

110TH CONGRESS
1ST SESSION

S. 1035

To amend the Immigration and Nationality Act to reduce fraud and abuse in certain visa programs for aliens working temporarily in the United States.

IN THE SENATE OF THE UNITED STATES

MARCH 29, 2007

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

A BILL

To amend the Immigration and Nationality Act to reduce fraud and abuse in certain visa programs for aliens working temporarily in the United States.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “H–1B and L–1 Visa Fraud and Abuse Prevention Act
6 of 2007”.

7 (b) TABLE OF CONTENTS.—The table of contents for
8 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. H–1B employer requirements.
- Sec. 3. H–1B government authority and requirements.

Sec. 4. L-1 visa fraud and abuse protections.

Sec. 5. Whistleblower protections.

Sec. 6. Additional Department of Labor employees.

1 **SEC. 2. H-1B EMPLOYER REQUIREMENTS.**

2 (a) APPLICATION OF NONDISPLACEMENT AND GOOD
3 FAITH RECRUITMENT REQUIREMENTS TO ALL H-1B
4 EMPLOYERS.—

5 (1) AMENDMENTS.—Section 212(n) of the Im-
6 migration and Nationality Act (8 U.S.C. 1182(n)) is
7 amended—

8 (A) in paragraph (1)—

9 (i) in subparagraph (E);

10 (I) in clause (i), by striking
11 “(E)(i) In the case of an application
12 described in clause (ii), the” and in-
13 serting “(E) The”; and

14 (II) by striking clause (ii);

15 (ii) in subparagraph (F), by striking
16 “In the case of” and all that follows
17 through “where—” and inserting the fol-
18 lowing: “The employer will not place the
19 nonimmigrant with another employer if—
20 ”; and

21 (iii) in subparagraph (G), by striking
22 “In the case of an application described in
23 subparagraph (E)(ii), subject” and insert-
24 ing “Subject”;

1 (B) in paragraph (2)—

2 (i) in subparagraph (E), by striking
3 “If an H-1B-dependent employer” and in-
4 serting “If an employer that employs H-
5 1B nonimmigrants”; and

6 (ii) in subparagraph (F), by striking
7 “The preceding sentence shall apply to an
8 employer regardless of whether or not the
9 employer is an H-1B-dependent em-
10 ployer.”; and

11 (C) by striking paragraph (3).

12 (2) EFFECTIVE DATE.—The amendments made
13 by paragraph (1) shall apply to applications filed on
14 or after the date of the enactment of this Act.

15 (b) NONDISPLACEMENT REQUIREMENT.—

16 (1) EXTENDING TIME PERIOD FOR NON-
17 DISPLACEMENT.—Section 212(n) of such Act, as
18 amended by subsection (a), is further amended—

19 (A) in paragraph (1)—

20 (i) in subparagraph (E), by striking
21 “90 days” each place it appears and in-
22 serting “180 days”;

23 (ii) in subparagraph (F)(ii), by strik-
24 ing “90 days” each place it appears and
25 inserting “180 days”; and

1 (B) in paragraph (2)(C)(iii), by striking
 2 “90 days” each place it appears and inserting
 3 “180 days”.

4 (2) EFFECTIVE DATE.—The amendments made
 5 by paragraph (1)—

6 (A) shall apply to applications filed on or
 7 after the date of the enactment of this Act; and

8 (B) shall not apply to displacements for
 9 periods occurring more than 90 days before
 10 such date.

11 (c) PUBLIC LISTING OF AVAILABLE POSITIONS.—

12 (1) LISTING OF AVAILABLE POSITIONS.—Sec-
 13 tion 212(n)(1)(C) of such Act is amended—

14 (A) in clause (i), by striking “(i) has pro-
 15 vided” and inserting the following:

16 “(ii)(I) has provided”;

17 (B) by redesignating clause (ii) as sub-
 18 clause (II); and

19 (C) by inserting before clause (ii), as re-
 20 designated, the following:

21 “(i) has advertised the job availability on
 22 the list described in paragraph (6), for at least
 23 30 calendar days; and”.

