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**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001**

Thursday, July 30, 1998

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: Ronald E. Jones (for) Assistant Director for Legislative Reference 

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SUBJECT: Statement of Administration Policy on HR3736 Workforce Improvement and Protection Act of 1998

DEADLINE: COB Thursday, July 30, 1998

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: House and Senate floor action on H.R. 3736 is expected on Friday, July 31st.

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DRAFT -- NOT FOR RELEASE

July 30, 1998
(House)

H.R. 3736 - Workforce Improvement and Protection Act of 1998
(Smith (R) Texas and 3 cosponsors)

The Administration strongly opposes House passage of H.R. 3736, the "Workforce Improvement and Protection Act of 1998," as amended. If this bill is presented to the President, his senior advisors will recommend that he veto it. *→ see attached amendment in the nature of a substitute*

This bill is intended to respond to a skills shortage in the information technology industry by increasing the annual cap on the number of temporary visas for foreign "specialty" workers under the H-1B program. Regrettably, H.R. 3736, as amended, emphasizes providing opportunities for foreign workers rather than providing opportunities for and protecting U.S. workers.

The Administration supports sound and balanced legislative efforts to address shortages of skilled workers within certain sectors of our economy. The most important way to increase the availability of skilled workers must be to improve the skills of U.S. workers and ensure that employers seek U.S. workers first. While it may be necessary in the short-term to increase the number of visas for temporary foreign workers, this must only be done in conjunction with additional efforts to increase the skill level of U.S. workers and meaningful reforms to the H-1B program.

Although this bill provides for certain employers to attest to recruitment and lay-off provisions, the attestations are too weak to adequately protect U.S. workers and far too many employers are exempt from their obligations. Moreover, the bill, as structured, will not generate sufficient funds for increased training opportunities for U.S. workers. Finally, rather than strengthening enforcement to prevent employer abuses of the H-1B program, H.R. 3736, as amended, undermines some of the program's important enforcement provisions.

The Administration wants to work with the Congress to develop a bill that addresses the growing demand for highly skilled workers, while effectively protecting and promoting the interests of U.S. workers and enhancing the international competitiveness of important U.S. industries.

* * * * *

AMENDMENT #___ TO H.R. 8736
OFFERED BY MR. SMITH OF TEXAS

Strike all after the enacting clause and insert the following:

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 Nationality 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 State student incentive grant programs and job training of United States workers.

Sec. 105. Determinations on labor condition applications to be made by Attorney General.

Sec. 106. Determination of prevailing wage level.

Sec. 107. Improving count of H-1B and H-2B nonimmigrants.

Sec. 108. Report on sex discrimination in the information technology field.

Sec. 109. Report on high-technology labor market needs.

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.

July 29, 1998 (11:46 p.m.)

1 (c) AMENDMENTS TO IMMIGRATION AND NATIONAL-
2 ITY ACT.—Except as otherwise specifically provided in
3 this Act, whenever in this Act an amendment is expressed
4 in terms of an amendment to a section or other provision,
5 the reference shall be considered to be made to that sec-
6 tion or other provision of the Immigration and Nationality
7 Act (8 U.S.C. 1101 et seq.).

8 **TITLE I—PROVISIONS RELATING**
9 **TO H-1B NONIMMIGRANTS**

10 **SEC. 101. TEMPORARY INCREASE IN ACCESS TO TEM-**
11 **PORARY SKILLED PERSONNEL UNDER H-1B**
12 **PROGRAM**

13 (a) TEMPORARY INCREASE IN SKILLED NON-
14 IMMIGRANT WORKERS.—Paragraph (1)(A) of section
15 214(g) (8 U.S.C. 1184(g)) is amended to read as follows:

16 “(A) under section 101(a)(15)(E)(i)(b), may
17 not exceed—

18 “(i) 65,000 in each fiscal year before fiscal
19 year 1998;

20 “(ii) 85,000 in fiscal year 1998;

21 “(iii) 95,000 in fiscal year 1999;

22 “(iv) 105,000 in fiscal year 2000;

23 “(v) 115,000 in each of fiscal years 2001
24 and 2002; and

1 “(vi) 65,000 in each succeeding fiscal
2 year.”.

3 (b) TEMPORARY CAP ON NONIMMIGRANT, NON-
4 PHYSICIAN HEALTH CARE WORKERS.—Section 214(g) (8
5 U.S.C. 1184(g)) is further amended by adding at the end
6 the following:

7 “(5) The total number of aliens described in section
8 212(a)(5)(C) who may be issued visas or otherwise pro-
9 vided nonimmigrant status during each of fiscal years
10 1999, 2000, 2001, and 2002 under section
11 101(a)(15)(H)(i)(b) may not exceed 7,500.”.

