

118TH CONGRESS  
1ST SESSION

# H. R. 3734

To amend the Immigration and Nationality Act to provide for an H-2C nonimmigrant classification, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 25, 2023

Mr. SMUCKER (for himself and Mr. CUELLAR) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Ways and Means, and Oversight and Accountability, 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

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## A BILL

To amend the Immigration and Nationality Act to provide for an H-2C nonimmigrant classification, 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.**

4 This Act may be cited as the “Essential Workers for  
5 Economic Advancement Act”.

1 **SEC. 2. NONIMMIGRANT CLASSIFICATION FOR H-2C NON-**  
 2 **IMMIGRANTS.**

3 Section 101(a)(15)(H)(ii) of the Immigration and  
 4 Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)) is amended  
 5 by inserting “(c) who is coming temporarily to the United  
 6 States to perform services or labor for a registered non-  
 7 agricultural employer in a registered position (as those  
 8 terms are defined in section 219A(a)) in accordance with  
 9 the requirements under section 219A; or” before “(iii)  
 10 have a residence”.

11 **SEC. 3. ADMISSION OF H-2C NONIMMIGRANT WORKERS.**

12 (a) **ADMISSION OF H-2C NONIMMIGRANT WORK-**  
 13 **ERS.—**

14 (1) **IN GENERAL.—**Chapter 2 of title II of the  
 15 Immigration and Nationality Act (8 U.S.C. 1181 et  
 16 seq.) is amended by adding at the end the following:

17 **“SEC. 219A. ADMISSION OF H-2C NONIMMIGRANT WORK-**  
 18 **ERS.**

19 “(a) **DEFINITIONS.—**In this section:

20 “(1) **DEPARTMENT.—**Except as otherwise spe-  
 21 cifically provided, the term ‘Department’ means the  
 22 Department of Homeland Security.

23 “(2) **ELIGIBLE OCCUPATION.—**The term ‘eligi-  
 24 ble occupation’ means an eligible occupation de-  
 25 scribed in subsection (e)(3).

26 “(3) **EMPLOYER.—**

1           “(A) IN GENERAL.—The term ‘employer’  
2 means any person or operational unit of a for-  
3 profit or nonprofit entity that is operating inde-  
4 pendently in a county or metropolitan statistical  
5 area and who hires an individual for employ-  
6 ment in the United States.

7           “(B) TREATMENT OF SINGLE EM-  
8 PLOYER.—For purposes of determining the  
9 number of employees or United States workers  
10 employed by an employer, a single entity shall  
11 be treated as 1 employer.

12           “(4) ENDURING JOB OPENING.—The term ‘en-  
13 during job opening’ refers to a job opening that—

14           “(A) remains unfilled on the first day of  
15 the month for 3 consecutive months; or

16           “(B) is unfilled for more than 60 days in  
17 a period of 90 consecutive days.

18           “(5) FULL EMPLOYMENT AREA.—The term ‘full  
19 employment area’ refers to any county or metropoli-  
20 tan statistical area where the unemployment rate  
21 during the fiscal quarter during which an application  
22 is submitted by an employer is equal or less than 7.9  
23 percent.

1           “(6) H-2C NONIMMIGRANT.—The term ‘H-2C  
2 nonimmigrant’ means an alien admitted as a non-  
3 immigrant pursuant to section 101(a)(15)(H)(ii)(c).

4           “(7) H-2C NONIMMIGRANT STATUS.—The term  
5 ‘H-2C nonimmigrant status’ means status granted  
6 to an alien admitted as a nonimmigrant pursuant to  
7 section 101(a)(15)(H)(ii)(c).

8           “(8) INDUSTRIES WITH COMPARATIVELY LOW  
9 SALES PER EMPLOYEE.—The term ‘industries with  
10 comparatively low sales per employee’ means those  
11 industries that rank in the lowest ten when dividing  
12 sales by the number of employees in the ECNBASIC  
13 Dataset, as shown in the ‘All Sectors: Summary Sta-  
14 tistics for the U.S.’ using the three-digits North  
15 American Industry Classification System (NAICS).  
16 This table provides summary statistics for establish-  
17 ments and firms with paid employees.

18           “(9) INITIAL H-2C NONIMMIGRANT.—The term  
19 ‘initial H-2C nonimmigrant’ means an alien—

20           “(A) issued an H-2C-nonimmigrant visa  
21 by the Secretary of State authorizing the ad-  
22 mission of that alien to the United States for  
23 the first time as an H-2C nonimmigrant; and

24           “(B) does not include an alien on or after  
25 the date the alien commences employment in

1 H-2C nonimmigrant status with a registered  
2 employer in a registered position.

3 “(10) LAY OFF.—The term ‘lay off’—

4 “(A) means to cause a worker to lose em-  
5 ployment, other than through a discharge for  
6 inadequate performance, violation of workplace  
7 rules, cause, voluntary departure, voluntary re-  
8 tirement, or the expiration of a grant or con-  
9 tract; and

10 “(B) does not include any situation in  
11 which the worker is offered and refused to ac-  
12 cept, as an alternative to such loss of employ-  
13 ment, a similar employment opportunity with  
14 the same employer at equivalent or higher com-  
15 pensation and benefits than the position from  
16 which the employee was discharged.

17 “(11) METROPOLITAN STATISTICAL AREA.—  
18 The term ‘metropolitan statistical area’ means a ge-  
19 ographic area designated as a metropolitan statis-  
20 tical area by the Director of the Office of Manage-  
21 ment and Budget.

22 “(12) REGISTERED EMPLOYER.—The term  
23 ‘registered employer’ means an operational business  
24 unit of a nonagricultural employer that is operating  
25 independently in a full employment area and is des-

1       ignated by the Secretary as a registered employer  
2       under subsection (d).

3               “(13) REGISTERED POSITION.—The term ‘reg-  
4       istered position’ means a position designated as a  
5       registered position under subsection (e).

6               “(14) SCARCITY RECRUITMENT FEE.—The  
7       term ‘scarcity recruitment fee’ refers to a payment  
8       equal to 5 percent of an H-2C immigrant’s esti-  
9       mated annual compensation that a registered em-  
10      ployer remits to the Secretary as part of the employ-  
11      er’s application for a registered position in order to  
12      demonstrate said employer’s inability to recruit a  
13      United States worker for the position.

14              “(15) SECRETARY.—Except as otherwise spe-  
15      cifically provided, the term ‘Secretary’ means the  
16      Secretary of Homeland Security.

17              “(16) SINGLE ENTITY.—The term ‘single enti-  
18      ty’ means any group treated as a single employer  
19      under subsection (b), (c), (m), or (o) of section 414  
20      of the Internal Revenue Code of 1986.

21              “(17) SMALL BUSINESS.—The term ‘small busi-  
22      ness’ means an employer that employs fewer than 36  
23      full-time employees or fewer than 51 full-time equiv-  
24      alent employees.

1           “(18) UNITED STATES WORKER.—The term  
2           ‘United States worker’ means an individual who is—

3                   “(A) lawfully employed or seeking employ-  
4                   ment in the United States; and

5                   “(B)(i) a national of the United States;

6                   “(ii) an alien lawfully admitted for perma-  
7                   nent residence; or

8                   “(iii) any other alien authorized to work in  
9                   the United States with no limitation as to the  
10                  alien’s employer.

11           “(19) ZONE 1 OCCUPATION.—The term ‘zone 1  
12           occupation’ means an occupation that requires little  
13           or no preparation and is classified as a zone 1 occu-  
14           pation on—

15                   “(A) the Occupational Information Net-  
16                   work Database (O\*NET) on the date of the en-  
17                   actment of this section; or

18                   “(B) such Database or a similar successor  
19                   database, as designated by the Secretary of  
20                   Labor, after the date of the enactment of this  
21                   section.

22           “(20) ZONE 2 OCCUPATION.—The term ‘zone 2  
23           occupation’ means an occupation that requires some  
24           preparation and is classified as a zone 2 occupation  
25           on—

1           “(A) the Occupational Information Net-  
2           work Database (O\*NET) on the date of the en-  
3           actment of this section; or

4           “(B) such Database or a similar successor  
5           database, as designated by the Secretary of  
6           Labor, after the date of the enactment of this  
7           section.

8           “(21) ZONE 3 OCCUPATION.—The term ‘zone 3  
9           occupation’ means an occupation that requires me-  
10          dium preparation and is classified as a zone 3 occu-  
11          pation on—

12           “(A) the Occupational Information Net-  
13           work Database (O\*NET) on the date of the en-  
14           actment of this section; or

15           “(B) such Database or a similar successor  
16           database, as designated by the Secretary of  
17           Labor, after the date of the enactment of this  
18           section.

