

H.R. 2202 (from 1996)

New attestations

(E) no lay-off of U.S. worker
or 90 days after)

(6 mo. prior) in the occupational classification
which is the subject of the application and in which the
~~in which~~ non-immig. is intended to be (or is) employed

(F) recruitment ~~and retain~~ of U.S. workers

employer attempted unsuccessfully and in good
faith to recruit a U.S. worker for the employment
for the employment that will be done by the alien

using recruitment procedures that meet industry-wide
standards and offering wages that are at least —

(i) 100% of actual wage or (ii) 100% of prevailing wage
whichever is greater

(G) Attest to whether employer is H-1B dependent

(H) Job contractors

will not place any H-1B employee w/ another
employer unless such other employer is
complying and will continue to comply w/ the
requirements of this Act in the same manner
as they apply to the job contractor.

(I) H-1B dependent employers can't get more
unless they can demonstrate:

(i) Secy has certified that employers have taken certain steps.

(ii) alien demonstrates that he has residence abroad which he has no intention of abandoning.

An H-1B dependent employer shall take timely, significant, and effective steps to recruit & retain U.S. workers (to reduce dependence).

Examples:

Performance measure — must reduce by 10% in each of 2 consecutive years.

Increased penalties for misrepresentation:

(including misrep as E or F).

⊕ debarment for 1 yr (5 yrs. if willful)

(⊕ ^{double} backpay) ~~X~~

→ CC Rouse

①

AMENDMENT TO H.R. 2202, AS REPORTED

OFFERED BY MR. BRYANT OF TEXAS

see page 5?

20 total
pages -
2 prints

Amend section 806 to read as follows:

1 SEC. 806. CHANGES RELATING TO H-1B NONIMMIGRANTS.

2 (a) ATTESTATIONS.—

3 (1) COMPENSATION LEVEL.—Section
4 212(n)(1)(A)(i) (8 U.S.C. 1182(n)(1)(A)(i)) is
5 amended—

6 (A) in subclause (I), by inserting “100 per-
7 cent of” before “the actual wage level”,

8 (B) in subclause (II), by inserting “100
9 percent of” before “the prevailing wage level”,
10 and

11 (C) by adding at the end the following: “is
12 offering and will offer during such period the
13 same benefits and additional compensation pro-
14 vided to similarly-employed workers by the em-
15 ployer, and”.

16 (2) DISPLACEMENT OF UNITED STATES WORK-
17 ERS.—Section 212(n)(1) (8 U.S.C. 1182(n)(1)) is
18 amended by inserting after subparagraph (D) the
19 following new subparagraph:

20 “(E)(i) The employer—

21 “(I) has not, within the six-month period
22 prior to the filing of the application, laid off or

1 otherwise displaced any United States worker
2 (as defined in clause (ii)), including any worker
3 obtained by contract, employee leasing, tem-
4 porary help agreement, or other similar basis,
5 in the occupational classification which is the
6 subject of the application and in which the non-
7 immigrant is intended to be (or is) employed;
8 and

9 “(II) within 90 days following the applica-
10 tion, and within 90 days before and after the
11 filing of a petition for any H-1B worker pursu-
12 ant to that application, will not lay off or other-
13 wise displace any United States worker in the
14 occupational classification which is the subject
15 of the application and in which the non-
16 immigrant is intended to be (or is) employed.

17 “(ii) For purposes of this subparagraph, the
18 term ‘United States worker’ means—

19 “(I) a citizen or national of the United
20 States;

21 “(II) an alien lawfully admitted to the
22 United States for permanent residence; and

23 “(III) an alien authorized to be so em-
24 ployed by this Act or by the Attorney General.

1 “(iii) For purposes of this subparagraph, the
2 term ‘laid off’, with respect to an employee, means
3 the employee’s loss of employment, other than a dis-
4 charge for cause or a voluntary departure or vol-
5 untary retirement.”.

6 (3) RECRUITMENT OF UNITED STATES WORK-
7 ERS.—Section 212(n)(1) (8 U.S.C. 1182(n)(1)), as
8 amended by paragraph (2), is further amended by
9 inserting after subparagraph (E) the following new
10 subparagraph:

11 “(F) The employer, prior to filing the applica-
12 tion, attempted unsuccessfully and in good faith to
13 recruit a United States worker for the employment
14 that will be done by the alien whose services are
15 being sought, using recruitment procedures that
16 meet industry-wide standards and offering wages
17 that are at least—

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18 “(i) 100 percent of the actual wage level
19 paid by the employer to other individuals with
20 similar experience and qualifications for the
21 specific employment in question, or

22 “(ii) 100 percent of the prevailing wage
23 level for individuals in such employment in the
24 area of employment,

1 whichever is greater, based on the best information
2 available as of the date of filing the application, and
3 offering the same benefits and additional compensa-
4 tion provided to similarly-employed workers by the
5 employer."

6 (4) DEPENDENCE ON H-1B WORKERS.—Section
7 212(n)(1) (8 U.S.C. 1182(n)(1)), as amended by
8 paragraphs (2) and (3), is further amended by in-
9 serting after subparagraph (F) the following new
10 subparagraph:

11 “(G)(i) Whether the employer is dependent on
12 H-1B workers, as defined in clause (ii) and in such
13 regulations as the Secretary of Labor may develop
14 and promulgate in accordance with this paragraph.

15 “(ii) For purposes of clause (i), an employer is
16 ‘dependent on H-1B workers’ if the employer—

17 “(I) has fewer than 41 full-time equivalent
18 employees who are employed in the United
19 States and employs four or more
20 nonimmigrants under section
21 101(a)(15)(H)(i)(b); or

22 “(II) has at least 41 full-time equivalent
23 employees who are employed in the United
24 States, and employs nonimmigrants described
25 in section 101(a)(15)(H)(i)(b) in a number that

1 is equal to at least ten percent of the number
2 of such full-time equivalent employees.

3 "(iii) In applying this subparagraph, any group
4 treated as a single employer under subsection (b),
5 (c), (m), or (o) of section 414 of the Internal Reve-
6 nue Code of 1986 shall be treated as a single em-
7 ployer under this subparagraph. Aliens with respect
8 to whom the employer has filed such an application
9 shall be treated as employees, and counted as
10 nonimmigrants under section 101(a)(15)(H)(i)(b),
11 under this paragraph."



12 (5) JOB CONTRACTORS.—(A) Section 212(n)(1)
13 (8 U.S.C. 1182(n)(1)), as amended by paragraphs
14 (2) through (4), is further amended by inserting
15 after subparagraph (G) the following new subpara-
16 graph:

17 "(H) In the case of an employer that is a job
18 contractor (within the meaning of regulations pro-
19 mulgated by the Secretary of Labor to carry out this
20 subsection), the contractor will not place any H-1B
21 employee with another employer unless such other
22 employer has executed an attestation that the em-
23 ployer is complying and will continue to comply with
24 the requirements of this paragraph in the same
25 manner as they apply to the job contractor."

1 (B) Section 212(n)(2) (8 U.S.C. 1182(n)(2)) is
2 amended by adding at the end the following new
3 subparagraph:

4 "(E) The provisions of this paragraph shall apply to
5 complaints respecting a failure of another employer to
6 comply with an attestation described in paragraph (1),
7 that has been made as the result of the requirement im-
8 posed on job contractors under paragraph (1)(H), in the
9 same manner that they apply to complaints of a petitioner
10 with respect to a failure to comply with a condition de-
11 scribed in paragraph (1) by employers generally."

12 (b) SPECIAL RULES FOR EMPLOYERS DEPENDENT
13 ON H-1B WORKERS.—Section 212(n) (8 U.S.C. 1182(n))
14 is amended by adding at the end the following new para-
15 graph:

16 "(3)(A) No alien may be admitted or provided status
17 as a nonimmigrant described in section
18 101(a)(15)(H)(i)(b) if the employer who is seeking the
19 services of such alien has attested under paragraph (1)(G)
20 that the employer is dependent on H-1B workers unless
21 the following conditions are met:

22 "(i) The Secretary of Labor has determined
23 and certified to the Secretary of State and the At-
24 torney General that the employer who is seeking the
25 services of such alien is taking steps described in

1 subparagraph (C) (including having taken the step
2 described in subparagraph (D)).

3 "(ii) The alien has demonstrated to the satis-
4 faction of the Secretary of State and the Attorney
5 General that the alien has a residence abroad which
6 he has no intention of abandoning.

7 "(B)(i) It is unlawful for a petitioning employer to
8 require, as a condition of employment by such employer,
9 or otherwise, that the fee described in subparagraph
10 (A)(i), or any part of it, be paid directly or indirectly by
11 the alien whose services are being sought.

12 "(ii) Any person or entity which is determined, after
13 notice and opportunity for an administrative hearing, to
14 have violated clause (i) shall be subject to a civil penalty
15 of \$5,000 for each violation, to an administrative order
16 requiring the payment of the fee described in subpara-
17 graph (A)(i), and to disqualification for 1 year from peti-
18 tioning under section 204 or 214(c).

19 "(iii) Any amount determined to have been paid, di-
20 rectly or indirectly, to the fund by the alien whose services
21 were sought, shall be repaid from the fund or by the em-
22 ployer, as appropriate, to such alien.

23 "(C)(i) An employer who attests under paragraph
24 (1)(G) to dependence on H-1B workers shall take timely,
25 significant, and effective steps (including the step de-

1 scribed in subparagraph (D)) to recruit and retain suffi-
2 cient United States workers in order to remove as quickly
3 as reasonably possible the dependence of the employer on
4 H-1B workers.

5 “(ii) For purposes of clause (i), steps under clause
6 (i) (in addition to the step described in subparagraph (D))
7 may include the following:

8 “(I) Operating a program of training existing
9 employees who are United States workers in the
10 skills needed by the employer, or financing (or other-
11 wise providing for) such employees’ participation in
12 such a training program elsewhere.

13 “(II) Providing career development programs
14 and other methods of facilitating United States
15 workers in related fields to acquire the skills needed
16 by the employer.

17 “(III) Paying to employees who are United
18 States workers compensation that is equal in value
19 to more than 105 percent of what is paid to persons
20 similarly employed in the geographic area.

21 The steps described in this clause shall not be considered
22 to be an exhaustive list of the significant steps that may
23 be taken to meet the requirements of clause (i).

24 “(iii) The steps described in clause (i) shall not be
25 considered effective if the employer has failed to decrease

1 by at least 10 percent in each of two consecutive years
2 the percentage of the employer's total number of employ-
3 ees in the specific employment in which the H-1B workers
4 are employed which is represented by the number of H-
5 1B workers.

6 “(iv) The Attorney General shall not approve peti-
7 tions filed under section 204 or 214(c) with respect to an
8 employer that has not, in the prior two years, complied
9 with the requirements of this subparagraph (including
10 subparagraph (D)).

11 “(D)(i) The step described in this subparagraph is
12 payment of an amount consistent with clause (ii) by the
13 petitioning employer into a private fund which is certified
14 by the Secretary of Labor as dedicated to reducing the
15 dependence of employers in the industry of which the peti-
16 tioning employer is a part on new foreign workers and
17 which expends amounts received under this subclause con-
18 sistent with clause (iii).

19 “(ii) An amount is consistent with this clause if it
20 is a percent of the value of the annual compensation (in-
21 cluding wages, benefits, and all other compensation) to be
22 paid to the alien whose services are being sought, equal
23 to 5 percent in the first year, 7.5 percent in the second
24 year, and 10 percent in the third year.

1 “(iii) Amounts are expended consistent with this
2 clause if they are expended as follows:

3 “(I) One-half of the aggregate amounts are ex-
4 pended for awarding scholarships and fellowships to
5 students at colleges and universities in the United
6 States who are citizens or lawful permanent resi-
7 dents of the United States majoring in, or engaging
8 in graduate study of, subjects of direct relevance to
9 the employers in the same industry as the petition-
10 ing employer.

