S. 1384

To amend the Immigration and Nationality Act to provide for the temporary employment of foreign agricultural workers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 19, 2011

Mr. CHAMBLISS introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Immigration and Nationality Act to provide for the temporary employment of foreign agricultural workers, and for other purposes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3
4 SECTION 1. SHORT TITLE.
5 This Act may be cited as the “Helping Agriculture
6 Receive Verifiable Employees Securely and Temporarily
7 Act of 2011” or the “HARVEST Act of 2011”.
8
9 SEC. 2. SENSE OF THE SENATE.
10 It is the sense of the Senate that—
(1) farmers and ranchers in the United States produce the highest quality food and fiber in the world;

(2) abundant harvests in the United States allow this Nation to provide over ½ of the world’s food aid donations to help our international neighbors in need;

(3) it is in the best interest of the American people for their agricultural goods to be produced in the United States;

(4) the United States is the world’s largest agricultural exporter and is one of the few sectors of the United States economy that produces a trade surplus;

(5) the Secretary of Agriculture announced that the United States exported $108,700,000,000 worth of agricultural exports during fiscal year 2010;

(6) Americans enjoy the highest quality food at the lowest cost compared to any industrialized nation in the world, spending less than 10 percent of our household income on food;

(7) the continued safety of the agricultural goods produced in the United States is an issue of national security;
(8) the agricultural labor force of the United States is overwhelmingly composed of foreign labor;

(9) due to the importance of food safety, it is critical to know who is handling our Nation’s food supply and who is working on our Nation’s farms and ranches;

(10) there could be detrimental effects on the United States economy for farms to downsize or close operations due to labor shortages;

(11) decreased agricultural production could have ramifications throughout the farm support industries, such as food processing, fertilizers, and equipment manufacturers;

(12) a shortage of agriculture labor could lead to decreased supply and increased prices for food and fiber; and

(13) this Nation needs both secure borders and an immigration system that allows those who seek legal immigrant status through the proper channels to work in the diverse sectors of the agriculture industry.

SEC. 3. ADMISSION OF TEMPORARY AGRICULTURAL WORKERS.

(a) DEFINITION.—Section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 

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1101(a)(15)(H)(ii)(a)) is amended by striking “, of a temporary or seasonal nature”.

(b) Procedure for Admission.—

(1) In general.—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) Definitions.—In this section and in section 218A:

“(1) Adverse effect wage rate.—The term ‘adverse effect wage rate’ means 115 percent of the greater of—

“(A) the State minimum wage; or

“(B) the hourly wage prescribed under section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)).

“(2) Area of employment.—The term ‘area of employment’ means the area within normal commuting distance of the work site or physical location at which the work of the H–2A worker is or will be performed. If such work site or location is within a Metropolitan Statistical Area, any place within such area shall be considered to be within the area of employment.”
“(3) DISPLACE.—In the case of an application with respect to an H–2A worker filed by an employer, an employer ‘displaces’ a United States worker from a job if the employer lays off the worker from a job that is essentially equivalent to the job for which the H–2A worker is sought. A job shall be considered essentially equivalent to another job if the job—

“(A) involves essentially the same responsibilities as the other job;

“(B) was held by a United States worker with substantially equivalent qualifications and experience; and

“(C) is located in the same area of employment as the other job.

“(4) ELIGIBLE INDIVIDUAL.—The term ‘eligible individual’ means an alien who is not ineligible for an H–2A visa pursuant to subsection (l).

“(5) EMPLOYER.—The term ‘employer’ means an employer who hires workers to perform—

“(A) animal agriculture or agricultural processing;

“(B) agricultural work included within the provisions of section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)) or
section 3121(g) of the Internal Revenue Code of 1986;

“(C) drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state; or

“(D) dairy or feedyard work.

“(6) H–2A WORKER.—The term ‘H–2A worker’ means a nonimmigrant who—

“(A) continuously maintains a residence and place of abode outside of the United States which the alien has no intention of abandoning; and

“(B)(i) is seeking to work for an employer performing agricultural labor in the United States for not more than 10 months during each calendar year in a job for which United States workers are not available and willing to perform such service or labor; or

“(ii)(I) is seeking to work for an employer performing agricultural labor in the United States in a job for which United States workers are not available and willing to perform such service or labor;
“(II) commutes each business day across the United States international border to work for a qualified United States employer; and

“(III) returns across the United States international border to his or her foreign residence and place of abode at the end of each business day.

“(7) Lay off.—

“(A) IN GENERAL.—The term ‘lay off’—

“(i) means to cause a worker’s loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, or the expiration of a grant or contract (other than a temporary employment contract entered into in order to evade a condition described in paragraph (3) or (7) of subsection (b)); and

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

“(B) CONSTRUCTION.—Nothing in this paragraph may be construed to limit an employee’s rights under a collective bargaining agreement or other employment contract.

