116TH CONGRESS *1st Session* } HOUSE OF REPRESENTATIVES { REPORT 116–

FARM WORKFORCE MODERNIZATION ACT OF 2019

DECEMBER --, 2019.—Ordered to be printed

Mr. NADLER, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

_____ VIEWS

[To accompany H.R. 5038]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 5038) to amend the Immigration and Nationality Act to provide for terms and conditions for nonimmigrant workers performing agricultural labor or services, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Farm Workforce Modernization Act of 2019".

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

TITLE I—SECURING THE DOMESTIC AGRICULTURAL WORKFORCE

Subtitle A—Temporary Status for Certified Agricultural Workers

SEC. 101. CERTIFIED AGRICULTURAL WORKER STATUS.

(a) REQUIREMENTS FOR CERTIFIED AGRICULTURAL WORKER STATUS.—

(1) PRINCIPAL ALIENS.—The Secretary may grant certified agricultural worker status to an alien who submits a completed application, including the required processing fees, before the end of the period set forth in subsection (c) and who—

(A) performed agricultural labor or services in the United States for at least 1,035 hours (or 180 work days) during the 2-year period preceding the date of the introduction of this Act;

(B) is inadmissible or deportable from the United States on the date of the introduction of this Act;

(C) subject to section 104, has been continuously present in the United States since the date of the introduction of this Act and until the date on which the alien is granted certified agricultural worker status; and

(D) is not otherwise ineligible for certified agricultural worker status as provided in subsection (b).

(2) DEPENDENT SPOUSE AND CHILDREN.—The Secretary may grant certified agricultural dependent status to the spouse or child of an alien granted certified agricultural worker status under paragraph (1) if the spouse or child is not ineligible for certified agricultural dependent status as provided in subsection (b).

(b) GROUNDS FOR INELIGIBILITY.—

(1) GROUNDS OF INADMISSIBILITY.—Except as provided in paragraph (3), an alien is ineligible for certified agricultural worker or certified agricultural dependent status if the Secretary determines that the alien is inadmissible under section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)), except that in determining inadmissibility—

(A) paragraphs (4), (5), (7), and (9)(B) of such section shall not apply;

(B) subparagraphs (A), (C), (D), (F), and (G) of such section 212(a)(6) and paragraphs (9)(C) and (10)(B) of such section 212(a) shall not apply unless based on the act of unlawfully entering the United States after the date of introduction of this Act; and

(C) paragraphs (6)(B) and (9)(A) of such section 212(a) shall not apply unless the relevant conduct began on or after the date of filing of the application for certified agricultural worker status.

(2) ADDITIONAL CRIMINAL BARS.—Except as provided in paragraph (3), an alien is ineligible for certified agricultural worker or certified agricultural dependent status if the Secretary determines that, excluding any offense under State law for which an essential element is the alien's immigration status and any minor traffic offense, the alien has been convicted of—

(A) any felony offense;

(B) an aggravated felony (as defined in section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)) at the time of the conviction);

(C) two misdemeanor offenses involving moral turpitude, as described in section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)(A)(i)(I)), unless an offense is waived by the Secretary under paragraph (3)(B); or

(D) three or more misdemeanor offenses not occurring on the same date, and not arising out of the same act, omission, or scheme of misconduct.

(3) WAIVERS FOR CERTAIN GROUNDS OF INADMISSIBILITY.—For humanitarian purposes, family unity, or if otherwise in the public interest, the Secretary may waive the grounds of inadmissibility under—

(A) paragraph (1), (6)(E), or (10)(D) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)); or

(B) subparagraphs (A) and (D) of section 212(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)), unless inadmissibility is based on a conviction that would otherwise render the alien ineligible under subparagraph (A), (B), or (D) of paragraph (2).

(c) APPLICATION.—

(1) APPLICATION PERIOD.—Except as provided in paragraph (2), the Secretary shall accept initial applications for certified agricultural worker status during the 18-month period beginning on the date on which the interim final rule is published in the Federal Register pursuant to section 122(a).

(2) EXTENSION.—If the Secretary determines, during the initial period described in paragraph (1), that additional time is required to process initial applications for certified agricultural worker status or for other good cause, the Secretary may extend the period for accepting applications for up to an additional 12 months.

(3) SUBMISSION OF APPLICATIONS.—

(A) IN GENERAL.—An alien may file an application with the Secretary under this section with the assistance of an attorney or a nonprofit religious, charitable, social service, or similar organization recognized by the Board of Immigration Appeals under section 292.2 of title 8, Code of Federal Regulations. The Secretary shall also create a procedure for accepting

applications filed by qualified designated entities with the consent of the applicant.

(B) FARM SERVICE AGENCY OFFICES.—The Secretary, in consultation with the Secretary of Agriculture, shall establish a process for the filing of applications under this section at Farm Service Agency offices throughout the United States.

(4) EVIDENCE OF APPLICATION FILING.—As soon as practicable after receiving an application for certified agricultural worker status, the Secretary shall provide the applicant with a document acknowledging the receipt of such application. Such document shall serve as interim proof of the alien's authorization to accept employment in the United States and shall be accepted by an employer as evidence of employment authorization under section 274A(b)(1)(C) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)(1)(C)), pending a final administrative decision on the application.

(5) EFFECT OF PENDING APPLICATION.—During the period beginning on the date on which an alien applies for certified agricultural worker status under this subtitle, and ending on the date on which the Secretary makes a final administrative decision regarding such application, the alien and any dependents included in the application—

(A) may apply for advance parole, which shall be granted upon demonstrating a legitimate need to travel outside the United States for a temporary purpose;

(B) may not be detained by the Secretary or removed from the United States unless the Secretary makes a prima facie determination that such alien is, or has become, ineligible for certified agricultural worker status;

(C) may not be considered unlawfully present under section 212(a)(9)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(9)(B)); and

(D) may not be considered an unauthorized alien (as defined in section 274A(h)(3) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(3))).

(6) WITHDRAWAL OF APPLICATION.—The Secretary shall, upon receipt of a request from the applicant to withdraw an application for certified agricultural worker status under this subtitle, cease processing of the application, and close the case. Withdrawal of the application shall not prejudice any future application filed by the applicant for any immigration benefit under this Act or under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(d) ADJUDICATION AND DECISION.—

(1) IN GENERAL.—Subject to section 123, the Secretary shall render a decision on an application for certified agricultural worker status not later than 180 days after the date the application is filed.

(2) NOTICE.—Prior to denying an application for certified agricultural worker status, the Secretary shall provide the alien with—

(A) written notice that describes the basis for ineligibility or the deficiencies in the evidence submitted; and

(B) at least 90 days to contest ineligibility or submit additional evidence.

(3) AMENDED APPLICATION.—An alien whose application for certified agricultural worker status is denied under this section may submit an amended application for such status to the Secretary if the amended application is submitted within the application period described in subsection (c) and contains all the required information and fees that were missing from the initial application.

(e) ALTERNATIVE H-2A STATUS.—An alien who has not met the required period of agricultural labor or services under subsection (a)(1)(A), but is otherwise eligible for certified agricultural worker status under such subsection, shall be eligible for classification as a nonimmigrant described in section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)) upon approval of a petition submitted by a sponsoring employer, if the alien has performed at least 575 hours (or 100 work days) of agricultural labor or services during the 3-year period preceding the date of the introduction of this Act. The Secretary shall create a procedure to provide for such classification without requiring the alien to depart the United States and obtain a visa abroad.

SEC. 102. TERMS AND CONDITIONS OF CERTIFIED STATUS.

(a) IN GENERAL.—

(1) APPROVAL.—Upon approval of an application for certified agricultural worker status, or an extension of such status pursuant to section 103, the Secretary shall issue—

(A) documentary evidence of such status to the applicant; and

(B) documentary evidence of certified agricultural dependent status to any qualified dependent included on such application.

(2) DOCUMENTARY EVIDENCE.—In addition to any other features and information as the Secretary may prescribe, the documentary evidence described in paragraph (1)—

(A) shall be machine-readable and tamper-resistant;

(B) shall contain a digitized photograph;

(C) shall serve as a valid travel and entry document for purposes of applying for admission to the United States; and

(D) shall be accepted during the period of its validity by an employer as evidence of employment authorization and identity under section 274A(b)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)(1)(B)).

(3) VALIDITY PERIOD.—Certified agricultural worker and certified agricultural dependent status shall be valid for five and one-half years beginning on the date of approval.

(4) TRAVEL AUTHORIZATION.—An alien with certified agricultural worker or certified agricultural dependent status may—

(A) travel within and outside of the United States, including commuting to the United States from a residence in a foreign country; and

(B) be admitted to the United States upon return from travel abroad without first obtaining a visa if the alien is in possession of—

(i) valid, unexpired documentary evidence of certified agricultural worker or certified agricultural worker dependent status as described in subsection (a); or

(ii) a travel document that has been approved by the Secretary and was issued to the alien after the alien's original documentary evidence was lost, stolen, or destroyed.

(b) ABILITY TO CHANGE STATUS.—

(1) CHANGE TO CERTIFIED AGRICULTURAL WORKER STATUS.—Notwithstanding section 101(a), an alien with valid certified agricultural dependent status may apply to change to certified agricultural worker status, at any time, if the alien—

(A) submits a completed application, including the required processing fees; and

(B) is not ineligible for certified agricultural worker status under section 101(b).

(2) CLARIFICATION.—Nothing in this title prohibits an alien granted certified agricultural worker or certified agricultural dependent status from changing status to any other nonimmigrant classification for which the alien may be eligible.

(c) PROHIBITION ON PUBLIC BENEFITS, TAX BENEFITS, AND HEALTH CARE SUBSIDIES.—Aliens granted certified agricultural worker or certified agricultural dependent status shall be considered lawfully present in the United States for all purposes for the duration of their status, except that such aliens—

(1) shall be ineligible for Federal means-tested public benefits to the same extent as other individuals who are not qualified aliens under section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641);

(2) are not entitled to the premium assistance tax credit authorized under section 36B of the Internal Revenue Code of 1986 (26 U.S.C. 36B), and shall be subject to the rules applicable to individuals who are not lawfully present set forth in subsection (e) of such section;

(3) shall be subject to the rules applicable to individuals who are not lawfully present set forth in section 1402(e) of the Patient Protection and Affordable Care Act (42 U.S.C. 18071(e)); and

(4) shall be subject to the rules applicable to individuals not lawfully present set forth in section 5000A(d)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 5000A(d)(3)).

(d) REVOCATION OF STATUS.—

(1) IN GENERAL.—The Secretary may revoke certified agricultural worker or certified agricultural dependent status if, after providing notice to the alien and the opportunity to provide evidence to contest the proposed revocation, the Secretary determines that the alien no longer meets the eligibility requirements for such status under section 101(b).

(2) INVALIDATION OF DOCUMENTATION.—Upon the Secretary's final determination to revoke an alien's certified agricultural worker or certified agricultural dependent status, any documentation issued by the Secretary to such alien under subsection (a) shall automatically be rendered invalid for any purpose except for departure from the United States.

SEC. 103. EXTENSIONS OF CERTIFIED STATUS.

(a) REQUIREMENTS FOR EXTENSIONS OF STATUS.—

(1) PRINCIPAL ALIENS.—The Secretary may extend certified agricultural worker status for additional periods of five and one-half years to an alien who submits a completed application, including the required processing fees, within the 120-day period beginning 60 days before the expiration of the fifth year of the immediately preceding grant of certified agricultural worker status, if the alien—

(A) except as provided in subsection (b), has performed agricultural labor or services in the United States for at least 575 hours (or 100 work days) for each of the prior five years in which the alien held certified agricultural worker status; and

(B) has not become ineligible for certified agricultural worker status under section 101(b).

(2) DEPENDENT SPOUSE AND CHILDREN.—The Secretary may grant or extend certified agricultural dependent status to the spouse or child of an alien granted an extension of certified agricultural worker status under paragraph (1) if the spouse or child is not ineligible for certified agricultural dependent status under section 101(b).

(3) WAIVER FOR LATE FILINGS.—The Secretary may waive an alien's failure to timely file before the expiration of the 120-day period described in paragraph (1) if the alien demonstrates that the delay was due to extraordinary circumstances beyond the alien's control or for other good cause.

(b) STATUS FOR WORKERS WITH PENDING APPLICATIONS.—

(1) IN GENERAL.—Certified agricultural worker status of an alien who timely files an application to extend such status under subsection (a) (and the status of the alien's dependents) shall be automatically extended through the date on which the Secretary makes a final administrative decision regarding such application.

(2) DOCUMENTATION OF EMPLOYMENT AUTHORIZATION.—As soon as practicable after receipt of an application to extend certified agricultural worker status under subsection (a), the Secretary shall issue a document to the alien acknowledging the receipt of such application. An employer of the worker may not refuse to accept such document as evidence of employment authorization under section 274A(b)(1)(C) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)(1)(C)), pending a final administrative decision on the application.

(c) NOTICE.—Prior to denying an application to extend certified agricultural worker status, the Secretary shall provide the alien with—

(1) written notice that describes the basis for ineligibility or the deficiencies of the evidence submitted; and

(2) at least 90 days to contest ineligibility or submit additional evidence.

SEC. 104. DETERMINATION OF CONTINUOUS PRESENCE.

(a) EFFECT OF NOTICE TO APPEAR.—The continuous presence in the United States of an applicant for certified agricultural worker status under section 101 shall not terminate when the alien is served a notice to appear under section 239(a) of the Immigration and Nationality Act (8 U.S.C. 1229(a)).

(b) TREATMENT OF CERTAIN BREAKS IN PRESENCE.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), an alien shall be considered to have failed to maintain continuous presence in the United States under this subtitle if the alien departed the United States for any period exceeding 90 days, or for any periods, in the aggregate, exceeding 180 days.

(2) EXTENSIONS FOR EXTENUATING CIRCUMSTANCES.—The Secretary may extend the time periods described in paragraph (1) for an alien who demonstrates that the failure to timely return to the United States was due to extenuating circumstances beyond the alien's control, including the serious illness of the alien, or death or serious illness of a spouse, parent, son or daughter, grandparent, or sibling of the alien.

(3) TRAVEL AUTHORIZED BY THE SECRETARY.—Any period of travel outside of the United States by an alien that was authorized by the Secretary shall not

be counted toward any period of departure from the United States under paragraph (1).

SEC. 105. EMPLOYER OBLIGATIONS.

(a) RECORD OF EMPLOYMENT.—An employer of an alien in certified agricultural worker status shall provide such alien with a written record of employment each year during which the alien provides agricultural labor or services to such employer as a certified agricultural worker.

(b) CIVIL PENALTIES.—

(1) IN GENERAL.—If the Secretary determines, after notice and an opportunity for a hearing, that an employer of an alien with certified agricultural worker status has knowingly failed to provide the record of employment required under subsection (a), or has provided a false statement of material fact in such a record, the employer shall be subject to a civil penalty in an amount not to exceed $500 per violation.

(2) LIMITATION.—The penalty under paragraph (1) for failure to provide employment records shall not apply unless the alien has provided the employer with evidence of employment authorization described in section 102 or 103.

(3) DEPOSIT OF CIVIL PENALTIES.—Civil penalties collected under this paragraph shall be deposited into the Immigration Examinations Fee Account under section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)).

SEC. 106. ADMINISTRATIVE AND JUDICIAL REVIEW.

(a) ADMINISTRATIVE REVIEW.—The Secretary shall establish a process by which an applicant may seek administrative review of a denial of an application for certified agricultural worker status under this subtitle, an application to extend such status, or a revocation of such status.

(b) ADMISSIBILITY IN IMMIGRATION COURT.—Each record of an alien's application for certified agricultural worker status under this subtitle, application to extend such status, revocation of such status, and each record created pursuant to the administrative review process under subsection (a) is admissible in immigration court, and shall be included in the administrative record.

(c) JUDICIAL REVIEW.—Notwithstanding any other provision of law, judicial review of the Secretary's decision to deny an application for certified agricultural worker status, an application to extend such status, or the decision to revoke such status, shall be limited to the review of an order of removal under section 242 of the Immigration and Nationality Act (8 U.S.C. 1252).

Subtitle B—Optional Earned Residence for Long-term Workers

SEC. 111. OPTIONAL ADJUSTMENT OF STATUS FOR LONG-TERM AGRICULTURAL WORKERS.

(a) REQUIREMENTS FOR ADJUSTMENT OF STATUS.—

(1) PRINCIPAL ALIENS.—The Secretary may adjust the status of an alien from that of a certified agricultural worker to that of a lawful permanent resident if the alien submits a completed application, including the required processing and penalty fees, and the Secretary determines that—

(A) except as provided in section 126(c), the alien performed agricultural labor or services for not less than 575 hours (or 100 work days) each year—

(i) for at least 10 years prior to the date of the enactment of this Act and for at least 4 years in certified agricultural worker status; or

(ii) for fewer than 10 years prior to the date of the enactment of this Act and for at least 8 years in certified agricultural worker status; and

(B) the alien has not become ineligible for certified agricultural worker status under section 101(b).

(2) DEPENDENT ALIENS.—

(A) IN GENERAL.—The spouse and each child of an alien described in paragraph (1) whose status has been adjusted to that of a lawful permanent resident may be granted lawful permanent residence under this subtitle if—

(i) the qualifying relationship to the principal alien existed on the date on which such alien was granted adjustment of status under this subtitle; and

(ii) the spouse or child is not ineligible for certified agricultural worker dependent status under section 101(b).

(B) PROTECTIONS FOR SPOUSES AND CHILDREN.—The Secretary of Homeland Security shall establish procedures to allow the spouse or child of a certified agricultural worker to self-petition for lawful permanent residence under this subtitle in cases involving—

(i) the death of the certified agricultural worker, so long as the spouse or child submits a petition not later than 2 years after the date of the worker's death; or

(ii) the spouse or a child being battered or subjected to extreme cruelty by the certified agricultural worker.

(3) DOCUMENTATION OF WORK HISTORY.—An applicant for adjustment of status under this section shall not be required to resubmit evidence of work history that has been previously submitted to the Secretary in connection with an approved extension of certified agricultural worker status.

(b) PENALTY FEE.—In addition to any processing fee that the Secretary may assess in accordance with section 122(b), a principal alien seeking adjustment of status under this subtitle shall pay a $1,000 penalty fee, which shall be deposited into the Immigration Examinations Fee Account pursuant to section 286(m) of the Immigration and Nationality Act (8 U.S.C.1356(m)).

(c) EFFECT OF PENDING APPLICATION.—During the period beginning on the date on which an alien applies for adjustment of status under this subtitle, and ending on the date on which the Secretary makes a final administrative decision regarding such application, the alien and any dependents included on the application—

(1) may apply for advance parole, which shall be granted upon demonstrating a legitimate need to travel outside the United States for a temporary purpose;

(2) may not be detained by the Secretary or removed from the United States unless the Secretary makes a prima facie determination that such alien is, or has become, ineligible for adjustment of status under subsection (a);

(3) may not be considered unlawfully present under section 212(a)(9)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(9)(B)); and

(4) may not be considered an unauthorized alien (as defined in section 274A(h)(3) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(3))).

(d) EVIDENCE OF APPLICATION FILING.—As soon as practicable after receiving an application for adjustment of status under this subtitle, the Secretary shall provide the applicant with a document acknowledging the receipt of such application. Such document shall serve as interim proof of the alien's authorization to accept employment in the United States and shall be accepted by an employer as evidence of employment authorization under section 274A(b)(1)(C) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)(1)(C)), pending a final administrative decision on the application.

(e) WITHDRAWAL OF APPLICATION.—The Secretary shall, upon receipt of a request to withdraw an application for adjustment of status under this subtitle, cease processing of the application, and close the case. Withdrawal of the application shall not prejudice any future application filed by the applicant for any immigration benefit under this Act or under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

SEC. 112. PAYMENT OF TAXES.

(a) IN GENERAL.—An alien may not be granted adjustment of status under this subtitle unless the applicant has satisfied any applicable Federal tax liability.

(b) COMPLIANCE.—An alien may demonstrate compliance with subsection (a) by submitting such documentation as the Secretary, in consultation with the Secretary of the Treasury, may require by regulation.

SEC. 113. ADJUDICATION AND DECISION; REVIEW.

(a) IN GENERAL.—Subject to the requirements of section 123, the Secretary shall render a decision on an application for adjustment of status under this subtitle not later than 180 days after the date on which the application is filed.

(b) NOTICE.—Prior to denying an application for adjustment of status under this subtitle, the Secretary shall provide the alien with—

(1) written notice that describes the basis for ineligibility or the deficiencies of the evidence submitted; and

(2) at least 90 days to contest ineligibility or submit additional evidence.

(c) ADMINISTRATIVE REVIEW.—The Secretary shall establish a process by which an applicant may seek administrative review of a denial of an application for adjustment of status under this subtitle.

(d) JUDICIAL REVIEW.—Notwithstanding any other provision of law, an alien may seek judicial review of a denial of an application for adjustment of status under this title in an appropriate United States district court.

Subtitle C—General Provisions

SEC. 121. DEFINITIONS.

In this title:

(1) IN GENERAL.—Except as otherwise provided, any term used in this title that is used in the immigration laws shall have the meaning given such term in the immigration laws (as such term is defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)).

(2) AGRICULTURAL LABOR OR SERVICES.—The term "agricultural labor or services" means—

(A) agricultural labor or services as such term is used in section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)), without regard to whether the labor or services are of a seasonal or temporary nature; and

(B) agricultural employment as such term is defined in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1802), without regard to whether the specific service or activity is temporary or seasonal.

(3) APPLICABLE FEDERAL TAX LIABILITY.—The term "applicable Federal tax liability" means all Federal income taxes assessed in accordance with section 6203 of the Internal Revenue Code of 1986 beginning on the date on which the applicant was authorized to work in the United States as a certified agricultural worker.

(4) APPROPRIATE UNITED STATES DISTRICT COURT.—The term "appropriate United States district court" means the United States District Court for the District of Columbia or the United States district court with jurisdiction over the alien's principal place of residence.

(5) CHILD.—The term "child" has the meaning given such term in section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1)).

(6) CONVICTED OR CONVICTION.—The term "convicted" or "conviction" does not include a judgment that has been expunged or set aside, that resulted in a rehabilitative disposition, or the equivalent.

(7) EMPLOYER.—The term "employer" means any person or entity, including any labor contractor or any agricultural association, that employs workers in agricultural labor or services.

(8) QUALIFIED DESIGNATED ENTITY.—The term "qualified designated entity" means—

(A) a qualified farm labor organization or an association of employers designated by the Secretary; or

(B) any other entity that the Secretary designates as having substantial experience, demonstrated competence, and a history of long-term involvement in the preparation and submission of application for adjustment of status under title II of the Immigration and Nationality Act (8 U.S.C. 1151 et seq.).

(9) SECRETARY.—The term "Secretary" means the Secretary of Homeland Security.

(10) WORK DAY.—The term "work day" means any day in which the individual is employed 5.75 or more hours in agricultural labor or services.

SEC. 122. RULEMAKING; FEES.

(a) RULEMAKING.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall publish in the Federal Register, an interim final rule implementing this title. Notwithstanding section 553 of title 5, United States Code, the rule shall be effective, on an interim basis, immediately upon publication, but may be subject to change and revision after public notice and opportunity for comment. The Secretary shall finalize such rule not later than 1 year after the date of the enactment of this Act.

(b) FEES.—

(1) IN GENERAL.—The Secretary may require an alien applying for any benefit under this title to pay a reasonable fee that is commensurate with the cost of processing the application.

(2) FEE WAIVER; INSTALLMENTS.—

(A) IN GENERAL.—The Secretary shall establish procedures to allow an alien to—

(i) request a waiver of any fee that the Secretary may assess under this title if the alien demonstrates to the satisfaction of the Secretary that the alien is unable to pay the prescribed fee; or

(ii) pay any fee or penalty that the Secretary may assess under this title in installments.

(B) CLARIFICATION.—Nothing in this section shall be read to prohibit an employer from paying any fee or penalty that the Secretary may assess under this title on behalf of an alien and the alien's spouse or children.

SEC. 123. BACKGROUND CHECKS.

(a) SUBMISSION OF BIOMETRIC AND BIOGRAPHIC DATA.—The Secretary may not grant or extend certified agricultural worker or certified agricultural dependent status under subtitle A, or grant adjustment of status to that of a lawful permanent resident under subtitle B, unless the alien submits biometric and biographic data, in accordance with procedures established by the Secretary. The Secretary shall provide an alternative procedure for aliens who cannot provide all required biometric or biographic data because of a physical impairment.

(b) BACKGROUND CHECKS.—The Secretary shall use biometric, biographic, and other data that the Secretary determines appropriate to conduct security and law enforcement background checks and to determine whether there is any criminal, national security, or other factor that would render the alien ineligible for status under this title. An alien may not be granted any such status under this title unless security and law enforcement background checks are completed to the satisfaction of the Secretary.

SEC. 124. PROTECTION FOR CHILDREN.

(a) IN GENERAL.—Except as provided in subsection (b), for purposes of eligibility for certified agricultural dependent status or lawful permanent resident status under this title, a determination of whether an alien is a child shall be made using the age of the alien on the date on which the initial application for certified agricultural worker status is filed with the Secretary of Homeland Security.

(b) LIMITATION.—Subsection (a) shall apply for no more than 10 years after the date on which the initial application for certified agricultural worker status is filed with the Secretary of Homeland Security.

SEC. 125. LIMITATION ON REMOVAL.

(a) IN GENERAL.—An alien who appears to be prima facie eligible for status under this title shall be given a reasonable opportunity to apply for such status and shall not be placed in removal proceedings or removed from the United States until a final administrative decision establishing ineligibility for such status is rendered.

(b) ALIENS IN REMOVAL PROCEEDINGS.—Notwithstanding any other provision of the law, the Attorney General shall (upon motion by the Secretary with the consent of the alien, or motion by the alien) terminate removal proceedings, without prejudice, against an alien who appears to be prima facie eligible for status under this title, and provide such alien a reasonable opportunity to apply for such status.

(c) EFFECT OF FINAL ORDER.—An alien present in the United States who has been ordered removed or has been permitted to depart voluntarily from the United States may, notwithstanding such order or permission to depart, apply for status under this title. Such alien shall not be required to file a separate motion to reopen, reconsider, or vacate the order of removal. If the Secretary approves the application, the Secretary shall notify the Attorney General of such approval, and the Attorney General shall cancel the order of removal. If the Secretary renders a final administrative decision to deny the application, the order of removal or permission to depart shall be effective and enforceable to the same extent as if the application had not been made, only after all available administrative and judicial remedies have been exhausted.

(d) EFFECT OF DEPARTURE.—Section 101(g) of the Immigration and Nationality Act (8 U.S.C. 1101(g)) shall not apply to an alien who departs the United States—

(1) with advance permission to return to the United States granted by the Secretary under this title; or

(2) after having been granted certified agricultural worker status or lawful permanent resident status under this title.

SEC. 126. DOCUMENTATION OF AGRICULTURAL WORK HISTORY.

(a) BURDEN OF PROOF.—An alien applying for certified agricultural worker status under subtitle A or adjustment of status under subtitle B shall provide evidence that the alien has worked the requisite number of hours or days required under section 101, 103, or 111, as applicable. The Secretary shall establish special procedures

to properly credit work in cases in which an alien was employed under an assumed name.

(b) EVIDENCE.—An alien may meet the burden of proof under subsection (a) by producing sufficient evidence to show the extent of such employment as a matter of just and reasonable inference. Such evidence may include—

(1) an annual record of certified agricultural worker employment as described in section 105(a), or other employment records from employers;

(2) employment records maintained by collective bargaining associations;

(3) tax records or other government records;

(4) sworn affidavits from individuals who have direct knowledge of the alien's work history; or

(5) any other documentation designated by the Secretary for such purpose.

(c) EXCEPTION FOR EXTRAORDINARY CIRCUMSTANCES.—

(1) IN GENERAL.—In determining whether an alien has met the requirement under section 103(a)(1)(A) or 111(a)(1)(A), the Secretary may credit the alien with not more than 575 hours (or 100 work days) of agricultural labor or services in the United States if the alien was unable to perform the required agricultural labor or services due to—

(A) pregnancy, illness, disease, disabling injury, or physical limitation of the alien;

(B) injury, illness, disease, or other special needs of the alien's child or spouse;

(C) severe weather conditions that prevented the alien from engaging in agricultural labor or services; or

(D) termination from agricultural employment, if the Secretary determines that—

(i) the termination was without just cause; and

(ii) the alien was unable to find alternative agricultural employment after a reasonable job search.

(2) EFFECT OF DETERMINATION.—A determination under paragraph (1)(D) shall not be conclusive, binding, or admissible in a separate or subsequent judicial or administrative action or proceeding between the alien and a current or prior employer of the alien or any other party.

SEC. 127. EMPLOYER PROTECTIONS.

(a) CONTINUING EMPLOYMENT.—An employer that continues to employ an alien knowing that the alien intends to apply for certified agricultural worker status under subtitle A shall not violate section 274A(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1324a(a)(2)) by continuing to employ the alien for the duration of the application period under section 101(c), and with respect to an alien who applies for certified agricultural status, for the duration of the period during which the alien's application is pending final determination.

(b) USE OF EMPLOYMENT RECORDS.—Copies of employment records or other evidence of employment provided by an alien or by an alien's employer in support of an alien's application for certified agricultural worker or adjustment of status under this title may not be used in a civil or criminal prosecution or investigation of that employer under section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) or the Internal Revenue Code of 1986 for the prior unlawful employment of that alien regardless of the outcome of such application.

(c) ADDITIONAL PROTECTIONS.—Employers that provide unauthorized aliens with copies of employment records or other evidence of employment in support of an application for certified agricultural worker status or adjustment of status under this title shall not be subject to civil and criminal liability pursuant to such section 274A for employing such unauthorized aliens. Records or other evidence of employment provided by employers in response to a request for such records for the purpose of establishing eligibility for status under this title may not be used for any purpose other than establishing such eligibility.

(d) LIMITATION ON PROTECTION.—The protections for employers under this section shall not apply if the employer provides employment records to the alien that are determined to be fraudulent.

SEC. 128. CORRECTION OF SOCIAL SECURITY RECORDS.

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

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

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

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

"(D) who is granted certified agricultural worker status, certified agricultural dependent status, or lawful permanent resident status under title I of the Farm Work Modernization Act of 2019,"; and

(4) in the undesignated matter following subparagraph (D), as added by paragraph (3), by striking "1990." and inserting "1990, or in the case of an alien described in subparagraph (D), if such conduct is alleged to have occurred before the date on which the alien was granted status under title I of the Farm Work Modernization Act of 2019.".

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

SEC. 129. DISCLOSURES AND PRIVACY.

(a) IN GENERAL.—The Secretary may not disclose or use information provided in an application for certified agricultural worker status or adjustment of status under this title (including information provided during administrative or judicial review) for the purpose of immigration enforcement.

(b) REFERRALS PROHIBITED.—The Secretary, based solely on information provided in an application for certified agricultural worker status or adjustment of status under this title (including information provided during administrative or judicial review), may not refer an applicant to U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, or any designee of either such entity.

(c) EXCEPTIONS.—Notwithstanding subsections (a) and (b), information provided in an application for certified agricultural worker status or adjustment of status under this title may be shared with Federal security and law enforcement agencies—

(1) for assistance in the consideration of an application under this title;

(2) to identify or prevent fraudulent claims or schemes;

(3) for national security purposes; or

(4) for the investigation or prosecution of any felony not related to immigration status.

(d) PENALTY.—Any person who knowingly uses, publishes, or permits information to be examined in violation of this section shall be fined not more than $10,000.

(e) PRIVACY.—The Secretary shall ensure that appropriate administrative and physical safeguards are in place to protect the security, confidentiality, and integrity of personally identifiable information collected, maintained, and disseminated pursuant to this title.

SEC. 130. PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.

(a) CRIMINAL PENALTY.—Any person who—

(1) files an application for certified agricultural worker status or adjustment of status under this title and knowingly falsifies, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry; or

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

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

(b) INADMISSIBILITY.—An alien who is convicted under subsection (a) shall be deemed inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(C)(i)).

(c) DEPOSIT.—Fines collected under subsection (a) shall be deposited into the Immigration Examinations Fee Account pursuant to section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)).

SEC. 131. DISSEMINATION OF INFORMATION.

(a) IN GENERAL.—Beginning not later than the first day of the application period described in section 101(c)—

(1) the Secretary of Homeland Security, in cooperation with qualified designated entities, shall broadly disseminate information described in subsection (b); and

(2) the Secretary of Agriculture, in consultation with the Secretary of Homeland Security, shall disseminate to agricultural employers a document containing the information described in subsection (b) for posting at employer worksites.

(b) INFORMATION DESCRIBED.—The information described in this subsection shall include—

(1) the benefits that aliens may receive under this title; and
(2) the requirements that an alien must meet to receive such benefits.

SEC. 132. EXEMPTION FROM NUMERICAL LIMITATIONS.

The numerical limitations under title II of the Immigration and Nationality Act (8 U.S.C. 1151 et seq.) shall not apply to the adjustment of aliens to lawful permanent resident status under this title, and such aliens shall not be counted toward any such numerical limitation.

SEC. 133. REPORTS TO CONGRESS.

Not later than 180 days after the publication of the final rule under section 122(a), and annually thereafter for the following 10 years, the Secretary shall submit a report to Congress that identifies, for the previous fiscal year—

(1) the number of principal aliens who applied for certified agricultural worker status under subtitle A, and the number of dependent spouses and children included in such applications;

(2) the number of principal aliens who were granted certified agricultural worker status under subtitle A, and the number of dependent spouses and children who were granted certified agricultural dependent status;

(3) the number of principal aliens who applied for an extension of their certified agricultural worker status under subtitle A, and the number of dependent spouses and children included in such applications;

(4) the number of principal aliens who were granted an extension of certified agricultural worker status under subtitle A, and the number of dependent spouses and children who were granted certified agricultural dependent status under such an extension;

(5) the number of principal aliens who applied for adjustment of status under subtitle B, and the number of dependent spouses and children included in such applications;

(6) the number of principal aliens who were granted lawful permanent resident status under subtitle B, and the number of spouses and children who were granted such status as dependents;

(7) the number of principal aliens included in petitions described in section 101(e), and the number of dependent spouses and children included in such applications; and

(8) the number of principal aliens who were granted H–2A status pursuant to petitions described in section 101(e), and the number of dependent spouses and children who were granted H–4 status.

SEC. 134. GRANT PROGRAM TO ASSIST ELIGIBLE APPLICANTS.

(a) ESTABLISHMENT.—The Secretary shall establish a program to award grants, on a competitive basis, to eligible nonprofit organizations to assist eligible applicants under this title by providing them with the services described in subsection (c).

(b) ELIGIBLE NONPROFIT ORGANIZATION.—For purposes of this section, the term "eligible nonprofit organization" means an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 (excluding a recipient of funds under title X of the Economic Opportunity Act of 1964 (42 U.S.C. 2996 et seq.)) that has demonstrated qualifications, experience, and expertise in providing quality services to farm workers or aliens.

(c) USE OF FUNDS.—Grant funds awarded under this section may be used for the design and implementation of programs that provide—

(1) information to the public regarding the eligibility and benefits of certified agricultural worker status authorized under this title; and

(2) assistance, within the scope of authorized practice of immigration law, to individuals submitting applications for certified agricultural worker status or adjustment of status under this title, including—

(A) screening prospective applicants to assess their eligibility for such status;

(B) completing applications, including providing assistance in obtaining necessary documents and supporting evidence; and

(C) providing any other assistance that the Secretary determines useful to assist aliens in applying for certified agricultural worker status or adjustment of status under this title.

(d) SOURCE OF FUNDS.—In addition to any funds appropriated to carry out this section, the Secretary may use up to $10,000,000 from the Immigration Examinations Fee Account under section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) to carry out this section.

(e) ELIGIBILITY FOR SERVICES.—Section 504(a)(11) of Public Law 104–134 (110 Stat. 1321–53 et seq.) shall not be construed to prevent a recipient of funds under title X of the Economic Opportunity Act of 1964 (42 U.S.C. 2996 et seq.) from providing legal assistance directly related to an application for status under this title or to an alien granted such status.

