

117TH CONGRESS
1ST SESSION

S. 3406

To amend section 214(c)(8) of the Immigration and Nationality Act to modify the data reporting requirements relating to nonimmigrant employees, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 15, 2021

Mr. BLUMENTHAL (for himself, Mr. CRUZ, Mr. LEAHY, and Mr. GRASSLEY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend section 214(c)(8) of the Immigration and Nationality Act to modify the data reporting requirements relating to nonimmigrant employees, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Visa Transparency
5 Anti-Trafficking Act of 2021”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) BONA FIDE RESEARCH PURPOSES.—The
9 term “bona fide research purposes”—

1 (A) means a systematic study or investiga-
2 tion, including research, development, testing,
3 and evaluation, designed to develop or to con-
4 tribute to fuller or generalizable knowledge or
5 understanding; and

6 (B) does not include—

7 (i) purposes that are commercial,
8 tortious, or criminal in nature;

9 (ii) purposes that are related to immi-
10 gration enforcement; or

11 (iii) nonresearch purposes that would
12 not have been practicable, but for access to
13 the information.

14 (2) EMPLOYMENT.—The term “employment”—

15 (A) means employment in the United
16 States;

17 (B) includes cultural exchanges, training,
18 and business activities in which the non-
19 immigrant receives any form of compensation
20 (including a stipend) from any source, whether
21 paid in the United States or in the non-
22 immigrant’s country of origin, and whether or
23 not authorized by law; and

24 (C) does not include the activities of a non-
25 immigrant described in section 101(a)(15)(B)

1 of the Immigration and Nationality Act (8
2 U.S.C. 1101(a)(15)(B)), except—

3 (i) personal or domestic servants ac-
4 companying or following to join a non-
5 immigrant employer who seeks admission
6 into, or is already in, the United States;

7 (ii) personal or domestic servants ac-
8 companying or following to join a United
9 States citizen employer who has a perma-
10 nent home or is stationed in a foreign
11 country, and who is temporarily visiting
12 the United States;

13 (iii) nonimmigrants engaged in train-
14 ing, services, or work normally allowed
15 under other nonimmigrant visa classifica-
16 tions, including—

17 (I) services described in clause
18 (i)(b) of section 101(a)(15)(H) of the
19 Immigration and Nationality Act (8
20 U.S.C. 1101(a)(15)); and

21 (II) training described in clause
22 (iii) of such section; and

23 (iv) nonimmigrants engaged in the su-
24 pervision or training of others engaged in
25 building or construction work, but not for

1 the purpose of performing any such build-
2 ing or construction work themselves (as de-
3 scribed in section 214.2(b)(5) of title 8,
4 Code of Federal Regulations and section
5 41.31(b)(1) of title 22, Code of Federal
6 Regulations).

7 (3) LAW ENFORCEMENT.—The term “law en-
8 forcement” includes—

9 (A) Federal law enforcement officers (as
10 defined in section 115(c)(1) of title 18, United
11 States Code);

12 (B) Federal law enforcement officers and
13 local law enforcement officers (as such terms
14 are defined in paragraphs (5) and (6) of sub-
15 section (b) of the Combat Human Trafficking
16 Act of 2015 (34 U.S.C. 20709)); and

17 (C) State attorneys general (as defined in
18 section 4G(1) of the Clayton Act (15 U.S.C.
19 15g(1))).

20 (4) NONIMMIGRANT VISA CLASSIFICATION, STA-
21 TUS, OR SUBCLASSIFICATION.—The term “non-
22 immigrant visa classification, status, or subclassi-
23 fication” means any program, level, category, sub-
24 category, or other type of grouping that—

(A) is part of a nonimmigrant visa classification or status—

(i) described in section 101(a)(15) or 214(e) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15) and 1184(e)); or

(ii) otherwise established under the immigration laws (as defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17))); and

(B) may be specifically created, delineated, or defined in—

(i) any Federal statute, regulation, agency guidance, directive, memo, or any other source material, including the Code of Federal Regulations, the Foreign Affairs Manual, and Department of State cables (classified or unclassified); or

(ii) any official form, application, or petition used by the Secretary of Homeland Security, the Secretary of State, or the Secretary of Labor.

