

1 **TITLE IV—REFORMS TO NON-**  
2 **IMMIGRANT VISA PROGRAMS**  
3 **Subtitle A—Employment-based**  
4 **Nonimmigrant Visas**

5 **SEC. 4101. MARKET-BASED H-1B VISA LIMITS.**

6 (a) IN GENERAL.—Section 214(g) (8 U.S.C.  
7 1184(g)) is amended—

8 (1) in paragraph (1)—

9 (A) in the matter preceding subparagraph  
10 (A), by striking “(beginning with fiscal year  
11 1992)”; and

12 (B) by amending subparagraph (A) to read  
13 as follows:

14 “(A) under section 101(a)(15)(H)(i)(b)  
15 may not exceed the sum of—

16 “(i) the base allocation calculated  
17 under paragraph (9)(A); and

18 “(ii) the allocation adjustment cal-  
19 culated under paragraph (9)(B); and”;

20 (2) by redesignating paragraph (10) as sub-  
21 paragraph (D) of paragraph (9);

22 (3) by redesignating paragraph (9) as para-  
23 graph (10); and

1           (4) by inserting after paragraph (8) the fol-  
2       lowing:

3       “(9)(A) Except as provided in subparagraph (C), the  
4       base allocation of nonimmigrant visas under section  
5       101(a)(15)(H)(i)(b) for each fiscal year shall be equal  
6       to—

7           “(i) the sum of—

8               “(I) the base allocation for the most re-  
9               cently completed fiscal year; and

10               “(II) the allocation adjustment under sub-  
11               paragraph (B) for the most recently completed  
12               fiscal year;

13           “(ii) if the number calculated under clause (i)  
14       is less than 115,000, 115,000; or

15           “(iii) if the number calculated under clause (i)  
16       is more than 180,000, 180,000.

17       “(B)(i) If the number of cap-subject nonimmigrant  
18       visa petitions accepted for filing under section  
19       101(a)(15)(H)(i)(b) during the first 45 days petitions may  
20       be filed for a fiscal year is equal to the base allocation  
21       for such fiscal year, an additional 20,000 such visas shall  
22       be made available beginning on the 46th day on which pe-  
23       titions may be filed for such fiscal year.

24       “(ii) If the base allocation of cap-subject non-  
25       immigrant visa petitions accepted for filing under section

1 101(a)(15)(H)(i)(b) for a fiscal year is reached during the  
2 15-day period ending on the 60th day on which petitions  
3 may be filed for such fiscal year, an additional 15,000  
4 such visas shall be made available beginning on the 61st  
5 day on which petitions may be filed for such fiscal year.

6 “(iii) If the base allocation of cap-subject non-  
7 immigrant visa petitions accepted for filing under section  
8 101(a)(15)(H)(i)(b) for a fiscal year is reached during the  
9 30-day period ending on the 90th day on which petitions  
10 may be filed for such fiscal year, an additional 10,000  
11 such visas shall be made available beginning on the 91st  
12 day on which petitions may be filed for such fiscal year.

13 “(iv) If the base allocation of cap-subject non-  
14 immigrant visa petitions accepted for filing under section  
15 101(a)(15)(H)(i)(b) for a fiscal year is reached during the  
16 185-day period ending on the 275th day on which peti-  
17 tions may be filed for such fiscal year, an additional 5,000  
18 such visas shall be made available beginning on the date  
19 on which such allocation is reached.

20 “(v) If the number of cap-subject nonimmigrant visa  
21 petitions accepted for filing under section  
22 101(a)(15)(H)(i)(b) for a fiscal year is at least 5,000  
23 fewer than the base allocation, but is not more than 9,999  
24 fewer than the base allocation, the allocation adjustment  
25 for the following fiscal year shall be -5,000.

1       “(vi) If the number of cap-subject nonimmigrant visa  
2 petitions accepted for filing under section  
3 101(a)(15)(H)(i)(b) for a fiscal year is at least 10,000  
4 fewer than the base allocation, but not more than 14,999  
5 fewer than the base allocation, the allocation adjustment  
6 for the following fiscal year shall be -10,000.

7       “(vii) If the number of cap-subject nonimmigrant visa  
8 petitions accepted for filing under section  
9 101(a)(15)(H)(i)(b) for a fiscal year is at least 15,000  
10 fewer than the base allocation, but not more than 19,999  
11 fewer than the base allocation, the allocation adjustment  
12 for the following fiscal year shall be -15,000.

13       “(viii) If the number of cap-subject nonimmigrant  
14 visa petitions accepted for filing under section  
15 101(a)(15)(H)(i)(b) for a fiscal year is at least 20,000  
16 fewer than the base allocation, the allocation adjustment  
17 for the following fiscal year shall be -20,000.

18       “(C) An allocation adjustment under clause (i), (ii),  
19 (iii), or (iv) of subparagraph (B)—

20               “(i) may not increase the total number of non-  
21 immigrant visas available for any fiscal year under  
22 section 101(a)(15)(H)(i)(b) above 180,000; and

23               “(ii) may not take place to make additional  
24 nonimmigrant visas available for any fiscal year in  
25 which the national occupational unemployment rate

1 for ‘Management, Professional, and Related Occupa-  
2 tions’, as published by the Bureau of Labor Statis-  
3 tics each month, averages 4.5 percent or greater  
4 over the 12-month period preceding the date of the  
5 Secretary’s determination of whether the cap should  
6 be increased or decreased.”.

7 (b) INCREASE IN ALLOCATION FOR STEM NON-  
8 IMMIGRANTS.—Section 214(g)(5)(C) (8 U.S.C.  
9 1184(g)(5)(C)) is amended to read as follows:

10 “(C) has earned a master’s or higher degree, in  
11 a field of science, technology, engineering, or math  
12 included in the Department of Education’s Classi-  
13 fication of Instructional Programs taxonomy within  
14 the summary groups of computer and information  
15 sciences and support services, engineering, mathe-  
16 matics and statistics, biological and biomedical  
17 sciences, and physical sciences, from a United States  
18 institution of higher education (as defined in section  
19 101(a) of the Higher Education Act of 1965 (20  
20 U.S.C. 1001(a)) until the number of aliens who are  
21 exempted from such numerical limitation during  
22 such year exceed 25,000.”.

23 (c) PUBLICATION.—

24 (1) DATA SUMMARIZING PETITIONS.—The Sec-  
25 retary shall timely upload to a public website data

1       that summarizes the adjudication of nonimmigrant  
2       petitions under section 101(a)(15)(H)(i)(b) of the  
3       Immigration and Nationality Act (8 U.S.C.  
4       1101(a)(15)(H)(i)(b)) during each fiscal year.

5               (2) ANNUAL NUMERICAL LIMITATION.—As soon  
6       as practicable and no later than March 2 of each fis-  
7       cal year, the Secretary shall publish in the Federal  
8       Register the numerical limitation determined under  
9       section 214(g)(1)(A) for such fiscal year.

10       (d) EFFECTIVE DATE AND APPLICATION.—The  
11       amendments made by subsection (a) shall take effect on  
12       the first day of the first fiscal year beginning after the  
13       date of the enactment of this Act and apply to applications  
14       for nonimmigrant visas under section 101(a)(15)(H)(i)(b)  
15       of the Immigration and Nationality Act (8 U.S.C.  
16       1101(a)(15)(H)(i)(b)) for such fiscal year.

17       **SEC. 4102. EMPLOYMENT AUTHORIZATION FOR DEPEND-**  
18               **ENTS OF EMPLOYMENT-BASED NON-**  
19               **IMMIGRANTS.**

20       Section 214(c) (8 U.S.C. 1184(c)) is amended—

21               (1) by striking “Attorney General” each place  
22       such term appears and inserting “Secretary of  
23       Homeland Security”; and

24               (2) in paragraph (2), by amending subpara-  
25       graph (E) to read as follows:

1 “(E)(i) In the case of an alien spouse admitted under  
2 section 101(a)(15)(L), who is accompanying or following  
3 to join a principal alien admitted under such section, the  
4 Secretary of Homeland Security shall—

5 “(I) authorize the alien spouse to engage in em-  
6 ployment in the United States; and

7 “(II) provide the spouse with an ‘employment  
8 authorized’ endorsement or other appropriate work  
9 permit.

10 “(ii) In the case of an alien spouse admitted under  
11 section 101(a)(15)(H)(i)(b), who is accompanying or fol-  
12 lowing to join a principal alien admitted under such sec-  
13 tion, the Secretary of Homeland Security shall—

14 “(I) authorize the alien spouse to engage in em-  
15 ployment in the United States; and

16 “(II) provide such a spouse with an ‘employ-  
17 ment authorized’ endorsement or other appropriate  
18 work permit, if appropriate.

19 “(iii)(I) Upon the request of the Secretary of State,  
20 the Secretary of Homeland Security may suspend employ-  
21 ment authorizations under clause (ii) to nationals of a for-  
22 eign country that does not permit reciprocal employment  
23 to nationals of the United States who are accompanying  
24 or following to join the employment-based nonimmigrant

1 husband or wife of such spouse to be employed in such  
2 foreign country based on that status.

3 “(II) In subclause (I), the term ‘employment-based  
4 nonimmigrant’ means an individual who is admitted to a  
5 foreign country to perform employment similar to the em-  
6 ployment described in section 101(a)(15)(H)(i)(b).”.

7 **SEC. 4103. ELIMINATING IMPEDIMENTS TO WORKER MO-**  
8 **BILITY.**

9 (a) DEFERENCE TO PRIOR APPROVALS.—Section  
10 214(c) (8 U.S.C. 1184(c)), as amended by section 4102,  
11 is further amended by adding at the end the following:

12 “(15) Subject to paragraph (2)(D) and subsection (g)  
13 and section 104(c) and subsections (a) and (b) of section  
14 106 of the American Competitiveness in the Twenty-first  
15 Century Act of 2000 (Public Law 106–313; 8 U.S.C. 1184  
16 note), the Secretary of Homeland Security shall give def-  
17 erence to a prior approval of a petition in reviewing a peti-  
18 tion to extend the status of a nonimmigrant admitted  
19 under subparagraph (H)(i)(b) or (L) of section 101(a)(15)  
20 if the petition involves the same alien and petitioner unless  
21 the Secretary determines that—

22 “(A) there was a material error with regard to  
23 the previous petition approval;

24 “(B) a substantial change in circumstances has  
25 taken place;



1           “(C) new material information has been discov-  
2           ered that adversely impacts the eligibility of the em-  
3           ployer or the nonimmigrant; or

4           “(D) in the Secretary’s discretion, such exten-  
5           sion should not be approved.”.

6           (b) EFFECT OF EMPLOYMENT TERMINATION.—Sec-  
7           tion 214(n) (8 U.S.C. 1184(n)) is amended by adding at  
8           the end the following:

9           “(3) A nonimmigrant admitted under section  
10          101(a)(15)(H)(i)(b) whose employment relationship termi-  
11          nates before the expiration of the nonimmigrant’s period  
12          of authorized admission shall be deemed to have retained  
13          such legal status throughout the entire 60-day period be-  
14          ginning on the date such employment is terminated. A  
15          nonimmigrant who files a petition to extend, change, or  
16          adjust their status at any point during such period shall  
17          be deemed to have lawful status under section  
18          101(a)(15)(H)(i)(b) while that petition is pending.”.

19          (c) VISA REVALIDATION.—Section 222(c) (8 U.S.C.  
20          1202(c)) is amended—

21                 (1) by inserting “(1)” before “Every alien”;  
22                 and

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

24                 “(2) The Secretary of State may, at the Secretary’s  
25                 discretion, renew in the United States the visa of an alien

1 admitted under subparagraph (A), (E), (G), (H), (I), (L),  
2 (N), (O), (P), (R), or (W) of section 101(a)(15) if the  
3 alien has remained eligible for such status and qualifies  
4 for a waiver of interview as provided for in subsection  
5 (h)(1)(D).”.

6 (d) INTERVIEW WAIVERS FOR LOW RISK VISA AP-  
7 PPLICANTS.—Section 222(h)(1) (8 U.S.C. 1202(h)(1)) is  
8 amended—

9 (1) in subparagraph (B)(iv), by striking “or” at  
10 the end;

11 (2) in subparagraph (C)(ii), by striking “and”  
12 at the end and inserting “or”; and

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

14 “(D) by the Secretary of State, in con-  
15 sultation with the Secretary of Homeland Secu-  
16 rity, for such aliens or classes of aliens—

17 “(i) that the Secretary determines  
18 generally represent a low security risk;

19 “(ii) for which an in-person interview  
20 would not add material benefit to the adju-  
21 dication process;

22 “(iii) unless the Secretary of State,  
23 after a review of all standard database and  
24 biometric checks, the visa application, and  
25 other supporting documents, determines

1                   that an interview is unlikely to reveal de-  
2                   rogatory information; and

3                   “(iv) except that in every case, the  
4                   Secretary of State retains the right to re-  
5                   quire an applicant to appear for an inter-  
6                   view; and”.

7   **SEC. 4104. STEM EDUCATION AND TRAINING.**

8           (a)   FEE.—Section   212(a)(5)(A)   (8    U.S.C.  
9   1182(a)(5)(A)) is amended by adding at the end the fol-  
10   lowing:

11                   “(v) FEE.—An employer shall submit,  
12                   along with an application for a certification  
13                   under this subparagraph, a fee of \$1,000,  
14                   which shall be deposited in the STEM  
15                   Education and Training Account estab-  
16                   lished under section 286(w).”.

17           (b) H-1B NONIMMIGRANT PETITIONER ACCOUNT.—  
18   Section 286(s) (8 U.S.C. 1356(s)) is amended by striking  
19   paragraphs (3) and (4) and inserting the following:

20                   “(3) LOW-INCOME STEM SCHOLARSHIP PRO-  
21   GRAM.—

22                   “(A) IN GENERAL.—Thirty percent of the  
23                   amounts deposited into the H-1B Non-  
24                   immigrant Petitioner Account shall remain  
25                   available to the Director of the National Science

1 Foundation until expended for scholarships de-  
2 scribed in section 414(d) of the American Com-  
3 petitiveness and Workforce Improvement Act of  
4 1998 (42 U.S.C. 1869c) for low-income stu-  
5 dents enrolled in a program of study leading to  
6 a degree in science, technology, engineering, or  
7 mathematics.

8 “(B) STEM EDUCATION FOR UNDERREP-  
9 RESENTED.—The Director shall work in con-  
10 sultation with, or direct scholarship funds  
11 through, national nonprofit organizations that  
12 primarily focus on science, technology, engineer-  
13 ing, or mathematics education for underrep-  
14 resented groups, such as women and minorities.

15 “(C) LOAN FORGIVENESS.—The Director  
16 may expend funds from the Account for pur-  
17 poses of loan forgiveness or repayment of stu-  
18 dent loans which led to a low-income student  
19 obtaining a degree in science, technology, engi-  
20 neering, mathematics, or other high demand  
21 fields.

22 “(4) NATIONAL SCIENCE FOUNDATION GRANT  
23 PROGRAM FOR K–12 SCIENCE, TECHNOLOGY, ENGI-  
24 NEERING, AND MATHEMATICS EDUCATION.—

1           “(A) IN GENERAL.—Ten percent of the  
2           amounts deposited into the H-1B Non-  
3           immigrant Petitioner Account shall remain  
4           available to the Director of the National Science  
5           Foundation until expended to carry out a direct  
6           or matching grant program to support improve-  
7           ment in K-12 education, including through pri-  
8           vate-public partnerships. Grants awarded pur-  
9           suant to this paragraph shall include formula  
10          based grants that target lower income popu-  
11          lations with a focus on reaching women and mi-  
12          norities.

13          “(B) TYPES OF PROGRAMS COVERED.—  
14          The Director shall award grants to programs  
15          that—

16                 “(i) support the development and im-  
17                 plementation of standards-based instruc-  
18                 tional materials models and related student  
19                 assessments that enable K-12 students to  
20                 acquire an understanding of science, tech-  
21                 nology, engineering, and mathematics, and  
22                 to develop critical thinking skills;

23                 “(ii) provide systemic improvement in  
24                 training K-12 teachers and education for  
25                 students in science, technology, engineer-

1 ing, and mathematics, including by sup-  
2 porting efforts to promote gender-equality  
3 among students receiving such instruction;

4 “(iii) support the professional develop-  
5 ment of K–12 science, technology, engi-  
6 neering, and mathematics teachers in the  
7 use of technology in the classroom;

8 “(iv) stimulate systemwide K–12 re-  
9 form of science, technology, engineering,  
10 and mathematics in urban, rural, and eco-  
11 nomically disadvantaged regions of the  
12 United States;

13 “(v) provide externships and other op-  
14 portunities for students to increase their  
15 appreciation and understanding of science,  
16 technology, engineering, and mathematics  
17 (including summer institutes sponsored by  
18 an institution of higher education for stu-  
19 dents in grades 7 through 12 that provide  
20 instruction in such fields);

21 “(vi) involve partnerships of industry,  
22 educational institutions, and national or  
23 regional community based organizations  
24 with demonstrated experience addressing

1 the educational needs of disadvantaged  
2 communities;

3 “(vii) provide college preparatory sup-  
4 port to expose and prepare students for ca-  
5 reers in science, technology, engineering,  
6 and mathematics; or

7 “(viii) provide for carrying out sys-  
8 temic reform activities under section  
9 3(a)(1) of the National Science Foundation  
10 Act of 1950 (42 U.S.C. 1862(a)(1)).”.

11 (c) USE OF FEE.—Section 286 (8 U.S.C. 1356) is  
12 amended by adding at the end the following:

13 “(w) STEM EDUCATION AND TRAINING ACCOUNT.—

14 “(1) IN GENERAL.—There is established in the  
15 general fund of the Treasury a separate account,  
16 which shall be known as the ‘STEM Education and  
17 Training Account’. Notwithstanding any other sec-  
18 tion of this title, there shall be deposited as offset-  
19 ting receipts into the Account all of the fees col-  
20 lected under section 212(a)(5)(A)(v).

21 “(2) PURPOSES.—

22 “(A) IN GENERAL.—The purposes of the  
23 STEM Education and Training Account are to  
24 enhance the economic competitiveness of the  
25 United States by—

1 “(i) strengthening STEM education,  
2 including in computer science, at all levels;

3 “(ii) ensuring that schools have access  
4 to well-trained and effective STEM teach-  
5 ers;

6 “(iii) supporting efforts to strengthen  
7 the elementary and secondary curriculum,  
8 including efforts to make courses in com-  
9 puter science more broadly available; and

10 “(iv) helping colleges and universities  
11 produce more graduates in fields needed by  
12 American employers.

13 “(B) DEFINED TERM.—In this paragraph,  
14 the term ‘STEM education’ means instruction  
15 in a field of science, technology, engineering or  
16 math included in the Department of Edu-  
17 cation’s Classification of Instructional Pro-  
18 grams taxonomy within the summary groups of  
19 computer and information sciences and support  
20 services, engineering, mathematics and statis-  
21 tics, biological and biomedical sciences, and  
22 physical sciences.

23 “(3) ALLOCATIONS TO STATES AND TERRI-  
24 TORIES.—



1           “(A) IN GENERAL.—Subject to subpara-  
2 graph (B), the Secretary of Education shall  
3 proportionately allocate 70 percent of the  
4 amounts deposited into the STEM Education  
5 and Training Account each fiscal year to the 50  
6 States, the District of Columbia, the Common-  
7 wealth of Puerto Rico, Guam, the United States  
8 Virgin Islands, American Samoa, and the  
9 Northern Mariana Islands in an amount that  
10 bears the same relationship as the proportion  
11 the State, district, or territory received under  
12 subpart 2 of part A of title I of the Elementary  
13 and Secondary Education Act of 1965 (20  
14 U.S.C. 6331 et seq.) for the preceding fiscal  
15 year bears to the amount all States and terri-  
16 tories received under that subpart for the pre-  
17 ceding fiscal year.

18           “(B) MINIMUM ALLOCATIONS.—No State  
19 or territory shall receive less than an amount  
20 equal to 0.5 percent of the total amount made  
21 available to all States from the STEM Edu-  
22 cation and Training Account. If a State or ter-  
23 ritory does not request an allocation from the  
24 Account for a fiscal year, the Secretary shall re-  
25 allocate the State’s allocation to the remaining

1 States and territories in accordance with this  
2 paragraph.

3 “(C) USE OF FUNDS.—Amounts allocated  
4 pursuant to this paragraph may be used for the  
5 activities described in section 4104(c) of the  
6 Border Security, Economic Opportunity, and  
7 Immigration Modernization Act.

8 “(4) STEM CAPACITY BUILDING AT MINORITY-  
9 SERVING INSTITUTIONS.—

10 “(A) IN GENERAL.—The Secretary of Edu-  
11 cation shall allocate 20 percent of the amounts  
12 deposited into the STEM Education and Train-  
13 ing Account to establish or expand programs to  
14 award grants to institutions described in sub-  
15 paragraph (C)—

16 “(i) to enhance the quality of under-  
17 graduate science, technology, engineering,  
18 and mathematics education at such institu-  
19 tions; and

20 “(ii) to increase the retention and  
21 graduation rates of students pursuing de-  
22 grees in such fields at such institutions.

23 “(B) TYPES OF PROGRAMS COVERED.—  
24 Grants awarded under this paragraph shall be  
25 awarded to—

1 “(i) minority-serving institutions of  
2 higher education for—

3 “(I) activities to improve courses  
4 and curriculum in science, technology,  
5 engineering, and mathematics;

6 “(II) efforts to promote gender  
7 equality among students enrolled in  
8 such courses;

9 “(III) faculty development;

10 “(IV) stipends for undergraduate  
11 students participating in research;  
12 and

13 “(V) other activities consistent  
14 with subparagraph (A), as determined  
15 by the Secretary of Education; and

16 “(ii) to other institutions of higher  
17 education to partner with the institutions  
18 described in clause (i) for—

19 “(I) faculty and student develop-  
20 ment and exchange;

21 “(II) research infrastructure de-  
22 velopment;

23 “(III) joint research projects;  
24 and

1 “(IV) identification and develop-  
2 ment of minority and low-income can-  
3 didates for graduate studies in  
4 science, technology, engineering, and  
5 mathematics degree programs.

6 “(C) INSTITUTIONS INCLUDED.—In this  
7 paragraph, the term ‘institutions’ shall in-  
8 clude—

9 “(i) colleges eligible to receive funds  
10 under the Act of August 30, 1890 (7  
11 U.S.C. 321–326a and 328), including  
12 Tuskegee University;

13 “(ii) 1994 Institutions, as defined in  
14 section 532 of the Equity in Educational  
15 Land-Grant Status Act of 1994 (7 U.S.C.  
16 301 note);

17 “(iii) part B institutions (as defined  
18 in section 322 of the Higher Education  
19 Act of 1965 (20 U.S.C. 1061)); and

20 “(iv) Hispanic-serving institutions, as  
21 defined in section 502(a)(5) of the Higher  
22 Education Act of 1965 (20 U.S.C.  
23 1101a(a)(5)).

24 “(D) GRANTING OF BONDING AUTHOR-  
25 ITY.—A recipient of a grant awarded under this

1 paragraph is authorized to utilize such funds  
2 for the issuance of bonds to fund research in-  
3 frastructure development.

4 “(E) LOAN FORGIVENESS.—The Director  
5 may expend funds from the allocation under  
6 this paragraph for purposes of loan forgiveness  
7 or repayment of student loans which led to a  
8 low-income student obtaining a degree in  
9 science, technology, engineering, mathematics,  
10 or other high demand fields.

11 “(5) WORKFORCE INVESTMENT.—The Sec-  
12 retary of Education shall allocate 5 percent of the  
13 amounts deposited into the STEM Education and  
14 Training Account to the Secretary of Labor until ex-  
15 pended for statewide workforce investment activities  
16 that may also benefit veterans and their spouses, in-  
17 cluding youth activities and statewide employment  
18 and training and activities for adults and dislocated  
19 workers described in section 128(a) of the Workforce  
20 Investment Act of 1998 (29 U.S.C. 2853(a)), and  
21 the development of licensing and credentialing pro-  
22 grams.

23 “(6) AMERICAN DREAM ACCOUNTS.—The Sec-  
24 retary of Education shall allocate 3 percent of the  
25 amounts deposited into the STEM Education and

1 Training Account to award grants, on a competitive  
2 basis, to eligible entities to enable such eligible enti-  
3 ties to establish and administer American Dream  
4 Accounts under section 4104(e) of the Illegal Immi-  
5 gration Reform and Immigrant Responsibility Act of  
6 1996.

7 “(7) ADMINISTRATION EXPENSES.—The Sec-  
8 retary of Education may expend up to 2 percent of  
9 the amounts deposited into the STEM Education  
10 and Training Account for administrative expenses,  
11 including conducting an annual evaluation of the im-  
12 plementation and impact of the activities funded by  
13 the STEM Education and Training Account as re-  
14 quired under section 4104(c)(3) of the Border Secu-  
15 rity, Economic Opportunity, and Immigration Mod-  
16 ernization Act.”.

17 (d) STEM EDUCATION GRANTS.—

18 (1) APPLICATION PROCESS.—

19 (A) IN GENERAL.—Each Governor and  
20 Chief State School Officer desiring an allocation  
21 from the STEM Education and Training Ac-  
22 count under section 286(w)(3) of the Immigra-  
23 tion and Nationality Act, as added by sub-  
24 section (b), shall jointly submit a plan, includ-  
25 ing a proposed budget, signed by the Governor

1 and Chief State School Officer, to the Secretary  
2 of Education at such time, in such form, and  
3 including such information as the Secretary of  
4 Education may prescribe pursuant to subpara-  
5 graph (B). The plan shall describe how the  
6 State plans to improve STEM education to  
7 meet the needs of students and employers in  
8 the State.

9 (B) RULEMAKING.—The Secretary of Edu-  
10 cation shall issue a rule, through a rulemaking  
11 procedure that complies with section 553 of  
12 title 5, United States Code, prescribing the in-  
13 formation that should be included in the State  
14 plans submitted under subparagraph (A).

15 (2) ALLOWABLE ACTIVITIES.—A State, district,  
16 or territory that receives funding from the STEM  
17 Education and Training Account may use such  
18 funding to develop and implement science, tech-  
19 nology, engineering, and mathematics (STEM) ac-  
20 tivities to serve students, including students of  
21 underrepresented groups such as minorities, eco-  
22 nomically disadvantaged, and females by—

23 (A) strengthening the State’s STEM aca-  
24 demic achievement standards;

1 (B) implementing strategies for the re-  
2 cruitment, training, placement, and retention of  
3 teachers in STEM fields, including computer  
4 science;

5 (C) carrying out initiatives designed to as-  
6 sist students in succeeding and graduating from  
7 postsecondary STEM programs;

8 (D) improving the availability and access  
9 to STEM-related worker training programs, in-  
10 cluding community college courses and pro-  
11 grams;

12 (E) forming partnerships with higher edu-  
13 cation, economic development, workforce, indus-  
14 try, and local educational agencies; or

15 (F) engaging in other activities, as deter-  
16 mined by the State, in consultation with busi-  
17 nesses and State agencies, to improve STEM  
18 education.

19 (3) NATIONAL EVALUATION.—

20 (A) IN GENERAL.—Using amounts allo-  
21 cated under section 286(w)(7) of the Immigra-  
22 tion and Nationality Act, as added by sub-  
23 section (b), the Secretary of Education shall  
24 conduct, directly or through a grant or con-  
25 tract, an annual evaluation of the implementa-



1           tion and impact of the activities funded by the  
2           STEM Education and Training Account.

3           (B) ANNUAL REPORT.—The Secretary  
4           shall submit a report describing the results of  
5           each evaluation conducted under subparagraph  
6           (A) to—

7                       (i) the President;

8                       (ii) the Committee on the Judiciary of  
9           the Senate;

10                      (iii) the Committee on the Judiciary  
11           of the House of Representatives;

12                      (iv) the Committee on Health, Edu-  
13           cation, Labor, and Pensions of the Senate;  
14           and

15                      (v) the Committee on Education and  
16           the Workforce of the House of Representa-  
17           tives.

18           (C) DISSEMINATION.—The Secretary shall  
19           make the findings of the evaluation widely  
20           available to educators, the business community,  
21           and the public.

22           (4) RULE OF CONSTRUCTION.—Nothing in this  
23           subsection may be construed to permit the Secretary  
24           of Education or any other Federal official to approve

1 the content or academic achievement standards of a  
2 State.

3 (e) AMERICAN DREAM ACCOUNTS.—

4 (1) DEFINITIONS.—In this subsection:

5 (A) AMERICAN DREAM ACCOUNT.—The  
6 term “American Dream Account” means a per-  
7 sonal online account for low-income students  
8 that monitors higher education readiness and  
9 includes a college savings account.

10 (B) APPROPRIATE COMMITTEES OF CON-  
11 GRESS.—The term “appropriate committees of  
12 Congress” means—

13 (i) the Committee on Health, Edu-  
14 cation, Labor, and Pensions of the Senate;

15 (ii) the Committee on Appropriations  
16 of the Senate;

17 (iii) the Committee on Finance of the  
18 Senate;

19 (iv) the Committee on Education and  
20 the Workforce of the House of Representa-  
21 tives;

22 (v) the Committee on Appropriations  
23 of the House of Representatives;

1 (vi) the Committee on Ways and  
2 Means of the House of Representatives;  
3 and

4 (vii) any other committee of the Sen-  
5 ate or House of Representatives that the  
6 Secretary determines appropriate.

7 (C) COLLEGE SAVINGS ACCOUNT.—The  
8 term “college savings account” means a savings  
9 account that—

10 (i) provides some tax-preferred accu-  
11 mulation;

12 (ii) is widely available (such as Quali-  
13 fied Tuition Programs under section 529  
14 of the Internal Revenue Code of 1986 or  
15 Coverdell Education Savings Accounts  
16 under section 530 of the Internal Revenue  
17 Code of 1986); and

18 (iii) contains funds that may be used  
19 only for the costs associated with attending  
20 an institution of higher education, includ-  
21 ing—

22 (I) tuition and fees;

23 (II) room and board;

24 (III) textbooks;

25 (IV) supplies and equipment; and

1 (V) internet access.

2 (D) DUAL ENROLLMENT PROGRAM.—The  
3 term “dual enrollment program” means an aca-  
4 demic program through which a secondary  
5 school student is able simultaneously to earn  
6 credit toward a secondary school diploma and a  
7 postsecondary degree or credential.

8 (E) ELIGIBLE ENTITY.—The term “eligible  
9 entity” means—

- 10 (i) a State educational agency;  
11 (ii) a local educational agency;  
12 (iii) a charter school or charter man-  
13 agement organization;  
14 (iv) an institution of higher education;  
15 (v) a nonprofit organization;  
16 (vi) an entity with demonstrated expe-  
17 rience in educational savings or in assist-  
18 ing low-income students to prepare for,  
19 and attend, an institution of higher edu-  
20 cation; or

21 (vii) a consortium of 2 or more of the  
22 entities described in clause (i) through (vi).

23 (F) ESEA DEFINITIONS.—The terms  
24 “local educational agency”, “parent”, and  
25 “State educational agency” have the meanings

1 given the terms in section 9101 of the Elemen-  
2 tary and Secondary Education Act of 1965 (20  
3 U.S.C. 7801) and the term “charter school”  
4 has the meaning given the term in section 5210  
5 of such Act.

6 (G) INSTITUTION OF HIGHER EDU-  
7 CATION.—The term “institution of higher edu-  
8 cation” has the meaning given the term in sec-  
9 tion 101(a) of the Higher Education Act of  
10 1965 (20 U.S.C. 1001(a)).

11 (H) LOW-INCOME STUDENT.—The term  
12 “low-income student” means a student who is  
13 eligible to receive a free or reduced price lunch  
14 under the Richard B. Russell National School  
15 Lunch Act (42 U.S.C. 1751 et seq.).

16 (2) GRANT PROGRAM.—

17 (A) PROGRAM AUTHORIZED.—The Sec-  
18 retary of Education is authorized to award  
19 grants, on a competitive basis, to eligible enti-  
20 ties to enable such eligible entities to establish  
21 and administer American Dream Accounts for a  
22 group of low-income students.

23 (B) RESERVATION.—From the amount  
24 made available each fiscal year to carry out this  
25 section under section 286(w)(6) of the Immi-

1           gration and Nationality Act, the Secretary of  
2           Education shall reserve not more than 5 per-  
3           cent of such amount to carry out the evaluation  
4           activities described in paragraph (5)(A).

5           (C) DURATION.—A grant awarded under  
6           this subsection shall be for a period of not more  
7           than 3 years. The Secretary of Education may  
8           extend such grant for an additional 2-year pe-  
9           riod if the Secretary of Education determines  
10          that the eligible entity has demonstrated signifi-  
11          cant progress, based on the factors described in  
12          paragraph (3)(B)(xi).

13         (3) APPLICATIONS; PRIORITY.—

14                 (A) IN GENERAL.—Each eligible entity de-  
15                 siring a grant under this subsection shall sub-  
16                 mit an application to the Secretary of Edu-  
17                 cation at such time, in such manner, and con-  
18                 taining such information as the Secretary of  
19                 Education may require.

20                 (B) CONTENTS.—The application de-  
21                 scribed in subparagraph (A) shall include—

22                         (i) a description of the characteristics  
23                         of a group of not less than 30 low-income  
24                         public school students who—

1 (I) are, at the time of the appli-  
2 cation, attending a grade not higher  
3 than grade 9; and

4 (II) will, under the grant, receive  
5 an American Dream Account;

6 (ii) a description of how the eligible  
7 entity will engage, and provide support  
8 (such as tutoring and mentoring for stu-  
9 dents, and training for teachers and other  
10 stakeholders) either online or in person,  
11 to—

12 (I) the students in the group de-  
13 scribed in clause (i);

14 (II) the family members and  
15 teachers of such students; and

16 (III) other stakeholders such as  
17 school administrators and school  
18 counselors;

19 (iii) an identification of partners who  
20 will assist the eligible entity in establishing  
21 and sustaining American Dream Accounts;

22 (iv) a description of what experience  
23 the eligible entity or the eligible entity's  
24 partners have in managing college savings  
25 accounts, preparing low-income students

1 for postsecondary education, managing on-  
2 line systems, and teaching financial lit-  
3 eracy;

4 (v) a description of how the eligible  
5 entity will help increase the value of the  
6 college savings account portion of each  
7 American Dream Account, such as by pro-  
8 viding matching funds or incentives for  
9 academic achievement;

10 (vi) a description of how the eligible  
11 entity will notify each participating student  
12 in the group described in subparagraph  
13 (A), on a semiannual basis, of the current  
14 balance and status of the student's college  
15 savings account portion of the student's  
16 American Dream Account;

17 (vii) a plan that describes how the eli-  
18 gible entity will monitor participating stu-  
19 dents in the group described in clause (i)  
20 to ensure that each student's American  
21 Dream Account will be maintained if a stu-  
22 dent in such group changes schools before  
23 graduating from secondary school;

24 (viii) a plan that describes how the  
25 American Dream Accounts will be man-



1           aged for not less than 1 year after a ma-  
2           jority of the students in the group de-  
3           scribed in clause (i) graduate from sec-  
4           ondary school;

5                 (ix) a description of how the eligible  
6           entity will encourage students in the group  
7           described in clause (i) who fail to graduate  
8           from secondary school to continue their  
9           education;

10                (x) a description of how the eligible  
11           entity will evaluate the grant program, in-  
12           cluding by collecting, as applicable, data  
13           about the students in the group described  
14           in clause (i) during the grant period, and,  
15           if sufficient grant funds are available, after  
16           the grant period, including

17                         (I) attendance rates;

18                         (II) progress reports;

19                         (III) grades and course selec-  
20           tions;

21                         (IV) the student graduation rate  
22           (as defined in section 1111  
23           (b)(2)(C)(vi) of the Elementary and  
24           Secondary Education Act of 1965 (20  
25           U.S.C. 6311(b)(2)(C)(vi)));

1 (V) rates of student completion  
2 of the Free Application for Federal  
3 Student Aid described in section 483  
4 of the Higher Education Act of 1965  
5 (20 U.S.C. 1090);

6 (VI) rates of enrollment in an in-  
7 stitution of higher education; and

8 (VII) rates of completion at an  
9 institution of higher education;

10 (xi) a description of what will happen  
11 to the funds in the college savings account  
12 portion of the American Dream Accounts  
13 that are dedicated to participating stu-  
14 dents described in clause (i) who have not  
15 matriculated at an institution of higher  
16 education at the time of the conclusion of  
17 the period of American Dream Account  
18 management described in clause (viii);

19 (xii) a description of how the eligible  
20 entity will ensure that funds in the college  
21 savings account portion of the American  
22 Dream Accounts will not make families in-  
23 eligible for public assistance; and

24 (xiii) a description of how the eligible  
25 entity will ensure that participating stu-

1                   dents described in clause (i) will have ac-  
2                   cess to the Internet;

3                   (C) PRIORITY.—In awarding grants under  
4                   this subsection, the Secretary of Education  
5                   shall give priority to applications from eligible  
6                   entities that—

7                   (i) are described in paragraph  
8                   (1)(E)(vii);

9                   (ii) serve the largest number of low-in-  
10                  come students;

11                  (iii) emphasize preparing students to  
12                  pursue careers in science, technology, engi-  
13                  neering, or mathematics; or

14                  (iv) in the case of an eligible entity  
15                  described in clause (i) or (ii) of paragraph  
16                  (1)(E), provide opportunities for partici-  
17                  pating students described in clause (i) to  
18                  participate in a dual enrollment program  
19                  at no cost to the student.

20                  (4) AUTHORIZED ACTIVITIES.—

21                  (A) IN GENERAL.—An eligible entity that  
22                  receives a grant under this subsection shall use  
23                  such grant funds to establish an American  
24                  Dream Account for each participating student

1 described in paragraph (3)(B)(i), which will be  
2 used to—

3 (i) open a college savings account for  
4 such student;

5 (ii) monitor the progress of such stu-  
6 dent online, which—

7 (I) shall include monitoring stu-  
8 dent data relating to—

9 (aa) grades and course se-  
10 lections;

11 (bb) progress reports; and

12 (cc) attendance and discipli-  
13 nary records; and

14 (II) may also include monitoring  
15 student data relating to a broad range  
16 of information, provided by teachers  
17 and family members, related to post-  
18 secondary education readiness, access,  
19 and completion;

20 (iii) provide opportunities for such  
21 students, either online or in person, to  
22 learn about financial literacy, including  
23 by—

1 (I) assisting such students in fi-  
2 nancial planning for enrollment in an  
3 institution of higher education; and

4 (II) assisting such students in  
5 identifying and applying for financial  
6 aid (such as loans, grants, and schol-  
7 arships) for an institution of higher  
8 education;

9 (iv) provide opportunities for such  
10 students, either online or in person, to  
11 learn about preparing for enrollment in an  
12 institution of higher education, including  
13 by providing instruction to students  
14 about—

15 (I) choosing the appropriate  
16 courses to prepare for postsecondary  
17 education;

18 (II) applying to an institution of  
19 higher education;

20 (III) building a student portfolio,  
21 which may be used when applying to  
22 an institution of higher education;

23 (IV) selecting an institution of  
24 higher education;

1 (V) choosing a major for the stu-  
2 dent's postsecondary program of edu-  
3 cation or a career path, including spe-  
4 cific instruction on pursuing science,  
5 technology, engineering, and mathe-  
6 matics majors; and

7 (VI) adapting to life at an insti-  
8 tution of higher education; and

9 (v) provide opportunities for such stu-  
10 dents, either online or in person, to iden-  
11 tify skills or interests, including career in-  
12 terests.

13 (B) ACCESS TO AMERICAN DREAM AC-  
14 COUNT.—

15 (i) IN GENERAL.—Subject to clause  
16 (iii) and (iv), and in accordance with appli-  
17 cable Federal laws and regulations relating  
18 to privacy of information and the privacy  
19 of children, an eligible entity that receives  
20 a grant under this subsection shall allow  
21 vested stakeholders described in clause (ii),  
22 to have secure access, through the Inter-  
23 net, to an American Dream Account.

24 (ii) VESTED STAKEHOLDERS.—The  
25 vested stakeholders that an eligible entity

1 shall permit to access an American Dream  
2 Account are individuals (such as the stu-  
3 dent's teachers, school counselors, coun-  
4 selors at an institution of higher education,  
5 school administrators, or other individuals)  
6 that are designated, in accordance with the  
7 Family Educational Rights and Privacy  
8 Act of 1974 (20 U.S.C. 1232g), by the  
9 parent of a participating student in whose  
10 name such American Dream Account is  
11 held, as having permission to access the  
12 account. A student's parent may withdraw  
13 such designation from an individual at any  
14 time.

15 (iii) EXCEPTION FOR COLLEGE SAV-  
16 INGS ACCOUNT.—An eligible entity that re-  
17 ceives a grant under this subsection shall  
18 not be required to give vested stakeholders  
19 described in clause (ii), access to the col-  
20 lege savings account portion of a student's  
21 American Dream Account.

22 (iv) ADULT STUDENTS.—Notwith-  
23 standing clause (i) through (iii), if a par-  
24 ticipating student is age 18 or older, an el-  
25 igible entity that receives a grant under

1           this subsection shall not provide access to  
2           such participating student's American  
3           Dream Account without the student's con-  
4           sent, in accordance with the Family Edu-  
5           cational Rights and Privacy Act of 1974  
6           (20 U.S.C. 1232g).

7                       (v) INPUT OF STUDENT INFORMA-  
8           TION.—Student data collected pursuant to  
9           subparagraph (A)(ii)(I) may only be en-  
10          tered into an American Dream Account by  
11          a school administrator or such administra-  
12          tor's designee.

13                      (C) PROHIBITION ON USE OF STUDENT IN-  
14          FORMATION.—An eligible entity that receives a  
15          grant under this subsection may not use any  
16          student-level information or data for the pur-  
17          pose of soliciting, advertising, or marketing any  
18          financial or nonfinancial consumer product or  
19          service that is offered by such eligible entity, or  
20          on behalf of any other person.

