

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

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

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

**S. 744**

To provide for comprehensive immigration reform and for other purposes.

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

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. FRANKEN

Viz:

1 At the end of subtitle A of title III, add the following:

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

4 (a) ESTABLISHMENT OF SMALL BUSINESS AND EM-  
5 PLOYEE ADVOCATE.—The Secretary shall establish and  
6 maintain within U.S. Citizenship and Immigration Serv-  
7 ices the Office of the Small Business and Employee Advoc-  
8 ate (in this section referred to as the “Office”). The pur-  
9 pose of the Office shall be to assist small businesses and  
10 individuals in complying with the requirements of section  
11 274A of the Immigration and Nationality Act (8 U.S.C.  
12 1324a), as amended by this Act, including the resolution

1 of conflicts arising in the course of attempted compliance  
2 with such requirements.

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

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

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

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

1           (4) To the extent practicable, proposing  
2 changes in the administrative practices of the em-  
3 ployment verification system required under sub-  
4 section (d) of section 274A of the Immigration and  
5 Nationality Act to mitigate the problems identified  
6 under paragraph (2).

7           (5) Identifying recommendations for legislative  
8 action to mitigate such problems.

9           (c) AUTHORITY TO ISSUE ASSISTANCE ORDER.—

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

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

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

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

4                   (A) an immediate threat of adverse action;

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

7                   (C) the incurring by the small business or  
8           individual of significant costs (including fees for  
9           professional representation) if relief is not  
10          granted; or

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

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

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

1 (A) to cease any action, take any action, or  
2 refrain from taking any action, with respect to  
3 the small business or individual under section  
4 274A of the Immigration and Nationality Act;

5 (B) to determine whether any employee is  
6 or is not authorized to work in the United  
7 States; or

8 (C) to abate any penalty under section  
9 274A of the Immigration and Nationality Act  
10 that the Office determines is inappropriate or  
11 excessive.

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

15 (A) only by the Office, or the Director or  
16 Deputy Director of U.S. Citizenship and Immi-  
17 gration Services, and

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

23 (6) SUSPENSION OF RUNNING OF PERIOD OF  
24 LIMITATION.—The running of any period of limita-

1           tion with respect to an action described in paragraph  
2           (4)(A) shall be suspended for—

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

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

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

15           (d) ACCESSIBILITY TO THE PUBLIC.—

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

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

1 available through the Office shall be available to any  
2 employer.

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

11 (f) DEFINITIONS.—In this section:

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

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

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