

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To provide for the temporary employment of foreign agricultural workers, and for other purposes.

IN THE SENATE OF THE UNITED STATES—112th Cong., 2d Sess.

(no.) \_\_\_\_\_

To reauthorize agricultural programs through 2017, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. CHAMBLISS

Viz:

1 At the end of title XII, insert the following:

2 **Subtitle D—HARVEST Act**

3 **SEC. 12301. SHORT TITLE.**

4 This title may be cited as the “Helping Agriculture  
5 Receive Verifiable Employees Securely and Temporarily  
6 Act of 2012” or the “HARVEST Act of 2012”.

7 **SEC. 12302. SENSE OF THE SENATE.**

8 It is the sense of the Senate that—

9 (1) farmers and ranchers in the United States  
10 produce the highest quality food and fiber in the  
11 world;

1           (2) abundant harvests in the United States  
2 allow this Nation to provide over ½ of the world's  
3 food aid donations to help our international neigh-  
4 bors in need;

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

8           (4) the United States is the world's largest ag-  
9 ricultural exporter and is one of the few sectors of  
10 the United States economy that produces a trade  
11 surplus;

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

15           (6) Americans enjoy the highest quality food at  
16 the lowest cost compared to any industrialized na-  
17 tion in the world, spending less than 10 percent of  
18 our household income on food;

19           (7) the continued safety of the agricultural  
20 goods produced in the United States is an issue of  
21 national security;

22           (8) the agricultural labor force of the United  
23 States is overwhelmingly composed of foreign labor;

24           (9) due to the importance of food safety, it is  
25 critical to know who is handling our Nation's food

1 supply and who is working on our Nation's farms  
2 and ranches;

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

6 (11) decreased agricultural production could  
7 have ramifications throughout the farm support in-  
8 dustries, such as food processing, fertilizers, and  
9 equipment manufacturers;

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

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

18 **SEC. 12303. ADMISSION OF TEMPORARY AGRICULTURAL**  
19 **WORKERS.**

20 (a) DEFINITION.—Section 101(a)(15)(H)(ii)(a) of  
21 the Immigration and Nationality Act (8 U.S.C.  
22 1101(a)(15)(H)(ii)(a)) is amended by striking “, of a tem-  
23 porary or seasonal nature”.

24 (b) PROCEDURE FOR ADMISSION.—

1 (1) IN GENERAL.—Section 218 of the Immigra-  
2 tion and Nationality Act (8 U.S.C. 1188) is amend-  
3 ed to read as follows:

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

5 “(a) DEFINITIONS.—In this section and in section  
6 218A:

7 “(1) ADVERSE EFFECT WAGE RATE.—The term  
8 ‘adverse effect wage rate’ means 115 percent of the  
9 greater of—

10 “(A) the State minimum wage; or

11 “(B) the hourly wage prescribed under sec-  
12 tion 6(a)(1) of the Fair Labor Standards Act of  
13 1938 (29 U.S.C. 206(a)(1)).

14 “(2) AREA OF EMPLOYMENT.—The term ‘area  
15 of employment’ means the area within normal com-  
16 muting distance of the work site or physical location  
17 at which the work of the H-2A worker is or will be  
18 performed. If such work site or location is within a  
19 Metropolitan Statistical Area, any place within such  
20 area shall be considered to be within the area of em-  
21 ployment.

22 “(3) DISPLACE.—In the case of an application  
23 with respect to an H-2A worker filed by an em-  
24 ployer, an employer ‘displaces’ a United States  
25 worker from a job if the employer lays off the work-

1 er from a job that is essentially equivalent to the job  
2 for which the H-2A worker is sought. A job shall be  
3 considered essentially equivalent to another job if  
4 the job—

5 “(A) involves essentially the same respon-  
6 sibilities as the other job;

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

10 “(C) is located in the same area of employ-  
11 ment as the other job.

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

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

17 “(A) animal agriculture or agricultural  
18 processing;

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

24 “(C) drying, packing, packaging, proc-  
25 essing, freezing, or grading prior to delivery for

1 storage of any agricultural or horticultural com-  
2 modity in its unmanufactured state; or

3 “(D) dairy or feedyard work.

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

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

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

16 “(ii)(I) is seeking to work for an employer  
17 performing agricultural labor in the United  
18 States in a job for which United States workers  
19 are not available and willing to perform such  
20 service or labor;

21 “(II) commutes each business day across  
22 the United States international border to work  
23 for a qualified United States employer; and

24 “(III) returns across the United States  
25 international border to his or her foreign resi-



1 charged, regardless of whether or not the  
2 employee accepts the offer.

3 “(B) CONSTRUCTION.—Nothing in this  
4 paragraph may be construed to limit an em-  
5 ployee’s rights under a collective bargaining  
6 agreement or other employment contract.

7 “(8) UNITED STATES WORKER.—The term  
8 ‘United States worker’ means any worker who is a  
9 national of the United States, an alien lawfully ad-  
10 mitted for permanent residence, or an alien author-  
11 ized to work in the relevant job opportunity within  
12 the United States, except an alien admitted or other-  
13 wise provided status under section  
14 101(a)(15)(H)(ii)(a).