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

“(b) LABOR ATTESTATION PROCESS.—The Secretary of Agriculture shall utilize the labor attestation process described in this subsection until the Secretary of Labor certifies that, based on State workforce agency data, there is an adequate domestic workforce in the United States to fill agricultural jobs in the State in which the agricultural employer is seeking H–2A workers. Once the Sec-
Secretary of Labor certifies that there are adequate authorized workers in a State to fill agricultural jobs (excluding H–2A workers), the Secretary of Agriculture, after consultation with the Secretary of Labor, shall issue regulations describing a labor certification process for agricultural employers seeking H–2A workers. An alien may not be admitted as an H–2A worker unless the employer has filed an application with the Secretary of Agriculture in which the employer attests to the following:

“(1) Temporary work or services.—

“(A) In general.—The employer is seeking to employ a specific number of agricultural workers on a temporary basis and will provide compensation to such workers at a specified wage rate and under specified conditions.

“(B) Skilled workers.—If the worker is a Level 2 H–2A worker, the employer will recruit the worker separately and the application will delineate separate wage rate and conditions of employment for such worker.

“(C) Defined term.—In this paragraph and in subsection (h)(6)(B), a worker is considered to be ‘employed on a temporary basis’ if the employer employs the worker for not longer than 10 months in a calendar year.
“(2) Benefits, wages, and working conditions.—The employer will provide, at a minimum, the benefits, wages, and working conditions required under subsection (k) to—

“(A) all workers employed in the jobs for which the H–2A worker is sought; and

“(B) all other temporary workers in the same occupation at the same place of employment.

“(3) Nondisplacement of United States workers.—The employer did not and will not displace a United States worker employed by the employer during the period of employment of the H–2A worker and during the 30-day period immediately preceding such period of employment in the occupation at the place of employment for which the employer seeks approval to employ H–2A workers.

“(4) Recruitment.—

“(A) In general.—The employer will—

“(i) describe previous recruitment efforts made before the filing of the application; and

“(ii) complete adequate recruitment requirements before H–2A workers are issued a visa at an American consulate.
“(B) ADEQUATE RECRUITMENT.—The adequate recruitment requirements under sub-
paragraph (A)(ii) are satisfied if the em-
ployer—

“(i) submits a copy of the job offer to
the local office of the State workforce
agency serving the area of intended em-
ployment and authorizes the posting of the
job opportunity on the Department of La-
bor’s electronic registry of job applications
for all other occupations in the same man-
ner as other United States employers, ex-
cept that nothing in this clause shall re-
quire the employer to file an interstate job
order under section 653 of title 20, Code
of Federal Regulations;

“(ii) advertises the availability of the
job opportunities for which the employer is
seeking workers in a publication in the
local market that is likely to be patronized
by potential farm workers; and

“(iii) mails a letter through the
United States Postal Service or otherwise
contacts any United States worker the em-
ployer employed within the past year in the
occupation at the place of intended employ-
ment for which the employer is seeking H–
2A workers that describes available job op-
portunities, unless the worker was termi-
nated from employment by the employer
for a lawful job-related reason or aban-
doned the job before the worker completed
the period of employment of the job oppor-
tunity for which the worker was hired.

“(C) ADVERTISEMENT REQUIREMENT.—
The advertisement requirement under subpara-
graph (B)(ii) is satisfied if the employer runs
an advertisement for 2 consecutive days that—

“(i) names the employer;
“(ii) describes the job or jobs;
“(iii) provides instructions on how to
contact the employer to apply for the job;
“(iv) states the duration of employ-
ment;
“(v) describes the geographic area
with enough specificity to apprise appli-
cants of any travel requirements and where
applicants will likely have to reside to per-
form the job;
“(vi) states the rate of pay; and
“(vii) describes working conditions and the availability of housing or the amount of housing allowances.

“(D) END OF RECRUITMENT REQUIREMENT.—The requirement to recruit and hire United States workers for the contract period for which H–2A workers have been hired shall terminate on the first day of such contract period.

“(5) OFFERS TO UNITED STATES WORKERS.—The employer has offered or will offer the job for which the nonimmigrant is sought to any eligible United States worker who—

“(A) applies;

“(B) will be available at the time and place of need; and

“(C) is able and willing to complete the period of employment.

“(6) PROVISION OF INSURANCE.—If the job for which the H–2A worker is sought is not covered by State workers’ compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of, and in the course of, the worker’s employment, which will provide benefits at least equal to those provided under the State
workers’ compensation law for comparable employment. No employer shall be liable for the provision of health insurance for any H–2A worker.

“(7) **Strike or Lockout.**—There is not a strike or lockout in the course of a labor dispute that precludes the hiring of H–2A workers.

“(8) **Previous Violations.**—The employer has not, during the previous 5-year period, employed H–2A workers and knowingly violated a material term or condition of approval with respect to the employment of domestic or nonimmigrant workers, as determined by the Secretary of Agriculture after notice and opportunity for a hearing.

“(c) **Public Examination.**—Not later than 1 working day after the date on which an application is filed under this section, the employer shall make a copy of each such application (and any necessary accompanying documents) available for public examination, at the employer’s work site or principal place of business.

“(d) **List.**—

“(1) **In General.**—The Secretary of Agriculture shall maintain a list of the applications filed under subsection (b), sorted by employer, which shall include—

“(A) the number of H–2A workers sought;
“(B) the wage rate;

“(C) the date work is scheduled to begin;

and

“(D) the period of intended employment.

“(2) AVAILABILITY.—The Secretary of Agriculture shall make the list described in paragraph (1) available for public examination.

