involved shall be reim-

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

11 “(C) LIMITATION.—

12 “(i) AMOUNT OF REIMBURSEMENT.—

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

17 “(I) the actual cost to the worker
18 or alien of the transportation and sub-
19 sistence involved; or

20 “(II) the most economical and
21 reasonable common carrier transpor-
22 tation charges and subsistence costs
23 for the distance involved.

24 “(ii) DISTANCE TRAVELED.—No reim-
25 bursement under subparagraph (A) or (B)

1 shall be required if the distance traveled is
2 100 miles or less, or the worker is not re-
3 siding in employer-provided housing or
4 housing secured through an allowance as
5 provided in paragraph (1)(G).

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

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

24 “(3) REQUIRED WAGES.—

1 “(A) IN GENERAL.—An employer applying
2 for workers under section 218(a) shall offer to
3 pay, and shall pay, all workers in the occupa-
4 tion for which the employer has applied for
5 workers, not less (and is not required to pay
6 more) than the greater of the prevailing wage
7 in the occupation in the area of intended em-
8 ployment or the adverse effect wage rate. No
9 worker shall be paid less than the greater of the
10 hourly wage prescribed under section 6(a)(1) of
11 the Fair Labor Standards Act of 1938 (29
12 U.S.C. 206(a)(1)) or the applicable State min-
13 imum wage.

14 “(B) LIMITATION.—Effective on the date
15 of the enactment of the Comprehensive Immigra-
16 tion Reform Act of 2012 and continuing for
17 3 years thereafter, no adverse effect wage rate
18 for a State may be more than the adverse effect
19 wage rate for that State in effect on January
20 1, 2011, as established by section 655.107 of
21 title 20, Code of Federal Regulations.

22 “(C) REQUIRED WAGES AFTER 3-YEAR
23 FREEZE.—

24 “(i) FIRST ADJUSTMENT.—If Con-
25 gress does not set a new wage standard

1 applicable to this section before the first
2 March 1 that is not less than 3 years after
3 the date of the enactment of this section,
4 the adverse effect wage rate for each State
5 beginning on such March 1 shall be the
6 wage rate that would have resulted if the
7 adverse effect wage rate in effect on Janu-
8 ary 1, 2011, had been annually adjusted,
9 beginning on March 1, 2014, by the lesser
10 of—

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

17 “(II) 4 percent.

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

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

7 “(II) 4 percent.

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

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

20 “(F) HOURS AND EARNINGS STATE-
21 MENTS.—The employer shall furnish to the
22 worker, on or before each payday, in 1 or more
23 written statements—

24 “(i) the worker’s total earnings for
25 the pay period;

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

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

8 “(iv) the hours actually worked by the
9 worker;

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

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

14 “(G) REPORT ON WAGE PROTECTIONS.—
15 Not later than December 31, 2012, the Comp-
16 troller General of the United States shall sub-
17 mit a report to the Secretary of Labor, the
18 Committee on the Judiciary of the Senate, and
19 the Committee on the Judiciary of the House of
20 Representatives that addresses—

21 “(i) whether the employment of H-2A
22 or unauthorized aliens in the United States
23 agricultural workforce has depressed
24 United States farm worker wages below
25 the levels that would otherwise have pre-

1 vailed if alien farm workers had not been
2 employed in the United States;

3 “(ii) whether an adverse effect wage
4 rate is necessary to prevent wages of
5 United States farm workers in occupations
6 in which H-2A workers are employed from
7 falling below the wage levels that would
8 have prevailed in the absence of the em-
9 ployment of H-2A workers in those occu-
10 pations;

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

18 “(iv) whether any changes are war-
19 ranted in the current methodologies for
20 calculating the adverse effect wage rate
21 and the prevailing wage; and

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

24 “(H) COMMISSION ON WAGE STAND-
25 ARDS.—

1 “(i) ESTABLISHMENT.—There is es-
2 tablished the Commission on Agricultural
3 Wage Standards under the H-2A program
4 (in this subparagraph referred to as the
5 ‘Commission’).