21                      (D) LIMITATION ON THE USE OF GRANT  
22          FUNDS.—An eligible entity shall not use more  
23          than 25 percent of the grant funds provided  
24          under this subsection to provide the initial de-



1           posit into a college savings account portion of  
2           a student's American Dream Account.

3           (5) REPORTS AND EVALUATIONS.—

4                   (A) IN GENERAL.—Not later than 1 year  
5           after the Secretary of Education has disbursed  
6           grants under this subsection, and annually  
7           thereafter, the Secretary of Education shall pre-  
8           pare and submit a report to the appropriate  
9           committees of Congress that includes an evalua-  
10          tion of the effectiveness of the grant program  
11          established under this subsection.

12                   (B) CONTENTS.—The report described in  
13          subparagraph (A) shall—

14                           (i) list the grants that have been  
15                           awarded under paragraph (2)(A);

16                           (ii) include the number of students  
17                           who have an American Dream Account es-  
18                           tablished through a grant awarded under  
19                           paragraph (2)(A);

20                           (iii) provide data (including the inter-  
21                           est accrued on college savings accounts  
22                           that are part of an American Dream Ac-  
23                           count) in the aggregate, regarding stu-  
24                           dents who have an American Dream Ac-  
25                           count established through a grant awarded

1 under paragraph (2)(A), as compared to  
2 similarly situated students who do not have  
3 an American Dream Account;

4 (iv) identify best practices developed  
5 by the eligible entities receiving grants  
6 under this subsection;

7 (v) identify any issues related to stu-  
8 dent privacy and stakeholder accessibility  
9 to American Dream Accounts;

10 (vi) provide feedback from partici-  
11 pating students and the parents of such  
12 students about the grant program, includ-  
13 ing—

14 (I) the impact of the program;

15 (II) aspects of the program that  
16 are successful;

17 (III) aspects of the program that  
18 are not successful; and

19 (IV) any other data required by  
20 the Secretary of Education; and

21 (vii) provide recommendations for ex-  
22 panding the American Dream Accounts  
23 program.

24 (6) ELIGIBILITY TO RECEIVE FEDERAL STU-  
25 DENT FINANCIAL AID.—Notwithstanding any other

1 provision of law, any funds that are in the college  
2 savings account portion of a student's American  
3 Dream Account shall not affect such student's eligi-  
4 bility to receive Federal student financial aid, includ-  
5 ing any Federal student financial aid under the  
6 Higher Education Act of 1965 (20 U.S.C. 1001),  
7 and shall not be considered in determining the  
8 amount of any such Federal student aid.

9 (f) CONFORMING AMENDMENT.—Section 480(j) of  
10 the Higher Education Act of 1965 (20 U.S.C. 1087vv(j))  
11 is amended by adding at the end the following:

12 “(5) Notwithstanding paragraph (1), amounts  
13 made available under the college savings account  
14 portion of an American Dream Account under sec-  
15 tion 4105(e)(4) of the Illegal Immigration Reform  
16 and Immigrant Responsibility Act of 1996 shall not  
17 be treated as estimated financial assistance for pur-  
18 poses of section 471(3).”.

19 **SEC. 4105. H-1B AND L VISA FEES.**

20 Section 281 (8 U.S.C. 1351) is amended—

21 (1) by striking “The fees” and inserting the fol-  
22 lowing:

23 “(a) IN GENERAL.—The fees”;

24 (2) by striking “: Provided, That nonimmigrant  
25 visas” and inserting the following: “.

1       “(b) UNITED NATIONS VISITORS.—Nonimmigrant  
2 visas”;

3               (3) by striking “Subject to” and inserting the  
4 following:

5       “(c) FEE WAIVERS OR REDUCTIONS.—Subject to”;  
6 and

7               (4) by adding at the end the following:

8       “(d) H-1B AND L VISA FEES.—In addition to the  
9 fees authorized under subsection (a), the Secretary of  
10 Homeland Security shall collect, from each employer (ex-  
11 cept for nonprofit research institutions and nonprofit edu-  
12 cational institutions) filing a petition to hire non-  
13 immigrants described in subparagraph (H)(i)(B) or (L)  
14 of section 101(a)(15), a fee in an amount equal to—

15               “(1) \$1,250 for each such petition filed by any  
16 employer with not more than 25 full-time equivalent  
17 employees in the United States; and

18               “(2) \$2,500 for each such petition filed by any  
19 employer with more than 25 such employees.”.

1     **Subtitle B—H-1B Visa Fraud and**  
2             **Abuse Protections**

3             **CHAPTER 1—H-1B EMPLOYER**  
4             **APPLICATION REQUIREMENTS**

5     **SEC. 4211. MODIFICATION OF APPLICATION REQUIRE-**  
6             **MENTS.**

7             (a) GENERAL APPLICATION REQUIREMENTS.—

8                 (1) WAGE RATES.—Section 212(n)(1)(A) (8  
9     U.S.C. 1182(n)(1)(A)) is amended—

10                 (A) in clause (i)—

11                     (i) in the matter preceding subclause  
12                     (I), by inserting “if the employer is not an  
13                     H-1B-dependent employer,” before “is of-  
14                     fering”;

15                     (ii) in subclause (I), by striking  
16                     “question, or” and inserting “question;  
17                     or”;

18                     (iii) in subclause (II), by striking  
19                     “employment,” and inserting “employ-  
20                     ment;” and

21                     (iv) in the undesignated material fol-  
22                     lowing subclause (II), by striking “applica-  
23                     tion, and” and inserting “application;”  
24                     and

1 (B) by striking clause (ii) and inserting the  
2 following:

3 “(ii) if the employer is an H–1B-dependent  
4 employer, is offering and will offer to H–1B  
5 nonimmigrants, during the period of authorized  
6 employment for each H–1B nonimmigrant,  
7 wages that are not less than the level 2 wages  
8 set out in subsection (p); and

9 “(iii) will provide working conditions for  
10 H–1B nonimmigrants that will not adversely af-  
11 fect the working conditions of other workers  
12 similarly employed.”.

13 (2) STRENGTHENING THE PREVAILING WAGE  
14 SYSTEM.—Section 212(p) (8 U.S.C. 1182(p)) is  
15 amended to read as follows:

16 “(p) COMPUTATION OF PREVAILING WAGE LEVEL.—

17 “(1) IN GENERAL.—

18 “(A) SURVEYS.—For employers of non-  
19 immigrants admitted pursuant to section  
20 101(a)(15)(H)(i)(b), the Secretary of Labor  
21 shall make available to employers a govern-  
22 mental survey to determine the prevailing wage  
23 for each occupational classification by metro-  
24 politan statistical area in the United States.  
25 Such survey, or other survey approved by the

1 Secretary of Labor, shall provide 3 levels of  
2 wages commensurate with experience, edu-  
3 cation, and level of supervision. Such wage lev-  
4 els shall be determined as follows:

5 “(i) The first level shall be the mean  
6 of the lowest two-thirds of wages surveyed,  
7 but in no case less than 80 percent of the  
8 mean of the wages surveyed.

9 “(ii) The second level shall be the  
10 mean of wages surveyed.

11 “(iii) The third level shall be the  
12 mean of the highest two-thirds of wages  
13 surveyed.

14 “(B) EDUCATIONAL, NONPROFIT, RE-  
15 SEARCH, AND GOVERNMENTAL ENTITIES.—In  
16 computing the prevailing wage level for an occu-  
17 pational classification in an area of employment  
18 for purposes of section 203(b)(1)(D) and sub-  
19 sections (a)(5)(A), (n)(1)(A)(i)(II), and  
20 (t)(1)(A)(i)(II) of this section in the case of an  
21 employee of—

22 “(i) an institution of higher education,  
23 or a related or affiliated nonprofit entity;  
24 or

1 “(ii) a nonprofit research organization  
2 or a governmental research organization;  
3 the prevailing wage level shall only take into ac-  
4 count employees at such institutions and orga-  
5 nizations in the area of employment.

6 “(2) PAYMENT OF PREVAILING WAGE.—The  
7 prevailing wage level required to be paid pursuant to  
8 section 203(b)(1)(D) and subsections (a)(5)(A),  
9 (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II) of this section  
10 shall be 100 percent of the wage level determined  
11 pursuant to those sections.

12 “(3) PROFESSIONAL ATHLETE.—With respect  
13 to a professional athlete (as defined in subsection  
14 (a)(5)(A)(iii)(II)) when the job opportunity is cov-  
15 ered by professional sports league rules or regula-  
16 tions, the wage set forth in those rules or regula-  
17 tions shall be considered as not adversely affecting  
18 the wages of United States workers similarly em-  
19 ployed and shall be considered the prevailing wage.

20 “(4) WAGES FOR H-2B EMPLOYEES.—

21 “(A) IN GENERAL.—The wages paid to H-  
22 2B nonimmigrants employed by the employer  
23 will be the greater of—

24 “(i) the actual wage level paid by the  
25 employer to other employees with similar



1 experience and qualifications for such posi-  
2 tion; or

3 “(ii) the prevailing wage level for the  
4 occupational classification of the position  
5 in the geographic area of the employment,  
6 based on the best information available as  
7 of the time of filing the application.

8 “(B) BEST INFORMATION AVAILABLE.—In  
9 subparagraph (A), the term ‘best information  
10 available’, with respect to determining the pre-  
11 vailing wage for a position, means—

12 “(i) a controlling collective bargaining  
13 agreement or Federal contract wage, if ap-  
14 plicable;

15 “(ii) if there is no applicable wage  
16 under clause (i), the wage level commensu-  
17 rate with the experience, training, and su-  
18 pervision required for the job based on Bu-  
19 reau of Labor Statistics data; or

20 “(iii) if the data referred to in clause  
21 (ii) is not available, a legitimate and recent  
22 private survey of the wages paid for such  
23 positions in the metropolitan statistical  
24 area.”.

1           (3) WAGES FOR EDUCATIONAL, NONPROFIT,  
2       RESEARCH, AND GOVERNMENTAL ENTITIES.—Sec-  
3       tion 212 (8 U.S.C. 1182), as amended by sections  
4       2312 and 2313, is further amended by adding at the  
5       end the following:

6       “(x) DETERMINATION OF PREVAILING WAGE.—In  
7       the case of a nonprofit institution of higher education (as  
8       defined in section 101(a) of the Higher Education Act of  
9       1965 (20 U.S.C. 1001(a))), a related or affiliated non-  
10      profit entity, a nonprofit research organization, or a gov-  
11      ernmental research organization, the Secretary of Labor  
12      shall determine such wage levels as follows:

13           “(1) If the Secretary of Labor uses, or makes  
14      available to employers, a governmental survey to de-  
15      termine the prevailing wage, such survey shall pro-  
16      vide at least 4 levels of wages commensurate with  
17      experience, education, and the level of supervision.

18           “(2) If an existing government survey has only  
19      2 levels, 2 intermediate levels may be created by di-  
20      viding by 3, the difference between the 2 levels of-  
21      fered, adding the quotient thus obtained to the first  
22      level and subtracting that quotient from the second  
23      level.

1           “(3) For institutions of higher education, only  
2           teaching positions and research positions may be  
3           paid using this special educational wage level.

4           “(4) In computing the prevailing wage level for  
5           an occupational classification in an area of employ-  
6           ment for purposes of subsections (a)(5)(A),  
7           (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II) and section  
8           203(b)(1)(D) for an employee of an institution of  
9           higher education, or a related or affiliated nonprofit  
10          entity or a nonprofit research organization or a gov-  
11          ernmental research organization, the prevailing wage  
12          level shall only take into account employees at such  
13          institutions and organizations in the area of employ-  
14          ment.”.

15          (b) INTERNET POSTING REQUIREMENT.—Section  
16          212(n)(1)(C) (8 U.S.C. 1182(n)(1)(C)) is amended—

17                 (1) by redesignating clause (ii) as subclause  
18                 (II);

19                 (2) by striking “(i) has provided” and inserting  
20                 the following:

21                         “(ii)(I) has provided”;

22                 (3) by striking “sought, or” and inserting  
23                 “sought; or”; and

24                 (4) by inserting before clause (ii), as redesign-  
25                 ated by paragraph (2), the following:

1           “(i) has advertised on the Internet website  
2           maintained by the Secretary of Labor for the  
3           purpose of such advertising, for at least 30 cal-  
4           endar days, a detailed description of each posi-  
5           tion for which a nonimmigrant is sought that  
6           includes a description of—

7                   “(I) the wage ranges and other terms  
8                   and conditions of employment;

9                   “(II) the minimum education, train-  
10                  ing, experience, and other requirements for  
11                  the position;

12                  “(III) the process for applying for the  
13                  position;

14                  “(IV) the title and description of the  
15                  position, including the location where the  
16                  work will be performed; and

17                  “(V) the name, city, and zip code of  
18                  the employer; and”.

19           (c) APPLICATION OF REQUIREMENTS TO ALL EM-  
20           PLOYERS.—

21                   (1) NONDISPLACEMENT.—Section 212(n)(1)(E)  
22                   (8 U.S.C. 1182(n)(1)(E)) is amended to read as fol-  
23                   lows:

24                   “(E)(i)(I) In the case of an application filed by  
25                   an employer that is an H-1B skilled worker depend-

1 ent employer, and is not an H-1B dependent em-  
2 ployer, the employer did not displace and will not  
3 displace a United States worker employed by the  
4 employer during the period beginning 90 days before  
5 the date on which a visa petition supported by the  
6 application is filed and ending 90 days after such fil-  
7 ing.

8 “(II) An employer that is not an H-1B skilled  
9 worker dependent employer shall not be subject to  
10 subclause (I) unless—

11 “(aa) the employer is filing the H-1B peti-  
12 tion with the intent or purpose of displacing a  
13 specific United States worker from the position  
14 to be occupied by the beneficiary of the petition;  
15 or

16 “(bb) workers are displaced who—

17 “(AA) provide services, in whole or in  
18 part, at 1 or more worksites owned, oper-  
19 ated, or controlled by a Federal, State, or  
20 local government entity, other than a pub-  
21 lic institution of higher education, that di-  
22 rects and controls the work of the H-1B  
23 worker; or

1 “(BB) are employed as public school  
2 kindergarten, elementary, middle school, or  
3 secondary school teachers.

4 “(ii)(I) In the case of an application filed by an  
5 H-1B-dependent employer, the employer did not dis-  
6 place and will not displace a United States worker  
7 employed by the employer within the period begin-  
8 ning 180 days before the date on which a visa peti-  
9 tion supported by the application is filed and ending  
10 180 days after such filing.

11 “(II) An application described in this clause is  
12 an application filed on or after the date final regula-  
13 tions are first promulgated to carry out this sub-  
14 paragraph, and before by an H-1B-dependent em-  
15 ployer (as defined in paragraph (3)) or by an em-  
16 ployer that has been found, on or after the date of  
17 the enactment of the American Competitiveness and  
18 Workforce Improvement Act of 1998, under para-  
19 graph (2)(C) or (5) to have committed a willful fail-  
20 ure or misrepresentation during the 5-year period  
21 preceding the filing of the application.

22 “(iii) In this subparagraph, the term ‘job zone’  
23 means a zone assigned to an occupation by—

1           “(I) the Occupational Information Network  
2           Database (O\*NET) on the date of the enact-  
3           ment of this Act; or

4           “(II) such database or a similar successor  
5           database, as designated by the Secretary of  
6           Labor, after the date of the enactment of Bor-  
7           der Security, Economic Opportunity, and Immi-  
8           gration Modernization Act.”.

9           (2) RECRUITMENT.—Section 212(n)(1)(G) (8  
10          U.S.C. 1182(n)(1)(G)) is amended to read as fol-  
11          lows:

12           “(G) An employer, prior to filing the applica-  
13          tion—

14           “(i) has taken good faith steps to recruit  
15          United States workers for the occupational clas-  
16          sification for which the nonimmigrant or non-  
17          immigrants is or are sought, using procedures  
18          that meet industry-wide standards and offering  
19          compensation that is at least as great as that  
20          required to be offered to H–1B nonimmigrants  
21          under subparagraph (A);

22           “(ii) has advertised the job on an Internet  
23          website maintained by the Secretary of Labor  
24          for the purpose of such advertising; and

1           “(iii) if the employer is an H–1B skilled  
2           worker dependent employer, has offered the job  
3           to any United States worker who applies and is  
4           equally or better qualified for the job for which  
5           the nonimmigrant or nonimmigrants is or are  
6           sought.”.

7           (d)   OUTPLACEMENT.—Section   212(n)(1)(F)   (8  
8   U.S.C. 1182(n)(1)(F)) is amended to read as follows:

9           “(F)(i) An H–1B-dependent employer may  
10          not place, outsource, lease, or otherwise con-  
11          tract for the services or placement of an H–1B  
12          nonimmigrant employee.

13          “(ii) An employer that is not an H–1B-de-  
14          pendent employer and not described in para-  
15          graph (3)(A)(i) may not place, outsource, lease,  
16          or otherwise contract for the services or place-  
17          ment of an H–1B nonimmigrant employee un-  
18          less the employer pays a fee of \$500 per  
19          outplaced worker.

20          “(iii) A fee collected under clause (ii) shall  
21          be deposited in the Comprehensive Immigration  
22          Reform Trust Fund established under section 6  
23          of the Border Security, Economic Opportunity,  
24          and Immigration Modernization Act.



1                   “(iv) An H–1B dependent employer shall  
2                   be exempt from the prohibition on outplacement  
3                   under clause (i) if the employer is a nonprofit  
4                   institution of higher education, a nonprofit re-  
5                   search organization, or primarily a health care  
6                   business and is petitioning for a physician, a  
7                   nurse, or a physical therapist or a substantially  
8                   equivalent health care occupation. Such em-  
9                   ployer shall be subject to the fee set forth in  
10                  clause (ii).”.

11               (e) H–1B-DEPENDENT EMPLOYER DEFINED.—Sec-  
12               tion 212(n)(3) (8 U.S.C. 1182(n)(3)) is amended to read  
13               as follows:

14               “(3)(A) The term ‘H–1B-dependent employer’ means  
15               an employer (other than nonprofit education and research  
16               institutions) that—

17                   “(i) in the case of an employer that has 25 or  
18                   fewer full-time equivalent employees who are em-  
19                   ployed in the United States, employs more than 7  
20                   H–1B nonimmigrants;

21                   “(ii) in the case of an employer that has at  
22                   least 26 but not more than 50 full-time equivalent  
23                   employees who are employed in the United States,  
24                   employs more than 12 H–1B nonimmigrants; or

1           “(iii) in the case of an employer that has at  
2           least 51 full-time equivalent employees who are em-  
3           ployed in the United States, employs H–1B non-  
4           immigrants in a number that is equal to at least 15  
5           percent of the number of such full-time equivalent  
6           employees.

7           “(B) In determining the number of employees who  
8           are H–1B nonimmigrants under subparagraph (A)(ii), an  
9           intending immigrant employee shall not count toward such  
10          number.”.

11          (f) H–1B SKILLED WORKER DEPENDENT DE-  
12          FINED.—Section 212(n)(3) (8 U.S.C. 1182(n)(3)) is  
13          amended—

14                 (1) by redesignating subparagraph (B) as sub-  
15                 paragraph (D); and

16                 (2) by inserting after subparagraph (A) the fol-  
17                 lowing:

18           “(B)(i) For purposes of this subsection, an ‘H–1B  
19           skilled worker dependent employer’ means an employer  
20           (other than nonprofit education and research institutions)  
21           that employs H–1B nonimmigrants in the United States  
22           in a number that in total is equal to at least 15 percent  
23           of the number of its full-time equivalent employees in the  
24           United States employed in occupations contained within

1 Occupational Information Network Database (O\*NET)  
2 Job Zone 4 and Job Zone 5.

3 “(ii) An H–1B nonimmigrant who is an intending im-  
4 migrant shall be counted as a United States worker in  
5 making a determination under clause (i).”.

6 (g) INTENDING IMMIGRANTS DEFINED.—Section  
7 101(a) (8 U.S.C. 1101(a)), as amended by section  
8 3504(a), is further amended by adding at the end the fol-  
9 lowing:

10 “(54)(A) The term ‘intending immigrant’  
11 means, with respect to the number of aliens em-  
12 ployed by an employer, an alien who intends to work  
13 and reside permanently in the United States, as evi-  
14 denced by—

15 “(i) a pending or approved application for  
16 a labor certification filed for such alien by a  
17 covered employer; or

18 “(ii) a pending or approved immigrant sta-  
19 tus petition filed for such alien by a covered  
20 employer.

21 “(B) In this paragraph:

22 “(i) The term ‘covered employer’ means an  
23 employer that has filed immigrant status peti-  
24 tions for not less than 90 percent of current  
25 employees who were the beneficiaries of applica-

1           tions for labor certification that were approved  
2           during the 1-year period ending 6 months be-  
3           fore the filing of an application or petition for  
4           which the number of intending immigrants is  
5           relevant.

6           “(ii) The term ‘immigrant status petition’  
7           means a petition filed under paragraph (1), (2),  
8           or (3) of section 203(b).

9           “(iii) The term ‘labor certification’ means  
10          an employment certification under section  
11          212(a)(5)(A).

12          “(C) Notwithstanding any other provision of  
13          law—

14               “(i) for all calculations under this Act, of  
15               the number of aliens admitted pursuant to sub-  
16               paragraph (H)(i)(b) or (L) of paragraph (15),  
17               an intending immigrant shall be counted as an  
18               alien lawfully admitted for permanent residence  
19               and shall not be counted as an employee admit-  
20               ted pursuant to such a subparagraph; and

21               “(ii) for all determinations of the number  
22               of employees or United States workers em-  
23               ployed by an employer, all of the employees in  
24               any group treated as a single employer under  
25               subsection (b), (c), (m), or (o) of section 414 of

1           the Internal Revenue Code of 1986 shall be  
2           counted.”.

3   **SEC. 4212. REQUIREMENTS FOR ADMISSION OF NON-**  
4                   **IMMIGRANT NURSES IN HEALTH PROFES-**  
5                   **SIONAL SHORTAGE AREAS.**

6           (a) EXTENSION OF PERIOD OF AUTHORIZED ADMIS-  
7   SION.—Section 212(m)(3) (8 U.S.C. 1182(m)(3)) is  
8   amended to read as follows:

9           “(3) The initial period of authorized admission as a  
10   nonimmigrant under section 101(a)(15)(H)(i)(c) shall be  
11   3 years, and may be extended once for an additional 3-  
12   year period.”.

13          (b) NUMBER OF VISAS.—Section 212(m)(4) (8  
14   U.S.C. 1182(m)(4)) is amended by striking “500.” and  
15   inserting “300.”.

16          (c) PORTABILITY.—Section 214(n) (8 U.S.C.  
17   1184(n)), as amended by section 4103(b), is further  
18   amended by adding at the end the following:

19          “(4)(A) A nonimmigrant alien described in subpara-  
20   graph (B) who was previously issued a visa or otherwise  
21   provided nonimmigrant status under section  
22   101(a)(15)(H)(i)(c) is authorized to accept new employ-  
23   ment performing services as a registered nurse for a facil-  
24   ity described in section 212(m)(6) upon the filing by the  
25   prospective employer of a new petition on behalf of such

1 nonimmigrant as provided under subsection (c). Employ-  
2 ment authorization shall continue for such alien until the  
3 new petition is adjudicated. If the new petition is denied,  
4 such authorization shall cease.

5 “(B) A nonimmigrant alien described in this para-  
6 graph is a nonimmigrant alien—

7 “(i) who has been lawfully admitted into the  
8 United States;

9 “(ii) on whose behalf an employer has filed a  
10 nonfrivolous petition for new employment before the  
11 date of expiration of the period of stay authorized by  
12 the Secretary of Homeland Security, except that, if  
13 a nonimmigrant described in section  
14 101(a)(15)(H)(i)(c) is terminated or laid off by the  
15 nonimmigrant’s employer, or otherwise ceases em-  
16 ployment with the employer, such petition for new  
17 employment shall be filed during the 60-day period  
18 beginning on the date of such termination, lay off,  
19 or cessation; and

20 “(iii) who, subsequent to such lawful admission,  
21 has not been employed without authorization in the  
22 United States before the filing of such petition.”.

23 (d) APPLICABILITY.—

24 (1) IN GENERAL.—Beginning on the commence-  
25 ment date described in paragraph (2), the amend-

1       ments made by section 2 of the Nursing Relief for  
2       Disadvantaged Areas Act of 1999 (Public Law 106–  
3       95; 113 Stat. 1313), and the amendments made by  
4       this section, shall apply to classification petitions  
5       filed for nonimmigrant status. This period shall be  
6       in addition to the period described in section 2(e) of  
7       the Nursing Relief for Disadvantaged Areas Act of  
8       1999 (8 U.S.C. 1182 note).

9               (2) COMMENCEMENT DATE.—Not later than 60  
10       days after the date of the enactment of this Act, the  
11       Secretary shall determine whether regulations are  
12       necessary to implement the amendments made by  
13       this section. If the Secretary determines that no  
14       such regulations are necessary, the commencement  
15       date described in this paragraph shall be the date of  
16       such determination. If the Secretary determines that  
17       regulations are necessary to implement any amend-  
18       ment made by this section, the commencement date  
19       described in this paragraph shall be the date on  
20       which such regulations (in final form) take effect.

21       **SEC. 4213. NEW APPLICATION REQUIREMENTS.**

22       Section 212(n)(1) (8 U.S.C. 1182(n)(1)) is amended  
23       by inserting after clause (iii) of subparagraph (G), as  
24       amended by section 4211(c)(2), the following:

1           “(H)(i) The employer has not advertised any  
2           available position specified in the application in an  
3           advertisement that states or indicates that—

4                   “(I) such position is only available to an  
5           individual who is or will be an H–1B non-  
6           immigrant or an alien participating in optional  
7           practical training pursuant to section  
8           101(a)(15)(F)(i); or

9                   “(II) an individual who is or will be an H–  
10          1B nonimmigrant or participant in such op-  
11          tional practical training shall receive priority or  
12          a preference in the hiring process for such posi-  
13          tion.

14          “(ii) The employer has not solely recruited indi-  
15          viduals who are or who will be H–1B nonimmigrants  
16          or participants in optional practical training pursu-  
17          ant to section 101(a)(15)(F)(i) to fill such position.

18          “(I)(i) If the employer (other than an edu-  
19          cational or research employer) employs 50 or more  
20          employees in the United States, the sum of the num-  
21          ber of such employees who are H–1B nonimmigrants  
22          plus the number of such employees who are non-  
23          immigrants described in section 101(a)(15)(L) may  
24          not exceed—



1           “(I) 75 percent of the total number of em-  
2           ployees, for fiscal year 2015;

3           “(II) 65 percent of the total number of  
4           employees, for fiscal year 2016; and

5           “(III) 50 percent of the total number of  
6           employees, for each fiscal year after fiscal year  
7           2016.

8           “(ii) In this subparagraph:

9           “(I) The term ‘educational or research em-  
10          ployer’ means an employer that is a nonprofit  
11          institution of higher education or a nonprofit  
12          research organization described in section  
13          501(c)(3) of the Internal Revenue Code of 1986  
14          and exempt from taxation under 501(a) of that  
15          Code.

16          “(II) The term ‘H–1B nonimmigrant’  
17          means an alien admitted as a nonimmigrant  
18          pursuant to section 101(a)(15)(H)(i)(b).

19          “(III) The term ‘L nonimmigrant’ means  
20          an alien admitted as a nonimmigrant pursuant  
21          to section 101(a)(15)(L) to provide services to  
22          his or her employer involving specialized knowl-  
23          edge.

24          “(iii) In determining the percentage of employ-  
25          ees of an employer that are H–1B nonimmigrants or

1 L nonimmigrants under clause (i), an intending im-  
2 migrant employee shall not count toward such per-  
3 centage.

4 “(J) The employer shall submit to the Sec-  
5 retary of Homeland Security an annual report that  
6 includes the Internal Revenue Service Form W-2  
7 Wage and Tax Statement filed by the employer for  
8 each H-1B nonimmigrant employed by the employer  
9 during the previous year.”.

10 **SEC. 4214. APPLICATION REVIEW REQUIREMENTS.**

11 (a) TECHNICAL AMENDMENT.—Section 212(n)(1) (8  
12 U.S.C. 1182(n)(1)), as amended by section 4213, is fur-  
13 ther amended in the undesignated paragraph at the end,  
14 by striking “The employer” and inserting the following:

15 “(K) The employer”.

16 (b) APPLICATION REVIEW REQUIREMENTS.—Sub-  
17 paragraph (K) of such section 212(n)(1), as designated  
18 by subsection (a), is amended—

19 (1) by inserting “and through the Department  
20 of Labor’s website, without charge.” after “D.C.”;

21 (2) by striking “only for completeness” and in-  
22 serting “for completeness and evidence of fraud or  
23 misrepresentation of material fact,”;

24 (3) by striking “or obviously inaccurate” and  
25 inserting “, presents evidence of fraud or misrepre-

1       sentation of material fact, or is obviously inac-  
2       curate”;

3           (4) by striking “within 7 days of the” and in-  
4       serting “not later than 14 days after”; and

5           (5) by adding at the end the following: “If the  
6       Secretary’s review of an application identifies evi-  
7       dence of fraud or misrepresentation of material fact,  
8       the Secretary may conduct an investigation and  
9       hearing in accordance with paragraph (2).”.

10       (c) FILING OF PETITION FOR NONIMMIGRANT  
11       WORKER.—Section 212(n)(1) (8 U.S.C. 1182(n)(1)), as  
12       amended by section 4213, is further amended by adding  
13       at the end the following:

14           “(L) An I-129 Petition for Nonimmigrant  
15       Worker (or similar successor form)—

16           “(i) may be filed by an employer with the  
17       Secretary of Homeland Security prior to the  
18       date the employer receives an approved certifi-  
19       cation described in section 101(a)(15)(H)(i)(b)  
20       from the Secretary of Labor; and

21           “(ii) may not be approved by the Secretary  
22       of Homeland Security until the date such cer-  
23       tification is approved.”.

1 **CHAPTER 2— INVESTIGATION AND DIS-**  
2 **POSITION OF COMPLAINTS AGAINST**  
3 **H-1B EMPLOYERS**

4 **SEC. 4221. GENERAL MODIFICATION OF PROCEDURES FOR**  
5 **INVESTIGATION AND DISPOSITION.**

6 Section 212(n) (8 U.S.C. 1182(n)) is amended—

7 (1) in paragraph (2)(A)—

8 (A) by striking “(A) Subject” and insert-  
9 ing “(A)(i) Subject”;

10 (B) by inserting after the first sentence  
11 the following: “Such process shall include publi-  
12 cizing a dedicated toll-free number and publicly  
13 available Internet website for the submission of  
14 such complaints.”;

15 (C) by striking “12 months” and inserting  
16 “24 months”;

17 (D) by striking the last sentence and in-  
18 serting the following: “The Secretary shall issue  
19 regulations requiring that employers that em-  
20 ploy H-1B nonimmigrants, other than non-  
21 profit institutions of higher education and non-  
22 profit research organizations, through posting  
23 of notices or other appropriate means, inform  
24 their employees of such toll-free number and

1 Internet website and of their right to file com-  
2 plaints pursuant to this paragraph.”; and

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

4 “(ii)(I) Upon the receipt of such a com-  
5 plaint, the Secretary may initiate an investiga-  
6 tion to determine if such a failure or misrepresen-  
7 tation has occurred.

8 “(II) The Secretary may conduct voluntary  
9 surveys of the degree to which employers com-  
10 ply with the requirements of this subsection.

11 “(III) The Secretary shall—

12 “(aa) conduct annual compliance au-  
13 dits of each employer with more than 100  
14 employees who work in the United States  
15 if more than 15 percent of such employees  
16 are H-1B nonimmigrants; and

17 “(bb) make available to the public an  
18 executive summary or report describing the  
19 general findings of the audits carried out  
20 pursuant to this subclause.”; and

21 (2) by adding at the end the following new  
22 paragraph:

23 “(6) REPORT REQUIRED.—Not later than 1  
24 year after the date of the enactment of the Border  
25 Security, Economic Opportunity, and Immigration

1 Modernization Act, and every 5 years thereafter, the  
2 Inspector General of the Department of Labor shall  
3 submit a report regarding the Secretary's enforce-  
4 ment of the requirements of this section to the Com-  
5 mittee on the Judiciary and the Committee on  
6 Health, Education, Labor, and Pensions of the Sen-  
7 ate and the Committee on the Judiciary and the  
8 Committee on Education and the Workforce of the  
9 House of Representatives.”.

10 **SEC. 4222. INVESTIGATION, WORKING CONDITIONS, AND**  
11 **PENALTIES.**

12 Subparagraph (C) of section 212(n)(2) (8 U.S.C.  
13 1182(n)(2)) is amended—

14 (1) in clause (i)—

15 (A) in the matter preceding subclause

16 (I)—

17 (i) by striking “a condition of para-  
18 graph (1)(B), (1)(E), or (1)(F)” and in-  
19 serting “a condition under subparagraph  
20 (A), (B), (C)(i), (E), (F), (G), (H), (I), or  
21 (J) of paragraph (1)”;

22 (ii) by striking “(1)(C)” and inserting  
23 “(1)(C)(ii)”;

24 (B) in subclause (I)—

1 (i) by striking “\$1,000” and inserting  
2 “\$2,000”; and

3 (ii) by striking “and” at the end;

4 (C) in subclause (II), by striking the pe-  
5 riod at the end and inserting a semicolon and  
6 “and”; and

7 (D) by adding at the end the following:

8 “(III) an employer that violates such subpara-  
9 graph (A) shall be liable to any employee harmed by  
10 such violations for lost wages and benefits.”; and

11 (2) in clause (ii)—

12 (A) in subclause (I)—

13 (i) by striking “may” and inserting  
14 “shall”; and

15 (ii) by striking “\$5,000” and insert-  
16 ing “\$10,000”;

17 (B) in subclause (II), by striking the pe-  
18 riod at the end and inserting a semicolon and  
19 “and”; and

20 (C) by adding at the end the following:

21 “(III) an employer that violates such subpara-  
22 graph (A) shall be liable to any employee harmed by  
23 such violations for lost wages and benefits.”;

24 (3) in clause (iii)—

1 (A) in the matter preceding subclause (I),  
2 by striking “90 days” both places it appears  
3 and inserting “180 days”;

4 (B) in subclause (I)—

5 (i) by striking “may” and inserting  
6 “shall”; and

7 (ii) by striking “and” at the end;

8 (C) in subclause (II), by striking the pe-  
9 riod at the end and inserting a semicolon and  
10 “and”; and

11 (D) by adding at the end the following:

12 “(III) an employer that violates subparagraph  
13 (A) of such paragraph shall be liable to any em-  
14 ployee harmed by such violations for lost wages and  
15 benefits.”;

16 (4) in clause (iv)—

17 (A) by inserting “to take, or threaten to  
18 take, a personnel action, or” before “to intimi-  
19 date”;

20 (B) by inserting “(I)” after “(iv)”; and

21 (C) by adding at the end the following:

22 “(II) An employer that violates this clause shall  
23 be liable to any employee harmed by such violation  
24 for lost wages and benefits.”; and

25 (5) in clause (vi)—



1 (A) by amending subclause (I) to read as  
2 follows:

3 “(I) It is a violation of this clause for an em-  
4 ployer who has filed an application under this sub-  
5 section—

6 “(aa) to require an H–1B nonimmigrant to  
7 pay a penalty for ceasing employment with the  
8 employer prior to a date agreed to by the non-  
9 immigrant and the employer (the Secretary  
10 shall determine whether a required payment is  
11 a penalty, and not liquidated damages, pursu-  
12 ant to relevant State law); and

13 “(bb) to fail to offer to an H–1B non-  
14 immigrant, during the nonimmigrant’s period of  
15 authorized employment, on the same basis, and  
16 in accordance with the same criteria, as the em-  
17 ployer offers to similarly situated United States  
18 workers, benefits and eligibility for benefits, in-  
19 cluding—

20 “(AA) the opportunity to participate  
21 in health, life, disability, and other insur-  
22 ance plans;

23 “(BB) the opportunity to participate  
24 in retirement and savings plans; and

1 “(CC) cash bonuses and noncash com-  
2 pensation, such as stock options (whether  
3 or not based on performance).”; and  
4 (B) in subclause (III), by striking  
5 “\$1,000” and inserting “\$2,000”.

6 **SEC. 4223. INITIATION OF INVESTIGATIONS.**

7 Subparagraph (G) of section 212(n)(2) (8 U.S.C.  
8 1182(n)(2)) is amended—

9 (1) in clause (i), by striking “if the Secretary”  
10 and all that follows and inserting “with regard to  
11 the employer’s compliance with the requirements of  
12 this subsection.”;

13 (2) in clause (ii), by striking “and whose iden-  
14 tity” and all that follows through “failure or fail-  
15 ures.” and inserting “the Secretary of Labor may  
16 conduct an investigation into the employer’s compli-  
17 ance with the requirements of this subsection.”;

18 (3) in clause (iii), by striking the last sentence;

19 (4) by striking clauses (iv) and (v);

20 (5) by redesignating clauses (vi), (vii), and (viii)  
21 as clauses (iv), (v), and (vi), respectively;

22 (6) in clause (iv), as so redesignated, by strik-  
23 ing “meet a condition described in clause (ii), unless  
24 the Secretary of Labor receives the information not  
25 later than 12 months” and inserting “comply with

1 the requirements under this subsection, unless the  
2 Secretary of Labor receives the information not later  
3 than 24 months”;

4 (7) by amending clause (v), as so redesignated,  
5 to read as follows:

6 “(v) The Secretary of Labor shall provide no-  
7 tice to an employer of the intent to conduct an in-  
8 vestigation. The notice shall be provided in such a  
9 manner, and shall contain sufficient detail, to permit  
10 the employer to respond to the allegations before an  
11 investigation is commenced. The Secretary is not re-  
12 quired to comply with this clause if the Secretary de-  
13 termines that such compliance would interfere with  
14 an effort by the Secretary to investigate or secure  
15 compliance by the employer with the requirements of  
16 this subsection. A determination by the Secretary  
17 under this clause shall not be subject to judicial re-  
18 view.”;

19 (8) in clause (vi), as so redesignated, by strik-  
20 ing “An investigation” and all that follows through  
21 “the determination.” and inserting “If the Secretary  
22 of Labor, after an investigation under clause (i) or  
23 (ii), determines that a reasonable basis exists to  
24 make a finding that the employer has failed to com-  
25 ply with the requirements under this subsection, the

1 Secretary shall provide interested parties with notice  
2 of such determination and an opportunity for a  
3 hearing in accordance with section 556 of title 5,  
4 United States Code, not later than 120 days after  
5 the date of such determination.”; and

6 (9) by adding at the end the following:

7 “(vii) If the Secretary of Labor, after a hear-  
8 ing, finds a reasonable basis to believe that the em-  
9 ployer has violated the requirements under this sub-  
10 section, the Secretary shall impose a penalty under  
11 subparagraph (C).”.

12 **SEC. 4224. INFORMATION SHARING.**

13 Section 212(n)(2) (8 U.S.C. 1182(n)(2)), as amended  
14 by sections 4222 and 4223, is further amended by adding  
15 at the end the following:

16 “(J) The Director of U.S. Citizenship and Immigra-  
17 tion Services shall provide the Secretary of Labor with any  
18 information contained in the materials submitted by em-  
19 ployers of H–1B nonimmigrants as part of the adjudica-  
20 tion process that indicates that the employer is not com-  
21 plying with visa program requirements for H–1B non-  
22 immigrants. The Secretary of Labor may initiate and con-  
23 duct an investigation related to H–1B nonimmigrants and  
24 a hearing under this paragraph after receiving information  
25 of noncompliance under this subparagraph. This subpara-

1 graph may not be construed to prevent the Secretary of  
2 Labor from taking action related to wage and hour and  
3 workplace safety laws.

4 “(K) The Secretary of Labor shall facilitate the post-  
5 ing of the descriptions described in paragraph (1)(C)(i)  
6 on the Internet website of the State labor or workforce  
7 agency for the State in which the position will be primarily  
8 located during the same period as the posting under para-  
9 graph (1)(C)(i).”.

10 **SEC. 4225. TRANSPARENCY OF HIGH-SKILLED IMMIGRA-**  
11 **TION PROGRAMS.**

12 Section 416(c) of the American Competitiveness and  
13 Workforce Improvement Act of 1998 (8 U.S.C. 1184 note)  
14 is amended—

15 (1) by amending paragraph (2) to read as fol-  
16 lows:

17 “(2) ANNUAL H-1B NONIMMIGRANT CHARAC-  
18 TERISTICS REPORT.—The Bureau of Immigration  
19 and Labor Market Research shall submit an annual  
20 report to the Committee on the Judiciary of the  
21 Senate and the Committee on the Judiciary of the  
22 House of Representatives that contains—

23 “(A) information on the countries of origin  
24 of, occupations of, educational levels attained  
25 by, and compensation paid to, aliens who were

1 issued visas or otherwise provided non-  
2 immigrant status under section  
3 101(a)(15)(H)(i)(b) of the Immigration and  
4 Nationality Act (8 U.S.C.  
5 1101(a)(15)(H)(i)(b)) during the previous fiscal  
6 year;

7 “(B) a list of all employers who petition  
8 for H–1B visas, the number of such petitions  
9 filed and approved for each such employer, the  
10 occupational classifications for the approved po-  
11 sitions, and the number of H–1B non-  
12 immigrants for whom each such employer files  
13 for adjustment to permanent resident status;

14 “(C) the number of immigrant status peti-  
15 tions filed during the prior year on behalf of H–  
16 1B nonimmigrants;

17 “(D) a list of all employers who are H–1B-  
18 dependent employers;

19 “(E) a list of all employers who are H–1B  
20 skilled worker dependent employers;

21 “(F) a list of all employers for whom more  
22 than 30 percent of their United States work-  
23 force is H–1B or L–1 nonimmigrants;

1           “(G) a list of all employers for whom more  
2           than 50 percent of their United States work-  
3           force is H–1B or L–1 nonimmigrants;

4           “(H) a gender breakdown by occupation  
5           and by country of H–1B nonimmigrants;

6           “(I) a list of all employers who have been  
7           approved to conduct outplacement of H–1B  
8           nonimmigrants; and

9           “(J) the number of H–1B nonimmigrants  
10          categorized by their highest level of education  
11          and whether such education was obtained in the  
12          United States or in a foreign country.”;

13          (2) by redesignating paragraph (3) as para-  
14          graph (5);

15          (3) by inserting after paragraph (2) the fol-  
16          lowing:

17               “(3) ANNUAL L–1 NONIMMIGRANT CHARACTER-  
18               ISTICS REPORT.—The Bureau of Immigration and  
19               Labor Market Research shall submit an annual re-  
20               port to the Committee on the Judiciary of the Sen-  
21               ate and the Committee on the Judiciary of the  
22               House of Representatives that contains—

23                       “(A) information on the countries of origin  
24                       of, occupations of, educational levels attained  
25                       by, and compensation paid to, aliens who were

1 issued visas or otherwise provided –non-  
2 immigrant status under section 101(a)(15)(L)  
3 of the Immigration and Nationality Act (8  
4 U.S.C. 1101(a)(15)(L)) during the previous fis-  
5 cal year;

6 “(B) a list of all employers who petition  
7 for L–1 visas, the number of such petitions  
8 filed and approved for each such employer, the  
9 occupational classifications for the approved po-  
10 sitions, and the number of L–1 nonimmigrants  
11 for whom each such employer files for adjust-  
12 ment to permanent resident status;

13 “(C) the number of immigrant status peti-  
14 tions filed during the prior year on behalf of L–  
15 1 nonimmigrants;

16 “(D) a list of all employers who are L–1  
17 dependent employers;

18 “(E) a gender breakdown by occupation  
19 and by country of L–1 nonimmigrants;

20 “(F) a list of all employers who have been  
21 approved to conduct outplacement of L–1 non-  
22 immigrants; and

23 “(G) the number of L–1 nonimmigrants  
24 categorized by their highest level of education



1           and whether such education was obtained in the  
2           United States or in a foreign country.