24 (2) LIST MAINTAINED BY THE DEPARTMENT OF
 25 LABOR.—Section 212(n) of such Act, as amended by

1 this section, is further amended by adding at the
2 end the following:

3 “(6)(A) Not later than 90 days after the date of the
4 enactment of this paragraph, the Secretary of Labor shall
5 establish a list of available jobs, which shall be publicly
6 accessible without charge—

7 “(i) on a website maintained by the Department
8 of Labor, which website shall be searchable by—

9 “(I) the name, city, State, and zip code of
10 the employer;

11 “(II) the date on which the job is expected
12 to begin;

13 “(III) the title and description of the job;
14 and

15 “(IV) the State and city (or county) at
16 which the work will be performed; and

17 “(ii) at each 1-stop center created under the
18 Workforce Investment Act of 1998 (Public Law
19 105–220).

20 “(B) Each available job advertised on the list shall
21 include—

22 “(i) the employer’s full legal name;

23 “(ii) the address of the employer’s principal
24 place of business;

25 “(iii) the employer’s city, State and zip code;

1 “(iv) the employer’s Federal Employer Identi-
2 fication Number;

3 “(v) the phone number, including area code and
4 extension, as appropriate, of the hiring official or
5 other designated official of the employer;

6 “(vi) the e-mail address, if available, of the hir-
7 ing official or other designated official of the em-
8 ployer;

9 “(vii) the wage rate to be paid for the position
10 and, if the wage rate in the offer is expressed as a
11 range, the bottom of the wage range;

12 “(viii) whether the rate of pay is expressed on
13 an annual, monthly, biweekly, weekly, or hourly
14 basis;

15 “(ix) a statement of the expected hours per
16 week that the job will require;

17 “(x) the date on which the job is expected to
18 begin;

19 “(xi) the date on which the job is expected to
20 end, if applicable;

21 “(xii) the number of persons expected to be em-
22 ployed for the job;

23 “(xiii) the job title;

24 “(xiv) the job description;

1 “(xv) the city and State of the physical location
2 at which the work will be performed; and

3 “(xvi) a description of a process by which a
4 United States worker may submit an application to
5 be considered for the job.

6 “(C) The Secretary of Labor may charge a nominal
7 filing fee to employers who advertise available jobs on the
8 list established under this paragraph to cover expenses for
9 establishing and administering the requirements under
10 this paragraph.

11 “(D) The Secretary may promulgate rules, after no-
12 tice and a period for comment—

13 “(i) to carry out the requirements of this para-
14 graph; and

15 “(ii) that require employers to provide other in-
16 formation in order to advertise available jobs on the
17 list.”.

18 (3) EFFECTIVE DATE.—Paragraph (1) shall
19 take effect for applications filed at least 30 days
20 after the creation of the list described in paragraph
21 (2).

22 (d) H-1B NONIMMIGRANTS NOT ADMITTED FOR
23 JOBS ADVERTISED OR OFFERED ONLY TO H-1B NON-
24 IMMIGRANTS.—Section 212(n)(1) of such Act, as amended
25 by this section, is further amended—

1 (1) by inserting after subparagraph (G) the fol-
 2 lowing:

3 “(H)(i) The employer has not advertised the
 4 available jobs specified in the application in an ad-
 5 vertisement that states or indicates that—

6 “(I) the job or jobs are only available to
 7 persons who are or who may become H–1B
 8 nonimmigrants; or

9 “(II) persons who are or who may become
 10 H–1B nonimmigrants shall receive priority or a
 11 preference in the hiring process.

12 “(ii) The employer has not only recruited per-
 13 sons who are, or who may become, H–1B non-
 14 immigrants to fill the job or jobs.”; and

15 (2) in the undesignated paragraph at the end,
 16 by striking “The employer” and inserting the fol-
 17 lowing:

18 “(K) The employer”.

19 (e) PROHIBITION OF OUTPLACEMENT.—

20 (1) IN GENERAL.—Section 212(n) of such Act,
 21 as amended by this section, is further amended—

22 (A) in paragraph (1), by amending sub-
 23 paragraph (F) to read as follows:

24 “(F) The employer shall not place, outsource,
 25 lease, or otherwise contract for the placement of an

1 alien admitted or provided status as an H–1B non-
2 immigrant with another employer;” and

3 (B) in paragraph (2), by striking subpara-
4 graph (E).