(5) SERVICE PROVIDERS TO HUMAN TRAFFICKING VICTIMS.—The term “service providers to human trafficking victims” means any nonprofit,

1 nongovernmental organization that has significant
2 knowledge and substantial experience in human traf-
3 ficking prevention and eradication, investigation and
4 identification of human trafficking, and delivering
5 wrap-around services to human trafficking victims,
6 including grant recipients under—

7 (A) section 107(b)(2)(A), 107(f), or 112A
8 of the Trafficking Victims Protection Act of
9 2000 (22 U.S.C. 7105(b)(2)(A), 7105(f), and
10 7109a); or

11 (B) section 202 or 203 of the Trafficking
12 Victims Protection Reauthorization Act of 2005
13 (34 U.S.C. 20702 and 20703).

14 (6) TEMPORARY FOREIGN NONIMMIGRANT
15 WORKER.—The term “temporary foreign non-
16 immigrant worker” means—

17 (A) a nonimmigrant—

18 (i) who has been issued a visa under
19 section 101(a)(15) of the Immigration and
20 Nationality Act (8 U.S.C. 1101(a)(15));

21 (ii) who has petitioned for, requested,
22 or otherwise applied for a visa described in
23 subparagraph (A); or

24 (iii) for whom such a visa has been
25 petitioned, requested, or applied; and

1 (B) any person authorized to be employed
2 in the United States under any nonimmigrant
3 visa classification, subclassification, or program
4 for nonimmigrants that authorizes employment,
5 except for persons who were issued non-
6 immigrant visas for the purpose of victim or
7 witness protection.

8 (7) THIRD PARTY INTERMEDIARY.—The term
9 “third party intermediary”—

10 (A) means any natural person, corporation,
11 company, firm, partnership, joint stock com-
12 pany or association, or other organization or
13 entity, including municipal corporations, that
14 recruits, solicits, or engages in related activities
15 with respect to an individual who resides out-
16 side of the United States in furtherance of em-
17 ployment in the United States, including when
18 such activity occurs outside of the United
19 States; and

20 (B) includes recruiters, subrecruiters,
21 placement agencies, staffing agencies, labor
22 contractors, and sponsor organizations des-
23 ignated by the Secretary of State, including for-
24 profit and not-for-profit sponsor entities.

1 (8) WORKER PROTECTION ORGANIZATION.—

2 The term “worker protection organization” means
3 any nonprofit, nongovernmental organization that—

4 (A) promotes compliance with antidiscrimi-
5 nation, wage, occupational health and safety,
6 workers’ compensation and other labor and em-
7 ployment laws and regulations; or

8 (B) otherwise advocates for safeguarding
9 labor standards and improving workplace pro-
10 tections and working conditions.

11 **SEC. 3. ANNUAL REPORT TO CONGRESS ON NON-**
12 **IMMIGRANT VISAS.**

13 Section 214(c)(8) of the Immigration and Nationality
14 Act (8 U.S.C. 1184(c)(8)) is amended to read as follows:

15 “(8) Not later than 6 months after the end of each
16 fiscal year, the Secretary of Homeland Security shall sub-
17 mit a report to the Committee on the Judiciary of the Sen-
18 ate and the Committee on the Judiciary of the House of
19 Representatives that includes, with respect to the report-
20 ing period—

21 “(A) the number of citizens of countries with a
22 Compact of Free Association with the United States
23 who—

1 “(i) are authorized by such Compact to re-
2 side indefinitely in the United States as non-
3 immigrants; and

4 “(ii) were admitted to the United States;

5 “(B) the ports of entry at which the individuals
6 described in subparagraph (A) were admitted; and

7 “(C) with respect to each nonimmigrant visa
8 classification, subclassification, or program for non-
9 immigrants that authorizes employment, as applica-
10 ble (except for visas issued for the purpose of victim
11 or witness protection), to the extent that the fol-
12 lowing data are collected by the Department of
13 Homeland Security, the Department of Labor, the
14 Department of State, or any other Federal agency to
15 which the collection of such data has been delegated
16 by any such Department, or by any successor agency
17 to any such department—

18 “(i) the number of visas that were issued;

19 “(ii) the number of persons who were ad-
20 mitted into the United States;

21 “(iii) the number of persons who were oth-
22 erwise granted legal status;

23 “(iv) the number of visas that expired,
24 were revoked, or were otherwise terminated, re-
25 spectively;

1 “(v) the number of temporary foreign non-
2 immigrant workers employed in each State;

3 “(vi) the 10 employers that hired the most
4 temporary foreign nonimmigrant workers;

5 “(vii) the 10 occupations, listed by Stand-
6 ard Occupational Classification Code, in which
7 the largest number of temporary foreign non-
8 immigrant workers are employed in the United
9 States, and the average hourly and yearly sal-
10 ary paid to temporary foreign nonimmigrant
11 workers in each such occupation;

