

115TH CONGRESS  
2D SESSION

# S. 2344

To amend the Immigration and Nationality Act to authorize additional visas for well-educated aliens to live and work in the United States, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 25, 2018

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

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## A BILL

To amend the Immigration and Nationality Act to authorize additional visas for well-educated aliens to live and work in the United States, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Immigration Innova-  
5 tion Act of 2018”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—EMPLOYMENT-BASED NONIMMIGRANT VISAS

- Sec. 101. Market-based H–1B visa limits.
- Sec. 102. Employment authorization for dependents of H–1B nonimmigrants.
- Sec. 103. Eliminating impediments to worker mobility.
- Sec. 104. Definitions.
- Sec. 105. Strengthening the prevailing wage system.
- Sec. 106. Schedule A study.

#### TITLE II—EMPLOYMENT-BASED IMMIGRANT VISAS

- Sec. 201. Elimination of per-country numerical limitations.
- Sec. 202. Ensuring the issuance of all preference employment-based immigrant visas.
- Sec. 203. Aliens not subject to direct numerical limitation.
- Sec. 204. Increased portability.
- Sec. 205. Adjustment of status for employment-based immigrants.
- Sec. 206. Employment-based conditional immigrants.

#### TITLE III—STUDENT VISAS

- Sec. 301. Authorization of dual intent.

#### TITLE IV—STEM EDUCATION AND WORKER TRAINING

- Sec. 401. Funding for STEM education and worker training.
- Sec. 402. Promoting American Ingenuity Account.
- Sec. 403. National evaluation.
- Sec. 404. Rule of construction.

#### TITLE V—REFORMS AFFECTING IMMIGRANT AND NONIMMIGRANT VISAS

- Sec. 501. Streamlining petitions for established employers and other requirements.

## 1 **TITLE I—EMPLOYMENT-BASED** 2 **NONIMMIGRANT VISAS**

### 3 **SEC. 101. MARKET-BASED H-1B VISA LIMITS.**

4 (a) IN GENERAL.—Section 214(g) of the Immigra-  
5 tion and Nationality Act (8 U.S.C. 1184(g)) is amended—

6 (1) in paragraph (1)—

7 (A) in the matter preceding subparagraph

8 (A), by striking “(beginning with fiscal year  
9 1992)”; and

10 (B) by amending subparagraph (A) to read

11 as follows:

1           “(A) under section 101(a)(15)(H)(i)(b)  
2           may not exceed the sum of—

3                   “(i) the base allocation calculated  
4                   under paragraph (9)(A); and

5                   “(ii) the allocation adjustment cal-  
6                   culated under paragraph (9)(B); and”;

7           (2) in paragraph (5), by amending subpara-  
8           graph (C) to read as follows:

9                   “(C) subject to paragraph (6)(B), has earned a  
10           master’s or higher degree from a United States in-  
11           stitution of higher education (as defined in section  
12           101(a) of the Higher Education Act of 1965 (20  
13           U.S.C. 1001(a)).”;

14           (3) in paragraph (6)—

15                   (A) by inserting “(A)” before “Any alien”;

16                   and

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

18                   “(B)(i) If the employer of an alien described in  
19           paragraph (5)(C) certifies that the employer has  
20           filed or will file an Immigrant Petition on behalf of  
21           the alien, the initial period of validity of the non-  
22           immigrant visa issued to the alien under section  
23           101(a)(15)(H)(i)(b) shall be 12 months. The period  
24           of validity of such visa may be extended beyond such  
25           initial period if the employer provides evidence to the

1 Secretary that the employer has filed, on the alien’s  
2 behalf, a nonfrivolous Application for Permanent  
3 Employment Certification or a nonfrivolous Immigrant  
4 Petition and such application or petition has  
5 not been denied in a final agency action.

6 “(ii) Not more than 20,000 of the aliens described in paragraph (5)(C) who are not described in  
7 clause (i) may be exempted from the numerical limitations under paragraph (1)(A) during each fiscal  
8 year.”;

11 (4) in paragraph (8), by striking subparagraphs  
12 (B)(iv) and (D);

13 (5) by redesignating paragraph (10) as subparagraph (D) of paragraph (9), and adjusting the  
14 margin accordingly;

16 (6) by redesignating paragraph (9) as paragraph (10); and

18 (7) by inserting after paragraph (8) the following:

20 “(9)(A) The base allocation of nonimmigrant visas  
21 under section 101(a)(15)(H)(i)(b) for each fiscal year  
22 shall be equal to—

23 “(i) the sum of—

24 “(I) the base allocation for the most recently completed fiscal year; and  
25

1           “(II) the allocation adjustment for the  
2           most recently completed fiscal year;

3           “(ii) if the number calculated under clause (i)  
4           is less than 85,000, 85,000; or

5           “(iii) if the number calculated under clause (i)  
6           is more than 195,000, 195,000.

7           “(B)(i) If the number of cap-subject nonimmigrant  
8           visa petitions filed under section 101(a)(15)(H)(i)(b) dur-  
9           ing the first 45 days of the petition filing period for a  
10          fiscal year exceeds the base allocation for such fiscal year,  
11          an additional 30,000 such visas shall be made available  
12          beginning on the first day of such fiscal year.

13          “(ii) If the base allocation of cap-subject non-  
14          immigrant visa petitions filed under section  
15          101(a)(15)(H)(i)(b) for a fiscal year is reached during the  
16          period beginning on the 46th day of the petition filing pe-  
17          riod for the fiscal year and ending on the last day of the  
18          previous fiscal year, an additional 20,000 such visas shall  
19          be made available for the fiscal year beginning on the first  
20          day of such fiscal year.

21          “(iii) If the base allocation of cap-subject non-  
22          immigrant visa petitions filed under section  
23          101(a)(15)(H)(i)(b) for a fiscal year is reached during the  
24          first 60 days of the fiscal year, an additional 10,000 such

1 visas shall be made available beginning on December 1  
2 of the fiscal year.

3 “(iv) If the base allocation of cap-subject non-  
4 immigrant visa petitions filed under section  
5 101(a)(15)(H)(i)(b) for a fiscal year is reached during the  
6 period beginning on the 61st day of the fiscal year and  
7 ending on the 120th day of the fiscal year, an additional  
8 5,000 such visas shall be made available beginning on  
9 February 1 of the fiscal year.

10 “(v) If the number of cap-subject nonimmigrant visa  
11 petitions approved under section 101(a)(15)(H)(i)(b) for  
12 a fiscal year is at least 5,000 fewer than the base alloca-  
13 tion, but is not more than 9,999 fewer than the base allo-  
14 cation, the allocation of such visas for the following fiscal  
15 year shall be reduced by 5,000.

16 “(vi) If the number of cap-subject nonimmigrant visa  
17 petitions approved under section 101(a)(15)(H)(i)(b) for  
18 a fiscal year is at least 10,000 fewer than the base alloca-  
19 tion, but not more than 19,999 fewer than the base alloca-  
20 tion, the allocation of such visas for the following fiscal  
21 year shall be reduced by 10,000.

22 “(vii) If the number of cap-subject nonimmigrant visa  
23 petitions approved under section 101(a)(15)(H)(i)(b) for  
24 a fiscal year is at least 20,000 fewer than the base alloca-  
25 tion, but not more than 29,999 fewer than the base alloca-

1 tion, the allocation of such visas for the following fiscal  
2 year shall be reduced by 20,000.

3 “(viii) If the number of cap-subject nonimmigrant  
4 visa petitions approved under section 101(a)(15)(H)(i)(b)  
5 for a fiscal year is at least 30,000 fewer than the base  
6 allocation, the allocation of such visas for the following  
7 fiscal year shall be reduced by 30,000.

8 “(C)(i) If the final receipt date for filing non-  
9 immigrant visa petitions under section 101(a)(H)(i)(b)  
10 subject to the numerical limitations under paragraph  
11 (1)(A) in a fiscal year occurs on or before the 180th day  
12 of the fiscal year, the Secretary of Homeland Security  
13 shall announce the following fiscal year’s base allocation  
14 for such nonimmigrant visas on or before April 1 of the  
15 fiscal year preceding the fiscal year for which such alloca-  
16 tion applies.

17 “(ii) If the final receipt date for filing nonimmigrant  
18 visa petitions under section 101(a)(H)(i)(b) subject to the  
19 numerical limitations under paragraph (1)(A) in a fiscal  
20 year occurs after the 180th day of the fiscal year, the Sec-  
21 retary of Homeland Security shall announce the following  
22 fiscal year’s base allocation for such nonimmigrant visas  
23 not later than the first day of the fiscal year for which  
24 such allocation applies.”.

