

116TH CONGRESS
2D SESSION

H. R. 6083

To create a nonimmigrant H–2C work visa program for agricultural workers, to make mandatory and permanent requirements relating to use of an electronic employment eligibility verification system, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 4, 2020

Mr. YOHO (for himself, Mr. THOMPSON of Pennsylvania, Mr. DUNN, Mr. ROUZER, Mr. BARR, Mr. BUDD, Mrs. HARTZLER, Mr. McCAUL, Mr. CASE, Mr. KELLY of Pennsylvania, and Mr. NORMAN) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Education and Labor, Ways and Means, and Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To create a nonimmigrant H–2C work visa program for agricultural workers, to make mandatory and permanent requirements relating to use of an electronic employment eligibility verification system, 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 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Labor Certainty for Food Security Act of 2020”.

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

Sec. 1. Short title; table of contents.

TITLE I—AGRICULTURAL GUESTWORKER PROGRAM

- Sec. 101. Short title.
- Sec. 102. H-2C temporary agricultural work visa program.
- Sec. 103. Admission of temporary H-2C workers.
- Sec. 104. Mediation.
- Sec. 105. Migrant and seasonal agricultural worker protection.
- Sec. 106. Binding arbitration.
- Sec. 107. Coverage through health exchanges; required health insurance coverage.
- Sec. 108. Establishment of an agricultural worker employment pool.
- Sec. 109. Prevailing wage.
- Sec. 110. Portability of H-2C status.
- Sec. 111. Collection of taxes.
- Sec. 112. Effective dates; regulations; defined terms.
- Sec. 113. Report on compliance and violations.
- Sec. 114. Electronic filing system.

TITLE II—LEGAL WORKFORCE ACT

- Sec. 201. Short title.
- Sec. 202. Employment eligibility verification process.
- Sec. 203. Employment eligibility verification system.
- Sec. 204. Recruitment, referral, and continuation of employment.
- Sec. 205. Good faith defense.
- Sec. 206. Preemption and States' rights.
- Sec. 207. Repeal.
- Sec. 208. Penalties.
- Sec. 209. Fraud and misuse of documents.
- Sec. 210. Protection of Social Security Administration programs.
- Sec. 211. Fraud prevention.
- Sec. 212. Use of employment eligibility verification photo tool.
- Sec. 213. Identity Authentication Employment Eligibility Verification pilot programs.
- Sec. 214. Inspector General audits.

TITLE III—H-2A PROGRAM

- Sec. 301. Administration by Department of Agriculture.
- Sec. 302. Defining agricultural labor.
- Sec. 303. Wage structure and other amendments to H-2A program.
- Sec. 304. Biometric identification card.
- Sec. 305. Effective date.

TITLE I—AGRICULTURAL GUESTWORKER PROGRAM

SEC. 101. SHORT TITLE.

This title may be cited as the “Agricultural Guestworker Reform Act”.

SEC. 102. H-2C TEMPORARY AGRICULTURAL WORK VISA PROGRAM.

(a) IN GENERAL.—Section 101(a)(15)(H) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)) is amended by striking “; or (iii)” and inserting “, or (c) who is coming temporarily to the United States to perform agricultural labor or services as an at-will employee; or (iii)”.

(b) DEFINITION.—Section 101(a) of such Act (8 U.S.C. 1101(a)) is amended by adding at the end the following:

“(53) The term ‘agricultural labor or services’ has the meaning given such term by the Secretary of Agriculture in regulations and includes—

“(A) agricultural labor as defined in section 3121(g) of the Internal Revenue Code of 1986;

“(B) agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f));

1 “(C) the handling, planting, drying, pack-
2 ing, packaging, processing, freezing, or grading
3 prior to delivery for storage of any agricultural
4 or horticultural commodity in its unmanufac-
5 tured state up to the point it is to be sold to
6 a warehouse for wholesale distribution;

7 “(D) all activities required for the prepara-
8 tion, processing or manufacturing of a product
9 of agriculture (as such term is defined in such
10 section 3(f)), or fish or shellfish, for further dis-
11 tribution;

12 “(E) forestry-related activities up to the
13 point of wholesale to a distribution facility;

14 “(F) aquaculture activities up to the point
15 of wholesale distribution; and

16 “(G) activities related to the breeding,
17 management, training, and racing of equines.

18 For purposes of labor involving meat or poultry proc-
19 essing, the term only includes the killing of animals and
20 the breakdown of their carcasses up to the point of whole-
21 sale distribution, and the collection, cleaning, grading, and
22 packaging of eggs up to the point of wholesale distribu-
23 tion.”.

1 **SEC. 103. ADMISSION OF TEMPORARY H-2C WORKERS.**

2 (a) PROCEDURE FOR ADMISSION.—Chapter 2 of title
3 II of the Immigration and Nationality Act (8 U.S.C. 1181
4 et seq.) is amended by inserting after section 218 the fol-
5 lowing:

6 **“SEC. 218A. ADMISSION OF TEMPORARY H-2C WORKERS.**

7 “(a) DEFINITIONS.—In this section:

8 “(1) DISPLACE.—The term ‘displace’ means to
9 lay off a United States worker from the job for
10 which H-2C workers are sought.

11 “(2) JOB.—The term ‘job’ refers to all posi-
12 tions with an employer that—

13 “(A) involve essentially the same respon-
14 sibilities;

15 “(B) are held by workers with substan-
16 tially equivalent qualifications and experience;
17 and

18 “(C) are located in the same place or
19 places of employment.

20 “(3) EMPLOYER.—The term ‘employer’ includes
21 a single or joint employer, including—

22 “(A) an association acting as a joint em-
23 ployer with its members, who hires workers to
24 perform agricultural labor or services; and

25 “(B) any association of farmers, producers
26 or harvesters of aquatic products, or any fed-

eration of such associations, which is operated on a cooperative basis, and has the powers for processing, preparing for market, handling, or marketing farm or aquatic products.

“(4) FORESTRY-RELATED ACTIVITIES.—The term ‘forestry-related activities’ includes tree planting, timber harvesting, logging operations, brush clearing, vegetation management, herbicide application, the maintenance of rights-of-way (including for roads, trails, and utilities), regardless of whether such right-of-way is on forest land, and the harvesting of pine straw.

“(5) H-2C WORKER.—The term ‘H-2C worker’ means a nonimmigrant described in section 101(a)(15)(H)(ii)(c).

“(6) 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

1 into in order to evade a condition described
2 in paragraph (4) of subsection (b)); and

3 “(ii) does not include any situation in
4 which the worker is offered, as an alter-
5 native to such loss of employment, a simi-
6 lar position with the same employer at
7 equivalent or higher wages and benefits
8 than the position from which the employee
9 was discharged, regardless of whether or
10 not the employee accepts the offer.

11 “(B) CONSTRUCTION.—Nothing in this
12 paragraph is intended to limit an employee’s
13 rights under a collective bargaining agreement
14 or other employment contract.

15 “(7) UNITED STATES WORKER.—The term
16 ‘United States worker’ means any worker who is—

17 “(A) a citizen or national of the United
18 States; or

19 “(B) an alien who is lawfully admitted for
20 permanent residence, is admitted as a refugee
21 under section 207, or is granted asylum under
22 section 208.

23 “(b) PETITION.—An employer that seeks to employ
24 aliens as H-2C workers under this section shall file with

1 the Secretary of Homeland Security a petition attesting
2 to the following:

3 “(1) OFFER OF EMPLOYMENT.—The employer
4 will offer employment to the aliens on an at-will
5 basis.

6 “(2) TEMPORARY LABOR OR SERVICES.—

7 “(A) IN GENERAL.—The employer is seek-
8 ing to employ a specific number of H-2C work-
9 ers on a temporary basis and will provide com-
10 pensation to such workers at a wage rate no
11 less than that set forth in subsection (j)(2).

12 “(B) DEFINITION.—For purposes of this
13 paragraph, a worker is employed on a tem-
14 porary basis if the employer intends to employ
15 the worker for no longer than the time period
16 set forth in subsection (m)(1) (subject to the
17 exceptions in subsection (m)(3)).

18 “(3) BENEFITS, WAGES, AND WORKING CONDI-
19 TIONS.—The employer will provide, at a minimum,
20 the benefits, wages, and working conditions required
21 by subsection (j) to all workers employed in the job
22 for which the H-2C workers are sought.

23 “(4) NONDISPLACEMENT OF UNITED STATES
24 WORKERS.—The employer did not displace and will
25 not displace United States workers employed by the

1 employer during the period of employment of the H–
2 2C workers and during the 30-day period imme-
3 diately preceding such period of employment in the
4 job for which the employer seeks approval to employ
5 H–2C workers.

6 “(5) RECRUITMENT.—

7 “(A) IN GENERAL.—The employer—

8 “(i) conducted adequate recruitment
9 before filing the petition; and

10 “(ii) was unsuccessful in locating suf-
11 ficient numbers of willing and qualified
12 United States workers for the job for
13 which the H–2C workers are sought.

14 “(B) OTHER REQUIREMENTS.—The re-
15 cruitment requirement under subparagraph (A)
16 is satisfied if the employer places a local job
17 order with the State workforce agency serving
18 each place of employment, except that nothing
19 in this subparagraph shall require the employer
20 to file an interstate job order under section 653
21 of title 20, Code of Federal Regulations. The
22 State workforce agency shall post the job order
23 on its official agency website for a minimum of
24 30 days and not later than 3 days after receipt
25 using the employment statistics system author-

1 ized under section 15 of the Wagner-Peyser Act
2 (29 U.S.C. 491-2). The Secretary of Labor
3 shall include links to the official websites of all
4 State workforce agencies on a single webpage of
5 the official website of the Department of Labor.

6 “(C) END OF RECRUITMENT REQUIRE-
7 MENT.—The requirement to recruit United
8 States workers for a job shall terminate on the
9 first day that work begins for any H-2C worker
10 for whom the petition was filed.

11 “(6) OFFERS TO UNITED STATES WORKERS.—
12 The employer has offered or will offer the job for
13 which the H-2C workers are sought to any eligible
14 United States workers who—

15 “(A) apply;

16 “(B) are qualified for the job; and

17 “(C) will be available at the time, at each
18 place, and for the duration, of need.

19 This requirement shall not apply to United States
20 workers who apply for the job on or after the first
21 day that work begins for the H-2C workers.

22 “(7) STRIKE OR LOCKOUT.—The job that is the
23 subject of the petition is not vacant because the
24 former workers in that job are on strike or locked
25 out in the course of a labor dispute.

1 “(c) LIST.—

2 “(1) IN GENERAL.—The Secretary of Homeland
3 Security shall maintain a list of the petitions filed
4 under this subsection, which shall—

5 “(A) be sorted by employer; and

6 “(B) include the number of H-2C workers
7 sought, the wage rate, the period of employ-
8 ment, each place of employment, and the date
9 of need for each alien.

10 “(2) AVAILABILITY.—The Secretary of Home-
11 land Security shall make the list available for public
12 examination.

13 “(d) PETITIONING FOR ADMISSION.—

14 “(1) CONSIDERATION OF PETITIONS.—For peti-
15 tions filed and considered under this subsection—

16 “(A) the Secretary of Homeland Security
17 may not require such petition to be filed more
18 than 28 days before the first date the employer
19 requires the labor or services of H-2C workers;

20 “(B) within the appropriate time period
21 under subparagraph (C) or (D), the Secretary
22 of Homeland Security shall—

23 “(i) approve the petition;

24 “(ii) reject the petition; or

1 “(iii) determine that the petition is in-
2 complete or obviously inaccurate or that
3 the employer has not complied with the re-
4 quirements of subsection (b)(5)(A)(i)
5 (which the Secretary can ascertain by
6 verifying whether the employer has placed
7 a local job order as provided for in sub-
8 section (b)(5)(B));

9 “(C) if the Secretary determines that the
10 petition is incomplete or obviously inaccurate,
11 or that the employer has not complied with the
12 requirements of subsection (b)(5)(A)(i) (which
13 the Secretary can ascertain by verifying wheth-
14 er the employer has placed a local job order as
15 provided for in subsection (b)(5)(B)), the Sec-
16 retary shall—

17 “(i) within 5 business days of receipt
18 of the petition, notify the petitioner of the
19 deficiencies to be corrected by means en-
20 suring same or next day delivery; and

21 “(ii) within 5 business days of receipt
22 of the corrected petition, approve or reject
23 the petition and provide the petitioner with
24 notice of such action by means ensuring
25 same or next day delivery; and

1 “(D) if the Secretary does not determine
2 that the petition is incomplete or obviously inac-
3 curate, the Secretary shall not later than 10
4 business days after the date on which such peti-
5 tion was filed, either approve or reject the peti-
6 tion and provide the petitioner with notice of
7 such action by means ensuring same or next
8 day delivery.

9 “(2) ACCESS.—By filing an H-2C petition, the
10 petitioner and each employer (if the petitioner is an
11 association that is a joint employer of workers who
12 perform agricultural labor or services) consent to
13 allow access to each place of employment to the De-
14 partment of Agriculture and the Department of
15 Homeland Security for the purpose of investigations
16 and audits to determine compliance with the immi-
17 gration laws (as defined in section 101(a)(17)).

18 “(3) CONFIDENTIALITY OF INFORMATION.—No
19 information contained in a non-fraudulent petition
20 filed by an employer pursuant to subsection (b)
21 which is not otherwise available to the Secretary of
22 Homeland Security may be used—

23 “(A) in a civil or criminal prosecution or
24 investigation of the petitioning employer under
25 section 274A or the Internal Revenue Code of

1 1986 for unlawful employment of an alien who
2 is the beneficiary of such petition; or

3 “(B) for the purpose of initiating or pro-
4 ceeding with removal proceedings with respect
5 to an alien who is the beneficiary of such peti-
6 tion, except in the case of an alien with respect
7 to whom a petition is denied.

