



# FARM WORKFORCE MODERNIZATION ACT

H.R. 1603

## Title I—Securing the Domestic Agricultural Workforce

### Subtitle A—Temporary Status for Certified Agricultural Workers

#### SEC. 101.—CERTIFIED AGRICULTURAL WORKER STATUS.

**Sec. 101(a).—Requirements for Certified Agricultural Worker Status.** Sets forth certain criteria for farmworkers in the United States to receive certified agricultural worker (CAW) status for themselves (and dependent status for their spouses and minor children). To be eligible, workers must—

- have worked at least 180 days in agriculture in the 2 years prior to introduction;
- be inadmissible or deportable from the United States, or under a grant of deferred enforced departure or temporary protected status on the date of introduction; and
- be continuously present in the United States from the date of introduction until the date they are granted CAW status.

**Sec. 101(b).—Grounds for Ineligibility.** Sets forth additional criteria for CAW (and dependent) status. *Immigration bars:* Applicants and any dependents must generally be “admissible” under section 212(a) of the Immigration and Nationality Act (INA), except that—

- certain grounds are excused (public charge, labor certification, unlawful presence);
- certain grounds are waived unless the relevant conduct occurred after the date of introduction (misrepresenting immigration status, being a stowaway, violating a student visa); and
- certain grounds are waived unless the relevant conduct occurred after the date of application for CAW status (failing to attend proceedings, receiving a removal order).

*Criminal/Security bars:* In addition to the normal criminal and security bars that apply to all applicants for admission, the bill also contains catch-all criminal bars. Applicants can’t be convicted of—

- any felony (excluding State offenses involving immigration status or minor traffic offenses);
- an aggravated felony (broadly defined in INA § 101(a)(43));
- any 2 misdemeanor offenses of moral turpitude (crimes involving the intent to injure or steal); or
- 3 or more 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.

*Discretionary waiver:* DHS has the discretion to waive certain grounds of inadmissibility, but not the felony, aggravated felony, or 3 misdemeanor bars.

**Sec. 101(c).—Application.** Delineates the application process, including an 18-month window for taking applications. 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 unless the applicant is *prima facie* ineligible for status.

**Sec. 101(d).—Adjudication and Decision.** Requires DHS to adjudicate applications within 180 days (unless background checks and security clearances are still pending). Prior to denial, DHS must provide written notice to the applicant, who has 90 days to correct any deficiencies in the application.

**Sec. 101(e).—Alternative H-2A Status.** 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 3 years prior to introduction. Such individuals shall be allowed to apply for H-2A status without having to depart the United States.

## **SEC. 102.—TERMS AND CONDITIONS OF CERTIFIED STATUS.**

**Sec. 102(a).—In General.** States that CAW status is valid for 5 and a half years. DHS 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 spouses).

**Sec. 102(b).—Ability to Change Status.** 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. The bill also clarifies that nothing prevents a worker or dependent from changing to any other nonimmigrant classification for which they may be eligible.

**Sec. 102(c).—Prohibition on Public Benefits, Tax Benefits, and Health Care Subsidies.** Prohibits individuals holding CAW status and their dependents from receiving federal means tested public benefits, certain tax credits, and Affordable Care Act benefits.

**Sec. 102(d).—Revocation of Status.** Permits DHS to revoke CAW or dependent status after notice and opportunity to contest the revocation.

## **SEC. 103.—EXTENSION OF CERTIFIED STATUS.**

**Sec. 103(a).—Requirements for Extensions of Status.** Provides for extensions of CAW and dependent status. Absent extraordinary circumstances, applicants must seek extension within a 120-day window at the end of the fifth year of CAW status. Applicants must demonstrate that they worked in agriculture for at least 100 work days for each of the prior 5 years in CAW status, and that they are not ineligible due to criminal or other bars to eligibility.

**Sec. 103(b).—Status for Workers with Pending Applications.** Automatically extends CAW status and employment authorization based on a timely filed extension application, until a final decision is made on the application.

**Sec. 103(c).—Notice.** Prior to denying an extension application, DHS must provide written notice to the applicant along with 90 days to respond.

## **SEC. 104.—DETERMINATION OF CONTINUOUS PRESENCE.**

**Sec. 104(a).—Effect of Notice to Appear.** States that continuous presence of an applicant for CAW status does not terminate if the applicant has been placed in removal proceedings.

**Sec. 104(b).—Treatment of Certain Breaks in Presence.** States that absent extraordinary circumstances or prior approval for travel, applicants fail to maintain continuous presence if they depart the United States for any period more than 90 days or 180 days in the aggregate.