15 “(b) LABOR ATTESTATION PROCESS.—The Secretary  
16 of Agriculture shall utilize the labor attestation process  
17 described in this subsection until the Secretary of Labor  
18 certifies that, based on State workforce agency data, there  
19 is an adequate domestic workforce in the United States  
20 to fill agricultural jobs in the State in which the agricul-  
21 tural employer is seeking H-2A workers. Once the Sec-  
22 retary of Labor certifies that there are adequate author-  
23 ized workers in a State to fill agricultural jobs (excluding  
24 H-2A workers), the Secretary of Agriculture, after con-  
25 sultation with the Secretary of Labor, shall issue regula-



1 tions describing a labor certification process for agricul-  
2 tural employers seeking H-2A workers. An alien may not  
3 be admitted as an H-2A worker unless the employer has  
4 filed an application with the Secretary of Agriculture in  
5 which the employer attests to the following:

6 “(1) TEMPORARY WORK OR SERVICES.—

7 “(A) IN GENERAL.—The employer is seek-  
8 ing to employ a specific number of agricultural  
9 workers on a temporary basis and will provide  
10 compensation to such workers at a specified  
11 wage rate and under specified conditions.

12 “(B) SKILLED WORKERS.—If the worker is  
13 a Level 2 H-2A worker, the employer will re-  
14 cruit the worker separately and the application  
15 will delineate separate wage rate and conditions  
16 of employment for such worker.

17 “(C) DEFINED TERM.—In this paragraph  
18 and in subsection (h)(6)(B), a worker is consid-  
19 ered to be ‘employed on a temporary basis’ if  
20 the employer employs the worker for not longer  
21 than 10 months in a calendar year.

22 “(2) BENEFITS, WAGES, AND WORKING CONDI-  
23 TIONS.—The employer will provide, at a minimum,  
24 the benefits, wages, and working conditions required  
25 under subsection (k) to—

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

3           “(B) all other temporary workers in the  
4           same occupation at the same place of employ-  
5           ment.

6           “(3) NONDISPLACEMENT OF UNITED STATES  
7           WORKERS.—The employer did not and will not dis-  
8           place a United States worker employed by the em-  
9           ployer during the period of employment of the H-  
10          2A worker and during the 30-day period imme-  
11          diately preceding such period of employment in the  
12          occupation at the place of employment for which the  
13          employer seeks approval to employ H-2A workers.

14          “(4) RECRUITMENT.—

15                 “(A) IN GENERAL.—The employer will—

16                         “(i) describe previous recruitment ef-  
17                         forts made before the filing of the applica-  
18                         tion; and

19                         “(ii) complete adequate recruitment  
20                         requirements before H-2A workers are  
21                         issued a visa at an American consulate.

22                 “(B) ADEQUATE RECRUITMENT.—The  
23                 adequate recruitment requirements under sub-  
24                 paragraph (A)(ii) are satisfied if the em-  
25                 ployer—

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

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

18          “(iii) mails a letter through the  
19          United States Postal Service or otherwise  
20          contacts any United States worker the em-  
21          ployer employed within the past year in the  
22          occupation at the place of intended employ-  
23          ment for which the employer is seeking H-  
24          2A workers that describes available job op-  
25          portunities, unless the worker was termi-

1           nated from employment by the employer  
2           for a lawful job-related reason or aban-  
3           doned the job before the worker completed  
4           the period of employment of the job oppor-  
5           tunity for which the worker was hired.

6           “(C) ADVERTISEMENT REQUIREMENT.—

7           The advertisement requirement under subpara-  
8           graph (B)(ii) is satisfied if the employer runs  
9           an advertisement for 2 consecutive days that—

10           “(i) names the employer;

11           “(ii) describes the job or jobs;

12           “(iii) provides instructions on how to  
13           contact the employer to apply for the job;

14           “(iv) states the duration of employ-  
15           ment;

16           “(v) describes the geographic area  
17           with enough specificity to apprise appli-  
18           cants of any travel requirements and where  
19           applicants will likely have to reside to per-  
20           form the job;

21           “(vi) states the rate of pay; and

22           “(vii) describes working conditions  
23           and the availability of housing or the  
24           amount of housing allowances.

1           “(D) END OF RECRUITMENT REQUIRE-  
2           MENT.—The requirement to recruit and hire  
3           United States workers for the contract period  
4           for which H-2A workers have been hired shall  
5           terminate on the first day of such contract pe-  
6           riod.

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

11                 “(A) applies;

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

14                 “(C) is able and willing to complete the pe-  
15                 riod of employment.

16           “(6) PROVISION OF INSURANCE.—If the job for  
17           which the H-2A worker is sought is not covered by  
18           State workers’ compensation law, the employer will  
19           provide, at no cost to the worker, insurance covering  
20           injury and disease arising out of, and in the course  
21           of, the worker’s employment, which will provide ben-  
22           efits at least equal to those provided under the State  
23           workers’ compensation law for comparable employ-  
24           ment. No employer shall be liable for the provision  
25           of health insurance for any H-2A worker.

1           “(7) STRIKE OR LOCKOUT.—There is not a  
2 strike or lockout in the course of a labor dispute  
3 that precludes the hiring of H-2A workers.