11 “(II) One-half of the aggregate amounts
12 are expended for enabling United States work-
13 ers in the United States to obtain training in
14 occupations required by employers in the same
15 industry as the petitioning employer.

16 (c) INCREASED PENALTIES FOR MISREPRESENTA-
17 TION.—Section 212(n)(2)(C) (8 U.S.C. 1182(n)(2)(C)) is
18 amended—

19 (1) in subparagraph (C) in the matter before
20 clause (i), by striking “(1)(C) or (1)(D)” and insert-
21 ing “(1)(C), (1)(D), (1)(E), or (1)(F) or to fulfill
22 obligations imposed under subsection (b) for employ-
23 ers defined in subsection (a)(4)”;

24 (2) in subparagraph (C)(i), by striking
25 “\$1,000” and inserting “\$5,000”;

1 (3) by amending subparagraph (C)(ii) to read
2 as follows:

3 "(ii) the Attorney General shall not approve pe-
4 titions filed with respect to that employer (or any
5 employer who is a successor in interest) under sec-
6 tion 204 or 214(c) for aliens to be employed by the
7 employer—

8 "(I) during a period of at least 1 year in
9 the case of the first determination of a violation
10 or any subsequent determination of a violation
11 occurring within 1 year of that first violation or
12 any subsequent determination of a nonwillful
13 violation occurring more than 1 year after the
14 first violation;

15 "(II) during a period of at least 5 years in
16 the case of a determination of a willful violation
17 occurring more than 1 year after the first viola-
18 tion; and

19 "(III) at any time in the case of a deter-
20 mination of a willful violation occurring more
21 than 5 years after a violation described in
22 subclause (II)."; and

23 (3) in subparagraph (D), by adding at the end
24 the following: "If a penalty under subparagraph (C)
25 has been imposed in the case of a willful violation,

1 the Secretary shall impose an additional civil mone-
2 tary penalty on the employer in an amount equalling
3 twice the amount of backpay.”.

4 (d) LIMITATION ON PERIOD OF AUTHORIZED ADMIS-
5 SION.—Section 214(g)(4) (8 U.S.C. 1184(g)(4)) is amend-
6 ed—

7 (1) by inserting “or section
8 101(a)(15)(H)(ii)(b)” after “section
9 101(a)(15)(H)(i)(b)”;

10 (2) by striking “6 years” and inserting in lieu
11 thereof “3 years”.

12 (e) REQUIREMENT FOR RESIDENCE ABROAD.—Sec-
13 tion 101(a)(15)(H)(i)(b) (8 U.S.C. 1101(a)(15)(H)(i)(b))
14 is amended by inserting “who has a residence in a foreign
15 country which he has no intention of abandoning,” after
16 “212(j)(2),”.

17 (f) EFFECTIVE DATES.—

18 (1) Except as provided in paragraph (2), the
19 amendments made by this section shall take effect
20 60 days after the date of the enactment of this Act.

21 (2) The amendments made by subsections (d)
22 shall apply with respect to offenses occurring on or
23 after the date of enactment of this Act.

H.R. 2202, As Reported by the Committee on
the Judiciary

~~CONFIDENTIAL~~

DETERMINED TO BE AN
ADMINISTRATIVE MARKING
INITIALS: Ry DATE: 10/30/17

806 H-1B Program Changes

- ▷ Wage determinations
 - No actual wage system
 - Actual wage provision for large employers
 - Expanded prevailing wage sources
- ▷ Inapplicability of Certain Regulations
 - Definition of H-1B Dependent
 - Probationary period for Dependent EOs
 - Inapplicability:
 - ▷ posting within area of intended emp.
 - ▷ new CCA for other areas
 - ▷ limited investigations
- ▷ NO lay-off
 - General
 - Out-placement
 - definition - lay off prohibited individual
- ▷ Increased penalties
- ▷ Hattaway rule for prevailing wages

ment of the foreign contiguous territory and who are residing in that territory".

SEC. 806. CHANGES RELATING TO H-1B NONIMMIGRANTS.

(a) PROVISIONS RELATING TO WAGE DETERMINATIONS. — Section 212(n) (8 U.S.C. 1182(n)) is amended by adding at the end the following new paragraphs:

"(3) For purposes of determining the actual wage level paid under paragraph (1)(A)(i)(I), an employer shall not be required to have and document an objective system to determine the wages of workers.

"(4) For purposes of determining the actual wage level paid under paragraph (1)(A)(i)(I), a non-H-1B-dependent employer of more than 1,000 full-time equivalent employees in the United States may demonstrate that in determining the wages of H-1B nonimmigrants, it utilizes a compensation and benefits system that has been previously certified by the Secretary of Labor (and recertified at such intervals the Secretary of Labor may designate) to satisfy all of the following conditions:

"(A) The employer has a company-wide compensation policy for its full-time equivalent employees which ensures salary equity among employees similarly employed.

"(B) The employer has a company-wide benefits policy under which all full-time equivalent employees similarly employed are eligible for substantially the same benefits or under which some employees may accept higher pay, at least equal in value to the benefits, in lieu of benefits.

"(C) The compensation and benefits policy is communicated to all employees.

"(D) The employer has a human resources or compensation function that administers its compensation system.

"(E) The employer has established documentation for the job categories in question.

An employer's payment of wages consistent with a system which meets the conditions of subparagraphs (A) through (E) of this paragraph which has been certified by the Secretary of Labor pursuant to this paragraph shall be deemed to satisfy the requirements of paragraph (1)(A)(i)(I).

"(5) For purposes of determining the prevailing wage level paid under paragraph (1)(A)(i)(II), employers may provide a published survey, a State Employment Security Agency determination, a determination by an accepted private source, or any other legitimate source. The Secretary of Labor shall, not later than 180 days from the date of enactment of this paragraph, provide for acceptance of prevailing wage determinations not made by a State Employment Security Agency. The Secretary of Labor or the Secretary's designate must either accept such a non-State Employment Security Agency wage determination or issue a written decision rejecting the determination and detailing the legitimate reasons that the determination is not acceptable. If a detailed rejection is not issued within 45 days of the date of the Secretary's receipt of such determination, the determination will be deemed accepted. An employer's payment of wages consistent with a prevailing wage determination not rejected by the Secretary of Labor under this para-

graph shall be deemed to satisfy the requirements of paragraph (1)(A)(i)(II)."

(b) INAPPLICABILITY OF CERTAIN REGULATIONS TO NON-H-1B-DEPENDENT EMPLOYERS.—

(1) DEFINITION OF H-1B-DEPENDENT EMPLOYER.—Section 212(n)(2) (8 U.S.C. 1182(n)(2)) is amended by inserting after subparagraph (D) the following new subparagraphs:

"(E) In this subsection, the term 'H-1B-dependent employer' means an employer that—

"(i)(I) has fewer than 21 full-time equivalent employees who are employed in the United States, and (II) employs 4 or more H-1B nonimmigrants; or

"(ii)(I) has at least 21 but not more than 150 full-time equivalent employees who are employed in the United States, and (II) employs H-1B nonimmigrants in a number that is equal to at least 20 percent of the number of such full-time equivalent employees; or

"(iii)(I) has at least 151 full-time equivalent employees who are employed in the United States, and (II) employs H-1B nonimmigrants in a number that is equal to at least 15 percent of the number of such full-time equivalent employees.

In applying this subparagraph, any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 shall be treated as a single employer. Aliens employed under a petition for H-1B nonimmigrants shall be treated as employees, and counted as nonimmigrants under section 101(a)(15)(H)(i)(b) under this subparagraph. In this subsection, the term 'non-H-1B-dependent employer' means an employer that is not an H-1B-dependent employer.

"(F)(i) An employer who is an H-1B dependent employer as defined in subparagraph (E) can nevertheless be treated as a non-H-1B-nondependent employer for five years on a probationary status if—

"(I) the employer has demonstrated to the satisfaction of the Secretary of Labor that it has developed a reasonable plan for reducing its use of H-1B nonimmigrants over a five-year period to the level of a non-H-1B-dependent employer, and

"(II) annual reviews of that plan by the Secretary of Labor indicate successful implementation of that plan.

If the employer has not met the requirements established in this clause, the probationary status ends and the employer shall be treated as an H-1B-dependent employer until such time as the employer can prove to the Secretary of Labor that it no longer is an H-1B-dependent employer as defined in subparagraph (E).

"(ii) The probationary program set out in clause (i) shall be effective for no longer than five years after the date of the enactment of this subparagraph."

(2) LIMITING APPLICATION OF CERTAIN REQUIREMENTS FOR NON-H-1B-DEPENDENT EMPLOYERS.—Section 212(n) (8 U.S.C. 1182(n)), as amended by subsection (a), is further amended by adding at the end the following new paragraph:

"(6) In carrying out this subsection in the case of an employer that is not an H-1B-dependent employer—

"(A) the employer is not required to post a notice at a worksite that was not listed on the application under paragraph (1) if the worksite is within the area of intended employment listed on such application for such nonimmigrant; and

"(B) if the employer has filed and had certified an application under paragraph (1) with respect to one or more H-1B nonimmigrants for one or more areas of employment—

"(i) the employer is not required to file and have certified an additional application under paragraph (1) with respect to such a nonimmigrant for an area of employment not listed in the previous application because the employer has placed one or more such nonimmigrants in such a nonlisted area so long as either (I) each such nonimmigrant is not placed in such nonlisted areas for a period exceeding 45 workdays in any 12-month period and not to exceed 90 workdays in any 36-month period, or (II) each such nonimmigrant's principal place of employment has not changed to a nonlisted area, and

"(ii) the employer is not required to pay per diem and transportation costs at any specified rates for work performed in such a nonlisted area."

(3) LIMITATION ON AUTHORITY TO INITIATE COMPLAINTS AND CONDUCT INVESTIGATIONS FOR NON-H-1B-DEPENDENT EMPLOYERS.—Section 212(n)(2)(A) (8 U.S.C. 1182(n)(2)(A)) is amended—

(A) in the second sentence, by inserting before the period at the end the following: ", except that the Secretary may only file such a complaint in the case of an H-1B-dependent employer (as defined in subparagraph (E)) or when conducting an annual review of a plan pursuant to subparagraph (F)(i) if there appears to be a violation of an attestation or a misrepresentation of a material fact in an application", and

(B) by inserting after the second sentence the following new sentence: "No investigation or hearing shall be conducted with respect to a non-H-1B-dependent employer except in response to a complaint filed under the previous sentence."

(c) NO DISPLACEMENT OF AMERICAN WORKERS PERMITTED.—(1) Section 212(n)(1) (8 U.S.C. 1182(n)(1)) is amended by inserting after subparagraph (D) the following new subparagraph:

"(E)(i) If the employer, within the period beginning 6 months before and ending 90 days following the date of filing of the application or during the 90 days immediately preceding and following the date of filing of any visa petition supported by the application, has laid off or lays off any protected individual with substantially equivalent qualifications and experience in the specific employment as to which the nonimmigrant is sought or is employed, the employer will pay a wage to the nonimmigrant that is at least 110 percent of the arithmetic mean of the last wage earned by all such laid off individuals (or, if greater, at least 110 percent of the arithmetic mean of the highest wage earned by all such laid off individuals within the most recent year if the employer reduced the wage of any

such laid off individual during such year other than in accordance with a general company-wide reduction of wages for substantially all employees).

"(ii) Except as provided in clause (iii), in the case of an H-1B-dependent employer which employs an H-1B nonimmigrant, the employer shall not place the nonimmigrant with another employer where—

"(I) the nonimmigrant performs his or her duties in whole or in part at one or more worksites owned, operated, or controlled by such other employer, and

"(II) there are indicia of an employment relationship between the nonimmigrant and such other employer.

