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105TH CONGRESS
2D SESSION

H. R. 3736

AN ACT

To amend the Immigration and Nationality Act to make
changes relating to H-1B nonimmigrants.

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

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS; AMEND-
2 MENTS TO IMMIGRATION AND NATIONALITY
3 ACT.

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Temporary Access to Skilled Workers and H-1B Non-
6 immigrant Program Improvement Act of 1998”.

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

Sec. 1. Short title; table of contents; amendments to Immigration and National-
ity Act.

TITLE I—PROVISIONS RELATING TO H-1B NONIMMIGRANTS

Sec. 101. Temporary increase in access to temporary skilled personnel under
H-1B program.

Sec. 102. Protection against displacement of United States workers in case of
H-1B-dependent employers.

Sec. 103. Changes in enforcement and penalties.

Sec. 104. Collection and use of H-1B nonimmigrant fees for scholarships for
low-income math, engineering, and computer science students
and job training of United States workers.

Sec. 105. Computation of prevailing wage level.

Sec. 106. Improving count of H-1B and H-2B nonimmigrants.

Sec. 107. Report on older workers in the information technology field.

Sec. 108. Report on high technology labor market needs; reports on economic
impact of increase in H-1B nonimmigrants.

TITLE II—SPECIAL IMMIGRANT STATUS FOR CERTAIN NATO
CIVILIAN EMPLOYEES

Sec. 201. Special immigrant status for certain NATO civilian employees.

TITLE III—MISCELLANEOUS PROVISION

Sec. 301. Academic honoraria.

9 (c) AMENDMENTS TO IMMIGRATION AND NATIONAL-
10 ITY ACT.—Except as otherwise specifically provided in
11 this Act, whenever in this Act an amendment is expressed
12 in terms of an amendment to a section or other provision,
13 the reference shall be considered to be made to that sec-

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1 tion or other provision of the Immigration and Nationality
2 Act (8 U.S.C. 1101 et seq.).

3 **TITLE I—PROVISIONS RELATING**
4 **TO H-1B NONIMMIGRANTS**

5 **SEC. 101. TEMPORARY INCREASE IN ACCESS TO TEM-**
6 **PORARY SKILLED PERSONNEL UNDER H-1B**
7 **PROGRAM.**

8 (a) TEMPORARY INCREASE IN SKILLED NON-
9 IMMIGRANT WORKERS.—Paragraph (1)(A) of section
10 214(g) (8 U.S.C. 1184(g)) is amended to read as follows:

11 “(A) under section 101(a)(15)(H)(i)(b), may
12 not exceed—

13 “(i) 65,000 in each fiscal year before fiscal
14 year 1999;

15 “(ii) 115,000 in fiscal year 1999;

16 “(iii) 115,000 in fiscal year 2000;

17 “(iv) 107,500 in fiscal year 2001; and

18 “(v) 65,000 in each succeeding fiscal year;

19 or”.

20 (b) EFFECTIVE DATES.—The amendment made by

21 subsection (a) applies beginning with fiscal year 1998. 1999

1 SEC. 102. PROTECTION AGAINST DISPLACEMENT OF UNIT-
2 ED STATES WORKERS IN CASE OF H-1B-DE-
3 PENDENT EMPLOYERS.

4 (a) PROTECTION AGAINST LAYOFF AND REQUIRE-
5 MENT FOR PRIOR RECRUITMENT OF UNITED STATES
6 WORKERS.—

7 (1) ADDITIONAL STATEMENTS ON APPLICA-
8 TION.—Section 212(n)(1) (8 U.S.C. 1182(n)(1)) is
9 amended by inserting after subparagraph (D) the
10 following:

11 “(E)(i) In the case of an application described
12 in clause (ii), the employer did not displace and will
13 not displace a United States worker (as defined in
14 paragraph (4)) employed by the employer within the
15 period beginning 90 days before and ending 90 days
16 after the date of filing of any visa petition supported
17 by the application.

18 “(ii) An application described in this clause is
19 an application filed on or after the date final regula-
20 tions are first promulgated to carry out this sub-
21 paragraph, and before October 1, 2001, by an H-
22 1B-dependent employer (as defined in paragraph
23 (3)) or by an employer that has been found under
24 paragraph (2)(C) or (5) to have committed a willful
25 failure or misrepresentation on or after the date of
26 the enactment of this subparagraph. An application

1 is not described in this clause if the only H-1B non-
2 immigrants sought in the application are exempt H-
3 1B nonimmigrants.

4 “(F) In the case of an application described in
5 subparagraph (E)(ii), the employer will not place the
6 nonimmigrant with another employer (regardless of
7 whether or not such other employer is an H-1B-de-
8 pendent employer) where—

9 “(i) the nonimmigrant performs duties in
10 whole or in part at one or more worksites
11 owned, operated, or controlled by such other
12 employer; and

13 “(ii) there are indicia of an employment re-
14 lationship between the nonimmigrant and such
15 other employer;

16 unless the employer has inquired of the other em-
17 ployer as to whether, and has no knowledge that,
18 within the period beginning 90 days before and end-
19 ing 90 days after the date of the placement of the
20 nonimmigrant with the other employer, the other
21 employer has displaced or intends to displace a Unit-
22 ed States worker employed by the other employer.

23 “(G)(i) In the case of an application described
24 in subparagraph (E)(ii), subject to clause (ii), the
25 employer, prior to filing the application—

1 “(I) has taken good faith steps to recruit,
2 in the United States using procedures that
3 meet industry-wide standards and offering com-
4 pensation that is at least as great as that re-
5 quired to be offered to H-1B nonimmigrants
6 under subparagraph (A), United States workers
7 for the job for which the nonimmigrant or non-
8 immigrants is or are sought; and

9 “(II) has offered the job to any United
10 States worker who applies and is equally or bet-
11 ter qualified for the job for which the non-
12 immigrant or nonimmigrants is or are sought.

13 “(ii) The conditions described in clause (i) shall
14 not apply to an application filed with respect to the
15 employment of an H-1B nonimmigrant who is de-
16 scribed in subparagraph (A), (B), or (C) of section
17 203(b)(1).”.