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

11          “(e) PUBLIC EXAMINATION.—Not later than 1 work-  
12 ing day after the date on which an application is filed  
13 under this section, the employer shall make a copy of each  
14 such application (and any necessary accompanying docu-  
15 ments) available for public examination, at the employer’s  
16 work site or principal place of business.

17          “(d) LIST.—

18           “(1) IN GENERAL.—The Secretary of Agri-  
19 culture shall maintain a list of the applications filed  
20 under subsection (b), sorted by employer, which  
21 shall include—

22                   “(A) the number of H-2A workers sought;

23                   “(B) the wage rate;

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

25                   and

1           “(D) the period of intended employment.

2           “(2) AVAILABILITY.—The Secretary of Agri-  
3 culture shall make the list described in paragraph  
4 (1) available for public examination.

5           “(e) APPLYING FOR ADMISSION.—

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

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

14           “(A) the Secretary of Agriculture may not  
15 require such application to be filed more than  
16 60 days before the first date on which the em-  
17 ployer requires the labor or services of the H-  
18 2A worker; and

19           “(B) unless the Secretary of Agriculture  
20 determines that the application is incomplete or  
21 obviously inaccurate, or the Secretary has prob-  
22 able cause to suspect the application was fraud-  
23 ulently made, the Secretary shall either approve  
24 or deny the application not later than 15 days

1 after the date on which such application was  
2 filed.

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

9 “(4) MULTISTATE EMPLOYERS.—Employers  
10 with multiple operations may use H-2A workers in  
11 the occupations for which they are sought in all  
12 places in which the employer has operations if the  
13 employer—

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

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

19 “(f) ROLES OF AGRICULTURAL ASSOCIATIONS.—

20 “(1) PERMITTING FILING BY AGRICULTURAL  
21 ASSOCIATIONS.—An application to hire an H-2A  
22 worker may be filed by an association of agricultural  
23 employers which use agricultural labor.

24 “(2) TREATMENT OF ASSOCIATIONS ACTING AS  
25 EMPLOYERS.—If an association is a joint or sole em-



1        ployer of H-2A workers, such H-2A workers may be  
2        transferred among its members to perform agricul-  
3        tural labor of the same nature for which the applica-  
4        tion was approved.

5            “(3) TREATMENT OF VIOLATIONS.—

6            “(A) INDIVIDUAL MEMBER.—If an indi-  
7        vidual member of a joint employer association  
8        violates any condition for approval with respect  
9        to the member’s application, the Secretary of  
10       Agriculture shall deny such application only  
11       with respect to that member of the association  
12       unless the Secretary determines that the asso-  
13       ciation or other member participated in, had  
14       knowledge of, or had reason to know of the vio-  
15       lation.

16            “(B) ASSOCIATION OF AGRICULTURAL EM-  
17        PLOYERS.—

18            “(i) JOINT EMPLOYER.—If an associa-  
19        tion representing agricultural employers as  
20        a joint employer violates any condition for  
21        approval with respect to the association’s  
22        application, the Secretary of Agriculture  
23        shall deny such application only with re-  
24        spect to the association and may not apply  
25        the denial to any individual member of the

1 association, unless the Secretary deter-  
2 mines that the member participated in,  
3 had knowledge of, or had reason to know  
4 of the violation.

5 “(ii) SOLE EMPLOYER.—If an associa-  
6 tion of agricultural employers approved as  
7 a sole employer violates any condition for  
8 approval with respect to the association’s  
9 application, no individual member of the  
10 association may be the beneficiary of the  
11 services of H-2A workers admitted under  
12 this section in the occupation in which  
13 such H-2A workers were employed by the  
14 association which was denied approval dur-  
15 ing the period such denial is in force.

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

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

22 “(2) at the applicant’s request, for a de novo  
23 administrative hearing of the denial.

24 “(h) MISCELLANEOUS PROVISIONS.—

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

9           “(2) ENDORSEMENT OF DOCUMENTS.—The  
10 Secretary of Homeland Security shall provide for the  
11 endorsement of entry and exit documents of H-2A  
12 workers to carry out this section and to provide no-  
13 tice under section 274A.

14           “(3) PREEMPTION OF STATE LAWS.—This sec-  
15 tion and subsections (a) and (c) of section 214 pre-  
16 empt any State or local law regulating admissibility  
17 of nonimmigrant workers.

18           “(4) FEES.—The Secretary of Agriculture may  
19 charge a reasonable fee to recover the costs of proc-  
20 essing applications under this section. In deter-  
21 mining the amount of the fee to be charged under  
22 this paragraph, the Secretary shall consider whether  
23 the employer is a single employer or an association  
24 and the number of H-2A workers intended to be  
25 employed.

1           “(5) E-VERIFY PARTICIPATION BY EMPLOY-  
2           ERS.—The Secretary of Agriculture shall require  
3           employers participating in the H-2A program to  
4           register with and participate in E-Verify, as estab-  
5           lished under title IV of the Illegal Immigration Re-  
6           form and Immigrant Responsibility Act of 1996 (di-  
7           vision C of Public Law 104-208).

8           “(i) FAILURE TO MEET CONDITIONS.—

9           “(1) IN GENERAL.—The Secretary of Agri-  
10          culture shall conduct investigations and random au-  
11          dits of employer work sites to ensure employer com-  
12          pliance with the requirements under this section. All  
13          monetary fines assessed under this section shall be  
14          paid by the violating employer to the Department of  
15          Agriculture and used by the Secretary to conduct  
16          audits and investigations.

