

House veto SAP
8/4/98

From: Ingrid M. Schroeder on 08/05/98 09:36:29 AM

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Subject: LRM #IMS398 - REVISED Statement of Administration Policy on HR3736 Workforce Improvement and Protection Act of 1998

Total Pages: _____

LRM ID: IMS398

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

Wednesday, August 5, 1998

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

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

OMB CONTACT: Ingrid M. Schroeder

PHONE: (202)395-3883 FAX: (202)395-3109

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

DEADLINE: 2pm Wednesday, August 5, 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: HR 3736 is scheduled for House floor action on Thursday, August 6th. Therefore the above deadline is firm. The attached SAP comments on the version of H.R. 3736 which was circulated on July 30th and is identical to the SAP circulated on July 30th. Please note the senior advisors veto recommendation in the first paragraph.

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LRM ID: IMS398 **SUBJECT: REVISED** Statement of Administration Policy on HR3736
Workforce Improvement and Protection Act of 1998

**RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM**

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

(2) sending us a memo or letter

Please include the LRM number shown above, and the subject shown below.

TO: Ingrid M. Schroeder Phone: 395-3883 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-3454

FROM: _____ (Date)
 _____ (Name)
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 _____ (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: _____

_____ FAX RETURN of _____ pages, attached to this response sheet

DRAFT -- NOT FOR RELEASE

August 5, 1998

(House)

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

The Administration strongly opposes House passage 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.

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.

* * * * *

Message Sent To: _____

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Rachel E. Levinson/OSTP/EOP

August 4, 1998
No Lay-off Options

This provision would apply to those H-1B employers who are not H-1B dependent and have not, within the last 5 years, been found to have willfully violated its obligations under this law:

1. The employer attests that it has not and will not lay off a U.S. worker where the result is an economic advantage through total compensation or more hours of work for given compensation, and excluding any costs associated with the individual's status as an H-1B worker.

[Better to narrow the definition of economic advantage, or otherwise narrow the class of employees protected, than to go with a "willful" standard. The "willful" standard could have the effect of nullifying the protection for most workers.]

2. The employer attests that it has not and will not lay off a U.S. worker where the result is an economic advantage through total compensation or more hours of work for given compensation, and including the costs associated with the individual's status as an H-1B worker.

[NOTE: This would allow the employer to count the costs associated with the individual's status as an H-1B as a "cost" of hiring the H-1B.]

3. The employer attests that it has not and will not lay off a U.S. worker where the result is an economic advantage through salary or more hours of work for given compensation, and including the costs associated with the individual's status as an H-1B worker.

[NOTE: Because only salary is counted, a firm could hire a contractor who earns a higher salary, but gets not benefits and therefore is less costly to the firm. This would also have the effect of encouraging independent contractor relationships.]

4. The employer attests that it has not and will not lay off a U.S. worker where the result is an economic advantage through total compensation or more hours of work for given compensation, and including the costs associated with the individual's status as an H-1B worker, provided that the violation is not inadvertent.

Abraham Compromise

AMENDMENT IN THE NATURE OF A SUBSTITUTE

TO H.R. 3736, AS REPORTED

OFFERED BY _____

(Proposed Compromise/Substitute)

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 “[review:] H-1B Nonimmigrant Program Improvement
6 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 for United States companies and universities 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. Computation of prevailing wage level.

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

Sec. 108. Temporary extension of length of stay for H-1B nonimmigrants awaiting skilled immigrant visa under per country ceiling.

Sec. 109. Report on age discrimination in the information technology field.

Sec. 110. Report on high-technology labor market needs.

Sec. 111. Authority to issue interim, final regulations.

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.

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 ex-
4 pressed in terms of an amendment to a section or other
5 provision, the reference shall be considered to be made to
6 that section or other provision of the Immigration and Na-
7 tionality 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 FOR UNITED**
12 **STATES COMPANIES AND UNIVERSITIES**
13 **UNDER H-1B PROGRAM.**

14 (a) TEMPORARY INCREASE IN SKILLED NON-
15 IMMIGRANT WORKERS.—Paragraph (1)(A) of section
16 214(g) (8 U.S.C. 1184(g)) is amended to read as follows:

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

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

21 “(ii) 85,000 in fiscal year 1998;

1 **【level alternative:】** “(iii) 107,500 in each
2 of fiscal years 1999 through 2002; and

3 **【original proposal:】** “(iii) 95,000 in fiscal
4 year 1999;

5 **【original proposal:】** “(iv) 105,000 in fiscal
6 year 2000;

7 **【original proposal:】** “(v) 115,000 in each
8 of fiscal years 2001 and 2002; and

9 “(b)(iv)/(vi) 65,000 in each succeeding fis-
10 cal year.”.

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

15 “(5) The total number of aliens described in section
16 212(a)(5)(C) who may be issued visas or otherwise pro-
17 vided nonimmigrant status during each of fiscal years
18 1999, 2000, 2001, and 2002 under section
19 101(a)(15)(H)(i)(b) may not exceed 7,500.”.

nurse
cap.
(GATS?)

20 **【(c) PERMITTING USE OF ADDITIONAL FY 1998**
21 **VISA NUMBERS IN FY 1999.**—The additional visa num-
22 bers made available under section 214(g)(1)(A) of the Im-
23 migration and Nationality Act (under the amendment
24 made by subsection (a)) for fiscal year 1998 that are not
25 used in such fiscal year shall be available under such sec-

1 tion for the succeeding fiscal year for an alien with respect
2 to whom a petition under section 214(c)(1) of such Act
3 to grant the alien nonimmigrant status under section
4 101(a)(15)(H)(i)(b) of such Act is filed before October 1,
5 1998.】

6 (d) EFFECTIVE DATES.—The amendment made by
7 subsection (a) applies beginning with fiscal year 1998 and
8 the amendment made by subsection (b) applies beginning
9 with fiscal year 1999.

10 **SEC. 102. PROTECTION AGAINST DISPLACEMENT OF**
11 **UNITED STATES WORKERS IN CASE OF H-1B**
12 **DEPENDENT EMPLOYERS.**

13 (a) PROTECTION AGAINST LAY OFF AND REQUIRE-
14 MENT FOR PRIOR RECRUITMENT OF UNITED STATES
15 WORKERS.—Section 212(n)(1) (8 U.S.C. 1182(n)(1)) is
16 amended by inserting after subparagraph (D) the follow-
17 ing:

no lay-off
18 “(E)(i) In the case of an application described
19 in clause (ii), subject to clause (iii), 【(I)】 the em-
20 ployer did not displace and will not displace a
21 United States worker (as defined in paragraph (4)
22 【, including such a worker who has a time-limited
23 employment contract】) within the period beginning
24 90 days before and ending 90 days after the date of
25 【filing of the application】/【filing of any visa petition

1 supported by the application][the initiation of em-
2 ployment of the nonimmigrant] [and (II) the em-
3 ployer did and does not take any action (including
4 changing a job title) in order to evade the condition
5 described in subclause (I)].