SEC. 135. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the Secretary, such sums as may be necessary to implement this title, including any amounts needed for costs associated with the initiation of such implementation, for each of fiscal years 2020 through 2022.

TITLE II—ENSURING AN AGRICULTURAL WORKFORCE FOR THE FUTURE

Subtitle A—Reforming the H–2A Temporary Worker Program

SEC. 201. COMPREHENSIVE AND STREAMLINED ELECTRONIC H-2A PLATFORM.

(a) STREAMLINED H-2A PLATFORM.—

(1) IN GENERAL.—Not later than 12 months after the date of the enactment of this Act, the Secretary of Homeland Security, in consultation with the Secretary of Labor, the Secretary of Agriculture, the Secretary of State, and United States Digital Service, shall ensure the establishment of an electronic platform through which a petition for an H–2A worker may be filed. Such platform shall—

(A) serve as a single point of access for an employer to input all information and supporting documentation required for obtaining labor certification from the Secretary of Labor and the adjudication of the H–2A petition by the Secretary of Homeland Security;

(B) serve as a single point of access for the Secretary of Homeland Security, the Secretary of Labor, and State workforce agencies to concurrently perform their respective review and adjudicatory responsibilities in the H–2A process;

(C) facilitate communication between employers and agency adjudicators, including by allowing employers to—

(i) receive and respond to notices of deficiency and requests for information;

(ii) submit requests for inspections and licensing;

(iii) receive notices of approval and denial; and

(iv) request reconsideration or appeal of agency decisions; and

(D) provide information to the Secretary of State and U.S. Customs and Border Protection necessary for the efficient and secure processing of H–2A visas and applications for admission.

(2) OBJECTIVES.—In developing the platform described in paragraph (1), the Secretary of Homeland Security, in consultation with the Secretary of Labor, the Secretary of Agriculture, the Secretary of State, and United States Digital Service, shall streamline and improve the H–2A process, including by—

(A) eliminating the need for employers to submit duplicate information and documentation to multiple agencies;

(B) eliminating redundant processes, where a single matter in a petition is adjudicated by more than one agency;

(C) reducing the occurrence of common petition errors, and otherwise improving and expediting the processing of H–2A petitions; and

(D) ensuring compliance with H–2A program requirements and the protection of the wages and working conditions of workers.

(b) ONLINE JOB REGISTRY.—The Secretary of Labor shall maintain a national, publicly-accessible online job registry and database of all job orders submitted by H–2A employers. The registry and database shall—

(1) be searchable using relevant criteria, including the types of jobs needed to be filled, the date(s) and location(s) of need, and the employer(s) named in the job order;

(2) provide an interface for workers in English, Spanish, and any other language that the Secretary of Labor determines to be appropriate; and

(3) provide for public access of job orders approved under section 218(h)(2) of the Immigration and Nationality Act.

SEC. 202. H–2A PROGRAM REQUIREMENTS.

Section 218 of the Immigration and Nationality Act (8 U.S.C. 1188) is amended to read as follows:

"SEC. 218. ADMISSION OF TEMPORARY H–2A WORKERS.

"(a) LABOR CERTIFICATION CONDITIONS.—The Secretary of Homeland Security may not approve a petition to admit an H–2A worker unless the Secretary of Labor has certified that—

"(1) there are not sufficient United States workers who are able, willing and qualified, and who will be available at the time and place needed, to perform the agricultural labor or services described in the petition; and

"(2) the employment of the H–2A worker in such labor or services will not adversely affect the wages and working conditions of workers in the United States who are similarly employed.

"(b) H–2A PETITION REQUIREMENTS.—An employer filing a petition for an H–2A worker to perform agricultural labor or services shall attest to and demonstrate compliance, as and when appropriate, with all applicable requirements under this section, including the following:

"(1) NEED FOR LABOR OR SERVICES.—The employer has described the need for agricultural labor or services in a job order that includes a description of the nature and location of the work to be performed, the anticipated period or periods (expected start and end dates) for which the workers will be needed, and the number of job opportunities in which the employer seeks to employ the workers.

"(2) NONDISPLACEMENT OF UNITED STATES WORKERS.—The employer has not and will not displace United States workers employed by the employer during the period of employment of the H–2A worker and during the 60-day period immediately preceding such period of employment in the job for which the employer seeks approval to employ the H–2A worker.

"(3) STRIKE OR LOCKOUT.—Each place of employment described in the petition is not, at the time of filing the petition and until the petition is approved, subject to a strike or lockout in the course of a labor dispute.

"(4) RECRUITMENT OF UNITED STATES WORKERS.—The employer shall engage in the recruitment of United States workers as described in subsection (c) and shall hire such workers who are able, willing and qualified, and who will be available at the time and place needed, to perform the agricultural labor or services described in the petition. The employer may reject a United States worker only for lawful, job-related reasons.

"(5) WAGES, BENEFITS, AND WORKING CONDITIONS.—The employer shall offer and provide, at a minimum, the wages, benefits, and working conditions required by this section to the H–2A worker and all United States workers who are similarly employed. The employer—

"(A) shall offer such United States workers not less than the same benefits, wages, and working conditions that the employer is offering or will provide to the H–2A worker; and

"(B) may not impose on such United States workers any restrictions or obligations that will not be imposed on the H–2A worker.

"(6) WORKERS' COMPENSATION.—If the job opportunity is not covered by or is exempt from the State workers' compensation law, the employer shall provide, at no cost to the worker, insurance covering injury and disease arising out of, and in the course of, the worker's employment which will provide benefits at least equal to those provided under the State workers' compensation law.

"(7) COMPLIANCE WITH LABOR AND EMPLOYMENT LAWS.—The employer shall comply with all applicable Federal, State and local employment-related laws and regulations.

"(c) RECRUITING REQUIREMENTS.—

"(1) IN GENERAL.—The employer may satisfy the recruitment requirement described in subsection (b)(4) by satisfying all of the following:

"(A) JOB ORDER.—As provided in subsection (h)(1), the employer shall complete a job order for posting on the electronic job registry maintained by the Secretary of Labor and for distribution by the appropriate State

workforce agency. Such posting shall remain on the job registry as an active job order through the period described in paragraph (2)(B).

"(B) FORMER WORKERS.—At least 45 days before each start date identified in the petition, the employer shall—

"(i) make reasonable efforts to contact any United States worker the employer employed in the previous year in the same occupation and area of intended employment for which an H–2A worker is sought (excluding workers who were terminated for cause or abandoned the worksite); and

"(ii) post such job opportunity in a conspicuous location or locations at the place of employment.

"(C) POSITIVE RECRUITMENT.—During the period of recruitment, the employer shall complete any other positive recruitment steps within a multi-State region of traditional or expected labor supply where the Secretary of Labor finds that there are a significant number of qualified United States workers who, if recruited, would be willing to make themselves available for work at the time and place needed.

"(2) PERIOD OF RECRUITMENT.—

"(A) IN GENERAL.—For purposes of this subsection, the period of recruitment begins on the date on which the job order is posted on the online job registry and ends on the date that H–2A workers depart for the employer's place of employment. For a petition involving more than 1 start date under subsection (h)(1)(C), the end of the period of recruitment shall be determined by the date of departure of the H–2A workers for the final start date identified in the petition.

"(B) REQUIREMENT TO HIRE US WORKERS.—

"(i) IN GENERAL.—Notwithstanding the limitations of subparagraph (A), the employer will provide employment to any qualified United States worker who applies to the employer for any job opportunity included in the petition until the later of—

"(I) the date that is 30 days after the date on which work begins; or

"(II) the date on which—

"(aa) 33 percent of the work contract for the job opportunity has elapsed; or

"(bb) if the employer is a labor contractor, 50 percent of the work contract for the job opportunity has elapsed.

"(ii) STAGGERED ENTRY.—For a petition involving more than 1 start date under subsection (h)(1)(C), each start date designated in the petition shall establish a separate job opportunity. An employer may not reject a United States worker because the worker is unable or unwilling to fill more than 1 job opportunity included in the petition.

"(iii) EXCEPTION.—Notwithstanding clause (i), the employer may offer a job opportunity to an H-2A worker instead of an alien granted certified agricultural worker status under title I of the Farm Workforce Modernization Act of 2019 if the H-2A worker was employed by the employer in each of 3 years during the most recent 4-year period.

"(3) RECRUITMENT REPORT.—

"(A) IN GENERAL.—The employer shall maintain a recruitment report through the applicable period described in paragraph (2)(B) and submit regular updates through the electronic platform on the results of recruitment. The employer shall retain the recruitment report, and all associated recruitment documentation, for a period of 3 years from the date of certification.

"(B) BURDEN OF PROOF.—If the employer asserts that any eligible individual who has applied or been referred is not able, willing or qualified, the employer bears the burden of proof to establish that the individual is not able, willing or qualified because of a lawful, employment-related reason.

"(d) WAGE REQUIREMENTS.—

"(1) IN GENERAL.—Each employer under this section will offer the worker, during the period of authorized employment, wages that are at least the greatest of—

"(A) the agreed-upon collective bargaining wage;

"(B) the adverse effect wage rate (or any successor wage established under paragraph (7));

"(C) the prevailing wage (hourly wage or piece rate); or

"(D) the Federal or State minimum wage.

"(2) ADVERSE EFFECT WAGE RATE DETERMINATIONS.—

"(A) IN GENERAL.—Except as provided under subparagraph (B), the applicable adverse effect wage rate for each State and occupational classification for a calendar year shall be as follows:

"(i) The annual average hourly wage for the occupational classification in the State or region as reported by the Secretary of Agriculture based on a wage survey conducted by such Secretary.

"(ii) If a wage described in clause (i) is not reported, the national annual average hourly wage for the occupational classification as reported by the Secretary of Agriculture based on a wage survey conducted by such Secretary.

"(iii) If a wage described in clause (i) or (ii) is not reported, the Statewide annual average hourly wage for the standard occupational classification as reported by the Secretary of Labor based on a wage survey conducted by such Secretary.

"(iv) If a wage described in clause (i), (ii), or (iii) is not reported, the national average hourly wage for the occupational classification as reported by the Secretary of Labor based on a wage survey conducted by such Secretary.

"(B) LIMITATIONS ON WAGE FLUCTUATIONS.—

"(i) WAGE FREEZE FOR CALENDAR YEAR 2020.—For calendar year 2020, the adverse effect wage rate for each State and occupational classification under this subsection shall be the adverse effect wage rate that was in effect for H–2A workers in the applicable State in calendar year 2019.

"(ii) CALENDAR YEARS 2021 THROUGH 2029.—For each of calendar years 2021 through 2029, the adverse effect wage rate for each State and occupational classification under this subsection shall be the wage calculated under subparagraph (A), except that such wage may not—

"(I) be more than 1.5 percent lower than the wage in effect for H–2A workers in the applicable State and occupational classification in the immediately preceding calendar year;

"(II) except as provided in clause (III), be more than 3.25 percent higher than the wage in effect for H–2A workers in the applicable State and occupational classification in the immediately preceding calendar year; and

"(III) if the application of clause (II) results in a wage that is lower than 110 percent of the applicable Federal or State minimum wage, be more than 4.25 percent higher than the wage in effect for H–2A workers in the applicable State and occupational classification in the immediately preceding calendar year.

"(iii) CALENDAR YEARS AFTER 2029.—For any calendar year after 2029, the applicable wage rate described in paragraph (1)(B) shall be the wage rate established pursuant to paragraph (7)(D). Until such wage rate is effective, the adverse effect wage rate for each State and occupational classification under this subsection shall be the wage calculated under subparagraph (A), except that such wage may not be more than 1.5 percent lower or 3.25 percent higher than the wage in effect for H–2A workers in the applicable State and occupational classification in the immediately preceding calendar year.

"(3) MULTIPLE OCCUPATIONS.—If the primary job duties for the job opportunity described in the petition do not fall within a single occupational classification, the applicable wage rates under subparagraphs (B) and (C) of paragraph (1) for the job opportunity shall be based on the highest such wage rates for all applicable occupational classifications.

"(4) PUBLICATION; WAGES IN EFFECT.—

"(A) PUBLICATION.—Prior to the start of each calendar year, the Secretary of Labor shall publish the applicable adverse effect wage rate (or successor wage rate, if any), and prevailing wage if available, for each State and occupational classification through notice in the Federal Register.

"(B) JOB ORDERS IN EFFECT.—Except as provided in subparagraph (C), publication by the Secretary of Labor of an updated adverse effect wage rate or prevailing wage for a State and occupational classification shall not affect the wage rate guaranteed in any approved job order for which recruitment efforts have commenced at the time of publication.

"(C) EXCEPTION FOR YEAR-ROUND JOBS.—If the Secretary of Labor publishes an updated adverse effect wage rate or prevailing wage for a State and occupational classification concerning a petition described in subsection (i), and the updated wage is higher than the wage rate guaranteed in the work contract, the employer shall pay the updated wage not later than 14 days after publication of the updated wage in the Federal Register.

"(5) WORKERS PAID ON A PIECE RATE OR OTHER INCENTIVE BASIS.—If an employer pays by the piece rate or other incentive method and requires 1 or more minimum productivity standards as a condition of job retention, such standards shall be specified in the job order and shall be no more than those normally required (at the time of the first petition for H–2A workers) by other employers for the activity in the area of intended employment, unless the Secretary of Labor approves a higher minimum standard resulting from material changes in production methods.

"(6) GUARANTEE OF EMPLOYMENT.—

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

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

"(C) ABANDONMENT OF EMPLOYMENT; TERMINATION FOR CAUSE.—If the worker voluntarily abandons employment without good cause before the end of the contract period, or is terminated for cause, the worker is not entitled to the guarantee of employment described in subparagraph (A).

"(D) CONTRACT IMPOSSIBILITY.—If, before the expiration of the period of employment specified in the job offer, the services of the worker are no longer required for reasons beyond the control of the employer due to any form of natural disaster before the guarantee in subparagraph (A) is fulfilled, the employer may terminate the worker's employment. In the event of such termination, the employer shall fulfill the employment guarantee in subparagraph (A) for the work days that have elapsed from the first work day after the arrival of the worker to the termination of employment. The employer shall make efforts to transfer a United States worker to other comparable employment acceptable to the worker. If such transfer is not affected, the employer shall provide the return transportation required in subsection (f)(2).

"(7) WAGE STANDARDS AFTER 2029.—

"(A) STUDY OF ADVERSE EFFECT WAGE RATE.—Beginning in fiscal year 2026, the Secretary of Agriculture and Secretary of Labor shall jointly conduct a study that addresses—

"(i) whether the employment of H–2A workers has depressed the wages of United States farm workers;

"(ii) whether an adverse effect wage rate is necessary to protect the wages of United States farm workers in occupations in which H–2A workers are employed;

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

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

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

"(B) FINAL REPORT.—Not later than October 1, 2027, the Secretary of Agriculture and Secretary of Labor shall jointly prepare and submit a report to the Congress setting forth the findings of the study conducted under subparagraph (A) and recommendations for future wage protections under this section.

"(C) CONSULTATION.—In conducting the study under subparagraph (A) and preparing the report under subparagraph (B), the Secretary of Agriculture and Secretary of Labor shall consult with representatives of agricultural employers and an equal number of representatives of agricultural workers, at the national, State and local level.

"(D) WAGE DETERMINATION AFTER 2029.—Upon publication of the report described in subparagraph (B), the Secretary of Labor, in consultation with and the approval of the Secretary of Agriculture, shall make a rule to establish a process for annually determining the wage rate for purposes of paragraph (1)(B) for fiscal years after 2029. Such process shall be designed to ensure that the employment of H-2A workers does not undermine the wages and working conditions of similarly employed United States workers.

"(e) HOUSING REQUIREMENTS.—Employers shall furnish housing in accordance with regulations established by the Secretary of Labor. Such regulations shall be consistent with the following:

"(1) IN GENERAL.—The employer shall be permitted at the employer's option to provide housing meeting applicable Federal standards for temporary labor camps or to secure housing which meets the local standards for rental and/or public accommodations or other substantially similar class of habitation: Provided, That in the absence of applicable local standards, State standards for rental and/or public accommodations or other substantially similar class of habitation shall be met: Provided further, That in the absence of applicable local or State standards, Federal temporary labor camp standards shall apply.

"(2) FAMILY HOUSING.—Except as otherwise provided in subsection (i)(5), the employer shall provide family housing to workers with families who request it when it is the prevailing practice in the area and occupation of intended employment to provide family housing.

"(3) UNITED STATES WORKERS.—Notwithstanding paragraphs (1) and (2), an employer is not required to provide housing to United States workers who are reasonably able to return to their residence within the same day.

"(4) TIMING OF INSPECTION.—

"(A) IN GENERAL.—The Secretary of Labor or designee shall make a determination as to whether the housing furnished by an employer for a worker meets the requirements imposed by this subsection prior to the date on which the Secretary of Labor is required to make a certification with respect to a petition for the admission of such worker.

"(B) TIMELY INSPECTION.—The Secretary of Labor shall provide a process for—

"(i) an employer to request inspection of housing up to 60 days before the date on which the employer will file a petition under this section; and

"(ii) annual inspection of housing for workers who are engaged in agricultural employment that is not of a seasonal or temporary nature.

"(f) TRANSPORTATION REQUIREMENTS.—

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

"(2) TRAVEL FROM PLACE OF EMPLOYMENT.—For a worker who completes the period of employment specified in the job order or who is terminated without cause, the employer shall provide or pay for the worker's transportation and subsistence from the place of employment to the place from which the worker, disregarding intervening employment, came to work for the employer, or to the place of next employment, if the worker has contracted with a subsequent employer who has not agreed to provide or pay for the worker's transportation and subsistence to such subsequent employer's place of employment.

"(3) LIMITATION.—

"(A) AMOUNT OF REIMBURSEMENT.—Except as provided in subparagraph (B), the amount of reimbursement provided under paragraph (1) or (2) to a worker need not exceed the lesser of—

"(i) the actual cost to the worker of the transportation and subsistence involved; or

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

"(B) DISTANCE TRAVELED.—For travel to or from the worker's home country, if the travel distance between the worker's home and the relevant consulate is 50 miles or less, reimbursement for transportation and subsistence may be based on transportation to or from the consulate.

"(g) HEAT ILLNESS PREVENTION PLAN.—The employer shall maintain a reasonable plan that describes the employer's procedures for the prevention of heat illness, including appropriate training, access to water and shade, the provision of breaks, and the protocols for emergency response. Such plan shall—

"(1) be in writing in English and, to the extent necessary, any language common to a significant portion of the workers if they are not fluent in English; and

"(2) be posted at a conspicuous location at the worksite and provided to employees prior to the commencement of labor or services.

"(h) H–2A PETITION PROCEDURES.—

"(1) SUBMISSION OF PETITION AND JOB ORDER.—

"(A) IN GENERAL.—The employer shall submit information required for the adjudication of the H–2A petition, including a job order, through the electronic platform no more than 75 calendar days and no fewer than 60 calendar days before the employer's first date of need specified in the petition.

"(B) FILING BY AGRICULTURAL ASSOCIATIONS.—An association of agricultural producers that use agricultural services may file an H–2A petition under subparagraph (A). If an association is a joint or sole employer of workers who perform agricultural labor or services, H–2A workers may be used for the approved job opportunities of any of the association's producer members and such workers may be transferred among its producer members to perform the agricultural labor or services for which the petition was approved.

"(C) PETITIONS INVOLVING STAGGERED ENTRY.—

"(i) IN GENERAL.—Except as provided in clause (ii), an employer may file a petition involving employment in the same occupational classification and same area of intended employment with multiple start dates if—

"(I) the petition involves temporary or seasonal employment and no more than 10 start dates;

"(II) the multiple start dates share a common end date that is no longer than 1 year after the first start date;

"(III) no more than 120 days separate the first start date and the final start date listed in the petition; and

"(IV) the need for multiple start dates arises from variations in labor needs associated with the job opportunity identified in the petition.

"(ii) LABOR CONTRACTORS.—A labor contractor may not file a petition described in clause (i) unless the labor contractor—

"(I) is filing as a joint employer with its contractees, or is operating in a State in which joint employment and liability between the labor contractor and its contractees is otherwise established; or

"(II) has posted and is maintaining a premium surety bond as described in subsection (l)(1).

"(2) LABOR CERTIFICATION.—

"(A) REVIEW OF JOB ORDER.—

"(i) IN GENERAL.—The Secretary of Labor, in consultation with the relevant State workforce agency, shall review the job order for compliance with this section and notify the employer through the electronic platform of any deficiencies not later than 7 business days from the date the employer submits the necessary information required under paragraph (1)(A). The employer shall be provided 5 business days to respond to any such notice of deficiency.

"(ii) STANDARD.—The job order must include all material terms and conditions of employment, including the requirements of this section, and must be otherwise consistent with the minimum standards provided under Federal, State or local law. In considering the question of whether a specific qualification is appropriate in a job order, the Secretary of Labor shall apply the normal and accepted qualification required by non-H–2A employers in the same or comparable occupations and crops.

"(iii) EMERGENCY PROCEDURES.—The Secretary of Labor shall establish emergency procedures for the curing of deficiencies that cannot be resolved during the period described in clause (i).

"(B) APPROVAL OF JOB ORDER.—

"(i) IN GENERAL.—Upon approval of the job order, the Secretary of Labor shall immediately place for public examination a copy of the job order on the online job registry, and the State workforce agency serving the area of intended employment shall commence the recruitment of United States workers.

"(ii) REFERRAL OF UNITED STATES WORKERS.—The Secretary of Labor and State workforce agency shall keep the job order active until the end of the period described in subsection (c)(2) and shall refer to the employer each United States worker who applies for the job opportunity.

"(C) REVIEW OF INFORMATION FOR DEFICIENCIES.—Within 7 business days of the approval of the job order, the Secretary of Labor shall review the information necessary to make a labor certification and notify the employer through the electronic platform if such information does not meet the standards for approval. Such notification shall include a description of any deficiency, and the employer shall be provided 5 business days to cure such deficiency.

"(D) CERTIFICATION AND AUTHORIZATION OF WORKERS.—Not later than 30 days before the date that labor or services are first required to be performed, the Secretary of Labor shall issue the requested labor certification if the Secretary determines that the requirements for certification set forth in this section have been met.

"(E) EXPEDITED ADMINISTRATIVE APPEALS OF CERTAIN DETERMINATIONS.—The Secretary of Labor shall by regulation establish a procedure for an employer to request the expedited review of a denial of a labor certification under this section, or the revocation of such a certification. Such procedure shall require the Secretary to expeditiously, but no later than 72 hours after expedited review is requested, issue a de novo determination on a labor certification that was denied in whole or in part because of the availability of able, willing and qualified workers if the employer demonstrates, consistent with subsection (c)(3)(B), that such workers are not actually available at the time or place such labor or services are required.

"(3) PETITION DECISION.—

"(A) IN GENERAL.—Not later than 7 business days after the Secretary of Labor issues the certification, the Secretary of Homeland Security shall issue a decision on the petition and shall transmit a notice of action to the petitioner via the electronic platform.

"(B) APPROVAL.—Upon approval of a petition under this section, the Secretary of Homeland Security shall ensure that such approval is noted in the electronic platform and is available to the Secretary of State and U.S. Customs and Border Protection, as necessary, to facilitate visa issuance and admission.

"(C) PARTIAL APPROVAL.—A petition for multiple named beneficiaries may be partially approved with respect to eligible beneficiaries notwithstanding the ineligibility, or potential ineligibility, of one or more other beneficiaries.

"(D) POST-CERTIFICATION AMENDMENTS.—The Secretary of Labor shall provide a process for amending a request for labor certification in conjunction with an H–2A petition, subsequent to certification by the Secretary of Labor, in cases in which the requested amendment does not materially change the petition (including the job order).

"(4) ROLES OF AGRICULTURAL ASSOCIATIONS.—

"(A) MEMBER'S VIOLATION DOES NOT NECESSARILY DISQUALIFY ASSOCIATION OR OTHER MEMBERS.—If an individual producer member of a joint employer association is determined to have committed an act that results in

the denial of a petition with respect to the member, the denial shall apply only to that member of the association unless the Secretary of Labor determines that the association or other member participated in, had knowledge of, or reason to know of, the violation.

"(B) ASSOCIATION'S VIOLATION DOES NOT NECESSARILY DISQUALIFY MEMBERS.—

"(i) If an association representing agricultural producers as a joint employer is determined to have committed an act that results in the denial of a petition with respect to the association, the denial shall apply only to the association and does not apply to any individual producer member of the association unless the Secretary of Labor determines that the member participated in, had knowledge of, or reason to know of, the violation.

"(ii) If an association of agricultural producers certified as a sole employer is determined to have committed an act that results in the denial of a petition with respect to the association, no individual producer member of such association may be the beneficiary of the services of H–2A workers in the commodity and occupation in which such aliens were employed by the association which was denied during the period such denial is in force, unless such producer member employs such aliens in the commodity and occupation in question directly or through an association which is a joint employer of such workers with the producer member.

"(5) SPECIAL PROCEDURES.—The Secretary of Labor, in consultation with the Secretary of Agriculture and Secretary of Homeland Security, may by regulation establish alternate procedures that reasonably modify program requirements under this section, when the Secretary determines that such modifications are required due to the unique nature of the work involved.

"(6) CONSTRUCTION OCCUPATIONS.—An employer may not file a petition under this section on behalf of a worker if the majority of the worker's duties will fall within a construction or extraction occupational classification.

"(i) NON-TEMPORARY OR -SEASONAL NEEDS.—

"(1) IN GENERAL.—Notwithstanding the requirement in section 101(a)(15)(H)(ii)(a) that the agricultural labor or services performed by an H–2A worker be of a temporary or seasonal nature, the Secretary of Homeland Security may, consistent with the provisions of this subsection, approve a petition for an H–2A worker to perform agricultural services or labor that is not of a temporary or seasonal nature.

"(2) NUMERICAL LIMITATIONS.—

"(A) FIRST 3 FISCAL YEARS.—The total number of aliens who may be issued visas or otherwise provided H–2A nonimmigrant status under paragraph (1) for the first fiscal year during which the first visa is issued under such paragraph and for each of the following two fiscal years may not exceed 20,000.

"(B) FISCAL YEARS 4 THROUGH 10.—

"(i) IN GENERAL.—The total number of aliens who may be issued visas or otherwise provided H–2A nonimmigrant status under paragraph (1) for the first fiscal year following the fiscal years referred to in subparagraph (A) and for each of the following six fiscal years may not exceed a numerical limitation jointly imposed by the Secretary of Agriculture and Secretary of Labor in accordance with clause (ii).

"(ii) ANNUAL ADJUSTMENTS.—For each fiscal year referred to in clause (i), the Secretary of Agriculture and Secretary of Labor, in consultation with the Secretary of Homeland Security, shall establish a numerical limitation for purposes of clause (i). Such numerical limitation may not be lower 20,000 and may not vary by more than 12.5 percent compared to the numerical limitation applicable to the immediately preceding fiscal year. In establishing such numerical limitation, the Secretaries shall consider appropriate factors, including—

"(I) a demonstrated shortage of agricultural workers;

"(II) the level of unemployment and underemployment of agricultural workers during the preceding fiscal year;

"(III) the number of H–2A workers sought by employers during the preceding fiscal year to engage in agricultural labor or services not of a temporary or seasonal nature;

"(IV) the number of such H–2A workers issued a visa in the most recent fiscal year who remain in the United States in compliance with the terms of such visa;

"(V) the estimated number of United States workers, including workers who obtained certified agricultural worker status under title I of the Farm Workforce Modernization Act of 2019, who worked during the preceding fiscal year in agricultural labor or services not of a temporary or seasonal nature;

"(VI) the number of such United States workers who accepted jobs offered by employers using the online job registry during the preceding fiscal year;

"(VII) any growth or contraction of the United States agricultural industry that has increased or decreased the demand for agricultural workers; and

"(VIII) any changes in the real wages paid to agricultural workers in the United States as an indication of a shortage or surplus of agricultural labor.

"(C) SUBSEQUENT FISCAL YEARS.—For each fiscal year following the fiscal years referred to in subparagraph (B), the Secretary of Agriculture and Secretary of Labor shall jointly determine, in consultation with the Secretary of Homeland Security, and after considering appropriate factors, including those factors listed in subclauses (I) through (VIII) of subparagraph (B)(ii), whether to establish a numerical limitation for that fiscal year. If a numerical limitation is so established—

"(i) such numerical limitation may not be lower than highest number of aliens admitted under this subsection in any of the three fiscal years immediately preceding the fiscal year for which the numerical limitation is to be established; and

"(ii) the total number of aliens who may be issued visas or otherwise provided H–2A nonimmigrant status under paragraph (1) for that fiscal year may not exceed such numerical limitation.

"(D) EMERGENCY PROCEDURES.—The Secretary of Agriculture and Secretary of Labor, in consultation with the Secretary of Homeland Security, shall jointly establish by regulation procedures for immediately adjusting a numerical limitation imposed under subparagraph (B) or (C) to account for significant labor shortages.

"(3) ALLOCATION OF VISAS.—

"(A) BI-ANNUAL ALLOCATION.—The annual allocation of visas described in paragraph (2) shall be evenly allocated between two halves of the fiscal year unless the Secretary of Homeland Security, in consultation with the Secretary of Agriculture and Secretary of Labor, determines that an alternative allocation would better accommodate demand for visas. Any unused visas in the first half of the fiscal year shall be added to the allocation for the subsequent half of the same fiscal year.

"(B) RESERVE FOR DAIRY LABOR OR SERVICES.—

"(i) IN GENERAL.—Of the visa numbers made available in each half of the fiscal year pursuant to subparagraph (A), 50 percent of such visas shall be reserved for employers filing petitions seeking H–2A workers to engage in agricultural labor or services in the dairy industry.

"(ii) EXCEPTION.—If, after four months have elapsed in one half of the fiscal year, the Secretary of Homeland Security determines that application of clause (i) will result in visas going unused during that half of the fiscal year, clause (i) shall not apply to visas under this paragraph during the remainder of such calendar half.

"(4) ANNUAL ROUND TRIP HOME.—

"(A) IN GENERAL.—In addition to the other requirements of this section, an employer shall provide H–2A workers employed under this subsection, at no cost to such workers, with annual round trip travel, including transportation and subsistence during travel, to their homes in their communities of origin. The employer must provide such travel within 14 months of the initiation of the worker's employment, and no more than 14 months can elapse between each required period of travel.

"(B) LIMITATION.—The cost of travel under subparagraph (A) need not exceed the lesser of—

"(i) the actual cost to the worker of the transportation and subsistence involved; or

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

"(5) FAMILY HOUSING.—An employer seeking to employ an H–2A worker pursuant to this subsection shall offer family housing to workers with families if such workers are engaged in agricultural employment that is not of a seasonal or temporary nature. The worker may reject such an offer. The employer may not charge the worker for the worker's housing, except that if the worker accepts family housing, a prorated rent based on the fair market value for such housing may be charged for the worker's family members.

"(6) WORKPLACE SAFETY PLAN FOR DAIRY EMPLOYEES.—

"(A) IN GENERAL.—If an employer is seeking to employ a worker in agricultural labor or services in the dairy industry pursuant to this subsection, the employer must report incidents consistent with the requirements under section 1904.39 of title 29, Code of Federal Regulations, and maintain an effective worksite safety and compliance plan to prevent workplace accidents and otherwise ensure safety. Such plan shall—

"(i) be in writing in English and, to the extent necessary, any language common to a significant portion of the workers if they are not fluent in English; and

"(ii) be posted at a conspicuous location at the worksite and provided to employees prior to the commencement of labor or services.

"(B) CONTENTS OF PLAN.—The Secretary of Labor, in consultation with the Secretary of Agriculture, shall establish by regulation the minimum requirements for the plan described in subparagraph (A). Such plan shall include measures to—

"(i) require workers (other than the employer's family members) whose positions require contact with animals to complete animal care training, including animal handling and job-specific animal care;

"(ii) protect against sexual harassment and violence, resolve complaints involving harassment or violence, and protect against retaliation against workers reporting harassment or violence; and

"(iii) contain other provisions necessary for ensuring workplace safety, as determined by the Secretary of Labor, in consultation with the Secretary of Agriculture.

"(j) ELIGIBILITY FOR H-2A STATUS AND ADMISSION TO THE UNITED STATES.—

"(1) DISQUALIFICATION.—An alien shall be ineligible for admission to the United States as an H–2A worker pursuant to a petition filed under this section if the alien was admitted to the United States as an H–2A worker within the past 5 years of the date the petition was filed and—

"(A) violated a material provision of this section, including the requirement to promptly depart the United States when the alien's authorized period of admission has expired, unless the alien has good cause for such failure to depart; or

"(B) otherwise violated a term or condition of admission into the United States as an H–2A worker.

"(2) VISA VALIDITY.—A visa issued to an H–2A worker shall be valid for three years and shall allow for multiple entries during the approved period of admission.

"(3) PERIOD OF AUTHORIZED STAY; ADMISSION.—

"(A) IN GENERAL.—An alien admissible as an H–2A worker shall be authorized to stay in the United States for the period of employment specified in the petition approved by the Secretary of Homeland Security under this section. The maximum continuous period of authorized stay for an H–2A worker is 36 months.

"(B) REQUIREMENT TO REMAIN OUTSIDE THE UNITED STATES.—In the case of an H–2A worker whose maximum continuous period of authorized stay (including any extensions) has expired, the alien may not again be eligible for such stay until the alien remains outside the United States for a cumulative period of at least 45 days.

"(C) EXCEPTIONS.—The Secretary of Homeland Security shall deduct absences from the United States that take place during an H–2A worker's period of authorized stay from the period that the alien is required to remain outside the United States under subparagraph (B), if the alien or the alien's employer requests such a deduction, and provides clear and convincing

proof that the alien qualifies for such a deduction. Such proof shall consist of evidence including, but not limited to, arrival and departure records, copies of tax returns, and records of employment abroad.

"(D) ADMISSION.—In addition to the maximum continuous period of authorized stay, an H–2A worker's authorized period of admission shall include an additional period of 10 days prior to the beginning of the period of employment for the purpose of traveling to the place of employment and 45 days at the end of the period of employment for the purpose of traveling home or seeking an extension of status based on a subsequent offer of employment if the worker has not reached the maximum continuous period of authorized stay under subparagraph (A) (subject to the exceptions in subparagraph (C)).

"(4) CONTINUING H-2A WORKERS.—

"(A) SUCCESSIVE EMPLOYMENT.—An H–2A worker is authorized to start new or concurrent employment upon the filing of a nonfrivolous H–2A petition, or as of the requested start date, whichever is later if—

"(i) the petition to start new or concurrent employment was filed prior to the expiration of the H–2A worker's period of admission as defined in paragraph (3)(D); and

"(ii) the H–2A worker has not been employed without authorization in the United States from the time of last admission to the United States in H–2A status through the filing of the petition for new employment.

"(B) PROTECTION DUE TO IMMIGRANT VISA BACKLOGS.—Notwithstanding the limitations on the period of authorized stay described in paragraph (3), any H–2A worker who—

"(i) is the beneficiary of an approved petition, filed under section 204(a)(1)(E) or (F) for preference status under section 203(b)(3)(A)(iii); and

"(ii) is eligible to be granted such status but for the annual limitations on visas under section 203(b)(3)(A),

may apply for, and the Secretary of Homeland Security may grant, an extension of such nonimmigrant status until the Secretary of Homeland Security issues a final administrative decision on the alien's application for adjustment of status or the Secretary of State issues a final decision on the alien's application for an immigrant visa.

"(5) ABANDONMENT OF EMPLOYMENT.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), an H–2A worker who abandons the employment which was the basis for the worker's authorized stay, without good cause, shall be considered to have failed to maintain H–2A status and shall depart the United States or be subject to removal under section 237(a)(1)(C)(i).

"(B) GRACE PERIOD TO SECURE NEW EMPLOYMENT.—An H–2A worker shall not be considered to have failed to maintain H–2A status solely on the basis of a cessation of the employment on which the alien's classification was based for a period of 45 consecutive days, or until the end of the authorized validity period, whichever is shorter, once during each authorized validity period.