## **SEC. 105.—EMPLOYER OBLIGATIONS.**

Requires employers to provide workers with a written record of employment for each year such workers were employed in CAW status, and subjects employers 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.**

Requires DHS 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.

### **Subtitle B— Optional Earned Residence for Long-Term Workers**

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

**Sec. 111(a).—Requirements for Adjustment of Status.** Permits the DHS Secretary to adjust the status of a CAW to lawful permanent resident (LPR) if the worker remains eligible for CAW status and the worker demonstrates completion of the following work requirements:

- If the applicant worked in U.S. agriculture for at least 10 years prior to the date of enactment, the applicant must demonstrate at least another 4 years of agricultural work in CAW status.
- If the applicant worked in U.S. agriculture for less than 10 years prior to the date of enactment, the applicant must demonstrate at least another 8 years of agricultural work in CAW status.

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. The bill includes protections for dependents in cases involving the death of the worker or severe domestic violence.

**Sec. 111(b).—Penalty Fee.** Requires applicants to pay a penalty fee of \$1,000.

**Sec. 111(c).—Effect of Pending Application.** Provides that upon filing for adjustment of status, applicants receive interim proof of employment authorization and the ability to apply for travel permission, if needed. Applicants may not be detained or removed unless *prima facie* ineligible.

**Sec. 111(d).—Evidence of Application Filing.** States that applicants should be provided proof of filing, which shall serve as interim proof of work authorization.

**Sec. 111(e).—Withdrawal of Application.** Allows applicants to withdraw applications without prejudice.

## **SEC. 112.—PAYMENT OF TAXES.**

Prohibits adjustment to LPR status unless the applicant has paid all required Federal taxes since the date on which the applicant was authorized to work in the United States as a CAW.

## **SEC. 113—ADJUDICATION AND DECISION; REVIEW.**

Requires DHS to adjudicate applications within 180 days (unless background checks and security clearances are still pending). Prior to denial, DHS must provide written notice and 90 days to correct any deficiencies. DHS 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.**

Defines the following terms: 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.**

Requires DHS to publish interim final rules within 180 days of enactment and to finalize such rules within 1 year of enactment. DHS is authorized to charge reasonable filing fees, and it must establish procedures for the waiver of fees or payment of such fees in installments.

### **SEC. 123.—BACKGROUND CHECKS.**

Requires DHS to collect biometric and biographic data from applicants and prohibits the granting of benefits unless security and background checks are completed to DHS' satisfaction.

### **SEC. 124.—PROTECTION FOR CHILDREN.**

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 the filing date.

### **SEC. 125.—LIMITATION ON REMOVAL.**

**Sec. 125(a).—In General.** Prohibits the removal of an individual who is *prima facie* eligible for CAW status. Also prohibits such individual from being placed in removal proceedings (or removed) until a final decision on ineligibility is rendered.

**Sec. 125(b).—Aliens in Removal Proceedings.** Requires termination of proceedings against an individual who is eligible for CAW status and permits that individual to apply for such status.

**Sec. 125(c).—Effect of Final Order.** Allows an individual ordered removed (or granted voluntary departure) to apply for status without first having to file a motion with the immigration court. If the application is approved, the order is cancelled; if the application is denied, the order remains in effect.

**Sec. 125(d).—Effect of Departure.** Clarifies that individuals with removal orders who have been granted status or who have obtained travel permission from the Secretary shall not be deemed to have executed the removal order as a result of departing the United States.

**SEC. 126.—DOCUMENTATION OF AGRICULTURAL WORK HISTORY.**

Places the burden on CAW and LPR applicants to provide evidence that they satisfied any agricultural work requirements and sets forth the types of evidence that may be submitted. Provides the DHS Secretary with discretion to waive a portion of the work requirement for extraordinary circumstances.

**SEC. 127.—EMPLOYER PROTECTIONS.**

States 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 an unauthorized alien. Documents provided by an employer in support of an application for CAW or LPR status cannot be used to prosecute such employers under the immigration laws or tax code, unless such documents are found to be fraudulent.

**SEC. 128.—CORRECTION OF SOCIAL SECURITY RECORDS.**

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.**

Prohibits DHS from disclosing or using application information for general immigration enforcement purposes. 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.

**SEC. 130.—PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.**

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 and/or sentenced to a maximum of 5 years imprisonment.

**SEC. 131.—DISSEMINATION OF INFORMATION.**

Requires DHS to cooperate with qualified designated entities to broadly disseminate information on benefits and eligibility requirements under this title.