5 (2) EFFECTIVE DATE.—The amendments made
6 by paragraph (1) shall apply to applications filed on
7 or after the date of the enactment of this Act.

8 (f) LIMIT ON PERCENTAGE OF H–1B EMPLOYEES.—
9 Section 212(n)(1) of such Act, as amended by this section,
10 is further amended by inserting after subparagraph (H),
11 as added by subsection (d)(1), the following:

12 “(I) If the employer employs not less than 50
13 employees in the United States, not more than 50
14 percent of such employees are H–1B non-
15 immigrants.”.

16 (g) WAGE DETERMINATION.—

17 (1) CHANGE IN MINIMUM WAGES.—Section
18 212(n)(1) of such Act, as amended by this section,
19 is further amended—

20 (A) by amending subparagraph (A) to read
21 as follows:

22 “(A) The employer—

23 “(i) is offering and will offer, during the
24 period of authorized employment, to aliens ad-
25 mitted or provided status as an H–1B non-

immigrant, wages, based on the best information available at the time the application is filed, which are not less than the highest of—

“(I) the locally determined prevailing wage level for the occupational classification in the area of employment;

“(II) the median average wage for all workers in the occupational classification in the area of employment; or

“(III) the median wage for skill level 2 in the occupational classification found in the most recent Occupational Employment Statistics survey; and

“(ii) will provide working conditions for such a nonimmigrant that will not adversely affect the working conditions of workers similarly employed.”; and

(B) in subparagraph (D), by inserting “the wage determination methodology used under subparagraph (A)(i),” after “shall contain”.

(2) PROVISION OF W-2 FORMS.—Section 212(n)(1) of such Act is amended by inserting after subparagraph (I), as added by subsection (f), the following:

1 “(J) If the employer, in such previous period as
2 the Secretary shall specify, employed 1 or more H–
3 1B nonimmigrants, the employer shall submit to the
4 Secretary the Internal Revenue Service Form W–2
5 Wage and Tax Statement filed by the employer with
6 respect to such nonimmigrants for such period.”.

7 (3) EFFECTIVE DATE.—The amendments made
8 by this subsection shall apply to applications filed on
9 or after the date of the enactment of this Act.

10 (h) IMMIGRATION DOCUMENTS.—Section 204 of such
11 Act (8 U.S.C. 1154) is amended by adding at the end the
12 following:

13 “(l) EMPLOYER TO SHARE ALL IMMIGRATION PA-
14 PERWORK EXCHANGED WITH FEDERAL AGENCIES.—Not
15 later than 10 working days after receiving a written re-
16 quest from a former, current, or future employee or bene-
17 ficiary, an employer shall provide the employee or bene-
18 ficiary with the original (or a certified copy of the original)
19 of all petitions, notices, and other written communication
20 exchanged between the employer and the Department of
21 Labor, the Department of Homeland Security, or any
22 other Federal agency that is related to an immigrant or
23 nonimmigrant petition filed by the employer for the em-
24 ployee or beneficiary.”.

1 **SEC. 3. H-1B GOVERNMENT AUTHORITY AND REQUIRE-**
2 **MENTS.**

3 (a) SAFEGUARDS AGAINST FRAUD AND MISREPRE-
4 SENTATION IN APPLICATION REVIEW PROCESS.—Section
5 212(n)(1)(K) of the Immigration and Nationality Act, as
6 redesignated by section 2(d)(2), is amended—

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

9 (2) by inserting “, clear indicators of fraud,
10 misrepresentation of material fact,” after “complete-
11 ness”;

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

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

18 (5) by adding at the end the following: “If the
19 Secretary’s review of an application identifies clear
20 indicators of fraud or misrepresentation of material
21 fact, the Secretary may conduct an investigation and
22 hearing under paragraph (2).