12 “(viii) the 10 most common nationalities of
13 temporary foreign nonimmigrant workers;

14 “(ix) the 10 third party intermediaries that
15 recruited or hired the most temporary foreign
16 nonimmigrant workers;

17 “(x) the percentage of temporary foreign
18 nonimmigrant workers at each major education
19 level;

20 “(xi) the percentage of temporary foreign
21 nonimmigrant workers who are younger than
22 20 years of age, between 20 and 24 years of
23 age, between 25 and 29 years of age, between
24 30 and 34 years of age, between 35 and 39
25 years of age, between 40 and 44 years of age,

1 between 45 and 49 years of age, between 50
2 and 54 years of age, between 55 and 59 years
3 of age, between 60 and 64 years of age, or
4 older than 65 years of age, respectively;

5 “(xii) the percentage of temporary foreign non-
6 immigrant workers of each sex who were issued
7 visas; and

8 “(xiii) the source of the data described in
9 clauses (i) through (xii).”.

10 **SEC. 4. DATABASE.**

11 (a) IN GENERAL.—

12 (1) AVAILABILITY OF INFORMATION.—At the
13 time the Secretary of Homeland Security submits
14 each annual report under section 214(c)(8) of the
15 Immigration and Nationality Act, as amended by
16 section 3, with respect to each temporary foreign
17 nonimmigrant worker, the Secretary shall make the
18 information described in subsection (b) (except for
19 information regarding visas issued for the purpose of
20 victim or witness protection) that is collected by the
21 Department of Homeland Security, the Department
22 of Labor, the Department of State, or any other
23 Federal agency to which the collection of such data
24 has been delegated by any such department, or by

1 any successor agency to any such department on a
2 dedicated and searchable database.

3 (2) SOURCES; REDUNDANCIES.—The database
4 established pursuant to paragraph (1) shall—

5 (A) indicate the sources from which the in-
6 formation described in subsection (b) is derived;
7 and

8 (B) to the extent that any of the informa-
9 tion described in subsection (b) is available
10 from more than 1 source or Federal agency—

11 (i) reproduce the information from
12 each source or Federal agency; and

13 (ii) indicate the source from which
14 such information was derived, including
15 the Federal agency and any relevant peti-
16 tion or application form.

17 (b) REQUIRED INFORMATION.—

18 (1) BIOGRAPHICAL INFORMATION.—The infor-
19 mation made available in the database established
20 pursuant to subsection (a) shall include, for each
21 temporary foreign nonimmigrant worker—

22 (A) his or her age;

23 (B) his or her sex;

24 (C) his or her country of origin and local
25 region or State;

1 (D) the highest level of education attained,
2 the institution from which such education was
3 attained, and his or her primary field of study;
4 and

5 (E) the name of the university at which he
6 or she is enrolled.

7 (2) VISA INFORMATION.—The information
8 made available in the database established pursuant
9 to subsection (a) shall include, for each visa re-
10 quested by a temporary foreign nonimmigrant work-
11 er—

12 (A) the visa classification or status that
13 was requested, including—

14 (i) any applicable subclassification,
15 preference, or program associated with the
16 visa classification or status; and

17 (ii) if applicable, any section cited
18 from the Code of Federal Regulations,
19 Foreign Affairs Manual, or any other Fed-
20 eral guidance document that corresponds
21 to such subclassification, preference, or
22 program;

23 (B) whether the request is for a new visa
24 or an extension of an existing visa or status;

1 (C) the status of the visa, such as issued,
2 expired, revoked, or terminated;

3 (D) whether the visa was issued pursuant
4 to a blanket petition; and

5 (E) whether the visa or status was issued
6 at a port of entry and, if so, the port of entry
7 where it was issued.

8 (3) EMPLOYMENT INFORMATION.—The infor-
9 mation made available in the database established
10 pursuant to subsection (a) shall include—

11 (A) for each offer of employment in the
12 United States—

13 (i) the temporary foreign non-
14 immigrant worker's occupation and the
15 standard occupational classification code
16 for the occupation, or any other occupa-
17 tional code listed;

18 (ii) the wages, salary, and any other
19 compensation to be paid to the temporary
20 foreign nonimmigrant worker;

21 (iii) the address where the temporary
22 foreign nonimmigrant worker will work,
23 and any additional worksite addresses;

1 (iv) the address where the temporary
2 foreign nonimmigrant worker will reside
3 during his or her employment;

4 (v) whether the temporary foreign
5 nonimmigrant worker will be assigned to
6 work at an offsite location; and

7 (vi) whether the temporary foreign
8 nonimmigrant worker's position is a full-
9 time position; and

10 (B) for each accepted offer of employment
11 in the United States—

12 (i) the dates on which the temporary
13 foreign nonimmigrant worker began and
14 ended employment; and

15 (ii) the date on which the temporary
16 foreign nonimmigrant worker entered the
17 United States.