17          “(2) PENALTIES FOR FAILURE TO MEET CONDI-  
18          TIONS.—If the Secretary of Agriculture finds, after  
19          notice and opportunity for a hearing, a failure to  
20          meet a material condition under subsection (b), or a  
21          material misrepresentation of fact in an application  
22          filed under subsection (b), the Secretary—

23                  “(A) shall notify the Secretary of Home-  
24                  land Security of such finding; and

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

6           “(3) PENALTIES FOR WILLFUL FAILURE.—If  
7 the Secretary of Agriculture finds, after notice and  
8 opportunity for a hearing, a willful failure to meet  
9 a material condition under subsection (b) or a willful  
10 misrepresentation of a material fact in an applica-  
11 tion filed under subsection (b), the Secretary—

12           “(A) shall notify the Secretary of Home-  
13 land Security of such finding;

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

19           “(C) may disqualify the employer from the  
20 employment of H-2A workers for a period of 2  
21 years;

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

1           “(E) for a third violation, may perma-  
2           nently disqualify the employer from the employ-  
3           ment of H-2A workers.

4           “(4) PENALTIES FOR DISPLACEMENT OF  
5           UNITED STATES WORKERS.—If the Secretary of Ag-  
6           riculture finds, after notice and opportunity for a  
7           hearing, a willful failure to meet a material condition  
8           of subsection (b) or a willful misrepresentation of a  
9           material fact in an application filed under subsection  
10          (b), and the employer displaced a United States  
11          worker employed by the employer during the period  
12          of employment on the employer’s application, or dur-  
13          ing the 30-day period preceding such period of em-  
14          ployment, the Secretary—

15                 “(A) shall notify the Secretary of Home-  
16                 land Security of such finding;

17                 “(B) may impose such other administrative  
18                 remedies, including civil money penalties in an  
19                 amount not to exceed \$15,000 per violation, as  
20                 the Secretary of Agriculture determines to be  
21                 appropriate;

22                 “(C) may disqualify the employer from the  
23                 employment of H-2A workers for a period of 5  
24                 years; and

1           “(D) for a second violation, may perma-  
2           nently disqualify the employer from the employ-  
3           ment of H-2A workers.

4           “(5) LIMITATIONS ON CIVIL MONEY PEN-  
5           ALTIES.—The Secretary of Agriculture may not im-  
6           pose total civil money penalties with respect to an  
7           application filed under subsection (b) in excess of  
8           \$100,000.

9           “(j) FAILURE TO PAY WAGES OR REQUIRED BENE-  
10          FITS.—

11           “(1) IN GENERAL.—The Secretary of Agri-  
12          culture shall conduct investigations and random au-  
13          dits of employer work sites to ensure employer com-  
14          pliance with the requirements under this section.

15           “(2) ASSESSMENT.—If the Secretary of Agri-  
16          culture finds, after notice and opportunity for a  
17          hearing, that the employer has failed to pay the  
18          wages or provide the housing allowance, transpor-  
19          tation, subsistence requirement, or guarantee of em-  
20          ployment attested in the application filed by the em-  
21          ployer under subsection (b)(2), the Secretary shall  
22          assess payment of back wages, or other required  
23          benefits, due any United States worker or H-2A  
24          worker employed by the employer in the specific em-  
25          ployment in question.

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

3                   “(A) shall be equal to the difference be-  
4           tween the amount that should have been paid  
5           and the amount that was paid to such worker;  
6           and

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

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

11                   “(1) PREFERENTIAL TREATMENT OF ALIENS  
12          PROHIBITED.—

13                   “(A) IN GENERAL.—Each employer seek-  
14          ing to hire United States workers shall offer  
15          such workers not less than the same benefits,  
16          wages, and working conditions that the em-  
17          ployer is offering, intends to offer, or will pro-  
18          vide to H-2A workers in the same occupation.  
19          No job offer may impose any restriction or obli-  
20          gation on United States workers which will not  
21          be imposed on the employer’s H-2A workers.  
22          The benefits, wages, and other terms and condi-  
23          tions of employment described in this sub-  
24          section shall be provided in connection with em-  
25          ployment under this section.



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

8                   “(i) the services of workers to their  
9                   employers and the employment opportuni-  
10                  ties afforded to workers by the employers,  
11                  including those employment opportunities  
12                  that require United States workers or H-  
13                  2A workers to travel or relocated in order  
14                  to accept or perform employment—

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

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

20                   “(III) employment opportunities  
21                   within the United States benefit the  
22                   United States economy.

23           “(2) REQUIRED WAGES.—

24                   “(A) IN GENERAL.—Each employer apply-  
25                   ing for workers under subsection (b) shall pay

1 not less (and is not required to pay more) than  
2 the greater of—

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

7 “(ii) the adverse effect wage rate.

8 “(B) WAGES FOR LEVEL 2 H-2A WORK-  
9 ERS.—

10 “(i) IN GENERAL.—Each employer  
11 applying for Level 2 H-2A workers under  
12 subsection (b) shall pay such workers not  
13 less than 140 percent of the adverse effect  
14 wage rate for H-2A workers, excluding  
15 piece-rate wages.