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

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

13 “(II) Four representatives of agri-
14 cultural workers and 1 representa-
15 tive of the Department of Labor, each
16 appointed by the Secretary of Labor.

17 “(iii) FUNCTIONS.—The Commission
18 shall conduct a study that shall address—

19 “(I) whether the employment of
20 H-2A or unauthorized aliens in the
21 United States agricultural workforce
22 has depressed United States farm
23 worker wages below the levels that
24 would otherwise have prevailed if alien

1 farm workers had not been employed
2 in the United States;

3 “(II) whether an adverse effect
4 wage rate is necessary to prevent
5 wages of United States farm workers
6 in occupations in which H-2A work-
7 ers are employed from falling below
8 the wage levels that would have pre-
9 vailed in the absence of the employ-
10 ment of H-2A workers in those occu-
11 pations;

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

20 “(IV) whether any changes are
21 warranted in the current methodolo-
22 gies for calculating the adverse effect
23 wage rate and the prevailing wage
24 rate; and

1 “(V) recommendations for future
2 wage protection under this section.

3 “(iv) FINAL REPORT.—Not later than
4 December 31, 2012, the Commission shall
5 submit a report to the Congress setting
6 forth the findings of the study conducted
7 under clause (iii).

8 “(v) TERMINATION DATE.—The Com-
9 mission shall terminate upon submitting
10 its final report.

11 “(4) GUARANTEE OF EMPLOYMENT.—

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

1 the employer shall pay such worker the amount
2 which the worker would have earned had the
3 worker, in fact, worked for the guaranteed
4 number of hours.

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

17 “(C) ABANDONMENT OF EMPLOYMENT,
18 TERMINATION FOR CAUSE.—If the worker vol-
19 untarily abandons employment before the end
20 of the contract period, or is terminated for
21 cause, the worker is not entitled to the $\frac{3}{4}$ guar-
22 antee described in subparagraph (A).

23 “(D) CONTRACT IMPOSSIBILITY.—If, be-
24 fore the expiration of the period of employment
25 specified in the job offer, the services of the

1 worker are no longer required for reasons be-
2 yond the control of the employer due to any
3 form of natural disaster, including a flood, hur-
4 ricane, freeze, earthquake, fire, drought, plant
5 or animal disease or pest infestation, or regu-
6 latory drought, before the guarantee in sub-
7 paragraph (A) is fulfilled, the employer may
8 terminate the worker's employment. In the
9 event of such termination, the employer shall
10 fulfill the employment guarantee in subpara-
11 graph (A) for the work days that have elapsed
12 from the first work day after the arrival of the
13 worker to the termination of employment. In
14 such cases, the employer will make efforts to
15 transfer the United States worker to other com-
16 parable employment acceptable to the worker. If
17 such transfer is not effected, the employer shall
18 provide the return transportation required in
19 paragraph (2)(D).

20 “(5) MOTOR VEHICLE SAFETY.—

21 “(A) MODE OF TRANSPORTATION SUBJECT
22 TO COVERAGE.—

23 “(i) IN GENERAL.—Except as pro-
24 vided in clauses (iii) and (iv), this sub-
25 section applies to any H-2A employer that

1 uses or causes to be used any vehicle to
2 transport an H-2A worker within the
3 United States.

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

7 “(I) applies only to transpor-
8 tation provided by an H-2A employer
9 to an H-2A worker, or by a farm
10 labor contractor to an H-2A worker
11 at the request or direction of an H-
12 2A employer; and

13 “(II) does not apply to—

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

20 “(bb) car pooling arrange-
21 ments made by H-2A workers
22 themselves, using 1 of the work-
23 ers’ own vehicles, unless specifi-
24 cally requested by the employer

1 directly or through a farm labor
2 contractor.