8 “(e) ROLES OF AGRICULTURAL ASSOCIATIONS.—

9 “(1) TREATMENT OF ASSOCIATIONS ACTING AS
10 EMPLOYERS.—If an association is a joint employer
11 of workers who perform agricultural labor or serv-
12 ices, H-2C workers may be transferred among its
13 members to perform the agricultural labor or serv-
14 ices on a temporary basis for which the petition was
15 approved.

16 “(2) TREATMENT OF VIOLATIONS.—

17 “(A) INDIVIDUAL MEMBER.—If an indi-
18 vidual member of an association that is a joint
19 employer commits a violation described in para-
20 graph (2) or (3) of subsection (h) or subsection
21 (i)(1), the Secretary of Agriculture shall invoke
22 penalties pursuant to subsections (h) and (i)
23 against only that member of the association un-
24 less the Secretary of Agriculture determines

1 that the association participated in, had knowl-
2 edge of, or had reason to know of the violation.

3 “(B) ASSOCIATION OF AGRICULTURAL EM-
4 PLOYERS.—If an association that is a joint em-
5 ployer commits a violation described in sub-
6 sections (h) (2) and (3) or (i)(1), the Secretary
7 of Agriculture shall invoke penalties pursuant
8 to subsections (h) and (i) against only the asso-
9 ciation and not any individual members of the
10 association, unless the Secretary determines
11 that the member participated in the violation.

12 “(f) EXPEDITED ADMINISTRATIVE APPEALS.—The
13 Secretary of Homeland Security shall promulgate regula-
14 tions to provide for an expedited procedure for the review
15 of a denial of a petition under this section by the Sec-
16 retary. At the petitioner’s request, the review shall include
17 a de novo administrative hearing at which new evidence
18 may be introduced.

19 “(g) FEES.—The Secretary of Homeland Security
20 shall require, as a condition of approving the petition, the
21 payment of a fee of \$2,500 to recover the reasonable cost
22 of processing the petition.

23 “(h) ENFORCEMENT.—

24 “(1) INVESTIGATIONS AND AUDITS.—The Sec-
25 retary of Agriculture shall be responsible for con-

ducting investigations and audits, including random audits, of employers to ensure compliance with the requirements of the H-2C program. All monetary fines levied against employers shall be paid to the Department of Agriculture and used to enhance the Department of Agriculture's investigative and auditing abilities to ensure compliance by employers with their obligations under this section.

“(2) VIOLATIONS.—If the Secretary of Agriculture finds, after notice and opportunity for a hearing, a failure to fulfill an attestation required by this subsection, or a material misrepresentation of a material fact in a petition under this subsection, the Secretary—

“(A) may impose such administrative remedies (including civil money penalties in an amount not to exceed \$1,000 per violation) as the Secretary determines to be appropriate; and

“(B) may disqualify the employer from the employment of H-2C workers for a period of 1 year.

“(3) WILLFUL VIOLATIONS.—If the Secretary of Agriculture finds, after notice and opportunity for a hearing, a willful failure to fulfill an attestation required by this subsection, or a willful misrepresenta-

1 tion of a material fact in a petition under this sub-
2 section, the Secretary—

3 “(A) may impose such administrative rem-
4 edies (including civil money penalties in an
5 amount not to exceed \$5,000 per violation, or
6 not to exceed \$15,000 per violation if in the
7 course of such failure or misrepresentation the
8 employer displaced one or more United States
9 workers employed by the employer during the
10 period of employment of H–2C workers or dur-
11 ing the 30-day period immediately preceding
12 such period of employment) in the job the H–
13 2C workers are performing as the Secretary de-
14 termines to be appropriate;

15 “(B) may disqualify the employer from the
16 employment of H–2C workers for a period of 2
17 years;

18 “(C) may, for a subsequent failure to fulfill
19 an attestation required by this subsection, or a
20 misrepresentation of a material fact in a peti-
21 tion under this subsection, disqualify the em-
22 ployer from the employment of H–2C workers
23 for a period of 5 years; and

24 “(D) may, for a subsequent willful failure
25 to fulfill an attestation required by this sub-

1 section, or a willful misrepresentation of a ma-
2 terial fact in a petition under this subsection,
3 permanently disqualify the employer from the
4 employment of H-2C workers.

5 “(i) FAILURE TO PAY WAGES OR REQUIRED BENE-
6 FITS.—

7 “(1) IN GENERAL.—If the Secretary of Agri-
8 culture finds, after notice and opportunity for a
9 hearing, that the employer has failed to provide the
10 benefits, wages, and working conditions that the em-
11 ployer has attested that it would provide under this
12 subsection, the Secretary shall require payment of
13 back wages, or such other required benefits, due any
14 United States workers or H-2C workers employed
15 by the employer.

16 “(2) AMOUNT.—The back wages or other re-
17 quired benefits described in paragraph (1)—

18 “(A) shall be equal to the difference be-
19 tween the amount that should have been paid
20 and the amount that was paid to such workers;
21 and

22 “(B) shall be distributed to the workers to
23 whom such wages or benefits are due.

24 “(j) MINIMUM WAGES, BENEFITS, AND WORKING
25 CONDITIONS.—

1 “(1) PREFERENTIAL TREATMENT OF H-2C
2 WORKERS PROHIBITED.—

3 “(A) IN GENERAL.—Each employer seek-
4 ing to hire United States workers for the job
5 the H-2C workers will perform shall offer such
6 United States workers not less than the same
7 benefits, wages, and working conditions that the
8 employer will provide to the H-2C workers, ex-
9 cept that if an employer chooses to provide H-
10 2C workers with housing or a housing allow-
11 ance, the employer need not offer housing or a
12 housing allowance to such United States work-
13 ers. No job offer may impose on United States
14 workers any restrictions or obligations which
15 will not be imposed on H-2C workers.

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

23 “(i) the services of workers to their
24 employers and the employment opportuni-
25 ties afforded to workers by the employers,

1 including those employment opportunities
2 that require United States workers or H-
3 2C workers to travel or relocate in order to
4 accept or perform employment—

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

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

10 “(ii) employment opportunities within
11 the United States benefit the United
12 States economy.

13 “(2) REQUIRED WAGES.—

14 “(A) IN GENERAL.—Each employer peti-
15 tioning for H-2C workers under this subsection
16 shall offer the H-2C workers, during the period
17 of authorized employment as H-2C workers,
18 wages that are at least the greatest of—

19 “(i) the applicable State or local min-
20 imum wage;

21 “(ii) 115 percent of the Federal min-
22 imum wage; or

23 “(iii) the actual wage level paid by the
24 employer to all other individuals with simi-

1 lar experience and qualifications for the
2 specific employment in question.

3 “(B) ALTERNATE WAGE PAYMENT SYS-
4 TEMS.—An employer can utilize a piece rate or
5 other alternative wage payment system so long
6 as the employer guarantees each worker a wage
7 rate that equals or exceeds the amount required
8 under subparagraph (A) for the total hours
9 worked in each pay period.

10 “(k) NONDELEGATION.—The Department of Agri-
11 culture and the Department of Homeland Security shall
12 not delegate their investigatory, enforcement, or adminis-
13 trative functions relating to this section to other agencies
14 or departments of the Federal Government.

15 “(l) COMPLIANCE WITH BIO-SECURITY PROTO-
16 COLS.—Except in the case of an imminent threat to health
17 or safety, any personnel from a Federal agency or Federal
18 grantee seeking to determine the compliance of an em-
19 ployer with the requirements of this section shall, when
20 visiting such employer’s place of employment, make their
21 presence known to the employer and sign-in in accordance
22 with reasonable bio-security protocols before proceeding to
23 any other area of the place of employment.

24 “(m) LIMITATION ON H-2C WORKERS’ STAY IN STA-
25 TUS.—

1 “(1) MAXIMUM PERIOD.—The maximum con-
2 tinuous period of authorized stay as an H-2C work-
3 er is 36 months. The employer shall file any petition
4 to extend the period of authorized stay for such H-
5 2C worker not later than 6 months before the expi-
6 ration of the period of authorized stay. In addition
7 to the maximum continuous period of authorized
8 stay, an H-2C worker may also be present for a pe-
9 riod of not more than 7 days prior to the beginning
10 of authorized employment as an H-2C worker for
11 the purpose of travel to the place of employment.
12 Notwithstanding the duration of the employment re-
13 quested by the employer petitioning for the admis-
14 sion of an H-2C worker, if the alien is granted a
15 visa, at the request of the alien, the term of the visa
16 shall be for the maximum period described in this
17 subsection, except that subsection (n) shall apply to
18 such alien.

19 “(2) EXCEPTION.—There is no maximum con-
20 tinuous period of authorized status as set forth in
21 paragraph (1) for H-2C workers who return to the
22 workers’ permanent residence outside the United
23 States each day.

24 “(n) ALTERNATE EMPLOYMENT AFTER TERMI-
25 NATION.—If an H-2C worker’s employment with a reg-

1 istered agricultural employer is terminated that alien may
2 seek employment with any other registered agricultural
3 employer. If the alien does not obtain such employment
4 by not later than 14 days after the termination of that
5 alien's employment, the period of authorized stay shall ter-
6minate 28 days after the date of termination and the alien
7 shall be required to depart the United States unless the
8 alien is otherwise lawfully present.

9 “(o) CHANGE TO H-2C STATUS.—

10 “(1) WAIVER.—Until the date that is 12
11 months after the issuance of final rules carrying out
12 this Act, in the case of an alien described in para-
13 graph (2), the Secretary of Homeland Security shall
14 waive the grounds of inadmissibility under para-
15 graphs (5)(A), (6)(A), (6)(C), (7), (9)(B), and
16 (9)(C) of section 212(a), and the grounds of deport-
17 ability under paragraphs (1)(A) (with respect to the
18 grounds of inadmissibility waived under this para-
19 graph), (1)(B), (1)(C), (3)(A), and (3)(C) of section
20 237(a), with respect to conduct that occurred prior
21 to the alien first receiving status as an H-2C work-
22 er, solely in order to provide the alien with such sta-
23 tus.

24 “(2) ALIEN DESCRIBED.—An alien described in
25 this paragraph is an alien who—

1 “(A) was unlawfully present in the United
2 States on March 4, 2020; and

3 “(B) performed agricultural labor or serv-
4 ices in the United States for at least 5.75 hours
5 during each of at least 225 days during the 2-
6 year period ending on March 4, 2020.

7 “(3) SPECIAL APPROVAL PROCEDURES.—The
8 Secretary shall grant parole to any alien described in
9 paragraph (2) who makes an application therefore,
10 for a period beginning on the date of enactment of
11 this Act and ending on the date that is 12 months
12 after the issuance of final rules carrying out this
13 Act. Such a parolee may be authorized for employ-
14 ment only to perform agricultural labor or services
15 during the term of such parole. In the case of any
16 alien who applies for parole under this paragraph
17 the Secretary shall make a determination as to the
18 admissibility of such alien except with regard to the
19 grounds of inadmissibility waived under paragraph
20 (1). Such parole may not extend past the final dis-
21 position of any application under this subsection.

22 “(4) FINE.—Before an alien described in para-
23 graph (2) can be provided with nonimmigrant status
24 under section 101(a)(15)(H)(ii)(c), the alien shall
25 pay a fine of \$2,500, which shall be deposited into

1 a trust fund that shall be available to the Secretary
2 of Agriculture for purposes of administering this
3 section.

4 “(5) IMMEDIATE RELATIVES.—

5 “(A) PAROLE AND NONIMMIGRANT STA-
6 TUS.—The spouse or child of an alien described
7 under paragraph (2) and who are cohabitating
8 with that alien at the time of application—

9 “(i) shall be granted parole under this
10 subsection when such alien receives parole,
11 under the same terms and conditions, ex-
12 cept that the spouse or child may not be
13 authorized for employment; and

14 “(ii) for the term that such alien is
15 provided with status as an H-2C worker,
16 shall be provided nonimmigrant status
17 equivalent to the status of the status ac-
18 corded a spouse or child if accompanying
19 or following to join an alien who had sta-
20 tus under section 101(a)(15)(H).

21 “(B) WAIVERS.—For purposes of this
22 paragraph, the Secretary shall apply paragraph
23 (1) to such spouse or child as though the
24 spouse or child was the alien described in para-
25 graph (2).

1 “(C) DOCUMENTATION.—The Secretary of
2 Homeland Security shall provide the spouse or
3 child with documentation of such status.

4 “(p) FLEXIBILITY WITH RESPECT TO START
5 DATES.—Upon approval of a petition with regard to jobs
6 that are of a temporary or seasonal nature, the employer
7 may begin the employment of petitioned-for H–2C workers
8 up to ten months after the first date the employer requires
9 the labor or services of H–2C workers. An employer may
10 file a petition involving employment in the same occupa-
11 tional classification and same area of intended employ-
12 ment with multiple start dates.

13 “(q) TRANSPORTATION.—An employer may, but is
14 not required to, offer transportation to an H–2C worker,
15 and may also charge a reasonable fee for the same. Any
16 transportation offered shall comply with all applicable re-
17 quirements of Federal and State law.

18 “(r) ADJUSTMENT OF STATUS.—In applying section
19 245 to an alien who is an H–2C worker who was the bene-
20 ficiary of a waiver under subsection (o)(1)—

21 “(1) such alien shall be deemed to have been in-
22 spected and admitted into the United States; and

23 “(2) in determining the alien’s admissibility as
24 an immigrant, paragraphs (5)(A), (6)(A), (6)(C),
25 (7), (9)(B), and (9)(C)(i)(I) of section 212(a) shall

1 not apply with respect to conduct that occurred prior
2 to the alien first receiving status as an H-2C work-
3 er.