1 (b) PRIORITIZATION OF PETITIONS.—Section  
2 214(g)(3) of the Immigration and Nationality Act (8  
3 U.S.C. 1184(g)(3)) is amended—

4 (1) by striking the first sentence and inserting  
5 the following: “(A) Subject to subparagraphs (B)  
6 and (C), aliens who are subject to the numerical lim-  
7 itations under paragraph (1)(A) shall be issued  
8 visas, or otherwise provided nonimmigrant status, in  
9 a manner and order established by the Secretary by  
10 regulation.”; and

11 (2) by adding at the end the following:

12 “(B) In any fiscal year in which the number of peti-  
13 tions filed for nonimmigrant status under section  
14 101(a)(15)(H)(i)(b) during the first 5 business days of the  
15 petition filing period exceeds the numerical limitation for  
16 that fiscal year, the Secretary shall consider petitions re-  
17 ceived during those 5 business days in the following order:

18 “(i) Petitions for aliens who have earned a mas-  
19 ter’s or higher degree from an institution of higher  
20 education (as defined in section 101(a) of the High-  
21 er Education Act of 1965 (20 U.S.C. 1001(a))) in  
22 the United States and who are subject to the numer-  
23 ical limitations under paragraph (1)(A).

24 “(ii) Petitions for aliens who have earned a doc-  
25 toral degree from an institution of higher education



1 outside the United States in a specialty related to  
2 the intended employment if such degree is equivalent  
3 to a doctoral degree awarded by an institution of  
4 higher education (as defined in section 101(a) of the  
5 Higher Education Act of 1965 (20 U.S.C. 1001(a)))  
6 in the United States.

7 “(iii) Petitions for aliens who have earned a  
8 bachelor’s degree in a field listed on the STEM Des-  
9 ignated Degree Program List published by the De-  
10 partment of Homeland Security on the Student and  
11 Exchange Visitor Program website from an institu-  
12 tion of higher education (as defined in section  
13 101(a) of the Higher Education Act of 1965 (20  
14 U.S.C. 1001(a))) in the United States.

15 “(iv) Other petitions.

16 “(C) The first sentence of subparagraph (A) shall not  
17 apply in any fiscal year in which the demand for non-  
18 immigrant visas under section 101(a)(15)(H)(i)(b) ex-  
19 ceeds the numerical limitation under paragraph (1)(A)  
20 during the first 5 business days of the petition filing pe-  
21 riod.”.

22 (c) PENALTY.—

23 (1) IN GENERAL.—Section 214(g)(9) of the Im-  
24 migration and Nationality Act, as added by sub-

1 section (a)(7), is amended by adding at the end the  
2 following:

3 “(D)(i) Subject to clause (ii), if 5 or more petitions  
4 for H–1B classification subject to the cap established  
5 under paragraph (1)(A) filed by an employer in a fiscal  
6 year are approved, the employer shall pay a penalty for  
7 each such approved petition subject to such cap for which  
8 the H–1B beneficiary works in the United States for less  
9 than 25 percent of the first year of the beneficiary’s ap-  
10 proved work authorization period.

11 “(ii)(I) An employer shall not be subject to the pen-  
12 alties set forth in clause (i) if the employer withdraws the  
13 petition for an H–1B visa—

14 “(aa) as a result of an unexpected change in  
15 the need for the alien worker;

16 “(bb) because the alien worker commences em-  
17 ployment in the United States for the employer  
18 under another lawful status; or

19 “(cc) because the alien worker quit or resigned  
20 the worker’s position with the employer.

21 “(II) An employer withdrawing a petition under sub-  
22 clause (I) shall file with the Secretary a description of the  
23 circumstances—

24 “(aa) resulting in the unexpected change in the  
25 need for the alien worker;

1           “(bb) surrounding the alien worker’s com-  
2           mencement of employment in the United States for  
3           the employer under another lawful status; or

4           “(cc) surrounding the alien worker’s decision to  
5           quit or resign the worker’s position with the em-  
6           ployer.

7           “(III) Any unused visas associated with petitions  
8           withdrawn under subclause (I) that were subject to the  
9           cap established under paragraph (1)(A) shall be reas-  
10          signed to another H–1B petition filed by another employer  
11          either in the fiscal year in which the withdrawal was re-  
12          ceived or in the following fiscal year.

13          “(IV) Subclause (I) shall not apply to an employer  
14          in a fiscal year if—

15                 “(aa)(AA) at least 20 and not more than 49 pe-  
16                 titions filed by the employer in a fiscal year for H–  
17                 1B visa classification subject to the cap established  
18                 under paragraph (1)(A) are approved; and

19                 “(BB) the employer withdraws more than 25  
20                 percent of the approved H–1B visa petitions subject  
21                 to the numerical limitation under paragraph (1)(A)  
22                 that were received by the employer in the fiscal year  
23                 or the employer withdraws more than 10 percent of  
24                 such petitions because the alien worker resigned his

1 or her employment with the employer before com-  
2 pleting 3 months of employment; or

3 “(bb)(AA) more than 50 petitions filed by the  
4 employer in a fiscal year for H–1B visa classification  
5 subject to the cap established under paragraph  
6 (1)(A) are approved; and

7 “(BB) the employer withdraws more than 20  
8 percent of the approved H–1B visa petitions subject  
9 to the numerical limitation under paragraph (1)(A)  
10 that were received by the employer in the fiscal year  
11 or the employer withdraws more than 5 percent of  
12 such petitions because the alien worker resigned his  
13 or her employment with the employer before com-  
14 pleting 3 months of employment.

15 “(iii)(I) The penalty for a violation of clause (i) shall  
16 be—

17 “(aa) \$10,000 for each petition described in  
18 such clause during the first fiscal year of noncompli-  
19 ance; and

20 “(bb) \$25,000 for each such petition after the  
21 first fiscal year of noncompliance.

22 “(II) An employer subject to a penalty under clause  
23 (i) in any 3 fiscal years shall be barred from filing any  
24 petitions for H–1B visas subject to the numerical limita-

1 tion under paragraph (1)(A) for the fiscal year imme-  
2 diately following the third year of noncompliance.

3 “(iv) Each employer that has 5 or more approved pe-  
4 titions for H–1B classification subject to the cap estab-  
5 lished under paragraph (1)(A) shall submit an annual re-  
6 port to the Secretary of Homeland Security that identi-  
7 fies—

8 “(I) the date on which each such H–1B non-  
9 immigrant approved during the most recent fiscal  
10 year began working for the employer in the United  
11 States; and

12 “(II) the total period of employment in the first  
13 year of available work authorization for each such  
14 H–1B nonimmigrant during the most recent fiscal  
15 year.

16 “(v) Penalties assessed under this subparagraph shall  
17 be deposited into the Promoting American Ingenuity Ac-  
18 count established under section 286(w).”.

19 (2) EFFECTIVE DATE.—Section 214(g)(9)(C) of  
20 the Immigration and Nationality Act, as added by  
21 paragraph (1), shall take effect on the date that is  
22 1 year after the date of the enactment of this Act.

23 (d) REPORTING REQUIREMENT.—The Secretary of  
24 Homeland Security shall—

1           (1) timely upload to a public website data that  
2 summarizes the adjudication of nonimmigrant peti-  
3 tions under section 101(a)(15)(H)(i)(b) of the Immig-  
4 ration and Nationality Act (8 U.S.C.  
5 1101(a)(15)(H)(i)(b)) during each fiscal year;

6           (2) allow the timely adjustment of visa alloca-  
7 tions under section 214(g)(9)(B) of such Act, as  
8 added by subsection (a)(7); and

9           (3) identify the number of previously approved  
10 visas that were the subject of withdrawn petitions  
11 under section 214(g)(9)(C)(ii) of such Act and are  
12 available for reassignment to another employer.

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

16           (1) in the matter preceding subparagraph (A),  
17 by striking “stating the following” and inserting  
18 “containing the statements described in subpara-  
19 graphs (A) through (G)”; and

20           (2) in the undesignated matter following sub-  
21 paragraph (G)(ii)—

22                   (A) by striking “The employer shall make”  
23 and inserting the following:

24                   “(H) The employer shall make”; and

25                   (B) by adding at the end the following:

1           “(I)(i) An employer may not hire an H–1B  
2 nonimmigrant for the purpose and intent of replac-  
3 ing a United States worker with the H–1B non-  
4 immigrant (other than through the United States  
5 worker’s promotion, voluntary transfer, voluntary  
6 departure, or voluntary retirement). In an enforce-  
7 ment action for a violation of this clause, the agency  
8 initiating the enforcement action shall bear the bur-  
9 den of proving that the employer acted with the pur-  
10 pose and intent to replace the United States worker  
11 with the H–1B nonimmigrant.

12           “(ii) No employer, having the purpose and in-  
13 tent of replacing a current employee with an H–1B  
14 nonimmigrant (other than through the current em-  
15 ployee’s promotion, voluntary transfer, voluntary de-  
16 parture, or voluntary retirement), may condition the  
17 employee’s pay, bonus, or severance, or any other  
18 form of compensation, or the employee’s perform-  
19 ance review, on the employee’s willingness to train  
20 the H–1B nonimmigrant to perform the employee’s  
21 responsibilities. In an enforcement action for a viola-  
22 tion of this clause, the agency initiating the enforce-  
23 ment action shall bear the burden of proving that  
24 the employer had the purpose and intent to replace

1 the current employee with the H-1B non-  
2 immigrant.”.

3 (f) FUNDING.—Section 212(n) of the Immigration  
4 and Nationality Act (8 U.S.C. 1182(n)) is amended by  
5 adding at the end the following:

6 “(6) The enforcement of this subsection may be car-  
7 ried out using funds deposited into the Fraud Prevention  
8 and Detection Account under section 286(v).”.