3 “(iii) CLARIFICATION.—Providing a
4 job offer to an H-2A worker that causes
5 the worker to travel to or from the place
6 of employment, or the payment or reim-
7 bursment of the transportation costs of
8 an H-2A worker by an H-2A employer,
9 shall not constitute an arrangement of, or
10 participation in, such transportation.

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

21 “(v) COMMON CARRIERS EX-
22 CLUDED.—This subsection does not apply
23 to common carrier motor vehicle transpor-
24 tation in which the provider holds itself out
25 to the general public as engaging in the

1 transportation of passengers for hire and
2 holds a valid certification of authorization
3 for such purposes from an appropriate
4 Federal, State, or local agency.

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

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

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

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

24 “(III) have an insurance policy
25 or a liability bond that is in effect

1 which insures the employer against li-
2 ability for damage to persons or prop-
3 erty arising from the ownership, oper-
4 ation, or causing to be operated, of
5 any vehicle used to transport any H-
6 2A worker.

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

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

21 “(I) No insurance policy or liabil-
22 ity bond shall be required of the em-
23 ployer, if such workers are trans-
24 ported only under circumstances for

1 which there is coverage under such
2 State law.

3 “(II) An insurance policy or li-
4 ability bond shall be required of the
5 employer for circumstances under
6 which coverage for the transportation
7 of such workers is not provided under
8 such State law.

9 “(c) COMPLIANCE WITH LABOR LAWS.—An em-
10 ployer shall assure that, except as otherwise provided in
11 this section, the employer will comply with all applicable
12 Federal, State, and local labor laws, including laws affect-
13 ing migrant and seasonal agricultural workers, with re-
14 spect to all United States workers and alien workers em-
15 ployed by the employer, except that a violation of this as-
16 surance shall not constitute a violation of the Migrant and
17 Seasonal Agricultural Worker Protection Act (29 U.S.C.
18 1801 et seq.).

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

1 the alien beneficiary (or beneficiaries) will apply for a visa
2 or admission to the United States.

3 “(c) CRITERIA FOR ADMISSIBILITY.—

4 “(1) IN GENERAL.—An H-2A worker shall be
5 considered admissible to the United States if the
6 alien—

7 “(A) is otherwise admissible under this
8 section, section 218, and section 218A; and

9 “(B) is not ineligible under paragraph (2).

10 “(2) DISQUALIFICATION.—An alien shall be
11 considered inadmissible to the United States and in-
12 eligible for nonimmigrant status under section
13 101(a)(15)(H)(ii)(a) if the alien has, at any time
14 during the past 5 years—

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

20 “(B) otherwise violated a term or condition
21 of admission into the United States as a non-
22 immigrant, including overstaying the period of
23 authorized admission as such a nonimmigrant.

24 “(3) WAIVER OF INELIGIBILITY FOR UNLAW-
25 FUL PRESENCE.—

1 “(A) IN GENERAL.—An alien who has not
2 previously been admitted into the United States
3 pursuant to this section, and who is otherwise
4 eligible for admission in accordance with para-
5 graphs (1) and (2), shall not be deemed inad-
6 missible by virtue of section 212(a)(9)(B). If an
7 alien described in the preceding sentence is
8 present in the United States, the alien may
9 apply from abroad for H-2A worker status, but
10 may not be granted that status in the United
11 States.

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

21 “(d) PERIOD OF ADMISSION.—

22 “(1) IN GENERAL.—The alien shall be admitted
23 for the period of employment in the application cer-
24 tified by the Secretary of Labor pursuant to section
25 218(e)(2)(B), not to exceed 10 months, supple-

1 mented by a period of not more than 1 week before
2 the beginning of the period of employment for the
3 purpose of travel to the worksite and a period of 14
4 days following the period of employment for the pur-
5 pose of departure or extension based on a subse-
6 quent offer of employment, except that—

7 “(A) the alien is not authorized to be em-
8 ployed during such 14-day period except in the
9 employment for which the alien was previously
10 authorized; and

11 “(B) the total period of employment, in-
12 cluding such 14-day period, may not exceed 10
13 months.