4 “(s) BIOMETRIC IDENTIFICATION CARD.—An H-2C
5 worker shall be issued, upon being approved for status as
6 an H-2C worker, an encrypted, machine-readable elec-
7 tronic identification card to be known as a ‘guestworker
8 identification card’ which shall—

9 “(1) have an electronic identification strip to be
10 used for all H-2C workers;

11 “(2) have a 15-digit numerical identification
12 code that may be used for tax withholdings and for
13 verifying an H-2C worker’s employment approval
14 for agriculture specifically;

15 “(3) include a photograph on the front, and
16 such other information as the Secretary determines
17 necessary stored on a card containing micro-
18 processors for data storage including, fingerprints,
19 retinal scans, DNA, blood type, and facial recogni-
20 tion;

21 “(4) be eligible for replacement not more than
22 once in a 3-year period;

23 “(5) include the start and end date of the pe-
24 riod of approved stay of the H-2C worker and a

1 statement that the H-2C worker is a year-round
2 worker;

3 “(6) have physical and electronic security fea-
4 tures to prevent fraudulent uses or any misuse as
5 determined by the Secretary; and

6 “(7) have the H-2C worker’s program identi-
7 fication number clearly visible.

8 “(t) CARD READER.—

9 “(1) IN GENERAL.—The Secretary of Homeland
10 Security shall develop or otherwise designate a card
11 reader for H-2C workers to check in and verify their
12 place of employment for purposes of verification
13 under section 274A using the guestworker identifica-
14 tion card, and acquire a sufficient number of such
15 readers.

16 “(2) PLACEMENT.—Each U.S. Postal Service
17 office shall reserve a space to place such a card
18 reader. After the card reader has been developed or
19 selected, the Secretary of Homeland Security shall
20 place the card readers at each USPS office. Employ-
21 ers may also reserve a space at the jobsite to place
22 a card reader. The Secretary of Homeland Security,
23 in coordination with the Secretary of Agriculture,
24 shall develop a process by which employers may re-
25 quest the card readers. The Secretary of Homeland

1 Security may, in order to recover the cost of the
2 card reader, charge an employer a fee to place the
3 card reader at the jobsite.

4 “(3) CHECK IN REQUIRED.—An H–2C worker
5 shall be required to check in at a guestworker identi-
6 fication card reader at the closest, or most conven-
7 nient, Post Office or at his place of employment with-
8 in the first 72 hours of entering the United States
9 to verify employment. The H–2C worker shall check
10 in at the beginning of each quarter of the calendar
11 year, and the H–2C worker shall check in within 7
12 days of each quarter. If an H–2C worker fails to
13 check in, the employer will be notified in writing and
14 electronically, and the H–2C worker will be required
15 to contact the Secretary of Agriculture within 7 days
16 to explain the occurrence. If an H–2C worker fails
17 to check in for 2 consecutive quarters, the H–2C
18 worker will be removed from the program, ineligible
19 to reapply to the program for 3 years, and will be
20 required to return to his home country. The infor-
21 mation collected by the Department of Homeland
22 Security, or the Department of Agriculture, by the
23 guestworker identification card reader may only be
24 used to verify compliance with this section or other
25 reporting requirements under this section, section

1 214(s), and section 113 of the Labor Certainty for
2 Food Security Act of 2020.

3 “(4) RULE OF CONSTRUCTION.—Nothing in
4 this subsection may be construed to require an H–
5 2A worker to check in under this subsection.

6 “(u) SOCIAL SECURITY NUMBERS.—An H–2C work-
7 er may not be issued a social security account number.
8 In any case where such number would be necessary, the
9 guestworker identification number issued by the Secretary
10 of Agriculture shall be used.

11 “(v) EXPEDITED APPROVAL FOR CERTAIN H–2C
12 WORKERS.—The Secretary of Homeland Security shall es-
13 tablish a process for expediting consideration of any peti-
14 tion for a worker who has previously been the subject of
15 two consecutive petitions that were approved.

16 “(w) ESTABLISHMENT AND EXPANSION OF CON-
17 SULATES.—The Secretary of State is authorized to take
18 such steps as may be necessary in order to expand and
19 establish consulates in foreign countries in which aliens
20 are likely to apply to become seasonal agricultural workers
21 under the program.

22 “(x) ELIGIBILITY FOR FINANCIAL ASSISTANCE.—An
23 H–2C worker is not eligible for any financial assistance
24 program under Federal law (whether through grant, loan,
25 guarantee, or otherwise) on the basis of financial need.”.

1 (b) PROHIBITION ON FAMILY MEMBERS.—Section
 2 101(a)(15)(H) of the Immigration and Nationality Act (8
 3 U.S.C. 1101(a)(15)(H)) is amended by striking “him;” at
 4 the end and inserting “him, except that no spouse or child
 5 may be admitted under clause (ii)(c) (except as otherwise
 6 provided under section 218A(o)(5));”.

7 (c) SECRETARY OF AGRICULTURE REVIEW OF AGRI-
 8 CULTURAL WORK NEEDS.—Section 214 of the Immigra-
 9 tion and Nationality Act (8 U.S.C. 1184) is amended by
 10 adding at the end the following:

11 “(s) SECRETARY OF AGRICULTURE REVIEW OF AG-
 12 RICULTURAL WORK NEEDS.—

13 “(1) IN GENERAL.—The Secretary of Agri-
 14 culture shall conduct a review, on a continual basis,
 15 of—

16 “(A) whether there are indicators of a
 17 shortage or surplus of workers performing agri-
 18 cultural labor or services;

19 “(B) the growth or contraction in the
 20 United States agricultural industry and whether
 21 such growth or contraction has increased or de-
 22 creased the demand for workers to perform ag-
 23 ricultural labor or services;

24 “(C) the level of unemployment and under-
 25 employment of United States workers (as de-

1 fined in section 218A(a)) in agricultural labor
2 or services;

3 “(D) the number of H–2C workers (as de-
4 fined in section 218A(a)) who in the preceding
5 fiscal year had to depart from the United
6 States or be subject to removal under section
7 237(a)(1)(C)(i) because they could not find ad-
8 ditional employment;

9 “(E) the number of H–2C workers who in
10 the preceding calendar year received a final
11 order of removal for violations under the immi-
12 gration laws; and

13 “(F) the estimated number of non-
14 immigrant agricultural workers issued a visa or
15 otherwise provided nonimmigrant status pursu-
16 ant to section 101(a)(15)(H)(ii) (a) or (c) dur-
17 ing preceding fiscal years who remain in the
18 United States out of compliance with the terms
19 of their status.

20 “(2) ANNUAL REPORT.—Each employer of H–
21 2C workers shall report to the Secretary the number
22 of H–2C workers that are anticipated to be needed
23 for the following calendar year.”.

24 (d) INTENT.—Section 214(b) of the Immigration and
25 Nationality Act (8 U.S.C. 1184(b)) is amended by striking

1 “section 101(a)(15)(H)(i) except subclause (b1) of such
 2 section” and inserting “clause (i), except subclause (b1),
 3 or (ii)(c) of section 101(a)(15)(H)”.

4 (e) CLERICAL AMENDMENT.—The table of contents
 5 for the Immigration and Nationality Act (8 U.S.C. 1101
 6 et seq.) is amended by inserting after the item relating
 7 to section 218 the following:

“Sec. 218A. Admission of temporary H-2C workers.”.

8 **SEC. 104. MEDIATION.**

9 Nonimmigrants having status under section
 10 101(a)(15)(H)(ii)(c) of the Immigration and Nationality
 11 Act (8 U.S.C. 1101(a)(15)(H)(ii)(c)) may not bring civil
 12 actions for damages against their employers, nor may any
 13 other attorneys or individuals bring civil actions for dam-
 14 ages on behalf of such nonimmigrants against the non-
 15 immigrants’ employers, unless at least 90 days prior to
 16 bringing an action a request has been made to the Federal
 17 Mediation and Conciliation Service to assist the parties
 18 in reaching a satisfactory resolution of all issues involving
 19 all parties to the dispute and mediation has been at-
 20 tempted.

21 **SEC. 105. MIGRANT AND SEASONAL AGRICULTURAL WORK-**
 22 **ER PROTECTION.**

23 Section 3(8)(B)(ii) of the Migrant and Seasonal Agri-
 24 cultural Worker Protection Act (29 U.S.C.
 25 1802(8)(B)(ii)) is amended by striking “under sections

1 101(a)(15)(H)(ii)(a) and 214(c) of the Immigration and
2 Nationality Act.” and inserting “under subclauses (a) and
3 (c) of section 101(a)(15)(H)(ii), and section 214(c), of the
4 Immigration and Nationality Act.”.

5 **SEC. 106. BINDING ARBITRATION.**

6 (a) **APPLICABILITY.**—H–2C workers may, as a condi-
7 tion of employment with an employer, be subject to man-
8 datory binding arbitration and mediation of any grievance
9 relating to the employment relationship. An employer shall
10 provide any such workers with notice of such condition of
11 employment at the time it makes job offers.

12 (b) **ALLOCATION OF COSTS.**—Any cost associated
13 with such arbitration and mediation process shall be
14 equally divided between the employer and the H–2C work-
15 ers, except that each party shall be responsible for the cost
16 of its own counsel, if any.

17 (c) **DEFINITIONS.**—As used in this section:

18 (1) The term “condition of employment” means
19 a term, condition, obligation, or requirement that is
20 part of the job offer, such as the term of employ-
21 ment, job responsibilities, employee conduct stand-
22 ards, and the grievance resolution process, and to
23 which applicants or prospective H–2C workers must
24 consent or accept in order to be hired for the posi-
25 tion.

1 (2) The term “H-2C worker” means a non-
 2 immigrant described in section 218A(a)(5) of the
 3 Immigration and Nationality Act, as added by this
 4 Act.

5 **SEC. 107. COVERAGE THROUGH HEALTH EXCHANGES; RE-**
 6 **QUIRED HEALTH INSURANCE COVERAGE.**

7 (a) COVERAGE THROUGH HEALTH EXCHANGES.—In
 8 applying section 1312(f)(3) of the Patient Protection and
 9 Affordable Care Act (42 U.S.C. 18032(f)(3)), an H-2C
 10 worker (as defined in section 218A(a)(5) of the Immigra-
 11 tion and Nationality Act, as added by this Act) shall not
 12 be treated as an individual who is, or is reasonably ex-
 13 pected to be, a citizen or national of the United States
 14 or an alien lawfully present in the United States.

15 (b) REQUIREMENT REGARDING HEALTH INSURANCE
 16 COVERAGE.—

17 (1) IN GENERAL.—Notwithstanding the Fair
 18 Labor Standards Act of 1938 (29 U.S.C. 201 et
 19 seq.) and State and local wage laws, not later than
 20 21 days after being issued a visa or otherwise pro-
 21 vided nonimmigrant status under section
 22 101(a)(15)(H)(ii)(c) of the Immigration and Nation-
 23 ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(c)), an alien
 24 shall, in the case that qualifying health coverage is
 25 offered in the State of employment or State of resi-

1 dence of such alien and the alien is eligible for such
2 coverage, for the period of employment specified in
3 section 218A(b)(1) of the Immigration and Nation-
4 ality Act, be enrolled under qualifying health cov-
5 erage.

6 (2) QUALIFYING HEALTH COVERAGE.—For pur-
7 poses of paragraph (1), the term “qualifying health
8 coverage means”, with respect to an alien described
9 in such paragraph, the higher of the following levels
10 of coverage applicable to such alien:

11 (A) At a minimum, catastrophic health in-
12 surance coverage that provides coverage of such
13 individual with respect to at least the State of
14 employment and State of residence of the alien.

15 (B) In the case of an alien whose State of
16 residence or State of employment requires such
17 an alien to maintain coverage under health in-
18 surance, such health insurance.

19 (3) ADDITIONAL HEALTH COVERAGE.—H-2C
20 workers or employers thereof may pay for additional
21 health insurance, which must be a reasonable and
22 fair price, subject to State and Federal requirements
23 under law.

1 **SEC. 108. ESTABLISHMENT OF AN AGRICULTURAL WORKER**
 2 **EMPLOYMENT POOL.**

3 The Secretary of Agriculture shall establish an agri-
 4 cultural worker employment pool and an electronic inter-
 5 net-based portal to assist H–2C workers (as such term
 6 is defined in section 218A of the Immigration and Nation-
 7 ality Act), prospective H–2C workers, and employers to
 8 identify job opportunities in the H–2C program and will-
 9 ing, able, and available workers for the program, respec-
 10 tively, and may charge a fee for the use of such portal.

11 **SEC. 109. PREVAILING WAGE.**

12 Section 212(p) of the Immigration and Nationality
 13 Act (8 U.S.C. 1182(p)) is amended—

14 (1) in paragraph (1), by inserting after “sub-
 15 sections (a)(5)(A) and (s)(1)(A)(i)(II)” the fol-
 16 lowing: “of this section and section
 17 218A(j)(2)(B)(ii)”;

18 (2) in paragraph (3), by inserting after “sub-
 19 sections (a)(5)(A) and (s)(1)(A)(i)(II)” the fol-
 20 lowing: “of this section and section
 21 218A(j)(2)(B)(ii)”.

22 **SEC. 110. PORTABILITY OF H-2C STATUS.**

23 Section 214(n)(1) of the Immigration and Nationality
 24 Act (8 U.S.C. 1184(n)(1)) is amended by inserting after
 25 “section 101(a)(15)(H)(i)(b)” the following: “or
 26 101(a)(15)(H)(ii)(c)”.

1 **SEC. 111. COLLECTION OF TAXES.**

2 For purposes of chapters 2, 3, 21 and 23 of the Inter-
3 nal Revenue Code of 1986, any remuneration paid by any
4 person to an individual for services as an H-2C worker
5 shall be treated in the same manner as wages with respect
6 to employment of such individual. Notwithstanding any
7 other provision of law, an H-2C worker shall be ineligible
8 for any benefit payable under title XVIII of the Social Se-
9 curity Act.

10 **SEC. 112. EFFECTIVE DATES; REGULATIONS; DEFINED**
11 **TERMS.**

12 (a) IN GENERAL.—Sections 102 and sections 104
13 through 106 of this title, subsections (a) and (c) through
14 (f) of section 103 of this title, and the amendments made
15 by the sections, shall take effect on the date on which the
16 Secretary issues the rules under paragraph (3), and the
17 Secretary of Homeland Security shall accept petitions pur-
18 suant to section 218A of the Immigration and Nationality
19 Act, as inserted by this title, beginning no later than that
20 date. Sections 107 and 109 of this title shall take effect
21 on the date of the enactment of this Act.

