American Immigration Lawyers Association/American Immigration Council

Section-by-Section Summary of the Senate Immigration Reform Bill introduced on April 16, 2013

"Border Security, Economic Opportunity, and Immigration Modernization Act" (S. 744)

(DRAFT VERSION of April 19, 2013)

Sec. 1. SHORT TITLE; TABLE OF CONTENTS. Border Security, Economic Opportunity, and Immigration Modernization Act.

Sec. 2. STATEMENT OF CONGRESSIONAL FINDINGS. Recognizes that the Act's success depends on securing the sovereignty of the U.S. and establishing a coherent and just system for integrating those who seek to join American society. Recognizes the right and duty to maintain and secure our borders and to harness the power of our tradition as a nation founded, built, and sustained by immigrants. Finds that the U.S. has always welcomed newcomers and will continue to do so.

Sec. 3. EFFECTIVE DATE TRIGGERS.

- Defines the following:
  - "Commission" – Southern Border Security Commission
  - "Comprehensive Southern Border Strategy" – strategy to achieve and maintain an effectiveness rate of 90 percent or higher in all high-risk border sectors
  - "Effective Control" – ability to achieve and maintain persistent surveillance and an effectiveness rate of 90 percent or higher in a Border Patrol sector
  - "Effectiveness Rate" – in a border sector, percentage calculated by dividing the number of apprehensions and turn-backs by the total number of illegal entries during a fiscal year
  - "High Risk Border Sector" – border sector in which more than 30,000 individuals were apprehended during the most recent fiscal year
  - "Southern Border"– international border between U.S. and Mexico
  - "Southern Border Fencing Strategy" – strategy that identifies where fencing, including double-layer fencing, should be deployed along the Southern border
- Establishes that DHS's border security goal is "to achieve and maintain effective control in high risk border sectors along the Southern border."

Triggers

- Directs the Secretary of Homeland Security to submit to Congress the Notice of Commencement of implementation of the two strategies (Comprehensive Southern Border Strategy and Southern Border Fencing Strategy) before starting to process applications for Registered Provisional Immigrant (RPI) status.
- Directs the Secretary, after consultation with GAO, to submit to the President and Congress a written certification of the following before starting to process applications for RPIs to adjust status (these triggers do not apply to agriculture card status or DREAM Act-eligible individuals):
  - Comprehensive Southern Border Security Strategy has been submitted to Congress and is substantially deployed and substantially operational;
  - Southern Border Fencing Strategy has been submitted to Congress, implemented, and is substantially completed;
  - Implementation of a mandatory employment verification system to be used by all employers to prevent unauthorized workers from obtaining employment;
  - Use of an electronic exit system at air and sea ports of entry that collects machine-readable visa or passport information from carriers.
- Provides exceptions to the trigger for adjustment of status: the Secretary may permit RPIs to apply for adjustment to LPR status if:

- Litigation or force majeure (act of God, extraordinary circumstances beyond control) prevents implementation or implementation has been held unconstitutional by the Supreme Court, and
- 10 years have elapsed since enactment

- Authorizes Secretary to waive legal requirements necessary to ensure expeditious construction of infrastructure. Grants district courts exclusive jurisdiction for all causes/claims arising from DHS action to waive legal requirements that allege violation of the Constitution. Cause/claim must be filed within 60 days after the date of contest action/decision. District court's decision may be reviewed only upon petition for writ to Supreme Court.

Sec. 4. SOUTHERN BORDER SECURITY COMMISSION. Establishes a commission that will be formed if the Secretary certifies that DHS has not achieved effective control in all high-risk border sectors within five years of enactment. The commission will be formed no later than 60 days after certification.

- Outlines the composition of the Commission (10 members): 2 appointed by President, 2 by Senate (1 majority, 1 minority); 2 by House (1 majority, 1 minority); 4 from states along Southern border (governor or appointee by governor).
- Establishes the duty of the Commission in providing recommendations to achieve and maintain the border security goal (persistent surveillance and 90 percent effectiveness rate)
- Directs the Commission to submit a report with recommendations within 180 days after end of five-year period after enactment. Requires GAO review of the Commission's recommendations.
- Terminates the Commission after 30 days of report submission.

Sec. 5. COMPREHENSIVE SOUTHERN BORDER SECURITY STRATEGY AND SOUTHERN BORDER FENCING STRATEGY.

Comprehensive Southern Border Security Strategy

- Directs the Secretary to submit, to Congress and GAO, within 180 days of enactment, a strategy for achieving and maintaining effective control (persistent surveillance and 90 percent effectiveness rate) between the ports of entry in all high risk border sectors along the Southern border.
- Requires strategy to specify:
  - Priorities to be met for success; capabilities to be obtained, including surveillance and personnel; resources to be obtained, including personnel, infrastructure, and technology;
  - Alignment of resources to execution of strategy; interim goals; schedule and milestones.
- Directs the Secretary to immediately implement the strategy after submitting to Congress and GAO, and to submit a notice of commencement.
- Directs the Secretary to submit semi-annually reports that will include:
  - Steps DHS has taken or plans to take toward interim goals and milestone; descriptions of impediments and actions on strategy as a whole;
  - Statistics on each Border Patrol sector: effectiveness rate of sector and aggregated effectiveness rate; number of recidivist apprehensions; recidivism rate for individuals that received a criminal consequence through the Consequence Delivery System process.

Southern Border Fencing Strategy

- Directs the Secretary to submit, to Congress and GAO, within 180 days of enactment, a strategy to identify where fencing, including double-layer fencing, infrastructure, and technology should be deployed along the Southern border. Directs the Secretary to submit a notice of commencement.

Sec. 6. COMPREHENSIVE IMMIGRATION REFORM TRUST FUND. Establishes an account in Treasury and outlines the initial deposit amount, sources of funding, and uses for the Comprehensive Immigration Reform Trust Fund (CIR Trust Fund).

- Provides from Treasury general fund an initial funding of $6.5 billion and an additional $100 million for start-up costs to implement the Act.
- Provides ongoing funding from the following sources: 75 percent of electronic travel authorization system fees; J-1 mitigation fees; H-1B, L-1, H-2B, retiree visa fees; F-1 visa fees ($500); visitor visa fees ($5); merit system green card fees; INA Sec 211($1500); penalties paid by RPI applicants; H-1B and L dependent employer fees; H-1B outplacement fees.
- Makes available to DHS $3 billion from initial fund to carry out Comprehensive Southern Border Strategy; $2 billion to carry out the Commission's recommendations; $1.5 billion to procure and deploy additional fencing.
- Makes available from the ongoing fund $50 million annually from FY2014–18 to increase border crossing prosecutions in Tucson Sector to 210/day and to fund FEMA in relation to Operation Stonegarden.
- Designates the funds as an emergency requirement.

Sec. 7. REFERENCE TO THE IMMIGRATION AND NATIONALITY ACT. Clarifies that unless specified, sections and provisions of this bill refer to the INA.

Sec. 8. DEFINITIONS. Defines "Department" as Department of Homeland Security and "Secretary" as Secretary of Homeland Security.

Title I – Border Security

Sec. 1101. DEFINITIONS.

- Rural, high-trafficked areas: rural areas where drugs and undocumented persons are routinely smuggled.
- Southern border: International border between the U.S. and Mexico.
- Southwest border region: Area in the U.S. that is within 100 miles of the Southern border.

Sec. 1102. ADDITIONAL U.S. CUSTOMS AND BORDER PROTECTION OFFICERS.

- Directs CBP to hire 3,500 officers by September 30, 2017.
- Allows CBP to reassign officers and agents between the Northern and Southern borders.
- Authorizes funding by the Comprehensive Immigration Reform Trust Fund.

Sec. 1103. NATIONAL GUARD SUPPORT TO SECURE THE SOUTHERN BORDER.

- Authorizes state Governors to utilize the National Guard of that state to assist CBP in securing the Southwest Border region by constructing fencing and checkpoints; increasing mobile surveillance systems; deploying manned and unmanned aircraft; deploying and providing radio communications between CBP and state and local law enforcement; and assisting CBP in rural, high-trafficked areas.
- Directs the Secretary of Defense to deploy necessary materiel, equipment, and logistical support for the National Guard.

Sec. 1104. ENHANCEMENT OF EXISTING BORDER SECURITY OPERATIONS.

- Mandates the increase in the number of border crossing prosecutions, up to 210 per day, in the Tucson Sector of the Southwest Border region.
    - Increases funding for prosecutors and support staff, interpreters, pre-trial services, and U.S Marshals.
    - Provides reimbursements to State, local, and tribal law enforcement agencies for detention costs on border crossing prosecutions.
    - Authorizes the appointment of additional magistrate judges.

    - Appropriates $50 million annually for FY2014–18 from the Comprehensive Immigration Reform Trust Fund
- Directs Federal Emergency Management Agency (FEMA) to enhance law enforcement preparedness and operational readiness through Operation Stonegarden (program that provides grants to states in the Southwest Border region to cover costs related to "illegal immigration and drug smuggling"). Appropriates $50 million annually for FY2014–18 from the Comprehensive Immigration Reform Trust Fund.
- Instructs the Secretary to construct additional Border Patrol stations in the Southwest Border region and analyze the feasibility of constructing additional Border Patrol sectors to combat drug trafficking operations. Establishes additional, and upgrades existing forward operating bases in the Southwest Border region. Authorizes appropriations for FY2014–18.

Sec. 1105. BORDER SECURITY ON CERTAIN FEDERAL LAND.

- Defines "Federal Lands" as all land under the control of the Secretary of Agriculture or Secretary of the Interior and located within the Southwest Border region in the State of Arizona along the international border with Mexico.
- Authorizes CBP personnel immediate access to Federal lands for security activities, such as routine patrols and deployment of communication and surveillance.
- Directs that security activities should be conducted in a manner that protects natural and cultural resources.
- Requires the preparation of a programmatic environmental impact statement to be published in the Federal Register. Clarifies that the impact statement shall not control, delay, or restrict actions by the Secretary to achieve effective control.
- Clarifies that this authority does not apply to private or state-owned land within the boundaries of Federal lands.

Sec. 1106. EQUIPMENT AND TECHNOLOGY.

- Mandates:
    - 24-hour surveillance at the Southwest Border region using mobile, video, and portable systems, as well as unmanned aircraft. 24-hour operation of unarmed and unmanned aerial vehicles along the Southern border.
    - Unarmed additional aircraft and helicopters along the Southern border.
    - New rotocraft and upgrades to helicopter fleet and horse patrols.
- Authorizes appropriations for FY2014–18.

Sec. 1107. ACCESS TO EMERGENCY PERSONNEL.

- Establishes, and authorizes appropriations to carry out, a two-year grant program to improve emergency communication by providing satellite telephones to individuals living and working in the Southwest Border region to those who lack cellular service. Authorizes appropriations.
- Provides funding to purchase technology and upgrade radio and communications systems for federal, state, tribal, and local law enforcement in the Southwest Border region during the five-year period from enactment. Grants state, tribal, and local law enforcement access to the spectrum assigned to federal law enforcement agencies, if an emergency situation arises.

Sec. 1108. SOUTHWEST BORDER REGION PROSECUTION INITIATIVE. Directs the Attorney General to reimburse state, county, tribal, and municipal governments for prosecution and pre-trial detention costs of federally initiated criminal cases declined by local offices of the U.S. Attorneys. Authorizes appropriations for FY2014–18.

Sec. 1109. INTERAGENCY COLLABORATION. Directs the Department of Defense to work with DHS to identify equipment and technology that could assist CBP in improving security at the Southern border.

Sec. 1110. SCAAP REAUTHORIZATION. Extends appropriation of $950 million until FY2015.

Sec. 1111. USE OF FORCE.

- Requires the Secretary of Homeland Security, in consultation with the Civil Rights Division of the Department of Justice, to issue policies governing the use of force within 180 days of enactment.
- Requires the reporting of each use of force and the establishment of procedures for accepting and investigating complaints, disciplining personnel, and reviewing all uses of force.

Sec. 1112. TRAINING FOR BORDER SECURITY AND IMMIGRATION ENFORCEMENT OFFICERS.

- Requires training for CBP officers, Border Patrol officers, and ICE officers, as well as agriculture specialists.
- Training will be prepared in collaboration with the Civil Rights Division of the Department of Justice and will cover:
    - Fraudulent travel documents; civil, constitutional, human, and privacy rights; scope of enforcement authority; use of force policies; immigration laws; social and cultural sensitivity; impact of border operations on communities; and environmental concerns.
- Requires training for border community liaison officers at the northern and southern borders in order to better liaise between border communities and the Office for Civil Rights and Civil Liberties and Civil Rights Division of the Department of Justice, to keep an open dialogue between border communities and the federal government, and to receive performance assessments from border communities.

Sec. 1113. DEPARTMENT OF HOMELAND SECURITY BORDER OVERSIGHT TASK FORCE.

- Establishes an independent Department of Homeland Security Border Oversight Task Force to review and make recommendations on:
    - border enforcement policies and their impact on the border communities
    - function of liaison offices
    - protection of due process, civil and human rights of border residents, visitors, and migrants
    - training of border enforcement personnel
- Outlines the composition of the Task Force, which will be comprised of 26 members, appointed by the President, including 11 members from the Northern border region and 15 members from the Southern border region. Includes local government elected officials, local law enforcement officials, civil rights advocates, business representatives, higher education representatives, representatives from faith communities, and representatives of Border Patrol.
    - Task Force members may not be employed by Federal Government
    - members serve for three years or life of Task Force
    - members select chair and vice chair
    - members are not paid, but are reimbursed for travel expenses
- Authorizes the Task Force to conduct hearings, make findings or recommendations to the Secretary of Homeland Security, and request statistics from the federal government.
- Requires Secretary to respond within 180 days to findings and recommendations.
- Directs Task Force to submit final report to President, Congress, and Secretary within two years of its first meeting. Report must include findings regarding duties of the Task Force and recommendations on border and immigration policies, strategies, and programs, including recommendations about the Task Force and whether it should continue to operate.
- Authorizes appropriations for FY2014–17.
- Terminates 60 days after submission of the final report.

Sec. 1114. IMMIGRATION OMBUDSMAN. Expands the CIS Ombudsman's office to cover CBP and ICE. Will be called "DHS Immigration Ombudsman."

Sec. 1115. REPORTS.

- Requires the Secretary of Homeland Security to report to congressional committees on:
  - the effectiveness rate of each Border Patrol sector along the Northern and Southern borders
  - the number of miles along the Southern border that are under persistent surveillance
  - monthly wait times for crossing the Southern border and the staffing on such border crossings
  - allocations at each port of entry along the Southern border
- Requires DHS and DOD to report to congressional committees on interagency collaboration with respect to equipment and technology (as specified in Sec. 1109).

Sec. 1116. SEVERABILITY. Provides that if any provision of this Act is held to be unconstitutional, the remainder of the Act shall not be affected.

Title II – Immigrant Visas

Subtitle A—Registration and Adjustment of Registered Provisional Immigrants

SEC. 2101. REGISTERED PROVISIONAL IMMIGRANT STATUS.

Sec. 2101(a): Authorization. Creates new INA §245B to allow certain noncitizens who are currently unlawfully present and who entered the U.S. before December 31, 2011, to adjust status to that of Registered Provisional Immigrant (RPI).

§245B(a): Authorizes DHS to grant RPI status to individuals who clear national security and background checks, meet certain eligibility criteria, apply for RPI status within the application period, and pay applicable penalties and fees.

§245B(b): Establishes the eligibility requirements (preponderance standard) for registration as an RPI:

- §245B(b)(2): Physical Presence.
  - Must be physically present on date application for RPI is submitted;
  - Must have been physically present on or before December 31, 2011, and maintain continuous physical presence from December 31, 2011, until RPI status is granted;
    - An alien who is absent from the U.S. without authorization after the date of enactment does not meet the physical presence requirement, except that a departure after December 31, 2011, may be excused if brief, casual and innocent.

- §245B(b)(3)(A)(i): Criminal Bars.
  - Any felony (other than state or local status-based or immigration offenses);
  - Aggravated felony under INA §101(a)(43);
  - Three or more misdemeanors (other than minor traffic offenses or state/local status-based or immigration offenses) where conviction occurred on different dates. May be waived for humanitarian purposes to ensure family unity, or if otherwise in the public interest.
  - Foreign offenses (except purely political offenses) that would render the person inadmissible or deportable if committed in the U.S., with certain exceptions.
  - Unlawful voting.

- §245B(b)(3)(A)(ii): Admissibility Bars. Applicant must be admissible under INA §212(a) except:

- The following inadmissibility grounds do not apply: §212(a)(4) (public charge); §212(a)(5) (labor certification requirements); §212(a)(7) (documentation requirements); and §212(a)(9)(B) (3/10 year unlawful presence bars).
- The following inadmissibility grounds do not apply unless they are based on the act of unlawfully entering the U.S. after the date of enactment: §212(a)(6)(A) (present without admission or parole); §212(a)(6)(C) (misrepresentation); §212(a)(6)(D) (stowaways); §212(a)(6)(F) (subject to civil penalty); §212(a)(6)(G) (student visa abusers); and §212(a)(9)(C) (unlawful presence after previous immigration violation); and §212(a)(10)(B) (guardian of inadmissible alien).
- The following inadmissibility grounds do not apply unless the relevant conduct began on or after the date on which the alien files the RPI application: §212(a)(6)(B) (failure to attend removal proceedings); §212(a)(9)(A) (certain aliens previously removed).

- §245B(b)(3)(A)(iii):Terrorism Bars. Applicant is ineligible if DHS knows or has reasonable grounds to believe he or she is engaged in or is likely to engage in terrorism.

- §245B(b)(3)(A)(iv): Status Bars. Applicant cannot have been an LPR, refugee, asylee, or lawfully present nonimmigrant (with certain exceptions) notwithstanding any unauthorized employment or status violations, on the date the bill was introduced in the Senate (April 16, 2013).

- §245B(b)(3)(B):Waiver. Provides for a waiver of the three or more misdemeanor ineligibility ground for humanitarian purposes to ensure family unity, or if otherwise in the public interest. Also waives any provision of INA §212(a) that is not listed in the exemptions except for:

  - §212(a)(2)(B) (multiple criminal convictions); §212(a)(2)(C) (drug trafficking); (D)(ii) (procurers of prostitutes); §212(a)(2)(E) (criminal activity/immunity), §212(a)(2)(G) (violators of religious freedom); §212(a)(2)(H) (human trafficking), or §212(a)(2)(I) (money laundering);
  - §212(a)(3) (national security);
  - §212(a)(10)(A) (polygamy); §212(a)(10)(C) (child abductors); §212(a)(10)(D) (unlawful voting); §212(a)(10)(E) (renouncing citizenship to avoid taxes); and
  - §212(a)(6)(C)(i) (where misrepresentation relates to RPI application).

