

AMENDMENT NO. _____ Calendar No. _____

Purpose: To modify the per-country numerical limitation for immigrants, to eliminate the diversity immigrant visa program, and to reform and reduce fraud and abuse in certain visa programs for aliens working temporarily in the United States.

IN THE SENATE OF THE UNITED STATES—112th Cong., 1st Sess.

H. R. 3012

To amend the Immigration and Nationality Act to eliminate the per-country numerical limitation for employment-based immigrants, to increase the per-country numerical limitation for family-sponsored immigrants, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. GRASSLEY

Viz:

- 1 Beginning on page 2, strike line 4 and all that follows
- 2 through page 6, line 16, and insert the following:
- 3 **SEC. 2. TABLE OF CONTENTS.**
- 4 The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—IMMIGRANT VISAS

Sec. 101. Numerical limitation on individual foreign states.

Sec. 102. Repeal of the Diversity Visa Program.

TITLE II—H-1B VISA FRAUD AND ABUSE PROTECTIONS

1 “(A) FAMILY-SPONSORED IMMIGRANTS.—
2 Subject to paragraphs (3), (4), and (5), of the
3 total number of visas made available under sec-
4 tion 203(a) in a fiscal year—

5 “(i) not more than 7 percent may be
6 issued to natives of any single foreign
7 state; and

8 “(ii) not more than 2 percent may be
9 issued to natives of any single dependent
10 area.

11 “(B) EMPLOYMENT-BASED IMMIGRANTS.—
12 Subject to paragraphs (3), (4), and (5), and
13 section 2(e) of the Fairness for High-Skilled
14 Immigrants Act of 2011, of the total number of
15 visas made available under section 203(b) in a
16 fiscal year—

17 “(i) not more than 15 percent may be
18 issued to natives of any single foreign
19 state; and

20 “(ii) not more than 2 percent may be
21 issued to natives of any single dependent
22 area.”.

23 (b) EFFECTIVE DATE.—The amendment made by
24 subsection (a) shall take effect on October 1, 2012.

1 **SEC. 102. REPEAL OF THE DIVERSITY VISA PROGRAM.**

2 Title II of the Immigration and Nationality Act (8
3 U.S.C. 1151 et seq.) is amended—

4 (1) in section 201

5 (A) in subsection (a)—

6 (i) in paragraph (1), by adding “and”
7 at the end;

8 (ii) in paragraph (2), by striking “;
9 and” at the end and inserting a period;
10 and

11 (iii) by striking paragraph (3); and

12 (B) by striking subsection (e);

13 (2) in section 203—

14 (A) by striking subsection (e);

15 (B) in subsection (d), by striking “(a), (b),
16 or (c)” and inserting “(a) or (b)”;

17 (C) in subsection (e)—

18 (i) by striking paragraph (2); and

19 (ii) by redesignating paragraph (3) as
20 paragraph (2);

21 (D) in subsection (f), by striking “(a), (b),
22 or (c) of this section” and inserting “(a) or
23 (b)”;

24 (E) in subsection (g), by striking “(a), (b),
25 and (c)” and inserting “(a) and (b)”;

1 (3) in section 204(a)(1), by striking subpara-
2 graph (I).

3 **TITLE II—H-1B VISA FRAUD AND**
4 **ABUSE PROTECTIONS**
5 **Subtitle A—H-1B Employer**
6 **Application Requirements**

7 **SEC. 201. MODIFICATION OF APPLICATION REQUIRE-**
8 **MENTS.**

9 (a) GENERAL APPLICATION REQUIREMENTS.—Sec-
10 tion 212(n)(1)(A) of the Immigration and Nationality Act
11 (8 U.S.C. 1182(n)(1)(A)) is amended to read as follows:

12 “(A) The employer—

13 “(i) is offering and will offer to H-1B non-
14 immigrants, during the period of authorized
15 employment for each H-1B nonimmigrant,
16 wages that are determined based on the best in-
17 formation available at the time the application
18 is filed and which are not less than the highest
19 of—

20 “(I) the locally determined prevailing
21 wage level for the occupational classifica-
22 tion in the area of employment;

23 “(II) the median average wage for all
24 workers in the occupational classification
25 in the area of employment; and

1 “(III) the median wage for skill level
2 2 in the occupational classification found
3 in the most recent Occupational Employ-
4 ment Statistics survey; and

5 “(ii) will provide working conditions for
6 such H–1B nonimmigrant that will not ad-
7 versely affect the working conditions of other
8 workers similarly employed.”.

9 (b) INTERNET POSTING REQUIREMENT.—Section
10 212(n)(1)(C) of the Immigration and Nationality Act (8
11 U.S.C. 1182(n)(1)(C)) is amended—

12 (1) by redesignating clause (ii) as subclause
13 (II);

14 (2) by striking “(i) has provided” and inserting
15 the following:

16 “(ii)(I) has provided”; and

17 (3) by inserting before clause (ii), as redesign-
18 nated, the following:

19 “(i) has posted on the Internet website de-
20 scribed in paragraph (3), for at least 30 cal-
21 endar days, a detailed description of each posi-
22 tion for which a nonimmigrant is sought that
23 includes a description of—

24 “(I) the wages and other terms and
25 conditions of employment;

1 “(II) the minimum education, train-
2 ing, experience, and other requirements for
3 the position; and

4 “(III) the process for applying for the
5 position; and”.