"(k) REQUIRED DISCLOSURES.—

"(1) DISCLOSURE OF WORK CONTRACT.—Not later than the time the H–2A worker applies for a visa, the employer shall provide the worker with a copy of the work contract that includes the disclosures and rights under this section (or in the absence of such a contract, a copy of the job order and proof of the certification described in subparagraphs (B) and (D) of subsection (h)(2)). An H–2A worker moving from one H–2A employer to a subsequent H–2A employer shall be provided with a copy of the new employment contract no later than the time an offer of employment is made by the subsequent employer.

"(2) HOURS AND EARNINGS STATEMENTS.—The employer shall furnish to H–2A workers, on or before each payday, in 1 or more written statements—

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

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

"(C) the hours of employment offered to the worker and the hours of employment actually worked;

"(D) if piece rates of pay are used, the units produced daily;

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

"(F) any other information required by Federal, State or local law.

"(3) NOTICE OF WORKER RIGHTS.—The employer must post and maintain in a conspicuous location at the place of employment, a poster provided by the Secretary of Labor in English, and, to the extent necessary, any language common to a significant portion of the workers if they are not fluent in English, which sets out the rights and protections for workers employed pursuant to this section.

"(l) LABOR CONTRACTORS; FOREIGN LABOR RECRUITERS; PROHIBITION ON FEES.—

"(1) LABOR CONTRACTORS.—

"(A) SURETY BOND.—An employer that is a labor contractor who seeks to employ H–2A workers shall maintain a surety bond in an amount required under subparagraph (B). Such bond shall be payable to the Secretary of Labor or pursuant to the resolution of a civil or criminal proceeding, for the payment of wages and benefits, including any assessment of interest, owed to an H-2A worker or a similarly employed United States worker, or a United States worker who has been rejected or displaced in violation of this section.

"(B) AMOUNT OF BOND.—The Secretary of Labor shall annually publish in the Federal Register a schedule of required bond amounts that are determined by such Secretary to be sufficient for labor contractors to discharge financial obligations under this section based on the number of workers the labor contractor seeks to employ and the wages such workers are required to be paid.

"(C) PREMIUM BOND.—A labor contractor seeking to file a petition involving more than 1 start date under subsection (h)(1)(C) shall maintain a surety bond that is at least 15 percent higher than the applicable bond amount determined by the Secretary under subparagraph (B).

"(D) USE OF FUNDS.—Any sums paid to the Secretary under subparagraph (A) that are not paid to a worker because of the inability to do so within a period of 5 years following the date of a violation giving rise to the obligation to pay shall remain available to the Secretary without further appropriation until expended to support the enforcement of this section.

"(2) FOREIGN LABOR RECRUITING.—If the employer has retained the services of a foreign labor recruiter, the employer shall use a foreign labor recruiter registered under section 251 of the Farm Workforce Modernization Act of 2019.

"(3) PROHIBITION AGAINST EMPLOYEES PAYING FEES.—Neither the employer nor its agents shall seek or receive payment of any kind from any worker for any activity related to the H–2A process, including payment of the employer's attorneys' fees, application fees, or recruitment costs. An employer and its agents may receive reimbursement for costs that are the responsibility and primarily for the benefit of the worker, such as government-required passport fees.

"(4) THIRD PARTY CONTRACTS.—The contract between an employer and any labor contractor or any foreign labor recruiter (or any agent of such labor contractor or foreign labor recruiter) whom the employer engages shall include a term providing for the termination of such contract for cause if the contractor or recruiter, either directly or indirectly, in the placement or recruitment of H–2A workers seeks or receives payments or other compensation from prospective employees. Upon learning that a labor contractor or foreign labor recruiter has sought or collected such payments, the employer shall so terminate any contracts with such contractor or recruiter.

"(m) ENFORCEMENT AUTHORITY.—

"(1) IN GENERAL.—The Secretary of Labor is authorized to take such actions against employers, including imposing appropriate penalties and seeking monetary and injunctive relief and specific performance of contractual obligations, as may be necessary to ensure compliance with the requirements of this section and with the applicable terms and conditions of employment.

"(2) COMPLAINT PROCESS.—

"(A) PROCESS.—The Secretary of Labor shall establish a process for the receipt, investigation, and disposition of complaints alleging failure of an employer to comply with the requirements under this section and with the applicable terms and conditions of employment.

"(B) FILING.—A complaint referred to in subparagraph (A) may be filed not later than 2 years after the date of the conduct that is the subject of the complaint.

"(C) COMPLAINT NOT EXCLUSIVE.—A complaint filed under this paragraph is not an exclusive remedy and the filing of such a complaint does not waive any rights or remedies of the aggrieved party under this law or other laws.

"(D) DECISION AND REMEDIES.—If the Secretary of Labor finds, after notice and opportunity for a hearing, that the employer failed to comply with the requirements of this section or the terms and conditions of employment, the Secretary of Labor may require payment of unpaid wages, unpaid benefits, fees assessed in violation of this section, damages, and civil money penalties. The Secretary is also authorized to impose other administrative remedies, including disqualification of the employer from utilizing the H–2A program for a period of up to 5 years in the event of willful or multiple material violations. The Secretary is authorized to permanently disqualify an employer from utilizing the H–2A program upon a subsequent finding involving willful or multiple material violations.

"(E) DISPOSITION OF PENALTIES.—Civil penalties collected under this paragraph shall be deposited into the H–2A Labor Certification Fee Account established under section 203 of the Farm Workforce Modernization Act of 2019.

"(3) STATUTORY CONSTRUCTION.—Nothing in this subsection may be construed as limiting the authority of the Secretary of Labor to conduct an investigation—

"(A) under any other law, including any law affecting migrant and seasonal agricultural workers; or

"(B) in the absence of a complaint.

"(4) RETALIATION PROHIBITED.—It is a violation of this subsection for any person who has filed a petition under this section to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other manner discriminate against, or to cause any person to intimidate, threaten, restrain, coerce, blacklist, or in any manner discriminate against, an employee, including a former employee or an applicant for employment, because the employee—

"(A) has disclosed information to the employer, or to any other person, that the employee reasonably believes evidences a violation under this section, or any rule or regulation relating to this section;

"(B) has filed a complaint concerning the employer's compliance with the requirements under this section or any rule or regulation pertaining to this section;

"(C) cooperates or seeks to cooperate in an investigation or other proceeding concerning the employer's compliance with the requirements under this section or any rule or regulation pertaining to this section; or

"(D) has taken steps to exercise or assert any right or protection under the provisions of this section, or any rule or regulation pertaining to this section, or any other relevant Federal, State, or local law.

"(5) INTERAGENCY COMMUNICATION.—The Secretary of Labor, in consultation with the Secretary of Homeland Security, Secretary of State and the Equal Employment Opportunity Commission, shall establish mechanisms by which the agencies and their components share information, including by public electronic means, regarding complaints, studies, investigations, findings and remedies regarding compliance by employers with the requirements of the H–2A program and other employment-related laws and regulations.

"(n) DEFINITIONS.—In this section:

"(1) DISPLACE.—The term 'displace' means to lay off a similarly employed United States worker, other than for lawful job-related reasons, in the occupation and area of intended employment for the job for which H–2A workers are sought.

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

"(3) JOB ORDER.—The term 'job order' means the document containing the material terms and conditions of employment, including obligations and assurances required under this section or any other law.

"(4) ONLINE JOB REGISTRY.—The term 'online job registry' means the online job registry of the Secretary of Labor required under section 201(b) of the Farm Workforce Modernization Act of 2019 (or similar successor registry).

"(5) SIMILARLY EMPLOYED.—The term 'similarly employed', in the case of a worker, means a worker in the same occupational classification as the classification or classifications for which the H–2A worker is sought.

"(6) UNITED STATES WORKER.—The term 'United States worker' means any worker who is—

"(A) a citizen or national of the United States;

"(B) an alien who is lawfully admitted for permanent residence, is admitted as a refugee under section 207, is granted asylum under section 208, or is an immigrant otherwise authorized to be employed in the United States;

"(C) an alien granted certified agricultural worker status under title I of the Farm Workforce Modernization Act of 2019; or

"(D) an individual who is not an unauthorized alien (as defined in section 274A(h)(3)) with respect to the employment in which the worker is engaging.

"(o) FEES; AUTHORIZATION OF APPROPRIATIONS.—

"(1) FEES.—

"(A) IN GENERAL.—The Secretary of Homeland Security shall impose a fee to process petitions under this section. Such fee shall be set at a level that is sufficient to recover the reasonable costs of processing the petition, including the reasonable costs of providing labor certification by the Secretary of Labor.

"(B) DISTRIBUTION.—Fees collected under subparagraph (A) shall be deposited as offsetting receipts into the immigration examinations fee account in section 286(m), except that the portion of fees assessed for the Secretary of Labor shall be deposited into the H–2A Labor Certification Fee Account established pursuant to section 203(c) of the Farm Workforce Modernization Act of 2019 .

"(2) APPROPRIATIONS.—There are authorized to be appropriated for each fiscal year such sums as necessary for the purposes of—

"(A) recruiting United States workers for labor or services which might otherwise be performed by H–2A workers, including by ensuring that State workforce agencies are sufficiently funded to fulfill their functions under this section;

"(B) enabling the Secretary of Labor to make determinations and certifications under this section and under section 212(a)(5)(A)(i);

"(C) monitoring the terms and conditions under which H–2A workers (and United States workers employed by the same employers) are employed in the United States; and

"(D) enabling the Secretary of Agriculture to carry out the Secretary of Agriculture's duties and responsibilities under this section.".

SEC. 203. AGENCY ROLES AND RESPONSIBILITIES.

(a) RESPONSIBILITIES OF THE SECRETARY OF LABOR.—With respect to the administration of the H–2A program, the Secretary of Labor shall be responsible for—

(1) consulting with State workforce agencies to—

(A) review and process job orders;

(B) facilitate the recruitment and referral of able, willing and qualified United States workers who will be available at the time and place needed;

(C) determine prevailing wages and practices; and

(D) conduct timely inspections to ensure compliance with applicable Federal, State, or local housing standards and Federal regulations for H–2A housing;

(2) determining whether the employer has met the conditions for approval of the H–2A petition described in section 218(a) of the Immigration and Nationality Act (8 U.S.C. 1188(a));

(3) determining, in consultation with the Secretary of Agriculture, whether a job opportunity is of a seasonal or temporary nature;

(4) determining whether the employer has complied or will comply with the H–2A program requirements set forth in section 218 of the Immigration and Nationality Act (8 U.S.C. 1188);

(5) processing and investigating complaints consistent with section 218(m) of the Immigration and Nationality Act (8 U.S.C. 1188(m)); and

(6) ensuring that guidance to State workforce agencies to conduct wage surveys is regularly updated.

(b) RESPONSIBILITIES OF THE SECRETARY OF HOMELAND SECURITY.—With respect to the administration of the H–2A program, the Secretary of Homeland Security shall be responsible for—

(1) adjudicating petitions for the admission of H–2A workers, which shall include an assessment as to whether each beneficiary will be employed in accord-

ance with the terms and conditions of the certification and whether any named beneficiaries qualify for such employment;

(2) transmitting a copy of the final decision on the petition to the employer, and in the case of approved petitions, ensuring that the petition approval is reflected in the electronic platform to facilitate the prompt issuance of a visa by the Department of State (if required) and the admission of the H–2A workers to the United States; and

(3) establishing a reliable and secure method through which H–2A workers can access information about their H–2A visa status, including information on pending, approved, or denied petitions to extend such status.

(c) ESTABLISHMENT OF ACCOUNT AND USE OF FUNDS.—

(1) ESTABLISHMENT OF ACCOUNT.—There is established in the general fund of the Treasury a separate account, which shall be known as the "H–2A Labor Certification Fee Account". Notwithstanding any other provisions of law, there shall be deposited as offsetting receipts into the account all amounts—

(A) collected as a civil penalty under section 218(m)(2)(E)of the Immigration and Nationality Act; and

(B) collected as a fee under section 218(o)(1)(B) of the Immigration and Nationality Act.

(2) USE OF FEES.—Amounts deposited into the H–2A Labor Certification Fee Account shall be available (except as otherwise provided in this paragraph) without fiscal year limitation and without the requirement for specification in appropriations Acts to the Secretary of Labor for use, directly or through grants, contracts, or other arrangements, in such amounts as the Secretary of Labor determines are necessary for the costs of Federal and State administration in carrying out activities in connection with labor certification under section 218 of the Immigration and Nationality Act. Such costs may include personnel salaries and benefits, equipment and infrastructure for adjudication and customer service processes, the operation and maintenance of an on-line job registry, and program integrity activities. The Secretary, in determining what amounts to transfer to States for State administration in carrying out activities in connection with labor certification under section 218 of the Immigration and Nationality Act shall consider the number of H–2A workers employed in that State and shall adjust the amount transferred to that State accordingly. In addition, 10 percent of the amounts deposited into the H–2A Labor Certification Fee Account shall be available to the Office of Inspector General of the Department of Labor to conduct audits and criminal investigations relating to such foreign labor certification programs.

(3) ADDITIONAL FUNDS.—Amounts available under paragraph (1) shall be available in addition to any other funds appropriated or made available to the Department of Labor under other laws, including section 218(o)(2) of the Immigration and Nationality Act.

SEC. 204. WORKER PROTECTION AND COMPLIANCE.

(a) EQUALITY OF TREATMENT.—H–2A workers shall not be denied any right or remedy under any Federal, State, or local labor or employment law applicable to United States workers engaged in agricultural employment.

(b) APPLICABILITY OF OTHER LAWS.—

(1) MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT.—H–2A workers shall be considered migrant agricultural workers for purposes of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801 et seq.).

(2) WAIVER OF RIGHTS PROHIBITED.—Agreements by H–2A workers to waive or modify any rights or protections under this Act or section 218 of the Immigration and Nationality Act (8 U.S.C. 1188) shall be considered void or contrary to public policy except as provided in a collective bargaining agreement with a bona fide labor organization.

(3) MEDIATION.—

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

(B) COMPLAINT.—If an H–2A worker files a civil lawsuit alleging one or more violations of section 218 of the Immigration and Nationality Act (8 U.S.C. 1188), the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.), or the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C.

1801 et seq.), not later than 60 days after the filing of proof of service of the complaint, a party to the lawsuit may file a request with the Federal Mediation and Conciliation Service to assist the parties in reaching a satisfactory resolution of all issues involving all parties to the dispute.

(C) NOTICE.—Upon filing a request under subparagraph (B) and giving of notice to the parties, the parties shall attempt mediation within the period specified in subparagraph (D), except that nothing in this paragraph shall limit the ability of a court to order preliminary injunctive relief to protect health and safety.

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

(E) AUTHORIZATION OF APPROPRIATIONS.—

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

(ii) MEDIATION.—Notwithstanding any other provision of law, the Director of the Federal Mediation and Conciliation Service is authorized—

(I) to conduct the mediation or other dispute resolution activities from any other account containing amounts available to the Director; and

(II) to reimburse such account with amounts appropriated pursuant to clause (i).

(F) PRIVATE MEDIATION.—If all parties agree, a private mediator may be employed as an alternative to the Federal Mediation and Conciliation Service.

(c) FARM LABOR CONTRACTOR REQUIREMENTS.—

(1) SURETY BONDS.—

(A) REQUIREMENT.—Section 101 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1811), is amended by adding at the end the following:

"(e) A farm labor contractor shall maintain a surety bond in an amount determined by the Secretary to be sufficient for ensuring the ability of the farm labor contractor to discharge its financial obligations, including payment of wages and benefits to employees. Such a bond shall be available to satisfy any amounts ordered to be paid by the Secretary or by court order for failure to comply with the obligations of this Act. The Secretary of Labor shall annually publish in the Federal Register a schedule of required bond amounts that are determined by such Secretary to be sufficient for farm labor contractors to discharge financial obligations based on the number of workers to be covered.".

(B) REGISTRATION DETERMINATIONS.—Section 103(a) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1813(a)), is amended—

(i) in paragraph (4), by striking "or" at the end;

(ii) in paragraph (5)(B), by striking "or" at the end;

(iii) in paragraph (6), by striking the period at the end and inserting ";" ; and

(iv) by adding at the end the following:

"(7) has failed to maintain a surety bond in compliance with section 101(e); or

"(8) has been disqualified by the Secretary of Labor from importing nonimmigrants described in section 101(a)(15)(H)(ii) of the Immigration and Nationality Act.".

(2) SUCCESSORS IN INTEREST.—

(A) DECLARATION.—Section 102 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1812), is amended—

(i) in paragraph (4), by striking "and" at the end;

(ii) in paragraph (5), by striking the period at the end and inserting "; and"; and

(iii) by adding at the end the following:

"(6) a declaration, subscribed and sworn to by the applicant, stating whether the applicant has a familial, contractual, or employment relationship with, or shares vehicles, facilities, property, or employees with, a person who has been

refused issuance or renewal of a certificate, or has had a certificate suspended or revoked, pursuant to section 103.".

(B) REBUTTABLE PRESUMPTION.—Section 103 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1813), as amended by this Act, is further amended by inserting after subsection (a) the following new subsection (and by redesignating the subsequent subsections accordingly):

"(b)(1) There shall be a rebuttable presumption that an applicant for issuance or renewal of a certificate is not the real party in interest in the application if the applicant—

"(A) is the immediate family member of any person who has been refused issuance or renewal of a certificate, or has had a certificate suspended or revoked; and

"(B) identifies a vehicle, facility, or real property under paragraph (2) or (3) of section 102 that has been previously listed by a person who has been refused issuance or renewal of a certificate, or has had a certificate suspended or revoked.

"(2) An applicant described in paragraph (1) bears the burden of demonstrating to the Secretary's satisfaction that the applicant is the real party in interest in the application.".

SEC. 205. REPORT ON WAGE PROTECTIONS.

(a) Not later than 3 years after the date of the enactment of this Act, and every 3 years thereafter, the Secretary of Labor and Secretary of Agriculture shall prepare and transmit to the Committees on the Judiciary of the House of Representatives and Senate, a report that addresses—

(1) whether, and the manner in which, the employment of H–2A workers in the United States has impacted the wages, working conditions, or job opportunities of United States farm workers;

(2) whether, and the manner in which, the adverse effect wage rate increases or decreases wages on United States farms, broken down by geographic region and farm size;

(3) whether any potential impact of the adverse effect wage rate varies based on the percentage of workers in a geographic region that are H–2A workers;

(4) the degree to which the adverse effect wage rate is affected by the inclusion in wage surveys of piece rate compensation, bonus payments, and other pay incentives, and whether such forms of incentive compensation should be surveyed and reported separately from hourly base rates;

(5) whether, and the manner in which, other factors may artificially affect the adverse effect wage rate, including factors that may be specific to a region, State, or region within a State;

(6) whether, and the manner in which, the H–2A program affects the ability of United States farms to compete with agricultural commodities imported from outside the United States;

(7) the number and percentage of farmworkers in the United States whose incomes are below the poverty line;

(8) whether alternative wage standards would be sufficient to prevent wages in occupations in which H–2A workers are employed from falling below the wage level that would have prevailed in the absence of the H–2A program;

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

(10) recommendations for future wage protection under this section.

(b) In preparing the report described in subsection (a), the Secretary of Labor and Secretary of Agriculture shall engage with equal numbers of representatives of agricultural employers and agricultural workers, both locally and nationally.

SEC. 206. PORTABLE H-2A VISA PILOT PROGRAM.

(a) ESTABLISHMENT OF PILOT PROGRAM.—

(1) IN GENERAL.—Not later than 18 months after the date of the enactment of this Act, the Secretary of Homeland Security, in consultation with the Secretary of Labor and Secretary of Agriculture, shall establish through regulation a 6-year pilot program to facilitate the free movement and employment of temporary or seasonal H–2A workers to perform agricultural labor or services for agricultural employers registered with the Secretary of Agriculture. Notwithstanding the requirements of section 218 of the Immigration and Nationality Act, such regulation shall establish the requirements for the pilot program, consistent with subsection (b). For purposes of this section, such a worker shall be

referred to as a portable H–2A worker, and status as such a worker shall be referred to as portable H–2A status.

(2) ONLINE PLATFORM.—The Secretary of Homeland Security, in consultation with the Secretary of Labor and the Secretary of Agriculture, shall maintain an online electronic platform to connect portable H–2A workers with registered agricultural employers seeking workers to perform temporary or seasonal agricultural labor or services. Employers shall post on the platform available job opportunities, including a description of the nature and location of the work to be performed, the anticipated period or periods of need, and the terms and conditions of employment. Such platform shall allow portable H–2A workers to search for available job opportunities using relevant criteria, including the types of jobs needed to be filled and the dates and locations of need.

(3) LIMITATION.—Notwithstanding the issuance of the regulation described in paragraph (1), the Secretary of State may not issue a portable H–2A visa and the Secretary of Homeland Security may not confer portable H–2A status on any alien until the Secretary of Homeland Security, in consultation with the Secretary of Labor and Secretary of Agriculture, has determined that a sufficient number of employers have been designated as registered agricultural employers under subsection (b)(1) and that such employers have sufficient job opportunities to employ a reasonable number of portable H–2A workers to initiate the pilot program.

(b) PILOT PROGRAM ELEMENTS.—The pilot program in subsection (a) shall contain the following elements:

(1) REGISTERED AGRICULTURAL EMPLOYERS.—

(A) DESIGNATION.—Agricultural employers shall be provided the ability to seek designation as registered agricultural employers. Reasonable fees may be assessed commensurate with the cost of processing applications for designation. A designation shall be valid for a period of up to 3 years unless revoked for failure to comply with program requirements. Registered employers that comply with program requirements may apply to renew such designation for additional periods of up to 3 years for the duration of the pilot program.

(B) LIMITATIONS.—Registered agricultural employers may employ aliens with portable H–2A status without filing a petition. Such employers shall pay such aliens at least the wage required under section 218(d) of the Immigration and Nationality Act (8 U.S.C. 1188(d)).

(C) WORKERS' COMPENSATION.—If a job opportunity is not covered by or is exempt from the State workers' compensation law, a registered agricultural employer shall provide, at no cost to the worker, insurance covering injury and disease arising out of, and in the course of, the worker's employment, which will provide benefits at least equal to those provided under the State workers' compensation law.

(2) DESIGNATED WORKERS.—

(A) IN GENERAL.—Individuals who have been previously admitted to the United States in H–2A status, and maintained such status during the period of admission, shall be provided the opportunity to apply for portable H–2A status. Portable H–2A workers shall be subject to the provisions on visa validity and periods of authorized stay and admission for H–2A workers described in paragraphs (2) and (3) of section 218(j) of the Immigration and Nationality Act (8 U.S.C. 1188(j)(2) and (3)).

(B) LIMITATIONS ON AVAILABILITY OF PORTABLE H–2A STATUS.—

(i) INITIAL OFFER OF EMPLOYMENT REQUIRED.—No alien may be granted portable H–2A status without an initial valid offer of employment to perform temporary or agricultural labor or services from a registered agricultural employer.

(ii) NUMERICAL LIMITATIONS.—The total number of aliens who may hold valid portable H–2A status at any one time may not exceed 10,000. Notwithstanding such limitation, the Secretary of Homeland Security may further limit the number of aliens with valid portable H–2A status if the Secretary determines that there are an insufficient number of registered agricultural employers or job opportunities to support the employment of all such portable H–2A workers.

(C) SCOPE OF EMPLOYMENT.—During the period of admission, a portable H–2A worker may perform temporary or seasonal agricultural labor or services for any employer in the United States that is designated as a registered agricultural employer pursuant to paragraph (1). An employment

arrangement under this section may be terminated by either the portable H–2A worker or the registered agricultural employer at any time.

(D) TRANSFER TO NEW EMPLOYMENT.—At the cessation of employment with a registered agricultural employer, a portable H–2A worker shall have 60 days to secure new employment with a registered agricultural employer.

(E) MAINTENANCE OF STATUS.—A portable H–2A worker who does not secure new employment with a registered agricultural employer within 60 days shall be considered to have failed to maintain such status and shall depart the United States or be subject to removal under section 237(a)(1)(C)(i) of the Immigration and Nationality Act (8 U.S.C. 1188(a)(1)(C)(i)).

(3) ENFORCEMENT.—The Secretary of Labor shall be responsible for conducting investigations and random audits of employers to ensure compliance with the employment-related requirements of this section, consistent with section 218(m) of the Immigration and Nationality Act (8 U.S.C. 1188(m)). The Secretary of Labor shall have the authority to collect reasonable civil penalties for violations, which shall be utilized by the Secretary for the administration and enforcement of the provisions of this section.

(4) ELIGIBILITY FOR SERVICES.—Section 305 of Public Law 99–603 (100 Stat. 3434) is amended by striking "other employment rights as provided in the worker's specific contract under which the nonimmigrant was admitted" and inserting "employment-related rights".

(c) REPORT.—Not later than 6 months before the end of the third fiscal year of the pilot program, the Secretary of Homeland Security, in consultation with the Secretary of Labor and the Secretary of Agriculture, shall prepare and submit to the Committees on the Judiciary of the House of Representatives and the Senate, a report that provides—

(1) the number of employers designated as registered agricultural employers, broken down by geographic region, farm size, and the number of job opportunities offered by such employers;

(2) the number of employers whose designation as a registered agricultural employer was revoked;

(3) the number of individuals granted portable H–2A status in each fiscal year, along with the number of such individuals who maintained portable H–2A status during all or a portion of the 3-year period of the pilot program;

(4) an assessment of the impact of the pilot program on the wages and working conditions of United States farm workers;

(5) the results of a survey of individuals granted portable H–2A status, detailing their experiences with and feedback on the pilot program;

(6) the results of a survey of registered agricultural employers, detailing their experiences with and feedback on the pilot program;

(7) an assessment as to whether the program should be continued and if so, any recommendations for improving the program; and

(8) findings and recommendations regarding effective recruitment mechanisms, including use of new technology to match workers with employers and ensure compliance with applicable labor and employment laws and regulations.

SEC. 207. IMPROVING ACCESS TO PERMANENT RESIDENCE.

(a) WORLDWIDE LEVEL.—Section 201(d)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1151(d)(1)(A)) is amended by striking "140,000" and inserting "180,000".

(b) VISAS FOR FARMWORKERS.—Section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)) is amended—

(1) in paragraph (1) by striking "28.6 percent of such worldwide level" and inserting "40,040";

(2) in paragraph (2)(A) by striking "28.6 percent of such worldwide level" and inserting "40,040";

(3) in paragraph (3)—

(A) in subparagraph (A)—

(i) in the matter before clause (i), by striking "28.6 percent of such worldwide level" and inserting "80,040"; and

(ii) by amending clause (iii) to read as follows:

"(iii) OTHER WORKERS.—Other qualified immigrants who, at the time of petitioning for classification under this paragraph—

"(I) are capable of performing unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States; or

"(II) can demonstrate employment in the United States as an H–2A nonimmigrant worker for at least 100 days in each of at least 10 years.";

(B) by amending subparagraph (B) to read as follows:

"(B) VISAS ALLOCATED FOR OTHER WORKERS.—

"(i) IN GENERAL.—Except as provided in clauses (ii) and (iii), 50,000 of the visas made available under this paragraph shall be reserved for qualified immigrants described in subparagraph (A)(iii).

"(ii) PREFERENCE FOR AGRICULTURAL WORKERS.—Subject to clause (iii), not less than four-fifths of the visas described in clause (i) shall be reserved for—

"(I) qualified immigrants described in subparagraph (A)(iii)(I) who will be performing agricultural labor or services in the United States; and

"(II) qualified immigrants described in subparagraph (A)(iii)(II).

"(iii) EXCEPTION.—If because of the application of clause (ii), the total number of visas available under this paragraph for a calendar quarter exceeds the number of qualified immigrants who otherwise may be issued such a visa, clause (ii) shall not apply to visas under this paragraph during the remainder of such calendar quarter.

"(iv) NO PER COUNTRY LIMITS.—Visas described under clause (ii) shall be issued without regard to the numerical limitation under section 202(a)(2).."; and

(C) by amending subparagraph (C) by striking "An immigrant visa" and inserting "Except for qualified immigrants petitioning for classification under subparagraph (A)(iii)(II), an immigrant visa";

(4) in paragraph (4), by striking "7.1 percent of such worldwide level" and inserting "9,940"; and

(5) in paragraph (5)(A), in the matter before clause (i), by striking "7.1 percent of such worldwide level" and inserting "9,940".

(c) PETITIONING PROCEDURE.—Section 204(a)(1)(E) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(E)) is amended by inserting "or 203(b)(3)(A)(iii)(II)" after "203(b)(1)(A)".

(d) DUAL INTENT.—Section 214(b) of the Immigration and Nationality Act (8 U.S.C. 1184(b)) is amended by striking "section 101(a)(15)(H)(i) except subclause (b1) of such section" and inserting "clause (i), except subclause (b1), or (ii)(a) of section 101(a)(15)(H)".

Subtitle B—Preservation and Construction of Farmworker Housing

SEC. 220. SHORT TITLE.

This subtitle may be cited as the "Strategy and Investment in Rural Housing Preservation Act of 2019".

SEC. 221. PERMANENT ESTABLISHMENT OF HOUSING PRESERVATION AND REVITALIZATION PROGRAM.

Title V of the Housing Act of 1949 (42 U.S.C. 1471 et seq.) is amended by adding at the end the following new section:

"SEC. 545. HOUSING PRESERVATION AND REVITALIZATION PROGRAM.

"(a) ESTABLISHMENT.—The Secretary shall carry out a program under this section for the preservation and revitalization of multifamily rental housing projects financed under section 515 or both sections 514 and 516.

"(b) NOTICE OF MATURING LOANS.—

"(1) TO OWNERS.—On an annual basis, the Secretary shall provide written notice to each owner of a property financed under section 515 or both sections 514 and 516 that will mature within the 4-year period beginning upon the provision of such notice, setting forth the options and financial incentives that are available to facilitate the extension of the loan term or the option to decouple a rental assistance contract pursuant to subsection (f).

"(2) TO TENANTS.—

"(A) IN GENERAL.—For each property financed under section 515 or both sections 514 and 516, not later than the date that is 2 years before the date that such loan will mature, the Secretary shall provide written notice to each household residing in such property that informs them of the date of the loan maturity, the possible actions that may happen with respect to the property upon such maturity, and how to protect their right to reside in Federally assisted housing after such maturity.

"(B) LANGUAGE.—Notice under this paragraph shall be provided in plain English and shall be translated to other languages in the case of any property located in an area in which a significant number of residents speak such other languages.

"(c) LOAN RESTRUCTURING.—Under the program under this section, the Secretary may restructure such existing housing loans, as the Secretary considers appropriate, for the purpose of ensuring that such projects have sufficient resources to preserve the projects to provide safe and affordable housing for low-income residents and farm laborers, by—

"(1) reducing or eliminating interest;

"(2) deferring loan payments;

"(3) subordinating, reducing, or reamortizing loan debt; and

"(4) providing other financial assistance, including advances, payments, and incentives (including the ability of owners to obtain reasonable returns on investment) required by the Secretary.

"(d) RENEWAL OF RENTAL ASSISTANCE.—When the Secretary offers to restructure a loan pursuant to subsection (c), the Secretary shall offer to renew the rental assistance contract under section 521(a)(2) for a 20-year term that is subject to annual appropriations, provided that the owner agrees to bring the property up to such standards that will ensure its maintenance as decent, safe, and sanitary housing for the full term of the rental assistance contract.

"(e) RESTRICTIVE USE AGREEMENTS.—

"(1) REQUIREMENT.—As part of the preservation and revitalization agreement for a project, the Secretary shall obtain a restrictive use agreement that obligates the owner to operate the project in accordance with this title.

"(2) TERM.—

"(A) NO EXTENSION OF RENTAL ASSISTANCE CONTRACT.—Except when the Secretary enters into a 20-year extension of the rental assistance contract for the project, the term of the restrictive use agreement for the project shall be consistent with the term of the restructured loan for the project.

"(B) EXTENSION OF RENTAL ASSISTANCE CONTRACT.—If the Secretary enters into a 20-year extension of the rental assistance contract for a project, the term of the restrictive use agreement for the project shall be for 20 years.

"(C) TERMINATION.—The Secretary may terminate the 20-year use restrictive use agreement for a project prior to the end of its term if the 20-year rental assistance contract for the project with the owner is terminated at any time for reasons outside the owner's control.

"(f) DECOUPLING OF RENTAL ASSISTANCE.—

"(1) RENEWAL OF RENTAL ASSISTANCE CONTRACT.—If the Secretary determines that a maturing loan for a project cannot reasonably be restructured in accordance with subsection (c) and the project was operating with rental assistance under section 521, the Secretary may renew the rental assistance contract, notwithstanding any provision of section 521, for a term, subject to annual appropriations, of at least 10 years but not more than 20 years.

"(2) RENTS.—Any agreement to extend the term of the rental assistance contract under section 521 for a project shall obligate the owner to continue to maintain the project as decent, safe and sanitary housing and to operate the development in accordance with this title, except that rents shall be based on the lesser of—

"(A) the budget-based needs of the project; or

"(B) the operating cost adjustment factor as a payment standard as provided under section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437 note).

"(g) MULTIFAMILY HOUSING TRANSFER TECHNICAL ASSISTANCE.—Under the program under this section, the Secretary may provide grants to qualified non-profit organizations and public housing agencies to provide technical assistance, including financial and legal services, to borrowers under loans under this title for multi-

family housing to facilitate the acquisition of such multifamily housing properties in areas where the Secretary determines there is a risk of loss of affordable housing.

"(h) TRANSFER OF RENTAL ASSISTANCE.—After the loan or loans for a rental project originally financed under section 515 or both sections 514 and 516 have matured or have been prepaid and the owner has chosen not to restructure the loan pursuant to subsection (c), a tenant residing in such project shall have 18 months prior to loan maturation or prepayment to transfer the rental assistance assigned to the tenant's unit to another rental project originally financed under section 515 or both sections 514 and 516, and the owner of the initial project may rent the tenant's previous unit to a new tenant without income restrictions.

"(i) ADMINISTRATIVE EXPENSES.—Of any amounts made available for the program under this section for any fiscal year, the Secretary may use not more than $1,000,000 for administrative expenses for carrying out such program.

"(j) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for the program under this section $200,000,000 for each of fiscal years 2020 through 2024.".

SEC. 222. ELIGIBILITY FOR RURAL HOUSING VOUCHERS.

Section 542 of the Housing Act of 1949 (42 U.S.C. 1490r) is amended by adding at the end the following new subsection:

"(c) ELIGIBILITY OF HOUSEHOLDS IN SECTIONS 514, 515, AND 516 PROJECTS.—The Secretary may provide rural housing vouchers under this section for any low-income household (including those not receiving rental assistance) residing, for a term longer than the remaining term of their lease in effect just prior to prepayment, in a property financed with a loan made or insured under section 514 or 515 (42 U.S.C. 1484, 1485) which has been prepaid without restrictions imposed by the Secretary pursuant to section 502(c)(5)(G)(ii)(I) (42 U.S.C. 1472(c)(5)(G)(ii)(I)), has been foreclosed, or has matured after September 30, 2005, or residing in a property assisted under section 514 or 516 that is owned by a nonprofit organization or public agency.".

SEC. 223. AMOUNT OF VOUCHER ASSISTANCE.

Notwithstanding any other provision of law, in the case of any rural housing voucher provided pursuant to section 542 of the Housing Act of 1949 (42 U.S.C. 1490r), the amount of the monthly assistance payment for the household on whose behalf such assistance is provided shall be determined as provided in subsection (a) of such section 542.

SEC. 224. RENTAL ASSISTANCE CONTRACT AUTHORITY.

Subsection (d) of section 521 of the Housing Act of 1949 (42 U.S.C. 1490a(d)) is amended—

(1) in paragraph (1), by inserting after subparagraph (A) the following new subparagraph (and by redesignating the subsequent subparagraphs accordingly):

"(B) upon request of an owner of a project financed under section 514 or 515, the Secretary is authorized to enter into renewal of such agreements for a period of 20 years or the term of the loan, whichever is shorter, subject to amounts made available in appropriations Acts;"; and

(2) by adding at the end the following new paragraph:

"(3) In the case of any rental assistance contract authority that becomes available because of the termination of assistance on behalf of an assisted family—

"(A) at the option of the owner of the rental project, the Secretary shall provide the owner a period of 6 months before such assistance is made available pursuant to subparagraph (B) during which the owner may use such assistance authority to provide assistance of behalf of an eligible unassisted family that—

"(i) is residing in the same rental project that the assisted family resided in prior to such termination; or

"(ii) newly occupies a dwelling unit in such rental project during such period; and

"(B) except for assistance used as provided in subparagraph (A), the Secretary shall use such remaining authority to provide such assistance on behalf of eligible families residing in other rental projects originally financed under section 515 or both sections 514 and 516 of this Act.".