- §245B(b)(3)(C): Conviction Explained. For purposes of criminal ineligibilities, the term "conviction" does not include a judgment that has been expunged or set aside.

- §245B(b)(3)(D): Rule of Construction. Provides that nothing in the ineligibility paragraph should be construed to require DHS to initiate removal proceedings.

- §245B(b)(4): Applicability of Other Provisions. INA §§208(d)(6) (frivolous asylum applications) and 240B(d) (failure to depart under voluntary departure) do not apply to RPI applicants.

- §245B(b)(5): Dependent Spouses and Children. The spouse and child of an RPI may receive RPI status provided they:
  - Are physically present in the U.S. on the date RPI status is granted and on or before December 30, 2012;
  - Meet all of the eligibility requirements for RPIs other than the physical presence requirements that are tied to December 31, 2011.
  - Where relationship between RPI and dependent terminates, the spouse or child may apply for RPI dependent status if the relationship terminated due to death, divorce, or domestic violence. Application period does not apply.
  - Where the RPI's application is terminated or revoked, dependents may apply for RPI status independent of the RPI relative. Application period does not apply.

§245B(c)(1)−(4): Application Procedures, Taxes, Form.

- Provides that applicants for RPI or RPI dependent status must submit a completed application form during the application period in accordance with the final rule;
- Requires satisfaction of federal tax liabilities before filing.
- Initial application period is one year beginning on the date that the final rule is published in the *Federal Register*. Application period may be extended 18 months.
- Application form will collect required information and will allow families to submit a single application. Interview may be required.

§245B(c)(5): Apprehension Before or During Application Period. If prima facie eligible individual is apprehended between date of enactment and end of application period, DHS must provide reasonable opportunity to apply and may not remove the individual until a final decision on the RPI application is made.

§245B(c)(6): Eligibility After Departure. An alien who departed the U.S. under an order of removal or voluntary departure, who is outside the U.S., or who re-entered illegally after December 31, 2011, without obtaining permission to reapply for admission, is ineligible for RPI status. May be waived if the alien is: (i) the spouse or child of a USC or LPR; (ii) the parent of a USC or LPR; (iii) was younger than 16 upon initial entry and earned a high school diploma or GED in the U.S.; or (4) was younger than 16 upon initial entry, is 16 or older on the date of filing the RPI application, and was physically present for an aggregate of three years within the six-year period preceding the date of enactment.

§245B(c)(7): Suspension of Removal During Application Period. Provides that RPIs may not be detained or removed unless RPI is or became ineligible or RPI status revoked.

- In Removal Proceedings. If prima facie eligible individual in removal proceedings is identified by DHS between the date of enactment and end of application period, DHS must provide reasonable opportunity to apply. Upon motion by either party (with noncitizen's consent), EOIR shall terminate to provide opportunity to apply. If EOIR identifies a prima facie eligible individual in removal proceedings, EOIR must notify DHS and if DHS does not dispute eligibility within seven days, EOIR shall terminate (with noncitizen's consent) to provide opportunity to apply.

- Prior Removal Order. Noncitizens in the U.S. with prior removal or voluntary departure orders may apply for RPI status, notwithstanding the order or reinstatement under INA §241(a)(5). If granted RPI status, RPI shall move to reopen the prior order and the motion shall be granted unless there is clear and convincing evidence of ineligibility.

- Period While RPI Application Is Pending. RPI applicant:

    - May receive advance parole if urgent humanitarian circumstances compel such travel;
    - May not be detained or removed unless DHS finds the alien is, or has become, ineligible for RPI status for criminal or national security reasons;
    - Will not accrue unlawful presence for purposes of 3/10-year bars; and
    - Will not be considered unauthorized to work.

Employer Protections. Employer who knows that an employee is an RPI applicant or will apply when the application period commences is not in violation of employer sanctions laws.

Effect of Departure. Individuals with final orders who depart under advance parole or RPI status do not effectuate removal under INA §101(g).

§245B(c)(8): Security and Law Enforcement Clearances. Sets forth the requirements for the collection of biometric and biographic data for purposes of national security and law enforcement clearances.

§245B(c)(9): Duration of Status and Extension. Initial RPI status valid for six years unless revoked. May be extended for additional six years if:

- RPI continues to be eligible for RPI status and RPI status has not been revoked; and
- RPI satisfies any applicable federal tax liability;
- **Employment Requirement**. Applicant (1) must have been regularly employed through RPI period (allowing for gaps of not more than 60 days); and (2) is not likely to become a public charge; or (3) demonstrates an average income or resources not less than 100 percent of the poverty level throughout RPI period.
    - Applicant can satisfy the employment requirement by providing evidence of full-time attendance at certain educational institutions/programs.
    - The following individuals are exempt from the employment/education requirement:
        - RPIs under 21 at time of first extension of RPI status;
        - Those over 60 on the date of filing (or 65 on the date of adjustment);
        - Those with a physical or mental disability or pregnancy; and
        - RPI dependents.
    - Temporary exceptions allowed for medical leave, maternity leave, childcare or other circumstances outside the control of the RPI that render the RPI unable to work.
        - Allows for a waiver if applicant can show extreme hardship to him- or herself or to a USC or LPR spouse, parent, or child.

§245B(c)(10): Fees and Penalties. Provides for the collection of a filing fee from applicants over age 16 to be determined by DHS Secretary. DHS Secretary may limit fees and exempt defined classes of individuals from the fee requirement. RPIs 21 and older must pay a $1,000 penalty (unless exempt as described in §245D). Allows for installment payments.

§245B(c)(11): Adjudication. Where RPI application is denied for insufficient evidence, applicant may file an amended application, but must do so during application period.

§245B(c)(12): Evidence of RPI Status**.** Provides that RPIs shall receive a machine-readable, tamper-resistant photo ID as proof of RPI status. Document authorizes travel and employment, though employment authorization is limited to three years.

§245B(c)(13): DACA Recipients. Authorizes the DHS Secretary to grant RPI status to DACA beneficiaries provided that they undergo renewed national security and law enforcement clearances and have not engaged in conduct that would render the individual ineligible for RPI status since DACA was granted.

§245B(d)(1)–(2): Conditions of RPI Status, Revocation

- RPIs are authorized to be employed in the U.S. and may travel and, if otherwise admissible, may return without a visa if:
    - RPI provides proof of RPI status or a travel document;
    - Duration of trip is 180 days or less, absent extenuating circumstances;
    - RPI meets requirements to extend RPI status;
    - RPI is not inadmissible for national security concerns.
- RPIs to be considered admitted and lawfully present as of date of application. RPIs are not to be classified as nonimmigrants or LPRs.
- DHS may revoke RPI status at any time if:
    - RPI no longer eligible for RPI status;
    - RPI knowingly used RPI documentation for unlawful or fraudulent purpose;

- RPI absent from the U.S. for a single period of 180 days or 180 days in the aggregate during a calendar year, absent extenuating circumstances.
- To revoke RPI status, DHS must provide notice and administrative review. May require RPI to appear for interview. If RPI status revoked, RPI document immediately invalidated.

§245B(d)(3)–(4): Public Benefits and Tax Provisions. Provides that RPIs are ineligible for federal means-tested benefits, premium assistance tax credits, and any benefits under the Patient Protection and Affordable Care Act.

§245B(d)(5): Assignment of Social Security Numbers. Authorizes the Social Security Administration to issue social security cards and numbers to RPIs.

§245B(e): Dissemination of Information on RPI Program. Requires DHS to disseminate information in relevant languages to the public regarding the RPI program.

Sec. 2101(b): Enlistment in the Armed Forces. Modifies existing law to allow RPIs to enlist in the U.S. Armed Forces.

Sec. 2102: ADJUSTMENT OF STATUS OF REGISTERED PROVISIONAL IMMIGRANTS

Sec. 2102(a): Adjustment of Status of RPIs. Adds new INA §245C to establish the legal regime by which RPIs may adjust to LPR status.

§245C(a): Authorizes DHS to adjust the status of RPIs to LPR status provided they meet certain requirements, including those set forth in §2302(c)(3), which established the merit-based system for immigrant visas.

§245C(b): Eligibility Requirements.

- Applicant must have been granted RPI status and remain eligible for such status. Previously waived inadmissibility grounds do not apply. Applicants cannot adjust if DHS has initiated RPI revocation process.
- Applicant cannot have been absent from the U.S. for more than 180 days in any calendar year during RPI status, unless there were extenuating circumstances.
- Applicant must have satisfied any federal tax liability.
- Employment or Education Requirement:
  - Applicant: (1) must have been regularly employed through RPI period (allowing for gaps of not more than 60 days); and (2) is not likely to become a public charge; OR (3) demonstrate average income or resources of 125 percent of the federal poverty guidelines throughout the RPI period.
  - Applicants cannot be required satisfy this requirement with a single employer.
  - Applicant can satisfy the employment requirement by providing evidence of full-time attendance at certain educational institutions/programs.
  - The following individuals are exempt from the employment/education requirement:
    - RPIs under 21 at time of first extension of RPI status;
    - Those over 60 on the date of filing or 65 years of age on the date of adjustment;
    - Those with a physical or mental disability or pregnancy;
    - RPI-dependents.
  - Temporary exceptions allowed for medical leave, maternity leave, childcare or other circumstances outside the control of the RPI that render the RPI unable to work.
    - Allows for a waiver if applicant can show extreme hardship to him- or herself or to a USC or LPR spouse, parent, or child.

- Applicants 16 years or older must meet the English/civics requirements used in naturalization, or be pursuing a course of study in English/civics, unless the applicant suffers from a disability (mandatory waiver) or is 70 or older (discretionary waiver). If English/civics requirement is met at adjustment, there is no requirement to re-test at naturalization.
- Applicant provides proof of selective service registration, if applicable.

§245C(c): Application Procedures. Prohibits RPIs from applying for LPR status until the Secretary of State certifies that immigrant visas have become available for all approved petitions that were filed before the date of enactment.

- Must file an application and pay a filing fee (to be determined by DHS Secretary).
- Applicant may be interviewed by DHS.
- Must complete new national security and law enforcement clearances.
- Applicants 21 years of age or older on April 16, 2013, (date bill introduced in Senate) must pay a $1,000 penalty unless adjusting status under the provisions for DREAMers.

Sec. 2102(b): Limitation on Registered Provisional Immigrants. Provides that RPIs may only adjust status under §2302 of this Act (establishing a merit-based system).

Sec. 2102(c): Naturalization. Amends INA §319 to allow some LPRs meeting certain physical presence and other requirements to apply for citizenship within three years of obtaining LPR status.

Sec. 2103: THE DREAM ACT

Sec. 2103(a): Short Title. "Development, Relief, and Education for Alien Minors Act of 2013."

Sec. 2103(b): Adjustment of Status for Certain Aliens Who Entered the U.S. as Children. Creates new INA §245D for permanent resident status for certain RPIs brought to the U.S. as children.

§245D(a): Definitions. Provides for definitions of terms used in Section 245D.

§245D(b)(1): Requirements. RPI must demonstrate that he or she:

- Has been an RPI for at least five years;
- Entered initially the U.S. before the age of 16;
- Has earned a H.S. diploma or GED in the U.S.;
- Obtained a degree from an institution of higher education or completed at least two years of a bachelor's program, or served at least four years in Uniformed Services and, if discharged, received an honorable discharge (may be waived for compelling circumstances); and
- Has provided a list of each secondary school that the applicant attended in the U.S.;
- Has passed an English/civics test, unless the applicant has a physical or developmental disability or mental impairment; and
- Has submitted new biometric and biographic data and passed background checks.

- §245D(b)(2)(A) and (B): Application and Adjudication. Requires RPI to file an application for adjustment of status and sets forth the procedures for favorable and adverse decisions.

- §245D(b)(2)(C): DACA Recipients. Authorizes the Secretary to adopt streamlined adjustment of status procedures for DACA recipients.

- §245D(b)(3): Treatment for Purposes of Naturalization. Allows DREAM Act LPRs to apply for citizenship immediately upon becoming green card holders.

- §245D(c): Exemption from Numerical Limitations. Provides individuals who adjust status under §245C or §245D are not subject to the numerical limitations on visas.

- §245D(d): Restoration of State Option to Determine Residency for Purposes of Higher Education. Repeals §505 of IIRAIRA, which limits the ability of states to provide tuition equity to its students based on immigration status. Establishes an effective date retroactive to the date of enactment of IIRAIRA.

Sec. 2104: ADDITIONAL REQUIREMENTS. Creates new INA §245E:

§245E(a)(1): Prohibited Disclosures. Prohibits the disclosure, publication, or examination of information gained through an application for lawful status under the RPI program (including §§245B, 245C, and 245D) except as is necessary to adjudicate an application.

§245E(a)(2): Required Disclosures. Requires the disclosure of information in connection with a criminal or national security investigation to:

- Law enforcement and intelligence agencies;
- Courts;
- A grand jury; or
- An official coroner for purposes of identification.

§245E(a)(3): Auditing and Evaluation of Information. Allows the Secretary to audit and evaluate information from applications under this section to identify immigration fraud, and use evidence to investigate, prosecute, deny, or terminate benefits.

§245E(b): Employer Protections. Protects employers who provide employment documents in support of applications for RPI status from civil or criminal prosecution for unlawfully employing unauthorized immigrants prior to enactment, unless the documents provided are fraudulent.

§245E(c): Administrative Review. Provides a single level of administrative appellate review for applications for and revocation of status under the RPI programs, including petitions for children and spouses of RPI applicants. Review is based on the administrative record and on any newly discovered or previously unavailable evidence. This section also:

- Limits appeals from denials or revocations to a single appeal and requires notice of appeal to be filed no later than 90 days after service of the decision.
- Preserves the DHS Secretary's ability to certify appeals for review.
- During the administrative appeal, the noncitizen may not be removed and does not accrue unlawful status.

§245E(d): Privacy and Civil Liberties. Requires the DHS Secretary to safeguard personally identifiable information collected under §§245B, 245C, and 245D and conduct a privacy impact assessment during the pendency of interim final regulations.

Sec. 2204(b): Judicial Review. Revises the judicial review provisions as follows:

- Clarifies the scope of judicial review of discretionary determinations and review of constitutional claims or questions of law;
- Adds venue provisions relating to judicial review of decisions under the RPI program;
- Adds new INA §242(h), which provides for judicial review of denials or revocations under §§245B, 245C, or 245D relating to the RPI program in U.S. district court after all administrative

appeals have been exhausted. Protects the noncitizen from accruing unlawful presence, tolls voluntary departure, and allows the court to grant a stay of removal during appeal;
- Allows an appeal to U.S. circuit courts for denials or revocations under §§245B, 245C, or 245D relating to the RPI program in conjunction with review of a removal order, if the validity of the denial has not been upheld in a prior judicial proceeding;
- Provides a reviewing court the ability to remand a case for consideration of additional evidence if the court finds the additional evidence is material; and there were reasonable grounds for why the information was not previously cited;
- Standard of review is governed by 5 USC §706;
- Provides jurisdiction for any cause or claim arising from a pattern or practice of the DHS Secretary in the operation or implementation of this bill to federal district courts and allows appropriate relief regardless of ripeness or other standing requirements if resolution of the case serves judicial or administrative efficiency or a remedy would not otherwise be reasonable available;
- Limits claims that an action taken by the Secretary under §§245B, 245C, 245D, or 245E violates the law or is unconstitutional to U.S. district courts;
- Requires compliance with the Class Action Fairness Act of 2005 and the Federal Rules of Civil Procedure for any class action lawsuits;
- Precludes the filing of the same claim by the same individual when the claim has already been decided;
- Allows claims relating to the legality of the program to be brought without requiring the exhaustion of administrative remedies; and
- Allows individuals who did not comply with registration requirements upon arrival into the U.S. or who received a removal order or voluntary departure order based on noncompliance with registration requirements to still be eligible for an immigration benefit under the INA.

Sec. 2105: CRIMINAL PENALTY. Establishes a fine of up to $10,000 for persons who knowingly use, publish, or permit to be examined, information relating to RPI applications in violation of the §245E(a) (prohibited disclosures).

Sec. 2106: GRANT PROGRAM TO ASSIST ELIGIBLE APPLICANTS. Permits the Secretary to establish a USCIS program to award competitive grants to "eligible public or private nonprofits" for the purpose of assisting individuals in applying for RPI status, adjustment of status for RPIs, or adjustment of status for childhood arrivals.

- Defines "eligible public or private nonprofit;"
- Establishes activities for which funds can be used (*e.g.*, public information on eligibility and benefits; assistance with applications for RPI status and adjustment of status; English and civics; naturalization applications, etc.);
- Funds come from the CIR Trust Fund (up to $50 million) or appropriations as necessary.

Sec. 2107: CONFORMING AMENDMENTS TO THE SOCIAL SECURITY ACT. Amends §208(e)(1) of the Social Security Act to exempt RPIs and those who adjusted to LPR status from RPI status from certain penalties for giving false information to the Social Security Administration (same provision as for IRCA LPRs, etc.). Establishes an effective date of 10 months from the date of enactment.

- Specifies that the removal of a parent from the U.S. or the involvement of a parent in an immigration proceeding (unless the parent is unfit or unwilling to be a parent) is a compelling reason for a state not to file a petition to terminate parental rights. Establishes actions that a state must take before filing to terminate parental rights;
- Amends §471(a) of the Social Security Act to ensure that immigration status alone of a parent, legal guardian, or relative should not disqualify the person when determining placement for a child;

- Adds a requirement that a case manager for a separated child be able to communicate in the native language of the child and his/her family or use an interpreter;
- Requires state to coordinate with DHS to ensure that parents who wish for their child to accompany them to their country of origin are given adequate time to obtain a passport, visa, and relevant documents;
- Requires states to coordinate with state agencies regarding alternative documentation requirements for background checks if caregiver does not have a federal or state-issued identification;
- Provides privacy/confidentiality provisions with exceptions for reunification, consent/best interests of the child, or prevention of imminent serious harm;
- Requires additional information in the child's "case plan," including the location of the parent, guardian, relative from whom the child has been separated, and disclosures to government agencies or other persons;
- Defines "separated child" as a child who has a parent/relative/guardian who is detained by federal/state/local law enforcement because of immigration or was removed from the U.S. in violation of an immigration law and is in foster care; and
- Establishes an effective date of the first day of the first calendar quarter that begins after the first-year period that begins on the date of enactment.

Sec. 2108: GOVERNMENT CONTRACTING AND ACQUISITION OF REAL PROPERTY INTEREST. Provides certain exemptions for federal agencies from procurement/contracting rules and hiring rules in order to implement the provisions of the title. Extends authority to waive annuity limitations to September 30, 2017. Authorizes the Secretary to acquire a leasehold interest in real property in order to implement the provisions of the title.

Sec. 2109: LONG-TERM LEGAL RESIDENTS OF THE CNMI. Amends the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America to create a CNMI-only resident status.