Vague

6 “(ii) An application described in this clause is an ap-
7 plication made on or after October 1, 1998, [and before
8 October 1, 2002,] by an H-1B dependent employer (as
9 defined in paragraph (3)) {review reference/application to
10 willful violators} [or an employer subject to this subpara-
11 graph under paragraph (2)(F)][or an employer for which
12 the {Secretary of Labor}, within the previous 5-year pe-
13 riod, has made a finding described in clause (ii) or (iii)
14 of paragraph (2)(C)].

Who
has to do
the
no-leave
attestation

15 [“(iii) The conditions described in clause (i) shall not
16 apply to an application filed with respect to an exempt
17 H-1B nonimmigrant.]

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

23 “(i) the nonimmigrant performs duties in
24 whole or in part at one or more worksites

1 owned, operated, or controlled by such other
2 employer; and

3 “(ii) there are indicia of an employment re-
4 lationship between the nonimmigrant and such
5 other employer;
6 unless the employer has inquired of the other em-
7 ployer as to whether, and has no knowledge that, the
8 other employer has displaced or intends to displace,
9 within the period beginning 90 days before and end-
10 ing 90 days after [the date of placement of the H-
11 1B nonimmigrant with that other employer]/[the
12 date the employer files the application under this
13 paragraph], a United States worker [and the other
14 employer did and does not take any action (includ-
15 ing changing a job title) in order to evade such con-
16 dition].

recruit

17 “(G)(i) In the case of an application described
18 in subparagraph (E)(ii), subject to clause (ii), the
19 employer—

20 “(I) prior to filing the application, has
21 taken good faith steps to recruit, in the United
22 States using procedures that meet industry-
23 wide standards and offering compensation that
24 is at least as great as that required to be of-
25 fered to H-1B nonimmigrants under subpara-

1 graph (A), United States workers for the job
2 for which the nonimmigrant or nonimmigrants
3 is or are sought; and

4 “(II) [prior to filing the application,] has
5 offered employment to any United States work-
6 er who applies and is equally or better qualified
7 for [Senate option: the essentially equivalent
8 job]/[House option: a job that is essentially
9 equivalent to the job] in the area of intended
10 employment for which the nonimmigrant or
11 nonimmigrants is or are sought.

broader(?)

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

17 (b) H-1B-DEPENDENT EMPLOYER AND OTHER
18 DEFINITIONS.—

19 (1) IN GENERAL.—Section 212(n) (8 U.S.C.
20 1182(n)) is amended by adding at the end the fol-
21 lowing:

22 “(3)(A) For purposes of this subsection, the term ‘H-
23 1B-dependent employer’ means an employer that—

24 [“(i) has 16 or fewer full-time equivalent em-
25 ployees who are employed in the United States; and

1 (II) employs more than 8 non-exempt H-1B non-
2 immigrants;

3 ["(ii)(I) has at least 17 but not more than 50
4 full-time equivalent employees who are employed in
5 the United States; and (II) employs non-exempt H-
6 1B nonimmigrants in a number that is equal to at
7 least 50 percent of the number of such full-time
8 equivalent employees; or

9 “(iii)(I) has at least 51 full-time equivalent em-
10 ployees who are employed in the United States; and
11 (II) employs non-exempt H-1B nonimmigrants in a
12 number that is equal to at least 15 percent [(or 20
13 percent in the case of applications filed in fiscal year
14 1999)] of the number of such full-time equivalent
15 employees.

16 “(B) For purposes of subparagraph (A)—

17 “(i) the term ‘exempt H-1B nonimmigrant’
18 means a H-1B nonimmigrant who—

19 “(I) receives wages [(as defined in section
20 ____ of the Internal Revenue Code of 1986)]
21 at an annual rate equal to at least \$60,000; or

22 “(II) has attained a master’s or higher de-
23 gree (or its equivalent) in a specialty [relevant
24 to]/[the specific knowledge of which is required
25 for] the intended employment; and

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

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

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

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

12 “(4) For purposes of this subsection:

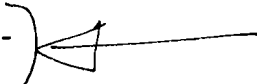
13 “(A) The term ‘area of intended employment’
14 means the area within normal commuting distance
15 of the worksite or physical location where the work
16 of the H-1B nonimmigrant is or will be performed.
17 If such worksite or location is within a Metropolitan
18 Statistical Area, any place within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

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 [Senate option: the essentially

1 equivalent job]/[House option: a job that is essen-
2 tially equivalent to the job] in the area of intended
3 employment for which the nonimmigrant or non-
4 immigrants is or are sought.

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

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

10 “(i) means to cause the worker’s loss of
11 employment, other than through a discharge for
12 inadequate performance, violation of workplace *very*
13 rules, cause, voluntary departure, voluntary re-
14 tirement, or the expiration of a [grant, con-] 
15 tract, or other agreement]; but

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

1 charged, regardless of whether or not the em-
2 ployee accepts the offer.

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

5 “(i) is a citizen or national of the United
6 States; or

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

*who is
excluded
here?*

11 (2) CONFORMING AMENDMENTS.—Section
12 212(n)(1) (8 U.S.C. 1182(n)(1)) is amended by
13 striking “a nonimmigrant described in section
14 101(a)(15)(H)(i)(b)” each place it appears and in-
15 serting “an H-1B nonimmigrant”.

16 [(c) IMPROVED POSTING OF NOTICE OF APPLICA-
17 TION.—Section 212(n)(1)(C)(ii) (8 U.S.C.
18 1182(n)(1)(C)(ii)) is amended to read as follows:

✓
19 “(ii) if there is no such bargaining rep-
20 resentative, has provided notice of filing in the
21 occupational classification through such meth-
22 ods as physical posting in conspicuous locations
23 at the place of employment or electronic notifi-
24 cation to employees in the occupational classi-

1 fication for which H-1B nonimmigrants are
2 sought.”.]

3 (d) EFFECTIVE DATES.—The amendments made by
4 subsections (a) and (c) apply to applications filed under
5 section 212(n)(1) of the Immigration and Nationality Act
6 on or after October 1, 1998, and the amendments made
7 by subsection (b) take effect on the date of the enactment
8 of this Act.

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

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

13 “(C)(i) Subject to paragraph [(5)(A)(ii)], if the Sec-
14 retary finds, after notice and opportunity for a hearing,
15 a failure to meet a condition of paragraph (1)(B), (1)(E),
16 or (1)(F), a substantial failure to meet a condition of
17 paragraph (1)(C), (1)(D), or (1)(G)(i)(I), or a misrepre-
18 sentation of material fact in an application—

19 “(I) the Secretary shall notify the Attorney
20 General of such finding and may, in addition, im-
21 pose such other administrative remedies (including
22 civil monetary penalties in an amount not to exceed
23 \$1,000 per violation) as the Secretary determines to
24 be appropriate; and

*placing
w/other
employer*

lay-off

recruit

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

5 “(ii) Subject to paragraph [(5)(A)(ii)], if the Sec-
6 retary finds, after notice and opportunity for a hearing,
7 a willful failure to meet a condition of paragraph (1), a
8 willful misrepresentation of material fact in an applica-
9 tion, or a violation of clause (iv)—

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

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

20 “(iii) Subject to paragraph [(5)(A)(ii)], if the Sec-
21 retary finds, after notice and opportunity for a hearing,
22 a willful failure to meet a condition of paragraph (1) or
23 a willful misrepresentation of material fact in an applica-
24 tion, in the course of which failure or misrepresentation

while at the same time.