"(iii) Clause (ii) shall not apply to an employer's placement of an H-1B nonimmigrant with another employer if—

"(I) the other employer has executed an attestation that it, within the period beginning 6 months before and ending 90 days after the date of filing of the application or during the 90 days immediately preceding and following the date of filing of any visa petition supported by the application, has not laid off and will not lay off any protected individual with substantially equivalent qualifications and experience in the specific employment as to which the H-1B nonimmigrant is being sought, or

"(II) the employer pays a wage to the nonimmigrant that is at least 110 percent of the arithmetic mean of the last wage earned by all such laid off individuals (or, if greater, at least 110 percent of the arithmetic mean of the highest wage earned by all such laid off individuals within the most recent year if the other employer reduced the wage of any such laid off individual during such year other than in accordance with a general company-wide reduction of wages for substantially all employees).

"(iv) For purposes of this subparagraph, the term 'laid off' with respect to an individual—

"(I) refers to the individual's loss of employment, other than a discharge for inadequate performance, cause, voluntary departure, or retirement, and

"(II) does not include any situation in which the individual involved is offered, as an alternative to such loss of employment, a similar job opportunity with the same employer (or with the H-1B-dependent employer described in clause (ii)) carrying equivalent or higher compensation and benefits as the position from which the employee was laid off, regardless of whether or not the employee accepts the offer.

"(v) For purposes of this subparagraph, the term 'protected individual' means an individual who—

"(I) is a citizen or national of the United States, or

"(II) is an alien who is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence under section 210(a), 210A(a), or 245(a)(1), is admitted as a refugee under section 207, or is granted asylum under section 208."

(2) Section 212(n)(2) (8 U.S.C. 1182(n)(2)), as amended by subsection (b)(1), is amended by adding at the end the following new subparagraph:

"(G) Under regulations of the Secretary, the previous provisions of this paragraph shall apply to complaints respecting a failure of an other employer to comply with an attestation described in paragraph (1)(E)(ii) in the same manner that they apply to complaints of a petitioner with respect to a failure to comply with a condition described in paragraph (1)(E)(i)."

(3) Section 212(n)(2)(C) (8 U.S.C. 1182(n)(2)(C)) is amended by inserting "or (1)(E)" after "(1)(B)".

(d) INCREASED PENALTIES.—Section 212(n)(2) is amended—

(1) in subparagraph (C)(i), by striking "\$1,000" and inserting "\$5,000";

(2) by amending subparagraph (C)(ii) to read as follows:

"(ii) the Attorney General shall not approve petitions filed with respect to that employer (or any employer who is a successor in interest) under section 204 or 214(c) for aliens to be employed by the employer—

"(I) during a period of at least 1 year in the case of the first determination of a violation or any subsequent determination of a violation occurring within one year of that first violation or any subsequent determination of a nonwillful violation occurring more than one year after the first violation;

"(II) during a period of at least 5 years in the case of a determination of a willful violation occurring more than one year after the first violation; and

"(III) at any time in the case of a determination of a willful violation occurring more than five years after a violation described in subclause (II)."; and

(3) in subparagraph (D), by adding at the end the following: "If a penalty under subparagraph (C) has been imposed in the case of a willful violation, the Secretary shall impose on the employer a civil monetary penalty in an amount equalling twice the amount of backpay."

(e) COMPUTATION OF PREVAILING WAGE LEVEL.—Section 212(n) (8 U.S.C. 1182(n)), as amended by subsections (a) and (b)(2), is further amended by adding at the end the following new paragraph:

"(7) In computing the prevailing wage level for an occupational classification in an area of employment for purposes of paragraph (1)(A)(i)(II) and subsection (a)(5)(A) in the case of an employee of (A) an institution of higher education (as defined in section 1201(a) of the Higher Education Act of 1965), or a related or affiliated nonprofit entity, or (B) a nonprofit scientific research organization, the prevailing wage level shall only take into account employees at such institutions and entities in the area of employment."

(f) CONFORMING AMENDMENTS.—Section 212(n) (8 U.S.C. 1182(n)) is further amended—

(1) in the matter in paragraph (1) before subparagraph (A), by inserting "(in this subsection referred to as an 'H-1B non-immigrant') after "101(a)(15)(H)(i)(b)"; and

(2) in paragraph (1)(A), by striking "nonimmigrant described in section 101(a)(15)(H)(i)(b)" and inserting "H-1B nonimmigrant".

(g) EFFECTIVE DATES.—

(1) Except as otherwise provided in this subsection, the amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to applications filed with the Secretary of Labor on or after 30 days after the date of the enactment of this Act.

(2) The amendments made by subsection (b)(3) shall apply to complaints filed, and to investigations or hearings initiated, on or after January 19, 1995.

SEC. 807. VALIDITY OF PERIOD OF VISAS.

(a) EXTENSION OF VALIDITY OF IMMIGRANT VISAS TO 6 MONTHS.—Section 221(c) (8 U.S.C. 1201(c)) is amended by striking "four months" and inserting "six months".

(b) AUTHORIZING APPLICATION OF RECIPROcity RULE FOR NON-IMMIGRANT VISA IN CASE OF REFUGEES AND PERMANENT RESIDENTS.—Such section is further amended by inserting before the period at the end of the third sentence the following: "; except that in the case of aliens who are nationals of a foreign country and who either are granted refugee status and firmly resettled in another foreign country or are granted permanent residence and residing in another foreign country, the Secretary of State may prescribe the period of validity of such a visa based upon the treatment granted by that other foreign country to alien refugees and permanent residents, respectively, in the United States".

SEC. 808. LIMITATION ON ADJUSTMENT OF STATUS OF INDIVIDUALS NOT LAWFULLY PRESENT IN THE UNITED STATES.

(a) IN GENERAL.—Section 245(i)(1) (8 U.S.C. 1255), as added by section 506(b) of the Department of State and Related Agencies Appropriations Act, 1995 (Public Law 103-317, 108 Stat. 1765), is amended by striking all that follows "equalling" through "application," and inserting "\$2,500".

(b) ELIMINATION OF LIMITATION.—Section 212 (8 U.S.C. 1182) is amended by striking subsection (a).

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to applications for adjustment of status filed after September 30, 1996.

SEC. 809. LIMITED ACCESS TO CERTAIN CONFIDENTIAL INS FILES.

(a) LEGALIZATION PROGRAM.—Section 245A(c)(5) (8 U.S.C. 1255a(c)(5)) is amended—

(1) by redesignating subparagraphs (A) through (C) as clauses (i) through (iii), respectively;

(2) by striking "Neither" and inserting "(A) Except as provided in this paragraph, neither";

(3) by redesignating the last sentence as subparagraph (D);

(4) by striking the semicolon and inserting a period;

(5) by striking "except that the" and inserting the following:

“(B) The”;

(6) by inserting after subparagraph (B), as created by the amendment made by paragraph (5), the following:

Abraham H1B bill

INGRID M. SCHROEDER

03/11/98 11:38:57 AM

Record Type: Record

To: Julie A. Fernandes/OPD/EOP

cc:

Subject: Abraham - H-1B bill

Attached is Abraham's H-1B bill - I can't seem to find a Kennedy/Feinstein bill - any clues you can give me on this one?

S1723.is

S 1723 IS

105th CONGRESS

2d Session

To amend the Immigration and Nationality Act to assist the United States to remain competitive by increasing the access of United States firms and institutions of higher education to skilled personnel and by expanding educational and training opportunities for American students and workers.

IN THE SENATE OF THE UNITED STATES

March 6, 1998

Mr. ABRAHAM (for himself, Mr. HATCH, Mr. MCCAIN, Mr. DEWINE and Mr. SPECTER) 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 assist the United States to remain competitive by increasing the access of United States firms and institutions of higher education to skilled personnel and by expanding educational and training opportunities for American students and workers.

[Italic->] Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [<-Italic]

SECTION 1. SHORT TITLE; REFERENCES IN ACT.

(a) SHORT TITLE- This Act may be cited as the `American Competitiveness Act'.

(b) REFERENCES IN ACT- Except as otherwise specifically provided in this Act, whenever in this Act an amendment or repeal is expressed as an amendment to or a repeal of a provision, the reference shall be deemed to be made to the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) American companies today are engaged in fierce competition in global markets.

(2) Companies across America are faced with severe high skill labor shortages that threaten their competitiveness.

(3) The National Software Alliance, a consortium of concerned

government, industry, and academic leaders that includes the United States Army, Navy, and Air Force, has concluded that 'The supply of computer science graduates is far short of the number needed by industry.'. The Alliance concludes that the current severe understaffing could lead to inflation and lower productivity.

(4) The Department of Labor projects that the United States economy will produce more than 130,000 information technology jobs in each of the next 10 years, for a total of more than 1,300,000.

(5) Between 1986 and 1995, the number of bachelor's degrees awarded in computer science declined by 42 percent. Therefore, any short-term increases in enrollment may only return the United States to the 1986 level of graduates and take several years to produce these additional graduates.

(6) A study conducted by Virginia Tech for the Information Technology Association of America estimates that there are more than 340,000 unfilled positions for highly skilled information technology workers in American companies.

(7) The Hudson Institute estimates that the unaddressed shortage of skilled workers throughout the United States economy will result in a 5-percent drop in the growth rate of GDP. That translates into approximately \$200,000,000,000 in lost output, nearly \$1,000 for every American.

(8) It is necessary to deal with the current situation with both short-term and long-term measures.

(9) In fiscal year 1997, United States companies and universities reached the cap of 65,000 on H-1B temporary visas a month before the end of the fiscal year. In fiscal year 1998 the cap is expected to be reached as early as May if Congress takes no action. And it will be hit earlier each year until backlogs develop of such a magnitude as to prevent United States companies and researchers from having any timely access to skilled foreign-born professionals.

(10) It is vital that more American young people be encouraged and equipped to enter technical fields, such as mathematics, engineering, and computer science.

(11) If American companies cannot find home-grown talent, and if they cannot bring talent to this country, a large number are likely to move key operations overseas, sending those and related American jobs with them.

(12) Inaction in these areas will carry significant consequences for the future of American competitiveness around the world and will seriously undermine efforts to create and keep jobs in the United States.

SEC. 3. INCREASED ACCESS TO SKILLED PERSONNEL FOR UNITED STATES COMPANIES AND UNIVERSITIES.

(a) ESTABLISHMENT OF H1-C NONIMMIGRANT CATEGORY-

(1) IN GENERAL- Section 101(a)(15)(H)(i) (8 U.S.C.

1101(a)(15)(H)(i)) is amended--

(A) by inserting 'and other than services described in clause (c)' after 'subparagraph (O) or (P)'; and

(B) by inserting after 'section 212(n)(1)' the following:
' , or (c) who is coming temporarily to the United States to

perform labor as a health care worker, other than a physician, if the alien qualifies for the exemption from the grounds of inadmissibility described in section 212(a)(5)(C)'.

(2) **TRANSITION RULE-** Any petition filed prior to the date of enactment of this Act, for issuance of a visa under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act on behalf of an alien described in the amendment made by paragraph (1)(B) shall, on and after that date, be treated as a petition filed under section 101(a)(15)(H)(i)(c) of that Act, as added by paragraph (1).