Sec. 2110: RULEMAKING.

- Mandates that the DHS Secretary, Attorney General, and Secretary of State separately issue interim final regulations to implement this subtitle within one year of enactment, which will take effect immediately upon publication in the *Federal Register*.
- Mandates that regulations include RPI application procedures, criteria used to determine processing fees and exemptions, required documentation, procedures and evidence required for adjustment of status from RPI status.

Sec. 2111: STATUTORY CONSTRUCTION. Provides legal disclaimer that unless specifically provided, nothing in the subtitle may be construed to create a legally enforceable substantive or procedural right or benefit.

Subtitle B—Agricultural Worker Program

Sec. 2201. SHORT TITLE. Provides that Subtitle B may be cited as the "Agricultural Worker Program Act of 2013."

Sec. 2202. DEFINITIONS. Defines the following terms used in this subtitle: "blue card status," "agricultural employment," "child," "employer," "qualified designated entity," and "work day."

Chapter 1: Program for Earned Status Adjustment of Agricultural Workers

Subchapter A—Blue Card Status

Sec. 2211. REQUIREMENTS FOR BLUE CARD STATUS. Provides that the Secretary can grant "blue card" (BC) status to any noncitizen who:

  - Undergoes background checks;
  - Performed at least 575 hours or 100 work days during the two-year period ending on December 31, 2012, or is a qualifying noncitizen's spouse or child;
  - Submits a completed application during the application period;
  - Is not ineligible under INA §245B(b)(3) or (4) (same grounds as RPI status)
- Sets forth an application period of one year, beginning on the date the final rule is published in the *Federal Register,* with the possibility of an 18-month extension.
- Provides for a $100 penalty fee for applicants 21 and older. Secretary to determine fees.
- If denied, allows the applicant to file an amended application within the application period with evidence or fees missing in the first application.
- Provides protections for prima facie eligible individuals who are in removal proceedings or are apprehended between the date of enactment and the end of the application period. Such individuals shall be given reasonable opportunity to apply and shall not be removed.
- Individuals with final orders of removal or voluntary departure orders may apply for BC status and, if granted, shall file a motion to reopen, which shall be granted unless evidence indicates they are not eligible.
- While the BC application is pending, applicants:
    - May travel on advance parole under urgent humanitarian circumstances;
    - May not be detained or removed unless it is determined that the alien is or has become ineligible for BC status;
    - Do not accrue unlawful presence for purposes of 3/10 year bars; and
    - Are not considered unauthorized for employment.
- Protects employers from an unlawful employment violation under §274A(a)(2) if the employer knows the individual is an applicant for BC status or will apply once the application period starts.
- Individuals with final orders who depart under advance parole or BC status do not effectuate removal under INA §101(g).
- No individual may remain in BC status eight years after the date regulations are published.
- Individuals granted BC status:
  - Will receive evidence of BC status that is machine-readable, tamper-resistant, and includes a digitized photo that will serve as a valid travel document and evidence of employment authorization;
  - Will be authorized for employment;
  - May travel and be readmitted to the U.S. without a visa, but may not remain outside the U.S. for more than 180 days unless extenuating circumstances prevent timely return. The BC holder is also subject to certain inadmissibility grounds;
  - Are lawfully admitted to the U.S. as of the date the application is filed;
  - Are considered lawfully present, EXCEPT for purposes of certain tax credits and the Affordable Healthcare Act; and
  - Are NOT eligible for means-tested public benefits.
- BC status can be revoked after notice and administrative review procedures, IF:
  - The individual is no longer eligible;
  - The individual knowingly used documentation issued under this section for an unlawful or fraudulent purpose; or
  - The individual was outside the U.S. for more than 180 days (for any single period or in the aggregate over a calendar year) unless there were extenuating circumstances.

- Employer must provide annual record of employment to BC holders and the Secretary of Agriculture. There are fines for noncompliance.

Sec. 2212. ADJUSTMENT TO PERMANENT RESIDENT STATUS. Provides for adjustment of status to LPR for individuals granted BC status five years after the date of enactment if: (1) they performed 100 work days of agricultural employment during each of five years during the eight-year period beginning on the date of enactment, OR (2) they performed 150 work days of agricultural employment during each of three years during the five-year period beginning on the date of enactment.

- Secretary may credit up to 12 additional months of agricultural employment to meet the requirements if they were unable to work due to pregnancy, injury or disease of self or child; severe weather conditions; or termination from employment if termination was without just cause;
- If alien is unable to fulfill the agricultural service requirement, may adjust status to RPI.
- Individuals applying for adjustment to LPR status from BC status:
  - Must apply before BC status expires;
  - Must pay a $400 fine;
  - May be denied LPR status if no longer eligible for BC status or if failed to perform qualifying employment;
  - May not adjust if BC revocation proceedings are pending;
  - May not file until federal tax liabilities are satisfied; and
  - Can include spouses and children on their principal application.
- Grounds of inadmissibility that were previously waived or made inapplicable shall not apply for purposes of adjustment to LPR status.
- Secretary to determine fees and may interview applicants.
- Includes confidentiality provisions for information provided on applications and for employment records maintained for purposes of this section.
- Provides for criminal penalties, including fines and/or imprisonment for false statements. If convicted, person is deemed inadmissible under INA §212(a)(6)(C)(i).

Sec. 2213. USE OF INFORMATION. Requires the Secretary, in cooperation with qualified designated entities, to broadly disseminate information on these benefits no later than the first day of the application period.

Sec. 2214. REPORTS ON BLUE CARDS. Requires the Secretary to submit annual reports to Congress, starting no later than September 30, 2013, that identify the number of individuals who applied for and were granted BC status, and the number of individuals who applied for and were granted adjustment from BC status for the previous FY.

Sec. 2215. AUTHORIZATION OF APPROPRIATIONS. Authorizes appropriations as may be necessary to implement this subpart for FYs 2013 and 2014.

Subchapter B—Correction of Social Security Records

Sec. 2221. CORRECTION OF SOCIAL SECURITY RECORDS. Amends the Social Security Act to exempt BC status holders and BC status holders who adjusted from certain penalties for giving false information to the Social Security Administration (same provision as for IRCA LPRs, etc.).

Chapter 2: Nonimmigrant Agricultural Visa Program

Sec. 2231. NONIMMIGRANT CLASSIFICATION FOR NONIMMIGRANT AGRICULTURAL WORKERS. Amends INA §101(a)(15) to create new temporary visas for aliens coming to the U.S. to perform full-time

agricultural work under a written contract (W-2) or for "at-will" agricultural workers who have an offer of full-time employment (W-3) in an agricultural occupation with a designated agricultural employer (DAE).

Sec. 2232. ESTABLISHING OF NONIMMIGRANT AGRICULTURAL WORKER PROGRAM. Adds new INA §218A, "Nonimmigrant Agricultural Worker Program." Requires the issuance of regulations one year after the date of enactment. Establishes an effective date of October 1, 2014.

§218A(a): Defines terms used in new INA §218A.

§218A(b): Provides that an employer may not employ an agricultural worker under the program unless they are a DAE. Agricultural workers may not be employed under the program unless they are a nonimmigrant agricultural worker.

§218A(c): Establishes numerical limitations as follows:

- 112,333 for the first five fiscal years, to be adjusted based on the evaluation of a number of demand, usage, and economic factors.
    - Visas to be allocated evenly between the four quarters unless the Secretary determines otherwise.
    - Unused visas carry over to the next quarter of the same fiscal year.
    - W-2/W-3 shall not be recounted if petitioned for by a subsequent DAE.
    - Directs the Secretary to establish emergency procedures for immediately adjusting the cap to account for severe labor shortage.
- For the sixth and subsequent years, worldwide levels will be set after considering a number of demand, usage, and economic factors.

§218A(d)(1): Provides that an alien is not eligible for nonimmigrant agricultural worker status if he or she:

- violated a material term or condition of such status in a previous admission within the past three years (except for contract workers who voluntarily abandon employment or whose employment was terminated for cause);
- has not passed security and background checks; or
- departed the U.S. while under an order of removal or voluntary departure and is outside the U.S., or re-entered illegally after December 31, 2012. May be waived if the alien is the spouse, child, or parent of a USC or LPR; meets the requirements for adjustment of status for aliens who entered the U.S. as children; or was younger than 16 on the date of initial entry, is 16 years or older on the date of applying for nonimmigrant agricultural status, and was physically present for an aggregate of three years during the six years preceding the date of enactment.

§218A(d)(2): Provides for a three-year period of admission, renewable for three more years. No additional renewals until the alien returns to residence outside the U.S. for at least three months.

§218A(d)(3): Requires W-2 contract worker to depart once contract is complete, assuming no new employment with a DAE, and W-3 "at-will" worker to depart if not continuously employed with a DAE. Allows a 60-day exemption. Provides for waiver of periods of unemployment of more than 60 days if unemployment was due to injury or natural disaster. 60-day exemption is tolled for up to 60 days per fiscal year if the worker leaves the U.S.

§218A(d)(4): Portability for Contract Workers: Allows W-2 contract workers to accept employment with other DAEs after completion of the original contract. A W-2 who voluntarily abandons the contract period or whose employment is terminated for cause may not accept new employment with another DAE without

first departing the U.S. and re-entering under new offer and is not entitled to the 75 percent payment guarantee in (e)(4)(B). Termination of a W-2 contract by mutual agreement is not voluntary abandonment.

Portability for "At-Will" Workers: W-3 "at-will" workers may seek employment with other DAEs.

§218A(d)(5): Prohibits limiting a W-2 or W-3 visa to a geographical area or type of agricultural employment, but may be restricted to work with DAEs.

§218A(d)(6): Provides that spouses and children of nonimmigrant agricultural workers are not entitled to visas based on their relationship to the worker or may qualify independently on their own for such status.

§218A(e)(1): Requires employers to register for DAE status and sets forth criteria. Employers granted DAE status will be provided a registration number and status will be valid for three years. Provides for the collection of a registration fee in an amount to be determined.

§218A(e)(2): Requires the DAE to submit a petition to DHS not later than 45 days before the date of need. Sets forth the required attestations and documentation. Allows W-2 or W-3 workers who are in the U.S. in lawful status to commence employment with the DAE upon submission of the petition to DHS.

§218A(e)(3)(A): Requires employers to submit a job posting to the state workforce agency no later than 60 days before the date of need and authorize the posting on America's Job Bank or other electronic job registry for 45 days. No interstate job order is required. Employer must keep a record of eligible, able, willing, and qualified U.S. workers who apply for the job.

§218A(e)(3)(B): Prohibits employers from pursuing a W-2 or W-3 unless the employer offers such employment to equally or better qualified U.S. workers or blue card holders who will be available at the time and place of need and who apply for such employment. An employer may hire an H-2A worker if the H-2A worker worked for the employer for three years during the four-year period ending on the date when the H-2A program is terminated, and the employer pays the worker the adverse effect wage rate.

§218A(e)(4)(A): Prohibits employers from displacing U.S. workers except for good cause during the period of employment and for 30 days preceding. W-2 or W-3 workers cannot be used to replace workers during a strike or lockout.

§218A(e)(4)(B)(i) and (ii): Requires employers to guarantee contract workers (W-2) the hourly equivalent of at least 75 percent of the work days of the total period of employment. If the employer affords the W-2 worker less than this, it must pay the worker the amount they would have otherwise earned. Allows employers to consider hours in which the employee failed to work when calculating whether the guaranteed employment period has been met.

§218A(e)(4)(B)(iii): Provides that if the services of a W-2 contract worker are no longer required before expiration of the contract for reasons beyond the control of the employer, such as a natural disaster or regulatory drought, the employer:

- May terminate employment;
- Must fulfill the 75 percent guarantee from the first work day to termination;
- Must make efforts to transfer the worker to other comparable employment; and
- If no transfer, provide return transportation costs to home country.

§218A(e)(4)(C): Requires employers to provide comparable insurance for injury and disease at no cost to the employee if the job is not covered by state worker's compensation laws.

§218A(e)(4)(D): Prohibits employers from employing a W-2 or W-3 worker for work other than agricultural employment.

§218A(e)(4)(E): Requires the employer to pay the wages set forth in subsection (f).

§218A(e)(4)(F): Prohibits the employer from making deductions from a W-2 or W-3 worker's wages unless authorized by law or are reasonable and customary.

§218A(e)(4)(G): Requires the employer to offer housing that meets federal standards for temporary labor camps or local or state standards for rental or public accommodation housing or substantially similar habitation. Employer may not collect deposits for bedding or other incidentals. Employee may be required to reimburse the employer for reasonable costs to repair damage not resulting from normal wear and tear.

- Housing Allowance Alternative: Allows the employer to provide reasonable housing allowance in lieu of housing. Allowance cannot be used for housing that is owned or controlled by the employer. Allowance is permitted only if the governor of the state of employment certifies that there is adequate housing for such workers. Certification expires after three years, but may be renewed.
- Amount of Allowance: Provides for a calculation of the housing allowance that equals the fair market rental for existing housing in county of employment as established by HUD, based on a two-bedroom unit and an assumption of two persons per bedroom.
- Commuters: Exempts workers who reside outside the U.S. from the housing requirements if their place of residence is within normal commuting distance and the job site is within 50 miles of the border.

§218A(e)(4)(H): Requires employers to provide or reimburse W-2 contract workers for the cost of transportation from the worker's residence in the U.S. to the place of employment.

§218A(e)(4)(I): Requires employers to reimburse W-2 contract workers who complete at least 27 months under contract with the same DAE the cost of transportation and subsistence (up to a certain limit) to the place of employment from abroad. No reimbursement requirement if the distance traveled is 100 miles or less or the worker is not residing in employer-provided housing or housing secured through an allowance.

§218A(e)(4)(J): Requires employers to reimburse W-2 contract workers who complete 75 percent of a contract the cost of transportation and subsistence (up to a certain limit) from the place of employment to the place from which the worker came. No reimbursement requirement if the distance traveled is 100 miles or less or the worker is not residing in employer-provided housing or housing secured through an allowance. If the contract worker is laid off or terminated for contract impossibility before completing 75 percent, employer is still liable.

§218A(e)(5): Imposes penalties for DAEs who violate program requirements, including fines, and for serious violations, disqualification from the program for up to three years.

§218A(f)(1): Requires DAEs to pay W-2 and W-3 workers the wage rate set forth in (f)(3). Requires employers who pay by a piece rate and have productivity standards as a condition of job retention to set forth such terms in the job offer.

§218A(f)(2): Requires the employer to assign the employee to one of six Bureau of Labor Statistics job categories: (1) First Line Supervisors of Farming, Fishing, and Forestry Workers; (2) Animal Breeders; (3) Graders and Sorters, Agricultural Products; (4) Agricultural Equipment Operators; (5) Farmworkers and Laborers, Crop, Nursery, and Greenhouse; or (6) Farmworkers, Farm, Ranch and Aquacultural Animals.

§218A(f)(3): Establishes the wage rate for FY2014–FY2016 as the higher of the federal, state, or local minimum wage or specific wage rates set forth for the last four of the six job categories. For subsequent years, the hourly wage rates will be increased by 1.5 to 2.5 percent. For First Line Supervisors and Animal Breeders, the prevailing wage rate will be established no later than September 1, 2015, and annually thereafter.

§218A(f)(4): Sets forth a list of factors that may be considered when determining the wage rate.

§218A(f)(5): Provides that the adverse effect wage rates in effect on April 15, 2013, for H-2A nonimmigrants shall remain in effect until the H-2A program sunsets and may only be modified under certain circumstances.

§218A(f)(6): Requires employers to offer the same benefits, wages, and working conditions to similarly situated U.S. workers. Employers need not provide housing to U.S. workers unless they were recruited and hired in connection with an application for a W-2 or W-3 worker and live 100 miles or more from the place of employment. Employers must attest as to whether they are a program dependent employer, which is defined as an employer with at least 60 percent of its employees who are not U.S. workers based on the preceding calendar year, payroll records, and E-Verify records.

§218A(g)(1): Provides for equality of treatment of W-2/W-3 workers and U.S. workers under federal, state, or local labor or employment law.

§218A(g)(2): Sets forth definitions for purposes of protections under the Migrant and Seasonal Agricultural Worker Protection Act and the Legal Services Corporation Act. Provides for free mediation of disputes through the Federal Mediation and Conciliation Service.

§218A(g)(3) and (4): Provides that W-2 and W-3 workers are entitled to the same rights granted to other aliens under INA §242(h) (judicial review of RPI benefits) and INA §245E (additional requirements relating to RPIs and others). Any waiver or modification of rights or protections is deemed void or contrary to public policy unless provided in a collective bargaining agreement with a bona fide labor organization.

§218A(h)(1)−(2): Requires DHS to review petitions submitted by DAEs for completeness or obvious inaccuracies. Directs the Secretary of Labor to establish a process to investigate complaints against DAEs if there is reasonable cause to believe that the DAE failed to meet a program condition or misrepresented a material fact in the petition. Establishes a one-year statute of limitations on complaints and sets forth complaint procedures and timelines.

§218A(h)(2)(C)−(G): Requires the Secretary of Labor to notify the Secretary of Agriculture if a violation or misrepresentation is found. Provides for penalties to be deposited in the CIR Trust Fund as follows:

- Violation or Misrepresentation: Fines up to $1,000 per violation; one-year disqualification.
- Willful Violations or Misrepresentations: Fines up to $5,000 per violation; two-year disqualification. Legal or equitable relief also permitted.
- Violation in Conjunction with Displacement of U.S. Worker: Fines up to $15,000 per violation; three-year disqualification.
- Failure to Pay Wages or Provide Benefits: Assessment of back wages or other required benefits equal to the difference between the amount that should have been paid and the amount actually paid.

§218A(h)(3): Prohibits more than $90,000 in penalties with respect to a petition.

§218A(h)(4): Prohibits employees from pursuing simultaneously, an administrative complaint with the Secretary of Labor and a civil action.

§218A(h)(5) and (6): Provides that any settlement reached through mediation, or any settlement or finding by the Secretary of Labor, precludes any right of action arising out of the same facts between parties in federal, state or administrative proceedings unless provided otherwise in the settlement agreement.

§218A(h)(7): Provides that the subsection is not to be construed as limiting the authority of the Secretary of Labor to conduct compliance investigations under any other labor law.

§218A(h)(8): Prohibits discrimination or unlawful behavior directed against an employee, former employee, or applicant for disclosing a potential program violation or cooperating in an investigation against an employer.

§218A(h)(9): Sets forth rules for liability of associations when filing a petition on behalf of an employer or filing as a sole or joint employer.

§218A(i): Provides for special visa processing and wage determination procedures for sheep and goat herding, bee keeping, open range production of livestock, itinerant animal shearing, custom combining industries, and other industries designated by the Secretary.

