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

IN THE SENATE OF THE UNITED STATES

JANUARY 20, 2017

Mr. GRASSLEY (for himself, Mr. DURBIN, Mr. BROWN, and Mr. BLUMENTHAL) 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 reform and reduce fraud and abuse in certain visa programs for aliens working temporarily in the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “H–1B and L–1 Visa Reform Act of 2017”.

(b) Table of Contents.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
TITLE I—H–1B VISA FRAUD AND ABUSE PROTECTIONS

Subtitle A—H–1B Employer Application Requirements

Sec. 101. Modification of application requirements.
Sec. 102. New application requirements.
Sec. 103. Application review requirements.
Sec. 104. H–1B visa allocation.
Sec. 105. H–1B workers employed by institutions of higher education.
Sec. 106. Specialty occupation to require an actual degree.
Sec. 107. Labor condition application fee.
Sec. 108. H–1B subpoena authority for the Department of Labor.
Sec. 109. Limitation on extension of H–1B petition.
Sec. 110. Elimination of B–1 in lieu of H–1.

Subtitle B—Investigation and Disposition of Complaints Against H–1B Employers

Sec. 111. General modification of procedures for investigation and disposition.
Sec. 112. Investigation, working conditions, and penalties.
Sec. 113. Waiver requirements.
Sec. 114. Initiation of investigations.
Sec. 115. Information sharing.
Sec. 116. Conforming amendment.

Subtitle C—Other Protections

Sec. 121. Posting available positions through the Department of Labor.
Sec. 122. Transparency and report on wage system.
Sec. 123. Requirements for information for H–1B and L–1 nonimmigrants.
Sec. 124. Additional Department of Labor employees.
Sec. 125. Technical correction.
Sec. 126. Application.

TITLE II—L–1 VISA FRAUD AND ABUSE PROTECTIONS

Sec. 201. Prohibition on replacement of United States workers and restricting outplacement of L–1 nonimmigrants.
Sec. 202. L–1 employer petition requirements for employment at new offices.
Sec. 203. Cooperation with Secretary of State.
Sec. 204. Investigation and disposition of complaints against L–1 employers.
Sec. 205. Wage rate and working conditions for L–1 nonimmigrants.
Sec. 206. Penalties.
Sec. 207. Prohibition on retaliation against L–1 nonimmigrants.
Sec. 208. Adjudication by Department of Homeland Security of petitions under blanket petition.
Sec. 209. Reports on employment-based nonimmigrants.
Sec. 211. Technical amendments.
Sec. 212. Application.
TITLE I—H–1B VISA FRAUD AND
ABUSE PROTECTIONS
Subtitle A—H–1B Employer
Application Requirements

SEC. 101. MODIFICATION OF APPLICATION REQUIREMENTS.

(a) General Application Requirements.—Section 212(n)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)(A)) is amended to read as follows:

“(A) The employer—

“(i) is offering and will offer to H–1B non-immigrants, during the period of authorized employment for each H–1B nonimmigrant, wages that are determined based on the best information available at the time the application is filed and 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 wage for all workers in the occupational classification in the area of employment; and

“(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 H–1B nonimmigrant that will not adversely affect the working conditions of United States workers similarly employed by the employer or by an employer with which such H–1B nonimmigrant is placed pursuant to a waiver under paragraph (2)(E).”.

(b) Internet Posting Requirement.—Section 212(n)(1)(C) of such Act is amended—

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

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

“(ii)(I) has provided”; and

(3) by inserting before clause (ii), as redesignated by paragraph (2), the following:

“(i) has posted on the Internet website described in paragraph (3), for at least 30 calendar days, a detailed description of each position for which a nonimmigrant is sought that includes a description of—

“(I) the wages and other terms and conditions of employment;
“(II) the minimum education, training, experience, and other requirements for the position; and
“(III) the process for applying for the position; and’’.

(c) WAGE DETERMINATION INFORMATION.—Section 212(n)(1)(D) of such Act is amended by inserting “the wage determination methodology used under subparagraph (A)(i),” after “shall contain”.

(d) APPLICATION OF REQUIREMENTS TO ALL EMPLOYERS.—

(1) NONDISPLACEMENT.—Section 212(n)(1)(E) of such Act is amended to read as follows:
“(E)(i) The employer—
“(I) will not at any time replace a United States worker with one or more H–1B non-immigrants; and
“(II) did not displace and will not displace a United States worker employed by the employer within the period beginning 180 days before and ending 180 days after the date of the placement of the nonimmigrant with the employer.
“(ii) The 180-day period referred to in clause (i) may not include any period of on-site or virtual
training of H–1B nonimmigrants by employees of
the employer.”.

(2) RECRUITMENT.—Section 212(n)(1)(G)(i) of
such Act is amended by striking “In the case of an
application described in subparagraph (E)(ii), sub-
ject” and inserting “Subject”.

(e) WAIVER REQUIREMENT.—Section 212(n)(1)(F)
of such Act is amended to read as follows:

“(F) The employer will not place, outsource,
lease, or otherwise contract for the services or place-
ment of H–1B nonimmigrants with another em-
ployer, regardless of the physical location where such
services will be performed, unless the employer of
the alien has been granted a waiver under paragraph
(2)(E).”.

SEC. 102. NEW APPLICATION REQUIREMENTS.

Section 212(n)(1) of the Immigration and Nationality
Act (8 U.S.C. 1182(n)(1)), as amended by section 101,
is further amended by inserting after subparagraph (G)(ii)
the following:

“(H)(i) The employer, or a person or entity act-
ing on the employer’s behalf, has not advertised any
available position specified in the application in an
advertisement that states or indicates that—
“(I) such position is only available to an individual who is or will be an H–1B non-immigrant; or

“(II) an individual who is or will be an H–1B nonimmigrant shall receive priority or a preference in the hiring process for such position.