18 (2) NOTICE ON APPLICATION OF POTENTIAL LI-
19 ABILITY OF PLACING EMPLOYERS.—Section
20 212(n)(1) (8 U.S.C. 1182(n)(1)) is amended by add-
21 ing at the end the following: “The application form
22 shall include a clear statement explaining the liabil-
23 ity under subparagraph (F) of a placing employer if
24 the other employer described in such subparagraph

1 displaces a United States worker as described in
2 such subparagraph.”.

3 (3) CONSTRUCTION.—Section 212(n)(1) (8
4 U.S.C. 1182(n)(1)) is further amended by adding at
5 the end the following: “Nothing in subparagraph (G)
6 shall be construed to prohibit an employer from
7 using legitimate selection criteria relevant to the job
8 that are normal or customary to the type of job in-
9 volved, so long as such criteria are not applied in a
10 discriminatory manner.”.

11 (b) H-1B-DEPENDENT EMPLOYER AND OTHER
12 DEFINITIONS.—

13 (1) IN GENERAL.—Section 212(n) (8 U.S.C.
14 1182(n)) is amended by adding at the end the fol-
15 lowing:

16 “(3)(A) For purposes of this subsection, the term ‘H-
17 1B-dependent employer’ means an employer that—

18 “(i)(I) has 25 or fewer full-time equivalent em-
19 ployees who are employed in the United States; and
20 (II) employs more than 7 H-1B nonimmigrants;

21 “(ii)(I) has at least 26 but not more than 50
22 full-time equivalent employees who are employed in
23 the United States; and (II) employs more than 12
24 H-1B nonimmigrants; or

1 “(iii)(I) has at least 51 full-time equivalent em-
2 ployees who are employed in the United States; and
3 (II) employs H-1B nonimmigrants in a number that
4 is equal to at least 15 percent of the number of such
5 full-time equivalent employees.

6 “(B) For purposes of this subsection—

7 “(i) the term ‘exempt H-1B nonimmigrant’
8 means an H-1B nonimmigrant who—

9 “(I) receives wages (including cash bonuses
10 and similar compensation) at an annual rate
11 equal to at least \$60,000; or

12 “(II) has attained a master’s or higher de-
13 gree (or its equivalent) in a specialty related to
14 the intended employment; and

15 “(ii) the term ‘nonexempt H-1B nonimmigrant’
16 means an H-1B nonimmigrant who is not an ex-
17 empt H-1B nonimmigrant.

18 “(C) For purposes of subparagraph (A)—

19 “(i) in computing the number of full-time equiv-
20 alent employees and the number of H-1B non-
21 immigrants, exempt H-1B nonimmigrants shall not
22 be taken into account during the longer of—

23 “(I) the 6-month period beginning on the
24 date of the enactment of the Temporary Access

1 to Skilled Workers and H-1B Nonimmigrant
2 Program Improvement Act of 1998; or

3 “(II) the period beginning on the date of
4 the enactment of the Temporary Access to
5 Skilled Workers and H-1B Nonimmigrant Pro-
6 gram Improvement Act of 1998 and ending on
7 the date final regulations are issued to carry
8 out this paragraph; and

9 “(ii) any group treated as a single employer
10 under subsection (b), (c), (m), or (o) of section 414
11 of the Internal Revenue Code of 1986 shall be treat-
12 ed as a single employer.

13 “(4) For purposes of this subsection:

14 “(A) The term ‘area of employment’ means the
15 area within normal commuting distance of the work-
16 site or physical location where the work of the H-
17 1B nonimmigrant is or will be performed. If such
18 worksite or location is within a Metropolitan Statis-
19 tical Area, any place within such area is deemed to
20 be within the area of employment.

21 “(B) In the case of an application with respect
22 to one or more H-1B nonimmigrants by an em-
23 ployer, the employer is considered to ‘displace’ a
24 United States worker from a job if the employer lays
25 off the worker from a job that is essentially the

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1 equivalent of the job for which the nonimmigrant or
2 nonimmigrants is or are sought. A job shall not be
3 considered to be essentially equivalent of another job
4 unless it involves essentially the same responsibil-
5 ities, was held by a United States worker with sub-
6 stantially equivalent qualifications and experience,
7 and is located in the same area of employment as
8 the other job.

9 “(C) The term ‘H-1B nonimmigrant’ means an
10 alien admitted or provided status as a nonimmigrant
11 described in section 101(a)(15)(H)(i)(b).

12 “(D) The term ‘lays off’, with respect to a
13 worker—

14 “(i) means to cause the worker’s loss of
15 employment, other than through a discharge for
16 inadequate performance, violation of workplace
17 rules, cause, voluntary departure, voluntary re-
18 tirement, or the expiration of a grant or con-
19 tract (other than a temporary employment con-
20 tract entered into in order to evade a condition
21 described in subparagraph (E) or (F) of para-
22 graph (1)); but

23 “(ii) does not include any situation in
24 which the worker is offered, as an alternative to
25 such loss of employment, a similar employment

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1 opportunity with the same employer (or, in the
2 case of a placement of a worker with another
3 employer under paragraph (1)(F), with either
4 employer described in such paragraph) at equiv-
5 alent or higher compensation and benefits than
6 the position from which the employee was dis-
7 charged, regardless of whether or not the em-
8 ployee accepts the offer.

9 “(E) The term ‘United States worker’ means
10 an employee who—

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

13 “(ii) is an alien who is lawfully admitted
14 for permanent residence, is admitted as a refu-
15 gee under section 207, is granted asylum under
16 section 208, or is an immigrant otherwise au-
17 thorized, by this Act or by the Attorney Gen-
18 eral, to be employed.”.

19 (2) CONFORMING AMENDMENTS.—Section
20 212(n)(1) (8 U.S.C. 1182(n)(1)) is amended by
21 striking “a nonimmigrant described in section
22 101(a)(15)(H)(i)(b)” each place it appears and in-
23 serting “an H-1B nonimmigrant”.