23 (b) INVESTIGATIONS BY DEPARTMENT OF LABOR.—
24 Section 212(n)(2) of such Act is amended—

25 (1) in subparagraph (A)—

1 (A) by striking “12 months” and inserting
2 “24 months”; and

3 (B) by striking “The Secretary shall con-
4 duct” and all that follows and inserting “Upon
5 the receipt of such a complaint, the Secretary
6 may initiate an investigation to determine if
7 such a failure or misrepresentation has oc-
8 curred.”;

9 (2) in subparagraph (C)(i)—

10 (A) by striking “a condition of paragraph
11 (1)(B), (1)(E), or (1)(F)” and inserting “a con-
12 dition under subparagraph (B), (C)(i), (E), (F),
13 (H), (I), or (J) of paragraph (1)”;

14 (B) by striking “(1)(C)” and inserting
15 “(1)(C)(ii)”;

16 (3) in subparagraph (G)—

17 (A) in clause (i), by striking “if the Sec-
18 retary” and all that follows and inserting “with
19 regard to the employer’s compliance with the
20 requirements of this subsection.”;

21 (B) in clause (ii), by striking “and whose
22 identity” and all that follows through “failure
23 or failures.” and inserting “the Secretary of
24 Labor may conduct an investigation into the

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

3 (C) in clause (iii), by striking the last sen-
4 tence;

5 (D) by striking clauses (iv) and (v);

6 (E) by redesignating clauses (vi), (vii), and
7 (viii) as clauses (iv), (v), and (vi), respectively;

8 (F) in clause (iv), as redesignated, by
9 striking “meet a condition described in clause
10 (ii), unless the Secretary of Labor receives the
11 information not later than 12 months” and in-
12 serting “comply with the requirements under
13 this subsection, unless the Secretary of Labor
14 receives the information not later than 24
15 months”;

16 (G) by amending clause (v), as redesign-
17 nated, to read as follows:

18 “(v) The Secretary of Labor shall provide notice to
19 an employer of the intent to conduct an investigation. The
20 notice shall be provided in such a manner, and shall con-
21 tain sufficient detail, to permit the employer to respond
22 to the allegations before an investigation is commenced.
23 The Secretary is not required to comply with this clause
24 if the Secretary determines that such compliance would
25 interfere with an effort by the Secretary to investigate or

1 secure compliance by the employer with the requirements
 2 of this subsection. A determination by the Secretary under
 3 this clause shall not be subject to judicial review.”.

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

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

18 “(vii) If the Secretary of Labor, after a hearing, finds
 19 a reasonable basis to believe that the employer has violated
 20 the requirements under this subsection, the Secretary may
 21 impose a penalty under subparagraph (C).”; and

22 (4) by striking subparagraph (H).

23 (c) INFORMATION SHARING BETWEEN DEPARTMENT
 24 OF LABOR AND DEPARTMENT OF HOMELAND SECU-
 25 RITY.—Section 212(n)(2) of such Act, as amended by this

1 section, is further amended by inserting after subpara-
2 graph (G) the following:

3 “(H) The Director of United States Citizenship
4 and Immigration Services shall provide the Secretary
5 of Labor with any information contained in the ma-
6 terials submitted by H–1B employers as part of the
7 adjudication process that indicates that the employer
8 is not complying with H–1B visa program require-
9 ments. The Secretary may initiate and conduct an
10 investigation and hearing under this paragraph after
11 receiving information of noncompliance under this
12 subparagraph.”.

13 (d) AUDITS.—Section 212(n)(2)(A) of such Act, as
14 amended by this section, is further amended by adding
15 at the end the following: “The Secretary may conduct sur-
16 veys of the degree to which employers comply with the re-
17 quirements under this subsection and may conduct annual
18 compliance audits of employers that employ H–1B non-
19 immigrants. The Secretary shall conduct annual compli-
20 ance audits of not less than 1 percent of the employers
21 that employ H–1B nonimmigrants during the applicable
22 calendar year. The Secretary shall conduct annual compli-
23 ance audits of each employer with more than 100 employ-
24 ees who work in the United States if more than 15 percent
25 of such employees are H–1B nonimmigrants.”.

1 (e) PENALTIES.—Section 212(n)(2)(C) of such Act,
2 as amended by this section, is further amended—

3 (1) in clause (i)(I), by striking “\$1,000” and
4 inserting “\$2,000”;

5 (2) in clause (ii)(I), by striking “\$5,000” and
6 inserting “\$10,000”; and

7 (3) in clause (vi)(III), by striking “\$1,000” and
8 inserting “\$2,000”.