(b) **ANNUAL CEILINGS FOR H1-B AND H1-C WORKERS-**

(1) **AMENDMENT OF THE INA-** Section 214(g)(1) (8 U.S.C. 1184(g)(1)) is amended to read as follows:

`(g)(1) The total number of aliens who may be issued visas or otherwise provided nonimmigrant status during any fiscal year--

`(A) under section 101(a)(15)(H)(i)(b)--

`(i) for each of fiscal years 1992 through 1997, may not exceed 65,000,

`(ii) for fiscal year 1998, may not exceed 2 times the number of aliens issued visas or otherwise provided nonimmigrant status between October 1, 1997, and March 31, 1998,

`(iii) for fiscal year 1999, may not exceed the number determined for fiscal year 1998 under such section, minus 10,000, plus the number of unused visas under subparagraph (B) for the fiscal year preceding the applicable fiscal year, and

`(iv) for fiscal year 2000 and each applicable fiscal year thereafter, may not exceed the number determined for fiscal year 1998 under such section, minus 10,000, plus the number of unused visas under subparagraph (B) for the fiscal year preceding the applicable fiscal year, plus the number of unused visas under subparagraph (C) for the fiscal year preceding the applicable fiscal year;

`(B) under section 101(a)(15)(H)(ii)(b), beginning with fiscal year 1992, may not exceed 66,000; or

`(C) under section 101(a)(15)(H)(i)(c), beginning with fiscal year 1999, may not exceed 10,000.

For purposes of determining the ceiling under subparagraph (A) (iii) and (iv), not more than 25,000 of the unused visas under subparagraph (B) may be taken into account for any fiscal year.'

(2) **TRANSITION PROCEDURES-** Any visa issued or nonimmigrant status otherwise accorded to any alien under clause (i)(b) or (ii)(b) of section 101(a)(15)(H) of the Immigration and Nationality Act pursuant to a petition filed during fiscal year 1998 but approved on or after October 1, 1998, shall be counted against the applicable ceiling in section 214(g)(1) of that Act for fiscal year 1998 (as amended by paragraph (1) of this subsection), except that, in the case where counting the visa or the other granting of status would cause the applicable ceiling for fiscal year 1998 to be exceeded, the visa or grant of status shall be counted against the applicable ceiling for fiscal year 1999.

SEC. 4. EDUCATION AND TRAINING IN SCIENCE AND TECHNOLOGY.

(a) DEGREES IN MATHEMATICS, COMPUTER SCIENCE, AND ENGINEERING- Subpart 4 of part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070c et seq.) is amended--

(1) in section 415A(b)(1) (20 U.S.C. 1070c(b)(1))--

(A) by striking '\$105,000,000 for fiscal year 1993' and inserting '\$155,000,000 for fiscal year 1999'; and

(B) by inserting ', of which the amount in excess of \$25,000,000 for each fiscal year that does not exceed \$50,000,000 shall be available to carry out section 415F for the fiscal year' before the period; and

(2) by adding at the end the following:

SEC. 415F. DEGREES IN MATHEMATICS, COMPUTER SCIENCE, AND ENGINEERING.

(a) ALLOTMENTS AND GRANTS- From amounts made available to carry out this section under section 415A(b)(1) for a fiscal year, the Secretary shall make allotments to States to enable the States to pay not more than 50 percent of the amount of grants awarded to low-income students in the States.

(b) USE OF GRANTS- Grants awarded under this section shall be used by the students for attendance on a full-time basis at an institution of higher education in a program of study leading to an associate, baccalaureate or graduate degree in mathematics, computer science, or engineering.

(c) COMPARABILITY- The Secretary shall make allotments and grants shall be awarded under this section in the same manner, and under the same terms and conditions, as--

(1) the Secretary makes allotments and grants are awarded under this subpart (other than this section); and

(2) are not inconsistent with this section.'

(b) DATA BANK; TRAINING-

(1) IN GENERAL- The Secretary of Labor shall--

(A) establish or improve a data bank on the Internet that facilitates--

(i) job searches by individuals seeking employment in the field of technology; and

(ii) the matching of individuals possessing technology credentials with employment in the field of technology; and

(B) provide training in information technology to unemployed individuals who are seeking employment.

(2) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated for fiscal year 1999 and each of the 4 succeeding fiscal years--

(A) \$8,000,000 to carry out paragraph (1)(A); and

(B) \$10,000,000 to carry out paragraph (1)(B).

SEC. 5. INCREASED ENFORCEMENT PENALTIES AND IMPROVED OPERATIONS.

(a) INCREASED PENALTIES FOR VIOLATIONS OF H1-B OR H1-C PROGRAM- Section 212(n)(2)(C) (8 U.S.C. 1182(n)(2)(C)) is amended--

(1) by striking 'a failure to meet' and all that follows through 'an application--' and inserting 'a willful failure to meet a condition in paragraph (1) or a willful misrepresentation of a material fact in an application--'; and

(2) in clause (i), by striking '\$1,000' and inserting '\$5,000'.

(b) SPOT INSPECTIONS DURING PROBATIONARY PERIOD- Section 212(n)(2) (8 U.S.C. 1182(n)(2)) is amended--

(1) by redesignating subparagraph (D) as subparagraph (E); and

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

`(D) The Secretary of Labor may, on a case-by-case basis, subject an employer to random inspections for a period of up to five years beginning on the date that such employer is found by the Secretary of Labor to have engaged in a willful failure to meet a condition of subparagraph (A), or a misrepresentation of material fact in an application.'.

(c) EXPEDITED REVIEWS AND DECISIONS- Section 214(c)(2)(C) (8 U.S.C. 1184(c)(2)(C)) is amended by inserting `or section 101(a)(15)(H)(i)(b)' after `section 101(a)(15)(L)'.

(d) DETERMINATIONS ON LABOR CONDITION APPLICATIONS TO BE MADE BY ATTORNEY GENERAL-

(1) IN GENERAL- Section 101(a)(15)(H)(i)(b) (8 U.S.C. 1101(a)(15)(H)(i)(b)) is amended by striking `with respect to whom' and all that follows through `with the Secretary' and inserting `with respect to whom the Attorney General determines that the intending employer has filed with the Attorney General'.

(2) CONFORMING AMENDMENTS- Section 212(n) (8 U.S.C. 1182(n)(1)) is amended--

(A) in paragraph (1)--

(i) in the first sentence, by striking `Secretary of Labor' and inserting `Attorney General';

(ii) in the sixth and eighth sentences, by inserting `of Labor' after `Secretary' each place it appears;

(iii) in the ninth sentence, by striking `Secretary of Labor' and inserting `Attorney General';

(iv) by amending the tenth sentence to read as follows: `Unless the Attorney General finds that the application is incomplete or obviously inaccurate, the Attorney General shall provide the certification described in section 101(a)(15)(H)(i)(b) and adjudicate the nonimmigrant visa petition.'; and

(v) by inserting in full measure margin after subparagraph (D) the following new sentence: `Such application shall be filed with the employer's petition for a nonimmigrant visa for the alien, and the Attorney General shall transmit a copy of such application to the Secretary of Labor.'; and

(B) in the first sentence of paragraph (2)(A), by striking `Secretary' and inserting `Secretary of Labor'.

(e) PREVAILING WAGE CONSIDERATIONS- Section 101(a) (8 U.S.C. 1101(a)) is amended by adding at the end the following:

`(50) The term `prevailing wage' means the following:

`(A) If the job opportunity is subject to a wage determination in the area under the Act of March 3, 1931 (commonly known as the Davis-Bacon Act (40 U.S.C. 276a et seq.)), or the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), the prevailing wage shall be the rate required under such Acts.

`(B) If the job opportunity is not covered by a prevailing wage determined under the Acts referred to in subparagraph (A),

the prevailing wage shall be--

` (i) the rate of wages to be determined, to the extent feasible, by adding the wage paid to workers similarly employed in the area of intended employment and dividing the total by the number of such workers, except that the wage set forth in the application shall be considered as meeting the prevailing wage standard if it is within 5 percent of the average rate of wages; or

` (ii) if the job opportunity is covered by a collective bargaining agreement, the wage rate set forth in the agreement shall be considered as not adversely affecting the wages of United States workers similarly employed and shall be considered the `prevailing wage'.

` (C) A prevailing wage determination made pursuant to this section shall not permit an employer to pay a wage lower than that required under any other Federal, State, or local law.

` (D) For purposes of this section:

` (i) The term `similarly employed' means having substantially comparable jobs in the occupational category in the area of intended employment, except that, if no such workers are employed by employers other than the employer applicant in the area of intended employment, the term `similarly employed' means--

` (I) having jobs requiring a substantially similar level of skills within the area of intended employment; or

` (II) if there are no substantially comparable jobs in the area of intended employment, having substantially comparable jobs with employers outside of the area of intended employment.

` (ii) The term `substantially comparable jobs' means jobs with substantially comparable employers, taking into account size, profit or nonprofit classification, start-up or mature business operations, the specific industry, public or private sector, status as an academic institution, or other defining characteristics which the employer can demonstrate result in a distinct wage scale from the industry at large.

` (iii) The term `similarly employed' shall be construed to require separate average rates of wage taking into account such factors as years of experience, academic degree, educational institution attended, grade point average, publications or other distinctions, personal traits deemed essential to job performance, specialized training or skills, competitive market factors, or any other factors typically considered by employers within the industry.

` (iv) Employers may use either government or nongovernment published surveys, including industry, region, or statewide wage surveys, to determine the prevailing wage, which shall be considered correct and valid where the employer has maintained a copy of the survey information.'

(f) POSTING REQUIREMENT- Section 212(n)(1)(C)(ii) (8 U.S.C.

1182(n)(1)(C)(ii)) is amended to read as follows:

` (ii) if there is no such bargaining representative, has provided notice of filing to the employer's employees in the occupational classification through such methods as physical posting in a conspicuous location at the employer's place of business, or electronic posting through an internal job bank, or electronic notification available to employees in the occupational classification.'.

SEC. 6. ANNUAL REPORTS ON H1-B VISAS.

Section 212(n) (8 U.S.C. 1182(n)) is amended by adding at the end the following:

` (3) Using data from petitions for visas issued under section 101(a)(15)(H)(i)(b), the Attorney General shall annually submit the following reports to Congress:

` (A) Quarterly reports on the numbers of aliens who were provided nonimmigrant status under section 101(a)(15)(H)(i)(b) during the previous quarter and who were subject to the numerical ceiling for the fiscal year established under section 214(g)(1).

` (B) Annual reports on the occupations and compensation of aliens provided nonimmigrant status under such section during the previous fiscal year.'.

SEC. 7. LIMITATION ON PER COUNTRY CEILING WITH RESPECT TO EMPLOYMENT-BASED IMMIGRANTS.

(a) SPECIAL RULES- Section 202(a) (8 U.S.C. 1152(a)) is amended by adding at the end the following new paragraph:

` (5) RULES FOR EMPLOYMENT-BASED IMMIGRANTS-

` (A) EMPLOYMENT-BASED IMMIGRANTS NOT SUBJECT TO PER COUNTRY LIMITATION IF ADDITIONAL VISAS AVAILABLE- If the total number of visas available under paragraph (1), (2), (3), (4), or (5) of section 203(b) for a calendar quarter exceeds the number of qualified immigrants who may otherwise be issued such visas, the visas made available under that paragraph shall be issued without regard to the numerical limitation under paragraph (2) of this subsection during the remainder of the calendar quarter.

` (B) LIMITING FALL ACROSS FOR CERTAIN COUNTRIES SUBJECT TO SUBSECTION (e)- In the case of a foreign state or dependent area to which subsection (e) applies, if the total number of visas issued under section 203(b) exceeds the maximum number of visas that may be made available to immigrants of the state or area under section 203(b) consistent with subsection (e) (determined without regard to this paragraph), in applying subsection (e) all visas shall be deemed to have been required for the classes of aliens specified in section 203(b).'.
(b) CONFORMING AMENDMENTS-

(b) CONFORMING AMENDMENTS-

(1) Section 202(a)(2) (8 U.S.C. 1152(a)(2)) is amended by striking `paragraphs (3) and (4)' and inserting `paragraphs (3), (4), and (5)'.