19          “(b) ADMISSION INTO THE UNITED STATES.—An  
20          alien is eligible to be admitted as an H-2C nonimmigrant  
21          if the alien—

22           “(1) has received an offer of employment from  
23           a registered employer; and

24           “(2) otherwise meets the requirements of this  
25           section.

1 “(c) H-2C NONIMMIGRANTS.—

2 “(1) APPLICATION.—An alien seeking to be an  
3 H-2C nonimmigrant shall submit an application to  
4 the Secretary.

5 “(2) ATTESTATION.—Each application sub-  
6 mitted under paragraph (1) for an alien shall in-  
7 clude an attestation as follows:

8 “(A) That the H-2C nonimmigrant will re-  
9 port to such nonimmigrant’s initial employment  
10 in a registered position not later than 14 days  
11 after such nonimmigrant is admitted.

12 “(B) That the H-2C nonimmigrant will  
13 accept only registered positions and abide by all  
14 terms and conditions of H-2C nonimmigrant  
15 status.

16 “(C) That the H-2C nonimmigrant will  
17 not bring a family member to the United States  
18 in violation of any provision of this Act.

19 “(3) APPLICATION REVIEW.—The Secretary  
20 shall adjudicate an application submitted under  
21 paragraph (1) not later than 45 days after the re-  
22 ceipt of such application.

23 “(4) FEES.—

24 “(A) IN GENERAL.—Each application sub-  
25 mitted under paragraph (1) shall include a fee

1 in the amount determined by the Secretary ad-  
2 judicating such application to be necessary to  
3 cover the cost of adjudicating the application  
4 within 45 days.

5 “(B) PREMIUM PROCESSING.—The Sec-  
6 retary and the Secretary of State shall create  
7 an expedited process to review an application  
8 submitted under paragraph (1) for an addi-  
9 tional fee, in an amount determined by such  
10 Secretaries.

11 “(5) ELIGIBILITY FOR H-2C NONIMMIGRANT  
12 STATUS.—No alien may be admitted as an H-2C  
13 nonimmigrant if the alien—

14 “(A) is inadmissible under this Act;

15 “(B) fails to pass a criminal background  
16 check or a national security background check;

17 “(C) is from a country determined by the  
18 Secretary of State to have repeatedly provided  
19 support for acts of international terrorism pur-  
20 suant to—

21 “(i) section 6(j)(1)(A) of the Export  
22 Administration Act of 1979 (50 U.S.C.  
23 App. 2405(j)(1)(A)) (or successor statute);

24 “(ii) section 40(d) of the Arms Export  
25 Control Act (22 U.S.C. 2780(d)); or

1 “(iii) section 620A(a) of the Foreign  
2 Assistance Act of 1961 (22 U.S.C.  
3 2371(a)); or

4 “(D) has not received an offer of employ-  
5 ment from a registered employer in a registered  
6 position.

7 “(6) EMPLOYMENT.—

8 “(A) INITIAL EMPLOYMENT.—

9 “(i) REPORTING TO EMPLOYMENT.—  
10 An initial H-2C nonimmigrant shall report  
11 to such nonimmigrant’s initial employment  
12 in a registered position not later than 14  
13 days after such nonimmigrant is admitted  
14 to the United States.

15 “(ii) REPORTING TO THE SEC-  
16 RETARY.—An initial H-2C nonimmigrant  
17 shall maintain contact with the Secretary  
18 after such H-2C nonimmigrant is admit-  
19 ted to the United States but before report-  
20 ing to the initial employment at an interval  
21 that is determined by the Secretary, but  
22 not less than every 7 days.

23 “(B) PERIODS OF UNEMPLOYMENT.—An  
24 H-2C nonimmigrant—

1                   “(i) may be unemployed for a period  
2                   of not more than 45 consecutive days of  
3                   presence in the United States; and

4                   “(ii) shall depart the United States if  
5                   such H-2C nonimmigrant is unable to ob-  
6                   tain employment during such period.

7                   “(7) INITIAL PERIOD OF AUTHORIZED PRES-  
8                   ENCE.—An H-2C nonimmigrant may be physically  
9                   present in the United States for an initial period of  
10                  not more than a total of 36 months.

11                  “(8) RENEWAL.—An H-2C nonimmigrant may  
12                  renew his or her H-2C nonimmigrant status for not  
13                  more than 2 additional consecutive periods of au-  
14                  thorized presence.

15                  “(9) TRAVEL.—An H-2C nonimmigrant may  
16                  travel outside the United States and be readmitted  
17                  to the United States.

18                  “(10) PENALTIES.—If an H-2C nonimmigrant  
19                  fails to comply with any other term or condition of  
20                  H-2C nonimmigrant status or remains in the  
21                  United States for 10 days after the date of the expi-  
22                  ration of his or her period of authorized presence  
23                  without status under the immigration laws, then the  
24                  Secretary shall mandatorily—

1           “(A) subject such nonimmigrant to the  
2           revocation of employment authorization; and

3           “(B) initiate and pursue removal under  
4           section 237(a)(1)(C)(i).

5           “(d) REGISTERED EMPLOYER.—

6           “(1) APPLICATION.—An employer seeking to be  
7           a registered employer may submit an application to  
8           the Secretary. Each such application shall include  
9           the following:

10           “(A) Documentation to establish that the  
11           employer is a bona fide employer operating in  
12           a full employment area.

13           “(B) Evidence that the employer is current  
14           in payment of payroll taxes.

15           “(C) The employer’s Federal tax identifica-  
16           tion number or employer identification number  
17           issued by the Internal Revenue Service.

18           “(D) The number of H-2C nonimmigrants  
19           the employer estimates the employer will seek  
20           to employ annually.

21           “(E) Any documented evidence of employer  
22           participation in industry recognized training  
23           and safety programs for U.S. workers.

24           “(2) REFERRAL FOR FRAUD INVESTIGATION.—

25           The Secretary may refer an application submitted

1 under paragraph (1) or subsection (e)(1)(A) to the  
2 Fraud Detection and National Security Directorate  
3 of U.S. Citizenship and Immigration Services for po-  
4 tential investigation if there is evidence of fraud par-  
5 ticular to such application.

6 “(3) INELIGIBLE EMPLOYERS.—

7 “(A) IN GENERAL.—Notwithstanding any  
8 other applicable penalties under law, the Sec-  
9 retary shall deny an employer’s application to  
10 be a registered employer if the Secretary deter-  
11 mines, after notice and an opportunity for a  
12 hearing, that the employer submitting such ap-  
13 plication—

14 “(i) has, in such application (includ-  
15 ing any attestations required by law)—

16 “(I) knowingly misrepresented a  
17 material fact;

18 “(II) knowingly made a fraudu-  
19 lent statement; or

20 “(III) knowingly failed to comply  
21 with the terms of such attestations;

22 “(ii) failed to cooperate in the process  
23 established pursuant to subsection (m);

24 “(iii) has been convicted of an offense  
25 under chapter 77 of title 18, United States

1 Code, any conspiracy to commit such an  
2 offense, or any human trafficking offense  
3 under State or territorial law;

4 “(iv) has, within 2 years prior to the  
5 date of the application—

6 “(I) been finally adjudicated as  
7 having committed any hazardous oc-  
8 cupation orders violation resulting in  
9 injury or death under the child labor  
10 provisions contained in section 12 of  
11 the Fair Labor Standards Act of  
12 1938 (29 U.S.C. 212) or any perti-  
13 nent regulation;

14 “(II) received a final adjudication  
15 assessing a civil monetary penalty for  
16 a pattern and practice of willful viola-  
17 tion of the minimum wage provisions  
18 of section 6 of the Fair Labor Stand-  
19 ards Act of 1938 (29 U.S.C. 206); or

20 “(III) received a final adjudica-  
21 tion assessing a civil monetary penalty  
22 for a pattern and practice of willful  
23 violation of the overtime provisions of  
24 section 7 of the Fair Labor Standards

1 Act of 1938 (29 U.S.C. 207) or any  
2 regulations thereunder; or

3 “(v) has, within 2 years prior to the  
4 date of application, received a final adju-  
5 dication for a willful violation involving in-  
6 jury or death—

7 “(I) of section 5 of the Occupa-  
8 tional Safety and Health Act of 1970  
9 (29 U.S.C. 654);

10 “(II) of any standard, rule, or  
11 order promulgated pursuant to section  
12 6 of the Occupational Safety and  
13 Health Act of 1970 (29 U.S.C. 655);  
14 or

15 “(III) of a plan approved under  
16 section 18 of the Occupational Safety  
17 and Health Act of 1970 (29 U.S.C.  
18 667).