“(e) APPLYING FOR ADMISSION.—

“(1) IN GENERAL.—An employer, or an association acting as an agent or joint employer for its members, that seeks the admission into the United States of an H–2A worker shall file an application that includes the attestations described in subsection (b) with the Secretary of Agriculture.

“(2) CONSIDERATION OF APPLICATIONS.—For each application filed under this subsection—

“(A) the Secretary of Agriculture may not require such application to be filed more than 60 days before the first date on which the employer requires the labor or services of the H–2A worker; and

“(B) unless the Secretary of Agriculture determines that the application is incomplete or obviously inaccurate, or the Secretary has probable cause to suspect the application was fraud-
ulently made, the Secretary shall either approve
or deny the application not later than 15 days
after the date on which such application was
filed.

“(3) Application agreements.—By filing an
H–2A application, an applicant and each employer
consents to allow the Department of Agriculture ac-
cess to the site where labor is being performed for
the purpose of determining compliance with H–2A
requirements.

“(4) Multistate employers.—Employers
with multiple operations may use H–2A workers in
the occupations for which they are sought in all
places in which the employer has operations if the
employer—

“(A) designates on the application each lo-
cation at which such workers will be used; and

“(B) performs adequate recruitment ef-
forts in each State in which such workers will
be used.

“(f) Roles of Agricultural Associations.—

“(1) Permitting filing by agricultural
associations.—An application to hire an H–2A
worker may be filed by an association of agricultural
employers which use agricultural labor.
“(2) **TREATMENT OF ASSOCIATIONS ACTING AS EMPLOYERS.**—If an association is a joint or sole employer of H–2A workers, such H–2A workers may be transferred among its members to perform agricultural labor of the same nature for which the application was approved.

“(3) **TREATMENT OF VIOLATIONS.**—

“(A) **INDIVIDUAL MEMBER.**—If an individual member of a joint employer association violates any condition for approval with respect to the member’s application, the Secretary of Agriculture shall deny such application only with respect to that member of the association unless the Secretary determines that the association or other member participated in, had knowledge of, or had reason to know of the violation.

“(B) **ASSOCIATION OF AGRICULTURAL EMPLOYERS.**—

“(i) **JOINT EMPLOYER.**—If an association representing agricultural employers as a joint employer violates any condition for approval with respect to the association’s application, the Secretary of Agriculture shall deny such application only with re-
spect to the association and may not apply the denial to any individual member of the association, unless the Secretary determines that the member participated in, had knowledge of, or had reason to know of the violation.

“(ii) SOLE EMPLOYER.—If an association of agricultural employers approved as a sole employer violates any condition for approval with respect to the association’s application, no individual member of the association may be the beneficiary of the services of H–2A workers admitted under this section in the occupation in which such H–2A workers were employed by the association which was denied approval during the period such denial is in force.

“(g) EXPEDITED ADMINISTRATIVE APPEALS.—The Secretary of Agriculture, in conjunction with the Secretary of State and the Secretary of Homeland Security, shall issue regulations to provide for an expedited procedure—

“(1) for the review of a denial of an application under this section by any of the Secretaries; or

“(2) at the applicant’s request, for a de novo administrative hearing of the denial.
“(h) MISCELLANEOUS PROVISIONS.—

“(1) REQUIREMENTS FOR PLACEMENT OF H–2A WORKERS WITH OTHER EMPLOYERS.—An H–2A worker may be transferred to another employer that has had an application approved under this section. The Secretary of Homeland Security and the Secretary of State shall issue regulations to establish a process for the approval and reissuance of visas for transferred H–2A workers.

“(2) ENDORSEMENT OF DOCUMENTS.—The Secretary of Homeland Security shall provide for the endorsement of entry and exit documents of H–2A workers to carry out this section and to provide notice under section 274A.

“(3) PREEMPTION OF STATE LAWS.—This section and subsections (a) and (e) of section 214 pre-empt any State or local law regulating admissibility of nonimmigrant workers.

“(4) FEES.—The Secretary of Agriculture may charge a reasonable fee to recover the costs of processing applications under this section. In determining the amount of the fee to be charged under this paragraph, the Secretary shall consider whether the employer is a single employer or an association.
and the number of H–2A workers intended to be employed.

“(5) E-VERIFY PARTICIPATION BY EMPLOYERS.—The Secretary of Agriculture shall require employers participating in the H–2A program to register with and participate in E–Verify, as established under title IV of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208).

“(i) FAILURE TO MEET CONDITIONS.—

“(1) IN GENERAL.—The Secretary of Agriculture shall conduct investigations and random audits of employer work sites to ensure employer compliance with the requirements under this section. All monetary fines assessed under this section shall be paid by the violating employer to the Department of Agriculture and used by the Secretary to conduct audits and investigations.

“(2) PENALTIES FOR FAILURE TO MEET CONDITIONS.—If the Secretary of Agriculture finds, after notice and opportunity for a hearing, a failure to meet a material condition under subsection (b), or a material misrepresentation of fact in an application filed under subsection (b), the Secretary—
“(A) shall notify the Secretary of Homeland Security of such finding; and

“(B) may impose such other administrative remedies, including civil money penalties in an amount not to exceed $1,000 per violation, as the Secretary of Agriculture determines to be appropriate.

