

112TH CONGRESS
1ST SESSION

H. R. 2161

To amend the Immigration and Nationality Act to promote innovation, investment, and research in the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 14, 2011

Ms. ZOE LOFGREN of California (for herself, Mr. CAPUANO, Ms. CHU, Mr. CONYERS, Ms. ESHOO, Mr. GUTIERREZ, Mr. HEINRICH, Mr. HONDA, Mrs. MALONEY, Mr. GEORGE MILLER of California, Mr. POLIS, Ms. LINDA T. SÁNCHEZ of California, Mr. SCHIFF, and Mr. RUSH) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Immigration and Nationality Act to promote innovation, investment, and research in the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as—

5 (1) the “Immigration Driving Entrepreneurship
6 in America Act of 2011”; or

1 (2) the “IDEA Act of 2011”.

2 **TITLE I—ATTRACTING AND RE-**
3 **TAINING INNOVATORS AND**
4 **JOB CREATORS**

5 **SEC. 101. U.S. GRADUATES IN SCIENCE, TECHNOLOGY, EN-**
6 **GINEERING, AND MATHEMATICS.**

7 (a) **ADVANCED STEM GRADUATES.**—Section
8 203(b)(1) of the Immigration and Nationality Act (8
9 U.S.C. 1153(b)(1)) is amended—

10 (1) in the matter preceding subparagraph (A),
11 by striking “(A) through (C)” and inserting “(A)
12 through (D)”; and

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

14 “(D) **ADVANCED GRADUATES IN SCIENCE,**
15 **TECHNOLOGY, ENGINEERING AND MATHE-**
16 **MATICS.**—An alien is described in this subpara-
17 graph if—

18 “(i) the alien possesses a graduate de-
19 gree at the level of master’s or higher in
20 a field of science, technology, engineering,
21 or mathematics from a United States insti-
22 tution of higher education that has been
23 designated by the Director of the National
24 Science Foundation as a research institu-

1 tion or as otherwise excelling at instruction
2 in such fields;

3 “(ii) the alien has an offer of employ-
4 ment from a United States employer in a
5 field related to such degree; and

6 “(iii) the employer is offering and will
7 offer wages that are at least—

8 “(I) the actual wage level paid by
9 the employer to all other individuals
10 with similar experience and qualifica-
11 tions in the same occupational classi-
12 fication; or

13 “(II) the prevailing wage level for
14 the occupational classification in the
15 area of employment;

16 whichever is greater, based on the best in-
17 formation available as of the time of filing
18 the petition.”.

19 (b) CAP EXEMPTION.—Section 201(b)(1) of the Im-
20 migration and Nationality Act (8 U.S.C. 1151(b)(1)) is
21 amended by adding at the end the following:

22 “(F) Aliens described in paragraph (1)(B) or
23 (1)(D) of section 203(b).”.

24 (c) REMOVING VISA HURDLES FOR STUDENTS.—

25 (1) PROVIDING DUAL INTENT.—

1 (A) IN GENERAL.—Section
2 101(a)(15)(F)(i) of the Immigration and Na-
3 tionality Act (8 U.S.C. 1101(a)(15)(F)(i)) is
4 amended by striking “an alien having a resi-
5 dence in a foreign country which he has no in-
6 tention of abandoning, who is a bona fide stu-
7 dent qualified to pursue a full course of study
8 and who” and inserting “an alien who is a bona
9 fide student qualified to pursue a full course of
10 study, who (except for a student qualified to
11 pursue a full course of study at an institution
12 of higher education) has a residence in a for-
13 eign country which the alien has no intention of
14 abandoning, and who”.

15 (B) CONFORMING AMENDMENTS.—

16 (i) Section 214(b) of the Immigration
17 and Nationality Act (8 U.S.C. 1184(b)) is
18 amended by striking “(other than a non-
19 immigrant” and inserting “(other than a
20 nonimmigrant described in section
21 101(a)(15)(F) if the alien is qualified to
22 pursue a full course of study at an institu-
23 tion of higher education, other than a non-
24 immigrant”.

1 (ii) Section 214(h) of the Immigration
2 and Nationality Act (8 U.S.C. 1184(h)) is
3 amended by inserting “(F) (if the alien is
4 qualified to pursue a full course of study at
5 an institution of higher education),” before
6 “H(i)(b)”.

7 (2) EXTENSIONS IN CASES OF LENGTHY ADJU-
8 DICATIONS.—

9 (A) IN GENERAL.—Section 214 of the Im-
10 migration and Nationality Act (8 U.S.C. 1154)
11 is amended by adding at the end the following:

12 “(s) EXTENSIONS IN CASES OF LENGTHY ADJUDICA-
13 TIONS.—

14 “(1) EXEMPTION FROM LIMITATIONS.—Not-
15 withstanding subsection (c)(2)(D), (g)(4) and (m),
16 the authorized stay of an alien described in para-
17 graph (2) may be extended pursuant to paragraph
18 (3) if 365 days or more have elapsed since the filing
19 of any of the following:

20 “(A) An application for labor certification
21 under section 212(a)(5)(A), in a case in which
22 certification is required or used by an alien to
23 obtain status under section 203(b).

1 “(B) A petition described in section 204(b)
2 to accord the alien a status under section
3 203(b).

4 “(2) ALIENS DESCRIBED.—An alien is de-
5 scribed in this paragraph if the alien was previously
6 issued a visa or otherwise provided nonimmigrant
7 status under—

8 “(A) section 101(a)(15)(F);

9 “(B) section 101(a)(15)(H)(i)(b); or

10 “(C) section 101(a)(15)(L).

11 “(3) EXTENSION OF STATUS.—The Secretary
12 of Homeland Security shall extend the stay of an
13 alien who qualifies for an extension under paragraph
14 (1) in one-year increments until such time as a final
15 decision is made—

16 “(A) to deny the application described in
17 paragraph (1)(A), or, in a case in which such
18 application is granted, to deny a petition de-
19 scribed in paragraph (1)(B) filed on behalf of
20 the alien pursuant to such grant;

21 “(B) to deny the petition described in
22 paragraph (1)(B); or

23 “(C) to grant or deny the alien’s applica-
24 tion for an immigrant visa or adjustment of

1 status to that of an alien lawfully admitted for
2 permanent residence.

3 Work authorization shall be provided to an alien
4 whose stay is extended under this paragraph.”.

5 (B) CONFORMING AMENDMENT.—Section
6 106 of the American Competitiveness in the
7 21st Century Act is amended by striking sub-
8 sections (a) and (b).

9 (3) DEFINITIONS.—Section 101(a) of the Immi-
10 gration and Nationality Act (8 U.S.C. 1101(a)) is
11 amended by adding at the end the following:

12 “(52) The term ‘institution of higher education’
13 has the meaning given such term in section 101(a)
14 of the Higher Education Act of 1965 (20 U.S.C.
15 1001(a)).

16 “(53) The term ‘employer’ shall include any
17 group treated as a single employer under subsection
18 (b), (c), (m), or (o) of section 414 of the Internal
19 Revenue Code of 1986.”.

20 (d) CONFORMING AMENDMENTS.—Section
21 204(a)(1)(F) of the Immigration and Nationality Act (8
22 U.S.C. 1154(a)(1)(F)) is amended—

23 (1) by inserting “203(b)(1)(D),” after
24 “203(b)(1)(C),”; and

1 (2) by striking “Attorney General” and insert-
2 ing “Secretary of Homeland Security”.

3 **SEC. 102. ENTREPRENEURS WHO ESTABLISH BUSINESSES**
4 **AND CREATE JOBS IN THE UNITED STATES.**

5 (a) **START-UP BUSINESS AND JOB CREATION**
6 **VISAS.**—Section 203(b) of the Immigration and Nation-
7 ality Act (8 U.S.C. 1153(b)) is amended—

8 (1) by redesignating paragraph (6) as para-
9 graph (7); and

10 (2) by inserting after paragraph (5) the fol-
11 lowing:

12 “(6) **START-UP ENTREPRENEURS.**—

13 “(A) **IN GENERAL.**—Visas shall be made
14 available, notwithstanding subsection (a)(2) or
15 (d) of section 201 or the matter preceding para-
16 graph (1) of this subsection, to qualified immi-
17 grants who are described in subparagraph (B)
18 or (C).

19 “(B) **VENTURE CAPITAL-BACKED START-**
20 **UP ENTREPRENEURS.**—An alien is described in
21 this subparagraph if the alien intends to engage
22 in a new commercial enterprise (including a
23 limited partnership or similar entity) in the
24 United States—

1 “(i) with respect to which the alien
2 has completed an investment agreement re-
3 quiring an investment in the enterprise in
4 an amount not less than \$500,000 on the
5 part of—

6 “(I) a qualified venture capital
7 operating company;

8 “(II) 1 or more qualified angel
9 investors (of which at least 1 such in-
10 vestor is providing \$100,000 of the re-
11 quired investment); or

12 “(III) a qualified business entity;
13 and

14 “(ii) which will benefit the United
15 States economy and, during the 2-year pe-
16 riod beginning on the date on which the
17 visa is issued under this paragraph, will—

18 “(I) create full-time employment
19 for at least 3 United States workers;

20 “(II) raise not less than an addi-
21 tional \$1,000,000 in capital invest-
22 ment; or

23 “(III) generate not less than
24 \$1,000,000 in revenue.

1 “(C) SELF-SPONSORED START-UP ENTRE-
2 PRENEURS.—An alien is described in this sub-
3 paragraph if—

4 “(i) the alien has engaged in a new
5 commercial enterprise (including a limited
6 partnership or similar entity) in the United
7 States that benefits the United States
8 economy;

9 “(ii) the enterprise has created full-
10 time employment for at least 3 United
11 States workers; and

12 “(iii) by not later than the end of the
13 2-year period beginning on the date on
14 which the visa is issued under this para-
15 graph, the enterprise will create full-time
16 employment for a total of at least 10
17 United States workers (which total may in-
18 clude the employment described in clause
19 (ii)).

20 “(D) METHODOLOGIES.—The Secretary of
21 Homeland Security, in consultation with the
22 Secretary of Commerce, shall recognize reason-
23 able methodologies for determining the number
24 of direct and indirect jobs created by a commer-
25 cial enterprise, including such jobs that are es-

1 timated to have been created indirectly through
2 revenues generated from increased exports, im-
3 proved regional productivity, or increased do-
4 mestic capital investment resulting from the
5 commercial enterprise.

6 “(E) DEFINITIONS.—For purposes of this
7 paragraph:

8 “(i) FULL-TIME EMPLOYMENT.—The
9 term ‘full-time employment’ means employ-
10 ment in a position that requires at least 35
11 hours of service per week at any time, re-
12 gardless of who fills the position. Such em-
13 ployment may be satisfied on a full-time
14 equivalent basis by calculating the number
15 of full-time employees that could have been
16 employed if the reported number of hours
17 worked by part-time employees had been
18 worked by full-time employees. Full-time
19 equivalent employment shall be calculated
20 by dividing the part-time hours paid by the
21 standard number of hours for full-time em-
22 ployees.