§218A(j)(1): Excludes W-2 and W-3 workers from need-based federal financial assistance programs.

§218A(j)(2): Requires the Secretary to monitor the movement of W-2 and W-3 workers through E-Verify and an electronic monitoring system to be modeled off of the Student and Exchange Visitor Information System.

Sec. 2233. **TRANSITION OF H-2A WORKER PROGRAM.** Establishes a cut-off date for petitioning for H-2A aliens one year from the effective date of the regulations.

Sec. 2234. REPORTS TO CONGRESS ON NONIMMIGRANT AGRICULTRUAL WORKERS. Requires the Secretary of Agriculture to submit an annual report to Congress with statistics on W-2 and W-3 worker admissions from the previous year. The Secretary of Homeland Security is to submit an annual report to Congress on the number of W-2/W-3 status violations and the number of W-2/W-3 aliens who failed to depart.

Chapter 3—Other Provisions

Sec. 2241. RULEMAKING. Requires the Secretaries of Labor, Agriculture, Homeland Security, and State to regularly consult with one another in the course of developing regulations. Regulations must be issued no later than six months after the date of enactment.

Sec: 2242. REPORTS TO CONGRESS. Requires the Secretaries of Homeland Security and Agriculture to submit, within 180 days of the date of enactment, a progress report on the implementation of this subtitle to Congress.

Sec. 2243. EFFECTIVE DATE. Establishes the effective date of the subtitle as the date on which regulations are issued, regardless of whether they are issued on an interim or any other basis.

Subtitle C – Future Immigration

Sec. 2301. MERIT-BASED POINTS TRACK ONE. Creates a merit-based visa and points system and establishes eligibility criteria for merit-based immigrants.

- Replaces provision for the Diversity visa with Merit-based system.
- Clarifies that individuals admitted on the basis of a merit-based immigrant visa will have lawful permanent resident (LPR) status.
- Awards points to applicants for factors such as education, length of employment, type of employment, family members in the U.S., and length of residence in the U.S.
- Establishes a fee of $500.
- Establishes eligibility criteria:
    - Individuals in Registered Provisional Immigrant Status (RPI) may begin accruing points no earlier than 10 years after enactment.
    - Individuals with a pending or approved petition in another immigrant category are ineligible to apply for a merit-based immigrant visa.

Visa Number and Allocation

- Provides initially 120,000 visas as the worldwide level of merit-based immigrants, with a cap of 250,000. Allows for recapture of unused visas. If the level is less than 75 percent of the number of applicants, the level will increase by five percent the next year. If equal to or more than 75 percent, the level will stay the same minus any amount added for the recapture of unused visas. No increase in level is allowed if unemployment is over 8.5 percent.
- Allocates the number of merit-based visas:
    - First four fiscal years after enactment: the level of merit-based immigrant visas are allocated for skilled workers, professionals, and other workers, who provide non-seasonal unskilled labor.
    - Beginning with fifth fiscal year: 50 percent to applicants with highest number of points under Tier 1; 50 percent to applicants with highest number of points under Tier 2
    - Recapture of unused visas: Two-thirds of any unused Tier 1 visas are reserved for Tier 1 in the following fiscal year; Two-thirds of any unused Tier 2 visas are reserved for Tier 2 in the following fiscal year. The remaining one-third of Tier 1 and Tier 2 visas are available for either Tier 1/Tier2, in the following fiscal year.
- Authorizes Secretary to submit a proposal to modify the allocation of points.
- Effective on first day of the first fiscal year beginning after the date of enactment.

Point system—Tier 1

Criteria		**Points**
Education (Can receive points from only one category)	Doctorate degree	15
	Master's degree	10
	Bachelor's degree	5
Employment Experience (No more than 20 points total)	Each year the alien has been lawfully employed in Zone 5* occupation	3/year
	Each year the alien has been lawfully employed in a Zone 4 occupation	2/year
Full-time Employment or Offer in Field Related to Alien's Education	Zone 5 occupation	10
	Zone 4 occupation	8
Entrepreneurship	Entrepreneur in a business that employs at least 2 employees in Zone 4 or 5 occupation	10

High-Demand Occupation	Full-time employment in the U.S. or offer in a high-demand Tier 1 occupation (1 of 5 occupations for which highest number of nonimmigrants were sought to be admitted by employers)	10
Civic Involvement	Significant amount of community service	2
English Language	TOEFL score of 80 or more (or an equivalent score on a similar test)	10
Family of USC	Sibling or married son or daughter more than 31 years of age	10
Age	Between 18-24 years old	8
	Between 25-32 years old	6
	Between 33-37 years old	4
Country of Origin	National of a country with fewer than 50,000 nationals admitted to LPR status in previous 5 years	5

*Zone 1, 2, 3, 4, 5 occupations based on levels of education, experience, and training necessary, as defined by Occupational Information Network Database (O*NET) or similar database designated by Secretary of Labor. Zone 1 (requires little/no preparation); Zone 2 (some preparation); Zone 3 (medium preparation); Zone 4 (considerable preparation); Zone 5 (extensive preparation).

Point system—Tier 2

Criteria		**Points**
Employment Experience (no more than 20 points total)	Each year of lawful employment in the U.S.	2/year
Special Employment Criteria	Full-time employment in the U.S. or offer in a high demand Tier 2 occupation (1 of 5 occupations for which highest number of positions were sought to become registered positions by employers) or in a Zone 1 or Zone 2 occupation	10
Caregiver	Is or has been a primary caregiver	10
Exceptional Employment Record	Factors: promotions, longevity, changes in occupations from lower to higher job zone, safety record, and pay increases	10
Civic Involvement	Significant civic involvement	2
English Language	TOEFL score of 75 (or an equivalent score on a similar test)	10
	TOEFL score more than 54 less than 75 (or an equivalent score on a similar test)	5
Family of USC	Sibling or married son or daughter more than 31 years of age	10
Age	Between 18-24 years old	8
	Between 25-32 years old	6
	Between 33-37 years old	4
Country of Origin	National of a country with fewer than 50,000 nationals admitted as LPRs in previous 5 years	5

Sec. 2302. MERIT-BASED POINTS TRACK ONE. Creates an immigrant visa system and establishes eligibility criteria for merit-based immigrants under Track Two.

- Clarifies that individuals admitted on the basis of a merit-based immigrant visa will have lawful permanent resident (LPR) status.
- Allows the following individuals to be eligible for merit-based immigrant visas beginning October 1, 2014:
    - Beneficiaries of family- and employment-based immigrant petitions pending for five years and filed prior to enactment
    - Beneficiaries of current F3/F4 petitions pending for five years and filed after enactment
    - Long-term workers, that were not admitted under the W visa and have been lawfully present in the U.S. for 10 years
        - Adds requirement that beginning in FY2029, in order to be eligible for adjustment of status, the alien must be lawfully present in an employment authorized status for 20 years prior to filing.

Visa Allocation

- Employment-based
    - Allocates annually for the years FY2015–FY2021, the number of visas equal to 1/7 of the number of employment-based petitions pending for five years
- Family-based:
    - Converts automatically spouses and children of LPRs to immediate relatives
    - Allocates annually for the years FY2015–FY2021, the number of visas equal to 1/7 of the number of family petitions pending at the time of enactment minus the number of spouses and children of LPRs as of the date of enactment.
    - Directs the Secretary, in FY2022, to allocate the number of visas equal to ½ of the number of beneficiaries of current F3/F4 petitions whose visas had not been issued by October 1, 2021.
    - Directs the Secretary, in FY2023, to allocate the number of merit-based immigrant visas equal to the number of beneficiaries of current F3/F4 petitions whose visas had not been issued by October 1, 2022.
- Directs that employment- and family-based visas shall be issued in the order they were filed.

Sec. 2303. REPEAL OF THE DIVERSITY VISA PROGRAM.

- Eliminates the diversity visa program with an effective date of October 1, 2014.
- Allows individuals who receive notification of selection for a diversity immigrant visa for FY2013 or FY2014 to remain eligible.

Sec. 2304. WORLD-WIDE LEVELS AND RECAPTURE OF UNUSED IMMIGRANT VISAS. Establishes worldwide levels for employment-based and family-sponsored immigrant visas. Sets the effective date as the first day of the first fiscal year beginning after the date of enactment.

Employment-based

- Sets the worldwide level for fiscal year after FY2015 as the sum of:
    - 140,000; and
    - Unused family-sponsored visas from previous fiscal year
- Sets the worldwide level for FY2015 as the sum of

- 140,000; and
- Unused family-sponsored visas from previous fiscal year; and
- Unused employment-based visas from FY1992–FY2013

Family-sponsored

- Sets the worldwide level for fiscal year after FY2015 as the sum of:
  - 480,000 minus number of immediate relatives**; and
  - Unused employment-based visas from previous fiscal year
- Sets the worldwide level for FY2015 as the sum of :
  - 480,000 minus number of immediate relatives; and
  - Unused employment-based visas from previous fiscal year; and
  - Unused family-sponsored visas from FY1992–FY2013

**This total may not be less than 226,000; 18 months after enactment, may not be less than 161,000

Sec. 2305. RECLASIFFICATION OF SPOUSES AND MINOR CHILDREN OF LAWFUL PERMANENT RESIDENTS AS IMMEDIATE RELATIVES. Effective on the date of the enactment of this Act.

Immediate Relatives

- Reclassifies spouses and minor children of lawful permanent residents as immediate relatives. Extends to them the protections for immediate relatives in case of death of or abuse by a U.S. citizen or an LPR spouse or parent.
- Allows derivatives (spouse or child) for immediate relatives.
- Includes "child" to protections given to spouses in case of death of or abuse by USC spouse or parent.
- Continues to include the requirement that the immediate relative petition be filed within two years of the death of the qualifying relative; however, Section 2312 expressly removed the two-year requirement.

Visa Allocation

- Allocates worldwide level for family-sponsored immigrant visas.
  - Unmarried sons and daughters of USCs: 20 percent of worldwide level
  - Unmarried sons and daughters of LPRs: 20 percent of worldwide level + unused visas for unmarried sons and daughters of USCs
  - Married sons and daughters of USCs: 20 percent of worldwide level + unused visas for unmarried sons and daughter of LPRs
  - Siblings of USCs: 40 percent of worldwide level + unused visas for married sons and daughters of USCs

Termination/Reinstatement of Registration

- Includes circumstances when an individual's registration for an immigrant visa shall be terminated:
  - Failure to apply for adjustment of status within one year following notification of visa availability
  - Failure to apply for an immigrant visa within one year following notification of visa availability

- Modifies reinstatement requirement to include that failure to apply was "due to good cause" and not "beyond the individual's control."

Priority dates

- Includes a provision for the retention of priority dates in family-sponsored and employment-based petitions, which sets the priority date for any family- or employment-based petition as the date of filing of petition (or filing of the labor certification, if earlier).
- Allows the beneficiary to retain the earliest priority date based on any petition filed on his or her behalf, regardless of the category of subsequent petitions.
- Clarifies that derivative beneficiaries, who are 21 years of age or older at the time the visa number becomes available to the parent who was the principal beneficiary of the petition, shall have their petition automatically convert to a petition for an unmarried son or daughter of an LPR upon the parent's admission as an LPR. The derivative beneficiary will retain the priority date established by the original petition.

Procedure for granting immigrant status

- Adds "renounced or lost status" as an LPR, and removes the word "lost" with regard to a spouse who "lost" U.S. citizenship. The section now reads "whose spouse renounced citizenship or renounced or lost status" as an LPR. [Previous version stated "whose spouse lost or renounced citizenship status…"]

Adjustment of Status

- Adds the language "…(regardless of whether the alien has already been admitted for permanent residence)…"

Sec. 2306. NUMERICAL LIMITATIONS ON INDIVIDUAL FOREIGN STATES.

- Increases "Family" per-country levels from 7% to 15%.
- Removes Employment per-country visa levels.
- Applies special rules for countries at the ceiling to distribute visas in a proportional way across the family categories.
- Effective one year after the date of the enactment of this Act.

Sec. 2307. ALLOCATION OF IMMIGRATION VISAS.

- Allocates visas for unmarried sons or daughters of U.S. citizens to not exceed 35% of worldwide level (change from 23,400)
- Allocates visas for married sons or daughters of USCs under 31 years of age at the time of filing to not exceed 25% of the worldwide level. (CHANGES from all married sons or daughters, to only those under 31 years of age at time of filing, and changes number from 23,400)
- Allocates visas for unmarried sons and daughters of LPRs not to exceed 40% of the worldwide level (change from 114,200)
- Removes limit on spouses and children of LPRs. (Now considered immediate relatives.)
- Eliminates the visa category for brothers and sisters of USCs.
- Visa petitions which automatically convert:
    - Unmarried son or daughter of a USC to a married son or daughter category upon marriage, irrespective of age of the alien.

    - Married son or daughter of a USC to an unmarried son or daughter of a USC upon dissolution of a marriage or death of the alien's spouse.
- Above-listed family-based visa provisions are effective as of the first day of the first fiscal year that begins at least 18 months after the enactment of this Act.
- Exempts certain aliens (derivative beneficiaries of employment-based immigrants; aliens with extraordinary ability in the sciences, arts, education, business, or athletics, outstanding professors and researchers; multinational executives and managers; doctorate degree holders; and physicians who have completed the foreign residency requirements or obtained a waiver of those requirements or an exemption was requested by an interested state or federal agency) from being subject to the worldwide levels or numerical limitations.
- Expands treatment of family members to also include derivative beneficiaries of aliens described above.
- Renames §203(b)(2) from "Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability" to "Aliens who are members of the professions holding advanced degrees or advanced degrees in a STEM field."
- Allocates visas for professionals holding advanced degrees to not exceed 40% of the worldwide level. (Increased from 28.6%.)
- Eliminates the requirement for those who received an advanced degree in a STEM field from being subject to the worldwide levels or numerical limitations if the immigrant earned a graduate degree at the level of master's or higher in the STEM field from a U.S. institution of higher education, has an offer of employment from a U.S. employer in a related field, and earned the qualifying degree within five years immediately prior to filing the petition.
    - Defines the term U.S. doctoral institution of higher education.
- Removes the requirement of being "sought by an employer in the U.S." if the Secretary of Homeland Security deems it to be in the national interest.
- Allows the Secretary to grant a national interest waiver if physician will work in shortage area or area with veterans' facilities, and a federal agency or a local, county, regional, or state department of public health determines that work will be in the public interest.
    - Permanent resident status cannot be issued until the alien has worked for five years in the area described above, not including the time spent in J status.
    - Time accrues when work commences, not when petition is filed or approved.
    - Explains mechanics for how the five-year period is to be counted.
    - Unnecessary to file an additional immigrant visa petition due to change of work location.
- Allows physician working in a shortage area or area with veterans' facilities to file the petition with the Secretary of Homeland Security prior to the completion of the five-year employment requirement.
- Removes the requirement for a labor certification for STEM workers.
- Allocates visas for skilled workers, professionals and other workers to not exceed 40% of the worldwide level. (Increased from 28.6%.)
- Adds that medical doctors must possess a license to practice medicine in the U.S.
- Removes the limitation on "other workers."
- Allocates visas for certain special immigrants to not exceed 10% of the worldwide level.
- Allocates that visas for employment creation (EB-5) are not exceed 10% of the worldwide level.

Sec. 2308. V NONIMMIGRANT VISAS. Changes eligibility for the V visa and related work authorization as follows:

- Unmarried sons or daughters of USCs or LPRs and married sons or daughters of USCs under the age of 31, if the alien is the beneficiary of an approved petition:
    - Eligible for V Visa.

    - Eligible for work authorization.
    - Termination of authorized admission 30 days after denial of the visa petition or adjustment of status application.
- Siblings of USCs and married sons or daughters of USCs over the age of 31:
    - Eligible for V Visa.
    - Ineligible for work authorization.
    - Authorized admission may not exceed 60 days per fiscal year
    - Ineligible to earn points for merit-based visa while in this status.
- Ineligible to receive public benefits.
- Effective on the first day of the first fiscal year after the date of enactment of the Act.

Sec. 2309. FIANCEE AND FIANCEE CHILD STATUS PROTECTION. Expands eligibility for K visas to fiancés, fiancées, and spouses of LPRs and protects against children of the beneficiary "aging out."

- Permits LPRs to file fiancée, fiancé, or immigrant visa petitions (as a K-1 or K-3).
- Provides that, for purposes of both the visa petition and the subsequent adjustment application, the age of the dependent child of the beneficiary is determined at the time the petition is filed.
- For K-1 visas, establishes a six-month window following the marriage within which the visa holder must apply for adjustment of status.
- Eligibility for a waiver of inadmissibility isnot a bar to an application for adjustment.
- Effective on the date of enactment.

Sec. 2310. EQUAL TREATMENT FOR ALL STEPCHILDREN. Permits stepchild to be sponsored if under the age of 21 years (changed from 18).

Sec. 2311. INTERNATIONAL ADOPTION HARMONIZATION. Allows child to be adopted if under the age of 18 (changed from 16) and harmonizes adoptions between Hague and Non-Hague Convention countries.

Sec. 2312. RELIEF FOR ORPHANS, WIDOWS, AND WIDOWERS.

- Allows an alien whose U.S. citizen (USC) or Lawful Permanent Resident (LPR) relative died prior to the date of the enactment of the Act to file an immigrant petition based on that relationship within two years of the enactment of this Act.
- Permits an alien, who if prior to the enactment of this Act was excluded, deported, removed, or departed voluntarily solely based on the alien's lack of classification as an immediate relative because the petitioner died, to apply for parole and adjustment of status, notwithstanding 212(a)(9).
- Permits an alien as described in 204(*l*), who if prior to the enactment of this Act was excluded, deported, removed, or departed voluntarily, to apply for parole and adjustment of status, notwithstanding 212(a)(9).
- Permits adjudication of an immigrant visa if the qualifying relative on a visa petition dies prior to the completion of the immigrant visa processing. Visa can be adjudicated as if the death had not occurred. Visa issued prior to qualifying relative's death remains valid after such death. Applies to an immediate relative, a family-sponsored immigrant, a derivative beneficiary of an employment-based immigrant, or the spouse or child of a refugee or asylee.
- Where qualifying relative died prior to enactment of this Act, provision –
    - Allows for a renewal of an application via filing a Motion to Reopen without fee, if the case was denied or revoked due to death of the petitioner;
    - Allows for consideration of the visa petition if the beneficiary was excluded, deported, removed or departed voluntarily, notwithstanding section 212(a)(9).
- Allows spouses of deceased USCs to apply for naturalization after three years of LPR status.

