

117TH CONGRESS
1ST SESSION

H. R. 3897

To make improvements to the H–2B nonimmigrant worker program, and
for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 15, 2021

Mr. CUELLAR (for himself, Mr. JOYCE of Ohio, Mr. KEATING, Mr. CHABOT, Ms. PINGREE, and Mr. HARRIS) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To make improvements to the H–2B nonimmigrant worker
program, 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 “H–2B Returning
5 Worker Exception Act of 2021”.

6 **SEC. 2. DEFINITIONS.**

7 For purposes of this Act:

1 (1) The term “H–2B”, when used with respect
2 to a worker or other individual, refers an alien ad-
3 mitted or provided status as a nonimmigrant de-
4 scribed in section 101(a)(15)(H)(ii)(b) of the Immi-
5 gration and Nationality Act (8 U.S.C.
6 1101(a)(15)(H)(ii)(b)). Such term, when used with
7 respect to a petition, procedure, process, program, or
8 visa, refers to a petition, procedure, process, pro-
9 gram, or visa related to admission or provision of
10 status under such section.

11 (2) The term “job order” means the document
12 containing the material terms and conditions of em-
13 ployment, including obligations and assurances re-
14 quired under this Act or any other law.

15 (3) The term “United States worker” means
16 any employee who is—

17 (A) a national of the United States (as de-
18 fined in section 101(a)(22) of the Immigration
19 and Nationality Act (8 U.S.C. 1101(a)(22))); or

20 (B) an alien lawfully admitted for perma-
21 nent residence, is admitted as a refugee under
22 section 207 of such Act (8 U.S.C. 1157), is
23 granted asylum under section 208 of such Act
24 (8 U.S.C. 1158), or is an immigrant otherwise
25 authorized by the immigration laws (as defined

1 in section 101(a)(17) of such Act (8 U.S.C.
2 1101(a)(17))) or the Secretary of Homeland
3 Security to be employed.

4 **SEC. 3. H-2B CAP RELIEF.**

5 (a) H-2B NUMERICAL LIMITATIONS.—Section
6 214(g)(9)(A) of the Immigration and Nationality Act (8
7 U.S.C. 1184(g)(9)(A)) is amended—

8 (1) by striking “fiscal year 2013, 2014, or
9 2015” and inserting “1 of the 3 preceding fiscal
10 years”; and

11 (2) by striking “fiscal year 2016” and inserting
12 “a fiscal year”.

13 (b) EFFECTIVE DATE.—The amendment made by
14 subsection (a) shall take effect on October 1, 2021. If this
15 section is enacted after such date, the amendment made
16 by subsection (a) shall take effect as if enacted on such
17 date.

18 **SEC. 4. INCREASED SANCTIONS FOR WILLFUL MISREPRE-**
19 **SENTATION OR FAILURE TO MEET THE RE-**
20 **QUIREMENTS FOR PETITIONING FOR AN H-2B**
21 **WORKER.**

22 Section 214 of the Immigration and Nationality Act
23 (8 U.S.C. 1184) is amended—

24 (1) in subsection (c)(13)(B), by striking
25 “\$150” and inserting “\$350”; and

1 (2) in subsection (c)(14)(A)(i), by striking
2 “may, in addition to any other remedy authorized by
3 law, impose such administrative remedies (including
4 civil monetary penalties in an amount not to exceed
5 \$10,000 per violation)” and inserting “shall impose
6 civil monetary penalties in an amount of not less
7 than \$1,000 but not to exceed \$10,000 per violation,
8 in addition to any other remedy authorized by law,
9 and may impose such other administrative rem-
10 edies”.