1 the employer ^{lay-off} ~~also~~ has failed to meet a condition of para-
2 graph (1)(E) or (1)(F)— ~~aggrav~~ placement

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

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

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

whistle-
blower

1 with the requirements of this subsection or any rule or
2 regulation pertaining to this subsection.

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

11 (b) USE OF ~~ARBITRATION~~ PROCESS FOR DISPUTES
12 INVOLVING QUALIFICATIONS OF UNITED STATES WORK-
13 ERS NOT HIRED.—[review placement of this provision/
14 amendment; could be a separate section] Section 212(n)
15 (8 U.S.C. 1182(n)(2)) is amended by adding at the end
16 the following: [this draft is only intended to provide a fair-
17 ly simplified model and may not be constitutional.]

18 “(5)(A)(i) The Attorney General shall establish a
19 process, consistent with this paragraph, for the resolution
20 through binding arbitration of disputes involving whether
21 a H-1B-dependent employer denied a United States work-
22 er employment in violation of paragraph (1)(G)(i)(II).

23 “(ii) Except as provided in this paragraph, such
24 process shall apply instead of subparagraphs (B)

1 through (D) **and (F) {see (F) below}** of paragraph
2 (2) in the case of such a violation.

3 “(B) The process under this paragraph shall include
4 the following:

5 “(i) The arbitration is conducted by a 3-member
6 panel composed of 1 member appointed by the
7 employer involved, 1 member appointed by the
8 United States worker involved, and the third appointed
9 by the other 2 members.

10 “(ii) Each party has the opportunity to present
11 all relevant and material evidence **and has the opportunity**
12 **to be represented by counsel**, as no expense
13 to the other party]. who pays?

14 “(iii) The costs of the arbitration are borne
15 **equally by the employer and United States worker**
16 **involved** **by the party that does not substantially**
17 **prevail, as determined by the panel** **in an equitable**
18 **manner specified by the Attorney General**. ?

19 “(iv) The panel shall not find in favor of the
20 United States worker unless there is **review:** clear
21 and convincing evidence that a violation of paragraph
22 (1)(G)(i)(II) has occurred.

23 “(v) The decision of the panel shall be binding
24 of the parties and enforceable by the parties and followed
25 by the Attorney General unless there is evi-

1 dence of fraud or similar grounds provided under
2 title 9, United States Code, for reversal.

3 “(vi) [etc.]”.

4 (c) LIABILITY OF PETITIONING EMPLOYER IN CASE
5 OF PLACEMENT OF H-1B NONIMMIGRANT WITH AN-
6 OTHER EMPLOYER.—Section 212(n)(2) (8 U.S.C.
7 1182(n)(2)) is amended by adding at the end the follow-
8 ing:

9 “(E) If an employer places an H-1B nonimmigrant
10 with another employer as provided under paragraph
11 (1)(F) and the other employer has displaced or displaces
12 a United States worker during the period described in
13 such paragraph, such displacement shall be considered for
14 purposes of this paragraph a failure, by the placing em-
15 ployer, to meet a condition specified in an application sub-
16 mitted under paragraph (1) [, except that no sanction
17 other than that described in subparagraph (C)(i)(I) may
18 be imposed unless such employer knew or had reason to
19 know of such displacement]”.

20 [review:] (d) SPOT INVESTIGATIONS DURING PRO-
21 BATIONARY PERIOD.—Section 212(n)(2) (8 U.S.C.
22 1182(n)(2)), as amended by subsection (c), is further
23 amended by adding at the end the following:

24 “(F) The Secretary may, on a case-by-case basis,
25 subject an employer to random investigations for a period

1 of up to 5 years [or treatment as an H-1B dependent
 2 employer for purposes of paragraph (1)], beginning on the
 3 date that the employer is found by the Secretary to have
 4 committed a willful failure to meet a condition of para-
 5 graph (1) (or has been found under paragraph (5) to have
 6 committed a willful failure to meet the condition of para-
 7 graph (1)(G)(i)(II)) or to have made a misrepresentation
 8 of material fact in an application. The preceding sentence
 9 shall apply to an employer regardless of whether or not
 10 the employer is an H-1B-dependent employer. The au-
 11 thority of the Secretary under this subparagraph shall not
 12 be construed to be subject to, or limited by, the require-
 13 ments of subparagraph (A).”.

*but only
 have (F) and (G)
 obligations if
 an H-1B
 dependent
 employer.
 Thus, applies
 if willful
 violation of the
 prevailing wage*

14 **[(e) PROHIBITION OF USE OF H-1B VISAS BY EM-**
 15 **PLOYERS ASSISTING IN FOREIGN NUCLEAR WEAPONS**
 16 **DEVELOPMENT PROGRAM.—**Section 214(g) (8 U.S.C.
 17 1184(g)), as amended by section 101(b), is amended by
 18 adding at the end the following:

19 “(6) The Attorney General shall not approve a peti-
 20 tion under subsection (c)(1) with respect to an H-1B non-
 21 immigrant (as defined in section 212(n)(4)) for any em-
 22 ployer that the Attorney General has knowledge or reason-
 23 able cause to know is providing material assistance for the
 24 development of nuclear weapons in India or any other for-
 25 eign country.”.]

1 (f) EFFECTIVE DATES.—[review:]

2 (1) IN GENERAL.—Except as provided in this
3 subsection , the amendments made by this section
4 apply to applications filed on or after October 1,
5 1998. [Review effective date for arbitration provi-
6 sions in particular, should be coordinated with sub-
7 stantive rule, e.g., 10/1/98...]

8 (2) SPOT INVESTIGATION AUTHORITY.—The
9 amendment made by subsection (d) applies to find-
10 ings made on or after the date of the enactment of
11 this Act.

12 (3) NUCLEAR DEVELOPMENT LIMITATION.—
13 The amendment made by subsection (e) takes effect
14 on the date of the enactment of this Act.

15 **SEC. 104. COLLECTION AND USE OF H-1B NONIMMIGRANT**
16 **FEEES FOR STATE STUDENT INCENTIVE**
17 **GRANT PROGRAMS AND JOB TRAINING OF**
18 **UNITED STATES WORKERS.**

19 (a) IMPOSITION OF FEE.—

20 (1) IN GENERAL.—Section 214(c) (8 U.S.C.
21 1184(c)) is amended by adding at the end the fol-
22 lowing:

23 “(9)(A) The Attorney General shall impose a fee on
24 an employer (excluding an employer described in subpara-
25 graph (A) or (B) of section 212(p)(1)) as a condition for

1 the approval of a petition under paragraph (1) to import
2 an alien as a nonimmigrant described in section
3 101(a)(15)(H)(i)(b). The amount of the fee shall be \$250
4 for each such nonimmigrant.