22 (b) AT-WILL EMPLOYMENT.—Section 103(b) of this
23 Act and the amendments made by that subsection shall
24 take effect when—

25 (1) it becomes unlawful for all persons or other
26 entities to hire, or to recruit or refer for a fee, for

1 employment in the United States an individual (as
2 provided in section 274A(a)(1) of the Immigration
3 and Nationality Act (8 U.S.C. 1324a(a)(1))) without
4 using the verification system set forth in section
5 274A(d) of such Act, as amended by section 203 of
6 title II, to seek verification of the employment eligi-
7 bility of an individual; and

8 (2) such verification system, in providing con-
9 firmation of an individual's employment eligibility,
10 indicates whether an individual is eligible to be em-
11 ployed only to perform agricultural labor or services
12 as a nonimmigrant who has been issued a visa or
13 otherwise provided nonimmigrant status under sec-
14 tion 101(a)(15)(H)(ii)(c) of the Immigration and
15 Nationality Act.

16 (c) REGULATIONS.—Notwithstanding any other pro-
17 vision of law, not later than the first day of the seventh
18 month that begins after the date of the enactment of this
19 Act, the Secretary of Homeland Security shall issue final
20 rules, on an interim or other basis, to carry out this title.

21 (d) DEFINED TERMS.—Terms used in this title have
22 the meanings given such terms in section 101 and section
23 218A of the Immigration and Nationality Act.

1 **SEC. 113. REPORT ON COMPLIANCE AND VIOLATIONS.**

2 Not later than 1 year after the first day on which
3 employers can file petitions pursuant to section 218A of
4 the Immigration and Nationality Act, as added by section
5 103(a) of this Act, the Secretary of Homeland Security,
6 in consultation with the Secretary of Agriculture, shall
7 submit to the Committees on the Judiciary of the House
8 of Representatives and the Senate a report on compliance
9 by H-2C workers with the requirements of this Act and
10 the Immigration and Nationality Act, as amended by this
11 Act. In the case of a violation of a term or condition of
12 the temporary agricultural work visa program established
13 by this Act, the report shall identify the provision or provi-
14 sions of law violated.

15 **SEC. 114. ELECTRONIC FILING SYSTEM.**

16 The Secretary of Homeland Security, in coordination
17 with the Secretary of Agriculture, shall establish an elec-
18 tronic filing system for petitions under section 218A of
19 the Immigration and Nationality Act, as added by section
20 103(a) of this Act, and for applications and petitions for
21 or relating to status under section 101(a)(15)(H)(ii)(a).
22 An employer shall be able to file any administrative appeal
23 of a determination on such a petition or application
24 through the system.

1 **TITLE II—LEGAL WORKFORCE**
2 **ACT**

3 **SEC. 201. SHORT TITLE.**

4 This title may be cited as the “Legal Workforce Act”.

5 **SEC. 202. EMPLOYMENT ELIGIBILITY VERIFICATION PROC-**
6 **ESS.**

7 (a) IN GENERAL.—Section 274A(b) of the Immigra-
8 tion and Nationality Act (8 U.S.C. 1324a(b)) is amended
9 to read as follows:

10 “(b) EMPLOYMENT ELIGIBILITY VERIFICATION
11 PROCESS.—

12 “(1) NEW HIRES, RECRUITMENT, AND REFER-
13 RAL.—The requirements referred to in paragraphs
14 (1)(B) and (3) of subsection (a) are, in the case of
15 a person or other entity hiring, recruiting, or refer-
16 ring an individual for employment in the United
17 States, the following:

18 “(A) ATTESTATION AFTER EXAMINATION
19 OF DOCUMENTATION.—

20 “(i) ATTESTATION.—During the
21 verification period (as defined in subpara-
22 graph (E)), the person or entity shall at-
23 test, under penalty of perjury and on a
24 form, including electronic and telephonic
25 formats, designated or established by the

1 Secretary by regulation not later than 6
2 months after the date of the enactment of
3 the Legal Workforce Act, that it has
4 verified that the individual is not an unau-
5 thorized alien by—

6 “(I) obtaining from the indi-
7 vidual the individual’s social security
8 account number, guestworker identi-
9 fication number, or United States
10 passport number and recording the
11 number on the form (if the individual
12 claims to have been issued such a
13 number), and, if the individual does
14 not attest to United States nationality
15 under subparagraph (B), obtaining
16 such identification or authorization
17 number established by the Depart-
18 ment of Homeland Security for the
19 alien as the Secretary of Homeland
20 Security may specify, and recording
21 such number on the form; and

22 “(II) examining—

23 “(aa) a document relating to
24 the individual presenting it de-
25 scribed in clause (ii); or

1 “(bb) a document relating to
2 the individual presenting it de-
3 scribed in clause (iii) and a docu-
4 ment relating to the individual
5 presenting it described in clause
6 (iv).

7 “(ii) DOCUMENTS EVIDENCING EM-
8 PLOYMENT AUTHORIZATION AND ESTAB-
9 LISHING IDENTITY.—A document de-
10 scribed in this subparagraph is an individ-
11 ual’s—

12 “(I) unexpired United States
13 passport or passport card;

14 “(II) unexpired permanent resi-
15 dent card that contains a photograph;

16 “(III) unexpired employment au-
17 thorization card that contains a pho-
18 tograph;

19 “(IV) in the case of a non-
20 immigrant alien authorized to work
21 for a specific employer incident to sta-
22 tus, a foreign passport with Form I-
23 94 or Form I-94A, or other docu-
24 mentation as designated by the Sec-
25 retary specifying the alien’s non-

1 immigrant status as long as the pe-
2 riod of status has not yet expired and
3 the proposed employment is not in
4 conflict with any restrictions or limita-
5 tions identified in the documentation;

6 “(V) passport from the Fed-
7 erated States of Micronesia (FSM) or
8 the Republic of the Marshall Islands
9 (RMI) with Form I-94 or Form I-
10 94A, or other documentation as des-
11 ignated by the Secretary, indicating
12 nonimmigrant admission under the
13 Compact of Free Association Between
14 the United States and the FSM or
15 RMI; or

16 “(VI) other document designated
17 by the Secretary of Homeland Secu-
18 rity, if the document—

19 “(aa) contains a photograph
20 of the individual and biometric
21 identification data from the indi-
22 vidual and such other personal
23 identifying information relating
24 to the individual as the Secretary
25 of Homeland Security finds, by

1 regulation, sufficient for purposes
2 of this clause;

3 “(bb) is evidence of author-
4 ization of employment in the
5 United States; and

6 “(cc) contains security fea-
7 tures to make it resistant to tam-
8 pering, counterfeiting, and fraud-
9 ulent use.

10 “(iii) DOCUMENTS EVIDENCING EM-
11 PLOYMENT AUTHORIZATION.—A document
12 described in this subparagraph is an indi-
13 vidual’s social security account number
14 card (other than such a card which speci-
15 fies on the face that the issuance of the
16 card does not authorize employment in the
17 United States).

18 “(iv) DOCUMENTS ESTABLISHING
19 IDENTITY OF INDIVIDUAL.—A document
20 described in this subparagraph is—

21 “(I) an individual’s unexpired
22 driver’s license or identification card if
23 it was issued by a State or American
24 Samoa and contains a photograph and
25 information such as name, date of

1 birth, gender, height, eye color, and
2 address;

3 “(II) an individual’s unexpired
4 U.S. military identification card; or

5 “(III) an individual’s unexpired
6 Native American tribal identification
7 document issued by a tribal entity rec-
8 ognized by the Bureau of Indian Af-
9 fairs.

10 “(v) AUTHORITY TO PROHIBIT USE OF
11 CERTAIN DOCUMENTS.—If the Secretary of
12 Homeland Security finds, by regulation,
13 that any document described in clause (i),
14 (ii), or (iii) as establishing employment au-
15 thorization or identity does not reliably es-
16 tablish such authorization or identity or is
17 being used fraudulently to an unacceptable
18 degree, the Secretary may prohibit or place
19 conditions on its use for purposes of this
20 paragraph.

21 “(vi) SIGNATURE.—Such attestation
22 may be manifested by either a handwritten
23 or electronic signature.

24 “(B) INDIVIDUAL ATTESTATION OF EM-
25 PLOYMENT AUTHORIZATION.—During the

1 verification period (as defined in subparagraph
2 (E)), the individual shall attest, under penalty
3 of perjury on the form designated or established
4 for purposes of subparagraph (A), that the indi-
5 vidual is a citizen or national of the United
6 States, an alien lawfully admitted for perma-
7 nent residence, or an alien who is authorized
8 under this Act or by the Secretary of Homeland
9 Security to be hired, recruited, or referred for
10 such employment. Such attestation may be
11 manifested by either a handwritten or electronic
12 signature. The individual shall also provide that
13 individual's social security account number or
14 United States passport number (if the indi-
15 vidual claims to have been issued such a num-
16 ber), and, if the individual does not attest to
17 United States nationality under this subpara-
18 graph, such identification or authorization num-
19 ber established by the Department of Homeland
20 Security for the alien as the Secretary may
21 specify.

22 “(C) RETENTION OF VERIFICATION FORM
23 AND VERIFICATION.—

24 “(i) IN GENERAL.—After completion
25 of such form in accordance with subpara-

graphs (A) and (B), the person or entity shall—

“(I) retain a paper, microfiche, microfilm, or electronic version of the form and make it available for inspection by officers of the Department of Homeland Security, the Department of Justice, or the Department of Labor during a period beginning on the date of the recruiting or referral of the individual, or, in the case of the hiring of an individual, the date on which the verification is completed, and ending—

“(aa) in the case of the recruiting or referral of an individual, 3 years after the date of the recruiting or referral; and

“(bb) in the case of the hiring of an individual, the later of 3 years after the date the verification is completed or one year after the date the individual’s employment is terminated; and

1 “(II) during the verification pe-
2 riod (as defined in subparagraph (E)),
3 make an inquiry, as provided in sub-
4 section (d), using the verification sys-
5 tem to seek verification of the identity
6 and employment eligibility of an indi-
7 vidual.

8 “(ii) CONFIRMATION.—

9 “(I) CONFIRMATION RE-
10 CEIVED.—If the person or other entity
11 receives an appropriate confirmation
12 of an individual’s identity and work
13 eligibility under the verification sys-
14 tem within the time period specified,
15 the person or entity shall record on
16 the form an appropriate code that is
17 provided under the system and that
18 indicates a final confirmation of such
19 identity and work eligibility of the in-
20 dividual.

21 “(II) TENTATIVE NONCONFIRMA-
22 TION RECEIVED.—If the person or
23 other entity receives a tentative non-
24 confirmation of an individual’s iden-
25 tity or work eligibility under the

1 verification system within the time pe-
2 riod specified, the person or entity
3 shall so inform the individual for
4 whom the verification is sought. If the
5 individual does not contest the non-
6 confirmation within the time period
7 specified, the nonconfirmation shall be
8 considered final. The person or entity
9 shall then record on the form an ap-
10 propriate code which has been pro-
11 vided under the system to indicate a
12 final nonconfirmation. If the indi-
13 vidual does contest the nonconfirma-
14 tion, the individual shall utilize the
15 process for secondary verification pro-
16 vided under subsection (d). The non-
17 confirmation will remain tentative
18 until a final confirmation or noncon-
19 firmation is provided by the
20 verification system within the time pe-
21 riod specified. In no case shall an em-
22 ployer terminate employment of an in-
23 dividual because of a failure of the in-
24 dividual to have identity and work eli-
25 gibility confirmed under this section

1 until a nonconfirmation becomes final.
2 Nothing in this clause shall apply to a
3 termination of employment for any
4 reason other than because of such a
5 failure. In no case shall an employer
6 rescind the offer of employment to an
7 individual because of a failure of the
8 individual to have identity and work
9 eligibility confirmed under this sub-
10 section until a nonconfirmation be-
11 comes final. Nothing in this subclause
12 shall apply to a rescission of the offer
13 of employment for any reason other
14 than because of such a failure.

15 “(III) FINAL CONFIRMATION OR
16 NONCONFIRMATION RECEIVED.—If a
17 final confirmation or nonconfirmation
18 is provided by the verification system
19 regarding an individual, the person or
20 entity shall record on the form an ap-
21 propriate code that is provided under
22 the system and that indicates a con-
23 firmation or nonconfirmation of iden-
24 tity and work eligibility of the indi-
25 vidual.

1 “(IV) EXTENSION OF TIME.—If
2 the person or other entity in good
3 faith attempts to make an inquiry
4 during the time period specified and
5 the verification system has registered
6 that not all inquiries were received
7 during such time, the person or entity
8 may make an inquiry in the first sub-
9 sequent working day in which the
10 verification system registers that it
11 has received all inquiries. If the
12 verification system cannot receive in-
13 quiries at all times during a day, the
14 person or entity merely has to assert
15 that the entity attempted to make the
16 inquiry on that day for the previous
17 sentence to apply to such an inquiry,
18 and does not have to provide any ad-
19 ditional proof concerning such inquiry.

20 “(V) CONSEQUENCES OF NON-
21 CONFIRMATION.—

22 “(aa) TERMINATION OR NO-
23 TIFICATION OF CONTINUED EM-
24 PLOYMENT.—If the person or
25 other entity has received a final

1 nonconfirmation regarding an in-
2 dividual, the person or entity
3 may terminate employment of the
4 individual (or decline to recruit
5 or refer the individual). If the
6 person or entity does not termi-
7 nate employment of the indi-
8 vidual or proceeds to recruit or
9 refer the individual, the person or
10 entity shall notify the Secretary
11 of Homeland Security of such
12 fact through the verification sys-
13 tem or in such other manner as
14 the Secretary may specify.

15 “(bb) FAILURE TO NO-
16 TIFY.—If the person or entity
17 fails to provide notice with re-
18 spect to an individual as required
19 under item (aa), the failure is
20 deemed to constitute a violation
21 of subsection (a)(1)(A) with re-
22 spect to that individual.