11 **SEC. 5. REDUCTION OF PAPERWORK BURDEN.**

12 (a) STREAMLINED H-2B PLATFORM.—

13 (1) IN GENERAL.—Not later than 12 months
14 after the date of the enactment of this Act, the Sec-
15 retary of Homeland Security, in consultation with
16 the Secretary of Labor, the Secretary of State, and
17 the Administrator of the United States Digital Serv-
18 ice, shall ensure the establishment of an electronic
19 platform through which employers may submit and
20 request approval of an H-2B petition. Such plat-
21 form shall—

22 (A) serve as a single point of access for
23 employers to input all information and sup-
24 porting documentation required for obtaining
25 labor certification from the Secretary of Labor

1 and the adjudication of the petition by the Sec-
2 retary of Homeland Security;

3 (B) serve as a single point of access for the
4 Secretary of Homeland Security, the Secretary
5 of Labor, the Secretary of State, and State
6 workforce agencies concurrently to perform
7 their respective review and adjudicatory respon-
8 sibilities in the petition process;

9 (C) facilitate communication between em-
10 ployers and agency adjudicators, including by
11 allowing employers to—

12 (i) receive and respond to notices of
13 deficiency and requests for information;

14 (ii) receive notices of approval and de-
15 nial; and

16 (iii) request reconsideration or appeal
17 of agency decisions; and

18 (D) provide information to the Secretary of
19 State and the Secretary of Homeland Security
20 necessary for the efficient and secure processing
21 of H-2B visas and applications for admission.

22 (2) OBJECTIVES.—In developing the platform
23 described in paragraph (1), the Secretary of Home-
24 land Security, in consultation with the Secretary of
25 Labor, the Secretary of State, and the Adminis-

1 trator of the United States Digital Service, shall
2 make an effort to streamline and improve the H-2B
3 process, including by—

4 (A) eliminating the need for employers to
5 submit duplicate information and documenta-
6 tion to multiple agencies;

7 (B) reducing common petition errors, and
8 otherwise improving and expediting the proc-
9 essing of H-2B petitions;

10 (C) ensuring compliance with H-2B pro-
11 gram requirements and the protection of the
12 wages and working conditions of workers; and

13 (D) eliminating unnecessary government
14 waste.

15 (3) ENHANCEMENT OF EXISTING PLATFORM.—

16 If the Secretary of Homeland Security, the Sec-
17 retary of Labor, the Secretary of State, or the State
18 workforce agencies already have an electronic plat-
19 form with respect to the H-2B process on the date
20 of the enactment of this Act, they shall enhance it
21 as necessary so as to ensure that adjudication of an
22 H-2B petition may be conducted electronically as
23 specified in this section.

24 (b) ONLINE JOB REGISTRY.—The Secretary of Labor
25 shall maintain a publicly-accessible online job registry and

1 database of all job orders submitted by H–2B employers.

2 The registry and database shall—

3 (1) be searchable using relevant criteria, includ-
4 ing the types of jobs needed to be filled, the dates
5 and locations of need, and the employers named in
6 the job order;

7 (2) provide an interface for workers in English,
8 Spanish, and any other language that the Secretary
9 of Labor determines to be appropriate; and

10 (3) provide for public access of job order certifi-
11 cations.

12 **SEC. 6. WORKPLACE SAFETY.**

13 (a) **WORKSITE SAFETY AND COMPLIANCE PLAN.**—

14 If the employer is seeking to employ an H–2B worker pur-
15 suant to this Act and the Immigration and Nationality
16 Act (8 U.S.C. 1101 et seq.), the employer shall maintain
17 an effective worksite safety and compliance plan to ensure
18 safety and reduce workplace illnesses, injuries and fatali-
19 ties. Such plan shall—

20 (1) be in writing in English and, to the extent
21 necessary, any language common to a significant
22 portion of the workers if they are not fluent in
23 English; and

1 (2) be posted at a conspicuous location at the
2 worksite and provided to employees prior to the com-
3 mencement of labor or services.

4 (b) CONTENTS OF PLAN.—The Secretary of Labor
5 shall establish by regulation the minimum requirements
6 for the plan described in subsection (a). Such plan shall
7 include measures to—

8 (1) protect against sexual harassment and vio-
9 lence, resolve complaints involving harassment or vi-
10 olence, and protect against retaliation against work-
11 ers reporting harassment or violence; and

12 (2) contain other provisions necessary for en-
13 suring workplace safety.

14 **SEC. 7. FOREIGN LABOR RECRUITING; PROHIBITION ON**
15 **FEEES.**

16 (a) FOREIGN LABOR RECRUITING.—If an employer
17 has engaged any foreign labor contractor or recruiter (or
18 any agent of such a foreign labor contractor or recruiter)
19 in the recruitment of H-2B workers, the employer shall
20 disclose the identity and geographic location of such per-
21 son or entity to the Secretary of Labor in accordance with
22 the regulations of the Secretary.