19 “(B) LENGTH OF INELIGIBILITY.—

20 “(i) TEMPORARY INELIGIBILITY.—An  
21 employer described in clause (i) or (ii) of  
22 subparagraph (A) whose application is de-  
23 nied shall not be eligible to be a registered  
24 employer for a period that is not less than  
25 1 year or a time period determined by the

1 Secretary, whichever is greater, and not  
2 more than 2 years.

3 “(ii) PERMANENT INELIGIBILITY.—  
4 An employer described in clause (iii), (iv),  
5 or (v) of subparagraph (A) shall be perma-  
6 nently ineligible to be a registered em-  
7 ployer.

8 “(4) TERM OF REGISTRATION.—The Secretary  
9 may approve an application only for a term, begin-  
10 ning on the date of approval, and ending on the  
11 later of—

12 “(A) the date that is 3 years thereafter; or

13 “(B) the date that is 3 months after the  
14 date on which the employer has no registered  
15 positions.

16 “(5) RENEWAL.—

17 “(A) IN GENERAL.—An employer may sub-  
18 mit an application to renew the employer’s sta-  
19 tus as a registered employer for additional peri-  
20 ods under paragraph (4).

21 “(B) ATTESTATION.—An application for  
22 renewal under subparagraph (A) shall include  
23 an attestation described in paragraph (7)(A).

24 “(6) FEE.—At the time an employer’s applica-  
25 tion to be a registered employer is approved, such

1 employer shall pay a fee of \$500, and shall pay such  
2 fee every 3 years thereafter while the employer re-  
3 mains a registered employer.

4 “(7) CONTINUED ELIGIBILITY.—

5 “(A) ATTESTATION.—Each registered em-  
6 ployer shall attest to the Secretary each year—

7 “(i) that the registered employer has  
8 provided the wages and working conditions  
9 the registered employer agreed to provide  
10 to its H-2C nonimmigrant employees  
11 under paragraph (5)(B);

12 “(ii) that the registered employer re-  
13 mains a bona fide employer operating in a  
14 full employment area; and

15 “(iii) to the number of H-2C non-  
16 immigrants the employer employed the  
17 prior year.

18 “(B) NO LONGER A FULL EMPLOYMENT  
19 AREA.—An employer is ineligible to file an ap-  
20 plication for a new permit or to renew an exist-  
21 ing permit if the unemployment rate in the  
22 county or metropolitan statistical area where  
23 the business said employer operates rises so  
24 that the area is no longer designated as a full  
25 employment area.

1           “(8) NOTICE OF FAILURE OF H-2C NON-  
2 IMMIGRANT TO APPEAR.—An employer shall inform  
3 the Secretary if an H-2C nonimmigrant does not  
4 appear for employment with the employer during the  
5 time period specified in subsection (e)(6)(A)(i).

6           “(e) REGISTERED POSITIONS.—

7           “(1) IN GENERAL.—

8           “(A) APPLICATION.—Each employer may  
9 submit with an application or renewal under  
10 subsection (d) for adjudication to the Secretary  
11 an application to designate a registered position  
12 for which the employer is seeking to hire an H-  
13 2C nonimmigrant at any time during the year  
14 without regard to the date the employer needs  
15 each position to be filled.

16           “(B) ATTESTATION.—An application sub-  
17 mitted under subparagraph (A) shall include a  
18 general description of each such position and an  
19 attestation to each of the following:

20           “(i) The number of full-time equiva-  
21 lent employees of the employer.

22           “(ii) The occupational category, as  
23 classified by Bureau of Labor Statistics,  
24 for which each registered position is  
25 sought.

1           “(iii) That the wages to be paid to H–  
2           2C nonimmigrants employed by the em-  
3           ployer in each registered position will be  
4           the greater of—

5                   “(I) the actual wage level paid by  
6                   the employer to other employees with  
7                   similar experience and qualifications  
8                   for such position in the same location;  
9                   or

10                   “(II) the prevailing wage level for  
11                   the occupational classification of the  
12                   position in the metropolitan statistical  
13                   area of the employment, based on the  
14                   best information available as of the  
15                   time of filing the application.

16           “(iv) That the employer has carried  
17           out the recruiting activities required by  
18           paragraph (2)(B).

19           “(v) That, subject to subparagraphs  
20           (B) and (C) of paragraph (2)—

21                   “(I) there is no equally or better  
22                   qualified United States worker who  
23                   has applied for the position and who  
24                   is ready, willing, and able to fill such  
25                   position; or

1                   “(II) such position qualifies as  
2                   an enduring job opening.

3                   “(vi) That there is not a strike, lock-  
4                   out, or work stoppage in the course of a  
5                   labor dispute in the occupation at the place  
6                   of employment at which the H-2C non-  
7                   immigrant will be employed. If such strike,  
8                   lockout, or work stoppage occurs following  
9                   submission of the application, the employer  
10                  will provide notification in accordance with  
11                  all applicable regulations.

12                  “(vii)(I) The employer has not laid off  
13                  and will not lay off a United States worker  
14                  during the period beginning 45 days prior  
15                  to and ending 45 days after the date the  
16                  employer files an application for designa-  
17                  tion of a position for which the H-2C non-  
18                  immigrant is sought or hires such H-2C  
19                  nonimmigrant, unless the employer has  
20                  made a reasonable effort to contact and  
21                  offer such United States worker the posi-  
22                  tion, or documented the legitimate reasons  
23                  that such United States worker is not  
24                  qualified or available for the position.

1                   “(II) A United States worker is not  
2 laid off for purposes of this clause if—

3                   “(aa) at the time such worker’s  
4 employment is terminated, such work-  
5 er is not employed in the same occu-  
6 pation and in the same metropolitan  
7 statistical area where the registered  
8 position is located. A United States  
9 worker is not laid off for purposes of  
10 this clause if, in the 45 calendar days  
11 before the hiring of an H-2C non-  
12 immigrant, the employer adds another  
13 United States worker so that the total  
14 number of United States workers em-  
15 ployed by such employer in the same  
16 occupation as such H-2C non-  
17 immigrant and in the same metropoli-  
18 tan statistical area where the reg-  
19 istered position is located has not de-  
20 creased; or

21                   “(bb) in the 45 calendar days  
22 after the hiring of an H-2C non-  
23 immigrant, the employer adds another  
24 United States worker within 5 busi-  
25 ness days after laying off a United

1 States worker so that the total num-  
2 ber of United States workers em-  
3 ployed by such employer in the same  
4 occupation as such H-2C non-  
5 immigrant and in the same metropoli-  
6 tan statistical area where the reg-  
7 istered position is located has not de-  
8 creased.

9 “(viii) The number of workers whose  
10 jobs and job stability depend on the peti-  
11 tioned job positions being filled.

12 “(C) DEFINITIONS.—

13 “(i) BEST INFORMATION AVAIL-  
14 ABLE.—In subparagraph (B)(iii)(II), the  
15 term ‘best information available’, with re-  
16 spect to determining the prevailing wage  
17 for a position, means—

18 “(I) a controlling collective bar-  
19 gaining agreement, to which the em-  
20 ployer is a signatory and which sets  
21 wages for work performed by H-2C  
22 nonimmigrants;

23 “(II) if there is no controlling  
24 collective bargaining agreement as set  
25 forth in subclause (I), the local, State,

1 or Federal prevailing wage laws or or-  
2 dinances, for any time period during  
3 which the H-2C nonimmigrant per-  
4 forms work on a project for which  
5 payment of such wages is required by  
6 such laws or ordinances, and the em-  
7 ployer has signed a contract agreeing  
8 to pay such wages on that project; or

9 “(III) if there is no controlling  
10 collective bargaining agreement as set  
11 forth in subclause (I) and the H-2C  
12 nonimmigrant is not performing work  
13 on a project governed by a prevailing  
14 wage law or ordinance as set forth in  
15 subclause (II)—

16 “(aa) the wage level com-  
17 mensurate with the experience,  
18 training, and supervision re-  
19 quired for the job based on Bu-  
20 reau of Labor Statistics data; or

21 “(bb) a legitimate private  
22 wage survey of the wages paid  
23 for such positions in the metro-  
24 politan statistical area.