- Grants that if an alien would have been eligible for a waiver of inadmissibility but for the death of the qualifying relative, the alien's eligibility for the waiver is preserved and the death will be considered the functional equivalent of hardship.
- Removes the requirement under 204(*l*) that the alien had to live within the U.S. at the time of the death of the qualifying relative and had to continue to live in the U.S.
- Allows for adjudication of an affidavit of support to be adjudicated for § 204(*l*) surviving relatives.
- Removes the requirement that the immediate relative petition be filed within two years of the death of the qualifying relative.
- Exempts any alien who has obtained the status of a § 204(*l*) surviving relative from the public charge ground of inadmissibility.

Sec. 2313. DISCRETIONARY AUTHORITY WITH RESPECT TO REMOVAL, DEPORTATION OR INADMISSIBILITY OF CITIZEN AND RESIDENT IMMEDIATE FAMILY MEMBERS.

- Gives Immigration Judges and DHS officers discretion to terminate removal proceedings or waive inadmissibility with respect to a request for admission, respectively, in cases in which:
    - Not doing so would be contrary to public interest;
    - There would otherwise be hardship to the noncitizen's U.S. citizen or LPR parent, spouse, or child; or
    - The noncitizen is prima facie eligible for naturalization.
    - The waiver is not available to individuals who are subject to removal or are inadmissible based on a wide range of criminal and national security grounds, including convictions for aggravated felonies.
- Creates an exception to reinstatement of removal orders for individuals under 18 years of age or where reinstatement would be contrary to public interest or would result in hardship to the alien's citizen or permanent resident parent, spouse, or child.

Sec. 2314. WAIVERS OF INADMISSIBILITY.

- Limits the impact of the unlawful presence bars found at INA § 212(a)(9)(B) and (C):
    - Expands eligibility for the waiver of the three– and ten-year bars to those who are parents of U.S. citizens or LPRs and strikes "extreme" from the waiver's hardship standard;
    - Adds that beneficiaries of approved H nonimmigrant visa petitions who earned a baccalaureate or higher degree from a U.S. institution and were under the age of 16 upon initial entry into the U.S. are eligible for a waiver of inadmissibility.
- Limits scope of inadmissibility for misrepresentation and false claims to U.S. citizenship.
    - Adds a three-year limit on past misrepresentations.
    - Requires that false claims to citizenship be "knowing" and exempts children under 18 and those without the mental capacity to knowingly make a false claim.
    - Creates a new, non-reviewable waiver for misrepresentations and false claims that applies to noncitizens in or outside the United States; that is based upon extreme hardship to the noncitizen or a qualifying relative; that in VAWA cases is based upon significant hardship to the noncitizen or qualifying relative; and eliminates existing section 212(i) waiver.
    - Applies the new inadmissibility provisions for false claims to citizenship to the deportability provisions.

Sec. 2315. CONTINOUS PRESENCE. Amends the cancellation of removal statute so that continuous residence and continuous physical presence end with the *filing* of the Notice to Appear with EOIR, rather than service of the Notice to Appear.

Sec. 2316. GLOBAL HEALTH CARE COOPERATION. Requires the Secretary of Homeland Security to allow legal permanent residents who are physicians or health workers (and spouses and children) to reside in a developing country as designated by the Secretary of State and be considered physically

present and continuously residing in a state in the U.S., for purposes of meeting the naturalization requirements.

- Requires noncitizens who seek to enter the U.S. to work as physicians or health care workers to attest that they are not seeking to enter the United States for such purpose during any period in which they have an outstanding debt to their country of origin or residence; without such attestation, they will be inadmissible. A waiver is available.

Sec. 2317. EXTENSION AND IMPROVEMENT OF THE IRAQI SPECIAL IMMIGRANT VISA PROGRAM. Extends Iraqi Special Immigrant Visa Program (SIV) and sets parameters for improved efficiency.

- Broadens qualifying employment to include certain media and nongovernmental organizations.
- Allows any unused balance of principal SIVs available in FY2008–12 to be carried forward for use through FY2018.
- Requires improvements in processing applications so that decisions are made within nine months and provides a review process for a denied application.
- Provides for a report on the program's status in six months to Senate committees and quarterly public reports thereafter.

Sec. 2318. EXTENSION AND IMPROVEMENT OF THE AFGHAN SPECIAL IMMIGRANT VISA PROGRAM. Extends Afghan Special Immigrant Visa Program (SIV) and sets parameters for improved efficiency.

- Broadens qualifying employment to include certain media and nongovernmental organizations.
- Provides SIVs for the spouse and minor children accompanying or following to join the principal applicant and for any spouse or child who is in danger due to the applicant's qualifying employment.
- Increases the number of principal Afghan SIVs from 1,500 to 5,000 for FY2014–18 and allows for certain unused balances of principal SIVs to be carried forward for use through FY2019.
- Requires improvements in processing applications so that decisions are made within nine months and provides a review process for a denied application.
- Provides for a status report to Senate committees on the program in six months and quarterly public reports thereafter.

Sec. 2319. ELIMINATION OF SUNSENTS FOR CERTAIN VISA PROGRAMS. Eliminates the September 30, 2015, sunset provision for the Special Immigrant Non-Minister Religious Worker Program and the EB-5 Regional Center Program.

Subtitle D – Conrad State 30 and Physician Access

SEC. 2401. CONRAD STATE 30 PROGRAM. Makes the Conrad State 30 program permanent by eliminating the sunset provision.

SEC. 2402. RETAINING PHYSICIANS WHO HAVE PRACTICED IN MEDICALLY UNDERSERVED COMMUNITIES. Amends INA §201(b)(1) by adding new subsection (L) to exempt from numerical limitations alien physicians who have completed NIW shortage area or VA service, and their dependents. (NOTE: Sec. 2307 amends §203(b)(1) by adding new subsection (K) to exempt from numerical limits physicians who have complied with the §212(e) foreign residence requirement or received a waiver under §214(*l*) (Conrad waiver).)

SEC. 2403. EMPLOYMENT PROTECTIONS FOR PHYSICIANS.

- Clarifies §214(*l*) waiver employment start date;
- Provides greater flexibility to permit physicians to change employers;
- Permits change of employers without showing "extenuating circumstances" in exchange for additional year of service for each change;
- Specifies certain contract terms to clarify physician employment obligations;
- Provides that physician terminated is considered in status for 120 days while seeking new qualifying employment.

SEC. 2404. ALLOTMENT OF CONRAD 30 WAIVERS.

- Amends §214(*l*) to provide for additional Conrad 30 waivers to states due to high demand;
- Makes per-state increases indefinite; provides for downward adjustment to floor of 30 if demand declines;
- Adds §214(*l*)(1)(D)(iv) to provide up to three waivers per state for physicians in academic medical centers or on medical residency teaching faculty.

SEC. 2405. AMENDMENTS TO THE PROCEDURES, DEFINITIONS, AND OTHER PROVISIONS RELATED TO PHYSICIAN IMMIGRATION.

- Amends §214(b) to provide for dual intent for physicians coming for graduate medical education under 214(j) or to take qualifying exams;
- Amends §214(*l*) to permit physicians who have received J-1 waivers under §214(*l*) to satisfy their service obligations in any employment-authorized nonimmigrant category;
- Amends the NIW provisions of §203(b)(2)(B)(ii)(1) to clarify that the practice of specialty medicine qualifies; removes the requirement that the actual employment must be in a shortage area, so long as the patients served are from a shortage area;
- Provides a "cap gap" to the beginning of the next fiscal year for H-1B physicians who are graduating from medical residencies who will be transitioning to H-1B cap-subject employment;
- Eliminates the two-year foreign residence requirement of §212(e) for the spouse and children of a J-1 exchange visitor.

Subtitle E – Integration

Sec. 2501. DEFINITIONS. Provides definitions for the applicable terms in the subtitle.

Chapter 1 – Citizenship and New Americans

Subchapter A – Office of Citizenship and New Americans

Sec. 2511. OFFICE OF CITIZENSHIP AND NEW AMERICANS. Renames the Office of Citizenship the Office of Citizenship and New Americans and places the Chief of the Office in charge of, among other functions, the following:

- Promoting institutions and training on citizenship responsibilities for immigrants;
- Coordinating the federal, state, and local immigrant integration programs;
- Advising the Director of USCIS, Secretary of Homeland Security, and the Domestic Policy Council about challenges and opportunities for immigrant integration and progress to meeting integration goals;
- Establishing national goals for introducing new immigrants and measuring their success;
- Evaluating federal government efforts to integrate immigrants;

- Identifying the implications of new immigration policies on integration;
- Continuing the efforts of the Task Force on New Americans;
- Serving as a liaison with states and local governments and assisting states in coordinating grant programs;
- Providing information about the demand for existing English and citizenship education programs; and
- Submitting biennial reports to the appropriate congressional committees.

Subchapter B – Task Force on New Americans

Sec. 2521. ESTABLISHMENT. Establishes a Task Force on new Americans that must be fully functional no later than 18 months after enactment of the Bill.

Sec. 2522. PURPOSE. The Task Force serves to coordinate federal responses to immigrant integration issues and advise the Secretary of DHS on how to carry out the policies and goals of this Subtitle.

Sec. 2523. MEMBERSHIP. Delineates who will serve on the Task Force and provides these individuals with limited delegation authority.

Sec. 2524. FUNCTIONS. Provides for a coordinated response between the Task Force and executive branch agencies to respond to issues facing immigrants and immigrant receiving communities, as well as ensures the agencies' timely participation in activities, including:

- Access to education programming;
- Workforce training;
- Health care policy;
- Access to naturalization; and
- Community development challenges.

Requires the Task Force to provide recommendations to the Domestic Policy Council and the Secretary of DHS, suggest policy changes, and analyze policies that impact new immigrants and receiving communities.

Chapter 2 – Public Private Partnership

Sec. 2531. ESTABLISHMENT OF UNITED STATES CITIZENSHIP FOUNDATION. Establishes the nonprofit corporation titled the United States Citizenship Foundation.

Sec. 2532. FUNDING. Provides parameters for the Foundation to solicit and accept funding to carry out its purposes.

Sec. 2533. PURPOSES. Delineates the purposes of the Foundation to include expanding citizenship preparation programs, providing assistance to individuals seeking RPI or LPR status or naturalization, and coordinating integration programs.

Sec. 2534. AUTHORITZED ACTIVITIES. Authorizes the Foundation to do the following:

- Make citizenship programs and naturalization assistance available to low-income and underserved populations;
- Coordinate best practices for citizenship preparation and address barriers to naturalization;
- Increase access to technology in citizenship preparation programs;

- Engage receiving communities in integration and citizenship efforts;
- Administer the New Citizen Award Program, which will recognize USCs who have naturalized within the past 10 years and who have made outstanding contributions to the United States;
- Foster public education and awareness;
- Provide grants to eligible nonprofits and to state and local governments.

Sec. 2535. COUNCIL OF DIRECTORS. Describes the make-up of the Foundation's Council of Directors, which will include the Director of USCIS, the Chief of the Office of Citizenship and New Americans, and 10 designated national stakeholders from community-based organizations.

Sec. 2536. POWERS. Gives the Executive Director the authority to carry out necessary functions such as entering into contracts on behalf of the Foundation.

Sec. 2537. INITIAL ENTRY, ADJUSTMENT, AND CITIZENSHIP ASSISTANCE GRANT PROGRAM. Creates Initial Entry, Adjustment, and Citizenship Assistance grants to support the implementation of programs that provide direct immigration assistance to the following people:

- Individuals preparing applications for RPI status, including applying for waivers;
- Individuals adjusting status to RPI, blue card, or green card status;
- LPRs seeking to naturalize;
- Applicants seeking civics and English assistance.

Sec. 2538. PILOT PROGRAM TO PROMOTE IMMIGRANT INTEGRATION AT STATE AND LOCAL LEVELS. Establishes a pilot program to award grants to promote immigrant integration at state and local levels and to establish New Immigrant Councils. To apply, an entity must submit an application that includes a proposal, the number of immigrants in its jurisdiction, and a description of the challenges facing those immigrants in integrating into the community. Priority will be given to state and local governments that:

- Will use matching non-federal funds;
- Show collaboration with public and private groups;
- Are in the top 10 states with the highest rate of foreign-born residents; or
- Experienced a large increase in immigration in the past 10 years.

Governments can use a grant to do the following:

- Form New Immigrant Councils consisting of 15 to 19 stakeholders from various organizations;
- Provide subgrants to local organizations that will help:
    - Improve English language skills;
    - Engage parents with limited English in their child's education;
    - Improve access to workforce training;
    - Teach civics and U.S. history;
    - Improve financial literacy; and
    - Engage receiving communities in the integration process.

Grant recipients will be required to submit annual reports and undergo annual evaluations.

Sec. 2539. NATURALIZATION CEREMONIES. Requires the Chief of the Office of Citizenship and New Americans to increase awareness of naturalization ceremonies, and further requires the Secretary of DHS to report to Congress on the progress made.

Chapter 3 – Funding

Sec. 2541. AUTHORIZATION OF APPROPRIATIONS. Authorizes $10,000,000 to be appropriated to fund the Office of Citizenship and New Americans for five years and $100,000,000 to fund the grant programs for five years. Beyond five years, appropriations are authorized as needed.

Chapter 4 – Reduce Barriers to Naturalization

Sec. 2551. WAIVER OF ENGLISH REQUIREMENT FOR SENIOR NEW AMERICANS. Amends the requirements for naturalization to:

- Waive the English language and civics requirements for anyone who is over 65 years of age and has lived in the U.S. for a total of at least five years after being lawfully admitted for permanent residence.
- Waive the English language requirement for anyone who is over 60 years of age and has lived in the U.S. for a total of at least 10 years after being lawfully admitted for permanent residence.
- Allow the DHS Secretary (previously the Attorney General) to waive, on a case-by-case basis, the civics requirement for anyone who is over 60 years of age (previously 65) and has lived in the U.S. for a total of at least 10 years (previously 20) after being lawfully admitted for permanent residence.

Sec. 2552. FILING OF APPLICATIONS NOT REQUIRING REGULAR INTERNET ACCESS. Prohibits the DHS Secretary from requiring an electronic application for permanent residence or citizenship until the sunset date of October 1, 2020; thereafter, the Secretary must provide notice before requiring an electronic application.

Title III – Interior Enforcement

Subtitle A – Employment Verification System

Sec. 3101. UNLAWFUL EMPLOYMENT OF UNAUTHORIZED ALIENS. Amends INA §274A to expand use of E-Verify and make it mandatory for all employers over a period of five years.

(a) General: Amends INA §274A (8 USC §1324a) regarding unlawful employment of unauthorized aliens.

274A(a) Making Employment of Unauthorized Aliens Unlawful

- Prohibits employers from hiring, recruiting, or referring for a fee an alien known to be unauthorized for employment in the U.S.
- Prohibits employers from hiring, recruiting, or referring for a fee without complying with document verification and other E-Verify system requirements.
- Prohibits continued employment of unauthorized aliens.
- Prohibits the consideration of previous unauthorized status for hiring purposes.
- Prohibits employers from using contracts, subcontracts, or exchanges to obtain the labor of an alien known to be unauthorized.
- Employers can rely on a state employment agency's referral if employer retained appropriate documentation certifying that the agency complied with document verification requirements.
- Establishes good faith affirmative defense for employers who have complied in good faith with document verification and E-Verify system requirements.

- Employer who made E-Verify inquiry but did not receive verification within the designated time period has good faith defense if he or she timely records the reasons for continuing to employ the individual.
- Employers who are not required to participate in E-Verify or are participating on a voluntary basis also have an affirmative defense.

- A technical or procedural failure to meet an E-Verify requirement still constitutes compliance if the employer made a good faith attempt to comply with the requirement.
  - Does not include failures that are not de minimis if the employer has been given at least 30 days to voluntarily correct the errors and has not done so.
  - Does not apply to employers who engage in a pattern or practice of violations.
  - After the date on which an employer is required to use E-Verify, he or she will be presumed to have acted with knowledge in hiring an alien who lacks work authorization if he or she failed to use E-Verify.
- An employer may not deny an employee back pay or any other remedy required under federal, state, or local law relating to workplace rights, and a court may not prohibit an employee from pursuing a cause of action under these laws on account of the employee's unauthorized status. Reinstatement and all other appropriate relief are available to individuals who are lawfully present in the U.S. at the time the relief is requested, and lost employment due to unlawful acts by the employer.

274A(b) Definitions:

Key terms are defined as follows —

- Commissioner – Commissioner of Social Security
- Department – DHS
- Employer – any person or entity that hires, employs, recruits, or refers for a fee an individual for employment in the U.S. that is not casual, sporadic, irregular, or intermittent
- Employment Authorized Status – authorized to be employed in the U.S.
- Secretary – Secretary of DHS
- System – E-Verify
- Unauthorized Alien – Alien who is not lawfully admitted for permanent residence or is not authorized to be employed under this Act or by the Secretary
- Workplace Rights – rights guaranteed under federal, state, or local labor or employment laws

274A(c) Document Verification Requirements:

Attestation after Examination of Documentation

- Requires employer to attest that he or she has verified the identity and employment authorization status of an individual by examining certain documents and using an identity authentication mechanism. USCIS must publish pictures of acceptable documents on its website.
- Within six months of enactment, DHS will make available an attestation form that an employer may complete in paper form, via telephone, or electronically.
  - Employer must sign attestation form with a handwritten, electronic, or digital pin code signature.
  - An employer will be deemed to have complied with document verification requirements if he or she has, in good faith, followed applicable regulations and if a reasonable person would conclude that the documentation is genuine and relates to the individual presenting it.

- Specifies documents that establish both identity and employment authorization:
  - U.S. Passport or passport card;
  - Document demonstrating alien is lawfully admitted for permanent residence or another document showing work authorized status with a photograph of the bearer and other security features;
  - An enhanced driver's license or identification card issued by a U.S. state, or federally recognized Indian tribe that meets REAL ID Act 2005 requirements and has been certified for use by the Secretary;
  - A foreign passport accompanied by a Form I-94 or Form I-94A (or similar successor form), or other appropriate documentation designated by Secretary;
  - A passport issued by Federated States of Micronesia or the Republic of the Marshall Islands with evidence of nonimmigrant admission in to the U.S.
- Specifies documents that establish identity:
  - Driver's license or identity card that includes photograph, name, DOB, gender, driver's license or identification card number, as well as security features;
  - Voter registration card;
  - A document that complies with the requirements of the Intelligence Reform and Terrorism Prevention Act of 2004;
  - Alternative documents established by the Secretary for those under 18.
- Specifies documents that establish employment authorization:
  - Social Security card, other than one that is not valid for work authorization;
  - Any other document that the Secretary publishes in the *Federal Register* if such document contains appropriate security features.
- Requires employers to use an identity authentication mechanism once it becomes available.
    - "Covered identity document" means a valid U.S. passport, passport card, document evidencing lawful permanent resident status or employment authorized status, enhanced driver's license or identity card issued by a participating state, or photograph with appropriate identifying information provided by DOS pursuant to the granting of a visa.
    - "Participating state" means a state that has an agreement with the Secretary to provide, for purposes of identity verification in the E-Verify, photographs and other identifying information.
  - Establishes a photo tool that enables employers to verify an individual's identity by matching a photo on a covered identity document with a photo in a USCIS database.
  - An employer seeking to hire an individual whose identity may not be verified using the photo tool shall verify the identity of the individual using additional security measures, which the Secretary must develop after publication in the *Federal Register* and opportunity for public comment.
- Secretary may, after publication in the *Federal Register*, opportunity for public comment, and notice to employers: (1) prohibit or restrict use of certain documents considered unreliable, and (2) allow the use of additional documents or classes of documents, which must be published on USCIS website.