23 (b) PROHIBITION AGAINST EMPLOYEES PAYING
24 FEEES.—Neither the employer nor its agents shall seek or
25 receive payment of any kind from any worker for any ac-

1 tivity related to the H–2B petition process, including pay-
2 ment of the employer’s attorneys’ fees, application fees,
3 or recruitment costs. An employer and its agents may re-
4 ceive reimbursement for costs that are the responsibility,
5 and primarily for the benefit, of the worker, such as gov-
6 ernment-required passport fees.

7 (c) **THIRD PARTY CONTRACTS.**—The employer shall
8 contractually forbid any foreign labor contractor or re-
9 cruter (or any agent of a foreign labor contractor or re-
10 cruter) who the employer engages, either directly or indi-
11 rectly, in the recruitment of H–2B workers to seek or re-
12 ceive payments or other compensation from prospective
13 employees. Upon learning that a foreign labor contractor
14 or recruiter has collected such payments, the employer
15 shall terminate any contracts with the foreign labor con-
16 tractor or recruiter.

17 **SEC. 8. PROGRAM INTEGRITY MEASURES.**

18 (a) **ENFORCEMENT AUTHORITY.**—With respect to
19 the H–2B program, the Secretary of Labor is authorized
20 to take such actions against employers, including imposing
21 appropriate penalties and seeking monetary and injunctive
22 relief and specific performance of contractual obligations,
23 as may be necessary to ensure compliance with—

1 (1) the requirements of this Act and the Immi-
2 gration and Nationality Act (8 U.S.C. 1101 et seq.);
3 and

4 (2) the applicable terms and conditions of em-
5 ployment.

6 (b) COMPLAINT PROCESS.—

7 (1) PROCESS.—With respect to the H–2B pro-
8 gram, the Secretary of Labor shall establish a proc-
9 ess for the receipt, investigation, and disposition of
10 complaints alleging failure of an employer to comply
11 with—

12 (A) the requirements of this Act and the
13 Immigration and Nationality Act (8 U.S.C.
14 1101 et seq.); and

15 (B) the applicable terms and conditions of
16 employment.

17 (2) FILING.—Any aggrieved person or organiza-
18 tion, including a bargaining representative, may file
19 a complaint referred to in paragraph (1) not later
20 than 2 years after the date of the conduct that is
21 the subject of the complaint.

22 (3) COMPLAINT NOT EXCLUSIVE.—A complaint
23 filed under this subsection is not an exclusive rem-
24 edy and the filing of such a complaint does not

1 waive any rights or remedies of the aggrieved party
2 under this law or other laws.

3 (4) DECISION AND REMEDIES.—If the Sec-
4 retary of Labor finds, after notice and opportunity
5 for a hearing, that the employer failed to comply
6 with the requirements of this Act, the Immigration
7 and Nationality Act (8 U.S.C. 1101 et seq.), or the
8 terms and conditions of employment, the Secretary
9 of Labor shall require payment of unpaid wages, un-
10 paid benefits, damages, and civil money penalties.
11 The Secretary is also authorized to impose other ad-
12 ministrative remedies, including disqualification of
13 the employer from utilizing the H-2B program for
14 a period of up to 5 years in the event of willful or
15 multiple material violations. The Secretary is au-
16 thorized to permanently disqualify an employer from
17 utilizing the H-2B program upon a subsequent find-
18 ing involving willful or multiple material violations.

19 (5) DISPOSITION OF PENALTIES.—To the ex-
20 tent provided in advance in appropriations Acts, civil
21 penalties collected under this subsection shall be
22 used by the Secretary of Labor for the administra-
23 tion and enforcement of the provisions of this sec-
24 tion.

1 (6) STATUTORY CONSTRUCTION.—Nothing in
2 this subsection may be construed as limiting the au-
3 thority of the Secretary of Labor to conduct an in-
4 vestigation in the absence of a complaint.