9 (f) INFORMATION PROVIDED TO H-1B NON-
10 IMMIGRANTS UPON VISA ISSUANCE.—Section 212(n) of
11 such Act, as amended by this section, is further amended
12 by inserting after paragraph (2) the following:

13 “(3)(A) Upon issuing an H-1B visa to an applicant
14 outside the United States, the issuing office shall provide
15 the applicant with—

16 “(i) a brochure outlining the employer’s obliga-
17 tions and the employee’s rights under Federal law,
18 including labor and wage protections;

19 “(ii) the contact information for Federal agen-
20 cies that can offer more information or assistance in
21 clarifying employer obligations and workers’ rights;
22 and

23 “(iii) a copy of the employer’s H-1B applica-
24 tion for the position that the H-1B nonimmigrant
25 has been issued the visa to fill.

1 “(B) Upon the issuance of an H–1B visa to an alien
 2 inside the United States, the officer of the Department
 3 of Homeland Security shall provide the applicant with—

4 “(i) a brochure outlining the employer’s obliga-
 5 tions and the employee’s rights under Federal law,
 6 including labor and wage protections;

7 “(ii) the contact information for Federal agen-
 8 cies that can offer more information or assistance in
 9 clarifying employer’s obligations and workers’ rights;
 10 and

11 “(iii) a copy of the employer’s H–1B applica-
 12 tion for the position that the H–1B nonimmigrant
 13 has been issued the visa to fill.”.

14 **SEC. 4. L–1 VISA FRAUD AND ABUSE PROTECTIONS.**

15 (a) IN GENERAL.—Section 214(c)(2) of the Immigra-
 16 tion and Nationality Act (8 U.S.C. 1184(c)(2)) is amend-
 17 ed—

18 (1) by striking “Attorney General” each place
 19 it appears and inserting “Secretary of Homeland Se-
 20 curity”;

21 (2) in subparagraph (E), by striking “In the
 22 case of an alien spouse admitted under section
 23 101(a)(15)(L), who” and inserting “Except as pro-
 24 vided in subparagraph (H), if an alien spouse admit-
 25 ted under section 101(a)(15)(L)”; and

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

2 “(G)(i) If the beneficiary of a petition under this sub-
3 section is coming to the United States to open, or be em-
4 ployed in, a new facility, the petition may be approved for
5 up to 12 months only if the employer operating the new
6 facility has—

7 “(I) a business plan;

8 “(II) sufficient physical premises to carry out
9 the proposed business activities; and

10 “(III) the financial ability to commence doing
11 business immediately upon the approval of the peti-
12 tion.

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

17 “(I) evidence that the importing employer
18 meets the requirements of this subsection;

19 “(II) evidence that the beneficiary meets the re-
20 quirements under section 101(a)(15)(L);

21 “(III) a statement summarizing the original pe-
22 tition;

23 “(IV) evidence that the importing employer has
24 fully complied with the business plan submitted
25 under clause (i)(I);

1 “(V) evidence of the truthfulness of any rep-
2 resentations made in connection with the filing of
3 the original petition;

4 “(VI) evidence that the importing employer,
5 during the preceding 12 months, has been doing
6 business at the new facility through regular, system-
7 atic, and continuous provision of goods or services,
8 or has otherwise been taking commercially reason-
9 able steps to establish the new facility as a commer-
10 cial enterprise;

11 “(VII) a statement of the duties the beneficiary
12 has performed at the new facility during the pre-
13 ceding 12 months and the duties the beneficiary will
14 perform at the new facility during the extension pe-
15 riod approved under this clause;

16 “(VIII) a statement describing the staffing at
17 the new facility, including the number of employees
18 and the types of positions held by such employees;

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

20 “(X) evidence of the financial status of the new
21 facility; and

22 “(XI) any other evidence or data prescribed by
23 the Secretary.