23 “(ii) INVESTMENT.—The term ‘invest-
24 ment’ does not include any assets acquired,
25 directly or indirectly, by unlawful means.

1 “(iii) QUALIFIED ANGEL INVESTOR.—

2 The term ‘qualified angel investor’ means,
3 with respect to a qualified immigrant, an
4 individual who—

5 “(I) is an accredited investor (as
6 defined in section 230.501(a) of title
7 17, Code of Federal Regulations (as
8 in effect on April 1, 2010));

9 “(II) is a United States citizen or
10 an alien lawfully admitted to the
11 United States for permanent resi-
12 dence; and

13 “(III) has made at least 2 equity
14 investments of not less than \$50,000
15 in each of the 3 years before the date
16 of a petition by the qualified immi-
17 grant for classification under this
18 paragraph.

19 “(iv) QUALIFIED BUSINESS ENTITY.—

20 The term ‘qualified business entity’ means,
21 with respect to a qualified immigrant, an
22 entity that—

23 “(I) has been operating for a pe-
24 riod beginning on a date that is not
25 less than 2 years before the date of

1 the petition for classification under
2 this paragraph;

3 “(II) employs not fewer than 10
4 United States workers in the United
5 States; and

6 “(III) has employed the alien for
7 not less than 1 year on the date of the
8 petition for classification under this
9 paragraph.

10 “(v) QUALIFIED VENTURE CAPITAL
11 OPERATING COMPANY.—The term ‘quali-
12 fied venture capital operating company’
13 means, with respect to a qualified immi-
14 grant, an entity that—

15 “(I) is classified as a ‘venture
16 capital operating company’ under sec-
17 tion 2510.3–101(d) of title 29, Code
18 of Federal Regulations (as in effect on
19 July 1, 2009);

20 “(II) is based in the United
21 States;

22 “(III) in the determination of the
23 Secretary of Homeland Security, is
24 owned and controlled by United
25 States citizens or aliens lawfully ad-

1 mitted to the United States for per-
2 manent residence;

3 “(IV) has capital commitments of
4 not less than \$10,000,000;

5 “(V) has been operating for a pe-
6 riod of at least 2 years before the date
7 of the petition for classification under
8 this paragraph; and

9 “(VI) has made at least 2 invest-
10 ments of not less than \$500,000 in
11 each of the 2 years before the date of
12 the petition for classification under
13 this paragraph.

14 “(vi) UNITED STATES WORKER.—The
15 term ‘United States worker’ means an em-
16 ployee (other than the immigrant or the
17 immigrant’s spouse, sons, or daughters)
18 who—

19 “(I) is a citizen or national of the
20 United States; or

21 “(II) is an alien who is lawfully
22 admitted for permanent residence, is
23 admitted as a refugee under section
24 207, is granted asylum under section
25 208, or is an immigrant otherwise au-

1 thorized to be employed in the United
2 States.”.

3 (b) PROCEDURE FOR GRANTING IMMIGRANT STA-
4 TUS.—Section 204(a)(1)(H) of the Immigration and Na-
5 tionality Act (8 U.S.C. 1154(a)(1)(H)) is amended by
6 striking “section 203(b)(5)” and inserting “paragraph (5)
7 or (6) of section 203(b)”.

8 (c) CONDITIONAL PERMANENT RESIDENT STATUS.—
9 Section 216A of the Immigration and Nationality Act (8
10 U.S.C. 1186b) is amended—

11 (1) by striking “Attorney General” each place
12 such term appears and inserting “Secretary of
13 Homeland Security”;

14 (2) in subsection (b)(1)—

15 (A) in subparagraph (A), by striking “in-
16 vestment” and inserting “investment or engage-
17 ment”;

18 (B) by amending subparagraph (B) to read
19 as follows:

20 “(B) the requisite investment or engage-
21 ment was not made or was not sustained
22 throughout the period of the alien’s residence in
23 the United States; or”; and

1 (C) in subparagraph (C), by striking “sec-
2 tion 203(b)(5)” and inserting “paragraph (5)
3 or 6 of section 203(b), as applicable”;

4 (3) in subsection (d)(1)—

5 (A) in the matter preceding subparagraph
6 (A), by striking “the alien”;

7 (B) by amending subparagraph (A) to read
8 as follows:

9 “(A) the requisite investment or engage-
10 ment was made and was sustained throughout
11 the period of the alien’s residence in the United
12 States; and”;

13 (C) in subparagraph (B), by striking “sec-
14 tion 203(b)(5)” and inserting “paragraph (5)
15 or (6) of section 203(b), as applicable”; and
16 (4) in subsection (f)—

17 (A) in paragraph (1), by striking “section
18 203(b)(5)” and inserting “paragraph (5) or (6)
19 of section 203(b)”;

20 (B) in paragraph (3), by inserting “or
21 similar entity” before the period.

22 (d) CAP EXEMPTION.—Section 201(b)(1) of the Im-
23 migration and Nationality Act (8 U.S.C. 1151(b)(1)), as
24 amended by section 101(b) of this Act, is further amended

1 by striking the period at the end and inserting “or section
2 203(b)(6).”.

3 **SEC. 103. ELIMINATING GREEN CARD BACKLOGS.**

4 (a) RECAPTURING IMMIGRANT VISAS LOST TO BU-
5 REAUCRATIC DELAY.—

6 (1) EMPLOYMENT-BASED IMMIGRANTS.—Sec-
7 tion 201(d) of the Immigration and Nationality Act
8 (8 U.S.C. 1151(d)) is amended to read as follows:

9 “(d) WORLDWIDE LEVEL OF EMPLOYMENT-BASED
10 IMMIGRANTS.—

11 “(1) IN GENERAL.—The worldwide level of em-
12 ployment-based immigrants under this subsection for
13 a fiscal year is equal to the sum of—

14 “(A) 140,000;

15 “(B) the number computed under para-
16 graph (2); and

17 “(C) the number computed under para-
18 graph (3).

19 “(2) PREVIOUS FISCAL YEAR.—The number
20 computed under this paragraph for a fiscal year is
21 the difference, if any, between the maximum number
22 of visas which may be issued under section 203(a)
23 (relating to family-sponsored immigrants) during the
24 previous fiscal year and the number of visas issued
25 under that section during that year.

1 “(3) UNUSED VISAS.—The number computed
2 under this paragraph is the difference, if any, be-
3 tween—

4 “(A) the difference, if any, between—

5 “(i) the sum of the worldwide levels
6 established under paragraph (1) for fiscal
7 years 1992 through 2011; and

8 “(ii) the number of visas actually
9 issued under section 203(b), subject to this
10 subsection, during such fiscal years; and

11 “(B) the number of visas actually issued
12 after fiscal year 2011 pursuant to an immi-
13 grant visa number issued under section 203(b),
14 subject to this subsection, during fiscal years
15 1992 through 2011.”.

16 (2) FAMILY-SPONSORED IMMIGRANTS.—Section
17 201(c) of the Immigration and Nationality Act (8
18 U.S.C. 1151(c)) is amended to read as follows:

19 “(c) WORLDWIDE LEVEL OF FAMILY-SPONSORED
20 IMMIGRANTS.—

21 “(1) IN GENERAL.—

22 “(A) Subject to subparagraph (B), the
23 worldwide level of family-sponsored immigrants
24 under this subsection for a fiscal year is equal
25 to—

1 “(i) 480,000 minus the number com-
2 puted under paragraph (2); plus

3 “(ii) the sum of the number computed
4 under paragraph (3) and the number com-
5 puted under paragraph (4).

6 “(B) In no case shall the number com-
7 puted under subparagraph (A)(i) be less than
8 226,000.

9 “(2) IMMEDIATE RELATIVES.—The number
10 computed under this paragraph for a fiscal year is
11 the number of aliens described in subparagraph (A)
12 or (B) of subsection (b)(2) who were issued immi-
13 grant visas, or who otherwise acquired the status of
14 an alien lawfully admitted to the United States for
15 permanent residence, in the previous fiscal year.

16 “(3) PREVIOUS FISCAL YEAR.—The number
17 computed under this paragraph for a fiscal year is
18 the difference, if any, between the maximum number
19 of visas which may be issued under section 203(b)
20 (relating to employment-based immigrants) during
21 the previous fiscal year and the number of visas
22 issued under that section during that year.

23 “(4) UNUSED VISAS.—The number computed
24 under this paragraph is the difference, if any, be-
25 tween—

1 “(A) the difference, if any, between—

2 “(i) the sum of the worldwide levels
3 established under paragraph (1) for fiscal
4 years 1992 through 2011; and

5 “(ii) the number of visas actually
6 issued under section 203(a), subject to this
7 subsection, during such fiscal years; and

8 “(B) the number of visas actually issued
9 after fiscal year 2011 pursuant to an immi-
10 grant visa number issued under section 203(a),
11 subject to this subsection, during fiscal years
12 1992 through 2011.”.

13 (b) SPOUSES AND MINOR CHILDREN.—Section
14 201(b)(1) of the Immigration and Nationality Act (8
15 U.S.C. 1151(b)(1)), as amended by this Act, is further
16 amended by adding at the end the following:

17 “(G) Aliens who are the spouse or child of
18 an alien admitted as an employment-based im-
19 migrant under section 203(b).”.

20 (c) ELIMINATING EMPLOYMENT-BASED PER COUN-
21 TRY LEVELS.—Section 202(a) of the Immigration and
22 Nationality Act (8 U.S.C. 1152(a)) is amended—

23 (1) in paragraph (2)—

24 (A) by striking “, (4), and (5)” and insert-
25 ing “and (4)”;

1 (B) by striking “subsections (a) and (b) of
2 section 203” and inserting “section 203(a)”;

3 (C) by striking “7 percent (in the case of
4 a single foreign state) or 2 percent” and insert-
5 ing “10 percent (in the case of a single foreign
6 state) or 5 percent”; and

7 (D) by striking “such subsections” and in-
8 serting “such section”; and

9 (2) by striking paragraph (5).

10 (d) COUNTRY-SPECIFIC OFFSET.—Section 2 of the
11 Chinese Student Protection Act of 1992 (8 U.S.C. 1255
12 note) is amended—

13 (1) in subsection (a), by striking “subsection
14 (e)” and inserting “subsection (d)”;

15 (2) by striking subsection (d); and

16 (3) by redesignating subsection (e) as sub-
17 section (d).

18 **SEC. 104. IMMIGRANT ENTREPRENEURS AND INNOVATORS**

19 **PRESENT IN THE UNITED STATES.**

20 Section 245 of the Immigration and Nationality Act
21 (8 U.S.C. 1255) is amended by adding at the end the fol-
22 lowing:

23 “(n) IMMIGRANT ENTREPRENEURS AND INNOVATORS
24 PRESENT IN THE UNITED STATES.—An alien who is eligi-
25 ble to receive an immigrant visa under paragraph (1)(D)

1 or (6) of section 203(b) may adjust status pursuant to
2 subsection (a) and notwithstanding paragraph (2), (7), or
3 (8) of subsection (c) and paragraphs (6)(A) and (7) of
4 section 212(a), if the alien was present in the United
5 States on the date of the enactment of the IDEA Act of
6 2011 and has been continuously present since that date.”.