23 “(VI) CONTINUED EMPLOYMENT
24 AFTER FINAL NONCONFIRMATION.—If
25 the person or other entity continues to

1 employ (or to recruit or refer) an indi-
2 vidual after receiving final noncon-
3 firmation, a rebuttable presumption is
4 created that the person or entity has
5 violated subsection (a)(1)(A).

6 “(D) EFFECTIVE DATES OF NEW PROCE-
7 DURES.—

8 “(i) HIRING.—Except as provided in
9 clause (iii), the provisions of this para-
10 graph shall apply to a person or other enti-
11 ty hiring an individual for employment in
12 the United States as follows:

13 “(I) With respect to employers
14 having 10,000 or more employees in
15 the United States on the date of the
16 enactment of the Legal Workforce
17 Act, on the date that is 6 months
18 after the date of the enactment of
19 such Act.

20 “(II) With respect to employers
21 having 500 or more employees in the
22 United States, but less than 10,000
23 employees in the United States, on
24 the date of the enactment of the
25 Legal Workforce Act, on the date that

1 is 12 months after the date of the en-
2 actment of such Act.

3 “(III) With respect to employers
4 having 20 or more employees in the
5 United States, but less than 500 em-
6 ployees in the United States, on the
7 date of the enactment of the Legal
8 Workforce Act, on the date that is 18
9 months after the date of the enact-
10 ment of such Act.

11 “(IV) With respect to employers
12 having 1 or more employees in the
13 United States, but less than 20 em-
14 ployees in the United States, on the
15 date of the enactment of the Legal
16 Workforce Act, on the date that is 24
17 months after the date of the enact-
18 ment of such Act.

19 “(ii) RECRUITING AND REFERRING.—
20 Except as provided in clause (iii), the pro-
21 visions of this paragraph shall apply to a
22 person or other entity recruiting or refer-
23 ring an individual for employment in the
24 United States on the date that is 12

1 months after the date of the enactment of
2 the Legal Workforce Act.

3 “(iii) AGRICULTURAL LABOR OR SERV-
4 ICES.—With respect to an employee per-
5 forming agricultural labor or services, this
6 paragraph shall not apply with respect to
7 the verification of the employee until the
8 date that is 24 months after the date of
9 the enactment of the Legal Workforce Act.
10 An employee described in this clause shall
11 not be counted for purposes of clause (i).

12 “(iv) TRANSITION RULE.—Subject to
13 paragraph (4), the following shall apply to
14 a person or other entity hiring, recruiting,
15 or referring an individual for employment
16 in the United States until the effective
17 date or dates applicable under clauses (i)
18 through (iii):

19 “(I) This subsection, as in effect
20 before the enactment of the Legal
21 Workforce Act.

22 “(II) Subtitle A of title IV of the
23 Illegal Immigration Reform and Im-
24 migrant Responsibility Act of 1996 (8
25 U.S.C. 1324a note), as in effect be-

1 fore the effective date in section 7(c)
2 of the Legal Workforce Act.

3 “(III) Any other provision of
4 Federal law requiring the person or
5 entity to participate in the E-Verify
6 Program described in section 403(a)
7 of the Illegal Immigration Reform and
8 Immigrant Responsibility Act of 1996
9 (8 U.S.C. 1324a note), as in effect be-
10 fore the effective date in section 7(c)
11 of the Legal Workforce Act, including
12 Executive Order 13465 (8 U.S.C.
13 1324a note; relating to Government
14 procurement).

15 “(E) VERIFICATION PERIOD DEFINED.—

16 “(i) IN GENERAL.—For purposes of
17 this paragraph:

18 “(I) In the case of recruitment or
19 referral, the term ‘verification period’
20 means the period ending on the date
21 recruiting or referring commences.

22 “(II) In the case of hiring, the
23 term ‘verification period’ means the
24 period beginning on the date on which
25 an offer of employment is extended

1 and ending on the date that is three
2 business days after the date of hire,
3 except as provided in clause (iii). The
4 offer of employment may be condi-
5 tioned in accordance with clause (ii).

6 “(ii) JOB OFFER MAY BE CONDI-
7 TIONAL.—A person or other entity may
8 offer a prospective employee an employ-
9 ment position that is conditioned on final
10 verification of the identity and employment
11 eligibility of the employee using the proce-
12 dures established under this paragraph.

13 “(iii) SPECIAL RULE.—Notwith-
14 standing clause (i)(II), in the case of an
15 alien who is authorized for employment
16 and who provides evidence from the Social
17 Security Administration that the alien has
18 applied for a social security account num-
19 ber, the verification period ends three busi-
20 ness days after the alien receives the social
21 security account number.

22 “(2) REVERIFICATION FOR INDIVIDUALS WITH
23 LIMITED WORK AUTHORIZATION.—

24 “(A) IN GENERAL.—Except as provided in
25 subparagraph (B), a person or entity shall

1 make an inquiry, as provided in subsection (d),
2 using the verification system to seek
3 reverification of the identity and employment
4 eligibility of all individuals with a limited period
5 of work authorization employed by the person
6 or entity during the three business days after
7 the date on which the employee's work author-
8 ization expires as follows:

9 “(i) With respect to employers having
10 10,000 or more employees in the United
11 States on the date of the enactment of the
12 Legal Workforce Act, beginning on the
13 date that is 6 months after the date of the
14 enactment of such Act.

15 “(ii) With respect to employers having
16 500 or more employees in the United
17 States, but less than 10,000 employees in
18 the United States, on the date of the en-
19 actment of the Legal Workforce Act, be-
20 ginning on the date that is 12 months
21 after the date of the enactment of such
22 Act.

23 “(iii) With respect to employers hav-
24 ing 20 or more employees in the United
25 States, but less than 500 employees in the

1 United States, on the date of the enact-
2 ment of the Legal Workforce Act, begin-
3 ning on the date that is 12 months after
4 the date of the enactment of such Act.

5 “(iv) With respect to employers hav-
6 ing 1 or more employees in the United
7 States, but less than 20 employees in the
8 United States, on the date of the enact-
9 ment of the Legal Workforce Act, begin-
10 ning on the date that is 12 months after
11 the date of the enactment of such Act.

12 “(B) AGRICULTURAL LABOR OR SERV-
13 ICES.—With respect to an employee performing
14 agricultural labor or services, or an employee
15 recruited or referred by a farm labor contractor
16 (as defined in section 3 of the Migrant and Sea-
17 sonal Agricultural Worker Protection Act (29
18 U.S.C. 1801)), subparagraph (A) shall not
19 apply with respect to the reverification of the
20 employee until the date that is 24 months after
21 the date of the enactment of the Legal Work-
22 force Act. For purposes of the preceding sen-
23 tence, the term ‘agricultural labor or services’
24 has the meaning given such term by the Sec-
25 retary of Agriculture in regulations and in-

cludes agricultural labor as defined in section 3121(g) of the Internal Revenue Code of 1986, agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state, all activities required for the preparation, processing, or manufacturing of a product of agriculture (as such term is defined in such section 3(f)) for further distribution, and activities similar to all the foregoing as they relate to fish or shellfish facilities. The term does not include the preparation of any food product that is to be served directly to the public. An employee described in this subparagraph shall not be counted for purposes of subparagraph (A).

“(C) REVERIFICATION.—Paragraph (1)(C)(ii) shall apply to reverifications pursuant to this paragraph on the same basis as it applies to verifications pursuant to paragraph (1), except that employers shall—

1 “(i) use a form designated or estab-
2 lished by the Secretary by regulation for
3 purposes of this paragraph; and

4 “(ii) retain a paper, microfiche, micro-
5 film, or electronic version of the form and
6 make it available for inspection by officers
7 of the Department of Homeland Security,
8 the Department of Justice, or the Depart-
9 ment of Labor during the period beginning
10 on the date the reverification commences
11 and ending on the date that is the later of
12 3 years after the date of such reverification
13 or 1 year after the date the individual’s
14 employment is terminated.

15 “(3) PREVIOUSLY HIRED INDIVIDUALS.—

16 “(A) ON A MANDATORY BASIS FOR MUL-
17 TIPLE USERS OF SAME SOCIAL SECURITY AC-
18 COUNT NUMBER.—In the case of an employer
19 who is required by this subsection to use the
20 verification system described in subsection (d),
21 or has elected voluntarily to use such system,
22 the employer shall make inquiries to the system
23 in accordance with the following:

24 “(i) The Commissioner of Social Secu-
25 rity shall notify annually employees (at the

1 employee address listed on the Wage and
2 Tax Statement) who submit a social secu-
3 rity account number to which more than
4 one employer reports income and for which
5 there is a pattern of unusual multiple use.
6 The notification letter shall identify the
7 number of employers to which income is
8 being reported as well as sufficient infor-
9 mation notifying the employee of the proc-
10 ess to contact the Social Security Adminis-
11 tration Fraud Hotline if the employee be-
12 lieves the employee's identity may have
13 been stolen. The notice shall not share in-
14 formation protected as private, in order to
15 avoid any recipient of the notice from
16 being in the position to further commit or
17 begin committing identity theft.

18 “(ii) If the person to whom the social
19 security account number was issued by the
20 Social Security Administration has been
21 identified and confirmed by the Commis-
22 sioner, and indicates that the social secu-
23 rity account number was used without
24 their knowledge, the Secretary and the
25 Commissioner shall lock the social security

1 account number for employment eligibility
2 verification purposes and shall notify the
3 employers of the individuals who wrong-
4 fully submitted the social security account
5 number that the employee may not be
6 work eligible.

7 “(iii) Each employer receiving such
8 notification of an incorrect social security
9 account number under clause (ii) shall use
10 the verification system described in sub-
11 section (d) to check the work eligibility sta-
12 tus of the applicable employee within 10
13 business days of receipt of the notification.

14 “(B) ON A VOLUNTARY BASIS.—Subject to
15 paragraph (2), and subparagraphs (A) through
16 (C) of this paragraph, beginning on the date
17 that is 30 days after the date of the enactment
18 of the Legal Workforce Act, an employer may
19 make an inquiry, as provided in subsection (d),
20 using the verification system to seek verification
21 of the identity and employment eligibility of any
22 individual employed by the employer. If an em-
23 ployer chooses voluntarily to seek verification of
24 any individual employed by the employer, the
25 employer shall seek verification of all individ-

1 uals employed at the same geographic location
2 or, at the option of the employer, all individuals
3 employed within the same job category, as the
4 employee with respect to whom the employer
5 seeks voluntarily to use the verification system.
6 An employer's decision about whether or not
7 voluntarily to seek verification of its current
8 workforce under this subparagraph may not be
9 considered by any government agency in any
10 proceeding, investigation, or review provided for
11 in this Act.

12 “(C) VERIFICATION.—Paragraph (1)(C)(ii)
13 shall apply to verifications pursuant to this
14 paragraph on the same basis as it applies to
15 verifications pursuant to paragraph (1), except
16 that employers shall—

17 “(i) use a form designated or estab-
18 lished by the Secretary by regulation for
19 purposes of this paragraph; and

20 “(ii) retain a paper, microfiche, micro-
21 film, or electronic version of the form and
22 make it available for inspection by officers
23 of the Department of Homeland Security,
24 the Department of Justice, or the Depart-
25 ment of Labor during the period beginning

1 on the date the verification commences and
2 ending on the date that is the later of 3
3 years after the date of such verification or
4 1 year after the date the individual's em-
5 ployment is terminated.

6 “(4) EARLY COMPLIANCE.—

7 “(A) FORMER E-VERIFY REQUIRED USERS,
8 INCLUDING FEDERAL CONTRACTORS.—Notwith-
9 standing the deadlines in paragraphs (1) and
10 (2), beginning on the date of the enactment of
11 the Legal Workforce Act, the Secretary is au-
12 thorized to commence requiring employers re-
13 quired to participate in the E-Verify Program
14 described in section 403(a) of the Illegal Immi-
15 gration Reform and Immigrant Responsibility
16 Act of 1996 (8 U.S.C. 1324a note), including
17 employers required to participate in such pro-
18 gram by reason of Federal acquisition laws
19 (and regulations promulgated under those laws,
20 including the Federal Acquisition Regulation),
21 to commence compliance with the requirements
22 of this subsection (and any additional require-
23 ments of such Federal acquisition laws and reg-
24 ulation) in lieu of any requirement to partici-
25 pate in the E-Verify Program.

1 “(B) FORMER E-VERIFY VOLUNTARY
2 USERS AND OTHERS DESIRING EARLY COMPLI-
3 ANCE.—Notwithstanding the deadlines in para-
4 graphs (1) and (2), beginning on the date of
5 the enactment of the Legal Workforce Act, the
6 Secretary shall provide for the voluntary com-
7 pliance with the requirements of this subsection
8 by employers voluntarily electing to participate
9 in the E-Verify Program described in section
10 403(a) of the Illegal Immigration Reform and
11 Immigrant Responsibility Act of 1996 (8 U.S.C.
12 1324a note) before such date, as well as by
13 other employers seeking voluntary early compli-
14 ance.

15 “(5) COPYING OF DOCUMENTATION PER-
16 MITTED.—Notwithstanding any other provision of
17 law, the person or entity may copy a document pre-
18 sented by an individual pursuant to this subsection
19 and may retain the copy, but only (except as other-
20 wise permitted under law) for the purpose of com-
21 plying with the requirements of this subsection.

22 “(6) LIMITATION ON USE OF FORMS.—A form
23 designated or established by the Secretary of Home-
24 land Security under this subsection and any infor-
25 mation contained in or appended to such form, may

1 not be used for purposes other than for enforcement
2 of this Act and any other provision of Federal criminal law.
3

4 “(7) GOOD FAITH COMPLIANCE.—

5 “(A) IN GENERAL.—Except as otherwise
6 provided in this subsection, a person or entity
7 is considered to have complied with a requirement of this subsection notwithstanding a technical or procedural failure to meet such requirement if there was a good faith attempt to comply with the requirement.
11

12 “(B) EXCEPTION IF FAILURE TO CORRECT
13 AFTER NOTICE.—Subparagraph (A) shall not
14 apply if—

15 “(i) the failure is not de minimus;

16 “(ii) the Secretary of Homeland Security has explained to the person or entity the basis for the failure and why it is not de minimus;
19

20 “(iii) the person or entity has been
21 provided a period of not less than 30 calendar days (beginning after the date of the explanation) within which to correct the failure; and
24

1 “(iv) the person or entity has not cor-
2 rected the failure voluntarily within such
3 period.