**SEC. 132.—EXEMPTION FROM NUMERICAL LIMITATIONS.**

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.**

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.**

Establishes a grant program to assist nonprofit organizations in publicizing information about benefits under this title, and assisting individuals applying for and receiving such benefits.

## **SEC. 135.—AUTHORIZATION OF APPROPRIATIONS.**

Authorizes appropriations necessary to implement this title.

# **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.**

***Sec. 201(a) Streamlined H-2A Platform.*** Establishes an electronic platform for completing the H-2A process. The platform will serve as a single point of access for DHS, the Department of Labor (DOL) and State workforce agencies (SWAs) to concurrently perform their responsibilities relating to labor certification and petition approval. The Department of State (DOS) and U.S. Customs and Border Protection (CBP) may access the platform to facilitate H-2A visa issuance and admission of workers.

***Sec. 201(b) Online Job Registry.*** Requires DOL to maintain a public online job registry and searchable database of all job orders submitted by H-2A employers.

### **SEC. 202.—H-2A PROGRAM REQUIREMENTS.**

Amends section 218 of the Immigration and Nationality Act (INA) in its entirety, as follows:

***New Section 218(a)—Labor Certification Conditions.*** Requires DOL to certify that there are no able, willing, and qualified workers to perform the needed agricultural work, and that employment of H-2A workers will not adversely affect the wages and working conditions of similarly employed individuals.

***New Section 218(b)—H-2A Petition Requirements.*** Requires the employer to attest to and demonstrate compliance with several requirements, including—

- The need for agricultural labor or services, including a description and location of the work, the material terms and conditions of employment, the dates of need, and the number of workers requested.
- That the employer has not displaced and will not displace U.S. workers.
- 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.
- That the employer will offer and provide the required minimum wages, benefits, and working conditions to H-2A workers and all similarly employed U.S. workers, and that U.S. workers will not be offered less than what is offered to H-2A workers.
- That the employer will provide appropriate worker's compensation insurance 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 laws, including provisions of the Farm Workforce Modernization Act.

***New Section 218(c)—Recruiting Requirements.*** Streamlines recruitment requirements, including by eliminating the requirement to post classified ads. New requirements are as follows:

- Posting the job on the electronic job registry and at the place of employment.
- Making reasonable efforts to contact former U.S. workers about the job opportunity.
- Fulfilling positive recruitment steps ordered by the SWA, if any.

*Recruitment period.* The period of recruitment starts when the job order is posted and ends when H-2A workers depart for the place of employment. For petitions involving staggered entry (more than one start date), the recruitment period ends with the departure of the worker with the last start date.

*Requirement to hire U.S. workers.* Employers are required to hire any U.S. worker who applies for the job opportunity until the later of 30 days 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 sets a distinct work contract period. An employer, however, may hire an H-2A worker over a certified agricultural worker if the employer previously employed the H-2A worker for 3 years.

*Recruitment report.* Employers must maintain a recruitment report for 3 years and update the results of recruitment during the recruitment period in the electronic platform.

***New Section 218(d)—Wage Requirements.*** Requires employers to offer H-2A workers the highest of (1) the collective bargaining wage; (2) the Adverse Effect Wage Rate (AEWR); (3) the prevailing hourly wage or piece rate; or (4) the Federal or State minimum wage.

*AEWR Reform.* The bill requires that wages be surveyed and set based on the type of agricultural work involved (occupational classification). If available, wages would be set based on USDA data. Otherwise, wages would be based on DOL data. Additionally, the bill addresses wage fluctuations in the AEWR from 2022 through 2031 as follows:

- **2022:** The AEWR is frozen for each State and occupational classification at levels in effect on the date of the introduction of the Farm Workforce Modernization Act of 2021.
- **2023-2031:** The AEWR cannot decrease more than 1.5% or increase more than 3.25% from the previous calendar year, *unless* the resulting wage is lower than 110% of minimum wage, in which case the wage cannot be more than 4.25% higher than the previous calendar year.
- **Post-2031:** The AEWR is replaced by a new wage rate process determined through regulation based on a joint study conducted by the USDA and DOL.

*Multiple occupations.* If the primary job duties of a worker fall into multiple occupational classifications, the wage rate shall be the highest wage rate of all applicable classifications.

*Recruitment in effect.* If a new AEWR is issued during a season, the employer will not be required to pay the new wage if recruitment efforts have already commenced at the time of publication of the new AEWR. For *year-round positions*, if the wage is higher than that which is guaranteed in the work contract, the employer must pay the new wage within 14 days of publication.