6 (c) WAGE DETERMINATION INFORMATION.—Section
7 212(n)(1)(D) of the Immigration and Nationality Act (8
8 U.S.C. 1182(n)(1)(D)) is amended by inserting “the wage
9 determination methodology used under subparagraph
10 (A)(i),” after “shall contain”.

11 (d) APPLICATION OF REQUIREMENTS TO ALL EM-
12 PLOYERS.—

13 (1) NONDISPLACEMENT.—Section 212(n)(1)(E)
14 of the Immigration and Nationality Act (8 U.S.C.
15 1182(n)(1)(E)) is amended—

16 (A) in clause (i)—

17 (i) by striking “90 days” both places
18 it appears and inserting “180 days”; and

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

22 (B) by striking clause (ii).

23 (2) RECRUITMENT.—Section 212(n)(1)(G)(i) of
24 the Immigration and Nationality Act (8 U.S.C.
25 1182(n)(1)(G)(i)) is amended by striking “In the

1 case of an application described in subparagraph
2 (E)(ii), subject” and inserting “Subject”.

3 (e) REQUIREMENT FOR WAIVER.—Section
4 212(n)(1)(F) of the Immigration and Nationality Act (8
5 U.S.C. 1182(n)(1)(F)) is amended to read as follows:

6 “(F) The employer shall not place, outsource,
7 lease, or otherwise contract for the services or place-
8 ment of H–1B nonimmigrants with another em-
9 ployer unless the employer of the alien has been
10 granted a waiver under paragraph (2)(E).”.

11 **SEC. 202. NEW APPLICATION REQUIREMENTS.**

12 Section 212(n)(1) of the Immigration and Nationality
13 Act (8 U.S.C. 1182(n)(1)) is amended by inserting after
14 subparagraph (G) the following:

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

18 “(I) such position is only available to an
19 individual who is or will be an H–1B non-
20 immigrant; or

21 “(II) an individual who is or will be an H–
22 1B nonimmigrant shall receive priority or a
23 preference in the hiring process for such posi-
24 tion.

1 “(ii) The employer has not solely recruited indi-
2 viduals who are or who will be H–1B nonimmigrants
3 to fill such position.

4 “(I) If the employer employs 50 or more em-
5 ployees in the United States, the sum of the number
6 of such employees who are H–1B nonimmigrants
7 plus the number of such employees who are non-
8 immigrants described in section 101(a)(15)(L) may
9 not exceed 50 percent of the total number of em-
10 ployees.

11 “(J) If the employer, in such previous period as
12 the Secretary shall specify, employed 1 or more H–
13 1B nonimmigrants, the employer shall submit to the
14 Secretary the Internal Revenue Service Form W–2
15 Wage and Tax Statement filed by the employer with
16 respect to the H–1B nonimmigrants for such pe-
17 riod.”.

18 **SEC. 203. APPLICATION REVIEW REQUIREMENTS.**

19 (a) **TECHNICAL AMENDMENT.**—Section 212(n)(1) of
20 the Immigration and Nationality Act (8 U.S.C.
21 1182(n)(1)), as amended by section 202, is further
22 amended in the undesignated paragraph at the end, by
23 striking “The employer” and inserting the following:

24 “(K) The employer.”.

1 (b) APPLICATION REVIEW REQUIREMENTS.—Section
2 212(n)(1)(K) of the Immigration and Nationality Act, as
3 designated by subsection (a), is amended—

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

6 (2) by striking “only for completeness” and in-
7 sserting “for completeness and clear indicators of
8 fraud or misrepresentation of material fact,”;

9 (3) by striking “or obviously inaccurate” and
10 inserting “, presents clear indicators of fraud or
11 misrepresentation of material fact, or is obviously in-
12 accurate”;

13 (4) by striking “within 7 days of” and inserting
14 “not later than 14 days after”; and

15 (5) by adding at the end the following: “If the
16 Secretary’s review of an application identifies clear
17 indicators of fraud or misrepresentation of material
18 fact, the Secretary may conduct an investigation and
19 hearing in accordance with paragraph (2).”.

1 **Subtitle B—Investigation and Dis-**
2 **position of Complaints Against**
3 **H-1B Employers**

4 **SEC. 211. GENERAL MODIFICATION OF PROCEDURES FOR**
5 **INVESTIGATION AND DISPOSITION.**

6 Section 212(n)(2)(A) of the Immigration and Nation-
7 ality Act (8 U.S.C. 1182(n)(2)(A)) is amended—

8 (1) by striking “(A) Subject” and inserting
9 “(A)(i) Subject”;

10 (2) by striking “12 months” and inserting “24
11 months”;

12 (3) by striking the last sentence; and

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

14 “(ii)(I) Upon the receipt of such a com-
15 plaint, the Secretary may initiate an investiga-
16 tion to determine if such a failure or misrepre-
17 sentation has occurred.