7 **TITLE II—INVESTING IN THE**
8 **NEXT GENERATION OF**
9 **INNOVATORS AND JOB CRE-**
10 **ATORS**

11 **SEC. 201. INVESTING IN STEM EDUCATION FOR U.S. STU-**
12 **DENTS.**

13 Section 204(a)(1)(F) of the Immigration and Nation-
14 ality Act (8 U.S.C. 1154(a)(1)(F)), as amended by this
15 Act, is further amended—

16 (1) by striking “(F)” and inserting “(F)(i)”;

17 and

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

19 “(ii)(I) The Secretary of Homeland Secu-
20 rity shall impose a fee on an employer (exclud-
21 ing any employer that is a primary or sec-
22 ondary education institution, an institution of
23 higher education, a nonprofit entity related to
24 or affiliated with any such institution, a non-
25 profit entity which engages in established cur-

1 curriculum-related clinical training of students reg-
2 istered at any such institution, a nonprofit re-
3 search organization, or a governmental research
4 organization) filing a petition under clause (i)
5 to employ an alien entitled to classification
6 under subparagraph (B) or (D) of section
7 203(b)(1), section 203(b)(2), clause (i) or (ii) of
8 section 203(b)(3)(A), section 203(b)(5) or sec-
9 tion 203(b)(6).

10 “(II) The amount of the fee shall be
11 \$2,000 for each such petition except that the
12 fee shall be half the amount for each such peti-
13 tion by any employer with not more than 25
14 full-time equivalent employees who are em-
15 ployed in the United States.

16 “(III) Fees collected under this clause
17 shall be deposited in the Treasury in accordance
18 with section 286(s).”.

19 **SEC. 202. U.S. STEM EDUCATION AND TRAINING ACCOUNT.**

20 Section 286(s) of the Immigration and Nationality
21 Act (8 U.S.C. 1356(s)) is amended to read as follows:

22 “(s) STEM EDUCATION AND TRAINING ACCOUNT.—

23 “(1) IN GENERAL.—There is established in the
24 general fund of the Treasury a separate account,
25 which shall be known as the ‘STEM Education and

1 Training Account'. Notwithstanding any other sec-
2 tion of this title, there shall be deposited as offset-
3 ting receipts into the account all fees collected under
4 section 204(a)(1)(F)(ii) and paragraphs (9) and
5 (11) of section 214(c).

6 “(2) LOW-INCOME STEM SCHOLARSHIP PRO-
7 GRAM.—Sixty percent of the amounts deposited into
8 the STEM Education and Training Account shall
9 remain available to the Director of the National
10 Science Foundation until expended for scholarships
11 described in section 414(d) of the American Com-
12 petitiveness and Workforce Improvement Act of
13 1998 for low-income students enrolled in a program
14 of study leading to a degree in science, technology,
15 engineering, or mathematics.

16 “(3) NATIONAL SCIENCE FOUNDATION COM-
17 PETITIVE GRANT PROGRAM FOR K–12 SCIENCE,
18 TECHNOLOGY, ENGINEERING AND MATHEMATICS
19 EDUCATION.—

20 “(A) IN GENERAL.—Fifteen percent of the
21 amounts deposited into the STEM Education
22 and Training Account shall remain available to
23 the Director of the National Science Founda-
24 tion until expended to carry out a direct or
25 matching grant program to support improve-

1 ment in K–12 education, including through pri-
2 vate-public partnerships.

3 “(B) TYPES OF PROGRAMS COVERED.—

4 The Director shall award grants to such pro-
5 grams, including those which support the devel-
6 opment and implementation of standards-based
7 instructional materials models and related stu-
8 dent assessments that enable K–12 students to
9 acquire an understanding of science, technology,
10 engineering, and mathematics, as well as to de-
11 velop critical thinking skills; provide systemic
12 improvement in training K–12 teachers and
13 education for students in science, technology,
14 engineering, and mathematics, including by
15 supporting efforts to promote gender-equality
16 among students receiving such instruction; sup-
17 port the professional development of K–12
18 science, technology, engineering and mathe-
19 matics teachers in the use of technology in the
20 classroom; stimulate system-wide K–12 reform
21 of science, technology, engineering, and mathe-
22 matics in rural, economically disadvantaged re-
23 gions of the United States; provide externships
24 and other opportunities for students to increase
25 their appreciation and understanding of science,

1 technology, engineering, and mathematics (in-
2 cluding summer institutes sponsored by an in-
3 stitution of higher education for students in
4 grades 7–12 that provide instruction in such
5 fields); involve partnerships of industry, edu-
6 cational institutions, and community organiza-
7 tions to address the educational needs of dis-
8 advantaged communities; provide college pre-
9 paratory support to expose and prepare stu-
10 dents for careers in science, technology, engi-
11 neering, and mathematics; and provide for car-
12 rying out systemic reform activities under sec-
13 tion 3(a)(1) of the National Science Foundation
14 Act of 1950 (42 U.S.C. 1862(a)(1)).

15 “(4) STEM CAPACITY BUILDING AT MINORITY-
16 SERVING INSTITUTIONS.—

17 “(A) IN GENERAL.—Twelve percent of the
18 amounts deposited into the STEM Education
19 and Training Account shall remain available to
20 the Director of the National Science Founda-
21 tion until expended to establish or expand pro-
22 grams to award grants on a competitive, merit-
23 reviewed basis to enhance the quality of under-
24 graduate science, technology, engineering, and
25 mathematics education at minority-serving in-

1 stitutions of higher education and to increase
2 the retention and graduation rates of students
3 pursuing degrees in such fields at such institu-
4 tions.

5 “(B) TYPES OF PROGRAMS COVERED.—
6 Grants awarded under this paragraph shall be
7 awarded to—

8 “(i) minority-serving institutions of
9 higher education for—

10 “(I) activities to improve courses
11 and curriculum in science, technology,
12 engineering, and mathematics;

13 “(II) efforts to promote gender
14 equality among students enrolled in
15 such courses;

16 “(III) faculty development;

17 “(IV) stipends for undergraduate
18 students participating in research;
19 and

20 “(V) other activities consistent
21 with subparagraph (A), as determined
22 by the Director; and

23 “(ii) to other institutions of higher
24 education to partner with the institutions
25 described in clause (i) for—

1 “(I) faculty and student develop-
2 ment and exchange;

3 “(II) research infrastructure de-
4 velopment;

5 “(III) joint research projects;
6 and

7 “(IV) identification and develop-
8 ment of minority and low-income can-
9 didates for graduate studies in
10 science, technology, engineering and
11 mathematics degree programs.

12 “(C) INSTITUTIONS INCLUDED.—In this
13 paragraph, the term ‘minority-serving institu-
14 tions of higher education’ shall include—

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

19 “(ii) 1994 Institutions, as defined in
20 section 532 of the Equity in Educational
21 Land-Grant Status Act of 1994 (7 U.S.C.
22 301 note); and

23 “(iii) Hispanic-serving institutions, as
24 defined in section 502(a)(5) of the Higher

1 Education Act of 1965 (20 U.S.C.
2 1101a(a)(5)).

3 “(5) STEM JOB TRAINING.—Ten percent of
4 amounts deposited into the STEM Education and
5 Training Account shall remain available to the Sec-
6 retary of Labor until expended for—

7 “(A) demonstration programs and projects
8 described in section 414(c) of the American
9 Competitiveness and Workforce Improvement
10 Act of 1998; and

11 “(B) training programs in the fields of
12 science, technology, engineering, and mathe-
13 matics for persons who have served honorably
14 in the Armed Forces of the United States and
15 have retired or are retiring from such service.

16 “(6) USE OF FEES FOR DUTIES RELATING TO
17 PETITIONS.—One and one-half percent of the
18 amounts deposited into the STEM Education and
19 Training Account shall remain available to the Sec-
20 retary of Homeland Security until expended to carry
21 out duties under paragraphs (1) (E) or (F) of sec-
22 tion 204(a) (related to petitions for immigrants de-
23 scribed in section 203(b)) and under paragraphs (1)
24 and (9) of section 214(c) (related to petitions made

1 for nonimmigrants described in section
2 101(a)(15)(H)(i)(b)).

3 “(7) USE OF FEES FOR APPLICATION PROC-
4 ESSING AND ENFORCEMENT.—One and one-half per-
5 cent of the amounts deposited into the STEM Edu-
6 cation and Training Account shall remain available
7 to the Secretary of Labor until expended for de-
8 creasing the processing time for applications under
9 section 212(a)(5)(A) and section 212(n)(1).”.

10 **SEC. 203. ACCESS TO STUDENT VISAS FOR IMMIGRANT STU-**
11 **DENTS PRESENT IN THE UNITED STATES.**

12 Notwithstanding paragraphs (6)(A) and (7) of sec-
13 tion 212(a) of the Immigration and Nationality Act (8
14 U.S.C. 1182(a)), the Secretary of Homeland Security may
15 adjust an alien’s status to that of a nonimmigrant student
16 under section 101(a)(15)(F) of such Act (8 U.S.C.
17 1101(a)(15)(F)) if the alien—

18 (1) is a bona fide student enrolled in a full
19 course of study at a United States institution of
20 higher education;

21 (2) was present in the United States on the
22 date of the enactment of this Act and has been con-
23 tinuously present since that date; and

24 (3) was 15 years of age or younger on the date
25 the alien initially entered the United States.

1 **TITLE III—REDUCING ADMINIS-**
 2 **TRATIVE HURDLES TO FOS-**
 3 **TER INNOVATION AND JOB**
 4 **CREATION**

5 **SEC. 301. STREAMLINING LABOR CERTIFICATIONS.**

6 (a) IN GENERAL.—Section 212(a)(5)(A) of the Im-
 7 migration and Nationality Act (8. U.S.C. 1182(a)(5)(A))
 8 is amended—

9 (1) in clause (ii)—

10 (A) in subclause (I), by striking “or”;

11 (B) in subclause (II), by striking the pe-
 12 riod and inserting “, or”;

13 (C) by adding at the end the following new
 14 subclause:

15 “(III) is the beneficiary of a
 16 labor certification application filed by
 17 an employer designated as an Estab-
 18 lished U.S. Recruiter under clause
 19 (vii).”; and

20 (2) by adding at the end the following new
 21 clauses:

22 “(v) PROCESSING STANDARDS.—

23 “(I) TIMEFRAMES.—The Sec-
 24 retary of Labor shall adjudicate an
 25 application for certification under

1 clause (i) not later than 120 days
2 after the date on which the applica-
3 tion is filed. In the event that addi-
4 tional information or documentation is
5 requested by the Secretary during
6 such 120-day period, the Secretary
7 shall adjudicate the application not
8 later than 60 days after the date on
9 which such information or documenta-
10 tion is received.

11 “(II) NOTICE WITHIN 30 DAYS OF
12 DEFICIENCIES.—The employer shall
13 be notified in writing within 30 days
14 of the date of filing if the application
15 does not meet the standards (other
16 than that described in clause (i)(I))
17 for approval. If the application does
18 not meet such standards, the notice
19 shall include the reasons therefor and
20 the Secretary shall provide an oppor-
21 tunity for the prompt resubmission of
22 a modified application.