*Piece rate.* Employers who pay by a piece rate or other incentive method must 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 normally require.

*Work guarantee.* Employers must guarantee employment for three-fourths of the work days in the contract, unless the employee fails to appear for work, abandons employment, or is terminated for cause, or where the contract cannot be completed for reasons beyond the control of the employer.

***New Sec. 218(e) Housing Requirements.*** Requires employers to furnish housing in accordance with DOL regulations. Employers must offer family housing where it is the prevailing practice to provide such housing in the area and occupation of intended employment. The employer is not required to provide housing to U.S. workers who live within a reasonable commuting distance.

***Inspections.*** DOL 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.

***New Section 218(f)—Transportation Requirements.*** Requires the employer to reimburse the worker for reasonable transportation and subsistence costs once the worker completes 50 percent of the work contract. If the worker fully completes the contract, the employer must also pay for 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).

***New Section 218(g)—Heat Illness Prevention Plan.*** Requires all employers to maintain a reasonable heat illness prevention plan, and ensures employees are provided with details of such plan.

***New Section 218(h)—H-2A Petition Procedures.*** Sets forth the procedures for employers to request H-2A workers through the electronic platform as follows:

- The employer submits a completed H-2A petition (including a job order) through the electronic platform between 75 and 60 calendar days before the first date of need. An agricultural association may file a petition as either a joint or sole employer.

***Staggered entry.*** An employer may file a petition for temporary or seasonal work involving more than one start date (“staggered entry”) if: (1) the petition contains no more than 10 start dates and no more than 120 days separate the first and last start dates; (2) the petition involves the same occupational classification and area of intended employment; and (3) the need for staggered entry arises from normal variations in labor needs.

***Labor contractors.*** To use staggered entry, an employer that is a labor contractor must either: (1) file jointly with its farmer customers or otherwise operate in a state with joint liability, or (2) post a premium surety bond (15% more than the normally required bond).

- DOL must review the job order and notify the employer of any deficiencies through the electronic platform within 7 business days. Employers are given 5 days to respond.
- Once the job order is approved, DOL will 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.
- Not later than 7 business days after the job order is approved, DOL must notify the employer of any deficiencies related to labor certification. Employers are given 5 days to respond.
- DOL shall issue the certification not later than 30 days before the first date of need. Employers may appeal denials or partial certifications, and DOL must respond to an appeal within 72 hours.
- Within 7 days of certification, DHS shall issue a decision on the petition. If approved, the electronic platform is updated and available to DOS and CBP for visa issuance and admission.
- Post-certification amendments are permitted if they do not materially change the petition.

***Special procedures.*** DOL (in consultation with USDA and DHS) may modify requirements for occupations with unique needs (i.e., livestock production, beekeeping, shearing, custom combining).



*Construction occupations.* Prohibits employers from hiring an H-2A worker if the majority of work involves construction or extraction (i.e., mining).

***New Section 218(i)—Non-Temporary or Seasonal Needs.*** Makes the H-2A program available for year-round agricultural work (with 3-year H-2A visas) as follows:

- For the first 3 fiscal years, year-round H-2A visas are capped at 20,000 each year.
- For the next 7 fiscal years, USDA and DOL (in consultation with DHS) shall jointly determine the appropriate visa cap. Such cap cannot increase or decrease by more than 12.5% from the preceding fiscal year and cannot dip below 20,000.
- After the 10<sup>th</sup> year, USDA and DOL (in consultation with DHS) shall jointly determine whether to set a cap and, if so, what the cap should be.
- After the 3<sup>rd</sup> year, USDA and DOL (in consultation with DHS) may immediately adjust the numerical limit in any fiscal year due to significant labor shortages.
- Visas shall 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 for the first half of the fiscal year will be added to the second half of the fiscal year.
- Fifty percent of the visa numbers made available in each half of the fiscal year shall be allocated to dairy. Any unused visas are made available for non-dairy year-round jobs.
- Employers must provide year-round employees with annual round trip travel home, with no more than 14 months elapsing between each period of travel.
- Employers must offer family housing to year-round employees, but if an employee accepts such housing, the employer need only pay the pro-rated rent for the employee.
- Dairy employers must maintain a workplace safety plan.

***New Section 218(j)—Eligibility for H-2A Status and Admission to the United States.*** Sets forth the following conditions for eligibility and admission in H-2A status:

- Workers who previously violated H-2A status are disqualified from such status for 5 years.
- Year-round H-2A visas shall provide up to 3 years of status. A 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.
- Workers are provided additional admission of 10 days prior to the beginning of the work contract, and 45 days at the end 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.
- H-2A workers who are sponsored for permanent residence can continue working in H-2A status (notwithstanding the 36-month maximum) until their immigrant visas become available.
- H-2A workers who abandon employment without good cause will be considered to have failed to maintain H-2A status.