9 **SEC. 102. EMPLOYMENT AUTHORIZATION FOR DEPEND-**  
10 **ENTS OF H-1B NONIMMIGRANTS.**

11 Section 214(c) of the Immigration and Nationality  
12 Act (8 U.S.C. 1184(c)) is amended—

13 (1) by striking “Attorney General” each place  
14 such term appears and inserting “Secretary of  
15 Homeland Security”; and

16 (2) in paragraph (2), by adding at the end the  
17 following:

18 “(G)(i) If the principal alien has a pending or ap-  
19 proved Application for Permanent Employment Certifi-  
20 cation or a pending or approved Immigrant Petition, the  
21 Secretary of Homeland Security shall—

22 “(I) authorize the alien spouse of such principal  
23 alien admitted under section 101(a)(15)(H)(i)(b)  
24 who is accompanying or following to join the prin-





1       “(10) An amended H–1B petition shall not be re-  
2 quired if—

3               “(A) the petitioning employer is involved in a  
4 corporate restructuring, including a merger, acquisi-  
5 tion, or consolidation;

6               “(B) a new corporate entity succeeds to the in-  
7 terests and obligations of the original petitioning  
8 employer and the terms and conditions of employ-  
9 ment remain the same except for the identity of the  
10 petitioner; or

11               “(C) the nonimmigrant worker begins working  
12 at a new place of employment for which the peti-  
13 tioner has secured a valid, certified Labor Condition  
14 Application before the nonimmigrant worker began  
15 working at such place of employment.”.

16       (b) DEFERENCE TO PRIOR APPROVALS.—Section  
17 214(e) of such Act, as amended by subsection (a) and sec-  
18 tion 102, is further amended by adding at the end the  
19 following:

20               “(15) If the Secretary of Homeland Security or the  
21 Secretary of State approves a visa, petition, or application  
22 for admission on behalf of an alien described in subpara-  
23 graph (H)(i)(b) or (L) of section 101(a)(15), the Sec-  
24 retary of Homeland Security or the Secretary of State  
25 may not deny a subsequent petition, visa, or application

1 for admission involving the same employer and alien un-  
2 less the applicant is provided with a written finding that  
3 explains the basis for the Government's determination  
4 that—

5           “(A) there was a material error with regard to  
6 the approval of the previous petition, visa, or appli-  
7 cation for admission;

8           “(B) a substantial change in circumstances has  
9 taken place since the prior approval or admission  
10 that renders the nonimmigrant ineligible for such  
11 status under this Act; or

12           “(C) new material information has been discov-  
13 ered that adversely impacts the eligibility of the em-  
14 ployer or the nonimmigrant.”.

15       (c) EFFECT OF ENDING EMPLOYMENT RELATION-  
16 SHIP.—Section 214(n) of such Act (8 U.S.C. 1184(n)) is  
17 amended by adding at the end the following:

18       “(3) A nonimmigrant admitted under section  
19 101(a)(15)(H)(i)(b) whose employment relationship ends  
20 (either voluntarily or involuntarily) before the expiration  
21 of the nonimmigrant's period of authorized admission  
22 shall be deemed to have retained such legal status  
23 throughout the 60-day period beginning on such employ-  
24 ment ending date if an employer files a petition to extend,

1 change, or adjust the status of the nonimmigrant during  
2 such period.”.

3 **SEC. 104. DEFINITIONS.**

4 (a) INTENDING IMMIGRANT.—Section 101(a) of the  
5 Immigration and Nationality Act (8 U.S.C. 1101(a)) is  
6 amended by adding at the end the following:

7 “(53)(A) The term ‘intending immigrant’ means,  
8 with respect to the number of aliens employed by an em-  
9 ployer, an alien who intends to work and reside perma-  
10 nently in the United States, as evidenced by—

11 “(i) a pending or approved application for a  
12 labor certification filed for such alien by a covered  
13 employer; or

14 “(ii) a pending or approved immigrant status  
15 petition filed for such alien by a covered employer.

16 “(B) In this paragraph:

17 “(i) The term ‘covered employer’ means an em-  
18 ployer that has filed immigrant status petitions for  
19 not fewer than 90 percent of current employees who  
20 were the beneficiaries of applications for labor cer-  
21 tification that were approved during the 1-year pe-  
22 riod ending 6 months before the filing of an applica-  
23 tion or petition for which the number of intending  
24 immigrants is relevant.

1           “(ii) The term ‘immigrant status petition’  
2 means a petition filed under paragraph (1), (2), or  
3 (3) of section 203(b).

4           “(iii) The term ‘labor certification’ means an  
5 employment certification under section 212(a)(5)(A).

6           “(C) Notwithstanding any other provision of law—

7           “(i) for all calculations of the number of aliens  
8 admitted pursuant to subparagraph (H)(i)(b) or (L)  
9 of paragraph (15), including calculations for the  
10 purposes set forth in section 203(i), an intending  
11 immigrant shall be counted as an alien lawfully ad-  
12 mitted for permanent residence and shall not be  
13 counted as an employee admitted pursuant to such  
14 a subparagraph; and

15           “(ii) for all determinations of the number of  
16 employees or United States workers employed by an  
17 employer, all of the employees in any group treated  
18 as a single employer under subsection (b), (c), (m),  
19 or (o) of section 414 of the Internal Revenue Code  
20 of 1986 shall be counted.

21           “(54) The term ‘STEM’ means the academic and  
22 professional disciplines of science (excluding social  
23 sciences), technology, engineering, and mathematics.”.

1 (b) H-1B DEPENDENT EMPLOYERS; EXEMPT H-1B  
2 NONIMMIGRANTS.—Section 212(n) of the Immigration  
3 and Nationality Act (8 U.S.C. 1182(n)) is amended—

4 (1) in paragraph (1)—

5 (A) in subparagraph (E)—

6 (i) in clause (i), by striking “(as de-  
7 fined in paragraph (4))”; and

8 (ii) by striking clause (ii) and insert-  
9 ing the following:

10 “(ii) Except as provided in clause (iii), an appli-  
11 cation described in this clause is an application filed  
12 by—

13 “(I) an H-1B-dependent employer; or

14 “(II) an employer that has been found  
15 under paragraph (2)(C) or (5) to have com-  
16 mitted a willful failure or misrepresentation  
17 during the 5-year period preceding the filing of  
18 the application.

19 “(iii)(I) Except as provided in subclause (II),  
20 an application is not described in clause (ii) if the  
21 only H-1B nonimmigrants sought in the application  
22 are exempt H-1B nonimmigrants.

23 “(II) Subclause (I) shall not apply if the em-  
24 ployer has more than 50 employees and more than

1 50 percent of the employer’s employees are H–1B  
2 nonimmigrants.”;

3 (2) in paragraph (2)(F)—

4 (A) by inserting “(i)” before “Subject”;

5 and

6 (B) by adding at the end the following:

7 “(ii) The Director of U.S. Citizenship and Immigra-  
8 tion Services shall provide the Secretary of Labor with any  
9 information contained in the materials submitted by em-  
10 ployers of H–1B nonimmigrants as part of the petition  
11 adjudication process that indicates that the employer is  
12 not complying with visa program requirements for H–1B  
13 nonimmigrants. The Secretary may initiate and conduct  
14 an investigation and hearing under this paragraph after  
15 receiving information of noncompliance under this sub-  
16 paragraph.”; and

17 (3) in paragraph (3)—

18 (A) by amending subparagraph (A) to read

19 as follows:

20 “(A)(i) For purposes of this subsection, the term ‘H–  
21 1B-dependent employer’ means an employer that—

22 “(I) in the case of an employer that has 25 or  
23 fewer full-time equivalent employees who are em-  
24 ployed in the United States, employs more than 7  
25 H–1B nonimmigrants;

1           “(II) in the case of an employer that has at  
2           least 26 but not more than 50 full-time equivalent  
3           employees who are employed in the United States,  
4           employs more than 12 H–1B nonimmigrants; or

5           “(III) in the case of an employer that has at  
6           least 51 full-time equivalent employees who are em-  
7           ployed in the United States, employs H–1B non-  
8           immigrants in a number that is equal to at least 15  
9           percent of the number of such full-time equivalent  
10          employees.

11          “(ii) In determining the number of employees who are  
12          H–1B nonimmigrants under subparagraph (A), an intend-  
13          ing immigrant employee shall not count toward such num-  
14          ber.”; and

15                         (B) in subparagraph (B)—

16                                 (i) by amending clause (i) to read as  
17                                 follows:

18                                 “(i) the term ‘exempt H–1B nonimmigrant’  
19                                 means an H–1B nonimmigrant who—

20   “(I) receives wages (including cash bo-  
21   nuses) at an annual rate equal to not less than  
22   the higher of—

23   “(aa) 105 percent of the occupational  
24   mean wage, as determined based on Bu-



1           reau of Labor Statistics data for the geo-  
2           graphic area of employment; or

3           “(bb) \$100,000 (or the adjusted  
4           amount under clause (iii), if applicable); or

5           “(II) has attained a doctoral degree from  
6           an institution of higher education (as defined in  
7           section 101(a) of the Higher Education Act of  
8           1965 (20 U.S.C. 1001(a))) in the United States  
9           in a specialty related to the intended employ-  
10          ment;”;

11           (ii) in clause (ii), by striking the pe-  
12          riod at the end and inserting “; and”; and

13           (iii) by adding at the end the fol-  
14          lowing:

15          “(iii) the amount under clause (i)(I)(bb) shall  
16          be increased, for the third fiscal year beginning after  
17          the date of the enactment of this clause and for  
18          every third fiscal year thereafter, by the percentage  
19          (if any) by which the Consumer Price Index for the  
20          month of June preceding the date on which such in-  
21          crease takes effect exceeds the Consumer Price  
22          Index for the same month of the third preceding cal-  
23          endar year.”.