3           “(4) ANNUAL EMPLOYER SURVEY.—The Bu-  
4           reau of Immigration and Labor Market Research  
5           shall—

6                   “(A) conduct an annual survey of employ-  
7           ers hiring foreign nationals under the L–1 visa  
8           program; and

9                   “(B) shall issue an annual report that—

10                           “(i) describes the methods employers  
11           are using to meet the requirement of tak-  
12           ing good faith steps to recruit United  
13           States workers for the occupational classi-  
14           fication for which the nonimmigrants are  
15           sought, using procedures that meet indus-  
16           try-wide standards;

17                           “(ii) describes the best practices for  
18           recruiting among employers; and

19                           “(iii) contains recommendations on  
20           which recruiting steps employers can take  
21           to maximize the likelihood of hiring Amer-  
22           ican workers.”; and

23           (4) in paragraph (5), as redesignated, by strik-  
24           ing “paragraph (2)” and inserting “paragraphs (2)  
25           and (3)”.

1       **CHAPTER 3—OTHER PROTECTIONS**

2       **SEC. 4231. POSTING AVAILABLE POSITIONS THROUGH THE**  
3               **DEPARTMENT OF LABOR.**

4       (a) DEPARTMENT OF LABOR WEBSITE.—Section  
5 212(n) (8 U.S.C. 1182(n)), as amended by section  
6 4221(2), is further amended by adding at the end fol-  
7 lowing:

8       “(7)(A) Not later than 90 days after the date of the  
9 enactment of the Border Security, Economic Opportunity,  
10 and Immigration Modernization Act, the Secretary of  
11 Labor shall establish a searchable Internet website for  
12 posting positions as required by paragraph (1)(C). Such  
13 website shall be available to the public without charge.

14       “(B) The Secretary may work with private companies  
15 or nonprofit organizations to develop and operate the  
16 Internet website described in subparagraph (A).

17       “(C) The Secretary may promulgate rules, after no-  
18 tice and a period for comment, to carry out the require-  
19 ments of this paragraph.”.

20       (b) REQUIREMENT FOR PUBLICATION.—The Sec-  
21 retary of Labor shall submit to Congress and publish in  
22 the Federal Register and other appropriate media a notice  
23 of the date that the Internet website required by para-  
24 graph (6) of section 212(n) of the Immigration and Na-

1 tionality Act, as amended by subsection (a), will be oper-  
2 ational.

3 (c) APPLICATION.—The amendments made by sub-  
4 section (a) shall apply to an application filed on or after  
5 the date that is 30 days after the date described in sub-  
6 section (b).

7 **SEC. 4232. REQUIREMENTS FOR INFORMATION FOR H-1B**  
8 **AND L NONIMMIGRANTS.**

9 (a) IN GENERAL.—Section 214 (8 U.S.C. 1184), as  
10 amended by section 3608, is further amended by adding  
11 at the end the following:

12 “(t) REQUIREMENTS FOR INFORMATION FOR H-1B  
13 AND L NONIMMIGRANTS.—

14 “(1) IN GENERAL.—Upon issuing a visa to an  
15 applicant for nonimmigrant status pursuant to sub-  
16 paragraph (H)(i)(b) or (L) of section 101(a)(15)  
17 who is outside the United States, the issuing office  
18 shall provide the applicant with—

19 “(A) a brochure outlining the obligations  
20 of the applicant’s employer and the rights of  
21 the applicant with regard to employment under  
22 Federal law, including labor and wage protec-  
23 tions; and

24 “(B) the contact information for appro-  
25 priate Federal agencies or departments that

1 offer additional information or assistance in  
2 clarifying such obligations and rights.

3 “(2) PROVISION OF MATERIAL.—Upon the ap-  
4 proval of an application of an applicant referred to  
5 in paragraph (1), the applicant shall be provided  
6 with the material described in subparagraphs (A)  
7 and (B) of paragraph (1)—

8 “(A) by the issuing officer of the Depart-  
9 ment of Homeland Security, if the applicant is  
10 inside the United States; or

11 “(B) by the appropriate official of the De-  
12 partment of State, if the applicant is outside  
13 the United States.

14 “(3) EMPLOYER TO PROVIDE IMMIGRATION PA-  
15 PERWORK EXCHANGED WITH FEDERAL AGENCIES.—

16 “(A) IN GENERAL.—Not later than 30  
17 days after a labor condition application is filed  
18 under section 212(n)(1), an employer shall pro-  
19 vide an employee or beneficiary of such applica-  
20 tion who is or seeking nonimmigrant status  
21 under subparagraph (H)(i)(b) or (L) of section  
22 101(a)(15) with a copy the original of all appli-  
23 cations and petitions filed by the employer with  
24 the Department of Labor or the Department of

1 Homeland Security for such employee or bene-  
2 ficiary.

3 “(B) WITHHOLDING OF FINANCIAL OR  
4 PROPRIETARY INFORMATION.—If a document  
5 required to be provided to an employee or bene-  
6 ficiary under subparagraph (A) includes any fi-  
7 nancial or propriety information of the em-  
8 ployer, the employer may redact such informa-  
9 tion from the copies provided to such employee  
10 or beneficiary.”.

11 (b) REPORT ON JOB CLASSIFICATION AND WAGE  
12 DETERMINATIONS.—Not later than 1 year after the date  
13 of the enactment of this Act, the Comptroller General of  
14 the United States shall prepare a report analyzing the ac-  
15 curacy and effectiveness of the Secretary of Labor’s cur-  
16 rent job classification and wage determination system. The  
17 report shall—

18 (1) specifically address whether the systems in  
19 place accurately reflect the complexity of current job  
20 types as well as geographic wage differences; and

21 (2) make recommendations concerning nec-  
22 essary updates and modifications.

23 **SEC. 4233. FILING FEE FOR H-1B-DEPENDENT EMPLOYERS.**

24 (a) IN GENERAL.—Notwithstanding any other provi-  
25 sion of law, there shall be a fee required to be submitted

1 by an employer with an application for admission of an  
2 H–1B nonimmigrant as follows:

3 (1) For each fiscal year beginning in fiscal year  
4 2015, \$5,000 for applicants that employ 50 or more  
5 employees in the United States if more than 30 per-  
6 cent and less than 50 percent of the applicant’s em-  
7 ployees are H–1B nonimmigrants or L non-  
8 immigrants.

9 (2) For each of the fiscal years 2015 through  
10 2017, \$10,000 for applicants that employ 50 or  
11 more employees in the United States if more than  
12 50 percent and less than 75 percent of the appli-  
13 cant’s employees are H–1B nonimmigrants or L  
14 nonimmigrants. Fees collected under this paragraph  
15 shall be deposited in the Comprehensive Immigration  
16 Reform Trust Fund established under section  
17 6(a)(1).

18 (b) DEFINITIONS.—In this section:

19 (1) EMPLOYER.—The term “employer”—

20 (A) means any entity or entities treated as  
21 a single employer under subsection (b), (c),  
22 (m), or (o) of section 414 of the Internal Rev-  
23 enue Code of 1986; and

24 (B) does not include a nonprofit institution  
25 of higher education or a nonprofit research or-

1           ganization described in section 501(c)(3) of the  
2           Internal Revenue Code of 1986 and exempt  
3           from taxation under 501(a) of that Code that  
4           is—

5                   (i) an institution of higher education  
6                   (as defined in section 101(a) of the Higher  
7                   Education Act of 1965 (20 U.S.C.  
8                   1001(a))); or

9                   (ii) a research organization.

10           (2) H-1B NONIMMIGRANT.—The term “H-1B  
11           nonimmigrant” means an alien admitted as a non-  
12           immigrant pursuant to section 101(a)(15)(H)(i)(b)  
13           of the Immigration and Nationality Act (8 U.S.C.  
14           1101(a)(15)(H)(i)(b)).

15           (3) INTENDING IMMIGRANT.—The term “in-  
16           tending immigrant” has the meaning given that  
17           term in paragraph (54)(A) of section 101(a)(54)(A)  
18           of the Immigration and Nationality Act (8 U.S.C.  
19           1101(a)).

20           (4) L NONIMMIGRANT.—The term “L non-  
21           immigrant” means an alien admitted as a non-  
22           immigrant pursuant to section 101(a)(15)(L) of the  
23           Immigration and Nationality Act (8 U.S.C.  
24           1101(a)(15)(L)) to provide services to the alien’s  
25           employer involving specialized knowledge.

1 (c) EXCEPTION FOR INTENDING IMMIGRANTS.—In  
2 determining the percentage of employees of an employer  
3 that are H–1B nonimmigrants or L nonimmigrants under  
4 subsection (a), an intending immigrant employee shall not  
5 count toward such percentage.

6 (d) CONFORMING AMENDMENT.—Section 402 of the  
7 Act entitled “An Act making emergency supplemental ap-  
8 propriations for border security for the fiscal year ending  
9 September 30, 2010, and for other purposes”, approved  
10 August 13, 2010 (Public Law 111–230; 8 U.S.C. 1101  
11 note) is amended by striking subsection (b).

12 **SEC. 4234. PROVIDING PREMIUM PROCESSING OF EMPLOY-**  
13 **MENT-BASED VISA PETITIONS.**

14 Pursuant to section 286(u) of the Immigration and  
15 Nationality Act (8 U.S.C. 1356(u)), the Secretary shall  
16 establish and collect—

17 (1) a fee for premium processing of employ-  
18 ment-based immigrant petitions; and

19 (2) a fee for premium processing of an adminis-  
20 trative appeal of any decision on a permanent em-  
21 ployment-based immigrant petition.

22 **SEC. 4235. TECHNICAL CORRECTION.**

23 Section 212 (8 U.S.C. 1182) is amended by redesign-  
24 nating the second subsection (t), as added by section  
25 1(b)(2)(B) of the Act entitled “An Act to amend and ex-



1 tend the Irish Peace Process Cultural and Training Pro-  
2 gram Act of 1998” (Public Law 108–449 (118 Stat.  
3 3470)), as subsection (u).

4 **SEC. 4236. APPLICATION.**

5 (a) IN GENERAL.—Except as otherwise specifically  
6 provided, the amendments made by this subtitle shall  
7 apply to applications filed on or after the date of the en-  
8 actment of this Act.

9 (b) SPECIAL REQUIREMENTS.—Notwithstanding any  
10 other provision of law, the amendments made by section  
11 4211(c) shall not apply to any application or petition filed  
12 by an employer on behalf of an existing employee.

13 **SEC. 4237. PORTABILITY FOR BENEFICIARIES OF IMMI-**  
14 **GRANT PETITIONS.**

15 (a) INCREASED PORTABILITY.—Section 204(j) (8  
16 U.S.C. 1154(j)) is amended—

17 (1) by amending the subsection heading to read  
18 as follows:

19 “(j) INCREASED PORTABILITY.—”;

20 (2) by striking “A petition” and inserting the  
21 following:

22 “(1) LONG DELAYED APPLICANTS FOR ADJUST-  
23 MENT OF STATUS.—A petition”; and

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

1           “(2) PORTABILITY FOR BENEFICIARIES OF IM-  
2           MIGRANT PETITIONS.—Regardless of whether an em-  
3           ployer withdraws a petition approved under para-  
4           graph (1), (2), or (3) of section 203(b)—

5                   “(A) the petition shall remain valid with  
6           respect to a new job if—

7                           “(i) the beneficiary changes jobs or  
8                           employers after the petition is approved;  
9                           and

10                          “(ii) the new job is in the same or a  
11                          similar occupational classification as the  
12                          job for which the petition was approved;  
13                          and

14                          “(B) the employer’s legal obligations with  
15           respect to the petition shall terminate at the  
16           time the beneficiary changes jobs or employers.

17           “(3) DOCUMENTATION.—The Secretary of  
18           Labor shall develop a mechanism to provide the ben-  
19           eficiary or prospective employer with sufficient infor-  
20           mation to determine whether a new position or job  
21           is in the same or similar occupation as the job for  
22           which the petition was approved. The Secretary of  
23           Labor shall provide confirmation of application ap-  
24           proval if required for eligibility under this sub-  
25           section. The Secretary of Homeland Security shall

1 provide confirmation of petition approval if required  
2 for eligibility under this subsection.”.

3 (b) ADJUSTMENT OF STATUS FOR EMPLOYMENT-  
4 BASED IMMIGRANTS.—Section 245 of the Immigration  
5 and Nationality Act (8 U.S.C. 1255) is amended by add-  
6 ing at the end the following:

7 “(n) ADJUSTMENT OF STATUS FOR EMPLOYMENT-  
8 BASED IMMIGRANTS.—

9 “(1) PETITION.—An alien, and any eligible de-  
10 pendents of such alien, who has filed a petition for  
11 immigrant status, may concurrently, or at any time  
12 thereafter, file an application with the Secretary of  
13 Homeland Security for adjustment of status if such  
14 petition is pending or has been approved, regardless  
15 of whether an immigrant visa is immediately avail-  
16 able at the time the application is filed.

17 “(2) SUPPLEMENTAL FEE.—If a visa is not im-  
18 mediately available at the time an application is filed  
19 under paragraph (1), the beneficiary of such applica-  
20 tion shall pay a supplemental fee of \$500, which  
21 shall be deposited in the STEM Education and  
22 Training Account established under section 286(w).  
23 This fee shall not be collected from any dependent  
24 accompanying or following to join such beneficiary.

1           “(3) AVAILABILITY.—An application filed pur-  
2           suant to paragraph (2) may not be approved until  
3           the date on which an immigrant visa becomes avail-  
4           able.”.

5           **Subtitle C—L Visa Fraud and**  
6           **Abuse Protections**

7           **SEC. 4301. PROHIBITION ON OUTPLACEMENT OF L NON-**  
8           **IMMIGRANTS.**

9           Section 214(c)(2)(F) (8 U.S.C. 1184(c)(2)(F)) is  
10          amended to read as follows:

11          “(F)(i) An employer who employs L-1 nonimmigrants  
12          in a number that is equal to at least 15 percent of the  
13          total number of full-time equivalent employees employed  
14          by the employer shall not place, outsource, lease, or other-  
15          wise contract for the services or placement of such alien  
16          with another employer. In determining the number of em-  
17          ployees who are L-1 nonimmigrants, an intending immi-  
18          grant shall count as a United States worker.

19          “(ii) The employer of an alien described in section  
20          101(a)(15)(L) shall not place, outsource, lease, or other-  
21          wise contract for the services or placement of such alien  
22          with another employer unless—

23                 “(I) such alien will not be controlled or super-  
24                 vised principally by the employer with whom such  
25                 alien would be placed;

1 “(II) the placement of such alien at the work-  
2 site of the other employer is not essentially an ar-  
3 rangement to provide labor for hire for the other  
4 employer; and

5 “(III) the employer of such alien pays a fee of  
6 \$500, which shall be deposited in the STEM Edu-  
7 cation and Training Account established under sec-  
8 tion 286(w).”.

9 **SEC. 4302. L EMPLOYER PETITION REQUIREMENTS FOR**  
10 **EMPLOYMENT AT NEW OFFICES.**

11 Section 214(c)(2) (8 U.S.C. 1184(c)(2)) is amended  
12 by adding at the end the following:

13 “(G)(i) If the beneficiary of a petition under this  
14 paragraph is coming to the United States to open, or be  
15 employed in, a new office, the petition may be approved  
16 for up to 12 months only if—

17 “(I) the alien has not been the beneficiary of 2  
18 or more petitions under this subparagraph during  
19 the immediately preceding 2 years; and

20 “(II) the employer operating the new office  
21 has—

22 “(aa) an adequate business plan;

23 “(bb) sufficient physical premises to carry  
24 out the proposed business activities; and

1                   “(cc) the financial ability to commence  
2                   doing business immediately upon the approval  
3                   of the petition.

4           “(ii) An extension of the approval period under clause  
5 (i) may not be granted until the importing employer sub-  
6 mits an application to the Secretary of Homeland Security  
7 that contains—

8                   “(I) evidence that the importing employer  
9                   meets the requirements of this subsection;

10                   “(II) evidence that the beneficiary of the peti-  
11                   tion is eligible for nonimmigrant status under sec-  
12                   tion 101(a)(15)(L);

13                   “(III) a statement summarizing the original pe-  
14                   tition;

15                   “(IV) evidence that the importing employer has  
16                   complied with the business plan submitted under  
17                   clause (i)(I);

18                   “(V) evidence of the truthfulness of any rep-  
19                   resentations made in connection with the filing of  
20                   the original petition;

21                   “(VI) evidence that the importing employer has  
22                   been doing business at the new office through reg-  
23                   ular, systematic, and continuous provision of goods  
24                   and services;

1           “(VII) a statement of the duties the beneficiary  
2           has performed at the new office during the approval  
3           period under clause (i) and the duties the beneficiary  
4           will perform at the new office during the extension  
5           period granted under this clause;

6           “(VIII) a statement describing the staffing at  
7           the new office, including the number of employees  
8           and the types of positions held by such employees;

9           “(IX) evidence of wages paid to employees;

10          “(X) evidence of the financial status of the new  
11          office; and

12          “(XI) any other evidence or data prescribed by  
13          the Secretary.

14          “(iii) A new office employing the beneficiary of an  
15          L-1 petition approved under this paragraph shall do busi-  
16          ness only through regular, systematic, and continuous pro-  
17          vision of goods and services.

18          “(iv) Notwithstanding clause (ii), and subject to the  
19          maximum period of authorized admission set forth in sub-  
20          paragraph (D), the Secretary of Homeland Security, in  
21          the Secretary’s discretion, may approve a subsequently  
22          filed petition on behalf of the beneficiary to continue em-  
23          ployment at the office described in this subparagraph for  
24          a period beyond the initially granted 12-month period if  
25          the importing employer has been doing business at the

1 new office through regular, systematic, and continuous  
2 provision of goods and services for the 6 months imme-  
3 diately preceding the date of extension of petition filing  
4 and demonstrates that the failure to satisfy any of the  
5 requirements described in those subclauses was directly  
6 caused by extraordinary circumstances, as determined by  
7 the Secretary in the Secretary’s discretion.”.

8 **SEC. 4303. COOPERATION WITH SECRETARY OF STATE.**

9 Section 214(c)(2) (8 U.S.C. 1184(c)(2)), as amended  
10 by section 4302, is further amended by adding at the end  
11 the following:

12 “(H) For purposes of approving petitions under this  
13 paragraph, the Secretary of Homeland Security shall work  
14 cooperatively with the Secretary of State to verify the ex-  
15 istence or continued existence of a company or office in  
16 the United States or in a foreign country.”.

17 **SEC. 4304. LIMITATION ON EMPLOYMENT OF L NON-**  
18 **IMMIGRANTS.**

19 Section 214(c)(2) (8 U.S.C. 1184(c)(2)), as amended  
20 by sections 4302 and 4303, is further amended by adding  
21 at the end the following:

22 “(I)(i) If the employer employs 50 or more employees  
23 in the United States, the sum of the number of such em-  
24 ployees who are H–1B nonimmigrants plus the number



1 of such employees who are L nonimmigrants may not ex-  
2 ceed—

3 “(I) 75 percent of the total number of employ-  
4 ees, for fiscal year 2015;

5 “(II) 65 percent of the total number of employ-  
6 ees, for fiscal year 2016; and

7 “(III) 50 percent of the total number of em-  
8 ployees, for each fiscal year after fiscal year 2016.

9 “(ii) In this subparagraph:

10 “(I) The term ‘employer’ does not include a  
11 nonprofit institution of higher education or a non-  
12 profit research organization described in section  
13 501(c)(3) of the Internal Revenue Code of 1986 and  
14 exempt from taxation under 501(a) of that Code  
15 that is—

16 “(aa) an institution of higher education (as  
17 defined in section 101(a) of the Higher Edu-  
18 cation Act of 1965 (20 U.S.C. 1001(a))); or

19 “(bb) a research organization.

20 “(II) The term ‘H–1B nonimmigrant’ means an  
21 alien admitted as a nonimmigrant pursuant to sec-  
22 tion 101(a)(15)(H)(i)(b).

23 “(III) The term ‘L nonimmigrant’ means an  
24 alien admitted as a nonimmigrant pursuant to sec-

1       tion 101(a)(15)(L) to provide services to the alien’s  
2       employer involving specialized knowledge.

3       “(iii) In determining the percentage of employees of  
4       an employer that are H–1B nonimmigrants or L non-  
5       immigrants under clause (i), an intending immigrant em-  
6       ployee shall not count toward such percentage.”.

7       **SEC. 4305. FILING FEE FOR L NONIMMIGRANTS.**

8       (a) IN GENERAL.—Notwithstanding any other provi-  
9       sion of law, the filing fee for an application for admission  
10      of an L nonimmigrant shall be as follows:

11           (1) For each of the fiscal years beginning in fis-  
12      cal year 2014, \$5,000 for applicants that employ 50  
13      or more employees in the United States if more than  
14      30 percent and less than 50 percent of the appli-  
15      cant’s employees are H–1B nonimmigrants or L  
16      nonimmigrants.

17           (2) For each of the fiscal years 2014 through  
18      2017, \$10,000 for applicants that employ 50 or  
19      more employees in the United States if more than  
20      50 percent and less than 75 percent of the appli-  
21      cant’s employees are H–1B nonimmigrants or L  
22      nonimmigrants. Fees collected under this paragraph  
23      shall be deposited in the Comprehensive Immigration  
24      Reform Trust Fund established under section  
25      6(a)(1).

1 (b) DEFINITIONS.—In this section:

2 (1) EMPLOYER.—The term “employer” does  
3 not include a nonprofit institution of higher edu-  
4 cation or a nonprofit research organization described  
5 in section 501(c)(3) of the Internal Revenue Code of  
6 1986 and exempt from taxation under 501(a) of  
7 that Code that is—

8 (A) an institution of higher education (as  
9 defined in section 101(a) of the Higher Edu-  
10 cation Act of 1965 (20 U.S.C. 1001(a))); or

11 (B) a research organization.

12 (2) H-1B NONIMMIGRANT.—The term “H-1B  
13 nonimmigrant” means an alien admitted as a non-  
14 immigrant pursuant to section 101(a)(15)(H)(i)(b)  
15 of the Immigration and Nationality Act (8 U.S.C.  
16 1101(a)(15)(H)(i)(b)).

17 (3) L NONIMMIGRANT.—The term “L non-  
18 immigrant” means an alien admitted as a non-  
19 immigrant pursuant to section 101(a)(15)(L) of the  
20 Immigration and Nationality Act (8 U.S.C.  
21 1101(a)(15)(L)) to provide services to the alien’s  
22 employer involving specialized knowledge.

23 (c) EXCEPTION FOR INTENDING IMMIGRANTS.—In  
24 determining the percentage of employees of an employer  
25 that are H-1B nonimmigrants or L nonimmigrants under

1 subsection (a), an intending immigrant employee (as de-  
2 fined in section 101(a)(54)(A) of the Immigration and Na-  
3 tionality Act shall not count toward such percentage.

4 (d) CONFORMING AMENDMENT.—Section 402 of the  
5 Act entitled “An Act making emergency supplemental ap-  
6 propriations for border security for the fiscal year ending  
7 September 30, 2010, and for other purposes”, approved  
8 August 13, 2010 (Public Law 111–230; 8 U.S.C. 1101  
9 note), as amended by section 4233(d), is further amended  
10 by striking subsections (a) and (c).

11 **SEC. 4306. INVESTIGATION AND DISPOSITION OF COM-**  
12 **PLAINTS AGAINST L NONIMMIGRANT EM-**  
13 **PLOYERS.**

14 Section 214(c)(2) (8 U.S.C. 1184(c)(2)), as amended  
15 by sections 4302, 4303, and 4304 is further amended by  
16 adding at the end the following:

17 “(J)(i) The Secretary of Homeland Security may ini-  
18 tiate an investigation of any employer that employs non-  
19 immigrants described in section 101(a)(15)(L) with re-  
20 gard to the employer’s compliance with the requirements  
21 of this subsection.

22 “(ii)(I) If the Secretary receives specific credible in-  
23 formation from a source who is likely to have knowledge  
24 of an employer’s practices, employment conditions, or  
25 compliance with the requirements under this subsection,

1 the Secretary may conduct an investigation into the em-  
2 ployer's compliance with the requirements of this sub-  
3 section.

4 “(II) The Secretary may withhold the identity of a  
5 source referred to in subclause (I) from an employer and  
6 the identity of such source shall not be subject to dislo-  
7 sure under section 552 of title 5, United States Code.

8 “(iii) The Secretary shall establish a procedure for  
9 any person desiring to provide to the Secretary informa-  
10 tion described in clause (ii)(I) that may be used, in whole  
11 or in part, as the basis for the commencement of an inves-  
12 tigation described in such clause, to provide the informa-  
13 tion in writing on a form developed and provided by the  
14 Secretary and completed by or on behalf of the person.

15 “(iv) No investigation described in clause (ii)(I) (or  
16 hearing described in clause (vi) based on such investiga-  
17 tion) may be conducted with respect to information about  
18 a failure to comply with the requirements under this sub-  
19 section, unless the Secretary receives the information not  
20 later than 24 months after the date of the alleged failure.

21 “(v)(I) Subject to subclause (III), before commencing  
22 an investigation of an employer under clause (i) or (ii),  
23 the Secretary shall provide notice to the employer of the  
24 intent to conduct such investigation.

1       “(II) The notice required by subclause (I) shall be  
2 provided in such a manner, and shall contain sufficient  
3 detail, to permit the employer to respond to the allegations  
4 before an investigation is commenced.

5       “(III) The Secretary is not required to comply with  
6 this clause if the Secretary determines that to do so would  
7 interfere with an effort by the Secretary to investigate or  
8 secure compliance by the employer with the requirements  
9 of this subsection.

10       “(IV) There shall be no judicial review of a deter-  
11 mination by the Secretary under this clause.

12       “(vi) If the Secretary, after an investigation under  
13 clause (i) or (ii), determines that a reasonable basis exists  
14 to make a finding that the employer has failed to comply  
15 with the requirements under this subsection, the Secretary  
16 shall provide the interested parties with notice of such de-  
17 termination and an opportunity for a hearing in accord-  
18 ance with section 556 of title 5, United States Code, not  
19 later than 120 days after the date of such determination.  
20 If such a hearing is requested, the Secretary shall make  
21 a finding concerning the matter by not later than 120 days  
22 after the date of the hearing.

23       “(vii) If the Secretary, after a hearing, finds a rea-  
24 sonable basis to believe that the employer has violated the

1 requirements under this subsection, the Secretary shall  
2 impose a penalty under subparagraph (K).

3 “(viii)(I) The Secretary may conduct voluntary sur-  
4 veys of the degree to which employers comply with the re-  
5 quirements under this section.

6 “(II) The Secretary shall—

7 “(aa) conduct annual compliance audits of each  
8 employer with more than 100 employees who work  
9 in the United States if more than 15 percent of such  
10 employees are nonimmigrants described in  
11 101(a)(15)(L); and

12 “(bb) make available to the public an executive  
13 summary or report describing the general findings of  
14 the audits carried out pursuant to this subclause.”.

15 **SEC. 4307. PENALTIES.**

16 Section 214(c)(2) (8 U.S.C. 1184(c)(2)), as amended  
17 by sections 4302, 4303, 4304, and 4306, is further  
18 amended by adding at the end the following:

19 “(K)(i) If the Secretary of Homeland Security finds,  
20 after notice and an opportunity for a hearing, a failure  
21 by an employer to meet a condition under subparagraph  
22 (F), (G), or (L) or a misrepresentation of material fact  
23 in a petition to employ 1 or more aliens as nonimmigrants  
24 described in section 101(a)(15)(L)—

1       “(I) the Secretary shall impose such administrative  
2 remedies (including civil monetary penalties in an amount  
3 not to exceed \$2,000 per violation) as the Secretary deter-  
4 mines to be appropriate;

5       “(II) the Secretary may not, during a period of at  
6 least 1 year, approve a petition for that employer to em-  
7 ploy 1 or more aliens as such nonimmigrants; and

8       “(III) in the case of a violation of subparagraph (J),  
9 the employer shall be liable to the employees harmed by  
10 such violation for lost wages and benefits.

11       “(ii) If the Secretary finds, after notice and an oppor-  
12 tunity for a hearing, a willful failure by an employer to  
13 meet a condition under subparagraph (F), (G), or (L) or  
14 a willful misrepresentation of material fact in a petition  
15 to employ 1 or more aliens as nonimmigrants described  
16 in section 101(a)(15)(L)—

17               “(I) the Secretary shall impose such adminis-  
18 trative remedies (including civil monetary penalties  
19 in an amount not to exceed \$10,000 per violation)  
20 as the Secretary determines to be appropriate;

21               “(II) the Secretary may not, during a period of  
22 at least 2 years, approve a petition filed for that em-  
23 ployer to employ 1 or more aliens as such non-  
24 immigrants; and



1           “(III) in the case of a violation of subparagraph  
2           (J), the employer shall be liable to the employees  
3           harmed by such violation for lost wages and bene-  
4           fits.”.

5   **SEC. 4308. PROHIBITION ON RETALIATION AGAINST L NON-**  
6           **IMMIGRANTS.**

7           Section 214(c)(2) (8 U.S.C. 1184(c)(2)), as amended  
8           by sections 4302, 4303, 4303, 4306, and 4307, is further  
9           amended by adding at the end the following:

10          “(L)(i) It is a violation of this subparagraph for an  
11          employer who has filed a petition to import 1 or more  
12          aliens as nonimmigrants described in section  
13          101(a)(15)(L) to take, fail to take, or threaten to take  
14          or fail to take, a personnel action, or to intimidate, threat-  
15          en, restrain, coerce, blacklist, discharge, or discriminate  
16          in any other manner against an employee because the em-  
17          ployee—

18               “(I) has disclosed information that the em-  
19          ployee reasonably believes evidences a violation of  
20          this subsection, or any rule or regulation pertaining  
21          to this subsection; or

22               “(II) cooperates or seeks to cooperate with the  
23          requirements of this subsection, or any rule or regu-  
24          lation pertaining to this subsection.

1       “(ii) In this subparagraph, the term ‘employee’ in-  
2 cludes—

3               “(I) a current employee;

4               “(II) a former employee; and

5               “(III) an applicant for employment.”.

6   **SEC. 4309. REPORTS ON L NONIMMIGRANTS.**

7       Section 214(c)(8) (8 U.S.C. 1184(c)(8)) is amended  
8 by inserting “(L),” after “(H),”.

9   **SEC. 4310. APPLICATION.**

10       The amendments made by this subtitle shall apply to  
11 applications filed on or after the date of the enactment  
12 of this Act.

13   **SEC. 4311. REPORT ON L BLANKET PETITION PROCESS.**

14       Not later than 6 months after the date of the enact-  
15 ment of this Act, the Inspector General of the Department  
16 shall submit to the Committee on the Judiciary of the Sen-  
17 ate and the Committee on the Judiciary of the House of  
18 Representatives a report regarding the use of blanket peti-  
19 tions under section 214(c)(2)(A) of the Immigration and  
20 Nationality Act (8 U.S.C. 1184(c)(2)(A)). Such report  
21 shall assess the efficiency and reliability of the process for  
22 reviewing such blanket petitions, including whether the  
23 process includes adequate safeguards against fraud and  
24 abuse.

1     **Subtitle D—Other Nonimmigrant**  
2                     **Visas**

3     **SEC. 4401. NONIMMIGRANT VISAS FOR STUDENTS.**

4             (a) AUTHORIZATION OF DUAL INTENT FOR F NON-  
5 IMMIGRANTS SEEKING BACHELOR’S OR GRADUATE DE-  
6 GREES.—Section       101(a)(15)(F)       (8       U.S.C.  
7 1101(a)(15)(F)) is amended to read as follows:

8                     “(F)(i) an alien having a residence in a  
9             foreign country who is a bona fide student  
10            qualified to pursue a full course of study and  
11            who seeks to enter the United States tempo-  
12            rarily and solely for the purpose of pursuing  
13            such a course of study consistent with section  
14            214(m) at an accredited college, university, or  
15            language training program, or at an established  
16            seminary, conservatory, academic high school,  
17            elementary school, or other academic institution  
18            in the United States, particularly designated by  
19            the alien and approved by the Secretary of  
20            Homeland Security after consultation with the  
21            Secretary of Education, which institution or  
22            place of study shall have agreed to report to the  
23            Secretary of Homeland Security the termination  
24            of attendance of each nonimmigrant student,  
25            and if any such institution of learning or place

1 of study fails to make reports promptly the ap-  
2 proval shall be withdrawn, except that such an  
3 alien who is not seeking to pursue a degree that  
4 is a bachelor's degree or a graduate degree shall  
5 have a residence in a foreign country that the  
6 alien has no intention of abandoning;

7 “(ii) the alien spouse and minor children of  
8 any alien described in clause (i) if accom-  
9 panying or following to join such an alien; and

10 “(iii) an alien who is a national of Canada  
11 or Mexico, who maintains actual residence and  
12 place of abode in the country of nationality,  
13 who is described in clause (i) except that the  
14 alien's qualifications for and actual course of  
15 study may be full or part-time, and who com-  
16 mutes to the United States institution or place  
17 of study from Canada or Mexico.”.

18 (b) DUAL INTENT.—Section 214(h) (8 U.S.C.  
19 1184(h)) is amended to read as follows:

20 “(h) DUAL INTENT.—The fact that an alien is, or  
21 intends to be, the beneficiary of an application for a pref-  
22 erence status filed under section 204, seeks a change or  
23 adjustment of status after completing a legitimate period  
24 of nonimmigrant stay, or has otherwise sought permanent  
25 residence in the United States shall not constitute evi-

1 dence of intent to abandon a foreign residence that would  
2 preclude the alien from obtaining or maintaining—

3 “(1) a visa or admission as a nonimmigrant de-  
4 scribed in subparagraph (E), (F)(i), (F)(ii),  
5 (H)(i)(b), (H)(i)(c), (L), (O), (P), (V), or (W) of  
6 section 101(a)(15); or

7 “(2) the status of a nonimmigrant described in  
8 any such subparagraph.”.

9 (c) REQUIREMENT OF STUDENT VISA DATA TRANS-  
10 FER AND CERTIFICATION.—

11 (1) IN GENERAL.—The Secretary shall imple-  
12 ment real-time transmission of data from the Stu-  
13 dent and Exchange Visitor Information System to  
14 databases used by U.S. Customs and Border Protec-  
15 tion.

16 (2) CERTIFICATION.—

17 (A) IN GENERAL.—Not later than 120  
18 days after the date of the enactment of this  
19 Act, the Secretary shall certify to Congress that  
20 the transmission of data referred to in para-  
21 graph (1) has been implemented.

22 (B) TEMPORARY SUSPENSION OF VISA  
23 ISSUANCE.—If the Secretary has not made the  
24 certification referred to in subparagraph (A)  
25 during the 120-day period, the Secretary shall

1 suspend issuance of visas under subparagraphs  
2 (F) and (M) of section 101(a)(15) of the Immi-  
3 gration and Nationality Act (8 U.S.C.  
4 1101(a)(15)) until the certification is made.

5 **SEC. 4402. CLASSIFICATION FOR SPECIALTY OCCUPATION**  
6 **WORKERS FROM FREE TRADE COUNTRIES.**

7 (a) NONIMMIGRANT STATUS.—Section  
8 101(a)(15)(E)(8 U.S.C. 1101(a)(15)(E)) is amended—

9 (1) in the matter preceding clause (i), by insert-  
10 ing “, bilateral investment treaty, or free trade  
11 agreement” after “treaty of commerce and naviga-  
12 tion”;

13 (2) in clause (ii), by striking “or” at the end;  
14 and

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

16 “(iv) solely to perform services in a  
17 specialty occupation in the United States if  
18 the alien is a national of a country, other  
19 than Chile, Singapore, or Australia, with  
20 which the United States has entered into a  
21 free trade agreement (regardless of wheth-  
22 er such an agreement is a treaty of com-  
23 merce and navigation) and with respect to  
24 whom the Secretary of Labor determines  
25 and certifies to the Secretary of Homeland

1 Security and the Secretary of State that  
2 the intending employer has filed with the  
3 Secretary of Labor an attestation under  
4 section 212(t);

5 “(v) solely to perform services in a  
6 specialty occupation in the United States if  
7 the alien is a national of the Republic of  
8 Korea and with respect to whom the Sec-  
9 retary of Labor determines and certifies to  
10 the Secretary of Homeland Security and  
11 the Secretary of State that the intending  
12 employer has filed with the Secretary of  
13 Labor an attestation under section 212(t);  
14 or

15 “(vi) solely to perform services as an  
16 employee and who has at least a high  
17 school education or its equivalent, or has,  
18 during the most recent 5-year period, at  
19 least 2 years of work experience in an oc-  
20 cupation which requires at least 2 years of  
21 training or experience if the alien is a na-  
22 tional of a country—

23 “(I) designated as an eligible  
24 sub-Saharan African country under  
25 section 104 of the African Growth

1 and Opportunity Act (19 U.S.C.  
2 3703); or  
3 “(II) designated as a beneficiary  
4 country for purposes of the Caribbean  
5 Basin Economic Recovery Act (19  
6 U.S.C. 2701 et seq.);”.

7 (b) NUMERICAL LIMITATION.—Section 214(g)(11) (8  
8 U.S.C. 1184(g)(11)) is amended—

9 (1) in subparagraph (A), by striking “section  
10 101(a)(15)(E)(iii)” and inserting “clauses (iii) and  
11 (vi) of section 101(a)(15)(E)”;

12 (2) by amending subparagraph (B) to read as  
13 follows:

14 “(B) The applicable numerical limitation referred to  
15 in subparagraph (A) for each fiscal year is—

16 “(i) 10,500 for each of the nationalities identi-  
17 fied in clause (iii) of section 101(a)(15)(E); and

18 “(ii) 10,500 for all aliens described in clause  
19 (vi) of such section.”.

20 (c) FREE TRADE AGREEMENTS.—Section 214(g) (8  
21 U.S.C. 1184(g)) is amended by adding at the end the fol-  
22 lowing:

23 “(12)(A) The free trade agreements referred to in  
24 section 101(a)(15)(E)(iv) are defined as any free trade  
25 agreement designated by the Secretary of Homeland Secu-



1 rity with the concurrence of the United States Trade Rep-  
2 resentative and the Secretary of State.

3 “(B) The Secretary of State may not approve a num-  
4 ber of initial applications submitted for aliens described  
5 in clause (iv) or (v) of section 101(a)(15)(E) that is more  
6 than 5,000 per fiscal year for each country with which  
7 the United States has entered into a Free Trade Agree-  
8 ment.

9 “(C) The applicable numerical limitation referred to  
10 in subparagraph (A) shall apply only to principal aliens  
11 and not to the spouses or children of such aliens.”.

12 (d) NONIMMIGRANT PROFESSIONALS.—Section  
13 212(t) (8 U.S.C. 1182(t)) is amended by striking “section  
14 101(a)(15)(E)(iii)” each place that term appears and in-  
15 serting “clause (iv) or (v) of section 101(a)(15)(E)”.

16 **SEC. 4403. E-VISA REFORM.**

17 (a) NONIMMIGRANT CATEGORY.—Section  
18 101(a)(15)(E)(iii) (8 U.S.C. 1101(a)(15)(E)(iii)) is  
19 amended by inserting “, or solely to perform services as  
20 an employee and who has at least a high school education  
21 or its equivalent, or has, within 5 years, at least 2 years  
22 of work experience in an occupation which requires at least  
23 2 years of training or experience if the alien is a national  
24 of the Republic of Ireland,” after “Australia”.