SEC. 225. FUNDING FOR MULTIFAMILY TECHNICAL IMPROVEMENTS.

There is authorized to be appropriated to the Secretary of Agriculture $50,000,000 for fiscal year 2020 for improving the technology of the Department of Agriculture used to process loans for multifamily housing and otherwise managing such hous-

ing. Such improvements shall be made within the 5-year period beginning upon the appropriation of such amounts and such amount shall remain available until the expiration of such 5-year period.

SEC. 226. PLAN FOR PRESERVING AFFORDABILITY OF RENTAL PROJECTS.

(a) PLAN.—The Secretary of Agriculture (in this section referred to as the "Secretary") shall submit a written plan to the Congress, not later than the expiration of the 6-month period beginning on the date of the enactment of this Act, for preserving the affordability for low-income families of rental projects for which loans were made under section 515 or made to nonprofit or public agencies under section 514 and avoiding the displacement of tenant households, which shall—

(1) set forth specific performance goals and measures;

(2) set forth the specific actions and mechanisms by which such goals will be achieved;

(3) set forth specific measurements by which progress towards achievement of each goal can be measured;

(4) provide for detailed reporting on outcomes; and

(5) include any legislative recommendations to assist in achievement of the goals under the plan.

(b) ADVISORY COMMITTEE.—

(1) ESTABLISHMENT; PURPOSE.—The Secretary shall establish an advisory committee whose purpose shall be to assist the Secretary in preserving section 515 properties and section 514 properties owned by nonprofit or public agencies through the multifamily housing preservation and revitalization program under section 545 and in implementing the plan required under subsection (a).

(2) MEMBER.—The advisory committee shall consist of 16 members, appointed by the Secretary, as follows:

(A) A State Director of Rural Development for the Department of Agriculture.

(B) The Administrator for Rural Housing Service of the Department of Agriculture.

(C) Two representatives of for-profit developers or owners of multifamily rural rental housing.

(D) Two representatives of non-profit developers or owners of multifamily rural rental housing.

(E) Two representatives of State housing finance agencies.

(F) Two representatives of tenants of multifamily rural rental housing.

(G) One representative of a community development financial institution that is involved in preserving the affordability of housing assisted under sections 514, 515, and 516 of the Housing Act of 1949.

(H) One representative of a nonprofit organization that operates nationally and has actively participated in the preservation of housing assisted by the Rural Housing Service by conducting research regarding, and providing financing and technical assistance for, preserving the affordability of such housing.

(I) One representative of low-income housing tax credit investors.

(J) One representative of regulated financial institutions that finance affordable multifamily rural rental housing developments.

(K) Two representatives from non-profit organizations representing farmworkers, including one organization representing farmworker women.

(3) MEETINGS.—The advisory committee shall meet not less often than once each calendar quarter.

(4) FUNCTIONS.—In providing assistance to the Secretary to carry out its purpose, the advisory committee shall carry out the following functions:

(A) Assisting the Rural Housing Service of the Department of Agriculture to improve estimates of the size, scope, and condition of rental housing portfolio of the Service, including the time frames for maturity of mortgages and costs for preserving the portfolio as affordable housing.

(B) Reviewing current policies and procedures of the Rural Housing Service regarding preservation of affordable rental housing financed under sections 514, 515, 516, and 538 of the Housing Act of 1949, the Multifamily Preservation and Revitalization Demonstration program (MPR), and the rental assistance program and making recommendations regarding improvements and modifications to such policies and procedures.

(C) Providing ongoing review of Rural Housing Service program results.

(D) Providing reports to the Congress and the public on meetings, recommendations, and other findings of the advisory committee.

(5) TRAVEL COSTS.—Any amounts made available for administrative costs of the Department of Agriculture may be used for costs of travel by members of the advisory committee to meetings of the committee.

SEC. 227. COVERED HOUSING PROGRAMS.

Paragraph (3) of section 41411(a) of the Violence Against Women Act of 1994 (34 U.S.C. 12491(a)(3)) is amended—

(1) in subparagraph (I), by striking "and" at the end;

(2) by redesignating subparagraph (J) as subparagraph (K); and

(3) by inserting after subparagraph (I) the following new subparagraph:

"(J) rural development housing voucher assistance provided by the Secretary of Agriculture pursuant to section 542 of the Housing Act of 1949 (42 U.S.C. 1490r), without regard to subsection (b) of such section, and applicable appropriation Acts; and".

SEC. 228. NEW FARMWORKER HOUSING.

Section 513 of the Housing Act of 1949 (42 U.S.C. 1483) is amended by adding at the end the following new subsection:

"(f) FUNDING FOR FARMWORKER HOUSING.—

"(1) SECTION 514 FARMWORKER HOUSING LOANS.—

"(A) INSURANCE AUTHORITY.—The Secretary of Agriculture may, to the extent approved in appropriation Acts, insure loans under section 514 (42 U.S.C. 1484) during each of fiscal years 2020 through 2029 in an aggregate amount not to exceed $200,000,000.

"(B) AUTHORIZATION OF APPROPRIATIONS FOR COSTS.—There is authorized to be appropriated $75,000,000 for each of fiscal years 2020 through 2029 for costs (as such term is defined in section 502 of the Congressional Budget Act of 1974 (2 U.S.C. 661a)) of loans insured pursuant the authority under subparagraph (A).

"(2) SECTION 516 GRANTS FOR FARMWORKER HOUSING.—There is authorized to be appropriated $30,000,000 for each of fiscal years 2020 through 2029 for financial assistance under section 516 (42 U.S.C. 1486).

"(3) SECTION 521 HOUSING ASSISTANCE.—There is authorized to be appropriated $2,700,000,000 for each of fiscal years 2020 through 2029 for rental assistance agreements entered into or renewed pursuant to section 521(a)(2) (42 U.S.C. 1490a(a)(2)) or agreements entered into in lieu of debt forgiveness or payments for eligible households as authorized by section 502(c)(5)(D).".

SEC. 229. LOAN AND GRANT LIMITATIONS.

Section 514 of the Housing Act of 1949 (42 U.S.C. 1484) is amended by adding at the end the following:

"(j) PER PROJECT LIMITATIONS ON ASSISTANCE.—If the Secretary, in making available assistance in any area under this section or section 516 (42 U.S.C. 1486), establishes a limitation on the amount of assistance available per project, the limitation on a grant or loan award per project shall not be less than $5 million.".

SEC. 230. OPERATING ASSISTANCE SUBSIDIES.

Subsection (a)(5) of section 521 of the Housing Act of 1949 (42 U.S.C. 1490a(a)(5)) is amended—

(1) in subparagraph (A) by inserting "or domestic farm labor legally admitted to the United States and authorized to work in agriculture" after "migrant farmworkers";

(2) in subparagraph (B)—

(A) by striking "AMOUNT.—In any fiscal year" and inserting "AMOUNT.—

"(i) HOUSING FOR MIGRANT FARMWORKERS.—In any fiscal year";

(B) by inserting "providing housing for migrant farmworkers" after "any project"; and

(C) by inserting at the end the following:

"(ii) HOUSING FOR OTHER FARM LABOR.—In any fiscal year, the assistance provided under this paragraph for any project providing housing for domestic farm labor legally admitted to the United States and authorized to work in agriculture shall not exceed an amount equal to 50 percent of the operating costs for the project for the year, as determined by the Secretary. The owner of such project shall not qualify for operating assistance unless the Secretary certifies that the project was unoccupied or underutilized before making units available to such farm

labor, and that a grant under this section will not displace any farm worker who is a United States worker.''; and

(3) in subparagraph (D), by adding at the end the following:

''(iii) The term 'domestic farm labor' has the same meaning given such term in section 514(f)(3) (42 U.S.C. 1484(f)(3)), except that subparagraph (A) of such section shall not apply for purposes this section.''.

SEC. 231. ELIGIBILITY OF CERTIFIED WORKERS.

Subsection (a) of section 214 of the Housing and Community Development Act of 1980 (42 U.S.C. 1436a) is amended—

(1) in paragraph (6), by striking ''or'' at the end;

(2) by redesignating paragraph (7) as paragraph (8); and

(3) by inserting after paragraph (6) the following:

''(7) an alien granted certified agricultural worker or certified agricultural dependent status under title I of the Farm Workforce Modernization Act of 2019, but solely for financial assistance made available pursuant to section 521 or 542 of the Housing Act of 1949 (42 U.S.C. 1490a, 1490r); or''.

Subtitle C—Foreign Labor Recruiter Accountability

SEC. 251. REGISTRATION OF FOREIGN LABOR RECRUITERS.

(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Labor, in consultation with the Secretary of State and the Secretary of Homeland Security, shall establish procedures for the electronic registration of foreign labor recruiters engaged in the recruitment of nonimmigrant workers described in section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)) to perform agricultural labor or services in the United States.

(b) PROCEDURAL REQUIREMENTS.—The procedures described in subsection (a) shall—

(1) require the applicant to submit a sworn declaration—

(A) stating the applicant's permanent place of residence or principal place of business, as applicable;

(B) describing the foreign labor recruiting activities in which the applicant is engaged; and

(C) including such other relevant information as the Secretary of Labor and the Secretary of State may require;

(2) include an expeditious means to update and renew registrations;

(3) include a process, which shall include the placement of personnel at each United States diplomatic mission in accordance with subsection (g)(2), to receive information from the public regarding foreign labor recruiters who have allegedly engaged in a foreign labor recruiting activity that is prohibited under this subtitle;

(4) include procedures for the receipt and processing of complaints against foreign labor recruiters and for remedies, including the revocation of a registration or the assessment of fines upon a determination by the Secretary of Labor that the foreign labor recruiter has violated the requirements of this subtitle;

(5) require the applicant to post a bond in an amount sufficient to ensure the ability of the applicant to discharge its responsibilities and ensure protection of workers, including payment of wages; and

(6) allow the Secretary of Labor and the Secretary of State to consult with other appropriate Federal agencies to determine whether any reason exists to deny registration to a foreign labor recruiter or revoke such registration.

(c) ATTESTATIONS.—Foreign labor recruiters registering under this subtitle shall attest and agree to abide by the following requirements:

(1) PROHIBITED FEES.—The foreign labor recruiter, including any agent or employee of such foreign labor recruiter, shall not assess any recruitment fees on a worker for any foreign labor recruiting activity.

(2) PROHIBITION ON FALSE AND MISLEADING INFORMATION.—The foreign labor recruiter shall not knowingly provide materially false or misleading information to any worker concerning any matter required to be disclosed under this subtitle.

(3) REQUIRED DISCLOSURES.—The foreign labor recruiter shall ascertain and disclose to the worker in writing in English and in the primary language of the worker at the time of the worker's recruitment, the following information:

(A) The identity and address of the employer and the identity and address of the person conducting the recruiting on behalf of the employer, including each subcontractor or agent involved in such recruiting.

(B) A copy of the approved job order or work contract under section 218 of the Immigration and Nationality Act, including all assurances and terms and conditions of employment.

(C) A statement, in a form specified by the Secretary—

(i) describing the general terms and conditions associated with obtaining an H–2A visa and maintaining H–2A status;

(ii) affirming the prohibition on the assessment of fees described in paragraph (1), and explaining that such fees, if paid by the employer, may not be passed on to the worker;

(iii) describing the protections afforded the worker under this subtitle, including procedures for reporting violations to the Secretary of State, filing a complaint with the Secretary of Labor, or filing a civil action; and

(iv) describing the protections afforded the worker by section 202 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (8 U.S.C. 1375b), including the telephone number for the national human trafficking resource center hotline number.

(4) BOND.—The foreign labor recruiter shall agree to maintain a bond sufficient to ensure the ability of the foreign labor recruiter to discharge its responsibilities and ensure protection of workers, and to forfeit such bond in an amount determined by the Secretary under subsections (b)(1)(C)(ii) or (c)(2)(C) of section 252 for failure to comply with the provisions of this subtitle.

(5) COOPERATION IN INVESTIGATION.—The foreign labor recruiter shall agree to cooperate in any investigation under section 252 of this subtitle by the Secretary or other appropriate authorities.

(6) NO RETALIATION.—The foreign labor recruiter shall agree to refrain from intimidating, threatening, restraining, coercing, discharging, blacklisting or in any other manner discriminating or retaliating against any worker or their family members (including a former worker or an applicant for employment) because such worker disclosed information to any person based on a reason to believe that the foreign labor recruiter, or any agent or subcontractee of such foreign labor recruiter, is engaging or has engaged in a foreign labor recruiting activity that does not comply with this subtitle.

(7) EMPLOYEES, AGENTS, AND SUBCONTRACTEES.—The foreign labor recruiter shall consent to be liable for the conduct of any agents or subcontractees of any level in relation to the foreign labor recruiting activity of the agent or subcontractee to the same extent as if the foreign labor recruiter had engaged in such conduct.

(8) ENFORCEMENT.—If the foreign labor recruiter is conducting foreign labor recruiting activity wholly outside the United States, such foreign labor recruiter shall establish a registered agent in the United States who is authorized to accept service of process on behalf of the foreign labor recruiter for the purpose of any administrative proceeding under this title or any Federal court civil action, if such service is made in accordance with the appropriate Federal rules for service of process.

(d) TERM OF REGISTRATION.—Unless suspended or revoked, a registration under this section shall be valid for 2 years.

(e) APPLICATION FEE.—The Secretary shall require a foreign labor recruiter that submits an application for registration under this section to pay a reasonable fee, sufficient to cover the full costs of carrying out the registration activities under this subtitle.

(f) NOTIFICATION.—

(1) EMPLOYER NOTIFICATION.—

(A) IN GENERAL.—Not less frequently than once every year, an employer of H–2A workers shall provide the Secretary with the names and addresses of all foreign labor recruiters engaged to perform foreign labor recruiting activity on behalf of the employer, whether the foreign labor recruiter is to receive any economic compensation for such services, and, if so, the identity of the person or entity who is paying for the services.

(B) AGREEMENT TO COOPERATE.—In addition to the requirements of subparagraph (A), the employer shall—

(i) provide to the Secretary the identity of any foreign labor recruiter whom the employer has reason to believe is engaging in foreign labor recruiting activities that do not comply with this subtitle; and

(ii) promptly respond to any request by the Secretary for information regarding the identity of a foreign labor recruiter with whom the employer has a contract or other agreement.

(2) FOREIGN LABOR RECRUITER NOTIFICATION.—A registered foreign labor recruiter shall notify the Secretary, not less frequently than once every year, of the identity of any subcontractee, agent, or foreign labor recruiter employee involved in any foreign labor recruiting activity for, or on behalf of, the foreign labor recruiter.

(g) ADDITIONAL RESPONSIBILITIES OF THE SECRETARY OF STATE.—

(1) LISTS.—The Secretary of State, in consultation with the Secretary of Labor shall maintain and make publicly available in written form and on the websites of United States embassies in the official language of that country, and on websites maintained by the Secretary of Labor, regularly updated lists—

(A) of foreign labor recruiters who hold valid registrations under this section, including—

(i) the name and address of the foreign labor recruiter;

(ii) the countries in which such recruiters conduct recruitment;

(iii) the employers for whom recruiting is conducted;

(iv) the occupations that are the subject of recruitment;

(v) the States where recruited workers are employed; and

(vi) the name and address of the registered agent in the United States who is authorized to accept service of process on behalf of the foreign labor recruiter; and

(B) of foreign labor recruiters whose registration the Secretary has revoked.

(2) PERSONNEL.—The Secretary of State shall ensure that each United States diplomatic mission is staffed with a person who shall be responsible for receiving information from members of the public regarding potential violations of the requirements applicable to registered foreign labor recruiters and ensuring that such information is conveyed to the Secretary of Labor for evaluation and initiation of an enforcement action, if appropriate.

(3) VISA APPLICATION PROCEDURES.—The Secretary shall ensure that consular officers issuing visas to nonimmigrants under section 101(a)(1)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 11001(a)(1)(H)(ii)(a))—

(A) provide to and review with the applicant, in the applicant's language (or a language the applicant understands), a copy of the information and resources pamphlet required by section 202 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (8 U.S.C. 1375b);

(B) ensure that the applicant has a copy of the approved job offer or work contract;

(C) note in the visa application file whether the foreign labor recruiter has a valid registration under this section; and

(D) if the foreign labor recruiter holds a valid registration, review and include in the visa application file, the foreign labor recruiter's disclosures required by subsection (c)(3).

(4) DATA.—The Secretary of State shall make publicly available online, on an annual basis, data disclosing the gender, country of origin (and State, county, or province, if available), age, wage, level of training, and occupational classification, disaggregated by State, of nonimmigrant workers described in section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act.

SEC. 252. ENFORCEMENT.

(a) DENIAL OR REVOCATION OF REGISTRATION.—

(1) GROUNDS FOR DENIAL OR REVOCATION.—The Secretary shall deny an application for registration, or revoke a registration, if the Secretary determines that the foreign labor recruiter, or any agent or subcontractee of such foreign labor recruiter—

(A) knowingly made a material misrepresentation in the registration application;

(B) materially failed to comply with one or more of the attestations provided under section 251(c); or

(C) is not the real party in interest.

(2) NOTICE.—Prior to denying an application for registration or revoking a registration under this subsection, the Secretary shall provide written notice of the intent to deny or revoke the registration to the foreign labor recruiter. Such notice shall—

(A) articulate with specificity all grounds for denial or revocation; and

(B) provide the foreign labor recruiter with not less than 60 days to respond.

(3) RE-REGISTRATION.—A foreign labor recruiter whose registration was revoked under subsection (a) may re-register if the foreign labor recruiter demonstrates to the Secretary's satisfaction that the foreign labor recruiter has not violated this subtitle in the 5 years preceding the date an application for registration is filed and has taken sufficient steps to prevent future violations of this subtitle.

(b) ADMINISTRATIVE ENFORCEMENT.—

(1) COMPLAINT PROCESS.—

(A) FILING.—A complaint may be filed with the Secretary of Labor, in accordance with the procedures established under section 251(b)(4) not later than 2 years after the earlier of—

(i) the date of the last action which constituted the conduct that is the subject of the complaint took place; or

(ii) the date on which the aggrieved party had actual knowledge of such conduct.

(B) DECISION AND PENALTIES.—If the Secretary of Labor finds, after notice and an opportunity for a hearing, that a foreign labor recruiter failed to comply with any of the requirements of this subtitle, the Secretary of Labor may—

(i) levy a fine against the foreign labor recruiter in an amount not more than—

(I) $10,000 per violation; and

(II) $25,000 per violation, upon the third violation;

(ii) order the forfeiture (or partial forfeiture) of the bond and release of as much of the bond as the Secretary determines is necessary for the worker to recover prohibited recruitment fees;

(iii) refuse to issue or renew a registration, or revoke a registration; or

(iv) disqualify the foreign labor recruiter from registration for a period of up to 5 years, or in the case of a subsequent finding involving willful or multiple material violations, permanently disqualify the foreign labor recruiter from registration.

(2) AUTHORITY TO ENSURE COMPLIANCE.—The Secretary of Labor is authorized to take other such actions, including issuing subpoenas and seeking appropriate injunctive relief, as may be necessary to assure compliance with the terms and conditions of this subtitle.

(3) STATUTORY CONSTRUCTION.—Nothing in this subsection may be construed as limiting the authority of the Secretary of Labor to conduct an investigation—

(A) under any other law, including any law affecting migrant and seasonal agricultural workers; or

(B) in the absence of a complaint.

(c) CIVIL ACTION.—

(1) IN GENERAL.—The Secretary of Labor or any person aggrieved by a violation of this subtitle may bring a civil action against any foreign labor recruiter, or any employer that does not meet the requirements under subsection (d)(1), in any court of competent jurisdiction—

(A) to seek remedial action, including injunctive relief; and

(B) for damages in accordance with the provisions of this subsection.

(2) AWARD FOR CIVIL ACTION FILED BY AN INDIVIDUAL.—

(A) IN GENERAL.—If the court finds in a civil action filed by an individual under this section that the defendant has violated any provision of this subtitle, the court may award—

(i) damages, up to and including an amount equal to the amount of actual damages, and statutory damages of up to $1,000 per plaintiff per violation, or other equitable relief, except that with respect to statutory damages—

(I) multiple infractions of a single provision of this subtitle (or of a regulation under this subtitle) shall constitute only 1 violation for

purposes of this subsection to determine the amount of statutory damages due a plaintiff; and

(II) if such complaint is certified as a class action the court may award—

(aa) damages up to an amount equal to the amount of actual damages; and

(bb) statutory damages of not more than the lesser of up to $1,000 per class member per violation, or up to $500,000; and other equitable relief;

(ii) reasonable attorneys' fees and costs; and

(iii) such other and further relief as necessary to effectuate the purposes of this subtitle.

(B) CRITERIA.—In determining the amount of statutory damages to be awarded under subparagraph (A), the court is authorized to consider whether an attempt was made to resolve the issues in dispute before the resort to litigation.

(C) BOND.—To satisfy the damages, fees, and costs found owing under this paragraph, the Secretary shall release as much of the bond held pursuant to section 251(c)(4) as necessary.

(3) SUMS RECOVERED IN ACTIONS BY THE SECRETARY OF LABOR.—

(A) ESTABLISHMENT OF ACCOUNT.—There is established in the general fund of the Treasury a separate account, which shall be known as the "H–2A Foreign Labor Recruiter Compensation Account". Notwithstanding any other provisions of law, there shall be deposited as offsetting receipts into the account, all sums recovered in an action by the Secretary of Labor under this subsection.

(B) USE OF FUNDS.—Amounts deposited into the H–2A Foreign Labor Recruiter Compensation Account and shall be paid directly to each worker affected. Any such sums not paid to a worker because of inability to do so within a period of 5 years following the date such funds are deposited into the account shall remain available to the Secretary until expended. The Secretary may transfer all or a portion of such remaining sums to appropriate agencies to support the enforcement of the laws prohibiting the trafficking and exploitation of persons or programs that aid trafficking victims.

(d) EMPLOYER SAFE HARBOR.—

(1) IN GENERAL.—An employer that hires workers referred by a foreign labor recruiter with a valid registration at the time of hiring shall not be held jointly liable for a violation committed solely by a foreign labor recruiter under this subtitle—

(A) in any administrative action initiated by the Secretary concerning such violation; or

(B) in any Federal or State civil court action filed against the foreign labor recruiter by or on behalf of such workers or other aggrieved party under this subtitle.

(2) CLARIFICATION.—Nothing in this subtitle shall be construed to prohibit an aggrieved party or parties from bringing a civil action for violations of this subtitle or any other Federal or State law against any employer who hired workers referred by a foreign labor recruiter—

(A) without a valid registration at the time of hire; or

(B) with a valid registration if the employer knew or learned of the violation and failed to report such violation to the Secretary.

(e) PAROLE TO PURSUE RELIEF.—If other immigration relief is not available, the Secretary of Homeland Security may grant parole to permit an individual to remain legally in the United States for time sufficient to fully and effectively participate in all legal proceedings related to any action taken pursuant to subsection (b) or (c).

(f) WAIVER OF RIGHTS.—Agreements by employees purporting to waive or to modify their rights under this subtitle shall be void as contrary to public policy.

(g) LIABILITY FOR AGENTS.—Foreign labor recruiters shall be subject to the provisions of this section for violations committed by the foreign labor recruiter's agents or subcontractees of any level in relation to their foreign labor recruiting activity to the same extent as if the foreign labor recruiter had committed the violation.

SEC. 253. APPROPRIATIONS.

There is authorized to be appropriated such sums as may be necessary for the Secretary of Labor and Secretary of State to carry out the provisions of this subtitle.

SEC. 254. DEFINITIONS.

For purposes of this subtitle:

(1) FOREIGN LABOR RECRUITER.—The term "foreign labor recruiter" means any person who performs foreign labor recruiting activity in exchange for money or other valuable consideration paid or promised to be paid, to recruit individuals to work as nonimmigrant workers described in section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)), including any person who performs foreign labor recruiting activity wholly outside of the United States. Such term does not include any entity of the United States Government or an employer, or employee of an employer, who engages in foreign labor recruiting activity solely to find employees for that employer's own use, and without the participation of any other foreign labor recruiter.

(2) FOREIGN LABOR RECRUITING ACTIVITY.—The term "foreign labor recruiting activity" means recruiting, soliciting, or related activities with respect to an individual who resides outside of the United States in furtherance of employment in the United States, including when such activity occurs wholly outside of the United States.

(3) RECRUITMENT FEES.—The term "recruitment fees" has the meaning given to such term under section 22.1702 of title 22 of the Code of Federal Regulations, as in effect on the date of enactment of this Act.

(4) PERSON.—The term "person" means any natural person or any corporation, company, firm, partnership, joint stock company or association or other organization or entity (whether organized under law or not), including municipal corporations.

TITLE III—ELECTRONIC VERIFICATION OF EMPLOYMENT ELIGIBILITY

SEC. 301. ELECTRONIC EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.

(a) IN GENERAL.—Chapter 8 of title II of the Immigration and Nationality Act (8 U.S.C. 1321 et seq.) is amended by inserting after section 274D the following:

"SEC. 274E. REQUIREMENTS FOR THE ELECTRONIC VERIFICATION OF EMPLOYMENT ELIGIBILITY.

"(a) EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.—

"(1) IN GENERAL.—The Secretary of Homeland Security (referred to in this section as the 'Secretary') shall establish and administer an electronic verification system (referred to in this section as the 'System'), patterned on the E–Verify Program described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) (as in effect on the day before the effective date described in section 303(a)(4) of the Farm Workforce Modernization Act of 2019), and using the employment eligibility confirmation system established under section 404 of such Act (8 U.S.C. 1324a note) (as so in effect) as a foundation, through which the Secretary shall—

"(A) respond to inquiries made by persons or entities seeking to verify the identity and employment authorization of individuals that such persons or entities seek to hire, or to recruit or refer for a fee, for employment in the United States; and

"(B) maintain records of the inquiries that were made, and of verifications provided (or not provided) to such persons or entities as evidence of compliance with the requirements of this section.

"(2) INITIAL RESPONSE DEADLINE.—The System shall provide confirmation or a tentative nonconfirmation of an individual's identity and employment authorization as soon as practicable, but not later than 3 calendar days after the initial inquiry.

"(3) GENERAL DESIGN AND OPERATION OF SYSTEM.—The Secretary shall design and operate the System—

"(A) using responsive web design and other technologies to maximize its ease of use and accessibility for users on a variety of electronic devices and screen sizes, and in remote locations;

"(B) to maximize the accuracy of responses to inquiries submitted by persons or entities;

"(C) to maximize the reliability of the System and to register each instance when the System is unable to receive inquiries;

"(D) to protect the privacy and security of the personally identifiable information maintained by or submitted to the System;

"(E) to provide direct notification of an inquiry to an individual with respect to whom the inquiry is made, including the results of such inquiry, and information related to the process for challenging the results; and

"(F) to maintain appropriate administrative, technical, and physical safeguards to prevent misuse of the System and unfair immigration-related employment practices.

"(4) MEASURES TO PREVENT IDENTITY THEFT AND OTHER FORMS OF FRAUD.—To prevent identity theft and other forms of fraud, the Secretary shall design and operate the System with the following attributes:

"(A) PHOTO MATCHING TOOL.—The System shall display the digital photograph of the individual, if any, that corresponds to the document presented by an individual to establish identity and employment authorization so that the person or entity that makes an inquiry can compare the photograph displayed by the System to the photograph on the document presented by the individual.

"(B) INDIVIDUAL MONITORING AND SUSPENSION OF IDENTIFYING INFORMATION.—The System shall enable individuals to establish user accounts, after authentication of an individual's identity, that would allow an individual to—

"(i) confirm the individual's own employment authorization;

"(ii) receive electronic notification when the individual's social security account number or other personally identifying information has been submitted to the System;

"(iii) monitor the use history of the individual's personally identifying information in the System, including the identities of all persons or entities that have submitted such identifying information to the System, the date of each query run, and the System response for each query run;

"(iv) suspend or limit the use of the individual's social security account number or other personally identifying information for purposes of the System; and

"(v) provide notice to the Department of Homeland Security of any suspected identity fraud or other improper use of personally identifying information.

"(C) BLOCKING MISUSED SOCIAL SECURITY ACCOUNT NUMBERS.—

"(i) IN GENERAL.—The Secretary, in consultation with the Commissioner of Social Security (referred to in this section as the 'Commissioner'), shall develop, after publication in the Federal Register and an opportunity for public comment, a process in which social security account numbers that have been identified to be subject to unusual multiple use in the System or that are otherwise suspected or determined to have been compromised by identity fraud or other misuse, shall be blocked from use in the System unless the individual using such number is able to establish, through secure and fair procedures, that the individual is the legitimate holder of the number.

"(ii) NOTICE.—If the Secretary blocks or suspends a social security account number under this subparagraph, the Secretary shall provide notice to the persons or entities that have made inquiries to the System using such account number that the identity and employment authorization of the individual who provided such account number must be re-verified.

"(D) ADDITIONAL IDENTITY AUTHENTICATION TOOL.—The Secretary shall develop, after publication in the Federal Register and an opportunity for public comment, additional security measures to adequately verify the identity of an individual whose identity may not be verified using the photo tool described in subparagraph (A). Such additional security measures—

"(i) shall be kept up-to-date with technological advances; and

"(ii) shall be designed to provide a high level of certainty with respect to identity authentication.

"(E) CHILD-LOCK PILOT PROGRAM.—The Secretary, in consultation with the Commissioner, shall establish a reliable, secure program through which parents or legal guardians may suspend or limit the use of the social security account number or other personally identifying information of a minor under their care for purposes of the System. The Secretary may implement

the program on a limited pilot basis before making it fully available to all individuals.

"(5) RESPONSIBILITIES OF THE COMMISSIONER OF SOCIAL SECURITY.—The Commissioner, in consultation with the Secretary, shall establish a reliable, secure method, which, within the time periods specified in paragraph (2) and subsection (b)(4)(D)(i)(II), compares the name and social security account number provided in an inquiry against such information maintained by the Commissioner in order to validate (or not validate) the information provided by the person or entity with respect to an individual whose identity and employment authorization the person or entity seeks to confirm, the correspondence of the name and number, and whether the individual has presented a social security account number that is not valid for employment. The Commissioner shall not disclose or release social security information (other than such confirmation or nonconfirmation) under the System except as provided under this section or section 205(c)(2)(I) of the Social Security Act (42 U.S.C. 405).

"(6) RESPONSIBILITIES OF THE SECRETARY OF HOMELAND SECURITY.—

"(A) IN GENERAL.—The Secretary of Homeland Security shall establish a reliable, secure method, which, within the time periods specified in paragraph (2) and subsection (b)(4)(D)(i)(II), compares the name and identification or other authorization number (or any other information determined relevant by the Secretary) which are provided in an inquiry against such information maintained or accessed by the Secretary in order to validate (or not validate) the information provided, the correspondence of the name and number, and whether the individual is authorized to be employed in the United States.

"(B) TRAINING.—The Secretary shall provide and regularly update training materials on the use of the System for persons and entities making inquiries.

"(C) AUDIT.—The Secretary shall provide for periodic auditing of the System to detect and prevent misuse, discrimination, fraud, and identity theft, to protect privacy and assess System accuracy, and to preserve the integrity and security of the information in the System.

"(D) NOTICE OF SYSTEM CHANGES.—The Secretary shall provide appropriate notification to persons and entities registered in the System of any change made by the Secretary or the Commissioner related to permitted and prohibited documents, and use of the System.

"(7) RESPONSIBILITIES OF THE SECRETARY OF STATE.—As part of the System, the Secretary of State shall provide to the Secretary of Homeland Security access to passport and visa information as needed to confirm that a passport or passport card presented under subsection (b)(3)(A)(i) confirms the employment authorization and identity of the individual presenting such document, and that a passport, passport card, or visa photograph matches the Secretary of State's records, and shall provide such assistance as the Secretary of Homeland Security may request in order to resolve tentative nonconfirmations or final nonconfirmations relating to such information.

"(8) UPDATING INFORMATION.—The Commissioner, the Secretary of Homeland Security, and the Secretary of State shall update records in their custody in a manner that promotes maximum accuracy of the System and shall provide a process for the prompt correction of erroneous information, including instances in which it is brought to their attention through the secondary verification process under subsection (b)(4)(D).

"(9) MANDATORY AND VOLUNTARY SYSTEM USES.—

"(A) MANDATORY USERS.—Except as otherwise provided under Federal or State law, such as sections 302 and 303 of the Farm Workforce Modernization Act of 2019, nothing in this section shall be construed as requiring the use of the System by any person or entity hiring, recruiting, or referring for a fee, an individual for employment in the United States.

"(B) VOLUNTARY USERS.—Beginning after the date that is 30 days after the date on which final rules are published under section 309(a) of the Farm Workforce Modernization Act of 2019, a person or entity may use the System on a voluntary basis to seek verification of the identity and employment authorization of individuals the person or entity is hiring, recruiting, or referring for a fee for employment in the United States

"(C) PROCESS FOR NON-USERS.—The employment verification process for any person or entity hiring, recruiting, or referring for a fee, an individual

for employment in the United States shall be governed by section 274A(b) unless the person or entity—

"(i) is required by Federal or State law to use the System; or

"(ii) has opted to use the System voluntarily in accordance with subparagraph (B).

"(10) NO FEE FOR USE.—The Secretary may not charge a fee to an individual, person, or entity related to the use of the System.

"(b) NEW HIRES, RECRUITMENT, AND REFERRAL.—Notwithstanding section 274A(b), the requirements referred to in paragraphs (1)(B) and (3) of section 274A(a) are, in the case of a person or entity that uses the System for the hiring, recruiting, or referring for a fee, an individual for employment in the United States, the following:

"(1) INDIVIDUAL ATTESTATION OF EMPLOYMENT AUTHORIZATION.—During the period beginning on the date on which an offer of employment is accepted and ending on the date of hire, the individual shall attest, under penalty of perjury on a form designated by the Secretary, that the individual is authorized to be employed in the United States by providing on such form—

"(A) the individual's name and date of birth;

"(B) the individual's social security account number (unless the individual has applied for and not yet been issued such a number);

"(C) whether the individual is—

"(i) a citizen or national of the United States;

"(ii) an alien lawfully admitted for permanent residence; or

"(iii) an alien who is otherwise authorized by the Secretary to be hired, recruited, or referred for employment in the United States; and

"(D) if the individual does not attest to United States citizenship or nationality, such identification or other authorization number established by the Department of Homeland Security for the alien as the Secretary may specify.

"(2) EMPLOYER ATTESTATION AFTER EXAMINATION OF DOCUMENTS.—Not later than 3 business days after the date of hire, the person or entity shall attest, under penalty of perjury on the form designated by the Secretary for purposes of paragraph (1), that it has verified that the individual is not an unauthorized alien by—

"(A) obtaining from the individual the information described in paragraph (1) and recording such information on the form;

"(B) examining—

"(i) a document described in paragraph (3)(A); or

"(ii) a document described in paragraph (3)(B) and a document described in paragraph (3)(C); and

"(C) attesting that the information recorded on the form is consistent with the documents examined.