24 “(iii) Notwithstanding subclauses (I) through (VI) of
25 clause (ii), and subject to the maximum period of author-

1 ized admission set forth in subparagraph (D), the Sec-
 2 retary of Homeland Security may approve a petition sub-
 3 sequently filed on behalf of the beneficiary to continue em-
 4 ployment at the facility described in this subsection for
 5 a period beyond the initially granted 12-month period if
 6 the importing employer demonstrates that the failure to
 7 satisfy any of the requirements described in those sub-
 8 clauses was directly caused by extraordinary cir-
 9 cumstances beyond the control of the importing employer.

10 “(iv) For purposes of determining the eligibility of
 11 an alien for classification under section 101(a)(15)(L), the
 12 Secretary of Homeland Security shall work cooperatively
 13 with the Secretary of State to verify a company or facili-
 14 ty’s existence in the United States and abroad.”.

15 (b) RESTRICTION ON BLANKET PETITIONS.—Section
 16 214(c)(2)(A) of such Act is amended to read as follows:

17 “(2)(A) The Secretary of Homeland Security may not
 18 permit the use of blanket petitions to import aliens as non-
 19 immigrants under section 101(a)(15)(L).”.

20 (c) PROHIBITION ON OUTPLACEMENT.—Section
 21 214(c)(2) of such Act, as amended by this section, is fur-
 22 ther amended by adding at the end the following:

23 “(H) An employer who imports 1 or more aliens as
 24 nonimmigrants described in section 101(a)(15)(L) shall
 25 not place, outsource, lease, or otherwise contract for the

1 placement of an alien admitted or provided status as an
2 L–1 nonimmigrant with another employer.”.

3 (d) INVESTIGATIONS AND AUDITS BY DEPARTMENT
4 OF HOMELAND SECURITY.—

5 (1) DEPARTMENT OF HOMELAND SECURITY IN-
6 VESTIGATIONS.—Section 214(c)(2) of such Act, as
7 amended by this section, is further amended by add-
8 ing at the end the following:

9 “(I)(i) The Secretary of Homeland Security may ini-
10 tiate an investigation of any employer that employs non-
11 immigrants described in section 101(a)(15)(L) with re-
12 gard to the employer’s compliance with the requirements
13 of this subsection.

14 “(ii) If the Secretary of Homeland Security receives
15 specific credible information from a source who is likely
16 to have knowledge of an employer’s practices, employment
17 conditions, or compliance with the requirements under this
18 subsection, the Secretary may conduct an investigation
19 into the employer’s compliance with the requirements of
20 this subsection. The Secretary may withhold the identity
21 of the source from the employer, and the source’s identity
22 shall not be subject to disclosure under section 552 of title
23 5.

24 “(iii) The Secretary of Homeland Security shall es-
25 tablish a procedure for any person desiring to provide to

1 the Secretary of Homeland Security information described
2 in clause (ii) that may be used, in whole or in part, as
3 the basis for the commencement of an investigation de-
4 scribed in such clause, to provide the information in writ-
5 ing on a form developed and provided by the Secretary
6 of Homeland Security and completed by or on behalf of
7 the person.

8 “(iv) No investigation described in clause (ii) (or
9 hearing described in clause (vi) based on such investiga-
10 tion) may be conducted with respect to information about
11 a failure to comply with the requirements under this sub-
12 section, unless the Secretary of Homeland Security re-
13 ceives the information not later than 24 months after the
14 date of the alleged failure.

15 “(v) Before commencing an investigation of an em-
16 ployer under clause (i) or (ii), the Secretary of Homeland
17 Security shall provide notice to the employer of the intent
18 to conduct such investigation. The notice shall be provided
19 in such a manner, and shall contain sufficient detail, to
20 permit the employer to respond to the allegations before
21 an investigation is commenced. The Secretary is not re-
22 quired to comply with this clause if the Secretary deter-
23 mines that to do so would interfere with an effort by the
24 Secretary to investigate or secure compliance by the em-
25 ployer with the requirements of this subsection. There

1 shall be no judicial review of a determination by the Sec-
2 retary under this clause.

3 “(vi) If the Secretary of Homeland Security, after an
4 investigation under clause (i) or (ii), determines that a
5 reasonable basis exists to make a finding that the em-
6 ployer has failed to comply with the requirements under
7 this subsection, the Secretary shall provide interested par-
8 ties with notice of such determination and an opportunity
9 for a hearing in accordance with section 556 of title 5,
10 United States Code, not later than 120 days after the date
11 of such determination. If such a hearing is requested, the
12 Secretary shall make a finding concerning the matter by
13 not later than 120 days after the date of the hearing.