“(3) Penalties for willful failure.—If the Secretary of Agriculture finds, after notice and opportunity for a hearing, a willful failure to meet a material condition under subsection (b) or a willful misrepresentation of a material fact in an application filed under subsection (b), the Secretary—

“(A) shall notify the Secretary of Homeland Security of such finding;

“(B) may impose such other administrative remedies, including civil money penalties in an amount not to exceed $5,000 per violation, as the Secretary of Agriculture determines to be appropriate;

“(C) may disqualify the employer from the employment of H–2A workers for a period of 2 years;
“(D) for a second violation, may disqualify the employer from the employment of H–2A workers for a period of 5 years; and

“(E) for a third violation, may permanently disqualify the employer from the employment of H–2A workers.

“(4) Penalties for displacement of United States workers.—If the Secretary of Agriculture finds, after notice and opportunity for a hearing, a willful failure to meet a material condition of subsection (b) or a willful misrepresentation of a material fact in an application filed under subsection (b), and the employer displaced a United States worker employed by the employer during the period of employment on the employer’s application, or during the 30-day period preceding such period of employment, the Secretary—

“(A) shall notify the Secretary of Homeland Security of such finding;

“(B) may impose such other administrative remedies, including civil money penalties in an amount not to exceed $15,000 per violation, as the Secretary of Agriculture determines to be appropriate;
“(C) may disqualify the employer from the employment of H–2A workers for a period of 5 years; and

“(D) for a second violation, may permanently disqualify the employer from the employment of H–2A workers.

“(5) LIMITATIONS ON CIVIL MONEY PENALTIES.—The Secretary of Agriculture may not impose total civil money penalties with respect to an application filed under subsection (b) in excess of $100,000.

“(j) FAILURE TO PAY WAGES OR REQUIRED BENEFITS.—

“(1) IN GENERAL.—The Secretary of Agriculture shall conduct investigations and random audits of employer work sites to ensure employer compliance with the requirements under this section.

“(2) ASSESSMENT.—If the Secretary of Agriculture finds, after notice and opportunity for a hearing, that the employer has failed to pay the wages or provide the housing allowance, transportation, subsistence requirement, or guarantee of employment attested in the application filed by the employer under subsection (b)(2), the Secretary shall assess payment of back wages, or other required
benefits, due any United States worker or H–2A worker employed by the employer in the specific employment in question.

“(3) AMOUNT.—The back wages or other required benefits described in paragraph (2)—

“(A) shall be equal to the difference between the amount that should have been paid and the amount that was paid to such worker; and

“(B) shall be distributed to the worker to whom such wages are due.

“(k) MINIMUM WAGES, BENEFITS, AND WORKING CONDITIONS.—

“(1) PREFERENTIAL TREATMENT OF ALIENS PROHIBITED.—

“(A) IN GENERAL.—Each employer seeking to hire United States workers shall offer such workers not less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to H–2A workers in the same occupation. No job offer may impose any restriction or obligation on United States workers which will not be imposed on the employer’s H–2A workers.

The benefits, wages, and other terms and condi-
of employment described in this sub-
section shall be provided in connection with em-
ployment under this section.

“(B) INTERPRETATION.—Every interpreta-
tion and determination made under this section
or under any other law, regulation, or interpre-
tative provision regarding the nature, scope,
and timing of the provision of these and any
other benefits, wages, and other terms and con-
ditions of employment shall be made so that—

“(i) the services of workers to their
employers and the employment opportuni-
ties afforded to workers by the employers,
including those employment opportunities
that require United States workers or H–
2A workers to travel or relocated in order
to accept or perform employment—

“(I) mutually benefit such work-
ers, as well as their families, and em-
ployers;

“(II) principally benefit neither
employer nor employee; and

“(III) employment opportunities
within the United States benefit the
United States economy.
“(2) Required wages.—

“(A) In general.—Each employer applying for workers under subsection (b) shall pay not less (and is not required to pay more) than the greater of—

“(i) the hourly wage prescribed under section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or the applicable State minimum wage;

“(ii) the adverse effect wage rate.

“(B) Wages for Level 2 H–2A workers.—

“(i) In general.—Each employer applying for Level 2 H–2A workers under subsection (b) shall pay such workers not less than 140 percent of the adverse effect wage rate for H–2A workers, excluding piece-rate wages.

“(ii) Wage rate data.—The Secretary of Agriculture shall expand and disaggregate the source of wage rate data used in the survey conducted by the National Agricultural Statistics Service to include—
“(I) first line farming supervisors/managers;
“(II) graders and sorters of agricultural products;
“(III) agricultural equipment operators;
“(IV) crop and nursery farmworkers and laborers;
“(V) ranch and farm animal farmworkers; and
“(VI) all other agricultural workers.
“(iii) STUDY AND REPORT.—
“(I) STUDY.—After the Secretary of Agriculture collects wage rate data for 2 years using the method described in clause (ii), the Secretary of Agriculture, in conjunction with the Secretary of Labor, shall conduct a study to determine if—
“(aa) the wages accurately reflect prevailing wages for similar occupations in the area of employment; and
“(bb) it is necessary to establish a new wage methodology to prevent the depression of United States farmworker wages.