"(3) ACCEPTABLE DOCUMENTS.—

"(A) DOCUMENTS ESTABLISHING EMPLOYMENT AUTHORIZATION AND IDENTITY.—A document described in this subparagraph is an individual's—

"(i) United States passport or passport card;

"(ii) permanent resident card that contains a photograph;

"(iii) foreign passport containing temporary evidence of lawful permanent residence in the form of an official I–551 (or successor) stamp from the Department of Homeland Security or a printed notation on a machine-readable immigrant visa;

"(iv) unexpired employment authorization card that contains a photograph;

"(v) in the case of a nonimmigrant alien authorized to engage in employment for a specific employer incident to status, a foreign passport with Form I–94, Form I–94A, or other documentation as designated by the Secretary specifying the alien's nonimmigrant status as long as such status has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified in the documentation;

"(vi) passport from the Federated States of Micronesia or the Republic of the Marshall Islands with Form I–94, Form I–94A, or other documentation as designated by the Secretary, indicating nonimmigrant admission under the Compact of Free Association Between the United States and the Federated States of Micronesia or the Republic of the Marshall Islands; or

"(vii) other document designated by the Secretary, by notice published in the Federal Register, if the document—

"(I) contains a photograph of the individual, biometric identification data, and other personal identifying information relating to the individual;

"(II) is evidence of authorization for employment in the United States; and

"(III) contains security features to make it resistant to tampering, counterfeiting, and fraudulent use.

"(B) DOCUMENTS ESTABLISHING EMPLOYMENT AUTHORIZATION.—A document described in this subparagraph is—

"(i) an individual's social security account number card (other than such a card which specifies on the face that the issuance of the card does not authorize employment in the United States); or

"(ii) a document establishing employment authorization that the Secretary determines, by notice published in the Federal Register, to be acceptable for purposes of this subparagraph, provided that such documentation contains security features to make it resistant to tampering, counterfeiting, and fraudulent use.

"(C) DOCUMENTS ESTABLISHING IDENTITY.—A document described in this subparagraph is—

"(i) an individual's driver's license or identification card if it was issued by a State or one of the outlying possessions of the United States and contains a photograph and personal identifying information relating to the individual;

"(ii) an individual's unexpired United States military identification card;

"(iii) an individual's unexpired Native American tribal identification document issued by a tribal entity recognized by the Bureau of Indian Affairs;

"(iv) in the case of an individual under 18 years of age, a parent or legal guardian's attestation under penalty of law as to the identity and age of the individual; or

"(v) a document establishing identity that the Secretary determines, by notice published in the Federal Register, to be acceptable for purposes of this subparagraph, if such documentation contains a photograph of the individual, biometric identification data, and other personal identifying information relating to the individual, and security features to make it resistant to tampering, counterfeiting, and fraudulent use.

"(D) AUTHORITY TO PROHIBIT USE OF CERTAIN DOCUMENTS.—If the Secretary finds that any document or class of documents described in subparagraph (A), (B), or (C) does not reliably establish identity or employment authorization or is being used fraudulently to an unacceptable degree, the Secretary may, by notice published in the Federal Register, prohibit or place conditions on the use of such document or class of documents for purposes of this section.

"(4) USE OF THE SYSTEM TO SCREEN IDENTITY AND EMPLOYMENT AUTHORIZATION.—

"(A) IN GENERAL.—In the case of a person or entity that uses the System for the hiring, recruiting, or referring for a fee an individual for employment in the United States, during the period described in subparagraph (B), the person or entity shall submit an inquiry through the System described in subsection (a) to seek verification of the identity and employment authorization of the individual.

"(B) VERIFICATION PERIOD.—

"(i) IN GENERAL.—Except as provided in clause (ii), and subject to subsection (d), the verification period shall begin on the date of hire and end on the date that is 3 business days after the date of hire, or such other reasonable period as the Secretary may prescribe.

"(ii) SPECIAL RULE.—In the case of an alien who is authorized to be employed in the United States and who provides evidence from the Social Security Administration that the alien has applied for a social security account number, the verification period shall end 3 business days after the alien receives the social security account number.

"(C) CONFIRMATION.—If a person or entity receives confirmation of an individual's identity and employment authorization, the person or entity shall record such confirmation on the form designated by the Secretary for purposes of paragraph (1).

"(D) TENTATIVE NONCONFIRMATION.—

"(i) IN GENERAL.—In cases of tentative nonconfirmation, the Secretary shall provide, in consultation with the Commissioner, a process for—

"(I) an individual to contest the tentative nonconfirmation not later than 10 business days after the date of the receipt of the notice described in clause (ii); and

"(II) the Secretary to issue a confirmation or final nonconfirmation of an individual's identity and employment authorization not later than 30 calendar days after the Secretary receives notice from the individual contesting a tentative nonconfirmation.

"(ii) NOTICE.—If a person or entity receives a tentative nonconfirmation of an individual's identity or employment authorization, the person or entity shall, not later than 3 business days after receipt, notify such individual in writing in a language understood by the individual and on a form designated by the Secretary, that shall include a description of the individual's right to contest the tentative nonconfirmation. The person or entity shall attest, under penalty of perjury, that the person or entity provided (or attempted to provide) such notice to the individual, and the individual shall acknowledge receipt of such notice in a manner specified by the Secretary.

"(iii) NO CONTEST.—

"(I) IN GENERAL.—A tentative nonconfirmation shall become final if, upon receiving the notice described in clause (ii), the individual—

"(aa) refuses to acknowledge receipt of such notice;

"(bb) acknowledges in writing, in a manner specified by the Secretary, that the individual will not contest the tentative nonconfirmation; or

"(cc) fails to contest the tentative nonconfirmation within the 10-business-day period beginning on the date the individual received such notice.

"(II) RECORD OF NO CONTEST.—The person or entity shall indicate in the System that the individual did not contest the tentative nonconfirmation and shall specify the reason the tentative nonconfirmation became final under subclause (I).

"(III) EFFECT OF FAILURE TO CONTEST.—An individual's failure to contest a tentative nonconfirmation shall not be considered an admission of any fact with respect to any violation of this Act or any other provision of law.

"(iv) CONTEST.—

"(I) IN GENERAL.—An individual may contest a tentative nonconfirmation by using the process for secondary verification under clause (i), not later than 10 business days after receiving the notice described in clause (ii). Except as provided in clause (iii), the nonconfirmation shall remain tentative until a confirmation or final nonconfirmation is provided by the System.

"(II) PROHIBITION ON TERMINATION.—In no case shall a person or entity terminate employment or take any adverse employment action against an individual for failure to obtain confirmation of the individual's identity and employment authorization until the person or entity receives a notice of final nonconfirmation from the System. Nothing in this subclause shall prohibit an employer from terminating the employment of the individual for any other lawful reason.

"(III) CONFIRMATION OR FINAL NONCONFIRMATION.—The Secretary, in consultation with the Commissioner, shall issue notice of a confirmation or final nonconfirmation of the individual's identity and employment authorization not later than 30 calendar days after the date the Secretary receives notice from the individual contesting the tentative nonconfirmation.

"(E) FINAL NONCONFIRMATION.—

"(i) NOTICE.—If a person or entity receives a final nonconfirmation of an individual's identity or employment authorization, the person or entity shall, not later than 3 business days after receipt, notify such individual of the final nonconfirmation in writing, on a form designated by the Secretary, which shall include information regarding the individual's right to appeal the final nonconfirmation as provided under subparagraph (F). The person or entity shall attest, under penalty of perjury, that the person or entity provided (or attempted to provide) the notice to the individual, and the individual shall acknowledge receipt of such notice in a manner designated by the Secretary.

"(ii) TERMINATION OR NOTIFICATION OF CONTINUED EMPLOYMENT.—If a person or entity receives a final nonconfirmation regarding an individual, the person or entity may terminate employment of the individual. If the person or entity does not terminate such employment pending appeal of the final nonconfirmation, the person or entity shall notify the Secretary of such fact through the System. Failure to notify the Secretary in accordance with this clause shall be deemed a violation of section 274A(a)(1)(A).

"(iii) PRESUMPTION OF VIOLATION FOR CONTINUED EMPLOYMENT.—If a person or entity continues to employ an individual after receipt of a final nonconfirmation, there shall be a rebuttable presumption that the person or entity has violated paragraphs (1)(A) and (a)(2) of section 274A(a).

"(F) APPEAL OF FINAL NONCONFIRMATION.—

"(i) ADMINISTRATIVE APPEAL.—The Secretary, in consultation with the Commissioner, shall develop a process by which an individual may seek administrative review of a final nonconfirmation. Such process shall—

"(I) permit the individual to submit additional evidence establishing identity or employment authorization;

"(II) ensure prompt resolution of an appeal (but in no event shall there be a failure to respond to an appeal within 30 days); and

"(III) permit the Secretary to impose a civil money penalty (not to exceed $500) on an individual upon finding that an appeal was frivolous or filed for purposes of delay.

"(ii) COMPENSATION FOR LOST WAGES RESULTING FROM GOVERNMENT ERROR OR OMISSION.—

"(I) IN GENERAL.—If, upon consideration of an appeal of a final nonconfirmation, the Secretary determines that the final nonconfirmation was issued in error, the Secretary shall further determine whether the final nonconfirmation was the result of government error or omission. If the Secretary determines that the final nonconfirmation was solely the result of government error or omission and the individual was terminated from employment, the Secretary shall compensate the individual for lost wages.

"(II) CALCULATION OF LOST WAGES.—Lost wages shall be calculated based on the wage rate and work schedule that were in effect prior to the individual's termination. The individual shall be compensated for lost wages beginning on the first scheduled work day after employment was terminated and ending 90 days after completion of the administrative review process described in this subparagraph or the day the individual is reinstated or obtains other employment, whichever occurs first.

"(III) LIMITATION ON COMPENSATION.—No compensation for lost wages shall be awarded for any period during which the individual was not authorized for employment in the United States.

"(IV) SOURCE OF FUNDS.—There is established in the general fund of the Treasury, a separate account which shall be known as the 'Electronic Verification Compensation Account'. Fees collected under subsections (f) and (g) shall be deposited in the Electronic Verification Compensation Account and shall remain available for purposes of providing compensation for lost wages under this subclause.

"(iii) JUDICIAL REVIEW.—Not later than 30 days after the dismissal of an appeal under this subparagraph, an individual may seek judicial review of such dismissal in the United States District Court in the jurisdiction in which the employer resides or conducts business.

"(5) RETENTION OF VERIFICATION RECORDS.—

"(A) IN GENERAL.—After completing the form designated by the Secretary in accordance with paragraphs (1) and (2), the person or entity shall retain the form in paper, microfiche, microfilm, electronic, or other format deemed acceptable by the Secretary, and make it available for inspection by officers of the Department of Homeland Security, the Department of Justice, or the Department of Labor during the period beginning on the date the verification is completed and ending on the later of—

"(i) the date that is 3 years after the date of hire; or

"(ii) the date that is 1 year after the date on which the individual's employment is terminated.

"(B) COPYING OF DOCUMENTATION PERMITTED.—Notwithstanding any other provision of law, a person or entity may copy a document presented by an individual pursuant to this section and may retain the copy, but only for the purpose of complying with the requirements of this section.

"(c) REVERIFICATION OF PREVIOUSLY HIRED INDIVIDUALS.—

"(1) MANDATORY REVERIFICATION.—In the case of a person or entity that uses the System for the hiring, recruiting, or referring for a fee an individual for employment in the United States, the person or entity shall submit an inquiry using the System to verify the identity and employment authorization of—

"(A) an individual with a limited period of employment authorization, within 3 business days before the date on which such employment authorization expires; and

"(B) an individual, not later than 10 days after receiving a notification from the Secretary requiring the verification of such individual pursuant to subsection (a)(4)(C).

"(2) REVERIFICATION PROCEDURES.—The verification procedures under subsection (b) shall apply to reverifications under this subsection, except that employers shall—

"(A) use a form designated by the Secretary for purposes of this paragraph; and

"(B) retain the form in paper, microfiche, microfilm, electronic, or other format deemed acceptable by the Secretary, and make it available for inspection by officers of the Department of Homeland Security, the Department of Justice, or the Department of Labor during the period beginning on the date the reverification commences and ending on the later of—

"(i) the date that is 3 years after the date of reverification; or

"(ii) the date that is 1 year after the date on which the individual's employment is terminated.

"(3) LIMITATION ON REVERIFICATION.—Except as provided in paragraph (1), a person or entity may not otherwise reverify the identity and employment authorization of a current employee, including an employee continuing in employment.

"(d) GOOD FAITH COMPLIANCE.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, a person or entity that uses the System is considered to have complied with the requirements of this section notwithstanding a technical failure of the System, or other technical or procedural failure to meet such requirement if there was a good faith attempt to comply with the requirement.

"(2) EXCEPTION FOR FAILURE TO CORRECT AFTER NOTICE.—Paragraph (1) shall not apply if—

"(A) the failure is not de minimis;

"(B) the Secretary has provided notice to the person or entity of the failure, including an explanation as to why it is not de minimis;

"(C) the person or entity has been provided a period of not less than 30 days (beginning after the date of the notice) to correct the failure; and

"(D) the person or entity has not corrected the failure voluntarily within such period.

"(3) EXCEPTION FOR PATTERN OR PRACTICE VIOLATORS.—Paragraph (1) shall not apply to a person or entity that has engaged or is engaging in a pattern or practice of violations of paragraph (1)(A) or (2) of section 274A(a).

"(4) DEFENSE.—In the case of a person or entity that uses the System for the hiring, recruiting, or referring for a fee an individual for employment in the United States, the person or entity shall not be liable to a job applicant, an employee, the Federal Government, or a State or local government, under Federal, State, or local criminal or civil law, for any employment-related action taken

with respect to an employee in good-faith reliance on information provided by the System. Such person or entity shall be deemed to have established compliance with its obligations under this section, absent a showing by the Secretary, by clear and convincing evidence, that the employer had knowledge that an employee is an unauthorized alien.

"(e) LIMITATIONS.—

"(1) NO NATIONAL IDENTIFICATION CARD.—Nothing in this section shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.

"(2) USE OF RECORDS.—Notwithstanding any other provision of law, nothing in this section shall be construed to permit or allow any department, bureau, or other agency of the United States Government to utilize any information, database, or other records assembled under this section for any purpose other than the verification of identity and employment authorization of an individual or to ensure the secure, appropriate, and non-discriminatory use of the System.

"(f) PENALTIES.—

"(1) IN GENERAL.—Except as provided in this subsection, the provisions of subsections (e) through (g) of section 274A shall apply with respect to compliance with the provisions of this section and penalties for non-compliance for persons or entitles that use the System.

"(2) CEASE AND DESIST ORDER WITH CIVIL MONEY PENALTIES FOR HIRING, RECRUITING, AND REFERRAL VIOLATIONS.—Notwithstanding the civil money penalties set forth in section 274A(e)(4), with respect to a violation of paragraph (1)(A) or (2) of section 274A(a) by a person or entity that has hired, recruited, or referred for a fee, an individual for employment in the United States, a cease and desist order—

"(A) shall require the person or entity to pay a civil penalty in an amount, subject to subsection (d), of—

"(i) not less than $2,500 and not more than $5,000 for each unauthorized alien with respect to whom a violation of either such subsection occurred;

"(ii) not less than $5,000 and not more than $10,000 for each such alien in the case of a person or entity previously subject to one order under this paragraph; or

"(iii) not less than $10,000 and not more than $25,000 for each such alien in the case of a person or entity previously subject to more than one order under this paragraph; and

"(B) may require the person or entity to take such other remedial action as appropriate.

"(3) ORDER FOR CIVIL MONEY PENALTY FOR VIOLATIONS.—With respect to a violation of section 274A(a)(1)(B), the order under this paragraph shall require the person or entity to pay a civil penalty in an amount, subject to paragraphs (4), (5), and (6), of not less than $1,000 and not more than $25,000 for each individual with respect to whom such violation occurred. Failure by a person or entity to utilize the System as required by law or providing information to the System that the person or entity knows or reasonably believes to be false, shall be treated as a violation of section 274A(a)(1)(A).

"(4) EXEMPTION FROM PENALTY FOR GOOD FAITH VIOLATION.—

"(A) IN GENERAL.—A person or entity that uses the System is presumed to have acted with knowledge for purposes of paragraphs (1)(A) and (2) of section 274A(a) if the person or entity fails to make an inquiry to verify the identity and employment authorization of the individual through the System.

"(B) GOOD FAITH EXEMPTION.—In the case of imposition of a civil penalty under paragraph (2)(A) with respect to a violation of paragraph (1)(A) or (2) of section 274A(a) for hiring or continuation of employment or recruitment or referral by a person or entity, and in the case of imposition of a civil penalty under paragraph (3) for a violation of section 274A(a)(1)(B) for hiring or recruitment or referral by a person or entity, the penalty otherwise imposed may be waived or reduced if the person or entity establishes that the person or entity acted in good faith.

"(5) MITIGATION ELEMENTS.—For purposes of paragraphs (2)(A) and (3), when assessing the level of civil money penalties, in addition to the good faith of the person or entity being charged, due consideration shall be given to the size of the business, the seriousness of the violation, whether or not the individual was an unauthorized alien, and the history of previous violations.

"(6) CRIMINAL PENALTY.—Notwithstanding section 274A(f)(1) and the provisions of any other Federal law relating to fine levels, any person or entity that is required to comply with the provisions of this section and that engages in a pattern or practice of violations of paragraph (1) or (2) of section 274A(a), shall be fined not more than $5,000 for each unauthorized alien with respect to whom such a violation occurs, imprisoned for not more than 18 months, or both.

"(7) ELECTRONIC VERIFICATION COMPENSATION ACCOUNT.—Civil money penalties collected under this subsection shall be deposited in the Electronic Verification Compensation Account for the purpose of compensating individuals for lost wages as a result of a final nonconfirmation issued by the System that was based on government or employer error or omission, as set forth in subsection (b)(4)(F)(ii)(IV).

"(8) DEBARMENT.—

"(A) IN GENERAL.—If a person or entity is determined by the Secretary to be a repeat violator of paragraph (1)(A) or (2) of section 274A(a) or is convicted of a crime under section 274A, such person or entity may be considered for debarment from the receipt of Federal contracts, grants, or cooperative agreements in accordance with the debarment standards and pursuant to the debarment procedures set forth in the Federal Acquisition Regulation.

"(B) NO CONTRACT, GRANT, AGREEMENT.—If the Secretary or the Attorney General wishes to have a person or entity considered for debarment in accordance with this paragraph, and such a person or entity does not hold a Federal contract, grant or cooperative agreement, the Secretary or Attorney General shall refer the matter to the Administrator of General Services to determine whether to list the person or entity on the List of Parties Excluded from Federal Procurement, and if so, for what duration and under what scope.

"(C) CONTRACT, GRANT, AGREEMENT.—If the Secretary or the Attorney General wishes to have a person or entity considered for debarment in accordance with this paragraph, and such person or entity holds a Federal contract, grant, or cooperative agreement, the Secretary or Attorney General shall advise all agencies or departments holding a contract, grant, or cooperative agreement with the person or entity of the Government's interest in having the person or entity considered for debarment, and after soliciting and considering the views of all such agencies and departments, the Secretary or Attorney General may refer the matter to the appropriate lead agency to determine whether to list the person or entity on the List of Parties Excluded from Federal Procurement, and if so, for what duration and under what scope.

"(D) REVIEW.—Any decision to debar a person or entity in accordance with this subsection shall be reviewable pursuant to part 9.4 of the Federal Acquisition Regulation.

"(9) PREEMPTION.—The provisions of this section preempt any State or local law, ordinance, policy, or rule, including any criminal or civil fine or penalty structure, relating to the hiring, continued employment, or status verification for employment eligibility purposes, of unauthorized aliens, except that a State, locality, municipality, or political subdivision may exercise its authority over business licensing and similar laws as a penalty for failure to use the System as required under this section.

"(g) UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES AND THE SYSTEM.—

"(1) IN GENERAL.—In addition to the prohibitions on discrimination set forth in section 274B, it is an unfair immigration-related employment practice for a person or entity, in the course of utilizing the System—

"(A) to use the System for screening an applicant prior to the date of hire;

"(B) to terminate the employment of an individual or take any adverse employment action with respect to that individual due to a tentative nonconfirmation issued by the System;

"(C) to use the System to screen any individual for any purpose other than confirmation of identity and employment authorization as provided in this section;

"(D) to use the System to verify the identity and employment authorization of a current employee, including an employee continuing in employment, other than reverification authorized under subsection (c);

"(E) to use the System to discriminate based on national origin or citizenship status;

"(F) to willfully fail to provide an individual with any notice required under this title;

"(G) to require an individual to make an inquiry under the self-verification procedures described in subsection (a)(4)(B) or to provide the results of such an inquiry as a condition of employment, or hiring, recruiting, or referring; or

"(H) to terminate the employment of an individual or take any adverse employment action with respect to that individual based upon the need to verify the identity and employment authorization of the individual as required by subsection (b).

"(2) PREEMPLOYMENT SCREENING AND BACKGROUND CHECK.—Nothing in paragraph (1)(A) shall be construed to preclude a preemployment screening or background check that is required or permitted under any other provision of law.

"(3) CIVIL MONEY PENALTIES FOR DISCRIMINATORY CONDUCT.—Notwithstanding section 274B(g)(2)(B)(iv), the penalties that may be imposed by an administrative law judge with respect to a finding that a person or entity has engaged in an unfair immigration-related employment practice described in paragraph (1) are—

"(A) not less than $1,000 and not more than $4,000 for each individual discriminated against;

"(B) in the case of a person or entity previously subject to a single order under this paragraph, not less than $4,000 and not more than $10,000 for each individual discriminated against; and

"(C) in the case of a person or entity previously subject to more than one order under this paragraph, not less than $6,000 and not more than $20,000 for each individual discriminated against.

"(4) ELECTRONIC VERIFICATION COMPENSATION ACCOUNT.—Civil money penalties collected under this subsection shall be deposited in the Electronic Verification Compensation Account for the purpose of compensating individuals for lost wages as a result of a final nonconfirmation issued by the System that was based on government error or omission, as set forth in subsection (b)(4)(F)(ii)(IV).

"(h) CLARIFICATION.—All rights and remedies provided under any Federal, State, or local law relating to workplace rights, including but not limited to back pay, are available to an employee despite—

"(1) the employee's status as an unauthorized alien during or after the period of employment; or

"(2) the employer's or employee's failure to comply with the requirements of this section.

"(i) DEFINITION.—In this section, the term 'date of hire' means the date on which employment for pay or other remuneration commences.".

(b) CONFORMING AMENDMENT.—The table of contents for the Immigration and Nationality Act is amended by inserting after the item relating to section 274D the following:

"Sec. 274E. Requirements for the electronic verification of employment eligibility.".

SEC. 302. MANDATORY ELECTRONIC VERIFICATION FOR THE AGRICULTURAL INDUSTRY.

(a) IN GENERAL.—The requirements for the electronic verification of identity and employment authorization described in section 274E of the Immigration and Nationality Act, as inserted by section 301 of this Act, shall apply to a person or entity hiring, recruiting, or referring for a fee an individual for agricultural employment in the United States in accordance with the effective dates set forth in subsection (b).

(b) EFFECTIVE DATES.—

(1) HIRING.—Subsection (a) shall apply to a person or entity hiring an individual for agricultural employment in the United States as follows:

(A) With respect to employers having 500 or more employees in the United States on the date of the enactment of this Act, on the date that is 6 months after completion of the application period described in section 101(c).

(B) With respect to employers having 100 or more employees in the United States (but less than 500 such employees) on the date of the enactment of this Act, on the date that is 9 months after completion of the application period described in section 101(c).

(C) With respect to employers having 20 or more employees in the United States (but less than 100 such employees) on the date of the enactment of this Act, on the date that is 12 months after completion of the application period described in section 101(c).

(D) With respect to employers having 1 or more employees in the United States, (but less than 20 such employees) on the date of the enactment of this Act, on the date that is 15 months after completion of the application period described in section 101(c).

(2) RECRUITING AND REFERRING.—Subsection (a) shall apply to a person or entity recruiting or referring an individual for agricultural employment in the United States on the date that is 12 months after completion of the application period described in section 101(c).

(3) TRANSITION RULE.—Except as required under subtitle A of title IV of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) (as in effect on the day before the effective date described in section 303(a)(4)), Executive Order 13465 (8 U.S.C. 1324a note; relating to Government procurement), or any State law requiring persons or entities to use the E–Verify Program described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) (as in effect on the day before the effective date described in section 303(a)(4)), sections 274A and 274B of the Immigration and Nationality Act (8 U.S.C. 1324a and 1324b) shall apply to a person or entity hiring, recruiting, or referring an individual for employment in the United States until the applicable effective date under this subsection.

(4) E–VERIFY VOLUNTARY USERS AND OTHERS DESIRING EARLY COMPLIANCE.—Nothing in this subsection shall be construed to prohibit persons or entities, including persons or entities that have voluntarily elected to participate in the E–Verify Program described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) (as in effect on the day before the effective date described in section 303(a)(4)), from seeking early compliance on a voluntary basis.

(c) RURAL ACCESS TO SECONDARY REVIEW PROCESS.—

(1) IN GENERAL.—The Secretary of Homeland Security and the Commissioner of Social Security shall coordinate with the Secretary of Agriculture to create an alternate process for an individual to contest a tentative nonconfirmation as described in section 274E(b)(4)(D) of the Immigration and Nationality Act, as inserted by section 301 of this Act, by appearing in-person at a local office or service center of the U.S. Department of Agriculture or at a local office of the U.S. Social Security Administration.

(2) STAFFING AND RESOURCES.—The Secretary of Agriculture and Commissioner of Social Security shall ensure that local offices and service centers of the U.S. Department of Agriculture and local offices of the U.S. Social Security Administration are staffed appropriately and have the resources necessary to receive in-person requests for secondary review of a tentative nonconfirmation under paragraph (1) from individuals and to facilitate the secondary review process by serving as a single point of contact between the individual and the Department of Homeland Security and the Social Security Administration.

(d) DOCUMENT ESTABLISHING EMPLOYMENT AUTHORIZATION AND IDENTITY.—In accordance with section 274E(b)(3)(A)(vii) of the Immigration and Nationality Act, as inserted by section 301 of this Act, and not later than 12 months after the completion of the application period described in section 101(c) of this Act, the Secretary of Homeland Security shall recognize documentary evidence of certified agricultural worker status described in section 102(a)(2) of this Act as valid proof of employment authorization and identity for purposes of section 274E(b)(3)(A) of the Immigration and Nationality Act, as inserted by section 301 of this Act.

(e) AGRICULTURAL EMPLOYMENT.—For purposes of this section, the term "agricultural employment" means agricultural labor or services, as defined by section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)), as amended by this Act.

SEC. 303. COORDINATION WITH E–VERIFY PROGRAM.

(a) REPEAL.—

(1) IN GENERAL.—Subtitle A of title IV of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is repealed.

(2) CLERICAL AMENDMENT.—The table of sections, in section 1(d) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, is amended by striking the items relating to subtitle A of title IV.

(3) REFERENCES.—Any reference in any Federal, State, or local law, Executive order, rule, regulation, or delegation of authority, or any document of, or pertaining to, the Department of Homeland Security, Department of Justice, or the Social Security Administration, to the E–Verify Program described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note), or to the employment eligibility confirmation system established under section 404 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note), is deemed to refer to the employment eligibility confirmation system established under section 274E of the Immigration and Nationality Act, as inserted by section 301 of this Act.

(4) EFFECTIVE DATE.—This subsection, and the amendments made by this subsection, shall take effect on the date that is 30 days after the date on which final rules are published under section 309(a).

(b) FORMER E–VERIFY MANDATORY USERS, INCLUDING FEDERAL CONTRACTORS.—Beginning on the effective date in subsection (a)(4), the Secretary of Homeland Security shall require employers required to participate in the E–Verify Program described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) by reason of any Federal, State, or local law, Executive order, rule, regulation, or delegation of authority, including employers required to participate in such program by reason of Federal acquisition laws (and regulations promulgated under those laws, including the Federal Acquisition Regulation), to comply with the requirements of section 274E of the Immigration and Nationality Act, as inserted by section 301 of this Act (and any additional requirements of such Federal acquisition laws and regulation) in lieu of any requirement to participate in the E–Verify Program.

(c) FORMER E–VERIFY VOLUNTARY USERS.—Beginning on the effective date in subsection (a)(4), the Secretary of Homeland Security shall provide for the voluntary compliance with the requirements of section 274E of the Immigration and Nationality Act, as inserted by section 301 of this Act, by employers voluntarily electing to participate in the E–Verify Program described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) before such date.

SEC. 304. FRAUD AND MISUSE OF DOCUMENTS.

Section 1546(b) of title 18, United States Code, is amended—

(1) in paragraph (1), by striking "identification document," and inserting "identification document or document meant to establish employment authorization,";

(2) in paragraph (2), by striking "identification document" and inserting "identification document or document meant to establish employment authorization,"; and

(3) in the matter following paragraph (3) by inserting "or section 274E(b)" after "section 274A(b)".

SEC. 305. TECHNICAL AND CONFORMING AMENDMENTS.

(a) UNLAWFUL EMPLOYMENT OF ALIENS.—Section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) is amended—

(1) in paragraph (1)(B)(ii) of subsection (a), by striking "subsection (b)." and inserting "section 274B."; and

(2) in the matter preceding paragraph (1) of subsection (b), by striking "The requirements referred" and inserting "Except as provided in section 274E, the requirements referred".

(b) UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES.—Section 274B(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1324b(a)(1)) is amended in the matter preceding subparagraph (A), by inserting "including misuse of the verification system as described in section 274E(g)" after "referral for a fee,".

SEC. 306. PROTECTION OF SOCIAL SECURITY ADMINISTRATION PROGRAMS.

(a) FUNDING UNDER AGREEMENT.—Effective for fiscal years beginning on or after October 1, 2020, the Commissioner and the Secretary shall enter into and maintain an agreement which shall—

(1) provide funds to the Commissioner for the full costs of the responsibilities of the Commissioner under section 274E(a)(5) of the Immigration and Nationality Act, as inserted by section 301 of this Act, including—

(A) acquiring, installing, and maintaining technological equipment and systems necessary for the fulfillment of the responsibilities of the Commissioner under such section, but only that portion of such costs that are attributable exclusively to such responsibilities; and

(B) responding to individuals who contest a tentative nonconfirmation or administratively appeal a final nonconfirmation provided by the electronic employment eligibility verification system established under such section;

(2) provide such funds annually in advance of the applicable quarter based on an estimating methodology agreed to by the Commissioner and the Secretary (except in such instances where the delayed enactment of an annual appropriation may preclude such quarterly payments); and

(3) require an annual accounting and reconciliation of the actual costs incurred and the funds provided under the agreement, which shall be reviewed by the Inspectors General of the Social Security Administration and the Department of Homeland Security.

(b) CONTINUATION OF EMPLOYMENT VERIFICATION IN ABSENCE OF TIMELY AGREEMENT.—In any case in which the agreement required under subsection (a) for any fiscal year beginning on or after October 1, 2020, has not been reached as of October 1 of such fiscal year, the latest agreement between the Commissioner and the Secretary providing for funding to cover the costs of the responsibilities of the Commissioner under section 274E(a)(5) of the Immigration and Nationality Act, as inserted by section 301 of this Act, shall be deemed in effect on an interim basis for such fiscal year until such time as an agreement required under subsection (a) is subsequently reached, except that the terms of such interim agreement shall be modified by the Director of the Office of Management and Budget to adjust for inflation and any increase or decrease in the volume of requests under the employment eligibility verification system. In any case in which an interim agreement applies for any fiscal year under this subsection, the Commissioner and the Secretary shall, not later than October 1 of such fiscal year, notify the Committee on Ways and Means, the Committee on the Judiciary, and the Committee on Appropriations of the House of Representatives and the Committee on Finance, the Committee on the Judiciary, and the Committee on Appropriations of the Senate of the failure to reach the agreement required under subsection (a) for such fiscal year. Until such time as the agreement required under subsection (a) has been reached for such fiscal year, the Commissioner and the Secretary shall, not later than the end of each 90-day period after October 1 of such fiscal year, notify such Committees of the status of negotiations between the Commissioner and the Secretary in order to reach such an agreement.

SEC. 307. REPORT ON THE IMPLEMENTATION OF THE ELECTRONIC EMPLOYMENT VERIFICATION SYSTEM.

Not later than 24 months after the date on which final rules are published under section 309(a), and annually thereafter, the Secretary shall submit to Congress a report that includes the following:

(1) An assessment of the accuracy rates of the responses of the electronic employment verification system established under section 274E of the Immigration and Nationality Act, as inserted by section 301 of this Act (referred to in this section as the "System"), including tentative and final nonconfirmation notices issued to employment-authorized individuals and confirmation notices issued to individuals who are not employment-authorized.

(2) An assessment of any challenges faced by persons or entities (including small employers) in utilizing the System.

(3) An assessment of any challenges faced by employment-authorized individuals who are issued tentative or final nonconfirmation notices.

(4) An assessment of the incidence of unfair immigration-related employment practices, as described in section 274E(g) of the Immigration and Nationality Act, as inserted by section 301 of this Act, related to the use of the System.

(5) An assessment of the photo matching and other identity authentication tools, as described in section 274E(a)(4) of the Immigration and Nationality Act, as inserted by section 301 of this Act, including—

(A) an assessment of the accuracy rates of such tools;

(B) an assessment of the effectiveness of such tools at preventing identity fraud and other misuse of identifying information;

(C) an assessment of any challenges faced by persons, entities, or individuals utilizing such tools; and

(D) an assessment of operation and maintenance costs associated with such tools.

(6) A summary of the activities and findings of the U.S. Citizenship and Immigrations Services E–Verify Monitoring and Compliance Branch, or any successor office, including—

(A) the number, types and outcomes of audits, investigations, and other compliance activities initiated by the Branch in the previous year;

(B) the capacity of the Branch to detect and prevent violations of section 274E(g) of the Immigration and Nationality Act, as inserted by this Act; and

(C) an assessment of the degree to which persons and entities misuse the System, including—

(i) use of the System before an individual's date of hire;

(ii) failure to provide required notifications to individuals;

(iii) use of the System to interfere with or otherwise impede individuals' assertions of their rights under other laws; and

(iv) use of the System for unauthorized purposes; and

(7) An assessment of the impact of implementation of the System in the agricultural industry and the use of the verification system in agricultural industry hiring and business practices.

SEC. 308. MODERNIZING AND STREAMLINING THE EMPLOYMENT ELIGIBILITY VERIFICATION PROCESS.

Not later than 12 months after the date of the enactment of this Act, the Secretary, in consultation with the Commissioner, shall submit to Congress a plan to modernize and streamline the employment eligibility verification process that shall include—

(1) procedures to allow persons and entities to verify the identity and employment authorization of newly hired individuals where the in-person, physical examination of identity and employment authorization documents is not practicable;

(2) a proposal to create a simplified employment verification process that allows employers that utilize the employment eligibility verification system established under section 274E of the Immigration and Nationality Act, as inserted by section 301 of this Act, to verify the identity and employment authorization of individuals without also having to complete and retain Form I–9, Employment Eligibility Verification, or any subsequent replacement form; and

(3) any other proposal that the Secretary determines would simplify the employment eligibility verification process without compromising the integrity or security of the system.

SEC. 309. RULEMAKING AND PAPERWORK REDUCTION ACT.

(a) IN GENERAL.—Not later than 180 days prior to the end of the application period defined in section 101(c) of this Act, the Secretary shall publish in the Federal Register proposed rules implementing this title and the amendments made by this title. The Secretary shall finalize such rules not later than 180 days after the date of publication.

(b) PAPERWORK REDUCTION ACT.—

(1) IN GENERAL.—The requirements under chapter 35 of title 44, United States Code, (commonly known as the "Paperwork Reduction Act") shall apply to any action to implement this title or the amendments made by this title.

(2) ELECTRONIC FORMS.—All forms designated or established by the Secretary that are necessary to implement this title and the amendments made by this title shall be made available in paper and electronic formats, and shall be designed in such a manner to facilitate electronic completion, storage, and transmittal.

(3) LIMITATION ON USE OF FORMS.—All forms designated or established by the Secretary that are necessary to implement this title, and the amendments made by this title, and any information contained in or appended to such forms, may not be used for purposes other than for enforcement of this Act and any other provision of Federal criminal law.