14 “(2) CONSTRUCTION.—Nothing in this sub-
15 section may be construed to limit the authority of
16 the Secretary to extend the stay of the alien under
17 any other provision of this Act.

18 “(e) ABANDONMENT OF EMPLOYMENT.—

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

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

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

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

14 “(f) REPLACEMENT OF ALIEN.—

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

21 “(A) who abandons or prematurely termi-
22 nates employment; or

23 “(B) whose employment is terminated
24 after a United States worker is employed pur-
25 suant to section 218(b)(2)(H)(iii), if the United

1 States worker voluntarily departs before the
2 end of the period of intended employment or if
3 the employment termination is for a lawful job-
4 related reason.

5 “(2) CONSTRUCTION.—Nothing in this sub-
6 section may be construed to limit any preference re-
7 quired to be accorded United States workers under
8 any other provision of this Act.

9 “(g) IDENTIFICATION DOCUMENT.—

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

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

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

20 “(i) the individual with the identifica-
21 tion and employment eligibility document
22 whose eligibility is being verified is in fact
23 eligible for employment;

1 “(ii) the individual whose eligibility is
2 being verified is claiming the identity of
3 another person; and

4 “(iii) the individual whose eligibility is
5 being verified is authorized to be admitted
6 into, and employed in, the United States
7 as an H-2A worker.

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

10 “(C) The document shall—

11 “(i) be compatible with other data-
12 bases of the Secretary for the purpose of
13 excluding aliens from benefits for which
14 they are not eligible and determining
15 whether the alien is unlawfully present in
16 the United States; and

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

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

22 “(1) EXTENSION OF STAY.—If an employer
23 seeks approval to employ an H-2A alien who is law-
24 fully present in the United States, the petition filed
25 by the employer or an association pursuant to sub-

1 section (a), shall request an extension of the alien’s
2 stay and a change in the alien’s employment.

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

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

7 or

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

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

13 “(A) IN GENERAL.—An alien who is law-
14 fully present in the United States may com-
15 mence the employment described in a petition
16 under paragraph (1) on the date on which the
17 petition is filed.

18 “(B) DEFINITION.—In subparagraph (A),
19 the term ‘file’ means sending the petition by
20 certified mail via the United States Postal Serv-
21 ice, return receipt requested, or delivered by
22 guaranteed commercial delivery which will pro-
23 vide the employer with a documented acknowl-
24 edgment of the date of receipt of the petition.

1 “(C) HANDLING OF PETITION.—The em-
2 ployer shall provide a copy of the employer’s pe-
3 tition to the alien, who shall keep the petition
4 with the alien’s identification and employment
5 eligibility document as evidence that the peti-
6 tion has been filed and that the alien is author-
7 ized to work in the United States.

8 “(D) APPROVAL OF PETITION.—Upon ap-
9 proval of a petition for an extension of stay or
10 change in the alien’s authorized employment,
11 the Secretary shall provide a new or updated
12 employment eligibility document to the alien in-
13 dicating the new validity date, after which the
14 alien is not required to retain a copy of the pe-
15 tition.

16 “(4) LIMITATION ON EMPLOYMENT AUTHORIZA-
17 TION OF ALIENS WITHOUT VALID IDENTIFICATION
18 AND EMPLOYMENT ELIGIBILITY DOCUMENT.—An ex-
19 pired identification and employment eligibility docu-
20 ment, together with a copy of a petition for exten-
21 sion of stay or change in the alien’s authorized em-
22 ployment that complies with the requirements of
23 paragraph (1), shall constitute a valid work author-
24 ization document for a period of not more than 60
25 days beginning on the date on which such petition

1 is filed, after which time only a currently valid iden-
2 tification and employment eligibility document shall
3 be acceptable.