1           “(ii) LEGITIMATE PRIVATE WAGE  
2 SURVEY.—In this paragraph, the term ‘le-  
3 gitimate private wage survey’ means, in  
4 the case of an application under subpara-  
5 graph (A), a survey of wages by an entity  
6 other than the Federal Government—

7           “(I) for which the data has been  
8 collected during the 2-year period im-  
9 mediately preceding the date of the  
10 application;

11           “(II) that, if a published survey,  
12 has been published during the 2-year  
13 period immediately preceding the date  
14 of the application;

15           “(III) that is of the industry or  
16 occupation of intended employment;

17           “(IV) in which the employer job  
18 description is similar to the survey job  
19 description;

20           “(V) that is across industries  
21 that employ workers in the occupa-  
22 tion;

23           “(VI) for which the wage deter-  
24 mination is based on a weighted or  
25 straight average of the relevant wages,

1 or another valid measure of central  
2 tendency determined by the Secretary  
3 of Labor of relevant wage levels; and

4 “(VII) that identifies a statis-  
5 tically valid methodology that was  
6 used to collect the data.

7 “(D) PERMIT.—The Secretary shall pro-  
8 vide each registered employer whose application  
9 submitted under subparagraph (A) is approved  
10 with a permit that includes the number and de-  
11 scription of such employer’s approved registered  
12 positions at the time of such approval.

13 “(E) REGISTRY OF REGISTERED POSI-  
14 TIONS.—

15 “(i) MAINTENANCE OF REGISTRY.—  
16 The Secretary shall develop and maintain  
17 a registry of registered positions.

18 “(ii) AVAILABILITY ON WEBSITE.—  
19 Such registry shall be accessible on a  
20 website maintained by the Secretary.

21 “(iii) AVAILABILITY ON STATE WORK-  
22 FORCE AGENCY WEBSITES.—Each work-  
23 force agency of each State shall be linked  
24 to such registry.

1                   “(iv) CONDITIONS OF AVAILABILITY  
2                   ON WEBSITE.—

3                   “(I) REGISTERED POSITIONS.—

4                   Each registered position shall be in-  
5                   cluded in the registry of registered po-  
6                   sitions maintained by the Secretary  
7                   and shall remain available for viewing  
8                   on such registry throughout the pe-  
9                   riod of approval under paragraph (5).

10                  “(II) AVAILABILITY AND ELIGI-  
11                  BILITY.—The Secretary shall ensure  
12                  that the registry indicates whether  
13                  each registered position in the registry  
14                  is filled or unfilled.

15                  “(2) REQUIREMENTS.—

16                  “(A) ELIGIBLE OCCUPATION.—Each reg-  
17                  istered position shall be for a position in an eli-  
18                  gible occupation as described in paragraph (3).

19                  “(B) RECRUITMENT OF UNITED STATES  
20                  WORKERS.—

21                  “(i) REQUIREMENTS.—A position may  
22                  not be a registered position unless the reg-  
23                  istered employer—

24                  “(I) advertises the position for a  
25                  period of 30 days, including the wage

1 range, location or locations, and pro-  
2 posed start date—

3 “(aa) on the internet website  
4 maintained by the Secretary of  
5 Labor for the purpose of such  
6 advertising; and

7 “(bb) with the workforce  
8 agency of the State where the po-  
9 sition will be located; and

10 “(II) except as provided for in  
11 subsection (f)(4)(A)(ii), carries out  
12 not less than 3 of the recruiting ac-  
13 tivities described in subparagraph (C).

14 “(ii) DURATION OF ADVERTISING.—  
15 The 30-day periods required by items (aa)  
16 and (bb) of clause (i)(I) may occur at the  
17 same time.

18 “(C) RECRUITING ACTIVITIES.—Recruiting  
19 activities described in this subparagraph shall  
20 take place no earlier than 60 days before an  
21 employer files an application for a permit to  
22 hire an H-2C nonimmigrant and may be con-  
23 current with the requirements of subsection  
24 (e)(2)(B). A recruiting activity is any of the fol-  
25 lowing:

1                   “(i) Advertising such position at a job  
2 fair.

3                   “(ii) Advertising such position on the  
4 employer’s external website.

5                   “(iii) Advertising such position on a  
6 job search internet website.

7                   “(iv) Advertising such position using a  
8 presentation or posting at a vocational  
9 school, career technical school, community  
10 college, high school, or other educational or  
11 training site.

12                   “(v) Posting such position with a  
13 trade association.

14                   “(vi) Utilizing a search firm to seek  
15 applicants for such position.

16                   “(vii) Advertising such position  
17 through a recruitment program with a  
18 placement office at a vocational school, ca-  
19 reer technical school, community college,  
20 high school, or other educational or train-  
21 ing site.

22                   “(viii) Advertising such position with  
23 a local library, journal, or newspaper.

1           “(ix) Seeking a candidate for such po-  
2           sition through an employee referral pro-  
3           gram with incentives.

4           “(x) Advertising such position on  
5           radio or television.

6           “(xi) Advertising such position  
7           through an advertising, posting, or presen-  
8           tation with a newspaper, internet website,  
9           job fair, or community event targeted to  
10          constituencies designed to increase em-  
11          ployee diversity.

12          “(xii) Advertising such position  
13          through a career day presentation at a  
14          local high school or community organiza-  
15          tion.

16          “(xiii) Providing in-house training for  
17          such position.

18          “(xiv) Providing third-party training  
19          for such position.

20          “(xv) Advertising such position  
21          through recruitment, educational, or other  
22          cooperative programs offered by the em-  
23          ployer and a local economic development  
24          authority.

1           “(xvi) Advertising such position twice  
2           in a Sunday edition in a primary daily cir-  
3           culation newspaper.

4           “(xvii) Advertising such position on-  
5           site at the business location.

6           “(xviii) Advertising such position  
7           through major social media platforms.

8           “(xix) Advertising such position  
9           through public listservs, newsletters, and  
10          email updates.

11          “(3) ELIGIBLE OCCUPATION.—

12           “(A) IN GENERAL.—An occupation is an  
13          eligible occupation if the occupation—

14           “(i) is a zone 1 occupation, a zone 2  
15          occupation, or zone 3 occupation; and

16           “(ii) is not an excluded occupation  
17          under subparagraph (B).

18           “(B) OCCUPATIONS REQUIRING COLLEGE  
19          DEGREES.—An occupation that is listed in the  
20          Occupational Outlook Handbook published by  
21          the Bureau of Labor Statistics (or similar suc-  
22          cessor publication) that is classified as requir-  
23          ing an individual with a bachelor’s degree or  
24          higher level of education may not be an eligible  
25          occupation.

1           “(C) PUBLICATION.—The Secretary of  
2 Labor shall publicize the eligible occupations,  
3 designated as zone 1 occupations, zone 2 occu-  
4 pations, or zone 3 occupations, on an ongoing  
5 basis on a publicly available internet website.

6           “(4) FILLING OF VACANCIES.—If an H-2C  
7 nonimmigrant terminates employment in a reg-  
8 istered position or is terminated from such employ-  
9 ment by the registered employer, such employer may  
10 fill that vacancy by hiring an H-2C nonimmigrant  
11 other than an initial H-2C nonimmigrant.

12           “(5) PERIOD OF APPROVAL.—

13           “(A) IN GENERAL.—Except as provided in  
14 subparagraph (B), a registered position shall be  
15 approved by the Secretary for a period that be-  
16 gins on the date of such approval and ends on  
17 the earliest of—

18           “(i) the date the employer’s status as  
19 a registered employer is terminated;

20           “(ii) 3 years after the date of such ap-  
21 proval;

22           “(iii) 240 days after the date of such  
23 approval if such position has not been  
24 filled by an H-2C nonimmigrant at any  
25 point during such time; or

1                   “(iv) upon termination of the reg-  
2                   istered position by the employer.

3                   “(B) RENEWAL.—An approval under sub-  
4                   paragraph (A) shall be renewed for not more  
5                   than 2 additional periods at the request of the  
6                   registered employer as provided in this subpara-  
7                   graph if such registered employer fulfills the re-  
8                   quirements of paragraphs (1)(C) and (2).

9                   “(C) RENEWING EMPLOYER EXEMPTION.—  
10                  Renewals of registered positions by employers  
11                  shall not be counted toward the limits estab-  
12                  lished under paragraph (1)(A) or (2)(D) of sub-  
13                  section (f) or counted for the purposes of a nu-  
14                  merical limitation under subparagraph (B) or  
15                  (C) of subsection (f)(2).

16                  “(D) SECRETARY AUTHORITY TO TERMI-  
17                  NATE REGISTERED POSITION.—The Secretary  
18                  shall terminate a registered position if the Sec-  
19                  retary determines—

20                         “(i) that an employer has purposefully  
21                         allowed a registered position to be used for  
22                         an alien to gain admission to the United  
23                         States as an H-2C nonimmigrant with no  
24                         intention of such alien working for such  
25                         registered employer; or

1           “(ii) that there exists a pattern and  
2           practice of initial H-2C nonimmigrants  
3           failing to report in accordance with the  
4           time period specified in subsection  
5           (c)(6)(A)(i).