1 **SEC. 105. STRENGTHENING THE PREVAILING WAGE SYS-**  
2 **TEM.**

3 Section 212(p) of the Immigration and Nationality  
4 Act (8 U.S.C. 1182(p)) is amended—

5 (1) in paragraph (4), by adding at the end the  
6 following: “With regard to the prevailing wage re-  
7 quired to be paid under subsections (a)(5)(A),  
8 (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II) (as added by  
9 section 402(b)(2) of Public Law 108–77), the first  
10 level of wages shall be not less than the mean of the  
11 lowest 50 percent of the wages surveyed.”; and

12 (2) by adding at the end the following:

13 “(5) An employer may use an independent survey ap-  
14 proved by the Secretary of Labor for purposes of this sec-  
15 tion. The Secretary shall approve such a survey if—

16 “(A) the survey was published during the most  
17 recent 2-year period;

18 “(B) the survey has not been duplicated since  
19 its initial publication;

20 “(C) the data upon which the survey is based  
21 was collected during the 2-year period ending on the  
22 date on which the survey was published;

23 “(D) the survey reflects the area of intended  
24 employment;

25 “(E) the employer’s job description adequately  
26 matches the job description in the survey;

1           “(F) the survey is across industries that employ  
2 workers in the occupation;

3           “(G) the wage determination is based on the  
4 arithmetic mean (weighted average); and

5           “(H) the survey identifies a statistically valid  
6 methodology that was used to collect the data.”.

7 **SEC. 106. SCHEDULE A STUDY.**

8           Not later than 1 year after the date of the enactment  
9 of this Act, the Secretary of Labor, in cooperation with  
10 the Office of Foreign Labor Certification, shall—

11           (1) submit to the Committee on the Judiciary  
12 of the Senate and the Committee on the Judiciary  
13 of the House of Representatives the results of a  
14 study to determine whether the occupations listed in  
15 Schedule A (20 C.F.R. 656.5) should be modified or  
16 expanded; and

17           (2) if the study determines that Schedule A  
18 should be modified or expanded, publish a notice of  
19 proposed rulemaking in the Federal Register.

1 **TITLE II—EMPLOYMENT-BASED**  
2 **IMMIGRANT VISAS**

3 **SEC. 201. ELIMINATION OF PER-COUNTRY NUMERICAL LIM-**  
4 **ITATIONS.**

5 (a) IN GENERAL.—Section 202(a)(2) of the Immi-  
6 gration and Nationality Act (8 U.S.C. 1152(a)(2)) is  
7 amended to read as follows:

8 “(2) PER COUNTRY LEVELS FOR FAMILY-SPON-  
9 SORED IMMIGRANTS.—Subject to paragraphs (3)  
10 and (4), the total number of immigrant visas made  
11 available to natives of any single foreign state or de-  
12 pendent area under section 203(a) in any fiscal year  
13 may not exceed 15 percent (in the case of a single  
14 foreign state) or 2 percent (in the case of a depend-  
15 ent area) of the total number of such visas made  
16 available under such section in that fiscal year.”.

17 (b) CONFORMING AMENDMENTS.—Section 202 of  
18 such Act (8 U.S.C. 1152) is amended—

19 (1) in subsection (a)—

20 (A) in paragraph (3), by striking “both  
21 subsections (a) and (b) of section 203” and in-  
22 serting “section 203(a)”; and

23 (B) by striking paragraph (5); and

24 (2) by amending subsection (e) to read as fol-  
25 lows:

1       “(e) SPECIAL RULES FOR COUNTRIES AT CEILING.—  
2 If the total number of immigrant visas made available  
3 under section 203(a) to natives of any single foreign state  
4 or dependent area will exceed the numerical limitation  
5 specified in subsection (a)(2) in any fiscal year, the num-  
6 ber of visas for natives of that state or area shall be allo-  
7 cated under section 203(a) so that, except as provided in  
8 subsection (a)(4), the proportion of the visa numbers  
9 made available under each of paragraphs (1) through (4)  
10 of section 203(a) is equal to the ratio of the total number  
11 of visas made available under the respective paragraph to  
12 the total number of visas made available under section  
13 203(a).”.

14       (c) COUNTRY-SPECIFIC OFFSET.—Section 2 of the  
15 Chinese Student Protection Act of 1992 (8 U.S.C. 1255  
16 note) is amended—

17           (1) in subsection (a), by striking “subsection  
18 (e)” and inserting “subsection (d)”; and

19           (2) by striking subsection (d) and redesignating  
20 subsection (e) as subsection (d).

21       (d) EFFECTIVE DATE.—The amendments made by  
22 this section shall take effect as if enacted on October 1,  
23 2017, and shall apply to fiscal years beginning with fiscal  
24 year 2018.

1 **SEC. 202. ENSURING THE ISSUANCE OF ALL PREFERENCE**  
2 **EMPLOYMENT-BASED IMMIGRANT VISAS.**

3 (a) **BACKLOG REDUCTION.**—

4 (1) **IN GENERAL.**—Notwithstanding any other  
5 provision of law, beginning in fiscal year 2018, the  
6 number of employment-based immigrant visas that  
7 shall be issued under paragraph (1), (2), or (3) of  
8 section 203(b) of the Immigration and Nationality  
9 Act (8 U.S.C. 1153(b)) shall be increased by the  
10 number computed under paragraph (2).

11 (2) **NUMBER AVAILABLE.**—

12 (A) **IN GENERAL.**—The number computed  
13 under this paragraph is—

14 (i) the greater of—

15 (I) the number of preference im-  
16 migrant visas computed under section  
17 201(d)(1) of the Immigration and Na-  
18 tionality Act (8 U.S.C. 1151(d)(1))  
19 for fiscal years 1992 to 2013 that  
20 were not issued to any preference im-  
21 migrant for any of those fiscal years;  
22 or

23 (II) 200,000; minus

24 (ii) the number described in subpara-  
25 graph (B).

1 (B) REDUCTION.—The number described  
2 in subparagraph (A)(i) shall be reduced, for  
3 each fiscal year after fiscal year 2017, by the  
4 cumulative number of immigrant visas issued  
5 for previous fiscal years pursuant to the in-  
6 crease authorized under paragraph (1).

7 (C) CONSTRUCTION.—

8 (i) IN GENERAL.—Nothing in this  
9 paragraph may be construed as affecting  
10 the application of section 201(c)(3)(C) of  
11 the Immigration and Nationality Act (8  
12 U.S.C. 1151(c)(3)(C)) with regard to im-  
13 migrant visas other than the visas author-  
14 ized by the increase computed under sub-  
15 paragraph (A).

16 (ii) LIMITATION.—The visas author-  
17 ized by the increase computed under sub-  
18 paragraph (A) may only be issued to aliens  
19 seeking immigrant visas pursuant to para-  
20 graph (1), (2), or (3) of section 203(b) of  
21 the Immigration and Nationality Act (8  
22 U.S.C. 1153(b)).

23 (b) PREFERENCE IMMIGRATION AS DIRECTED BY  
24 CONGRESS.—Section 201(c)(1)(B)(ii) of the Immigration

1 and Nationality Act (8 U.S.C. 1151(c)(1)(B)(ii)) is  
2 amended to read as follows:

3 “(ii) The number computed under subparagraph (A)  
4 shall not be less than the sum of—

5 “(I) 226,000; plus

6 “(II) the number computed under paragraph  
7 (3).”.

8 (c) ENSURING FULL IMPLEMENTATION.—Section  
9 203(g) of the Immigration and Nationality Act (8 U.S.C.  
10 1153(g)) is amended by striking “(g) LISTS.—For pur-  
11 poses of carrying out” and inserting the following:

12 “(g) ADMINISTRATION.—

13 “(1) OBLIGATION TO ISSUE ALL AUTHORIZED  
14 VISAS.—

15 “(A) IN GENERAL.—The Secretary of  
16 State, in coordination with the Secretary of  
17 Homeland Security, shall administer this sec-  
18 tion in a manner that ensures that all immi-  
19 grant visas authorized by Congress to be issued  
20 under this section are issued to qualified appli-  
21 cants.

22 “(B) NOTICE.—Not later than June 1 of  
23 each fiscal year, the Secretary of State shall  
24 publish a notice in the Federal Register that



1 describes the steps that the Government is tak-  
2 ing to comply with subparagraph (A).

3 “(2) LISTS.—In order to carry out”.

4 (d) FACILITATING ISSUANCE OF VISAS.—Section  
5 245(a) of the Immigration and Nationality Act (8 U.S.C.  
6 1255(a)) is amended by adding at the end the following:  
7 “For purposes of paragraph (3), an immigrant visa is  
8 deemed to be immediately available if any visa number al-  
9 located under this Act to preference immigrants described  
10 in section 203(b) has not yet been issued for that fiscal  
11 year.”.