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

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

10 “(B) REQUIREMENT TO REMAIN OUTSIDE
11 THE UNITED STATES.—

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

24 “(ii) EXCEPTION.—Clause (i) shall
25 not apply in the case of an alien—

1 “(I) whose period of authorized
2 status as an H-2A worker (including
3 any extensions) was for a period of
4 not more than 10 months; and

5 “(II) has been outside the United
6 States for at least 2 months during
7 the 12-month period immediately pre-
8 ceding the date on which the alien is
9 reapplying for admission to the
10 United States as an H-2A worker.

11 “(i) SPECIAL RULES FOR ALIENS EMPLOYED AS
12 SHEEPHERDERS, GOAT HERDERS, OR DAIRY WORK-
13 ERS.—Notwithstanding any provision of the Comprehen-
14 sive Immigration Reform Act of 2012, an alien admitted
15 under section 101(a)(15)(H)(ii)(a) for employment as a
16 shepherd, goat herder, or dairy worker—

17 “(1) may be admitted for an initial period of 12
18 months;

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

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

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

4 “(1) ELIGIBLE ALIEN.—In this subsection, the
5 term ‘eligible alien’ means an alien—

6 “(A) having nonimmigrant status under
7 section 101(a)(15)(H)(ii)(a) based on employ-
8 ment as a shepherd, goat herder, or dairy
9 worker;

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

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

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

20 “(A) the alien’s employer on behalf of the
21 eligible alien; or

22 “(B) the eligible alien.

23 “(3) NO LABOR CERTIFICATION REQUIRED.—
24 Notwithstanding section 203(b)(3)(C), no deter-
25 mination under section 212(a)(5)(A) is required with

1 respect to an immigrant visa described in paragraph
2 (1)(C) for an eligible alien.

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

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

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

20 **“SEC. 218C. WORKER PROTECTIONS AND LABOR STAND-**
21 **ARDS ENFORCEMENT.**

22 “(a) ENFORCEMENT AUTHORITY.—

23 “(1) INVESTIGATION OF COMPLAINTS.—

24 “(A) AGGRIEVED PERSON OR THIRD-PARTY
25 COMPLAINTS.—The Secretary of Labor shall es-

1 tabish a process for the receipt, investigation,
2 and disposition of complaints respecting a
3 petitioner's failure to meet a condition specified
4 in section 218(b), or an employer's misrepre-
5 sentation of material facts in an application
6 under section 218(a). Complaints may be filed
7 by any aggrieved person or organization (in-
8 cluding bargaining representatives). No inves-
9 tigation or hearing shall be conducted on a
10 complaint concerning such a failure or mis-
11 representation unless the complaint was filed
12 not later than 12 months after the date of the
13 failure, or misrepresentation, respectively. The
14 Secretary of Labor shall conduct an investiga-
15 tion under this subparagraph if there is reason-
16 able cause to believe that such a failure or mis-
17 representation has occurred.

18 “(B) DETERMINATION ON COMPLAINT.—
19 Not later than 30 days after the date on which
20 a complaint is filed under subparagraph (A),
21 the Secretary of Labor shall determine whether
22 or not a reasonable basis exists to make a find-
23 ing described in subparagraph (C), (D), (E), or
24 (G). If the Secretary of Labor determines that
25 such a reasonable basis exists, the Secretary of

1 Labor shall provide for notice of such deter-
2 mination to the interested parties and an oppor-
3 tunity for a hearing on the complaint, in ac-
4 cordance with section 556 of title 5, United
5 States Code, not later than 60 days after the
6 date of the determination. If such a hearing is
7 requested, the Secretary of Labor shall make a
8 finding concerning the matter not later than 60
9 days after the date of the hearing. In the case
10 of similar complaints regarding the same appli-
11 cant, the Secretary of Labor may consolidate
12 the hearings under this subparagraph on such
13 complaints.