12 (c) EFFECTIVE DATES.—The amendment made by
13 subsection (a) applies beginning with fiscal year 1998 and
14 the amendment made by subsection (b) applies beginning
15 with fiscal year 1999.

16 SEC. 102. PROTECTION AGAINST DISPLACEMENT OF
17 UNITED STATES WORKERS IN CASE OF H-1B-
18 DEPENDENT EMPLOYERS.

19 (a) PROTECTION AGAINST LAY OFF AND REQUIRE-
20 MENT FOR PRIOR RECRUITMENT OF UNITED STATES
21 WORKERS.—

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

1 “(E)(i) In the case of an application described
2 in clause (ii), the employer did not displace and will
3 not displace a United States worker (as defined in
4 paragraph (4)) employed by the employer within the
5 period beginning 90 days before and ending 90 days
6 after the date of filing of any visa petition supported
7 by the application.

8 “(ii) An application described in this clause is
9 an application filed on or after the date final regula-
10 tions are first promulgated to carry out this sub-
11 paragraph (but not earlier than October 1, 1998),
12 and before October 1, 2002, by an H-1B-dependent
13 employer (as defined in paragraph (8)). An applica-
14 tion is not described in this clause if the only H-1B
15 nonimmigrants sought in the application are exempt
16 H-1B nonimmigrants.

17 “(F) In the case of an application described in
18 subparagraph (E)(ii), the employer will not place the
19 nonimmigrant with another employer (regardless of
20 whether or not such other employer is an H-1B-de-
21 pendent employer) where—

22 “(i) the nonimmigrant performs duties in
23 whole or in part at one or more worksites
24 owned, operated, or controlled by such other
25 employer; and

1 “(ii) there are indicia of an employment re-
2 lationship between the nonimmigrant and such
3 other employer;

4 unless the employer has inquired of the other em-
5 ployer as to whether, and has no knowledge that, the
6 other employer has displaced or intends to displace
7 a United States worker employed by such other em-
8 ployer within the period beginning 90 days before
9 and ending 90 days after the date of filing of any
10 visa petition supported by the application.

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

14 “(I) has taken good faith steps to recruit,
15 in the United States using procedures that
16 meet industry-wide standards and offering com-
17 pensation that is at least as great as that re-
18 quired to be offered to H-1B nonimmigrants
19 under subparagraph (A), United States workers
20 for the job for which the nonimmigrant or non-
21 immigrants is or are sought; and

22 “(II) has offered the job to any United
23 States worker who applies and is equally or bet-
24 ter qualified for the job for which the non-
25 immigrant or nonimmigrants is or are sought.

1 “(ii) The conditions described in clause (i) shall
2 not apply to an application filed with respect to the
3 employment of an H-1B nonimmigrant who is de-
4 scribed in subparagraph (A), (B), or (C) of section
5 208(b)(1).”.

6 (2) NOTICE ON APPLICATION OF POTENTIAL LI-
7 ABILITY OF PLACING EMPLOYERS.—Section
8 212(n)(1) (8 U.S.C. 1182(n)(1)) is amended by add-
9 ing at the end the following: “The application form
10 shall include a clear statement explaining the liabil-
11 ity under subparagraph (F) of a placing employer if
12 the other employer described in such subparagraph
13 displaces a United States worker as described in
14 such subparagraph.”.

15 (3) CONSTRUCTION.—Section 212(n)(1) (8
16 U.S.C. 1182(n)(1)) is further amended by adding at
17 the end the following: “Nothing in subparagraph (G)
18 shall be construed to prohibit an employer from
19 using selection standards normal or customary to
20 the type of job involved”.

21 (b) H-1B-DEPENDENT EMPLOYER AND OTHER
22 DEFINITIONS.—

23 (1) IN GENERAL.—Section 212(n) (8 U.S.C.
24 1182(n)) is amended by adding at the end the fol-
25 lowing:

1 “(8)(A) For purposes of this subsection, the term ‘H-
2 1B-dependent employer’ means an employer that—

3 “(i) has at least 51 full-time equivalent employ-
4 ees who are employed in the United States; and

5 (ii) employs non-exempt H-1B nonimmigrants
6 in a number that is equal to at least 15 percent of
7 the number of such full-time equivalent employees.

8 “(B) For purposes of this subsection—

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

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

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

17 “(ii) the term ‘non-exempt H-1B non-
18 immigrant’ means an H-1B nonimmigrant who is
19 not an exempt H-1B nonimmigrant.

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

21 “(i) in computing the number of full-time equiv-
22 alent employees, exempt H-1B nonimmigrants shall
23 not be take into account; and

24 “(ii) any group treated as a single employer
25 under subsection (b), (c), (m), or (o) of section 414

1 of the Internal Revenue Code of 1986 shall be treat-
2 ed as a single employer.