(2) Section 202(e)(3) (8 U.S.C. 1152(e)(3)) is amended by striking `the proportion of the visa numbers' and inserting `except as provided in subsection (a)(5), the proportion of the visa numbers'.

(c) ONE-TIME PROTECTION UNDER PER COUNTRY CEILING-
Notwithstanding section 214(g)(4) of the Immigration and
Nationality Act, any alien who--

(1) as of the date of enactment of this Act is a
nonimmigrant described in section 101(a)(15)(H)(i) of that Act;

(2) is the beneficiary of a petition filed under section
204(a) for a preference status under paragraph (1), (2), or (3)
of section 203(b); and

(3) would be subject to the per country limitations
applicable to immigrants under those paragraphs but for this
subsection,

may apply for and the Attorney General may grant an extension of
such nonimmigrant status until the alien's application for
adjustment of status has been processed and a decision made thereon.

SEC. 8. ACADEMIC HONORARIA.

Section 212 (8 U.S.C. 1182) is amended by adding at the end the
following new subsection:

(p) Any alien admitted under section 101(a)(15)(B) may accept an
honorarium payment and associated incidental expenses for a usual
academic activity or activities, as defined by the Attorney General
in consultation with the Secretary of Education, if such payment is
offered by an institution of higher education (as defined in
section 1201(a) of the Higher Education Act of 1965) or other
nonprofit entity and is made for services conducted for the benefit
of that institution or entity.'

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1 alien whose services were sought, shall be repaid
2 from the fund to such alien.

3 ~~There is the fund. No fund is wanted in this Act.~~

4 SEC. 6. RECRUITMENT OF UNITED STATES WORKERS
5 PRIOR TO SEEKING NONIMMIGRANT WORK-
6 ERS.

7 (a) IN GENERAL.—Section 212(n)(1) of the Immi-
8 gration and Nationality Act (8 U.S.C. 1182(n)(1)) is
9 amended by inserting at the end the following new sub-
10 paragraph:

11 “(B)(i) The employer ^{and} prior to filing the appli-
12 cation, has taken timely, significant, and effective
13 steps to recruit and retain sufficient United States
14 workers in the specialty occupation in which the
15 nonimmigrant whose services are being sought will
16 be employed. Such steps include good faith recruit-
17 ment in the United States using procedures that
18 meet industry-wide standards offering compensation
19 as required by subparagraph (A), and the offering of

20 ~~“(ii) The employer must offer employment to~~
21 any qualified United States worker applicant ^{or such}
22 good faith recruitment must otherwise be unsuccess-
23 ful.

24 “(iii) The recruitment requirements of this sub-
25 paragraph shall not apply to aliens with extraor-

identified
though
that
recruitment

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1 ordinary ability, aliens who are outstanding professors
 2 and researchers, and certain multinational executives
 3 and managers, described in section 203(b)(1)."

4 (b) WAGE COMPARABILITY.—Section
 5 212(n)(1)(A)(i)(I) of such Act is amended by inserting
 6 "(including ^{Salary?} ~~wages~~, benefits, and all other compensation)"
 7 after "actual wage level".

Section 212(n)(1)(A)(i)

of such Act
 is amended by
 inserting

"(including
 [Salary], benefits,
 and all other
 compensation)"
 after
 "wages."

SEC. 7. NONDISPLACEMENT OF UNITED STATES WORKERS.

9 Section 212(n) of the Immigration and Nationality
 10 Act (8 U.S.C. 1182(n)), as amended by section 5, is
 11 amended by adding at the end the following new para-
 12 graph:

13 "(4)(A) The employer--

14 "(i) has not, within the 6-month period
 15 prior to the filing of the application, laid off or
 16 otherwise displaced any United States worker
 17 (as defined in subparagraph (B)) including a
 18 worker obtained by contract, employee leasing,
 19 temporary help agreement, or other similar
 20 basis, who has substantially equivalent quali-
 21 fications and experience in the occupation clas-
 22 sification for the position in which the non-
 23 immigrant is intended to be (or is) employed;
 24 and

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DRAFT

April 23, 1998

Administration Position Regarding H-1B Legislation

The Administration has committed to pursuing both reforms to the H-1B visa program and increased training opportunities for U.S. workers as part of any legislation that would temporarily raise the annual cap on H-1B visas. The following represents the Administration's position on major reforms and training initiatives.

I. Recruitment and Non-displacement of United States Workers Prior to Seeking Nonimmigrant Workers

(a) IN GENERAL -- Section 212(n)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)) is amended by inserting at the end the following new subparagraph:

(E)(I) The employer, prior to filing the application, has taken good faith, timely and significant steps to recruit and retain sufficient U.S. workers in the specialty occupation in which the non-immigrant whose services are being sought will be employed. Good faith steps to recruit and retain shall be defined as:

- (a) the employer taking at least two of the following actions in a manner reasonably designed to attract and retain U.S. workers:
 - (i) widespread advertising of the relevant job openings to both current and prospective employees (e.g., through America's Job Bank, participation in job fairs, the Internet, intranet, employer newsletters, general circulation publications, professional journals and magazines);
 - (ii) provision of meaningful monetary incentives (such as paying above the prevailing wage or paying bonuses and training subsidies not included in the base compensation package);
 - (iii) *operation of an employer-financed training program at the employer's facility or financing (or otherwise providing for) a training program elsewhere which provides the means for its employees to enhance their skills to meet the needs of the employer.*
- (b) *With respect to current employees who have applied to or expressed interest in the available position, that the employer has considered whether these applicants could be given additional training within a reasonable period of time to be able to fill the available position.*
- (c) The employer did not receive applications from any U.S. worker or offered employment to any U.S. worker who has substantially equivalent qualifications and experience to the temporary foreign worker offered employment.

(E)(II) The recruitment requirements of this subparagraph shall not apply to aliens with extraordinary ability, aliens who are outstanding professors and researchers, and certain multinational executives and managers described in section 203(b)(1). The recruitment requirements of this subparagraph shall also not apply to a scientist, mathematician, or engineer who has attained at least a master's degree or its equivalent in a scientific or engineering discipline, and who is coming temporarily to the United States to participate in a cooperative joint scientific activity carried out under an Agreement between the Federal Government and the alien's Government.

(F)(I) The employer --

- (a) has not, within the 90-day period prior to the filing of the application, laid off or otherwise displaced any United States worker (as defined in subparagraph (B)), including a worker obtained by contract, employee leasing, temporary help agreement, or other similar basis, who has substantially equivalent qualifications and experience in the specialty occupation in which the nonimmigrant is intended to be (or is) employed; and
- (b) will not lay off or otherwise knowingly displace, during the 90-day period following the filing of the application, or during the 90-day period immediately preceding and following the filing of any visa petition supported by the application, any United States worker, including any worker obtained by contract, employee leasing, temporary help agreement, or other similar basis who has substantially equivalent qualifications and experience in the specialty occupation in which the nonimmigrant is intended to be (or is) employed.

(F)(II) For purposes of this subparagraph, the term "laid off," with respect to an employee, means the employee's loss of employment, other than a discharge for cause or a voluntary departure or voluntary retirement. The term "laid off" does not apply to any case in which employment is relocated to a different geographic area and the affected employee is offered a chance to move to the new location with the same wages and benefits, but elects not to move to the new location.

(G) The employer offered compensation as required by subparagraph (A).

(b) For purposes of this subsection, the term "United States worker" means --

- (I) a citizen or national of the United States
- (II) an alien lawfully admitted to the United States for permanent residence; or
- (III) an alien authorized to be employed by this Act or by the Attorney General.

II. Wage Comparability

Section 212(n)(1)(A)(I) of such Act is amended by inserting “(including the value of benefits and additional compensation)” after “wages.” Section 212(n)(1)(A)(I)(I) is amended by inserting “(including the value of benefits and additional compensation)” after “actual wage level.”

III. Job Contractors

In the case of an employer that is a job contractor (within the meaning of regulations promulgated by the Secretary of Labor to carry out this subsection), the contractor will not place any H-1B employee with another employer unless such other employer has executed an attestation that the employer is complying and will continue to comply with the requirements of this paragraph in the same manner as they apply to the job contractor.

IV. Enforcement

(a) Independent Authority to Investigate

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

(I) in paragraph (2)(A), by striking the first sentence and inserting the following:

“The Secretary may conduct investigations pursuant to a complaint or, where there is no complaint, where the Secretary has reasonable cause to believe that:

- (a) there is a pattern or practice of complaints by U.S. workers against the employer;
- (b) an employer whose domestic workforce is comprised of more than 10% H1B workers or is seeking to employ H1B workers as more than 10% of its U.S. workforce;
- (c) an employer has laid off or otherwise displaced more than 15% of its U.S. workforce or 500 U.S. workers (whichever is fewer) in any one year period (or has announced the intent to make such a lay-off).

The Secretary shall establish a process for the receipt, investigation, and disposition of complaints or other cases of noncompliance with this section.”

(II) in paragraph (2)(C), by inserting “, or that the employer failed to cooperate in the conduct of the Secretary’s investigation or has intimidated, discharged, or otherwise discriminated against any person because that person has asserted a right or has cooperated in an investigation under this paragraph” after “a material fact in an application.”

(III) in paragraph (2), by adding at the end the following new subparagraph:

“(E) The Secretary may issue subpoenas requiring the attendance and testimony of witnesses or the production of any records, books, papers, or documents in connection with any investigation or hearing, conducted under this paragraph. In conducting a hearing, the Secretary may administer oaths, examine witnesses, and receive evidence. For the purpose of any hearing or investigation provided for in this paragraph, the authority contained in sections 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 49 and 50), relating to the attendance of witnesses and the production of books, papers, and documents, shall apply.”

V. Sanctions

Section 212(n)(2)(C) is amended to read:

“If the Secretary finds, after notice and opportunity for a hearing, a failure to meet a condition of paragraph (1)(B); a substantial failure to meet a condition of paragraphs (1)(C) or (1)(D); a willful failure to meet a condition of paragraph (1)(A); a violation(s) of paragraphs (1)(E) or (1)(F) that is willful, or reflects a pattern or practice of violations, or is a violation that affects a significant number of applicants, employees, or former employees; or a mis-representation of a material fact contained in (1)(A), (1)(B), (1)(C) or (1)(D) —

- (i) the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties in an amount not to exceed \$5,000 per violation) as the Secretary determines to be appropriate,”

Note: This language is incomplete. Our goal is to craft language that permits the Secretary to retain all of her current authority to sanction employers, but that limits that authority with regard to the two new attestations.

VI. Application Fee

(3)(A) The Secretary of Labor shall require payment of a fee by the employer for each position for which an application is filed under this subsection. The fee shall be in an amount prescribed by the Secretary of Labor, and shall be paid to the Department of Labor. . . .

- (ii) During the period ending September 30, 2001, such a fee shall not exceed \$250 for each position.

. . .

- (v) It shall be unlawful for an employer to require, as a condition of employment by such employer, that the fee prescribed under this paragraph or any part of the fee, be paid directly or indirectly by the alien whose services are being sought.
- (vi) Any person or entity that is determined, after notice and opportunity for an

administrative hearing, to have violated clause (v) shall be subject to a civil penalty of \$5,000 for each violation, to an administrative order requiring the payment of any fee described in this paragraph, and the disqualification for 1 year from petitioning for foreign skilled temporary workers under this subsection.

- (vii) Any amount determined to have been paid, directly or indirectly, toward the filing fee described in paragraph (3)(A) by the alien whose services were sought, shall be repaid from the fund to such alien.

VII. Training

The Administration strongly supports the creation of Regional Skills Alliances and expansion of the National Science Foundation (NSF)'s advanced technical education programs. The Administration does not support providing scholarships or loans to individuals, including the expansion of the State Student Incentive Grant (SSIG) program.