4 “(C) EXCEPTION FOR PATTERN OR PRAC-
5 TICE VIOLATORS.—Subparagraph (A) shall not
6 apply to a person or entity that has or is engag-
7 ing in a pattern or practice of violations of sub-
8 section (a)(1)(A) or (a)(2).

9 “(8) SINGLE EXTENSION OF DEADLINES UPON
10 CERTIFICATION.—In a case in which the Secretary
11 of Homeland Security has certified to the Congress
12 that the employment eligibility verification system
13 required under subsection (d) will not be fully oper-
14 ational by the date that is 6 months after the date
15 of the enactment of the Legal Workforce Act, each
16 deadline established under this section for an em-
17 ployer to make an inquiry using such system shall
18 be extended by 6 months. No other extension of such
19 a deadline shall be made except as authorized under
20 paragraph (1)(D)(iv).”.

21 (b) DATE OF HIRE.—Section 274A(h) of the Immi-
22 gration and Nationality Act (8 U.S.C. 1324a(h)) is
23 amended by adding at the end the following:

24 “(4) DEFINITION OF DATE OF HIRE.—As used
25 in this section, the term ‘date of hire’ means the

1 date of actual commencement of employment for
2 wages or other remuneration, unless otherwise speci-
3 fied.”.

4 **SEC. 203. EMPLOYMENT ELIGIBILITY VERIFICATION SYS-**
5 **TEM.**

6 Section 274A(d) of the Immigration and Nationality
7 Act (8 U.S.C. 1324a(d)) is amended to read as follows:

8 “(d) EMPLOYMENT ELIGIBILITY VERIFICATION SYS-
9 TEM.—

10 “(1) IN GENERAL.—Patterned on the employ-
11 ment eligibility confirmation system established
12 under section 404 of the Illegal Immigration Reform
13 and Immigrant Responsibility Act of 1996 (8 U.S.C.
14 1324a note), the Secretary of Homeland Security
15 shall establish and administer a verification system
16 through which the Secretary (or a designee of the
17 Secretary, which may be a nongovernmental enti-
18 ty)—

19 “(A) responds to inquiries made by per-
20 sons at any time through a toll-free telephone
21 line and other toll-free electronic media con-
22 cerning an individual’s identity and whether the
23 individual is authorized to be employed; and

24 “(B) maintains records of the inquiries
25 that were made, of verifications provided (or

1 not provided), and of the codes provided to in-
2 quirers as evidence of their compliance with
3 their obligations under this section.

4 “(2) INITIAL RESPONSE.—The verification sys-
5 tem shall provide confirmation or a tentative non-
6 confirmation of an individual’s identity and employ-
7 ment eligibility not later than 3 days prior to the
8 date of employment per the initial inquiry. If pro-
9 viding confirmation or tentative nonconfirmation,
10 the verification system shall provide an appropriate
11 code indicating such confirmation or such noncon-
12 firmation.

13 “(3) SECONDARY CONFIRMATION PROCESS IN
14 CASE OF TENTATIVE NONCONFIRMATION.—In cases
15 of tentative nonconfirmation, the Secretary shall
16 specify, in consultation with the Commissioner of
17 Social Security, in the case of an individual with an
18 existing social security number or passport number,
19 an available secondary verification process to con-
20 firm the validity of information provided and to pro-
21 vide a final confirmation or nonconfirmation imme-
22 diately. The Secretary, in consultation with the
23 Commissioner, may extend this deadline once on a
24 case-by-case basis for a period of 10 working days,
25 and if the time is extended, shall document such ex-

1 tension within the verification system. The Sec-
2 retary, in consultation with the Commissioner, shall
3 notify the employee and employer of such extension.
4 The Secretary, in consultation with the Commis-
5 sioner, shall create a standard process of such exten-
6 sion and notification and shall make a description of
7 such process available to the public. When final con-
8 firmation or nonconfirmation is provided, the
9 verification system shall provide an appropriate code
10 indicating such confirmation or nonconfirmation.

11 “(4) DESIGN AND OPERATION OF SYSTEM.—

12 The verification system shall be designed and oper-
13 ated—

14 “(A) to maximize its reliability and ease of
15 use by persons and other entities consistent
16 with insulating and protecting the privacy and
17 security of the underlying information;

18 “(B) to respond to all inquiries made by
19 such persons and entities on whether individ-
20 uals are authorized to be employed and to reg-
21 ister all times when such inquiries are not re-
22 ceived;

23 “(C) with appropriate administrative, tech-
24 nical, and physical safeguards to prevent unau-
25 thorized disclosure of personal information;

1 “(D) to have reasonable safeguards against
2 the system’s resulting in unlawful discrimina-
3 tory practices based on national origin or citi-
4 zenship status, including—

5 “(i) the selective or unauthorized use
6 of the system to verify eligibility; or

7 “(ii) the exclusion of certain individ-
8 uals from consideration for employment as
9 a result of a perceived likelihood that addi-
10 tional verification will be required, beyond
11 what is required for most job applicants;

12 “(E) to maximize the prevention of iden-
13 tity theft use in the system; and

14 “(F) to limit the subjects of verification to
15 the following individuals:

16 “(i) Individuals hired, referred, or re-
17 cruited, in accordance with paragraph (1)
18 or (4) of subsection (b).

19 “(ii) Employees and prospective em-
20 ployees, in accordance with paragraph (1),
21 (2), (3), or (4) of subsection (b).

22 “(iii) Individuals seeking to confirm
23 their own employment eligibility on a vol-
24 untary basis.

1 “(5) RESPONSIBILITIES OF COMMISSIONER OF
2 SOCIAL SECURITY.—As part of the verification sys-
3 tem, the Commissioner of Social Security, in con-
4 sultation with the Secretary of Homeland Security
5 (and any designee of the Secretary selected to estab-
6 lish and administer the verification system), shall es-
7 tablish a reliable, secure method, which, within the
8 time periods specified under paragraphs (2) and (3),
9 compares the name and social security account num-
10 ber or agricultural guestworker identification num-
11 ber provided in an inquiry against such information
12 maintained by the Commissioner in order to validate
13 (or not validate) the information provided regarding
14 an individual whose identity and employment eligi-
15 bility must be confirmed, the correspondence of the
16 name and number, and whether the individual has
17 presented a social security account number that is
18 not valid for employment. The Commissioner shall
19 not disclose or release social security information
20 (other than such confirmation or nonconfirmation)
21 under the verification system except as provided for
22 in this section or section 205(c)(2)(I) of the Social
23 Security Act.

24 “(6) RESPONSIBILITIES OF SECRETARY OF
25 HOMELAND SECURITY.—

1 “(A) IN GENERAL.—As part of the
2 verification system, the Secretary of Homeland
3 Security (in consultation with any designee of
4 the Secretary selected to establish and admin-
5 ister the verification system), shall establish a
6 reliable, secure method, which, within the time
7 periods specified under paragraphs (2) and (3),
8 compares the name and alien identification or
9 authorization number (or any other information
10 as determined relevant by the Secretary) which
11 are provided in an inquiry against such infor-
12 mation maintained or accessed by the Secretary
13 in order to validate (or not validate) the infor-
14 mation provided, the correspondence of the
15 name and number, whether the alien is author-
16 ized to be employed in the United States, or to
17 the extent that the Secretary determines to be
18 feasible and appropriate, whether the records
19 available to the Secretary verify the identity or
20 status of a national of the United States.

21 “(B) AGRICULTURAL LABORERS.—The
22 Secretary of Homeland Security shall ensure
23 that, by the date that is 12 months after the
24 date of the enactment of the Legal Workforce
25 Act, whenever the verification system provides

1 confirmation of an individual's employment eli-
2 gibility, it indicates whether the individual is el-
3 igible to be employed only to perform agricul-
4 tural labor or services as a nonimmigrant who
5 has been issued a visa or otherwise provided
6 nonimmigrant status under section
7 101(a)(15)(H)(ii)(c).

8 “(7) UPDATING INFORMATION.—The Commis-
9 sioner of Social Security and the Secretary of Home-
10 land Security shall update their information in a
11 manner that promotes the maximum accuracy and
12 shall provide a process for the prompt correction of
13 erroneous information, including instances in which
14 it is brought to their attention in the secondary
15 verification process described in paragraph (3).

16 “(8) LIMITATION ON USE OF THE
17 VERIFICATION SYSTEM AND ANY RELATED SYS-
18 TEMS.—

19 “(A) NO NATIONAL IDENTIFICATION
20 CARD.—Nothing in this section shall be con-
21 strued to authorize, directly or indirectly, the
22 issuance or use of national identification cards
23 or the establishment of a national identification
24 card.

1 “(B) CRITICAL INFRASTRUCTURE.—The
 2 Secretary may authorize or direct any person or
 3 entity responsible for granting access to, pro-
 4 tecting, securing, operating, administering, or
 5 regulating part of the critical infrastructure (as
 6 defined in section 1016(e) of the Critical Infra-
 7 structure Protection Act of 2001 (42 U.S.C.
 8 5195c(e))) to use the verification system to the
 9 extent the Secretary determines that such use
 10 will assist in the protection of the critical infra-
 11 structure.

12 “(9) REMEDIES.—If an individual alleges that
 13 the individual would not have been dismissed from
 14 a job but for an error of the verification mechanism,
 15 the individual may seek compensation only through
 16 the mechanism of the Federal Tort Claims Act, and
 17 injunctive relief to correct such error. No class ac-
 18 tion may be brought under this paragraph.”.

19 **SEC. 204. RECRUITMENT, REFERRAL, AND CONTINUATION**
 20 **OF EMPLOYMENT.**

21 (a) ADDITIONAL CHANGES TO RULES FOR RECRUIT-
 22 MENT, REFERRAL, AND CONTINUATION OF EMPLOY-
 23 MENT.—Section 274A(a) of the Immigration and Nation-
 24 ality Act (8 U.S.C. 1324a(a)) is amended—

25 (1) in paragraph (1)(A), by striking “for a fee”;

1 (2) in paragraph (1), by amending subpara-
2 graph (B) to read as follows:

3 “(B) to hire, continue to employ, or to re-
4 cruit or refer for employment in the United
5 States an individual without complying with the
6 requirements of subsection (b).”; and

7 (3) in paragraph (2), by striking “after hiring
8 an alien for employment in accordance with para-
9 graph (1),” and inserting “after complying with
10 paragraph (1),”.

11 (b) DEFINITION.—Section 274A(h) of the Immigra-
12 tion and Nationality Act (8 U.S.C. 1324a(h)), as amended
13 by this title, is further amended by adding at the end the
14 following:

15 “(5) DEFINITION OF RECRUIT OR REFER.—As
16 used in this section, the term ‘refer’ means the act
17 of sending or directing a person who is in the United
18 States or transmitting documentation or information
19 to another, directly or indirectly, with the intent of
20 obtaining employment in the United States for such
21 person. Only persons or entities referring for remun-
22 eration (whether on a retainer or contingency
23 basis) are included in the definition, except that
24 union hiring halls that refer union members or non-
25 union individuals who pay union membership dues

1 are included in the definition whether or not they re-
2 ceive remuneration, as are labor service entities or
3 labor service agencies, whether public, private, for-
4 profit, or nonprofit, that refer, dispatch, or other-
5 wise facilitate the hiring of laborers for any period
6 of time by a third party. As used in this section, the
7 term ‘recruit’ means the act of soliciting a person
8 who is in the United States, directly or indirectly,
9 and referring the person to another with the intent
10 of obtaining employment for that person. Only per-
11 sons or entities referring for remuneration (whether
12 on a retainer or contingency basis) are included in
13 the definition, except that union hiring halls that
14 refer union members or nonunion individuals who
15 pay union membership dues are included in this defi-
16 nition whether or not they receive remuneration, as
17 are labor service entities or labor service agencies,
18 whether public, private, for-profit, or nonprofit that
19 recruit, dispatch, or otherwise facilitate the hiring of
20 laborers for any period of time by a third party.”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall take effect on the date that is 1 year
23 after the date of the enactment of this Act, except that
24 the amendments made by subsection (a) shall take effect
25 6 months after the date of the enactment of this Act inso-

1 far as such amendments relate to continuation of employ-
2 ment.

3 **SEC. 205. GOOD FAITH DEFENSE.**

4 Section 274A(a)(3) of the Immigration and Nation-
5 ality Act (8 U.S.C. 1324a(a)(3)) is amended to read as
6 follows:

7 “(3) GOOD FAITH DEFENSE.—

8 “(A) DEFENSE.—An employer (or person
9 or entity that hires, employs, recruits, or refers
10 (as defined in subsection (h)(5)), or is otherwise
11 obligated to comply with this section) who es-
12 tablishes that it has complied in good faith with
13 the requirements of subsection (b)—

14 “(i) shall not be liable to a job appli-
15 cant, an employee, the Federal Govern-
16 ment, or a State or local government,
17 under Federal, State, or local criminal or
18 civil law for any employment-related action
19 taken with respect to a job applicant or
20 employee in good-faith reliance on informa-
21 tion provided through the system estab-
22 lished under subsection (d); and

23 “(ii) has established compliance with
24 its obligations under subparagraphs (A)
25 and (B) of paragraph (1) and subsection

1 (b) absent a showing by the Secretary of
2 Homeland Security, by clear and con-
3 vincing evidence, that the employer had
4 knowledge that an employee is an unau-
5 thorized alien.

