

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

Purpose: To provide for the establishment of the Office of the Small Business and Employee Advocate.

**IN THE SENATE OF THE UNITED STATES—113th Cong., 1st Sess.**

**S. 744**

To provide for comprehensive immigration reform and for other purposes.

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

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. FRANKEN to the amendment (No. 4) proposed by Mr. FRANKEN

Viz:

1 In lieu of the matter proposed to be inserted, insert  
2 the following:

3 **SEC. 3107. OFFICE OF THE SMALL BUSINESS AND EM-**  
4 **PLOYEE ADVOCATE.**

5 (a) ESTABLISHMENT OF SMALL BUSINESS AND EM-  
6 PLOYEE ADVOCATE.—The Secretary shall establish and  
7 maintain within U.S. Citizenship and Immigration Serv-  
8 ices the Office of the Small Business and Employee Advo-  
9 cate (in this section referred to as the “Office”). The pur-  
10 pose of the Office shall be to assist small businesses and  
11 individuals in complying with the requirements of section

1 274A of the Immigration and Nationality Act (8 U.S.C.  
2 1324a), as amended by this Act, including the resolution  
3 of conflicts arising in the course of attempted compliance  
4 with such requirements.

5 (b) FUNCTIONS.—The functions of the Office shall  
6 include, but not be limited to, the following:

7 (1) Informing small businesses and individuals  
8 about the verification practices required by section  
9 274A of the Immigration and Nationality Act, in-  
10 cluding, but not limited to, the document verification  
11 requirements and the employment verification sys-  
12 tem requirements under subsections (c) and (d) of  
13 that section.

14 (2) Assisting small businesses and individuals  
15 in addressing allegedly erroneous further action no-  
16 tices and nonconfirmations issued under subsection  
17 (d) of section 274A of the Immigration and Nation-  
18 ality Act.

19 (3) Informing small businesses and individuals  
20 of the financial liabilities and criminal penalties that  
21 apply to violations and failures to comply with the  
22 requirements of section 274A of the Immigration  
23 and Nationality Act, including, but not limited to, by  
24 issuing best practices for compliance with that sec-  
25 tion.

1           (4) To the extent practicable, proposing  
2           changes to the Secretary in the administrative prac-  
3           tices of the employment verification system required  
4           under subsection (d) of section 274A of the Immi-  
5           gration and Nationality Act to mitigate the problems  
6           identified under paragraph (2).

7           (5) Making recommendations through the Sec-  
8           retary to Congress for legislative action to mitigate  
9           such problems.

10       (c) AUTHORITY TO ISSUE ASSISTANCE ORDER.—

11           (1) IN GENERAL.—Upon application filed by a  
12           small business or individual with the Office (in such  
13           form, manner, and at such time as the Secretary  
14           shall by regulations prescribe), the Office may issue  
15           an assistance order if—

16                   (A) the Office determines the small busi-  
17                   ness or individual is suffering or about to suffer  
18                   a significant hardship as a result of the manner  
19                   in which the employment verification laws  
20                   under subsections (c) and (d) of section 274A  
21                   of the Immigration and Nationality Act are  
22                   being administered by the Secretary; or

23                   (B) the small business or individual meets  
24                   such other requirements as are set forth in reg-  
25                   ulations prescribed by the Secretary.

1           (2) DETERMINATION OF HARDSHIP.—For pur-  
2           poses of paragraph (1), a significant hardship shall  
3           include—

4                   (A) an immediate threat of adverse action;

5                   (B) a delay of more than 60 days in resolv-  
6           ing employment verification system problems;

7                   (C) the incurring by the small business or  
8           individual of significant costs if relief is not  
9           granted; or

10                  (D) irreparable injury to, or a long-term  
11           adverse impact on, the small business or indi-  
12           vidual if relief is not granted.

13           (3) STANDARDS WHEN ADMINISTRATIVE GUID-  
14           ANCE NOT FOLLOWED.—In cases where a U.S. Citi-  
15           zenship and Immigration Services employee is not  
16           following applicable published administrative guid-  
17           ance, the Office shall construe the factors taken into  
18           account in determining whether to issue an assist-  
19           ance order under this subsection in the manner most  
20           favorable to the small business or individual.

21           (4) TERMS OF ASSISTANCE ORDER.—The terms  
22           of an assistance order under this subsection may re-  
23           quire the Secretary within a specified time period—

1 (A) to determine whether any employee is  
2 or is not authorized to work in the United  
3 States; or

4 (B) to abate any penalty under section  
5 274A of the Immigration and Nationality Act  
6 that the Office determines is arbitrary, capri-  
7 cious, or disproportionate to the underlying of-  
8 fense.

9 (5) AUTHORITY TO MODIFY OR RESCIND.—Any  
10 assistance order issued by the Office under this sub-  
11 section may be modified or rescinded—

12 (A) only by the Office, the Director or  
13 Deputy Director of U.S. Citizenship and Immi-  
14 gration Services, or the Secretary or the Sec-  
15 retary's designee; and

16 (B) if rescinded by the Director or Deputy  
17 Director of U.S. Citizenship and Immigration  
18 Services, only if a written explanation of the  
19 reasons of such official for the modification or  
20 rescission is provided to the Office.

21 (6) SUSPENSION OF RUNNING OF PERIOD OF  
22 LIMITATION.—The running of any period of limita-  
23 tion with respect to an action described in paragraph  
24 (4)(A) shall be suspended for—

1 (A) the period beginning on the date of the  
2 small business or individual's application under  
3 paragraph (1) and ending on the date of the  
4 Office's decision with respect to such applica-  
5 tion; and

6 (B) any period specified by the Office in  
7 an assistance order issued under this subsection  
8 pursuant to such application.

9 (7) INDEPENDENT ACTION OF OFFICE.—Noth-  
10 ing in this subsection shall prevent the Office from  
11 taking any action in the absence of an application  
12 under paragraph (1).

13 (d) ACCESSIBILITY TO THE PUBLIC.—

14 (1) IN PERSON, ONLINE, AND TELEPHONE AS-  
15 SISTANCE.—The Office shall provide information  
16 and assistance specified in subsection (b) in person  
17 at locations designated by the Secretary, online  
18 through an Internet website of the Department  
19 available to the public, and by telephone.

20 (2) AVAILABILITY TO ALL EMPLOYERS.—In  
21 making information and assistance available, the Of-  
22 fice shall prioritize the needs of small businesses and  
23 individuals. However, the information and assistance  
24 available through the Office shall be available to any  
25 employer.

1       (e) AVOIDING DUPLICATION THROUGH COORDINA-  
2 TION.—In the discharge of the functions of the Office, the  
3 Secretary shall consult with the Secretary of Labor, the  
4 Secretary of Agriculture, the Commissioner, the Attorney  
5 General, the Equal Employment Opportunity Commission,  
6 and the Administrator of the Small Business Administra-  
7 tion in order to avoid duplication of efforts across the Fed-  
8 eral government.

9       (f) DEFINITIONS.—In this section:

10           (1) The term “employer” has the meaning  
11 given that term in section 274A(b) of the Immigra-  
12 tion and Nationality Act.

13           (2) The term “small business” means an em-  
14 ployer with 49 or fewer employees.

15       (g) FUNDING.—There shall be appropriated, from the  
16 Comprehensive Immigration Reform Trust Fund estab-  
17 lished by section 6(a)(1) of this Act, such sums as may  
18 be necessary to carry out the functions of the Office.