23 “(vi) FEES.—

24 “(I) APPLICATION FEE.—In ad-
25 dition to any other fees authorized by

1 law, the Secretary of Labor shall im-
2 pose a fee on an employer that sub-
3 mits an application for certification
4 under clause (i). The amount of the
5 fee shall be \$295 for each such appli-
6 cation.

7 “(II) PREMIUM PROCESSING.—

8 The Secretary of Labor is authorized
9 to establish and collect an optional
10 premium fee for processing of applica-
11 tions for certification under clause (i).
12 This fee shall be set at \$1,000 and
13 shall be paid in addition to the appli-
14 cation fee under subclause (I). For an
15 application in which the premium
16 processing fee is paid, the Secretary
17 shall adjudicate the application not
18 later than 30 days after the date on
19 which the application is filed. In the
20 event that additional information or
21 documentation is requested by the
22 Secretary with respect to such appli-
23 cation during the 30-day period, the
24 Secretary shall adjudicate the applica-
25 tion not later than 30 days after the

1 date on which such information or
2 documentation is received. If the Sec-
3 retary does not comply with these
4 timeframes, the Secretary shall refund
5 the premium processing fee to the ap-
6 plicant.

7 “(III) DEPOSIT OF FEES.—Fees
8 collected under subclauses (I) and (II)
9 shall be deposited in the Treasury in
10 accordance with section 286(w).

11 “(IV) PROHIBITION ON EM-
12 PLOYER ACCEPTING REIMBURSEMENT
13 OF FEE.—An employer subject to a
14 fee under this clause shall not require
15 or accept reimbursement of or other
16 compensation for all or part of the
17 cost of such fee, directly or indirectly,
18 from the alien on whose behalf the ap-
19 plication is filed.

20 “(vii) ESTABLISHED U.S. RECRUIT-
21 ERS.—

22 “(I) IN GENERAL.—The Sec-
23 retary of Labor shall establish a proc-
24 ess for employers to apply for des-
25 ignation as an Established U.S. Re-

1 cruiter. An employer seeking such
2 designation must file an application
3 with the Secretary stating the fol-
4 lowing:

5 “(aa) At least 80 percent of
6 the employer’s workforce in the
7 United States are United States
8 workers.

9 “(bb) At least 80 percent of
10 the employer’s new hires in the
11 United States in the 5 years pre-
12 ceding the filing of the applica-
13 tion are United States workers.

14 “(cc) The employer regularly
15 posts employment opportunities
16 on a publicly accessible Internet
17 Web site and has engaged in at
18 least 3 other forms of active re-
19 cruitment on an annual basis
20 over the preceding 3 years.

21 “(dd) The employer will con-
22 tinue to engage in the recruit-
23 ment efforts described in item
24 (cc) during the certification pe-
25 riod.

1 For the purposes of this clause, the
2 term ‘United States worker’ shall in-
3 clude an alien with a pending or ap-
4 proved petition under subparagraph
5 (E) or (F) of section 204(a)(1).

6 “(II) DESIGNATION.—

7 “(aa) TIMELY ADJUDICA-
8 TIONS.—The Secretary of Labor
9 shall adjudicate an application
10 for designation under subclause
11 (I) not later than 30 days after
12 the date on which the application
13 is filed. In the event that addi-
14 tional information or documenta-
15 tion is requested by the Sec-
16 retary, the Secretary shall adju-
17 dicate the application not later
18 than 30 days after the receipt of
19 such information or documenta-
20 tion.

21 “(bb) APPLICATION FEE.—

22 In addition to any other fees au-
23 thorized by law, the Secretary of
24 Labor may impose a fee on an
25 employer that submits an appli-

1 cation for designation under sub-
2 clause (I). The amount of the fee
3 shall be \$500 for each such ap-
4 plication. Fees collected under
5 this clause shall be deposited in
6 the Treasury in accordance with
7 section 286(w).

8 “(cc) PERIOD OF DESIGNA-
9 TION.—Unless terminated under
10 item (dd), a designation issued
11 under this clause shall be valid
12 for 3 years.

13 “(dd) TERMINATION.—The
14 Secretary of Labor may termi-
15 nate a designation under sub-
16 clause (I) if the Secretary deter-
17 mines that the employer—

18 “(AA) did not fulfill the
19 requirements of such sub-
20 clause at the time the cer-
21 tification was issued; or

22 “(BB) failed to meet
23 the requirements under sub-
24 clause (I)(ee) during the

1 designation period described
2 in item (cc).

3 “(III) ACTIVE RECRUITMENT.—
4 For the purposes of this clause ‘active
5 recruitment’ means any of the fol-
6 lowing:

7 “(aa) EMPLOYEE REFERRAL
8 PROGRAM.—The employer oper-
9 ates an employee referral pro-
10 gram that includes meaningful
11 incentives for employees to refer
12 workers for job openings.

13 “(bb) IN-HOUSE RECRUIT-
14 ERS.—The employer retains an
15 in-house recruiter on a full-time
16 basis to recruit workers for job
17 openings.

18 “(cc) JOB FAIRS.—The em-
19 ployer recruits workers at job
20 fairs that are advertised in news-
21 paper advertisements in which
22 the employer is named as a par-
23 ticipant in such fairs.

24 “(dd) MILITARY RECRUIT-
25 ING.—The employer recruits

1 workers during recruiting events
2 that are organized by the Armed
3 Forces of the United States.

4 “(ee) ON-CAMPUS RECRUIT-
5 ING.—The employer recruits
6 workers at institutions of higher
7 education during recruiting
8 events that are organized by such
9 institutions.

10 “(ff) PRIVATE EMPLOYMENT
11 FIRMS.—The employer regularly
12 engages private employment
13 firms or placement agencies to
14 recruit workers for job openings.

15 “(gg) TRADE OR PROFES-
16 SIONAL ORGANIZATIONS.—The
17 employer regularly advertises
18 with trade or professional organi-
19 zations to recruit workers for job
20 openings.”.

21 (b) ESTABLISHMENT OF ACCOUNT AND USE OF
22 FUNDS.—Section 286 of the Immigration and Nationality
23 Act (8 U.S.C. 1356) is amended by adding at the end the
24 following new subsection:

1 “(w) LABOR CERTIFICATION APPLICATION FEE AC-
2 COUNT.—

3 “(1) IN GENERAL.—There is established in the
4 general fund of the Treasury a separate account,
5 which shall be known as the ‘Labor Certification Ap-
6 plication Fee Account’. Notwithstanding any other
7 section of this title, there shall be deposited as off-
8 setting receipts into the account all fees collected
9 under section 212(a)(5)(A).

10 “(2) USE OF FEES.—Amounts deposited into
11 the Labor Certification Application Fee Account
12 shall remain available to the Secretary of Labor
13 until expended for carrying out labor certification
14 activities under section 212(a)(5)(A) (including pro-
15 viding premium processing services) and to make in-
16 frastructure improvements in the adjudications and
17 customer-service processes related to such activi-
18 ties.”.

19 **SEC. 302. STREAMLINING PETITIONS FOR ESTABLISHED**
20 **EMPLOYERS.**

21 Section 214(c) of the Immigration and Nationality
22 Act (8. U.S.C. 1184) is amended by adding at the end
23 the following:

24 “(15) The Secretary of Homeland Security shall es-
25 tablish a pre-certification procedure for employers who file

1 multiple petitions described in this subsection or section
2 203(b). Such precertification procedure shall enable an
3 employer to avoid repeatedly submitting documentation
4 that is common to multiple petitions and establish,
5 through a single filing, criteria relating to the employer
6 and the offered employment opportunity.”.

7 **SEC. 303. PREMIUM PROCESSING.**

8 Section 286(u) of the Immigration and Nationality
9 Act (8 U.S.C. 1356(u)) is amended—

10 (1) by striking “is authorized to” and inserting
11 “shall”; and

12 (2) at the end of the first sentence, by striking
13 “applications.” and inserting “applications, includ-
14 ing an administrative appeal of any decision on an
15 employment-based immigrant petition.”.

16 **TITLE IV—PROTECTING**
17 **AMERICAN WORKERS**

18 **SEC. 401. STRENGTHENING THE PREVAILING WAGE SYS-**
19 **TEM TO PROTECT AMERICAN WORKERS.**

20 Section 212(p) of the Immigration and Nationality
21 Act (8 U.S.C. 1182(p)) is amended to read as follows:

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

23 “(1) The Secretary of Labor shall make avail-
24 able to employers a governmental survey to deter-
25 mine the prevailing wage for each occupational clas-

1 sification by metropolitan statistical area in the
2 United States. Such survey, or other survey ap-
3 proved by the Secretary of Labor, shall provide 3
4 levels of wages commensurate with experience, edu-
5 cation, and level of supervision. Such wage levels
6 shall be determined as follows:

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

11 “(B) The second level shall be the mean of
12 wages surveyed.

13 “(C) The third level shall be the mean of
14 the highest two-thirds of wages surveyed.

15 “(2) The prevailing wage level required to be
16 paid pursuant to section 203(b)(1)(D) and sub-
17 sections (a)(5)(A), (n)(1)(A)(i)(II), and
18 (t)(1)(A)(i)(II) of this section shall be 100 percent
19 of the wage level determined pursuant to those sec-
20 tions.

21 “(3) In computing the prevailing wage level for
22 an occupational classification in an area of employ-
23 ment for purposes of section 203(b)(1)(D) and sub-
24 sections (a)(5)(A), (n)(1)(A)(i)(II), and

1 (t)(1)(A)(i)(II) of this section in the case of an em-
 2 ployee of—

3 “(A) an institution of higher education, or
 4 a related or affiliated nonprofit entity, or

5 “(B) a nonprofit research organization or
 6 a Governmental research organization,

7 the prevailing wage level shall only take into account
 8 employees at such institutions and organizations in
 9 the area of employment.

10 “(4) With respect to a professional athlete (as
 11 defined in subsection (a)(5)(A)(iii)(II)) when the job
 12 opportunity is covered by professional sports league
 13 rules or regulations, the wage set forth in those
 14 rules or regulations shall be considered as not ad-
 15 versely affecting the wages of United States workers
 16 similarly employed and be considered the prevailing
 17 wage.”.

18 **SEC. 402. REFORMING THE H-1B VISA PROGRAM TO PRO-**
 19 **TECT AMERICAN WORKERS.**

20 (a) **STRENGTHENING WAGE PROTECTIONS.**—Section
 21 214(g)(3) of the Immigration and Nationality Act (8
 22 U.S.C. 1184(g)(3)) is amended—

23 (1) by striking “Aliens who” and inserting “(A)
 24 Aliens who”; and

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

1 “(B) If, on any given date, the number of peti-
2 tions filed under subparagraph (A) exceeds the num-
3 ber of visas remaining under paragraph (1), the Sec-
4 retary shall consider such petitions in the following
5 order:

6 “(i) petitions in which the offered wage
7 level meets or exceeds the wage set by section
8 212(p)(1)(C);

9 “(ii) petitions in which the offered wage
10 level meets or exceeds the wage set by section
11 212(p)(1)(B); and

12 “(iii) any remaining petitions.”.