6 “(B) MITIGATION ELEMENT.—For pur-
7 poses of subparagraph (A)(i), if an employer
8 proves by a preponderance of the evidence that
9 the employer uses a reasonable, secure, and es-
10 tablished technology to authenticate the identity
11 of the new employee, that fact shall be taken
12 into account for purposes of determining good
13 faith use of the system established under sub-
14 section (d).

15 “(C) FAILURE TO SEEK AND OBTAIN
16 VERIFICATION.—Subject to the effective dates
17 and other deadlines applicable under subsection
18 (b), in the case of a person or entity in the
19 United States that hires, or continues to em-
20 ploy, an individual, or recruits or refers an indi-
21 vidual for employment, the following require-
22 ments apply:

23 “(i) FAILURE TO SEEK
24 VERIFICATION.—

1 “(I) IN GENERAL.—If the person
2 or entity has not made an inquiry,
3 under the mechanism established
4 under subsection (d) and in accord-
5 ance with the timeframes established
6 under subsection (b), seeking
7 verification of the identity and work
8 eligibility of the individual, the de-
9 fense under subparagraph (A) shall
10 not be considered to apply with re-
11 spect to any employment, except as
12 provided in subclause (II).

13 “(II) SPECIAL RULE FOR FAIL-
14 URE OF VERIFICATION MECHANISM.—
15 If such a person or entity in good
16 faith attempts to make an inquiry in
17 order to qualify for the defense under
18 subparagraph (A) and the verification
19 mechanism has registered that not all
20 inquiries were responded to during the
21 relevant time, the person or entity can
22 make an inquiry until the end of the
23 first subsequent working day in which
24 the verification mechanism registers

1 no nonresponses and qualify for such
2 defense.

3 “(ii) FAILURE TO OBTAIN
4 VERIFICATION.—If the person or entity
5 has made the inquiry described in clause
6 (i)(I) but has not received an appropriate
7 verification of such identity and work eligi-
8 bility under such mechanism within the
9 time period specified under subsection
10 (d)(2) after the time the verification in-
11 quiry was received, the defense under sub-
12 paragraph (A) shall not be considered to
13 apply with respect to any employment after
14 the end of such time period.”.

15 **SEC. 206. PREEMPTION AND STATES’ RIGHTS.**

16 Section 274A(h)(2) of the Immigration and Nation-
17 ality Act (8 U.S.C. 1324a(h)(2)) is amended to read as
18 follows:

19 “(2) PREEMPTION.—

20 “(A) SINGLE, NATIONAL POLICY.—The
21 provisions of this section preempt any State or
22 local law, ordinance, policy, or rule, including
23 any criminal or civil fine or penalty structure,
24 insofar as they may now or hereafter relate to
25 the hiring, continued employment, or status

1 verification for employment eligibility purposes,
2 of unauthorized aliens.

3 “(B) STATE ENFORCEMENT OF FEDERAL
4 LAW.—

5 “(i) BUSINESS LICENSING.—A State,
6 locality, municipality, or political subdivi-
7 sion may exercise its authority over busi-
8 ness licensing and similar laws as a pen-
9 alty for failure to use the verification sys-
10 tem described in subsection (d) to verify
11 employment eligibility when and as re-
12 quired under subsection (b).

13 “(ii) GENERAL RULES.—A State, at
14 its own cost, may enforce the provisions of
15 this section, but only insofar as such State
16 follows the Federal regulations imple-
17 menting this section, applies the Federal
18 penalty structure set out in this section,
19 and complies with all Federal rules and
20 guidance concerning implementation of this
21 section. Such State may collect any fines
22 assessed under this section. An employer
23 may not be subject to enforcement, includ-
24 ing audit, investigation, and fines, by both
25 a Federal agency and a State for the same

1 violation under this section. Whichever en-
2 tity, the Federal agency or the State, is
3 first to initiate the enforcement action, has
4 the right of first refusal to proceed with
5 the enforcement action. The Secretary
6 must provide copies of all guidance, train-
7 ing, and field instructions provided to Fed-
8 eral officials implementing the provisions
9 of this section to each State.”.

10 **SEC. 207. REPEAL.**

11 (a) IN GENERAL.—Subtitle A of title IV of the Illegal
12 Immigration Reform and Immigrant Responsibility Act of
13 1996 (8 U.S.C. 1324a note) is repealed.

14 (b) REFERENCES.—Any reference in any Federal
15 law, Executive order, rule, regulation, or delegation of au-
16 thority, or any document of, or pertaining to, the Depart-
17 ment of Homeland Security, Department of Justice, or the
18 Social Security Administration, to the employment eligi-
19 bility confirmation system established under section 404
20 of the Illegal Immigration Reform and Immigrant Respon-
21 sibility Act of 1996 (8 U.S.C. 1324a note) is deemed to
22 refer to the employment eligibility confirmation system es-
23 tablished under section 274A(d) of the Immigration and
24 Nationality Act, as amended by this title.

1 (c) **EFFECTIVE DATE.**—This section shall take effect
 2 on the date that is 12 months after the date of the enact-
 3 ment of this Act.

4 (d) **CLERICAL AMENDMENT.**—The table of sections,
 5 in section 1(d) of the Illegal Immigration Reform and Im-
 6 migrant Responsibility Act of 1996, is amended by strik-
 7 ing the items relating to subtitle A of title IV.

8 **SEC. 208. PENALTIES.**

9 Section 274A of the Immigration and Nationality Act
 10 (8 U.S.C. 1324a) is amended—

11 (1) in subsection (e)(1)—

12 (A) by striking “Attorney General” each
 13 place such term appears and inserting “Sec-
 14 retary of Homeland Security”; and

15 (B) in subparagraph (D), by striking
 16 “Service” and inserting “Department of Home-
 17 land Security”;

18 (2) in subsection (e)(4)—

19 (A) in subparagraph (A), in the matter be-
 20 fore clause (i), by inserting “, subject to para-
 21 graph (10),” after “in an amount”;

22 (B) in subparagraph (A)(i), by striking
 23 “not less than \$250 and not more than
 24 \$2,000” and inserting “not less than \$2,500
 25 and not more than \$5,000”;

1 (C) in subparagraph (A)(ii), by striking
 2 “not less than \$2,000 and not more than
 3 \$5,000” and inserting “not less than \$5,000
 4 and not more than \$10,000”;

5 (D) in subparagraph (A)(iii), by striking
 6 “not less than \$3,000 and not more than
 7 \$10,000” and inserting “not less than \$10,000
 8 and not more than \$25,000”; and

9 (E) by moving the margin of the continu-
 10 ation text following subparagraph (B) two ems
 11 to the left and by amending subparagraph (B)
 12 to read as follows:

13 “(B) may require the person or entity to
 14 take such other remedial action as is appro-
 15 priate.”;

16 (3) in subsection (e)(5)—

17 (A) in the paragraph heading, strike “PA-
 18 PERWORK”;

19 (B) by inserting “, subject to paragraphs
 20 (10) through (12),” after “in an amount”;

21 (C) by striking “\$100” and inserting
 22 “\$1,000”;

23 (D) by striking “\$1,000” and inserting
 24 “\$25,000”; and

1 (E) by adding at the end the following:

2 “Failure by a person or entity to utilize the em-
3 ployment eligibility verification system as re-
4 quired by law, or providing information to the
5 system that the person or entity knows or rea-
6 sonably believes to be false, shall be treated as
7 a violation of subsection (a)(1)(A).”;

8 (4) by adding at the end of subsection (e) the
9 following:

10 “(10) EXEMPTION FROM PENALTY FOR GOOD
11 FAITH VIOLATION.—In the case of imposition of a
12 civil penalty under paragraph (4)(A) with respect to
13 a violation of subsection (a)(1)(A) or (a)(2) for hir-
14 ing or continuation of employment or recruitment or
15 referral by person or entity and in the case of im-
16 position of a civil penalty under paragraph (5) for a
17 violation of subsection (a)(1)(B) for hiring or re-
18 cruitment or referral by a person or entity, the pen-
19 alty otherwise imposed may be waived or reduced if
20 the violator establishes that the violator acted in
21 good faith.

22 “(11) MITIGATION ELEMENT.—For purposes of
23 paragraph (4), the size of the business shall be
24 taken into account when assessing the level of civil
25 money penalty.

1 “(12) AUTHORITY TO DEBAR EMPLOYERS FOR
2 CERTAIN VIOLATIONS.—

3 “(A) IN GENERAL.—If a person or entity
4 is determined by the Secretary of Homeland Se-
5 curity to be a repeat violator of paragraph
6 (1)(A) or (2) of subsection (a), or is convicted
7 of a crime under this section, such person or
8 entity may be considered for debarment from
9 the receipt of Federal contracts, grants, or co-
10 operative agreements in accordance with the de-
11 barment standards and pursuant to the debar-
12 ment procedures set forth in the Federal Acqui-
13 sition Regulation.

14 “(B) DOES NOT HAVE CONTRACT, GRANT,
15 AGREEMENT.—If the Secretary of Homeland
16 Security or the Attorney General wishes to have
17 a person or entity considered for debarment in
18 accordance with this paragraph, and such per-
19 son or entity does not hold a Federal contract,
20 grant or cooperative agreement, the Secretary
21 or Attorney General shall refer the matter to
22 the Administrator of General Services to deter-
23 mine whether to list the person or entity on the
24 List of Parties Excluded from Federal Procure-

1 ment, and if so, for what duration and under
2 what scope.

3 “(C) HAS CONTRACT, GRANT, AGREE-
4 MENT.—If the Secretary of Homeland Security
5 or the Attorney General wishes to have a per-
6 son or entity considered for debarment in ac-
7 cordance with this paragraph, and such person
8 or entity holds a Federal contract, grant or co-
9 operative agreement, the Secretary or Attorney
10 General shall advise all agencies or departments
11 holding a contract, grant, or cooperative agree-
12 ment with the person or entity of the Govern-
13 ment’s interest in having the person or entity
14 considered for debarment, and after soliciting
15 and considering the views of all such agencies
16 and departments, the Secretary or Attorney
17 General may refer the matter to any appro-
18 priate lead agency to determine whether to list
19 the person or entity on the List of Parties Ex-
20 cluded from Federal Procurement, and if so, for
21 what duration and under what scope.

22 “(D) REVIEW.—Any decision to debar a
23 person or entity in accordance with this para-
24 graph shall be reviewable pursuant to part 9.4
25 of the Federal Acquisition Regulation.

1 “(13) OFFICE FOR STATE AND LOCAL GOVERN-
2 MENT COMPLAINTS.—The Secretary of Homeland
3 Security shall establish an office—

4 “(A) to which State and local government
5 agencies may submit information indicating po-
6 tential violations of subsection (a), (b), or
7 (g)(1) that were generated in the normal course
8 of law enforcement or the normal course of
9 other official activities in the State or locality;

10 “(B) that is required to indicate to the
11 complaining State or local agency within five
12 business days of the filing of such a complaint
13 by identifying whether the Secretary will fur-
14 ther investigate the information provided;

15 “(C) that is required to investigate those
16 complaints filed by State or local government
17 agencies that, on their face, have a substantial
18 probability of validity;

19 “(D) that is required to notify the com-
20 plaining State or local agency of the results of
21 any such investigation conducted; and

22 “(E) that is required to report to the Con-
23 gress annually the number of complaints re-
24 ceived under this paragraph, the States and lo-
25 calities that filed such complaints, and the reso-

1 lution of the complaints investigated by the Sec-
2 retary.”; and

3 (5) by amending paragraph (1) of subsection (f)
4 to read as follows:

5 “(1) CRIMINAL PENALTY.—Any person or enti-
6 ty which engages in a pattern or practice of viola-
7 tions of subsection (a) (1) or (2) shall be fined not
8 more than \$5,000 for each unauthorized alien with
9 respect to which such a violation occurs, imprisoned
10 for not more than 18 months, or both, notwith-
11 standing the provisions of any other Federal law re-
12 lating to fine levels.”.

13 **SEC. 209. FRAUD AND MISUSE OF DOCUMENTS.**

14 Section 1546(b) of title 18, United States Code, is
15 amended—

16 (1) in paragraph (1), by striking “identification
17 document,” and inserting “identification document
18 or document meant to establish work authorization
19 (including the documents described in section
20 274A(b) of the Immigration and Nationality Act),”;
21 and

22 (2) in paragraph (2), by striking “identification
23 document” and inserting “identification document or
24 document meant to establish work authorization (in-

1 including the documents described in section 274A(b)
2 of the Immigration and Nationality Act),”.

3 **SEC. 210. PROTECTION OF SOCIAL SECURITY ADMINISTRA-**
4 **TION PROGRAMS.**

5 (a) FUNDING UNDER AGREEMENT.—Effective for
6 fiscal years beginning on or after October 1, 2020, the
7 Commissioner of Social Security and the Secretary of
8 Homeland Security shall enter into and maintain an
9 agreement which shall—

10 (1) provide funds to the Commissioner for the
11 full costs of the responsibilities of the Commissioner
12 under section 274A(d) of the Immigration and Na-
13 tionality Act (8 U.S.C. 1324a(d)), as amended by
14 this title, including (but not limited to)—

15 (A) acquiring, installing, and maintaining
16 technological equipment and systems necessary
17 for the fulfillment of the responsibilities of the
18 Commissioner under such section 274A(d), but
19 only that portion of such costs that are attrib-
20 utable exclusively to such responsibilities; and

21 (B) responding to individuals who contest
22 a tentative nonconfirmation provided by the em-
23 ployment eligibility verification system estab-
24 lished under such section;

1 (2) provide such funds annually in advance of
2 the applicable quarter based on estimating method-
3 ology agreed to by the Commissioner and the Sec-
4 retary (except in such instances where the delayed
5 enactment of an annual appropriation may preclude
6 such quarterly payments); and

7 (3) require an annual accounting and reconcili-
8 ation of the actual costs incurred and the funds pro-
9 vided under the agreement, which shall be reviewed
10 by the Inspectors General of the Social Security Ad-
11 ministration and the Department of Homeland Secu-
12 rity.