5 (7) RETALIATION PROHIBITED.—It is a viola-
6 tion of this subsection for any person to intimidate,
7 threaten, restrain, coerce, blacklist, discharge, or in
8 any other manner discriminate against, or to cause
9 any person to intimidate, threaten, restrain, coerce,
10 blacklist, or in any manner discriminate against, an
11 employee, including a former employee or an appli-
12 cant for employment, because the employee—

13 (A) has disclosed information to the em-
14 ployer, or to any other person, that the em-
15 ployee reasonably believes evidences a violation
16 of the immigration laws relating to the H-2B
17 program, or any rule or regulation relating to
18 such program;

19 (B) has filed a complaint concerning the
20 employer's compliance with the immigration
21 laws relating to the H-2B program, or any rule
22 or regulation relating to such program;

23 (C) cooperates or seeks to cooperate in an
24 investigation or other proceeding concerning the
25 employer's compliance with the immigration

1 laws relating to the H-2B program, or any rule
2 or regulation relating to such program; or

3 (D) has taken steps to exercise or assert
4 any right or protection under the provisions of
5 this section, or any rule or regulation pertaining
6 to this section, or any other relevant Federal,
7 State, or local law.

8 (c) INTERAGENCY COMMUNICATION.—The Secretary
9 of Labor, in consultation with the Secretary of Homeland
10 Security, Secretary of State and the Equal Employment
11 Opportunity Commission, shall establish mechanisms by
12 which the agencies and their components share informa-
13 tion, including by public electronic means, regarding com-
14 plaints, studies, investigations, findings and remedies re-
15 garding compliance by employers with the requirements
16 of the H-2B program and other employment-related laws
17 and regulations.

18 **SEC. 9. PROGRAM ELIGIBILITY.**

19 (a) IN GENERAL.—A petition filed by an employer
20 under subsection (c)(1) initially to grant an alien non-
21 immigrant status under section 101(a)(15)(H)(ii)(b) of
22 the Immigration and Nationality Act (8 U.S.C.
23 1101(a)(15)(H)(ii)(b)), or to extend or change to such sta-
24 tus, may be approved only for nationals of countries that
25 the Secretary of Homeland Security has designated as

1 participating countries, with the concurrence of the Sec-
2 retary of State, in a notice published in the Federal Reg-
3 ister, taking into account for each such country factors,
4 including—

5 (1) the fraud rate relating to petitions under
6 section 101(a)(15)(H)(ii) of such Act (8 U.S.C.
7 1101(a)(15)(H)(ii)) filed for by nationals of the
8 country and visa applications under such section
9 filed by nationals of the country;

10 (2) the denial rate of visa applications under
11 such section 101(a)(15)(H)(ii) filed by nationals of
12 the country;

13 (3) the overstay rate of nationals of the country
14 who were admitted to the United States under such
15 section 101(a)(15)(H)(ii);

16 (4) the number of nationals of the country who
17 were admitted to the United States under such sec-
18 tion 101(a)(15)(H)(ii) and who were reported by
19 their employers to—

20 (A) have failed to report to work within 5
21 workdays of the employment start date on the
22 petition or within 5 workdays of the date on
23 which the worker is admitted into the United
24 States pursuant to the petition, whichever is
25 later; or

1 (B) have not reported for work for a pe-
2 riod of 5 consecutive workdays without the con-
3 sent of the employer;

4 (5) the number of final and unexecuted orders
5 of removal against citizens, subjects, nationals, and
6 residents of the country; and

7 (6) such other factors as may serve the United
8 States interest.

9 (b) LIMITATION.—A country may not be included on
10 the list described in subsection (a) if the country denies
11 or unreasonably delays the repatriation of aliens who are
12 subject to a final order of removal and who are citizens,
13 subjects, nationals or residents of that country.

14 (c) STATISTICS.—The Secretary of Homeland Secu-
15 rity shall include in the notice described in subsection (a),
16 for each country included in the list of participating coun-
17 tries, the statistics referenced in paragraphs (1) through
18 (5) of that subsection, if available, for the immediately
19 preceding fiscal year.