5 “(B) Fees collected under this paragraph shall be de-
6 posited in the Treasury in accordance with section 286(s).

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

12 [“(ii) Section 274A(g)(2) shall apply to a violation
13 of clause (i) in the same manner as it applies to a violation
14 of section 274A(g)(1).]”.

15 (2) EFFECTIVE DATE.—The amendment made
16 by subsection (a) shall apply to applications [ap-
17 proved][filed] on or after [October 1, 1998].

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

21 “(s) H-1B NONIMMIGRANT PETITIONER AC-
22 COUNT.—

23 “(1) IN GENERAL.—There is established in the
24 general fund of the Treasury a separate account
25 which shall be known as the ‘H-1B Nonimmigrant

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

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

16 “(3) USE OF HALF OF FEES BY SECRETARY OF
17 LABOR FOR JOB TRAINING.—Fifty percent of
18 amounts deposited into the deposits into the H-1B
19 Nonimmigrant Petitioner Account shall remain
20 available until expended to the Secretary of Labor
21 for demonstration programs established under sec-
22 tion 104(d) of the [INSERT SHORT TITLE].”.

23 (c) CONFORMING MODIFICATION OF APPLICATION
24 REQUIREMENTS FOR STATE STUDENT INCENTIVE GRANT

1 PROGRAM.—Section 415C(b) of the Higher Education Act
2 of 1965 (20 U.S.C. 1070c–2(b)) is amended—

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

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

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

8 “(11) provides that any portion of the allotment
9 to the State for each fiscal year that derives from
10 the H–1B Nonimmigrant Petitioner Account estab-
11 lished under section 286(s) of the Immigration and
12 Nationality Act shall be expended to provide funds
13 for attendance on a full-time basis at an institution
14 of higher education to students enrolled in a pro-
15 gram of study leading to a degree in mathematics,
16 computer science, or engineering.”.

17 (d) DEMONSTRATION PROGRAMS TO PROVIDE TECH-
18 NICAL SKILLS TRAINING FOR WORKERS.

19 (1) IN GENERAL.—Subject to paragraph (3),
20 in establishing demonstration programs under sec-
21 tion 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 a successor Federal law, the
24 Secretary of Labor shall establish demonstration
25 programs to provide technical skills training for

1 workers, including both employed and unemployed
2 workers.

3 (2) GRANTS.—Subject to paragraph (3), the
4 Secretary of Labor shall award grants to carry out
5 the programs to—

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

12 (B) regional consortia of councils or enti-
13 ties described¹ in subparagraph (A).

14 (3) LIMITATION.—The Secretary of Labor shall
15 establish programs under paragraph (1), including
16 awarding grants to carry out such programs under
17 paragraph (2), only to the extent of funds made
18 available under section 286(s)(3) of the Immigration
19 and Nationality Act, and not with funds made avail-
20 able under the Job Training Partnership Act or a
21 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)—

13 (A) in the matter before subparagraph (A),
14 by striking “unless the employer has filed with
15 the Secretary of Labor” and inserting “unless
16 the employer has filed with the Attorney Gen-
17 eral”;

18 (B) in the matter following subparagraph
19 (D)—

20 (i) by striking “The Secretary shall
21 compile” and inserting “The Secretary of
22 Labor shall compile”;

23 (ii) by striking “The Secretary shall
24 make such list available” and inserting
25 “‘The Secretary of Labor shall make such
26 list available”;

*we prefer to
cut out INS.*

1 (iii) by striking “The Secretary of
2 Labor shall review such an application”
3 and inserting “The Attorney General shall
4 review such an application”;

5 (iv) by amending the last sentence to
6 read as follows: “The Attorney General
7 shall treat such an application as being
8 filed for purposes of section
9 101(a)(15)(H)(i)(b) unless the Attorney
10 General finds that the application is in-
11 complete or obviously inaccurate within 7
12 days of the date of its filing,”; and

13 (v) by adding at the end the following:
14 “The employer shall file the application
15 with the employer’s petition for a non-
16 immigrant visa for the alien under section
17 214(c)(1), and the Attorney General shall
18 transmit a copy of such application to the
19 Secretary of Labor.”; and

20 (3) in the first sentence of paragraph (2)(A), by
21 striking “The Secretary shall establish a process”
22 and inserting “The Secretary of Labor shall estab-
23 lish a process”.

24 (c) COSTS.—[review with CBO:] [Amounts appro-
25 priated to the Secretary of Labor for fiscal year 1999 to

1 carry out functions which are transferred to the Attorney
2 General under the amendments made by this section shall
3 be available to the Attorney General to carry out such
4 functions during such fiscal year.] Except as provided in
5 this subsection, any additional spending made necessary
6 by reason of the enactment of the amendments made by
7 this section shall be effective only to the extent and in
8 the amounts provided in an appropriations Act.

9 (d) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to applications filed on or after
11 such date (not later than April 1, 1999) as the Secretary
12 of Labor and the Attorney General shall publish, at least
13 30 days in advance of such date, in the Federal Register.

14 **SEC. 106. COMPUTATION OF PREVAILING WAGE LEVEL.**

15 (a) RULES FOR HIGHER EDUCATIONAL AND RE-
16 SEARCH INSTITUTIONS AND ATHLETES.—

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

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

23 “(A) an institution of higher education (as de-
24 fined in section 1201(a) of the Higher Education

1 Act of 1965), or a related or affiliated nonprofit en-
2 tity; or

3 “(B) a nonprofit **[research]** organization or a
4 Governmental research organization;

5 the prevailing wage level shall only take into account em-
6 ployees at such institutions and organizations in the area
7 of employment.

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

15 (2) EFFECTIVE DATE.—The amendment made
16 by paragraph (1) shall prevailing wage computations
17 made for applications filed on or after **[can we accel-**
18 *erate the effective date of these provisions?:]* **[the**
19 **date of the enactment of this Act]/[October 1,**
20 **1998]**.

21 (b) USE OF CERTAIN WAGE SURVEYS.—

22 (1) IN GENERAL.—Such section is further
23 amended by adding at the end the following:

24 **[“(3) If an employer provides a published survey, a**
25 **determination by an accepted private source, or any other**

1 legitimate source (other than by a State Employment Se-
2 curity Agency or the Department of Labor) for purposes
3 of determining the prevailing wage level paid under sub-
4 section (n)(1)(A)(i)(II), such determination shall be
5 deemed accepted (and to satisfy the requirements of such
6 subsection) unless the Secretary of Labor, within 45 days
7 of the date of the Secretary's receipt of such determina-
8 tion, issues a written decision rejecting the determination
9 and detailing the [legitimate] reasons that the determina-
10 tion is not acceptable. Such a rejection shall not preclude
11 an employer from using such a determination in any pro-
12 ceeding under subsection (n)(2) relating to the determina-
13 tion of prevailing wage level. This paragraph shall not af-
14 fect the Secretary's acceptance of a prevailing wage deter-
15 mination by a State Employment Security Agency or the
16 Department of Labor.".]