12 **SEC. 203. ALIENS NOT SUBJECT TO DIRECT NUMERICAL**  
13 **LIMITATION.**

14 (a) IN GENERAL.—Section 201(b)(1) of the Immi-  
15 gration and Nationality Act (8 U.S.C. 1151(b)(1)) is  
16 amended by adding at the end the following:

17 “(F) Aliens who are the spouse or a child of an  
18 alien admitted as an employment-based immigrant  
19 under subsection (b) or (i) of section 203.

20 “(G) Aliens who have earned a master’s or  
21 higher degree in a field listed on the STEM Des-  
22 ignated Degree Program List published by the De-  
23 partment of Homeland Security on the Student and  
24 Exchange Visitor Program website from an institu-  
25 tion of higher education (as defined in section

1 101(a) of the Higher Education Act of 1965 (20  
2 U.S.C. 1001(a)) in the United States.

3 “(H) Aliens for whom a petition for an employ-  
4 ment-based immigrant visa under paragraph (A) or  
5 (B) of section 203(b)(1) has been approved.”.

6 (b) CONFORMING AMENDMENTS.—Section 203(b) of  
7 the Immigration and Nationality Act (8 U.S.C. 1153(b))  
8 is amended—

9 (1) in paragraph (1), in the matter preceding  
10 subparagraph (A), by striking “28.6 percent” and  
11 inserting “12 percent”;

12 (2) in paragraph (2)(A), by striking “28.6 per-  
13 cent” and inserting “36.9 percent”; and

14 (3) in paragraph (3)(A), by striking “28.6 per-  
15 cent” and inserting “36.9 percent”.

16 **SEC. 204. INCREASED PORTABILITY.**

17 Section 204(j) of the Immigration and Nationality  
18 Act (8 U.S.C. 1154(j)) is amended to read as follows:

19 “(j) JOB FLEXIBILITY FOR LONG DELAYED APPLI-  
20 CANTS FOR ADJUSTMENT OF STATUS TO PERMANENT  
21 RESIDENCE.—A petition filed under subsection (a)(1)(F)  
22 for an individual who has filed an application for adjust-  
23 ment of status pursuant to section 245 or has been grant-  
24 ed conditional permanent resident status pursuant to sec-  
25 tion 216B and has had 3 annual reviews of such status

1 approved, shall remain valid with respect to a new job if  
2 the individual changes jobs or employers if the new job  
3 is in the same or a similar occupational classification as  
4 the job for which the petition was filed.”.

5 **SEC. 205. ADJUSTMENT OF STATUS FOR EMPLOYMENT-**  
6 **BASED IMMIGRANTS.**

7 Section 245 of the Immigration and Nationality Act  
8 (8 U.S.C. 1255) is amended—

9 (1) in subsection (c)—

10 (A) by striking “to (1) an alien” and in-  
11 serting the following: “to—

12 “(1) an alien”;

13 (B) by striking “(2) subject” and inserting  
14 the following:

15 “(2) subject”;

16 (C) by striking “(3) any alien” and insert-  
17 ing the following:

18 “(3) any alien”;

19 (D) by striking “(4) an alien” and insert-  
20 ing the following:

21 “(4) an alien”;

22 (E) by striking “(5) an alien” and insert-  
23 ing the following:

24 “(5) an alien”;

1 (F) by striking “section 101(a)(15)(S), (6)  
2 an alien” and inserting the following: “section  
3 101(a)(15)(S);  
4 “(6) an alien”;

5 (G) by striking “(7) any alien” and insert-  
6 ing the following:  
7 “(7) any alien”;

8 (H) in paragraph (7), by inserting “or  
9 203(i)” after “203(b)”; and

10 (I) by striking “status; or (8) any alien”  
11 and inserting the following: “status; or  
12 “(8) any alien”; and

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

14 “(n) ADJUSTMENT OF STATUS FOR EMPLOYMENT-  
15 BASED IMMIGRANTS.—

16 “(1) PETITION.—Any alien, and any eligible de-  
17 pendent of such alien, who has an approved petition  
18 for immigrant status, may file an application with  
19 the Secretary of Homeland Security for adjustment  
20 of status regardless of whether an immigrant visa is  
21 immediately available at the time the application is  
22 filed.

23 “(2) SUPPLEMENTAL FEE.—If a visa is not im-  
24 mediately available at the time an application is filed  
25 under paragraph (1), the beneficiary of such applica-

1       tion shall pay a supplemental fee of \$500, which  
 2       shall be deposited into the Promoting American In-  
 3       genuity Account established under section 286(w).  
 4       This fee shall not be collected from any dependent  
 5       accompanying or following to join such beneficiary.

6               “(3) AVAILABILITY.—An application filed under  
 7       this subsection may not be approved until the date  
 8       on which an immigrant visa becomes available.”.

9       **SEC. 206. EMPLOYMENT-BASED CONDITIONAL IMMI-**  
 10       **GRANTS.**

11       (a) **WORLDWIDE LEVEL.**—Section 201(a) of the Im-  
 12       migration and Nationality Act (8 U.S.C. 1151) is amend-  
 13       ed—

14               (1) in paragraph (2), by striking “and” at the  
 15       end;

16               (2) in paragraph (3), by striking the period at  
 17       the end and inserting “; and”; and

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

19               “(4) for fiscal year 2019 and each subsequent  
 20       fiscal year, conditional employment-based immi-  
 21       grants described in section 203(i) in a number not  
 22       to exceed 35,000 for any fiscal year.”.

23       (b) **REQUIREMENTS.**—Section 203 of the Immigra-  
 24       tion and Nationality Act (8 U.S.C. 1153) is amended—

1           (1) in subsection (d), by striking “or (c)” and  
2 inserting “(c), or (i)”;

3           (2) in subsection (e)—

4                 (A) by redesignating paragraph (3) as  
5 paragraph (4); and

6                 (B) by inserting after paragraph (2) the  
7 following:

8           “(3) Immigrant visa numbers made available under  
9 subsection (i) shall be issued to eligible immigrants in a  
10 manner and order established by the Secretary of Home-  
11 land Security, by regulations, in accordance with the re-  
12 quirements under such subsection.”;

13           (3) in subsection (f)—

14                 (A) by striking “his” and inserting “the  
15 alien’s”;

16                 (B) by striking “or (c) of this section” and  
17 inserting “(c), or (i)”;

18                 (C) by striking “he” and inserting “the  
19 consular officer”;

20           (4) in subsection (g)(2), as amended by section  
21 202(c), by striking “and (c)” and inserting “(c), and  
22 (i)”;

23           (5) by adding at the end the following:

24           “(i) **CONDITIONAL EMPLOYMENT-BASED IMMI-**  
25 **GRANTS.**—

1           “(1) AUTHORIZATION.—Conditional employ-  
2           ment-based immigrant visas shall be made available  
3           in a number not to exceed 35,000 for each fiscal  
4           year, to any eligible alien (including any non-  
5           immigrant lawfully residing in the United States)  
6           who—

7                     “(A) has earned a university degree;

8                     “(B) has received an offer of employment  
9                     from a United States employer that has com-  
10                    plied with the requirements under section  
11                    204(a)(1)(M); and

12                    “(C) will satisfy the requirements for im-  
13                    migrant classification under paragraph (1), (2),  
14                    or (3) of subsection (b).

15           “(2) DEPARTURE NOT REQUIRED.—The Sec-  
16           retary of Homeland Security may not require a non-  
17           immigrant who is lawfully residing in the United  
18           States to leave the United States in order to obtain  
19           a conditional employment-based immigrant visa  
20           under paragraph (1).”.

21           (c) PETITIONING PROCEDURE.—

22                    (1) IN GENERAL.—Section 204(a)(1) of the Im-  
23                    migration and Nationality Act (8 U.S.C. 1154(a)(1))  
24                    is amended—

1 (A) in subparagraph (F), by striking “sec-  
2 tion 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or  
3 203(b)(3)” and inserting “paragraph (1)(B),  
4 (1)(C), (2), or (3) of section 203(b) or section  
5 203(i)”;

6 (B) by moving subparagraph (L) 4 ems to  
7 the left; and

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

9 “(M) Each employer petitioning for a conditional em-  
10 ployment-based immigrant visa on behalf of an alien under  
11 this subsection, or seeking to hire a conditional employ-  
12 ment-based immigrant who was previously admitted—

13 “(i) shall file a petition with the Secretary of  
14 Homeland Security attesting that—

15 “(I) the alien will be paid not less than a  
16 similarly situated United States worker;

17 “(II) no United States worker has been or  
18 will be displaced by the alien;

19 “(III) the employer has undertaken re-  
20 cruitment efforts to hire United States workers,  
21 in the alien’s same occupation or a similar occu-  
22 pation, who possess a bachelor’s degree or high-  
23 er, including at least 3 types of targeted re-  
24 cruiting efforts, such as job fairs, on-campus



1 recruiting, or job postings that attract appli-  
2 cants; and

3 “(IV) the employer is in compliance with  
4 the requirements under clauses (ii) through  
5 (vii);

6 “(ii) shall be prepared to document all recruit-  
7 ment efforts attested to under clause (i)(III), if au-  
8 dited by the Secretary;

9 “(iii) shall fully participate in the E-Verify Pro-  
10 gram established under section 403(a) of the Illegal  
11 Immigration Reform and Immigrant Responsibility  
12 Act of 1996 (8 U.S.C. 1324a note);

13 “(iv) shall pay, for each petition filed under  
14 clause (i), a \$10,000 fee, which shall be deposited  
15 into the Promoting American Ingenuity Account es-  
16 tablished under section 286(w);

17 “(v) shall pay an administrative fee in an  
18 amount that is sufficient to cover the average paper-  
19 work processing and other administrative costs of an  
20 alien participating in the program established under  
21 this subsection;

22 “(vi) may not be an H-1B-dependent employer  
23 (as defined in section 212(n)(3)(A)); and

24 “(vii) may not be debarred from any existing  
25 immigration program.”.