13 (b) PROHIBITING DISPLACEMENT OF U.S. WORK-
14 ERS.—

15 (1) PROHIBITING DISPLACEMENT BY EM-
16 PLOYER.—Section 212(n)(1)(E) of the Immigration
17 and Nationality Act (8 U.S.C. 1182(n)(1)(E)) is
18 amended—

19 (A) in clause (i) by striking “In the case
20 of an application described in clause (ii), the”
21 and inserting “The”; and

22 (B) by striking clause (ii).

23 (2) PROHIBITING DISPLACEMENT BY THIRD-
24 PARTY EMPLOYER.—Section 212(n)(1)(F) of the Im-
25 migration and Nationality Act (8 U.S.C.

1 1182(n)(1)(F)) is amended by striking “In the case
2 of an application described in subparagraph (E)(ii),
3 the” and inserting “The”.

4 (3) DEFINITION OF DISPLACE.—Section
5 212(n)(4)(B) of the Immigration and Nationality
6 Act (8 U.S.C. 1182(n)(4)(B)) is amended by—

7 (A) inserting “and skills” after “respon-
8 sibilities”; and

9 (B) inserting “working in the same divi-
10 sion, project or product line” after “experi-
11 ence”.

12 (c) STRENGTHENING RECRUITMENT REQUIRE-
13 MENTS.—

14 (1) REQUIRING RECRUITMENT OF U.S. WORK-
15 ERS.—

16 (A) IN GENERAL.—Section 212(n)(1)(G)(i)
17 of the Immigration and Nationality Act (8
18 U.S.C. 1182(n)(1)(G)(i)) is amended by strik-
19 ing “In the case of an application described in
20 subparagraph (E)(ii), subject to clause (ii)” and
21 inserting “Subject to clauses (ii) and (iii)”.

22 (B) DEPENDENT EMPLOYERS.—Section
23 212(n)(1)(G)(ii) of the Immigration and Na-
24 tionality Act (8 U.S.C. 1182(n)(1)(G)(ii)) is
25 amended to read as follows:

1 “(ii) The employer shall be required
2 to comply with additional supervised re-
3 cruitment activities as specified by the Sec-
4 retary of the Labor if the employer—

5 “(I) employs 50 or more employ-
6 ees in the United States and less than
7 50 percent of such employees are
8 United States workers; and

9 “(II) is offering wages below the
10 wage level set by subsection (p)(1)(B)
11 (relating to the mean wage for the oc-
12 cupational classification in the area of
13 employment).

14 For purposes of this clause, the term
15 ‘United States worker’ shall include an
16 alien with a pending or approved petition
17 under subparagraph (E) or (F) of section
18 204(a)(1).”.

19 (C) RECRUITMENT REPORT.—Section
20 212(n)(1) of the Immigration and Nationality
21 Act (8 U.S.C. 1182(n)(1)) is amended, in the
22 flush text following subparagraph (G), by strik-
23 ing “Nothing in subparagraph (G)” and insert-
24 ing “An employer required to recruit under sub-
25 paragraph (G) shall submit to the Secretary,

1 along with an application under this paragraph,
2 a recruitment report containing evidence that
3 the employer posted the employment oppor-
4 tunity on a publicly accessible Internet Web site
5 and engaged in at least 3 other forms of active
6 recruitment (as defined in subsection
7 (a)(5)(A)(vii)(III)). The employer shall main-
8 tain an audit file of recruitment activities, in-
9 cluding information on United States worker
10 applicants, for 3 years after the date the appli-
11 cation was filed with the Secretary. Nothing in
12 Subparagraph (G)”.

13 (2) EXCEPTION FOR EMPLOYERS WHO PAY IN-
14 CREASED WAGES.—Section 212(n)(1)(G) of the Im-
15 migration and Nationality Act (8 U.S.C.
16 1182(n)(1)(G)), as amended by this subsection, is
17 further amended by adding at the end the following:

18 “(iii) The conditions described in
19 clause (i) shall not apply to an application
20 filed with respect to the employment of an
21 H-1B nonimmigrant—

22 “(I) who is described in subpara-
23 graph (A), (B), or (C) of section
24 203(b)(1); or

1 “(II) if the wages being offered
2 to such nonimmigrant meet or exceed
3 the wage level set by subsection
4 (p)(1)(B) (relating to the mean wage
5 for the occupational classification in
6 the area of employment) and the ap-
7 plicant is designated as an Estab-
8 lished U.S. Recruiter under section
9 212(a)(5)(A)(vii).”.

10 (3) ELIMINATING REDUNDANT TESTING OF
11 LABOR MARKET.—Section 212(a)(5)(D) of the Im-
12 migration and Nationality Act (8 U.S.C.
13 1182(a)(5)(D)) is amended—

14 (A) by striking “The grounds” and insert-
15 ing “(i) Except as provided in clause (ii), the
16 grounds”; and

17 (B) by adding at the end the following:

18 “(ii) Clause (i) shall not apply to an alien
19 seeking admission or adjustment of status who
20 is presently a nonimmigrant described under
21 section 101(a)(15)(H)(i)(b) if—

22 “(I) the alien obtained such non-
23 immigrant status based on a petition filed
24 after the effective date of the IDEA Act of
25 2011;

1 “(II) the alien is the subject of a peti-
2 tion described in section 204(a)(1)(F) and
3 is seeking admission or adjustment of sta-
4 tus through such petition; and

5 “(III) the petition described in sub-
6 clause (II) was filed by the alien’s em-
7 ployer within 18 months after the date on
8 which the alien obtained nonimmigrant
9 status under section 101(a)(15)(H)(i)(b).”.

10 (d) IMPROVING PROTECTIONS FOR U.S. WORKERS.—

11 (1) IN GENERAL.—Section 212(n)(2) of the Im-
12 migration and Nationality Act (8 U.S.C.
13 1182(n)(2)) is amended to read as follows:

14 “(2)(A) IN GENERAL.—The Secretary of Labor
15 shall establish a process for the receipt, investiga-
16 tion, and disposition of complaints, which may be
17 filed by any aggrieved person or organization (in-
18 cluding bargaining representatives), respecting an
19 employer’s compliance with this subsection. The Sec-
20 retary, either pursuant to this complaint process or
21 otherwise, may investigate employers as necessary to
22 determine such compliance. The Secretary shall
23 audit at least 5 percent of the employers who file ap-
24 plications under paragraph (1) in a given year to de-
25 termine compliance with this subsection.

1 “(B) PENALTIES.—If the Secretary of Labor
2 finds, after notice and an opportunity for a hear-
3 ing—

4 “(i) a substantial failure to meet any of
5 the conditions of the application described
6 under paragraph (1), a misrepresentation of a
7 material fact in such application, or a violation
8 of subparagraph (C) or (D)—

9 “(I) the Secretary of Labor shall, in
10 addition to any other remedy authorized by
11 law, impose such administrative remedies
12 (including civil monetary penalties in an
13 amount not to exceed \$10,000 per viola-
14 tion) as the Secretary determines to be ap-
15 propriate; and

16 “(II) the Secretary of Labor may not
17 approve applications with respect to that
18 employer under paragraph (1) during a pe-
19 riod of at least 1 year but not more than
20 5 years for aliens to be employed by the
21 employer; and

22 “(ii) a substantial failure to meet any of
23 the conditions of the application described
24 under paragraph (1) or a misrepresentation of
25 a material fact in such application, in the

1 course of which failure or misrepresentation the
2 employer displaced a United States worker em-
3 ployed by the employer within the period begin-
4 ning 180 days before and ending 180 days after
5 the date of filing of any visa petition supported
6 by the application—

7 “(I) the Secretary of Labor shall im-
8 pose such administrative remedies (includ-
9 ing civil monetary penalties in an amount
10 not to exceed \$35,000 per violation) as the
11 Secretary determines to be appropriate;
12 and

13 “(II) the Secretary of Labor may not
14 approve applications with respect to that
15 employer under paragraph (1) during a pe-
16 riod of at least 5 years for aliens to be em-
17 ployed by the employer.

18 “(C) DISCRIMINATION OR RETALIATION PRO-
19 HIBITED.—It is a violation of this subparagraph for
20 an employer who has filed an application under this
21 subsection to intimidate, threaten, restrain, coerce,
22 discharge, or in any other manner discriminate or
23 retaliate against an employee (including a former
24 employee or an applicant for employment) because
25 the employee—

1 “(i) has disclosed information to the em-
2 ployer, or to any other person, that the em-
3 ployee reasonably believes evidences a violation
4 of this subsection, or any rule or regulation per-
5 taining to this subsection; or

6 “(ii) seeks legal assistance or counsel re-
7 lated to any such violation, or cooperates, or
8 seeks to cooperate, in an investigation or other
9 proceeding concerning the employer’s compli-
10 ance with the requirements of this subsection,
11 or any rule or regulation pertaining to this sub-
12 section.

13 The Secretary of Labor and the Secretary of Home-
14 land Security shall devise a process under which an
15 H-1B nonimmigrant who files a complaint regarding
16 a violation of this subparagraph and is otherwise eli-
17 gible to remain and work in the United States may
18 be allowed to seek other appropriate employment in
19 the United States for a period not to exceed the
20 maximum period of stay authorized for such non-
21 immigrant classification.

22 “(D) PROHIBITED FEES.—It is a violation of
23 this subparagraph for an employer who has filed an
24 application under this subsection—

1 “(i) to require an H–1B nonimmigrant to
2 pay a penalty for ceasing employment with the
3 employer prior to a date agreed to by the non-
4 immigrant and the employer; or

5 “(ii) to require or accept reimbursement or
6 any other form of compensation from an alien
7 with respect to a fee imposed on the employer
8 under section 214(c)(9).

9 “(E) BENCHING PROHIBITED.—

10 “(i) IN GENERAL.—It is a violation of
11 paragraph (1)(A) for an employer, who has
12 filed an application under this subsection and
13 who places an H–1B nonimmigrant, after the
14 nonimmigrant has entered into employment
15 with the employer, in nonproductive status due
16 to a decision by the employer (based on factors
17 such as lack of work), or due to the non-
18 immigrant’s lack of a permit or license, to fail
19 to pay the nonimmigrant full-time wages in ac-
20 cordance with paragraph (1)(a) for all such
21 nonproductive time (if the nonimmigrant was
22 designated as a full-time employee on the peti-
23 tion filed under section 214(c)(1)) or otherwise
24 for such hours as are designated on such peti-

1 tion consistent with the rate of pay identified
2 on such petition.

3 “(ii) EXCEPTIONS.—

4 “(I) In the case of an H–1B non-
5 immigrant who has not yet entered into
6 employment with an employer who has had
7 approved an application under this sub-
8 section, and a petition under section
9 214(c)(1), with respect to the non-
10 immigrant, subclause (i) shall apply to the
11 employer beginning 30 days after the date
12 the nonimmigrant first is admitted into the
13 United States pursuant to the petition, or
14 60 days after the date the nonimmigrant
15 becomes eligible to work for the employer
16 (in the case of a nonimmigrant who is
17 present in the United States on the date of
18 the approval of the petition).