6           “(6) FEES.—

7           “(A) REGISTRATION FEE.—

8           “(i) IN GENERAL.—At the time an ap-  
9           plication to register a position is approved  
10          and after each renewal of such position,  
11          each registered employer shall pay a fee in  
12          an amount determined by the Secretary.

13          “(ii) USE OF FEE.—Except as other-  
14          wise provided in this section, a fee col-  
15          lected under clause (i) shall be used to  
16          fund any action to carry out this section,  
17          except for subsection (q) and subsection  
18          (p)(2).

19          “(B) PROHIBITION ON OTHER FEES.—A  
20          registered employer may not be required to pay  
21          an additional fee other than any fees specified  
22          in this Act.

23          “(7) INITIAL REVIEW OF APPLICATIONS.—

24          “(A) IN GENERAL.—For applications filed  
25          and considered under paragraph (1)—

1           “(i) unless the Secretary determines  
2           that the application is incomplete, facially  
3           invalid, or obviously inaccurate, the Sec-  
4           retary, not later than 10 business days  
5           after the date on which such application  
6           was filed, shall either approve or reject the  
7           application and provide the applicant with  
8           notice of such action by means ensuring  
9           same or next day delivery; and

10           “(ii) if the Secretary determines that  
11           the application is incomplete, facially in-  
12           valid, or obviously inaccurate, the Sec-  
13           retary shall—

14                   “(I) not later than 10 business  
15                   days after the date on which such ap-  
16                   plication was filed, notify the appli-  
17                   cant of the deficiencies to be corrected  
18                   by means ensuring same or next day  
19                   delivery; and

20                   “(II) not later than 10 business  
21                   days after receipt of the corrected ap-  
22                   plication, approve or deny the applica-  
23                   tion and provide the applicant with  
24                   notice of such action by means ensur-  
25                   ing same or next day delivery.

1           “(B) PREMIUM PROCESSING.—The Sec-  
2           retary shall establish a process for expedited  
3           processing of applications under this section,  
4           subject to the payment of an additional fee, as  
5           determined by the Secretary.

6           “(C) FEE REDUCTION.—The Secretary  
7           shall reduce the registration fee under para-  
8           graph (6) by 5 percent for each day the applica-  
9           tion is delayed beyond the required review peri-  
10          ods under subparagraph (A).

11          “(8) EXPEDITED REVIEW.—Not later than 1  
12          year after the date of the enactment of the Essential  
13          Workers for Economic Advancement Act, the Sec-  
14          retary shall promulgate regulations to provide for an  
15          expedited procedure for the review of a denial of an  
16          application under this section by the Secretary.

17          “(f) NUMERICAL LIMITATION.—

18                 “(1) REGISTERED POSITIONS.—Subject to  
19                 paragraphs (3), (4), and (5), the maximum number  
20                 of registered positions that may be approved by the  
21                 Secretary for a fiscal year is as follows:

22                         “(A) For the first full fiscal year after the  
23                         effective date of the Essential Workers for Eco-  
24                         nomic Advancement Act that aliens are admit-  
25                         ted as H-2C nonimmigrants, 65,000.

1           “(B) For each fiscal year after that first  
2 fiscal year, the level calculated for that fiscal  
3 year under paragraph (2).

4           “(2) SUBSEQUENT FISCAL YEARS.—

5           “(A) DEFINITION OF CURRENT FISCAL  
6 YEAR AND PRECEDING FISCAL YEAR.—In this  
7 paragraph:

8           “(i) CURRENT FISCAL YEAR.—The  
9 term ‘current fiscal year’ means the fiscal  
10 year for which the calculation of the nu-  
11 merical limits under this paragraph is  
12 being performed.

13           “(ii) PRECEDING FISCAL YEAR.—The  
14 term ‘preceding fiscal year’ means the fis-  
15 cal year immediately preceding the current  
16 fiscal year.

17           “(B) NUMERICAL LIMITATION.—Subject to  
18 subparagraph (D), the maximum number of  
19 registered positions that may be approved by  
20 the Secretary for a fiscal year after the first fis-  
21 cal year referred to in paragraph (1)(A) shall  
22 be equal to—

23           “(i) 65,000 for the first fiscal year in  
24 which the program is implemented; and

25           “(ii) in any subsequent fiscal year—

1           “(I) if the total number of reg-  
2           istered positions allocated for that fis-  
3           cal year are allotted within the first  
4           quarter of that fiscal year, then an  
5           additional 20 percent of the allocated  
6           number shall be made available imme-  
7           diately and the allocated amount for  
8           the following fiscal year shall increase  
9           by 20 percent of the original allocated  
10          amount in the prior fiscal year;

11          “(II) if the total number of reg-  
12          istered positions allocated for that fis-  
13          cal year are allotted within the second  
14          quarter of that fiscal year, then an  
15          additional 15 percent of the allocated  
16          number shall be made available imme-  
17          diately and the allocated amount for  
18          the following fiscal year shall increase  
19          by 15 percent of the original allocated  
20          amount in the prior fiscal year;

21          “(III) if the total number of reg-  
22          istered positions allocated for that fis-  
23          cal year are allotted within the third  
24          quarter of that fiscal year, then an  
25          additional 10 percent of the allocated

1 number shall be made available imme-  
2 diately and the allocated amount for  
3 the following fiscal year shall increase  
4 by 10 percent of the original allocated  
5 amount in the prior fiscal year;

6 “(IV) if the total number of reg-  
7 istered positions allocated for that fis-  
8 cal year are allotted within the last  
9 quarter of that fiscal year, then the  
10 allocated amount for the following fis-  
11 cal year shall increase by 10 percent  
12 of the original allocated amount in the  
13 prior fiscal year; and

14 “(V) with the exception of the  
15 first subsequent fiscal year to the fis-  
16 cal year in which the program is im-  
17 plemented, if fewer registered posi-  
18 tions were allotted the previous fiscal  
19 year than the number of registered  
20 positions allocated for that year and  
21 the reason was not due to processing  
22 delays or delays in promulgating regu-  
23 lations, then the allocated amount for  
24 the following fiscal year shall decrease

1                   by 10 percent of the allocated amount  
2                   in the prior fiscal year.

3                   “(C) MINIMUM AND MAXIMUM LEVELS.—

4                   Notwithstanding the number of registered posi-  
5                   tions calculated under subparagraph (B), the  
6                   number of registered positions made available  
7                   for a fiscal year under this paragraph may not  
8                   be less than 45,000 or more than 85,000.

9                   “(D) SUBSEQUENT ALLOCATIONS.—

10                   “(i) IN GENERAL.—Subject to the  
11                   limitations under subparagraph (C)—

12                   “(I) the maximum number of  
13                   registered positions available for the  
14                   current fiscal year calculated under  
15                   subparagraph (B) may be increased  
16                   for the 6-month period beginning on  
17                   the first day of the current fiscal year  
18                   by 5 percent of the maximum number  
19                   of registered positions allocated for  
20                   that 6-month period under subsection  
21                   (h)(1), if all such allocated registered  
22                   positions have been approved prior to  
23                   the 6th month of that 6-month period;  
24                   and

1                   “(II) the maximum number of  
2                   registered positions available for the  
3                   current fiscal year calculated under  
4                   subparagraph (B) may be increased  
5                   for the 6-month period ending on the  
6                   last day of the current fiscal year by  
7                   5 percent of the maximum number of  
8                   registered positions allocated for that  
9                   6-month period under subsection  
10                  (h)(2), if all such allocated registered  
11                  positions have been approved prior to  
12                  the 6th month of that 6-month period.

13                  “(ii) LOTTERY ALLOCATION.—Addi-  
14                  tional registered positions made available  
15                  under clause (i) during a 6-month period  
16                  shall be allocated 3 weeks prior to the last  
17                  day of that 6-month period by lottery  
18                  among registered employers that submit  
19                  applications in accordance with this section  
20                  for such positions.