18 (4) EMPLOYER INFORMATION.—The informa-
19 tion made available in the database established pur-
20 suant to subsection (a) shall include, for each em-
21 ployer of temporary foreign nonimmigrant workers—

22 (A) the name and address of the employer;

23 (B) if the employer is a household em-
24 ployer, the nationality of the employer;

1 (C) whether the employer is an H–1B de-
2 pendent employer (as defined in section
3 212(n)(3)(A) of the Immigration and Nation-
4 ality Act (8 U.S.C. 1182(n)(3)(A)));

5 (D) whether the employer has ever been
6 found to be a willful violator or to have violated
7 any law or regulation under the employment,
8 labor, or immigration laws of the United States;

9 (E) whether the employer conducts out-
10 placement of nonimmigrants; and

11 (F) the percentage of nonimmigrants com-
12 prising the United States workforce of the em-
13 ployer, including whether the percentage is less
14 than 30 percent, between 30 and 50 percent, or
15 more than 50 percent.

16 (5) APPLICATION INFORMATION.—The informa-
17 tion made available in the database established pur-
18 suant to subsection (a) shall include, for each appli-
19 cation filed on behalf of a temporary foreign non-
20 immigrant worker—

21 (A) the date on which the application was
22 filed;

23 (B) the status of such application, such as
24 approved, rejected, denied, withdrawn, or await-
25 ing final action;

1 (C) whether the application was for the
2 purpose of—

3 (i) beginning new employment;

4 (ii) continuing previously approved
5 employment with the same employer with-
6 out change;

7 (iii) changing from previously ap-
8 proved employment;

9 (iv) new concurrent employment;

10 (v) changing of employer;

11 (vi) amending a petition;

12 (vii) requesting initial permission to
13 accept employment;

14 (viii) renewing permission to accept
15 employment; or

16 (ix) something not described in
17 clauses (i) through (viii);

18 (D) whether the application was a blanket
19 petition;

20 (E) the total number of temporary foreign
21 nonimmigrant workers included in the applica-
22 tion;

23 (F) the application number;

24 (G) whether the temporary foreign non-
25 immigrant worker is eligible for employment au-

thorization based on pre-completion optional practical training, post-completion optional practical training, or STEM optional practical training;

(H) if the temporary foreign nonimmigrant worker is eligible for employment authorization based on STEM optional practical training—

(i) the worker's degree; and

(ii) the name of the worker's employer; and

(I) the name of the person or entity that filed a permanent status petition on the behalf of the temporary foreign nonimmigrant worker.

(6) THIRD PARTY INTERMEDIARY INFORMATION.—The information made available in the database established pursuant to subsection (a) shall include the name and last known domestic and foreign business address of any third party intermediary involved in identifying workers for employment in the United States with a nonimmigrant visa.

(c) RECIPIENT ENTITIES.—

(1) IN GENERAL.—The database established pursuant to subsection (a), including all personally identifiable information including in such database, shall be made available only to—

1 (A) law enforcement agencies;

2 (B) service providers to human trafficking
3 victims;

4 (C) worker protection organizations; or

5 (D) entities agreeing to only use such in-
6 formation for bona fide research purposes.

7 (2) CERTIFICATION.—Any entity receiving data
8 under paragraph (1)(D) for bona fide research pur-
9 poses shall certify that the entity—

10 (A) will only use the data for research pur-
11 poses; and

12 (B) will not share or disclose the data in
13 disaggregated form, in a manner that would
14 make any personally identifiable information
15 discernible, with any individual or entity that
16 has not been approved by the Department of
17 Homeland Security to receive such
18 disaggregated data.

19 (3) PRIVACY PROTECTION.—Any government
20 official who uses information contained in the data-
21 base established pursuant to subsection (a) shall
22 take reasonable steps to ensure that such use does
23 not enable such information to be manipulated—

24 (A) to identify an individual nonimmigrant
25 to whom the information relates; or

1 (B) to disaggregate such information into
2 its component parts.