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1 (c) IMPROVED POSTING OF NOTICE OF APPLICA-
2 TION.—Section 212(n)(1)(C)(ii) (8 U.S.C.
3 1182(n)(1)(C)(ii)) is amended to read as follows:

4 “(ii) if there is no such bargaining rep-
5 resentative, has provided notice of filing in the
6 occupational classification through such meth-
7 ods as physical posting in conspicuous locations
8 at the place of employment or electronic notifi-
9 cation to employees in the occupational classi-
10 fication for which H-1B nonimmigrants are
11 sought.”.

12 (d) REQUIREMENTS RELATING TO BENEFITS.—

13 (1) IN GENERAL.—Section 212(n)(1)(A) (8
14 U.S.C. 1182(n)(1)(A)) is amended—

15 (A) in clause (i), by striking “and” at the
16 end;

17 (B) in clause (ii), by striking the period at
18 the end and inserting “, and”; and

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

20 “(iii) is offering and will offer to H-1B
21 nonimmigrants, during the period of authorized
22 employment, benefits and eligibility for benefits
23 (including the opportunity to participate in
24 health, life, disability, and other insurance
25 plans; the opportunity to participate in retire-

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1 ment and savings plans; cash bonuses and
2 noncash compensation, such as stock options
3 (whether or not based on performance)) on the
4 same basis, and in accordance with the same
5 criteria, as the employer offers benefits and eli-
6 gibility for benefits to United States workers.”.

7 (2) ORDERS TO PROVIDE BENEFITS.—Section
8 212(n)(2)(D) (8 U.S.C. 1182(n)(2)(D)) is amend-
9 ed—

10 (A) by inserting “or has not provided bene-
11 fits or eligibility for benefits as required under
12 such paragraph,” after “required under para-
13 graph (1),”; and

14 (B) by inserting “or to provide such bene-
15 fits or eligibility for benefits” after “amounts of
16 back pay”.

17 (e) EFFECTIVE DATES.—The amendments made by
18 subsections (a) and (c) apply to applications filed under
19 section 212(n)(1) of the Immigration and Nationality Act
20 on or after the date final regulations are issued to carry
21 out such amendments, and the amendments made by sub-
22 section (b) take effect on the date of the enactment of
23 this Act.

24 (f) REDUCTION OF PERIOD FOR PUBLIC COM-
25 MENT.—In first promulgating regulations to implement

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1 the amendments made by this section in a timely manner,
2 the Secretary of Labor and the Attorney General may re-
3 duce to not less than 30 days the period of public comment
4 on proposed regulations.

5 **SEC. 103. CHANGES IN ENFORCEMENT AND PENALTIES.**

6 (a) **INCREASED ENFORCEMENT AND PENALTIES.**—
7 Section 212(n)(2)(C) (8 U.S.C. 1182(n)(2)(C)) is amend-
8 ed to read as follows:

9 “(C)(i) If the Secretary finds, after notice and oppor-
10 tunity for a hearing, a failure to meet a condition of para-
11 graph (1)(B), (1)(E), or (1)(F), a substantial failure to
12 meet a condition of paragraph (1)(C), (1)(D), or
13 (1)(G)(i)(I), or a misrepresentation of material fact in an
14 application—

15 “(I) the Secretary shall notify the Attorney
16 General of such finding and may, in addition, im-
17 pose such other administrative remedies (including
18 civil monetary penalties in an amount not to exceed
19 \$1,000 per violation) as the Secretary determines to
20 be appropriate; and

21 “(II) the Attorney General shall not approve
22 petitions filed with respect to that employer under
23 section 204 or 214(c) during a period of at least 1
24 year for aliens to be employed by the employer.

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1 “(ii) If the Secretary finds, after notice and oppor-
2 tunity for a hearing, a willful failure to meet a condition
3 of paragraph (1), a willful misrepresentation of material
4 fact in an application, or a violation of clause (iv)—

5 “(I) the Secretary shall notify the Attorney
6 General of such finding and may, in addition, im-
7 pose such other administrative remedies (including
8 civil monetary penalties in an amount not to exceed
9 \$5,000 per violation) as the Secretary determines to
10 be appropriate; and

11 “(II) the Attorney General shall not approve
12 petitions filed with respect to that employer under
13 section 204 or 214(c) during a period of at least 2
14 years for aliens to be employed by the employer.

15 “(iii) If the Secretary finds, after notice and oppor-
16 tunity for a hearing, a willful failure to meet a condition
17 of paragraph (1) or a willful misrepresentation of material
18 fact in an application, in the course of which failure or
19 misrepresentation the employer displaced a United States
20 worker employed by the employer within the period begin-
21 ning 90 days before and ending 90 days after the date
22 of filing of any visa petition supported by the applica-
23 tion—

24 “(I) the Secretary shall notify the Attorney
25 General of such finding and may, in addition, im-

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1 pose such other administrative remedies (including
2 civil monetary penalties in an amount not to exceed
3 \$35,000 per violation) as the Secretary determines
4 to be appropriate; and

5 “(II) the Attorney General shall not approve
6 petitions filed with respect to that employer under
7 section 204 or 214(c) during a period of at least 3
8 years for aliens to be employed by the employer.

9 “(iv) It is a violation of this clause for an employer
10 who has filed an application under this subsection to in-
11 timidate, threaten, restrain, coerce, blacklist, discharge, or
12 in any other manner discriminate against an employee
13 (which term, for purposes of this clause, includes a former
14 employee and an applicant for employment) because the
15 employee has disclosed information to the employer, or to
16 any other person, that the employee reasonably believes
17 evidences a violation of this subsection, or any rule or reg-
18 ulation pertaining to this subsection, or because the em-
19 ployee cooperates or seeks to cooperate in an investigation
20 or other proceeding concerning the employer’s compliance
21 with the requirements of this subsection or any rule or
22 regulation pertaining to this subsection.

23 “(v) The Secretary of Labor and the Attorney Gen-
24 eral shall devise a process under which an H-1B non-
25 immigrant who files a complaint regarding a violation of

1 clause (iv) and is otherwise eligible to remain and work
2 in the United States may be allowed to seek other appro-
3 priate employment in the United States for a period (not
4 to exceed the duration of the alien's authorized admission
5 as such a nonimmigrant).

