

**CHAIRMAN GOODLATTE’S H-2A REFORM BILL**  
**SECTION-BY-SECTION ANALYSIS**

**Section 1. Short Title.**

**Section 2. Admission of Temporary H-2A Workers.**

**(a)** Replaces section 218 of the Immigration and Nationality Act—the section that governed the employment of H-2A workers—with language that is modernized and more flexible.

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

**“(a) Petition.** Requires that an employer seeking to hire H-2A workers file a petition with the Secretary of Homeland Security in which the employer attests that:

- the work for which H-2A workers are sought is temporary or seasonal;
- the required benefits, wages, and working conditions will be provided;
- no United States workers will be displaced;
- a recruitment of U.S. workers has taken place;
- the employer conducted recruitment in the area of intended employment before filing the attestation and was unsuccessful in locating qualified United States workers for the job;
- the job will be offered to any United States worker willing and able to work;
- insurance will be provided if the work is not covered by State workers’ compensation law;
- the requirements for placing an H-2A worker with another employer will be followed;
- there is not a strike or lockout in the course of a labor dispute; and
- the employer has not violated employment laws (domestic or nonimmigrant) during the previous 2 year period.

**“(b) Publication.** Requires the employer to make a copy of the employer’s petition available for public examination.

**“(c) List.** Requires the Secretary of Labor to compile a list of the petitions filed and make it available for public examination.

**“(d) Special Rules for Consideration of Petitions.** Prohibits the Secretary of Homeland Security from requiring that petitions be filed more than 28 days in advance. Requires the Secretary to review petitions only for completeness and obvious inaccuracies and notify employers of approval within 7 days.

**“(e) Roles of Agricultural Associations.** Permits associations to file petitions for workers on behalf of members. Allows associations to transfer workers among its

members. Provides that violations by a member will not disqualify an association and vice versa.

**“(f) Expedited Administrative Appeals of Certain Determinations.** Requires that regulations provide for expedited review of a denial of approval.

**“(g) Miscellaneous Provisions.** Requires the Secretary of Homeland Security to provide endorsement of entry and exit documents. Preempts State law with respect to the regulation of admissibility of nonimmigrant workers. Allows Secretary of Labor to collect fees to cover cost of processing petitions.

**“(h) Failures to Meet Conditions.** Sets penalties for failure to meet a condition of the petition and material misrepresentations. Provides for fines of up to \$1,000 and a one-year disqualification.

**“(i) Willful Failures and Willful Misrepresentations.** Sets penalties for willful failures to meet conditions of the petition and willful misrepresentations. Provides for a fine of up to \$5,000 as well as a two-year disqualification for an initial violation, a five-year disqualification for a second violation, and a permanent disqualification for a third violation.

**“(j) Displacement of U.S. Workers.** Sets penalties for willful failures and misrepresentations that result in displacement of a U.S. worker. Provides for a fine of up to \$15,000 as well as a five-year disqualification for an initial violation, and a permanent disqualification for a second violation.

**“(k) Limitations on Civil Money Penalties.** Caps imposition of civil money penalties by the Secretary of Labor at \$90,000.

**“(l) Failures to Pay Wages or Required Benefits.** Provides that if the Secretary of Labor finds that the employer has failed to pay the wages, or provide the housing allowance, transportation, subsistence reimbursement, or guarantee of employment the Secretary of Labor shall assess payment of back wages, or other required benefits, due any United States worker or H-2A worker employed by the employer in the specific employment in question.

**“(m) Minimum Benefits, Wages, and Working Conditions.**

**“(1) Preferential treatment of aliens prohibited.** Requires employers to offer U.S. workers no less than the same benefits, wages, and working conditions that the employer offers to H-2A workers.

**“(2) Required Wages.** Requires employers to pay H-2A workers the prevailing wage rate for the occupation in the area of intended employment.

**“(3) Requirement to Provide Housing or a Housing Allowance.** Requires employers to provide housing at no cost, or a reasonable housing allowance, to all workers in jobs for which he has submitted an H-2A petition. The amount of a housing allowance must be equal to the statewide average fair market rental for existing housing for nonmetropolitan counties if the place of employment is in a nonmetropolitan county, or equal to the statewide average fair market rental for existing housing for metropolitan counties for the State if the place of employment is in a metropolitan county. Requires the Secretary of Labor to issue regulations that address the specific requirements for the provision of housing to workers engaged in the range production of livestock.

**“(4) Reimbursement of Transportation.** Requires an employer to reimburse a worker for transportation and subsistence from the place from which the worker came to work for the employer to the place of employment. Requires an employer to reimburse a worker for the cost of the worker’s transportation and subsistence from the place of employment to the place from which the worker was approved to enter the U.S. if the worker completes the period of employment. Requires no reimbursement if the distance traveled is 100 miles or less, or the worker is not residing in employer-provided housing or housing secured through an allowance. Provides that if the worker is laid off or employment is terminated for contract impossibility the employer shall provide for transportation and subsistence whether the worker has completed 50 percent of the period of employment or not. Requires an employer to provide transportation between a worker’s living quarters and the work site.