1 (b) TEMPORARY ADMISSION.—Section 212(d)(3)(A)  
2 (8 U.S.C. 1182(d)(3)(A)) is amended to read as follows:

3 “(A) Except as otherwise provided in this sub-  
4 section—

5 “(i) an alien who is applying for a non-  
6 immigrant visa and who the consular officer  
7 knows or believes to be ineligible for such visa  
8 under subsection (a) (other than subparagraphs  
9 (A)(i)(I), (A)(ii), (A)(iii), (C), (E)(i), and  
10 (E)(ii) of paragraph (3) of such subsection)—

11 “(I) after approval by the Secretary of  
12 Homeland Security of a recommendation  
13 by the Secretary of State or by the con-  
14 sular officer that the alien be admitted  
15 temporarily despite the alien’s inadmis-  
16 sibility, may be granted such a visa and  
17 may be admitted into the United States  
18 temporarily as a nonimmigrant, in the dis-  
19 cretion of the Secretary of Homeland Secu-  
20 rity; or

21 “(II) absent such recommendation  
22 and approval, be granted a nonimmigrant  
23 visa pursuant to section 101(a)(15)(E) if  
24 such ineligibility is based solely on conduct  
25 in violation of paragraph (6), (7), or (9) of

1 section 212(a) that occurred before the  
2 date of the enactment of the Border Secu-  
3 rity, Economic Opportunity, and Immigra-  
4 tion Modernization Act; and

5 “(ii) an alien who is inadmissible under  
6 subsection (a) (other than subparagraphs  
7 (A)(i)(I), (A)(ii), (A)(iii), (C), (E)(i), and  
8 (E)(ii) of paragraph (3) of such subsection), is  
9 in possession of appropriate documents or was  
10 granted a waiver from such document require-  
11 ment, and is seeking admission, may be admit-  
12 ted into the United States temporarily as a  
13 nonimmigrant, in the discretion of the Sec-  
14 retary of Homeland Security, who shall pre-  
15 scribe conditions, including exaction of such  
16 bonds as may be necessary, to control and regu-  
17 late the admission and return of inadmissible  
18 aliens applying for temporary admission under  
19 this paragraph.”.

20 (c) NUMERICAL LIMITATION.—Section  
21 214(g)(11)(B) (8 U.S.C. 1184(g)(11)(B)) is amended by  
22 striking the period at the end and inserting “for each of  
23 the nationalities identified under section  
24 101(a)(15)(E)(iii).”.

1   **SEC. 4404. OTHER CHANGES TO NONIMMIGRANT VISAS.**

2           (a) PORTABILITY.—Paragraphs (1) and (2) of sec-  
3   tion 214(n) (8 U.S.C. 1184(n)) are amended to read as  
4   follows:

5           “(1) A nonimmigrant alien described in paragraph  
6   (2) who was previously issued a visa or otherwise provided  
7   nonimmigrant status under section 101(a)(15)(H)(i)(b) or  
8   101(a)(15)(O)(i) is authorized to accept new employment  
9   pursuant to such section upon the filing by the prospective  
10   employer of a new petition on behalf of such nonimmigrant  
11   as provided under subsection (a). Employment authoriza-  
12   tion shall continue for such alien until the new petition  
13   is adjudicated. If the new petition is denied, such author-  
14   ization shall cease.

15           “(2) A nonimmigrant alien described in this para-  
16   graph is a nonimmigrant alien—

17               “(A) who has been lawfully admitted into the  
18   United States;

19               “(B) on whose behalf an employer has filed a  
20   nonfrivolous petition for new employment before the  
21   date of expiration of the period of stay authorized by  
22   the Secretary of Homeland Security; and

23               “(C) who, subsequent to such lawful admission,  
24   has not been employed without authorization in the  
25   United States before the filing of such petition.”.

1 (b) WAIVER.—The undesignated material at the end  
2 of section 214(c)(3) (8 U.S.C. 1184(c)(3)) is amended to  
3 read as follows:

4 “The Secretary of Homeland Security shall provide by  
5 regulation for the waiver of the consultation requirement  
6 under subparagraph (A) in the case of aliens who have  
7 been admitted as nonimmigrants under section  
8 101(a)(15)(O)(i) because of extraordinary ability in the  
9 arts or extraordinary achievement in motion picture or tel-  
10 evision production and who seek readmission to perform  
11 similar services within 3 years after the date of a consulta-  
12 tion under such subparagraph provided that, in the case  
13 of aliens admitted because of extraordinary achievement  
14 in motion picture or television production, such waiver  
15 shall apply only if the prior consultations by the appro-  
16 priate union and management organization were favorable  
17 or raised no objection to the approval of the petition. Not  
18 later than 5 days after such a waiver is provided, the Sec-  
19 retary shall forward a copy of the petition and all sup-  
20 porting documentation to the national office of an appro-  
21 priate labor organization. In the case of an alien seeking  
22 entry for a motion picture or television production (i) any  
23 opinion under the previous sentence shall only be advisory;  
24 (ii) any such opinion that recommends denial must be in  
25 writing; (iii) in making the decision the Attorney General

1 shall consider the exigencies and scheduling of the produc-  
2 tion; (iv) the Attorney General shall append to the decision  
3 any such opinion; and (v) upon making the decision, the  
4 Attorney General shall immediately provide a copy of the  
5 decision to the consulting labor and management organi-  
6 zations.”.

7 **SEC. 4405. TREATMENT OF NONIMMIGRANTS DURING AD-**  
8 **JUDICATION OF APPLICATION.**

9 Section 214 (8 U.S.C. 1184), as amended by sections  
10 3609 and 4233, is further amended by adding at the end  
11 the following:

12 “(u) TREATMENT OF NONIMMIGRANTS DURING AD-  
13 JUDICATION OF APPLICATION.—A nonimmigrant alien  
14 granted employment authorization pursuant to sections  
15 101(a)(15)(A), 101(a)(15)(E), 101(a)(15)(G),  
16 101(a)(15)(H), 101(a)(15)(I), 101(a)(15)(J),  
17 101(a)(15)(L), 101(a)(15)(O), 101(a)(15)(P),  
18 101(a)(15)(Q), 101(a)(15)(R), 214(e), and such other sec-  
19 tions as the Secretary of Homeland Security may by regu-  
20 lations prescribe whose status has expired but who has,  
21 or whose sponsoring employer or authorized agent has,  
22 filed a timely application or petition for an extension of  
23 such employment authorization and nonimmigrant status  
24 as provided under subsection (a) is authorized to continue  
25 employment with the same employer until the application

1 or petition is adjudicated. Such authorization shall be sub-  
2 ject to the same conditions and limitations as the initial  
3 grant of employment authorization.”.

4 **SEC. 4406. NONIMMIGRANT ELEMENTARY AND SECONDARY**  
5 **SCHOOL STUDENTS.**

6 Section 214(m)(1)(B) (8 U.S.C. 1184(m)(1)(B)) is  
7 amended striking “unless—” and all that follows through  
8 “(ii)” and inserting “unless”.

9 **SEC. 4407. J-1 SUMMER WORK TRAVEL VISA EXCHANGE VIS-**  
10 **ITOR PROGRAM FEE.**

11 Section 281 (8 U.S.C. 1351), as amended by section  
12 4105, is further amended by adding at the end the fol-  
13 lowing:

14 “(e) J-1 SUMMER WORK TRAVEL PARTICIPANT  
15 FEE.—In addition to the fees authorized under subsection  
16 (a), the Secretary of State shall collect a \$100 fee from  
17 each nonimmigrant entering under the Summer Work  
18 Travel program conducted by the Secretary of State pur-  
19 suant to the Foreign Affairs Reform and Restructuring  
20 Act of 1998 (division G of Public Law 105–277; 112 Stat.  
21 2681–761). Fees collected under this subsection shall be  
22 deposited into the Comprehensive Immigration Reform  
23 Trust Fund established under section 6(a)(1) of the Bor-  
24 der Security, Economic Opportunity, and Immigration  
25 Modernization Act.”.

1   **SEC. 4408. J VISA ELIGIBILITY.**

2           (a) SPEAKERS OF CERTAIN FOREIGN LANGUAGES.—

3   Section 101(a)(15)(J) (8 U.S.C. 1101(a)(15)(J)) is  
4   amended to read as follows:

5                   “(J) an alien having a residence in a for-  
6           eign country which he has no intention of aban-  
7           doning who—

8                   “(i) is a bona fide student, scholar,  
9           trainee, teacher, professor, research assist-  
10          ant, specialist, or leader in a field of spe-  
11          cialized knowledge or skill, or other person  
12          of similar description, who is coming tem-  
13          porarily to the United States as a partici-  
14          pant in a program designated by the Di-  
15          rector of the United States Information  
16          Agency, for the purpose of teaching, in-  
17          structing or lecturing, studying, observing,  
18          conducting research, consulting, dem-  
19          onstrating special skills, or receiving train-  
20          ing and who, if such alien is coming to the  
21          United States to participate in a program  
22          under which such alien will receive grad-  
23          uate medical education or training, also  
24          meets the requirements of section 212(j),  
25          and the alien spouse and minor children of



1           any such alien if accompanying such alien  
2           or following to join such alien; or

3           “(ii) is coming to the United States to  
4           perform work involving specialized knowl-  
5           edge or skill, including teaching on a full-  
6           time or part-time basis, that requires pro-  
7           ficiency of languages spoken as a native  
8           language in countries of which fewer than  
9           5,000 nationals were lawfully admitted for  
10          permanent residence in the United States  
11          in the previous year;”.

12          (b) REQUIREMENT FOR ANNUAL LIST OF COUN-  
13          TRIES.—The Secretary of State shall publish an annual  
14          list of the countries described in clause (ii) of section  
15          101(a)(15)(J) of the Immigration and Nationality Act (8  
16          U.S.C. 1101(a)(15)(J)), as added by subsection (a).

17          (c) SUMMER WORK TRAVEL PROGRAM EMPLOYMENT  
18          IN SEAFOOD PROCESSING.—Notwithstanding any other  
19          provision of law or regulation, including part 62 of title  
20          22, Code of Federal Regulations, or any proposed rule,  
21          the Secretary of State shall permit participants in the  
22          Summer Work Travel program described in section 62.32  
23          of such title 22 who are admitted under section  
24          101(a)(15)(J) of the Immigration and Nationality Act (8

1 U.S.C. 1101(a)(15)(J)), as amended by subsection (a), to  
2 be employed in seafood processing positions in Alaska.

3 **SEC. 4409. F-1 VISA FEE.**

4 Section 281 (8 U.S.C. 1351), as amended by sections  
5 4105 and 4407, is further amended by adding at the end  
6 the following:

7 “(f) F-1 VISA FEE.—

8 “(1) IN GENERAL.—In addition to the fees au-  
9 thorized under subsection (a), the Secretary of  
10 Homeland Security shall collect a \$100 fee from  
11 each nonimmigrant admitted under section  
12 101(a)(15)(F)(i). Fees collected under this sub-  
13 section shall be deposited into the Comprehensive  
14 Immigration Reform Trust Fund established under  
15 section 6(a)(1) of the Border Security, Economic  
16 Opportunity, and Immigration Modernization Act.

17 “(2) RULEMAKING.—The Secretary of Home-  
18 land Security, in conjunction with the Secretary of  
19 State, shall promulgate regulations to ensure that—

20 “(A) the fee authorized under paragraph  
21 (1) is paid on behalf of all J-1 nonimmigrants  
22 seeking entry into the United States;

23 “(B) a fee related to the hiring of a J-1  
24 nonimmigrant is not deducted from the wages

1 or other compensation paid to the J-1 non-  
2 immigrant; and

3 “(C) not more than 1 fee is collected per  
4 J-1 nonimmigrant.”.

5 **SEC. 4410. PILOT PROGRAM FOR REMOTE B NON-**  
6 **IMMIGRANT VISA INTERVIEWS.**

7 Section 222 (8 U.S.C. 1202) is amended by adding  
8 at the end the following:

9 “(i)(1) Except as provided in paragraph (3), the Sec-  
10 retary of State—

11 “(A) shall develop and conduct a pilot program  
12 for processing visas under section 101(a)(15)(B)  
13 using secure remote videoconferencing technology as  
14 a method for conducting any required in person  
15 interview of applicants; and

16 “(B) in consultation with the heads of other  
17 Federal agencies that use such secure communica-  
18 tions, shall help ensure the security of the  
19 videoconferencing transmission and encryption con-  
20 ducted under subparagraph (A).

21 “(2) Not later than 90 days after the termination of  
22 the pilot program authorized under paragraph (1), the  
23 Secretary of State shall submit to the appropriate commit-  
24 tees of Congress a report that contains—

1           “(A) a detailed description of the results of  
2           such program, including an assessment of the effi-  
3           cacy, efficiency, and security of the remote  
4           videoconferencing technology as a method for con-  
5           ducting visa interviews of applicants; and

6           “(B) recommendations for whether such pro-  
7           gram should be continued, broadened, or modified.

8           “(3) The pilot program authorized under paragraph  
9           (1) may not be conducted if the Secretary of State deter-  
10          mines that such program—

11           “(A) poses an undue security risk; and

12           “(B) cannot be conducted in a manner con-  
13          sistent with maintaining security controls.

14           “(4) If the Secretary of State makes a determination  
15          under paragraph (3), the Secretary shall submit a report  
16          to the appropriate committees of Congress that describes  
17          the reasons for such determination.

18           “(5) In this subsection:

19           “(A) The term ‘appropriate committees of Con-  
20          gress’ means—

21           “(i) the Committee on the Judiciary, the  
22           Committee on Foreign Relations, and the Com-  
23           mittee on Appropriations of the Senate; and

24           “(ii) the Committee on the Judiciary, the  
25           Committee on Foreign Affairs, and the Com-

1           mittee on Appropriations of the House of Rep-  
2           resentatives.

3           “(B) The term ‘in person interview’ includes  
4           interviews conducted using remote video tech-  
5           nology.”.

6   **SEC. 4411. PROVIDING CONSULAR OFFICERS WITH ACCESS**  
7                   **TO ALL TERRORIST DATABASES AND REQUIR-**  
8                   **ING HEIGHTENED SCRUTINY OF APPLICA-**  
9                   **TIONS FOR ADMISSION FROM PERSONS LIST-**  
10                  **ED ON TERRORIST DATABASES.**

11          Section 222 (8 U.S.C. 1202), as amended by section  
12 4410, is further amended by adding at the end the fol-  
13 lowing:

14          “(j) PROVIDING CONSULAR OFFICERS WITH ACCESS  
15 TO ALL TERRORIST DATABASES AND REQUIRING  
16 HEIGHTENED SCRUTINY OF APPLICATIONS FOR ADMIS-  
17 SION FROM PERSONS LISTED ON TERRORIST DATA-  
18 BASES.—

19               “(1) ACCESS TO THE SECRETARY OF STATE.—

20                   “(A) IN GENERAL.—Except as provided in  
21 subparagraph (B), the Secretary of State shall  
22 have access to all terrorism records and data-  
23 bases maintained by any agency or department  
24 of the United States for the purposes of deter-

1 mining whether an applicant for admission  
2 poses a security threat to the United States.

3 “(B) EXCEPTION.—The head of such an  
4 agency or department may only withhold access  
5 to terrorism records and databases from the  
6 Secretary of State if such head is able to articu-  
7 late that withholding is necessary to prevent the  
8 unauthorized disclosure of information that  
9 clearly identifies, or would reasonably permit  
10 ready identification of, intelligence or sensitive  
11 law enforcement sources, methods, or activities.

12 “(2) BIOGRAPHIC AND BIOMETRIC SCREEN-  
13 ING.—

14 “(A) REQUIREMENT FOR BIOGRAPHIC AND  
15 BIOMETRIC SCREENING.—Notwithstanding any  
16 other provision of this Act, the Secretary of  
17 State shall require every alien applying for ad-  
18 mission to the United States to submit to bio-  
19 graphic and biometric screening to determine  
20 whether the alien’s name or biometric informa-  
21 tion is listed in any terrorist watch list or data-  
22 base maintained by any agency or department  
23 of the United States.

24 “(B) EXCLUSIONS.—No alien applying for  
25 a visa to the United States shall be granted

1           such visa by a consular officer if the alien's  
2           name or biometric information is listed in any  
3           terrorist watch list or database referred to in  
4           subparagraph (A) unless—

5                   “(i) screening of the alien's visa appli-  
6                   cation against interagency counterter-  
7                   rorism screening systems which compare  
8                   the applicant's information against data in  
9                   all counterterrorism watch lists and data-  
10                  bases reveals no potentially pertinent links  
11                  to terrorism;

12                  “(ii) the consular officer submits the  
13                  application for further review to the Sec-  
14                  retary of State and the heads of other rel-  
15                  evant agencies, including the Secretary of  
16                  Homeland Security and the Director of  
17                  National Intelligence; and

18                  “(iii) the Secretary of State, after  
19                  consultation with the Secretary of Home-  
20                  land Security, the Director of National In-  
21                  telligence, and the heads of other relevant  
22                  agencies, certifies that the alien is admis-  
23                  sible to the United States.”.

1 **SEC. 4412. VISA REVOCATION INFORMATION.**

2 Section 428 of the Homeland Security Act of 2002  
3 (6 U.S.C. 236) is amended by adding at the end the fol-  
4 lowing:

5 “(j) VISA REVOCATION INFORMATION.—If the Sec-  
6 retary of State or the Secretary of Homeland Security re-  
7 voke a visa—

8 “(1) the fact of the revocation shall be imme-  
9 diately provided to the relevant consular officers, law  
10 enforcement, and terrorist screening databases; and

11 “(2) a notice of such revocation shall be posted  
12 to all Department of Homeland Security port inspec-  
13 tors and to all consular officers.”.

14 **SEC. 4413. STATUS FOR CERTAIN BATTERED SPOUSES AND**  
15 **CHILDREN.**

16 (a) NONIMMIGRANT STATUS FOR CERTAIN BAT-  
17 TERED SPOUSES AND CHILDREN.—Section 101(a)(51) (8  
18 U.S.C. 1101(a)(51)), as amended by section  
19 2305(d)(6)(B)(i)(III), is further amended—

20 (1) in subparagraph (E), by striking “or” at  
21 the end;

22 (2) in subparagraph (F), by striking the period  
23 at the end and inserting “; or”; and

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

25 “(G) section 106 as an abused derivative  
26 alien.”.



1 (b) RELIEF FOR ABUSED DERIVATIVE ALIENS.—

2 (1) IN GENERAL.—Section 106 (8 U.S.C.  
3 1105a) is amended to read as follows:

4 **“SEC. 106. RELIEF FOR ABUSED DERIVATIVE ALIENS.**

5 “(a) ABUSED DERIVATIVE ALIEN DEFINED.—In this  
6 section, the term ‘abused derivative alien’ means an alien  
7 who—

8 “(1) is the spouse or child admitted under sec-  
9 tion 101(a)(15) or pursuant to a blue card status  
10 granted under section 2211 of the Border Security,  
11 Economic Opportunity, and Immigration Moderniza-  
12 tion Act;

13 “(2) is accompanying or following to join a  
14 principal alien admitted under such a section; and

15 “(3) has been subjected to battery or extreme  
16 cruelty by such principal alien.

17 “(b) RELIEF FOR ABUSED DERIVATIVE ALIENS.—  
18 The Secretary of Homeland Security—

19 “(1) shall grant or extend the status of admis-  
20 sion of an abused derivative alien under section  
21 101(a)(15) or section 2211 of the Border Security,  
22 Economic Opportunity, and Immigration Moderniza-  
23 tion Act under which the principal alien was admit-  
24 ted for the longer of—

1                   “(A) the same period for which the prin-  
2                   cipal was initially admitted; or

3                   “(B) a period of 3 years;

4                   “(2) may renew a grant or extension of status  
5                   made under paragraph (1);

6                   “(3) shall grant employment authorization to  
7                   an abused derivative alien; and

8                   “(4) may adjust the status of the abused deriv-  
9                   ative alien to that of an alien lawfully admitted for  
10                  permanent residence if—

11                  “(A) the alien is admissible under section  
12                  212(a) or the Secretary of Homeland Security  
13                  finds the alien’s continued presence in the  
14                  United States is justified on humanitarian  
15                  grounds, to ensure family unity, or is otherwise  
16                  in the public interest; and

17                  “(B) the status under which the principal  
18                  alien was admitted to the United States would  
19                  have potentially allowed for eventual adjustment  
20                  of status.

21                  “(c) EFFECT OF TERMINATION OF RELATIONSHIP.—  
22                  Termination of the relationship with principal alien shall  
23                  not affect the status of an abused derivative alien under  
24                  this section if battery or extreme cruelty by the principal

1 alien was 1 central reason for termination of the relation-  
2 ship.

3 “(d) PROCEDURES.—Requests for relief under this  
4 section shall be handled under the procedures that apply  
5 to aliens seeking relief under section 204(a)(1)(C).”.

6 (2) TABLE OF CONTENTS AMENDMENT.—The  
7 table of contents in the first section is amended by  
8 striking the item relating to section 106 and insert-  
9 ing the following:

“Sec. 106. Relief for abused derivative aliens.”.

10 **SEC. 4414. NONIMMIGRANT CREWMEN LANDING TEMPO-**  
11 **RARILY IN HAWAII.**

12 (a) IN GENERAL.—Section 101(a)(15)(D)(ii) (8  
13 U.S.C. 1101(a)(15)(D)(ii)) is amended—

14 (1) by striking “Guam” both places that term  
15 appears and inserting “Hawaii, Guam,”; and

16 (2) by striking the semicolon at the end and in-  
17 serting “or some other vessel or aircraft;”.

18 (b) TREATMENT OF DEPARTURES.—In the adminis-  
19 tration of section 101(a)(15)(D)(ii) of the Immigration  
20 and Nationality Act (8 U.S.C. 1101(a)(15)(D)(ii)), an  
21 alien crewman shall be considered to have departed from  
22 Hawaii, Guam, or the Commonwealth of the Northern  
23 Mariana Islands after leaving the territorial waters of Ha-  
24 waii, Guam, or the Commonwealth of the Northern Mar-  
25 iana Islands, respectively, without regard to whether the

1 alien arrives in a foreign state before returning to Hawaii,  
2 Guam, or the Commonwealth of the Northern Mariana Is-  
3 lands.

4 (c) CONFORMING AMENDMENT.—The Act entitled  
5 “An Act to amend the Immigration and Nationality Act  
6 to permit nonimmigrant alien crewmen on fishing vessels  
7 to stop temporarily at ports in Guam”, approved October  
8 21, 1986 (Public Law 99–505; 8 U.S.C. 1101 note) is  
9 amended by striking section 2.

10 **SEC. 4415. TREATMENT OF COMPACT OF FREE ASSOCIA-**  
11 **TION MIGRANTS.**

12 (a) IN GENERAL.—Title II (8 U.S.C. 1151 et seq.)  
13 is amended by inserting after section 214 the following:

14 **“SEC. 214A. TREATMENT OF COMPACT OF FREE ASSOCIA-**  
15 **TION MIGRANTS.**

16 “Notwithstanding any other provision of law, with re-  
17 spect to eligibility for benefits for the Federal program  
18 defined in 402(b)(3)(C) of the Personal Responsibility and  
19 Work Opportunity Reconciliation Act of 1996 (8 U.S.C.  
20 1612(b)(3)(C)) (relating to the Medicaid program), sec-  
21 tions 401(a), 402(b)(1), and 403(a) of the Personal Re-  
22 sponsibility and Work Opportunity Reconciliation Act of  
23 1996 (8 U.S.C. 1611(a), 1612(b)(1), 1613(a)) shall not  
24 apply to any individual who lawfully resides in the United  
25 States in accordance with the Compacts of Free Associa-

1 tion between the Government of the United States and  
2 the Governments of the Federated States of Micronesia,  
3 the Republic of the Marshall Islands, and the Republic of  
4 Palau. Any individual to which the preceding sentence ap-  
5 plies shall be considered to be a qualified alien for pur-  
6 poses of title IV of the Personal Responsibility and Work  
7 Opportunity Reconciliation Act of 1996 (8 U.S.C. 1601  
8 et seq.), but only with respect to the designated Federal  
9 program defined in section 402(b)(3)(C) of such Act (re-  
10 lating to the Medicaid program) (8 U.S.C.  
11 1612(b)(3)(C)).”.

12 (b) CONFORMING AMENDMENTS.—Section 1108 of  
13 the Social Security Act (42 U.S.C. 1308) is amended—

14 (1) in subsection (f), in the matter preceding  
15 paragraph (1), by striking “subsection (g)” and in-  
16 serting “subsections (g) and (h)”; and

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

18 “(h) The limitations of subsections (f) and (g) shall  
19 not apply with respect to medical assistance provided to  
20 an individual described in section 214A of the Immigra-  
21 tion and Nationality Act.”.

22 (c) EFFECTIVE DATE.—The amendments made by  
23 this section shall apply to benefits for items and services  
24 furnished on or after the date of the enactment of this  
25 Act.

1 **SEC. 4416. INTERNATIONAL PARTICIPATION IN THE PER-**  
2 **FORMING ARTS.**

3 Section 214(c)(6)(D) (8 U.S.C. 1184(c)(6)(D)) is  
4 amended—

5 (1) in the first sentence, by inserting “(i)” be-  
6 fore “Any person”;

7 (2) in the second sentence—

8 (A) by striking “Once” and inserting “Ex-  
9 cept as provided in clause (ii), once”; and

10 (B) by striking “Attorney General shall”  
11 and inserting “Secretary of Homeland Security  
12 shall”;

13 (3) in the third sentence, by striking “The At-  
14 torney General” and inserting “The Secretary”; and

15 (4) by adding at the end the following:

16 “(ii) The Secretary of Homeland Security shall adju-  
17 dicate each petition for an alien with extraordinary ability  
18 in the arts (as described in section 101(a)(15)(O)(i)), an  
19 alien accompanying such an alien (as described in clauses  
20 (ii) and (iii) of section 101(a)(15)(O)), or an alien de-  
21 scribed in section 101(a)(15)(P) (other than an alien de-  
22 scribed in paragraph (4)(A) (relating to athletes)) not  
23 later than 14 days after—

24 “(I) the date on which the petitioner submits  
25 the petition with a written advisory opinion, letter of  
26 no objection, or request for a waiver; or

1           “(II) the date on which the 15-day period de-  
2           scribed in clause (i) has expired, if the petitioner has  
3           had an appropriate opportunity to supply rebuttal  
4           evidence.

5           “(iii) If a petition described in clause (ii) is not adju-  
6           dicated before the end of the 14-day period described in  
7           clause (ii) and the petitioner is an arts organization de-  
8           scribed in paragraph (3), (5), or (6) of section 501(c) of  
9           the Internal Revenue Code of 1986 and exempt from tax  
10          under section 501(a) of such Code for the taxable year  
11          preceding the calendar year in which the petition is sub-  
12          mitted, or an individual or entity petitioning primarily on  
13          behalf of such an organization, the Secretary of Homeland  
14          Security shall provide the petitioner with the premium  
15          processing services referred to in section 286(u), without  
16          a fee.”.

17   **SEC. 4417. LIMITATION ON ELIGIBILITY OF CERTAIN NON-**  
18                   **IMMIGRANTS FOR HEALTH-RELATED PRO-**  
19                   **GRAMS.**

20          (a) IN GENERAL.—Section 1903(v)(4)(A) of the So-  
21          cial Security Act (42 U.S.C. 1396b(v)(4)(A)) is amended  
22          by inserting “, but not including a nonimmigrant de-  
23          scribed in subparagraph (B) or (F) of section 101(a)(15)  
24          of the Immigration and Nationality Act” after “section  
25          431(c) of such Act”.

1 (b) CONFORMING CHANGES TO REGULATIONS.—

2 (1) SECRETARY OF HEALTH AND HUMAN SERV-  
3 ICES.—The Secretary of Health and Human Serv-  
4 ices shall conform all regulations promulgated by the  
5 Secretary of Health and Human Services that ref-  
6 erence the term “lawfully present” for purposes of  
7 health-related programs administered by the Sec-  
8 retary of Health and Human Services to reflect the  
9 amendment made by subsection (a) to the definition  
10 of “lawfully residing” in section 1903(v)(4)(A) of  
11 the Social Security Act (42 U.S.C. 1396b(v)(4)(A)).

12 (2) SECRETARY OF THE TREASURY.—The Sec-  
13 retary of the Treasury shall make the same changes  
14 to regulations promulgated by the Secretary of the  
15 Treasury that reference the term “lawfully present”  
16 for purposes of health-related programs adminis-  
17 tered by the Secretary of the Treasury as the Sec-  
18 retary of Health and Human Services makes under  
19 paragraph (1).

## 20 **Subtitle E—JOLT Act**

### 21 **SEC. 4501. SHORT TITLES.**

22 This subtitle may be cited as the “Jobs Originated  
23 through Launching Travel Act of 2013” or the “JOLT  
24 Act of 2013”.



1   **SEC. 4502. PREMIUM PROCESSING.**

2           Section 221 (8 U.S.C. 1201) is amended by inserting  
3   at the end the following:

4           “(j) PREMIUM PROCESSING.—

5               “(1) PILOT PROCESSING SERVICE.—Recogn-  
6           nizing that the best solution for expedited processing  
7           is low interview wait times for all applicants, the  
8           Secretary of State shall nevertheless establish, on a  
9           limited, pilot basis only, a fee-based premium proc-  
10          essing service to expedite interview appointments. In  
11          establishing a pilot processing service, the Secretary  
12          may—

13               “(A) determine the consular posts at which  
14           the pilot service will be available;

15               “(B) establish the duration of the pilot  
16           service;

17               “(C) define the terms and conditions of the  
18           pilot service, with the goal of expediting visa  
19           appointments and the interview process for  
20           those electing to pay said fee for the service;  
21           and

22               “(D) resources permitting, during the pilot  
23           service, consider the addition of consulates in  
24           locations advantageous to foreign policy objec-  
25           tives or in highly populated locales.

26           “(2) FEES.—

1           “(A) AUTHORITY TO COLLECT.—The Sec-  
2           retary of State is authorized to collect, and set  
3           the amount of, a fee imposed for the premium  
4           processing service. The Secretary of State shall  
5           set the fee based on all relevant considerations  
6           including, the cost of expedited service.

7           “(B) USE OF FEES.—Fees collected under  
8           the authority of subparagraph (A) shall be de-  
9           posited as an offsetting collection to any De-  
10          partment of State appropriation, to recover the  
11          costs of providing consular services. Such fees  
12          shall remain available for obligation until ex-  
13          pended.

14          “(C) RELATIONSHIP TO OTHER FEES.—  
15          Such fee is in addition to any existing fee cur-  
16          rently being collected by the Department of  
17          State.

18          “(D) NONREFUNDABLE.—Such fee will be  
19          nonrefundable to the applicant.

20          “(3) DESCRIPTION OF PREMIUM PROC-  
21          ESSING.—Premium processing pertains solely to the  
22          expedited scheduling of a visa interview. Utilizing  
23          the premium processing service for an expedited  
24          interview appointment does not establish the appli-  
25          cant’s eligibility for a visa. The Secretary of State

1       shall, if possible, inform applicants utilizing the pre-  
2       mium processing of potential delays in visa issuance  
3       due to additional screening requirements, including  
4       necessary security-related checks and clearances.

5               “(4) REPORT TO CONGRESS.—

6               “(A) REQUIREMENT FOR REPORT.—Not  
7       later than 18 months after the date of the en-  
8       actment of the JOLT Act of 2013, the Sec-  
9       retary of State shall submit to the appropriate  
10      committees of Congress a report on the results  
11      of the pilot service carried out under this sec-  
12      tion.

13              “(B) APPROPRIATE COMMITTEES OF CON-  
14      GRESS DEFINED.—In this paragraph, the term  
15      ‘appropriate committees of Congress’ means—

16              “(i) the Committee on the Judiciary,  
17              the Committee on Foreign Relations, and  
18              the Committee on Appropriations of the  
19              Senate; and

20              “(ii) the Committee on the Judiciary,  
21              the Committee on Foreign Affairs, and the  
22              Committee on Appropriations of the House  
23              of Representatives.”.

1   **SEC. 4503. ENCOURAGING CANADIAN TOURISM TO THE**  
2                   **UNITED STATES.**

3           Section 214 (8 U.S.C. 1184), as amended by sections  
4   3609, 4233, and 4405, is further amended by adding at  
5   the end the following:

6           “(v) CANADIAN RETIREES.—

7                   “(1) IN GENERAL.—The Secretary of Homeland  
8           Security may admit as a visitor for pleasure as de-  
9           scribed in section 101(a)(15)(B) any alien for a pe-  
10          riod not to exceed 240 days, if the alien dem-  
11          onstrates, to the satisfaction of the Secretary, that  
12          the alien—

13                   “(A) is a citizen of Canada;

14                   “(B) is at least 55 years of age;

15                   “(C) maintains a residence in Canada;

16                   “(D) owns a residence in the United States  
17          or has signed a rental agreement for accom-  
18          modations in the United States for the duration  
19          of the alien’s stay in the United States;

20                   “(E) is not inadmissible under section 212;

21                   “(F) is not described in any ground of de-  
22          portability under section 237;

23                   “(G) will not engage in employment or  
24          labor for hire in the United States; and

25                   “(H) will not seek any form of assistance  
26          or benefit described in section 403(a) of the

1           Personal Responsibility and Work Opportunity  
2           Reconciliation Act of 1996 (8 U.S.C. 1613(a)).

3           “(2) SPOUSE.—The spouse of an alien de-  
4           scribed in paragraph (1) may be admitted under the  
5           same terms as the principal alien if the spouse satis-  
6           fies the requirements of paragraph (1), other than  
7           subparagraphs (B) and (D).

8           “(3) IMMIGRANT INTENT.—In determining eli-  
9           gibility for admission under this subsection, mainte-  
10          nance of a residence in the United States shall not  
11          be considered evidence of intent by the alien to  
12          abandon the alien’s residence in Canada.

13          “(4) PERIOD OF ADMISSION.—During any sin-  
14          gle 365-day period, an alien may be admitted as de-  
15          scribed in section 101(a)(15)(B) pursuant to this  
16          subsection for a period not to exceed 240 days, be-  
17          ginning on the date of admission. Unless an exten-  
18          sion is approved by the Secretary, periods of time  
19          spent outside the United States during such 240-day  
20          period shall not toll the expiration of such 240-day  
21          period.”.

22   **SEC. 4504. RETIREE VISA.**

23          (a) NONIMMIGRANT STATUS.—Section 101(a)(15),  
24          as amended, is further amended by inserting after sub-  
25          paragraph (X) the following:

1 “(Y) subject to section 214(w), an alien  
2 who, after the date of the enactment of the  
3 JOLT Act of 2013—

4 “(i)(I) uses at least \$500,000 in cash  
5 to purchase 1 or more residences in the  
6 United States, which each sold for more  
7 than 100 percent of the most recent ap-  
8 praised value of such residence, as deter-  
9 mined by the property assessor in the city  
10 or county in which the residence is located;

11 “(II) maintains ownership of residen-  
12 tial property in the United States worth at  
13 least \$500,000 during the entire period the  
14 alien remains in the United States as a  
15 nonimmigrant described in this subpara-  
16 graph; and

17 “(III) resides for more than 180 days  
18 per year in a residence in the United  
19 States that is worth at least \$250,000; and

20 “(ii) the alien spouse and children of  
21 the alien described in clause (i) if accom-  
22 panying or following to join the alien.”.

23 (b) VISA APPLICATION PROCEDURES.—Section 214  
24 (8 U.S.C. 1184), as amended by sections 3609, 4233,

1 4405, and 4503, is further amended by adding at the end  
2 the following:

3 “(w) VISAS OF NONIMMIGRANTS DESCRIBED IN SEC-  
4 TION 101(a)(15)(Y).—

5 “(1) The Secretary of Homeland Security shall  
6 authorize the issuance of a nonimmigrant visa to  
7 any alien described in section 101(a)(15)(Y) who  
8 submits a petition to the Secretary that—

9 “(A) demonstrates, to the satisfaction of  
10 the Secretary, that the alien—

11 “(i) has purchased a residence in the  
12 United States that meets the criteria set  
13 forth in section 101(a)(15)(Y)(i);

14 “(ii) is at least 55 years of age;

15 “(iii) possesses health insurance cov-  
16 erage;

17 “(iv) is not inadmissible under section  
18 212; and

19 “(v) will comply with the terms set  
20 forth in paragraph (2); and

21 “(B) includes payment of a fee in an  
22 amount equal to \$1,000.

23 “(2) An alien who is issued a visa under this  
24 subsection—

1           “(A) shall reside in the United States at a  
2           residence that meets the criteria set forth in  
3           section 101(a)(15)(Y)(i) for more than 180  
4           days per year;

5           “(B) is not authorized to engage in em-  
6           ployment in the United States, except for em-  
7           ployment that is directly related to the manage-  
8           ment of the residential property described in  
9           section 101(Y)(i)(II);

10          “(C) is not eligible for any form of assist-  
11          ance or benefit described in section 403(a) of  
12          the Personal Responsibility and Work Oppor-  
13          tunity Reconciliation Act of 1996 (8 U.S.C.  
14          1613(a)); and

15          “(D) may renew such visa every 3 years  
16          under the same terms and conditions.”.

17          (c) USE OF FEE.—Fees collected under section  
18          214(w)(1)(B) of the Immigration and Nationality Act, as  
19          added by subsection (b), shall be deposited in the Com-  
20          prehensive Immigration Reform Trust Fund established  
21          under section 6(a)(1).



1 **SEC. 4505. INCENTIVES FOR FOREIGN VISITORS VISITING**  
2 **THE UNITED STATES DURING LOW PEAK SEA-**  
3 **SONS.**

4 The Secretary of State shall make publically avail-  
5 able, on a monthly basis, historical data, for the previous  
6 2 years, regarding the availability of visa appointments for  
7 each visa processing post, to allow applicants to identify  
8 periods of low demand, when wait times tend to be lower.

9 **SEC. 4506. VISA WAIVER PROGRAM ENHANCED SECURITY**  
10 **AND REFORM.**

11 (a) DEFINITIONS.—Section 217(c)(1) (8 U.S.C.  
12 1187(c)(1)) is amended to read as follows:

13 “(1) AUTHORITY TO DESIGNATE; DEFINI-  
14 TIONS.—

15 “(A) AUTHORITY TO DESIGNATE.—The  
16 Secretary of Homeland Security, in consultation  
17 with the Secretary of State, may designate any  
18 country as a program country if that country  
19 meets the requirements under paragraph (2).

20 “(B) DEFINITIONS.—In this subsection:

21 “(i) APPROPRIATE CONGRESSIONAL  
22 COMMITTEES.—The term ‘appropriate con-  
23 gressional committees’ means—

24 “(I) the Committee on Foreign  
25 Relations, the Committee on Home-  
26 land Security and Governmental Af-

1           fairs, and the Committee on the Judi-  
2           ciary of the Senate; and

3                   “(II) the Committee on Foreign  
4           Affairs, the Committee on Homeland  
5           Security, and the Committee on the  
6           Judiciary of the House of Representa-  
7           tives.

8           “(ii) OVERSTAY RATE.—

9                   “(I) INITIAL DESIGNATION.—The  
10          term ‘overstay rate’ means, with re-  
11          spect to a country being considered  
12          for designation in the program, the  
13          ratio of—

14                   “(aa) the number of nation-  
15          als of that country who were ad-  
16          mitted to the United States on  
17          the basis of a nonimmigrant visa  
18          under section 101(a)(15)(B)  
19          whose periods of authorized stay  
20          ended during a fiscal year but  
21          who remained unlawfully in the  
22          United States beyond such peri-  
23          ods; to

24                   “(bb) the number of nation-  
25          als of that country who were ad-

1                   mitted to the United States on  
2                   the basis of a nonimmigrant visa  
3                   under section 101(a)(15)(B)  
4                   whose periods of authorized stay  
5                   ended during that fiscal year.

6                   “(II) CONTINUING DESIGNA-  
7                   TION.—The term ‘overstay rate’  
8                   means, for each fiscal year after ini-  
9                   tial designation under this section  
10                  with respect to a country, the ratio  
11                  of—

12                   “(aa) the number of nation-  
13                   als of that country who were ad-  
14                   mitted to the United States  
15                   under this section or on the basis  
16                   of a nonimmigrant visa under  
17                   section 101(a)(15)(B) whose pe-  
18                   riods of authorized stay ended  
19                   during a fiscal year but who re-  
20                   mained unlawfully in the United  
21                   States beyond such periods; to

22                   “(bb) the number of nation-  
23                   als of that country who were ad-  
24                   mitted to the United States  
25                   under this section or on the basis

1 of a nonimmigrant visa under  
2 section 101(a)(15)(B) whose pe-  
3 riods of authorized stay ended  
4 during that fiscal year.

5 “(III) COMPUTATION OF OVER-  
6 STAY RATE.—In determining the over-  
7 stay rate for a country, the Secretary  
8 of Homeland Security may utilize in-  
9 formation from any available data-  
10 bases to ensure the accuracy of such  
11 rate.

12 “(iii) PROGRAM COUNTRY.—The term  
13 ‘program country’ means a country des-  
14 ignated as a program country under sub-  
15 paragraph (A).”.

16 (b) TECHNICAL AND CONFORMING AMENDMENTS.—  
17 Section 217 (8 U.S.C. 1187) is amended—

18 (1) by striking “Attorney General” each place  
19 the term appears (except in subsection (c)(11)(B))  
20 and inserting “Secretary of Homeland Security”;  
21 and

22 (2) in subsection (c)—

23 (A) in paragraph (2)(C)(iii), by striking  
24 “Committee on the Judiciary and the Com-  
25 mittee on International Relations of the House

1 of Representatives and the Committee on the  
2 Judiciary and the Committee on Foreign Rela-  
3 tions of the Senate” and inserting “appropriate  
4 congressional committees”;

5 (B) in paragraph (5)(A)(i)(III), by striking  
6 “Committee on the Judiciary, the Committee on  
7 Foreign Affairs, and the Committee on Home-  
8 land Security, of the House of Representatives  
9 and the Committee on the Judiciary, the Com-  
10 mittee on Foreign Relations, and the Com-  
11 mittee on Homeland Security and Govern-  
12 mental Affairs of the Senate” and inserting  
13 “appropriate congressional committees”; and

14 (C) in paragraph (7), by striking subpara-  
15 graph (E).

16 (c) DESIGNATION OF PROGRAM COUNTRIES BASED  
17 ON OVERSTAY RATES.—

18 (1) IN GENERAL.—Section 217(c)(2)(A) (8  
19 U.S.C. 1187(c)(2)(A)) is amended to read as fol-  
20 lows:

21 “(A) GENERAL NUMERICAL LIMITA-  
22 TIONS.—

23 “(i) LOW NONIMMIGRANT VISA RE-  
24 FUSAL RATE.—The percentage of nationals  
25 of that country refused nonimmigrant visas

1 under section 101(a)(15)(B) during the  
2 previous full fiscal year was not more than  
3 3 percent of the total number of nationals  
4 of that country who were granted or re-  
5 fused nonimmigrant visas under such sec-  
6 tion during such year.