“(II) REPORT.—Not later than 3 years after the date of the enactment of the HARVEST Act of 2011, the Secretary of Agriculture shall submit a final report reflecting the findings of the study conducted under sub-clause (I) to—

“(aa) the Committee on Agriculture, Nutrition, and Forestry of the Senate;

“(bb) the Committee on the Judiciary of the Senate;

“(cc) the Committee on Agriculture of the House of Representatives; and

“(dd) the Committee on the Judiciary of the House of Representatives.

“(3) HOUSING REQUIREMENT.—

“(A) IN GENERAL.—Except as provided under subparagraph (F), each employer apply-
ing for workers under subsection (b) shall offer
to provide housing at no cost to—

“(i) all workers in job opportunities
for which the employer has applied under
subsection (b); and

“(ii) all other workers in the same oc-
cupation at the same place of employment
whose place of residence is beyond normal
commuting distance.

“(B) COMPLIANCE.—An employer meets
the requirement under subparagraph (A) if the
employer—

“(i) provides the workers with housing
that meets applicable Federal standards
for temporary labor camps; or

“(ii) secures housing for the workers
that—

“(I) meets applicable local stand-
ards for rental or public accommoda-
tion housing, or other substantially
similar class of habitation; or

“(II) in the absence of applicable
local standards, meets State stand-
ards for rental or public accommoda-
tion housing or other substantially similar class of habitation.

“(C) INSPECTION.—

“(i) REQUEST.—At the time an employer that plans to provide housing described in subparagraph (B) to H–2A workers files an application for H–2A workers with the Secretary of Agriculture, the employer shall request a certificate of inspection by an approved Federal or State agency.

“(ii) INSPECTION; FOLLOW UP.—Not later than 28 days after the receipt of a request under clause (i), the Secretary of Agriculture shall ensure that—

“(I) such an inspection has been conducted; and

“(II) any necessary follow up has been scheduled to ensure compliance with the requirements under this paragraph.

“(iii) DELAY PROHIBITED.—The Secretary of Agriculture may not delay the approval of an application for failing to com-
ply with the deadlines set forth in clause (iii).

“(D) RULEMAKING.—The Secretary of Agriculture shall issue regulations that address the specific requirements for the provision of housing to workers engaged in the range production of livestock.

“(E) HOUSING ALLOWANCE.—

“(i) AUTHORITY.—If the Governor of a State certifies to the Secretary of Agriculture that there is adequate housing available in the area of intended employment for migrant farm workers and H–2A workers who are seeking temporary housing while employed in agricultural work, an employer in such State may provide a reasonable housing allowance instead of offering housing pursuant to subparagraph (A). An employer who provides a housing allowance to a worker shall not be required to reserve housing accommodations for the worker.

“(ii) ASSISTANCE IN LOCATING HOUSING.—Upon the request of a worker seeking assistance in locating housing, an em-
ployer providing a housing allowance under clause (i) shall make a good faith effort to assist the worker in identifying and locating housing in the area of intended employment.

"(iii) LIMITATION.—A housing allowance may not be used for housing that is owned or controlled by the employer. An employer who offers a housing allowance to a worker, or assists a worker in locating housing which the worker occupies under this subparagraph shall not be deemed a housing provider under section 203 of the Migrant and Seasonal Agricultural Worker Protect Act (29 U.S.C. 1823) solely by virtue of providing such housing allowance.

"(iv) OTHER REQUIREMENTS.—

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

"(II) METROPOLITAN COUNTY.—

If the place of employment of the workers provided an allowance under this subparagraph is in a metropolitan county, the amount of the housing allowance under this subparagraph shall be equal to the statewide average fair market rental for existing housing for metropolitan counties for the State, as established by the Secretary of Housing and Urban Development pursuant to section 8(c) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)), based on a 2-bedroom dwelling unit and an assumption of 2 persons per bedroom.
“(v) INFORMATION.—If the employer provides a housing allowance to H–2A employees, the employer shall provide a list of the names and local addresses of such workers to the Secretary of Agriculture and the Secretary of Homeland Security once per contract period.

“(4) REIMBURSEMENT OF TRANSPORTATION COSTS.—

“(A) REQUIREMENT FOR REIMBURSEMENT.—A worker who completes 50 percent of the period of employment of the job for which the worker was hired shall be reimbursed by the employer, beginning on the first day of such employment, for the cost of the worker’s transportation and subsistence from—

“(i) the place from which the worker was approved to enter the United States to the location at which the work for the employer is performed; or

“(ii) if the worker traveled from a place in the United States at which the worker was last employed, from such place of last employment to the location at which
the work for the employer is being performed.

“(B) TIMING OF REIMBURSEMENT.—Reimbursement to the worker of expenses for the cost of the worker’s transportation and subsistence to the place of employment under subparagraph (A) shall be considered timely if such reimbursement is made not later than the worker’s first regular payday after a worker completes 50 percent of the period of employment of the job opportunity as provided under this paragraph.