21                  “(3) SPECIAL ALLOCATIONS OF REGISTERED  
22                  POSITIONS.—

23                  “(A) AUTHORITY TO MAKE AVAILABLE.—  
24                  In addition to the number of registered posi-  
25                  tions made available for a fiscal year under

1 paragraphs (1) and (3), the Secretary shall  
2 make additional registered positions available,  
3 up to the maximum number of registered posi-  
4 tions specified in paragraph (3)(C), for the fis-  
5 cal year for a specific registered employer as  
6 described in this paragraph, if—

7 “(i)(I) the maximum number of reg-  
8 istered positions available under paragraph  
9 (2)(B) have been approved for the fiscal  
10 year and none remain available for alloca-  
11 tion; or

12 “(II) such registered employer is lo-  
13 cated in a full employment area;

14 “(ii) such registered employer has  
15 paid a scarcity recruitment fee; or

16 “(iii) in the case of registered employ-  
17 ers with 50 or fewer employees, such reg-  
18 istered employer has carried out not less  
19 than 7 of the recruiting activities described  
20 in subsection (e)(2)(C) and posts the posi-  
21 tion, including the wage range, location,  
22 and initial date of employment, for not less  
23 than 30 days—

24 “(I) on the internet website  
25 maintained by the Secretary of Labor

1 for the purpose of such advertising;  
2 and

3 “(II) with the workforce agency  
4 of the State where the position will be  
5 located.

6 “(B) RECRUITMENT.—

7 “(i) LIMITATION FOR INITIAL H-2C  
8 NONIMMIGRANTS.—Except as provided in  
9 clause (ii), an initial H-2C nonimmigrant  
10 may only enter the United States for ini-  
11 tial employment pursuant to a special allo-  
12 cation under this paragraph if the reg-  
13 istered employer has carried out at least 7  
14 of the recruiting activities described in sub-  
15 section (e)(2)(C) or has paid a scarcity re-  
16 cruitment fee.

17 “(ii) EXCEPTION.—A registered em-  
18 ployer may register a position pursuant to  
19 a special allocation under this paragraph  
20 by conducting at least 3 of the recruiting  
21 activities described in subsection (e)(2)(C),  
22 however a position registered pursuant to  
23 this clause may not be filled by an initial  
24 H-2C nonimmigrant.

25 “(iii) ADVERTISING THE POSITION.—

1                   “(I) REQUIREMENT.—Any reg-  
2                   istered employer registering any posi-  
3                   tion under the special allocation au-  
4                   thority shall post the position, includ-  
5                   ing the wage range, location or loca-  
6                   tions, and initial date of employment,  
7                   for not less than 30 days—

8                   “(aa) on the internet website  
9                   maintained by the Secretary of  
10                  Labor for the purpose of such  
11                  advertising; and

12                  “(bb) with the workforce  
13                  agency of the State where the po-  
14                  sition will be located.

15                  “(II) TIMING.—The 30-day peri-  
16                  ods required by items (aa) and (bb) of  
17                  subclause (I) may occur at the same  
18                  time.

19                  “(4) UNFILLED POSITIONS.—If an H-2C non-  
20                  immigrant has not been employed in registered posi-  
21                  tion during any portion of the 240-day period after  
22                  the date of the approval of the position, the reg-  
23                  istered position shall be terminated and added to the  
24                  number of positions made available for the next 6-

1 month allocation period under paragraph (1) or (2)  
2 of subsection (i).

3 “(g) FEDERAL PUBLIC BENEFITS.—

4 “(1) IN GENERAL.—H–2C nonimmigrants—

5 “(A) are not entitled to the premium as-  
6 sistance tax credit authorized under section  
7 36B of the Internal Revenue Code of 1986;

8 “(B) shall be subject to the rules applica-  
9 ble to individuals who are not lawfully present  
10 as set forth in subsection (e) of such section;  
11 and

12 “(C) shall not be allowed any credit under  
13 section 24 or 32 of the Internal Revenue Code  
14 of 1986, and, in the case of a joint return, no  
15 credit shall be allowed under either such section  
16 if both spouses are H–2C nonimmigrants.

17 “(2) EMPLOYER FEE.—For purposes of sub-  
18 sections (a)(2), (b)(1)(B), and (c)(2)(A) of section  
19 4980H of the Internal Revenue Code of 1986, the  
20 H–2C nonimmigrant shall be treated as a full-time  
21 employee certified as having enrolled in a qualified  
22 health plan with respect to which an applicable pre-  
23 mium tax credit or cost-sharing reduction is allowed  
24 or paid with respect to the employee.

25 “(h) ALLOCATION OF REGISTERED POSITIONS.—

1 “(1) IN GENERAL.—

2 “(A) FIRST 6-MONTH PERIOD.—The num-  
3 ber of registered positions available under para-  
4 graph (2) of subsection (f) (except those made  
5 available under subparagraph (E) of such para-  
6 graph) for the 6-month period beginning on the  
7 first day of a year is 50 percent of the max-  
8 imum number of registered positions available  
9 for such year under paragraph (1)(A)(i) or  
10 (2)(B) of subsection (f). Such registered posi-  
11 tions shall be allocated as described in this sub-  
12 section.

13 “(B) SECOND 6-MONTH PERIOD.—The  
14 number of registered positions available under  
15 paragraph (2) of subsection (f) (except those  
16 made available under subparagraph (E) of such  
17 paragraph) for the 6-month period ending on  
18 the last day of a year is the maximum number  
19 of registered positions available for such year  
20 under paragraph (1)(A)(i) or (2)(B) of sub-  
21 section (f) minus the number of registered posi-  
22 tions approved during the 6-month period re-  
23 ferred to in subparagraph (A). Such registered  
24 positions shall be allocated as described in this  
25 subsection.

1 “(2) SMALL BUSINESSES.—

2 “(A) IN GENERAL.—The Secretary shall  
3 reserve not less than one quarter of the number  
4 of registered positions initially allocated for  
5 each 6-month period under subsection (f)(2)(B)  
6 only for a registered employer that is a small  
7 business unless—

8 “(i) any such registered positions are  
9 not approved in the first 4 months of each  
10 6-month period; or

11 “(ii) less than one quarter of the reg-  
12 istered positions initially allocated for the  
13 6-month period remain available after the  
14 first month.

15 “(B) CONDITION MET.—If a condition re-  
16 ferred to in clause (i) or (ii) of subparagraph  
17 (A) is met, any remaining registered positions  
18 shall be available for any registered employer.

19 “(C) PRIORITY CONSIDERATION.—The  
20 Secretary shall give priority consideration to ap-  
21 proving registered positions for small business  
22 employers who are in industries with compara-  
23 tively low sales per employee, as measured by  
24 the Census Bureau’s Economic Census, that, as

1 part of a robust effort to recruit U.S. work-  
2 ers—

3 “(i) promote hiring programs for jus-  
4 tice-involved youth by having their main  
5 trade association or industry sponsored  
6 foundation participate in the Employment  
7 and Training Administration, U.S. Depart-  
8 ment of Labor, Pathway Home grant pro-  
9 gram to support expanded services to eligi-  
10 ble, incarcerated individuals in State cor-  
11 rectional facilities or local jails prior- and  
12 post-release to help eliminate the gap be-  
13 tween release and enrollment into a reentry  
14 program leading to employment, or a fu-  
15 ture equivalent Federal grant program;

16 “(ii) promote nationally recognized  
17 employee safety and health programs, in-  
18 cluding programs that promote best prac-  
19 tices to lessen the spread of COVID-19;

20 “(iii) hire workers under the Work  
21 Opportunity Tax Credit with the priority  
22 consideration applicable only for those oc-  
23 cupations that fall within the top five  
24 Standard Occupational Classifications as

1 measured by total number of certifications  
2 by occupation; or

3 “(iv) participate in industry appren-  
4 ticeship, training, or certification pro-  
5 grams.

6 “(i) PORTABILITY.—

7 “(1) NONIMMIGRANT PORTABILITY.—An H–2C  
8 nonimmigrant who is employed in a registered posi-  
9 tion may—

10 “(A) be employed at any worksite if the  
11 registered employer advertised such location  
12 under subsection (e)(2)(B)(i)(I) or  
13 (f)(3)(B)(iii);

14 “(B) terminate such employment at any  
15 time, for any reason;

16 “(C) in the case of an initial H–2C worker,  
17 after one year of employment with the initial  
18 H–2C registered employer, seek and accept em-  
19 ployment with another registered employer in  
20 any other registered position within the terms  
21 and conditions of the H–2C nonimmigrant visa;  
22 and

23 “(D) in the case of an H–2C worker who  
24 is no longer an initial H–2C worker, or who has  
25 completed one year with their initial H–2C reg-

1           istered employer, seek and accept employment  
2           with another registered employer in any other  
3           registered position within the terms and condi-  
4           tions of the H-2C nonimmigrant visa.