6 “(vi) It is a violation of this clause for an employer
7 who has filed an application under this subsection to re-
8 quire an H-1B nonimmigrant to pay a penalty (as deter-
9 mined under State law) for ceasing employment with the
10 employer prior to a date agreed to by the nonimmigrant
11 and the employer. If the Secretary finds, after notice and
12 opportunity for a hearing, that an employer has committed
13 such a violation, the Secretary may impose a civil mone-
14 tary penalty of \$1,000 for each such violation and issue
15 an administrative order requiring the return to the non-
16 immigrant of any amount required to be paid in violation
17 of this clause, or, if the nonimmigrant cannot be located,
18 requiring payment of any such amount to the general fund
19 of the Treasury.”.

20 (b) USE OF ARBITRATION PROCESS FOR DISPUTES
21 INVOLVING QUALIFICATIONS OF UNITED STATES WORK-
22 ERS NOT HIRED.—

23 (1) IN GENERAL.—Section 212(n) (8 U.S.C.
24 1182(n)), as amended by section 102(b), is further
25 amended by adding at the end the following:

1 “(5)(A) This paragraph shall apply instead of sub-
2 paragraphs (A) through (E) of paragraph (2) in the case
3 of a violation described in subparagraph (B).

4 “(B) The Attorney General shall establish a process
5 for the receipt, initial review, and disposition in accord-
6 ance with this paragraph of complaints respecting an em-
7 ployer’s failure to meet the condition of paragraph
8 (1)(G)(i)(II) or a petitioner’s misrepresentation of mate-
9 rial facts with respect to such condition. Complaints may
10 be filed by an aggrieved individual who has submitted a
11 resume or otherwise applied in a reasonable manner for
12 the job that is the subject of the condition. No proceeding
13 shall be conducted under this paragraph on a complaint
14 concerning such a failure or misrepresentation unless the
15 Attorney General determines that the complaint was filed
16 not later than 12 months after the date of the failure or
17 misrepresentation, respectively.

18 “(C) If the Attorney General finds that a complaint
19 has been filed in accordance with subparagraph (B) and
20 there is reasonable cause to believe that such a failure or
21 misrepresentation described in such complaint has oc-
22 curred, the Attorney General shall initiate binding arbitra-
23 tion proceedings by requesting the Federal Mediation and
24 Conciliation Service to appoint an arbitrator from the ros-
25 ter of arbitrators maintained by such Service. The proce-

1 dure and rules of such Service shall be applicable to the
2 selection of such arbitrator and to such arbitration pro-
3 ceedings. The Attorney General shall pay the fee and ex-
4 penses of the arbitrator.

5 “(D)(i) The arbitrator shall make findings respecting
6 whether a failure or misrepresentation described in sub-
7 paragraph (B) occurred. If the arbitrator concludes that
8 failure or misrepresentation was willful, the arbitrator
9 shall make a finding to that effect. The arbitrator may
10 not find such a failure or misrepresentation (or that such
11 a failure or misrepresentation was willful) unless the com-
12 plainant demonstrates such a failure or misrepresentation
13 (or its willful character) by clear and convincing evidence.
14 The arbitrator shall transmit the findings in the form of
15 a written opinion to the parties to the arbitration and the
16 Attorney General. Such findings shall be final and conclu-
17 sive, and, except as provided in this subparagraph, no offi-
18 cial or court of the United States shall have power or ju-
19 risdiction to review any such findings.

20 “(ii) The Attorney General may review and reverse
21 or modify the findings of an arbitrator only on the same
22 bases as an award of an arbitrator may be vacated or
23 modified under section 10 or 11 of title 9, United States
24 Code.

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1 “(iii) With respect to the findings of an arbitrator,
2 a court may review only the actions of the Attorney Gen-
3 eral under clause (ii) and may set aside such actions only
4 on the grounds described in subparagraph (A), (B), or (C)
5 of section 706(a)(2) of title 5, United States Code. Not-
6 withstanding any other provision of law, such judicial re-
7 view may only be brought in an appropriate United States
8 court of appeals.

9 “(E) If the Attorney General receives a finding of an
10 arbitrator under this paragraph that an employer has
11 failed to meet the condition of paragraph (1)(G)(i)(II) or
12 has misrepresented a material fact with respect to such
13 condition, unless the Attorney General reverses or modi-
14 fies the finding under subparagraph (D)(ii)—

15 “(i) the Attorney General may impose adminis-
16 trative remedies (including civil monetary penalties
17 in an amount not to exceed \$1,000 per violation or
18 \$5,000 per violation in the case of a willful failure
19 or misrepresentation) as the Attorney General deter-
20 mines to be appropriate; and

21 “(ii) the Attorney General is authorized to not
22 approve petitions filed with respect to that employer
23 under section 204 or 214(c) during a period of not
24 more than 1 year for aliens to be employed by the
25 employer.

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1 “(F) The Attorney General shall not delegate, to any
2 other employee or official of the Department of Justice,
3 any function of the Attorney General under this para-
4 graph, until 60 days after the Attorney General has sub-
5 mitted a plan for such delegation to the Committees on
6 the Judiciary of the United States House of Representa-
7 tives and the Senate ~~with respect to such delegation.”~~

8 (2) CONFORMING AMENDMENT.—The first sen-
9 tence of section 212(n)(2)(A) (8 U.S.C.
10 1182(n)(2)(A)) is amended by striking “The Sec-
11 retary” and inserting “Subject to paragraph (5)(A),
12 the Secretary”.