“(C) ADDITIONAL REIMBURSEMENT.—A worker who completes the period of employment for the job opportunity involved shall be reimbursed by the employer for the cost of the worker’s transportation and subsistence from the work site to the place where the worker was approved to enter the United States to work for the employer. If the worker has contracted with a subsequent employer, the previous and subsequent employer shall share the cost of the worker’s transportation and subsistence from work site to work site.
“(D) AMOUNT OF REIMBURSEMENT.—The amount of reimbursement provided to a worker under this paragraph shall be equal to 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 and subsistence costs for the distance involved.

“(E) REIMBURSEMENT FOR LAID OFF WORKERS.—If the worker is laid off or employment is terminated for contract impossibility (as described in paragraph (5)(D)) before the anticipated ending date of employment, the employer shall provide—

“(i) the transportation and subsistence required under subparagraph (C); and

“(ii) notwithstanding whether the worker has completed 50 percent of the period of employment, the transportation reimbursement required under subparagraph (A).

“(F) TRANSPORTATION.—The employer shall provide transportation between the work-
er's living quarters and the employer's work site without cost to the worker in accordance with applicable laws and regulations.

“(G) CONSTRUCTION.—Nothing in this paragraph may be construed to require an employer to reimburse visa, passport, consular, or international border-crossing fees incurred by the worker or any other fees associated with the worker's lawful admission into the United States to perform employment.

“(5) EMPLOYMENT GUARANTEE.—

“(A) IN GENERAL.—

“(i) REQUIREMENT.—Each employer applying for workers under subsection (b) shall guarantee to offer each such worker employment for the hourly equivalent of not less than 75 percent of the work hours during the total anticipated period of employment beginning with the first work day after the arrival of the worker at the place of employment and ending on the expiration date specified in the job offer.

“(ii) FAILURE TO MEET GUARANTEE.—If the employer affords the United States worker or the H–2A workers
less employment than that required under this subparagraph, the employer shall pay such worker the amount which the worker would have earned if the worker had worked for the guaranteed number of hours.

“(iii) Period of Employment.—In this subparagraph, the term ‘period of employment’ means the total number of anticipated work hours and work days described in the job offer and shall exclude the worker’s Sabbath and Federal holidays.

“(B) Calculation of Hours.—Any hours which the worker fails to work, up to a maximum 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) Limitation.—If the worker voluntarily abandons employment before the end of the contract period, or is terminated for cause, the worker is not entitled to the 75 percent guarantee described in subparagraph (A).

“(D) Termination of employment.—

“(i) In general.—If, before the expiration of the period of employment specified in the job offer, the services of the worker are no longer required due to any form of natural disaster, including flood, hurricane, freeze, earthquake, fire, drought, plant or animal disease, pest infestation, regulatory action, or any other reason beyond the control of the employer before the employment guarantee in subparagraph (A) is fulfilled, the employer may terminate the worker’s employment.

“(ii) Requirements.—If a worker’s employment is terminated under clause (i), the employer shall—

“(I) fulfill the employment guarantee in subparagraph (A) for the work days that have elapsed during the period beginning on the first work
day after the arrival of the worker
and ending on the date on which such
employment is terminated; and

“(II) make efforts to transfer the
United States worker to other com-
parable employment acceptable to the
worker.

“(I) Disqualification.—

“(1) Grounds of ineligibility.—

“(A) In general.—An alien is ineligible
for an H–2A visa if the alien—

“(i) is inadmissible to the United
States under section 212(a), except as pro-
vided under paragraph (2);

“(ii) is subject to the execution of an
outstanding administratively final order of
removal, deportation, or exclusion;

“(iii) is described in, or is subject to,
section 241(a)(5);

“(iv) has ordered, incited, assisted, or
otherwise participated in the persecution of
any person on account of race, religion, na-
tionality, membership in a particular social
group, or political opinion; or
“(v) has a felony or misdemeanor conviction, an element of which involves bodily injury, threat of serious bodily injury, or harm to property in excess of $500.

“(B) APPLICABILITY TO GROUNDS OF INADMISSIBILITY.—Nothing in this subsection may be construed to limit the applicability of any ground of inadmissibility under section 212.

“(2) GROUNDS OF INADMISSIBILITY.—

“(A) IN GENERAL.—In determining an alien’s admissibility—

“(i) paragraphs (5)(A), (6)(A)(i) (with respect to an alien present in the United States without being admitted or paroled), (6)(B), (6)(C), (6)(D), (6)(F), (6)(G), (7), (9)(B), and (9)(C)(i)(I) of section 212(a) shall not apply with respect to conduct occurring or arising before the date of the alien’s application for an H–2A visa if associated with obtaining employment;

“(ii) the Secretary of Homeland Security may not waive—
“(I) paragraph (1) or (2) of sections 212(a) (relating to health and safety and criminals);

“(II) section 212(a)(3) (relating to security and related grounds);

“(III) section 212(a)(9)(C)(i)(II);

or

“(IV) subparagraph (A), (C), or (D) of section 212(a)(10) (relating to polygamists, child abductors, and unlawful voters).

“(B) CONSTRUCTION.—Nothing in this paragraph may be construed as affecting the authority of the Secretary of Homeland Security, other than under this paragraph, to waive the provisions of section 212(a).