18 “(II) The Secretary may conduct surveys
19 of the degree to which employers comply with
20 the requirements of this subsection and may
21 conduct annual compliance audits of employers
22 that employ H-1B nonimmigrants.

23 “(III) The Secretary shall—

24 “(aa) conduct annual compliance au-
25 dits of not less than 1 percent of the em-

1 employers that employ H–1B nonimmigrants
2 during the applicable calendar year;

3 “(bb) conduct annual compliance au-
4 dits of each employer with more than 100
5 employees who work in the United States
6 if more than 15 percent of such employees
7 are H–1B nonimmigrants; and

8 “(cc) make available to the public an
9 executive summary or report describing the
10 general findings of the audits carried out
11 pursuant to this subclause.”.

12 **SEC. 212. INVESTIGATION, WORKING CONDITIONS, AND**
13 **PENALTIES.**

14 Section 212(n)(2)(C) of the Immigration and Nation-
15 ality Act (8 U.S.C. 1182(n)(2)(C)) is amended—

16 (1) in clause (i)—

17 (A) in the matter preceding subclause
18 (I)—

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

24 (ii) by striking “(1)(C)” and inserting
25 “(1)(C)(ii)”;

- 1 (B) in subclause (I)—
- 2 (i) by striking “\$1,000” and inserting
- 3 “\$2,000”; and
- 4 (ii) by striking “and” at the end;
- 5 (C) in subclause (II), by striking the pe-
- 6 riod at the end and inserting “; and”; and
- 7 (D) by adding at the end the following:
- 8 “(III) an employer that violates such subpara-
- 9 graph (A) shall be liable to the employees harmed by
- 10 such violations for lost wages and benefits.”; and
- 11 (2) in clause (ii)
- 12 (A) in subclause (I)—
- 13 (i) by striking “may” and inserting
- 14 “shall”; and
- 15 (ii) by striking “\$5,000” and insert-
- 16 ing “\$10,000”;
- 17 (B) in subclause (II), by striking the pe-
- 18 riod at the end and inserting “; and”; and
- 19 (C) by adding at the end the following:
- 20 “(III) an employer that violates such subpara-
- 21 graph (A) shall be liable to the employees harmed by
- 22 such violations for lost wages and benefits.”; and
- 23 (3) in clause (iii)—

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

4 (B) in subclause (I)—

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

7 (ii) by striking “and” at the end;

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

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

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

15 (4) in clause (iv)—

16 (A) by inserting “to take, fail to take, or
17 threaten to take or fail to take, a personnel ac-
18 tion, or” before “to intimidate”;

19 (B) by inserting “(I)” after “(iv)”;

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

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

24 (5) in clause (vi)—

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

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

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

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

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

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

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

6 **SEC. 213. WAIVER REQUIREMENTS.**

7 (a) IN GENERAL.—Section 212(n)(2)(E) of the Im-
8 migration and Nationality Act (8 U.S.C. 1182(n)(2)(E))
9 is amended to read as follows:

10 “(E)(i) The Secretary of Labor may waive the prohi-
11 bition in paragraph (1)(F) if the Secretary determines
12 that the employer seeking the waiver has established
13 that—

14 “(I) the employer with whom the H–1B non-
15 immigrant would be placed has not displaced, and
16 does not intend to displace, a United States worker
17 employed by the employer within the period begin-
18 ning 180 days before and ending 180 days after the
19 date of the placement of the nonimmigrant with the
20 employer;

21 “(II) the H–1B nonimmigrant will not be con-
22 trolled and supervised principally by the employer
23 with whom the H–1B nonimmigrant would be
24 placed; and

1 “(III) the placement of the H–1B non-
2 immigrant is not essentially an arrangement to pro-
3 vide labor for hire for the employer with whom the
4 H–1B nonimmigrant will be placed.

5 “(ii) The Secretary shall grant or deny a waiver
6 under this subparagraph not later than 7 days after the
7 Secretary receives the application for such waiver.”.

8 (b) REQUIREMENT FOR RULES.—

9 (1) RULES FOR WAIVERS.—The Secretary of
10 Labor shall promulgate rules, after notice and a pe-
11 riod for comment, for an employer to apply for a
12 waiver under section 212(n)(2)(E) of the Immigra-
13 tion and Nationality Act, as amended by subsection
14 (a).

15 (2) REQUIREMENT FOR PUBLICATION.—The
16 Secretary of Labor shall submit to Congress and
17 publish in the Federal Register and other appro-
18 priate media a notice of the date on which rules re-
19 quired under paragraph (1) are published.