16 “(ii) WAGE RATE DATA.—The Sec-  
17 retary of Agriculture shall expand and  
18 disaggregate the source of wage rate data  
19 used in the survey conducted by the Na-  
20 tional Agricultural Statistics Service to in-  
21 clude—

22 “(I) first line farming super-  
23 visors/managers;

24 “(II) graders and sorters of agri-  
25 cultural products;

1                   “(III) agricultural equipment op-  
2 erators;

3                   “(IV) crop and nursery farm-  
4 workers and laborers;

5                   “(V) ranch and farm animal  
6 farmworkers; and

7                   “(VI) all other agricultural work-  
8 ers.

9                   “(iii) STUDY AND REPORT.—

10                   “(I) STUDY.—After the Sec-  
11 retary of Agriculture collects wage  
12 rate data for 2 years using the meth-  
13 od described in clause (ii), the Sec-  
14 retary of Agriculture, in conjunction  
15 with the Secretary of Labor, shall  
16 conduct a study to determine if—

17                   “(aa) the wages accurately  
18 reflect prevailing wages for simi-  
19 lar occupations in the area of em-  
20 ployment; and

21                   “(bb) it is necessary to es-  
22 tablish a new wage methodology  
23 to prevent the depression of  
24 United States farmworker wages.



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

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

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

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

14                  “(ii) secures housing for the workers  
15                  that—

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

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

25                  “(C) INSPECTION.—

1                   “(i) REQUEST.—At the time an em-  
2                   ployer that plans to provide housing de-  
3                   scribed in subparagraph (B) to H-2A  
4                   workers files an application for H-2A  
5                   workers with the Secretary of Agriculture,  
6                   the employer shall request a certificate of  
7                   inspection by an approved Federal or State  
8                   agency.

9                   “(ii) INSPECTION; FOLLOW UP.—Not  
10                  later than 28 days after the receipt of a re-  
11                  quest under clause (i), the Secretary of Ag-  
12                  riculture shall ensure that—

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

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

19                   “(iii) DELAY PROHIBITED.—The Sec-  
20                  retary of Agriculture may not delay the ap-  
21                  proval of an application for failing to com-  
22                  ply with the deadlines set forth in clause  
23                  (iii).

24                   “(D) RULEMAKING.—The Secretary of Ag-  
25                  riculture shall issue regulations that address

1 the specific requirements for the provision of  
2 housing to workers engaged in the range pro-  
3 duction of livestock.

4 “(E) HOUSING ALLOWANCE.—

5 “(i) AUTHORITY.—If the Governor of  
6 a State certifies to the Secretary of Agri-  
7 culture that there is adequate housing  
8 available in the area of intended employ-  
9 ment for migrant farm workers and H-2A  
10 workers who are seeking temporary hous-  
11 ing while employed in agricultural work, an  
12 employer in such State may provide a rea-  
13 sonable housing allowance instead of offer-  
14 ing housing pursuant to subparagraph (A).  
15 An employer who provides a housing allow-  
16 ance to a worker shall not be required to  
17 reserve housing accommodations for the  
18 worker.

19 “(ii) ASSISTANCE IN LOCATING HOUS-  
20 ING.—Upon the request of a worker seek-  
21 ing assistance in locating housing, an em-  
22 ployer providing a housing allowance under  
23 clause (i) shall make a good faith effort to  
24 assist the worker in identifying and locat-

1           ing housing in the area of intended em-  
2           ployment.

3           “(iii) LIMITATION.—A housing allow-  
4           ance may not be used for housing that is  
5           owned or controlled by the employer. An  
6           employer who offers a housing allowance to  
7           a worker, or assists a worker in locating  
8           housing which the worker occupies under  
9           this subparagraph shall not be deemed a  
10          housing provider under section 203 of the  
11          Migrant and Seasonal Agricultural Worker  
12          Protect Act (29 U.S.C. 1823) solely by vir-  
13          tue of providing such housing allowance.

14          “(iv) OTHER REQUIREMENTS.—

15                 “(I) NONMETROPOLITAN COUN-  
16                 TY.—If the place of employment of  
17                 the workers provided an allowance  
18                 under this subparagraph is a non-  
19                 metropolitan county, the amount of  
20                 the housing allowance under this sub-  
21                 paragraph shall be equal to the state-  
22                 wide average fair market rental for  
23                 existing housing for nonmetropolitan  
24                 counties for the State, as established  
25                 by the Secretary of Housing and



1 Urban Development pursuant to sec-  
2 tion 8(c) of the United States Hous-  
3 ing Act of 1937 (42 U.S.C. 1437f(e)),  
4 based on a 2-bedroom dwelling unit  
5 and an assumption of 2 persons per  
6 bedroom.

7 “(II) METROPOLITAN COUNTY.—  
8 If the place of employment of the  
9 workers provided an allowance under  
10 this subparagraph is in a metropolitan  
11 county, the amount of the housing al-  
12 lowance under this subparagraph shall  
13 be equal to the statewide average fair  
14 market rental for existing housing for  
15 metropolitan counties for the State, as  
16 established by the Secretary of Hous-  
17 ing and Urban Development pursuant  
18 to section 8(c) of the United States  
19 Housing Act of 1937 (42 U.S.C.  
20 1437f(e)), based on a 2-bedroom  
21 dwelling unit and an assumption of 2  
22 persons per bedroom.