“(3) BARS TO EXTENSION OR ADMISSION.—An alien may not be granted an H–2A visa if—

“(A) the alien has violated any material term or condition of such status granted previously, unless the alien has had such violation waived under paragraph (2)(A);

“(B) the alien is inadmissible as a non-immigrant, except for those grounds previously waived under paragraph (2)(A); or
“(C) the granting of such status would allow the alien to exceed limitations on stay in the United States in H–2A status described in subsection (m).

“(4) PROMPT REMOVAL PROCEEDINGS.—The Secretary of Homeland Security shall promptly identify, investigate, detain, and initiate removal proceedings against every alien admitted into the United States on an H–2A visa who exceeds the alien’s period of authorized admission or otherwise violates any terms of the alien’s nonimmigrant status. In conducting such removal proceedings, the Secretary shall give priority to aliens who may pose a threat to the national security, and those convicted of criminal offenses.

“(5) NUMERICAL LIMITATIONS ON WAIVERS.—The Secretary of Homeland Security may waive any ground of inadmissibility, as authorized under this section, only once for each beneficiary of an application for an H–2A visa filed by an employer after the date of the enactment of the HARVEST Act of 2011. Such waiver authority for the Secretary shall expire 24 months after such date of enactment.

“(6) FINE.—Each alien applying for an H–2A visa under this section who would be inadmissible
under section 212(a)(6), if such provision had not
been made inapplicable under subsection (l)(2)(A)(i),
shall be required to pay a fine in an amount equal
to $500 before being granted such visa.

“(m) PERIOD OF ADMISSION.—

“(1) IN GENERAL.—An H–2A worker approved
to enter the United States may not remain in the
United States for more than 10 months during any
12-month period, excluding—

“(A) a period of not more than 7 days be-
fore the beginning of the period of employment
for the purpose of travel to the work site; and

“(B) a period of not more than 14 days
after the period of employment for the purpose
of departure to complete late work caused by
weather or other unforeseen conditions.

“(2) EMPLOYMENT LIMITATION.—An H–2A
worker may not be employed during the 14-day pe-
period described in paragraph (1)(B) except in the em-
ployment for which the alien was previously author-
ized.

“(3) CONSTRUCTION.—Nothing in this sub-
section shall limit the authority of the Secretary of
Homeland Security to extend the stay of an alien
under any other provision of this Act.
“(n) ABANDONMENT OF EMPLOYMENT.—

“(1) IN GENERAL.—An alien admitted or provided status under section 101(a)(15)(H)(ii)(a) who abandons the employment, which was the basis for such admission or status—

“(A) has failed to maintain nonimmigrant status as an H–2A worker; and

“(B) shall depart the United States or be subject to removal under section 237(a)(1)(C)(i).

“(2) REPORT BY EMPLOYER.—Not later than 36 hours after the premature abandonment of employment by an H–2A worker, the employer or association acting as an agent for the employer shall notify the Secretary of Homeland Security of such abandonment.

“(3) REMOVAL.—The Secretary of Homeland Security shall ensure the prompt removal from the United States of any H–2A worker who violates any term or condition of the worker’s nonimmigrant status.

“(4) VOLUNTARY TERMINATION.—Notwithstanding paragraph (1), an alien may voluntarily terminate the alien’s employment if the alien
promptly departs the United States upon termination of such employment.

“(o) REPLACEMENT OF WORKERS.—

“(1) IN GENERAL.—Upon receiving notification under subsection (n)(2) or being notified that a United States worker referred by the Department of Labor or a United States worker recruited by the employer during the recruitment period has prematurely abandoned employment or has failed to appear for employment—

“(A) the Secretary of State shall promptly issue a visa to an eligible alien designated by the employer to replace a worker who abandons or prematurely terminates employment; and

“(B) the Secretary of Homeland Security shall expeditiously admit such alien into the United States.

“(2) CONSTRUCTION.—Nothing in this subsection may be construed to limit any preference for which United States workers are eligible under this Act.

“(p) IDENTIFICATION DOCUMENT.—

“(1) IN GENERAL.—The Secretary of Homeland Security shall provide each alien authorized to be an H–2A worker with a single machine-readable, tam-
per-resistant, and counterfeit-resistant document that—

“(A) authorizes the alien’s entry into the United States;

“(B) serves, for the appropriate period, as an employment eligibility document; and

“(C) verifies the identity of the alien through the use of at least 1 biometric identifier.

“(2) REQUIREMENTS.—The document required for all aliens authorized to be an H–2A worker—

“(A) shall be capable of reliably determining whether the individual with the document—

“(i) is eligible for employment as an H–2A worker;

“(ii) is not claiming the identity of another person; and

“(iii) is authorized to be admitted into the United States; and

“(B) shall be compatible with—

“(i) other databases of the Department of Homeland Security to prevent an alien from obtaining benefits for which the alien is not eligible and determining wheth-
er the alien is unlawfully present in the United States; and

“(ii) law enforcement databases to determine if the alien has been convicted of criminal offenses.

“SEC. 218A. ADMISSION OF CROSS-BORDER H–2A WORKERS.

“(a) DEFINITION.—In this section, the term ‘cross-border H–2A worker’ means a nonimmigrant described in section 101(a)(15)(H)(ii)(a) who participates in the cross-border worker program established under this section.