3 "(4) For purposes of this subsection:

4 "(A) The term 'area of employment' means the
5 area within normal commuting distance of the work-
6 site or physical location where the work of the H-
7 1B nonimmigrant is or will be performed. If such
8 worksite or location is within a Metropolitan Statis-
9 tical Area, any place within such area is deemed to
10 be within the area of employment.

11 "(B) In the case of an application with respect
12 to one or more H-1B nonimmigrants by an em-
13 ployer, the employer is considered to 'displace' a
14 United States worker from a job if the employer lays
15 off the worker from a job that is essentially the
16 equivalent of the job for which the nonimmigrant or
17 nonimmigrants is or are sought. A job shall not be
18 considered to be essentially equivalent of another job
19 unless it involves essentially the same responsibil-
20 ities, was held by a United States worker with sub-
21 stantially equivalent qualifications and experience,
22 and is located in the same area of employment as
23 the other job.

job
person
location

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

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

6 “(i) means to cause the worker’s loss of
7 employment, other than through a discharge for
8 inadequate performance, violation of workplace
9 rules, cause, voluntary departure, voluntary re-
10 tirement, or the expiration of a grant or con-
11 tract (other than a temporary employment con-
12 tract entered into in order to evade a condition
13 described in subparagraph (E) or (F) of para-
14 graph (1)); but

15 “(ii) does not include any situation in
16 which the worker is offered, as an alternative to
17 such loss of employment, a similar employment
18 opportunity with the same employer (or, in the
19 case of a placement of a worker with another
20 employer under paragraph (1)(F), with either
21 employer described in such paragraph) at equiv-
22 alent or higher compensation and benefits as
23 the position from which the employee was dis-
24 charged, regardless of whether or not the em-
25 ployee accepts the offer.

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

3 “(i) is a citizen or national of the United
4 States; or

5 “(ii) is an alien who is lawfully admitted
6 for permanent residence, is admitted as a refu-
7 gee under section 207, or is granted asylum
8 under section 208.”.

9 (2) CONFORMING AMENDMENTS.—Section
10 212(n)(1) (8 U.S.C. 1182(n)(1)) is amended by
11 striking “a nonimmigrant described in section
12 101(a)(15)(H)(i)(b)” each place it appears and in-
13 serting “an H-1B nonimmigrant”.

14 (c) IMPROVED POSTING OF NOTICE OF APPLICA-
15 TION.—Section 212(n)(1)(C)(ii) (8 U.S.C.
16 1182(n)(1)(C)(ii)) is amended to read as follows:

17 “(ii) if there is no such bargaining rep-
18 resentative, has provided notice of filing in the
19 occupational classification through such meth-
20 ods as physical posting in conspicuous locations
21 at the place of employment or electronic notifi-
22 cation to employees in the occupational classi-
23 fication for which H-1B nonimmigrants are
24 sought.”.

1 (d) **EFFECTIVE DATES.**—The amendments made by
2 subsections (a) and (c) apply to applications filed under
3 section 212(n)(1) of the Immigration and Nationality Act
4 on or after the date final regulations are issued to carry
5 out such amendments (but not earlier than October 1,
6 1998), and the amendments made by subsection (b) take
7 effect on the date of the enactment of this Act.

8 (e) **REDUCTION OF PERIOD FOR PUBLIC COM-**
9 **MENT.**—In first promulgating regulations to implement
10 the amendments made by this section in a timely manner,
11 the Secretary of Labor and the Attorney General may re-
12 duce to not less than 30 days the period of public comment
13 on proposed regulations.

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

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

18 “(C)(i) If the Secretary finds, after notice and oppor-
19 tunity for a hearing, a failure to meet a condition of para-
20 graph (1)(B), (1)(E), or (1)(F), a substantial failure to
21 meet a condition of paragraph (1)(C), (1)(D), or
22 (1)(G)(i)(I), or a misrepresentation of material fact in an
23 application—

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

1 pose such other administrative remedies (including
2 civil monetary penalties in an amount not to exceed
3 \$1,000 per violation) as the Secretary determines to
4 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 1
8 year for aliens to be employed by the employer.