Individual Attestation of Employment Authorization: Requires individuals, upon commencing employment, to attest under penalty of perjury that they are authorized to work in the U.S. using a handwritten, electronic, or digital pin code signature, and to provide their Social Security numbers.

Retention of Verification Records: Requires employers to retain verification records for three years after hiring or one year after termination, whichever is later. The forms may be retained electronically.

Copying of Documentation and Recordkeeping: Allows Secretary to promulgate regulations regarding copying and retaining documents and related information.

Penalties: An employer that fails to comply may be penalized (as outlined below).

Civil Rights Protections: Preserves the application of existing civil rights laws to E-Verify system and prohibits discrimination in document verification.

Receipts: Permits the use of receipts for replacement documents and temporary evidence of employment authorization to meet documentation requirements for up to 1 year.

National Identification Card: Does not authorize the creation of a national identification card.

274A(d) Employment Verification System:

- Requires DHS, in consultation with SSA, to establish an Employment Verification System and monitor use and misuse of the System, including speed, error rates, discrimination, security, integrity, and privacy.
- Requires DHS to give individuals direct access to their case histories in the System.
- Allows DHS to develop protocols for notifying individuals when their records have been queried and for individuals to submit queries and notifications of potential identity fraud.

274A(d)(2) Participation Requirements

- Requires participation by all federal government agencies and departments beginning on the date of enactment (if already required to participate) or 90 days after date of enactment.
- Requires participation by federal contractors as provided in the final rule currently requiring their participation or subsequent regulations.
- Beginning one year after implementation, allows DHS to require participation by critical infrastructure employers, provided that they receive 90 days' notice.
- Requires employers with more than 5,000 employees to use system for all new hires and employees with expiring employment authorization no later than two years after publication of implementing regulations.
- Requires employers with more than 500 employees to use system for all new hires and employees with expiring employment authorization no later than three years after publication of implementing regulations.
- Does not require employer participation with respect to agricultural labor or services employees until four years after the date of enactment of the Legal Workforce Act.
- Requires all employers to use the system for new hires and employees with expiring employment authorization no later than four years after publication of implementing regulations.
- Requires DHS to implement rules governing tribal government employers; requires these employers to use the system to verify new hires and employees with expiring employment authorization no later than five years after those regulations are published.
- May require employers who have violated sections 274A or 274C to participate in E-Verify even if not already required to do so; may require employers who have engaged in a pattern or practice of violations to use System with regard to current employees as well as new hires.
- Allows any employer to voluntarily participate in E-Verify.

274A(d)(3) Consequences of Failure to Participate: Provides that, outside of a de minimis or inadvertent failure, failure to participate in E-Verify where required is a civil violation and creates a rebuttable

presumption of additional civil violations. Evidence regarding an employer's noncompliance with E-Verify requirements may be used in federal criminal proceedings.

274A(d)(4) Procedures for Participants: Requires employers to register with E-Verify before using it, update their information as needed, and participate in mandatory trainings. Employer must notify new hires that it is using E-Verify. The employer must also obtain and record in a manner specified by DHS the employee's social security number, proof of citizenship or noncitizen nationality, and other information that DHS may require to determine identity and employment authorization.

Seeking Confirmation: Requires employers to confirm identity and employment authorized status between the date when an individual accepts an employment offer and three business days later, or during another period prescribed by DHS.

- Bars employer from making start date or any other term of employment contingent on E-Verify confirmation.
- Requires reverification of temporary employment status no later than three business days after the last day of authorized employment.
- For critical infrastructure employers and others required to verify their entire workforce, employer must conduct verification on or before date specified by DHS.
- Requires DHS to establish method of notifying employers of confirmation, non-confirmation, or further action notice.
- Requires DHS to establish procedures to directly notify the individual and employer of the results and to provide information about the appeals process.

Confirmation or NonConfirmation:

- Requires that E-Verify provide confirmation or further action notice at the time of the inquiry or not more than three days later. An employer must record a confirmation in the manner specified by DHS. In the event of a further action notice, the employer must notify the employee within three business days of receipt or during another period established by DHS, of the notice and any procedures required to address the notice. The individual must acknowledge in writing the receipt of the notice; employers must notify DHS of an individual's failure to acknowledge or decision not to contest a further action notice.
- Individuals contesting further action notices must contact appropriate federal agency within 10 business days of receiving the notice. DHS may require the person to appear in person for purposes of verifying identity and employment eligibility using a secondary verification procedure.
- If a further action notice is not contested or acknowledged within the required time period, a nonconfirmation will be issued. The employer must record the nonconfirmation and terminate the individual's employment.
- Unless DHS grants an extension, E-Verify must provide a confirmation or nonconfirmation no later than 10 business days after an individual contests a further action notice.
- DHS may establish procedures for reexamining confirmations or nonconfirmations in the event that subsequent information is received.

Employee Protections: An employer may not terminate employment or take any other adverse action against an individual based solely on lack of employment verification unless (1) a nonconfirmation has been issued; (2) a further action notice was issued, and the individual failed to file an administrative appeal within the permissible time period; or (3) an administrative appeal was filed, and the nonconfirmation was upheld.

Notice of NonConfirmation: Not later than three business days after receiving a nonconfirmation or during another period specified by DHS, an employer must notify the applicant in writing, provide information about filing an administrative appeal and requesting a hearing before an ALJ, and attest (through the E-Verify system) that he or she has done so. The individual must acknowledge receipt of the notice in writing or in another manner prescribed by DHS.

Consequences of NonConfirmation: If an employer has received a nonconfirmation and has made a reasonable effort to notify the individual, employment must be terminated after the expiration of the time period specified for filing an administrative appeal and for requesting a hearing before an ALJ. If the employer does not terminate the employee, a rebuttable presumption is created that the employer knowingly hired an alien who was not authorized to work. This presumption does not apply to criminal prosecutions. If an individual files an administrative appeal or requests review by an ALJ, the employer may not terminate the individual prior to resolution of the appeal unless DHS terminates the stay of the nonconfirmation.

Obligation to Respond to Queries and Additional Information:

- Employers must comply with requests for information from DHS and DOJ's Office of Special Counsel for Immigration-Related Unfair Employment Practices, including queries regarding current and former employees, within the time frame during which records are to be maintained, if the inquiry relates to the functioning of the System, the accuracy of the responses provided, or any suspected misuse, discrimination, fraud, or identity theft.
- Failure to comply constitutes a violation of the employer's obligation to comply with the requirements of the E-Verify system.
- Individuals may be required to take further action to address questions identified by DHS or SSA regarding the documents relied on for verification.

Rulemaking: DHS is authorized to issue regulations to improve the functioning of E-Verify and to prevent misuse, discrimination, fraud, or identity theft.

Designated Agents: DHS shall certify third-party vendors to use E-Verify under certain circumstances.

Information Campaign: Within three months of enactment, requires a multiagency campaign to provide information about E-Verify. $40M authorized to be appropriated for FY2014–2016.

Authority to Modify Information Requirements: DHS, in consultation with SSA, may, through notice and comment rulemaking, modify the information requirements for both employers and employees, as well as the relevant procedures.

Self-Verification: Requires DHS, in consultation with SSA, to establish a secure procedure for employees to verify their employment eligibility and update their information as needed.

274A(d)(5) Protection from Liability for Actions Taken on the Basis of Information Provided by E-Verify: An employer shall not be liable for any employment-related action taken with respect to a job applicant or employee in good faith reliance on information provided by E-Verify.

274A(d)(6) Administrative Appeals Process

- An individual who is notified of a nonconfirmation has 10 business days to file an administrative appeal with the SSA Commissioner (if the notice is based on SSA records) or with the Secretary.

- Timely filing of administrative appeal stays nonconfirmation unless the appeal is deemed frivolous or filed for purposes of delay.
- DHS and SSA must develop procedures for resolving administrative appeals, which must be completed within 20 business days after the evidence and argument have been submitted.
- Appeals limited to whether a nonconfirmation is supported by a preponderance of the evidence.
- No damages, fees, or costs may be awarded.

274A(d)(7) Review by Administrative Law Judge

- After receiving a final determination on an administrative appeal, an individual has 30 days to file a complaint with an ALJ.
- Timely filing of complaint stays nonconfirmation unless complaint is deemed frivolous or filed for purposes of delay.
- Secretary must promulgate regulations on rules of practice for appeals to ALJs.
- ALJs have power to terminate a stay of nonconfirmation, adduce evidence at a hearing, compel by subpoena the attendance of witnesses and production of evidence, resolve claims of identity theft, issue decisions, and order lost wages and other appropriate remedies.
- If nonconfirmation was due to employer's gross negligence or intentional misconduct, ALJ can order employer to pay lost wages, and reasonable costs and attorneys' fees incurred during administrative and judicial review. If due to government negligence, judge can order Secretary or Commissioner to pay lost wages, reasonable costs, and attorneys' fees.
- An individual adversely affected by an ALJ order may appeal within 45 days to U.S. court of appeals for the circuit in which the violation allegedly occurred or in which the employer resides or transacts business.

274(d)(8) Management of the System

- DHS shall establish, manage and modify the E-Verify system as needed.
- The system shall be designed to maximize reliability, ease of use, privacy, security, and accuracy.
- The system shall be subject to audits to detect misuse, discrimination, fraud, and identity theft, and to preserve the integrity and security of information.
- The system shall be designed to confirm identity through a photo tool or through alternative procedures prescribed by DHS.
- DHS, in consultation with SSA, shall develop policies and procedures to ensure protection of privacy and security of information in the system, and conduct privacy audits.
- Any person who retains document verification or system data must implement a security program to protect such data. Private third-party vendors must take additional precautions.
- DHS must maintain a reliable, secure method for verifying identification and employment authorization, including a photo tool. Regular audits must be conducted. The information obtained through such audits, as well as certain information obtained from SSA, may be used to administer and enforce the immigration laws.
- DHS must make arrangements for employers and employees who are otherwise unable to access E-Verify to use other technology and/or facilities to do so.
- To prevent identity fraud, DHS and SSA must establish a program that enables individuals to suspend or limit the use of their social security numbers, implement procedures for identifying and preventing multiple use, and establish a monitoring and compliance unit.
- Secretary will conduct regular civil rights and civil liberties assessments of E-Verify.

- Authorizes $250M in grants to states to develop and share driver's license information for use with the E-Verify photo tool.
- DOS will provide access to passport and visa information for purposes of photo tool.
- Records and data assembled for E-Verify may only be used for purposes of employment verification.
- Reports:
  - Annual report by DHS
  - Annual GAO study and report

274A(e) Compliance

Complaints & Investigations

- Requires DHS to establish procedures for:
  - Filing and investigation of complaints regarding alleged violations of the prohibition against the knowing hire of aliens who are not authorized to work and against employers who allegedly require employees to post indemnity bonds for liability related to their hiring.
  - Notification to DOJ's Office of Special Counsel for Immigration-Related Unfair Employment Practices of potential discrimination and unfair immigration-related employment practices.

Authority in Investigations

- Gives immigration officers access to evidence for investigations and allows immigration officers and ALJs to compel evidence and witnesses by subpoena.
- Directs DHS to create a Joint Employment Fraud Task Force.

Compliance Procedures

- Sets forth detailed requirements for written notice by DHS to employers upon reasonable belief of civil violations of this section. Notice must describe violation, material facts supporting it, the proposed penalty, and give the employer a reasonable opportunity to respond.
- Gives employers 60 days from receipt of notice to file a written response, including relevant evidence or basis for mitigation of penalties, and request a hearing before an ALJ. If no hearing is requested, the penalty becomes final and unappealable.
- If ALJ finds clear and convincing evidence of a violation, must issue final determination and penalty claim in writing.

Civil Penalties

- Substantially increases civil penalties:
  - $3,500 to $7,500 per worker for knowingly hiring, recruiting, referring for a fee, or continuing to employ an unauthorized alien
    - $5,000 to $15,000 per worker, for second-time violators
    - $10,000 to $25,000 per worker, for multiple-time violators
  - $500 to $2,000 per violation for failure to comply with document verification or E-Verify use requirements, except for minor or inadvertent failures
    - $1,000 to $4,000 per violation, for second-time violators
    - $2,000 to $8,000 per worker, for multiple-time violators
- Permits enhanced penalties for failure to use the system or for violation of federal, state or local labor laws after E-Verify becomes mandatory for all employers.
- Allows DHS to impose additional penalties, including cease and desist orders, compliance plans, and suspended fines.
- Provides for discretionary mitigation of civil penalties:

- DHS or ALJ may reduce penalties up to statutory minimum, considering factors such as employer's size, compliance history, good faith implementation, sophistication, and voluntary disclosure of violations.
- DHS may reduce penalties below the statutory minimum only for first-time recordkeeping and verification violations.
- Civil penalties must be reduced for employers whose actions also gave rise to civil penalties under related anti-discrimination provisions.

- Penalties go into effect one year after enactment.

Order of Internal Review and Certification of Compliance

- If DHS has reasonable cause to believe an employer has failed to comply with this section, DHS may require the employer to certify that it is in compliance or has instituted a program to come into compliance.
  - Employers must certify within 60 days of notice, but DHS can extend deadline for good cause.
  - Certification requirements effective once System is mandatory for all employers.
- Allows DHS to establish methods for certification.

Requirements for Review of a Final Determination

- Creates procedure for judicial review of civil penalties imposed on employers
  - Employers must file petition for review in court of appeals within 30 days of final determination or penalty claim; petition must be served on Attorney General and Secretary of DHS. Employers must also file and serve a brief or the appeal will be dismissed absent manifest injustice.
  - Courts of appeals will review administrative record de novo and additional evidence that was previously unavailable.
  - Petitioners must exhaust administrative remedies.
- Allows Attorney General to bring suits in district court for enforcement of final determinations.

Creation and Notice of Lien

- Creates a lien on all real or personal property of employers who fail to pay penalties following demand or final judgment by court.
- Provides procedures for filing notice of lien, for determining effect of filing notice of lien on other parties, and for enforcing liens.

Attorney General Adjudication

- Places jurisdiction for administrative proceedings under this subsection with the Attorney General.
- Requires administrative proceedings to be conducted pursuant to the adjudications provisions of the Administrative Procedure Act (5 USC §554).

274A(f) Criminal and Civil Penalties and Injunctions

- Bars employers from requiring individuals to post indemnity bonds for liability under this section related to their hiring.
- Increases civil penalties to up to $10,000 per violation plus return of amount received.

274A(g) Government Contracts

- Requires DHS to consider debarment of federal contractors convicted of criminal violations of this section or who have committed more than three civil violations of this section.

- Requires use of debarment procedures in the Federal Acquisition Regulation; such proceedings may not reconsider prior administrative determinations of liability for civil penalties.
- Exempts contractors who only committed inadvertent violations of recordkeeping or verification requirements.
- No limitations on remedies for federal contractors' violations of contractual obligations to use E-Verify.

274A(h) Preemption

- Preempts state or local laws, ordinances, policies, or rules related to the hiring, continued employment, and status verification for employment eligibility purposes of unauthorized aliens.
- Contains an exception for state and local authority for business licensing.

274A(i) Deposit of Amounts Received

- Requires deposit of civil penalties in the Comprehensive Immigration Reform Trust Fund, unless otherwise noted.

274A(j) Challenges to Validity of the System

- Requires that challenges be brought in U.S. District Court for the District of Columbia no later than 180 days after the challenged section or regulation becomes effective.
- Limits challenges to questions regarding constitutionality, statutory violations, and compliance with the APA.

274A(k) Criminal Penalties and Injunctions for Pattern or Practice Violations

- Increases penalties for employers who engage in pattern or practice of knowingly hiring, recruiting, referring for a fee or continuing to employ unauthorized aliens, to a fine of up to $10,000 per worker and/or imprisonment of up to two years.
- Increases maximum term of imprisonment by five years for any criminal offense that is part of a such pattern or practice violations.
- Allows DHS to bring district court action for temporary or permanent injunction of such pattern or practice violations.

274A(*l*) Criminal Penalties for Unlawful and Abusive Employment

- Requires fine and/or imprisonment of up to 10 years for persons who, during any 12-month period, knowingly employ, hire, recruit or refer 10 or more unauthorized aliens and violate certain labor laws.
- Makes persons who attempt or conspire to commit such offenses subject to same penalty.

(b) Report on Use of System in Agricultural Industry

- Requires DHS to report to Congress within 18 months of enactment on implementation of E-Verify in the agricultural industry.

(c) Report on Impact of System on Employers

- Requires DHS to report to Congress within 18 months of enactment on implementation of E-Verify by employers, including any adverse impacts on employers and economic impact on small businesses.

(d) GAO Study on Effects of Document Requirements on Employment Authorized Persons and Employers

- Requires the Comptroller General to conduct a study and report to Congress within four years of enactment on challenges faced by employers, U.S. nationals and employment authorized individuals in obtaining required documentation.

- Repeals the E-Verify pilot program and creates transitional procedures.

Sec 3102. INCREASING SECURITY AND INTEGRITY OF SOCIAL SECURITY CARDS.

- The SSA Commissioner must work to issue fraud-, tamper-, wear-, and identity theft-resistant social security cards no later than 180 days after enactment, and must complete this work no later than five years after enactment.
- Appropriates $1B for fiscal year 2014, to remain available until expended.
- Restricts issuance of replacement cards to three per year and 10 for life of individual, subject to reasonable exceptions permitted by the Commissioner.
- Makes forms of social security fraud punishable by a fine, up to five years' imprisonment, or both:
  - Knowing possession or use of SS number or card, with knowledge that it was fraudulently or falsely obtained;
  - Knowing and false representation that another's SS number is one's own;
  - Knowing and unlawful purchase or sale of SS number or card;
  - Knowing alteration or counterfeit of SS card;
  - Knowing use, distribution, or transfer of altered, counterfeited, forged, falsely made or stolen card or number;
  - Knowing and unlawful production or acquisition of SS card or number for another person.
- Allows disclosure of SSA records to federal law enforcement agencies for certain purposes.

Sec 3103. INCREASING SECURITY AND INTEGRITY OF IMMIGRATION DOCUMENTS. Requires DHS to report to Congress, not later than one year after enactment, the feasibility, advantages and disadvantages of including biometric information other than a photograph on an employment authorization document.