14 “(C) FAILURES TO MEET CONDITIONS.—If
15 the Secretary of Labor finds, after notice and
16 opportunity for a hearing, a failure to meet a
17 condition of paragraph (1)(A), (1)(B), (1)(D),
18 (1)(F), (2)(A), (2)(B), or (2)(G) of section
19 218(b), a substantial failure to meet a condition
20 of paragraph (1)(C), (1)(E), (2)(C), (2)(D),
21 (2)(E), or (2)(H) of section 218(b), or a mate-
22 rial misrepresentation of fact in an application
23 under section 218(a)—

24 “(i) the Secretary of Labor shall no-
25 tify the Secretary of such finding and may,

1 in addition, impose such other administra-
2 tive remedies (including civil money pen-
3 alties in an amount not to exceed \$1,000
4 per violation) as the Secretary of Labor
5 determines to be appropriate; and

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

10 “(D) WILLFUL FAILURES AND WILLFUL
11 MISREPRESENTATIONS.—If the Secretary of
12 Labor finds, after notice and opportunity for
13 hearing, a willful failure to meet a condition of
14 section 218(b), a willful misrepresentation of a
15 material fact in an application under section
16 218(a), or a violation of subsection (d)(1)—

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

24 “(ii) the Secretary of Labor may seek
25 appropriate legal or equitable relief to ef-

1 fectuate the purposes of subsection (d)(1);
2 and

3 “(iii) the Secretary may disqualify the
4 employer from the employment of H-2A
5 workers for a period of 2 years.

6 “(E) DISPLACEMENT OF UNITED STATES
7 WORKERS.—If the Secretary of Labor finds,
8 after notice and opportunity for a hearing, a
9 willful failure to meet a condition of section
10 218(b) or a willful misrepresentation of a mate-
11 rial fact in an application under section 218(a),
12 in the course of which failure or misrepresenta-
13 tion the employer displaced a United States
14 worker employed by the employer during the
15 period of employment on the employer’s appli-
16 cation under section 218(a) or during the pe-
17 riod of 30 days preceding such period of em-
18 ployment—

19 “(i) the Secretary of Labor shall no-
20 tify the Secretary of such finding and may,
21 in addition, impose such other administra-
22 tive remedies (including civil money pen-
23 alties in an amount not to exceed \$15,000
24 per violation) as the Secretary of Labor
25 determines to be appropriate; and

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

4 “(F) LIMITATIONS ON CIVIL MONEY PEN-
5 ALTIES.—The Secretary of Labor shall not im-
6 pose total civil money penalties with respect to
7 an application under section 218(a) in excess of
8 \$90,000.

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

1 “(2) CONSTRUCTION.—Nothing in this section
2 may be construed as limiting the authority of the
3 Secretary of Labor to conduct any compliance inves-
4 tigation under any other labor law, including any
5 law affecting migrant and seasonal agricultural
6 workers, or, in the absence of a complaint under this
7 section, section 218, or section 218A.

8 “(b) RIGHTS ENFORCEABLE BY PRIVATE RIGHT OF
9 ACTION.—H-2A workers may enforce, through the private
10 right of action provided in subsection (c), the following
11 rights:

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

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

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

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

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

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

5 “(7) The prohibition of discrimination under
6 subsection (d)(2).

7 “(c) PRIVATE RIGHT OF ACTION.—

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

20 “(A) MEDIATION SERVICES.—The Federal
21 Mediation and Conciliation Service shall be
22 available to assist in resolving disputes arising
23 under subsection (b) between H-2A workers
24 and agricultural employers without charge to
25 the parties.

1 “(B) 90-DAY LIMIT.—The Federal Medi-
2 ation and Conciliation Service may conduct me-
3 diation or other nonbinding dispute resolution
4 activities for a period not to exceed 90 days be-
5 ginning on the date on which the Federal Medi-
6 ation and Conciliation Service receives the re-
7 quest for assistance unless the parties agree to
8 an extension of this period of time.