1           (2) ADJUDICATION OF PETITIONS.—The Sec-  
2           retary of Homeland Security shall adjudicate all pe-  
3           titions filed under section 204(a)(1)(M)(i) of the Im-  
4           migration and Nationality Act, as added by para-  
5           graph (1), not later than 60 days after receiving  
6           such petitions.

7           (d) LABOR CERTIFICATION BASED ON PRIOR COM-  
8           PETITIVE RECRUITMENT.—

9           (1) IN GENERAL.—Section 212(a)(5)(A)(ii) of  
10          the Immigration and Nationality Act (8 U.S.C.  
11          1182(a)(5)(A)(ii)) is amended—

12                   (A) in the clause heading, by inserting  
13                   “FOR SPECIAL RECRUITMENT AND DOCU-  
14                   MENTATION PROCEDURES” after “RULE”;

15                   (B) in subclause (I), by striking “, or” and  
16                   inserting a semicolon;

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

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

20                                   “(III) is a conditional permanent  
21                                   resident under section 216B and re-  
22                                   ceives wages (including cash bonuses)  
23                                   at an annual rate equal to not less  
24                                   than \$100,000.”.

1           (2) INFLATION ADJUSTMENT.—The amount  
 2 specified in section 212(a)(5)(A)(ii)(III) of the Im-  
 3 migration and Nationality Act, as added by para-  
 4 graph (1), shall be increased, on the first day of the  
 5 third fiscal year beginning after the date of the en-  
 6 actment of this Act, and on the first day of every  
 7 third fiscal year thereafter, by the percentage (if  
 8 any) by which the Consumer Price Index for the  
 9 month of June preceding the date on which such in-  
 10 crease takes effect exceeds the Consumer Price  
 11 Index for the same month of the third preceding cal-  
 12 endar year.

13           (e) CONDITIONAL PERMANENT RESIDENCY.—

14           (1) IN GENERAL.—Chapter 2 of title II of the  
 15 Immigration and Nationality Act (8 U.S.C. 1181 et  
 16 seq.) is amended by inserting after section 216A the  
 17 following:

18 **“SEC. 216B. CONDITIONAL PERMANENT RESIDENT STATUS**  
 19 **FOR CERTAIN HIGHLY SKILLED PROFES-**  
 20 **SIONALS, SPOUSES, AND CHILDREN.**

21           “(a) IN GENERAL.—

22           “(1) CONDITIONAL BASIS FOR STATUS.—Not-  
 23 withstanding any other provision of this Act, a con-  
 24 ditional employment-based immigrant (as described  
 25 in section 203(i)), and the alien spouse and alien

1 children of such immigrant, shall each be provided  
2 the status of an alien lawfully admitted for perma-  
3 nent residence, and shall be considered to have ob-  
4 tained such status on a conditional basis subject to  
5 the provisions of this section.

6 “(2) NOTICE OF REQUIREMENTS.—At the time  
7 a conditional employment-based immigrant, or the  
8 alien spouse or child of such immigrant, obtains per-  
9 manent resident status on a conditional basis, the  
10 Secretary of Homeland Security shall notify such  
11 immigrant, spouse, or child of—

12 “(A) the provisions of this section;

13 “(B) the requirements for maintaining  
14 such conditional permanent resident status; and

15 “(C) the requirements to have the condi-  
16 tional basis of such status removed.

17 “(b) ANNUAL REVIEW.—

18 “(1) IN GENERAL.—The Secretary of Homeland  
19 Security shall annually review the status of each  
20 alien receiving conditional permanent resident status  
21 under subsection (a) and shall require from the alien  
22 proof or evidence of—

23 “(A) ongoing employment in the occupa-  
24 tion for which the alien was granted a condi-  
25 tional employment-based visa by an employer

1 that has complied with the requirements under  
2 section 204(a)(1)(M);

3 “(B) the payment of all applicable income  
4 and Social Security taxes;

5 “(C) at the first annual review—

6 “(i) a filing with the Department of  
7 Labor on the alien’s behalf of an Applica-  
8 tion for Permanent Employment Certifi-  
9 cation, if such certification is required for  
10 the alien to satisfy the requirements for  
11 immigrant classification under paragraph  
12 (1), (2), or (3) of section 203(b); or

13 “(ii) a filing with the Department of  
14 Homeland Security on the alien’s behalf of  
15 an Immigrant Petition for Alien Worker, if  
16 such certification is not required for the  
17 alien to satisfy the requirements for immi-  
18 grant classification under paragraph (1),  
19 (2), or (3) of section 203(b);

20 “(D) at the second annual review, a filing  
21 with the Department of Homeland Security on  
22 the alien’s behalf of an Immigrant Petition for  
23 Alien Worker, unless a pending Application for  
24 Permanent Employment Certification prevents

1 the filing of an Immigrant Petition for Alien  
2 Worker on the alien's behalf; and

3 “(E) at the third and subsequent annual  
4 reviews, an approval from the Department of  
5 Homeland Security of an Immigrant Petition  
6 for Alien Worker filed on the alien's behalf.

7 “(2) EFFECT OF DENIAL.—A filing with the  
8 Department of Labor on the alien's behalf of an Ap-  
9 plication for Permanent Employment Certification  
10 or a filing with the Department of Homeland Secu-  
11 rity on the alien's behalf of an Immigrant Petition  
12 for Alien Worker shall not qualify as proof or evi-  
13 dence under paragraph (1) if—

14 “(A) the Application for Permanent Em-  
15 ployment Certification or the Immigrant Peti-  
16 tion for Alien Worker has been denied by a  
17 final agency action; or

18 “(B) an approved Immigrant Petition for  
19 Alien Worker filed on the alien's behalf was re-  
20 voked for cause under section 205.

21 “(c) TRANSFERS.—

22 “(1) IN GENERAL.—Except as provided in para-  
23 graph (2), an alien receiving conditional permanent  
24 resident status under subsection (a) may begin em-  
25 ployment with a new employer without affecting his

1 or her status if the new employer complies with the  
2 requirements set forth in section 204(a)(1)(M).

3 “(2) FEE.—Notwithstanding section  
4 204(a)(1)(M), the fee payable by the new employer  
5 for each alien shall be—

6 “(A) \$10,000 if the new employer hires the  
7 alien during the 1-year period beginning on the  
8 date on which the alien obtained conditional  
9 permanent resident status under subsection (a);

10 “(B) \$5,000 if the new employer hires the  
11 alien during the 1-year period beginning at the  
12 end of the period described in subparagraph  
13 (A);

14 “(C) \$2,500 if the new employer hires the  
15 alien during the 1-year period beginning at the  
16 end of the period described in subparagraph  
17 (B); and

18 “(D) zero if the new employer hires the  
19 alien after the end of the period described in  
20 subparagraph (C).

21 “(d) TERMINATION.—The Secretary of Homeland  
22 Security shall terminate the conditional permanent resi-  
23 dent status of an alien who received such status under  
24 subsection (a) if—

25 “(1) the alien—

1           “(A) fails to submit the required proof or  
2           evidence at the annual review in accordance  
3           with subsection (b); or

4           “(B) submits proof or evidence at such a  
5           review that fails to satisfy the requirements  
6           under subsection (b);

7           “(2) the alien has been unemployed or em-  
8           ployed other than in the occupation for which the  
9           alien was granted a conditional employment-based  
10          immigrant visa for a cumulative total of 180 days  
11          while holding conditional permanent resident status  
12          under subsection (a);

13          “(3) the alien is employed by an employer that  
14          is not in compliance with the requirements under  
15          section 204(a)(1)(M);

16          “(4) the alien does not apply to remove the con-  
17          ditions attached to his or her permanent resident  
18          status within 1 year after an immigrant visa would  
19          be available for such alien under paragraph (1), (2),  
20          or (3) of section 203(b) based on the alien’s pref-  
21          erence category and country of chargeability if the  
22          alien did not have conditional permanent resident  
23          status; or

24          “(5) an application submitted by the alien to  
25          remove the conditions attached to his or her perma-



1        nent resident status is denied in a final agency ac-  
2        tion.