23 “(v) INFORMATION.—If the employer  
24 provides a housing allowance to H-2A em-  
25 ployees, the employer shall provide a list of

1           the names and local addresses of such  
2           workers to the Secretary of Agriculture  
3           and the Secretary of Homeland Security  
4           once per contract period.

5           “(4) REIMBURSEMENT OF TRANSPORTATION  
6           COSTS.—

7           “(A) REQUIREMENT FOR REIMBURSE-  
8           MENT.—A worker who completes 50 percent of  
9           the period of employment of the job for which  
10          the worker was hired shall be reimbursed by the  
11          employer, beginning on the first day of such  
12          employment, for the cost of the worker’s trans-  
13          portation and subsistence from—

14                 “(i) the place from which the worker  
15                 was approved to enter the United States to  
16                 the location at which the work for the em-  
17                 ployer is performed; or

18                 “(ii) if the worker traveled from a  
19                 place in the United States at which the  
20                 worker was last employed, from such place  
21                 of last employment to the location at which  
22                 the work for the employer is being per-  
23                 formed.

24           “(B) TIMING OF REIMBURSEMENT.—Reim-  
25           bursement to the worker of expenses for the

1 cost of the worker's transportation and subsist-  
2 ence to the place of employment under subpara-  
3 graph (A) shall be considered timely if such re-  
4 imbursement is made not later than the work-  
5 er's first regular payday after a worker com-  
6 pletes 50 percent of the period of employment  
7 of the job opportunity as provided under this  
8 paragraph.

9           “(C) ADDITIONAL REIMBURSEMENT.—A  
10 worker who completes the period of employment  
11 for the job opportunity involved shall be reim-  
12 bursed by the employer for the cost of the  
13 worker's transportation and subsistence from  
14 the work site to the place where the worker was  
15 approved to enter the United States to work for  
16 the employer. If the worker has contracted with  
17 a subsequent employer, the previous and subse-  
18 quent employer shall share the cost of the work-  
19 er's transportation and subsistence from work  
20 site to work site.

21           “(D) AMOUNT OF REIMBURSEMENT.—The  
22 amount of reimbursement provided to a worker  
23 under this paragraph shall be equal to the less-  
24 er of—

1                   “(i) the actual cost to the worker of  
2                   the transportation and subsistence in-  
3                   volved; or

4                   “(ii) the most economical and reason-  
5                   able common carrier transportation and  
6                   subsistence costs for the distance involved.

7                   “(E) REIMBURSEMENT FOR LAID OFF  
8                   WORKERS.—If the worker is laid off or employ-  
9                   ment is terminated for contract impossibility  
10                  (as described in paragraph (5)(D)) before the  
11                  anticipated ending date of employment, the em-  
12                  ployer shall provide—

13                  “(i) the transportation and subsist-  
14                  ence required under subparagraph (C); and

15                  “(ii) notwithstanding whether the  
16                  worker has completed 50 percent of the pe-  
17                  riod of employment, the transportation re-  
18                  imbursement required under subparagraph  
19                  (A).

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

1           “(G) CONSTRUCTION.—Nothing in this  
2 paragraph may be construed to require an em-  
3 ployer to reimburse visa, passport, consular, or  
4 international border-crossing fees incurred by  
5 the worker or any other fees associated with the  
6 worker’s lawful admission into the United  
7 States to perform employment.

8           “(5) EMPLOYMENT GUARANTEE.—

9           “(A) IN GENERAL.—

10           “(i) REQUIREMENT.—Each employer  
11 applying for workers under subsection (b)  
12 shall guarantee to offer each such worker  
13 employment for the hourly equivalent of  
14 not less than 75 percent of the work hours  
15 during the total anticipated period of em-  
16 ployment beginning with the first work day  
17 after the arrival of the worker at the place  
18 of employment and ending on the expira-  
19 tion date specified in the job offer.

20           “(ii) FAILURE TO MEET GUAR-  
21 ANTEE.—If the employer affords the  
22 United States worker or the H-2A workers  
23 less employment than that required under  
24 this subparagraph, the employer shall pay  
25 such worker the amount which the worker

1           would have earned if the worker had  
2           worked for the guaranteed number of  
3           hours.

4           “(iii) PERIOD OF EMPLOYMENT.—In  
5           this subparagraph, the term ‘period of em-  
6           ployment’ means the total number of an-  
7           ticipated work hours and work days de-  
8           scribed in the job offer and shall exclude  
9           the worker’s Sabbath and Federal holi-  
10          days.

11          “(B) CALCULATION OF HOURS.—Any  
12          hours which the worker fails to work, up to a  
13          maximum number of hours specified in the job  
14          offer for a work day, when the worker has been  
15          offered an opportunity to do so, and all hours  
16          of work actually performed (including voluntary  
17          work in excess of the number of hours specified  
18          in the job offer in a work day, on the worker’s  
19          Sabbath, or on Federal holidays) may be count-  
20          ed by the employer in calculating whether the  
21          period of guaranteed employment has been met.