“(ii) The employer has not primarily recruited individuals who are or who will be H–1B nonimmigrants to fill such position.

“(I) If the employer employs 50 or more employees in the United States—

“(i) the sum of the number of such employees who are H–1B nonimmigrants plus the number of such employees who are nonimmigrants described in section 101(a)(15)(L) does not exceed 50 percent of the total number of employees; and

“(ii) the employer’s corporate organization has not been restructured to evade the limitation under clause (i).

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

SEC. 103. APPLICATION REVIEW REQUIREMENTS.

(a) TECHNICAL AMENDMENT.—Section 212(n)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)), as amended by sections 101 and 102, is further amended, in the undesignated paragraph at the end, by striking “The employer” and inserting the following:

“(K) The employer.”.

(b) APPLICATION REVIEW REQUIREMENTS.—Section 212(n)(1)(K), as designated by subsection (a), is amended—

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

(2) in the fifth sentence, by striking “only for completeness” and inserting “for completeness, indicators of fraud or misrepresentation of material fact,”;

(3) in the sixth sentence—

(A) by striking “or obviously inaccurate” and inserting “, presents indicators of fraud or misrepresentation of material fact, or is obviously inaccurate”; and
(B) by striking “within 7 days of” and inserting “not later than 14 days after”; and

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

SEC. 104. H–1B VISA ALLOCATION.

Section 214(g)(3) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(3)), is amended—

(1) by striking the first sentence and inserting the following:

“(A) Subject to subparagraph (B), aliens who are subject to the numerical limitations under paragraph (1)(A) shall be issued visas, or otherwise provided nonimmigrant status, in a manner and order established by the Secretary by regulation.”; and

(2) by adding at the end the following:

“(B) The Secretary shall consider petitions for nonimmigrant status under section 101(a)(15)(H)(i)(b) in the following order:

“(i) Petitions for nonimmigrants described in section 101(a)(15)(F) who, while physically present in the United States, have earned an
advanced degree in a field of science, technology, engineering, or mathematics from a United States institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))) that has been accredited by an accrediting entity that is recognized by the Department of Education.

“(ii) Petitions certifying that the employer will be paying the nonimmigrant the median wage for skill level 4 in the occupational classification found in the most recent Occupational Employment Statistics survey.

“(iii) Petitions for nonimmigrants described in section 101(a)(15)(F) who are graduates of any other advanced degree program, undertaken while physically present in the United States, from an institution of higher education described in clause (i).

“(iv) Petitions certifying that the employer will be paying the nonimmigrant the median wage for skill level 3 in the occupational classification found in the most recent Occupational Employment Statistics survey.
“(v) Petitions for nonimmigrants described in section 101(a)(15)(F) who are graduates of a bachelor’s degree program, undertaken while physically present in the United States, in a field of science, technology, engineering, or mathematics from an institution of higher education described in clause (i).

“(vi) Petitions for nonimmigrants described in section 101(a)(15)(F) who are graduates of bachelor’s degree programs, undertaken while physically present in the United States, in any other fields from an institution of higher education described in clause (i).

“(vii) Petitions for aliens who will be working in occupations listed in Group I of the Department of Labor’s Schedule A of occupations in which the Secretary of Labor has determined there are not sufficient United States workers who are able, willing, qualified, and available.

“(viii) Petitions filed by employers meeting the following criteria of good corporate citizenship and compliance with the immigration laws:

“(I) The employer is in possession of—
“(aa) a valid E-Verify company identification number; or

“(bb) if the enterprise is using a designated agent to perform E-Verify queries, a valid E-Verify client company identification number and documentation from U.S. Citizenship and Immigration Services that the commercial enterprise is a participant in good standing in the E-Verify program.

“(II) The employer is not under investigation by any Federal agency for violation of the immigration laws or labor laws.

“(III) A Federal agency has not determined, during the immediately preceding five years, that the employer violated the immigration laws or labor laws.

“(IV) During each of the preceding three fiscal years, at least 90 percent of the petitions filed by the employer under section 101(a)(15)(H)(i)(b) were approved.

“(V) The employer has filed, pursuant to section 204(a)(1)(F), employment-based immigrant petitions, including an approved
labor certification application under section 212(a)(5)(A), for at least 90 percent of employees imported under section 101(a)(15)(H)(i)(b) during the preceding three fiscal years.

“(ix) Any remaining petitions.

“(C) In this paragraph the term ‘field of science, technology, engineering, or mathematics’ means a field included in the Department of Education’s Classification of Instructional Programs taxonomy within the summary groups of computer and information sciences and support services, engineering, biological and biomedical sciences, mathematics and statistics, and physical sciences.”.

SEC. 105. H–1B WORKERS EMPLOYED BY INSTITUTIONS OF HIGHER EDUCATION.

Section 214(g)(5) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(5)) is amended by striking “is employed (or has received an offer of employment) at” each place such phrase appears and inserting “is employed by (or has received an offer of employment from)”.

SEC. 106. SPECIALTY OCCUPATION TO REQUIRE AN ACTUAL DEGREE.

Section 214(i) of the Immigration and Nationality Act (8 U.S.C. 1184(i)) is amended—
(1) in paragraph (1), by amending subpara-
graph (B) to read as follows:

“(B) attainment of a bachelor’s or higher de-
gree in the specific specialty directly related to the
occupation as a minimum for entry into the occupa-
tion in the United States.”; and

(2) by striking paragraph (2) and inserting the
following:

“(2) For purposes of section 101(a)(15)(H)(i)(b), the
requirements under this paragraph, with respect to a spe-
cialty occupation, are—

“(A) full State licensure to practice in the occu-
pation, if such licensure is required to practice in the
occupation; or

“(B) if a license is not required to practice in
the occupation—

“(i) completion of a United States degree
described in paragraph (1)(B) for the occupa-
tion; or

“(ii) completion of a foreign degree that is
equivalent to a United States degree described
in paragraph (1)(B) for the occupation.”.