19 “(II) Clause (i) does not apply to a
20 failure to pay wages to an H–1B non-
21 immigrant for nonproductive time due to
22 non-work-related factors, such as the vol-
23 untary request of the nonimmigrant for an
24 absence or circumstances rendering the
25 nonimmigrant unable to work.

1 “(III) Clause (i) shall not be con-
2 strued as prohibiting an employer that is a
3 school or other educational institution from
4 applying to an H-1B nonimmigrant an es-
5 tablished salary practice of the employer,
6 under which the employer pays to H-1B
7 nonimmigrants and United States workers
8 in the same occupational classification an
9 annual salary in disbursements over fewer
10 than 12 months, if—

11 “(aa) the nonimmigrant agrees to
12 the compressed annual salary pay-
13 ments prior to the commencement of
14 the employment; and

15 “(bb) the application of the sal-
16 ary practice to the nonimmigrant does
17 not otherwise cause the nonimmigrant
18 to violate any condition of the non-
19 immigrant’s authorization under this
20 chapter to remain in the United
21 States.

22 “(iii) RELATION TO SUBPARAGRAPH (G).—
23 This subparagraph shall not be construed as
24 superseding subparagraph (G).

1 “(F) TREATMENT.—It is a violation of para-
2 graph (1)(A) for an employer who has filed an appli-
3 cation under this subsection to fail to offer to an H-
4 1B nonimmigrant, during the nonimmigrant’s period
5 of authorized employment, benefits and eligibility for
6 benefits (including the opportunity to participate in
7 health, life, disability, and other insurance plans; the
8 opportunity to participate in retirement and savings
9 plans; and cash bonuses and noncash compensation,
10 such as stock options (whether or not based on per-
11 formance)) on the same basis, and in accordance
12 with the same criteria, as the employer offers to
13 United States workers.

14 “(G) BACK WAGES.—If the Secretary of Labor
15 finds, after notice and an opportunity for a hearing,
16 that recovery of back wages, fees or costs is nec-
17 essary to address a violation of this subsection or
18 any other law, the Secretary of Labor may recover
19 such back wages, fees or costs on behalf of the work-
20 er.

21 “(H) GOOD FAITH COMPLIANCE.—

22 “(i) Except as provided in clauses (ii) and
23 (iii), a person or entity is considered to have
24 complied with the requirements of this sub-
25 section, notwithstanding a technical or proce-

1 dural failure to meet such requirements, if
2 there was a good faith attempt to comply with
3 the requirements.

4 “(ii) Clause (i) shall not apply if—

5 “(I) the Department of Labor (or an-
6 other enforcement agency) has explained to
7 the person or entity the basis for the fail-
8 ure;

9 “(II) the person or entity has been
10 provided a period of not less than 10 busi-
11 ness days (beginning after the date of the
12 explanation) within which to correct such
13 failure; and

14 “(III) the person or entity has not
15 corrected the failure voluntarily within
16 such period.

17 “(iii) A person or entity that, in the course
18 of an investigation, is found to have violated the
19 prevailing wage requirements set forth in para-
20 graph (1)(A), shall not be assessed fines or
21 other penalties for such violation if the person
22 or entity can establish that the manner in
23 which the prevailing wage was calculated was
24 consistent with recognized industry standards
25 and practices.

1 “(iv) Clauses (i) and (iii) shall not apply to
2 a person or entity that has engaged in or is en-
3 gaging in a pattern or practice of willful viola-
4 tions of this paragraph.

5 “(I) AUTHORITY TO ENSURE COMPLIANCE.—
6 The Secretary of Labor is authorized to take other
7 such actions, including issuing subpoenas and seek-
8 ing appropriate injunctive relief and specific per-
9 formance of contractual obligations, as may be nec-
10 essary to assure employer compliance with the terms
11 and conditions under this subsection. The rights and
12 remedies provided to H-1B nonimmigrants by this
13 subsection are in addition to, and not in lieu of, any
14 other contractual or statutory rights and remedies of
15 such nonimmigrants, and are not intended to alter
16 or affect such rights and remedies.

17 “(J) SUBSTANTIAL FAILURE DEFINED.—The
18 term ‘substantial failure’ means the repeated, reck-
19 less or willful failure to comply with the require-
20 ments of this section that constitute a significant de-
21 viation from the requirements of this section or the
22 terms and conditions of an application filed under
23 this section.”.

24 “(2) CONFORMING AMENDMENT.—Section
25 212(n) of the Immigration and Nationality Act (8

1 U.S.C. 1182(n)) is amended by striking paragraphs
2 (3) and (5) and redesignating paragraph (4), as
3 amended by this section, as paragraph (3).

4 (e) ELIMINATING H-1B EXTENSIONS FOR EXCLU-
5 SIVELY TEMPORARY WORKERS.—Section 214(g)(4) of the
6 Immigration and Nationality Act (8 U.S.C. 1184(g)(4))
7 is amended by striking “6” and inserting “3”.

8 (f) INCREASED PORTABILITY FOR H-1B EMPLOY-
9 EES.—

10 (1) GRACE PERIOD.—Section 214(g)(4) of the
11 Immigration and Nationality Act (8 U.S.C.
12 1184(g)(4)), as amended by this Act, is further
13 amended by adding at the end the following:

14 “(C) If a nonimmigrant described in section
15 101(a)(15)(H)(i)(b) is terminated or laid off by the
16 nonimmigrant’s employer, or otherwise ceases em-
17 ployment with the employer, the nonimmigrant’s sta-
18 tus shall continue for 60 days or until the last date
19 of the previously approved status, whichever is ear-
20 lier.”.

21 (2) ALLOWING PROMOTIONS.—Section 204(j) of
22 the Immigration and Nationality Act (8 U.S.C.
23 1154(j)) is amended by—

24 (A) striking “(a)(1)(D)” and inserting
25 “(a)(1)(F)”;

1 (B) striking “if the new job is in the same
2 or similar occupational classification as the job
3 for which the petition was filed.” and inserting
4 “if the new job—”; and

5 (C) inserting at the end the following:

6 “(1) is in the same or similar occupational clas-
7 sification as the job for which the petition was filed;
8 or

9 “(2) is in a different occupational classification
10 that is in a field related to the job for which the pe-
11 tition was filed and involves an increase in wages of
12 at least 5 percent.”.

13 (3) RETENTION OF PRIORITY DATE.—Section
14 203 of the Immigration and Nationality Act (8
15 U.S.C. 1153), as amended by this Act, is further
16 amended by adding at the end the following new
17 subsection:

18 “(i) RETENTION OF PRIORITY DATE.—The priority
19 date for any immigrant petition shall be the date of filing
20 with the Secretary of Homeland Security or the Secretary
21 of State, unless the filing was preceded by the filing of
22 a labor certification with the Secretary of Labor, in which
23 case the date of filing of such labor certification shall con-
24 stitute the priority date. The beneficiary of any petition
25 shall retain the earliest priority date based on any ap-

1 proved petition filed on the beneficiary’s behalf, regardless
2 of the category of subsequent petitions.”.

3 (4) EMPLOYMENT OF SPOUSES.—Section
4 214(c)(2)(E) of the Immigration and Nationality
5 Act (8 U.S.C. 1184(c)(2)(E)) is amended by striking
6 “section 101(a)(15)(L)” and inserting “subpara-
7 graph (H) or (L) of section 101(a)(15)”.

8 (g) ELIMINATION OF H–1B CLASSIFICATION FOR
9 FASHION MODELS.—

10 (1) IN GENERAL.—Section 101(a)(15)(H)(i)(b)
11 of the Immigration and Nationality Act (8 U.S.C.
12 1101(a)(15)(H)(i)(b)) is amended—

13 (A) by striking “or as a fashion model”;

14 and

15 (B) by striking “or, in the case of a fash-
16 ion model, is of distinguished merit and abil-
17 ity”.

18 (2) ADDITION TO P NONIMMIGRANT CLASSI-
19 FICATION.—

20 (A) NEW CLASSIFICATION.—Section
21 101(a)(15)(P) of the Immigration and Nation-
22 ality Act (8 U.S.C. 1101(a)(15)(P)) is amend-
23 ed—

24 (i) in clause (iii), by striking “or” at
25 the end;

1 (ii) in clause (iv), by striking “clause
2 (i), (ii), or (iii)” and inserting “clause (i),
3 (ii), (iii), or (iv)”;

4 (iii) by redesignating clause (iv) as
5 clause (v);

6 (iv) by inserting after clause (iii) the
7 following:

8 “(iv) is a fashion model who is of dis-
9 tinguished merit and ability and who is
10 seeking to enter the United States tempo-
11 rarily to perform fashion modeling services
12 that involve events or productions which
13 have a distinguished reputation or that are
14 performed for an organization or establish-
15 ment that has a distinguished reputation
16 for, or a record of, utilizing prominent
17 modeling talent; or”;

18 (v) by striking “having a foreign resi-
19 dence which the alien has no intention of
20 abandoning”.

21 (B) AUTHORIZED PERIOD OF STAY.—Sec-
22 tion 214(a)(2) of the Immigration and Nation-
23 ality Act (8 U.S.C. 1184(a)(2)) is amended—

1 (i) in paragraph (B) by inserting “(i),
2 (ii), and (iii)” after “1101(a)(15)(P)” each
3 place that term appears; and

4 (ii) by inserting “or fashion model”
5 after “athlete”.

6 (C) CONSULTATION.—

7 (i) IN GENERAL.—Section
8 214(c)(4)(D) of the Immigration and Na-
9 tionality Act (8 U.S.C. 1184(c)(4)(D)) is
10 amended by striking “clause (i) or (iii)”
11 and inserting “clause (i), (iii), or (iv)”.

12 (ii) ADVISORY OPINION.—Section
13 214(c)(6)(A) of the Immigration and Na-
14 tionality Act (8 U.S.C. 1184(c)(6)(A)) is
15 amended by inserting at the end new
16 clause to read as follows—

17 “(iv) To meet the consultation re-
18 quirement of paragraph (4)(D), in the case
19 of a petition for a nonimmigrant described
20 in section 101(a)(15)(P)(iv) of this Act,
21 the petitioner shall submit with the peti-
22 tion an advisory opinion from a peer
23 group, labor organization, or other person
24 or persons of its choosing with expertise in
25 the field of fashion modeling.”

1 (iii) EXPEDITED PROCEDURES.—Sec-
2 tion 214(c)(6)(E)(i) of the Immigration
3 and Nationality Act (8 U.S.C.
4 1184(c)(6)(E)(i)) is amended by striking
5 “artists or entertainers” and inserting
6 “artists, entertainers, or fashion models”.

7 (3) CONFORMING AMENDMENTS.—Section 214
8 (a) and (c) of the Immigration and Nationality Act
9 (8 U.S.C. 1184 (a) and (c)) are amended by striking
10 the term “Attorney General” each place it appears
11 and inserting “Secretary of Homeland Security”.