22          “(C) LIMITATION.—If the worker volun-  
23          tarily abandons employment before the end of  
24          the contract period, or is terminated for cause,

1 the worker is not entitled to the 75 percent  
2 guarantee described in subparagraph (A).

3 “(D) TERMINATION OF EMPLOYMENT.—

4 “(i) IN GENERAL.—If, before the expi-  
5 ration of the period of employment speci-  
6 fied in the job offer, the services of the  
7 worker are no longer required due to any  
8 form of natural disaster, including flood,  
9 hurricane, freeze, earthquake, fire,  
10 drought, plant or animal disease, pest in-  
11 festation, regulatory action, or any other  
12 reason beyond the control of the employer  
13 before the employment guarantee in sub-  
14 subparagraph (A) is fulfilled, the employer  
15 may terminate the worker’s employment.

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

19 “(I) fulfill the employment guar-  
20 antee in subparagraph (A) for the  
21 work days that have elapsed during  
22 the period beginning on the first work  
23 day after the arrival of the worker  
24 and ending on the date on which such  
25 employment is terminated; and







1 “(III) section 212(a)(9)(C)(i)(II);

2 or

3 “(IV) subparagraph (A), (C), or  
4 (D) of section 212(a)(10) (relating to  
5 polygamists, child abductors, and un-  
6 lawful voters).

7 “(B) CONSTRUCTION.—Nothing in this  
8 paragraph may be construed as affecting the  
9 authority of the Secretary of Homeland Secu-  
10 rity, other than under this paragraph, to waive  
11 the provisions of section 212(a).

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

14 “(A) the alien has violated any material  
15 term or condition of such status granted pre-  
16 viously, unless the alien has had such violation  
17 waived under paragraph (2)(A);

18 “(B) the alien is inadmissible as a non-  
19 immigrant, except for those grounds previously  
20 waived under paragraph (2)(A); or

21 “(C) the granting of such status would  
22 allow the alien to exceed limitations on stay in  
23 the United States in H-2A status described in  
24 subsection (m).

1           “(4) PROMPT REMOVAL PROCEEDINGS.—The  
2 Secretary of Homeland Security shall promptly iden-  
3 tify, investigate, detain, and initiate removal pro-  
4 ceedings against every alien admitted into the  
5 United States on an H-2A visa who exceeds the  
6 alien’s period of authorized admission or otherwise  
7 violates any terms of the alien’s nonimmigrant sta-  
8 tus. In conducting such removal proceedings, the  
9 Secretary shall give priority to aliens who may pose  
10 a threat to the national security, and those convicted  
11 of criminal offenses.

12           “(5) NUMERICAL LIMITATIONS ON WAIVERS.—  
13 The Secretary of Homeland Security may waive any  
14 ground of inadmissibility, as authorized under this  
15 section, only once for each beneficiary of an applica-  
16 tion for an H-2A visa filed by an employer after the  
17 date of the enactment of the HARVEST Act of  
18 2012. Such waiver authority for the Secretary shall  
19 expire 24 months after such date of enactment.

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

1 “(m) PERIOD OF ADMISSION.—

2 “(1) IN GENERAL.—An H-2A worker approved  
3 to enter the United States may not remain in the  
4 United States for more than 10 months during any  
5 12-month period, excluding—

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

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

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

18 “(3) CONSTRUCTION.—Nothing in this sub-  
19 section shall limit the authority of the Secretary of  
20 Homeland Security to extend the stay of an alien  
21 under any other provision of this Act.

22 “(n) ABANDONMENT OF EMPLOYMENT.—

23 “(1) IN GENERAL.—An alien admitted or pro-  
24 vided status under section 101(a)(15)(H)(ii)(a) who

1       abandons the employment, which was the basis for  
2       such admission or status—

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

5               “(B) shall depart the United States or be  
6       subject to removal under section  
7       237(a)(1)(C)(i).

8               “(2) REPORT BY EMPLOYER.—Not later than  
9       36 hours after the premature abandonment of em-  
10      ployment by an H-2A worker, the employer or asso-  
11      ciation acting as an agent for the employer shall no-  
12      tify the Secretary of Homeland Security of such  
13      abandonment.

14              “(3) REMOVAL.—The Secretary of Homeland  
15      Security shall ensure the prompt removal from the  
16      United States of any H-2A worker who violates any  
17      term or condition of the worker’s nonimmigrant sta-  
18      tus.

19              “(4) VOLUNTARY TERMINATION.—Notwith-  
20      standing paragraph (1), an alien may voluntarily  
21      terminate the alien’s employment if the alien  
22      promptly departs the United States upon termi-  
23      nation of such employment.

24              “(o) REPLACEMENT OF WORKERS.—

1           “(1) IN GENERAL.—Upon receiving notification  
2           under subsection (n)(2) or being notified that a  
3           United States worker referred by the Department of  
4           Labor or a United States worker recruited by the  
5           employer during the recruitment period has pre-  
6           maturely abandoned employment or has failed to ap-  
7           pear for employment—

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

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

15           “(2) CONSTRUCTION.—Nothing in this sub-  
16           section may be construed to limit any preference for  
17           which United States workers are eligible under this  
18           Act.

19           “(p) IDENTIFICATION DOCUMENT.—

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

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

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

5           “(C) verifies the identity of the alien  
6 through the use of at least 1 biometric identi-  
7 fier.