***New Section 218(k)—Required Disclosures.*** Requires employers to provide copies of work contracts and hours/earning statements to H-2A workers, and to post a notice of worker rights at the worksite.

***New Section 218(l)—Labor Contractors; Foreign Labor Recruiting; Prohibition on Fees.***

*Labor Contractors.* Requires labor contractors to have surety bonds to hire H-2A workers. DOL shall set bond amounts based on the number of workers sought. Labor contractors that want to file petitions involving staggered entry must have premium surety bonds (15% more).

*Foreign Labor Recruiters.* Requires employers that use foreign labor recruiters to use a recruiter registered with DOL.

*Prohibited Fees.* Prohibits employers and their agents from collecting fees or seeking payment from workers for any activity associated with the H-2A petition process, excluding costs that are primarily for the worker's benefit. Employers must also contractually forbid labor contractors and foreign labor recruiters (and any of their agents) from receiving prohibited payments from prospective employees.

***New Section 218(m)—Enforcement Authority.*** Provides DOL with enforcement authority over the H-2A program, including the authority to impose penalties and other sanctions, and prohibits retaliation against any person who has taken steps to report violations of the H-2A program.

***New Section 218(n)—Definitions.*** Defines the following: area of intended employment; date of need; displace; H-2A worker; job order; online job registry; similarly employed; and United States worker.

***New Section 218(o)—Fees; Authorization of Appropriations.*** Directs DHS to impose a reasonable fee to process H-2A petitions and authorizes necessary appropriations.

**SEC. 203.—AGENCY ROLES AND RESPONSIBILITIES.**

***Section 203(a)—Responsibilities of the Secretary of Labor.*** Sets forth DOL's responsibilities in the H-2A process, including consulting with SWAs to review and process job orders, ensuring the timely completion of housing inspections, and determining whether the employer has met its obligations regarding the recruitment and hiring of U.S. workers.

***Section 203(b)—Responsibilities of the Secretary of Homeland Security.*** Sets forth DHS's responsibilities in the H-2A process, including assessing whether the beneficiary will be employed in accordance with the terms and conditions of the labor certification, transmitting final decisions to the employer, notifying DOS and CBP of petition approvals, and providing H-2A workers with access to information about their visa status.

***Section 203(c)—Establishment of Account and Use of Funds.*** Establishes an H-2A Labor Certification Fee Account that maintains fees from applications and penalties for use by DOL to carry out activities in connection with the labor certification process.

**SEC. 204.—WORKER PROTECTION AND COMPLIANCE.**

*Litigation.* Treats H-2A workers the same as U.S. agricultural workers under Federal, State, and local labor laws. H-2A workers are also covered by the Migrant and Seasonal Agricultural Worker Protection Act, except that either party may initiate mandatory mediation to resolve lawsuits within 60 days. Free mediation services are provided to resolve disputes.

*Farm Labor Contractor Requirements.* Amends the Migrant and Seasonal Worker Protection Act to better ensure compliance by farm labor contractors. The bill: (1) adds a statutory requirement to maintain a surety bond (now a regulatory requirement); (2) allows for revocation of a license for failing to maintain a bond or being disbarred from the H-2A program; (3) better prevents violators with revoked licenses from establishing shell companies to continue their contracting activities.

## **SEC. 205.—REPORT ON WAGE PROTECTIONS.**

Every three years, DOL and USDA must submit a report to Congress on wages, which shall include an assessment as to whether the use of H-2A workers depresses the wages of U.S. workers; factors that may artificially impact wage rates; and recommendations on changes to wage methodologies in the H-2A program.

## **SEC. 206.—PORTABLE H-2A VISA PILOT PROGRAM.**

Requires DHS, in consultation with DOL and USDA, to establish a 6-year pilot program authorizing *portable* H-2A status to up to 10,000 H-2A workers who complied with H-2A requirements. DHS is authorized to set program rules and requirements, consistent with the following:

- Employers must register with DHS, which will maintain an online platform to connect portable workers with registered employers.
- Registered employers may employ portable workers at will and without filing an H-2A petition, so long as the wage requirements that apply to H-2A workers are met.
- Portable 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.
- Portable workers shall have a 60-day grace period at the conclusion of employment to secure new employment with a registered agricultural employer.
- If the job opportunity is not covered or is exempt from the State workers' compensation law, the employer must provide commensurate insurance.
- DOL is responsible for conducting investigations and audits of employers to ensure compliance with the pilot program's employment-related requirements.
- DHS, in consultation with DOL and USDA, must submit a report to Congress on the pilot program, including its impact on U.S. workers and recommendations for improving the program.