SEC. 107. LABOR CONDITION APPLICATION FEE.

Section 212(n) of the Immigration and Nationality
Act (8 U.S.C. 1182(n)), as amended by sections 101
through 103, is further amended by adding at the end the following:

“(6)(A) The Secretary of Labor shall promulgate a regulation that requires applicants under this subsection to pay a reasonable application processing fee.

“(B) All of the fees collected under this paragraph shall be deposited as offsetting receipts within the general fund of the Treasury in a separate account, which shall be known as the ‘H–1B Administration, Oversight, Investigation, and Enforcement Account’ and shall remain available until expended. The Secretary of the Treasury shall refund amounts in such account to the Secretary of Labor for salaries and related expenses associated with the administration, oversight, investigation, and enforcement of the H–1B nonimmigrant visa program.”.

SEC. 108. H–1B SUBPOENA AUTHORITY FOR THE DEPARTMENT OF LABOR.

Section 212(n)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)) is amended—

(1) by redesignating subparagraph (I) as subparagraph (J); and

(2) by inserting after subparagraph (H) the following:

“(I) The Secretary of Labor is authorized to take such actions, including issuing subpoenas and seeking ap-
propriate injunctive relief and specific performance of contractual obligations, as may be necessary to ensure employer compliance with the terms and conditions under this subsection. The rights and remedies provided to H–1B nonimmigrants under this subsection are in addition to any other contractual or statutory rights and remedies of such nonimmigrants and are not intended to alter or affect such rights and remedies.”.

SEC. 109. LIMITATION ON EXTENSION OF H–1B PETITION.

Section 214(g)(4) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(4)) is amended to read as follows:

“(4)(A) Except as provided in subparagraph (B), the period of authorized admission as a nonimmigrant described in section 101(a)(15)(H)(i)(b) may not exceed three years.

“(B) The period of authorized admission as a nonimmigrant described in subparagraph (A) who is the beneficiary of an approved employment-based immigrant petition under section 204(a)(1)(F) may be authorized for a period of up to three additional years if the total period of stay does not exceed six years, except for an extension under section 104(c) or 106(b) of the American Competitiveness in the Twenty-first Century Act of 2000 (8 U.S.C. 1184 note).”.
SEC. 110. ELIMINATION OF B–1 IN LIEU OF H–1.

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

“(12) Unless otherwise authorized by law, an alien normally classifiable under section 101(a)(15)(H)(i) who seeks admission to the United States to provide services in a specialty occupation described in paragraph (1) or (3) of subsection (i) may not be issued a visa or admitted under section 101(a)(15)(B) for such purpose. Nothing in this paragraph may be construed to authorize the admission of an alien under section 101(a)(15)(B) who is coming to the United States for the purpose of performing skilled or unskilled labor if such admission is not otherwise authorized by law.”.

Subtitle B—Investigation and Disposition of Complaints Against H–1B Employers

SEC. 111. GENERAL MODIFICATION OF PROCEDURES FOR INVESTIGATION AND DISPOSITION.

Section 212(n)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)(A)) is amended—

(1) by striking “(A) Subject” and inserting the following:

“(A)(i) Subject”;
(2) by striking “12 months” and inserting “two years”;

(3) by striking the last sentence; and

(4) by adding at the end the following:

“(ii)(I) Upon the receipt of a complaint under clause (i), the Secretary may initiate an investigation to determine if such failure or misrepresentation has occurred.

“(II) In conducting an investigation under subclause (I), the Secretary may—

“(aa) conduct surveys of the degree to which employers comply with the requirements under this subsection; and

“(bb) conduct compliance audits of employers that employ H–1B nonimmigrants.

“(III) The Secretary shall—

“(aa) conduct annual compliance audits of not fewer than one percent of the employers that employ H–1B nonimmigrants during the applicable calendar year;

“(bb) conduct annual compliance audits of each employer with more than 100 employees who work in the United States if more than 15 percent of such employees are H–1B nonimmigrants; and
“(cc) make available to the public an executive summary or report describing the general findings of the audits carried out pursuant to this subclause.

“(iii) The process for receiving complaints under clause (i) shall include a hotline that is accessible 24 hours a day, by telephonic and electronic means.”.

SEC. 112. INVESTIGATION, WORKING CONDITIONS, AND PENALTIES.

Section 212(n)(2)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)(C)) is amended—

(1) in clause (i)—

(A) in the matter preceding subclause (I), by striking “a condition of paragraph (1)(B), (1)(E), or (1)(F), a substantial failure to meet a condition of paragraph (1)(C), (1)(D), or (1)(G)(i)(I)” and inserting “a condition under subparagraph (A), (B), (C), (D), (E), (F), (G)(i), (H), (I), or (J) of paragraph (1)”;

(B) in subclause (I)—

(i) by striking “$1,000” and inserting “$5,000”; and

(ii) by striking “and” at the end;

(C) in subclause (II), by striking the period at the end and inserting “; and”; and

(D) by adding at the end the following:
“(III) an employer that violates paragraph (1)(A) shall be liable to the employees harmed by such violation for lost wages and benefits.”;

(2) in clause (ii)—

(A) in subclause (I)—

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

(ii) by striking “$5,000” and inserting “$25,000”;

(B) in subclause (II), by striking the period at the end and inserting “; and”; and

(C) by adding at the end the following:

“(III) an employer that violates paragraph (1)(A) shall be liable to the employees harmed by such violation for lost wages and benefits.”;

(3) in clause (iii)—

(A) in the matter preceding subclause (I), by striking “displaced a United States worker employed by the employer within the period beginning 90 days before and ending 90 days after the date of filing of any visa petition supported by the application” and inserting “displaced or replaced a United States worker in violation of subparagraph (E)”;

(B) in subclause (I)—
(i) by striking “may” and inserting “shall”;

(ii) by striking “$35,000” and inserting “$150,000”; and

(iii) by striking “and” at the end;

(C) in subclause (II), by striking the period at the end and inserting “; and”; and

(D) by adding at the end the following:

“(III) an employer that violates paragraph (1)(A) shall be liable to the employees harmed by such violation for lost wages and benefits.”;

(4) by striking clause (iv) and inserting the following:

“(iv)(I) An employer that has filed an application under this subsection violates this clause by taking, failing to take, or threatening to take or fail to take a personnel action, or intimidating, threatening, restraining, coercing, blacklisting, discharging, or discriminating in any other manner against an employee because the employee—

“(aa) disclosed information that the employee reasonably believes evidences a violation of this subsection or any rule or regulation pertaining to this subsection; or
“(bb) cooperated or sought to cooperate with the requirements under this subsection or any rule or regulation pertaining to this subsection.