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

13 “(I) the Secretary shall notify the Attorney
14 General of such finding and may, in addition, im-
15 pose such other administrative remedies (including
16 civil monetary penalties in an amount not to exceed
17 \$5,000 per violation) as the Secretary determines to
18 be appropriate; and

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

23 “(iii) If the Secretary finds, after notice and oppor-
24 tunity for a hearing, a willful failure to meet a condition
25 of paragraph (1) or a willful misrepresentation of material

1 fact in an application, in the course of which failure or
2 misrepresentation the employer displaced a United States
3 worker employed by the employer within the period begin-
4 ning 90 days before and ending 90 days after the date
5 of filing of any visa petition supported by the applica-
6 tion—

7 “(I) the Secretary shall notify the Attorney
8 General of such finding and may, in addition, im-
9 pose such other administrative remedies (including
10 civil monetary penalties in an amount not to exceed
11 \$25,000 per violation) as the Secretary determines
12 to be appropriate; and

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

17 “(iv) It is a violation of this clause for an employer
18 who has filed an application under this subsection to in-
19 timidate, threaten, restrain, coerce, blacklist, discharge, or
20 in any other manner discriminate against an employee
21 (which term, for purposes of this clause, includes a former
22 employee and an applicant for employment) because the
23 employee has disclosed information to the employer, or to
24 any other person, that the employee reasonably believes
25 evidences a violation of this subsection, or any rule or reg-

1 ulation pertaining to this subsection, or because the em-
2 ployee cooperates or seeks to cooperate in an investigation
3 or other proceeding concerning the employer's compliance
4 with the requirements of this subsection or any rule or
5 regulation pertaining to this subsection.

6 “(v) The Secretary of Labor and the Attorney Gen-
7 eral shall devise a process under which an H-1B non-
8 immigrant who files a complaint regarding a violation of
9 clause (iv) and is otherwise eligible to remain and work
10 in the United States may be allowed to seek other appro-
11 priate employment in the United States for a period (not
12 to exceed the duration of the alien's authorized admission
13 as such an nonimmigrant).”.

14 (b) USE OF ARBITRATION PROCESS FOR DISPUTES
15 INVOLVING QUALIFICATIONS OF UNITED STATES WORK-
16 ERS NOT HIRED.—

17 (1) IN GENERAL.—Section 212(n) (8 U.S.C.
18 1182(n)(2)) is amended by adding at the end the
19 following:

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

23 “(B) The Commissioner shall establish a process for
24 the receipt, initial review, and disposition in accordance
25 with this paragraph of complaints respecting an employ-

1 er's failure to meet the condition of paragraph
2 (1)(G)(i)(II) or a petitioner's misrepresentation of mate-
3 rial facts with respect to such condition. Complaints may
4 be filed by an aggrieved individual who has submitted a
5 resume or otherwise applied in a reasonable manner for
6 the job that is the subject of the condition. No proceeding
7 shall be conducted under this paragraph on a complaint
8 concerning such a failure or misrepresentation unless the
9 Commissioner determines that the complaint was filed not
10 later than 12 months after the date of the failure or mis-
11 representation, respectively.

12 “(C) If the Commissioner finds that a complaint has
13 been filed in accordance with subparagraph (B) and there
14 is reasonable cause to believe that such a failure or mis-
15 representation described in such complaint has occurred,
16 the Commissioner shall initiate binding arbitration pro-
17 ceedings by requesting the Federal Mediation and Concil-
18 iation Service to appoint an arbitrator from the roster of
19 arbitrators maintained by such Service. The procedure
20 and rules of such Service shall be applicable to the selec-
21 tion of such arbitrator and to such arbitration proceed-
22 ings. The Commissioner shall pay the fee and expenses
23 of the arbitrator.

24 “(D)(i) The arbitrator shall make findings respecting
25 whether a failure or misrepresentation described in sub-

1 paragraph (B) occurred. If the arbitrator concludes that
2 failure or misrepresentation was willful, the arbitrator
3 shall make a finding to that effect. The arbitrator may
4 not find such a failure or misrepresentation (or that such
5 a failure or misrepresentation was willful) unless the com-
6 plainant demonstrates such a failure or misrepresentation
7 (or its willful character) by clear and convincing evidence.

8 The arbitrator shall transmit the findings in the form of
9 a written opinion to the parties to the arbitration and the
10 Commissioner. Such findings shall be final and conclusive,
11 and, except as provided in this subparagraph, no official
12 or court of the United States shall have power or jurisdic-
13 tion to review any such findings.

14 “(ii) The Commissioner may review and reverse or
15 modify the findings of an arbitrator only on the same
16 bases as an award of an arbitrator may be vacated or
17 modified under section 10 or 11 of title 9, United States
18 Code.

19 “(iii) With respect to the findings of an arbitrator,
20 a court may review only the actions of the Commissioner
21 under clause (ii) and may set aside such actions only on
22 the grounds described in subparagraph (A), (B), or (C)
23 of section 706(a)(2) of title 5, United States Code. Not-
24 withstanding any other provision of law, such judicial re-

1 view may only be brought in an appropriate United States
2 Court of Appeals.