**“(5) Guarantee of Employment.** Requires the employer to guarantee the worker employment for the hourly equivalent of at least three-fourths of the work days of the total period of employment, beginning with the first work day after the arrival of the worker at the place of employment and ending on the expiration date specified in the job offer. Provides that any hours which the worker fails to work may be counted by the employer in calculating whether the period of guaranteed employment has been met. Provides that a worker who abandons or terminates his or her employment before the end of the contract is not entitled to the “three-fourths guarantee.” Provides that if the services of the worker are no longer required for reasons such flood, hurricane, freeze, earthquake, fire, drought, plant or animal disease or pest infestation, or regulatory drought, before the “three-fourth guarantee” is fulfilled, the employer may terminate the worker’s employment, but shall apply and fulfill the “three-fourth guarantee” for the days worked, and in addition, make efforts to transfer the United States worker to other comparable employment acceptable to the worker.

**“(n) Petitioning for Admission.** Requires that an employer seeking to admit H-2A workers file a petition with the Secretary of Homeland Security and include a copy of an approved petition.

**“(o) Expedited Adjudication by the Secretary.** Requires the Secretary of Homeland Security to establish a procedure for expedited adjudication of petitions so that notice can be sent to employers within 7 working days and, in the case of approved petitions, to the appropriate immigration officer at the port of entry or United States consulate where the petitioner has indicated that the alien will apply for a visa or admission to the United States.

**“(p) Disqualification.** Provides that an alien who has violated a term or condition of admission into the United States as a nonimmigrant during the past 5 years is inadmissible to the United States and ineligible for H-2A status. Provides a one-time waiver of inadmissibility to aliens who may apply from abroad for H-2A status. Provides that the waiver can be maintained provided that the alien does not violate the terms and condition of his or her admission.

**“(q) Period of Admission.** Requires that an alien not be admitted for a term greater than 10 months, not including 1 week before the work (for travel) and 2 weeks following the work (to be granted for the purpose of departure or extension based on a subsequent offer of employment).

**“(r) Abandonment of Employment.** Provides that an H-2A worker who abandons employment shall be considered to have failed to maintain H-2A status and must depart the U.S. Requires employers to notify the Secretary of Homeland Security within 7 days of an H-2A worker abandoning employment.

**“(s) Replacement of Alien.** Instructs the Secretary of Homeland Security to promptly remove any H-2A worker who violates his or her nonimmigrant status. Permits an H-2A worker to quit his or her job if he or she leaves the U.S. immediately. Requires the Secretary of State to promptly issue a visa to an eligible alien designated by the employer to replace an H-2A worker who leaves.

**“(t) Identification Document.** Requires that each alien be provided an identification and employment eligibility document to verify eligibility and identity. Requires the document to be resistant to counterfeiting and compatible with other databases of the Secretary for the purpose of excluding aliens from benefits for which they are not eligible and determining whether the alien is unlawfully present in the United States.

**“(u) Extension of Stay of H-2A Aliens in the U.S.** Requires an employer who wants approval to extend the employment of an H-2A worker to petition for an extension of the alien’s stay and, if applicable, a change in the alien’s employment. Provides that a petition may not request an extension of more than 10 months. Provides that no H-2A worker may stay longer than 20 months total, and an alien may not apply for admission as an H-2A worker unless the alien has stayed outside the U.S. for a period that is at least 1/5 the duration of the alien’s previous stay as an H-2A worker, or two months, whichever is greater.

**“(v) Special Rules for Aliens Employed as Shepherders, Goatherders, or Dairy Workers.** H-2A workers employed as shepherders, goatherders, or dairy workers may be admitted for up to 12 months and are not required to remain outside the U.S. for a specific period of time before coming back.

**“(w) Definitions.** Defines “area of employment,” “eligible individual,” “displace,” “H-2A worker,” “lays off,” “prevailing wage,” and “United States worker.”

**(b) Conforming Amendment.**

Adds clarifying language to the section of the Immigration and Nationality Act that identifies H-2A workers and reflects the changes made to the H-2A program by this Act.

**(c) Uniform Procedures for the Issuing of H-2A Visas.**

Requires the Secretary of Homeland Security to institute uniform procedures for the issuance of visas to H-2A workers by U.S. consulates.

**(d) Effective Date.**

Provides that the amendments made by this section shall take effect 180 days after the date of the enactment of this Act.

**Section 3. Emergency Grants to Assist Employers with H-2A Transportation Costs.**

Allows the Secretary of Agriculture to make grants to assist employers with covering the costs of their H-2A workers’ trips home in the event that the services of the worker are no longer needed due to, for example, natural disasters.

**Section 4. Establishment of H-2A Ombudsman.** Requires the Secretary to establish an H-2A Worker Program Ombudsman within the office of Agricultural Labor Affairs, Office of the Chief Economist, U.S. Department of Agriculture.

**Section 5. Legal Assistance Provided by the Legal Services Corporation.**

(a) Provides that the Legal Services Corporation may not provide legal assistance for or on behalf of any alien, unless the alien is present in the U.S. at the time the legal assistance is provided.

(b) Provides that the Legal Services Corporation may not bring a civil action for damages on behalf of an H-2A worker unless the parties have attempted to reach a satisfactory resolution of the issues through mediation.

(c) Prohibits Legal Services attorneys from entering upon the property of H-2A employers unless such attorneys have pre-arranged appointments with H-2A workers.