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

10           “(A) shall be capable of reliably deter-  
11 mining whether the individual with the docu-  
12 ment—

13           “(i) is eligible for employment as an  
14 H-2A worker;

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

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

19           “(B) shall be compatible with—

20           “(i) other databases of the Depart-  
21 ment of Homeland Security to prevent an  
22 alien from obtaining benefits for which the  
23 alien is not eligible and determining wheth-  
24 er the alien is unlawfully present in the  
25 United States; and

1                   “(ii) law enforcement databases to de-  
2                   termine if the alien has been convicted of  
3                   criminal offenses.

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

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

9           “(b) INCORPORATION BY REFERENCE.—

10           “(1) IN GENERAL.—Except as specifically pro-  
11 vided under paragraph (2), the provisions under sec-  
12 tion 218 shall apply to cross-border H-2A workers.

13           “(2) EXCEPTIONS.—Subsections (k)(3), (k)(4),  
14 and (m) of section 218 shall not apply to cross-bor-  
15 der H-2A workers.

16           “(c) MANDATORY ENTRY AND EXIT.—A cross-border  
17 H-2A worker who complies with the provisions of this sec-  
18 tion—

19           “(1) may enter the United States each sched-  
20 uled work day, in accordance with regulations pro-  
21 mulgated by the Secretary of Homeland Security;  
22 and

23           “(2) shall exit the United States before the end  
24 of each day of such entrance.



1       “(d) RECRUITMENT.—Each employer that employs a  
2 cross-border H-2A worker under this section shall conduct  
3 a recruitment for each position occupied by such H-2A  
4 worker that complies with the requirements under section  
5 218(b)(4) at least once every 10 months.”.

6           (2) CLERICAL AMENDMENT.—The table of con-  
7 tents of the Immigration and Nationality Act (8  
8 U.S.C. 1101 et seq.) is amended by striking the item  
9 relating to section 218 and inserting the following:

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

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

10       (c) RULEMAKING.—

11           (1) ISSUANCE OF VISAS.—Not later than 180  
12 days after the date of the enactment of this Act, the  
13 Secretary of State shall promulgate regulations, in  
14 accordance with the notice and comment provisions  
15 of section 553 of title 5, United States Code, to pro-  
16 vide for uniform procedures for the issuance of H-  
17 2A visas by United States consulates and consular  
18 officials to nonimmigrants described in section  
19 101(a)(15)(H)(ii)(a) of the Immigration and Nation-  
20 ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)).

21           (2) BORDER CROSSINGS.—The Secretary of  
22 State shall promulgate regulations to establish a  
23 process for cross-border H-2A workers authorized to  
24 work in the United States under section 218A of the

1 Immigration and Nationality Act, as added by sub-  
2 section (b), to ensure that such workers expedi-  
3 tiously enter and exit the United States during each  
4 work day.

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

8 **SEC. 12304. LEGAL ASSISTANCE FROM THE LEGAL SERV-**  
9 **ICES CORPORATION.**

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

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

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

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

23 “(A) is described in subsection (a); and

24 “(B) is present in the United States at the time  
25 the legal assistance is provided.

1       “(3)(A) No party may bring a civil action for dam-  
2 ages or another complaint on behalf of a nonimmigrant  
3 described in section 101(a)(15)(H)(ii)(a) of the Immigra-  
4 tion and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a))  
5 (referred to in this subsection as an ‘H-2A worker’) un-  
6 less—

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

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

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

21       “(B) If the mediator finds that an agricultural em-  
22 ployer, agricultural association, or farm labor contractor  
23 has corrected a violation of this Act or a regulation under  
24 this Act not later than 14 days after the date on which  
25 such agricultural employer, agricultural association, or

1 farm labor contractor received written notification of such  
2 violation, no action may be brought under this section with  
3 respect to such violation.

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

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

13 “(4) An employer of an H-2A worker shall not be  
14 required to waive any requirements of any food safety pro-  
15 grams, such as sign in requirements, for any recipient of  
16 grants or contracts under section 1007 of the Legal Serv-  
17 ices Corporation Act (42 U.S.C. 1996f), or any employee  
18 of such recipient.

19 “(5) The employer of an H-2A worker shall post the  
20 contact information of the Legal Services Corporation in  
21 the dwelling and at the work site of each nonimmigrant  
22 employee in a language in which all employees can under-  
23 stand.

24 “(6) There are authorized to be appropriated to the  
25 Federal Mediation and Conciliation Service for each fiscal

1 year such sums as may be necessary to carry out the medi-  
2 ation process described in this subsection.”; and

3 (2) by adding at the end the following:

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

11 “(2) In this subsection, the term ‘fees and other ex-  
12 penses’ has the meaning given the term in section  
13 514(b)(1)(A) of title 5, United States Code.

14 “(3) The court shall take whatever steps necessary,  
15 including the imposition of sanctions, to ensure compli-  
16 ance with this subsection.”.

17 **SEC. 12305. AUTHORIZATION OF APPROPRIATIONS.**

18 There are authorized to be appropriated to the De-  
19 partment of Homeland Security and the Department of  
20 State such sums as may be necessary to adjudicate H-  
21 2A applications.