3 “(E) If the Commissioner receives a finding of an ar-
4 bitrator under this paragraph that an employer has failed
5 to meet the condition of paragraph (1)(G)(i)(II) or has
6 misrepresented a material fact with respect to such condi-
7 tion, unless the Commissioner reverses or modifies the
8 finding under subparagraph (D)(ii)—

9 “(i) the Commissioner may impose administra-
10 tive remedies (including civil monetary penalties in
11 an amount not to exceed \$1,000 per violation or
12 \$5,000 per violation in the case of a willful failure
13 or misrepresentation) as the Commissioner deter-
14 mines to be appropriate; and

15 “(ii) the Attorney General is authorized to not
16 approve petitions filed with respect to that employer
17 under section 204 or 214(c) during a period of not
18 more than 1 year for aliens to be employed by the
19 employer.”.

20 (2) CONFORMING AMENDMENT.—The first sen-
21 tence of section 202(n)(2)(A) (8 U.S.C.
22 1152(n)(2)(A)) is amended by striking “The Sec-
23 retary” and inserting “Subject to paragraph (5)(A),
24 the Secretary”.

1 (c) LIABILITY OF PETITIONING EMPLOYER IN CASE
2 OF PLACEMENT OF H-1B NONIMMIGRANT WITH AN-
3 OTHER EMPLOYER.—Section 212(n)(2) (8 U.S.C.
4 1182(n)(2)) is amended by adding at the end the follow-
5 ing:

6 “(E) If an H-1B-dependent employer places a non-
7 exempt H-1B nonimmigrant with another employer as
8 provided under paragraph (1)(F) and the other employer
9 has displaced or displaces a United States worker em-
10 ployed by such other employer during the period described
11 in such paragraph, such displacement shall be considered
12 for purposes of this paragraph a failure, by the placing
13 employer, to meet a condition specified in an application
14 submitted under paragraph (1); except that the Attorney
15 General may impose a sanction described in subclause (II)
16 of subparagraph (C)(i); (C)(ii), or (C)(iii) only if the Sec-
17 retary of Labor found that such placing employer—

18 “(i) knew or had reason to know of such dis-
19 placement at the time of the placement of the non-
20 immigrant with the other employer, or

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

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

5 "(F) The Secretary may, on a case-by-case basis,
6 subject an employer to random investigations for a period
7 of up to 5 years, beginning on the date that the employer
8 is found by the Secretary to have committed a willful fail-
9 ure to meet a condition of paragraph (1) (or has been
10 found under paragraph (5) to have committed a willful
11 failure to meet the condition of paragraph (1)(G)(i)(II))
12 or to have made a willful misrepresentation of material
13 fact in an application. The preceding sentence shall apply
14 to an employer regardless of whether or not the employer
15 is an H-1B-dependant employer. The authority of the Sec-
16 retary under this subparagraph shall not be construed to
17 be subject to, or limited by, the requirements of subpara-
18 graph (A)."

19 SEC. 104. COLLECTION AND USE OF E-1B NONIMMIGRANT
20 FEES FOR STATE STUDENT INCENTIVE
21 GRANT PROGRAMS AND JOB TRAINING OF
22 UNITED STATES WORKERS.

23 (a) IMPOSITION OF FEE.—Section 214(c) (8 U.S.C.
24 1184(c)) is amended by adding at the end the following:

1 “(9)(A) The Attorney General shall impose a fee on
2 an employer (excluding an employer described in subpara-
3 graph (A) or (B) of section 212(p)(1)) as a condition for
4 the approval of a petition filed on or after October 1,
5 1998, and before October 1, 2002, under paragraph (1)
6 to grant an alien nonimmigrant status described in section
7 101(a)(15)(H)(i)(b). The amount of the fee shall be \$250
8 for each such nonimmigrant.

9 “(B) Fees collected under this paragraph shall be de-
10 posited in the Treasury in accordance with section 286(t).

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

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

19 (b) **ESTABLISHMENT OF ACCOUNT; USE OF FEES.—**
20 Section 286 (8 U.S.C. 1856) is amended by adding at the
21 end the following:

22 “(t) **H-1B NONIMMIGRANT PETITIONER AC-**
23 **COUNT.—**

24 “(1) **IN GENERAL.—**There is established in the
25 general fund of the Treasury a separate account

1 which shall be known as the 'H-1B Nonimmigrant
2 Petitioner Account'. Notwithstanding any other sec-
3 tion of this title, there shall be deposited as offset-
4 ting receipts into the account all fees collected under
5 section 214(c)(9).