17 (2) EFFECTIVE DATE.—The amendment made
18 by paragraph (1) shall apply to applications filed on
19 and after April 1, 1999.

20 **SEC. 107. IMPROVING COUNT OF H-1B AND H-2B NON-**
21 **IMMIGRANTS.**

22 (a) ENSURING ACCURATE COUNT.—The Attorney
23 General shall take such steps as are necessary to maintain
24 an accurate count of the number of aliens subject to the
25 numerical limitations of section 214(g)(1) of the Immigra-

1 tion and Nationality Act (8 U.S.C. 1184(g)(1)) who are
2 issued visas or otherwise provided nonimmigrant status.

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

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

16 (1) on a quarterly basis a report on the num-
17 bers of individuals who were issued visas or other-
18 wise provided nonimmigrant status during the pre-
19 ceding 3-month period under section
20 101(a)(15)(H)(i)(b) of the Immigration and Nation-
21 ality Act (8 U.S.C. 1101(a)(15)(H)(i)(b)); and

22 (2) on an annual basis a report on the countries
23 of origin and occupations of, educational levels at-
24 tained by, and compensation paid to, individuals

1 issued visas or provided nonimmigrant status under
2 such sections during such period.

3 **[SEC. 108. TEMPORARY EXTENSION OF LENGTH OF STAY**
4 **FOR H-1B NONIMMIGRANTS AWAITING**
5 **SKILLED IMMIGRANT VISA UNDER PER**
6 **COUNTRY CEILING.**

7 **[**Notwithstanding section 214(g)(4) of the Immigra-
8 tion and Nationality Act (8 U.S.C. 1184(g)(4)), in the
9 case of an alien who—

10 (1) as of the date of enactment of this Act, is
11 a nonimmigrant described in section
12 101(a)(15)(H)(i)(b) of such Act (8 U.S.C.
13 1101(a)(15)(H)(i)(b));

14 (2) is the beneficiary of a petition filed under
15 section 204(a) of such Act (8 U.S.C. 1154(a)) for a
16 preference status under paragraph (1), (2), or (3) of
17 section 203(b) of such Act (8 U.S.C. 1153(b));

18 (3) would qualify for a visa under such para-
19 graph but for the application of a per country limi-
20 tation under section 202(b) of such Act (8 U.S.C.
21 1152(b)); and

22 (4) applies for benefits under this section;
23 the Attorney General may grant an extension of such non-
24 immigrant status for the alien until the alien's application
25 for adjustment of status has been processed and a decision

1 made thereon, except that the Attorney General may not
2 so extend an alien's status beyond September 30, 2001.]

3 **SEC. 109. REPORT ON AGE DISCRIMINATION IN THE INFOR-**
4 **MATION TECHNOLOGY FIELD.**

5 (a) STUDY.—The [Comptroller General of the United
✓ 6 States] shall conduct a study assessing age discrimination
7 in the information technology field. The study shall con-
8 sider the following:

9 (1) The prevalence of age discrimination in the
10 information technology workplace.

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

13 (A) promotion and advancement,

14 (B) working hours,

15 (C) telecommuting,

16 (D) salary, and

17 (E) stock options, bonuses, and other bene-
18 fits.

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

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

23 (b) REPORT.—Not later than October 1, 2000, the
24 [Comptroller General of the United States] shall submit
25 to the Committees on the Judiciary of the United States

1 House of Representatives and the Senate a report contain-
2 ing the results of the study described in subsection (a).
3 The report shall include any recommendations of the
4 Comptroller General concerning age discrimination in the
5 information technology field.

6 **SEC. 110. REPORT ON HIGH-TECHNOLOGY LABOR MARKET**
7 **NEEDS.**

8 (a) STUDY.—The [Comptroller General of the United
9 States]/[National Science Foundation] shall conduct a
10 study to assess labor market needs for workers with high
11 technology skills during the next 10 years. The study shall
12 investigate and analyze the following:

13 (1) Future training and education needs of
14 companies in the high technology and information
15 technology sectors and future training and education
16 needs of United States students to ensure that stu-
17 dents' skills at various levels are matched to the
18 needs in such sectors.

19 (2) An analysis of progress made by educators,
20 employers, and government entities to improve the
21 teaching and educational level of American students
22 in the fields of math, science, computer, and engi-
23 neering since 1998.

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

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

8 (5) The relative performance, by subject area,
9 of United States and foreign students in postsecond-
10 ary and graduate schools as compared to secondary
11 schools.

12 (6) The needs of the high-technology sector for
13 foreign workers with specific skills and the potential
14 benefits and costs to employers, workers, consumers,
15 postsecondary educational institutions, and the
16 United States economy from the entry of skilled for-
17 eign professionals in the fields of science and engi-
18 neering.

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

22 (8) An examination of the amount and trend of
23 moving the production or performance of products
24 and services now occurring in the United States
25 abroad.

1 (9) The effect of growth in the high-technology
2 sector on low-technology employment.

3 (b) REPORT.—Not later than October 1, 2000, the
4 【Comptroller General of the United States】/【National
5 Science Foundation】 shall submit to the Committees on
6 the Judiciary of the United States House of Representa-
7 tives and the Senate a report containing the results of the
8 study described in subsection (a).

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

12 **SEC. 111. AUTHORITY TO ISSUE INTERIM, FINAL REGULA-**
13 **TIONS.**

14 In order to carry out the amendments made by this
15 title on a timely manner, the Secretary of Labor and the
16 Attorney General may promulgate regulations that take
17 effect on an interim basis, after notice and pending oppor-
18 tunity for public comment, except that such regulations
19 may not remain in effect on an interim, final basis for
20 longer than 6 months. 【review whether or not you need
21 this only for section 102】

1 **TITLE II—SPECIAL IMMIGRANT**
2 **STATUS FOR CERTAIN NATO**
3 **CIVILIAN EMPLOYEES**

4 **SEC. 201. SPECIAL IMMIGRANT STATUS FOR CERTAIN NATO**
5 **CIVILIAN EMPLOYEES.**

6 (a) IN GENERAL.—Section 101(a)(27) (8 U.S.C.
7 1101(a)(27)) is amended—

8 (1) by striking “or” at the end of subparagraph
9 (J),

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

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

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

17 “(i) to an international organization de-
18 scribed in paragraph (15)(G)(i) were treated as
19 a reference to the North Atlantic Treaty Orga-
20 nization (NATO);

21 “(ii) to a nonimmigrant under paragraph
22 (15)(G)(iv) were treated as a reference to a
23 nonimmigrant classifiable under NATO–6 (as a
24 member of a civilian component accompanying
25 a force entering in accordance with the provi-

1 sions of the NATO Status-of-Forces Agree-
2 ment, a member of a civilian component at-
3 tached to or employed by an Allied Head-
4 quarters under the ‘Protocol on the Status of
5 International Military Headquarters’ set up
6 pursuant to the North Atlantic Treaty, or as a
7 dependent); and

8 “(iii) to the Immigration Technical Correc-
9 tions Act of 1988 or to the Immigration and
10 Nationality Technical Corrections Act of 1994
11 were a reference to the [insert short title].”.