5           “(2) EMPLOYER PORTABILITY.—A registered  
6           employer who employs an H-2C nonimmigrant  
7           may—

8                   “(A) employ such nonimmigrant at any  
9                   worksite if the registered employer advertised  
10                  such location under subsection (e)(2)(B)(i)(I)  
11                  or (f)(3)(B)(iii);

12                  “(B) terminate such employment at any  
13                  time for any reason if such reason is lawful for  
14                  United States workers;

15                  “(C) in the case of an initial H-2C worker  
16                  brought into the United States by the employer  
17                  to fill a registered position, the employer may  
18                  after the one-year anniversary date of that  
19                  worker’s employment term, seek and hire an-  
20                  other H-2C nonimmigrant to replace the initial  
21                  H-2C worker in accordance with subsection  
22                  (e)(4); and

23                  “(D) in the case of H-2C workers who are  
24                  not initial H-2C workers, seek and hire another

1 H-2C nonimmigrant in accordance with sub-  
2 section (e)(4).

3 “(3) AT-WILL EMPLOYMENT.—Notwithstanding  
4 any other provision of law, employment pursuant to  
5 this section shall be considered at-will unless speci-  
6 fied by a contract agreed to by the H-2C non-  
7 immigrant and the registered employer.

8 “(j) PROMOTION.—A registered employer may pro-  
9 mote an H-2C nonimmigrant if the H-2C nonimmigrant  
10 has been employed with that employer for a period of not  
11 less than 12 months. Such a promotion shall not increase  
12 the total number of registered positions available to that  
13 employer.

14 “(k) ASSESSING THE IMPACT OF THE H-2C PRO-  
15 GRAM.—

16 “(1) STUDY.—The Director of the Bureau of  
17 the Census, jointly with the Secretary, the Secretary  
18 of Energy, the Secretary of Health and Human  
19 Services, the Secretary of Housing and Urban De-  
20 velopment, the Secretary of the Interior, the Sec-  
21 retary of Labor, the Secretary of Transportation,  
22 the Secretary of the Treasury, and the Attorney  
23 General, shall undertake a study examining the im-  
24 pacts of this section as well as a possible future per-  
25 manent H-2C program on the infrastructure of, and

1 quality of life in, the participating metropolitan sta-  
2 tistical areas and counties.

3 “(2) REPORT.—Not later than 3 years after the  
4 date of the enactment of the Essential Workers for  
5 Economic Advancement Act, the Director of the Bu-  
6 reau of the Census shall submit to Congress a report  
7 on the findings of the study required by paragraph  
8 (1), including the following information:

9 “(A) An estimate of legal and illegal immi-  
10 grants in participating counties and metropoli-  
11 tan statistical areas, the estimated change in  
12 those populations since commencement of the  
13 program, and the estimated change to the num-  
14 ber of United States workers in such counties  
15 and metropolitan statistical areas.

16 “(B) The impact of H-2C nonimmigrants  
17 on employment and wage rates for United  
18 States workers in State labor markets affected  
19 by worker inflows into the full employment  
20 areas where the program operates. The study  
21 should pay particular attention to the industries  
22 and services in which H-2C nonimmigrants are  
23 concentrated. It should take into consideration  
24 equilibrating labor flows in and out of said full  
25 employment areas, and it should consider asso-

1           ciated costs and benefits, including those re-  
2           lated to public services, infrastructure mainte-  
3           nance, business startups, investment, and over-  
4           all economic activity.

5           “(C) The impact of H-2C nonimmigrants  
6           on home ownership rates, housing prices, and  
7           the demand for low-income and subsidized  
8           housing in participating counties and metropoli-  
9           tan statistical areas and the public expenditures  
10          required to maintain current median standards  
11          in these areas and the degree to which those  
12          standards will deteriorate if such expenditures  
13          are not forthcoming.

14          “(D) The impact of H-2C nonimmigrants  
15          on access to quality health care in participating  
16          counties and metropolitan statistical areas, on  
17          the cost of health care and health insurance,  
18          and an estimate of the public expenditures re-  
19          quired to maintain current median standards  
20          and the degree to which those standards will  
21          deteriorate if such expenditures are not forth-  
22          coming.

23          “(E) The impact of H-2C nonimmigrants  
24          on the criminal justice system in participating

1 counties and metropolitan statistical areas, and  
2 an estimate of associated public costs.

3 “(F) The impact of permitting non-sea-  
4 sonal low skilled workers that currently do not  
5 qualify for H-2C nonimmigrant status to qual-  
6 ify for H-2C nonimmigrant status or of cre-  
7 ating a new program to provide nonimmigrant  
8 status for such non-seasonal low skilled work-  
9 ers, including—

10 “(i) any impact on United States  
11 workers;

12 “(ii) any impact on employers that  
13 are utilizing H-2C nonimmigrants;

14 “(iii) any impact on employers that do  
15 not qualify to employ H-2C non-  
16 immigrants; and

17 “(iv) any impact on H-2C non-  
18 immigrants.

19 “(G) The impact on local tax revenues re-  
20 ceived from industries employing H-2C work-  
21 ers, by industry.

22 “(I) H-2C NONIMMIGRANT PROTECTIONS.—

23 “(1) WAIVER OF RIGHTS PROHIBITED.—

1           “(A) IN GENERAL.—An H–2C non-  
2 immigrant may not be required to waive any  
3 substantive rights or protections under this Act.

4           “(B) CONSTRUCTION.—Nothing in this  
5 paragraph may be construed to affect the inter-  
6 pretation of any other law.

7           “(2) PROHIBITION ON TREATMENT AS INDE-  
8 PENDENT CONTRACTORS.—

9           “(A) IN GENERAL.—Notwithstanding any  
10 other provision of law—

11           “(i) an H–2C nonimmigrant is prohib-  
12 ited from being treated as an independent  
13 contractor under any Federal or State law;  
14 and

15           “(ii) no person, including any em-  
16 ployer, labor contractor, or any person who  
17 is affiliated with or contracts with an em-  
18 ployer or labor contractor, may treat an  
19 H–2C nonimmigrant as an independent  
20 contractor.

21           “(B) CONSTRUCTION.—Subparagraph (A)  
22 may not be construed to prevent registered em-  
23 ployers who operate as independent contractors  
24 from employing H–2C nonimmigrants.

1           “(3) PAYMENT OF FEES.—A fee related to the  
2 hiring of an H-2C nonimmigrant required to be paid  
3 by an employer under this Act shall be paid by the  
4 employer and may not be deducted from the wages  
5 or other compensation paid to an H-2C non-  
6 immigrant.

7           “(4) TAX RESPONSIBILITIES.—An employer  
8 shall comply with all applicable Federal, State, and  
9 local tax laws with respect to each H-2C non-  
10 immigrant employed by the employer.

11           “(5) WHISTLEBLOWER PROTECTION.—It shall  
12 be unlawful for an employer of an H-2C non-  
13 immigrant to intimidate, threaten, restrain, coerce,  
14 retaliate, discharge, or in any other manner discrimi-  
15 nate against an employee or former employee be-  
16 cause the employee or former employee—

17           “(A) discloses information to the employer  
18 or any other person that the employee or  
19 former employee reasonably believes that the  
20 employer or other person has committed a vio-  
21 lation of this section; or

22           “(B) cooperates or seeks to cooperate in an  
23 investigation or other proceeding concerning  
24 compliance with the requirements of this sec-  
25 tion.

1 “(m) ENFORCEMENT.—

2 “(1) COMPLAINT PROCESS.—The Secretary  
3 shall, by rule, establish a process for the receipt, in-  
4 vestigation, and disposition of complaints by an ag-  
5 grieved employee, applicant, or H-2C nonimmigrant  
6 respecting a violation of this section.

7 “(2) FILING DEADLINE.—No investigation or  
8 hearing shall be conducted on a complaint con-  
9 cerning a violation under this section unless the  
10 complaint was filed not later than 3 months after  
11 the date of such violation.

12 “(3) REASONABLE BASIS.—The Secretary shall  
13 conduct an investigation under this subsection if  
14 there is reasonable basis to believe that a violation  
15 of this section has occurred. The process established  
16 under this subsection shall provide that, not later  
17 than 30 days after a complaint is filed, the Sec-  
18 retary shall determine if there is reasonable cause to  
19 find such a violation.

20 “(4) NOTICE AND HEARING.—

21 “(A) IN GENERAL.—Not later than 30  
22 days after the Secretary finds a reasonable  
23 basis under paragraph (3), the Secretary shall  
24 issue a notice to the interested parties and offer  
25 an opportunity for a hearing on the complaint,

1 in accordance with section 556 of title 5,  
2 United States Code.