VIII. New Visa Category Proposal

A new program (H-1C) that creates temporary visas for use only by non-immigrants with very high skill levels. In particular:

- The program would be authorized for four years beginning in FY1998.
- There would be a maximum of 25,000 visas for FY1998, FY1999, and FY2000, and a maximum of 15,000 visas for FY2001.
- Only employers whose number of H-1B and "H-1C" employees in the prior year constitutes no greater than one-half of their U.S. based workforce are eligible to apply.
- Only individuals with a minimum of a master's degree (or equivalent) in math, science, or engineering are eligible for an "H-1C" visa.
- Requires a \$500 fee for each position for which an application is filed for training, enforcement, and administration of the program.
- The "H-1C" visas would be issued for a 3-year period, and renewable for an additional 3 years.
- All of the requirements of the "H-1C" visa program would be the same as would exist under the reformed H-1B program.

KENNEDY H1B as introduced 3/27/98

From: Ingrid M. Schroeder on 04/01/98 09:30:12 AM

Record Type: Record

To: See the distribution list at the bottom of this message

cc: James J. Jukes/OMB/EOP

Subject: FYI - S. 1878 - Kennedy H1B bill as introduced on Friday, March 27th

S 1878 IS

105th CONGRESS

2d Session

S. 1878

To amend the Immigration and Nationality Act to authorize a temporary increase in the number of skilled foreign workers admitted to the United States, to improve efforts to recruit United States workers in lieu of foreign workers, and to enforce labor conditions regarding nonimmigrant aliens.

IN THE SENATE OF THE UNITED STATES

March 27, 1998

Mr. KENNEDY (for himself and Mrs. FEINSTEIN) 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 authorize a temporary increase in the number of skilled foreign workers admitted to the United States, to improve efforts to recruit United States workers in lieu of foreign workers, and to enforce labor conditions regarding nonimmigrant aliens.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the `High-Tech Immigration and United States Worker Protection Act'.

SEC. 2. TEMPORARY INCREASE IN SKILLED FOREIGN WORKERS.

Section 214(g)(1) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(1)) is amended to read:

`(g)(1) The total number of aliens who may be issued visas or otherwise provided nonimmigrant status during any fiscal year--

`(A) under section 101(a)(15)(H)(i)(b), may not exceed--

`(i) 90,000 in each of fiscal years 1998, 1999, and 2000, or

`(ii) 65,000 in fiscal year 2001 or any fiscal year thereafter,

except that in each of fiscal years 1999 through 2000, not more than 5,000 of the visas or grants of status may be provided to aliens described in section 212(a)(5)(C); and

`(B) under section 101(a)(15)(H)(ii)(b), may not exceed--

`(i) 41,000 in each of fiscal years 1998, 1999, and 2000, or

`(ii) 66,000 in fiscal year 2001 or any fiscal year thereafter.'

SEC. 3. GAO STUDY AND REPORT ON LABOR MARKET NEEDS.

(a) STUDY- The Comptroller General of the United States shall conduct a study assessing labor market needs for workers with high technology skills and the extent to which job openings requiring workers with high technology skills are likely to be unfilled in each of the fiscal years 2001 through 2006.

(b) REPORT- Not later than October 1, 2000, the Comptroller General shall submit a report containing the results of the study described in subsection (a) to the Committees on the Judiciary of the House of Representatives and the Senate. The report shall also address the effect on the high technology labor market of the following:

- (1) The downsizing of the defense sector.
- (2) The increase in productivity in the computer industry.
- (3) The redeployment of workers dedicated to year 2000 projects.

SEC. 4. INVESTMENT IN TRAINING HIGH TECHNOLOGY WORKERS.

(a) IN GENERAL- There is established in the Department of Labor a \$100,000,000 fund to assist United States workers to obtain skills that employers indicate are in short supply as evidenced by filings of Labor Condition Applications filed for aliens described in section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, of which not less than 85 percent shall be available for the activities described in subsection (b).

(b) LOAN PROGRAM-

(1) IN GENERAL- There is established in the Department of Labor a program to provide individuals with loans to obtain training necessary for employment in those occupations which are in high demand as evidenced by filings of Labor Condition Applications by employers for aliens described in section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act. This loan program shall be administered from the funds referred to in section 212(n)(3)(B). Loans provided under this section shall not exceed \$10,000 a person.

(2) PROGRAM REQUIREMENTS- The Secretary of Labor shall establish criteria

for implementing the loan program described in subsection (a), which include the following:

(A) QUALIFICATIONS OF INDIVIDUALS- The loan program shall provide that individuals receiving a loan under this section--

(i) have sufficient education or experience to enable them to qualify for employment in high technology industries with limited additional training;

(ii) are of working age and are United States citizens or qualified aliens described in section 431 of the Personal Responsibility and Work Reconciliation Act of 1996 (8 U.S.C. 1641); and

(iii) repay the loan in full not later than 4 years after completing the training for which the individual received the loan.

(B) CERTIFICATION-

(i) FISCAL YEARS 1999-2001- For each of fiscal years 1999 through 2001, the loan program shall be available only for training courses that the Secretary of Labor has certified as appropriate to obtain employment in high technology industries in the United States.

(ii) FISCAL YEAR 2002 AND THEREAFTER- For fiscal year 2002, and each fiscal year thereafter, the loan program shall be available only for training courses certified by the Secretary of Labor as appropriate to fill the occupations which are in high demand as evidenced by filings

of Labor Condition Applications by employers for aliens described in section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act.

(C) OTHER CRITERIA- The Secretary of Labor shall establish such other criteria as the Secretary determines to be appropriate with respect to certifying courses that qualify for the loan program, identifying individuals who qualify for loans under the program, and carrying out the provisions of this section.

(c) LABOR DEPARTMENT GRANT PROGRAM TO CREATE REGIONAL SKILLS ALLIANCES-

(1) IN GENERAL- The Secretary of Labor, in consultation with the Secretary of Commerce and the Secretary of Education, shall provide `seed' grants to eligible entities described in subsection (b) to assist such entities in creating Regional Skills Alliances. The purpose of these Regional Skills Alliances will be to help industry organize the labor market to better meet their needs by--

(A) improving the job skills of American workers necessary for employment in specific industries and occupations; and/or

(B) assessing and developing strategies to address critical skills needs at the local, State, regional, and national levels.

(2) ELIGIBLE ENTITIES-

(A) IN GENERAL- An eligible entity described in this subsection is a

consortium that consists of, but is not limited to, 2 or more of the following:

- (i) Employers.
- (ii) Labor organizations.
- (iii) State and local governments.
- (iv) Private Industry Councils or successor entities.
- (v) Postsecondary educational institutions.
- (vi) Nonprofit organizations that represent businesses or industries.
- (vii) Nonprofit training organizations.

(B) **ADDITIONAL REQUIREMENT-** To the maximum extent practicable, each business, organization, or government that forms an eligible entity under paragraph (1) shall be located in the same geographic region of the United States.

(3) **MAXIMUM AMOUNT AND TIMING OF GRANTS-** The amount of a grant provided to an eligible entity under paragraph (1) may not exceed \$2,000,000 for an 18-month grant period and may be provided to that eligible entity only for a maximum of 2 such grant periods.

(4) **APPLICATION-** The Secretary may not provide a grant under paragraph (1) to an eligible entity unless such entity submits to the Secretary an application containing such information as the Secretary may reasonably require.

(5) **USE OF AMOUNTS-** In carrying out the program described in paragraph (1), the eligible entity may, to the extent that such activities build on and supplement activities already underway as opposed to duplicating or substituting for current activities, provide for--

- (A) an identification of local, State, regional, and national skills needs;
- (B) an assessment of the extent to which United States workers are being educated and trained in needed critical skills;
- (C) the development of strategies to better focus existing training and education investments on rapidly expanding occupations;
- (D) the provision of improved occupational information and projections;
- (E) an assessment of training and job skill needs for specific industries;
- (F) development of a sequence of skill standards that are benchmarked to advanced industry practices for specific industries;
- (G) development of curriculum and training methods;
- (H) identification and development of training providers;

(I) development of apprenticeship programs; and

(J) development of training programs for dislocated workers.

(6) **ADDITIONAL CRITERIA FOR GRANTS-** In making grants under this subsection, the Secretary shall--

(A) use a peer review process to award grants;

(B) give preference to the extent to which applications provide funds from non-Federal sources to match Federal funds; and

(C) give preference to applications that demonstrate significant collaboration with major stakeholders in the State and local workforce development system, particularly Private Councils and labor organizations.

(7) **NATIONAL ALLIANCE FOR HIGH-TECHNOLOGY SKILLS-** The grants for Regional Skills alliances will be complemented by the establishment of a National Alliance for High-Technology Skills which shall consist of national representatives from government, industry, labor organizations, and education. The purpose of the National Alliance will be to develop and recommend strategies to the President for the education and training of American workers to meet the demand for high-technology skills.

(8) **DEFINITION-** For purposes of this subsection, the term `Secretary' means the Secretary of Labor.

SEC. 5. ENFORCEMENT OF LABOR CONDITIONS FOR NONIMMIGRANTS.

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

(1) in paragraph (2)(A), by striking the first sentence and inserting the following: `The Secretary shall conduct an investigation where there is reasonable cause to believe that an employer has made a

misrepresentation of a material fact on a labor condition attestation or has failed to comply with the terms and conditions of an application submitted under paragraph (1) or with the provisions of this section or any rule or regulation pertaining to this section. The Secretary shall establish a process for the receipt, investigation, and disposition of complaints or other cases of noncompliance with this section.';

(2) in paragraph (2)(C), by inserting `, or that the employer failed to cooperate in the conduct of the Secretary's investigation or has intimidated, discharged, or otherwise discriminated against any person because that person has asserted a right or has cooperated in an investigation under this paragraph' after `a material fact in an application';

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

`(E) Any alien admitted to the United States as a nonimmigrant described in section 101(a)(15)(H)(i)(b) of this Act who files a complaint pursuant to this subsection and is otherwise eligible to remain and work in the United States, shall be allowed to seek other employment in the United States for the duration of that alien's authorized

admission, provided that--

` (i) the complaint results in finding by the Secretary of Labor of a failure by the employer to meet the conditions in paragraph (2)(C), and

` (ii) the alien notifies the Immigration and Naturalization Service of the name and address of his new employer.';

(4) by striking clause (i) of paragraph (2)(C) and inserting the following:

` (i) the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies as the Secretary determines to be appropriate, assess civil money penalties in an amount not to exceed \$10,000 for each violation, with such penalties to be deposited for use in the loan program established under section 4 of the High-Tech Immigration and United States Worker Protection Act.';

(5) in paragraph (2), by adding at the end the following new subparagraph:

` (E) The Secretary may issue subpoenas requiring the attendance and testimony of witnesses or the production of any records, books, papers, or documents in connection with any investigation or hearing, conducted under this paragraph. In conducting a hearing, the Secretary may administer oaths, examine witnesses, and receive evidence. For the purpose of any hearing or investigation provided for in this paragraph, the authority contained in sections 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 49 and 50), relating to the attendance of witnesses and the production of books, papers, and documents, shall apply.'; and

(6) by adding at the end the following new paragraph:

` (3)(A) The Secretary of Labor shall require payment of a fee by the employer for each position for which an application is filed under this subsection. The fee shall be in an amount prescribed by the Secretary of Labor, and shall be paid to the Department of Labor.

` (B)(i) Such fee shall be used only--

` (I) to defray the cost of processing labor condition applications and for personnel and other costs directly associated with administering and enforcing the requirements applicable to aliens described in section 101(a)(15)(H)(i)(b), including the collection, safeguarding, and accounting for fees collected pursuant to and funds obligated or expended pursuant to this subsection; and

` (II) to endow the loan program and provide grants established under section 4 of the High-Tech Immigration and United States Worker Protection Act.