20 **SEC. 214. INITIATION OF INVESTIGATIONS.**

21 Section 212(n)(2)(G) of the Immigration and Nation-
22 ality Act (8 U.S.C. 1182(n)(2)(G)) is amended—

23 (1) in clause (i), by striking “if the Secretary”
24 and all that follows and inserting “with regard to

1 the employer’s compliance with the requirements of
2 this subsection.”;

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

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

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

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

12 (6) in clause (iv), as redesignated, by striking
13 “meet a condition described in clause (ii), unless the
14 Secretary of Labor receives the information not later
15 than 12 months” and inserting “comply with the re-
16 quirements under this subsection, unless the Sec-
17 retary of Labor receives the information not later
18 than 24 months”;

19 (7) by amending clause (v), as redesignated, to
20 read as follows:

21 “(v) The Secretary of Labor shall provide no-
22 tice to an employer of the intent to conduct an in-
23 vestigation. The notice shall be provided in such a
24 manner, and shall contain sufficient detail, to permit
25 the employer to respond to the allegations before an

1 investigation is commenced. The Secretary is not re-
2 quired to comply with this clause if the Secretary de-
3 termines that such compliance would interfere with
4 an effort by the Secretary to investigate or secure
5 compliance by the employer with the requirements of
6 this subsection. A determination by the Secretary
7 under this clause shall not be subject to judicial re-
8 view.”;

9 (8) in clause (vi), as redesignated, by striking
10 “An investigation” and all that follows through “the
11 determination.” and inserting “If the Secretary of
12 Labor, after an investigation under clause (i) or (ii),
13 determines that a reasonable basis exists to make a
14 finding that the employer has failed to comply with
15 the requirements under this subsection, the Sec-
16 retary shall provide interested parties with notice of
17 such determination and an opportunity for a hearing
18 in accordance with section 556 of title 5, United
19 States Code, not later than 120 days after the date
20 of such determination.”; and

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

22 “(vii) If the Secretary of Labor, after a hear-
23 ing, finds a reasonable basis to believe that the em-
24 ployer has violated the requirements under this sub-

1 section, the Secretary shall impose a penalty under
2 subparagraph (C).”.

3 **SEC. 215. INFORMATION SHARING.**

4 Section 212(n)(2)(H) of the Immigration and Na-
5 tionality Act (8 U.S.C. 1182(n)(2)(H)) is amended to read
6 as follows:

7 “(H) The Director of United States Citizenship and
8 Immigration Services shall provide the Secretary of Labor
9 with any information contained in the materials submitted
10 by employers of H–1B nonimmigrants as part of the adju-
11 dication process that indicates that the employer is not
12 complying with visa program requirements for H–1B non-
13 immigrants. The Secretary may initiate and conduct an
14 investigation and hearing under this paragraph after re-
15 ceiving information of noncompliance under this subpara-
16 graph.”.

17 **SEC. 216. CONFORMING AMENDMENT.**

18 Section 212(n)(2)(F) of the Immigration and Nation-
19 ality Act (8 U.S.C. 1182(n)(2)(F)) is amended by striking
20 “The preceding sentence shall apply to an employer re-
21 gardless of whether or not the employer is an H–1B-de-
22 pendent employer.”.

1 **Subtitle C—Other Protections**

2 **SEC. 221. POSTING AVAILABLE POSITIONS THROUGH THE**
3 **DEPARTMENT OF LABOR.**

4 (a) DEPARTMENT OF LABOR WEBSITE.—Section
5 212(n)(3) of the Immigration and Nationality Act (8
6 U.S.C. 1182(n)(3)) is amended to read as follows:

7 “(3)(A) Not later than 90 days after the date of the
8 enactment of the Fairness for High-Skilled Immigrants
9 Act of 2011, the Secretary of Labor shall establish a
10 searchable Internet website, which shall be available to the
11 public without charge, on which descriptions of available
12 positions are posted in accordance with paragraph (1)(C).

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

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

19 (b) REQUIREMENT FOR PUBLICATION.—The Sec-
20 retary of Labor shall submit to Congress and publish in
21 the Federal Register and other appropriate media a notice
22 of the date on which the Internet website required under
23 section 212(n)(3) of the Immigration and Nationality Act,
24 as amended by subsection (a), will be operational.

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

5 **SEC. 222. H-1B GOVERNMENT AUTHORITY AND REQUIRE-**
6 **MENTS.**

7 (a) IMMIGRATION DOCUMENTS.—Section 204 of the
8 Immigration and Nationality Act (8 U.S.C. 1154) is
9 amended by adding at the end the following:

10 “(m) EMPLOYER TO PROVIDE IMMIGRATION PAPER-
11 WORK EXCHANGED WITH FEDERAL AGENCIES.—Not
12 later than 21 business days after receiving a written re-
13 quest from a former, current, or future employee or bene-
14 ficiary, an employer shall provide such employee or bene-
15 ficiary with the original (or a certified copy of the original)
16 of all petitions, notices, and other written communication
17 exchanged between the employer and the Department of
18 Labor, the Department of Homeland Security, or any
19 other Federal agency or department that is related to an
20 immigrant or nonimmigrant petition filed by the employer
21 for such employee or beneficiary.”.