13 (c) LIABILITY OF PETITIONING EMPLOYER IN CASE
14 OF PLACEMENT OF H-1B NONIMMIGRANT WITH AN-
15 OTHER EMPLOYER.—Section 212(n)(2) (8 U.S.C.
16 1182(n)(2)) is amended by adding at the end the follow-
17 ing:

18 “(E) If an H-1B-dependent employer places a non-
19 exempt H-1B nonimmigrant with another employer as
20 provided under paragraph (1)(F) and the other employer
21 has displaced or displaces a United States worker em-
22 ployed by such other employer during the period described
23 in such paragraph, such displacement shall be considered
24 for purposes of this paragraph a failure, by the placing
25 employer, to meet a condition specified in an application

1 submitted under paragraph (1); except that the Attorney
2 General may impose a sanction described in subclause (II)
3 of subparagraph (C)(i), (C)(ii), or (C)(iii) only if the Sec-
4 retary of Labor found that such placing employer—

5 “(i) knew or had reason to know of such dis-
6 placement at the time of the placement of the non-
7 immigrant with the other employer; or

8 “(ii) has been subject to a sanction under this
9 subparagraph based upon a previous placement of
10 an H-1B nonimmigrant with the same other em-
11 ployer.”.

12 (d) SPOT INVESTIGATIONS DURING PROBATIONARY
13 PERIOD.—Section 212(n)(2) (8 U.S.C. 1182(n)(2)), as
14 amended by subsection (c), is further amended by adding
15 at the end the following:

16 “(F) The Secretary may, on a case-by-case basis,
17 subject an employer to random investigations for a period
18 of up to 5 years, beginning on the date that the employer
19 is found by the Secretary to have committed a willful fail-
20 ure to meet a condition of paragraph (1) (or has been
21 found under paragraph (5) to have committed a willful
22 failure to meet the condition of paragraph (1)(G)(i)(II))
23 or to have made a willful misrepresentation of material
24 fact in an application. The preceding sentence shall apply
25 to an employer regardless of whether or not the employer

1 is an H-1B-dependent employer. The authority of the Sec-
2 retary under this subparagraph shall not be construed to
3 be subject to, or limited by, the requirements of subpara-
4 graph (A).”

5 (e) ADDITIONAL INVESTIGATIVE AUTHORITY.—

6 (1) IN GENERAL.—Section 212(n)(2) (8 U.S.C.
7 1182(n)(2)), as amended by subsection (d), is fur-
8 ther amended by adding at the end the following:

9 “(G)(i) If the Secretary receives specific credible in-
10 formation from a source, who is likely to have knowledge
11 of an employer’s practices or employment conditions, or
12 an employer’s compliance with the employer’s labor condi-
13 tion application under paragraph (1), and whose identity
14 is known to the Secretary, and such information provides
15 reasonable cause to believe that the employer has commit-
16 ted a willful failure to meet a condition of paragraph
17 (1)(A), (1)(B), (1)(E), (1)(F), or (1)(G)(i)(I), has en-
18 gaged in a pattern or practice of failures to meet such
19 a condition, or has committed a substantial failure to meet
20 such a condition that affects multiple employees, the Sec-
21 retary may conduct a 30-day investigation into the alleged
22 failure or failures. The Secretary (or the Acting Secretary
23 in the case of the Secretary’s absence or disability) shall
24 personally certify that the requirements for conducting
25 such an investigation have been met and shall approve

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1 commencement of the investigation. ~~At the request of the~~
2 ~~source,~~ the Secretary may withhold the identity of the
3 source from the employer, and the source's identity shall
4 not be subject to disclosure under section 552 of title 5,
5 United States Code.

6 “(ii) The Secretary shall establish a procedure under
7 which any person who desires to provide to the Secretary
8 information described in clause (i) that may be used, in
9 whole or in part, as the basis for commencement of an
10 investigation described in the clause is required to provide
11 the information in writing on a form developed and pro-
12 vided by the Secretary and completed by or on behalf of
13 the person.

14 “(iii) The Secretary shall provide notice to an em-
15 ployer with respect to whom the Secretary has received
16 information described in clause (i), prior to the commence-
17 ment of an investigation under such clause, of the receipt
18 of the information and of the potential for an investiga-
19 tion. The notice shall be provided in such a manner, and
20 shall contain sufficient detail, to permit the employer to
21 respond to the allegations before an investigation is com-
22 menced. The Secretary is not required to comply with this
23 clause if the Secretary determines that to do so would
24 interfere with an effort by the Secretary to secure compli-

25

1 ance by the employer with the requirements of this sub-
2 section. *A determination by the Secretary under clause*
3 *(iii) shall not be subject to review by any*
 “(iv) Nothing in this subparagraph shall be construed *court.*
4 as authorizing the Secretary to initiate, or approve the ini-
5 tiation of, an investigation under clause (i) without the
6 receipt, from a person or persons who are not employed
7 by the Department of Labor, of information described in
8 such clause that provides the reasonable cause described
9 in such clause. The receipt by the Secretary of information
10 submitted by an employer to the Attorney General or the
11 Secretary for purposes of securing the employment of an
12 H-1B nonimmigrant shall not be considered a receipt of
13 information for purposes of this subparagraph.”.

14 (2) SUNSET.—The amendment made by para-
15 graph (1) shall cease to be effective on September
16 30, 2001.

17 **SEC. 104. COLLECTION AND USE OF H-1B NONIMMIGRANT**
18 **FEEES FOR SCHOLARSHIPS FOR LOW-INCOME**
19 **MATH, ENGINEERING, AND COMPUTER**
20 **SCIENCE STUDENTS AND JOB TRAINING OF**
21 **UNITED STATES WORKERS.**

22 (a) IMPOSITION OF FEE.—Section 214(c) (8 U.S.C.
23 1184(c)) is amended by adding at the end the following:

24 “(9)(A) The Attorney General shall impose a fee on
25 an employer (excluding an employer described in subpara-

26

1 graph (A) or (B) of section 212(p)(1) and an employer
2 filing for new concurrent employment) as a condition for
3 the approval of a petition filed on or after October 1,
4 1998, and before October 1, 2001, under paragraph (1)—

5 “(i) initially to grant an alien nonimmigrant
6 status described in section 101(a)(15)(H)(i)(b); or

7 “(ii) to extend for the first time the stay of an
8 alien having such status.

9 “(B) The amount of the fee shall be \$500 for each
10 such nonimmigrant.

11 “(C) Fees collected under this paragraph shall be de-
12 posited in the Treasury in accordance with section 286(s).