12 (b) CONFORMING NONIMMIGRANT STATUS FOR CER-
13 TAIN PARENTS OF SPECIAL IMMIGRANT CHILDREN.—
14 Section 101(a)(15)(N) (8 U.S.C. 1101(a)(15)(N)) is
15 amended—

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

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

20 **TITLE III—MISCELLANEOUS** 21 **PROVISION**

22 **[SEC. 301. ACADEMIC HONORARIA.**

23 [(a) IN GENERAL.—Section 212 (8 U.S.C. 1182), as
24 amended by section [106], is further amended by adding
25 at the end the following:

1 “(q) Any alien admitted under section 101(a)(15)(B)
2 may accept an honorarium payment and associated inci-
3 dental expenses for a usual academic activity or activities
4 (last lasting not longer than [] [consecutive]
5 days), as defined by the Attorney General in consultation
6 with the Secretary of Education, if such payment is of-
7 fered by institution or organization described in subsection
8 (p)(1) and is made for services conducted for the benefit
9 of that institution or entity.”.

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

Amend the title so as to read: “A Bill To amend the
Immigration and Nationality Act to modify the H-1B
nonimmigrant worker program to better meet temporary
employment needs for skilled workers in the United
States, [to provide for special immigrant status for
NATO civilian employees in the same manner as for em-
ployees of international organizations,] and for other
purposes.”.

H1B Legislative Proposals

Number of visas

Abraham-Hatch:

Increase to 95,000 (with 10,000 going to H-1C for nurses and use of 20,000 more from H2B).

Sunset after 5 years

Smith:

Increase to 95,000 in FY98; 105K in FY99; 115K in FY2000 (limits the nurses to 7500)

Sunset after 3 years

Administration:

No specific number. Said we liked Kennedy (90,000) and sunset after three years.

Training

Abraham-Hatch:

\$50 million authorized for SSIG program + \$10 million authorized for displaced workers

Smith:

No training

Administration:

\$250 application fee (per visa)

Money to go to fund Regional Skills Alliances + NSF program

Reforms

Abraham-Hatch:

Exempts from "lay-off" the expiration of a grant, contract, or other agreement.

Defines "replace" in the lay-off context to mean at a specific place of employment and in the specific employment opportunity + with substantially equivalent qualifications and experience in the specific employment opportunity.

No requirement that the employer attest to having recruited U.S. workers or to not having laid off a U.S. worker in order to replace them with a temporary foreign worker.

Smith:

A recruit & retain attestation (exempting the extraordinary)

A no lay-off attestation (90 days before; 90 days after); exempts "voluntary departure."

Both apply also to “job contractors.”

Administration:

A recruit & retain attestation

A no lay-off attestation (90 days before; 90 days after); exempts “voluntary departure.”

Both apply also to “job contractors.”

Enforcement

Abraham-Hatch:

Spot inspections for Secretary of Labor for employers who have previously committed willful violations.

Cuts back on existing enforcement authority: changes “failure to meet” in 1B and “substantial failure to meet” in 1C and 1D to “willful failure to meet.” Also, changes “misrepresentation of a material fact to “willful misrepresentation of a material fact.”

If a willful violation of an attestation (willful failure to meet a condition of paragraph (A)) or a willful misrepresentation of a material fact and a finding of willfully laying-off U.S. worker in order to hire an H-1B worker, get \$25,000 fine + 2-year debarment.

Smith:

Secretary can investigate in response to a complaint.

If there is no complaint, Secretary can only investigate an H-1B dependent employer and only if there appears to be a misrepresentation of a material fact in the attestation OR a violation of an attestation.

Spot investigations during the probationary period (the 5 year period after the Secretary finds a willful violation of a misrepresentation of a material fact -- whether H-1B dependent or not).

Extra harsh penalties if a lay-off.

Administration:

DOL can investigate in response to a complaint, and sanction if a violation is found.

If no complaint, DOL can investigate if she has a reasonable cause to believe that: (1) there is a pattern or practice of complaints by U.S. workers against the employer; unsuccessful recruitment by the employer or violations by the employer; (2) employer’s U.S. workforce is more than 10% H-1B; or (3) the employer has laid off or otherwise displaced more than 10% of its U.S. workforce or 100 U.S. workers (whichever is fewer) in any one year period.

DOL can sanction pursuant to an investigation initiated by a trigger only if the violation is found to be willful or a pattern or practice of violations or a violation that affects a significant number

of individuals.

Secretary of Labor with subpoena authority in connection with any investigation.

Prevailing Wage

Abraham-Hatch:

Repeals Hathaway decision, thus allowing universities to use their institution to determine prevailing wage.

Allows the use of industry surveys and others to determine prevailing wage if employer has kept a copy but allows DOL to challenge the validity of such surveys.

Other

Abraham-Hatch:

Modifies permanent program to remove per country limits w/in permanent employment-based immigration program.

4:15pm

H1B

Gene talked to Abraham ^{Sen.} yesterday.

Very positive. Both saying that they can & want to work it out.

→ Limit attestations based on salary (?)

Gene told him that he was willing to negotiate more.

Abraham said he didn't know whether enhanced cabal is going to meet.

Abraham was trying to put the H-1B bill in the manager's amend. Hard thing to do. Tried, but wasn't getting done.

~~BA A story today - Earl says nothing new
telling people to make a deal
hopeful~~

Geet called IBM.

Whether

for us { Murray
Ford
Lieberman
Landrieu } surprise

H2A

Q: What do we see. Does this go on the list of ~~the~~ reasons why we would veto CJS.

UMW
Connxn
w/ farmworkers

① Leg. negotiations (?)

② do we try to address the problem areas by regulation (?)

→ Becerra & Hispanic caucus & organized labor

12 D ^BManiham; Biden; Breaux; Kern; Bryan; Robb;
Bumpers; Baucus; Bingaman; Reid ^{Harmy}; Hollings; Cleland

HIB

~~XXXX~~

deal was reached last night
(Reps. met last night)

Have attestations

Limited to HIB

15% of total employees

or ~~emp. that have~~ 20% HIB
of employees excl.

\$60,000 or more

Lay-off:

essentially equiv. jobs
in areas of emp.

discharge lay. from Senate

\$250 training fee

RFR

House recruit
lay. Took out
word retain.

Eng. decision on

~~RFR~~ by an indep. arbitration board

dol complaint-driven complaint
investigate

no investigation w/out a complain.

85, 95, 105, 115, 115

FY98

FY99

FY2000

FY2001

FY2002

LCAs processed by INS.

Labr
Conditn
Applicati

INS will do the wage determination

July 24, 1998

Peter is working on where the Dems. are on this! prevailing wage?

The Framework for the Tentative Smith/Abraham Deal on H-1B Legislation

The following represents the framework for a tentative agreement that Sen. Abraham and Rep. Smith reached yesterday. There is as yet no real "language" (they are drafting today) and so this is based on conversations with Smith's staff. The House leadership's intent is to bring the bill to the House floor next week.

