

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.

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## 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

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## 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)”;

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           eign 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).”.

○