6 “(2) USE OF HALF OF FEES BY SECRETARY OF
7 EDUCATION FOR HIGHER EDUCATION GRANTS.—
8 Fifty percent of the amounts deposited into the H-
9 1B Nonimmigrant Petitioner Account shall remain
10 available until expended to the Secretary of Edu-
11 cation for additional allotments to States under sub-
12 part 4 of chapter 8 of title IV of the Higher Edu-
13 cation Act of 1965 but only for the purpose of as-
14 sisting States in providing grants to eligible students
15 enrolled in a program of study leading to a degree
16 in mathematics, computer science, or engineering.

17 “(3) USE OF HALF OF FEES BY SECRETARY OF
18 LABOR FOR JOB TRAINING.—Fifty percent of
19 amounts deposited into the deposits into such Ac-
20 count shall remain available until expended to the
21 Secretary of Labor for demonstration programs de-
22 scribed in section 104(d) of the Temporary Access
23 to Skilled Workers and H-1B Nonimmigrant Pro-
24 gram Improvement Act of 1998.”.

20

1 (c) CONFORMING MODIFICATION OF APPLICATION
2 REQUIREMENTS FOR STATE STUDENT INCENTIVE GRANT
3 PROGRAM.—Section 415C(b) of the Higher Education Act
4 of 1965 (20 U.S.C. 1070c-2(b)) is amended—

5 (1) in paragraph (9), by striking “and” at the
6 end;

7 (2) in paragraph (10), by striking the period at
8 the end and inserting “; and”; and

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

10 “(11) provides that any portion of the allotment
11 to the State for each fiscal year that derives from
12 funds made available under section 286(t)(2) of the
13 Immigration and Nationality Act shall be expended
14 for grants described in paragraph (2)(A) to students
15 enrolled in a program of study leading to a degree
16 in mathematics, computer science, or engineering.”.

17 (d) DEMONSTRATION PROGRAMS AND PROJECTS TO
18 PROVIDE TECHNICAL SKILLS TRAINING FOR WORKERS.

19 (1) IN GENERAL.—Subject to paragraph (3), in
20 establishing demonstration programs under section
21 452(c) of the Job Training Partnership Act (29
22 U.S.C. 1732(c)), as in effect on the date of enact-
23 ment of this Act, or demonstration programs or
24 projects under a successor Federal law, the Sec-
25 retary of Labor shall establish demonstration pro-

1 grams or projects to provide technical skills training
2 for workers, including both employed and unem-
3 ployed workers.

4 (2) GRANTS.—Subject to paragraph (3), the
5 Secretary of Labor shall award grants to carry out
6 the programs and projects described in paragraph
7 (1) to—

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

12 (ii) local boards that will carry out such
13 programs or projects through one-stop delivery
14 systems established under a successor Federal
15 law; or

16 (B) regional consortia of councils or local
17 boards described in subparagraph (A).

18 (3) LIMITATION.—The Secretary of Labor shall
19 establish programs and projects under paragraph
20 (1), including awarding grants to carry out such
21 programs and projects under paragraph (2), only
22 with funds made available under section 286(t)(8) of
23 the Immigration and Nationality Act, and not with
24 funds made available under the Job Training Part-
25 nership Act or a successor Federal law.

1 **SEC. 105. DETERMINATIONS ON LABOR CONDITION APPLI-**
2 **CATIONS TO BE MADE BY ATTORNEY GEN-**
3 **ERAL.**

4 (a) **IN GENERAL.**—Section 101(a)(15)(H)(i)(b) (8
5 U.S.C. 1101(a)(15)(H)(i)(b)) is amended by striking
6 “with respect to whom” and all that follows through “with
7 the Secretary” and inserting “with respect to whom the
8 Attorney General determines that the intending employer
9 has filed with the Attorney General”.

10 (b) **CONFORMING AMENDMENTS.**—Section 212(n) (8
11 U.S.C. 1182(n)) is amended—

12 (1) in paragraph (1), in the matter before sub-
13 paragraph (A), by striking “unless the employer has
14 filed with the Secretary of Labor” and inserting
15 “unless the employer has filed with the Attorney
16 General”;

17 (2) in paragraph (1), in the matter following
18 subparagraph (D)—

19 (A) by striking “The Secretary shall com-
20 pile” and inserting “The Secretary of Labor
21 shall compile”;

22 (B) by striking “The Secretary shall make
23 such list available” and inserting “The Sec-
24 retary of Labor shall make such list available”;

25 (C) by striking “The Secretary of Labor
26 shall review such an application” and inserting

1 "The Attorney General shall review such an ap-
2 plication";

3 (D) by amending the last sentence to read
4 as follows: "The Attorney General shall treat
5 such an application as being filed for purposes
6 of section 101(a)(15)(H)(i)(b) unless the Attor-
7 ney General finds that the application is incom-
8 plete or obviously inaccurate within 7 days of
9 the date of its filing."; and

10 (E) by adding at the end the following:
11 "The employer shall file the application with
12 the employer's petition for a nonimmigrant visa
13 for the alien under section 214(c)(1), and the
14 Attorney General shall transmit a copy of such
15 application to the Secretary of Labor."; and

16 (8) in the first sentence of paragraph (2)(A), by
17 striking "The Secretary shall establish a process"
18 and inserting "The Secretary of Labor shall estab-
19 lish a process".