CONTENTS

PURPOSE AND SUMMARY

H.R. 5038, the "Farm Workforce Modernization Act of 2019," addresses long-standing labor issues in our country's agricultural sector through targeted immigration-related and other reforms. First, the bill creates a process for certain workers with significant and recent agricultural experience to apply for temporary immigration status, known as certified agricultural worker (CAW) status. Workers with CAW status may remain on that temporary status indefinitely, but they also have the option to earn lawful permanent resident (LPR) status through continued agricultural work and the payment of penalties. Second, the bill streamlines and modernizes the existing H-2A temporary agricultural worker visa program to make it more cost-effective and user-friendly for employers, while strengthening protections for all agricultural workers. Among other things, the bill creates a unified portal and application process for hiring H-2A workers, reforms wage requirements to control sharp wage fluctuations, opens the H-2A program to year-round occupations, and expands the availability of affordable farmworker housing. At

the same time, the bill ensures that both domestic and H-2A workers have access to critical protections against exploitation and abuse. Third, once the legalization and H-2A reforms are fully implemented, the bill mandates the use of the electronic employment verification system (currently known as E-Verify) by agricultural employers. Taken together, these provisions will ensure that the U.S. agricultural sector has access to a stable, reliable, and authorized workforce for the future.

BACKGROUND AND NEED FOR THE LEGISLATION

A robust and reliable domestic food supply is a matter of national security. The more the country is forced to rely on imported agricultural products, the greater the risks to the nation. Among these risks are increased exposure to food contamination or epidemic; without a sufficient volume of food exports, risks also include fluctuating market prices, reduced productivity, job loss, and increased debt.[1] From 2004 to 2014, food imports rose by nearly 60 percent and now account for nearly one-fifth of the U.S. food supply, including approximately 49 percent of all consumed fruits and nuts.[2] Although the increase in imported food can be partially attributed to changing consumer demands and other factors, systemic labor challenges in the agricultural sector are a major contributor to this developing crisis.[3]

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[1] *See, e.g.*, Renée Johnson, *Food Safety Issues for the 114th Congress*, Cong. Research Service, Report R42885 at 19-20 (Apr. 10, 2015), http://www.crs.gov/reports/pdf/R42885; Mark A. McMinimy, *Major Agricultural Trade Issues in the 115th Cong*ress, Cong. Research Service, Report R43905 (Jan. 30, 2017), https://www.crs.gov/Reports/R43905?source=search&guid=e0a6f4384c27464784f7f64aa8e71055&index=5; Wayne Campbell, *Your View by State Grange: Pennsylvania's Farmers Desperately Need New Trade Deal*, THE MORNING CALL (Nov. 23, 2019), https://www.mcall.com/opinion/mc-opi-pa-grange-favors-usmca-trade-deal-20191123-vmjnaypqgncunm4tp27ukvwd2a-story.html.

[2] *Efforts to Address the Safety of FDA-Regulated Food Imports*, Cong. Research Service, IF10403 (May 5, 2016), https://www.crs.gov/reports/pdf/IF10403.

[3] New American Economy, *Agriculture*, https://www.newamericaneconomy.org/issues/agriculture/.

The U.S. agricultural workforce "has long-consisted of a mixture of self-employed farm operators and their family members, and hired workers."[4] However, from 1950 to 2000, the number of self-employed and family farm workers declined by 73 percent.[5] Most experts believe this decline is due to an increasingly educated U.S. workforce.[6] While at least half of native-born workers lacked a high school diploma through the 1950s, the share of the workforce without such a diploma has steadily declined, dropping to about 4.5 percent in 2016.[7] Over the same period, the agricultural sector also experienced a decline of 52 percent in hired labor, primarily due to mechanization. However, because the decline in self-employed and family workers was greater, the relative proportion of hired farm labor across the industry has increased. As of 2016, hired workers and contract laborers represented 41 percent of agricultural labor in the United States.[8] The majority of farm laborers are foreign born.[9]

Despite the country's increased reliance on hired farmworkers, the legal channels for hiring foreign farmworkers have not changed in several decades. The H-2A temporary agricultural worker program has seen significant growth in recent years, but the program is

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[4] U.S. Dep't of Agriculture, *Farm Labor* (Dec. 20, 2018), https://www.ers.usda.gov/topics/farm-economy/farm-labor/.

[5] *Id.*

[6] Immigration Policy Center, *Facts About Farmworkers*, at 2 (May 2009), *https://www.americanimmigrationcouncil.org/sites/default/files/research/Farmworkers%20Fact%20Sheet.pdf.*

[7] *See* U.S. Bureau of Labor Statistics, *Foreign-Born Workers: Labor Force Characteristics Summary*, U.S. Dep't of Labor (May 18, 2017), https://www.bls.gov/news.release/forbrn.nr0.htm; *see also* U.S. Census Bureau, *Educational Attainment in the United States: 2015*, at 2-3 (Mar. 2016), https://www.census.gov/content/dam/Census/library/publications/2016/demo/p20-578.pdf.

[8] U.S. Dep't of Agriculture, *Farm Labor* (Dec. 20, 2018), https://www.ers.usda.gov/topics/farm-economy/farm-labor/.

[9] Of the more than 5,000 crop workers interviewed through the Department of Labor's National Agricultural Workers Survey (NAWS) during fiscal years (FY) 2015 and 2016, an estimated 75 percent were born outside the United States or Puerto Rico. *See* U.S. Dep't of Labor, *Findings from the National Agricultural Worker Survey (NAWS) 2015-2016*, at i (Jan. 23 2019), https://wdr.doleta.gov/research/details.cfm?q=&id=2616. *See also* U.S. Dep't of Agriculture, *Farm Labor* (Dec. 20, 2018) (estimating that 53 percent of farm laborers in 2017 were foreign born), https://www.ers.usda.gov/topics/farm-economy/farm-labor/.

often criticized by farmers and ranchers as outdated, overly-burdensome, and expensive.[10] Moreover, certain agricultural industries are unable to fully use the program in its current form. America's dairies, mushroom growers, and other specialty crop farmers that have year-round labor needs are prohibited from using the H-2A program, which is currently limited to industries with seasonal or temporary needs.[11] The program is also often criticized by labor advocates for failing to adequately protect foreign workers from abusive practices and to protect the wages and working conditions of domestic workers.[12]

Moreover, while the Immigration and Nationality Act (INA) makes immigrant visas, or "green cards," available for employers to sponsor foreign workers for permanent labor needs, restrictive visa caps have made this program effectively unavailable for decades. Currently, the INA provides less than 10,000 immigrant visas per year for workers who engage in year-round, lower-skilled labor—across all sectors of the U.S. economy.[13] Because demand for these visas far outweighs supply, the program has been oversubscribed for years, resulting in long backlogs for new sponsor petitions.[14] And, as noted above, these

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[10] *Id.*

[11] *See* 29 C.F.R. § 501.3(c).

[12] *See, e.g.*, *Summary of the Final 2010 H-2A Regulations*, Agriculture Coalition for Immigration Reform http://njnla.weebly.com/uploads/1/4/0/9/1409189/summary_of_final_obama_h-2a_regulations_3-3-10.pdf; Nicholas C. Geale, *Back to Indentured Servitude*, WASHINGTON TIMES (May 10, 2009), http://www.washingtontimes.com/news/2009/may/10/back-to-indentured-servitude/.

[13] Since FY 2002, up to 5,000 of these visas have been allocated to individuals receiving lawful permanent resident status under section 203 of the Nicaraguan and Cuban Adjustment Relief Act of 1997 (NACARA), Pub. Law 105-100, 111 Stat. 2160 (Nov. 19, 1997). However, in FY 2017, the most recent year for which data is available, approximately 700 visa numbers were offset from the 5,000 set-aside, as NACARA programs continue to wind down. *See* U.S. Dep't of Homeland Security, *Yearbook of Immigration Statistics (2017)*, at Table 7, https://www.dhs.gov/immigration-statistics/yearbook/2017. The Department of State states that in FY 2020, "this reduction will be limited to approximately 350." U.S. Dep't of State, *Visa Bulletin* (Dec. 2019), https://travel.state.gov/content/dam/visas/Bulletins/visabulletin_december2019.pdf.

[14] *See* William A. Kandel, *Permanent legal Immigration to the United States: Policy Overview*, Cong. Research Service, Report R42866 at Fig. 4: Approved LPR Visa Petitions Pending as of November 1, 2017 (May 11, 2018), https://www.crs.gov/Reports/R42866?source=search&guid=df336568dc134449b8a6a56b122ee66e&index=0#_Toc514080628.

visas are unavailable to fill temporary or seasonal needs.

Due to these and other reasons, U.S. farmers have found it difficult to keep American farms running. In the face of problematic and potentially unavailable visa programs, many have turned to an unauthorized workforce. Without reforms to our immigration laws, these difficulties will only compound. Many U.S. agricultural producers are already experiencing decreased productivity and earnings.[15] Some farms and ranches have been forced to close, while others have simply off-shored production to Mexico or other nations where agricultural workers are in greater supply.

The lack of an adequate labor supply damages more than the agricultural economy. Productivity losses also have a ripple effect on other sectors, including the domestic workers in those sectors. According to the U.S. Department of Agriculture, for every on-farm job, there are about 3.1 "upstream" and "downstream" jobs—jobs that support and are created by agricultural production.[16] The vast majority of these complementary jobs are held by U.S. workers, who would also face unemployment if on-farm jobs are eliminated or moved out of the country.[17] With respect to the dairy industry, a 2015 report by Texas A&M AgriLife Research and the Center for North American Studies found the following:

> A 50 percent labor loss [in milk producing farms] would be expected to reduce fluid milk sales by dairies by $5.8 billion while the economic loss throughout the

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[15] *See, e.g.*, Erin Anthony, *With Fewer Hands in the Field, More Food Goes to Waste*, American Farm Bureau Federation (Sep. 18, 2019), https://www.fb.org/viewpoints/with-fewer-hands-in-the-field-more-food-goes-to-waste; Megan Henney, *California farms are suffering from a labor shortage. Here's why*, FOX BUSINESS (May 1, 2019), https://www.foxbusiness.com/economy/california-farms-are-suffering-from-a-labor-shortage-heres-why; Bruce Talbott, *Our fruit is rotting in the trees as laborers are kept out of the country*, WASHINGTON POST (Aug. 24, 2018), https://www.washingtonpost.com/opinions/our-fruit-is-rotting-in-the-trees-as-laborers-are-kept-out-of-the-country/2018/08/24/bf119ad6-a6e6-11e8-8fac-12e98c13528d_story.html.

[16] *Hearing to Review the Labor Needs of American Agriculture Before the H. Comm on Agriculture*, 110th Cong. 5 (2007) (statement of James Holt, Agricultural Labor Economist), https://www.govinfo.gov/content/pkg/CHRG-110hhrg48999/html/CHRG-110hhrg48999.htm.

[17] *Id.*

> U.S. economy would [be] $16.0 billion.... The majority of the losses occurring off the dairy farm ($10.2 billion), would be due to declining purchases by dairies from sectors that support dairy farm operations, such as input supply (fuel and feed), transportation, real estate and wholesale trade.[18]

The deleterious effects on the U.S. economy, and the workers that support agriculture, will only increase as the agricultural labor situation continues to worsen.

THE UNDOCUMENTED AGRICULTURAL WORKFORCE.

Since the onset of World War I, when migration from Europe slowed significantly, Mexican laborers have played an increasingly important role in sustaining the American agricultural sector.[19] The migration of Mexican farmworkers was at first unregulated, and later formalized when the "Bracero program" was created in 1942.[20] The Bracero program, however, grew to be controversial, leading to its eventual termination in 1965. Without an authorized channel to import farmworkers, the number of undocumented Mexican workers then began to grow, given that "the jobs were here, the relationships existed between Mexico and the United States, and there was limited enforcement across the Southwest border."[21]

In the 1980s, the unauthorized workforce grew at unprecedented levels, as an

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[18] Texas A&M AgriLife Research and the Center for North American Studies, *The Economic Impacts of Immigrant Labor on U.S. Dairy Farms* at 16 (Aug. 2015), https://www.nmpf.org/wp-content/uploads//immigration-survey-090915.pdf.

[19] Southern Poverty Law Center, *Close to Slavery: Guestworker Programs in the United States*, 2013 Ed. (2013), https://www.splcenter.org/sites/default/files/d6_legacy_files/downloads/publication/SPLC-Close-to-Slavery-2013.pdf.

[20] *Id.* at 3.

[21] *How Did We Get to 11 Million Unauthorized Immigrants?*, NATIONAL PUBLIC RADIO (Mar. 7, 2017), https://www.npr.org/2017/03/07/518201210/how-did-we-get-to-11-million-unauthorized-immigrants.

economic crisis in Mexico and a booming U.S. economy sent more young Mexican workers north in pursuit of work.[22] By 2001, the undocumented agricultural workforce had grown to nearly 55 percent.[23] Since then, it has hovered around 50 percent, with the Department of Labor estimating that as of the end of fiscal year (FY) 2016, about half of the nation's 2.4 million farm workers lacked work authorization.[24] More recently, because of an improved Mexican economy and an increasing emphasis on border and interior enforcement, the number of Mexican workers crossing the U.S.-Mexico border in pursuit of agricultural opportunities has decreased significantly.[25]

On average, foreign-born farmworkers in the United States have resided here for an average of 18 years.[26] These workers have developed knowledge and skills crucial to the continued viability of America's farms, and they cannot simply be replaced without significant cost to American agricultural producers and consumers. It is estimated that "[i]f agriculture were to lose access to all undocumented workers, agricultural output would fall by $30 to $60 billion."[27] Moreover, notwithstanding the indispensable role that these farmworkers play in sustaining the domestic food supply, their jobs are among the most difficult and least compensated in the country. Without legal status, farmworkers are at even greater risk of abuse and exploitation.

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[22] *Id.*

[23] U.S. Dep't of Agriculture, *Farm Labor* (Dec. 20, 2018), https://www.ers.usda.gov/topics/farm-economy/farm-labor/.

[24] U.S. Dep't of Labor, *Findings from the National Agricultural Worker Survey (NAWS) 2015-2016*, at i (Jan. 23 2019), https://wdr.doleta.gov/research/details.cfm?q=&id=2616.

[25] *What we Know About Illegal Immigration from Mexico,* Pew Research Center (Dec. 3, 2018), https://www.pewresearch.org/fact-tank/2018/12/03/what-we-know-about-illegal-immigration-from-mexico/.

[26] U.S. Dep't of Labor, *Findings from the National Agricultural Worker Survey (NAWS) 2015-2016,* at i (Jan. 23 2019), https://wdr.doleta.gov/research/details.cfm?q=&id=2616.

[27] *Economic Impact of Immigration*, American Farm Bureau Federation, https://www.fb.org/issues/immigration-reform/agriculture-labor-reform/economic-impact-of-immigration.

THE H-2A TEMPORARY AGRICULTURAL WORKER PROGRAM.

Created by the Immigration Reform and Control Act of 1986 (IRCA), the H-2A program provides for the temporary admission of foreign workers to perform agricultural work of a seasonal or temporary nature.[28] In recent years, as U.S. workers continue to turn to other professions and the number of undocumented farmworkers has begun to decline, use of the H-2A program has grown significantly. Between FYs 1992 and 2012, no more than 65,000 visas were issued in any one fiscal year.[29] As of FY 2018, the number of visas issued has more than tripled to almost 200,000.[30] H-2A visas are not subject to numerical limit.

The following chart further illustrates the growth in H-2A program utilization using data from the Department of Labor. While the Department of Labor certified just over 48,000 H-2A positions in FY 2005, that number has since increased five-fold, with nearly 243,000 positions certified in FY 2018, with employers in Georgia, Florida, Washington, North Carolina, and California receiving the highest volume of H-2A certifications.[31]

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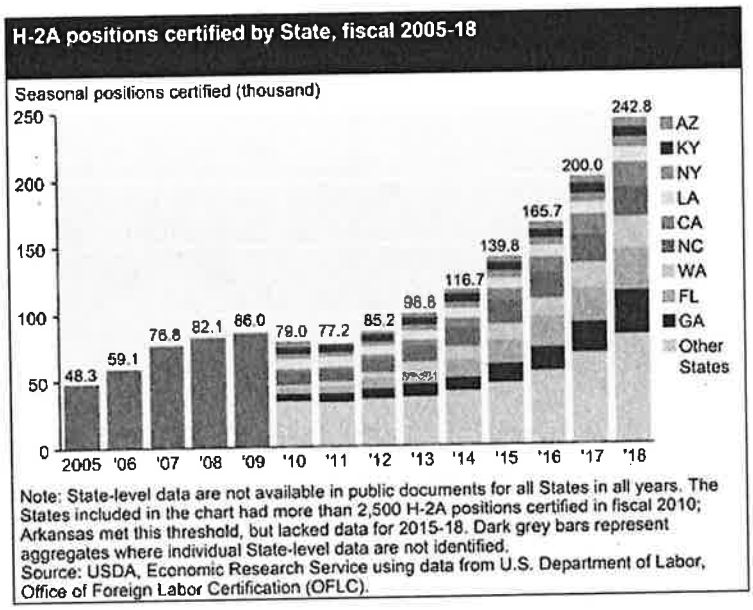
[28] Act of Nov. 6, 1986, Pub. L. 99-603; 100 Stat. 3359.

[29] Andorra Bruno, *H-2A and H-2B Temporary Worker Visas: Policy and Related Issues*, Cong. Research Service, Report R44849 (May 10, 2017), https://www.crs.gov/Reports/R44849?source=search&guid=734a5b71a6134bbb8baaf9275470cc1c&index=0.

[30] U.S. Dep't of State, *Report of the Visa Office 2018, Nonimmigrant Visas Issued by Classification (Including Border Crossing Cards) Fiscal Years 2014-2018*, https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2018AnnualReport/FY18AnnualReport%20-%20TableXVIB.pdf.

[31] "There are more H-2A-certified jobs than workers because some employers do not hire an H-2A worker after a job has been certified and some workers fill two or more jobs. Each worker requires a visa, and the ratio of visas issued to jobs certified has been falling, which suggests that there are fewer H-2A workers filling several jobs." *The H-2A Farm Guestworker Program is Expanding Rapidly: Here Are the Numbers You Need to Know*, Economic Policy Institute (Apr. 13, 2017), https://www.epi.org/blog/h-2a-farm-guestworker-program-expanding-rapidly/.



Both farmers and labor advocates, however, find that the H-2A program has serious deficiencies. A small sample of these deficiencies are outlined in the following sections.

H-2A PROCESSING.

Among the most criticized aspects of the H-2A program is the outdated process for seeking labor certification and filing petitions for H-2A workers. This process requires multiple, duplicative filings with several government agencies, and it is often disparaged by users as expensive, time-consuming, and overly bureaucratic. Specifically, the current H-2A process involves, at minimum, the following four steps:[32]

Step 1: The employer must first submit a detailed document describing the job opportunity, known as a "job order," with the State Workforce Agency (SWA) in the state where the requested agricultural work will be performed.[33]

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[32] *See generally*, U.S. Dep't of Labor, *Employer Guide to Participation in the H-2A Temporary Agricultural Program* (Jan. 2012), https://www.foreignlaborcert.doleta.gov/pdf/H-2A_Employer_Handbook.pdf.

[33] A job order is a document containing the material terms and conditions of employment relating to wages, working conditions, worksite, and other benefits. 20 C.F.R. § 651.10.

The SWA then reviews the job order to determine whether the job opportunity qualifies under the H-2A program and to initiate recruitment.

Step 2: If the job order is approved by the SWA, the employer must then file an application for temporary labor certification, along with the job order and other supporting documentation, with the Department of Labor. The Department of Labor then reviews the application to further determine whether the job opportunity qualifies for the H-2A program, including by certifying that there are no qualified U.S. workers available to perform the work and that hiring H-2A workers will not adversely affect the wages and working conditions of similarly employed U.S. workers.

Step 3: If the Department of Labor issues the labor certification, the employer must then file a petition with U.S. Citizenship and Immigration Services within the Department of Homeland Security. Along with the petition, the employer must provide the labor certification and proof that the position is seasonal or temporary and that any named beneficiaries meet the minimum job requirements. The petition and supporting documentation are largely duplicative of the labor certification application and supporting documentation filed with the Department of Labor.

Step 4: If U.S. Citizenship and Immigration Services approves the petition and the prospective workers are outside the United States, the H-2A workers must apply for visas with the Department of State and then admission with U.S. Customs and Border Protection at a port of entry. If a visa is not required, the workers may directly seek admission in H-2A status at a port of

entry.

As described above, this process requires the filing of largely duplicative filings with different agencies, and certain factors are subject to redundant adjudication. Moreover, employers with varied labor needs throughout the year must engage in this process multiple times. For example, a strawberry grower may first need 10 workers to plant seeds, an additional 10 workers in a few weeks to tend the plants, and an additional 20 workers near the end of the season for harvest. Under current practice, that employer must engage in the full H-2A process—and each of the steps described above—at least three times—once for each distinct labor need. These multiple application points significantly increase the cost and complexity of the H-2A petition process for employers.

H-2A WAGE REQUIREMENTS.

The H-2A program's wage requirements are also often criticized, particularly the wage standard known as the adverse effect wage rate, or "AEWR." Current H-2A regulations require employers to pay H-2A workers, and workers in corresponding employment (*i.e.*, workers who are similarly employed), at least the highest of: (1) the AEWR; (2) the prevailing wage rate; (iii) the prevailing piece rate; (iv) the agreed-upon collective bargaining wage; or (5) the applicable Federal or State minimum wage.[34]

For the vast majority of H-2A employers, the AEWR is the highest—and thus, governing—wage rate. The AEWR is derived from the Farm Labor Survey, which is conducted by the National Agricultural Statistics Service of the Department of Agriculture.[35] The Department of Agriculture surveys U.S. farms and ranches on a rolling

[34] 20 CFR § 655.120(l).

[35] *See generally*, Nat'l Agricultural Statistics Service, *Surveys – Farm Labor*, U.S. Dep't of Agriculture,

basis to compile employment and wage data for farmworkers in the United States as a whole, and in each of 15 multi-state labor regions as well as the single-state regions of California, Florida, and Hawaii.[36]

Although the Department of Agriculture collects information on all types of farm occupations (e.g., crop picking, machine operating, and supervising), survey data is aggregated to arrive at a single AEWR for field and livestock workers (combined) in each state or region. The AEWR is generally set at the rate that is equal to the annual weighted average hourly wage rate (*i.e.*, arithmetic mean) as derived from the surveyed data. Although the AEWR is derived from aggregated data, the resulting single wage rate is applicable to all H-2A workers (except for certain workers engaged in herding or production of livestock on the range).

As noted above, the AEWR has been the subject of debate for years. According to a 2017 Congressional Research Service report:

> Policy differences about H-2A wage requirements center on the AEWR; the H-2A visa is the only nonimmigrant visa subject to it. Farm labor advocates have argued that the AEWR is necessary to protect U.S. agricultural workers from a possible depression of wages resulting from the hiring of foreign workers. Employers have long maintained that the AEWR, as traditionally calculated using USDA's Farm Labor Survey data, results in inflated wage rates.[37]

Due in part to such concerns, the current Administration has proposed regulatory changes to

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https://www.nass.usda.gov/.

[36] *See id.*

[37] Andorra Bruno, *H-2A and H-2B Temporary Worker Visas: Policy and Related Issues*, Cong. Research Service, Report R44849 (May 10, 2017), https://www.crs.gov/Reports/R44849?source=search&guid=734a5b71a6134bbb8baaf9275470cc1c&index=0.

the H-2A program, including a modification to the current AEWR methodology to provide for more specific wage rates.[38] Specifically, the rule would disaggregate the Department of Agriculture's surveyed wage data and report out distinct wage rates for each of the various farm-related occupations in which H-2A workers are hired.[39] In other words, under the proposed rule, the administration would set an AEWR for crop workers based on wage data about crop workers; an AEWR for machine operators based on wage data about machine operators; and an AEWR for supervisors based on wage data about supervisors.

H-2A Labor Protections

Labor advocates have long stated that labor protections in the H-2A program need to be strengthened and better enforced. Many have raised serious questions as to whether the wage requirements described above, along with labor market tests and other H-2A program requirements, are sufficient to actually protect the wages and working conditions of domestic workers.[40]

To protect domestic workers, the H-2A program currently requires employers to affirmatively recruit U.S. workers and to hire any qualified U.S. worker who applies for a job until 50 percent of the work contract has elapsed.[41] H-2A workers are also entitled to free housing for the period of the contract, a guarantee of receiving at least three-fourths of

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[38] U.S. Dep't of Labor, *Temporary Agricultural Employment of H-2A Nonimmigrants in the United States* (July 26, 2019), https://www.federalregister.gov/documents/2019/07/26/2019-15307/temporary-agricultural-employment-of-h-2a-nonimmigrants-in-the-united-states.

[39] *Id.*, at proposed 20 C.F.R. § 655.120.

[40] *Close to Slavery: Guestworker Programs in the United States*, 2013 Edition (2013), https://www.splcenter.org/sites/default/files/d6_legacy_files/downloads/publication/SPLC-Close-to-Slavery-2013.pdf; Ruth Ellen Wasem, *Immigration of Foreign Workers: Labor Market Tests and Protections*, Cong. Research Service, Report RL33977 (Dec. 20, 2010), https://www.crs.gov/Reports/RL33977?source=search.

[41] 20 C.F.R. § 655.135(d).

the total hours promised in the contract, reimbursement for certain travel costs, and workers' compensation coverage.[42] However, because H-2A workers can work only for petitioning employers and those workers are dependent on the employers for their status and their ability to return in future seasons, labor advocates contend that existing protections are—for all practical purposes—largely diminished.[43]

Many U.S. employers also use private agencies to find and recruit temporary workers in their home countries, mostly in Mexico and Central America. These foreign labor recruiters may charge fees to workers and require them to leave collateral to ensure that they fulfill the terms of their contract. Consequently, labor advocates argue that many H-2A workers come to the United States with large debts and virtually no possibility of repaying these debts during their authorized work periods. This leaves such workers in a precarious economic state and further vulnerable to abuse and exploitation.

E-VERIFY AND THE AGRICULTURAL SECTOR

E-Verify is a web-based system, administered by USCIS, that allows enrolled users (employers and recruiters) to confirm the identity and work authorization of individuals they are seeking to hire or recruit (or refer for a fee) for employment in the United States.[44] The E-Verify system is used to confirm the identity and employment authorization of an employee by electronically matching information provided by the employee against records held by the Social Security Administration, the Department of Homeland Security, and the

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[42] *See generally*, 20 C.F.R. § 655.135.

[43] Ruth Ellen Wasem, *Immigration of Foreign Workers: Labor Market Tests and Protections*, Cong. Research Service, Report RL33977 (Dec. 20, 2010), https://www.crs.gov/Reports/RL33977?source=search.

[44] *See generally*, USCIS E-Verify, https://www.e-verify.gov/.

Department of State.[45] If the information fails to match the information at the appropriate federal agency, the employee will receive a tentative nonconfirmation (TNC). The employee has 8 business days to challenge the TNC, and if the employee fails to do so, or if work authorization is not confirmed after a challenge, E-Verify will issue a final nonconfirmation (FNC). E-Verify is currently voluntary for most employers, but is mandatory for some, including Federal government agencies, certain Federal government contractors, and employers in certain states that have mandated the use of E-Verify for some or all employers.

Given that roughly half of all farmworkers in the United States are undocumented, an E-Verify mandate without an accompanying legalization component would devastate the agricultural sector.[46] The American Farm Bureau Federation, for example, has estimated that mandatory E-Verify without stabilization of the agricultural workforce would reduce fruit production 30 to 61 percent and vegetable production 15 to 31 percent.[47]

HEARINGS

For the purposes of section 103(i) of H.Res. 6 of the 116th Congress, the following hearing was used to develop H.R. 5038: "Securing the Future of American Agriculture," held before the Subcommittee on Immigration and Citizenship on April 3, 2019. The Subcommittee heard testimony from: Arturo S. Rodriguez, former President of the United Farm Workers; Tom Nassif, President and CEO of Western Growers; Areli Arteaga, former dairy worker and child of

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[45] *Id.*

[46] U.S. Dep't of Labor, *Findings from the National Agricultural Worker Survey (NAWS) 2015-2016*, at i (Jan. 23 2019), https://wdr.doleta.gov/research/details.cfm?q=&id=2616; *Mandatory E-Verify Too Costly for Employers, Workers, and Taxpayers*, National Immigration Law Center (June 2015), https://www.nilc.org/wp-content/uploads/2015/11/E-Verify-issue-brief-2015-06-26.pdf.

[47] *Agricultural Labor – E-Verify*, American Farm Bureau Federation (Feb. 2018), https://www.fb.org/files/E-Verify_2018.pdf.

farmworkers; and Bill Brim, President of Lewis Taylor Farms, Inc. in Tifton, Georgia. Witnesses shared their personal stories and experiences with respect to the current state of the U.S. agricultural industry, highlighting the urgent need to address the growing labor crisis impacting America's farms.

COMMITTEE CONSIDERATION

On November 20, 2019, the Committee met in open session on H.R. 5038. An amendment in the nature of a substitute was offered by Mr. Nadler, and two amendments to the amendment in the nature of a substitute passed by voice vote: (1) an amendment offered by Ms. Lofgren to correct various typographical errors and variances in the underlying bill; and (2) an amendment offered by Ms. Jackson Lee to expand eligibility for certified agricultural worker (CAW) status under section 101 to individuals in the United States pursuant to deferred enforced departure (DED) or temporary protected status (TPS). On November 21, 2019, the Committee ordered the bill, H.R. 5038, favorably reported with an amendment in the nature of a substitute by a rollcall vote of 18 to 12, a quorum being present.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following rollcall votes occurred during the Committee's consideration of H.R.5038:

1. An amendment by Mr. Collins to strike subsections (a) and (b) of section 204, which ensures that H-2A workers are protected by existing labor laws, including the Migrant and Seasonal Agricultural Worker Protection Act, was defeated by a rollcall vote of 8 to 16.

Roll Call No.

Date: 11/20/2019

COMMITTEE ON THE JUDICIARY

House of Representatives

116th Congress

Amendment #3 ( ) to ANS HR 5038 offered by Rep. Collins

☐ PASSED

☑ FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)		✓	
Zoe Lofgren (CA-19)		✓	
Sheila Jackson Lee (TX-18)		✓	
Steve Cohen (TN-09)			
Hank Johnson (GA-04)		✓	
Ted Deutch (FL-22)			
Karen Bass (CA-37)			
Cedric Richmond (LA-02)			
Hakeem Jeffries (NY-08)			
David Cicilline (RI-01)		✓	
Eric Swalwell (CA-15)			
Ted Lieu (CA-33)		✓	
Jamie Raskin (MD-08)		✓	
Pramila Jayapal (WA-07)		✓	
Val Demings (FL-10)			
Lou Correa (CA-46)		✓	
Mary Gay Scanlon (PA-05)		✓	
Sylvia Garcia (TX-29)		✓	
Joseph Neguse (CO-02)			
Lucy McBath (GA-06)		✓	
Greg Stanton (AZ-09)		✓	
Madeleine Dean (PA-04)		✓	
Debbie Mucarsel-Powell (FL-26)		✓	
Veronica Escobar (TX-16)		✓	
	AYES	**NOS**	**PRES**
Doug Collins (GA-27)	✓		
James F. Sensenbrenner (WI-05)			
Steve Chabot (OH-01)	✓		
Louie Gohmert (TX-01)	✓		
Jim Jordan (OH-04)			
Ken Buck (CO-04)			
John Ratcliffe (TX-04)			
Martha Roby (AL-02)	✓		
Matt Gaetz (FL-01)			
Mike Johnson (LA-04)			
Andy Biggs (AZ-05)			
Tom McClintock (CA-04)			
Debbie Lesko (AZ-08)			
Guy Reschenthaler (PA-14)	✓		
Ben Cline (VA-06)	✓		
Kelly Armstrong (ND-AL)	✓		
Greg Steube (FL-17)	✓		
	AYES	**NOS**	**PRES.**
TOTAL	9	16	

2. An amendment by Mr. Collins to amend section 204(b) to authorize courts to dismiss complaints filed by H-2A workers alleging a violation of the Migrant and Seasonal Agricultural Worker Protection Act, if, not later than five days after receiving service of the complaint, the employer files documentation with the court demonstrating that the action giving rise to the complaint has been remedied, was defeated by a rollcall vote of 9 to 16.

Roll Call No.

Date: 11/20/2019

COMMITTEE ON THE JUDICIARY

House of Representatives

116th Congress

Amendment # 5 ( ) to ANS HR5038 offered by Rep. Collins

☐ PASSED

☑ FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)		✓	
Zoe Lofgren (CA-19)		✓	
Sheila Jackson Lee (TX-18)		✓	
Steve Cohen (TN-09)		✓	
Hank Johnson (GA-04)		✓	
Ted Deutch (FL-22)			
Karen Bass (CA-37)			
Cedric Richmond (LA-02)			
Hakeem Jeffries (NY-08)			
David Cicilline (RI-01)		✓	
Eric Swalwell (CA-15)			
Ted Lieu (CA-33)		✓	
Jamie Raskin (MD-08)		✓	
Pramila Jayapal (WA-07)		✓	
Val Demings (FL-10)			
Lou Correa (CA-46)		✓	
Mary Gay Scanlon (PA-05)			
Sylvia Garcia (TX-29)		✓	
Joseph Neguse (CO-02)			
Lucy McBath (GA-06)		✓	
Greg Stanton (AZ-09)		✓	
Madeleine Dean (PA-04)		✓	
Debbie Mucarsel-Powell (FL-26)		✓	
Veronica Escobar (TX-16)		✓	
	AYES	**NOS**	**PRES**
Doug Collins (GA-27)	✓		
James F. Sensenbrenner (WI-05)			
Steve Chabot (OH-01)	✓		
Louie Gohmert (TX-01)	✓		
Jim Jordan (OH-04)			
Ken Buck (CO-04)	✓		
John Ratcliffe (TX-04)			
Martha Roby (AL-02)	✓		
Matt Gaetz (FL-01)			
Mike Johnson (LA-04)			
Andy Biggs (AZ-05)			
Tom McClintock (CA-04)			
Debbie Lesko (AZ-08)			
Guy Reschenthaler (PA-14)	✓		
Ben Cline (VA-06)	✓		
Kelly Armstrong (ND-AL)	✓		
Greg Steube (FL-17)	✓		
	AYES	**NOS**	**PRES.**
TOTAL	9	16	

3. An amendment by Mr. Chabot to amend section 101(b) by adding a new bar to eligibility for certified agricultural worker status or optional earned lawful permanent resident status based on either: (1) a single conviction for driving while intoxicated causing serious bodily injury or the death of another person; or (2) two or more convictions for driving while intoxicated, was defeated by a rollcall vote of 7 to 16.

Roll Call No.

Date: 11/20/2019

COMMITTEE ON THE JUDICIARY

House of Representatives

116th Congress

Amendment # 7 ( ) to ANS HR 5038 offered by Rep. Chabot

☐ PASSED

☑ FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)		✓	
Zoe Lofgren (CA-19)		✓	
Sheila Jackson Lee (TX-18)		✓	
Steve Cohen (TN-09)		✓	
Hank Johnson (GA-04)		✓	
Ted Deutch (FL-22)			
Karen Bass (CA-37)			
Cedric Richmond (LA-02)			
Hakeem Jeffries (NY-08)			
David Cicilline (RI-01)		✓	
Eric Swalwell (CA-15)			
Ted Lieu (CA-33)		✓	
Jamie Raskin (MD-08)		✓	
Pramila Jayapal (WA-07)		✓	
Val Demings (FL-10)			
Lou Correa (CA-46)		✓	
Mary Gay Scanlon (PA-05)			
Sylvia Garcia (TX-29)		✓	
Joseph Neguse (CO-02)			
Lucy McBath (GA-06)		✓	
Greg Stanton (AZ-09)		✓	
Madeleine Dean (PA-04)		✓	
Debbie Mucarsel-Powell (FL-26)		✓	
Veronica Escobar (TX-16)		✓	
	AYES	**NOS**	**PRES**
Doug Collins (GA-27)	✓		
James F. Sensenbrenner (WI-05)			
Steve Chabot (OH-01)	✓		
Louie Gohmert (TX-01)	✓		
Jim Jordan (OH-04)			
Ken Buck (CO-04)	✓		
John Ratcliffe (TX-04)			
Martha Roby (AL-02)	✓		
Matt Gaetz (FL-01)			
Mike Johnson (LA-04)			
Andy Biggs (AZ-05)			
Tom McClintock (CA-04)			
Debbie Lesko (AZ-08)			
Guy Reschenthaler (PA-14)			
Ben Cline (VA-06)	✓		
Kelly Armstrong (ND-AL)			
Greg Steube (FL-17)	✓		
	AYES	**NOS**	**PRES.**
TOTAL	7	16	

4. An amendment by Ms. Lesko to amend section 111 to condition the Secretary of Homeland Security's approval of a self-petition for lawful permanent resident status filed by a dependent spouse or child who has been battered or subjected to extreme cruelty on such Secretary's denial of any pending adjustment of status application and revocation of certified agricultural worker status, was defeated by a rollcall vote of 7 to 12.