14 “(vii) If the Secretary of Homeland Security, after
15 a hearing, finds a reasonable basis to believe that the em-
16 ployer has violated the requirements under this subsection,
17 the Secretary may impose a penalty under section
18 214(c)(2)(J).”.

19 (2) AUDITS.—Section 214(c)(2)(I) of such Act,
20 as added by paragraph (1), is amended by adding at
21 the end the following:

22 “(viii) The Secretary of Homeland Security may con-
23 duct surveys of the degree to which employers comply with
24 the requirements under this section and may conduct an-
25 nual compliance audits of employers that employ H-1B

1 nonimmigrants. The Secretary shall conduct annual com-
 2 pliance audits of not less than 1 percent of the employers
 3 that employ nonimmigrants described in section
 4 101(a)(15)(L) during the applicable calendar year. The
 5 Secretary shall conduct annual compliance audits of each
 6 employer with more than 100 employees who work in the
 7 United States if more than 15 percent of such employees
 8 are nonimmigrants described in section 101(a)(15)(L).”.

9 (3) REPORTING REQUIREMENT.—Section
 10 214(c)(8) of such Act is amended by inserting
 11 “(L),” after “(H),”.

12 (e) PENALTIES.—Section 214(c)(2) of such Act, as
 13 amended by this section, is further amended by adding
 14 at the end the following:

15 “(J)(i) If the Secretary of Homeland Secu-
 16 rity finds, after notice and an opportunity for
 17 a hearing, a failure by an employer to meet a
 18 condition under subparagraph (F), (G), (H),
 19 (I), or (K) or a misrepresentation of material
 20 fact in a petition to employ 1 or more aliens as
 21 nonimmigrants described in section
 22 101(a)(15)(L)—

23 “(I) the Secretary of Homeland Secu-
 24 rity may impose such other administrative
 25 remedies (including civil monetary pen-

alties in an amount not to exceed \$2,000 per violation) as the Secretary determines to be appropriate; and

“(II) the Secretary of Homeland Security may not, during a period of at least 1 year, approve a petition for that employer to employ 1 or more aliens as such nonimmigrants.

“(ii) If the Secretary of Homeland Security finds, after notice and an opportunity for a hearing, a willful failure by an employer to meet a condition under subparagraph (F), (G), (H), (I), or (K) or a misrepresentation of material fact in a petition to employ 1 or more aliens as nonimmigrants described in section 101(a)(15)(L)—

“(I) the Secretary of Homeland Security may impose such other administrative remedies (including civil monetary penalties in an amount not to exceed \$10,000 per violation) as the Secretary determines to be appropriate; and

“(II) the Secretary of Homeland Security may not, during a period of at least 2 years, approve a petition filed for that

1 employer to employ 1 or more aliens as
 2 such nonimmigrants.

3 “(iii) If the Secretary of Homeland Secu-
 4 rity finds, after notice and an opportunity for
 5 a hearing, a willful failure by an employer to
 6 meet a condition under subparagraph (L)(i)—

7 “(I) the Secretary of Homeland Secu-
 8 rity may impose such other administrative
 9 remedies (including civil monetary pen-
 10 alties in an amount not to exceed \$10,000
 11 per violation) as the Secretary determines
 12 to be appropriate; and

13 “(II) the employer shall be liable to
 14 employees harmed for lost wages and bene-
 15 fits.”.

16 (f) WAGE DETERMINATION.—

17 (1) CHANGE IN MINIMUM WAGES.—Section
 18 214(c)(2) of such Act, as amended by this section,
 19 is further amended by adding at the end the fol-
 20 lowing:

21 “(K)(i) An employer that employs a non-
 22 immigrant described in section 101(a)(15)(L)
 23 shall—

24 “(I) offer such nonimmigrant, during
 25 the period of authorized employment,

1 wages, based on the best information avail-
2 able at the time the application is filed,
3 which are not less than the highest of—

4 “(aa) the locally determined pre-
5 vailing wage level for the occupational
6 classification in the area of employ-
7 ment;

8 “(bb) the median average wage
9 for all workers in the occupational
10 classification in the area of employ-
11 ment; or

12 “(cc) the median wage for skill
13 level 2 in the occupational classifica-
14 tion found in the most recent Occupa-
15 tional Employment Statistics survey;
16 and

17 “(II) provide working conditions for
18 such nonimmigrant that will not adversely
19 affect the working conditions of workers
20 similarly employed.