20 (c) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to applications filed on or after
22 such date (not later than April 1, 1999) as the Secretary
23 of Labor and the Attorney General shall publish, at least
24 80 days in advance of such date, in the Federal Register.

1 **SEC. 108. COMPUTATION OF PREVAILING WAGE LEVEL.**

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

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

8 “(A) an institution of higher education (as de-
9 fined in section 1201(a) of the Higher Education
10 Act of 1965), or a related or affiliated nonprofit en-
11 tity; or

12 “(B) a nonprofit research organization or a
13 Governmental research organization;

14 the prevailing wage level shall only take into account em-
15 ployees at such institutions and organizations in the area
16 of employment.

17 “(2) With respect to a professional athlete (as defined
18 in subsection (a)(5)(A)(iii)(II)) when the job opportunity
19 is covered by professional sports league rules or regula-
20 tions, the wage set forth in those rules or regulations shall
21 be considered as not adversely affecting the wages of
22 United States workers similarly employed and be consid-
23 ered the prevailing wage.”.

24 (b) **EFFECTIVE DATE.**—The amendment made by
25 subsection (a) applies to prevailing wage computations

1 made for applications filed on or after the date of the en-
2 actment of this Act.

3 SEC. 107. IMPROVING COUNT OF H-1B AND H-2B NON-
4 IMMIGRANTS.

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

11 (b) REVISION OF PETITION FORMS.—The Attorney
12 General shall take such steps as are necessary to revise
13 the forms used for petitions for visas or nonimmigrant sta-
14 tus under clause (i)(b) or (ii)(b) of section 101(a)(15)(H)
15 of the Immigration and Nationality Act (8 U.S.C.
16 1101(a)(15)(H)) so as to ensure that the forms provide
17 the Attorney General with sufficient information to permit
18 the Attorney General accurately to count the number of
19 aliens subject to the numerical limitations of section
20 214(g)(1) of such Act (8 U.S.C. 1184(g)(1)) who are
21 issued visas or otherwise provided nonimmigrant status.

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

24 (1) on a quarterly basis a report on the num-
25 bers of individuals who were issued visas or other-

1 wise provided nonimmigrant status during the pre-
2 seding 3-month period under section
3 101(a)(15)(H)(i)(b) of the Immigration and Nation-
4 ality Act (8 U.S.C. 1101(a)(16)(H)(i)(b)); and

5 (2) on an annual basis a report on the countries
6 of origin and occupations of, educational levels at-
7 tained by, and compensation paid to, individuals
8 issued visas or provided nonimmigrant status under
9 such sections during such period.

10 Each report under paragraph (2) shall include the number
11 of individuals described in paragraph (1) during the year
12 who were issued visas pursuant to petitions filed by insti-
13 tutions or organizations described in section 212(p)(1) of
14 such Act (as added by section 106 of this title).

15 **SEC. 108. REPORT ON AGE DISCRIMINATION IN THE INFOR-**
16 **MATION TECHNOLOGY FIELD.**

17 (a) **STUDY.**—The Director of the Congressional Re-
18 search Division of the Library of Congress shall enter into
19 a contract with an appropriate entity to conduct a study
20 assessing age discrimination in the information technology
21 field. The study shall consider the following:

22 (1) The prevalence of age discrimination in the
23 information technology workplace.

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

- 1 (A) promotion and advancement,
- 2 (B) working hours,
- 3 (C) telecommuting,
- 4 (D) salary, and
- 5 (E) stock options, bonuses, and other bene-
- 6 fits.

- 7 (3) The relationship between rates of advance-
- 8 ment, promotion, and compensation to experience,
- 9 skill level, education, and age.

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

11 (b) REPORT.—Not later than October 1, 2000, such
12 Director shall submit to the Committees on the Judiciary
13 of the United States House of Representatives and the
14 Senate a report containing the results of the study de-
15 scribed in subsection (a).

16 **SEC. 102. REPORT ON HIGH-TECHNOLOGY LABOR MARKET**
17 **NEEDS.**

18 (a) STUDY.—The National Science Foundation shall
19 conduct a study to assess labor market needs for workers
20 with high technology skills during the next 10 years. The
21 study shall investigate and analyze the following:

- 22 (1) Future training and education needs of
- 23 companies in the high technology and information
- 24 technology sectors and future training and education
- 25 needs of United States students to ensure that stu-

1 dents' skills at various levels are matched to the
2 needs in such sectors.