## **SEC. 207.—IMPROVING ACCESS TO PERMANENT RESIDENCE.**

Allows for additional employer sponsorship of agricultural workers by adding 40,000 new immigrant visas to the employment-based third preference (EB-3) category for "unskilled" labor.

Also allows H-2A workers to self-petition 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 40,000 visas is given to agricultural employers to petition for their workers and for H-2A workers who are eligible to self-petition.

## **Subtitle B—Preservation and Construction of Farmworker Housing**

### **SEC. 220.—SHORT TITLE.**

Sets the short title as the “Strategy and Investment in Rural Housing Preservation Act of 2021.”

### **SEC. 221.—PERMANENT ESTABLISHMENT OF HOUSING PRESERVATION AND REVITALIZATION PROGRAM**

Establishes a program to revitalize and preserve existing farmworker and rural housing. USDA may offer loan restructuring to owners of properties financed under sections 514 and 516 of the Housing Act of 1949 in order to preserve and refurbish such properties. USDA may reduce or eliminate interest, defer payments, re-amortize existing debt, or provide other financial assistance. If USDA offers to restructure a loan, it shall also offer to renew a rental assistance contract under section 521 for a 20-year term. Owners of 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.

### **SEC. 222.—ELIGIBILITY FOR RURAL HOUSING VOUCHERS**

Authorizes USDA to provide rural housing vouchers to low income households residing in properties that are financed (1) under sections 514 or 516; or (2) with a loan made under sections 514 or 515 which have been prepaid without restrictions, foreclosed, or matured after September 30, 2005.

### **SEC. 223.—AMOUNT OF VOUCHER ASSISTANCE.**

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 percent 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 percent of the family’s monthly gross income.

### **SEC. 224.—RENTAL ASSISTANCE CONTRACT AUTHORITY.**

Allows owners of section 514/515 properties to request renewal of a rental assistance contract for up to an additional 20 years. The bill also allows such owners who terminate 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.**

Authorizes an additional \$50 million in appropriations for USDA to improve its technology for processing loans for and managing multifamily housing.

### **SEC. 226.—PLAN FOR PRESERVING AFFORDABILITY OF RENTAL PROJECTS.**

Requires USDA to submit a plan to Congress on the preservation of affordable 514/516 housing and establishes an advisory committee to assist USDA in managing its rural housing programs.

### **SEC. 227.—COVERED HOUSING PROGRAMS.**

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 Act.

## **SEC. 228. NEW FARMWORKER HOUSING.**

Authorizes \$75 million for section 514 loans and \$30 million for section 516 grants in FYs 2022-2031. Authorizes \$2.7 billion in section 521 rental assistance (or operating assistance) payments.

## **SEC. 229. LOAN AND GRANT LIMITATIONS.**

Requires USDA's per project loan and grant limitation under sections 514 and 516 to be set at no lower than \$5 million.

## **SEC. 230. OPERATING ASSISTANCE SUBSIDIES.**

Authorizes operating assistance payments to owners of 514/516 housing that house H-2A workers. Payments are capped at 50% of operating costs for the housing project, and USDA 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.**

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.**

#### ***Sec. 251(a) and (b)—Registration of Foreign Labor Recruiters and Procedural Requirements.***

Requires DOL, in consultation with DOS and DHS, to set up an electronic registration process for foreign labor recruiters (FLRs) seeking to hire H-2A workers, including a process for registration renewal, receiving information at diplomatic missions, receiving complaints and assessing penalties, and consulting with other agencies when revocation might be necessary.

***Sec. 251(c)—Attestations.*** Provides that FLRs must attest to and abide by a series of requirements, including: not assessing recruitment fees on workers; not knowingly providing materially false or misleading information to workers concerning job opportunities; maintaining surety bonds; cooperating in investigations; not retaliating against workers for filing complaints; and agreeing to accept service of process in the United States for administrative and judicial proceedings.

***Sec. 251(d) and (e)—Term of Registration and Application Fee.*** Provides FLR registration for periods of 2 years, unless suspended or revoked. FLRs must pay a reasonable application fee for registration.