22 (b) REPORT ON JOB CLASSIFICATION AND WAGE
23 DETERMINATIONS.—Not later than 1 year after the date
24 of the enactment of this Act, the Comptroller General of
25 the United States shall prepare a report that—

1 (1) analyzes the accuracy and effectiveness of
2 the Secretary of Labor’s current job classification
3 and wage determination system;

4 (2) specifically addresses whether the systems
5 in place accurately reflect the complexity of current
6 job types as well as geographic wage differences; and

7 (3) makes recommendations concerning nec-
8 essary updates and modifications.

9 **SEC. 223. REQUIREMENTS FOR INFORMATION FOR H-1B**
10 **AND L-1 NONIMMIGRANTS.**

11 Section 214 of the Immigration and Nationality Act
12 (8 U.S.C. 1184) is amended by adding at the end the fol-
13 lowing:

14 “(s) REQUIREMENTS FOR INFORMATION FOR H-1B
15 AND L-1 NONIMMIGRANTS.—

16 “(1) APPLICANTS OUTSIDE THE UNITED
17 STATES.—Upon issuing a visa to an applicant for
18 nonimmigrant status pursuant to subparagraph
19 (H)(i)(b) or (L) of section 101(a)(15) who is outside
20 the United States, the issuing office shall provide
21 the applicant with—

22 “(A) a brochure outlining the obligations
23 of the applicant’s employer and the rights of
24 the applicant with regard to employment under

1 Federal law, including labor and wage protec-
2 tions;

3 “(B) the contact information for appro-
4 priate Federal agencies or departments that
5 offer additional information or assistance in
6 clarifying such obligations and rights; and

7 “(C) a copy of the application submitted
8 for the nonimmigrant under section 212(n) or
9 the petition submitted for the nonimmigrant
10 under subsection (c)(2)(A), as appropriate.

11 “(2) APPLICANTS INSIDE THE UNITED
12 STATES.—Upon the issuance of a visa to an appli-
13 cant referred to in paragraph (1) who is inside the
14 United States, the issuing officer of the Department
15 of Homeland Security shall provide the applicant
16 with the material described in subparagraphs (A),
17 (B), and (C) of paragraph (1).”.

18 **SEC. 224. ADDITIONAL DEPARTMENT OF LABOR EMPLOY-**
19 **EES.**

20 (a) IN GENERAL.—The Secretary of Labor is author-
21 ized to hire 200 additional employees to administer, over-
22 see, investigate, and enforce programs involving non-
23 immigrant employees described in section
24 101(a)(15)(H)(i)(B) of the Immigration and Nationality
25 Act (8 U.S.C. 1101(a)(15)(H)(i)(B)).

1 (b) FUNDING.—Section 286(s) of the Immigration
2 and Nationality Act (8 U.S.C. 1356(s)) is amended—

3 (1) in paragraph (2), by striking “50 percent”
4 and inserting “45 percent”; and

5 (2) by amending paragraph (6) to read as fol-
6 lows:

7 “(6) USE OF FEES FOR APPLICATION PROC-
8 ESSING AND ENFORCEMENT.—Of the amounts de-
9 posited into the H–1B Nonimmigrant Petitioner Ac-
10 count, 10 percent shall remain available to the Sec-
11 retary of Labor until expended for—

12 “(A) decreasing the processing time for ap-
13 plications filed under paragraphs (1) and (5)(A)
14 of section 212(n); and

15 “(B) carrying out the enforcement respon-
16 sibilities described in section 212(n).”.

17 **SEC. 225. TECHNICAL CORRECTION.**

18 Section 212 of the Immigration and Nationality Act
19 (8 U.S.C. 1182) is amended—

20 (1) by redesignating the second subsection (t),
21 as added by section 1(b)(2)(B) of the Act entitled
22 “An Act to amend and extend the Irish Peace Proc-
23 ess Cultural and Training Program Act of 1998”
24 (Public Law 108–449 (118 Stat. 3470)), as sub-
25 section (u); and

1 (2) in subsection (u), as redesignated—

2 (A) by striking “(U) (1) Except” and in-
3 serting the following:

4 “(u) RESIDENCE REQUIREMENT FOR CULTURAL EX-
5 CHANGE NONIMMIGRANTS.—

6 “(1) IN GENERAL.—Except”; and

7 (B) by striking “(2) The Secretary” and
8 inserting the following:

9 “(2) WAIVER.—The Secretary”.

10 **SEC. 226. APPLICATION.**

11 Except as specifically otherwise provided, the amend-
12 ments made by this title shall apply to applications filed
13 on or after the date of the enactment of this Act.