“(II) In this subparagraph, the term ‘employee’ includes—

“(aa) a current employee;

“(bb) a former employee; and

“(cc) an applicant for employment.

“(III) An employer that violates this clause shall be liable to the employee harmed by such violation for lost wages and benefits.”; and

(5) in clause (vi)—

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

“(I) It is a violation of this clause for an employer that has filed an application under this subsection—

“(aa) to require an H–1B nonimmigrant to pay a penalty or liquidated damages for ceasing employment with the employer before a date agreed to by the nonimmigrant and the employer; or

“(bb) to fail to offer to an H–1B nonimmigrant, during the nonimmigrant’s period of authorized employment, on the same basis, and in accordance with the same criteria, as the employer of-
fers to United States workers, benefits and eligibility for benefits, including—

“(AA) the opportunity to participate in health, life, disability, and other insurance plans;

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

“(CC) cash bonuses and noncash compensation, such as stock options (whether or not based on performance).”; and

(B) in subclause (III), by striking “$1,000” and inserting “$5,000”.

SEC. 113. WAIVER REQUIREMENTS.

(a) In General.—Section 212(n)(2)(E) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)(E)) is amended to read as follows:

“(E)(i) The Secretary of Labor may waive the prohibition under paragraph (1)(F) if the Secretary determines that the employer seeking such waiver has established that—

“(I) the employer with which the H–1B nonimmigrant would be placed—

“(aa) does not intend to replace a United States worker with one or more H–1B nonimmigrants; and
“(bb) has not displaced, and does not intend to displace, a United States worker employed by the employer within the period beginning 180 days before the date of the placement of the nonimmigrant with the employer and ending 180 days after such date (not including any period of on-site or virtual training of H–1B nonimmigrants by employees of the employer);

“(II) the H–1B nonimmigrant will be principally controlled and supervised by the petitioning employer; and

“(III) the placement of the H–1B nonimmigrant is not essentially an arrangement to provide labor for hire for the employer with which the H–1B nonimmigrant will be placed.

“(ii) The Secretary shall grant or deny a waiver under this subparagraph not later than seven days after the date on which the Secretary receives an application for such waiver.”.

(b) Rulemaking.—

(1) Rules for waivers.—The Secretary of Labor, after notice and a period for comment, shall promulgate a final rule for an employer to apply for a waiver under section 212(n)(2)(E) of the Immigra-
tion and Nationality Act, as amended by subsection (a).

(2) **Requirement for Publication.**—The Secretary of Labor shall submit to Congress, and publish in the Federal Register and in other appropriate media, a notice of the date on which the rules required under paragraph (1) are promulgated.

**SEC. 114. INITIATION OF INVESTIGATIONS.**

Section 212(n)(2)(G) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)(G)) is amended—

(1) in clause (i), by striking “if the Secretary of Labor” and all that follows and inserting “with regard to the employer’s compliance with the requirements under this subsection.”;

(2) in clause (ii), by striking “and whose identity” and all that follows through “failure or failures.” and inserting “the Secretary may conduct an investigation into the employer’s compliance with the requirements under this subsection.”;

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

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

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

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

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

“(v)(I) Except as provided in subclause (II), the Sec-
retary of Labor shall provide notice to an employer of the
intent to conduct an investigation under this subpara-
graph. Such notice shall be provided in such a manner,
and shall contain sufficient detail, to permit the employer
to respond to the allegations before an investigation is
commenced.

“(II) The Secretary of Labor is not required to com-
ply with subclause (I) if the Secretary determines that
such compliance would interfere with an effort by the Sec-
retary to investigate or secure compliance by the employer
with the requirements under this subsection.

“(III) A determination by the Secretary of Labor
under this clause shall not be subject to judicial review.”;

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

(9) by adding at the end the following:

“(vii) If the Secretary of Labor, after a hearing, finds a reasonable basis to believe that the employer has violated the requirements under this subsection, the Secretary shall impose a penalty in accordance with subparagraph (C).”.

SEC. 115. INFORMATION SHARING.

Section 212(n)(2)(H) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)(H)) is amended to read as follows:

“(H) The Director of U.S. Citizenship and Immigration Services shall provide the Secretary of Labor with any information contained in the materials submitted by employers of H–1B nonimmigrants as part of the petition adjudication process that indicates that the employer is not complying with visa program requirements for H–1B nonimmigrants. The Secretary may initiate and conduct
an investigation and hearing under this paragraph after
receiving information of noncompliance under this sub-
paragraph.”.

SEC. 116. CONFORMING AMENDMENT.

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

Subtitle C—Other Protections

SEC. 121. POSTING AVAILABLE POSITIONS THROUGH THE
DEPARTMENT OF LABOR.

(a) DEPARTMENT OF LABOR WEBSITE.—Section
212(n)(3) of the Immigration and Nationality Act (8
U.S.C. 1182(n)(3)) is amended to read as follows:
“(3)(A) Not later than 90 days after the date of the
enactment of the H–1B and L–1 Visa Reform Act of
2017, the Secretary of Labor shall establish a searchable
Internet website for posting positions in accordance with
paragraph (1)(C) that is available to the public without
charge.
“(B) The Secretary may work with private companies
or nonprofit organizations to develop and operate the
Internet website described in subparagraph (A).
“(C) The Secretary may promulgate rules, after notice and a period for comment, to carry out this paragraph.”.