3 (d) RULEMAKING.—The Secretary of Homeland Se-
4 curity shall—

5 (1) promulgate a rule that establishes—

6 (A) procedures for requesting and access-
7 ing information contained in the database es-
8 tablished pursuant to subsection (a), which ac-
9 cess may not be limited to fewer than 5 years;
10 and

11 (B) security procedures for protecting such
12 information, including rules relating to per-
13 sonnel security, physical security, and network
14 security; and

15 (2) promulgate regulations making the informa-
16 tion described in subsection (a) available to the pub-
17 lic in a searchable database format, except for—

18 (A) any personally identifiable information,
19 including—

20 (i) worksite address, but shall include
21 the State in which the worksite is located;
22 and

23 (ii) the names of any household em-
24 ployers;

1 (B) any query that returns fewer than 10
2 workers; and

3 (C) any information that, alone or in com-
4 bination, would allow a reasonable person who
5 does not have personal knowledge of the rel-
6 evant circumstances, to identify a specific tem-
7 porary foreign nonimmigrant worker with rea-
8 sonable certainty.

9 **SEC. 5. AUTHORITY TO MODIFY FORMS.**

10 The Secretary of Homeland Security, the Secretary
11 of State, and the Secretary of Labor may take such steps
12 as may be necessary to revise any application, petition,
13 form, or database used to regulate the issuance of visas
14 to nonimmigrants or to grant nonimmigrant status to
15 comply with the reporting requirements set forth in sec-
16 tion 214(c)(8) of the Immigration and Nationality Act, as
17 amended by section 3.

18 **SEC. 6. AUTHORITY TO IMMEDIATELY UPDATE FEES.**

19 Notwithstanding the requirements under chapter 5 of
20 title 5, United States Code (commonly referred to as the
21 “Administrative Procedure Act”) or any other law, the
22 Secretary of Homeland Security, the Secretary of State,
23 or the Secretary of Labor may, without notice and com-
24 ment, reasonably adjust applicable fees charged to any
25 person or entity to the extent necessary to recover the full

1 cost implementing this Act or the amendments made by
2 this Act.

3 **SEC. 7. INFORMATION SHARING.**

4 The Secretary of State and the Secretary of Labor
5 shall—

6 (1) annually submit to the Secretary of Home-
7 land Security, in a timely manner, any information
8 collected or maintained by the Department of State
9 or the Department of Labor that is required to be
10 included in the annual report under section
11 214(c)(8) of the Immigration and Nationality Act,
12 as amended by section 3; and

13 (2) provide any other related information to the
14 Secretary of Homeland Security, upon request, that
15 may be necessary to carry out the Secretary of
16 Homeland Security's responsibilities under this Act
17 and the amendment made by section 3.

18 **SEC. 8. EXEMPTION FROM PAPERWORK REDUCTION ACT.**

19 The requirements under chapter 35 of title 44,
20 United States Code (commonly referred to as the "Paper-
21 work Reduction Act"), shall not apply to any action to
22 implement this Act or the amendments made by this Act.

23 **SEC. 9. PROGRESSIVE IMPLEMENTATION.**

24 (a) INITIAL REPORT.—Not later than 1 year after
25 the date of the enactment of this Act, the Secretary of

1 Homeland Security shall submit the first report required
2 under section 214(c)(8) of the Immigration and Nation-
3 ality Act, as amended by section 3, based on the informa-
4 tion that is available from the Department of Homeland
5 Security, the Department of Labor, and the Department
6 of State as of the date of the enactment of this Act.

7 (b) FULL REPORT.—Not later than 3 years after the
8 date of the enactment of this Act, the Secretary of Home-
9 land Security shall submit the report required under sec-
10 tion 214(c)(8) of the Immigration and Nationality Act, as
11 amended by section 3, which shall include all of the infor-
12 mation and data listed in subparagraph (C) of such sec-
13 tion, which is collected by the Department of Homeland
14 Security, the Department of Labor, the Department of
15 State, or any other Federal agency to which the collection
16 of such data has been delegated by any such Department,
17 or by any successor agency to any such Department.

18 **SEC. 10. CONTINUED REPORTING.**

19 (a) IN GENERAL.—Federal and State administrative
20 agencies shall continue to publicly report all nonimmigrant
21 visa data required by law as of the day before the date
22 of the enactment of this Act.

23 (b) SAVINGS PROVISION.—None of the reporting re-
24 quirements under this Act or the amendments made by
25 this Act may be construed to replace—

1 (1) any reporting requirements under any stat-
2 ute or regulation in effect on the date of the enact-
3 ment of this Act; or

4 (2) any reports or publicly available microdata
5 published by any Federal agency pertaining to any
6 nonimmigrant visa classification that authorizes em-
7 ployment.

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