14 **TITLE III—L-1 VISA FRAUD AND**
15 **ABUSE PROTECTIONS**

16 **SEC. 301. PROHIBITION ON OUTPLACEMENT OF L-1 NON-**
17 **IMMIGRANTS.**

18 (a) IN GENERAL.—Section 214(c)(2)(F) of the Immi-
19 gration and Nationality Act (8 U.S.C. 1184(c)(2)(F)) is
20 amended to read as follows:

21 “(F)(i) Unless an employer receives a waiver under
22 clause (ii), an employer may not employ an alien, for a
23 cumulative period of more than 1 year, who—

1 “(I) will serve in a capacity involving specialized
2 knowledge with respect to an employer for purposes
3 of section 101(a)(15)(L); and

4 “(II) will be stationed primarily at the worksite
5 of an employer other than the petitioning employer
6 or its affiliate, subsidiary, or parent, including pur-
7 suant to an outsourcing, leasing, or other con-
8 tracting agreement.”

9 “(ii) The Secretary of Homeland Security may grant
10 a waiver of the requirements of clause (i) for an employer
11 if the Secretary determines that the employer has estab-
12 lished that—

13 “(I) the employer with whom the alien referred
14 to in clause (i) would be placed has not displaced
15 and does not intend to displace a United States
16 worker employed by the employer within the period
17 beginning 180 days after the date of the placement
18 of such alien with the employer;

19 “(II) such alien will not be controlled and su-
20 pervised principally by the employer with whom the
21 nonimmigrant would be placed; and

22 “(III) the placement of the nonimmigrant is not
23 essentially an arrangement to provide labor for hire
24 for an unaffiliated employer with whom the non-
25 immigrant will be placed, rather than a placement in

1 connection with the provision or a product or service
2 for which specialized knowledge specific to the peti-
3 tioning employer is necessary.

4 “(iii) The Secretary shall grant or deny a waiver
5 under clause (ii) not later than 7 days after the date that
6 the Secretary receives the application for the waiver.”.

7 (b) REGULATIONS.—The Secretary of Homeland Se-
8 curity shall promulgate rules, after notice and a period
9 for comment, for an employer to apply for a waiver under
10 section 214(c)(2)(F)(ii) of the Immigration and Nation-
11 ality Act, as added by subsection (a).

12 **SEC. 302. L-1 EMPLOYER PETITION REQUIREMENTS FOR**
13 **EMPLOYMENT AT NEW OFFICES.**

14 Section 214(c)(2) of the Immigration and Nationality
15 Act (8 U.S.C. 1184(c)(2)) is amended by adding at the
16 end the following:

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

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

24 “(II) the employer operating the new office
25 has—

1 “(aa) an adequate business plan;

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

4 “(cc) the financial ability to commence
5 doing business immediately upon the approval
6 of the petition.

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

11 “(I) evidence that the importing employer
12 meets the requirements of this subsection;

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

16 “(III) a statement summarizing the original pe-
17 tition;

18 “(IV) evidence that the importing employer has
19 fully complied with the business plan submitted
20 under clause (i)(I);

21 “(V) evidence of the truthfulness of any rep-
22 resentations made in connection with the filing of
23 the original petition;

24 “(VI) evidence that the importing employer, for
25 the entire period beginning on the date on which the

1 petition was approved under clause (i), has been
2 doing business at the new office through regular,
3 systematic, and continuous provision of goods and
4 services;

5 “(VII) a statement of the duties the beneficiary
6 has performed at the new office during the approval
7 period under clause (i) and the duties the beneficiary
8 will perform at the new office during the extension
9 period granted under this clause;

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

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

14 “(X) evidence of the financial status of the new
15 office; and

16 “(XI) any other evidence or data prescribed by
17 the Secretary.

18 “(iii) A new office employing the beneficiary of an
19 L-1 petition approved under this paragraph shall do busi-
20 ness only through regular, systematic, and continuous pro-
21 vision of goods and services for the entire period for which
22 the petition is sought.

23 “(iv) Notwithstanding clause (ii), and subject to the
24 maximum period of authorized admission set forth in sub-
25 paragraph (D), the Secretary of Homeland Security, in

1 the Secretary’s discretion, may approve a subsequently
2 filed petition on behalf of the beneficiary to continue em-
3 ployment at the office described in this subparagraph for
4 a period beyond the initially granted 12-month period if
5 the importing employer has been doing business at the
6 new office through regular, systematic, and continuous
7 provision of goods and services for the 6 months imme-
8 diately preceding the date of extension petition filing and
9 demonstrates that the failure to satisfy any of the require-
10 ments described in those subclauses was directly caused
11 by extraordinary circumstances, as determined by the Sec-
12 retary in the Secretary’s discretion.”.

13 **SEC. 303. COOPERATION WITH SECRETARY OF STATE.**

14 Section 214(c)(2) of the Immigration and Nationality
15 Act (8 U.S.C. 1184(c)(2)), as amended by section 302,
16 is further amended by adding at the end the following:

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

22 **SEC. 304. INVESTIGATION AND DISPOSITION OF COM-
23 PLAINS AGAINST L-1 EMPLOYERS.**

24 Section 214(c)(2) of the Immigration and Nationality
25 Act (8 U.S.C. 1184(c)(2)), as amended by sections 302

1 and 303, is further amended by adding at the end the
2 following:

3 “(I)(i) The Secretary of Homeland Security may ini-
4 tiate an investigation of any employer that employs non-
5 immigrants described in section 101(a)(15)(L) with re-
6 gard to the employer’s compliance with the requirements
7 under this subsection.