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

(c) APPLICATION.—The amendment made by subsection (a) shall apply to any application filed on or after the date that is 30 days after the date described in subsection (b).

SEC. 122. TRANSPARENCY AND REPORT ON WAGE SYSTEM.

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

“(m) EMPLOYER TO PROVIDE IMMIGRATION PAPERWORK EXCHANGED WITH FEDERAL AGENCIES.—

“(1) IN GENERAL.—Not later than 21 business days after receiving a written request from a former, current, or prospective employee of an employer who is the beneficiary of an employment-based non-immigrant petition filed by the employer, such employer shall provide such employee or beneficiary
with the original (or a certified copy of the original) of all petitions, notices, and other written communication exchanged between the employer and the Department of Labor, the Department of Homeland Security, or any other Federal agency or department that is related to an immigrant or nonimmigrant petition filed by the employer for such employee or beneficiary.

“(2) Withholding of financial or proprietary information.—If a document required to be provided to an employee or prospective employee under paragraph (1) includes any sensitive financial or proprietary information of the employer, the employer may redact such information from the copies provided to such person.”.

(b) GAO Report on Job Classification and Wage Determinations.—Not later than one year after the date of the enactment of this Act, the Comptroller General of the United States shall prepare a report that—

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

(2) specifically addresses whether the systems in place accurately reflect the complexity of current job types and geographic wage differences; and
(3) makes recommendations concerning necessary updates and modifications.

SEC. 123. REQUIREMENTS FOR INFORMATION FOR H–1B AND L–1 NONIMMIGRANTS.

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

“(s) REQUIREMENTS FOR INFORMATION FOR H–1B AND L–1 NONIMMIGRANTS.—

“(1) IN GENERAL.—Upon issuing a visa to an applicant, who is outside the United States, for non-immigrant status pursuant to subparagraph (H)(i)(b) or (L) of section 101(a)(15), the issuing office shall provide the applicant with—

“(A) a brochure outlining the obligations of the applicant’s employer and the rights of the applicant with regard to employment under Federal law, including labor and wage protections;

“(B) the contact information for appropriate Federal agencies or departments that offer additional information or assistance in clarifying such obligations and rights; and

“(C) a copy of the petition submitted for the nonimmigrant under section 212(n) or the
petition submitted for the nonimmigrant under subsection (e)(2)(A), as appropriate.

“(2) Applicants inside the United States.—Upon the approval of an initial petition filed for an alien who is in the United States and seeking status under subparagraph (H)(i)(b) or (L) of section 101(a)(15), the Secretary of Homeland Security shall provide the applicant with the material described in subparagraphs (A), (B), and (C) of paragraph (1).”.

SEC. 124. ADDITIONAL DEPARTMENT OF LABOR EMPLOYEES.

(a) In General.—The Secretary of Labor is authorized to hire up to 200 additional employees to administer, oversee, investigate, and enforce programs involving non-immigrant employees described in section 101(a)(15)(H)(i)(b).

(b) Source of Funds.—The cost of hiring the additional employees authorized to be hired under subsection (a) shall be recovered with funds from the H–1B Administration, Oversight, Investigation, and Enforcement Account established under section 212(n)(6) of the Immigration and Nationality Act, as added by section 107.
SEC. 125. TECHNICAL CORRECTION.


SEC. 126. APPLICATION.

Except as specifically otherwise provided, the amendments made by this title shall apply to petitions and applications filed on or after the date of the enactment of this Act.

TITLE II—L–1 VISA FRAUD AND ABUSE PROTECTIONS

SEC. 201. PROHIBITION ON REPLACEMENT OF UNITED STATES WORKERS AND RESTRICTING OUTPLACEMENT OF L–1 NONIMMIGRANTS.

(a) Restriction on Outplacement of L–1 Workers.—Section 214(c)(2)(F) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)(F)) is amended to read as follows:

“(F)(i) Unless an employer receives a waiver under clause (ii), an employer may not employ an alien, for a cumulative period exceeding one year, who—
“(I) will serve in a capacity involving specialized knowledge with respect to an employer for purposes of section 101(a)(15)(L); and

“(II) will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent, including pursuant to an outsourcing, leasing, or other contracting agreement.

“(ii) The Secretary of Labor may grant a waiver of the requirements under clause (i) if the Secretary determines that the employer requesting such waiver has established that—

“(I) the employer with which the alien referred to in clause (i) would be placed—

“(aa) will not at any time replace a United States worker with one or more nonimmigrants described in section 101(a)(15)(L); and

“(bb) has not displaced and does not intend to displace a United States worker employed by the employer within the period beginning 180 days before the date of the placement of such alien with the employer and ending 180 days after such date (not including any period of on-site or virtual training of nonimmigrants
described in section 101(a)(15)(L) by employees
of the employer);

“(II) such alien will be principally controlled
and supervised by the petitioning employer; and

“(III) the placement of the nonimmigrant is not
essentially an arrangement to provide labor for hire
for an unaffiliated employer with which the non-
immigrant will be placed, rather than a placement in
connection with the provision of a product or service
for which specialized knowledge specific to the peti-
tioning employer is necessary.

“(iii) The Secretary shall grant or deny a waiver
under clause (ii) not later than seven days after the date
on which the Secretary receives the application for the
waiver.”.