Size of Increase

85,000 (FY1998); 95,000 (FY1999); 105,000 (FY2000); 115,000 (FY2001); and 115,000 (FY2002)

Under the H-1B program, the number of visas going to health care workers would be capped at 7500.

DOL COMMENT:

- Start High and go to lower number.

Training

There would be a \$250 training fee although the training has not been specified.

DOL COMMENT

- Dedicate funding to JTPA or successor programs (Senate language on training)
- Target funds for training in shortage occupations
- Include incumbent worker training

Attestations

- Both attestations would only apply to H-1B dependent employers. H-1B dependent would be defined as either (Abraham gets to decide):

15% ~~20%~~ of the total workforce; or

10% ~~15%~~ of the total workforce but excluding H-1Bs with either a master's degree (or the equivalent) or higher, or with a salary (or total compensation -- Smith's staff was unclear) of at least \$60,000.

There will also likely be a small business exemption.

?

~~H-1B employers as contractors? (for jobs)~~

Lower Threshold
any way to only have 9% for recruit

- The recruitment language would likely be (this is essentially the Smith language):

“The employer, prior to filing the application, has taken, in good faith, timely and significant steps to recruit sufficient United States workers in the specialty occupation for which H-1B nonimmigrant are sought. Such steps shall have included recruitment in the United States, using procedures that meet industry-wide standards and offering compensation that is at least as great as that required to be offered to H-1B non-immigrants under subparagraph (A), and offering employment to any equally or better qualified United States worker who applies.”

- The essential components of the no-layoff language would be:
 - would apply to lay-offs that occur 90 days before and after the date of filing the application/visa petition;
 - a violation would occur if an H-1B worker is placed in an “essentially equivalent job” to and in the “area of employment” as the laid-off U.S. worker (this is largely the Smith language);
 - the ending of a contract would be considered a lay-off for purposes of the attestation;
 - there would be language that would sanction the job contractor that placed an H-1B worker with an employer who had just laid-off a U.S. worker.
- The attestations would sunset when the cap returns to 65,000.

DOL COMMENTS: It is difficult to provide substantive comments on this section without seeing the legislative language.

- threshold should be based on salary and not total compensation
- push to reduce dependency threshold coverage from 15% (to 5%)
- add Federal contractors to coverage (particularly contractors with over \$100,000 in contracts)
- Small business exemption should be less than 50 or 100 employees and not 500
- add back “retain”

Can define as : internal recruitment

internal skills development

- Attestations should not sunset with reduction in cap

Dpt. w/auth. to invest. only pursuant to a complaint
1994: regs to adopt broader nurses ~~complaint~~
NAM sued.
Ct. set aside provision on ripeness.
DOL has limited itself to only inv

3

Enforcement

- A worker could complain about a violation of the recruitment attestation to an independent arbitration board.
- A worker could complain about a violation of the no lay-off attestation to DOL.

[Smith would follow current law which is that only aggrieved parties could complain; it is unclear what Abraham has in mind.]

~~eliminates~~ eliminates statutory ambiguity

aggrieved parties?

DOL COMMENTS:

- Should push to eliminate board; at least, need to clarify relationship of independent arbitration board to DOL and Secretary's authority---Secretary should appoint; ~~FMCS~~ or representation from employers, employees; board provides information to Secretary about complaints, findings, and conclusions; penalties imposed by Secretary.
- DOL should have authority to conduct compliance investigations without constraint, including where independent information--e.g. GAO or OIG report--indicates compliance problems.

Sanctions

It would contain three levels of sanctions: The first level (with the lowest fine) is if there is a "failure" or a "substantial failure" to meet one of the attestations. The second level is if the violation was willful. The third level is if the violation is willful and involved the no lay-off attestation. (This is Smith's version of the sanctions)

DOL COMMENTS: Without seeing the language it is difficult to comment

- Clarifying remedies language is needed
- Retaliation language should be included

Authority

INS would review the applications for completeness, etc.
DOL would have the authority to enforce the law (including making the prevailing wage determination).

DOL COMMENTS:

- DOL should receive/process applications(not INS)
- Need subpoena power for DOL

DOL broad view of "aggrieved party"

bifurcated enf. power is a bad idea. BUT if you have to have this, must not have enf power (w/ the serv.)

OTHER DOL COMMENTS:

Extraneous Matters: Since the Administration has not seen the draft language, it is important to make sure that there are not extraneous issues that have been inserted particularly relate to:

- Further extension of the “Hathaway” rule
- Prevailing wage survey liberalization
- Minor League Baseball player exemption to prevailing wages

Prevailing Issues:

- Prevailing wage protections should be strengthened(e.g., require payment of 105% of prevailing wage) to reflect fact that prevailing wage determinations are always aged
- Further extension of “Hathaway”
- Prevailing wage surveys
- Minor league baseball players?

~~APPH~~

Illegal to lay-off U.S. worker in

DOL enforcement:

can investigate:

for H-1B
employers
pursuant to
a complaint.

① H-1B dependent employers (>15%)

② Pursuant to a complaint (if Seer finds substantial and credible info/evidence that employer has violated a provision)

for non-H-1B dependent
employers
complaint

③ WARN Act (lay-off notices)
substantial and credible info/evidence brought to Seer & Labor
④ he/she certifies

③ spot-checks for employers w/ previous violations

Mtg. w/ NEC (Ceei) and Labor (Fraser, Gohl)

7/28/98

Re: Abraham H-1B legislation

Abraham compromise

~~Smith~~ Smith:

Having a hard time w/
the details.

Lay-off

include expiration of a time-limited K

H-1B dependent employer or

< 16 employees: 50%

17 < x < 50 employees: 50%

> 51 employees: 15% (non-exempt)

exempt
jobs w/ ^{wages} salary
→ \$60,000/year
or those w/ a
master's degree
in specialty
occupation

(or equivalent)

Enforcement

Failure — (B)(E)(F)

substantial failure — (C)(D)(G) ^{recruit}

mis rep.

willful failure of any
willful misrep.

\$5000

or 1 year

willful failure of any or willful misrep
(+) lay-off or other emp.

\$25K

or 2 yrs

Bogus arbitration process

binding arbitration of disputes

clear & convincing

who pays

where arbitrators from

Spot invest.

if committed
willful violation of
any in past 5 yrs.

LCA

Bill shifts to AG.

How to do prevailing wage
(obvious inaccuracies)

also for
recruit

Wage
surveys
(?)

Per
country
?

ED

n.b.

U.S. worker
definition

- subpoena authority
- expand invest. authority

(?) of
offense

Exemptions

— broad — narrow lay-off
= 502
or equiv.
15% (20)

Enforcement

wave

- INS doing LCA (complicates compliance)
- ~~narrow lay-off~~
- arb board

Govts prevailing wage

• wage surveys

--- (*) Per country piece (INS?)