3 “(B) HEARING DEADLINE.—Not later than  
4 60 days after the date of a hearing under this  
5 paragraph, the Secretary shall make a finding  
6 on the matter.

7 “(5) ATTORNEY’S FEES.—

8 “(A) AWARD.—A complainant who prevails  
9 in an action under this subsection with respect  
10 to a claim related to wages or compensation for  
11 employment shall be entitled to an award of  
12 reasonable attorney’s fees and costs.

13 “(B) FRIVOLOUS COMPLAINTS.—A com-  
14 plainant who files a frivolous complaint under  
15 this subsection shall be liable for the reasonable  
16 attorney’s fees and costs of the person named  
17 in the complaint.

18 “(6) POWER OF THE SECRETARY.—The Sec-  
19 retary may bring an action in any court of com-  
20 petent jurisdiction—

21 “(A) to seek remedial action, including in-  
22 junctive relief;

23 “(B) to recover the damages described in  
24 subsection (n)(2); or

1           “(C) to ensure compliance with terms and  
2           conditions described in subsection (l)(5).

3           “(7) OTHER RIGHTS OF EMPLOYEES.—The  
4           rights and remedies provided to H-2C non-  
5           immigrants under this section are in addition to any  
6           other contractual or statutory rights and remedies of  
7           the workers, and are not intended to alter or affect  
8           such rights and remedies.

9           “(8) COMPLIANCE.—De minimis variations  
10          from the registered position’s duties described in the  
11          application and related materials or from the posi-  
12          tion’s general description provided in the attestation  
13          or the advertising requirements pursuant to sub-  
14          section (e), including de minimis work or work inci-  
15          dental to the job, shall be permitted and not be  
16          cause for complaint, referral, investigation, audit, or  
17          penalties.

18          “(n) PENALTIES.—

19                 “(1) IN GENERAL.—If, after notice and an op-  
20                 portunity for a hearing, the Secretary finds a viola-  
21                 tion of this section, the Secretary may impose ad-  
22                 ministrative remedies and penalties, including re-  
23                 quiring the payment of—

24                         “(A) back wages; and

25                         “(B) benefits.

1           “(2) CIVIL PENALTIES.—The Secretary may  
2 bring an action for a civil monetary penalty—

3           “(A) for a violation of this section—

4           “(i) in an amount not more than  
5           \$3,000 for the first violation and \$4,000  
6           per violation for each subsequent violation;  
7           or

8           “(ii) if the violation was committed  
9           knowingly, a fine in an amount not more  
10          than \$5,000 per violation;

11          “(B) for intentionally failing to comply  
12          with the protections of United States workers  
13          required under this section or with the protec-  
14          tion of whistleblowers under subsection (l)(5), a  
15          fine in an amount not more than \$25,000 per  
16          violation; or

17          “(C) for knowingly failing to materially  
18          comply with the terms of other representations  
19          made in petitions, applications, certifications, or  
20          attestations under this section—

21          “(i) a fine in an amount not more  
22          than \$4,000 per violation; and

23          “(ii) upon the occasion of a third of-  
24          fense of failure to comply with representa-  
25          tions, a fine in an amount not to exceed

1           \$5,000 per violation and designation as an  
2           ineligible employer, pursuant to subsection  
3           (d)(3)(B)(i).

4           “(3) CRIMINAL PENALTY.—Any H–2C non-  
5           immigrant who intentionally fails to report to a reg-  
6           istered position in the time period specified in sub-  
7           section (c)(6)(A)(i) or a registered employer who  
8           knowingly facilitates an H–2C nonimmigrant to in-  
9           tentionally fail to report in the time period specified  
10          above shall—

11           “(A) for a first offense, be fined in accord-  
12          ance with title 18, United States Code, in an  
13          amount up to \$5,000, or imprisoned for not  
14          more than 90 days; and

15           “(B) for each subsequent offense, be fined  
16          in accordance with title 18, United States Code,  
17          in an amount up to \$10,000, or imprisoned for  
18          not more than 1 year, or both.

19          “(o) MONITORING.—

20           “(1) ELECTRONIC MONITORING SYSTEM.—

21           “(A) REQUIREMENT FOR SYSTEM.—The  
22          Secretary, through U.S. Citizenship and Immi-  
23          gration Services, shall implement an electronic  
24          monitoring system to monitor the presence and  
25          employment of H–2C nonimmigrants, including

1 a requirement that registered employers update  
2 the system when H-2C nonimmigrants start  
3 and end employment in registered positions.  
4 The system shall be operational not later than  
5 6 months following the date of the publication  
6 of the final regulations to carry out this section.

7 “(B) RELATIONSHIP TO SEVIS.—Such sys-  
8 tem shall be modeled on the Student and Ex-  
9 change Visitor Information System (SEVIS)  
10 and SEVIS II tracking system of U.S. Immi-  
11 gration and Customs Enforcement.

12 “(C) INTERACTION WITH REGISTRY.—  
13 Such system shall interact with the registry re-  
14 ferred to in subsection (e)(1)(E) to ensure that  
15 the Secretary designates and updates approved  
16 registered positions as being filled or unfilled.

17 “(D) EMPLOYER.—The employer shall no-  
18 tify such system after offering employment to  
19 an H-2C nonimmigrant.

20 “(E) ACCESS FOR SECRETARY OF  
21 STATE.—The Secretary of State shall have ac-  
22 cess to such system to verify an alien’s offer of  
23 employment with a registered employer prior to  
24 admission as an H-2C nonimmigrant.

1           “(2) MANDATORY E-VERIFY USE.—No reg-  
2           istered employer may employ an H-2C non-  
3           immigrant without participating in the E-Verify  
4           Program described in section 403(a) of the Illegal  
5           Immigration Reform and Immigrant Responsibility  
6           Act of 1996 (8 U.S.C. 1324a note) or an employ-  
7           ment eligibility verification system patterned on such  
8           Program’s verification system. Any such system—

9                   “(A) shall respond to inquiries made by  
10                  registered employers by providing an employee’s  
11                  employment eligibility; and

12                  “(B) shall not be used, subject to a civil  
13                  monetary penalty determined by the Secretary  
14                  by rule—

15                          “(i) by any department, bureau, or  
16                          other agency of the United States Govern-  
17                          ment, any other public or private entity, or  
18                          any individual to monitor the movement of  
19                          United States workers; or

20                          “(ii) for inquiries related to a United  
21                          States worker other than—

22                                  “(I) to provide such worker’s eli-  
23                                  gibility for employment in the United  
24                                  States; or

1                   “(II) to ensure secure, appro-  
2                   priate, and nondiscriminatory use of  
3                   such system, notwithstanding any  
4                   other provision of law.

5           “(p) REQUIREMENT TO COMPLY WITH BIOMETRIC  
6 ENTRY AND EXIT SYSTEM.—Any alien entering the  
7 United States or present in the United States on a visa  
8 issued under section 101(a)(15)(H)(ii)(c) shall comply  
9 with the requirements of the entry and exit data system  
10 required by section 7208 of the Intelligence Reform and  
11 Terrorism Prevention Act of 2004 (8 U.S.C. 1365b), in-  
12 cluding the biometric identification requirements, after  
13 such requirements are implemented.

14           “(q) RULEMAKING.—Not later than 1 year after the  
15 date of the enactment of the Essential Workers for Eco-  
16 nomic Advancement Act, the Secretary shall, by rule, pro-  
17 vide for a means by which any renewal, attestation, or ap-  
18 plication filed pursuant to this section may be made elec-  
19 tronically.”.

20           (2) TABLE OF CONTENTS AMENDMENT.—The  
21 table of contents in the first section of the Immigra-  
22 tion and Nationality Act (8 U.S.C. 1101 et seq.) is  
23 amended by adding after the item relating to section  
24 219 the following:

“Sec. 219A. Admission of H-2C nonimmigrant workers.”.

1 (b) INTENTION TO ABANDON FOREIGN RESI-  
2 DENCE.—Section 214(h) of the Immigration and Nation-  
3 ality Act (8 U.S.C. 1184(h)) is amended by inserting  
4 “(H)(ii)(d),” after “(H)(i)(b) or (c),”.

5 (c) PROHIBITION ON FAMILY MEMBERS.—Section  
6 101(a)(15)(H) of the Immigration and Nationality Act (8  
7 U.S.C. 1101(a)(15)(H)) is amended by striking “him;” at  
8 the end and inserting “him, except that the Secretary of  
9 State shall not issue a visa under clause (ii)(d) to a spouse  
10 or child seeking to enter into the United States under such  
11 clause unless such spouse has received an offer of employ-  
12 ment by a registered employer as defined in section  
13 219A;”.

○