Roll Call No.

Date: 11/20/2019

COMMITTEE ON THE JUDICIARY

House of Representatives

116th Congress

Amendment # 10 ( ) to ANSHR5038 offered by Rep. Lesko

☐ PASSED

☑ FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)		✓	
Zoe Lofgren (CA-19)		✓	
Sheila Jackson Lee (TX-18)			
Steve Cohen (TN-09)			
Hank Johnson (GA-04)		✓	
Ted Deutch (FL-22)			
Karen Bass (CA-37)		✓	
Cedric Richmond (LA-02)			
Hakeem Jeffries (NY-08)			
David Cicilline (RI-01)		✓	
Eric Swalwell (CA-15)			
Ted Lieu (CA-33)			
Jamie Raskin (MD-08)		✓	
Pramila Jayapal (WA-07)		✓	
Val Demings (FL-10)			
Lou Correa (CA-46)		✓	
Mary Gay Scanlon (PA-05)		✓	
Sylvia Garcia (TX-29)		✓	
Joseph Neguse (CO-02)			
Lucy McBath (GA-06)		✓	
Greg Stanton (AZ-09)		✓	
Madeleine Dean (PA-04)			
Debbie Mucarsel-Powell (FL-26)			
Veronica Escobar (TX-16)			
	AYES	NOS	PRES
Doug Collins (GA-27)			
James F. Sensenbrenner (WI-05)			
Steve Chabot (OH-01)	✓		
Louie Gohmert (TX-01)	✓		
Jim Jordan (OH-04)			
Ken Buck (CO-04)			
John Ratcliffe (TX-04)			
Martha Roby (AL-02)			
Matt Gaetz (FL-01)			
Mike Johnson (LA-04)			
Andy Biggs (AZ-05)	✓		
Tom McClintock (CA-04)	✓		
Debbie Lesko (AZ-08)	✓		
Guy Reschenthaler (PA-14)			
Ben Cline (VA-06)	✓		
Kelly Armstrong (ND-AL)			
Greg Steube (FL-17)	✓		
	AYES	NOS	PRES.
TOTAL	7	12	

5. An amendment by Mr. Steube to amend section 202 of the bill to replace the bill's wage provisions with provisions requiring employers to offer wages that are equal to the greatest of: (1) the applicable State or local minimum wage; (2) 115 percent of the Federal minimum wage; or (3) the actual wage paid by the employer to all other individuals in the job, was defeated by a rollcall vote of 8 to 15.

Roll Call No.

Date: 11/20/2019

COMMITTEE ON THE JUDICIARY

House of Representatives

116th Congress

Amendment #13 ( ) to ANS HR 5038 offered by Rep. Steube

☐ PASSED

☑ FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)		✓	
Zoe Lofgren (CA-19)		✓	
Sheila Jackson Lee (TX-18)		✓	
Steve Cohen (TN-09)			
Hank Johnson (GA-04)		✓	
Ted Deutch (FL-22)			
Karen Bass (CA-37)		✓	
Cedric Richmond (LA-02)			
Hakeem Jeffries (NY-08)			
David Cicilline (RI-01)		✓	
Eric Swalwell (CA-15)			
Ted Lieu (CA-33)			
Jamie Raskin (MD-08)		✓	
Pramila Jayapal (WA-07)		✓	
Val Demings (FL-10)			
Lou Correa (CA-46)		✓	
Mary Gay Scanlon (PA-05)		✓	
Sylvia Garcia (TX-29)		✓	
Joseph Neguse (CO-02)			
Lucy McBath (GA-06)		✓	
Greg Stanton (AZ-09)		✓	
Madeleine Dean (PA-04)		✓	
Debbie Mucarsel-Powell (FL-26)		✓	
Veronica Escobar (TX-16)			
	AYES	**NOS**	**PRES**
Doug Collins (GA-27)			
James F. Sensenbrenner (WI-05)			
Steve Chabot (OH-01)	✓		
Louie Gohmert (TX-01)	✓		
Jim Jordan (OH-04)			
Ken Buck (CO-04)			
John Ratcliffe (TX-04)			
Martha Roby (AL-02)			
Matt Gaetz (FL-01)			
Mike Johnson (LA-04)			
Andy Biggs (AZ-05)			
Tom McClintock (CA-04)	✓		
Debbie Lesko (AZ-08)	✓		
Guy Reschenthaler (PA-14)	✓		
Ben Cline (VA-06)	✓		
Kelly Armstrong (ND-AL)	✓		
Greg Steube (FL-17)	✓		
	AYES	**NOS**	**PRES.**
TOTAL	8	15	

6. Motion to report H.R. 5038, as amended, favorably was agreed to by a vote of 18 to 12.

Roll Call No.

Date: 11/21/2019

COMMITTEE ON THE JUDICIARY

House of Representatives
116th Congress

Final Passage on HR 5038

☑ PASSED

☐ FAILED

	AYES	NOS	PRES.	
Jerrold Nadler (NY-10)	✓			
Zoe Lofgren (CA-19)	✓			
Sheila Jackson Lee (TX-18)				
Steve Cohen (TN-09)				
Hank Johnson (GA-04)	✓			
Ted Deutch (FL-22)	✓			
Karen Bass (CA-37)	✓			
Cedric Richmond (LA-02)				
Hakeem Jeffries (NY-08)				
David Cicilline (RI-01)	✓			
Eric Swalwell (CA-15)				
Ted Lieu (CA-33)	✓			
Jamie Raskin (MD-08)	✓			
Pramila Jayapal (WA-07)	✓			
Val Demings (FL-10)	✓			
Lou Correa (CA-46)	✓			
Mary Gay Scanlon (PA-05)				
Sylvia Garcia (TX-29)	✓			
Joseph Neguse (CO-02)	✓			
Lucy McBath (GA-06)	✓			
Greg Stanton (AZ-09)	✓			
Madeleine Dean (PA-04)	✓			
Debbie Mucarsel-Powell (FL-26)	✓			
Veronica Escobar (TX-16)	✓			
	AYES	**NOS**	**PRES**	
Doug Collins (GA-27)		✓		
James F. Sensenbrenner (WI-05)				
Steve Chabot (OH-01)		✓		
Louie Gohmert (TX-01)		✓		
Jim Jordan (OH-04)				
Ken Buck (CO-04)		✓		
John Ratcliffe (TX-04)				
Martha Roby (AL-02)		✓		
Matt Gaetz (FL-01)				
Mike Johnson (LA-04)		✓		
Andy Biggs (AZ-05)		✓		
Tom McClintock (CA-04)		✓		
Debbie Lesko (AZ-08)		✓		
Guy Reschenthaler (PA-14)				
Ben Cline (VA-06)		✓		
Kelly Armstrong (ND-AL)		✓		
Greg Steube (FL-17)		✓		
	AYES	**NOS**	**PRES.**	
TOTAL	18	12		

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this bill from the Director of Congressional Budget Office. The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 5038 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 5038 would address longstanding labor issues in our country's agricultural sector by: (1) creating a program for undocumented agricultural workers to apply for temporary immigration status, with an option for long-term workers to earn lawful permanent resident status through continued agricultural employment and the payment of penalties; (2) reforming the H-2A temporary agricultural worker program to make it more streamlined, user-friendly, and cost-effective for employers, while strengthening labor protections for all farmworkers; and (3) phasing in mandatory use of an electronic employment eligibility verification system (patterned on E-Verify) for the agricultural sector.

ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 5038 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.

SECTION-BY-SECTION ANALYSIS

The following discussion describes the bill as reported by the Committee.

Title I. Securing the Domestic Agricultural Workforce. Title I generally establishes two programs for experienced agricultural workers in the United States to earn immigration status through continued agricultural employment.

Subtitle A. Temporary Status for Certified Agricultural Workers. Subtitle A creates a new temporary immigration status, known as Certified Agricultural Worker (CAW) status, for certain farmworkers in the United States.

Sec. 101. Certified Agricultural Worker Status. Section 101(a) sets forth the criteria for farmworkers in the United States to receive CAW status for themselves, and dependent status for their spouses and minor children. To be eligible, workers must: (1) have worked at least 180 days in agriculture in the two years prior to the date of the bill's introduction (November 12, 2019); (2) be inadmissible or deportable from the United States, or under a grant of deferred enforced departure or temporary protected status, on November 12, 2019; and (3) have been continuously present in the United States from that date until the date they are granted CAW status.

Section 101(b) sets forth the grounds for ineligibility for CAW (and dependent) status. Applicants and any dependents must generally be "admissible" under section 212(a) of the Immigration and Nationality Act (INA), except that: (1) certain grounds are excused (e.g., public charge, labor certification, unlawful presence); (2) certain grounds are waived unless the relevant conduct occurred after the date of the bill's introduction (e.g., misrepresenting immigration status, being a stowaway, violating a student visa); and (3) certain grounds are waived unless the relevant conduct occurred after the date of application for CAW status (e.g., failing to attend proceedings, receiving a removal order).

In addition to the normal criminal and security bars that apply to all applicants for admission, the bill also contains new catch-all criminal bars. Applicants are ineligible for CAW (or dependent) status if they have been convicted of: (1) any felony (excluding State offenses involving immigration status); (2) an aggravated felony, as defined in section 101(a)(43) of the INA; (3) two misdemeanor offenses of moral turpitude (generally, crimes involving the intent to injure or steal); or (4) more than two misdemeanor offenses of any kind (excluding offenses involving immigration status or minor traffic offenses), not occurring on the same date or arising

out of the same misconduct. The Department of Homeland Security is provided the discretion to waive certain grounds of inadmissibility, but not the bars related to convictions for felonies, aggravated felonies, or more than two misdemeanors.

Section 101(c) delineates the application process for CAW status, including an 18-month period for taking applications. Applications may be filed with the Department of Homeland Security with the assistance of an attorney or an organization recognized by the Board of Immigration Appeals as able to provide services to immigrants. The Department of Homeland Security shall also establish a process with the Department of Agriculture to allow individuals to submit applications at Farm Service Agency offices throughout the United States. This provision is intended to make it easier for individuals in rural areas to physically submit applications, including by allowing Department of Homeland Security personnel to use Farm Service Agency space during the application process. There is no intent to shift processing or adjudicatory responsibilities to the Department of Agriculture; those are intended to remain with the Department of Homeland Security. The agencies are expected to cooperate to ensure that this provision does not inhibit the ability of Farm Service Agency employees to fulfill their primary missions.

Once an application is submitted, applicants receive interim proof of employment authorization and the ability to apply for travel permission, if needed. Applicants may not be detained or removed while the application is pending unless the Department of Homeland Security makes a prima facie determination that the applicant is ineligible for CAW status. Applicants may also withdraw their applications without prejudice.

Section 101(d) requires the Department of Homeland Security to adjudicate applications for CAW status within 180 days (unless background checks and security clearances are still

pending). Prior to issuing a denial, the Department must provide written notice to the applicant and allow the applicant at least 90 days to correct any deficiencies in the application.

Section 101(e) states that farmworkers who do not qualify for CAW status because they cannot demonstrate sufficient past agricultural work, may be eligible for H-2A status if they have performed at least 100 days of agricultural work in the three years prior to November 12, 2019. Such individuals shall be eligible for H-2A status without having to depart the United States.

Sec. 102. Terms and Conditions of Certified Status. Section 102(a) provides that CAW status is valid for five and one-half years beginning on the date of approval. The Department of Homeland Security shall issue documentary evidence of status to workers and their dependents, and such documents shall serve as evidence of travel and work authorization (for workers and dependents). The validity period of five and one-half years is intended to provide recipients with sufficient time to satisfy the five-year agricultural work requirement and facilitate the efficient processing of applications to renew CAW status.

Section 102(b) allows spouses and children with dependent status to apply for principal CAW status if they are not ineligible due to criminal and other bars to eligibility. Upon receiving principal CAW status, such individuals would be required to satisfy the applicable agricultural work requirements to apply for renewal of such status or to apply for lawful permanent resident status under Subtitle B. Section 102(b) also clarifies that nothing prevents workers or dependents from changing to any other nonimmigrant classification for which they may be eligible.

Section 102(c) provides that individuals holding CAW or dependent status shall be considered lawfully present for all purposes, except that they are ineligible to receive: (1) federal means-tested public benefits to the same extent as other individuals who are not "qualified

aliens" as defined in section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996; and (2) premium assistance tax credits, under section 36B of the Internal Revenue Code of 1996, for the maintenance of health care coverage. Such individuals shall also be subject to the rules applicable to individuals who are not lawfully present for purposes of certain requirements of the Patient Protection and Affordable Care Act.

Section 102(d) authorizes the Department of Homeland Security to revoke CAW or dependent status, after notice and opportunity to contest the revocation, upon a finding that the recipient no longer meets the eligibility requirements for such status under section 101(b).

Sec. 103. Extension of Certified Status. Section 103(a) establishes the procedures for obtaining extensions of CAW and dependent status, which may be extended indefinitely if applicants comply with the requirements of this section during each five-and-one-half-year period in CAW status. Absent extraordinary circumstances, applicants must apply to extend status within a 120-day window straddling the end of the fifth year of CAW status. Specifically, the 120-day application window begins 60 days before the expiration of the fifth year of CAW status and is intended to provide applicants with ample opportunity to satisfy the agricultural work requirements necessary for renewal. Applicants must demonstrate that they worked in agriculture for at least 100 work days for each of the 5 years in CAW status (except as otherwise provided), and that they are not ineligible due to criminal or other bars to eligibility. Section 103(a) further allows the Department of Homeland Security to waive an applicant's failure to timely file before the expiration of the 120-day window if the applicant demonstrates that the delay resulted from extraordinary circumstances or other good cause.

Section 103(b) automatically extends CAW status and employment authorization based on a timely filed extension application, until a final decision is made on the application.

Section 103(c) provides that, prior to denying an extension application, the Department of Homeland Security must provide written notice to the applicant along with 90 days to respond.

Sec. 104. Determination of Continuous Presence. Section 104(a) provides that an applicant's "continuous presence" in the United States is not terminated based simply upon the service of a notice to appear to initiate removal proceedings.

Section 104(b) states that absent extenuating circumstances or prior approval for travel by the Department of Homeland Security, applicants will fail to maintain continuous presence if they depart the United States for any period exceeding 90 days, or any periods exceeding 180 days in the aggregate.

Sec. 105. Employer Obligations. Section 105 requires employers to provide workers with written records of employment for each year such workers were employed in CAW status. Employers are subject to civil penalties of up to $500 per violation if they knowingly fail to provide, or make false statements of material fact in, such records.

Sec. 106. Administrative and Judicial Review. Section 106 requires the Department of Homeland Security to establish a process for administrative review of the denial or revocation of CAW status, and limits judicial review to review of a final order of removal. All records related to an individual's application for CAW status (including an extension or revocation of such status) shall be included in the administrative record and are admissible in immigration court. Judicial review of the denial or revocation of CAW status is limited to judicial review of a final order of removal.

Subtitle B. Optional Earned Residence for Long-Term Workers. Subtitle B recognizes the contribution of farmworkers to the economy and vibrancy of U.S. agriculture by providing an

option to earn lawful permanent resident (LPR) status through additional agricultural work and the payment of penalties. As noted previously, workers in CAW status are not required to seek LPR status at any point. Workers in CAW status can renew such status indefinitely by complying with the requirements of Subtitle A, and they may return to their home country at any point if they so choose.

Sec. 111. Optional Adjustment of Status for Long-Term Agricultural Workers. Section 111(a) authorizes the Department of Homeland Security to adjust the status of a worker in CAW status to LPR status if the worker remains eligible for CAW status, the worker pays the penalty under section 111(b), and the worker demonstrates completion of one of the following work requirements: (1) if the applicant worked in U.S. agriculture for 10 or more years prior to the date of the bill's enactment, the applicant must demonstrate another 4 years of agricultural work in CAW status; or (2) if the applicant worked in U.S. agriculture for less than 10 years prior to the date of enactment, the applicant must demonstrate another 8 years of agricultural work in CAW status. The Committee intends that workers be eligible to apply for LPR status with either 4 or 8 years of additional work in CAW status, as appropriate based on their prior work history. A spouse or child may also adjust to LPR status if the qualifying relationship exists at the time of adjudication and the spouse or child is not ineligible based on criminal or other bars listed in section 101(b). The bill includes protections for dependents in cases involving the death of the worker or severe domestic violence. The bill also provides that when applying for LPR status, workers are not required to resubmit evidence of work history that has been previously submitted and accepted by the Department of Homeland Security.

Section 111(b) requires applicants for LPR status to pay a penalty fee of $1,000.

Section 111(c) provides that upon filing for adjustment of status, applicants may apply

for travel permission, if needed. Applicants are not considered unlawfully present, and may not be detained or removed, while the application is pending unless the Department of Homeland Security makes a prima facie determination that the applicant is ineligible for LPR status.

Section 111(d) states that applicants shall be provided proof of filing, which shall serve as interim proof of work authorization.

Section 111(e) allows applicants to withdraw applications without prejudice.

Sec. 112. Payment of Taxes. Section 112 prohibits adjustment to LPR status unless the applicant has satisfied any applicable Federal tax liabilities incurred since the date on which the applicant was provided CAW status.

Sec. 113. Adjudication and Decision; Review. Section 113 requires the Department of Homeland Security to adjudicate applications for LPR status within 180 days (unless background checks and security clearances are still pending). Prior to issuing a denial, the Department must provide applicants with written notice and 90 days to correct any deficiencies. The Department must also establish an administrative review process. Judicial review of the denial of an application for LPR status may be sought in an appropriate United States district court.

Subtitle C. General Provisions.

Sec. 121. Definitions. Section 121 defines the following terms for the purposes of Title I of the bill: agricultural labor or services; applicable Federal tax liability; appropriate United States district court; child; convicted or conviction; employer; qualified designated entity; Secretary; and work day.

Sec. 122. Rulemaking; Fees. Section 122 requires the Department of Homeland Security to publish interim final rules within 180 days of the date of the bill's enactment and to finalize

such rules within one year of such enactment. The Department is authorized to charge reasonable filing fees commensurate with the costs of processing applications under Title I, and it must establish procedures for: (1) the waiver of fees, and (2) the payment of fees or penalties in installments. Section 122 also clarifies that nothing in the bill prevents employers from paying such fees or penalties on behalf of workers or their spouses and minor children.

Sec. 123. Background Checks. Section 123 requires the Department of Homeland Security to collect biometric and biographic data from applicants and prohibits the granting of benefits unless security and background checks are completed to the Department's satisfaction.

Sec. 124. Protection for Children. Section 124 sets a child's age, for purposes of obtaining CAW or LPR status as a dependent, on the filing date of the parent's first application for CAW status. This age-out protection applies for no more than 10 years after that filing date.

Sec. 125. Limitation on Removal. Section 125(a) requires that individuals who are prima facie eligible for status under Title I be given a reasonable opportunity to apply for such status. This section also prohibits individuals who are prima facie eligible from being placed in removal proceedings, or removed, until a final decision on the application is rendered.

Section 125(b) requires termination of removal proceedings against individuals who are prima facie eligible for status under Title I. Such individuals must be provided a reasonable opportunity to apply for such status.

Section 125(c) allows an individual ordered removed, or granted voluntary departure, to apply for status without first having to file a motion with the relevant immigration court. If the application is approved, the order of removal or voluntary departure is cancelled; if the application is denied, the order remains in effect.

Section 125(d) clarifies that individuals with orders of removal shall not be deemed to have executed these orders as a result of departing the United States if the individuals have been granted status or have obtained advance permission to travel abroad from the Secretary.

Sec. 126. Documentation of Agricultural Work History. Section 126(a) requires applicants for CAW or LPR status to provide evidence that they satisfied any agricultural work requirements. Section 126(b) sets forth the types of evidence that may be submitted. These include employment records maintained by employers and collective bargaining organizations, tax records and other government records, sworn affidavits from persons who have direct knowledge of the applicant's work history, and other documentation designated by the Department of Homeland Security for such purpose. This section is intended to allow applicants for status under Title I to satisfy the agricultural work requirement through the submission of various types of evidence considering the difficulty many undocumented individuals are likely to have proving employment, and the duration of such employment, as far back as 10 years ago.

Section 126(c) allows the Department of Homeland Security to credit an applicant with not more than 575 hours (or 100 work days) of agricultural labor or services if the applicant was unable to perform such services due to extraordinary circumstances, including: pregnancy, illness, disabling injury, or physical limitation of the applicant; injury, illness, or special needs of the applicant's spouse or child; severe weather conditions; or termination from employment if the Department of Homeland Security determines that such termination was without just cause and the applicant was unable to find alternative agricultural employment after a reasonable job search. This section recognizes that there are certain situations in which a worker may be unable to satisfy all of the applicable agricultural work requirements due to circumstances beyond the worker's control.

Sec. 127. Employer Protections. Section 127 provides that an employer that continues to employ an individual during the initial application window in section 101(c), knowing that such individual intends to apply for CAW status, shall not be held liable for continuing to employ that individual. Documents provided by an employer in support of an application for CAW or LPR status cannot be used to investigate or prosecute such employers under the immigration laws or tax code. When records or other evidence of employment are provided by employers in response to a request to establish eligibility for status under this title, such documents may not be used for any purpose other than establishing such eligibility. These employer protections shall not apply if the employer-provided documents are determined to be fraudulent.

Sec. 128. Correction of Social Security Records. Section 128 protects individuals with CAW (or dependent) status from certain penalties under the Social Security Act if such individuals worked under an assumed social security number prior to applying for such status.

Sec. 129. Disclosures and Privacy. Section 129 prohibits the Department of Homeland Security from disclosing or using application information under Title I for general immigration enforcement purposes and may not refer applicants for immigration enforcement based solely on information provided in such applications. However, application information may be shared with federal law enforcement agencies for assistance in the consideration of an application, to identify or prevent fraud, for national security purposes, or for the investigation or prosecution of a felony not related to immigration status. A person who knowingly violates these provisions shall be fined up to $10,000. The Department shall also take steps to ensure that all personally identifiable information collected is protected, secure, and remains confidential.

Sec. 130. Penalties for False Statements in Applications. Section 130 makes it a crime to knowingly make false statements, conceal a material fact, or use any false document in an

application for CAW or LPR status, or to create or supply false documents for such purposes. Individuals may be fined, sentenced to a maximum of 5 years imprisonment, or both. An individual convicted of such a crime shall be deemed inadmissible under section 212(a)(6)(C)(i) of the INA for misrepresentation.

Sec. 131. Dissemination of Information. Section 131 requires the Department of Homeland Security to cooperate with qualified designated entities to broadly disseminate information on benefits and eligibility requirements under this title. As defined in section 121, qualified designated entities include farm labor organizations, employer associations, and other entities that the Department of Homeland Security designates as having substantial experience and demonstrated competence in the preparation and submission of applications for adjustment of status. This section also requires the Department of Agriculture to disseminate to agricultural employers a document with information about the requirements and benefits under Title I for posting at employer worksites.

Sec. 132. Exemption from Numerical Limitations. Section 132 clarifies that there is no numerical limitation on the number of individuals who may be granted CAW status, dependent status, or LPR status under this title.

Sec. 133. Reports to Congress. Section 133 requires annual reporting for 10 years on the number of applicants for CAW, LPR, and H-2A status (as well as dependents) under this title, and the number of those approved in these statuses.

Sec. 134. Grant Program to Assist Eligible Applicants. Section 134 helps ensure that eligible individuals have access to information and assistance under this title. Among other things, the section establishes a grant program for nonprofit organizations with demonstrated experience in providing quality services to farmworkers or immigrants in publicizing

information about benefits under this title, and assisting individuals applying for and receiving such benefits.

Sec. 135. Authorization of Appropriations. Section 135 authorizes appropriations necessary to implement this title.

Title II. Ensuring an Agricultural Workforce for the Future. Title II contains reforms to modernize the H-2A temporary agricultural worker program. Subtitle A reforms the H-2A program to streamline processing, reduce costs, and provide more flexibility for employers, while providing protections for H-2A and domestic workers. Subtitle B reforms existing farmworker and rural housing programs to improve current housing stock and incentivize the construction of additional, affordable farmworker housing. Subtitle C establishes a program to register and provide oversight and enforcement over foreign labor recruiters engaged in the recruitment of workers for the H-2A program.

Subtitle A. Reforming the H-2A Temporary Worker Program.

Sec. 201. Comprehensive and Streamlined Electronic H-2A Platform. Section 201(a) replaces the current 4-step H-2A application and petition process with a single electronic platform for completing most of the H-2A process. The platform will serve as a single point of access for: (1) employers to input all information and supporting documentation for completing the H-2A petition process, including obtaining labor certification and petition approval; (2) all applicable agencies—including the Department of Homeland Security, the Department of Labor, and State workforce agencies (SWAs)—to concurrently perform their responsibilities relating to labor certification and petition approval; and (3) facilitating communication between employers and agency adjudicators. The Department of State and U.S. Customs and Border Protection may

access the platform to facilitate H-2A visa issuance and the admission of workers.

The purpose of the single electronic platform is to streamline and improve the H–2A process, including by: (1) eliminating the need for employers to submit duplicate information and documentation to multiple agencies; (2) eliminating redundant bureaucratic processes, where a single matter in a petition is adjudicated by more than one agency; (3) reducing the occurrence of common petition errors, and otherwise improving and expediting the processing of H–2A petitions; and (4) ensuring compliance with H–2A program requirements and the protection of the wages and working conditions of workers.

Section 201(b) requires the Department of Labor to maintain a public online job registry and searchable database of all job orders submitted by H-2A employers. The registry and database are intended to facilitate the ability of domestic workers to easily search and apply for available job opportunities.

Sec. 202. H-2A Program Requirements. Section 202 amends section 218 of the INA in its entirety, as follows:

New Section 218(a) preserves the existing requirement that the Department of Homeland Security may not approve a petition unless the Department of Labor certifies that there are no able, willing, and qualified workers to perform the agricultural work that is the subject of the H-2A petition, and that such employment of H-2A workers will not adversely affect the wages and working conditions of similarly employed individuals.

New Section 218(b) requires the employer to attest to and demonstrate compliance, as appropriate, with the following:

- That there is a need for agricultural labor or services, including a description and location of the work, the dates of need, and the number of job opportunities in which the employer seeks to employ workers.
- That the employer has not displaced and will not displace similarly situated U.S. workers during the period of employment, and the 60-days preceding such period.
- That there is no strike or lockout at the place of employment.
- That the employer will engage in the recruitment of U.S. workers and will hire such workers who are able, willing, qualified, and available. The employer may reject a U.S. worker only for lawful, job related reasons.
- That the employer will offer and provide the required minimum wages, benefits, and working conditions to H-2A workers and all similarly employed workers; that similarly employed workers will not be offered less than what is offered to H-2A workers; and that similarly employed workers will not be subject to restrictions or obligations that are not also imposed on H-2A workers
- That the employer will provide appropriate workers' compensation insurance, at no cost to the worker, if the job is not covered by State workers' compensation laws.
- That the employer will comply with all applicable Federal, State, and local labor- and employment-related laws.

New Section 218(c) modernizes the recruitment requirements for the H-2A program, including by eliminating a requirement to post classified ads. Under the new requirements, an employer will be required to: (1) post the job opportunity on the electronic job registry and at the place of employment; (2) make reasonable efforts to contact any U.S. worker employed by the

employer in the previous year in the same job and area of employment (excluding workers who were terminated for cause or abandoned the worksite); and (3) fulfill other positive recruitment steps ordered, if any.

The period of recruitment is defined as starting when the job order is posted and ending when the H-2A workers depart for the place of employment. For petitions involving staggered entry (i.e., petitions seeking H-2A workers for more than one start date), the recruitment period ends with the departure of the worker with the last start date.

The specific requirement to hire U.S. workers who apply for the job opportunity extends beyond the recruitment period and ends on the later of: (1) the 30th day after work begins, or the date on which 33% (50% for labor contractors) of the work contract has elapsed. For petitions involving staggered entry, each start date establishes a separate job opportunity. It is the intent of the Committee that each job opportunity within a staggered entry petition will be independently searchable in the public online job registry so that U.S. workers can easily identify and apply for such opportunities. An employer may not reject a U.S. worker because the worker is unable or unwilling to fill more than one job opportunity included in the petition. For the purpose of recruitment, workers with CAW status are considered U.S. workers, except that an employer may petition for and hire an H-2A worker over a worker with CAW status if the employer previously employed the H-2A worker in each of three years during the most recent four-year period.

Employers must maintain a report on recruitment efforts and must submit regular updates on the results of recruitment through the electronic portal. Recruitment reports and supporting documents must be maintained for three years from the date of labor certification. If the employer denies employment to an applicant as not able, willing, or qualified, the employer

maintains the burden of proof of establishing that the applicant was not able, willing, or qualified because of a lawful, employment-related reason.

New Section 218(d) sets the wage requirements for H-2A workers and similarly employed workers. New Section 218(d)(1) requires employers to offer workers the highest of: (1) the agreed-upon collective bargaining wage, if any; (2) the Adverse Effect Wage Rate (AEWR) (or any successor rate that may be established under a later provision in this subsection); (3) the prevailing hourly wage or piece rate; or (4) the Federal or State minimum wage.

New Section 218(d)(2) sets out to comprehensively reform AEWR determinations for future years. First, the Department of Labor is required to set and report distinct AEWR wages at the occupational classification level (i.e., based on the type of agricultural work involved), rather than as a single, aggregate wage applicable to all agricultural workers. If available, the AEWR would be set as the annual average hourly wage for the occupation based on regional wage data for the occupation collected in a wage survey conducted by the Department of Agriculture (commonly known as the "Farm Labor Survey"). If sufficient regional data is unavailable, the AEWR for the occupation would be set based on national wage data collected from that survey. However, if the survey data obtained by the Department of Agriculture is insufficient to set the AEWR for the occupation, the AEWR may then be set based on wage data collected in a wage survey conducted by the Department of Labor (commonly known as the "Occupational Employment Survey"). The Department of Labor would first be required to set the wage based on regional wage data. If sufficient regional data is unavailable, the Department could set the AEWR based on national wage data.

Second, new Section 218(d)(2) addresses wage fluctuations in the AEWR from 2020

through 2029. Specifically, for calendar year 2020, the AEWR remains set at 2019 levels. For each of calendar years 2021 through 2029, the AEWR cannot decrease by more than 1.5% or increase by more than 3.25% based on the AEWR from the immediately preceding year. However, if the result of this calculation is lower than 110% of the applicable Federal or State minimum wage, the calculation is adjusted so that the AEWR cannot increase by more than 4.25%. For 2030 and subsequent years, a successor wage rate is established as provided under new Section 218(d)(7). Until this new wage standard is effective, the AEWR cannot decrease by more than 1.5% or increase by more than 3.25% based on the AEWR from the immediately preceding year.

New Section 218(d)(3) clarifies that if the primary job duties of a worker fall into multiple occupational classifications, the applicable wage rates shall be based on the highest wage rate of any of the applicable occupational classifications for the worker.

New Section 218(d)(4) requires the Department of Labor to publish the AEWR and any available prevailing wage rates in the Federal Register prior to the start of each calendar year, but also protects employers with seasonal or temporary needs from having required wage rates increase mid-contract. Specifically, upon an update of the AEWR, an employer of seasonal or temporary H-2A workers will not be required to pay the new wage if recruitment efforts have already commenced at the time of publication of the new AEWR. However, for year-round positions, if the wage is higher than that which is guaranteed in the work contract, an employer must pay the new wage within 14 days of publication.

New Section 218(d)(5) requires employers who pay by a piece rate or other incentive method to specify in the job order any productivity standards that are a condition of job retention, and such standards must be consistent with what other employers in the area of

intended employment normally require. The Department of Labor, however, may approve a higher minimum standard if that standard results from material changes in production methods.

New Section 218(d)(6) requires employers to guarantee employment for three-fourths of the work days in the contract, unless: (1) the worker fails to work (up to a maximum of hours specified in the job offer for a work day) when the worker has been offered an opportunity to do so, abandons employment without good cause, or is terminated for cause; or (2) the contract cannot be completed for reasons beyond the control of the employer. In the event of contract impossibility, the employer has to fulfill the employment guarantee for the days that have elapsed and must make efforts to transfer the worker to comparable employment acceptable to the worker.

New Section 218(d)(7) establishes the procedures for determining the wage rate to replace the AEWR beginning in calendar year 2030. Beginning in 2026, the Departments of Agriculture and Labor are first required to jointly conduct a study of the AEWR and determine: (1) whether the employment of H-2A workers has depressed the wages of U.S. farmworkers; (2) whether the AEWR is necessary to protect the wages of U.S. farmworkers or whether alternative wage standards would be sufficient for this purpose; and (3) whether any changes are warranted in the current methodologies for calculating required wages for the H-2A program. The Departments are then required, by October 1, 2027, to jointly prepare and submit a report to Congress setting forth the findings of the study and any recommendations for future wage protections. Upon publication of this report, the Department of Labor, in consultation with and with the approval of the Department of Agriculture, shall make a rule to establish a process for annually determining a subsequent wage standard for years beginning in 2030. That process must be designed to ensure that the employment of H-2A workers does not undermine the wages

and working conditions of similarly employed U.S. workers.

New Section 218(e) preserves the current requirement that employers furnish housing that meets applicable standards, at no cost to the worker, in accordance with Department of Labor regulations. Employers must provide family housing where it is the prevailing practice to provide such housing in the area and occupation of intended employment. The employer, however, is not required to provide housing to U.S. workers who live within a reasonable commuting distance. The Department of Labor must ensure housing inspections are completed prior to the date that labor certification is required. To better ensure timely inspections, employers may request housing inspection up to 60 days before filing the H-2A petition. Housing provided to H-2A workers engaged in year-round employment shall be subject to an annual inspection.

New Section 218(f) requires that for a worker who completes 50 percent of the work contract, the employer is required to reimburse the worker for reasonable transportation and subsistence costs to the place of employment. If the worker completes the contract, the employer must also provide or pay for reasonable transportation and subsistence back home or to the next place of employment (unless the worker's subsequent employer agrees to provide transportation and subsistence to such worker). In either case, the amount of reimbursement need not exceed the lesser of: (1) the actual costs of travel, or (2) the most economical and reasonable common carrier transportation charges and subsistence costs for the distance involved. Finally, for travel to and from the worker's home country, if the travel distance between the worker's home and the relevant consulate is 50 miles or less, travel reimbursement may be based on transportation to or from the consulate.

New Section 218(g) requires all employers to maintain a reasonable heat illness

prevention plan, including appropriate training, access to water and shade, the provision of breaks, and the protocols for emergency response. Such plan must be in a language understood by a significant portion of workers, and it must be posted in a conspicuous location at the worksite and provided to workers prior to the commencement of labor or services.

New Section 218(h) sets forth the procedures for employers to request H-2A workers through the electronic platform. The process begins when the employer submits a completed H-2A petition (including a job order) through the electronic platform 75 to 60 calendar days before the first date of need. An agricultural association may file a petition as either a joint or sole employer. When filing the petition, an employer may seek temporary or seasonal workers for more than one start date ("staggered entry") if: (1) the petition contains no more than 10 start dates, all of which share a common end date that is no longer than one year after the first start date; (2) no more than 120 days separate the first and last start dates; (3) the petition involves the same occupational classification and area of intended employment; and (4) the need for staggered entry arises from normal variations in labor needs. The Committee clarifies, however, that this provision is not intended to reflect a view on the definition of "temporary or seasonal." A labor contractor may not file such a petition involving staggered entry unless the labor contractor: (1) files jointly with its farmer customers or otherwise operates in a state with joint liability, or (2) posts a premium surety bond (i.e., a bond that is at least 15 percent higher than the normally required bond for labor contractors).