7 “(ii) LOW NONIMMIGRANT OVERSTAY  
8 RATE.—The overstay rate for that country  
9 was not more than 3 percent during the  
10 previous fiscal year.”.

11 (2) QUALIFICATION CRITERIA.—Section  
12 217(c)(3) (8 U.S.C. 1187(c)(3)) is amended to read  
13 as follows:

14 “(3) QUALIFICATION CRITERIA.—After designa-  
15 tion as a program country under section 217(c)(2),  
16 a country may not continue to be designated as a  
17 program country unless the Secretary of Homeland  
18 Security, in consultation with the Secretary of State,  
19 determines, pursuant to the requirements under  
20 paragraph (5), that the designation will be contin-  
21 ued.”.

22 (3) INITIAL PERIOD.—Section 217(c) (8 U.S.C.  
23 1187(c)) is amended by striking paragraph (4).

1           (4) CONTINUING DESIGNATION.—Section  
2       217(c)(5)(A)(i)(II) (8 U.S.C. 1187(c)(5)(A)(i)(II)) is  
3       amended to read as follows:

4                               “(II) shall determine,  
5                               based upon the evaluation in  
6                               subclause (I), whether any  
7                               such designation under sub-  
8                               section (d) or (f), or proba-  
9                               tion under subsection (f),  
10                              ought to be continued or ter-  
11                              minated;”.

12           (5) COMPUTATION OF VISA REFUSAL RATES;  
13       JUDICIAL REVIEW.—Section 217(c)(6) (8 U.S.C.  
14       1187(c)(6)) is amended to read as follows:

15           “(6) COMPUTATION OF VISA REFUSAL RATES  
16       AND JUDICIAL REVIEW.—

17                              “(A) COMPUTATION OF VISA REFUSAL  
18                              RATES.—For purposes of determining the eligi-  
19                              bility of a country to be designated as a pro-  
20                              gram country, the calculation of visa refusal  
21                              rates shall not include any visa refusals which  
22                              incorporate any procedures based on, or are  
23                              otherwise based on, race, sex, or disability, un-  
24                              less otherwise specifically authorized by law or  
25                              regulation.

1           “(B) JUDICIAL REVIEW.—No court shall  
2           have jurisdiction under this section to review  
3           any visa refusal, the Secretary of State’s com-  
4           putation of a visa refusal rate, the Secretary of  
5           Homeland Security’s computation of an over-  
6           stay rate, or the designation or nondesignation  
7           of a country as a program country.”.

8           (6) VISA WAIVER INFORMATION.—Section  
9           217(c)(7) (8 U.S.C. 1187(c)(7)), as amended by  
10          subsection (b)(2)(C), is further amended—

11                 (A) by striking subparagraphs (B) through  
12                 (D); and

13                 (B) by striking “WAIVER INFORMATION.—  
14                 ” and all that follows through “In refusing”  
15                 and inserting “WAIVER INFORMATION.—In re-  
16                 fusing”.

17           (7) WAIVER AUTHORITY.—Section 217(c)(8) (8  
18           U.S.C. 1187(c)(8)) is amended to read as follows:

19                 “(8) WAIVER AUTHORITY.—The Secretary of  
20                 Homeland Security, in consultation with the Sec-  
21                 retary of State, may waive the application of para-  
22                 graph (2)(A)(i) for a country if—

23                         “(A) the country meets all other require-  
24                         ments of paragraph (2);



1           “(B) the Secretary of Homeland Security  
2 determines that the totality of the country’s se-  
3 curity risk mitigation measures provide assur-  
4 ance that the country’s participation in the pro-  
5 gram would not compromise the law enforce-  
6 ment, security interests, or enforcement of the  
7 immigration laws of the United States;

8           “(C) there has been a general downward  
9 trend in the percentage of nationals of the  
10 country refused nonimmigrant visas under sec-  
11 tion 101(a)(15)(B);

12           “(D) the country consistently cooperated  
13 with the Government of the United States on  
14 counterterrorism initiatives, information shar-  
15 ing, preventing terrorist travel, and extradition  
16 to the United States of individuals (including  
17 the country’s own nationals) who commit  
18 crimes that violate United States law before the  
19 date of its designation as a program country,  
20 and the Secretary of Homeland Security and  
21 the Secretary of State assess that such coopera-  
22 tion is likely to continue; and

23           “(E) the percentage of nationals of the  
24 country refused a nonimmigrant visa under sec-  
25 tion 101(a)(15)(B) during the previous full fis-

1 cal year was not more than 10 percent of the  
2 total number of nationals of that country who  
3 were granted or refused such nonimmigrant  
4 visas.”.

5 (d) TERMINATION OF DESIGNATION; PROBATION.—  
6 Section 217(f) (8 U.S.C. 1187(f)) is amended to read as  
7 follows:

8 “(f) TERMINATION OF DESIGNATION; PROBATION.—  
9 “(1) DEFINITIONS.—In this subsection:

10 “(A) PROBATIONARY PERIOD.—The term  
11 ‘probationary period’ means the fiscal year in  
12 which a probationary country is placed in pro-  
13 bationary status under this subsection.

14 “(B) PROGRAM COUNTRY.—The term ‘pro-  
15 gram country’ has the meaning given that term  
16 in subsection (c)(1)(B).

17 “(2) DETERMINATION, NOTICE, AND INITIAL  
18 PROBATIONARY PERIOD.—

19 “(A) DETERMINATION OF PROBATIONARY  
20 STATUS AND NOTICE OF NONCOMPLIANCE.—As  
21 part of each program country’s periodic evalua-  
22 tion required by subsection (c)(5)(A), the Sec-  
23 retary of Homeland Security shall determine  
24 whether a program country is in compliance

1 with the program requirements under subpara-  
2 graphs (A)(ii) through (F) of subsection (c)(2).

3 “(B) INITIAL PROBATIONARY PERIOD.—If  
4 the Secretary of Homeland Security determines  
5 that a program country is not in compliance  
6 with the program requirements under subpara-  
7 graphs (A)(ii) through (F) of subsection (c)(2),  
8 the Secretary of Homeland Security shall place  
9 the program country in probationary status for  
10 the fiscal year following the fiscal year in which  
11 the periodic evaluation is completed.

12 “(3) ACTIONS AT THE END OF THE INITIAL  
13 PROBATIONARY PERIOD.—At the end of the initial  
14 probationary period of a country under paragraph  
15 (2)(B), the Secretary of Homeland Security shall  
16 take 1 of the following actions:

17 “(A) COMPLIANCE DURING INITIAL PROBA-  
18 TIONARY PERIOD.—If the Secretary determines  
19 that all instances of noncompliance with the  
20 program requirements under subparagraphs  
21 (A)(ii) through (F) of subsection (c)(2) that  
22 were identified in the latest periodic evaluation  
23 have been remedied by the end of the initial  
24 probationary period, the Secretary shall end the  
25 country’s probationary period.

1                   “(B) NONCOMPLIANCE DURING INITIAL  
2                   PROBATIONARY PERIOD.—If the Secretary de-  
3                   termines that any instance of noncompliance  
4                   with the program requirements under subpara-  
5                   graphs (A)(ii) through (F) of subsection (c)(2)  
6                   that were identified in the latest periodic eval-  
7                   uation has not been remedied by the end of the  
8                   initial probationary period—

9                   “(i) the Secretary may terminate the  
10                  country’s participation in the program; or

11                  “(ii) on an annual basis, the Secretary  
12                  may continue the country’s probationary  
13                  status if the Secretary, in consultation  
14                  with the Secretary of State, determines  
15                  that the country’s continued participation  
16                  in the program is in the national interest  
17                  of the United States.

18                  “(4) ACTIONS AT THE END OF ADDITIONAL  
19                  PROBATIONARY PERIODS.—At the end of all proba-  
20                  tionary periods granted to a country pursuant to  
21                  paragraph (3)(B)(ii), the Secretary shall take 1 of  
22                  the following actions:

23                  “(A) COMPLIANCE DURING ADDITIONAL  
24                  PERIOD.—The Secretary shall end the country’s  
25                  probationary status if the Secretary determines

1 during the latest periodic evaluation required by  
2 subsection (c)(5)(A) that the country is in com-  
3 pliance with the program requirements under  
4 subparagraphs (A)(ii) through (F) of subsection  
5 (c)(2).

6 “(B) NONCOMPLIANCE DURING ADDI-  
7 TIONAL PERIODS.—The Secretary shall termi-  
8 nate the country’s participation in the program  
9 if the Secretary determines during the latest  
10 periodic evaluation required by subsection  
11 (c)(5)(A) that the program country continues to  
12 be in noncompliance with the program require-  
13 ments under subparagraphs (A)(ii) through (F)  
14 of subsection (c)(2).

15 “(5) EFFECTIVE DATE.—The termination of a  
16 country’s participation in the program under para-  
17 graph (3)(B) or (4)(B) shall take effect on the first  
18 day of the first fiscal year following the fiscal year  
19 in which the Secretary determines that such partici-  
20 pation shall be terminated. Until such date, nation-  
21 als of the country shall remain eligible for a waiver  
22 under subsection (a).

23 “(6) TREATMENT OF NATIONALS AFTER TERMI-  
24 NATION.—For purposes of this subsection and sub-  
25 section (d)—

1           “(A) nationals of a country whose designa-  
2           tion is terminated under paragraph (3) or (4)  
3           shall remain eligible for a waiver under sub-  
4           section (a) until the effective date of such ter-  
5           mination; and

6           “(B) a waiver under this section that is  
7           provided to such a national for a period de-  
8           scribed in subsection (a)(1) shall not, by such  
9           termination, be deemed to have been rescinded  
10          or otherwise rendered invalid, if the waiver is  
11          granted prior to such termination.

12          “(7) CONSULTATIVE ROLE OF THE SECRETARY  
13          OF STATE.—In this subsection, references to sub-  
14          paragraphs (A)(ii) through (F) of subsection (c)(2)  
15          and subsection (c)(5)(A) carry with them the con-  
16          sultative role of the Secretary of State as provided  
17          in those provisions.”.

18          (e) REVIEW OF OVERSTAY TRACKING METHOD-  
19          OLOGY.—Not later than 180 days after the date of the  
20          enactment of this Act, the Comptroller General of the  
21          United States shall conduct a review of the methods used  
22          by the Secretary—

23                 (1) to track aliens entering and exiting the  
24          United States; and

1           (2) to detect any such alien who stays longer  
2           than such alien's period of authorized admission.

3           (f) EVALUATION OF ELECTRONIC SYSTEM FOR  
4 TRAVEL AUTHORIZATION.—Not later than 90 days after  
5 the date of the enactment of this Act, the Secretary shall  
6 submit to Congress—

7           (1) an evaluation of the security risks of aliens  
8           who enter the United States without an approved  
9           Electronic System for Travel Authorization  
10          verification; and

11          (2) a description of any improvements needed  
12          to minimize the number of aliens who enter the  
13          United States without the verification described in  
14          paragraph (1).

15          (g) SENSE OF CONGRESS ON PRIORITY FOR REVIEW  
16 OF PROGRAM COUNTRIES.—It is the sense of Congress  
17 that the Secretary, in the process of conducting evalua-  
18 tions of countries participating in the visa waiver program  
19 under section 217 of the Immigration and Nationality Act  
20 (8 U.S.C. 1187), should prioritize the reviews of countries  
21 in which circumstances indicate that such a review is nec-  
22 essary or desirable.

23          (h) ELIGIBILITY OF HONG KONG SPECIAL ADMINIS-  
24 TRATIVE REGION FOR DESIGNATION FOR PARTICIPATION  
25 IN VISA WAIVER PROGRAM FOR CERTAIN VISITORS TO

1 THE UNITED STATES.—Section 217(c) (8 U.S.C.  
2 1187(c)) is amended by adding at the end the following  
3 new paragraph:

4 “(12) ELIGIBILITY OF CERTAIN REGION FOR  
5 DESIGNATION AS PROGRAM COUNTRY.—The Hong  
6 Kong Special Administrative Region of the People’s  
7 Republic of China—

8 “(A) shall be eligible for designation as a  
9 program country for purposes of this sub-  
10 section; and

11 “(B) may be designated as a program  
12 country for purposes of this subsection if such  
13 region meets requirements applicable for such  
14 designation in this subsection.”.

15 **SEC. 4507. EXPEDITING ENTRY FOR PRIORITY VISITORS.**

16 Section 7208(k)(4) of the Intelligence Reform and  
17 Terrorism Prevention Act of 2004 (8 U.S.C. 1365b(k)(4))  
18 is amended to read as follows:

19 “(4) EXPEDITING ENTRY FOR PRIORITY VISI-  
20 TORS.—

21 “(A) IN GENERAL.—The Secretary of  
22 Homeland Security may expand the enrollment  
23 across registered traveler programs to include  
24 eligible individuals employed by international  
25 organizations, selected by the Secretary, which



1 maintain strong working relationships with the  
2 United States.

3 “(B) REQUIREMENTS.—An individual may  
4 not be enrolled in a registered traveler program  
5 unless—

6 “(i) the individual is sponsored by an  
7 international organization selected by the  
8 Secretary under subparagraph (A); and

9 “(ii) the government that issued the  
10 passport that the individual is using has  
11 entered into a Trusted Traveler Arrange-  
12 ment with the Department of Homeland  
13 Security to participate in a registered trav-  
14 eler program.

15 “(C) SECURITY REQUIREMENTS.—An indi-  
16 vidual may not be enrolled in a registered trav-  
17 eler program unless the individual has success-  
18 fully completed all applicable security require-  
19 ments established by the Secretary, including  
20 cooperation from the applicable foreign govern-  
21 ment, to ensure that the individual does not  
22 pose a risk to the United States.

23 “(D) DISCRETION.—Except as provided in  
24 subparagraph (E), the Secretary shall retain  
25 unreviewable discretion to offer or revoke en-

1 rollment in a registered traveler program to any  
2 individual.

3 “(E) INELIGIBLE TRAVELERS.—An indi-  
4 vidual who is a citizen of a state sponsor of ter-  
5 rorism (as defined in section 301(13) of the  
6 Comprehensive Iran Sanctions, Accountability,  
7 and Divestment Act of 2010 (22 U.S.C.  
8 8541(13)) may not be enrolled in a registered  
9 traveler program.”.

10 **SEC. 4508. VISA PROCESSING.**

11 (a) IN GENERAL.—Notwithstanding any other provi-  
12 sion of law and not later than 90 days after the date of  
13 the enactment of this Act, the Secretary of State shall—

14 (1) require United States diplomatic and con-  
15 sular missions—

16 (A) to conduct visa interviews for non-  
17 immigrant visa applications determined to re-  
18 quire a consular interview in an expeditious  
19 manner, consistent with national security re-  
20 quirements, and in recognition of resource allo-  
21 cation considerations, such as the need to en-  
22 sure provision of consular services to citizens of  
23 the United States;

24 (B) to set a goal of interviewing 80 percent  
25 of all nonimmigrant visa applicants, worldwide,

1 within 3 weeks of receipt of application, subject  
2 to the conditions outlined in subparagraph (A);  
3 and

4 (C) to explore expanding visa processing  
5 capacity in China and Brazil, with the goal of  
6 maintaining interview wait times under 15 work  
7 days on a consistent, year-round basis, recog-  
8 nizing that demand can spike suddenly and un-  
9 predictably and that the first priority of United  
10 States missions abroad is the protection of citi-  
11 zens of the United States; and

12 (2) submit to the appropriate committees of  
13 Congress a detailed strategic plan that describes the  
14 resources needed to carry out paragraph (1)(A).

15 (b) APPROPRIATE COMMITTEES OF CONGRESS.—In  
16 this section, the term “appropriate committees of Con-  
17 gress” means—

18 (1) the Committee on the Judiciary, the Com-  
19 mittee on Foreign Relations, and the Committee on  
20 Appropriations of the Senate; and

21 (2) the Committee on the Judiciary, the Com-  
22 mittee on Foreign Affairs, and the Committee on  
23 Appropriations of the House of Representatives.

24 (c) SEMI-ANNUAL REPORT.—Not later than 30 days  
25 after the end of the first 6 months after the implementa-

tion of subsection (a), and not later than 30 days after the end of each subsequent quarter, the Secretary of State shall submit to the appropriate committees of Congress a report that provides—

(1) data substantiating the efforts of the Secretary of State to meet the requirements and goals described in subsection (a);

(2) any factors that have negatively impacted the efforts of the Secretary to meet such requirements and goals; and

(3) any measures that the Secretary plans to implement to meet such requirements and goals.

(d) SAVINGS PROVISION.—

(1) IN GENERAL.—Nothing in subsection (a) may be construed to affect a consular officer's authority—

(A) to deny a visa application under section 221(g) of the Immigration and Nationality Act (8 U.S.C. 1201(g)); or

(B) to initiate any necessary or appropriate security-related check or clearance.

(2) SECURITY CHECKS.—The completion of a security-related check or clearance shall not be subject to the time limits set out in subsection (a).

1   **SEC. 4509. B VISA FEE.**

2           Section 281 (8 U.S.C. 1351), as amended by sections  
3   4105, 4407, and 4408, is further amended by adding at  
4   the end the following:

5           “(g) B VISA FEE.—In addition to the fees authorized  
6   under subsection (a), the Secretary of Homeland Security  
7   shall collect a \$5 fee from each nonimmigrant admitted  
8   under section 101(a)(15)(B). Fees collected under this  
9   subsection shall be deposited into the Comprehensive Im-  
10   migration Reform Trust Fund established under section  
11   6(a)(1) of the Illegal Immigration Reform and Immigrant  
12   Responsibility Act of 1996.”.

13           **Subtitle F—Reforms to the H-2B**  
14                           **Visa Program**

15   **SEC. 4601. EXTENSION OF RETURNING WORKER EXEMP-**  
16                           **TION TO H-2B NUMERICAL LIMITATION.**

17           (a) IN GENERAL.—

18                   (1) IN GENERAL.—Subparagraph (A) of para-  
19           graph (10) of section 214(g) (8 U.S.C. 1184(g)), as  
20           redesignated by section 4101(a)(3), is amended by  
21           striking “fiscal year 2004, 2005, or 2006 shall not  
22           again be counted toward such limitation during fis-  
23           cal year 2007.” and inserting “fiscal year 2013 shall  
24           not again be counted toward such limitation during  
25           fiscal years 2014 through 2018.”.

1           (2) EFFECTIVE PERIOD.—The amendment  
2       made by paragraph (1) shall be effective during the  
3       period beginning on the effective date described in  
4       subsection (c) and ending on September 30, 2018.

5       (b) TECHNICAL AND CLARIFYING AMENDMENTS.—

6           (1) NONIMMIGRANT STATUS.—Section  
7       101(a)(15)(P) (8 U.S.C. 1101(a)(15)(P)) is amend-  
8       ed—

9           (A) in clause (iii), by striking “or” at the  
10       end;

11          (B) in clause (iv), by striking “clause (i),  
12       (ii), or (iii),” and inserting “clause (i), (ii), (iii),  
13       or (iv)”;

14          (C) by redesignating clause (iv) as clause  
15       (v); and

16          (D) by inserting after clause (iii) the fol-  
17       lowing:

18               “(iv) is a ski instructor, who has been  
19       certified as a level I, II, or III ski and  
20       snowboard instructor by the Professional  
21       Ski Instructors of America or the Amer-  
22       ican Association of Snowboard Instructors,  
23       or received an equivalent certification in  
24       the alien’s country of origin, and is seeking

1 to enter the United States temporarily to  
2 perform instructing services; or”.

3 (2) AUTHORIZED PERIOD OF STAY; NUMERICAL  
4 LIMITATION.—Section 214(a)(2)(B) (8 U.S.C.  
5 1184(a)(2)(B)) is amended in the second sentence—

6 (A) by inserting “or ski instructors” after  
7 “athletes”; and

8 (B) by inserting “or ski instructor” after  
9 “athlete”.

10 (3) CONSTRUCTION.—Nothing in the amend-  
11 ments made by this subsection may be construed as  
12 preventing an alien who is a ski instructor from ob-  
13 taining nonimmigrant status under section  
14 101(a)(15)(H)(ii)(b) of the Immigration and Nation-  
15 ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)) if such  
16 alien is otherwise qualified for such status.

17 (c) EFFECTIVE DATE.—The amendment made by  
18 subsection (a) shall take effect as if enacted on January  
19 1, 2013.

20 **SEC. 4602. OTHER REQUIREMENTS FOR H-2B EMPLOYERS.**

21 Section 214 (8 U.S.C. 1184), as amended by sections  
22 3609, 4233, 4405, 4503, and 4504, is further amended  
23 by adding at the end the following:

24 “(x) REQUIREMENTS FOR H-2B EMPLOYERS.—

1           “(1) H-2B NONIMMIGRANT DEFINED.—In this  
2           subsection the term ‘H-2B nonimmigrant’ means an  
3           alien admitted to the United States pursuant to sec-  
4           tion 101(a)(15)(H)(ii)(B).

5           “(2) NON-DISPLACEMENT OF UNITED STATES  
6           WORKERS.—An employer who seeks to employ an  
7           H-2B nonimmigrant admitted in an occupational  
8           classification shall certify and attest that the em-  
9           ployer did not displace and will not displace a  
10          United States worker employed by the employer in  
11          the same metropolitan statistical area where such  
12          nonimmigrant will be hired within the period begin-  
13          ning 90 days before the start date and ending on the  
14          end date for which the employer is seeking the serv-  
15          ices of such nonimmigrant as specified on an appli-  
16          cation for labor certification under this Act.

17          “(3) TRANSPORTATION COSTS.—The employer  
18          shall pay the transportation costs, including reason-  
19          able subsistence costs during the period of travel, for  
20          an H-2B nonimmigrant hired by the employer—

21                 “(A) from the place of recruitment to the  
22                 place of such nonimmigrant’s employment; and

23                 “(B) from the place of employment to such  
24                 nonimmigrant’s place of permanent residence or  
25                 a subsequent worksite.



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

7           “(5) H-2B NONIMMIGRANT LABOR CERTIFI-  
8           CATION APPLICATION FEE.—

9           “(A) IN GENERAL.—To recover costs of  
10           carrying out labor certification activities under  
11           the H-2B program, the Secretary of Labor  
12           shall impose a \$500 fee on an employer that  
13           submits an application for an employment cer-  
14           tification for aliens granted H-2B non-  
15           immigrant status to the Secretary of Labor  
16           under this subparagraph on or after the date  
17           that is 30 days after the date of the enactment  
18           of the Illegal Immigration Reform and Immi-  
19           grant Responsibility Act of 1996.”.

20           “(B) USE OF FEES.—The fees collected  
21           under subparagraph (A) shall be deposited in  
22           the Comprehensive Immigration Reform Trust  
23           Fund established under section 6 of the Illegal  
24           Immigration Reform and Immigrant Responsi-  
25           bility Act of 1996.”.

1   **SEC. 4603. EXECUTIVES AND MANAGERS.**

2           Section 214(a)(1) (8 U.S.C. 1184(a)(1)) is amended  
3 by adding at the end the following: “Aliens admitted under  
4 section 101(a)(15) should include—

5           “(A) executives and managers employed by a  
6 firm or corporation or other legal entity or an affil-  
7 iate or subsidiary thereof who are principally sta-  
8 tioned abroad and who seek to enter the United  
9 States for periods of 90 days or less to oversee and  
10 observe the United States operations of their related  
11 companies, and establish strategic objectives when  
12 needed; or

13           “(B) employees of multinational corporations  
14 who enter the United States to observe the oper-  
15 ations of a related United States company and par-  
16 ticipate in select leadership and development train-  
17 ing activities, whether or not the activity is part of  
18 a formal or classroom training program for a period  
19 not to exceed 180 days.

20 Nonimmigrant aliens admitted pursuant to section  
21 101(a)(15) and engaged in the activities described in  
22 the subparagraph (A) or (B) may not receive a sal-  
23 ary from a United States source, except for inci-  
24 dental expenses for meals, travel, lodging and other  
25 basic services.”.

1   **SEC. 4604. HONORARIA.**

2           Section 212(q) (8 U.S.C. 1182(q)) is amended to  
3 read as follows:

4           “(q)(1) Any alien admitted under section  
5 101(a)(15)(B) may accept an honorarium payment and  
6 associated incidental expenses, for a usual academic activ-  
7 ity or activities (lasting not longer than 9 days at any sin-  
8 gle institution), as defined by the Attorney General in con-  
9 sultation with the Secretary of Education, or for a per-  
10 formance, appearance and participation in United States  
11 based programming, including scripted or unscripted pro-  
12 gramming (with services not rendered for more than 60  
13 days in a 6 month period) if the alien has received a letter  
14 of invitation from the institution, organization, or media  
15 outlet, such payment is offered by an institution, organiza-  
16 tion, or media outlet described in paragraph (2) and is  
17 made for services conducted for the benefit of that institu-  
18 tion, entity or media outlet and if the alien has not accept-  
19 ed such payment or expenses from more than 5 institu-  
20 tions, organizations, or media outlets in the previous 6-  
21 month period. Any alien who is admitted under section  
22 101(a)(15)(B) or any other valid visa may perform serv-  
23 ices under this section without reentering the United  
24 States and without a letter of invitation, if the alien does  
25 not receive any remuneration including an honorarium

1 payment or incidental expenses, but may receive prize  
2 money.

3 “(2) An institution, organization, or media outlet de-  
4 scribed in this paragraph—

5 “(A) an institution of higher education (as de-  
6 fined in section 101(a) of the Higher Education Act  
7 of 1965 (20 U.S.C. 1001(a))) or a related or affili-  
8 ated nonprofit entity;

9 “(B) a nonprofit research organization or a  
10 governmental research organization; and

11 “(C) a broadcast network, cable entity, produc-  
12 tion company, new media, internet and mobile based  
13 companies, who create or distribute programming  
14 content.”.

15 **SEC. 4605. NONIMMIGRANTS PARTICIPATING IN RELIEF OP-**  
16 **ERATIONS.**

17 Section 214 (8 U.S.C. 1184), as amended by sections  
18 3609, 4233, 4405, 4503, 4504, and 4602, is further  
19 amended by adding at the end following:

20 “(y) NONIMMIGRANTS PARTICIPATING IN RELIEF  
21 OPERATIONS.—

22 “(1) IN GENERAL.—An alien coming individ-  
23 ually, or aliens coming as a group, to participate in  
24 relief operations, including critical infrastructure re-  
25 pairs or improvements, needed in response to a Fed-

1       eral or State declared emergency or disaster, may be  
2       admitted to the United States pursuant to section  
3       101(a)(15)(B) for a period of not more than 90 days  
4       if each such alien has been employed in a foreign  
5       country by 1 employer for not less than 1 year prior  
6       to the date the alien is so admitted.

7               “(2) PROHIBITION ON DIRECT PAYMENTS FROM  
8       A UNITED STATES SOURCE.—During a period of ad-  
9       mission pursuant to paragraph (1), an alien may not  
10      receive direct payments from a United States source,  
11      except for incidental expenses for meals, travel, lodg-  
12      ing, and other basic services.”.

13   **SEC. 4606. NONIMMIGRANTS PERFORMING MAINTENANCE**  
14               **ON COMMON CARRIERS.**

15      Section 214 (8 U.S.C. 1184), as amended by sections  
16   3609, 4233, 4405, 4503, 4504, 4602, and 4603, is further  
17   amended by adding at the end following:

18      “(z) NONIMMIGRANTS PERFORMING MAINTENANCE  
19   ON COMMON CARRIER.—

20              “(1) IN GENERAL.—An alien coming individ-  
21      ually, or aliens coming as a group, who possess spe-  
22      cialized knowledge to perform maintenance or re-  
23      pairs for common carriers, including to airlines,  
24      cruise lines, and railways, if such maintenance or re-  
25      pairs are occurring to equipment or machinery man-

1       ufactured outside of the United States and are need-  
2       ed for purposes relating to life, health, and safety,  
3       may be admitted to the United States pursuant to  
4       section 101(a)(15)(B) for a period of not more than  
5       90 days if each such alien has been employed in a  
6       foreign country by 1 employer for not less than 1  
7       year prior to the date the alien is so admitted.

8               “(2) PROHIBITION ON INCOME FROM A UNITED  
9       STATES SOURCE.—During a period of admission  
10      pursuant to paragraph (1), an alien may not receive  
11      income from a United States source, except for inci-  
12      dental expenses for meals, travel, lodging, and other  
13      basic services.

14             “(3) FEE.—

15               “(A) IN GENERAL.—An alien admitted  
16      pursuant to paragraph (1) shall pay a fee of  
17      \$500 in addition to any fee assessed to cover  
18      the costs to process an application under this  
19      subsection.

20               “(B) USE OF FEE.—The fees collected  
21      under subparagraph (A) shall be deposited in  
22      the Comprehensive Immigration Reform Trust  
23      Fund established under section 6(a)(1) of the  
24      Illegal Immigration Reform and Immigrant Re-  
25      sponsibility Act of 1996.”.

1 **SEC. 4607. AMERICAN JOBS IN AMERICAN FORESTS.**

2 (a) SHORT TITLE.—This section may be cited as the  
3 “American Jobs in American Forests Act of 2013”.

4 (b) DEFINITIONS.—In this section:

5 (1) FORESTRY.—The term “forestry” means—

6 (A) propagating, protecting, and managing  
7 forest tracts;

8 (B) felling trees and cutting them into  
9 logs;

10 (C) using hand tools or operating heavy  
11 powered equipment to perform activities such as  
12 preparing sites for planting, tending crop trees,  
13 reducing competing vegetation, moving logs, pil-  
14 ing brush, and yarding and trucking logs from  
15 the forest; and

16 (D) planting seedlings and trees.

17 (2) H-2B NONIMMIGRANT.—The term “H-2B  
18 nonimmigrant” means a nonimmigrant described in  
19 section 101(a)(15)(H)(ii)(b) of the Immigration and  
20 Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)).

21 (3) PROSPECTIVE H-2B EMPLOYER.—The term  
22 “prospective H-2B employer” means a United  
23 States business that is considering employing 1 or  
24 more nonimmigrants described in section  
25 101(a)(15)(H)(ii)(b) of the Immigration and Nation-  
26 ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)).

1           (4) STATE WORKFORCE AGENCY.—The term  
2           “State workforce agency” means the workforce  
3           agency of the State in which the prospective H–2B  
4           employer intends to employ H–2B nonimmigrants.

5           (c) DEPARTMENT OF LABOR.—

6           (1) RECRUITMENT.—As a component of the  
7           labor certification process required before H–2B  
8           nonimmigrants are offered forestry employment in  
9           the United States, the Secretary of Labor shall re-  
10          quire all prospective H–2B employers, before they  
11          submit a petition to hire H–2B nonimmigrants to  
12          work in forestry, to conduct a robust effort to re-  
13          cruit United States workers, including, to the extent  
14          the State workforce agency considers appropriate—

15                (A) advertising at employment or job-  
16                placement events, such as job fairs;

17                (B) placing the job opportunity with the  
18                State workforce agency and working with such  
19                agency to identify qualified and available  
20                United States workers;

21                (C) advertising in appropriate media, in-  
22                cluding local radio stations and commonly used,  
23                reputable Internet job-search sites; and

24                (D) such other recruitment efforts as the  
25                State workforce agency considers appropriate



1           for the sector or positions for which H-2B non-  
2           immigrants would be considered.

3           (2) SEPARATE CERTIFICATIONS AND PETI-  
4           TIONS.—A prospective H-2B employer shall submit  
5           a separate application for temporary employment  
6           certification and petition for each State in which the  
7           employer plans to employ H-2B nonimmigrants in  
8           forestry for a period of 7 days or longer. The Sec-  
9           retary of Labor shall review each application for  
10          temporary employment certification and decide sepa-  
11          rately whether certification is warranted.

12          (d) STATE WORKFORCE AGENCIES.—The Secretary  
13          of Labor may not grant a temporary labor certification  
14          to a prospective H-2B employer seeking to employ H-2B  
15          nonimmigrants in forestry until after the Director of the  
16          State workforce agency, in each State in which such work-  
17          ers are sought—

18               (1) submits a report to the Secretary of Labor  
19               certifying that—

20                       (A) the employer has complied with all re-  
21                       cruitment requirements set forth in subsection  
22                       (c)(1) and there is legitimate demand for the  
23                       employment of H-2B nonimmigrants in each of  
24                       those States; or

1 (B) the employer has amended the applica-  
2 tion by removing or making appropriate modi-  
3 fications with respect to the States in which the  
4 criteria set forth in subparagraph (A) have not  
5 been met; and

6 (2) makes a formal determination that nation-  
7 als of the United States are not qualified or avail-  
8 able to fill the employment opportunities offered by  
9 the prospective H-2B employer.

## 10 **Subtitle G—W Nonimmigrant Visas**

### 11 **SEC. 4701. BUREAU OF IMMIGRATION AND LABOR MARKET** 12 **RESEARCH.**

13 (a) DEFINITIONS.—In this section:

14 (1) BUREAU.—Except as otherwise specifically  
15 provided, the term “Bureau” means the Bureau of  
16 Immigration and Labor Market Research established  
17 under subsection (b).

18 (2) COMMISSIONER.—The term “Commis-  
19 sioner” means the Commissioner of the Bureau.

20 (3) CONSTRUCTION OCCUPATION.—The term  
21 “construction occupation” means an occupation clas-  
22 sified by the Bureau of Labor Statistics as being  
23 within the construction industry for the purposes of  
24 publishing the Bureau’s workforce statistics.

1           (4) METROPOLITAN STATISTICAL AREA.—The  
2       term “metropolitan statistical area” means a geo-  
3       graphic area designated as a metropolitan statistical  
4       area by the Director of the Office of Management  
5       and Budget.

6           (5) SHORTAGE OCCUPATION.—The term “short-  
7       age occupation” means an occupation that the Com-  
8       missioner determines is experiencing a shortage of  
9       labor—

10                (A) throughout the United States; or

11                (B) in a specific metropolitan statistical  
12       area.

13           (6) W VISA PROGRAM.—The term “W Visa Pro-  
14       gram” means the program for the admission of non-  
15       immigrant aliens described in subparagraph (W)(i)  
16       of section 101(a)(15) of the Immigration and Na-  
17       tionality Act (8 U.S.C. 1101(a)(15)), as added by  
18       section 4702.

19           (7) ZONE 1 OCCUPATION.—The term “zone 1  
20       occupation” means an occupation that requires little  
21       or no preparation and is classified as a zone 1 occu-  
22       pation on—

23                (A) the Occupational Information Network  
24       Database (O\*NET) on the date of the enact-  
25       ment of this Act; or

1 (B) such Database or a similar successor  
2 database, as designated by the Secretary of  
3 Labor, after the date of the enactment of this  
4 Act.

5 (8) ZONE 2 OCCUPATION.—The term “zone 2  
6 occupation” means an occupation that requires some  
7 preparation and is classified as a zone 2 occupation  
8 on—

9 (A) the Occupational Information Network  
10 Database (O\*NET) on the date of the enact-  
11 ment of this Act; or

12 (B) such Database or a similar successor  
13 database, as designated by the Secretary of  
14 Labor, after the date of the enactment of this  
15 Act.

16 (9) ZONE 3 OCCUPATION.—The term “zone 3  
17 occupation” means an occupation that requires me-  
18 dium preparation and is classified as a zone 3 occu-  
19 pation on—

20 (A) the Occupational Information Network  
21 Database (O\*NET) on the date of the enact-  
22 ment of this Act; or

23 (B) such Database or a similar successor  
24 database, as designated by the Secretary of

1 Labor, after the date of the enactment of this  
2 Act.

3 (b) ESTABLISHMENT.—There is established a Bureau  
4 of Immigration and Labor Market Research as an inde-  
5 pendent statistical agency within U.S. Citizenship and Im-  
6 migration Services.

7 (c) COMMISSIONER.—The head of the Bureau of Im-  
8 migration and Labor Market Research is the Commis-  
9 sioner, who shall be appointed by the President, by and  
10 with the advice and consent of the Senate.

11 (d) DUTIES.—The duties of the Commissioner are  
12 limited to the following:

13 (1) To devise a methodology subject to publica-  
14 tion in the Federal Register and an opportunity for  
15 public comment regarding the calculation for the  
16 index referred to in section 220(g)(2)(C) of the Im-  
17 migration and Nationality Act, as added by section  
18 4703.

19 (2) To determine and to publish in the Federal  
20 Register the annual change to the numerical limita-  
21 tion for nonimmigrant aliens described in subpara-  
22 graph (W)(i) of section 101(a)(15) of the Immigra-  
23 tion and Nationality Act (8 U.S.C. 1101(a)(15)), as  
24 added by section 4702.

1           (3) With respect to the W Visa Program, to  
2           supplement the recruitment methods employers may  
3           use to attract United States workers and current  
4           nonimmigrant aliens described in paragraph (2).

5           (4) With respect to the W Visa Program, to de-  
6           vise a methodology subject to publication in the Fed-  
7           eral Register and an opportunity for public comment  
8           to designate shortage occupations in zone 1 occupa-  
9           tions, zone 2 occupations, and zone 3 occupations.  
10          Such methodology must designated Alaskan seafood  
11          processing in zones 1, 2, and 3 as shortage occupa-  
12          tions.

13          (5) With respect to the W Visa Program, to  
14          designate shortage occupations in any zone 1 occu-  
15          pation, zone 2 occupation, or zone 3 occupation and  
16          publish such occupations in the Federal Register.  
17          Alaskan seafood processing in zones 1, 2, and 3  
18          must be designated as shortage occupations.

19          (6) With respect to the W Visa Program, to  
20          conduct a survey once every 3 months of the unem-  
21          ployment rate of zone 1 occupations, zone 2 occupa-  
22          tions, or zone 3 occupations that are construction  
23          occupations in each metropolitan statistical area.

24          (7) To study and report to Congress on employ-  
25          ment-based immigrant and nonimmigrant visa pro-

1       grams in the United States and to make annual rec-  
2       ommendations to improve such programs.

3               (8) To carry out any functions required to per-  
4       form the duties described in paragraphs (1) through  
5       (7).

6       (e) DETERMINATION OF CHANGES TO NUMERICAL  
7       LIMITATIONS.—The methodology required under sub-  
8       section (d)(1) shall be published in the Federal Register  
9       not later than 18 months after the date of the enactment  
10      of this Act.

11      (f) DESIGNATION OF SHORTAGE OCCUPATIONS.—

12              (1) METHODS TO DETERMINE.—The Commis-  
13      sioner shall—

14                      (A) establish the methodology to designate  
15                      shortage occupations under subsection (d)(4);  
16                      and

17                      (B) publish such methodology in the Fed-  
18                      eral Register not later than 18 months after the  
19                      date of the enactment of this Act.

20              (2) PETITION BY EMPLOYER.—The method-  
21      ology established under paragraph (1) shall permit  
22      an employer to petition the Commissioner for a de-  
23      termination that a particular occupation in a par-  
24      ticular metropolitan statistical area is a shortage oc-  
25      cupation.

1           (3) REQUIREMENT FOR NOTICE AND COM-  
2           MENT.—The methodology established under para-  
3           graph (1) shall be effective only after publication in  
4           the Federal Register and an opportunity for public  
5           comment.

6           (g) EMPLOYEE EXPERTISE.—The employees of the  
7           Bureau shall have the expertise necessary to identify labor  
8           shortages in the United States and make recommenda-  
9           tions to the Commissioner on the impact of immigrant and  
10          nonimmigrant aliens on labor markets in the United  
11          States, including expertise in economics, labor markets,  
12          demographics and methods of recruitment of United  
13          States workers.

14          (h) INTERAGENCY COOPERATION.—At the request of  
15          the Commissioner, the Secretary of Commerce, the Direc-  
16          tor of the Bureau of the Census, the Secretary of Labor,  
17          and the Commissioner of the Bureau of Labor Statistics  
18          shall—

- 19               (1) provide data to the Commissioner;  
20               (2) conduct appropriate surveys; and  
21               (3) assist the Commissioner in preparing the  
22          recommendations referred to subsection (d)(5).

23          (i) BUDGET.—

24               (1) REPORT.—Not later than 1 year after the  
25          date of the enactment of this Act, the Director of



1 U.S. Citizenship and Immigration Services shall sub-  
2 mit to Congress a report of the estimated budget  
3 that the Bureau will need to carry out the duties de-  
4 scribed in subsection (d).

5 (2) AUDIT.—The Comptroller General of the  
6 United States shall submit to Congress a report that  
7 is an audit of the budget prepared by the Director  
8 under paragraph (1).

9 (j) FUNDING.—

10 (1) APPROPRIATION OF FUNDS.—There is here-  
11 by appropriated, out of any money in the Treasury  
12 not otherwise appropriated, \$20,000,000 to establish  
13 the Bureau.

14 (2) USE OF W NONIMMIGRANT FEES.—The  
15 amounts collected for fees under section  
16 220(e)(6)(B) of the Immigration and Nationality  
17 Act, as added by section 4703, shall be used to es-  
18 tablish and fund the Bureau.

19 (3) OTHER FEES.—The Secretary may establish  
20 other fees for the sole purpose of funding the W  
21 Visa Program, including the Bureau, that are re-  
22 lated to the hiring of alien workers.

1 **SEC. 4702. NONIMMIGRANT CLASSIFICATION FOR W NON-**  
2 **IMMIGRANTS.**

3 Section 101(a)(15)(W), as added by section 2211, is  
4 amended by inserting before clause (iii) the following:

5 “(i) to perform services or labor for a  
6 registered nonagricultural employer in a  
7 registered position (as those terms are de-  
8 fined in section 220(a)) in accordance with  
9 the requirements under section 220;

10 “(ii) to accompany or follow to join  
11 such an alien described in clause (i) as the  
12 spouse or child of such alien;”.

13 **SEC. 4703. ADMISSION OF W NONIMMIGRANT WORKERS.**

14 (a) IN GENERAL.—Chapter 2 of title II (8 U.S.C.  
15 1181 et seq.) is amended by adding at the end the fol-  
16 lowing:

17 **“SEC. 220. ADMISSION OF W NONIMMIGRANT WORKERS.**

18 “(a) DEFINITIONS.—In this section:

19 “(1) BUREAU.—The term ‘Bureau’ means the  
20 Bureau of Immigration and Labor Market Research  
21 established by section 4701 of the Illegal Immigra-  
22 tion Reform and Immigrant Responsibility Act of  
23 1996.