3 (2) An analysis of progress made by educators,
4 employers, and government entities to improve the
5 teaching and educational level of American students
6 in the fields of math, science, computer, and engi-
7 neering since 1998.

8 (3) An analysis of the number of United States
9 workers currently or projected to work overseas in
10 professional, technical, and managerial capacities.

11 (4) The relative achievement rates of United
12 States and foreign students in secondary school in a
13 variety of subjects, including math, science, com-
14 puter science, English, and history.

15 (5) The relative performance, by subject area,
16 of United States and foreign students in postsecond-
17 ary and graduate schools as compared to secondary
18 schools.

19 (6) The needs of the high-technology sector for
20 foreign workers with specific skills and the potential
21 benefits and costs to United States employers, work-
22 ers, consumers, postsecondary educational institu-
23 tions, and the United States economy, from the
24 entry of skilled foreign professionals in the fields of
25 science and engineering.

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

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

8 (b) REPORT.—Not later than October 1, 2000, the
9 National Science Foundation shall submit to the Commit-
10 tees on the Judiciary of the United States House of Rep-
11 resentatives and the Senate a report containing the results
12 of the study described in subsection (a).

13 (c) INVOLVEMENT.—The study under subsection (a)
14 shall be conducted in a manner that assures the participa-
15 tion of individuals representing a variety of points of view.

16 **TITLE II—SPECIAL IMMIGRANT**
17 **STATUS FOR CERTAIN NATO**
18 **CIVILIAN EMPLOYEES**

19 **SEC. 201. SPECIAL IMMIGRANT STATUS FOR CERTAIN NATO**
20 **CIVILIAN EMPLOYEES.**

21 (a) IN GENERAL.—Section 101(a)(27) (8 U.S.C.
22 1101(a)(27)) is amended—

23 (1) by striking “or” at the end of subparagraph

24 (J),

1 (2) by striking the period at the end of sub-
2 paragraph (K) and inserting "; or", and

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

5 "(L) an immigrant who would be described in
6 clause (i), (ii), (iii), or (iv) of subparagraph (I) if
7 any reference in such a clause—

8 "(i) to an international organization de-
9 scribed in paragraph (15)(G)(i) were treated as
10 a reference to the North Atlantic Treaty Orga-
11 nization (NATO);

12 "(ii) to a nonimmigrant under paragraph
13 (15)(G)(iv) were treated as a reference to a
14 nonimmigrant classifiable under NATO-6 (as a
15 member of a civilian component accompanying
16 a force entering in accordance with the provi-
17 sions of the NATO Status-of-Forces Agree-
18 ment, a member of a civilian component at-
19 tached to or employed by an Allied Head-
20 quarters under the 'Protocol on the Status of
21 International Military Headquarters' set up
22 pursuant to the North Atlantic Treaty, or as a
23 dependant); and

24 "(iii) to the Immigration Technical Correc-
25 tions Act of 1988 or to the Immigration and

1 Nationality Technical Corrections Act of 1994
2 were a reference to the Temporary Access to
3 Skilled Workers and H-1B Nonimmigrant Pro-
4 gram Improvement Act of 1998.”.

5 (b) CONFORMING NONIMMIGRANT STATUS FOR CRIM-
6 INAL PARENTS OF SPECIAL IMMIGRANT CHILDREN.—
7 Section 101(a)(15)(N) (8 U.S.C. 1101(a)(15)(N)) is
8 amended—

9 (1) by inserting “(or under analogous authority
10 under paragraph (27)(L))” after “(27)(I)(i)”, and

11 (2) by inserting “(or under analogous authority
12 under paragraph (27)(L))” after “(27)(I)”.

13 **TITLE III—MISCELLANEOUS** 14 **PROVISION**

15 **SEC. 301. ACADEMIC HONORARIA.**

16 (a) IN GENERAL.—Section 212 (8 U.S.C. 1182), as
17 amended by section 108, is further amended by adding
18 at the end the following:

19 “(q) Any alien admitted under section 101(a)(15)(B)
20 may accept an honorarium payment and associated inci-
21 dental expenses for a usual academic activity or activities
22 (lastest not longer than 9 days at any single institution),
23 as defined by the Attorney General in consultation with
24 the Secretary of Education, if such payment is offered by
25 institution or organization described in subsection (p)(1)

1 and is made for services conducted for the benefit of that
2 institution or entity and if the alien has not accepted such
3 payment or expenses from more than 5 institutions or or-
4 ganizations in the previous 6-month period."

5 (b) **EFFECTIVE DATE.**—The amendment made by
6 subsection (a) shall apply to activities occurring on or
7 after the date of the enactment of this Act.

July 22, 1998 (11:45 p.m.)