12 (4) CONSTRUCTION.—Nothing in this sub-
13 section shall be construed as preventing an alien who
14 is a fashion model from obtaining nonimmigrant sta-
15 tus under section 101(a)(15)(O)(i) of the Immigra-
16 tion and Nationality Act (8 U.S.C.
17 1101(a)(15)(O)(i)) if such alien is otherwise quali-
18 fied for such status.

19 **SEC. 403. REFORMING THE L VISA PROGRAM TO PROTECT**
20 **AMERICAN WORKERS.**

21 (a) REQUIRING PREVAILING WAGE FOR CERTAIN L-
22 1B NONIMMIGRANTS.—Section 214(c)(2) of the Immigra-
23 tion and Nationality Act (8 U.S.C. 1184(c)(2)) is amend-
24 ed by adding at the end the following:

1 “(G)(i) No alien described in clause (ii)
2 may be admitted or provided status under sec-
3 tion 101(a)(15)(L) unless the employer has
4 filed with the Secretary of Labor an application
5 stating that the employer—

6 “(I) is offering and will offer during
7 the period of authorized employment wages
8 that are at least—

9 “(aa) the actual wage level paid
10 by the employer to all other individ-
11 uals with similar experience and quali-
12 fications for the specific employment
13 in question, or

14 “(bb) the prevailing wage level
15 for the occupational classification in
16 the area of employment,
17 whichever is greater, based on the best in-
18 formation available as of the time of filing
19 the application; and

20 “(II) will provide working conditions
21 for such alien that will not adversely affect
22 the working conditions of workers similarly
23 employed.

24 “(ii) An alien is described in this clause if
25 the alien will serve in a capacity involving spe-

1 cialized knowledge under section 101(a)(15)(L)
2 and the alien—

3 “(I) will be employed in the United
4 States for a cumulative period of time in
5 excess of 18 months over a 3-year period,
6 or

7 “(II) will be employed in the United
8 States for a cumulative period of time in
9 excess of 90 days over a 3-year period and
10 will be stationed primarily at the worksite
11 of an employer other than the petitioning
12 employer or its affiliate, subsidiary, or par-
13 ent, including pursuant to an outsourcing,
14 leasing, or other contracting agreement.

15 “(iii) An employer may comply with the re-
16 quirements of clause (i) by establishing that the
17 total amount of compensation to be paid by the
18 employer to the alien (including the value of
19 benefits paid by the employer to the alien in the
20 alien’s home country, employer-provided hous-
21 ing or housing allowances, employer-provided
22 vehicles or transportation allowances, and other
23 benefits provided to the alien as an incident of
24 the assignment in the United States) meets or
25 exceeds the total amount of compensation paid

1 by the employer to all other employees with
2 similar experience and qualifications working in
3 the same occupational classification.”.

4 (b) INVESTIGATION AND DISPOSITION OF COM-
5 PLAINTS AGAINST L-1 EMPLOYERS.—Section 214(c)(2)
6 of the Immigration and Nationality Act (8 U.S.C.
7 1184(c)(2)), as amended by this section, is further amend-
8 ed by adding at the end the following:

9 “(H)(i) The Secretary of Labor shall es-
10 tablish a process for the receipt, investigation
11 and disposition of complaints, which may be
12 filed by any aggrieved person or organization
13 (including bargaining representatives), respect-
14 ing an employer’s compliance with this para-
15 graph and the conditions of an application
16 under paragraph (1) for a nonimmigrant under
17 section 101(a)(15)(L). The Secretary, either
18 pursuant to this complaint process or otherwise,
19 may investigate employers as necessary to de-
20 termine such compliance. The Secretary shall
21 audit at least 5 percent of the employers who
22 file applications under subparagraph (G) in a
23 given year to determine compliance with this
24 subsection.

1 “(ii) If the Secretary finds, after notice
2 and an opportunity for a hearing, a substantial
3 failure to meet any of the conditions of this
4 paragraph, a misrepresentation of a material
5 fact in an application under paragraph (1) for
6 a nonimmigrant under section 101(a)(15)(L),
7 or a violation of clause (iii) or (iv)—

8 “(I) the Secretary shall, in addition to
9 any other remedy authorized by law, im-
10 pose such administrative remedies (includ-
11 ing civil monetary penalties in an amount
12 not to exceed \$10,000 per violation) as the
13 Secretary determines to be appropriate;
14 and

15 “(II) the Secretary may not approve
16 applications with respect to that employer
17 under paragraph (1) for a nonimmigrant
18 under section 101(a)(15)(L) during a pe-
19 riod of at least 1 year but not more than
20 5 years for aliens to be employed by the
21 employer.

22 “(iii) It is a violation of this subparagraph
23 for an employer who has filed an application
24 under paragraph (1) for a nonimmigrant under
25 section 101(a)(15)(L) to intimidate, threaten,

1 restrain, coerce, discharge, or in any other man-
2 ner discriminate or retaliate against an em-
3 ployee (including a former employee or an ap-
4 plicant for employment) because the em-
5 ployee—

6 “(I) has disclosed information to the
7 employer, or to any other person, that the
8 employee reasonably believes evidences a
9 violation of this subsection, or any rule or
10 regulation pertaining to this subsection; or

11 “(II) seeks legal assistance or counsel
12 related to any such violation, or cooper-
13 ates, or seeks to cooperate, in an investiga-
14 tion or other proceeding concerning the
15 employer’s compliance with the require-
16 ments of this subsection, or any rule or
17 regulation pertaining to this subsection.

18 The Secretary shall devise a process under
19 which a nonimmigrant under section
20 101(a)(15)(L) who files a complaint regarding
21 a violation of this subparagraph and is other-
22 wise eligible to remain and work in the United
23 States may be allowed to seek other appropriate
24 employment in the United States for a period

1 not to exceed the maximum period of stay au-
2 thorized for such nonimmigrant classification.

3 “(iv) It is a violation of this subparagraph
4 for an employer who has filed an application
5 under paragraph (1) for a nonimmigrant under
6 section 101(a)(15)(L)—

7 “(I) to require such nonimmigrant to
8 pay a penalty for ceasing employment with
9 the employer prior to a date agreed to by
10 the nonimmigrant and the employer; or

11 “(II) to require or accept reimburse-
12 ment or any other form of compensation
13 from an alien with respect to a fee imposed
14 on the employer related to such applica-
15 tion.

16 “(v) If the Secretary finds, after notice
17 and an opportunity for a hearing, that recovery
18 of back wages, fees or costs is necessary to ad-
19 dress a violation of this subparagraph or any
20 other law, the Secretary may recover such back
21 wages, fees or costs on behalf of the worker.

22 “(vi) The Secretary is authorized to take
23 other such actions, including issuing subpoenas
24 and seeking appropriate injunctive relief and
25 specific performance of contractual obligations,

1 as may be necessary to assure employer compli-
2 ance with the terms and conditions under this
3 paragraph. The rights and remedies provided to
4 nonimmigrants under section 101(a)(15)(L) by
5 this paragraph are in addition to, and not in
6 lieu of, any other contractual or statutory
7 rights and remedies of such nonimmigrants,
8 and are not intended to alter or affect such
9 rights and remedies.

10 “(vii)(I) Except as provided in subclauses
11 (II) and (III), a person or entity is considered
12 to have complied with the requirements of this
13 paragraph, notwithstanding a technical or pro-
14 cedural failure to meet such requirements, if
15 there was a good faith attempt to comply with
16 the requirements.

17 “(II) Subclause (I) shall not apply
18 if—

19 “(aa) the Secretary of Homeland
20 Security (or another enforcement
21 agency) has explained to the person or
22 entity the basis for the failure;

23 “(bb) the person or entity has
24 been provided a period of not less
25 than 10 business days (beginning

1 after the date of the explanation)
2 within which to correct such failure;
3 and

4 “(cc) the person or entity has not
5 corrected the failure voluntarily within
6 such period.

7 “(III) A person or entity that, in the
8 course of an investigation, is found to have
9 violated the prevailing wage requirements
10 set forth in subparagraph (G), shall not be
11 assessed fines or other penalties for such
12 violation if the person or entity can estab-
13 lish that the manner in which the pre-
14 vailing wage was calculated was consistent
15 with recognized industry standards and
16 practices.

17 “(IV) Subclauses (I) and (III) shall
18 not apply to a person or entity that has
19 engaged in or is engaging in a pattern or
20 practice of willful violations of this para-
21 graph.

22 “(viii) The term ‘substantial failure’ means
23 the repeated, reckless or willful failure to com-
24 ply with the requirements of this paragraph
25 that constitute a significant deviation from the

1 requirements of this paragraph or the terms
2 and conditions of an application filed under
3 paragraph (1) for nonimmigrants under section
4 101(a)(15)(L).”.

5 (c) TECHNICAL AMENDMENT.—Section 214(c)(2) of
6 the Immigration and Nationality Act (8 U.S.C.
7 1184(c)(2)), as amended by this section, is further amend-
8 ed by striking “Attorney General” each place such term
9 appears and inserting “Secretary of Homeland Security”.

10 (d) REPORT ON L-1 NONIMMIGRANTS.—Section
11 214(c)(8) of the Immigration and Nationality Act (8
12 U.S.C. 1184(c)(8)) is amended—

13 (1) by striking “Attorney General” and insert-
14 ing “Secretary of Homeland Security or Secretary of
15 State, as appropriate,”;

16 (2) by inserting “(L),” after “(H),”; and

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

18 “(F) The number of applications for non-
19 immigrants described under section
20 101(a)(15)(L), based on an approved blanket
21 petition under paragraph (2)(A), which have
22 been filed.

23 “(G) The number of applications for non-
24 immigrants described under section
25 101(a)(15)(L), based on an approved blanket

1 petition under paragraph (2)(A), which have
2 been approved.”.

3 (e) REPORT ON L-1 BLANKET PETITION PROC-
4 ESS.—Not later than 12 months after the date of the en-
5 actment of this Act, the Inspector General of the Depart-
6 ment of Homeland Security, in cooperation with the In-
7 spector General of the Department of State, shall submit
8 to the Committee on the Judiciary of the House of Rep-
9 resentatives and the Committee on the Judiciary of the
10 Senate a report regarding the use of blanket petitions
11 under section 214(c)(2)(A) of the Immigration and Na-
12 tionality Act (8 U.S.C. 1184(c)(2)(A)). Such report shall
13 assess the efficiency and reliability of the process for re-
14 viewing such blanket petitions and adjudicating visa appli-
15 cations filed under an approved blanket petition, including
16 whether the process includes adequate safeguards against
17 fraud and abuse.

18 **TITLE V—PROMOTING INVEST-**
19 **MENT IN THE AMERICAN**
20 **ECONOMY**

21 **SEC. 501. EB-5 EMPLOYMENT CREATION INVESTOR PRO-**
22 **GRAM.**

23 (a) AUTHORIZATION OF EB-5 EMPLOYMENT CRE-
24 ATION REGIONAL CENTER PROGRAM.—Section 203(b)(5)
25 of the Immigration and Nationality Act (8 U.S.C.