“(b) INCORPORATION BY REFERENCE.—

“(1) IN GENERAL.—Except as specifically provided under paragraph (2), the provisions under section 218 shall apply to cross-border H–2A workers.

“(2) EXCEPTIONS.—Subsections (k)(3), (k)(4), and (m) of section 218 shall not apply to cross-border H–2A workers.

“(c) MANDATORY ENTRY AND EXIT.—A cross-border H–2A worker who complies with the provisions of this section—

“(1) may enter the United States each scheduled work day, in accordance with regulations promulgated by the Secretary of Homeland Security; and
“(2) shall exit the United States before the end of each day of such entrance.

“(d) RECruITMENT.—Each employer that employs a cross-border H–2A worker under this section shall conduct a recruitment for each position occupied by such H–2A worker that complies with the requirements under section 218(b)(4) at least once every 10 months.”.

(2) Clerical Amendment.—The table of contents of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by striking the item relating to section 218 and inserting the following:

“Sec. 218. Admission of temporary H–2A workers.
Sec. 218A. Admission of cross-border H–2A workers.”.

(c) Rulemaking.—

(1) Issuance of Visas.—Not later than 180 days after the date of the enactment of this Act, the Secretary of State shall promulgate regulations, in accordance with the notice and comment provisions of section 553 of title 5, United States Code, to provide for uniform procedures for the issuance of H–2A visas by United States consulates and consular officials to nonimmigrants described in section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)).

(2) Border Crossings.—The Secretary of State shall promulgate regulations to establish a
process for cross-border H–2A workers authorized to
work in the United States under section 218A of the
Immigration and Nationality Act, as added by sub-
section (b), to ensure that such workers expedi-
tiously enter and exit the United States during each
work day.

(d) EFFECTIVE DATE.—The amendments made by
this section shall take effect on the date that is 180 days
after the date of the enactment of this Act.

SEC. 4. LEGAL ASSISTANCE FROM THE LEGAL SERVICES
CORPORATION.

Section 504 of the Migrant and Seasonal Agricultural
Worker Protection Act (29 U.S.C. 1854) is amended—

(1) by striking subsection (b) and inserting the
following:

“(b)(1) Upon application by a complainant and in
such circumstances as the court determines just, the court
may appoint an attorney for such complainant and may
authorize the commencement of the action.

“(2) The Legal Services Corporation may not provide
legal assistance for, or on behalf of, any alien, and may
not provide financial assistance to any person or entity
that provides legal assistance for, or on behalf of, any
alien, unless the alien—

“(A) is described in subsection (a); and
“(B) is present in the United States at the time
the legal assistance is provided.

“(3)(A) No party may bring a civil action for dam-
ages or another complaint on behalf of a nonimmigrant
described in section 101(a)(15)(H)(ii)(a) of the Immig-
(referred to in this subsection as an ‘H–2A worker’) un-
less—

“(i) the party makes a request to the Federal
Mediation and Conciliation Service or an equivalent
State program (as defined by the Secretary of
Labor) not later than 90 days before bringing the
action to assist the parties in reaching a satisfactory
resolution of all issues involving parties to the dis-
pute;

“(ii) the party provides written notification of
the alleged violation to the agricultural employer, ag-
gricultural association, or farm labor contractor; and

“(iii) the parties to the dispute have attempted,
in good faith, mediation or other non-binding dis-
pute resolution of all issues involving all such par-
ties.

“(B) If the mediator finds that an agricultural em-
ployer, agricultural association, or farm labor contractor
has corrected a violation of this Act or a regulation under
this Act not later than 14 days after the date on which such agricultural employer, agricultural association, or farm labor contractor received written notification of such violation, no action may be brought under this section with respect to such violation.

“(C) Any settlement reached through the mediation process described in subparagraph (A) shall preclude any right of action arising out of the same facts between the parties in any Federal or State court or administrative proceeding.

“(D) If no settlement is reached through the mediation process described in subparagraph (A), any offer of settlement or attempts to remedy alleged grievances shall be admissible as evidence.

“(4) An employer of an H–2A worker shall not be required to waive any requirements of any food safety programs, such as sign in requirements, for any recipient of grants or contracts under section 1007 of the Legal Services Corporation Act (42 U.S.C. 1996f), or any employee of such recipient.

“(5) The employer of an H–2A worker shall post the contact information of the Legal Services Corporation in the dwelling and at the work site of each nonimmigrant employee in a language in which all employees can understand.
“(6) There are authorized to be appropriated to the Federal Mediation and Conciliation Service for each fiscal year such sums as may be necessary to carry out the mediation process described in this subsection.”; and

(2) by adding at the end the following:

“(g)(1) If a defendant prevails in an action under this section in which the plaintiff is represented by an attorney who is employed by the Legal Services Corporation or any entity receiving funds from the Legal Services Corporation, such entity or the Legal Services Corporation shall award to the prevailing defendant fees and other expenses incurred by the defendant in connection with the action.

“(2) In this subsection, the term ‘fees and other expenses’ has the meaning given the term in section 514(b)(1)(A) of title 5, United States Code.

“(3) The court shall take whatever steps necessary, including the imposition of sanctions, to ensure compliance with this subsection.”.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Department of Homeland Security and the Department of State such sums as may be necessary to adjudicate H–2A applications.