13 (b) CONTINUATION OF EMPLOYMENT VERIFICATION
14 IN ABSENCE OF TIMELY AGREEMENT.—In any case in
15 which the agreement required under subsection (a) for any
16 fiscal year beginning on or after October 1, 2020, has not
17 been reached as of October 1 of such fiscal year, the latest
18 agreement between the Commissioner and the Secretary
19 of Homeland Security providing for funding to cover the
20 costs of the responsibilities of the Commissioner under
21 section 274A(d) of the Immigration and Nationality Act
22 (8 U.S.C. 1324a(d)) shall be deemed in effect on an in-
23 terim basis for such fiscal year until such time as an
24 agreement required under subsection (a) is subsequently
25 reached, except that the terms of such interim agreement

1 shall be modified by the Director of the Office of Manage-
2 ment and Budget to adjust for inflation and any increase
3 or decrease in the volume of requests under the employ-
4 ment eligibility verification system. In any case in which
5 an interim agreement applies for any fiscal year under this
6 subsection, the Commissioner and the Secretary shall, not
7 later than October 1 of such fiscal year, notify the Com-
8 mittee on Ways and Means, the Committee on the Judici-
9 ary, and the Committee on Appropriations of the House
10 of Representatives and the Committee on Finance, the
11 Committee on the Judiciary, and the Committee on Ap-
12 propriations of the Senate of the failure to reach the
13 agreement required under subsection (a) for such fiscal
14 year. Until such time as the agreement required under
15 subsection (a) has been reached for such fiscal year, the
16 Commissioner and the Secretary shall, not later than the
17 end of each 90-day period after October 1 of such fiscal
18 year, notify such Committees of the status of negotiations
19 between the Commissioner and the Secretary in order to
20 reach such an agreement.

21 **SEC. 211. FRAUD PREVENTION.**

22 (a) **BLOCKING MISUSED SOCIAL SECURITY ACCOUNT**
23 **NUMBERS.**—The Secretary of Homeland Security, in con-
24 sultation with the Commissioner of Social Security, shall
25 establish a program in which social security account num-

1 bers that have been identified to be subject to unusual
2 multiple use in the employment eligibility verification sys-
3 tem established under section 274A(d) of the Immigration
4 and Nationality Act (8 U.S.C. 1324a(d)), as amended by
5 this title, or that are otherwise suspected or determined
6 to have been compromised by identity fraud or other mis-
7 use, shall be blocked from use for such system purposes
8 unless the individual using such number is able to estab-
9 lish, through secure and fair additional security proce-
10 dures, that the individual is the legitimate holder of the
11 number.

12 (b) ALLOWING SUSPENSION OF USE OF CERTAIN SO-
13 CIAL SECURITY ACCOUNT NUMBERS.—The Secretary of
14 Homeland Security, in consultation with the Commis-
15 sioner of Social Security, shall establish a program which
16 shall provide a reliable, secure method by which victims
17 of identity fraud and other individuals may suspend or
18 limit the use of their social security account number or
19 other identifying information for purposes of the employ-
20 ment eligibility verification system established under sec-
21 tion 274A(d) of the Immigration and Nationality Act (8
22 U.S.C. 1324a(d)), as amended by this title. The Secretary
23 may implement the program on a limited pilot program
24 basis before making it fully available to all individuals.

1 (c) ALLOWING PARENTS TO PREVENT THEFT OF
2 THEIR CHILD'S IDENTITY.—The Secretary of Homeland
3 Security, in consultation with the Commissioner of Social
4 Security, shall establish a program which shall provide a
5 reliable, secure method by which parents or legal guard-
6 ians may suspend or limit the use of the social security
7 account number or other identifying information of a
8 minor under their care for the purposes of the employment
9 eligibility verification system established under 274A(d) of
10 the Immigration and Nationality Act (8 U.S.C. 1324a(d)),
11 as amended by this title. The Secretary may implement
12 the program on a limited pilot program basis before mak-
13 ing it fully available to all individuals.

14 **SEC. 212. USE OF EMPLOYMENT ELIGIBILITY**
15 **VERIFICATION PHOTO TOOL.**

16 An employer or entity who uses the photo matching
17 tool, if required by the Secretary as part of the verification
18 system, shall match, either visually, or using facial rec-
19 ognition or other verification technology approved or re-
20 quired by the Secretary, the photo matching tool photo-
21 graph to the photograph on the identity or employment
22 eligibility document provided by the individual or to the
23 face of the employee submitting the document for employ-
24 ment verification purposes, or both, as determined by the
25 Secretary.

1 **SEC. 213. IDENTITY AUTHENTICATION EMPLOYMENT ELIGI-**
2 **BILITY VERIFICATION PILOT PROGRAMS.**

3 Not later than 12 months after the date of the enact-
4 ment of this Act, the Secretary of Homeland Security,
5 after consultation with the Commissioner of Social Secu-
6 rity and the Director of the National Institute of Stand-
7 ards and Technology, shall establish by regulation not less
8 than 2 Identity Authentication Employment Eligibility
9 Verification pilot programs, each using a separate and dis-
10 tinct technology (the “Authentication Pilots”). The pur-
11 pose of the Authentication Pilots shall be to provide for
12 identity authentication and employment eligibility
13 verification with respect to enrolled new employees which
14 shall be available to any employer that elects to participate
15 in either of the Authentication Pilots. Any participating
16 employer may cancel the employer’s participation in the
17 Authentication Pilot after one year after electing to par-
18 ticipate without prejudice to future participation. The Sec-
19 retary shall report to the Committee on the Judiciary of
20 the House of Representatives and the Committee on the
21 Judiciary of the Senate the Secretary’s findings on the
22 Authentication Pilots, including the authentication tech-
23 nologies chosen, not later than 12 months after com-
24 mencement of the Authentication Pilots.

1 **SEC. 214. INSPECTOR GENERAL AUDITS.**

2 (a) IN GENERAL.—Not later than 1 year after the
3 date of the enactment of this Act, the Inspector General
4 of the Social Security Administration shall complete audits
5 of the following categories in order to uncover evidence
6 of individuals who are not authorized to work in the
7 United States:

8 (1) Workers who dispute wages reported on
9 their social security account number when they be-
10 lieve someone else has used such number and name
11 to report wages.

12 (2) Children’s social security account numbers
13 used for work purposes.

14 (3) Employers whose workers present signifi-
15 cant numbers of mismatched social security account
16 numbers or names for wage reporting.

17 (b) SUBMISSION.—The Inspector General of the So-
18 cial Security Administration shall submit the audits com-
19 pleted under subsection (a) to the Committee on Ways and
20 Means of the House of Representatives and the Committee
21 on Finance of the Senate for review of the evidence of
22 individuals who are not authorized to work in the United
23 States. The Chairmen of those Committees shall then de-
24 termine information to be shared with the Secretary of
25 Homeland Security so that such Secretary can investigate

1 the unauthorized employment demonstrated by such evi-
2 dence.

3 **TITLE III—H-2A PROGRAM**

4 **SEC. 301. ADMINISTRATION BY DEPARTMENT OF AGRI-** 5 **CULTURE.**

6 (a) ADMISSION OF NON-IMMIGRANTS.—Section
7 214(c)(1) of the Immigration and Nationality Act (8
8 U.S.C. 1184(c)(1)) is amended in the fifth sentence by
9 striking “means the Department of Labor and includes
10 the Department of Agriculture” and inserting “means the
11 Department of Agriculture”.

12 (b) ADMINISTRATION OF PROGRAM.—Section 218 of
13 the Immigration and Nationality Act (8 U.S.C. 1188)
14 (hereinafter in this title referred to as “section 218”) is
15 amended by striking “Secretary of Labor” each place such
16 term appears and inserting “Secretary of Agriculture”.

17 **SEC. 302. DEFINING AGRICULTURAL LABOR.**

18 (a) IN GENERAL.—Section 101(a)(15)(H) of the Im-
19 migration and Nationality Act is amended in clause (ii)(a)
20 by striking “agricultural labor or services, as defined by
21 the Secretary of Labor in regulations and including agri-
22 cultural labor defined in section 3121(g) of the Internal
23 Revenue Code of 1986, agriculture as defined in section
24 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C.
25 203(f)), and the pressing of apples for cider on a farm,

1 of a temporary or seasonal nature,” and inserting “agri-
2 cultural labor or services of a temporary nature (as such
3 term is defined in section 218)”.

4 (b) DEFINITION.—Section 218 is further amended in
5 subsection (i) by adding at the end the following:

6 “(3) AGRICULTURAL LABOR OR SERVICES OF A
7 TEMPORARY NATURE.—The term ‘agricultural labor
8 or services of a temporary or seasonal nature’—

9 “(A) has the meaning given such term by
10 the Secretary of Agriculture in regulations;

11 “(B) includes non-seasonal employment;
12 and

13 “(C) includes—

14 “(i) agricultural labor as defined in
15 section 3121(g) of the Internal Revenue
16 Code of 1986;

17 “(ii) agriculture as defined in section
18 3(f) of the Fair Labor Standards Act of
19 1938 (29 U.S.C. 203(f));

20 “(iii) all activities required for the
21 preparation, processing or manufacturing
22 of a product of agriculture (as such term
23 is defined in such section 3(f)), or fish or
24 shellfish, for further distribution;

1 “(iv) the handling, planting, drying,
2 packing, packaging, processing, freezing,
3 or grading prior to delivery for storage of
4 any agricultural or horticultural com-
5 modity in its unmanufactured state, but
6 only if the operator of the facility where
7 such activities are conducted, if not the
8 farmer, produced or provides such services
9 to a farmer or other entity of which farm-
10 ers are the owners, partners or members
11 who produced more than 50 percent of the
12 commodity with respect to which such
13 service is performed;

14 “(v) forestry-related activities up to
15 the point of wholesale to a distribution fa-
16 cility;

17 “(vi) aquaculture activities up to the
18 point of wholesale distribution;

19 “(vii) activities related to the breed-
20 ing, management, training, and racing of
21 equines;

22 “(viii) the pressing of apples for cider
23 on a farm;

24 “(ix) logging employment; and

1 “(x) the transportation of any agricul-
 2 tural or horticultural product in its un-
 3 manufactured state by any person from the
 4 farm to a storage facility, to market, or to
 5 any place of handling, planting, drying,
 6 packing, packaging, processing, freezing,
 7 or grading, including at a packing house,
 8 a processing establishment, a gin, a seed
 9 conditioning facility, a mill, or a grain ele-
 10 vator.”.

11 **SEC. 303. WAGE STRUCTURE AND OTHER AMENDMENTS TO**
 12 **H-2A PROGRAM.**

13 Section 218 is further amended by adding at the end
 14 the following:

15 “(j) WAGE STRUCTURE.—An H-2A worker shall be
 16 paid at a rate equal to the highest of—

17 “(1) 115 percent of the Federal minimum
 18 wage;

19 “(2) the State minimum wage rate; or

20 “(3) the actual wage level paid by the employer
 21 to all other individuals with similar experience and
 22 qualifications for the specific employment in ques-
 23 tion.

24 “(k) AREA OF INTENDED EMPLOYMENT; NO EXTEN-
 25 SION OF PERIOD OF AUTHORIZED STAY.—

1 “(1) AREA OF INTENDED EMPLOYMENT.—The
2 Secretary of Agriculture may consider an increased
3 area of employment for an H-2A petition that is not
4 larger than the State in which the employer will em-
5 ploy the worker for the purposes of providing hous-
6 ing.

7 “(2) NO EXTENSION OF PERIOD OF AUTHOR-
8 IZED STAY.—The period of authorized stay for an
9 H-2A worker may not exceed 10 months, and no ex-
10 tensions of such period may be made.

11 “(l) APPLICATION WITH STAGGERED START
12 DATES.—In the case of any employer under this section
13 who is applying for labor certifications for more than 1
14 H-2A worker, that employer may file a single consolidated
15 application, subject to such terms and conditions as the
16 Secretary of Homeland Security may prescribe, for all
17 such workers, and may specify multiple dates on which
18 the employer first requires the labor or services of H-2A
19 workers covered by the application.

20 “(m) EXPEDITED APPROVAL FOR CERTAIN WORK-
21 ERS.—The Secretary of Homeland Security shall establish
22 a process for expediting consideration of any petition for
23 an H-2A worker who has previously been the subject of
24 two consecutive petitions that were approved.”.

1 **SEC. 304. BIOMETRIC IDENTIFICATION CARD.**

2 Section 218 is further amended by adding at the end
3 the following:

4 “(n) BIOMETRIC IDENTIFICATION CARD.—An H–2A
5 worker shall be issued, upon being approved for status as
6 an H–2A worker, an encrypted, machine-readable elec-
7 tronic identification card to be known as a ‘guestworker
8 identification card’ which shall—

9 “(1) have an electronic identification strip to be
10 used for all H–2A workers;

11 “(2) have a 15-digit numerical identification
12 code that may be used for tax withholdings and for
13 verifying an H–2A worker’s employment approval
14 for agriculture specifically;

15 “(3) include a photograph on the front, and
16 such other information as the Secretary determines
17 necessary stored on a card containing micro-
18 processors for data storage including, fingerprints,
19 retinal scans, DNA, blood type, and facial recogni-
20 tion;

21 “(4) be eligible for replacement not more than
22 once in a 5-year period;

23 “(5) include the start and end date of the pe-
24 riod of approved stay of the H–2A worker and a
25 statement that the H–2A worker is a seasonal work-
26 er;

1 “(6) have physical and electronic security fea-
2 tures to prevent fraudulent uses or any misuse as
3 determined by the Secretary; and

4 “(7) have the H-2A worker’s program identi-
5 fication number clearly visible.

6 “(o) SOCIAL SECURITY NUMBERS.—An H-2A work-
7 er may not be issued a social security account number.
8 In any case where such number would be necessary, the
9 guestworker identification number issued by the Secretary
10 of Agriculture shall be used.”.

11 **SEC. 305. EFFECTIVE DATE.**

12 This title and the amendments made by this title
13 shall take effect beginning on the date that is not more
14 than 2 years after the date of enactment of this Act.