24 “(2) CERTIFIED ALIEN.—The term ‘certified  
25 alien’ means an alien that the Secretary of State has  
26 certified is eligible to be a W nonimmigrant if the

1 alien is hired by a registered employer for a reg-  
2 istered position.

3 “(3) COMMISSIONER.—The term ‘Commis-  
4 sioner’ means the Commissioner of the Bureau.

5 “(4) CONSTRUCTION OCCUPATION.—The term  
6 ‘construction occupation’ means an occupation de-  
7 fined by the Bureau of Labor Statistics as being  
8 within the construction industry for the purposes of  
9 publishing the Bureau’s workforce statistics.

10 “(5) DEPARTMENT.—Except as otherwise pro-  
11 vided, the term ‘Department’ means the Department  
12 of Homeland Security.

13 “(6) ELIGIBLE OCCUPATION.—The term ‘eligi-  
14 ble occupation’ means an eligible occupation de-  
15 scribed in subsection (e)(3).

16 “(7) EMPLOYER.—

17 “(A) IN GENERAL.—The term ‘employer’  
18 means any person or entity hiring an individual  
19 for employment in the United States.

20 “(B) TREATMENT OF SINGLE EM-  
21 PLOYER.—For purposes of determining the  
22 number of employees or United States workers  
23 employed by an employer, a single entity shall  
24 be treated as 1 employer.

1           “(8) EXCLUDED GEOGRAPHIC LOCATION.—The  
2           term ‘excluded geographic location’ means an ex-  
3           cluded geographic location described in subsection  
4           (f).

5           “(9) INITIAL W NONIMMIGRANT.—The term  
6           ‘initial W nonimmigrant’ means a certified alien  
7           issued a W nonimmigrant visa by the Secretary of  
8           State pursuant to section 101(a)(15)(W)(i) in order  
9           to seek initial admission to the United States to  
10          commence employment for a registered employer in  
11          a registered position subject to the numerical limit  
12          at section 220(g).

13          “(10) METROPOLITAN STATISTICAL AREA.—  
14          The term ‘metropolitan statistical area’ means a ge-  
15          ographic area designated as a metropolitan statis-  
16          tical area by the Director of the Office of Manage-  
17          ment and Budget.

18          “(11) REGISTERED EMPLOYER.—The term  
19          ‘registered employer’ means a nonagricultural em-  
20          ployer that the Secretary has designated as a reg-  
21          istered employer under subsection (d).

22          “(12) SECRETARY.—Except as otherwise spe-  
23          cifically provided, the term ‘Secretary’ means the  
24          Secretary of Homeland Security.

1           “(13) SINGLE ENTITY.—The term ‘single enti-  
2           ty’ means any group treated as a single employer  
3           under subsection (b), (c), (m), or (o) of section 414  
4           of the Internal Revenue Code of 1986.

5           “(14) SHORTAGE OCCUPATION.—The term  
6           ‘shortage occupation’ means a shortage occupation  
7           designated by the Commissioner pursuant to section  
8           4701(d)(4) of the Illegal Immigration Reform and  
9           Immigrant Responsibility Act of 1996.

10          “(15) SMALL BUSINESS.—The term ‘small busi-  
11          ness’ means an employer that employs 25 or fewer  
12          full-time equivalent employees.

13          “(16) UNITED STATES WORKER.—The term  
14          ‘United States worker’ means an individual who is—

15               “(A) employed or seeking employment in  
16               the United States; and

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

18               “(ii) an alien lawfully admitted for perma-  
19               nent residence;

20               “(iii) an alien in Registered Provisional  
21               Immigrant Status; or

22               “(iv) any other alien authorized to work in  
23               the United States with no limitation as to the  
24               alien’s employer.

1           “(17) W NONIMMIGRANT.—The term ‘W non-  
2       immigrant’ means an alien admitted as a non-  
3       immigrant pursuant to section 101(a)(15)(W)(i).

4           “(18) W NONIMMIGRANT VISA.—The term ‘W  
5       nonimmigrant visa’ means a visa issued to a cer-  
6       tified alien by the Secretary of State pursuant to  
7       section 101(a)(15)(W)(i).

8           “(19) W VISA PROGRAM.—The term ‘W Visa  
9       Program’ means the program for the admission of  
10      nonimmigrant aliens described in section  
11      101(a)(15)(W)(i).

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

16               “(A) the Occupational Information Net-  
17               work Database (O\*NET) on the date of the en-  
18               actment of the Illegal Immigration Reform and  
19               Immigrant Responsibility Act of 1996; or

20               “(B) such Database or a similar successor  
21               database, as designated by the Secretary of  
22               Labor, after the date of the enactment of the  
23               Illegal Immigration Reform and Immigrant Re-  
24               sponsibility Act of 1996.

1           “(21) ZONE 2 OCCUPATION.—The term ‘zone 2  
2           occupation’ means an occupation that requires some  
3           preparation and is classified as a zone 2 occupation  
4           on—

5                   “(A) the Occupational Information Net-  
6                   work Database (O\*NET) on the date of the en-  
7                   actment of the Illegal Immigration Reform and  
8                   Immigrant Responsibility Act of 1996; or

9                   “(B) such Database or a similar successor  
10                  database, as designated by the Secretary of  
11                  Labor, after the date of the enactment of the  
12                  Illegal Immigration Reform and Immigrant Re-  
13                  sponsibility Act of 1996.

14           “(22) ZONE 3 OCCUPATION.—The term ‘zone 3  
15           occupation’ means an occupation that requires me-  
16           dium preparation and is classified as a zone 3 occu-  
17           pation on—

18                   “(A) the Occupational Information Net-  
19                   work Database (O\*NET) on the date of the en-  
20                   actment of the Illegal Immigration Reform and  
21                   Immigrant Responsibility Act of 1996; or

22                   “(B) such Database or a similar successor  
23                   database, as designated by the Secretary of  
24                   Labor, after the date of the enactment of the

1           Illegal Immigration Reform and Immigrant Re-  
2           sponsibility Act of 1996.

3           “(b) ADMISSION INTO THE UNITED STATES.—

4           “(1) W NONIMMIGRANTS.—Subject to this sec-  
5           tion, a certified alien is eligible to be admitted to the  
6           United States as a W nonimmigrant if the alien is  
7           hired by a registered employer for employment in a  
8           registered position in a location that is not an ex-  
9           cluded geographic location.

10          “(2) SPOUSE AND MINOR CHILDREN.—The—

11           “(A) alien spouse and minor children of a  
12           W nonimmigrant may be admitted to the  
13           United States pursuant to clause (ii) of section  
14           101(a)(15)(W) during the period of the prin-  
15           cipal W nonimmigrant’s admission; and

16           “(B) such alien spouse shall be—

17           “(i) authorized to engage in employ-  
18           ment in the United States during such pe-  
19           riod of admission; and

20           “(ii) provided with an employment au-  
21           thorization document, stamp, or other ap-  
22           propriate work permit.

23          “(c) W NONIMMIGRANTS.—

24          “(1) CERTIFIED ALIEN.—



1           “(A) APPLICATION.—An alien seeking to  
2           be a W nonimmigrant shall apply to the Sec-  
3           retary of State at a United States embassy or  
4           consulate in a foreign country to be a certified  
5           alien.

6           “(B) CRITERIA.—An alien is eligible to be  
7           a certified alien if the alien—

8                   “(i) is not inadmissible under this  
9           Act;

10                   “(ii) passes a criminal background  
11           check;

12                   “(iii) agrees to accept only registered  
13           positions in the United States; and

14                   “(iv) meets other criteria as estab-  
15           lished by the Secretary.

16           “(2) W NONIMMIGRANT STATUS.—Only an alien  
17           that is a certified alien may be admitted to the  
18           United States as a W nonimmigrant.

19           “(3) INITIAL EMPLOYMENT.—A W non-  
20           immigrant shall report to such nonimmigrant’s ini-  
21           tial employment in a registered position not later  
22           than 14 days after such nonimmigrant is admitted  
23           to the United States.

24           “(4) TERM OF ADMISSION.—

1           “(A) INITIAL TERM.—A certified alien may  
2           be granted W nonimmigrant status for an ini-  
3           tial period of 3 years.

4           “(B) RENEWAL.—A W nonimmigrant may  
5           renew his or her status as a W nonimmigrant  
6           for additional 3-year periods. Such a renewal  
7           may be made while the W nonimmigrant is in  
8           the United States and shall not require the  
9           alien to depart the United States.

10          “(5) PERIODS OF UNEMPLOYMENT.—A W non-  
11          immigrant—

12               “(A) may be unemployed for a period of  
13               not more than 60 consecutive days; and

14               “(B) shall depart the United States if such  
15               W nonimmigrant is unable to obtain employ-  
16               ment during such period.

17          “(6) TRAVEL.—A W nonimmigrant may travel  
18          outside the United States and be readmitted to the  
19          United States. Such travel may not extend the pe-  
20          riod of authorized admission of such W non-  
21          immigrant.

22          “(d) REGISTERED EMPLOYER.—

23               “(1) APPLICATION.—An employer seeking to be  
24               a registered employer shall submit an application to

1 the Secretary. Each such application shall include  
2 the following:

3 “(A) Documentation to establish that the  
4 employer is a bona-fide employer.

5 “(B) The employer’s Federal tax identi-  
6 fication number or employer identification num-  
7 ber issued by the Internal Revenue Service.

8 “(C) The number of W nonimmigrants the  
9 employer estimates it will seek to employ annu-  
10 ally.

11 “(2) REFERRAL FOR FRAUD INVESTIGATION.—  
12 The Secretary may refer an application submitted  
13 under paragraph (1) or subsection (e)(1)(A) to the  
14 Fraud Detection and National Security Directorate  
15 of U.S. Citizenship and Immigration Services if  
16 there is evidence of fraud for potential investigation.

17 “(3) INELIGIBLE EMPLOYERS.—

18 “(A) IN GENERAL.—Notwithstanding any  
19 other applicable penalties under law, the Sec-  
20 retary may deny an employer’s application to be  
21 a registered employer if the Secretary deter-  
22 mines, after notice and an opportunity for a  
23 hearing, that the employer submitting such ap-  
24 plication—

1 “(i) has, with respect to the applica-  
2 tion required under paragraph (1), includ-  
3 ing any attestations required by law—

4 “(I) knowingly misrepresented a  
5 material fact;

6 “(II) knowingly made a fraudu-  
7 lent statement; or

8 “(III) knowingly failed to comply  
9 with the terms of such attestations; or

10 “(ii) failed to cooperate in the audit  
11 process in accordance with regulations pro-  
12 mulgated by the Secretary;

13 “(iii) has been convicted of an offense  
14 set out in chapter 77 of title 18, United  
15 States Code, or any conspiracy to commit  
16 such offenses, or any human trafficking of-  
17 fense under State or territorial law;

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

20 “(I) received a final adjudication  
21 of having committed any hazardous  
22 occupation orders violation resulting  
23 in injury or death under the child  
24 labor provisions contained in section  
25 12 of the Fair Labor Standards Act

1 of 1938 (29 U.S.C. 211) and any per-  
2 tinent regulation;

3 “(II) received a final adjudication  
4 assessing a civil money penalty for  
5 any repeated or willful violation of the  
6 minimum wage provisions of section 6  
7 of the Fair Labor Standards Act of  
8 1938 (29 U.S.C. 206); or

9 “(III) received a final adjudica-  
10 tion assessing a civil money penalty  
11 for any willful violation of the over-  
12 time provisions of section 7 of the  
13 Fair Labor Standards Act of 1938 or  
14 any regulations thereunder; or

15 “(v) has, within 2 years prior to the  
16 date of application, received a final adju-  
17 dication for a willful violation or repeated  
18 serious violations involving injury or  
19 death—

20 “(I) of section 5 of the Occupa-  
21 tional Safety and Health Act of 1970  
22 (29 U.S.C. 654);

23 “(II) of any standard, rule, or  
24 order promulgated pursuant to section  
25 6 of the Occupational Safety and

1 Health Act of 1970 (29 U.S.C. 655);  
2 or

3 “(III) of a plan approved under  
4 section 18 of the Occupational Safety  
5 and Health Act of 1970 (29 U.S.C.  
6 667).

7 “(B) LENGTH OF INELIGIBILITY.—

8 “(i) TEMPORARY INELIGIBILITY.—An  
9 employer described in subparagraph (A)  
10 may be ineligible to be a registered em-  
11 ployer for a period that is not less than the  
12 time period determined by the Secretary  
13 and not more than 3 years.

14 “(ii) PERMANENT INELIGIBILITY.—  
15 An employer who has been convicted of  
16 any offense set out in chapter 77 of title  
17 18, United States Code, or any conspiracy  
18 to commit such offenses, or any human  
19 trafficking offense under State or terri-  
20 torial law shall be permanently ineligible to  
21 be a registered employer.

22 “(4) TERM OF REGISTRATION.—The Secretary  
23 shall approve applications meeting the criteria of  
24 this subsection for a term of 3 years.

1           “(5) RENEWAL.—An employer may submit an  
2           application to renew the employer’s status as a reg-  
3           istered employer for additional 3-year periods.

4           “(6) FEE.—At the time an employer’s applica-  
5           tion to be a registered employer or to renew such  
6           status is approved, such employer shall pay a fee in  
7           an amount determined by the Secretary to be suffi-  
8           cient to cover the costs of the registry of such em-  
9           ployers.

10          “(7) CONTINUED ELIGIBILITY.—Each reg-  
11          istered employer shall submit to the Secretary an  
12          annual report that demonstrates that the registered  
13          employer has provided the wages and working condi-  
14          tions the registered employer agreed to provide to its  
15          employees.

16          “(e) REGISTERED POSITIONS.—

17               “(1) IN GENERAL.—

18                   “(A) APPLICATION.—Each registered em-  
19                   ployer shall submit to the Secretary an applica-  
20                   tion to designate a position for which the em-  
21                   ployer is seeking a W nonimmigrant as a reg-  
22                   istered position. The Secretary is authorized to  
23                   determine if the wage to be paid by the em-  
24                   ployer complies with subparagraph (B)(iv).

1 Each such application shall include a descrip-  
2 tion of each such position.

3                   “(B) ATTESTATION.—An application sub-  
4                   mitted under subparagraph (A) shall include an  
5                   attestation of the following:

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

8                   “(ii) The occupational category, as  
9                   classified by the Secretary of Labor, for  
10                  which the registered position is sought.

“(iii) Whether the occupation for which the registered position is sought is a shortage occupation.

“(iv) Except as provided in subsection (g)(4)(C)(i), the wages to be paid to W nonimmigrants employed by the employer in the registered position, including a position in a shortage occupation, will be the greater of—

20 “(I) the actual wage level paid by  
21 the employer to other employees with  
22 similar experience and qualifications  
23 for such position; or

24 “(II) the prevailing wage level for  
25 the occupational classification of the



1 position in the metropolitan statistical  
2 area of the employment, as deter-  
3 mined by the Secretary, based on the  
4 best information available as of the  
5 time of filing the application.

6 “(v) The working conditions for W  
7 nonimmigrants will not adversely affect the  
8 working conditions of other workers em-  
9 ployed in similar positions.

10 “(vi) The employer has carried out  
11 the recruiting activities required by para-  
12 graph (2)(B).

13 “(vii) There is no qualified United  
14 States worker who has applied for the po-  
15 sition and who is ready, willing, and able  
16 to fill such position pursuant to the re-  
17 quirements in subparagraphs (B) and (C)  
18 of paragraph (2).

19 “(viii) There is not a strike, lockout,  
20 or work stoppage in the course of a labor  
21 dispute in the occupation at the place of  
22 employment at which the W nonimmigrant  
23 will be employed. If such strike, lockout, or  
24 work stoppage occurs following submission  
25 of the application, the employer will pro-

1           vide notification in accordance with all ap-  
2           plicable regulations.

3           “(ix)(I) The employer has not laid off  
4           and will not layoff a United States worker  
5           during the period beginning 90 days prior  
6           to and ending 90 days after the date the  
7           employer files an application for designa-  
8           tion of a position for which the W non-  
9           immigrant is sought or hires such W non-  
10          immigrant, unless the employer has noti-  
11          fied such United States worker of the posi-  
12          tion and documented the legitimate rea-  
13          sons that such United States worker is not  
14          qualified or available for the position.

15          “(II) A United States worker is not  
16          laid off for purposes of this subparagraph  
17          if, at the time such worker’s employment is  
18          terminated, such worker is not employed in  
19          the same occupation and in the same met-  
20          ropolitan statistical area where the reg-  
21          istered position referred to in subclause (I)  
22          is located.

23          “(C) BEST INFORMATION AVAILABLE.—In  
24          subparagraph (B)(iv)(II), the term ‘best infor-

1 mation available’, with respect to determining  
2 the prevailing wage for a position, means—

3 “(i) a controlling collective bargaining  
4 agreement or Federal contract wage, if ap-  
5 plicable;

6 “(ii) if there is no applicable wage  
7 under clause (i), the wage level commensu-  
8 rate with the experience, training, and su-  
9 pervision required for the job based on Bu-  
10 reau of Labor Statistics data; or

11 “(iii) if the data referred to in clause  
12 (ii) is not available, a legitimate and recent  
13 private survey of the wages paid for such  
14 positions in the metropolitan statistical  
15 area.

16 “(D) PERMIT.—The Secretary shall pro-  
17 vide each registered employer whose application  
18 submitted under subparagraph (A) is approved  
19 with a permit that includes the number and de-  
20 scription of such employer’s approved registered  
21 positions.

22 “(E) TERM OF REGISTRATION.—The ap-  
23 proval of a registered position under subpara-  
24 graph (A) is for a term that begins on the date  
25 of such approval and ends on the earlier of—

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

3 “(ii) 3 years after the date of such ap-  
4 proval; or

5 “(iii) upon proper termination of the  
6 registered position by the employer.

7 “(F) REGISTRY OF REGISTERED POSI-  
8 TIONS.—

9 “(i) MAINTENANCE OF REGISTRY.—  
10 The Secretary shall develop and maintain  
11 a registry of approved registered positions  
12 for which the Secretary has issued a per-  
13 mit under subparagraph (D).

14 “(ii) AVAILABILITY ON WEBSITE.—  
15 The registry required by clause (i) shall be  
16 accessible on a website maintained by the  
17 Secretary.

18 “(iii) AVAILABILITY ON STATE WORK-  
19 FORCE AGENCY WEBSITES.—Each State  
20 workforce agency shall be linked to such  
21 registry and provide access to such registry  
22 through the website maintained by such  
23 agency.

24 “(iv) CONDITIONS OF AVAILABILITY  
25 ON WEBSITE.—

1                   “(I) IN GENERAL.—Each ap-  
2                   proved registered position for which  
3                   the Secretary has issued a permit  
4                   shall be included in the registry of  
5                   registered positions maintained by the  
6                   Secretary and shall remain available  
7                   for viewing on such registry through-  
8                   out the term of registration referred  
9                   to in subparagraph (E) or paragraph  
10                  (5).

11                  “(II) INDICATION OF VACANCY.—  
12                  The Secretary shall ensure that such  
13                  registry indicates whether each ap-  
14                  proved registered position in the reg-  
15                  istry is filled or unfilled.

16                  “(III) REQUIREMENT FOR 10-DAY  
17                  POSTING.—If a W nonimmigrant’s  
18                  employment in a registered position  
19                  ends, either voluntarily or involun-  
20                  tarily, the Secretary shall ensure that  
21                  such registry indicates that the reg-  
22                  istered position is unfilled for a period  
23                  of 10 calendar days, unless such reg-  
24                  istered position is filled by a United  
25                  States worker.

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1 “(2) REQUIREMENTS.—

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

5 “(B) RECRUITMENT OF UNITED STATES  
6 WORKERS.—

7 “(i) REQUIREMENTS.—A position may  
8 not be a registered position unless the reg-  
9 istered employer—

10 “(I) advertises the position for a  
11 period of 30 days, including the wage  
12 range, location, and proposed start  
13 date—

14 “(aa) on the Internet  
15 website maintained by the Sec-  
16 retary of Labor for the purpose  
17 of such advertising; and

18 “(bb) with the workforce  
19 agency of the State where the po-  
20 sition will be located; and

21 “(II) except as provided for in  
22 subsection (g)(4)(B)(i), carries out  
23 not less than 3 of the recruiting ac-  
24 tivities described in subparagraph (C).

1 “(ii) DURATION OF ADVERTISING.—

2 The 30 day periods required by item (aa)  
3 of (bb) of clause (i)(I) may occur at the  
4 same time.

5 “(C) RECRUITING ACTIVITIES.—The re-  
6 cruiting activities described in this subpara-  
7 graph, with respect to a position for which the  
8 employer is seeking a W nonimmigrant, shall  
9 consist of any combination of the following as  
10 defined by the Secretary of Homeland Security:

11 “(i) Advertising such position at job  
12 fairs.

13 “(ii) Advertising such position on the  
14 employer’s external website.

15 “(iii) Advertising such position on job  
16 search Internet websites.

17 “(iv) Advertising such position using  
18 presentations or postings at vocational, ca-  
19 reer technical schools, community colleges,  
20 high schools, or other educational or train-  
21 ing sites.

22 “(v) Posting such position with trade  
23 associations.

24 “(vi) Utilizing a search firm to seek  
25 applicants for such position.

1                   “(vii) Advertising such position  
2 through recruitment programs with place-  
3 ment offices at vocational schools, career  
4 technical schools, community colleges, high  
5 schools, or other educational or training  
6 sites.

7                   “(viii) Advertising such position  
8 through advertising or postings with local  
9 libraries, journals, or newspapers.

10                  “(ix) Seeking a candidate for such po-  
11 sition through an employee referral pro-  
12 gram with incentives.

13                  “(x) Advertising such position on  
14 radio or television.

15                  “(xi) Advertising such position  
16 through advertising, postings, or presen-  
17 tations with newspapers, Internet websites,  
18 job fairs, or community events targeted to  
19 constituencies designed to increase em-  
20 ployee diversity.

21                  “(xii) Advertising such position  
22 through career day presentations at local  
23 high schools or community organizations.

24                  “(xiii) Providing in-house training.

25                  “(xiv) Providing third-party training.



1                   “(xv) Advertising such position  
2                   through recruitment, educational, or other  
3                   cooperative programs offered by the em-  
4                   ployer and a local economic development  
5                   authority.

6                   “(xvi) Advertising such position twice  
7                   in the Sunday ads in the primary daily cir-  
8                   culation newspaper in the area.

9                   “(xvii) Any other recruitment activi-  
10                  ties determined to be appropriate to be  
11                  added by the Commissioner.

12               “(3) ELIGIBLE OCCUPATION.—

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

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

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

19               “(B) EXCLUDED OCCUPATIONS.—

20               “(i) OCCUPATIONS REQUIRING COL-  
21               LEGE DEGREES.—An occupation that is  
22               listed in the Occupational Outlook Hand-  
23               book published by the Bureau of Labor  
24               Statistics (or similar successor publication)  
25               that is classified as requiring an individual

1 with a bachelor's degree or higher level of  
2 education may not be an eligible occupa-  
3 tion.

4 “(ii) COMPUTER OCCUPATIONS.—An  
5 occupation in the field of computer oper-  
6 ation, computer programming, or computer  
7 repair may not be an eligible occupation.

8 “(C) PUBLICATION.—The Secretary of  
9 Labor shall publish the eligible occupations,  
10 designated as zone 1 occupations, zone 2 occu-  
11 pations, or zone 3 occupations, on an on-going  
12 basis on a publicly available website.

13 “(4) FILLING OF VACANCIES.—If a W non-  
14 immigrant's employment in a registered position  
15 ends, such employer may fill that vacancy—

16 “(A) by hiring a United States worker; or

17 “(B) after the 10 calendar day posting pe-  
18 riod in subsection (e)(1)(F)(iv)(III) by hiring—

19 “(i) a W nonimmigrant; or

20 “(ii) if available under subsection  
21 (g)(4), a certified alien.

22 “(5) PERIOD OF APPROVAL.—

23 “(A) IN GENERAL.—Except as provided in  
24 subparagraph (B), a registered position shall be

1 approved by the Secretary for a period of 3  
2 years.

3 “(B) RETURNING W NONIMMIGRANTS.—

4 “(i) EXTENSION OF PERIOD.—A reg-  
5 istered position shall continue to be a reg-  
6 istered position at the end of the 3-year  
7 period referred to in subparagraph (A) if  
8 the W nonimmigrant hired for such posi-  
9 tion is the beneficiary of a petition for im-  
10 migrant status filed by the registered em-  
11 ployer pursuant to this Act or is returning  
12 to the same registered employer.

13 “(ii) TERMINATION OF PERIOD.—The  
14 term of a registration position extended  
15 under clause (i) shall terminate on the  
16 date that is the earlier of—

17 “(I) the date an application or  
18 petition by or for a W nonimmigrant  
19 to obtain immigrant status is ap-  
20 proved or denied by the Secretary; or

21 “(II) the date of the termination  
22 of such W nonimmigrant’s employ-  
23 ment with the registered employer.

24 “(6) FEES.—

25 “(A) REGISTRATION FEE.—

1           “(i) IN GENERAL.—At the time a W  
2           nonimmigrant commences employment in  
3           the registered position for a registered em-  
4           ployer, such employer shall pay a registra-  
5           tion fee in an amount determined by the  
6           Secretary.

7           “(ii) USE OF FEE.—A fee collected  
8           under clause (i) shall be used to fund any  
9           aspect of the operation of the W Visa Pro-  
10          gram.

11          “(B) ADDITIONAL FEE.—

12           “(i) IN GENERAL.—In addition to the  
13           fee required by subparagraph (A), a reg-  
14           istered employer, at the time a W non-  
15           immigrant commences employment in the  
16           registered position for the registered em-  
17           ployer, shall pay an additional fee for each  
18           such approved registered position as fol-  
19           lows:

20           “(I) A fee of \$1,750 for the reg-  
21           istered position if the registered em-  
22           ployer, at the time of filing the appli-  
23           cation for the registered position, is a  
24           small business and more than 50 per-  
25           cent and less than 75 percent of the

1 employees of the registered employer  
2 are not United States workers.

3 “(II) A fee of \$3,500 for the reg-  
4 istered position if the registered em-  
5 ployer, at the time of filing the appli-  
6 cation for the registered position, is a  
7 small business and more than 75 per-  
8 cent of the employees of the registered  
9 employer are not United States work-  
10 ers.

11 “(III) A fee of \$3,500 for the  
12 registered position if the registered  
13 employer, at the time of filing the ap-  
14 plication for the registered position, is  
15 not a small business and more than  
16 15 percent and less than 30 percent  
17 of the employees of the registered em-  
18 ployer are not United States workers.

19 “(ii) USE OF FEE.—A fee collected  
20 under clause (i) shall be used to fund the  
21 operations of the Bureau.

22 “(C) PROHIBITION ON OTHER FEES.—A  
23 registered employer may not be required to pay  
24 an additional fee other than any fees specified

1           in this Act if the registered employer is a small  
2           business.

3           “(7) PROHIBITION ON REGISTERED POSITIONS  
4           FOR CERTAIN EMPLOYERS.—The Secretary may not  
5           approve an application for a registered position for  
6           an employer if the employer is not a small business  
7           and 30 percent or more of the employees of the em-  
8           ployer are not United States workers.

9           “(f) EXCLUDED GEOGRAPHIC LOCATION.—No appli-  
10          cation for a registered position filed by a registered em-  
11          ployer for an eligible occupation may be approved if the  
12          registered position is located in a metropolitan statistical  
13          area that has an unemployment rate that is more than  
14          8½ percent as reported in the most recent month pre-  
15          ceding the date that the application is submitted to the  
16          Secretary unless—

17               “(1) the Commissioner has identified the eligi-  
18          ble occupation as a shortage occupation; or

19               “(2) the Secretary approves the registered posi-  
20          tion under subsection (g)(4).

21          “(g) NUMERICAL LIMITATION.—

22               “(1) REGISTERED POSITIONS.—

23                       “(A) IN GENERAL.—Subject to paragraphs  
24          (3) and (4), the maximum number of registered

1 positions that may be approved by the Sec-  
2 retary for a year is as follows:

3 “(i) For the first year aliens are ad-  
4 mitted as W nonimmigrants, 20,000.

5 “(ii) For the second such year,  
6 35,000.

7 “(iii) For the third such year, 55,000.

8 “(iv) For the fourth such year,  
9 75,000.

10 “(v) For each year after the fourth  
11 such year, the level calculated for that year  
12 under paragraph (2).

13 “(B) DATES.—The first year referred to in  
14 subparagraph (A)(i) shall begin on April 1,  
15 2015, and end on March 31, 2016, unless the  
16 Secretary determines that such first year shall  
17 begin on October 1, 2015, and end on Sep-  
18 tember 30, 2016.

19 “(2) YEARS AFTER YEAR 4.—

20 “(A) CURRENT YEAR AND PRECEDING  
21 YEAR.—In this paragraph—

22 “(i) the term ‘current year’ shall refer  
23 to the 12-month period for which the cal-  
24 culation of the numerical limits under this  
25 paragraph is being performed; and

1 “(ii) the term ‘preceding year’ shall  
2 refer to the 12-month period immediately  
3 preceding the current year.

4 “(B) NUMERICAL LIMITATION.—Subject to  
5 subparagraph (D), the number of registered po-  
6 sitions that may be approved by the Secretary  
7 for a year after the fourth year referred to in  
8 paragraph (1)(A)(iv) shall be equal to the sum  
9 of—

10 “(i) the number of such registered po-  
11 sitions available under this paragraph for  
12 the preceding year; and

13 “(ii) the product of—

14 “(I) the number of such reg-  
15 istered positions available under this  
16 paragraph for the preceding year;  
17 multiplied by

18 “(II) the index for the current  
19 year calculated under subparagraph  
20 (C).

21 “(C) INDEX.—The index calculated under  
22 this subparagraph for a current year equals the  
23 sum of—

24 “(i) one-fifth of a fraction—



1                   “(I) the numerator of which is  
2                   the number of registered positions  
3                   that registered employers applied to  
4                   have approved under subsection (e)(1)  
5                   for the preceding year minus the  
6                   number of registered positions ap-  
7                   proved under subsection (e) for the  
8                   preceding year; and

9                   “(II) the denominator of which is  
10                  the number of registered positions ap-  
11                  proved under subsection (e) for the  
12                  preceding year;

13                  “(ii) one-fifth of a fraction—

14                  “(I) the numerator of which is  
15                  the number of registered positions the  
16                  Commissioner recommends be avail-  
17                  able under this subparagraph for the  
18                  current year minus the number of  
19                  registered positions available under  
20                  this subsection for the preceding year;  
21                  and

22                  “(II) the denominator of which is  
23                  the number of registered positions  
24                  available under this subsection for the  
25                  preceding year;

1 “(iii) three-tenths of a fraction—

2 “(I) the numerator of which is  
3 the number of unemployed United  
4 States workers for the preceding year  
5 minus the number of unemployed  
6 United States workers for the current  
7 year; and

8 “(II) the denominator of which is  
9 the number of unemployed United  
10 States workers for the preceding year;  
11 and

12 “(iv) three-tenths of a fraction—

13 “(I) the numerator of which is  
14 the number of job openings as set out  
15 in the Job Openings and Labor Turn-  
16 over Survey of the Bureau of Labor  
17 Statistics for the current year minus  
18 such number of job openings for the  
19 preceding year; and

20 “(II) the denominator of which is  
21 the number of such job openings for  
22 the preceding year;

23 “(D) MINIMUM AND MAXIMUM LEVELS.—

24 The number of registered positions calculated  
25 under subparagraph (B) for a 12-month period

1            may not be less than 20,000 nor more than  
2            200,000.

“(3) ADDITIONAL REGISTERED POSITIONS FOR  
SHORTAGE OCCUPATIONS.—In addition to the num-  
ber of registered positions made available for a year  
under paragraph (1), the Secretary shall make avail-  
able for a year an additional number of registered  
positions for shortage occupations in a particular  
metropolitan statistical area.

10                   “(4) SPECIAL ALLOCATIONS OF REGISTERED  
11                   POSITIONS.—

“(A) AUTHORITY TO MAKE AVAILABLE.—

In addition to the number of registered positions made available for a year under paragraph (1) or (3), the Secretary shall make additional registered positions available for the year for a specific registered employer as described in this paragraph, if—

19 “(i) the maximum number of reg-  
20 istered positions available under paragraph  
21 (1) have been approved for the year and  
22 none remain available for allocation; or

“(ii) such registered employer is located in a metropolitan statistical area that has an unemployment rate that is

1 more than 8½ percent as reported in the  
2 most recent month preceding the date that  
3 the application is submitted to the Sec-  
4 retary.

5 “(B) RECRUITMENT.—

6 “(i) IN GENERAL.—Except as pro-  
7 vided in clause (ii), an initial W non-  
8 immigrant may only enter the United  
9 States for initial employment pursuant to  
10 a special allocation under this paragraph if  
11 the registered employer has carried out at  
12 least 7 of the recruiting activities described  
13 in subsection (e)(2)(C).

14 “(ii) REQUIREMENT TO RECRUIT W  
15 NONIMMIGRANTS IN THE UNITED  
16 STATES.—A registered employer may reg-  
17 ister a position pursuant to a special allo-  
18 cation under this paragraph by conducting  
19 at least 3 of the recruiting activities de-  
20 scribed in subsection (e)(2)(C), however a  
21 position registered pursuant to this clause  
22 may not be filled by an initial W non-  
23 immigrant entering the United States for  
24 initial employment.

25 “(iii) 30 DAY POSTING.—

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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, and ini-  
6                   tial date of employment, for not less  
7                   than 30 days—

8                   “(aa) on the Internet  
9                   website maintained by the Sec-  
10                  retary of Labor for the purpose  
11                  of such advertising; and

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

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

19                  “(C) WAGES.—

20                  “(i) INITIAL W NONIMMIGRANTS.—An  
21                  initial W nonimmigrant entering the  
22                  United States for initial employment pur-  
23                  suant to a registered position made avail-  
24                  able under this paragraph may not be paid  
25                  less than the greater of—

1                   “(I) the level 4 wage set out in  
2                   the Foreign Labor Certification Data  
3                   Center Online Wage Library (or simi-  
4                   lar successor website) maintained by  
5                   the Secretary of Labor for such occu-  
6                   pation in that metropolitan statistical  
7                   area; or

8                   “(II) the mean of the highest  
9                   two-thirds of wages surveyed for such  
10                  occupation in that metropolitan statis-  
11                  tical area.

12                  “(ii) OTHER W NONIMMIGRANTS.—A  
13                  W nonimmigrant employed in a registered  
14                  position referred to in subsection  
15                  (g)(4)(B)(ii) may not be paid less than the  
16                  wages required under subsection  
17                  (e)(1)(B)(iv).

18                  “(D) REDUCTION OF FUTURE REGISTERED  
19                  POSITIONS.—Each registered position made  
20                  available for a year subject to the wage condi-  
21                  tions of subparagraph (C)(i) shall reduce by 1  
22                  the number of registered positions made avail-  
23                  able under paragraph (g)(1) for the following  
24                  year or the earliest possible year for which a  
25                  registered position is available. The limitation

1 contained in subsection (h)(4) shall not be re-  
2 duced by any registered position made available  
3 under this paragraph.

4 “(h) ALLOCATION OF REGISTERED POSITIONS.—

5 “(1) IN GENERAL.—

6 “(A) FIRST 6-MONTH PERIOD.—The num-  
7 ber of registered positions available for the 6-  
8 month period beginning on the first day of a  
9 year is 50 percent of the maximum number of  
10 registered positions available for such year  
11 under paragraph (1) or (2) of subsection (g).  
12 Such registered positions shall be allocated as  
13 described in this subsection.

14 “(B) SECOND 6-MONTH PERIOD.—The  
15 number of registered positions available for the  
16 6-month period ending on the last day of a year  
17 is the maximum number of registered positions  
18 available for such year under paragraph (1) or  
19 (2) of subsection (g) minus the number of reg-  
20 istered positions approved during the 6-month  
21 period referred to in subsection (A). Such reg-  
22 istered positions shall be allocated as described  
23 in this subsection.

24 “(2) SHORTAGE OCCUPATIONS.—

1           “(A) IN GENERAL.—For the first month of  
2           each 6-month period referred to in subpara-  
3           graph (A) or (B) of paragraph (1) a registered  
4           position may not be created in an occupation  
5           that is not a shortage occupation.

6           “(B) INITIAL DESIGNATIONS.—Subpara-  
7           graph (A) shall not apply in any period for  
8           which the Commissioner has not designated any  
9           shortage occupations.

10          “(3) SMALL BUSINESSES.—During the second,  
11          third, and fourth months of each 6-month period re-  
12          ferred to in subparagraph (A) or (B) of paragraph  
13          (1), one-third of the number of registered positions  
14          allocated for such period shall be approved only for  
15          a registered employer that is a small business. Any  
16          such registered positions not approved for such  
17          small businesses during such months shall be avail-  
18          able for any registered employer during the last 2  
19          months of each such 6-month period.

20          “(4) ANIMAL PRODUCTION SUBSECTORS.—In  
21          addition to the number of registered positions made  
22          available for a year under paragraph (1) or (3) of  
23          such section (g), the Secretary shall make additional  
24          registered positions available for the year for occupa-  
25          tions designated by the Secretary of Labor as Ani-



1 mal Production Subsectors. The numerical limitation  
2 for such additional registered positions shall be no  
3 more than 10 percent of the annual numerical limi-  
4 tation provided for in such paragraph (1).

5 “(5) LIMITATION FOR CONSTRUCTION OCCUPA-  
6 TIONS.—

7 “(A) IN GENERAL.—Subject to subpara-  
8 graph (B), not more than 33 percent of the reg-  
9 istered positions made available under para-  
10 graph (1) or (2) of subsection (g) for a year  
11 may be granted to perform work in a construc-  
12 tion occupation.

13 “(B) MAXIMUM LEVEL.—Notwithstanding  
14 subparagraph (A), the number of registered po-  
15 sitions granted to perform work in a construc-  
16 tion occupation under subsection (g)(1) may  
17 not exceed 15,000 for a year and 7,500 for any  
18 6-month period.

19 “(C) PROHIBITION FOR OCCUPATIONS  
20 WITH HIGH UNEMPLOYMENT.—

21 “(i) IN GENERAL.—A registered em-  
22 ployer may not hire a certified alien for a  
23 registered position to perform work in a  
24 construction occupation if the unemploy-  
25 ment rate for construction occupations in

1 the corresponding occupational job zone in  
2 that metropolitan statistical area was more  
3 than 8½ percent.

4 “(ii) DETERMINATION OF UNEMPLOY-  
5 MENT RATE.—The unemployment rate  
6 used in clause (i) shall be determined—

7 “(I) using the most recent survey  
8 taken by the Bureau; or

9 “(II) if a survey referred to in  
10 subclause (I) is not available, using a  
11 recent and legitimate private survey.

12 “(i) PORTABILITY.—A W nonimmigrant who is ad-  
13 mitted to the United States for employment by a reg-  
14 istered employer may—

15 “(1) terminate such employment for any rea-  
16 son; and

17 “(2) seek and accept employment with another  
18 registered employer in any other registered position  
19 within the terms and conditions of the W non-  
20 immigrant’s visa.

21 “(j) PROMOTION.—A registered employer may pro-  
22 mote a W nonimmigrant if the W nonimmigrant has been  
23 employed with that employer for a period of not less than  
24 12 months. Such a promotion shall not increase the total  
25 number of registered positions available to that employer.

1       “(k) PROHIBITION ON OUTPLACEMENT.—A reg-  
2 istered employer may not place, outsource, lease, or other-  
3 wise contract for the services or placement of a W non-  
4 immigrant employee with another employer if more than  
5 15 percent of the employees of the registered employer are  
6 W nonimmigrants.

7       “(l) W NONIMMIGRANT PROTECTIONS.—

8           “(1) APPLICABILITY OF LAWS.—A W non-  
9 immigrant shall not be denied any right or any rem-  
10 edy under Federal, State, or local labor or employ-  
11 ment law that would be applicable to a United  
12 States worker employed in a similar position with  
13 the employer because of the alien’s status as a non-  
14 immigrant worker.

15       “(2) WAIVER OF RIGHTS PROHIBITED.—

16           “(A) IN GENERAL.—A W nonimmigrant  
17 may not be required to waive any substantive  
18 rights or protections under this Act.

19           “(B) CONSTRUCTION.—Nothing under this  
20 paragraph may be construed to affect the inter-  
21 pretation of any other law.

22       “(3) PROHIBITION ON TREATMENT AS INDE-  
23 PENDENT CONTRACTORS.—

24           “(A) IN GENERAL.—Notwithstanding any  
25 other provision of law—

1           “(i) a W nonimmigrant is prohibited  
2           from being treated as an independent con-  
3           tractor under any Federal or State law;  
4           and

5           “(ii) no person, including an employer  
6           or labor contractor and any persons who  
7           are affiliated with or contract with an em-  
8           ployer or labor contractor, may treat a W  
9           nonimmigrant as an independent con-  
10          tractor.

11          “(B) CONSTRUCTION.—Subparagraph (A)  
12          may not be construed to prevent registered em-  
13          ployers who operate as independent contractors  
14          from employing W nonimmigrants.

15          “(4) PAYMENT OF FEES.—

16          “(A) IN GENERAL.—A fee related to the  
17          hiring of a W nonimmigrant required to be paid  
18          by an employer under this Act shall be paid by  
19          the employer and may not be deducted from the  
20          wages or other compensation paid to a W non-  
21          immigrant.

22          “(B) EXCLUDED COSTS.—The cost of  
23          round trip transportation from a certified  
24          alien’s home to the location of a registered posi-  
25          tion and the cost of obtaining a foreign pass-

1 port are not fees required to be paid by the em-  
2 ployer.

3 “(5) TAX RESPONSIBILITIES.—An employer  
4 shall comply with all applicable Federal, State, and  
5 local tax laws with respect to each W nonimmigrant  
6 employed by the employer.