(b) Prohibition on Replacement of United
States Workers.—Section 214(c)(2) of the Immigra-
tion and Nationality Act (8 U.S.C. 1184(c)(2)) is amend-
ed by adding at the end the following:

“(G)(i) An employer importing an alien as a non-
immigrant under section 101(a)(15)(L)—

“(I) may not at any time replace a United
States worker (as defined in section 212(n)(4)(E))
with one or more such nonimmigrants; and
“(II) may not displace a United States worker (as defined in section 212(n)(4)(E)) employed by the employer during the period beginning 180 days before and ending 180 days after the date of the placement of such a nonimmigrant with the employer.

“(ii) The 180-day period referenced in clause (i)(II) may not include any period of on-site or virtual training of nonimmigrants described in clause (i) by employees of the employer.”.

(c) Rulemaking.—The Secretary of Homeland Security, after notice and a period for comment, shall promulgate rules for an employer to apply for a waiver under section 214(c)(2)(F)(ii), as added by subsection (a).

SEC. 202. L–1 EMPLOYER PETITION REQUIREMENTS FOR EMPLOYMENT AT NEW OFFICES.

Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)), as amended by section 201, is further amended by adding at the end the following:

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

“(I) the alien has not been the beneficiary of two or more petitions under this subparagraph during the immediately preceding two years; and
“(II) the employer operating the new office has—

“(aa) an adequate business plan;

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

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

“(ii) An extension of the approval period under clause (i) may not be granted until the importing employer submits an application to the Secretary of Homeland Security that contains—

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

“(II) evidence that the beneficiary of the petition is eligible for nonimmigrant status under section 101(a)(15)(L);

“(III) a statement summarizing the original petition;

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

“(V) evidence of the truthfulness of any representations made in connection with the filing of the original petition;
“(VI) evidence that the importing employer, for the entire period beginning on the date on which the petition was approved under clause (i), has been doing business at the new office through regular, systematic, and continuous provision of goods and services;

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

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

“(IX) evidence of wages paid to employees;

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

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

“(iii) A new office employing the beneficiary of an L–1 petition approved under this paragraph shall do business only through regular, systematic, and continuous provision of goods and services for the entire period for which the petition is sought.
“(iv) Notwithstanding clause (ii), and subject to the maximum period of authorized admission set forth in subparagraph (D), the Secretary of Homeland Security, in the Secretary’s discretion, may approve a subsequently filed petition on behalf of the beneficiary to continue employment at the office described in this subparagraph for a period beyond the initially granted 12-month period if the importing employer has been doing business at the new office through regular, systematic, and continuous provision of goods and services for the 6 months immediately preceding the date of extension petition filing and demonstrates that the failure to satisfy any of the requirements described in those subclauses was directly caused by extraordinary circumstances, as determined by the Secretary in the Secretary’s discretion.”.

SEC. 203. COOPERATION WITH SECRETARY OF STATE.

Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)), as amended by sections 201 and 202, is further amended by adding at the end the following:

“(I) The Secretary of Homeland Security shall work cooperatively with the Secretary of State to verify the existence or continued existence of a company or office in the United States or in a foreign country for purposes of approving petitions under this paragraph.”.
SEC. 204. INVESTIGATION AND DISPOSITION OF COMPLAINTS AGAINST L–1 EMPLOYERS.

Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)), as amended by sections 201 through 203, is further amended by adding at the end the following:

“(J)(i) The Secretary of Homeland Security may initiate an investigation of any employer that employs non-immigrants described in section 101(a)(15)(L) with regard to the employer’s compliance with the requirements under this subsection.

“(ii) If the Secretary receives specific credible information from a source who is likely to have knowledge of an employer’s practices, employment conditions, or compliance with the requirements under this subsection, the Secretary may conduct an investigation into the employer’s compliance with the requirements of this subsection. The Secretary may withhold the identity of the source from the employer, and the source’s identity shall not be subject to disclosure under section 552 of title 5, United States Code.

“(iii) The Secretary shall establish a procedure for any person desiring to provide to the Secretary information described in clause (ii) that may be used, in whole or in part, as the basis for the commencement of an investigation described in such clause, to provide the informa-
(iv) No investigation described in clause (ii) (or hearing described in clause (vi) based on such investigation) may be conducted with respect to information about a failure to comply with the requirements under this subsection, unless the Secretary receives the information not later than 24 months after the date of the alleged failure.

(v) Before commencing an investigation of an employer under clause (i) or (ii), the Secretary shall provide notice to the employer of the intent to conduct such investigation. The notice shall be provided in such a manner, and shall contain sufficient detail, to permit the employer to respond to the allegations before an investigation is commenced. The Secretary is not required to comply with this clause if the Secretary determines that to do so would interfere with an effort by the Secretary to investigate or secure compliance by the employer with the requirements of this subsection. There shall be no judicial review of a determination by the Secretary under this clause.

(vi) If the Secretary, after an investigation under clause (i) or (ii), determines that a reasonable basis exists to make a finding that the employer has failed to comply with the requirements under this subsection, the Secretary shall provide the interested parties with notice of such de-
termination and an opportunity for a hearing in accordance with section 556 of title 5, United States Code, not later than 120 days after the date of such determination. If such a hearing is requested, the Secretary shall make a finding concerning the matter by not later than 120 days after the date of the hearing.

“(vii) If the Secretary, after a hearing, finds a reasonable basis to believe that the employer has violated the requirements under this subsection, the Secretary shall impose a penalty under subparagraph (K).

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

“(II) The Secretary shall—

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

“(bb) conduct annual compliance audits of each employer with more than 100 employees who work in the United States if more than 15 percent of such employees are nonimmigrants described in section 101(a)(15)(L); and
“(cc) make available to the public an executive summary or report describing the general findings of the audits carried out pursuant to this subclause.

“(ix) The Secretary is authorized to take other such actions, including issuing subpoenas and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with the terms and conditions under this paragraph. The rights and remedies provided to non-immigrants described in section 101(a)(15)(L) under this paragraph are in addition to, and not in lieu of, any other contractual or statutory rights and remedies of such non-immigrants, and are not intended to alter or affect such rights and remedies.”.