3        “(e) REMOVAL OF CONDITIONS.—Any alien receiving  
4 conditional permanent resident status under subsection  
5 (a) may file an application to have the conditions removed  
6 on or after the date on which an immigrant visa would  
7 be available for such alien under paragraph (1), (2), or  
8 (3) of section 203(b) based on the alien’s preference cat-  
9 egory and country of chargeability if the alien did not have  
10 conditional permanent resident status. Such application  
11 shall include the same proof or evidence that would be re-  
12 quired for an annual review under subsection (b) if such  
13 review occurred on the date on which the application was  
14 filed.”.

15            (2) CLERICAL AMENDMENT.—The table of con-  
16 tents for the Immigration and Nationality Act (8  
17 U.S.C. 1101 note) is amended by inserting after the  
18 item relating to section 216A the following:

“Sec. 216B. Conditional permanent resident status for certain highly skilled  
professionals, spouses, and children.”.

## 19            **TITLE III—STUDENT VISAS**

### 20            **SEC. 301. AUTHORIZATION OF DUAL INTENT.**

21            (a) DEFINITION.—Section 101(a)(15)(F)(i) of the  
22 Immigration and Nationality Act (8 U.S.C.  
23 1101(a)(15)(F)(i)) is amended by striking “which he has  
24 no intention of abandoning”.

1 (b) PRESUMPTION OF STATUS; INTENTION TO ABAN-  
2 DON FOREIGN RESIDENCE.—Section 214 of such Act (8  
3 U.S.C. 1184) is amended—

4 (1) in subsection (b), by striking “(L) or (V)”  
5 and inserting “(F), (L), or (V)”; and

6 (2) in subsection (h), by striking “(H)(i)(b) or  
7 (c)” and inserting “(F), (H)(i)(b), (H)(i)(c)”.

## 8 **TITLE IV—STEM EDUCATION** 9 **AND WORKER TRAINING**

### 10 **SEC. 401. FUNDING FOR STEM EDUCATION AND WORKER** 11 **TRAINING.**

12 (a) NONIMMIGRANT FEE ADJUSTMENT AND ALLOCA-  
13 TION.—Section 214(c)(9) of the Immigration and Nation-  
14 ality Act (8 U.S.C. 1184(c)(9)) is amended—

15 (1) in subparagraph (A), by striking “before”;  
16 and

17 (2) by striking subparagraphs (B) and (C) and  
18 inserting the following:

19 “(B) Except as provided in subparagraph (C), the  
20 amount of the fee imposed under this paragraph shall  
21 be—

22 “(i) \$2,000 for each such petition filed by an  
23 employer with not more than 25 full-time equivalent  
24 employees who are employed in the United States

1 (determined by including any affiliate or subsidiary  
2 of such employer); and

3 “(ii) \$4,000 for each such petition filed by an  
4 employer with more than 25 such employees.

5 “(C)(i) The amounts set forth in subparagraph (B)(i)  
6 shall be increased—

7 “(I) to \$2,500 for each fiscal year in which the  
8 base allocation of H–1B visas under section  
9 214(g)(9)(A) is between 85,001 and 115,000, inclu-  
10 sive;

11 “(II) to \$3,000 for each fiscal year in which the  
12 base allocation of H–1B visas under section  
13 214(g)(9)(A) is between 115,001 and 145,000, in-  
14 clusive;

15 “(III) to \$3,500 for each fiscal year in which  
16 the base allocation of H–1B visas under section  
17 214(g)(9)(A) is between 145,001 and 194,999, in-  
18 clusive; and

19 “(IV) to \$4,000 for each fiscal year in which  
20 the base allocation of H–1B visas under section  
21 214(g)(9)(A) is 195,000.

22 “(ii) The amounts set forth in subparagraph (B)(ii)  
23 shall be increased—

24 “(I) to \$5,000 for each fiscal year in which the  
25 base allocation of H–1B visas under section

1 214(g)(9)(A) is between 85,001 and 115,000, inclu-  
2 sive;

3 “(II) to \$6,000 for each fiscal year in which the  
4 base allocation of H–1B visas under section  
5 214(g)(9)(A) is between 115,001 and 145,000, in-  
6 clusive;

7 “(III) to \$7,000 for each fiscal year in which  
8 the base allocation of H–1B visas under section  
9 214(g)(9)(A) is between 145,001 and 194,999, in-  
10 clusive; and

11 “(IV) to \$8,000 for each fiscal year in which  
12 the base allocation of H–1B visas under section  
13 214(g)(9)(A) is 195,000.

14 “(D) Fees collected under this paragraph shall be dis-  
15 tributed as follows:

16 “(i) From the fees collected for each petition  
17 pursuant to subparagraph (B)(i)—

18 “(I) \$750 shall be deposited in the Treas-  
19 ury in accordance with section 286(s); and

20 “(II) the remaining amount shall be depos-  
21 ited in the Treasury in accordance with section  
22 286(w).

23 “(ii) From the fees collected for each petition  
24 pursuant to subparagraph (B)(ii)—

1           “(I) \$1,500 shall be deposited in the  
2 Treasury in accordance with section 286(s); and

3           “(II) the remaining amount shall be depos-  
4 ited in the Treasury in accordance with section  
5 286(w).”.

6       (b) CONFORMING AMENDMENT.—Section 286(s)(1)  
7 of the Immigration and Nationality Act (8 U.S.C.  
8 1356(s)(1)) is amended by striking the last sentence and  
9 inserting “There shall be deposited as offsetting receipts  
10 into the account a portion of the fees collected under para-  
11 graphs (9) and (11) of section 214(c).”.

12 **SEC. 402. PROMOTING AMERICAN INGENUITY ACCOUNT.**

13       Section 286 of the Immigration and Nationality Act  
14 (8 U.S.C. 1356) is amended by adding at the end the fol-  
15 lowing:

16       “(w) PROMOTING AMERICAN INGENUITY AC-  
17 COUNT.—

18           “(1) IN GENERAL.—There is established in the  
19 general fund of the Treasury a separate account,  
20 which shall be known as the ‘Promoting American  
21 Ingenuity Account’. There shall be deposited as off-  
22 setting receipts into the account a portion of the fees  
23 and penalties collected under section 214(c)(9).  
24 Amounts deposited into the account shall remain

1 available to the Secretary of Education until ex-  
2 pended.

3 “(2) PURPOSES.—The purposes of the Pro-  
4 moting American Ingenuity Account are to enhance  
5 the economic competitiveness of the United States  
6 by—

7 “(A) strengthening academic achievement  
8 standards in science, technology, engineering,  
9 and mathematics (STEM), including computer  
10 science, at all levels;

11 “(B) ensuring that schools have access to  
12 well-trained and effective STEM teachers  
13 through improved strategies for the recruit-  
14 ment, training, placement, and retention of  
15 teachers in STEM fields, including computer  
16 science;

17 “(C) supporting efforts to strengthen the  
18 elementary and secondary STEM curriculum,  
19 including efforts to make courses in computer  
20 science more broadly available;

21 “(D) helping colleges and universities  
22 produce more graduates in fields needed by  
23 American employers, including assistance for  
24 students in postsecondary STEM programs;

1           “(E) improving availability of and access  
2 to STEM-related worker training programs, in-  
3 cluding community college-based courses and  
4 programs;

5           “(F) providing employment-based STEM  
6 education and training programs, including ap-  
7 prenticeship programs; and

8           “(G) carrying out other activities approved  
9 by the Secretary of Education to improve  
10 STEM education and training.

11       “(3) ALLOCATION OF FUNDS.—

12           “(A) NATIONAL ACTIVITIES.—The Sec-  
13 retary of Education may reserve up to 2 per-  
14 cent of the amounts deposited into the Pro-  
15 moting American Ingenuity Account for na-  
16 tional research, development, demonstration,  
17 evaluation, and dissemination activities carried  
18 out directly or through grants, contracts, or co-  
19 operative agreements, including—

20           “(i) activities undertaken jointly with  
21 other Federal agencies, such as STEM  
22 mission agencies; and

23           “(ii) grants to nonprofit organizations  
24 for nationally significant activities con-

1           sistent with the purposes of the Immigra-  
2           tion Innovation Act of 2018.

3           “(B) AMERICAN DREAM ACCOUNTS.—

4                 “(i) GRANTS AUTHORIZED.—The Sec-  
5           retary of Education shall allocate 5 percent  
6           of the amounts deposited into the Pro-  
7           moting American Ingenuity Account to  
8           award grants, on a competitive basis, to el-  
9           igible entities to enable such entities to es-  
10          tablish and administer American Dream  
11          Accounts.

12                 “(ii) PURPOSE OF ACCOUNTS.—Amer-  
13          ican Dream Accounts shall be personal, on-  
14          line accounts for low-income students, who  
15          are, at the time of application, attending a  
16          grade not higher than ninth grade, that in-  
17          clude a college savings account, monitor  
18          progress toward higher education, and pro-  
19          vide opportunities, including mentoring—

20                         “(I) to gain financial literacy  
21                         skills;

22                         “(II) to learn about preparing for  
23                         enrollment in an institution of higher  
24                         education; and

25                         “(III) to identify career interests.



1           “(iii) PRIORITY.—The Secretary shall  
2 give priority to applicants that dem-  
3 onstrate one or more of the following:

4                   “(I) An intention to focus on  
5 STEM education and careers.

6                   “(II) The ability to serve a large  
7 number of low-income students.