9 “(C) AUTHORIZATION.—

10 “(i) IN GENERAL.—Subject to clause
11 (ii), there are authorized to be appro-
12 priated to the Federal Mediation and Con-
13 ciliation Service \$500,000 for each fiscal
14 year to carry out this section.

15 “(ii) MEDIATION.—Notwithstanding
16 any other provision of law, the Director of
17 the Federal Mediation and Conciliation
18 Service is authorized to conduct the medi-
19 ation or other dispute resolution activities
20 from any other appropriated funds avail-
21 able to the Director and to reimburse such
22 appropriated funds when the funds are ap-
23 propriated pursuant to this authorization,
24 such reimbursement to be credited to ap-

1 appropriations currently available at the time
2 of receipt.

3 “(2) MAINTENANCE OF CIVIL ACTION IN DIS-
4 TRICT COURT BY AGGRIEVED PERSON.—An H-2A
5 worker aggrieved by a violation of rights enforceable
6 under subsection (b) by an agricultural employer or
7 other person may file suit in any district court of the
8 United States having jurisdiction over the parties,
9 without regard to the amount in controversy, with-
10 out regard to the citizenship of the parties, and
11 without regard to the exhaustion of any alternative
12 administrative remedies under this Act, not later
13 than 3 years after the date the violation occurs.

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

22 “(4) PREEMPTION OF STATE CONTRACT
23 RIGHTS.—Nothing in this Act may be construed to
24 diminish the rights and remedies of an H-2A worker
25 under any other Federal or State law or regulation

1 or under any collective bargaining agreement, except
2 that no court or administrative action shall be avail-
3 able under any State contract law to enforce the
4 rights established under this Act.

5 “(5) WAIVER OF RIGHTS PROHIBITED.—Agree-
6 ments by employees purporting to waive or modify
7 their rights under this Act shall be void as contrary
8 to public policy, except that a waiver or modification
9 of the rights or obligations in favor of the Secretary
10 of Labor shall be valid for purposes of the enforce-
11 ment of this Act. The preceding sentence may not
12 be construed to prohibit agreements to settle private
13 disputes or litigation.

14 “(6) AWARD OF DAMAGES OR OTHER EQUI-
15 TABLE RELIEF.—

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

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

23 “(7) WORKERS’ COMPENSATION BENEFITS; EX-
24 CLUSIVE REMEDY.—

1 “(A) Notwithstanding any other provision
2 of this section, where a State’s workers’ com-
3 pensation law is applicable and coverage is pro-
4 vided for an H-2A worker, the workers’ com-
5 pensation benefits shall be the exclusive remedy
6 for the loss of such worker under this section
7 in the case of bodily injury or death in accord-
8 ance with such State’s workers’ compensation
9 law.

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

18 “(i) a recovery under a State workers’
19 compensation law; or

20 “(ii) rights conferred under a State
21 workers’ compensation law.

22 “(8) TOLLING OF STATUTE OF LIMITATIONS.—
23 If it is determined under a State workers’ compensa-
24 tion law that the workers’ compensation law is not
25 applicable to a claim for bodily injury or death of an

1 H-2A worker, the statute of limitations for bringing
2 an action for actual damages for such injury or
3 death under subsection (c) shall be tolled for the pe-
4 riod during which the claim for such injury or death
5 under such State workers' compensation law was
6 pending. The statute of limitations for an action for
7 actual damages or other equitable relief arising out
8 of the same transaction or occurrence as the injury
9 or death of the H-2A worker shall be tolled for the
10 period during which the claim for such injury or
11 death was pending under the State workers' com-
12 pensation law.

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

21 “(10) SETTLEMENTS.—Any settlement by the
22 Secretary of Labor with an H-2A employer on be-
23 half of an H-2A worker of a complaint filed with the
24 Secretary of Labor under this section or any finding
25 by the Secretary of Labor under subsection

1 (a)(1)(B) shall preclude any right of action arising
2 out of the same facts between the parties under any
3 Federal or State court or administrative proceeding,
4 unless specifically provided otherwise in the settle-
5 ment agreement.