8 “(ii) If the Secretary receives specific credible infor-
9 mation from a source who is likely to have knowledge of
10 an employer’s practices, employment conditions, or com-
11 pliance with the requirements under this subsection, the
12 Secretary may conduct an investigation into the employ-
13 er’s compliance with the requirements of this subsection.
14 The Secretary may withhold the identity of the source
15 from the employer, and the source’s identity shall not be
16 subject to disclosure under section 552 of title 5, United
17 States Code.

18 “(iii) The Secretary shall establish a procedure for
19 any person desiring to provide to the Secretary informa-
20 tion described in clause (ii) that may be used, in whole
21 or in part, as the basis for the commencement of an inves-
22 tigation described in such clause, to provide the informa-
23 tion in writing on a form developed and provided by the
24 Secretary and completed by or on behalf of the person.

1 “(iv) No investigation described in clause (ii) (or
2 hearing described in clause (vi) based on such investiga-
3 tion) may be conducted with respect to information about
4 a failure to comply with the requirements under this sub-
5 section, unless the Secretary receives the information not
6 later than 24 months after the date of the alleged failure.

7 “(v) Before commencing an investigation of an em-
8 ployer under clause (i) or (ii), the Secretary shall provide
9 notice to the employer of the intent to conduct such inves-
10 tigation. The notice shall be provided in such a manner,
11 and shall contain sufficient detail, to permit the employer
12 to respond to the allegations before an investigation is
13 commenced. The Secretary is not required to comply with
14 this clause if the Secretary determines that to do so would
15 interfere with an effort by the Secretary to investigate or
16 secure compliance by the employer with the requirements
17 of this subsection. There shall be no judicial review of a
18 determination by the Secretary under this clause.

19 “(vi) If the Secretary, after an investigation under
20 clause (i) or (ii), determines that a reasonable basis exists
21 to make a finding that the employer has failed to comply
22 with the requirements under this subsection, the Secretary
23 shall provide the interested parties with notice of such de-
24 termination and an opportunity for a hearing in accord-
25 ance with section 556 of title 5, United States Code, not

1 later than 120 days after the date of such determination.
2 If such a hearing is requested, the Secretary shall make
3 a finding concerning the matter by not later than 120 days
4 after the date of the hearing.

5 “(vii) If the Secretary, after a hearing, finds a rea-
6 sonable basis to believe that the employer has violated the
7 requirements under this subsection, the Secretary shall
8 impose a penalty under subparagraph (K).

9 “(viii)(I) The Secretary may conduct surveys of the
10 degree to which employers comply with the requirements
11 under this section.

12 “(II) The Secretary shall—

13 “(aa) conduct annual compliance audits of not
14 less than 1 percent of the employers that employ
15 nonimmigrants described in section 101(a)(15)(L)
16 during the applicable fiscal year;

17 “(bb) conduct annual compliance audits of each
18 employer with more than 100 employees who work
19 in the United States if more than 15 percent of such
20 employees are nonimmigrants described in
21 101(a)(15)(L); and

22 “(cc) make available to the public an executive
23 summary or report describing the general findings of
24 the audits carried out pursuant to this subclause.”.

1 **SEC. 305. WAGE RATE AND WORKING CONDITIONS FOR L-**
2 **1 NONIMMIGRANT.**

3 (a) IN GENERAL.—Section 214(c)(2) of the Immigra-
4 tion and Nationality Act (8 U.S.C. 1184(c)(2)), as amend-
5 ed by sections 302 through 304, is further amended by
6 adding at the end the following:

7 “(J)(i) An employer that employs a nonimmigrant
8 described in section 101(a)(15)(L) for a cumulative period
9 of time in excess of 1 year shall—

10 “(I) offer such nonimmigrant, during the period
11 of authorized employment, wages, based on the best
12 information available at the time the application is
13 filed, which are not less than the highest of—

14 “(aa) the locally determined prevailing
15 wage level for the occupational classification in
16 the area of employment;

17 “(bb) the median average wage for all
18 workers in the occupational classification in the
19 area of employment; and

20 “(cc) the median wage for skill level 2 in
21 the occupational classification found in the
22 most recent Occupational Employment Statis-
23 tics survey; and

24 “(II) provide working conditions for such non-
25 immigrant that will not adversely affect the working
26 conditions of workers similarly employed.

1 “(ii) If an employer, in such previous period specified
2 by the Secretary of Homeland Security, employed 1 or
3 more such nonimmigrants, the employer shall provide to
4 the Secretary of Homeland Security the Internal Revenue
5 Service Form W–2 Wage and Tax Statement filed by the
6 employer with respect to such nonimmigrants for such pe-
7 riod.