21 “(ii) If an employer, in such previous pe-
22 riod specified by the Secretary of Homeland Se-
23 curity, employed 1 or more L-1 nonimmigrants,
24 the employer shall provide to the Secretary of
25 Homeland Security the Internal Revenue Serv-

1 ice Form W-2 Wage and Tax Statement filed
2 by the employer with respect to such non-
3 immigrants for such period.

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

9 “(I) require such a nonimmigrant to
10 pay a penalty for ceasing employment with
11 the employer before a date mutually agreed
12 to by the nonimmigrant and the employer;
13 or

14 “(II) fail to offer to such a non-
15 immigrant, during the nonimmigrant’s pe-
16 riod of authorized employment, on the
17 same basis, and in accordance with the
18 same criteria, as the employer offers to
19 United States workers, benefits and eligi-
20 bility for benefits, including—

21 “(aa) the opportunity to partici-
22 pate in health, life, disability, and
23 other insurance plans;

1 “(bb) the opportunity to partici-
 2 pate in retirement and savings plans;
 3 and

4 “(cc) cash bonuses and noncash
 5 compensation, such as stock options
 6 (whether or not based on perform-
 7 ance).

8 “(iv) The Secretary of Homeland Security
 9 shall determine whether a required payment
 10 under clause (iii)(I) is a penalty (and not liq-
 11 uidated damages) pursuant to relevant State
 12 law.”.

13 (2) EFFECTIVE DATE.—The amendments made
 14 by this subsection shall apply to applications filed on
 15 or after the date of the enactment of this Act.

16 **SEC. 5. WHISTLEBLOWER PROTECTIONS.**

17 (a) H-1B WHISTLEBLOWER PROTECTIONS.—Section
 18 212(n)(2)(C)(iv) of the Immigration and Nationality Act
 19 (8 U.S.C. 1182(n)(2)(C)(iv)) is amended—

20 (1) by inserting “take, fail to take, or threaten
 21 to take or fail to take, a personnel action, or” before
 22 “to intimidate”; and

23 (2) by adding at the end the following: “An em-
 24 ployer that violates this clause shall be liable to the

1 employees harmed by such violation for lost wages
2 and benefits.”.

3 (b) L-1 WHISTLEBLOWER PROTECTIONS.—Section
4 214(c)(2) of such Act, as amended by section 4, is further
5 amended by adding at the end the following:

6 “(L)(i) It is a violation of this subparagraph for an
7 employer who has filed a petition to import 1 or more
8 aliens as nonimmigrants described in section
9 101(a)(15)(L) to take, fail to take, or threaten to take
10 or fail to take, a personnel action, or to intimidate, threat-
11 en, restrain, coerce, blacklist, discharge, or discriminate
12 in any other manner against an employee because the em-
13 ployee—

14 “(I) has disclosed information that the em-
15 ployee reasonably believes evidences a violation of
16 this subsection, or any rule or regulation pertaining
17 to this subsection; or

18 “(II) cooperates or seeks to cooperate with the
19 requirements of this subsection, or any rule or regu-
20 lation pertaining to this subsection.

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

24 “(iii) In this subparagraph, the term ‘employee’ in-
25 cludes—

- 1 “(I) a current employee;
2 “(II) a former employee; and
3 “(III) an applicant for employment.”.

4 **SEC. 6. ADDITIONAL DEPARTMENT OF LABOR EMPLOYEES.**

5 (a) IN GENERAL.—The Secretary of Labor is author-
6 ized to hire 200 additional employees to administer, over-
7 see, investigate, and enforce programs involving H-1B
8 nonimmigrant workers.

9 (b) AUTHORIZATION OF APPROPRIATIONS.—There
10 are authorized to be appropriated such sums as may be
11 necessary to carry out this section.

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