6 “(d) DISCRIMINATION PROHIBITED.—

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

24 “(2) DISCRIMINATION AGAINST H-2A WORK-
25 ERS.—It is a violation of this subsection for any per-

1 son who has filed an application under section
2 218(a), to intimidate, threaten, restrain, coerce,
3 blacklist, discharge, or in any manner discriminate
4 against an H-2A employee because such worker has,
5 with just cause, filed a complaint with the Secretary
6 of Labor regarding a denial of the rights enumer-
7 ated and enforceable under subsection (b) or insti-
8 tuted, or caused to be instituted, a private right of
9 action under subsection (c) regarding the denial of
10 the rights enumerated under subsection (b), or has
11 testified or is about to testify in any court pro-
12 ceeding brought under subsection (c).

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

22 “(f) ROLE OF ASSOCIATIONS.—

23 “(1) VIOLATION BY A MEMBER OF AN ASSOCIA-
24 TION.—An employer on whose behalf an application
25 is filed by an association acting as its agent is fully

1 responsible for such application, and for complying
2 with the terms and conditions of sections 218 and
3 218A, as though the employer had filed the applica-
4 tion itself. If such an employer is determined, under
5 this section, to have committed a violation, the pen-
6 alty for such violation shall apply only to that mem-
7 ber of the association unless the Secretary of Labor
8 determines that the association or other member
9 participated in, had knowledge, or reason to know,
10 of the violation, in which case the penalty shall be
11 invoked against the association or other association
12 member as well.

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

23 **“SEC. 218D. DEFINITIONS.**

24 “In this section and in sections 218, 218A, 218B,
25 and 218C:

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

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

19 “(3) DISPLACE.—The term ‘displace’, in the
20 case of an application with respect to 1 or more H–
21 2A workers by an employer, means laying off a
22 United States worker from a job for which H–2A
23 workers are sought.

24 “(4) ELIGIBLE.—The term ‘eligible’, when used
25 with respect to an individual, means an individual

1 who is not an unauthorized alien (as defined in sec-
2 tion 274A).

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

7 “(6) H-2A EMPLOYER.—The term ‘H-2A em-
8 ployer’ means an employer who seeks to hire 1 or
9 more nonimmigrant aliens described in section
10 101(a)(15)(H)(ii)(a).

11 “(7) H-2A WORKER.—The term ‘H-2A worker’
12 means a nonimmigrant described in section
13 101(a)(15)(H)(ii)(a).

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

19 “(9) LAYING OFF.—

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

22 “(i) means to cause the worker’s loss
23 of employment, other than through a dis-
24 charge for inadequate performance, viola-
25 tion of workplace rules, cause, voluntary

1 departure, voluntary retirement, contract
2 impossibility (as described in section
3 218A(b)(4)(D)), or temporary suspension
4 of employment due to weather, markets, or
5 other temporary conditions; and

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

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

22 “(10) REGULATORY DROUGHT.—The term ‘reg-
23 ulatory drought’ means a decision subsequent to the
24 filing of the application under section 218 by an en-
25 tity not under the control of the employer making

1 such filing which restricts the employer's access to
2 water for irrigation purposes and reduces or limits
3 the employer's ability to produce an agricultural
4 commodity, thereby reducing the need for labor.

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

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

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

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

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

18 “(14) UNITED STATES WORKER.—The term
19 ‘United States worker’ means any worker, whether
20 a national of the United States, an alien lawfully ad-
21 mitted for permanent residence, or any other alien,
22 who is authorized to work in the job opportunity
23 within the United States, except an alien admitted
24 or otherwise provided status under section
25 101(a)(15)(H)(ii)(a).”.

1 (b) TABLE OF CONTENTS.—The table of contents of
2 the Immigration and Nationality Act (8 U.S.C. 1101 et
3 seq.) is amended by striking the item relating to section
4 218 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.”.