***Sec. 251(f)—Notification.*** Provides that at least once per year, an H-2A employer must provide DOL with the names and addresses of all FLRs engaged in recruiting activity on behalf of the employer.

***Sec. 251(g)—Additional Responsibilities of the Secretary of State.*** Requires DOS, in consultation with DOL, to maintain publicly available lists of FLRs with valid registrations and FLRs with revoked registrations. DOS shall also ensure that diplomatic missions are staffed with persons responsible for receiving information regarding potential violations of this subtitle.

## **SEC. 252.—ENFORCEMENT.**

**Sec. 252(a)—Denial or Revocation of Registration.** Requires DOL to deny an application for registration or to revoke registration if it determines that the FLR or an agent/subcontractee 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.

**Sec. 252(b)—Administrative Enforcement.** Establishes a complaint process for aggrieved individuals or organizations. FLRs found in violation of the subtitle may—

- be fined not more than \$10,000 per violation, or \$25,000 per violation upon the third violation;
- have their registration revoked, or renewal application denied;
- be disqualified for up to five years.

DOL may also take other actions, including issuing subpoenas, seeking injunctive relief, and ordering forfeiture (or partial forfeiture) of a surety bond, to secure compliance with this subtitle.

**Sec. 252(c)—Civil Action.** Allows DOL or an aggrieved person to bring a civil action against an employer or FLR that violates this subtitle. 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 DOL shall be deposited in a separate Treasury account.

**Sec. 252(d)—Employer Safe Harbor.** Employers that utilize registered FLRs will not be held jointly liable in administrative or judicial proceedings for violations committed solely by the recruiter.

**Sec. 252(e)—Parole to Pursue Relief.** Allows DHS to grant parole to individuals participating in administrative or judicial proceedings against FLRs.

**Sec. 252(f)—Waiver of Rights.** Voids agreements by employers purporting to waive or modify rights under this subtitle.

**Sec. 252(g)—Liability for Agents.** Clarifies that FLRs 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 FLR had committed the violation.

## **SEC. 253.—APPROPRIATIONS.**

Authorizes necessary appropriations.

## **SEC. 254.—DEFINITIONS.**

Defines the following terms: foreign labor recruiter; foreign labor recruiting activity; recruitment fees; and person.

## **Title III—Electronic Verification of the Agricultural Workforce**

### **SEC. 301.—ELECTRONIC EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.**

Amends chapter 8 of title II of the INA by inserting after section 274D a new section 274E:

#### ***New Sec. 274E(a)—Requirements for the Electronic Verification of Employment Eligibility.***

Requires DHS to establish an electronic employment 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. The System shall—

- provide a confirmation or tentative nonconfirmation (TNC) of identity and employment authorization not later than 3 days after the initial inquiry;
- be designed to maximize reliability and accessibility across devices, and in remote locations;
- include safeguards to prevent misuse, data and identity theft, fraud, and violations of privacy.

*Measures to 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 number (SSN) in the System, and a process to block misused SSNs. DHS shall establish a pilot program that allows parents or legal guardians to suspend use of a child’s SSN in the System.

*System not mandatory.* Clarifies that nothing in this section should be construed as mandating the use of the System unless such use is otherwise required under Federal or State law.

***Sec. 274E(b)—New Hires, Recruitment, and Referral.*** Sets forth the employment verification process for employers that utilize the System, as follows:

- An individual who has accepted an offer of employment attests to employment authorization and provides an SSN (or proof that the individual has applied for an SSN).
- The employer attests that it has verified that the individual is not unauthorized by examining acceptable documents confirming the individual’s identity and employment authorization.
- The employer submits an inquiry through the System to seek verification of the individual’s identity and employment authorization.
- *Tentative nonconfirmation.* 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 (FNC) is issued.
  - DHS must issue a confirmation or an FNC not later than 30 days after the date that DHS receives notice from the individual contesting the TNC.
- *Final nonconfirmation.* An employer must notify the individual within 3 business days of receipt of an FNC and may terminate the individual.
- The individual may appeal an FNC through procedures to be developed by DHS. 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 3 years after the date of hire or 1 year after the date the individual’s employment is terminated.

**Sec. 274E(c).—Reverification of Previously Hired Individuals.** Limits re-verification of existing employees to: (1) individuals with a limited period of work authorization; and (2) individuals who are using an SSN identified by the Secretary as subject to potential misuse.

**Sec. 274E(d)—Good Faith Compliance.** Deems employers to have complied with the System if they made a good faith attempt to comply, but a technical or procedural failure prevented them from doing so. The good faith presumption shall not apply if: (1) the failure is not de minimis; (2) DHS has provided notice of the failure to the employer; and (3) the employer has been provided 30 days to correct the failure and has not voluntarily corrected the failure within such period. The presumption shall also not apply if the employer has engaged in a pattern or practice of violations.