13 “(D)(i) An employer may not require an alien who
14 is the subject of the petition for which a fee is imposed
15 under this paragraph to reimburse, or otherwise com-
16 pensate, the employer for part or all of the cost of such
17 fee.

18 “(ii) Section 274A(g)(2) shall apply to a violation of
19 clause (i) in the same manner as it applies to a violation
20 of section 274A(g)(1).”.

21 (b) ESTABLISHMENT OF ACCOUNT; USE OF FEES.—
22 Section 286 (8 U.S.C. 1356) is amended by adding at the
23 end the following:

24 “(s) H-1B NONIMMIGRANT PETITIONER AC-
25 COUNT.—

27

1 “(1) IN GENERAL.—There is established in the
2 general fund of the Treasury a separate account,
3 which shall be known as the ‘H-1B Nonimmigrant
4 Petitioner Account’. Notwithstanding any other sec-
5 tion of this title, there shall be deposited as offset-
6 ting receipts into the account all fees collected under
7 section 214(c)(9).

8 “(2) USE OF FEES FOR JOB TRAINING.—63
9 percent of amounts deposited into the H-1B Non-
10 immigrant Petitioner Account shall remain available
11 to the Secretary of Labor until expended for dem-
12 onstration programs and projects described in sec-
13 tion 104(c) of the Temporary Access to Skilled
14 Workers and H-1B Nonimmigrant Program Im-
15 provement Act of 1998.

16 “(3) USE OF FEES FOR LOW-INCOME SCHOLAR-
17 SHIP PROGRAM.—32 percent of the amounts depos-
18 ited into the H-1B Nonimmigrant Petitioner Ac-
19 count shall remain available to the Director of the
20 National Science Foundation until expended for
21 scholarships described in section 104(d) of the Tem-
22 porary Access to Skilled Workers and H-1B Non-
23 immigrant Program Improvement Act of 1998 for
24 low-income students enrolled in a program of study

1 leading to a degree in mathematics, engineering, or
2 computer science.

3 “(4) USE OF FEES FOR APPLICATION PROCESS-
4 ING AND ENFORCEMENT.—2.5 percent of the
5 amounts deposited into the H-1B Nonimmigrant
6 Petitioner Account shall remain available to the Sec-
7 retary of Labor until expended for decreasing the
8 processing time for applications under section
9 212(n)(1), and 2.5 percent of such amounts shall re-
10 main available to such Secretary until expended for
11 carrying out section 212(n)(2). Notwithstanding the
12 preceding sentence, both of the amounts made avail-
13 able for any fiscal year pursuant to the preceding
14 sentence shall be available to such Secretary, and
15 shall remain available until expended, only for carry-
16 ing out section 212(n)(2) until the Secretary sub-
17 mits to the Congress a report containing a certifi-
18 cation that, during the most recently concluded cal-
19 endar year, the Secretary substantially complied
20 with the requirement in section 212(n)(1) relating to
21 the provision of the certification described in section
22 101(a)(15)(H)(i)(b) within a 7-day period.”.

23 (c) DEMONSTRATION PROGRAMS AND PROJECTS TO
24 PROVIDE TECHNICAL SKILLS TRAINING FOR WORK-
25 ERS.—

29

1 (1) IN GENERAL.—Subject to paragraph (3), in
2 establishing demonstration programs under section
3 452(c) of the Job Training Partnership Act (29
4 U.S.C. 1732(c)), as in effect on the date of the en-
5 actment of this Act, or demonstration programs or
6 projects under section 171(b) of the Workforce In-
7 vestment Act of 1998, the Secretary of Labor shall
8 establish demonstration programs or projects to pro-
9 vide technical skills training for workers, including
10 both employed and unemployed workers.

11 (2) GRANTS.—Subject to paragraph (3), the
12 Secretary of Labor shall award grants to carry out
13 the programs and projects described in paragraph
14 (1) to—

15 (A)(i) private industry councils established
16 under section 102 of the Job Training Partner-
17 ship Act (29 U.S.C. 1512), as in effect on the
18 date of the enactment of this Act; or

19 (ii) local boards that will carry out such
20 programs or projects through one-stop delivery
21 systems established under section 121 of the
22 Workforce Investment Act of 1998; or

23 (B) regional consortia of councils or local
24 boards described in subparagraph (A).

30

1 (3) LIMITATION.—The Secretary of Labor shall
2 establish programs and projects under paragraph
3 (1), including awarding grants to carry out such
4 programs and projects under paragraph (2), only
5 with funds made available under section 286(s)(2) of
6 the Immigration and Nationality Act, and not with
7 funds made available under the Job Training Part-
8 nership Act or the Workforce Investment Act of
9 1998.

10 (d) LOW-INCOME SCHOLARSHIP PROGRAM.—

11 (1) ESTABLISHMENT.—The Director of the Na-
12 tional Science Foundation (referred to in this sub-
13 section as the “Director”) shall award scholarships
14 to low-income individuals to enable such individuals
15 to pursue associate, undergraduate, or graduate level
16 degrees in mathematics, engineering, or computer
17 science.

18 (2) ELIGIBILITY.—

19 (A) IN GENERAL.—To be eligible to receive
20 a scholarship under this subsection, an individ-
21 ual—

22 (i) must be a citizen or national of the
23 United States or an alien lawfully admitted
24 to the United States for permanent resi-
25 dence;

31

1 (ii) shall prepare and submit to the
2 Director an application at such time, in
3 such manner, and containing such infor-
4 mation as the Director may require; and

5 (iii) shall certify to the Director that
6 the individual intends to use amounts re-
7 ceived under the scholarship to enroll or
8 continue enrollment at an institution of
9 higher education (as defined in section
10 1201(a) of the Higher Education Act of
11 1965) in order to pursue an associate, un-
12 dergraduate, or graduate level degree in
13 mathematics, engineering, or computer
14 science.