SEC. 205. WAGE RATE AND WORKING CONDITIONS FOR L–1 NONIMMIGRANTS.

(a) IN GENERAL.—Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)), as amended by sections 201 through 204, is further amended by adding at the end the following:

“(K)(i) An employer that employs a nonimmigrant described in section 101(a)(15)(L) for a cumulative period of time in excess of one year shall—

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

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

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

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

“(II) provide working conditions for such non-immigrant that will not adversely affect the working conditions of workers similarly employed by the employer or by an employer with which such non-immigrant is placed pursuant to a waiver under subparagraph (F)(ii).

“(ii) If an employer, in such previous period specified by the Secretary of Homeland Security, employed one or more such nonimmigrants, the employer shall provide to the Secretary of Homeland Security the Internal Revenue Service Form W–2 Wage and Tax Statement filed by the employer with respect to such nonimmigrants for such period.
“(iii) It is a failure to meet a condition under this subparagraph for an employer who has filed a petition to import one or more aliens as nonimmigrants described in section 101(a)(15)(L)—

“(I) to require such a nonimmigrant to pay a penalty or liquidated damages for ceasing employment with the employer before a date mutually agreed to by the nonimmigrant and the employer; or

“(II) to fail to offer to such a nonimmigrant, during the nonimmigrant’s period of authorized employment, on the same basis, and in accordance with the same criteria, as the employer offers to United States workers, benefits and eligibility for benefits, including—

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

“(bb) the opportunity to participate in retirement and savings plans; and

“(cc) cash bonuses and noncash compensation, such as stock options (whether or not based on performance).”.

(b) RULEMAKING.—The Secretary of Homeland Security, after notice and a period of comment and taking into consideration any special circumstances relating to
intracompany transfers, shall promulgate rules to implement the requirements under section 214(c)(2)(K) of the Immigration and Nationality Act, as added by subsection (a).

SEC. 206. PENALTIES.

Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)), as amended by sections 201 through 205, is further amended by adding at the end the following:

“(L)(i) If the Secretary of Homeland Security determines, after notice and an opportunity for a hearing, that an employer failed to meet a condition under subparagraph (F), (G), (K), or (M), or misrepresented a material fact in a petition to employ one or more aliens as non-immigrants described in section 101(a)(15)(L)—

“(I) the Secretary shall impose such administrative remedies (including civil monetary penalties in an amount not to exceed $5,000 per violation) as the Secretary determines to be appropriate;

“(II) the Secretary may not, during a period of at least one year, approve a petition for that employer to employ one or more aliens as such non-immigrants; and

“(III) in the case of a violation of subparagraph (K) or (M), the employer shall be liable to the em-
ployees harmed by such violation for lost wages and benefits.

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

“(I) the Secretary shall impose such administrative remedies (including civil monetary penalties in an amount not to exceed $25,000 per violation) as the Secretary determines to be appropriate;

“(II) the Secretary may not, during a period of at least two years, approve a petition filed for that employer to employ one or more aliens as such nonimmigrants; and

“(III) in the case of a violation of subparagraph (K) or (M), the employer shall be liable to the employees harmed by such violation for lost wages and benefits.”.

SEC. 207. PROHIBITION ON RETALIATION AGAINST L–1 NONIMMIGRANTS.

Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)), as amended by sections 201
through 206, is further amended by adding at the end the following:

“(M)(i) An employer that has filed a petition to import one or more aliens as nonimmigrants described in section 101(a)(15)(L) violates this subparagraph by taking, failing to take, or threatening to take or fail to take, a personnel action, or intimidating, threatening, restraining, coercing, blacklisting, discharging, or discriminating in any other manner against an employee because the employee—

“(I) has disclosed information that the employee reasonably believes evidences a violation of this subsection, or any rule or regulation pertaining to this subsection; or

“(II) cooperates or seeks to cooperate with the requirements under this subsection, or any rule or regulation pertaining to this subsection.

“(ii) In this subparagraph, the term ‘employee’ includes—

“(I) a current employee;

“(II) a former employee; and

“(III) an applicant for employment.”.
SEC. 208. ADJUDICATION BY DEPARTMENT OF HOMELAND SECURITY OF PETITIONS UNDER BLANKET PETITION.

(a) IN GENERAL.—Section 214(c)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)(A)) is amended to read as follows:

“(2)(A) The Secretary of Homeland Security shall establish a procedure under which an importing employer that meets the requirements established by the Secretary may file a blanket petition to authorize aliens to enter the United States as nonimmigrants described in section 101(a)(15)(L) instead of filing individual petitions under paragraph (1) on behalf of such aliens. Such procedure shall permit—

“(i) the expedited processing by the Secretary of State of visas for admission of aliens covered under such blanket petitions; and

“(ii) the expedited adjudication by the Secretary of Homeland Security of individual petitions covered under such blanket petitions.”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to petitions filed on or after the date of the enactment of this Act.
SEC. 209. REPORTS ON EMPLOYMENT-BASED NON-IMMIGRANTS.

(a) In general.—Section 214(c)(8) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(8)) is amended to read as follows—

“(8) The Secretary of Homeland Security or Secretary of State, as appropriate, shall submit an annual report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that describes, with respect to petitions under subsection (e) and each subcategory of subparagraphs (H), (L), (O), (P), and (Q) of section 101(a)(15)—

“(A) the number of such petitions (or applications for admission, in the case of applications by Canadian nationals seeking admission under subsection (e) or section 101(a)(15)(L)) which have been filed;

“(B) the number of such petitions which have been approved and the number of workers (by occupation) included in such approved petitions;

“(C) the number of such petitions which have been denied and the number of workers (by occupation) requested in such denied petitions;

“(D) the number of such petitions which have been withdrawn;
“(E) the number of such petitions which are awaiting final action;

“(F) the number of aliens in the United States under each subcategory under section 101(a)(15)(H); and

“(G) the number of aliens in the United States under each subcategory under section 101(a)(15)(L).”.