Once the petition is filed, the Department of Labor, in consultation with the relevant State workforce agency (SWA), must review the job order and notify the employer of any deficiencies through the electronic platform within 7 business days. Employers are provided 5 business days to respond. The job order must include all material terms and conditions of employment,

including the requirements of new Section 218, and must be otherwise consistent with the minimum standards provided under Federal, State, or local law. The Department of Labor must also establish emergency procedures for the curing of deficiencies that cannot be resolved quickly. If the job order is approved, the Department of Labor must post it on the online job registry and notify the appropriate SWA to commence recruitment of U.S. workers. The SWA shall refer qualified U.S. workers who apply for the job opportunity during the recruitment period.

Within 7 business days of the approval of the job order, the Department of Labor must notify the employer of any deficiencies in the information required for labor certification. Employers are provided 5 business days to respond. The Department of Labor is required to issue the labor certification, if the requirements under new Section 218 are met, not later than 30 days before the first date of need. Employers may appeal denials or partial certifications, and the Department of Labor must respond to an appeal within 72 hours.

Within 7 days of the issuance of a labor certification, the Department of Homeland Security must issue a decision on the petition. If approved, the electronic platform is updated and available to the Department of State for visa issuance and to Customs and Border Protection for the purpose of determining admission. A petition for multiple named beneficiaries may be partially approved for the eligible beneficiaries, even if one or more of the other beneficiaries are potentially ineligible. Post-certification amendments are permitted if they do not materially change the petition, including the job order.

New Section 218(h)(4) simply retains the current statutory language governing the roles of agricultural associations and its individual producer members. No changes were made to these provisions.

New Section 218(h)(5) authorizes the Department of Labor, in consultation with the Departments of Agriculture and Homeland Security, to issue regulations reasonably modifying H-2A program requirements to accommodate specific agricultural occupations due to the unique nature of the work involved. This provision is intended to codify the Department of Labor's longstanding use of "special procedures" for certain industries when strict adherence to program requirements would be impractical or impossible.

New Section 218(h)(6) prohibits employers from hiring H-2A workers when the majority of duties fall within an occupational classification designated by the Department of Labor as a construction or extraction occupation.

New Section 218(i) accommodates the need for workers engaged in labor or services that are not of a temporary or seasonal nature by making 3-year H-2A visas available for workers engaged in such year-round employment. Unlike traditional H-2A visas for temporary or seasonal jobs, which are not subject to numerical limitation, the H-2A visas for year-round employment are subject to such limitation. For the first three fiscal years, year-round H-2A visas are capped at 20,000 per year. For the next seven fiscal years, the Departments of Agriculture and Labor, in consultation with the Department of Homeland Security, shall jointly determine the appropriate visa cap after considering appropriate factors related to labor needs. Such cap, however, cannot be set lower than 20,000 and cannot increase or decrease by more than 12.5% from the cap set in the immediately preceding fiscal year.

After the tenth year, the Departments of Agriculture and Labor, in consultation with the Department of Homeland Security, shall jointly determine, after considering appropriate factors, whether to set a cap and, if so, what the cap should be. The Departments shall also jointly establish emergency procedures for immediately adjusting the numerical limit in any fiscal year

(after the first three fiscal years) if such adjustment is necessary to account for significant labor shortages.

New Section 218(i) additionally requires that 3-year H-2A visas be evenly allocated between the two halves of the fiscal year, unless it is determined that an alternative allocation would better accommodate demand. Unused visas from the first half of the fiscal year are added to the allocation for the second half of the fiscal year. Additionally, 50 percent of the visa numbers made available in each half of the fiscal year shall be allocated to dairy-related jobs, except that any unused visas can later be made available for non-dairy jobs.

Additionally, employers must provide year-round H-2A workers with annual round trip travel home, with no more than 14 months elapsing between each period of travel. Employers must also offer family housing to year-round workers with families, but workers can reject such an offer. If a worker accepts such housing, the employer may not charge the worker for the housing, but the employer may charge a pro-rated rent based on the fair market value of the housing for the worker's family members.

Finally, to be eligible for year-round H-2A workers, dairy employers must report serious safety-related incidents consistent with federal safety regulations. Dairy employers must also maintain a workplace safety plan to prevent workplace accidents, including by providing animal care training; protecting against sexual harassment and violence, as well as retaliation; and complying with other safety regulations issued by the Department of Labor, in consultation with the Department of Agriculture. Such plan must be in a language understood by a significant portion of workers, and it must be provided to workers prior to the commencement of labor or services

New Section 218(j) sets forth the conditions for eligibility and admission of a worker in

H-2A status. Workers who previously violated H-2A status are disqualified from such status for 5 years. H-2A visas shall be valid for three years and shall allow for multiple entries, except that an H-2A worker's authorized period of stay shall be based on the period of employment specified in the approved petition. Upon reaching the maximum continuous period of authorized stay (36 months), H-2A workers must depart and remain outside the United States for at least 45 days before they can reenter in H-2A status. Any periods in which an H-2A worker has departed the United States during the worker's period of authorized stay may be used to offset or partially offset the 45-day absence requirement.

In addition to the period of authorized stay (up to 36 months), an H-2A worker's period of admission shall include an additional 10 days prior to the beginning of the work contract and 45 days at the end of employment for the purpose of traveling home or seeking an extension of status based on a new offer of employment. H-2A workers in the United States may start new employment with another employer if a non-frivolous petition is timely filed and the H-2A worker has not worked without authorization. Moreover, H-2A workers who are sponsored for immigrant visas (i.e., lawful permanent residence) can continue working in H-2A status (notwithstanding the 36-month maximum) until their immigrant visas become available. Those workers who abandon employment without good cause will generally be considered to have failed to maintain H-2A status. H-2A workers are provided a reasonable grace period, once during each period of authorized stay.

New Section 218(k) governs required disclosures that employers must make to H-2A workers. First, employers must provide a prospective H-2A worker with a copy of the work contract (or job order and labor certification), including the disclosures and rights under the H-2A program, before the H-2A worker is required to apply for a visa (or, for a worker moving

from one H-2A employer to another, by the time the subsequent offer of employment is made). Employers must provide H-2A workers with detailed earnings statements on or before each pay day. Finally, employers must post a notice of worker rights, in one or more languages common to a significant portion of the workers, at the worksite.

New Section 218(l) requires labor contractors seeking to hire H-2A workers to maintain surety bonds. The Department of Labor shall set bond amounts based on the number of workers sought, and labor contractors that want to file petitions involving staggered entry must maintain premium surety bonds, which are defined as bonds that are 15 percent higher than the otherwise applicable bond amount.

New Section 218(l) also requires employers that use foreign labor recruiters to use a recruiter registered with the Department of Labor consistent with Subtitle C of Title II. In addition, employers and their agents are prohibited from collecting fees or seeking payment from workers for any activity associated with the H-2A petition process, except for costs that are primarily for the worker's benefit. Employers must also contractually forbid labor contractors and foreign labor recruiters, and any agents of such contractors or recruiters, from seeking or receiving prohibited payments from prospective employees.

New Section 218(m) specifies the Department of Labor's enforcement authority over the H-2A program, including the authority to impose penalties and other sanctions and to seek monetary and injunctive relief and specific performance of contractual obligations. The Department of Labor is required to maintain a process for receiving, investigating, and resolving complaints, which may be filed up to 2 years after the date of the alleged violation. If, after notice and the opportunity for a hearing, the Department of Labor finds that an employer failed to comply with H-2A program requirements, the Department may order the payment of back

wages, unpaid benefits, or illegally assessed fees, as well as damages and civil money penalties. The Department may also debar employers for up to 5 years for willful or multiple material violations, and permanently upon subsequent findings involving willful or multiple material violations. This subsection is not to be construed as limiting the Department of Labor's authority to conduct an investigation under any other law or in the absence of a complaint. Finally, employers are prohibited from retaliating against any person who has: (1) disclosed information that the person reasonably believes evidences a violation, (2) filed a complaint or otherwise taken steps to report violations of the H-2A program, (3) cooperated in any investigation or other proceeding concerning H-2A program compliance; or (4) exercised or asserted any right or protection under this section.

New Section 218(n) defines the following terms: displace; H-2A worker; job order; online job registry; similarly employed; and United States worker.

New Section 218(o) directs the Department of Homeland Security to impose a fee to cover the reasonable costs of processing H-2A petitions, including the costs of providing labor certification. The portion of fees collected to offset the costs of labor certification shall be deposited into an account maintained by the Department of Labor. New Section 218(o) also authorizes appropriations necessary for administering and enforcing the H-2A program.

Sec. 203. Agency Roles and Responsibilities. Section 203(a) sets forth the Department of Labor's responsibilities in the H-2A process. These responsibilities include consulting with State workforce agencies (SWAs) on processes related to the recruitment and protection of workers. The Department of Labor must also: (1) determine whether the employer has met the conditions for issuance of a labor certification, including whether the employer has complied or will comply with H-2A program requirements; (2) determine, in consultation with the

Department of Agriculture, whether job opportunities are of a seasonal or temporary nature; and (3) process and investigate complaints. Finally, the Department of Labor must regularly update guidance to the SWAs to ensure that prevailing wage rates accomplish the statutory requirements and accurately reflect the wages paid for particular labor or services in specific crops throughout the season.

Section 203(b) sets forth the Department of Homeland Security's responsibilities in the H-2A process. These responsibilities include: (1) adjudicating H-2A petitions, including the assessment of whether the beneficiary will be employed in accordance with the terms and conditions of the labor certification, (2) transmitting final decisions to the employer, (3) notifying the Department of State and U.S. Customs and Border Protection of petition approvals, and (4) providing H-2A workers with access to information about their status, including the status of petitions.

Section 203(c) establishes an H-2A Labor Certification Fee Account, funded by H-2A program application fees and enforcement penalties, for use by the Department of Labor to carry out activities in connection with the labor certification process and the enforcement of the H-2A program. Account funds shall be provided by the Department of Labor to States for activities conducted by State workforce agencies in connection with the H-2A program. Funds are also made available to the Department of Labor's Office of Inspector General to conduct audits and investigations related to H-2A program compliance.

Sec. 204. Worker Protection and Compliance. Section 204(a) provides that H-2A workers shall have the same rights and remedies as U.S. agricultural workers under Federal, State, and local labor laws.

Section 204(b) ensures that H-2A workers are covered by the Migrant and Seasonal

Agricultural Worker Protection Act (MSPA), and it prohibits any agreements to waive or modify any rights or protections provided by MSPA or the H-2A program. While the bill makes H-2A workers eligible for MSPA protection, it also provides for free mediation services to resolve disputes prior to litigation. As provided in the bill, if an H-2A worker files a civil lawsuit alleging one or more violations of the H-2A program, MSPA, or the Fair Labor Standards Act, either party to the lawsuit may, within 60 days of service of the complaint, request mediation. Upon such a request, the parties must attempt mediation for up to 90 days, except that the mediation period may be extended if both parties agree. The bill authorizes appropriations to support free mediation services, and it also allows for parties to use private mediators if all parties agree.

Section 204(c) amends MSPA to better ensure compliance by farm labor contractors. First, the bill codifies the current regulatory requirement for farm labor contractors to maintain surety bonds, while also requiring the Department of Labor to annually set and publish surety bond schedules in an amount sufficient for farm labor contractors to discharge financial obligations based on the number of workers sought to be covered. MSPA is also amended to expressly allow the Department of Labor to revoke a farm labor contractor license based on the failure to maintain the required surety bond or on being disbarred from participating in the H-2A program. Finally, Section 204(c) further amends MSPA to better prevent violators with revoked licenses from serving as the actual successors in interest in another entity that seeks to obtain a license to continue contracting activities. The bill both: (1) requires applicants for licenses to disclose relationships with persons who have had licenses suspended or revoked, and (2) creates a rebuttable presumption that the applicant is not the real party in interest when the applicant is closely associated with such a person.

Sec. 205. Report on Wage Protections. Section 205 requires the Departments of Labor and Agriculture to submit a report to Congress every three years on H-2A wage protections, including: whether the use of H-2A workers depresses the wages of U.S. workers; the impact of the AEWR on wages; factors that may artificially impact wage rates; and recommendations on whether there should be changes to wage methodologies in the H-2A program. In preparing these reports, the Departments of Labor and Agriculture must engage with agricultural stakeholders, including an equal number of employer representatives and worker representatives.

Sec. 206. Portable H-2A Visa Pilot Program. Section 206 requires the Department of Homeland Security, in consultation with the Departments of Labor and Agriculture, to establish through regulation a 6-year pilot program to facilitate the free movement and employment of temporary or seasonal H-2A workers (known herein as "portable H-2A workers") with registered agricultural employers. The Department of Homeland Security is authorized to set program rules and requirements for this special class of H-2A workers, consistent with the following:

- Employers that wish to participate in the pilot program must register with the Department of Homeland Security, which will maintain an online platform to connect portable H-2A workers with registered employers. Workers who have been previously admitted in H-2A status, and maintained such status during the period of admission, are eligible to apply for portable H-2A status.

- Registered employers may employ portable H-2A workers at will and without filing an H-2A petition, so long as the wage requirements that apply to H-2A workers are met. Workers may work for any registered employer during the period of admission, which shall be for up to 3 years, and either party can terminate employment at any time.

Workers shall also have a 60-day grace period at the conclusion of employment to secure new employment with a subsequent registered employer.

- If the job opportunity is not covered or is exempt from the State workers' compensation law, the employer must provide commensurate insurance at no cost to the worker.
- The total number of individuals who may hold portable H-2A status at any one time may not exceed 10,000, except that the Department of Homeland Security may further reduce this number if the Department determines that there are an insufficient number of registered employers or job opportunities to support the employment of the full number of portable H-2A workers. Moreover, no worker may be admitted in portable H-2A status until the Department has determined that a sufficient number of employers have been registered to support a reasonable number of portable H-2A workers to initiate the pilot program, and no individual may initially be granted portable H-2A status without an offer of employment from a registered employer.

In addition, the Department of Labor is responsible for enforcement of the pilot program's employment-related requirements, including conducting investigations and audits of employers to ensure compliance. And the Department of Homeland Security, in consultation with the Departments of Labor and Agriculture, must submit a report to Congress on the pilot program, including its impact on U.S. workers and recommended improvements, not later than six months before the end of the third fiscal year of the pilot program.

Sec. 207. Improving Access to Permanent Residence. Section 207 further accommodates the need for workers in year-round agriculture by adding 40,000 new immigrant visas to the employment-based third preference (EB-3) category for "unskilled" labor. These additional immigrant visas are available for employer sponsorship of workers, except that H-2A workers

may self-petition for one of these visas once they have worked in the United States in H-2A status for at least 10 years (and for at least 100 days in each of those years). Preference for the additional 40,000 visas is given to agricultural employers seeking to petition for year-round workers and for H-2A workers who are eligible to self-petition. These visas are also not subject to the "per country" limitations described in section 202(a)(2) of the INA. Finally, H-2A workers are provided dual intent so that they do not become ineligible to remain in temporary status due solely to being the beneficiary of an immigrant visa petition.

Subtitle B. Preservation and Construction of Farmworker Housing. Subtitle B improves the availability of farmworker and other rural housing, while lowering employer costs related to such housing.

Sec. 220. Short Title. Section 220 sets forth the short title of Subtitle B as the "Strategy and Investment in Rural Housing Preservation Act of 2019."

Sec. 221. Permanent Establishment of Housing Preservation and Revitalization Program. Section 221 amends the Housing Act of 1949 to establish a program to revitalize and preserve existing farmworker and rural housing financed under section 515 ("515 housing"), or both sections 514 and 516 ("514/516 housing"), of the Housing Act. Under the program, the Department of Agriculture may offer loan restructuring to owners of 515 or 514/516 housing to preserve and refurbish such properties. The Department may reduce or eliminate interest, defer payments, re-amortize existing debt, or provide other financial assistance. If the Department offers to restructure a loan, it shall also offer to renew for a 20-year term a rental assistance contract under section 521 of the Housing Act. Properties that obtain 20-year extensions of the rental assistance contract must agree to a restrictive use agreement that obligates the owner to continue operating the project as farmworker or rural housing as provided in the Housing Act.

If the Department determines that a maturing loan cannot reasonably be restructured and the project was operating with rental assistance under section 521 of the Housing Act, the Department may nevertheless renew the rental assistance contract for a 10- to 20-year term so long as the owner agrees to continue operating the project as farmworker or rural housing. Owners of 515 or 514/516 housing whose loans have matured must give tenants 18 months prior to loan maturation or prepayment to transfer their rental assistance to another rental project. The bill also authorizes $200,000,000 in appropriations for each of FY 2020 through 2024 for such purposes.

Sec. 222. Eligibility for Rural Housing Vouchers. Section 222 amends section 542 of the Housing Act of 1949 to authorize the Department of Agriculture to provide rural housing vouchers to low income households residing in properties that are financed: (1) under sections 514 or 516 if such property is owned by a non-profit organization or public agency; or (2) with a loan made or insured under sections 514 or 515 that has been prepaid without restrictions, has been foreclosed, or has matured after September 30, 2005.

Sec. 223. Amount of Voucher Assistance. Section 223 caps the value of a rural housing voucher in an amount equal to the greater of: (1) the difference between the fair market rental rate for the area in which the family is living and 30% of the family's monthly adjusted income; or (2) the difference between the rent of the dwelling unit in which the voucher recipient lives and 10% of the family's monthly gross income.

Sec. 224. Rental Assistance Contract Authority. Section 224 allows the owner of a project financed under section 514 or 515 of the Housing Act to request renewal of a rental assistance contract for up to an additional 20 years. The bill also allows such an owner who terminates a rental assistance contract for a family (presumably because the family moves away

or is no longer eligible) to make that assistance available for 6 months to another eligible family residing in the same rental unit or newly occupying a unit in the rental property.

Sec. 225. Funding for Multifamily Technical Improvements. Section 225 authorizes an additional $50,000,000 in appropriations for FY 2020 for the Department of Agriculture to improve its technology for processing loans for and managing multifamily housing.

Sec. 226. Plan for Preserving Affordability of Rental Projects. Section 226 requires the Department of Agriculture to submit a plan to Congress on the preservation of affordable housing financed under section 514 or 515 of the Housing Act. The bill also establishes an advisory committee, consisting of 16 members representing a range of stakeholders in farming and rural communities, to assist the Department of Agriculture in managing its rural housing programs.

Sec. 227. Covered Housing Programs. Section 227 amends the definition of "covered housing program" to clarify that recipients of rural development housing vouchers are also part of a covered housing program under the Housing Act.

Sec. 228. New Farmworker Housing. Section 228 amends section 513 of the Housing Act to further incentivize the financing and construction of new farmworker housing. Specifically, section 228: (1) increases the Department of Agriculture's authority to insure loans made under section 514, up to an aggregate amount of $200,000,000 during each of FYs 2020 through 2029; (2) triples funding for the section 514 loan program by authorizing $75,000,000 in appropriations for each of FYs 2020 through 2029; (3) triples funding for the section 516 grant program by authorizing $30,000,000 in appropriations for each of FYs 2020 through 2029; and approximately doubles funding for section 521 rental assistance (or operating assistance) payments by authorizing $2.7 billion in appropriations for each of FYs 2020 through 2029.

Sec. 229. Loan and Grant Limitations. Section 229 requires the Department of Agriculture's per project loan and grant limitation under sections 514 and 516 to be set at no lower than $5 million. The current per project loan and grant limitation is $3 million.

Sec. 230. Operating Assistance Subsidies. Section 230 authorizes operating assistance payments to owners of section 514/516 housing that house H-2A workers. Payments are capped at 50 percent of operating costs for the housing project, and the Department of Agriculture may only authorize such payments upon certification that: (1) the project was previously unoccupied or underutilized; and (2) provision of operating assistance will not displace domestic farm workers.

Sec. 231. Eligibility of Certified Workers. Section 231 makes holders of CAW status eligible for rental assistance under section 521 and housing vouchers under section 542 of the Housing Act of 1949.

Subtitle C. Foreign Labor Recruiter Accountability.

Sec. 251. Registration of Foreign Labor Recruiters. Sections 251(a) and (b) require the Department of Labor, in consultation with the Departments of State and Homeland Security, to set up an electronic registration process for foreign labor recruiters seeking to hire H-2A workers. The process shall include a mechanism for obtaining information about foreign labor recruiting activities from persons and entities seeking to register; maintaining surety bonds to protect workers, including by ensuring the ability of labor recruiters to discharge their financial responsibilities; renewing registrations; receiving information at diplomatic missions; receiving and processing complaints, conducting investigations, and assessing penalties; and consulting with other agencies when revocation might be necessary.

Section 251(c) provides that foreign labor recruiters must attest to and abide by a series of requirements. Sections 251(d) and (e) provide that a foreign labor recruiter registration shall be valid for 2 years, unless suspended or revoked. Foreign labor recruiters must pay a reasonable application fee for registration.

Section 251(f) provides that at least once per year, an H-2A employer must provide the Department of Labor with the names and addresses of all foreign labor recruiters engaged in recruiting activity on behalf of the employer and whether such persons are to receive compensation for such services. Such an employer must notify the Department of Labor if the employer has reason to believe that a foreign labor recruiter is violating this subtitle and must promptly respond to any Departmental request for information about a foreign labor recruiter with whom the employer has an agreement. Foreign labor recruiters must also annually notify the Department of Labor of the identity of its subcontractees, agents, and employees.

Section 251(g) requires the Department of State, in consultation with the Department of Labor, to maintain publicly available lists of foreign labor recruiters with valid registrations and those with revoked registrations. The Department of State shall also ensure that: (1) diplomatic missions are staffed with persons responsible for receiving information regarding potential violations of this subtitle; (2) consular officers take steps during consular interviews to ensure that applicants for H-2A visas are accurately informed of the job opportunity and any other disclosures required by law, including by reviewing required disclosures with the visa applicants; and (3) information is made available online on the characteristics of H-2A workers.

Sec. 252. Enforcement. Section 252(a) requires the Department of Labor to deny an application for registration, or to revoke registration, if it determines that a foreign labor recruiter, or an agent or subcontractee of such a recruiter, knowingly made a material

misrepresentation in the registration application, materially failed to comply with an attestation required under section 251(c), or is not the real party in interest. Prior to such a denial, the Department of Labor must notify the foreign labor recruiter of the intent to deny or revoke the registration and provide the recruiter with at least 60 days to respond. A foreign labor recruiter whose registration has been revoked may apply to reregister upon demonstrating that it has not violated this subtitle for 5 years.

Section 252(b) establishes a complaint process at the Department of Labor. Foreign labor recruiters found in violation of the subtitle may: (1) be fined not more than $10,000 per violation, or $25,000 per violation upon a third violation; (2) be ordered to forfeit or partially forfeit a surety bond; (3) have their registration revoked, or their renewal application denied; or (4) be disqualified for up to five years (or permanently disqualified with the subsequent finding involving willful or multiple material violations). The Department of Labor may also take other actions, including issuing subpoenas and seeking injunctive relief, to secure compliance with this subtitle. This subsection does not limit the Department of Labor's authority to conduct an investigation under any other law or in the absence of a complaint.

Section 252(c) allows the Department of Labor or any aggrieved person to bring a civil action against a foreign labor recruiter that violates this subtitle or an employer that fails to use a registered recruiter. The reviewing court may award actual damages and statutory damages up to $1,000 per plaintiff per violation, equitable relief, attorneys' fees and costs, and other relief as necessary. Damages recovered by the Department of Labor shall be deposited in a separate Treasury account. Amounts deposited in this fund shall be paid directly to affected workers, except that remaining funds shall be remain available to the Department of Labor, and may be transferred to other agencies to support the enforcement of anti-trafficking laws.

Section 252(d) provides a safe harbor for employers that use foreign labor recruiters registered under this section. Employers that utilize registered recruiters will not be held jointly liable in administrative or judicial proceedings for violations committed solely by the recruiter. Employers, however, may be liable if they employed a recruiter without a valid registration at the time of hire or the employer knew or learned of a violation and failed to report it to the Department of Labor.

Section 252(e) authorizes the Department of Homeland Security to grant parole to individuals to participate in administrative or judicial proceedings against foreign labor recruiters.

Section 252(f) voids agreements by employers purporting to waive or modify rights under this subtitle.

Section 252(g) clarifies that foreign labor recruiters are liable for violations committed by agents or subcontractees at any level in relation to the foreign labor recruiting activity to the same extent as if the foreign labor recruiter had committed the violation.

Sec. 253. Appropriations. Section 253 authorizes necessary appropriations to implement this subtitle.

Sec. 254. Definitions. Section 254 defines the following terms: foreign labor recruiter; foreign labor recruiting activity; recruitment fees; and person.

Title III. Electronic Verification of the Agricultural Workforce. Title III phases in mandatory use of an electronic employment eligibility verification system, patterned on E-Verify, for agricultural employment, but only after the reforms in Titles I and II have been implemented. Title III also includes necessary due process protections for authorized workers who are incorrectly rejected by the system to challenge such determinations. This serves as the last necessary piece to ensure a legal workforce for the agricultural sector.

Sec. 301. Electronic Employment Eligibility Verification System. Section 301 amends chapter 8 of title II of the INA by inserting after section 274D a new section 274E:

New Section 274E(a) requires the Department of Homeland Security to establish an electronic employment eligibility verification system (the "System") patterned on E-Verify for: (1) checking identity and employment authorization; and (2) maintaining records of past inquiries and whether identity and employment authorization were confirmed. Such System shall: (1) provide a confirmation or tentative nonconfirmation (TNC) of identity and employment authorization not later than 3 days after the initial inquiry; (2) be designed to maximize reliability and accessibility across devices and in remote locations; and (3) include safeguards to prevent misuse, data and identity theft, fraud, and violations of privacy.

New Section 274E(a)(4) requires the System to include various features that prevent identity theft and fraud. The System shall include a photo matching tool, a mechanism to permit individuals to monitor and suspend the use of their social security numbers in the System, and a process to block misused social security numbers. The Department of Homeland Security shall establish a pilot program that allows parents or legal guardians to suspend use of a child's social security number in the System.

New Section 274E(a)(5) sets forth the responsibilities of the Social Security

Administration with respect to the System. The Social Security Administration is primarily tasked with comparing information submitted in a System inquiry against information maintained by the Social Security Administration.

New Section 274E(a)(6) sets forth the responsibilities of the Department of Homeland Security with respect to the System. The Department of Homeland Security is primarily tasked with comparing information submitted in a System inquiry against information maintained by the Department. The Department of Homeland Security must also: (1) provide and regularly update System training materials; (2) periodically conduct audits of the System to detect and prevent violations; and (3) appropriately notify System users of any changes to the System or its use.

New Section 274E(a)(7) sets forth the responsibilities of the Department of State with respect to the System. The Department of State is primarily tasked with comparing information submitted in a System inquiry, particularly when passport or visa information is used, against information maintained by the Department of State.

New Section 274E(a)(8) requires the Social Security Administration, the Department of Homeland Security, and the Department of State to: (1) update individual records in their custody to ensure maximum accuracy of the System, and (2) provide a process to correct erroneous information.

New Section 274E(a)(9) clarifies that nothing in this section should be construed as mandating use of the System, unless such use is otherwise required under Federal or State law.

New Section 274E(a)(10) states that no fee may be charged to use the System.

New Section 274E(b) sets forth the employment eligibility verification process for employers that utilize the System, as follows:

- An individual who has accepted an offer of employment must attest to employment authorization and provide a social security number (or proof that the individual has applied for a social security number). If the individual does not attest to U.S. citizenship or nationality, the individual must also provide an identification or other authorization number as provided by the Department of Homeland Security.

- The employer must then attest that it has verified that the individual is not unauthorized by examining acceptable documents confirming the individual's identity and employment authorization. The bill requires the individual to present the employer with either: (1) one document listed in New Section 274E(b)(3)(A), which lists documents acceptable for establishing both identity and employment authorization; or (2) one document listed in New Section 274E(b)(3)(B), which lists documents acceptable for establishing employment authorization, and one document listed in New Section 274E(b)(3)(C), which lists documents acceptable for establishing identity. The Department of Homeland Security is also authorized to prohibit or place conditions on any document or class of documents if it finds that such document or documents are unreliable or being used fraudulently to an unacceptable degree.

- Upon examining the document or documents presented by the individual, the employer must then submit an inquiry through the System to seek verification of the individual's identity and employment authorization. The employer is generally required to submit this inquiry during the period beginning on the date of hire and ending three business days later.

- *Confirmation.* If the System issues a confirmation of identity and employment authorization, the employer may continue employing the individual.

- *Tentative nonconfirmation (TNC).* If the System generates a TNC, the employer must provide notice to the individual that explains the individual's right to contest the TNC within 10 business days. A TNC becomes final if the individual refuses to acknowledge receipt of such notice, elects not to contest the TNC, or fails to contest the TNC within 10 business days. An individual who contests a TNC cannot be terminated unless and until a final nonconfirmation is issued. The Department of Homeland Security must make a final determination not later than 30 days after the date that the Department receives notice from the individual contesting the TNC.

- *Final nonconfirmation (FNC).* If the System generates an FNC, the employer must notify the individual within three business days of receipt of the FNC, and the employer may terminate the individual. If the employer does not terminate the individual, it must so notify the Department of Homeland Security. The individual may appeal an FNC through procedures developed by the Department of Homeland Security. If the FNC was due to government error, the worker may be compensated for lost wages. Such wages shall be paid through the collection of penalties assessed against employers for violations of this section.

- Employers are required to retain verification records beginning on the date the verification is completed and ending on the later of three years after the date of hire or one year after the date the individual's employment is terminated.

New Section 274E(c) limits re-verification of existing employees to: (1) individuals with a limited period of work authorization; and (2) individuals who are using a Social Security Number identified by the Department of Homeland Security as subject to potential misuse. Employers are required to retain reverification records beginning on the date the reverification

commences and ending on the later of three years after the date of reverification or one year after the date the individual's employment is terminated

New Section 274E(d) deems employers compliant with the System if they made a good faith attempt to comply, even if a technical or procedural failure prevented them from doing so. The good faith presumption does not apply if: (1) the failure is not de minimis; (2) the Department of Homeland Security provides notice of the failure to the employer; and (3) the employer fails to voluntarily correct the failure within a 30-day period beginning on the date of notification. The presumption also does not apply if the employer has engaged in a pattern or practice of violations. An employer that relies in good faith on the System in taking an employment-related action shall not be liable in any action by the employee or the Federal, State, or local government.

New Section 274E(e) clarifies that the bill does not authorize: (1) the creation of a national identification card, or (2) use of the System for anything other than verification of employment authorization.

New Sections 274E(f) sets forth the civil penalties for violations by employers subject to this Title. Such penalties for violations regarding hiring, recruiting or referring for a fee are: (1) $2,500 to $5,000 per unauthorized individual; (2) $5,000 to $10,000 if the employer previously received one cease and desist order; or (3) $10,000 to $25,000 if the employer previously received more than one such order. Penalties for failing to comply with the verification requirements in general range from $1,000 to $25,000 for each violation.

Penalties may be waived or reduced if the violator acted in good faith, and, in assessing penalties, consideration shall be given to the size of the business, the severity of the violation, whether the individual was an unauthorized alien, and the history of previous violations.

Criminal penalties may also be imposed against employers that engage in a pattern or practice of violations. Penalties collected under this subsection are made available to compensate individuals for lost wages as a result of erroneous FNCs issued by the System. Repeat violators, and employers convicted of a crime under section 274A of the INA, may be debarred from receipt of Federal contracts, grants, or cooperative agreements. Finally, the bill preempts State or local laws relating to the hiring or employment of individuals, except that States and localities may continue to exercise authority over business licenses and similar laws as a penalty for failure to use the System as required.

New Section 274E(g) establishes the unfair immigration-related employment practices with respect to the use of the System. Such employment practices include: (1) screening applicants prior to the date of hire; (2) terminating employment due to the issuance of a TNC; (3) using the System for any purpose other than confirming employment authorization; (4) using the System to reverify a current employee other than as allowed in this section; (5) using the System to discriminate based on national origin or citizenship status; (6) willfully failing to provide individuals with notice as required under this section; (7) requiring individuals to use the self-verification procedures as a condition of employment; and (8) terminating or taking other adverse employment action with respect to an individual based on the need to verify that individual. Penalties for unfair immigration-related employment practices are: (1) $1,000 to $4,000 for each individual discriminated against; (2) $4,000 to $10,000 if the employer was previously subject to one order; and (3) $6,000 to $20,000 if the employer was previously subject to multiple orders. Collected penalties are deposited into an account for the purpose of compensating individuals for lost wages based on the erroneous issuance of a final nonconfirmation due to government error or omission.

New Section 274E(h) clarifies that all rights and remedies available under Federal, State, or local law remain available to an employee despite the employee's status as an unauthorized alien or the employer or employee's failure to comply with the requirements of this section.

New Section 274E(i) defines the term date of hire as the date on which employment for pay or other remuneration commences.

Sec. 302. Mandatory Electronic Verification for the Agricultural Industry. Section 302(a) makes use of the System mandatory for agricultural employers as defined in Section 302(e). Section 302(b) sets forth the dates by which agricultural employers must use the System based on workforce size: employers with 500 or more employees must use the System within 6 months after the completion of the application period for CAW status; within 9 months for employers with 100 to 499 employees; within 12 months for employers with 20 to 99 employees; and within 15 months for all other employers. Entities that recruit or refer farm workers for a fee must use the System within 12 months after the completion of the CAW application period.

Section 302(c) requires the Department of Homeland Security and the Social Security Administration to coordinate with the Department of Agriculture to create an alternative process for an individual to contest a TNC by appearing in-person at a local office or service center of the Department of Agriculture, or at a local office of the Social Security Administration. The Department of Homeland Security and the Social Security Administration shall ensure that such local offices are sufficiently staffed and resourced to provide such services. There is no intent to shift responsibilities related to the System to the Department of Agriculture; those are intended to remain with the Department of Homeland Security and the Social Security Administration. The agencies are expected to cooperate to ensure that this provision does not inhibit the ability of the Department of Agriculture to fulfill its primary missions.

Section 302(d) requires the Department of Homeland Security to recognize documentary evidence of CAW status as valid proof of employment authorization and identity for purposes of employment verification.

Section 302(e) defines "agricultural employment" to mean agricultural labor or services as defined for purposes of the H-2A program. This definition is not intended to impose the requirements of this section on any entity that does not employ workers for such agricultural labor or services, including entities that are members of associations or cooperatives with other entities that do employ such workers.

Sec. 303. Coordination With E-Verify Program. Section 303 repeals the provisions of the Illegal Immigration Reform and Immigrant Responsibility Act that established the employment eligibility verification pilot programs. This section also includes technical amendments to ensure that current E-Verify users are transitioned to the System.

Sec. 304. Fraud and Misuse of Documents. Section 304 amends 18 U.S.C. § 1546(b) to clarify that fines or a term of imprisonment up to five years may be imposed for use of false documents to satisfy the employment eligibility verification requirements under this title.

Sec. 305. Technical and Conforming Amendments. Section 305 provides technical and conforming amendments to sections 274A and 274B of the INA.

Sec. 306. Protection of Social Security Administration Programs. Section 306 requires the Department of Homeland Security and the Social Security Administration to enter into an agreement to provide the Social Security Administration with the funds needed to carry out its responsibilities under this title. The Social Security Administration is also required to provide an annual accounting and cost reconciliation for review by the Inspectors General of the Social

Security Administration and the Department of Homeland Security.

Sec. 307. Report on the Implementation of the Verification System. Section 307 requires annual reporting on the System, to start within 24 months of implementation.

Sec. 308. Modernizing and Streamlining the Employment Eligibility Verification Process. Section 308 requires the Department of Homeland Security to submit a plan to Congress, 12 months after enactment, to modernize the System and the employment eligibility verification process, including procedures to allow employers to verify remote hires and to complete the process without also having to complete the current, paper-based Form I-9 process.

Sec. 309. Rulemaking and Paperwork Reduction Act. Section 309 requires the Department of Homeland Security to propose rules not later than 180 days prior to the end of the application period for CAW status, and to finalize the rules not later than 180 days later.