15 (B) ABILITY.—Awards of scholarships
16 under this subsection shall be made by the Di-
17 rector solely on the basis of the ability of the
18 applicant, except that in any case in which 2 or
19 more applicants for scholarships are deemed by
20 the Director to be possessed of substantially
21 equal ability, and there are not sufficient schol-
22 arships available to grant one to each of such
23 applicants, the available scholarship or scholar-
24 ships shall be awarded to the applicants in a
25 manner that will tend to result in a geographi-

1 cally wide distribution throughout the United
2 States of recipients' places of permanent resi-
3 dence.

4 (3) LIMITATION.—The amount of a scholarship
5 awarded under this subsection shall be determined
6 by the Director, except that the Director shall not
7 award a scholarship in an amount exceeding \$2,500
8 per year.

9 (4) FUNDING.—The Director shall carry out
10 this subsection only with funds made available under
11 section 286(s)(3) of the Immigration and National-
12 ity Act.

13 **SEC. 105. COMPUTATION OF PREVAILING WAGE LEVEL.**

14 (a) IN GENERAL.—Section 212 (8 U.S.C. 1182) is
15 amended by adding at the end the following:

16 “(p)(1) In computing the prevailing wage level for an
17 occupational classification in an area of employment for
18 purposes of subsections (n)(1)(A)(i)(II) and (a)(5)(A) in
19 the case of an employee of—

20 “(A) an institution of higher education (as de-
21 fined in section 1201(a) of the Higher Education
22 Act of 1965), or a related or affiliated nonprofit en-
23 tity; or

24 “(B) a nonprofit research organization or a
25 Governmental research organization;

1 the prevailing wage level shall only take into account em-
2 ployees at such institutions and organizations in the area
3 of employment.

4 “(2) With respect to a professional athlete (as defined
5 in subsection (a)(5)(A)(iii)(II)) when the job opportunity
6 is covered by professional sports league rules or regula-
7 tions, the wage set forth in those rules or regulations shall
8 be considered as not adversely affecting the wages of Unit-
9 ed States workers similarly employed and be considered
10 the prevailing wage.”.

11 (b) EFFECTIVE DATE.—The amendment made by
12 subsection (a) applies to prevailing wage computations
13 made for applications filed on or after the date of the en-
14 actment of this Act.

15 **SEC. 106. IMPROVING COUNT OF H-1B AND H-2B NON-**
16 **IMMIGRANTS.**

17 (a) ENSURING ACCURATE COUNT.—The Attorney
18 General shall take such steps as are necessary to maintain
19 an accurate count of the number of aliens subject to the
20 numerical limitations of section 214(g)(1) of the Immigra-
21 tion and Nationality Act (8 U.S.C. 1184(g)(1)) who are
22 issued visas or otherwise provided nonimmigrant status.

23 (b) REVISION OF PETITION FORMS.—The Attorney
24 General shall take such steps as are necessary to revise
25 the forms used for petitions for visas or nonimmigrant sta-

34

1 tus under clause (i)(b) or (ii)(b) of section 101(a)(15)(H)
2 of the Immigration and Nationality Act (8 U.S.C.
3 1101(a)(15)(H)) so as to ensure that the forms provide
4 the Attorney General with sufficient information to permit
5 the Attorney General accurately to count the number of
6 aliens subject to the numerical limitations of section
7 214(g)(1) of such Act (8 U.S.C. 1184(g)(1)) who are is-
8 sued visas or otherwise provided nonimmigrant status.

9 (c) REPORTS.—Beginning with fiscal year 1999, the
10 Attorney General shall provide to the Congress—

11 (1) on a quarterly basis a report on the num-
12 bers of individuals who were issued visas or other-
13 wise provided nonimmigrant status during the pre-
14 ceding 3-month period under section
15 101(a)(15)(H)(i)(b) of the Immigration and Nation-
16 ality Act (8 U.S.C. 1101(a)(15)(H)(i)(b)); and

17 (2) on an annual basis a report on the countries
18 of origin and occupations of, educational levels at-
19 tained by, and compensation paid to, individuals is-
20 sued visas or provided nonimmigrant status under
21 such sections during such period.

22 Each report under paragraph (2) shall include the number
23 of individuals described in paragraph (1) during the year
24 who were issued visas pursuant to petitions filed by insti-

1 tutions or organizations described in section 212(p)(1) of
2 such Act (as added by section 105 of this Act).

3 **SEC. 107. REPORT ON OLDER WORKERS IN THE INFORMA-**
4 **TION TECHNOLOGY FIELD.**

5 (a) **STUDY.**—The Secretary of Commerce shall enter
6 into a contract with the President of the National Acad-
7 emy of Sciences to conduct a study, using the best avail-
8 able data, assessing the status of older workers in the in-
9 formation technology field. The study shall consider the
10 following:

11 (1) The existence and extent of age discrimina-
12 tion in the information technology workplace.

13 (2) The extent to which there is a difference,
14 based on age, in—

15 (A) promotion and advancement;

16 (B) working hours;

17 (C) telecommuting;

18 (D) salary; and

19 (E) stock options, bonuses, and other bene-
20 fits.

21 (3) The relationship between rates of advance-
22 ment, promotion, and compensation to experience,
23 skill level, education, and age.

24 (4) Differences in skill level on the basis of age.

1 (b) REPORT.—Not later than October 1, 2000, the
2 Secretary of Commerce shall submit to the Committees
3 on the Judiciary of the United States House of Represent-
4 atives and the Senate a report containing the results of
5 the study described in subsection (a).

6 **SEC. 108. REPORT ON HIGH TECHNOLOGY LABOR MARKET**
7 **NEEDS; REPORTS ON ECONOMIC IMPACT OF**
8 **INCREASE IN H-1B NONIMMIGRANTS.**

9 (a) NATIONAL SCIENCE FOUNDATION STUDY AND
10 REPORT.—

11 (1) IN GENERAL.—The Director of the National
12 Science Foundation shall conduct a study to assess
13 labor market needs for workers with high technology
14 skills during the next 10 years. The study shall in-
15 vestigate and analyze the following:

16 (A) Future training and education needs of
17 companies in the high technology and informa-
18 tion technology sectors and future training and
19 education needs of United States students to
20 ensure that students' skills at various levels are
21 matched to the needs in such sectors.