7 “(6) PROHIBITED ACTIVITIES.—It shall be un-  
8 lawful for an employer of a W nonimmigrant to in-  
9 timidate, threaten, restrain, coerce, retaliate, dis-  
10 charge, or in any other manner, discriminate against  
11 an employee or former employee because the em-  
12 ployee or former employee—

13 “(A) discloses information to the employer  
14 or any other person that the employee or  
15 former employee reasonably believes dem-  
16 onstrates a violation of this section; or

17 “(B) cooperates or seeks to cooperate in an  
18 investigation or other proceeding concerning  
19 compliance with the requirements of this sec-  
20 tion.

21 “(m) COMPLAINT PROCESS.—The Secretary shall es-  
22 tablish a process for the receipt, investigation, and disposi-  
23 tion of complaints by an aggrieved applicant, employee,  
24 or nonimmigrant (or a person acting on behalf of such  
25 applicant, employee, or nonimmigrant) with respect to—

1           “(1) the failure of a registered employer to  
2           meet a condition of this section; or

3           “(2) the lay off or nonhiring of a United States  
4           worker as prohibited under this section.

5           “(n) ENFORCEMENT.—

6           “(1) IN GENERAL.—The Secretary shall pro-  
7           mulgate regulations for the receipt, investigation,  
8           and disposition of complaints by an aggrieved W  
9           nonimmigrant respecting a violation of this section.

10          “(2) FILING DEADLINE.—No investigation or  
11          hearing shall be conducted on a complaint con-  
12          cerning a violation under this section unless the  
13          complaint was filed not later than 6 months after  
14          the date of such violation.

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

23          “(4) NOTICE AND HEARING.—

24                 “(A) IN GENERAL.—Not later than 60  
25                 days after the Secretary makes a determination

1 of reasonable basis under paragraph (3), the  
2 Secretary shall issue a notice to the interested  
3 parties and offer an opportunity for a hearing  
4 on the complaint, in accordance with section  
5 556 of title 5, United States Code.

6 “(B) HEARING DEADLINE.—Not later than  
7 60 days after the date of a hearing under this  
8 paragraph, the Secretary shall make a finding  
9 on the matter.

10 “(5) ATTORNEY’S FEES.—

11 “(A) AWARD.—A complainant who prevails  
12 in an action under this subsection with respect  
13 to a claim related to wages or compensation for  
14 employment, or a claim for a violation of sub-  
15 section (l) or (m), shall be entitled to an award  
16 of reasonable attorney’s fees and costs.

17 “(B) FRIVOLOUS COMPLAINTS.—A com-  
18 plainant who files a frivolous complaint for an  
19 improper purpose under this subsection shall be  
20 liable for the reasonable attorney’s fees and  
21 costs of the person named in the complaint.

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

1 “(A) to seek remedial action, including in-  
2 junctive relief;

3 “(B) to recover the damages described in  
4 this subsection and subsection (o); or

5 “(C) to ensure compliance with terms and  
6 conditions described in subsection (1)(6).

7           “(7) OTHER RIGHTS OF EMPLOYEES.—The  
8       rights and remedies provided to W nonimmigrants  
9       under this section are in addition to any other con-  
10      tractual or statutory rights and remedies of the  
11      workers, and are not intended to alter or affect such  
12      rights and remedies.

13           “(o) PENALTIES.—

“(1) IN GENERAL.—If, after notice and an opportunity for a hearing, the Secretary finds a violation of this section, the Secretary may impose administrative remedies and penalties, including—

18 “(A) back wages;

19 “(B) benefits; and

20 “(C) civil monetary penalties.

21 “(2) CIVIL PENALTIES.—The Secretary may  
22 impose, as a civil penalty—

23 “(A) for a violation of this subsection—

24 “(i) a fine in an amount not more  
25 than \$2,000 per violation per affected



1 worker and \$4,000 per violation per af-  
2 fected worker for each subsequent viola-  
3 tion;

4 “(ii) if the violation was willful, a fine  
5 in an amount not more than \$5,000 per  
6 violation per affected worker; and

7 “(iii) if the violation was willful and if  
8 in the course of such violation a United  
9 States worker was harmed, a fine in an  
10 amount not more than \$25,000 per viola-  
11 tion per affected worker; or

12 “(B) for knowingly failing to materially  
13 comply with the terms of representations made  
14 in petitions, applications, certifications, or at-  
15 testations under this section—

16 “(i) a fine in an amount not more  
17 than \$4,000 per aggrieved worker; and

18 “(ii) upon the occasion of a third of-  
19 fense of failure to comply with representa-  
20 tions, a fine in an amount not to exceed  
21 \$5,000 per affected worker and designa-  
22 tion as an ineligible employer, recruiter, or  
23 broker for purposes of any immigrant or  
24 nonimmigrant program.

1           “(3) CRIMINAL PENALTY.—Any person who  
2           knowingly misrepresents the number of full-time  
3           equivalent employees of an employer or the number  
4           of employees of a person who are United States  
5           workers for the purpose of reducing a fee under sub-  
6           section (e)(6) or avoiding the limitation in sub-  
7           section (e)(7), shall be fined in accordance with title  
8           18, United States Code, in an amount up to  
9           \$25,000 or imprisoned not more than 1 year, or  
10          both.

11          “(p) MONITORING.—

12           “(1) REQUIREMENT TO MONITOR.—The Sec-  
13           retary shall monitor the movement of W non-  
14           immigrants in registered positions through—

15                   “(A) the Employment Verification System  
16                   described in section 274A(d); and

17                   “(B) the electronic monitoring system de-  
18                   scribed in paragraph (2).

19          “(2) ELECTRONIC MONITORING SYSTEM.—

20           “(A) REQUIREMENT FOR SYSTEM.—The  
21           Secretary, through U.S. Citizenship and Immi-  
22           gration Services, shall implement an electronic  
23           monitoring system to monitor presence and em-  
24           ployment of W nonimmigrants, including a re-  
25           quirement that registered employers update the

1 system when W nonimmigrants start and end  
2 employment in registered positions.

3 “(B) SYSTEM DESCRIPTION.—Such system  
4 shall be modeled on the Student and Exchange  
5 Visitor Information System (SEVIS) and  
6 SEVIS II tracking system of U.S. Immigration  
7 and Customs Enforcement.

8 “(C) INTERACTION WITH REGISTRY.—  
9 Such system shall interact with the registry re-  
10 ferred to in subsection (e)(1)(F) to ensure that  
11 the Secretary designates and updates approved  
12 registered positions as being filled or unfilled.”.

13 (b) TABLE OF CONTENTS AMENDMENT.—The table  
14 of contents in the first section (8 U.S.C. 1101 et seq.)  
15 is amended by adding after the item relating to section  
16 219 the following:

“Sec. 220. Admission of W nonimmigrant workers.”.

17 **Subtitle H—Investing in New Ven-**  
18 **ture, Entrepreneurial Startups,**  
19 **and Technologies**

20 **SEC. 4801. NONIMMIGRANT INVEST VISAS.**

21 (a) INVEST NONIMMIGRANT CATEGORY.—Section  
22 101(a)(15) (8 U.S.C. 1101(a)(15)), as amended by sec-  
23 tions 2231, 2308, 2309, 3201, 4402, 4504, 4601, and  
24 4702, is further amended by inserting after subparagraph  
25 (W) the following:

1           “(X) in accordance with the definitions in  
2           section 203(b)(6)(A), a qualified entrepreneur  
3           who has demonstrated that, during the 3-year  
4           period ending on the date on which the alien  
5           filed an initial petition for nonimmigrant status  
6           described in this clause—

7                   “(i) a qualified venture capitalist, a  
8                   qualified super angel investor, a qualified  
9                   government entity, a qualified community  
10                  development financial institution, qualified  
11                  startup accelerator, or such other type of  
12                  entity or investors, as determined by the  
13                  Secretary, or any combination of such enti-  
14                  ties or investors, has made a qualified in-  
15                  vestment or combination of qualified in-  
16                  vestments of not less than \$100,000 in  
17                  total in the alien’s United States business  
18                  entity; or

19                   “(ii) the alien’s United States busi-  
20                  ness entity has created no fewer than 3  
21                  qualified jobs and during the 2-year period  
22                  ending on such date has generated not less  
23                  than \$250,000 in annual revenue arising  
24                  from business conducted in the United  
25                  States; or”.

1 (b) ADMISSION OF INVEST NONIMMIGRANTS.—Sec-  
2 tion 214 (8 U.S.C. 1184), as amended by sections 3608,  
3 4232, 4405, 4503, 4504, 4602, 4605, and 4606, is further  
4 amended by adding at the end the following:

5 “(aa) INVEST NONIMMIGRANT VISAS.—

6 “(1) DEFINITIONS.—The definitions in section  
7 203(b)(6)(A) apply to this subsection.

8 “(2) INITIAL PERIOD OF AUTHORIZED ADMIS-  
9 SION.—The initial period of authorized status as a  
10 nonimmigrant described in section 101(a)(15)(X)  
11 shall be for an initial 3-year period.

12 “(3) RENEWAL OF ADMISSION.—Subject to  
13 paragraph (4), the initial period of authorized non-  
14 immigrant status described in paragraph (2) may be  
15 renewed for additional 3-year periods if during the  
16 most recent 3-year period that the alien was granted  
17 such status—

18 “(A) the alien’s United States business en-  
19 tity has created no fewer than 3 qualified jobs  
20 and a qualified venture capitalist, a qualified  
21 super angel investor, a qualified government en-  
22 tity, a qualified community development finan-  
23 cial institution, qualified startup accelerator, or  
24 such other type of entity or investors, as deter-  
25 mined by the Secretary, or any combination of

such entities or investors, has made a qualified investment or combination of qualified investments of not less than \$250,000 in total to the alien's United States business entity; or

5                   “(B) the alien’s United States business en-  
6                   tity has created no fewer than 3 qualified jobs  
7                   and, during the 2-year period ending on the  
8                   date that the alien petitioned for an extension,  
9                   has generated not less than \$250,000 in annual  
10                  revenue arising from business conducted within  
11                  the United States.

“(4) WAIVER OF RENEWAL REQUIREMENTS.—  
The Secretary may renew an alien’s status as a non-immigrant described in section 101(a)(15)(X) for not more than 1 year at a time, up to an aggregate of 2 years if the alien—

17                   “(A) does not meet the criteria under  
18                   paragraph (3); and

19 “(B) meets the criteria established by the  
20 Secretary, in consultation with the Secretary of  
21 Commerce, for approving renewals under this  
22 subsection, which shall include a finding that—

23 “(i) the alien has made substantial  
24 progress in meeting such criteria; and

1                   “(ii) such renewal is economically ben-  
2                   eficial to the United States.

3                   “(5) ATTESTATION.—The Secretary may re-  
4                   quire an alien seeking status as a nonimmigrant de-  
5                   scribed in section 101(a)(15)(X) to attest, under  
6                   penalty of perjury, that the alien meets the applica-  
7                   tion criteria.

8                   “(6) X-1 VISA FEE.—In addition to processing  
9                   fees, the Secretary shall collect a \$1,000 fee from  
10                  each nonimmigrant admitted under section  
11                  101(a)(15)(X). Fees collected under this paragraph  
12                  shall be deposited into the Comprehensive Immigra-  
13                  tion Reform Trust Fund established under section  
14                  6(a)(1) of the Illegal Immigration Reform and Im-  
15                  migrant Responsibility Act of 1996.”.

16 **SEC. 4802. INVEST IMMIGRANT VISA.**

17                  Section 203(b) (8 U.S.C. 1153(b)) is amended—

18                   (1) by redesignating paragraph (6) as para-  
19                   graph (7); and

20                   (2) by inserting after paragraph (5) the fol-  
21                   lowing:

22                   “(6) INVEST IMMIGRANTS.—

23                   “(A) DEFINITIONS.—In this paragraph,  
24                   section 101(a)(15)(X), and section 214(s):

1                   “(i) QUALIFIED COMMUNITY DEVEL-  
2                   OPMENT FINANCIAL INSTITUTION.—The  
3                   term ‘qualified community development fi-  
4                   nancial institution’ is defined as provided  
5                   under section 1805.201 45D(c) of title 12,  
6                   Code of Federal Regulations, or any simi-  
7                   lar successor regulations.

8                   “(ii) QUALIFIED ENTREPRENEUR.—  
9                   The term ‘qualified entrepreneur’ means  
10                  an individual who—

11                   “(I) has a significant ownership  
12                   interest, which need not constitute a  
13                   majority interest, in a United States  
14                   business entity;

15                   “(II) is employed in a senior ex-  
16                   ecutive position of such United States  
17                   business entity;

18                   “(III) submits a business plan to  
19                   U.S. Citizenship and Immigration  
20                   Services; and

21                   “(IV) had a substantial role in  
22                   the founding or early-stage growth  
23                   and development of such United  
24                   States business entity.



1                   “(iii) QUALIFIED GOVERNMENT ENTI-  
2                   TY.—The term ‘qualified government enti-  
3                   ty’ means an agency or instrumentality of  
4                   the United States or of a State, local, or  
5                   tribal government.

6                   “(iv) QUALIFIED INVESTMENT.—The  
7                   term ‘qualified investment’—

8                   “(I) means an investment in a  
9                   qualified entrepreneur’s United States  
10                  business entity that is—

11                  “(aa) a purchase from the  
12                  United States business entity or  
13                  equity or convertible debt issued  
14                  by such entity;

15                  “(bb) a secured loan;

16                  “(cc) a convertible debt  
17                  note;

18                  “(dd) a public securities of-  
19                  fering;

20                  “(ee) a research and devel-  
21                  opment award from a qualified  
22                  government entity to the United  
23                  States entity;

1                   “(ff) other investment deter-  
2                   mined appropriate by the Sec-  
3                   retary; or

4                   “(gg) a combination of the  
5                   investments described in items  
6                   (aa) through (ff); and

7                   “(II) may not include an invest-  
8                   ment from such qualified entre-  
9                   preneur, the parents, spouse, son, or  
10                  daughter of such qualified entre-  
11                  preneur, or from any corporation,  
12                  company, association, firm, partner-  
13                  ship, society, or joint stock company  
14                  over which such qualified entre-  
15                  preneur has a substantial ownership  
16                  interest.

17                  “(v) QUALIFIED JOB.—The term  
18                  ‘qualified job’ means a full-time position of  
19                  a United States business entity owned by  
20                  a qualified entrepreneur that—

21                  “(I) is located in the United  
22                  States;

23                  “(II) has been filled for at least  
24                  2 years by an individual who is not  
25                  the qualified entrepreneur or the

1 spouse, son, or daughter of the quali-  
2 fied entrepreneur; and

3 “(III) pays a wage that is not  
4 less than 250 percent of the Federal  
5 minimum wage.

6 “(vi) QUALIFIED STARTUP ACCEL-  
7 ERATOR.—The term ‘qualified startup ac-  
8 celerator’ means a corporation, company,  
9 association, firm, partnership, society, or  
10 joint stock company that—

11 “(I) is organized under the laws  
12 of the United States or any State and  
13 conducts business in the United  
14 States;

15 “(II) in the ordinary course of  
16 business, provides a program of train-  
17 ing, mentorship, and logistical support  
18 to assist entrepreneurs in growing  
19 their businesses;

20 “(III) is managed by individuals,  
21 the majority of whom are citizens of  
22 the United States or aliens lawfully  
23 admitted for permanent residence;

24 “(IV)(aa) regularly acquires an  
25 equity interest in companies that par-

1           ticipate in its programs, where the  
2           majority of the capital so invested is  
3           committed from individuals who are  
4           United States citizens or aliens law-  
5           fully admitted for permanent resi-  
6           dence, or from entities organized  
7           under the laws of the United States  
8           or any State; or

9                   “(bb) is an entity that has re-  
10           ceived not less than \$250,000 in fund-  
11           ing from a qualified government entity  
12           or entities during the previous 5 years  
13           and regularly makes grants to compa-  
14           nies that participate in its programs  
15           (in which case, such grant shall be  
16           treated as a qualified investment for  
17           purposes of clause (iv));

18                   “(V) during the previous 5 years,  
19           has acquired an equity interest in, or,  
20           in the case of an entity described in  
21           subclause (IV)(bb), regularly made  
22           grants to, not fewer than 10 United  
23           States business entities that have par-  
24           ticipated in its programs and that  
25           have—

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1                   “(aa) each secured at least  
2                   \$100,000 in initial investments;  
3                   or

4                   “(bb) during any 2-year pe-  
5                   riod following the date of such  
6                   acquisition, generated not less  
7                   than \$500,000 in aggregate an-  
8                   nual revenue within the United  
9                   States;

10                  “(VI) has its primary location in  
11                  the United States; and

12                  “(VII) satisfies such other cri-  
13                  teria as may be established by the  
14                  Secretary.

15                  “(vii) QUALIFIED SUPER ANGEL IN-  
16                  VESTOR.—The term ‘qualified super angel  
17                  investor’ means an individual or organized  
18                  group of individuals investing directly or  
19                  through a legal entity—

20                  “(I) each of whom is an accred-  
21                  ited investor, as defined in section  
22                  230.501(a) of title 17, Code of Fed-  
23                  eral Regulations, or any similar suc-  
24                  cessor regulation, investing the funds  
25                  owned by such individual or organized

1 group in a qualified entrepreneur's  
2 United States business entity;

3 “(II)(aa) if an individual, is a cit-  
4 izen of the United States or an alien  
5 lawfully admitted for permanent resi-  
6 dence; or

7 “(bb) if an organized group or  
8 legal entity, a majority of the individ-  
9 uals investing through such group or  
10 entity are citizens of the United  
11 States or aliens lawfully admitted for  
12 permanent residence; and

13 “(III) each of whom in the pre-  
14 vious 3 years has made qualified in-  
15 vestments in a total amount deter-  
16 mined to be appropriate by the Sec-  
17 retary, that is not less than \$50,000,  
18 in United States business entities  
19 which are less than 5 years old.

20 “(viii) QUALIFIED VENTURE CAPI-  
21 TALIST.—The term ‘qualified venture capi-  
22 talist’ means an entity—

23 “(I) that—

24 “(aa) is a venture capital  
25 operating company (as defined in

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1 section 2510.3–101(d) of title 29,  
2 Code of Federal Regulations (or  
3 any successor to such regula-  
4 tion)); or

5 “(bb) has management  
6 rights, as defined in, and to the  
7 extent required by, such section  
8 2510.3–101(d) (or successor reg-  
9 ulation), in its portfolio compa-  
10 nies;

11 “(II) that has capital commit-  
12 ments of not less than \$10,000,000;  
13 and

14 “(III) the investment adviser,  
15 that is registered under the Invest-  
16 ment Advisers Act of 1940 (15 U.S.C.  
17 80b–2), for which—

18 “(aa) has its primary office  
19 location in the United States;

20 “(bb) is owned, directly or  
21 indirectly, by individuals, the ma-  
22 jority of whom are citizens of the  
23 United States or aliens lawfully  
24 admitted for permanent residence  
25 in the United States;

1                   “(cc) has been advising such  
2                   entity or other similar funds or  
3                   entities for at least 2 years; and

4                   “(dd) has advised such enti-  
5                   ty or a similar fund or entity  
6                   with respect to at least 2 invest-  
7                   ments of not less than \$500,000  
8                   made by such entity or similar  
9                   fund or entity during each of the  
10                  most recent 2 years.

11               “(ix) SECRETARY.—Except as other-  
12               wise specifically provided, the term ‘Sec-  
13               retary’ means the Secretary of Homeland  
14               Security.

15               “(x) SENIOR EXECUTIVE POSITION.—  
16               The term ‘senior executive position’ in-  
17               cludes the position of chief executive offi-  
18               cer, chief technology officer, and chief op-  
19               erating officer.

20               “(xi) UNITED STATES BUSINESS EN-  
21               TITY.—The term ‘United States business  
22               entity’ means any corporation, company,  
23               association, firm, partnership, society, or  
24               joint stock company that is organized  
25               under the laws of the United States or any



1 State and that conducts business in the  
2 United States that is not—

3 “(I) a private fund, as defined in  
4 202(a) of the Investment Advisers Act  
5 of 1940 (15 U.S.C. 80b–2);

6 “(II) a commodity pool, as de-  
7 fined in section 1a of the Commodity  
8 Exchange Act (7 U.S.C. 1a);

9 “(III) an investment company, as  
10 defined in section 3 of the Investment  
11 Company Act of 1940 (15 U.S.C.  
12 80a–3); or

13 “(IV) an issuer that would be an  
14 investment company but for an ex-  
15 emption provided in—

16 “(aa) section 3(c) of the In-  
17 vestment Company Act of 1940  
18 (15 U.S.C. 80a–3(c); or

19 “(bb) section 270.3a–7 of  
20 title 17 of the Code of Federal  
21 Regulations or any similar suc-  
22 cessor regulation.

23 “(B) IN GENERAL.—Visas shall be avail-  
24 able, in a number not to exceed 10,000 for each  
25 fiscal year, to qualified immigrants seeking to

1 enter the United States for the purpose of cre-  
2 ating new businesses, as described in this para-  
3 graph.

4 “(C) ELIGIBILITY.—An alien is eligible for  
5 a visa under this paragraph if—

6 “(i)(I) the alien is a qualified entre-  
7 preneur;

8 “(II) the alien maintained valid non-  
9 immigrant status in the United States for  
10 at least 2 years;

11 “(III) during the 3-year period ending  
12 on the date the alien files an initial peti-  
13 tion for such status under this section—

14 “(aa)(AA) the alien has a signifi-  
15 cant ownership in a United States  
16 business entity that has created no  
17 fewer than 5 qualified jobs; and

18 “(BB) a qualified venture capi-  
19 talist, a qualified super angel investor,  
20 a qualified government entity, a quali-  
21 fied community development financial  
22 institution, qualified startup accel-  
23 erator, or such other entity or type of  
24 investors, as determined by the Sec-  
25 retary, or any combination of such en-

1                   tities or investors, has devoted a  
2                   qualified investment or combination of  
3                   qualified investments of not less than  
4                   \$500,000 in total to the alien's  
5                   United States business entity; or

6                   “(bb)(AA) the alien has a signifi-  
7                   cant ownership interest in a United  
8                   States business entity that has cre-  
9                   ated no fewer than 5 qualified jobs;  
10                  and

11                  “(BB) during the 2-year period  
12                  ending on such date has generated not  
13                  less than \$750,000 in annual revenue  
14                  within the United States; and

15                  “(IV) no more than 2 other aliens  
16                  have received nonimmigrant status under  
17                  this section on the basis of an alien's own-  
18                  ership of such United States business enti-  
19                  ty;

20                  “(ii)(I) the alien is a qualified entre-  
21                  preneur;

22                  “(II) the alien maintained valid non-  
23                  immigrant status in the United States for  
24                  at least 3 years prior to the date of filing  
25                  an application for such status;

1                   “(III) the alien holds an advanced de-  
2                   gree in a field of science, technology, engi-  
3                   neering, or mathematics, approved by the  
4                   Secretary; and

5                   “(IV) during the 3-year period ending  
6                   on the date the alien files an initial peti-  
7                   tion for such status under this section—

8                   “(aa)(AA) the alien has a signifi-  
9                   cant ownership interest in a United  
10                  States business entity that has cre-  
11                  ated no fewer than 4 qualified jobs;  
12                  and

13                  “(BB) a qualified venture capi-  
14                  talist, a qualified super angel investor,  
15                  a qualified government entity, a quali-  
16                  fied community development financial  
17                  institution, qualified startup accel-  
18                  erator, or such other entity or type of  
19                  investors, as determined by the Sec-  
20                  retary, or any combination of such en-  
21                  tities or investors, has devoted a  
22                  qualified investment or combination of  
23                  qualified investments of not less than  
24                  \$500,000 in total to the alien’s  
25                  United States business entity; or

1 “(bb)(AA) the alien has a signifi-  
2 cant ownership interest in a United  
3 States business entity that has cre-  
4 ated no fewer than 3 qualified jobs;  
5 and

6 “(BB) during the 2-year period  
7 ending on such date has generated not  
8 less than \$500,000 in annual revenue  
9 within the United States; and

10 “(V) no more than 3 other aliens have  
11 received nonimmigrant status under this  
12 section on the basis of an alien’s ownership  
13 of such United States business entity.

14 “(D) ATTESTATION.—The Secretary may  
15 require an alien seeking a visa under this para-  
16 graph to attest, under penalties of perjury, to  
17 the alien’s qualifications.”.

18 **SEC. 4803. ADMINISTRATION AND OVERSIGHT.**

19 (a) REGULATIONS.—Not later than 16 months after  
20 the date of the enactment of this Act, the Secretary, in  
21 consultation with the Secretary of Commerce, the Admin-  
22 istrator of the Small Business Administration, and other  
23 heads of other relevant Federal agencies and departments,  
24 shall promulgate regulations to carry out the amendments  
25 made by this subtitle. Such regulations shall ensure that

1 such amendments are implemented in a manner that is  
2 consistent with the protection of national security and pro-  
3 motion of United States economic growth, job creation,  
4 and competitiveness.

5 (b) MODIFICATION OF DOLLAR AMOUNTS.—

6 (1) IN GENERAL.—The Secretary may from  
7 time to time prescribe regulations increasing or de-  
8 creasing any dollar amount specified in section  
9 203(b)(6) of the Immigration and Nationality Act,  
10 as added by section 4802, section 101(a)(15)(X) of  
11 such Act, as added by section 4801, or section  
12 214(s), as added by section 4801.

13 (2) AUTOMATIC ADJUSTMENT.—Unless a dollar  
14 amount referred to in paragraph (1) is adjusted by  
15 the Secretary under paragraph (1), such dollar  
16 amount shall automatically adjust on January 1,  
17 2016, by the percentage change in the Consumer  
18 Price Index (CPI–U) during fiscal year 2015, and  
19 on every fifth subsequent January 1 by the percent-  
20 age change in the CPI–U during the previous 5 fis-  
21 cal years, for any petition filed to classify an alien  
22 under this paragraph on or after the date of each  
23 automatic adjustment.

24 (c) OTHER AUTHORITY.—The Secretary, in the Sec-  
25 retary’s unreviewable discretion, may deny or revoke the

1 approval of a petition seeking classification of an alien  
2 under paragraph (6) of section 203(b) of the Immigration  
3 and Nationality Act, as added by section 4802, or any  
4 other petition, application, or benefit based upon the pre-  
5 vious or concurrent filing or approval of a petition for clas-  
6 sification of an alien under such paragraph (6), if the Sec-  
7 retary determines, in the Secretary's sole and  
8 unreviewable discretion, that the approval or continuation  
9 of such petition, application, or benefit is contrary to the  
10 national interest of the United States or for other good  
11 cause.

12 (d) REPORTS.—Once every 3 years, the Secretary  
13 shall submit to Congress a report on this subtitle and the  
14 amendments made by this subtitle. Each such report shall  
15 include—

16 (1) the number and percentage of entrepreneurs  
17 able to meet thresholds for nonimmigrant renewal  
18 and adjustment to green card status under the  
19 amendments made by this subtitle;

20 (2) an analysis of the program's economic im-  
21 pact including job and revenue creation, increased  
22 investments and growth within business sectors and  
23 regions;

1           (3) a description and breakdown of types of  
2       businesses that entrepreneurs granted nonimmigrant  
3       or immigrant status are creating;

4           (4) for each report following the Secretary's ini-  
5       tial report submitted under this subsection, a de-  
6       scription of the percentage of the businesses initially  
7       created by the entrepreneurs granted immigrant and  
8       nonimmigrant status under this subtitle and the  
9       amendments made by this subtitle, that are still in  
10      operation; and

11          (5) any recommendations for improving the  
12      program established by this subtitle and the amend-  
13      ments made by this subtitle.

14   **SEC. 4804. PERMANENT AUTHORIZATION OF EB-5 RE-**  
15                           **GIONAL CENTER PROGRAM.**

16      (a) REPEAL.—Section 610 of the Departments of  
17   Commerce, Justice, and State, the Judiciary, and Related  
18   Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note)  
19   is repealed.

20      (b) AUTHORIZATION.—Section 203(b)(5) (8 U.S.C.  
21   1153(b)(5)) is amended by adding at the end the fol-  
22   lowing:

23                           “(E) REGIONAL CENTER PROGRAM.—

24                           “(i) IN GENERAL.—Visas under this  
25      paragraph shall be made available to quali-



1           fied immigrants participating in a program  
2           implementing this paragraph that involves  
3           a regional center in the United States,  
4           which has been designated by the Sec-  
5           retary of Homeland Security, in consulta-  
6           tion with the Secretary of Commerce, on  
7           the basis of a general proposal for the pro-  
8           motion of economic growth, including—

9                       “(I) increased export sales;

10                      “(II) improved regional produc-  
11                      tivity;

12                      “(III) job creation; or

13                      “(IV) increased domestic capital  
14                      investment.

15                      “(ii) ESTABLISHMENT OF A REGIONAL  
16           CENTER.—A regional center shall have ju-  
17           risdiction over a defined geographic area,  
18           which shall be described in the proposal  
19           and consistent with the purpose of concen-  
20           trating pooled investment in defined eco-  
21           nomic zones. The establishment of a re-  
22           gional center may be based on general pre-  
23           dictions, contained in the proposal, con-  
24           cerning—

1                   “(I) the kinds of commercial en-  
2                   terprises that will receive investments  
3                   from aliens;

4                   “(II) the jobs that will be created  
5                   directly or indirectly as a result of  
6                   such investments; and

7                   “(III) other positive economic ef-  
8                   fects such investments will have.

9                   “(iii) COMPLIANCE.—In determining  
10                  compliance with subparagraph (A)(ii), the  
11                  Secretary of Homeland Security shall per-  
12                  mit aliens admitted under the program de-  
13                  scribed in this subparagraph to establish  
14                  reasonable methodologies for determining  
15                  the number of jobs created by the pro-  
16                  gram, including jobs estimated to have  
17                  been created indirectly through—

18                   “(I) revenues generated from in-  
19                   creased exports, improved regional  
20                   productivity, job creation; or

21                   “(II) increased domestic capital  
22                   investment resulting from the pro-  
23                   gram, including jobs created outside  
24                   of the geographic boundary of the re-  
25                   gional center as a result of the immi-

1 grant's investment in regional center-  
2 affiliated commercial enterprises.

3 “(iv) INDIRECT JOB CREATION.—The  
4 Secretary shall permit immigrants admit-  
5 ted under this paragraph to satisfy the re-  
6 quirements under subparagraph (A)(ii)  
7 with jobs that are estimated to be created  
8 indirectly through investment under this  
9 paragraph in accordance with this sub-  
10 paragraph.

11 “(F) PREAPPROVAL OF BUSINESS PLANS  
12 FOR REGIONAL CENTER INVESTMENTS.—

13 “(i) PETITION.—Before the filing of a  
14 petition under this subparagraph by an  
15 alien investor, a commercial enterprise af-  
16 filiated with a regional center may file a  
17 petition with the Secretary of Homeland  
18 Security to preapprove a particular invest-  
19 ment in the commercial enterprise, as pro-  
20 vided in—

21 “(I) a business plan for a specific  
22 capital investment project;

23 “(II) investment documents, such  
24 as subscription, investment, partner-  
25 ship, and operating agreements; and

1                   “(III) a credible economic anal-  
2                   ysis regarding estimated job creation  
3                   that is based upon reasonable meth-  
4                   odologies.

5                   “(ii) PREAPPROVAL PROCEDURE.—  
6                   The Secretary shall establish a process to  
7                   facilitate the preapproval of business plans  
8                   under this subparagraph related to invest-  
9                   ment in a regional center commercial en-  
10                  terprise, which shall include an opportunity  
11                  for the applicant to address and cure any  
12                  deficiencies identified by the Secretary in  
13                  the applicant’s business plan, investment  
14                  documents, or statement regarding job cre-  
15                  ation prior to a final determination. The  
16                  Secretary shall impose a fee for the use of  
17                  the process described in this clause suffi-  
18                  cient to recover the costs of its administra-  
19                  tion.

20                  “(iii) EFFECT OF PREAPPROVAL OF  
21                  BUSINESS PLAN FOR INVESTMENT IN RE-  
22                  GIONAL CENTER COMMERCIAL ENTER-  
23                  PRISE.—The preapproval of a petition  
24                  under this subparagraph shall be binding  
25                  for purposes of the adjudication of peti-

1           tions filed under this subparagraph by im-  
2           migrants investing in the commercial en-  
3           terprise unless the Secretary determines  
4           that there is evidence of fraud, misrepre-  
5           sentation, criminal misuse, a threat to na-  
6           tional security, or other evidence affecting  
7           program eligibility that was not disclosed  
8           by the petitioner during the preapproval  
9           process.

10           “(iv) EXPEDITED PROCESSING OPTION  
11           FOR ALIEN INVESTOR PETITIONS AFFILI-  
12           ATED WITH PREAPPROVED BUSINESS  
13           PLANS.—The Secretary may establish a  
14           premium processing option for alien inves-  
15           tors who are investing in a commercial en-  
16           terprise that has received preapproval  
17           under this subparagraph and may impose  
18           a fee for the use of that option sufficient  
19           to recover all costs of the option.

20           “(v) CONSIDERATION OF CRIMINAL  
21           ACTIVITY IN ESTABLISHING ELIGIBILITY  
22           CRITERIA.—The Secretary shall consider  
23           the potential for fraud, misrepresentation,  
24           criminal misuse, and threats to national  
25           security in establishing eligibility criteria

1                   for any program the Secretary may estab-  
2                   lish under this subparagraph.

3                   “(G)   REGIONAL   CENTER   FINANCIAL  
4                   STATEMENTS.—

5                   “(i) IN GENERAL.—Each regional cen-  
6                   ter designated under subparagraph (E)  
7                   shall annually submit, to the Director of  
8                   U.S. Citizenship and Immigration Services  
9                   (referred to in this subparagraph as the  
10                  ‘Director’), in a manner prescribed by the  
11                  Secretary of Homeland Security, financial  
12                  statements, including—

13                   “(I) an accounting of all foreign  
14                   investor money invested through the  
15                   regional center; and

16                   “(II) for each capital investment  
17                   project—

18                   “(aa) an accounting of the  
19                   aggregate capital invested  
20                   through the regional center or af-  
21                   filiated commercial enterprises by  
22                   immigrants under this para-  
23                   graph;

1                   “(bb) a description of how  
2                   such funds are being used to exe-  
3                   cute the approved business plan;

4                   “(cc) evidence that 100 per-  
5                   cent of such investor funds have  
6                   been dedicated to the project;

7                   “(dd) detailed evidence of  
8                   the progress made toward the  
9                   completion of the project;

10                  “(ee) an accounting of the  
11                  aggregate direct and indirect jobs  
12                  created or preserved; and

13                  “(ff) a certification by the  
14                  regional center that such state-  
15                  ments are accurate.

16                  “(ii) AMENDMENT OF FINANCIAL  
17                  STATEMENTS.—If the Director determines  
18                  that a financial statement required under  
19                  clause (i) is deficient, the Director may re-  
20                  quire the regional center to amend or sup-  
21                  plement such financial statement.

22                  “(iii) SANCTIONS.—

23                  “(I) EFFECT OF VIOLATION.—If  
24                  the Director determines, after review-  
25                  ing the financial statements submitted

1 under clause (i), that a regional cen-  
2 ter, director, or other individual in-  
3 volved with a regional center (other  
4 than an alien investor) has violated  
5 any requirement under clause (i) or  
6 that the regional center is conducting  
7 itself in a manner inconsistent with its  
8 designation, the Director may sanc-  
9 tion the violating entity or individual  
10 under subclause (II).

11 “(II) AUTHORIZED SANCTIONS.—  
12 The Director shall establish a grad-  
13 uated set of sanctions for violations  
14 referred to in subclause (I), includ-  
15 ing—

16 “(aa) fines equal to not  
17 more than 5 percent of the total  
18 capital invested by immigrant in-  
19 vestors in the commercial enter-  
20 prise’s approved business plan;

21 “(bb) temporary suspension  
22 from participation in the pro-  
23 gram described in subparagraph  
24 (E), which may be lifted by the  
25 Director if the individual or enti-



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1 ty cures the alleged violation  
2 after being provided such an op-  
3 portunity by the Director;

4 “(cc) permanent bar from  
5 program participation for 1 or  
6 more individuals affiliated with  
7 the regional center; and

8 “(dd) termination of re-  
9 gional center status.

10 “(H) BONA FIDES OF PERSONS INVOLVED  
11 IN REGIONAL CENTERS.—

12 “(i) IN GENERAL.—No person shall be  
13 permitted by any regional center to be in-  
14 volved with the regional center as its prin-  
15 cipal, representative, administrator, owner,  
16 officer, board member, manager, executive,  
17 general partner, fiduciary, marketer, pro-  
18 moter, or other similar position of sub-  
19 stantive authority for the operations, man-  
20 agement or promotion of the regional cen-  
21 ter if the Secretary of Homeland Secu-  
22 rity—

23 “(I) determines such person has  
24 been found liable within the previous  
25 5 years for any criminal or civil viola-

tion of any law relating to fraud or  
deceit, or at any time if such violation  
involved a criminal conviction with a  
term of imprisonment of at least 1  
year or a criminal or civil violation of  
any law or agency regulation in con-  
nection with the purchase or sale of a  
security; or

“(II) knows or has reasonable  
cause to believe that the person is en-  
gaged in, has ever been engaged in, or  
seeks to engage in any—

“(aa) illicit trafficking in  
any controlled substance;

“(bb) activity relating to es-  
pionage or sabotage;

“(cc) activity related to  
money laundering (as described  
in section 1956 or 1957 of title  
18, United States Code);

“(dd) terrorist activity (as  
defined in clauses (iii) and (iv) of  
section 212(a)(3)(B));

“(ee) human trafficking or  
human rights offense; or

1                   “(ff) violation of any stat-  
2                   ute, regulation, or Executive  
3                   Order regarding foreign financial  
4                   transactions or foreign asset con-  
5                   trol.

6                   “(ii) INFORMATION REQUIRED.—The  
7                   Secretary shall require such attestations  
8                   and information, including, the submission  
9                   of fingerprints to the Federal Bureau of  
10                  Investigation, and shall perform such  
11                  criminal record checks and other back-  
12                  ground checks with respect to a regional  
13                  center, and persons involved in a regional  
14                  center as described in clause (i), as the  
15                  Secretary considers appropriate to deter-  
16                  mine whether the regional center is in com-  
17                  pliance with clause (i). The Secretary may  
18                  require the information and attestations  
19                  described in this clause from such regional  
20                  center, and any person involved in the re-  
21                  gional center, at any time on or after the  
22                  date of the enactment of the Border Secu-  
23                  rity, Economic Opportunity, and Immigra-  
24                  tion Modernization Act.

“(iii) **TERMINATION.**—The Secretary is authorized, in his or her unreviewable discretion, to terminate any regional center from the program under this paragraph if he or she determines that—

“(I) the regional center is in violation of clause (i);

“(II) the regional center or any person involved with the regional center has provided any false attestation or information under clause (ii);

“(III) the regional center or any person involved with the regional center fails to provide an attestation or information requested by the Secretary under clause (ii); or

“(IV) the regional center or any person involved with the regional center is engaged in fraud, misrepresentation, criminal misuse, or threats to national security.

1 approve an application for regional center  
2 designation or regional center amendment  
3 that does not certify that the regional cen-  
4 ter and, to the best knowledge of the appli-  
5 cant, all parties to the regional center are  
6 in, and will maintain, compliance with the  
7 securities laws of the United States.

8 “(ii) TERMINATION OR SUSPEN-  
9 SION.—The Secretary shall terminate the  
10 designation of any regional center that  
11 does not provide the certification described  
12 in subclause (i) on an annual basis. In ad-  
13 dition to any other authority provided to  
14 the Secretary regarding the regional center  
15 program described in subparagraph (E),  
16 the Secretary may, in his or her  
17 unreviewable discretion, suspend or termi-  
18 nate the designation of any regional center  
19 if he or she determines that the regional  
20 center or any party to the regional cen-  
21 ter—

22 “(I) is permanently or tempo-  
23 rarily enjoined by order, judgment, or  
24 decree of any court of competent ju-

1 jurisdiction in connection with the pur-  
2 chase or sale of a security;

3 “(II) is subject to any final order  
4 of the Securities and Exchange Com-  
5 mission that—

6 “(aa) bars such person from  
7 association with an entity regu-  
8 lated by the Securities and Ex-  
9 change Commission; or

10 “(bb) constitutes a final  
11 order based on violations in con-  
12 nection with the purchase or sale  
13 of a security; or

14 “(III) knowingly submitted or  
15 caused to be submitted a certification  
16 described in clause (i) that contained  
17 an untrue statement of a material fact  
18 or omitted to state a material fact  
19 necessary in order to make the state-  
20 ments made, in the light of the cir-  
21 cumstances under which they were  
22 made, not misleading.

23 “(iii) SAVINGS PROVISION.—Nothing  
24 in this subparagraph may be construed to  
25 impair or limit the authority of the Securi-

1                   ties and Exchange Commission under the  
2                   Federal securities laws.

3                   “(iv) DEFINED TERM.—For the pur-  
4                   pose of this subparagraph, the term ‘party  
5                   to the regional center’ shall include the re-  
6                   gional center, its agents, employees, and  
7                   attorneys, and any persons in active con-  
8                   cert or participation with the regional cen-  
9                   ter.

10                  “(J) DENIAL OR REVOCATION.—If the Sec-  
11                  retary of Homeland Security determines, in his  
12                  or her unreviewable discretion, that the ap-  
13                  proval of a petition, application, or benefit de-  
14                  scribed in this subparagraph is contrary to the  
15                  national interest of the United States for rea-  
16                  sons relating to fraud, misrepresentation, crimi-  
17                  nal misuse, or threats to national security, the  
18                  Secretary may deny or revoke the approval of—

19                         “(i) a petition seeking classification of  
20                         an alien as an alien investor under this  
21                         paragraph;

22                         “(ii) a petition to remove conditions  
23                         under section 216A before granting lawful  
24                         permanent resident status or any other pe-  
25                         tition, application, or benefit based upon

1           the previous or concurrent filing or ap-  
2           proval of a petition for classification of an  
3           alien under this paragraph; or  
4           “(iii) an application for designation as  
5           a regional center.”.