(*) Expansion of Hathaway

(*) "or equivalent" could substantially broaden the exemption

(*) 50 is a lot of employees (90% of businesses in U.S.)
are

(*) Lay-off : no attest if not dependent of for any applicant
[is \$60K or masters/equiv]

Recruit : must attest if H-1B dependent

but not if worker meets first preference
(Einstein)
or multi-national

(a source of confusion to us)

(*) lay-off — what is it ?

"grant, contract, or other agreement"

"time-limited employment contract"

("inadequate performance")

very narrow lay-off provisions

(*) is definition of U.S. worker too narrow

include "alien authorized to be employed by this
Act or by the AG."

(*) Arbitration only applies to disputes over whether U.S. worker
denied employment opportunity in favor of H-1B worker.

clear &
convincing
evidence(?)

(whether H-1B dependent employer recruits)
is enforceable by the Dpt. of Labor

(*) who pays for arbitrators?
where are arbitrators from?

what is the sanction?
Can arbitrator
re-instate the worker.

none(?)

(*) ~~Sanction for employer passing on fee from to employee?~~

(*) wage surveys : shifts burden to govt. to whack @ bad surveys.
⊕ if rejected, does not preclude use.

(*) transfer of LCA review to AG ("obviously inaccurate"
on prevailing wage)

July 30, 1998

Proposed Administration Revisions to H.R. 3736 (the July 29, 1998 version):

1. Require either a \$500 fee for each position for which an application is filed or a \$1,000 fee for each nonimmigrant. Fee to fund training provided under JTPA Title IV. In addition, a small portion of these revenues should fund the administration of the H-1B visa program, including the cost of arbitration.
2. Define H-1B-dependent employers as:
 - a. For employers with fewer than 51 workers, that at least 20% of their workforce is H-1B; and
 - b. For employers with more than 50 workers, that at least 10% of their workforce is H-1B.
3. The recruitment and no lay-off attestations apply to: (1) H-1B dependent employers; and (2) any employer who, within the previous 5 years, has been found to have willfully violated its obligations under this law.
4. H-1B dependent employers attest they will not place an H-1B worker with another employer, under certain employment circumstances, where the other employer has displaced or intends to displace a U.S. worker (as defined in paragraph (4)) during the period beginning 90 days before and ending 90 days after the date the placement would begin.
5. DOL would have the authority to investigate compliance either: (1) pursuant to a complaint by an aggrieved party; or (2) based on other credible evidence indicating possible violations. *OK* *→ they don't like. maybe O.K.*
6. Establish an arbitration process for disputes involving the laying-off of any U.S. worker who was replaced by an H-1B worker, even of a non-H-1B dependent employer. This arbitration process would be largely similar to that laid out in H.R. 3736 except that it would be administered by the Secretary of Labor. The arbitrator must base his or her decision on a "preponderance of the evidence."
7. Reference in the bill to "administrative remedies" includes the authority to require back pay, the hiring of an individual, or reinstatement.
8. There must be appropriate sanctions for violations of "whistleblower" protections.
9. Close loopholes in the attestations:

heart
of their
objections

3 big
issues

Gene to
work out
w/ Abraham

- a. Strike the provision that "[n]othing in the [recruitment attestation] shall be construed to prohibit an employer from using selection standards normal or customary to the type of job involved."
 - b. Clarify that job contractors can be sanctioned for placing an H-1B worker with an employer who subsequently lays off a U.S. worker within the 90 days following placement.
 - c. Do not exempt H-1B workers with at least a master's degree or the equivalent from calculations of the total number of H-1B employees.
 - d. Define lay-off based on termination for "cause or voluntary termination," but exclude cases where there has been an offer of continuing employment.
10. Consolidate the LCA approval and petition processes within DOL, rather than within INS. *we prefer status quo to their proposal.*
- tech issue* 11. Broaden the definition of U.S. workers to include aliens authorized to be employed by this act or by the Attorney General.
12. Include a provision that prohibits unconscionable contracts.
13. Include a "no benching" requirement that an H-1B nonimmigrant in "non-productive status" for reasons such as training, lack of license, lack of assigned work, or other such reason (not including when the employee is unavailable for work) be paid for a 40 hour week or a prorated portion of a 40 hour week during such time.
14. Increase the annual cap on H-1B visas to 95,000 in FY 1998, 105,000 in FY 1999, and 115,000 in FY 2000. After FY 2000, the visa cap shall return to 65,000.
15. Eliminate the 7500 cap on the number of non-physician health care workers admitted under the H-1B program to make the bill consistent with our obligations under the GATS agreement.

July 30, 1998

Administration Changes Regarding H.R. 3736, as amended:

1. Require either a \$500 fee for each position for which an application is filed or a \$1,000 fee for each nonimmigrant. This fee should be used to fund training provided under JTPA Title IV.
2. Define H-1B-dependent employers as:
 - a. For employers with fewer than 51 workers, that at least 20% of their workforce is H-1B; and *OK (willing to work)*
 - b. For employers with more than 50 workers, that at least 10% of their workforce is H-1B. *lots of heartburn.*
 - c. *Exclude H-1Bs earning salary > \$60K? (firm who is an H-1B)*
3. The recruitment and no lay-off attestations apply to: (1) H-1B dependent employers; and (2) any employer who, within the previous 5 years, has been found to have willfully violated its obligations under this law. *OK*
may be O.K. ~~that's~~
4. DOL would have the authority to investigate compliance with these provisions either: (1) pursuant to a complaint by an aggrieved party; or (2) based on other credible evidence indicating possible violations. *MAAA*
5. Establish an arbitration process for disputes involving the laying-off of any U.S. worker who was replaced by an H-1B worker to be administered by the Secretary of Labor and the process would be largely similar to that laid out in H.R. 3736 as amended. The arbitrator must base his or her decision on a "preponderance of the evidence."
6. Close loopholes in the attestations:
 - a. Strike the provision that "[n]othing in the [recruitment attestation] shall be construed to prohibit an employer from using selection standards normal or customary to the type of job involved."
 - b. Strike the provision that the job contractor cannot be sanctioned for placing an H-1B worker with an employer who has, within the previous 90 days, laid off a U.S. worker with substantially equivalent qualifications and experience, unless they "knew or had reason to know of such displacement at the time of the placement of the H-1B worker" or "has been subject to a sanction under this provision based upon a previous placement" of an H-1B worker.
 - c. Do not exempt H-1B workers with at least a master's degree or the equivalent from calculations of the total number of H-1B employees.

percentage gets higher bc large companies have lots of K employees

- d. Define lay-off based on termination for “cause or voluntary termination,” but exclude cases where there has been an offer of continuing employment.
- 7. Consolidate the LCA approval process within DOL, rather than within INS.
- 8. Broaden the definition of U.S. worker to include aliens authorized to be employed by this act or by the Attorney General.
- 9. Include a provision that prohibits unconscionable contracts.
- 10. Include a requirement that an H-1B nonimmigrant in “non-productive status” for reasons such as training, lack of license, lack of assigned work, or other such reason (not including when the employee is unavailable for work) be paid for a 40 hour week or a prorated portion of a 40 hour week during such time.
- 11. Eliminate the 7500 cap on the number of non-physician health care workers admitted under the H-1B program.