20 (d) NATIONAL FROM A COUNTRY NOT ON THE
21 LIST.—A national from a country not on the list described
22 in subsection (a) may be a beneficiary of an approved peti-
23 tion under such section 101(a)(15)(H)(ii) upon the re-
24 quest of a petitioner or potential petitioner, if the Sec-
25 retary of Homeland Security, in his sole and unreviewable

1 discretion, determines that it is in the United States inter-
2 est for that alien to be a beneficiary of such petition. De-
3 termination of such a United States interest will take into
4 account factors, including but not limited to—

5 (1) evidence from the petitioner demonstrating
6 that a worker with the required skills is not available
7 from among foreign workers from a country cur-
8 rently on the list described in subsection (a);

9 (2) evidence that the beneficiary has been ad-
10 mitted to the United States previously in status
11 under such section 101(a)(15)(H)(ii);

12 (3) the potential for abuse, fraud, or other
13 harm to the integrity of the visa program under
14 such section 101(a)(15)(H)(ii) through the potential
15 admission of a beneficiary from a country not cur-
16 rently on the list; and

17 (4) such other factors as may serve the United
18 States interest.

19 (e) DURATION.—Once published, any designation of
20 participating countries pursuant to subsection (a) shall be
21 effective for one year after the date of publication in the
22 Federal Register and shall be without effect at the end
23 of that one-year period.

1 **SEC. 10. H-2B EMPLOYER NOTIFICATION REQUIREMENT.**

2 (a) IN GENERAL.—An employer of one or more H-
3 2B workers shall, within three business days, make elec-
4 tronic notification, in the manner prescribed by the Sec-
5 retary of Homeland Security, of the following events:

6 (1) Such a worker fails to report to work within
7 5 workdays of the employment start date on the pe-
8 tition or within 5 workdays of the date on which the
9 worker is admitted into the United States pursuant
10 to the petition, whichever is later.

11 (2) The labor or services for which such a work-
12 er was hired is completed more than 30 days earlier
13 than the employment end date stated on the peti-
14 tion.

15 (3) The employment of such a worker is termi-
16 nated prior to the completion of labor or services for
17 which he or she was hired.

18 (4) Such a worker has not reported for work
19 for a period of 5 consecutive workdays without the
20 consent of the employer.

21 (b) EVIDENCE.—An employer shall retain evidence of
22 a notification described in subsection (a) and make it
23 available for inspection by officers of the Department of
24 Homeland Security for a 1-year period beginning on the
25 date of the notification.

1 (c) PENALTY.—The Secretary shall impose civil mon-
2 etary penalties, in an amount not less than \$500 per viola-
3 tion and not to exceed \$1,000 per violation, as the Sec-
4 retary determines to be appropriate, for each instance
5 where the employer cannot demonstrate that it has com-
6 plied with the notification requirements, unless, in the
7 case of an untimely notification, the employer dem-
8 onstrates with such notification that good cause existed
9 for the untimely notification, and the Secretary of Home-
10 land Security, in the Secretary’s discretion, waives such
11 penalty.

12 (d) PROCESS.—If the Secretary has determined that
13 an employer has violated the notification requirements in
14 subsection (a), the employer shall be given written notice
15 and 30 days to reply before being given written notice of
16 the assessment of the penalty.

17 (e) FAILURE TO PAY PENALTY.—If a penalty de-
18 scribed in subsection (c) is not paid within 10 days of as-
19 sessment, no nonimmigrant or immigrant petition may be
20 processed for that employer, nor may that employer con-
21 tinue to employ nonimmigrants, until such penalty is paid.

22 **SEC. 11. AUTHORIZATION OF APPROPRIATIONS.**

23 There are authorized to be appropriated for fiscal
24 year 2022 and each fiscal year thereafter such sums as
25 may be necessary for the purposes of—

1 (1) recruiting United States workers for labor
2 or services which might otherwise be performed by
3 H-2B workers, including by ensuring that State
4 workforce agencies are sufficiently funded to fulfill
5 their functions under the H-2B program;

6 (2) enabling the Secretary of Labor to make de-
7 terminations and certifications under the H-2B pro-
8 gram in accordance with this Act and the Immigra-
9 tion and Nationality Act (8 U.S.C. 1101 et seq.), in-
10 cluding the operation of the publicly-accessible online
11 job registry and database of job orders described in
12 section 5(b) of this Act; and

13 (3) monitoring the terms and conditions under
14 which H-2B workers (and United States workers
15 employed by the same employers) are employed in
16 the United States.

○