Sec 3104. RESPONSIBILITIES OF THE SOCIAL SECURITY ADMINISTRATION.

- Gives SSA responsibility for establishing reliable and secure method to check employee data against SSA data to confirm identity and employment eligibility.
- Prohibits release of social security information to employers through E-Verify.

Sec 3105. IMPROVED PROHIBITION ON DISCRIMINATION BASED ON NATIONAL ORIGIN OR CITIZENSHIP STATUS.

- Expands existing antidiscrimination provisions in the INA to ensure that employers cannot use E-Verify in a discriminatory or unlawful manner. Exception for employers with five or fewer employees, other than an employment agency, and for discrimination based on citizenship that is otherwise required by law.
- Expands definition of unfair immigration-related employment practice to include:
  - Use of E-Verify to illegally discharge an employee;
  - Unlawful use of E-Verify;
  - Use of E-Verify to reverify current employees;
  - Selective use of E-Verify;

- Failure to provide required notices;
- Use of E-Verify to deny benefits;
- Misuse of E-Verify to discriminate based on national origin or citizenship status;
- Any requirement that employees or potential employees self-verify;
- Use of alternative systems to verify employment eligibility;
- Granting unauthorized access to E-Verify or failing to implement reasonable safeguards to protect data.

- Expands existing prohibition against employers requesting additional or different documents or refusing to honor documents that appear to be genuine.
- Requires EEOC to refer all matters alleging immigration-related unfair employment practices to DOJ's Office of Special Counsel for Immigration-Related Unfair Employment Practices.
- Appropriates additional $40M per year in FYs2014–2016 for public information campaign concerning the antidiscrimination provisions.
- Substantially increases fines resulting from violations of this section:
  - $2,000 to $5,000 per individual subjected to unfair immigration-related employment practices;
  - For second-time offenders, $4,000 to $10,000 per individual subjected to unfair immigration-related employment practices;
  - For multiple-time offenders, $8,000 to $25,000 per individual subjected to unfair immigration-related employment practices;
  - $500 to $2,000 per individual for unfair immigration-related employment practices related to the misuse of E-Verify; intimidation or retaliation; and improper document verification demands.
- Increased fines become effective one year after enactment.

Sec 3106. RULEMAKING. Requires DHS and AG to issue implementing regulations within one year of enactment.

Subtitle B—Protecting United States Workers

Sec. 3201. PROTECTIONS FOR VICTIMS OF SERIOUS VIOLATIONS OF LABOR AND EMPLOYMENT LAW OR CRIME.

- Expands availability of U visa to victims of serious workplace violations by:
  - Amending §101(a)(15)(U) to encompass certain individuals who have been victims of "covered violations" (in addition to enumerated criminal activity)
    - Covered violations defined to include:
      - Serious workplace abuse, exploitation, retaliation, violation of whistleblower protections, or similar activities;
      - Peonage, slavery, and trafficking in persons ("violations giving rise to a civil cause of action under 18 USC §1595"); or
      - Violation resulting in deprivation of due process, constitutional rights
    - Requires alien to possess information regarding a covered violation and to be helpful in the investigation of any cause of action—civil criminal or administrative—arising from the covered violation (as determined by certification from federal, state or local agency)
    - Adds "covered violation" language in other relevant statutes that reference §101(a)(15)(U) to conform to the above amendments, including:
      - INA §245(m)(1) (adjustment of status for victims of crimes against women) and 8 USC §1367 (expansion of limitations on sources of information that can be used to make adverse determinations)
- Expands availability of U visas to victims of criminal activity or of a covered violation who would suffer extreme hardship upon removal.
- Adds "stalking," "fraud in foreign labor contracting," and "child abuse when the alien is a minor" to list of criminal activity in §101(a)(15)(U).

- Amends §274A to provide protections for aliens arrested or detained as part of workplace enforcement action at a facility about which a bona fide workplace claim has been filed or is filed, including not removing the aliens until DHS has had an opportunity to interview them and mandating a stay of removal in certain situations.
- Allows an alien to work in the U.S. if he or she has filed an application for a U visa, is a material witness to a bona fide claim or proceeding resulting from a covered violation, or is being helpful in the investigation of civil remedies related to the claim arising from a covered violation.

Sec. 3202. EMPLOYMENT VERIFICATION SYSTEM EDUCATION FUNDING. Allocates funds collected through civil penalties for certain employment verification violations to "Comprehensive Immigration Reform Trust Fund" to be used to provide education on E-Verify.

Sec. 3203. DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION. Directs the United States Sentencing Commission to promulgate sentencing guidelines for individuals convicted of offenses under INA §274A, §16 of the Fair Labor Standards Act, or other similar conduct, including enhancements for certain behavior.

Sec. 3204. CONFIDENTIALITY FOR VICTIMS OF CRIME. Allows the disclosure information provided by aliens who are victims of certain crimes only in limited circumstances, such as when constitutionally obligated.

Subsection C: Other Provisions

Sec. 3301. FUNDING. Establishes the Interior Enforcement Account with $1,000,000,000 to fund the provisions of the Interior Enforcement Title.

- Requires the funding of at least 5,000 additional ICE and USCIS positions within five years to administer and monitor the E-Verify system for compliance, misuse, fraud, and discrimination, etc.
- Provides funding for set up and maintenance E-Verify system and enforcement-related information sharing, as well as funding to states to assist in carrying out the Title.

Sec. 3302. EFFECTIVE DATE. Provides that the title will take effect on the date of enactment.

Sec. 3303. MANDATORY EXIT SYSTEM. Requires DHS to establish a mandatory exit data system for aliens leaving by air or sea by end of 2015, a component of which must be the integration of data held by ICE, CBP, USCIS, EOIR, and the DOS Bureau of Consular Affairs through an interoperable electronic data system that also includes access to information held by federal law enforcement agencies and intelligence communities.

Sec. 3304. IDENTITY-THEFT RESISTANT MANIFEST INFORMATION FOR PASSENGERS, CREW, AND NON-CREW ONBOARD DEPARTING AIRCRAFT AND VESSELS. Requires air and vessel carriers of noncitizen passengers, crew, and non-crew to transmit identity theft-resistant manifest information to CBP.

- Must be collected in airport or seaport prior to boarding at a time close to departure
- Must include data from machine-readable visas, passports, other travel and entry documents
- Exempts noncitizens who are active duty military personnel on chartered aircraft

Bars carriers from using the identity theft-resistant manifest information for any other purpose other than authorized by the subsection. Authorizes DHS to designate a specific location for collection of the

information if the carrier has not adequately complied with the provisions of the section. Appropriates $500,000,000 to reimburse carrier expenses.

Sec. 3305. PROFILING. Prohibits federal law enforcement officers from using race or ethnicity in making a law enforcement decisions unless a specific suspect description exists, trustworthy information connects a specific race or ethnicity to a specific crime, criminal organization or scheme, or is authorized by U.S. law and Constitution in the context of national security and border security. Requires DHS to collect data, study, and issue regulations regarding the use of race, ethnicity, and other suspect classifications by DHS officers.

Subtitle D—Asylum and Refugee Provisions

Sec. 3401. TIME LIMITES AND EFFICIENT ADJUDICATION OF GENUINE ASYLUM CLAIMS.

- Amends §208(a)(2) by eliminating the one-year filing deadline for filing an asylum application.
- Preserves the ability of an asylum applicant whose application was previously denied to reapply due to changed circumstances that materially affect his or her eligibility for asylum.
- Newly provides that a noncitizen whose asylum application previously was denied may file to a motion to reopen their asylum claim during the two-year period after enactment of the law if the noncitizen:
    - 1) was denied asylum based solely on the failure to meet the one-year filing deadline,
    - 2) was granted withholding of removal pursuant to §241(b)(3) and has not obtained lawful permanent residence pursuant to any other provision of law,
    - 3) is not subject to the safe third-country exception or a bar to asylum and should not be denied asylum as a matter of discretion, and
    - 4) is physically present in the U.S. when the motion is filed.

Sec. 3402. REFUGEE FAMILY PROTECTIONS. Expands the categories of family members who qualify for derivative asylee and refugee status to include the children of refugees' and asylees' spouses or children. Specifically, the child of a noncitizen who qualifies for admission as a spouse or child under §207(c)(2)(A) (providing that a spouse or child of a refugee is entitled to refugee status subject to certain criteria) or §208(b)(3) (providing that a spouse or child of an asylee may be granted asylee status subject to certain criteria) shall be entitled to the same admission status of such noncitizen if the child is 1) following to join and 2) is otherwise eligible under § 207(c)(2)(A) or 208(b)(3).

Sec. 3403. CLARIFICATION ON DESIGNATION OF CERTAIN REFUGEES.

- Amends §207(c)(1) to provide that the President—upon a recommendation made by the Secretary of State in consultation with the Secretary—may designate specifically defined groups whose resettlement in the U.S. is justified by humanitarian concerns or is otherwise in the national interest and
    - 1) who share common characteristics that identify them as targets of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion; or
    - 3) having been identified as targets of the persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, share a common need for resettlement due to a specific vulnerability.
- Noncitizens who establish membership in a designated group shall be considered a refugee for purposes of admission as a refugee.
- A noncitizen who establishes membership in a designated group will not be considered a refugee if he or she ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.

- Categories of aliens established under §599D of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990 shall be designated refugees until the end of the first fiscal year beginning after the date of the enactment of the law and shall be eligible for designation thereafter at the discretion of the President. A decision to deny admission under this section to a noncitizen who establishes membership in designated group shall be in writing and state the reason for the denial.
- Refugees admitted pursuant to a group designation will be subject to the number of admissions under this section.

Sec. 3404. ASYLUM DETERMINATION EFFICIENCY.

- Amends §235(b)(1)(B)(ii) to allow an asylum officer to grant asylum to an applicant for admission who demonstrates a credible fear of persecution, after conducting a non-adversarial asylum interview and seeking supervisory review.
- The asylum officer also may refer the case to a designee of the Attorney General for a de novo asylum determination, for relief under the Convention Against Torture, or for withholding protection under §241(b)(3).

Sec. 3405. STATELESS PERSONS IN THE UNITED STATES.

- Amends §201 to provide provides new protections for stateless persons in the United States, and defines "stateless person" to mean an "individual who is not considered a national under the operation of the laws of any country." The Secretary or the Attorney General may designate certain groups of individuals who are considered stateless persons for purposes of this section.
- The DHS Secretary. or Attorney General may, in his or her discretion, provide conditional lawful status to a noncitizen who is otherwise inadmissible or deportable if he or she:
    - 1) is considered a stateless person present in the U.S.;
    - 2) applies for such relief;
    - 3) has not lost his or her nationality as a result of her or her voluntary action or knowing inaction after arrival in the U.S.;
    - 4) is not inadmissible under select provisions of §212(a) (subject to waivers under prescribed circumstances); and
    - 5) is not considered a persecutor under §241(b)(3)(B)(i).
- Certain inadmissibility grounds will not apply to these noncitizens, including those based on whether the noncitizen will be considered a public charge, labor certification requirements, documentation requirements, and whether he or she was previously removed. Waivers of other inadmissibility grounds are available.
- The Secretary may grant work authorization to applicants who are prima facie eligible for relief under this provision, or individuals who are granted relief under this provision.
- The Secretary may issue travel documents to individuals granted relief under this provision.
- The spouse or child who is accompanying or following to join a stateless person granted status under this provision will also be granted status if 1) the spouse or child is admissible (except as otherwise provided) and 2) the qualifying relationship existed on the date the noncitizen was granted conditional lawful status.
- At the end of the one-year period beginning on the date on which an alien has been granted conditional lawful status, the alien may apply for LPR status, if
    - The individual has been physically present in the U.S. for at least one year;
    - The individual's conditional lawful status has not been terminated by the Secretary or Attorney General; and
    - The individual has not otherwise acquired LPR status.
- The Secretary or the Attorney General may adjust the status of an individual granted conditional lawful status to that of an alien lawfully admitted for permanent residence if the individual:
    - Is a stateless person;
    - Properly applies for adjustment of status;

    - The individual has been physically present in the U.S. for at least one year after being granted conditional lawful status;
    - Is not firmly resettled in any foreign country; and
    - Is admissible except otherwise provided as an immigrant at the time of examination for adjustment of status.
- The number of individuals who may receive LPR status under this section is subject to existing numerical limitations at §203(b)(4).
- A noncitizen may not appeal the denial of an application, but may reapply.
- Within two years of enactment of this law, an individual who is eligible for relief under this section may file a motion to reopen proceedings in order to apply for this relief.

Sec. 3406. U VISA ACCESSIBILITY. Amends §214(p)(2)(A) to expand the number of available U visas from 10,000 to 18,000, and specifies that no more than 3,000 of those 18,000 may be issued to those who are "victims of a covered violation described in section 101(a)(15)(U)." (See Sec. 3201 of this bill for more information.)

Sec. 3407. REPRESENTATION AT OVERSEAS REFUGEE INTERVIEWS.

- Amends §207(c) to require an adjudicator of an application for refugee status to consider all relevant evidence and to maintain a record of evidence considered.
- States that an applicant for refugee status may be represented by an attorney or accredited representative, including at a refugee interview.
- Requires that a decision to deny an application for refugee status be in writing and provide information on the reason for the denial, including the facts underlying the determination and whether there is a waiver of inadmissibility available to the applicant. The basis of any negative credibility finding shall be part of the written decision.
- An applicant who is denied refugee status under this section may file a request with the Secretary for a review of his or her application within six months of the denial. Refugee officers trained to consider requests for review will review the denials. The Secretary shall publish the standard applied to a request for review.
- A request for review may result in the decision being granted, denied, or reopened for a further interview. A decision on a request for review will be in writing and will provide the reason for the denial.

Subtitle E – Shortage of Immigration Court Resources for Removal Proceedings

Sec. 3501. SHORTAGE OF IMMIGRATION COURT PERSONNEL FOR REMOVAL PROCEEDINGS.

- Increases the number of IJs and support staff to better adjudicate removal cases and clear the backlog in cases currently before the immigration courts.
    - Increase of 75 IJs per year for the next three years;
    - Ensures equivalent of one staff attorney/law clerk and one legal assistant for each IJ; and
    - Increase of 30 BIA staff members per year for the next three years.
- Funds appropriated from CIR Trust Fund as necessary.

Sec. 3502. IMPROVING IMMIGRATION COURT EFFICIENCY AND REDUCING COSTS BY INCREASING ACCESS TO LEGAL INFORMATION.

- Clarifies that the Attorney General has authority to appoint counsel in certain removal proceedings at his or her discretion, though the government is not *required* to provide counsel in immigration court.
- Directs the Attorney General to appoint counsel at the expense of the government for "unaccompanied alien children" (UACs) and individuals with serious mental disabilities, as well as other "particularly vulnerable" immigrants if necessary to ensure fairness and efficiency.
- Funds appropriated from CIR Trust Fund as necessary.

Sec. 3503. **OFFICE OF LEGAL ACCESS PROGRAMS.**

- Codifies the existing Office of Legal Access Programs (OLAP) at EOIR to administer Legal Orientation Programs (LOP) for immigrant detainees. LOPs are intended to make immigration proceedings more efficient and cost effective by educating detainees on immigration court procedure and their legal rights. Also, authorizes OLAP to establish other programs to assist in providing immigrants access to legal information.
- Directs the Secretary to ensure that LOPs are available to all immigration detainees within five days of arrival into custody. LOPs may provide services to individuals in immigration court proceedings (INA §240), as well as other proceedings, including under §§235, 238, and 241(a)(5).
- Requires LOPs to identify UACs, individuals with serious mental disabilities, and other particularly vulnerable immigrants for consideration by Attorney General for appointed counsel under section 3502.
- Specifies that this subsection does not create a substantive or procedural right or benefit that is enforceable against the U.S.
- Funds appropriated from CIR Trust Fund as necessary.

Sec. 3504. **CODIFYING BOARD OF IMMIGRATION APPEALS.**

- Codifies BIA as reviewing body for IJ decisions and defines "Board Member."
- Provides that a noncitizen may appeal an IJ decision to a three-judge panel of the Board.
- Directs the Board to issue written opinions that address "all dispositive arguments" raised and specifies that the panel may incorporate by reference the IJ's opinion "provided that the panel also addresses any arguments made by the nonprevailing party regarding purported errors of law, fact, or discretion."

Sec. 3505. **IMPROVED TRAINING FOR IMMIGRATION JUDGES AND BOARD MEMBERS.**

- Director of EOIR to review and modify training programs for IJs, members of the BIA, and staff.
- Outlines requirements of this review to include expansion of training, CLE, and practical training on crafting and dictating decisions.
- Funds appropriated from CIR Trust Fund as necessary.

Sec. 3506. IMPROVED RESOURCES AND TECHNOLOGY FOR IMMIGRATION COURTS AND BOARD OF IMMIGRATION APPEALS.

- Directs Director of EOIR to ensure that IJs are provided with updated on-bench reference materials and decision templates that conform to their circuit; produce IJ practice manual on best practices and make it available to counsel and immigrant respondents electronically.
- Directs Director of EOIR to create plan and schedule to replace current tape recording system with digital recording system.
- Directs Director of EOIR to report on current transcription services and recommend improvements.
- Directs Director of EOIR to report on current interpreter selection process and recommend improvements.
- Funds appropriated from CIR Trust Fund as necessary.

Subtitle F – Prevention of Trafficking in Persons and Abuses Involving Workers Recruited Abroad

Sec. 3601. DEFINTIONS. Lays out the definitions to be used in the subtitle, generally referring back to the Fair Labor Standards Act of 1938 and providing additional definitions.

Sec. 3602. DISCLOSURE. Requires a foreign labor contractor to disclose in English and in the worker's primary language at the time of the worker's recruitment, the following:

- The identity and address of the employer and the person recruiting on behalf of the employer
- The terms and conditions of employment;
- A signed copy of the employment contract;
- The visa that the foreign worker would receive and employer or employee plans for renewal of the visa;
- A list of any expenses to be charged to the worker and any deductions from wages;
- The existence of any labor organizing efforts or disputes at the place of employment;
- The compensation available for work-related injuries;
- A statement by the Secretary of Labor describing protections for trafficking victims and any applicable visa program as well as information about filing a trafficking-related complaint. The statement must also advise the worker that:
    - No foreign contractor may charge the worker fees for contracting services;
    - The worker must be given at least 48 hours to review any employment contract changes;
    - Any changes to the employment contract require specific consent from the worker and must be obtained voluntarily.
- Any training or education to be provided or required by the employer; and
- Any other information the Secretary may require.

Prohibits a foreign labor contractor or employer from knowingly providing false or misleading information regarding any of the disclosures required above.