1 1153(b)(5)) is amended by adding at the end the following
2 new subparagraph:

3 “(E) SET-ASIDE FOR EMPLOYMENT CRE-
4 ATION REGIONAL CENTERS.—

5 “(i) IN GENERAL.—Of the visas other-
6 wise available under this paragraph, the
7 Secretary of State, together with the Sec-
8 retary of Homeland Security, shall set
9 aside at least 5,000 visas for a program in-
10 volving regional centers designated by the
11 Secretary of Homeland Security, on the
12 basis of a general proposal, for the pro-
13 motion of economic growth, including im-
14 proved regional productivity, job creation,
15 or increased domestic capital investment. A
16 regional center shall have jurisdiction over
17 a specific geographic area, which shall be
18 described in the proposal and consistent
19 with the purpose of concentrating pooled
20 investment in defined economic zones. The
21 establishment of a regional center under
22 this subparagraph may be based on gen-
23 eral predictions, contained in the proposal,
24 concerning the kinds of new commercial
25 enterprises that will receive capital from

1 aliens under this paragraph, the jobs that
2 will be created (directly or indirectly) as a
3 result of such capital investments and the
4 other positive economic effects such capital
5 investments will have.

6 “(ii) **METHODOLOGIES.**—In deter-
7 mining compliance with this subparagraph,
8 and notwithstanding requirements applica-
9 ble to investors not involving regional cen-
10 ters, the Secretary of Homeland Security,
11 in consultation with the Secretary of Com-
12 merce, shall recognize reasonable meth-
13 odologies for determining the number of
14 jobs created by a designated regional cen-
15 ter, including such jobs that are estimated
16 to have been created indirectly through
17 revenues generated from increased exports,
18 improved regional productivity, or in-
19 creased domestic capital investment result-
20 ing from the regional center. The Sec-
21 retary may consider estimated job creation
22 outside the geographic boundary of a des-
23 ignated regional center if such estimate is
24 supported by substantial evidence and con-
25 stitutes no more than 50 percent of the

1 overall number of jobs estimated to be cre-
2 ated by such regional center.

3 “(iii) PREAPPROVAL OF NEW COM-
4 Mercial Enterprises.—The Secretary of
5 Homeland Security shall establish a
6 preapproval procedure for commercial en-
7 terprises that—

8 “(I) allows a regional center to
9 apply to the Secretary for approval of
10 a new commercial enterprise before
11 any alien files a petition for classifica-
12 tion under this paragraph by reason
13 of investment in the new commercial
14 enterprise;

15 “(II) in considering an applica-
16 tion under subclause (I), requires that
17 the Secretary make final decisions on
18 all issues under this paragraph other
19 than those issues unique to each indi-
20 vidual investor in the new commercial
21 enterprise; and

22 “(III) requires that the Secretary
23 eliminate the need for the repeated
24 submission of documentation that is
25 common to multiple petitions for clas-

1 sification under this paragraph
2 through a regional center.

3 “(iv) FEE FOR REGIONAL CENTER
4 DESIGNATION.—In addition to any other
5 fees authorized by law, the Secretary of
6 Homeland Security shall impose a fee to
7 apply for designation as an EB–5 regional
8 center under this paragraph. Fees collected
9 under this paragraph shall be deposited in
10 the Treasury in accordance with section
11 286(y).”.

12 (b) TARGETED EMPLOYMENT AREAS.—Section
13 203(b)(5)(B) of the Immigration and Nationality Act (8
14 U.S.C. 1153(b)(5)(B)) is amended as follows:

15 (1) TARGETED EMPLOYMENT AREA DEFINED.—

16 In clause (ii), to read as follows:

17 “(ii) TARGETED EMPLOYMENT AREA
18 DEFINED.—In this paragraph, the term
19 ‘targeted employment area’ means—

20 “(I) a rural area;

21 “(II) an area that has experi-
22 enced high unemployment (of at least
23 150 percent of the national average
24 rate) within the preceding 12 months;

1 “(III) a county that has had a 20
2 percent or more decrease in popu-
3 lation since 1970; or

4 “(IV) an area that is within the
5 boundaries established for purposes of
6 a State or Federal economic develop-
7 ment incentive program, including
8 areas defined as Enterprise Zones,
9 Renewal Communities and Empower-
10 ment Zones.”.

11 (2) RURAL AREA DEFINED.—In clause (iii), by
12 striking “within a metropolitan statistical area or”.

13 (3) EFFECT OF PRIOR DETERMINATION.—By
14 adding at the end the following:

15 “(iv) EFFECT OF PRIOR DETERMINA-
16 TION.—In a case in which a geographic
17 area is determined under clause (ii) to be
18 a targeted employment area, such deter-
19 mination shall remain in effect during the
20 2-year period beginning on the date of the
21 determination for purposes of any alien
22 seeking a visa reserved under this subpara-
23 graph.”.

1 (c) CALCULATING JOB CREATION.—Section
2 203(b)(5)(D) of such Act (8 U.S.C. 1153(b)(5)(D)) is
3 amended to read as follows:

4 “(D) FULL-TIME EMPLOYMENT.—In this
5 paragraph, the term ‘full-time employment’
6 means employment in a position that requires
7 at least 35 hours of service per week at any
8 time, regardless of who fills the position. Such
9 employment may be satisfied on a full-time
10 equivalent basis by calculating the number of
11 full-time employees that could have been em-
12 ployed if the reported number of hours worked
13 by part-time employees had been worked by
14 full-time employees. Full-time equivalent em-
15 ployment shall be calculated by dividing the
16 part-time hours paid by the standard number of
17 hours for full-time employees.”.

18 (d) CAPITAL.—Section 203(b)(5)(C) of the Immigra-
19 tion and Nationality Act (8 U.S.C. 1153(b)(5)(C)) is
20 amended by adding at the end the following:

21 “(iv) CAPITAL DEFINED.—For pur-
22 poses of this paragraph, the term ‘capital’
23 does not include any assets acquired, di-
24 rectly or indirectly, by unlawful means.”.

1 (e) TYPE OF INVESTMENT.—Section 203(b)(5)(A) of
2 the Immigration and Nationality Act (8 U.S.C.
3 1153(b)(5)(A)), is amended by adding “or similar entity”
4 after “including a limited partnership”.

5 (f) EXTENSION.—Subparagraph (A) of section
6 216A(d)(2) of the Immigration and Nationality Act (8
7 U.S.C. 1186b(d)(2)(A)) is amended by adding at the end
8 the following: “A date specified by the applicant (but not
9 later than the fourth anniversary) shall be substituted for
10 the second anniversary in applying the preceding sentence
11 if the applicant demonstrates that the applicant has at-
12 tempted to follow the applicant’s business model in good
13 faith, provides an explanation for the delay in filing the
14 petition that is based on circumstances outside of the ap-
15 plicant’s control, and demonstrates that such cir-
16 cumstances will be able to be resolved within the specified
17 period.”.

18 (g) STUDY.—

19 (1) IN GENERAL.—The Secretary of Homeland
20 Security, in appropriate consultation with the Sec-
21 retary of Commerce and other interested parties,
22 shall conduct a study concerning—

23 (A) current job creation counting method-
24 ology and initial projections under section

1 203(b)(5) of the Immigration and Nationality
2 Act (8 U.S.C. 1153(b)(5)); and

3 (B) how to best promote the employment
4 creation program described in such section
5 overseas to potential immigrant investors.

6 (2) REPORT.—The Secretary of Homeland Se-
7 curity shall submit a report to the Committee on the
8 Judiciary of the House of Representatives and the
9 Committee on the Judiciary of the Senate not later
10 than 1 year after the date of the enactment of this
11 Act containing the results of the study conducted
12 under paragraph (1).

13 (h) BIENNIAL REPORT.—Beginning on the date that
14 is one year after the date of enactment of this Act, and
15 every 2 years thereafter, the Secretary of Homeland Secu-
16 rity shall submit a report to the Committee on the Judici-
17 ary of the House of Representatives and the Committee
18 on the Judiciary of the Senate that measures the economic
19 impact of the regional center program described in section
20 203(b)(5)(E) of the Immigration and Nationality Act (8
21 U.S.C. 1153(b)(5)(E)), including—

22 (1) foreign and domestic capital investment;

23 (2) the number of jobs directly and indirectly
24 created;

1 (3) any other economic benefits related to for-
2 foreign investment under such program; and

3 (4) the number of petitions under such section
4 approved or denied for each regional center.

5 (i) RULEMAKING.—Not later than 120 days after the
6 date of the enactment of this Act, the Secretary of Home-
7 land Security shall prescribe regulations to implement the
8 amendments made by this section.

9 **SEC. 502. CONCURRENT FILING; ADJUSTMENT OF STATUS.**

10 Section 245 of the Immigration and Nationality Act
11 (8 U.S.C. 1255) is amended—

12 (1) in subsection (k), in the matter preceding
13 paragraph (1), by striking “(1), (2), or (3)” and in-
14 serting “(1), (2), (3), (5), or (6)”; and

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

16 “(n) If, at the time a petition is filed under section
17 204 for classification under paragraph (5) or (6) of section
18 203(b), approval of the petition would make a visa imme-
19 diately available to the alien beneficiary, the alien bene-
20 ficiary’s adjustment application under this section shall be
21 considered to be properly filed whether the application is
22 submitted concurrently with, or subsequent to, the visa pe-
23 tition.”.

1 **SEC. 503. FEES; PREMIUM PROCESSING.**

2 (a) ESTABLISHMENT OF ACCOUNT; USE OF FEES.—

3 Section 286 of the Immigration and Nationality Act (8
4 U.S.C. 1356), as amended by this Act, is further amended
5 by adding at the end the following:

6 “(y) IMMIGRANT ENTREPRENEUR ACCOUNT.—

7 “(1) IN GENERAL.—There is established in the
8 general fund of the Treasury a separate account,
9 which shall be known as the ‘Immigrant Entre-
10 preneur Account’. Notwithstanding any other provi-
11 sion of law, there shall be deposited as offsetting re-
12 ceipts into the account all fees collected under para-
13 graph (5) or (6) of section 203(b) of this Act or sec-
14 tion 610(b) of the Departments of Commerce, Jus-
15 tice, and State, the Judiciary, and Related Agencies
16 Appropriations Act, 1993 (8 U.S.C. 1153 note).

17 “(2) USE OF FEES.—Fees collected under this
18 section may only be used by the Secretary of Home-
19 land Security to administer and operate the employ-
20 ment creation program described in paragraph (5)
21 or (6) of section 203(b).”.

22 (b) PREMIUM PROCESSING.—Section 286(u) of the
23 Immigration and Nationality Act (8 U.S.C. 1356(u)) is
24 amended by adding at the end the following: “In the case
25 of a petition filed under section 204(a)(1)(H) for classi-
26 fication under paragraph (5) or (6) of section 203(b), if

1 the petitioner desires a guarantee of a decision on the peti-
2 tion in 60 days or less, the premium processing fee under
3 this subsection shall be set at \$2,500 and shall be depos-
4 ited as offsetting receipts in the Immigrant Entrepreneur
5 Account established under subsection (y).”.

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