6       (c) ASSISTANCE BY THE SECRETARY OF COM-  
7       MERCE.—

8           (1) IN GENERAL.—The Secretary of Commerce,  
9       upon the request of the Secretary, shall provide con-  
10      sultation assistance for determining whether—

11           (A) a proposed regional center should be  
12      designated, terminated, or subject to other ad-  
13      judicative action; or

14           (B) a petitioner or applicant for a benefit  
15      under section 203(b)(5) of the Immigration and  
16      Nationality Act, as amended by subsection (b),  
17      has met the requirements under such paragraph  
18      with respect to job creation.

19       (2) RULEMAKING.—The Secretary and the Sec-  
20      retary of Commerce may each adopt such rules and  
21      regulations as are necessary to carry out the con-  
22      sultation process provided for in paragraph (1).

23       (3) SAVINGS PROVISION.—Nothing in this sub-  
24      section shall be construed to require consultation  
25      with the Secretary of Commerce to continue the des-



1       ignation of a regional center approved before the  
2       date of the enactment of this Act.

3       (d) EFFECTIVE DATE.—The amendments made by  
4 this section—

5           (1) shall be effective upon the enactment of this  
6       Act; and

7           (2) shall apply to—

8               (A) any application to designate a regional  
9               center, and any person involved with the re-  
10              gional center, that is pending or approved on or  
11              after the date of the enactment of this Act; and

12              (B) any regional center approved before  
13              the date of the enactment of this Act, on or  
14              after a delayed effective date that is 1 year  
15              after such date of enactment with respect to  
16              any person involved in the regional center on or  
17              after such delayed effective date.

18 **SEC. 4805. CONDITIONAL PERMANENT RESIDENT STATUS**  
19 **FOR CERTAIN EMPLOYMENT-BASED IMMI-**  
20 **GRANTS, SPOUSES, AND CHILDREN.**

21       (a) IN GENERAL.—Section 216A (8 U.S.C. 1186b)  
22 is amended to read as follows:

1 **“SEC. 216A. CONDITIONAL PERMANENT RESIDENT STATUS**  
2 **FOR CERTAIN EMPLOYMENT-BASED IMMI-**  
3 **GRANTS, SPOUSES, AND CHILDREN.**

4 “(a) IN GENERAL.—

5 “(1) CONDITIONAL BASIS FOR STATUS.—Not-  
6 withstanding any other provision of this Act, em-  
7 ployment-based immigrants (as defined in subsection  
8 (f) (1) or (2)), alien spouses, and alien children (as  
9 defined in subsection (f)(3)) shall be considered, at  
10 the time of obtaining the status of an alien lawfully  
11 admitted for permanent residence, to have obtained  
12 such status on a conditional basis subject to the pro-  
13 visions of this section.

14 “(2) NOTICE OF REQUIREMENTS.—

15 “(A) AT TIME OF OBTAINING PERMANENT  
16 RESIDENCE.—At the time an employment-based  
17 immigrant, alien spouse, or alien child obtains  
18 permanent resident status on a conditional  
19 basis under paragraph (1), the Secretary of  
20 Homeland Security shall provide for notice to  
21 the alien, spouse, or child respecting the provi-  
22 sions of this section and the requirements of  
23 subsection (c)(1) to have the conditional basis  
24 of such status removed.

25 “(B) AT TIME OF REQUIRED PETITION.—

26 In addition, the Secretary of Homeland Secu-

1           rity shall attempt to provide notice to an em-  
2           ployment-based immigrant, alien spouse, or  
3           alien child, at or about the beginning of the 90-  
4           day period described in subsection (d)(3), of the  
5           requirements of subsection (c)(1).

6           “(C) EFFECT OF FAILURE TO PROVIDE  
7           NOTICE.—The failure of the Secretary of  
8           Homeland Security to provide a notice under  
9           this paragraph shall not affect the enforcement  
10          of the provisions of this section with respect to  
11          an employment-based immigrant, alien spouse,  
12          or alien child.

13          “(b) TERMINATION OF STATUS IF FINDING THAT  
14          QUALIFYING EMPLOYMENT IMPROPER.—

15          “(1) ALIEN INVESTOR.—In the case of an alien  
16          investor with permanent resident status on a condi-  
17          tional basis under subsection (a), if the Secretary of  
18          Homeland Security determines, before the second  
19          anniversary of the alien’s obtaining the status of  
20          lawful admission for permanent residence, that—

21                  “(A) the investment in the commercial en-  
22                  terprise was intended as a means of evading the  
23                  immigration laws of the United States;

1           “(B)(i) the alien did not invest, or was not  
2           actively in the process of investing, the requisite  
3           capital; or

4           “(ii) the alien was not sustaining the ac-  
5           tions described in clause (i) throughout the pe-  
6           riod of the alien’s residence in the United  
7           States; or

8           “(C) subject to the exception in subsection  
9           (d)(4), the alien was otherwise not conforming  
10          to the requirements under section 203(b)(5),  
11          the Secretary shall so notify the alien investor and,  
12          subject to paragraph (3), shall terminate the perma-  
13          nent resident status of the alien (and the alien  
14          spouse and alien child) involved as of the date of the  
15          determination.

16          “(2) EMPLOYEE OF A FEDERAL NATIONAL SE-  
17          curity, science, and technology laboratory,  
18          center or agency.—In the case of an employee of  
19          a Federal national security, science, and technology  
20          laboratory, center, or agency (as defined pursuant to  
21          section 203(b)(2)(C)) with permanent resident sta-  
22          tus on a conditional basis under subsection (a), if  
23          the Secretary of Homeland Security, in consultation  
24          with the relevant employing department or agency,  
25          determines, before the first anniversary of the alien’s

1 obtaining the status of lawful admission for perma-  
2 nent residence, that—

3 “(A) the qualifying employment was in-  
4 tended as a means of evading the immigration  
5 laws of the United States;

6 “(B) the alien has not completed or is not  
7 likely to complete 12 months of qualifying con-  
8 tinuous employment; or

9 “(C) the alien did not otherwise conform  
10 with the requirements of section 203(b)(2),  
11 the Secretary shall so notify the alien involved and,  
12 subject to paragraph (3), shall terminate the perma-  
13 nent resident status of the alien (and the alien  
14 spouse and alien child) involved as of the date of the  
15 determination.

16 “(3) HEARING IN REMOVAL PROCEEDING.—Any  
17 alien whose permanent resident status is terminated  
18 under paragraph (1) or (2) may request a review of  
19 such determination in a proceeding to remove the  
20 alien. In such proceeding, the burden of proof shall  
21 be on the Secretary of Homeland Security to estab-  
22 lish, by a preponderance of the evidence, that a con-  
23 dition described in paragraph (1) or (2), as appro-  
24 priate, is met.

1       “(c) REQUIREMENTS OF TIMELY PETITION AND  
2 INTERVIEW FOR REMOVAL OF CONDITION.—

3               “(1) IN GENERAL.—

4                       “(A) PETITION AND INTERVIEW.—In order  
5 for the conditional basis established under sub-  
6 section (a) for an employment-based immigrant,  
7 alien spouse, or alien child to be removed—

8                               “(i) the employment-based immigrant  
9 shall submit to the Secretary of Homeland  
10 Security, during the period described in  
11 subsection (d)(3), a petition which requests  
12 the removal of such conditional basis and  
13 which states, under penalty of perjury, the  
14 facts and information described in para-  
15 graph (1) or (2) of subsection (d), as ap-  
16 propriate; and

17                               “(ii) in accordance with subsection  
18 (d)(3), the employment-based immigrant  
19 must appear for a personal interview be-  
20 fore an officer or employee of U.S. Citizen-  
21 ship and Immigration Services respecting  
22 such facts and information.

23                       “(B) SEPARATE PETITION NOT RE-  
24 QUIRED.—An alien spouse or alien child shall  
25 not be required to file separate petitions under

1           subparagraph (A)(i) if the employment-based  
2           immigrant’s petition includes such alien spouse  
3           or alien child.

4           “(C) EFFECT ON SPOUSE OR CHILD.—If  
5           the alien spouse or alien child obtains perma-  
6           nent residence on a conditional basis after the  
7           employment-based immigrant files a petition  
8           under subparagraph (A)(i)—

9                   “(i) the conditional basis of the per-  
10                  manent residence of the alien spouse or  
11                  alien child shall be removed upon approval  
12                  of the employment-based immigrant’s peti-  
13                  tion under this subsection;

14                  “(ii) the permanent residence of the  
15                  alien spouse or alien child shall be uncon-  
16                  ditional if—

17                   “(I) the employment-based immi-  
18                  grant’s petition is approved before the  
19                  date on which the spouse or child ob-  
20                  tains permanent residence; or

21                   “(II) the employment-based im-  
22                  migrant dies after the approval of a  
23                  petition under section 203(b)(5); and

24                  “(iii) the alien child shall not be  
25                  deemed ineligible for approval under sec-

1                   tion 203(b)(5) or removal of conditions  
2                   under this section if the alien child reaches  
3                   21 years of age during—

4                   “(I) the pendency of the employ-  
5                   ment-based immigrant’s petition  
6                   under section 203(b)(5); or

7                   “(II) conditional residency under  
8                   such section.

9                   “(D) ADDITIONAL FEE.—Notwithstanding  
10                  any other provision under this section, the Sec-  
11                  retary may require the employment-based immi-  
12                  grant to pay an additional fee for a petition  
13                  filed under subparagraph (A)(i) that includes  
14                  the alien’s spouse and child or children.

15                  “(2) TERMINATION OF PERMANENT RESIDENT  
16                  STATUS FOR FAILURE TO FILE PETITION OR HAVE  
17                  PERSONAL INTERVIEW.—

18                  “(A) IN GENERAL.—In the case of an alien  
19                  with permanent resident status on a conditional  
20                  basis under subsection (a), if—

21                  “(i) no petition is filed with respect to  
22                  the alien in accordance with the provisions  
23                  of paragraph (1)(A); or

24                  “(ii) unless there is good cause shown,  
25                  the employment-based immigrant fails to



1           appear at the interview described in para-  
2           graph (1)(B) (if required under subsection  
3           (d)(4)),  
4           the Secretary of Homeland Security shall termi-  
5           nate the permanent resident status of the alien  
6           (and the alien's spouse and children if it was  
7           obtained on a conditional basis under this sec-  
8           tion or section 216) as of the second anniver-  
9           sary of the alien's lawful admission for perma-  
10          nent residence.

11           “(B) HEARING IN REMOVAL PRO-  
12          CEEDING.—In any removal proceeding with re-  
13          spect to an alien whose permanent resident sta-  
14          tus is terminated under subparagraph (A), the  
15          burden of proof shall be on the alien to estab-  
16          lish compliance with the conditions of para-  
17          graphs (1)(A) and (1)(B).

18           “(3) DETERMINATION AFTER PETITION AND  
19          INTERVIEW.—

20           “(A) IN GENERAL.—If—

21           “(i) a petition is filed in accordance  
22           with the provisions of paragraph (1)(A);  
23           and

1                   “(ii) the employment-based immigrant  
2                   appears at any interview described in para-  
3                   graph (1)(B),  
4                   the Secretary of Homeland Security shall make  
5                   a determination, not later than 90 days after  
6                   the date of such filing or interview (whichever  
7                   is later), as to whether the facts and informa-  
8                   tion described in paragraph (1) or (2) of sub-  
9                   section (d), as appropriate, and alleged in the  
10                  petition are true.

11                  “(B) REMOVAL OF CONDITIONAL BASIS IF  
12                  FAVORABLE DETERMINATION.—

13                  “(i) HEADER.—If the Secretary of  
14                  Homeland Security determines with re-  
15                  spect to a petition filed by an alien inves-  
16                  tor that such facts and information are  
17                  true, the Secretary shall so notify the alien  
18                  investor and shall remove the conditional  
19                  basis of the alien’s status effective as of  
20                  the second anniversary of the alien’s lawful  
21                  admission for permanent residence.

22                  “(ii) REMOVAL OF CONDITIONAL  
23                  BASIS FOR EMPLOYEE OF A FEDERAL NA-  
24                  TIONAL SECURITY, SCIENCE, AND TECH-  
25                  NOLOGY LABORATORY, CENTER OR AGEN-

1                   CY.—If the Secretary of Homeland Secu-  
2                   rity determines with respect to a petition  
3                   filed by an employee of a Federal national  
4                   security, science, and technology labora-  
5                   tory, center, or agency that such facts and  
6                   information are true, the Secretary shall so  
7                   notify the alien and shall remove the condi-  
8                   tional basis of the alien’s status effective  
9                   as of the first anniversary of the alien’s  
10                  lawful admission for permanent residence.

11               “(C) TERMINATION IF ADVERSE DETER-  
12               MINATION.—If the Secretary of Homeland Se-  
13               curity determines that such facts and informa-  
14               tion are not true, the Secretary shall so notify  
15               the alien involved and, subject to subparagraph  
16               (D), shall terminate the permanent resident  
17               status of an employment-based immigrant, alien  
18               spouse, or alien child as of the date of the de-  
19               termination.

20               “(D) HEARING IN REMOVAL PRO-  
21               CEEDING.—Any alien whose permanent resident  
22               status is terminated under subparagraph (C)  
23               may request a review of such determination in  
24               a proceeding to remove the alien. In such pro-  
25               ceeding, the burden of proof shall be on the

1 Secretary of Homeland Security to establish, by  
2 a preponderance of the evidence, that the facts  
3 and information described in subsection (d)(1)  
4 and alleged in the petition are not true.

5 “(d) DETAILS OF PETITION AND INTERVIEW.—

6 “(1) CONTENTS OF PETITION BY ALIEN INVES-  
7 TOR.—Each petition filed by an alien investor under  
8 section (c)(1)(A) shall contain facts and information  
9 demonstrating that the alien—

10 “(A)(i) invested, or is actively in the proc-  
11 ess of investing, the requisite capital; and

12 “(ii) sustained the actions described in  
13 clause (i) throughout the period of the alien’s  
14 residence in the United States; and

15 “(B) except as provided in paragraph (4),  
16 is otherwise conforming to the requirements  
17 under section 203(b)(5).

18 “(2) CONTENTS OF PETITION BY EMPLOYEE OF  
19 A FEDERAL NATIONAL SECURITY, SCIENCE, AND  
20 TECHNOLOGY LABORATORY, CENTER, OR AGENCY.—  
21 Each petition under subsection (c)(1)(A) filed by an  
22 employee of a Federal national security, science, and  
23 technology laboratory, center, or agency shall con-  
24 tain facts and information demonstrating that the

1 alien is conforming to the requirements of section  
2 203(b)(2).

3 “(3) PERIOD FOR FILING PETITION.—

4 “(A) 90-DAY PERIOD BEFORE ANNIVER-  
5 SARY.—Except as provided in subparagraph  
6 (B), the petition under subsection (c)(1)(A)  
7 must be filed as follows:

8 “(i) In the case of an alien investor,  
9 during the 90-day period before the second  
10 anniversary of the alien’s lawful admission  
11 for permanent residence.

12 “(ii) In the case of an employee of a  
13 Federal national security, science, and  
14 technology laboratory, center, or agency,  
15 during the 90-day period before the first  
16 anniversary of the alien’s lawful admission  
17 for permanent residence.

18 “(B) LATE PETITIONS.—Such a petition  
19 may be considered if filed after such date, but  
20 only if the alien establishes to the satisfaction  
21 of the Secretary of Homeland Security good  
22 cause and extenuating circumstances for failure  
23 to file the petition during the period described  
24 in subparagraph (A).

1                   “(C) FILING OF PETITIONS DURING RE-  
2                   MOVAL.—In the case of an alien who is the sub-  
3                   ject of removal hearings as a result of failure  
4                   to file a petition on a timely basis in accordance  
5                   with subparagraph (A), the Secretary of Home-  
6                   land Security may stay such removal pro-  
7                   ceedings against an alien pending the filing of  
8                   the petition under subparagraph (B).

9                   “(4) PERSONAL INTERVIEW.—The interview  
10                  under subsection (c)(1)(B) shall be conducted within  
11                  90 days after the date of submitting a petition under  
12                  subsection (c)(1)(A) and at a local office of U.S.  
13                  Citizenship and Immigration Services, designated by  
14                  the Secretary of Homeland Security, which is con-  
15                  venient to the parties involved. The Secretary, in the  
16                  discretion of the Secretary, may waive the deadline  
17                  for such an interview or the requirement for such an  
18                  interview in such cases as may be appropriate.

19                  “(5) SPECIAL RULE FOR ALIEN INVESTORS IN  
20                  A REGIONAL CENTER.—Each petition under sub-  
21                  section (c)(1)(A) filed by an alien investor who in-  
22                  vests in accordance with section 203(b)(5)(E) shall  
23                  contain facts and information demonstrating that  
24                  the alien is complying with the requirements under  
25                  section 203(b)(5), except—

1                   “(A) the alien shall not be subject to the  
2                   requirements under section 203(b)(5)(A)(ii);  
3                   and

4                   “(B) the petition shall contain the most re-  
5                   cent financial statement filed by the regional  
6                   center in which the alien has invested in accord-  
7                   ance with section 203(b)(5)(G).

8           “(e) TREATMENT OF PERIOD FOR PURPOSES OF  
9   NATURALIZATION.—For purposes of title III, in the case  
10 of an alien who is in the United States as a lawful perma-  
11 nent resident on a conditional basis under this section, the  
12 alien shall be considered to have been admitted as an alien  
13 lawfully admitted for permanent residence and to be in  
14 the United States as an alien lawfully admitted to the  
15 United States for permanent residence, if the alien has  
16 had the conditional basis removed pursuant to this section.

17           “(f) FRAUD, MISREPRESENTATION, CRIMINAL MIS-  
18 USE, OR THREATS TO THE PUBLIC SAFETY OR NATIONAL  
19 SECURITY.—If the Secretary of Homeland Security deter-  
20 mines, in his or her sole and unreviewable discretion, that  
21 the conditional permanent resident status granted to an  
22 employment-based immigrant under subsection (a), or to  
23 an alien researcher described in section 203(b)(2)(A)(ii)  
24 is contrary to the national interest of the United States  
25 for reasons relating to fraud, misrepresentation, criminal

1 misuse, or threats to national security, the Secretary  
2 shall—

3 “(1) notify the immigrant involved of such de-  
4 termination; and

5 “(2) terminate the permanent resident status of  
6 the immigrant involved (and the alien spouse and  
7 alien children of such immigrant) as of the date of  
8 such determination.

9 “(g) DEFINITIONS.—In this section:

10 “(1) The term ‘alien investor’ means an alien  
11 who obtains the status of an alien lawfully admitted  
12 for permanent residence (whether on a conditional  
13 basis or otherwise) under section 203(b)(5).

14 “(2) The term ‘alien spouse’ and the term ‘alien  
15 child’ mean an alien who obtains the status of an  
16 alien lawfully admitted for permanent residence  
17 (whether on a conditional basis or otherwise) by vir-  
18 tue of being the spouse or child, respectively, of an  
19 alien investor or an employee of a Federal national  
20 security, science, and technology laboratory, center,  
21 or agency.

22 “(3) The term ‘commercial enterprise’ includes  
23 a limited partnership.

24 “(4) The term ‘employment-based immigrant’  
25 means an alien described in paragraph (1) or (5).



1           “(5) The term ‘employee of a Federal national  
2           security, science, and technology laboratory, center,  
3           or agency’ means an alien who obtains the status of  
4           an alien lawfully admitted for permanent residence  
5           (whether on a conditional basis or otherwise) under  
6           section 203(b)(2)(A)(ii).”.

7           (b) CONFORMING AMENDMENT.—Section 216(e) (8  
8           U.S.C. 1186a(e)) is amended by inserting before the pe-  
9           riod at the end the following: “, if the alien has had the  
10          conditional basis removed pursuant to this section”.

11          (c) CLERICAL AMENDMENT.—The table of contents  
12          is amended by striking the item relating to section 216A  
13          and inserting the following:

          “Sec. 216A. Conditional permanent resident status for certain employment-  
          based immigrants, spouses, and children.”.

14   **SEC. 4806. EB-5 VISA REFORMS.**

15          (a) ALIENS NOT SUBJECT TO DIRECT NUMERICAL  
16          LIMITATION.—Section 201(b)(1) (8 U.S.C. 1151(b)(1)),  
17          as amended by sections 2103(c)(2), 2212(d)(2), 2307(b),  
18          and 2402, is further amended by adding at the end the  
19          following:

20               “(P) Aliens who are the spouse or a child of an  
21          alien admitted as an employment-based immigrant  
22          under section 203(b)(5).”.

23          (b) TECHNICAL AMENDMENT.—Section 203(b)(5), as  
24          amended by this Act, is further amended by striking “At-

1 torney General” each place it appears and inserting “Sec-  
2 retary of Homeland Security”.

3 (c) TARGETED EMPLOYMENT AREAS.—

4 (1) IN GENERAL.—Section 203(b)(5)(B) (8  
5 U.S.C. 1153(b)(5)(B)) is amended to read as fol-  
6 lows:

7 “(B) SET-ASIDE FOR TARGETED EMPLOY-  
8 MENT AREAS.—

9 “(i) IN GENERAL.—Not fewer than  
10 5,000 of the visas made available under  
11 this paragraph in each fiscal year shall be  
12 reserved for qualified immigrants who in-  
13 vest in a new commercial enterprise de-  
14 scribed in subparagraph (A), which—

15 “(I) is investing such capital in a  
16 targeted employment area; and

17 “(II) will create employment in  
18 such targeted employment area.

19 “(ii) DURATION OF HIGH UNEMPLOY-  
20 MENT AND POVERTY AREA DESIGNA-  
21 TION.—A designation of a high unemploy-  
22 ment or poverty area as a targeted employ-  
23 ment area shall be valid for 5 years and  
24 may be renewed for additional 5-year peri-  
25 ods if the area continues to meet the defi-

1                   nition of a high unemployment or poverty  
2                   area. An investor who has made the re-  
3                   quired amount of investment in such a tar-  
4                   geted employment area during its period of  
5                   designation shall not be required to in-  
6                   crease the amount of investment based  
7                   upon expiration of the designation.”.

8           (d) ADJUSTMENT OF MINIMUM EB-5 INVESTMENT  
9 AMOUNT.—Section     203(b)(5)(C)(i)     (8     U.S.C.  
10 1153(b)(5)(C)(i)) is amended—

11           (1) by striking “The Attorney General” and in-  
12           serting “The Secretary of Commerce”;

13           (2) by striking “Secretary of State” and insert-  
14           ing “Secretary of Homeland Security”; and

15           (3) by adding at the end the following: “Unless  
16           adjusted by the Secretary of Commerce, the amount  
17           specified in this clause shall automatically adjust, on  
18           January 1, 2016, by the percentage change in the  
19           Consumer Price Index (CPI-U) during fiscal year  
20           2015, and on every fifth subsequent January 1 by  
21           the cumulative percentage change in the CPI-U dur-  
22           ing the previous 5 fiscal years, for any petition filed  
23           to classify an alien under this paragraph on or after  
24           the date of each automatic adjustment.”.

25           (e) DEFINITIONS.—

1           (1) IN GENERAL.—Section 203(b)(5) (8 U.S.C.  
2       1153(b)(5)), as amended by subsections (b) and (c)  
3       and section 4804, is further amended—

4           (A) by striking subparagraph (D) and in-  
5       serting following:

6           “(D) CALCULATION OF FULL-TIME EM-  
7       PLOYMENT.—Job creation under this paragraph  
8       may consist of employment measured in full-  
9       time equivalents, such as intermittent or sea-  
10      sonal employment opportunities and construc-  
11      tion jobs. A full-time employment position is  
12      not a requirement for indirect job creation.”;  
13      and

14          (B) by adding at the end the following:

15          “(K) DEFINITIONS.—In this paragraph:

16               “(i) The term ‘capital’ means all real,  
17              personal, or mixed assets, whether tangible  
18              or intangible, owned or controlled by the  
19              investor, or held in trust for the benefit of  
20              the investor, to which the investor has un-  
21              restricted access, which shall be valued at  
22              fair market value in United States dollars,  
23              in accordance with Generally Accepted Ac-  
24              counting Principles, at the time it is in-  
25              vested under this paragraph.

1           “(ii) The term ‘full-time employment’  
2 means employment in a position that re-  
3 quires at least 35 hours of service per  
4 week, regardless of how many employees  
5 fill the position.

6           “(iii) The term ‘high unemployment  
7 and poverty area’ means—

8                 “(I) an area consisting of a cen-  
9 sus tract or contiguous census tracts  
10 that has an unemployment rate that  
11 is at least 150 percent of the national  
12 average unemployment rate and in-  
13 cludes at least 1 census tract with 20  
14 percent of its residents living below  
15 the poverty level as determined by the  
16 Bureau of the Census; or

17                 “(II) an area that is within the  
18 boundaries established for purposes of  
19 a Federal or State economic develop-  
20 ment incentive program, including  
21 areas defined as Enterprise Zones,  
22 Renewal Communities, Promise  
23 Zones, and Empowerment Zones.

24           “(iv) The term ‘rural area’ means—

1                   “(I) any area other than an area  
2                   within a metropolitan statistical area  
3                   or within the outer boundary of any  
4                   city or town having a population of  
5                   20,000 or more (based on the most  
6                   recent decennial census of the United  
7                   States); or

8                   “(II) any city or town having a  
9                   population of fewer than 20,000  
10                  (based on the most recent decennial  
11                  census of the United States) that is  
12                  located within a State having a popu-  
13                  lation of fewer than 1,500,000 (based  
14                  on the most recent decennial census of  
15                  the United States).

16                  “(v) The term ‘targeted employment  
17                  area’ means a rural area or a high unem-  
18                  ployment and poverty area.”.

19                  (2) EFFECTIVE DATE.—The amendment made  
20                  by paragraph (1) shall apply to any application for  
21                  a visa under section 203(b)(5) of the Immigration  
22                  and Nationality Act that is filed on or after the date  
23                  that is 1 year after the date of the enactment of this  
24                  Act.

1 (f) AGE DETERMINATION FOR CHILDREN OF ALIEN  
2 INVESTORS.—Section 203(h) (8 U.S.C. 1153(h)) is  
3 amended by adding at the end the following:

4 “(5) AGE DETERMINATION FOR CHILDREN OF  
5 ALIEN INVESTORS.—An alien admitted under sub-  
6 section (d) as a lawful permanent resident on a con-  
7 ditional basis as the child of an alien lawfully admit-  
8 ted for permanent residence under subsection (b)(5),  
9 whose lawful permanent resident status on a condi-  
10 tional basis is terminated under section 216A, shall  
11 continue to be considered a child of the principal  
12 alien for the purpose of a subsequent immigrant pe-  
13 tition by such alien under subsection (b)(5) if the  
14 alien remains unmarried and the subsequent petition  
15 is filed by the principal alien not later than 1 year  
16 after the termination of conditional lawful perma-  
17 nent resident status. No alien shall be considered a  
18 child under this paragraph with respect to more  
19 than 1 petition filed after the alien’s 21st birth-  
20 day.”.

21 (g) ENHANCED PAY SCALE FOR CERTAIN FEDERAL  
22 EMPLOYEES ADMINISTERING THE EB-5 PROGRAM.—The  
23 Secretary may establish, fix the compensation of, and ap-  
24 point individuals to, designated critical administrative,  
25 technical, and professional positions needed to administer

1 sections 203(b)(5) and 216A of the Immigration and Na-  
2 tionality Act (8 U.S.C. 1153(b)(5) and 1186b).

3 (h) DELEGATION OF CERTAIN EB-5 AUTHORITY.—

4 (1) IN GENERAL.—The Secretary of Homeland  
5 Security may delegate to the Secretary of Commerce  
6 authority and responsibility for determinations  
7 under sections 203(b)(5) and 216A (with respect to  
8 alien entrepreneurs) of the Immigration and Nation-  
9 ality Act (8 U.S.C. 1153(b)(5) and 1186a), includ-  
10 ing determining whether an alien has met employ-  
11 ment creation requirements.

12 (2) REGULATIONS.—The Secretary of Home-  
13 land Security and the Secretary of Commerce may  
14 each adopt such rules and regulations as are nec-  
15 essary to carry out the delegation authorized under  
16 paragraph (1), including regulations governing the  
17 eligibility criteria for obtaining benefits pursuant to  
18 the amendments made by this section.

19 (3) USE OF FEES.—Adjudication fees described  
20 in section 286(m) of the Immigration and Nation-  
21 ality Act (8 U.S.C. 1356(m)) shall remain available  
22 until expended to reimburse the Secretary of Com-  
23 merce for the costs of any determinations made by  
24 the Secretary of Commerce under paragraph (1).



1 (i) CONCURRENT FILING OF EB-5 PETITIONS AND  
2 APPLICATIONS FOR ADJUSTMENT OF STATUS.—Section  
3 245 (8 U.S.C. 1255), as amended by section 4237(b), is  
4 further amended—

5 (1) in subsection (k), in the matter preceding  
6 paragraph (1), by striking “or (3)” and inserting  
7 “(3), (5), or (7)”; and

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

9 “(o) At the time a petition is filed for classification  
10 under section 203(b)(5), if the approval of such petition  
11 would make a visa immediately available to the alien bene-  
12 ficiary, the alien beneficiary’s application for adjustment  
13 of status under this section shall be considered to be prop-  
14 erly filed whether the application is submitted concur-  
15 rently with, or subsequent to, the visa petition.”.

16 **SEC. 4807. AUTHORIZATION OF APPROPRIATIONS.**

17 (a) FUNDING.—There are authorized to be appro-  
18 priated from the Trust Fund established under section  
19 6(a) such sums as may be necessary to carry out sections  
20 1110, 2101, 2104, 2212, 2213, 2221, 2232, 3301, 3501,  
21 3502, 3503, 3504, 3505, 3506, 3605, 3610, 4221, and  
22 4401 of this Act.

23 (b) AVAILABILITY OF FUNDS.—Amounts appro-  
24 priated pursuant to this section shall remain available  
25 until expended unless otherwise specified in this Act.

1     **Subtitle I—Student and Exchange**  
2                     **Visitor Programs**

3     **SEC. 4901. SHORT TITLE.**

4             This subtitle may be cited as the “Student Visa In-  
5     tegrity Act”.

6     **SEC. 4902. SEVIS AND SEVP DEFINED.**

7             In this subtitle:

8                     (1) SEVIS.—The term “SEVIS” means the  
9             Student and Exchange Visitor Information System  
10            of the Department of Homeland Security.

11                    (2) SEVP.—The term “SEVP” means the Stu-  
12            dent and Exchange Visitor Program of the Depart-  
13            ment of Homeland Security.

14     **SEC. 4903. INCREASED CRIMINAL PENALTIES.**

15            Section 1546(a) of title 18, United States Code, is  
16     amended by striking “10 years” and inserting “15 years  
17     (if the offense was committed by an owner, official, em-  
18     ployee, or agent of an educational institution with respect  
19     to such institution’s participation in the Student and Ex-  
20     change Visitor Program), 10 years”.

21     **SEC. 4904. ACCREDITATION REQUIREMENT.**

22            Section 101(a)(52) (8 U.S.C. 1101(a)(52)) is amend-  
23     ed to read as follows:

24            “(52) Except as provided in section 214(m)(4), the  
25     term ‘accredited college, university, or language training

1 program’ means a college, university, or language training  
2 program that is accredited by an accrediting agency recog-  
3 nized by the Secretary of Education.”.

4 **SEC. 4905. OTHER ACADEMIC INSTITUTIONS.**

5 Section 214(m) (8 U.S.C. 1184(m)) is amended by  
6 adding at the end the following:

7 “(3) The Secretary of Homeland Security shall re-  
8 quire accreditation of an academic institution (except for  
9 seminaries or other religious institutions) for purposes of  
10 section 101(a)(15)(F) if—

11 “(A) that institution is not already required to  
12 be accredited under section 101(a)(15)(F)(i); and

13 “(B) an appropriate accrediting agency recog-  
14 nized by the Secretary of Education is able to pro-  
15 vide such accreditation.

16 “(4) The Secretary of Homeland Security, in the Sec-  
17 retary’s discretion, may waive the accreditation require-  
18 ment in section 101(a)(15)(F)(i) with respect to an ac-  
19 credited college, university, or language training program  
20 if the academic institution—

21 “(A) is otherwise in compliance with the re-  
22 quirements of such section; and

23 “(B) is, on the date of the enactment of the Il-  
24 legal Immigration Reform and Immigrant Responsi-  
25 bility Act of 1996, a candidate for accreditation or,

1 after such date, has been a candidate for accredita-  
2 tion for at least 1 year and continues to progress to-  
3 ward accreditation by an accreditation agency recog-  
4 nized by the Secretary of Education.”.

5 **SEC. 4906. PENALTIES FOR FAILURE TO COMPLY WITH**  
6 **SEVIS REPORTING REQUIREMENTS.**

7 Section 641 of the Illegal Immigration Reform and  
8 Immigrant Responsibility Act of 1996 (8 U.S.C. 1372) is  
9 amended—

10 (1) in subsection (c)(1)—

11 (A) by striking “institution,” each place it  
12 appears and inserting “institution,”; and

13 (B) in subparagraph (D), by striking  
14 “and” at the end;

15 (2) in subsection (d)(2), by striking “fails to  
16 provide the specified information” and all that fol-  
17 lows and inserting “does not comply with the report-  
18 ing requirements set forth in this section, the Sec-  
19 retary of Homeland Security may—

20 “(A) impose a monetary fine on such insti-  
21 tution in an amount to be determined by the  
22 Secretary; and

23 “(B) suspend the authority of such institu-  
24 tion to issue a Form I-20 to any alien.”.

1 **SEC. 4907. VISA FRAUD.**

2 (a) IMMEDIATE WITHDRAWAL OF SEVP CERTIFI-  
3 CATION.—Section 641(d) of the Illegal Immigration Re-  
4 form and Immigrant Responsibility Act of 1996 (8 U.S.C.  
5 1372(d)) is amended—

6 (1) in paragraph (1)(A), by striking “institu-  
7 tion,” and inserting “institution,”; and

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

9 “(3) EFFECT OF REASONABLE SUSPICION OF  
10 FRAUD.—If the Secretary of Homeland Security has  
11 reasonable suspicion that an owner of, or a des-  
12 ignated school official at, an approved institution of  
13 higher education, an other approved educational in-  
14 stitution, or a designated exchange visitor program  
15 has committed fraud or attempted to commit fraud  
16 relating to any aspect of the Student and Exchange  
17 Visitor Program, or if such owner or designated  
18 school official is indicted for such fraud, the Sec-  
19 retary may immediately—

20 “(A) suspend such certification without  
21 prior notification; and

22 “(B) suspend such official’s or such  
23 school’s access to the Student and Exchange  
24 Visitor Information System (SEVIS).”.

25 (b) EFFECT OF CONVICTION FOR VISA FRAUD.—Sec-  
26 tion 641(d) of the Illegal Immigration Reform and Immi-

1 grant Responsibility Act of 1996, as amended by sub-  
2 section (a), is further amended by adding at the end the  
3 following:

4           “(5) PERMANENT DISQUALIFICATION FOR  
5 FRAUD.—A designated school official at, or an owner  
6 of, an approved institution of higher education, an  
7 other approved educational institution, or a des-  
8 ignated exchange visitor program who is convicted  
9 for fraud relating to any aspect of the Student and  
10 Exchange Visitor Program shall be permanently dis-  
11 qualified from filing future petitions and from hav-  
12 ing an ownership interest or a management role (in-  
13 cluding serving as a principal, owner, officer, board  
14 member, general partner, designated school official,  
15 or any other position of substantive authority for the  
16 operations or management of the institution) in any  
17 United States educational institution that enrolls  
18 nonimmigrant alien students described in subpara-  
19 graph (F) or (M) of section 101(a)(15) of the Immi-  
20 gration and Nationality Act (8 U.S.C.  
21 1101(a)(15)).”.

22 **SEC. 4908. BACKGROUND CHECKS.**

23       (a) IN GENERAL.—Section 641(d) of the Illegal Im-  
24 migration Reform and Immigrant Responsibility Act of  
25 1996 (8 U.S.C. 1372(d)), as amended by section 4907 of

1 this Act, is further amended by adding at the end the fol-  
2 lowing:

3 “(6) BACKGROUND CHECK REQUIREMENT.—

4 “(A) IN GENERAL.—An individual may not  
5 serve as a designated school official or be grant-  
6 ed access to SEVIS unless the individual is a  
7 national of the United States or an alien law-  
8 fully admitted for permanent residence and dur-  
9 ing the most recent 3-year period—

10 “(i) the Secretary of Homeland Secu-  
11 rity has—

12 “(I) conducted a thorough back-  
13 ground check on the individual, in-  
14 cluding a review of the individual’s  
15 criminal and sex offender history and  
16 the verification of the individual’s im-  
17 migration status; and

18 “(II) determined that the indi-  
19 vidual—

20 “(aa) has not been convicted  
21 of any violation of United States  
22 immigration law; and

23 “(bb) is not a risk to the na-  
24 tional security of the United  
25 States; and

1                   “(ii) the individual has successfully  
2                   completed an on-line training course on  
3                   SEVP and SEVIS, which has been devel-  
4                   oped by the Secretary.

5                   “(B) INTERIM DESIGNATED SCHOOL OFFI-  
6                   CIAL.—

7                   “(i) IN GENERAL.—An individual may  
8                   serve as an interim designated school offi-  
9                   cial during the period that the Secretary is  
10                  conducting the background check required  
11                  by subparagraph (A)(i)(I).

12                  “(ii) REVIEWS BY THE SECRETARY.—  
13                  If an individual serving as an interim des-  
14                  ignated school official under clause (i) does  
15                  not successfully complete the background  
16                  check required by subparagraph (A)(i)(I),  
17                  the Secretary shall review each Form I-20  
18                  issued by such interim designated school  
19                  official.

20                  “(7) FEE.—The Secretary is authorized to col-  
21                  lect a fee from an approved school for each back-  
22                  ground check conducted under paragraph (6)(A)(i).  
23                  The amount of such fee shall be equal to the average  
24                  amount expended by the Secretary to conduct such  
25                  background checks.”.



1 (b) EFFECTIVE DATE.—The amendment made by  
2 subsection (a) shall take effect on the date that is 1 year  
3 after the date of the enactment of this Act.

4 **SEC. 4909. REVOCATION OF AUTHORITY TO ISSUE FORM I-**  
5 **20 OF FLIGHT SCHOOLS NOT CERTIFIED BY**  
6 **THE FEDERAL AVIATION ADMINISTRATION.**

7 Immediately upon the enactment of this Act, the Sec-  
8 retary shall prohibit any flight school in the United States  
9 from accessing SEVIS or issuing a Form I-20 to an alien  
10 seeking a student visa pursuant to subparagraph (F)(i)  
11 or (M)(i) of section 101(a)(15) of the Immigration and  
12 Nationality Act (8 U.S.C. 1101(a)(15)) if the flight school  
13 has not been certified to the satisfaction of the Secretary  
14 and by the Federal Aviation Administration pursuant to  
15 part 141 or part 142 of title 14, Code of Federal Regula-  
16 tions (or similar successor regulations).

17 **SEC. 4910. REVOCATION OF ACCREDITATION.**

18 At the time an accrediting agency or association is  
19 required to notify the Secretary of Education and the ap-  
20 propriate State licensing or authorizing agency of the final  
21 denial, withdrawal, suspension, or termination of accredi-  
22 tation of an institution pursuant to section 496 of the  
23 Higher Education Act of 1965 (20 U.S.C. 1099b), such  
24 accrediting agency or association shall notify the Secretary  
25 of Homeland Security of such determination and the Sec-

1   retary of Homeland Security shall immediately withdraw  
2   the school from the SEVP and prohibit the school from  
3   accessing SEVIS.

4   **SEC. 4911. REPORT ON RISK ASSESSMENT.**

5       Not later than 180 days after the date of the enact-  
6   ment of this Act, the Secretary shall submit to the Com-  
7   mittee on the Judiciary of the Senate and the Committee  
8   on the Judiciary of the House of Representatives a report  
9   that contains the risk assessment strategy that will be em-  
10  ployed by the Secretary to identify, investigate, and take  
11  appropriate action against schools and school officials that  
12  are facilitating the issuance of Form I-20 and the mainte-  
13  nance of student visa status in violation of the immigra-  
14  tion laws of the United States.

15  **SEC. 4912. IMPLEMENTATION OF GAO RECOMMENDATIONS.**

16       Not later than 180 days after the date of the enact-  
17  ment of this Act, the Secretary shall submit to the Com-  
18  mittee on the Judiciary of the Senate and the Committee  
19  on the Judiciary of the House of Representatives a report  
20  that describes—

- 21           (1) the process in place to identify and assess  
22       risks in the SEVP;  
23           (2) a risk assessment process to allocate  
24       SEVP's resources based on risk;

1           (3) the procedures in place for consistently en-  
2           suring a school's eligibility, including consistently  
3           verifying in lieu of letters;

4           (4) how SEVP identified and addressed missing  
5           school case files;

6           (5) a plan to develop and implement a process  
7           to monitor State licensing and accreditation status  
8           of all SEVP-certified schools;

9           (6) whether all flight schools that have not been  
10          certified to the satisfaction of the Secretary and by  
11          the Federal Aviation Administration have been re-  
12          moved from the program and have been restricted  
13          from accessing SEVIS;

14          (7) the standard operating procedures that gov-  
15          ern coordination among SEVP, Counterterrorism  
16          and Criminal Exploitation Unit, and U.S. Immigra-  
17          tion and Customs Enforcement field offices; and

18          (8) the established criteria for referring cases of  
19          a potentially criminal nature from SEVP to the  
20          counterterrorism and intelligence community.

21 **SEC. 4913. IMPLEMENTATION OF SEVIS II.**

22          Not later than 2 years after the date of the enact-  
23          ment of this Act, the Secretary shall complete the deploy-  
24          ment of both phases of the second generation Student and

- 1 Exchange Visitor Information System (commonly known
- 2 as “SEVIS II”).