22 (B) An analysis of progress made by edu-
23 cators, employers, and government entities to
24 improve the teaching and educational level of
25 American students in the fields of math,

1 science, computer science, and engineering since
2 1998.

3 (C) An analysis of the number of United
4 States workers currently or projected to work
5 overseas in professional, technical, and manage-
6 rial capacities.

7 (D) The relative achievement rates of
8 United States and foreign students in second-
9 ary schools in a variety of subjects, including
10 math, science, computer science, English, and
11 history.

12 (E) The relative performance, by subject
13 area, of United States and foreign students in
14 postsecondary and graduate schools as com-
15 pared to secondary schools.

16 (F) The needs of the high technology sec-
17 tor for foreign workers with specific skills and
18 the potential benefits and costs to United
19 States employers, workers, consumers, post-
20 secondary educational institutions, and the
21 United States economy, from the entry of
22 skilled foreign professionals in the fields of
23 science and engineering.

1 (G) The needs of the high technology sec-
2 tor to adapt products and services for export to
3 particular local markets in foreign countries.

4 (H) An examination of the amount and
5 trend of moving the production or performance
6 of products and services now occurring in the
7 United States abroad.

8 (2) REPORT.—Not later than October 1, 2000,
9 the Director of the National Science Foundation
10 shall submit to the Committees on the Judiciary of
11 the United States House of Representatives and the
12 Senate a report containing the results of the study
13 described in paragraph (1).

14 (3) INVOLVEMENT.—The study under para-
15 graph (1) shall be conducted in a manner that en-
16 sures the participation of individuals representing a
17 variety of points of view.

18 (b) REPORTING ON STUDIES SHOWING ECONOMIC
19 IMPACT OF H-1B NONIMMIGRANT INCREASE.—The
20 Chairman of the Board of Governors of the Federal Re-
21 serve System, the Director of the Office of Management
22 and Budget, the Chair of the Council of Economic Advis-
23 ers, the Secretary of the Treasury, the Secretary of Com-
24 merce, the Secretary of Labor, and any other member of
25 the Cabinet, shall promptly report to the Congress the re-

1 sults of any reliable study that suggests, based on legiti-
2 mate economic analysis, that the increase effected by sec-
3 tion 101(a) of this Act in the number of aliens who may
4 be issued visas or otherwise provided nonimmigrant status
5 under section 101(a)(15)(H)(i)(b) of the Immigration and
6 Nationality Act has had an impact on any national eco-
7 nomic indicator, such as the level of inflation or unemploy-
8 ment, that warrants action by the Congress.

9 **TITLE II—SPECIAL IMMIGRANT**
10 **STATUS FOR CERTAIN NATO**
11 **CIVILIAN EMPLOYEES**

12 **SEC. 201. SPECIAL IMMIGRANT STATUS FOR CERTAIN NATO**
13 **CIVILIAN EMPLOYEES.**

14 (a) IN GENERAL.—Section 101(a)(27) (8 U.S.C.
15 1101(a)(27)) is amended—

16 (1) by striking “or” at the end of subparagraph
17 (J),

18 (2) by striking the period at the end of sub-
19 paragraph (K) and inserting “; or”, and

20 (3) by adding at the end the following new sub-
21 paragraph:

22 “(L) an immigrant who would be described in
23 clause (i), (ii), (iii), or (iv) of subparagraph (I) if
24 any reference in such a clause—

40

1 “(i) to an international organization de-
2 scribed in paragraph (15)(G)(i) were treated as
3 a reference to the North Atlantic Treaty Orga-
4 nization (NATO);

5 “(ii) to a nonimmigrant under paragraph
6 (15)(G)(iv) were treated as a reference to a
7 nonimmigrant classifiable under NATO-6 (as a
8 member of a civilian component accompanying
9 a force entering in accordance with the provi-
10 sions of the NATO Status-of-Forces Agree-
11 ment, a member of a civilian component at-
12 tached to or employed by an Allied Head-
13 quarters under the ‘Protocol on the Status of
14 International Military Headquarters’ set up
15 pursuant to the North Atlantic Treaty, or as a
16 dependent); and

17 “(iii) to the Immigration Technical Correc-
18 tions Act of 1988 or to the Immigration and
19 Nationality Technical Corrections Act of 1994
20 were a reference to the Temporary Access to
21 Skilled Workers and H-1B Nonimmigrant Pro-
22 gram Improvement Act of 1998.”.

23 (b) CONFORMING NONIMMIGRANT STATUS FOR CER-
24 TAIN PARENTS OF SPECIAL IMMIGRANT CHILDREN.—

41

1 Section 101(a)(15)(N) (8 U.S.C. 1101(a)(15)(N)) is
2 amended—

3 (1) by inserting “(or under analogous authority
4 under paragraph (27)(L))” after “(27)(I)(i)”, and
5 (2) by inserting “(or under analogous authority
6 under paragraph (27)(L))” after “(27)(I)”.

7 **TITLE III—MISCELLANEOUS**
8 **PROVISION**

9 **SEC. 301. ACADEMIC HONORARIA.**

10 (a) IN GENERAL.—Section 212 (8 U.S.C. 1182), as
11 amended by section 105, is further amended by adding
12 at the end the following:

13 “(q) Any alien admitted under section 101(a)(15)(B)
14 may accept an honorarium payment and associated inci-
15 dental expenses for a usual academic activity or activities
16 (lasting not longer than 9 days at any single institution),
17 as defined by the Attorney General in consultation with
18 the Secretary of Education, if such payment is offered by
19 an institution or organization described in subsection
20 (p)(1) and is made for services conducted for the benefit
21 of that institution or entity and if the alien has not accept-
22 ed such payment or expenses from more than 5 institu-
23 tions or organizations in the previous 6-month period.”.

42

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall apply to activities occurring on or
3 after the date of the enactment of this Act.

Passed the House of Representatives September 24,
1998.

Attest:

Clerk.

106TH CONGRESS
2D SESSION

H. R. 3736

AN ACT

To amend the Immigration and Nationality Act to
make changes relating to H-1B nonimmigrants.