An employer that acts against an employee in good faith reliance on the System shall not be liable in any action by the employee or the Federal, State, or local government.

**Sec. 274E(e).—Limitations.** Clarifies that the bill does not authorize the creation of a national identification card or the use of the System for anything other than employment verification.

**Sec. 274E(f).—Penalties.** Sets forth the civil penalties for violations by employers that use the System. Such penalties for violations regarding hiring, recruiting or referring for a fee are—

- \$2,500 to \$5,000 per unauthorized individual;
- \$5,000 to \$10,000 if the employer previously received one cease and desist order; or
- \$10,000 to \$25,000 if the employer previously received more than one cease and desist order.

Penalties for failing to comply with the verification requirements in general range from \$1,000 to \$25,000 for each violation.

*Mitigation.* Penalties may be waived or reduced if the violator acted in good faith. In assessing penalties, consideration shall be given to the size of the business, the seriousness of the violation, whether the individual was an unauthorized alien, and the history of previous violations.

*Criminal penalties.* May be imposed against those who engage in a pattern or practice of violations.

*Debarment.* Repeat violators and employers convicted of a crime may be debarred from receipt of Federal contracts, grants, or cooperative agreements.

**Sec. 274E(g).—Unfair Immigration-Related Employment Practices and the System.** Establishes the unfair immigration-related employment practices with respect to the use of the System, which include screening applicants prior to the date of hire, terminating employment due to the issuance of a TNC, and using the System to discriminate based on national origin or citizenship status.

Penalties for unfair immigration-related employment practices are—

- \$1,000 to \$4,000 for each individual discriminated against;
- \$4,000 to \$10,000 if the employer was previously subject to one order; and
- \$6,000 to \$20,000 if the employer was previously subject to multiple orders.

**Sec. 274E(h).—Clarification.** States 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 employee's failure to comply with the requirements of this section.

**Sec. 274E(i).—Definition.** Defines: date of hire.



## **SEC. 302.—MANDATORY ELECTRONIC VERIFICATION FOR THE AGRICULTURAL INDUSTRY.**

*Sec. 302(a).—In General.* Makes the System mandatory for the agricultural sector.

*Sec. 302(b).—Effective Dates.* Sets forth the dates by which agricultural employers must use the System based on the size of the employer (anywhere from 6 to 15 months after the completion of the application period for CAW status). 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.

*Sec. 302(c).—Rural Access to Secondary Review Process.* Requires DHS and the Social Security Administration to coordinate with USDA to create an alternative process for an individual to contest a TNC by appearing in-person at a local USDA office or service center, or at a local SSA office.

*Sec. 302(d).—Documents Establishing Employment Authorization and Identity.* Requires DHS to recognize documentary evidence of CAW status as valid proof of employment authorization and identity for purposes of the employment verification process.

*Sec. 302(e).—Agricultural Employment.* Defines “agricultural employment” to mean agricultural labor or services, based on the definition of such term for H-2A purposes.

## **SEC. 303.—COORDINATION WITH E-VERIFY PROGRAM.**

Repeals the provisions of the Illegal Immigration Reform and Immigrant Responsibility Act that established the employment eligibility verification pilot programs, including E-Verify. Includes technical amendments to ensure that current E-Verify users are transitioned to the System.

## **SEC. 304.—FRAUD AND MISUSE OF DOCUMENTS.**

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 verification requirements.

## **SEC. 305.—TECHNICAL AND CONFORMING AMENDMENTS.**

Provides technical and conforming amendments to INA sections 274A and 274B.

## **SEC. 306.—PROTECTION OF SOCIAL SECURITY ADMINISTRATION PROGRAMS.**

Requires DHS and SSA to enter into an agreement to provide SSA with the funds needed to carry out its responsibilities under this title and requires SSA to provide an annual accounting and cost reconciliation for review by the SSA Inspector General and DHS.

## **SEC. 307.—REPORT ON THE IMPLEMENTATION OF THE VERIFICATION SYSTEM.**

Requires annual reporting on the System, to start within 24 months of implementation.

## **SEC. 308.—MODERNIZING AND STREAMLINING THE EMPLOYMENT ELIGIBILITY VERIFICATION PROCESS.**

Requires DHS to submit a plan to Congress, 12 months after enactment, to modernize the employment 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.**

Requires DHS 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.

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