8                   “(III) In the case of eligible enti-  
9 ties described in subclause (I) or (II)  
10 of clause (iv), the provision of oppor-  
11 tunities for students to participate in  
12 a dual or concurrent enrollment pro-  
13 gram or early college high school pro-  
14 gram at no cost to the student or to  
15 the student’s family.

16           “(iv) ELIGIBLE ENTITIES.—An eligi-  
17 ble entity may be a partnership of two or  
18 more of the following entities:

19                   “(I) A State educational agency.

20                   “(II) A local educational agency,  
21 including a charter school that oper-  
22 ates as its own educational agency.

23                   “(III) A charter management or-  
24 ganization or charter school author-  
25 izer.

1                   “(IV) An institution of higher  
2 education or a Tribal college or uni-  
3 versity.

4                   “(V) A nonprofit organization.

5                   “(VI) An organization with dem-  
6 onstrated experience in educational  
7 savings or in preparing low-income  
8 students for higher education.

9                   “(v) REPORTS AND EVALUATIONS.—

10 Not later than 1 year after the date on  
11 which the Secretary of Education disburses  
12 grants under this Act, and annually there-  
13 after until each grant disbursed under this  
14 Act has ended, the Secretary shall prepare  
15 and submit a report to the appropriate  
16 committees of Congress, which shall in-  
17 clude an evaluation of the effectiveness of  
18 the grant program established under this  
19 Act, including in building financial capa-  
20 bility.

21                   “(vi) ELIGIBILITY TO RECEIVE FED-  
22 ERAL STUDENT FINANCIAL AID.—Notwith-  
23 standing any other provision of law, any  
24 funds that are in the college savings ac-

1 count portion of a student’s American  
2 Dream Account—

3 “(I) shall not affect such stu-  
4 dent’s eligibility to receive Federal  
5 student financial aid, including any  
6 Federal student financial aid under  
7 the Higher Education Act of 1965 (20  
8 U.S.C. 1001 et seq.); and

9 “(II) shall not be considered in  
10 determining the amount of any such  
11 Federal student aid.

12 “(vii) RULEMAKING.—The Secretary  
13 of Education shall promulgate regulations,  
14 through notice and comment rulemaking in  
15 compliance with section 553 of title 5,  
16 United States Code, to implement the  
17 American Dream Account competitive  
18 grant program authorized under this sub-  
19 paragraph. The Secretary shall issue a no-  
20 tice of proposed rulemaking in the Federal  
21 Register not later than 1 year after the  
22 date of the enactment of this subsection.

23 “(C) ALLOCATIONS TO STATES.—

24 “(i) IN GENERAL.—Subject to clause  
25 (iii), the Secretary of Education, after

1 making the allocations under subpara-  
2 graphs (A) and (B), shall proportionately  
3 allocate the remaining amount deposited  
4 into the Promoting American Ingenuity  
5 Account in each fiscal year to each State  
6 that submits an application under subpara-  
7 graph (D) in an amount that bears the  
8 same relationship to such remaining  
9 amount as the amount the State received  
10 under subpart 2 of part A of title I of the  
11 Elementary and Secondary Education Act  
12 of 1965 (20 U.S.C. 6331 et seq.) for the  
13 preceding fiscal year bears to the amount  
14 all States received under that subpart for  
15 the preceding fiscal year.

16 “(ii) AUTHORIZED USE OF STATE AL-  
17 LOCATIONS.—Of the amount each State  
18 receives under clause (i) in each fiscal  
19 year, the State shall allocate—

20 “(I) 50 percent for the activities  
21 described in subparagraphs (A), (B),  
22 (C), (D), and (G) of paragraph (2);  
23 and

1           “(II) 50 percent for the activities  
2 described in subparagraphs (E), (F),  
3 and (G) of paragraph (2).

4           “(iii) MINIMUM ALLOCATIONS.—

5           “(I) IN GENERAL.—Except as  
6 provided in subclause (II), no State  
7 shall receive less than 0.5 percent of  
8 the total amount made available to all  
9 States under this subparagraph from  
10 the Promoting American Ingenuity  
11 Account.

12           “(II) REALLOCATION.—If a  
13 State does not submit an application  
14 in accordance with subparagraph (D)  
15 in a fiscal year, the Secretary of Edu-  
16 cation shall reallocate the State’s allo-  
17 cation to the remaining States in ac-  
18 cordance with this subsection.

19           “(D) STEM EDUCATION GRANT APPLICA-  
20 TION PROCESS.—

21           “(i) APPLICATION.—Each State desir-  
22 ing to receive an allocation from the Pro-  
23 moting American Ingenuity Account shall  
24 submit an application to the Secretary of  
25 Education at such time, in such form, and

1 including such information as the Sec-  
2 retary may prescribe. The application shall  
3 describe how the State plans to improve  
4 STEM education and training to meet the  
5 needs of employers in the State, in accord-  
6 ance with paragraph (2).

7 “(ii) APPROVAL.—The Secretary of  
8 Education shall approve any application  
9 submitted under clause (i) that meets the  
10 requirements prescribed by the Secretary if  
11 the Secretary determines, after evaluating  
12 the recommendations of peer reviewers,  
13 that the State’s plan for the use of funds  
14 would be successful in making progress to-  
15 ward meeting the purposes set forth in  
16 paragraph (2).

17 “(4) FEDERAL FUNDS TO SUPPLEMENT, NOT  
18 SUPPLANT, NON-FEDERAL FUNDS.—

19 “(A) IN GENERAL.—A State educational  
20 agency or local educational agency shall use  
21 Federal funds received under this subsection  
22 only to supplement the funds that would, in the  
23 absence of such Federal funds, be made avail-  
24 able from State and local sources for the edu-  
25 cation of students participating in programs as-

1           sisted under this part, and not to supplant such  
2           funds.

3           “(B) COMPLIANCE.—To demonstrate com-  
4           pliance with this paragraph, a local educational  
5           agency shall demonstrate that the methodology  
6           used to allocate State and local funds to each  
7           school receiving assistance under this part en-  
8           sures that such school receives all of the State  
9           and local funds it would otherwise receive if it  
10          were not receiving assistance under this sub-  
11          section.

12          “(C) RULE OF CONSTRUCTION.—Nothing  
13          in this subsection may be construed to author-  
14          ize or permit the Secretary of Education to pre-  
15          scribe the specific methodology a local edu-  
16          cation agency uses to allocate State and local  
17          funds to each school receiving assistance under  
18          this subsection.”.

19 **SEC. 403. NATIONAL EVALUATION.**

20          (a) IN GENERAL.—Using amounts reserved under  
21          section 286(w)(3)(A) of the Immigration and Nationality  
22          Act, as added by section 402, the Secretary of Education  
23          shall conduct, directly or through a grant or contract, an  
24          annual evaluation of the implementation and impact of the

1 activities funded by the Promoting American Ingenuity  
2 Account.

3 (b) ANNUAL REPORT.—The Secretary shall submit  
4 a report describing the results of each evaluation con-  
5 ducted under subsection (a) to—

6 (1) the President;

7 (2) the Committee on the Judiciary of the Sen-  
8 ate;

9 (3) the Committee on the Judiciary of the  
10 House of Representatives;

11 (4) the Committee on Health, Education,  
12 Labor, and Pensions of the Senate; and

13 (5) the Committee on Education and the Work-  
14 force of the House of Representatives.

15 (c) DISSEMINATION.—The Secretary shall make the  
16 findings of the evaluation widely available to educators,  
17 the business community, and the public.

18 **SEC. 404. RULE OF CONSTRUCTION.**

19 Nothing in this title may be construed to permit the  
20 Secretary of Education or any other Federal official to ap-  
21 prove the content or academic achievement standards of  
22 a State.



1 **TITLE V—REFORMS AFFECTING**  
2 **IMMIGRANT AND NON-**  
3 **IMMIGRANT VISAS**

4 **SEC. 501. STREAMLINING PETITIONS FOR ESTABLISHED**  
5 **EMPLOYERS AND OTHER REQUIREMENTS.**

6 (a) IN GENERAL.—Section 214(c) of the Immigration  
7 and Nationality Act (8 U.S.C. 1184(c)), as amended by  
8 titles I and IV, is further amended by adding at the end  
9 the following:

10 “(16) The Secretary of Homeland Security shall es-  
11 tablish a pre-certification procedure for employers who file  
12 multiple petitions under this subsection or section  
13 204(a)(1)(F) that enables an employer—

14 “(A) to avoid repeatedly submitting documenta-  
15 tion that is common to multiple petitions; and

16 “(B) to establish, through a single filing, cri-  
17 teria relating to the employer and the offered em-  
18 ployment opportunity.

19 “(17) The Secretary of Homeland Security shall pro-  
20 mulgate regulations that allow a petitioner to opt to elec-  
21 tronically sign, file, and store any report, form, or sup-  
22 porting document required to be submitted to U.S. Citi-  
23 zenship and Immigration Services.”.

24 (b) EFFECTIVE DATE.—The amendment made by  
25 subsection (a) shall take effect on the date of the enact-

1 ment of this Act, and shall apply to petitions filed under  
2 section 204(a)(1)(F) or 214(c) of the Immigration and  
3 Nationality Act (8 U.S.C. 1154(a)(1)(F) and 1184(c)) be-  
4 ginning 180 days after such date.

○