(b) NONIMMIGRANT CHARACTERISTICS REPORT.—Section 416(c) of the American Competitiveness and Workforce Improvement Act of 1998 (8 U.S.C. 1184 note) is amended—

(1) by amending paragraph (2) to read as follows:

“(2) ANNUAL H–1B NONIMMIGRANT CHARACTERISTICS REPORT.—The Secretary of Homeland Security shall submit an annual report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that contains—

“(A) for the previous fiscal year—

“(i) information on the countries of origin of, occupations of, educational levels attained by, and compensation paid to, aliens who were issued visas or provided

“(ii) a list of all employers who petitioned for H–1B workers, the number of such petitions filed and approved for each such employer, the occupational classifications for the approved positions, and the number of H–1B nonimmigrants for whom each such employer filed an employment-based immigrant petition pursuant to section 204(a)(1)(F) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(F)); and

“(iii) the number of employment-based immigrant petitions filed pursuant to such section 204(a)(1)(F) on behalf of H–1B nonimmigrants;

“(B) a list of all employers for whom more than 15 percent of their United States workforce is H–1B or L–1 nonimmigrants;

“(C) a list of all employers for whom more than 50 percent of their United States workforce is H–1B or L–1 nonimmigrants;
“(D) a gender breakdown by occupation and by country of origin of H–1B non-immigrants;

“(E) a list of all employers who have been granted a waiver under section 214(n)(2)(E) of the Immigration and Nationality Act (8 U.S.C. 1184(n)(2)(E)); and

“(F) the number of H–1B nonimmigrants categorized by their highest level of education and whether such education was obtained in the United States or in a foreign country.”;

(2) by redesignating paragraph (3) as paragraph (5);

(3) by inserting after paragraph (2) the following:

“(3) ANNUAL L–1 NONIMMIGRANT CHARACTERISTICS REPORT.—The Secretary of Homeland Security shall submit an annual report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that contains—

“(A) for the previous fiscal year—

“(i) information on the countries of origin of, occupations of, educational levels attained by, and compensation paid to,
aliens who were issued visas or provided
nonimmigrant status under section
101(a)(15)(L) of the Immigration and Na-
tionality Act (8 U.S.C. 1101(a)(15)(L));
“(ii) a list of all employers who peti-
tioned for L–1 workers, the number of
such petitions filed and approved for each
such employer, the occupational classifica-
tions for the approved positions, and the
number of L–1 nonimmigrants for whom
each such employer filed an employment-
based immigrant petition pursuant to sec-
tion 204(a)(1)(F) of the Immigration and
Nationality Act (8 U.S.C. 1154(a)(1)(F));
and
“(iii) the number of employment-
based immigrant petitions filed pursuant
to such section 204(a)(1)(F) on behalf of
L–1 nonimmigrants;
“(B) a gender breakdown by occupation
and by country of L–1 nonimmigrants;
“(C) a list of all employers who have been
granted a waiver under section 214(e)(2)(F)(ii)
of the Immigration and Nationality Act (8
U.S.C. 1184(e)(2)(F)(ii));
“(D) the number of L–1 nonimmigrants categorized by their highest level of education and whether such education was obtained in the United States or in a foreign country;

“(E) the number of applications that have been filed for each subcategory of non-immigrant described under section 101(a)(15)(L) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(L)), based on an approved blanket petition under section 214(c)(2)(A) of such Act; and

“(F) the number of applications that have been approved for each subcategory of non-immigrant described under such section 101(a)(15)(L), based on an approved blanket petition under such section 214(c)(2)(A).

“(4) ANNUAL H–1B EMPLOYER SURVEY.—The Secretary of Labor shall—

“(A) conduct an annual survey of employers hiring foreign nationals under the H–1B visa program; and

“(B) issue an annual report that—

“(i) describes the methods employers are using to meet the requirement under section 212(n)(1)(G)(i) of the Immigration
and Nationality Act (8 U.S.C. 1182(n)(1)(G)(i)) of taking good faith steps to recruit United States workers for the occupational classification for which the nonimmigrants are sought, using procedures that meet industry-wide standards; “(ii) describes the best practices for recruiting among employers; and “(iii) contains recommendations on which recruiting steps employers can take to maximize the likelihood of hiring American workers.”; and (4) in paragraph (5), as redesignated, by striking “paragraph (2)” and inserting “paragraphs (2) and (3)”.

SEC. 210. SPECIALIZED KNOWLEDGE.

Section 214(c)(2)(B) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)(B)) is amended to read as follows:

“(B)(i) For purposes of section 101(a)(15)(L), the term ‘specialized knowledge’—

“(I) means knowledge possessed by an individual whose advanced level of expertise and proprietary knowledge of the employer’s product, service, research, equipment, techniques, management, or
other interests of the employer are not readily available in the United States labor market;

“(II) is clearly different from those held by others employed in the same or similar occupations; and

“(III) does not apply to persons who have general knowledge or expertise which enables them merely to produce a product or provide a service.

“(ii)(I) The ownership of patented products or copyrighted works by a petitioner under section 101(a)(15)(L) does not establish that a particular employee has specialized knowledge. In order to meet the definition under clause (i), the beneficiary shall be a key person with knowledge that is critical for performance of the job duties and is protected from disclosure through patent, copyright, or company policy.

“(II) Different procedures are not proprietary knowledge within this context unless the entire system and philosophy behind the procedures are clearly different from those of other firms, they are relatively complex, and they are protected from disclosure to competition.”.

SEC. 211. TECHNICAL AMENDMENTS.

Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)) is amended by striking “Attorney General” each place such term appears and inserting “Secretary of Homeland Security”.

S 180 IS
SEC. 212. APPLICATION.

Except as otherwise specifically provided, the amendments made by this title shall apply to petitions and applications filed on or after the date of the enactment of this Act.