` (ii) During the period ending September 30, 2001, such fee shall not exceed \$250 for each position.

` (iii) Not less than \$5,000,000 of the funds collected from the fee authorized under this paragraph shall be available for the purposes described in this subsection and shall cover the costs to the Department of Labor of conducting regular, random audits relating to the attestations under this subsection and of engaging in other enforcement activities in connection with this subsection.

`(iv) Fees collected under this paragraph shall be available to the Department of Labor, without regard to appropriation Acts and without fiscal year limitation, to supplement funds otherwise available to the Department of Labor.

`(v) It shall be unlawful for an employer to require, as a condition of employment by such employer, that the fee prescribed under this paragraph, or any part of the fee, be paid directly or indirectly by the alien whose services are being sought.

`(vi) Any person or entity that is determined, after notice and opportunity for an administrative hearing, to have violated clause (v) shall be subject to a civil penalty of \$5,000 for each violation, to an administrative order requiring the payment of any fee described in this paragraph, and to disqualification for 1 year from petitioning for foreign skilled temporary workers under this subsection.

`(vii) Any amount determined to have been paid, directly or indirectly, toward the filing fee described in paragraph (3)(A) by the alien whose services were sought, shall be repaid from the fund to such alien.'.

SEC. 6. RECRUITMENT OF UNITED STATES WORKERS PRIOR TO SEEKING NONIMMIGRANT WORKERS.

(a) IN GENERAL- Section 212(n)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)) is amended by inserting at the end the following new subparagraph:

`(E)(i) The employer, prior to filing the application, has taken timely, significant, and effective

steps to recruit and retain sufficient United States workers in the specialty occupation in which the nonimmigrant whose services are being sought will be employed. Such steps include good faith recruitment in the United States using procedures that meet industry-wide standards offering compensation as required by subparagraph (A) (and offering of employment to any qualified United States worker applicant or such good faith recruitment must otherwise be unsuccessful.)

`(ii) The recruitment requirements of this subparagraph shall not apply to aliens with extraordinary ability, aliens who are outstanding professors and researchers, and certain multinational executives and managers described in section 203(b)(1).'

(b) WAGE COMPARABILITY- Section 212(n)(1)(A)(i)(I) of such Act is amended by inserting `(including wages, benefits, and all other compensation)' after `actual wage level'.

SEC. 7. NONDISPLACEMENT OF UNITED STATES WORKERS.

Section 212(n) of the Immigration and Nationality Act (8 U.S.C. 1182(n)), as amended by section 5, is amended by adding at the end the following new paragraph:

`(4)(A) The employer--

`(i) has not, within the 6-month period prior to the filing of the application, laid off or otherwise displaced any United States worker (as defined in subparagraph (B), including a worker obtained by contract, employee leasing, temporary help agreement, or other similar basis, who has substantially equivalent qualifications and experience in the (occupation classification) for the position in which the nonimmigrant is intended to be (or is) employed; and

specialty occupation

` (ii) will not lay off or otherwise knowingly displace, during the 90-day period following the filing of the application, or during the 90-day period immediately preceding and following the filing of any visa petition supported by the application, any United States worker, including any worker obtained by contract, who has substantially equivalent qualifications and experience in the occupation classification for the position in which the nonimmigrant is intended to be (or is) employed.

` (B) For purposes of this subsection, the term `United States worker' means--

` (i) a citizen or national of the United States;

` (ii) an alien lawfully admitted to the United States for permanent residence; or

` (iii) an alien authorized to be employed by this Act or by the Attorney General.

` (C) For purposes of this subparagraph, the term `laid off', with respect to an employee, means the employee's loss of employment, other than a discharge for cause or a voluntary departure or voluntary retirement. The term `laid off' does not apply to any case in which employment is relocated to a different geographic area and the affected employee is offered a chance to move to the new location with the same wages and benefits but elects not to move to the new location.'.

SEC. 8. LIMITATION ON PERIOD OF AUTHORIZED ADMISSION.

Section 214(g)(4) of the Immigration and Nationality Act is amended by striking `6 years' and inserting `3 years'.

SEC. 9. APPLICABILITY TO EXECUTIVE AGENCIES.

Section 212(n)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)), as amended by adding at the end the following new sentence: `Notwithstanding any other provision of this Act, or any other law, the Secretary shall have authority to require executive agencies as defined in 5 U.S.C. 105 to comply with this section, and such agencies shall be subject to the regulations of the Secretary promulgated pursuant to this section.'.

END

Message Sent To:

Debra J. Bond/OMB/EOP
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Joseph G. Pipan/OMB/EOP
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April 20, 1998

**Administration Position Regarding H-1B Legislation
(based on DPC/NEC Deputies Meeting, April 17, 1998)**

The Administration has committed to pursuing both reforms to the H-1B visa program and increased training opportunities for U.S. workers as part of any legislation that would temporarily raise the annual cap on H-1B visas. The following represents the Administration's position on major reforms and training initiatives (with the Department of Commerce dissenting on Sections I and II).

I. Recruitment of United States Workers Prior to Seeking Nonimmigrant Workers

(a) IN GENERAL -- Section 212(n)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)) is amended by inserting at the end the following new subparagraph:

(E)(i) The employer, prior to filing the application, has taken timely and significant steps to recruit and retain sufficient U.S. workers in the specialty occupation in which the non-immigrant whose services are being sought will be employed. Such steps shall include good faith recruitment in the United States using procedures that are standard practice within the industry (e.g., wide-spread advertising of all job openings (such as through America's Job Bank, the Internet, general circulation publications, professional journals and magazines, or job fairs), or providing meaningful monetary incentives (such as paying above the prevailing wage or paying bonuses and training subsidies not included in the base compensation package)), and offering compensation as required by subparagraph (A) and such good faith recruitment must be unsuccessful.

(ii) The recruitment requirements of this subparagraph shall not apply to aliens with extraordinary ability, aliens who are outstanding professors and researchers, and certain multinational executives and managers described in section 203(b)(1). The recruitment requirements of this subparagraph shall also not apply to a scientist, mathematician, or engineer who has attained at least a master's degree or its equivalent in a scientific discipline, and who is coming temporarily to the United States to participate in a cooperative joint scientific activity carried out under an Agreement between the Federal Government and the alien's Government.

(b) WAGE COMPARABILITY -- Section 212(n)(1)(A)(I) of such Act is amended by inserting "(including the value of benefits and additional compensation)" after "wages." Section 212(n)(1)(A)(I)(I) is amended by inserting "(including the value of benefits and additional compensation)" after "actual wage level."

II. Non-displacement of United States Workers

Section 212(n) of the Immigration and Nationality Act (8 U.S.C. 1182(n)), as amended by section 5, is amended by adding at the end the following new paragraph:

(4)(A) The employer --

3

(I) has not, within the ~~6~~-month period prior to the filing of the application, laid off or otherwise displaced any United States worker (as defined in subparagraph (B)), including a worker obtained by contract, employee leasing, temporary help agreement, or other similar basis, who has substantially equivalent qualifications and experience [**CHECK with BILL M.**] in the specialty occupation in which the nonimmigrant is intended to be (or is) employed; and

(ii) will not lay off or otherwise knowingly displace, during the 90-day period following the filing of the application, or during the 90-day period immediately preceding and following the filing of any visa petition supported by the application, any United States worker, including any worker obtained by contract, employee leasing, temporary help agreement, or other similar basis who has substantially equivalent qualifications and experience in the specialty occupation in which the nonimmigrant is intended to be (or is) employed.

(B) For purposes of this subsection, the term “United States worker” means --

- (I) a citizen or national of the United States
- (ii) an alien lawfully admitted to the United States for permanent residence; or
- (iii) an alien authorized to be employed by this Act or by the Attorney General.

(C) For purposes of this subparagraph, the term “laid off,” with respect to an employee, means the employee’s loss of employment, other than a discharge for cause or a voluntary departure or voluntary retirement. The term “laid off” does not apply to any case in which employment is relocated to a different geographic area and the affected employee is offered a chance to move to the new location with the same wages and benefits, but elects not to move to the new location.

(D) If during the six month period prior to filing an application for an H-1B worker an employer of more than 100 U.S. employees lays-off more than 10% of its U.S. workforce or 500 people (whichever is fewer), the employer will not be eligible to apply for H-1B workers unless it demonstrates to the Department of Labor that it is not seeking employees through the H-1B program in the same specialty occupation(s) as those U.S. workers laid-off.

III. Job Contractors

In the case of an employer that is a job contractor (within the meaning of regulations promulgated by the Secretary of Labor to carry out this subsection), the contractor will not place any H-1B employee with another employer unless such other employer has executed an attestation that the employer is complying and will continue to comply with the requirements of this paragraph in the same manner as they apply to the job contractor.

IV. Enforcement

(a) Independent Authority to Investigate

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

(1) in paragraph (2)(A), by striking the first sentence and inserting the following: “The Secretary shall conduct an investigation where there is reasonable cause to believe that an employer has made a misrepresentation of a material fact on a labor condition attestation or has failed to comply with the terms and conditions of an application submitted under paragraph (1) or with the provisions of this section or any rule or regulation pertaining to this section. The Secretary shall establish a process for the receipt, investigation, and disposition of complaints or other cases of noncompliance with this section.”

(2) in paragraph (2)(C), by inserting “or that the employer failed to cooperate in the conduct of the Secretary’s investigation or has intimidated, discharged, or otherwise discriminated against any person because that person has asserted a right or has cooperated in an investigation under this paragraph” after “a material fact in an application.”

(b) Subpoena Authority

(5) in paragraph (2), by adding at the end the following new subparagraph:

“(E) The Secretary may issue subpoenas requiring the attendance and testimony of witnesses or the production of any records, books, papers, or documents in connection with any investigation or hearing, conducted under this paragraph. In conducting a hearing, the Secretary may administer oaths, examine witnesses, and receive evidence. For the purpose of any hearing or investigation provided for in this paragraph, the authority contained in sections 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 49 and 50), relating to the attendance of witnesses and the production of books, papers, and documents, shall apply.”

V. Application Fee

“(3)(A) The Secretary of Labor shall require payment of a fee by the employer for each position for which an application is filed under this subsection. The fee shall be in an amount prescribed by the Secretary of Labor, and shall be paid to the Department of Labor.

“(ii) During the period ending September 30, 2001, such a fee shall not exceed \$250 for each position.”

“(v) It shall be unlawful for an employee to require, as a condition of employment by such employer, that the fee prescribed under this paragraph or any part of the fee, be paid directly or indirectly by the alien whose services are being sought.”

VI. Training

The Administration strongly supports the creation of Regional Skills Alliances and expansion of the National Science Foundation (NSF)’s advanced technical education programs. The Administration does not support providing scholarships or loans to individuals, including the expansion of the State Student Incentive Grant (SSIG) program.

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A new program (H-1C) that creates temporary visas for use only by non-immigrants with very high skill levels. In particular:

- The program would be authorized for four years beginning in FY1998.
- There would be a maximum of 25,000 visas for FY1998, FY1999, and FY2000, and a maximum of 15,000 visas for FY2001.
- Only employers whose number of H-1B and "H-1C" employees in the prior year constitutes no greater than one-half of their U.S. based workforce are eligible to apply.
- Only individuals with a minimum of a master's degree (or equivalent) in math, science, or engineering are eligible for an H-1C visa.
- Requires a \$500 fee for each position for which an application is filed for training, enforcement, and administration of the program.
- The "H-1C" visas would be issued a 3-year period, renewable for an additional 3 years.
- All of the requirements of the "H-1C" visa program would be the same as would exist under the reformed H-1B program.