8 “(iii) It is a failure to meet a condition under this
9 subparagraph for an employer who has filed a petition to
10 import 1 or more aliens as nonimmigrants described in
11 section 101(a)(15)(L)—

12 “(I) to require such a nonimmigrant to pay a
13 penalty for ceasing employment with the employer
14 before a date mutually agreed to by the non-
15 immigrant and the employer; or

16 “(II) to fail to offer to such a nonimmigrant,
17 during the nonimmigrant’s period of authorized em-
18 ployment, on the same basis, and in accordance with
19 the same criteria, as the employer offers to United
20 States workers, benefits and eligibility for benefits,
21 including—

22 “(aa) the opportunity to participate in
23 health, life, disability, and other insurance
24 plans;

1 “(bb) the opportunity to participate in re-
2 tirement and savings plans; and

3 “(cc) cash bonuses and noncash compensa-
4 tion, such as stock options (whether or not
5 based on performance).

6 “(iv) The Secretary of Homeland Security shall de-
7 termine whether a required payment under clause (iii)(I)
8 is a penalty (and not liquidated damages) pursuant to rel-
9 evant State law.”.

10 (b) REGULATIONS.—The Secretary of Homeland Se-
11 curity, after taking into consideration any special cir-
12 cumstances relating to intracompany transfers, shall pro-
13 mulgate rules, after notice and a period of comment, to
14 implement the requirements under section 214(c)(2)(J) of
15 the Immigration and Nationality Act, as added by sub-
16 section (a).

17 **SEC. 306. PENALTIES.**

18 Section 214(c)(2) of the Immigration and Nationality
19 Act (8 U.S.C. 1184(c)(2)), as amended by sections 302
20 through 305, is further amended by adding at the end the
21 following:

22 “(K)(i) If the Secretary of Homeland Security finds,
23 after notice and an opportunity for a hearing, a failure
24 by an employer to meet a condition under subparagraph
25 (F), (G), (J), or (L) or a misrepresentation of material

1 fact in a petition to employ 1 or more aliens as non-
2 immigrants described in section 101(a)(15)(L)—

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

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

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

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

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

23 “(II) the Secretary may not, during a period of
24 at least 2 years, approve a petition filed for that em-

1 ployer to employ 1 or more aliens as such non-
2 immigrants; and

3 “(III) in the case of a violation of subparagraph
4 (J) or (L), the employer shall be liable to the em-
5 ployees harmed by such violation for lost wages and
6 benefits.”.

7 **SEC. 307. PROHIBITION ON RETALIATION AGAINST L-1**
8 **NONIMMIGRANTS.**

9 Section 214(c)(2) of the Immigration and Nationality
10 Act (8 U.S.C. 1184(c)(2)), as amended by sections 302
11 through 306, is further amended by adding at the end the
12 following:

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

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

1 “(II) cooperates or seeks to cooperate with the
2 requirements of this subsection, or any rule or regu-
3 lation pertaining to this subsection.

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

6 “(I) a current employee;

7 “(II) a former employee; and

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

9 **SEC. 308. REPORTS ON L-1 NONIMMIGRANTS.**

10 Section 214(c)(8) of the Immigration and Nationality
11 Act (8 U.S.C. 1184(c)(8)) is amended by inserting “(L),”
12 after “(H),”.

13 **SEC. 309. TECHNICAL AMENDMENTS.**

14 Section 214(c)(2) of the Immigration and Nationality
15 Act (8 U.S.C. 1184(c)(2)) is amended by striking “Attor-
16 ney General” each place it appears and inserting “Sec-
17 retary of Homeland Security”.

18 **SEC. 310. APPLICABILITY.**

19 The amendments made by sections 301 through 307
20 shall apply to applications filed on or after the date of
21 the enactment of this Act.

22 **SEC. 311. REPORT ON L-1 BLANKET PETITION PROCESS.**

23 (a) **REQUIREMENT FOR REPORT.**—Not later than 6
24 months after the date of the enactment of this Act, the
25 Inspector General of the Department of Homeland Secu-

1 rity shall submit a report to the appropriate committees
2 of Congress that—

3 (1) analyzes the use of blanket petitions under
4 section 214(c)(2)(A) of the Immigration and Nation-
5 ality Act (8 U.S.C. 1184(c)(2)(A));

6 (2) assesses the efficiency and reliability of the
7 process for reviewing such blanket petitions; and

8 (3) determines whether the process referred to
9 in paragraph (2) includes adequate safeguards
10 against fraud and abuse.

11 (b) APPROPRIATE COMMITTEES OF CONGRESS.—In
12 this section the term “appropriate committees of Con-
13 gress” means—

14 (1) the Committee on Homeland Security and
15 Governmental Affairs of the Senate;

16 (2) the Committee on the Judiciary of the Sen-
17 ate;

18 (3) the Committee on Homeland Security of the
19 House of Representatives; and

20 (4) the Committee on the Judiciary of the
21 House of Representatives.