Kennedy H1B
draft

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON IMMIGRATION
SENATOR EDWARD M. KENNEDY

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FAX MEMORANDUM

TO: Julia Fernandez
FAX: 456. 5581
FROM: Michael Myers
DATE: 9 Mar 98

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MESSAGE:

Kennedy draft bill on
H-1B (High-tech & others) Visas

3-9-98

DRAFT

105TH CONGRESS
2D SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

Mr. KENNEDY introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend the Immigration and Nationality Act to authorize a temporary increase in the number of skilled foreign workers admitted to the United States, to improve efforts to recruit United States workers in lieu of foreign workers, and to enforce labor conditions regarding non-immigrant aliens.

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 "High-Tech Immigra-
5 tion and United States Worker Protection Act".

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1 **SEC. 2. TEMPORARY INCREASE IN SKILLED FOREIGN**
2 **WORKERS.**

3 Section 214(g)(1) of the Immigration and Nationality
4 Act (8 U.S.C. 1184(g)(1)) is amended to read:

5 “(g)(1) The total number of aliens who may be issued
6 visas or otherwise provided nonimmigrant status during
7 any fiscal year—

8 “(A) under section 101(a)(15)(H)(i)(b), may
9 not exceed 90,000 in each of fiscal years 1998,
10 1999, and 2000, 80,000 in fiscal year 2001, or
11 65,000 in fiscal year 2002 or any fiscal year there-
12 after, except that in each of fiscal years 1999
13 through 2001, not more than 5,000 of the visas or
14 grants of status may be provided to aliens described
15 in section 212(a)(5)(C); and

16 “(B) under section 101(a)(15)(H)(ii)(b), may
17 not exceed 41,000 in each of fiscal years 1998,
18 1999, and 2000, 51,000 in fiscal year 2001, or
19 66,000 in fiscal year 2002 or any fiscal year there-
20 after.”.

21 **SEC. 3. GAO STUDY AND REPORT ON LABOR MARKET**
22 **NEEDS.**

23 (a) STUDY.—The Comptroller General of the United
24 States shall conduct a study assessing labor market needs
25 for workers with high technology skills in the information
26 technology industry and the extent to which job openings

1 requiring workers with those skills are likely to be unfilled
2 in each of the fiscal years 2001 through 2006.

3 (b) REPORT.—Not later than October 1, 2000, the
4 Comptroller General shall submit a report containing his
5 findings to the Committees on the Judiciary of the House
6 of Representatives and the Senate.

7 **SEC. 4. LABOR DEPARTMENT LOAN PROGRAM FOR TRAIN-**
8 **ING HIGH TECHNOLOGY WORKERS.**

9 (a) IN GENERAL.—There is established in the De-
10 partment of Labor a program to provide individuals with
11 loans to obtain training necessary for employment in high
12 technology industries in the United States. Loans provided
13 under this section shall not exceed \$10,000 a person.

14 (b) PROGRAM REQUIREMENTS.—The Secretary of
15 Labor shall establish criteria for implementing the loan
16 program described in subsection (a), which include the fol-
17 lowing:

18 (1) QUALIFICATIONS OF INDIVIDUALS.—The
19 loan program shall provide that individuals receiving
20 a loan under this section—

21 (A) have sufficient education or experience
22 to enable them to qualify for employment in
23 high technology industries with limited addi-
24 tional training;

1 (B) are of working age and are United
2 States citizens or qualified aliens described in
3 section 431 of the Personal Responsibility and
4 Work Reconciliation Act of 1996 (8 U.S.C.
5 1641); and

6 (C) repay the loan in full not later than 4
7 years after completing the training for which
8 the individual received the loan.

9 (2) CERTIFICATION.—The loan program shall
10 be available only for training courses that the Sec-
11 retary of Labor has certified as appropriate to ob-
12 tain employment in high technology industries in the
13 United States.

14 (3) OTHER CRITERIA.—The Secretary of Labor
15 shall establish such other criteria as the Secretary
16 determines to be appropriate with respect to certify-
17 ing courses that qualify for the loan program, identi-
18 fying industries that qualify as high technology in-
19 dustries in the United States, identifying individuals
20 who qualify for loans under the program, and carry-
21 ing out the provisions of this section.

22 (c) AUTHORIZATION OF APPROPRIATIONS.—There
23 are authorized to be appropriated \$50,000,000 for fiscal
24 year 1999, and each fiscal year thereafter, to carry out
25 the provisions of this section.

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1 **SEC. 5. ENFORCEMENT OF LABOR CONDITIONS FOR NON-**
2 **IMMIGRANTS.**

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

5 (1) in paragraph (2)(A), by striking the first
6 sentence and inserting the following: “The Sec-
7 retary, pursuant to a complaint or upon initiation by
8 the Secretary, shall conduct an investigation where
9 there is reasonable cause to believe that an employer
10 has made a misrepresentation of a material fact on
11 a labor condition attestation or has failed to comply
12 with the terms and conditions of an application sub-
13 mitted under paragraph (1) or with the provisions of
14 this section or any rule or regulation pertaining to
15 this section. The Secretary shall establish a process
16 for the receipt, investigation, and disposition of com-
17 plaints or other cases of noncompliance with this
18 section.”;

19 (2) in paragraph (2)(C), by inserting “, or that
20 the employer failed to cooperate in the conduct of
21 the Secretary’s investigation or has intimidated, dis-
22 charged, or otherwise discriminated against any per-
23 son because that person has asserted a right or has
24 cooperated in an investigation under this paragraph”
25 after “a material fact in an application”;

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1 (3) by striking clause (i) of paragraph (2)(C)
2 and inserting the following:

3 “(i) the Secretary shall notify the Attorney
4 General of such finding and may, in addition,
5 impose such other administrative remedies as
6 the Secretary determines to be appropriate, as-
7 sess civil money penalties in an amount not to
8 exceed \$10,000 for each violation, with such
9 penalties to be deposited for use in the loan
10 program established under section 4 of the
11 High-Tech Immigration and United States
12 Worker Protection Act.”; and

13 (4) by adding at the end the following new
14 paragraph:

15 “(3)(A) The Secretary of Labor shall require
16 payment of a fee by the employer for each applica-
17 tion filed under this subsection. The fee shall be in
18 an amount prescribed by the Secretary of Labor,
19 and shall be paid to the Department of Labor.

20 “(B)(i) Such fee shall be used only—

21 “(I) to defray the cost of processing labor
22 condition applications and for personnel and
23 other costs directly associated with administer-
24 ing and enforcing the requirements applicable

1 to aliens described in section
2 101(a)(15)(H)(i)(b); and

3 “(II) to endow the loan program estab-
4 lished under section 4 of the High-Tech Immi-
5 gration and United States Worker Protection
6 Act.

7 “(ii) During the period ending September 30,
8 2001, such fee shall not exceed \$500.

9 “(iii) Not less than \$5,000,000 of the funds col-
10 lected through the fee authorized under this para-
11 graph shall be available for the purposes described
12 in paragraph (2)(A) and shall cover the costs to the
13 Department of Labor of conducting regular, random
14 audits relating to the attestations under this sub-
15 section and of engaging in other enforcement activi-
16 ties in connection with this subsection.

17 “(iv) Fees collected under this paragraph shall
18 be available to the Department of Labor, without re-
19 gard to appropriation Acts and without fiscal year
20 limitation, to supplement funds otherwise available
21 to the Department of Labor.

22 “(v) It shall be unlawful for an employer to re-
23 quire, as a condition of employment by such em-
24 ployer, that the fee prescribed under this paragraph,

1 or any part of the fee, be paid directly or indirectly
2 by the alien whose services are being sought.

3 “(vi) Any person or entity that is determined,
4 after notice and opportunity for an administrative
5 hearing, to have violated clause (v) shall be subject
6 to a civil penalty of \$5,000 for each violation, to an
7 administrative order requiring the payment of any
8 fee described in this paragraph, and to disqualifica-
9 tion for 1 year from petitioning for foreign skilled
10 temporary workers under this subsection.

11 “(vii) Any amount determined to have been
12 paid, directly or indirectly, to the fund by the alien
13 whose services were sought, shall be repaid from the
14 fund to such alien.”.

15 **SEC. 6. RECRUITMENT OF UNITED STATES WORKERS**
16 **PRIOR TO SEEKING NONIMMIGRANT WORK-**
17 **ERS.**

18 (a) IN GENERAL.—Section 212(n)(1) of the Immi-
19 gration and Nationality Act (8 U.S.C. 1182(n)(1)) is
20 amended by inserting at the end the following new sub-
21 paragraph:

22 “(E) The Secretary may issue subpoenas re-
23 quiring the attendance and testimony of witnesses or
24 the production of any records, books, papers, or doc-
25 uments in connection with any investigation or hear-

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ing, conducted under this paragraph. In conducting a hearing, the Secretary may administer oaths, examine witnesses, and receive evidence. For the purpose of any hearing or investigation provided for in this paragraph, the authority contained in sections 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 49 and 50), relating to the attendance of witnesses and the production of books, papers, and documents, shall apply.

“(F)(i) The employer, prior to filing the application, has taken timely, significant, and effective steps to recruit and retain sufficient United States workers in the specialty occupation in which the nonimmigrant whose services are being sought will be employed. Such steps include good faith recruitment in the United States using procedures that meet industry-wide standards offering compensation as required by subparagraph (A).

“(ii) The employer must offer employment to any qualified United States worker applicant or such good faith recruitment must otherwise be unsuccessful.

“(iii) The recruitment requirements of this subparagraph shall not apply to aliens with extraordinary ability, aliens who are outstanding professors

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1 and researchers, and certain multinational executives
2 and managers, described in section 203(b)(1).

3 (b) WAGE COMPARABILITY.—Section 212(n)(1)(A)(i)
4 of such Act is amended by inserting “(including wages,
5 benefits, and all other compensation)” after “wage level”
6 each place it appears.

7 **SEC. 7. NONDISPLACEMENT OF UNITED STATES WORKERS.**

8 Section 212(n) of the Immigration and Nationality
9 Act (8 U.S.C. 1182(n)), as amended by section 5, is
10 amended by adding at the end the following new para-
11 graph:

12 “(4)(A) The employer—

13 “(i) has not, within the 6-month period
14 prior to the filing of the application, laid off or
15 otherwise displaced any United States worker
16 (as defined in subparagraph (B), including a
17 worker obtained by contract, employee leasing,
18 temporary help agreement, or other similar
19 basis, who has substantially equivalent quali-
20 fications and experience in the occupation clas-
21 sification for the position in which the non-
22 immigrant is intended to be (or is) employed;
23 and

24 “(ii) will not lay off or otherwise knowingly
25 displace, during the 90-day period following the

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1 filing of the application, or during the 90-day
2 period immediately preceding and following the
3 filing of any visa petition supported by the ap-
4 plication, any United States worker, including
5 any worker obtained by contract, who has sub-
6 stantially equivalent qualifications and experi-
7 ence in the occupation classification for the po-
8 sition in which the nonimmigrant is intended to
9 be (or is) employed.

10 “(B) For purposes of this subsection, the term
11 ‘United States worker’ means—

12 “(i) a citizen or national of the United
13 States;

14 “(ii) an alien lawfully admitted to the
15 United States for permanent residence; or

16 “(iii) an alien authorized to be employed
17 by this Act or by the Attorney General.

18 “(C) For purposes of this subparagraph, the
19 term ‘laid off’, with respect to an employee, means
20 the employee’s loss of employment, other than a dis-
21 charge for cause or a voluntary departure or vol-
22 untary retirement. The term ‘laid off’ does not apply
23 to any case in which employment is relocated to a
24 different geographic area and the affected employee
25 is offered a chance to move to the new location with

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- 1 the same wages and benefits but elects not to move
- 2 to the new location.".