Sec. 3603. PROHIBITION ON DISCRIMINATION. Prohibits a foreign labor contractor or employer from failing or refusing to hire or otherwise discriminating against a worker based on race, color, creed, sex, national origin, religion, age, or disability and delineates the legal standards to be used to establish discrimination based on title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, and the Americans with Disabilities Act of 1990.

Sec. 3604. RECRUITMENT FEES. Bans an employer, foreign labor contractor, or agent or employee of a foreign labor contractor from assessing fees to workers for any foreign labor contracting activity.

Sec. 3605. REGISTRATION. Requires foreign labor contractors or their agents to obtain a certificate of registration from the Secretary of Labor prior to commencing any foreign labor contracting activity unless an employer directly contracts with an employee. Employers who directly contract with employees will still be subject to the disclosure requirements. Employers must notify DHS annually of any foreign labor contractors used by the employer, and any foreign labor contractor must annually notify DHS of any agents, subcontractees, or foreign labor contractor employees involved in any foreign labor contracting activity. Employers must notify DHS of any noncompliant foreign labor contractors and provide within 48 hours information about any foreign labor contractors used. The Secretary of Labor must establish by regulation and within 180 days of the enactment of the Act an electronic process for approving foreign labor contractors that will include:

- A sworn statement of the foreign labor contractor applicant's address and the activities for which the applicant is requesting certification;
- Fingerprints of the applicant;
- A method to quickly update registrations and renew certificates;

- Consent to allow the Secretary of Labor to receive service of a summons;
- Consent to the jurisdiction of the Department of Labor, any state, or federal court in the U.S.;
- Willingness to cooperate in any investigations;
- Consent to forfeit bond for noncompliance with these provisions;
- Consent to liability for any violations by agents or subcontractees of the foreign labor contractor;
- Consultation with other federal agencies to determine whether an application for registration should be approved; and
- Any other requirements established by the Secretary.

A certificate of registration is good for two years. The Secretary of Labor shall:

- Impose a fee to be deposited in the general fund of the Treasury;
- Cover the costs of the foreign labor contract registration activities.

The Secretary of Labor shall refuse to issue or renew, or shall revoke and bar from eligibility for up to five years, after notice and an opportunity for a hearing, a certificate of registration, if the applicant:

- Knowingly made a material misrepresentation;
- Is not the real party in interest and the real party in interest has been denied issuance or renewal of a certificate, had a certificate revoked, or does not qualify for a certificate;
- Has been convicted in the five previous years of one of the listed crimes;
- Has materially failed to comply with this section.

The Secretary of Labor shall provide a method for re-registering foreign labor contractors whose registration has been revoked if they have demonstrated that they have not violated the subtitle in the past five years and have taken steps to prevent future violations.

Sec. 3606. BONDING REQUIREMENT. Requires foreign labor contractors to post a bond with the Secretary of Labor to ensure the ability of the contractor to ensure protection of workers and requires the Secretary to establish by guideline the amount of the bond, payment, and forfeiture.

Sec. 3607. MAINTENANCE OF LISTS. Requires the Secretary of Labor to maintain a list of registered foreign labor contractors that includes:

- The countries where the contractor recruits;
- The employers for whom the contractor recruits;
- The visa categories and occupations for which the contractor recruits;
- The states where recruited workers are employed; and

A list of foreign labor contractors whose certificate of registration was revoked. The lists must be: updated regularly, publicly available, and available to the Secretary of State.

Sec. 3608. AMENDMENT TO THE IMMIGRATION AND NATIONALITY ACT. Section 214 is amended to require the consular officer to review with an applicant in the applicant's own language information about trafficking protections, and to have the foreign labor recruiter disclosures required by Section 3602 in the visa file before issuing a visa to the following nonimmigrants:

- Attendants, servants and personal employees of ambassadors, public ministers, career diplomatic or consular officers and other employees who have been accredited by a foreign government and recognized de jure by the U.S.;
- Visitors for pleasure;
- Attendants, servants and personal employees of employees of certain international organizations;
- Specialty occupation workers, non-agricultural seasonal workers, agricultural workers;
- International Students;
- Intracompany transfers of high-level executives or employees with special skills;
- Individuals participating in an international cultural exchange program;
- Religious workers; and
- Any new immigration subsections of §101(a)(15).

Sec. 3609. RESPONSIBILITIES OF SECRETARY OF STATE. Requires the Secretary of State to:

- Staff each diplomatic mission with a person who:
    - Receives information about violations;
    - Transmits the information to DOJ, DOL, or any other relevant federal agency; and
    - Is encouraged to coordinate with government and civil society groups to provide the worker with support;
- The Attorney General and the Secretary shall develop a mechanism to respond to information received;
- Maintain information containing the identity of the foreign labor contractor and employers who use foreign labor contractors and make it publicly available;
- Annually report data containing information about the gender, country of origin, date of birth, wage, level of training, and occupation category by job and visa category.

Sec. 3610. ENFORCEMENT PROVISIONS. Establishes a complaint, investigation, and enforcement mechanism through which the Secretary of Labor will:

- Create a process to receive, investigate, and dispose of complaints respecting a foreign labor contractor's compliance with this subtitle;
- Impose a fine of $10,000 if, after a hearing, the Secretary finds a violation of this subtitle; upon a third violation of this subtitle, a fine of $25,000 per violation may be imposed
- Use subpoenas, injunctions, or other mechanisms to ensure compliance;

Bond liquidation or forfeiture can also be used as a remedy. The Secretary of Labor or any other individual can bring a civil action based on a violation of this subtitle in order to:

- Seek remedial action, including injunctive relief;
- Recover damages; and
- Ensure compliance.

Any sums recovered by the Secretary on behalf of a worker will be paid directly to the worker and if unable to distribute the funds within five years, the Secretary may use the money to offset the expenses of this subtitle.

The Solicitor can represent the Secretary of Labor in any civil litigation.

Awards to any individual in a civil suit who demonstrates a violation of this subsection may include:

- Actual damages and statutory damages up to $1,000 per plaintiff per violation;
- Up to $500,000 in a class action lawsuit Reasonable attorney's fees;
- Other relief as necessary, such as declaratory or injunctive relief.

The court can consider attempts made to resolve the issue prior to litigation, and bond held pursuant to section 3606 can be used to satisfy damages assessed. Appeals to federal court are available, and Legal Services Corporation can represent workers under this subtitle.

Establishes liability under an agency relationship:

- 180 days after the promulgation of regulations, an employer may only use a foreign labor contractor who is registered with the Secretary of Labor or the employer will be liable to the same extent as if the employer were a foreign labor contractor who had committed the violation.
- An employer will not be liable if the foreign labor contractor is validly registered with the DOL, the employer does not act with reckless disregard for a foreign labor contractor's violations, and reports violations immediately to the Secretary of Labor.

Prohibits retaliation against a worker who discloses a violation, seeks legal assistance, or cooperates in investigating violations and provides that a victim of retaliation may bring a civil remedy.

Employees cannot waive their rights under this section.

Requires the Attorney General and Secretary of DHS to grant a worker advance parole during the pendency of all legal proceedings under this subtitle if other immigration relief is not available.

Sec. 3611. RULE OF CONSTRUCTION. Nothing in the subtitle will preempt any other rights or remedies available under federal or state law.

Sec. 3612. REGULATIONS. Gives the Secretary of Labor authority to develop regulations to carry out the subtitle.

Subtitle G: Interior Enforcement

Sec. 3701. **CRIMINAL STREET GANGS.** Creates new grounds of inadmissibility, deportability, and ineligibility for RPI status for criminal street gang participation.

- Makes a noncitizen inadmissible if the noncitizen is:
    - Convicted for an offense for which an element was active participation in a criminal street gang as defined under federal law with both knowledge that gang members engaged in certain felony offenses and acted with the intention to promote or further the felonious activities of the gang or to maintain or increase his or her position in the gang; or
    - 18 years or older, physically present outside U.S., and the Secretary has clear and convincing evidence that the noncitizen knowingly and willingly participated in gang activity with knowledge that participation further or promoted illegal activity.
        - Waived if the noncitizen has renounced all association with the street gang, is otherwise admissible, and is not a security threat.
- Makes a noncitizen deportable if the noncitizen is:
    - Convicted for an offense for which an element was active participation in a criminal street gang as defined under federal law with both knowledge that gang members engaged in certain felony offenses and acted with the intention to promote or further the felonious activities of the gang or to maintain or increase his or her position in the gang.

- Makes an unauthorized immigrant ineligible for RPI status if the noncitizen is18 years of age or older and either:
    - Convicted for an offense for which an element was active participation in a criminal street gang as defined under federal law with both knowledge that gang members engaged in certain felony offenses and acted with the intention to promote or further the felonious activities of the gang or to maintain or increase his or her position in the gang; or
    - If physically present outside the U.S., the Secretary has clear and convincing evidence the noncitizen knowingly and willingly participated with knowledge that participation further or promoted or furthered illegal activity.
        - Waived only if the noncitizen has renounced all associations with the gang and is otherwise admissible and is not a security threat.

Sec. 3702. **BANNING HABITUAL DRUNK DRIVERS FROM THE UNITED STATES.** Creates a new ground of inadmissibility and deportability for three or more convictions related to DUI (but does not make it an aggravated felony)

- Makes a noncitizen inadmissible if convicted of three or more offenses on separate dates related to driving under the influence or driving while intoxicated. At least one or more offenses must have occurred after enactment of law.
- Makes a noncitizen deportable if convicted for three or more DUI offenses related to driving under the influence or driving while intoxicated. Unlike inadmissibility provision, one of the offenses does not need to have occurred after the enactment of the law.

Sec. 3703. **SEXUAL ABUSE OF A MINOR.** Expands the evidence that can be considered as to the age of the victim for sexual abuse of minor aggravated felony ground to include "credible evidence extrinsic to the record of conviction."

Sec. 3704. **ILLEGAL ENTRY.** Increases the criminal penalties for illegal entry and otherwise amends INA §275, to take effect one year after enactment.

- Increases criminal penalties from up to six months in jail for initial violation and two years for subsequent violations, to up to 12 months for initial violation and three years for subsequent violations.
- Provides that if the violation occurred after the noncitizen has been convicted of three or more misdemeanors on different dates with time served of 15 days or more, the noncitizen shall be imprisoned for up to 10 years. If convicted of one felony with sentence of less than 30 months, imprisonment of up to 15 years. Limitations on the nature of the convictions.
- Narrows scope of crime by removing "attempted" crossings and punishing only actual entrance or crossings.
- Narrows scope of civil penalties to those who are older than 18 and to those who "knowingly" enter or attempt to enter, cross, or attempt to cross but increases fine from $50–250 to $250–5000 for each first violation. Doubles fines if noncitizen was previously subject to civil penalty under subsection.
- It looks like subsections (b) (marriage fraud) and (c) (immigration-related entrepreneurship fraud) have been removed or left out.

Sec. 3705. **REENTRY OF REMOVED ALIEN**. Increases criminal penalties for illegal reentry and otherwise amends INA §276.

- Retains maximum penalty of two years for illegal reentry and 10 years for repeated removal, but changes penalties for illegal reentry after prior criminal convictions.

- Provision also changes the elements of 18 USC §1326. Under current law, there are two exceptions included in the definition of the crime (related to U.S. government consent to the person's reentry). These exceptions have been reclassified as affirmative defenses, which shifts the burden of proof to the defendant rather than the prosecutor.
- Prohibits the use of parole or supervised release for anyone convicted under this section unless the defendant affirmatively demonstrates that DHS has expressly consented to his reentry or that he is prima facie eligible for protection from removal.
- Establishing that it is not aiding and abetting for providing "emergency humanitarian assistance."

Sec. 3706. **PENALTIES RELATED TO REMOVAL.** Increases monetary penalties for vessels and aircraft regarding execution of removal orders and stowaways.

Sec. 3707. **REFORM OF PASSPORT, VISA, AND IMMIGRATION FRAUD OFFENSES**. Amends criminal code and increases criminal punishments for passport trafficking, misstatements, and misuse of passports, as well as schemes to provide fraudulent immigration services and visa fraud, and protects authorized law enforcement activities.

Sec. 3708. **COMBATING SCHEMES TO DEFRAUD ALIENS.**

- Secretary of DHS and the Attorney General to create regulations and procedures defining circumstances that require the identification of individuals who assist immigrants with form completion or translation.
- Any person who receives compensation in connection with preparation of an application or other submission is required to sign as preparer.
- Empowers the Attorney General with injunctive authority to act against any "immigration service provider" at the federal level— whether well-meaning or unscrupulous. Authority extends to conduct which substantially interferes with proper administration of immigration laws or misrepresentation regarding a provider's legal authority to represent immigrants.
- "Immigration service provider" is any individual or entity (other than an attorney or BIA representative) who provides *any* assistance in relation to an immigration matter.

Sec. 3709. **INADMISSIBILITY AND REMOVAL FOR PASSPORT AND IMMIGRATION FRAUD OFFENSES.** Creates new inadmissibility and deportability grounds for violation of the amended passport, visa, and immigration document criminal sections above.

Sec. 3710: **DIRECTIVES RELATED TO PASSPORT AND DOCUMENT FRAUD.** Creates carve-outs for applicants for asylum, withholding or CAT, T or U visas, SIJS, or VAWA for the passport, visa, and immigration document from prosecution under the amended passport, visa, and immigration document criminal sections above.

Sec. 3711. INADMISSIBLE ALIENS. Increases deterrent for aliens ordered removed.

- Expands §212(a)(9)(A) slightly (from "within" time frame to "not later than" time frame);
- Adds new inadmissibility ground for failing to comply with biometric request, with broad waiver;
- Adds new inadmissibility ground related to domestic violence;
    - This ground tracks very closely §237(a)(2)(E) with the following differences: (1) must have served at least one year imprisonment or convicted of offenses constituting more than one such crime; and (2) violation of protective order must constitute criminal contempt;
- Amends §212(h) inadmissibility waiver to permit both the Attorney General and the Secretary to waive.

Sec. 3712. ORGANIZED AND ABUSIVE HUMAN SMUGGLING ACTIVITIES.

- Prohibits anyone acting for financial gain from directing or participating in an effort to bring five or more persons into the United States unlawfully. Also prohibits the transport of the same number of individuals from the United States to another country when the smuggler knows that those individuals are seeking to enter the United States unlawfully.
- Provides for enhanced penalties in smuggling cases that result in serious bodily injury or death or which involve 10 or more persons, bribery, corruption, extortion, robbery or sexual assault.
- Makes it a crime to transmit to another person the location, movement, or activities of law enforcement agents with the intent to further a federal crime relating to United States immigration.
- Makes it a crime to destroy, alter or damage any fence, barrier, sensor, camera or other physical or electronic device used by the federal government to control a border or port of entry; makes it a crime to construct any device or structure intended to defeat, circumvent or evade such barrier or electronic device. Provides for an enhanced penalty if any person uses or carries a firearm in furtherance of this crime.
- Conspirators or individuals who attempt to violate sections 295(a) or 296 (a) or (b) section shall be punished in the same manner as those who complete a violation.
- Prohibits the carrying or use of a firearm during any human smuggling crime.

Sec. 3713. PREVENTING CRIMINALS FROM RENOUNCING CITIZENSHIP DURING WARTIME. Strikes provision in 8 USC §1481(a)(6) that allows a national of the United States to renounce his citizenship when the U.S. is in a state of war.

Sec. 3714. DIPLOMATIC SECURITY SERVICE. Authorizes Special Agents of the State Department and Foreign Service to investigate illegal passport or visa issuance or use, identity theft, document fraud, peonage, slavery, human trafficking, and federal offenses committed within the special maritime and territorial jurisdiction of the US.

Sec. 3715. SECURE ALTERNATIVES PROGRAM.

- Establishes a secure alternatives to detention program in each field office that utilizes case management in field offices and offers a continuum of supervision mechanisms based on individual circumstances;
- Contracts with nongovernmental community based organizations to provide support for secure alternatives by screening and providing appearance assistances services as well as community-based supervision programs
- Requires the Secretary to:
    - Make individual assessments about whether to use secure alternatives;
    - Review the determination monthly; and
    - Not use secure alternatives where release on bail or recognizance is sufficient.
- Authorizes the Secretary to use secure alternatives to maintain custody of a detained noncitizen, except for suspected terrorists, including the use of electronic ankle devices.
- Notes that if an individual is not eligible for release from custody or detention, the Secretary can consider placement in secure alternatives that maintain custody over the alien, including the use of electronic ankle devices.

Sec. 3716. OVERSIGHT OF DETENTION FACILITIES.

- Provides definitions for “applicable standards,” “detention facility,” and “detention requirements.”
- Requires an annual inspection of all detention facilities as well as routine oversight.

- Mandates all detention facilities contracts, memoranda of agreements, evaluations, and reviews be available via FOIA.
- Tasks the Secretary with getting input from nongovernmental organizations regarding facilities.
- Requires compliance with applicable standards and regulations or face financial penalties to be a material part of any future contracts or agreements.
- Requires the Secretary to modify existing agreements within 180 days of enactment of the bill.
- Cancels any agreements that are not modified or, are in good-faith, in the process of being modified.
- Requires facilities to give the Secretary contracts, memoranda of agreements, evaluations, and reviews in order to make the necessary modifications.
- Imposes a financial penalty on facilities that fail to comply with applicable detention standards after a facility does not achieve the necessary score in an evaluation unless the facility corrects the deficiency and receives an adequate score in 90 days or less.
- Closes facilities that do not score high enough on two consecutive evaluations or persistently and substantially in non-compliance.
- Requires the Secretary to submit reports to both the House and Senate Judiciary committees on inspection and oversight activities of detention facilities that include:
    - A description of facilities found to be non-compliant;
    - A description of actions taken by the DHS to remedy findings of noncompliance;
    - Information about whether actions taken resulted in compliance with the applicable detention standards.

Sec. 3717. **PROCEDURES FOR BOND HEARINGS AND FILING OF NOTICES TO APPEAR.**

- Mandates that DHS file the NTA with immigration court and make custody determination within 72 hours.
- Requires bond hearing before an IJ within 7 days of the individual being taken into custody, unless the individual requests that the hearing be postponed.
- Unless the IJ finds that the individual is deportable under §236(c) or 236A, the IJ shall review the custody determination de novo and may detain the individual only if the Secretary demonstrates that no conditions, including the use of alternatives to detention that maintain custody over the alien, will reasonably assure the appearance of the individual and the safety of the community.
- If the IJ determines that the individual is detained under §236(c), the IJ may review the custody determination if the Secretary agrees the alien is not a danger to the community and alternatives to detention exist that assure the appearance of the individual and the safety of the community.
- Noncitizens who remain in custody are afforded custody redetermination hearings before an IJ every 90 days and upon a showing of good cause.
- IJ may enter stipulated removal order upon finding at an in-person hearing that the stipulation is voluntary, knowing and intelligent. Order is conclusive determination of alien's removability.

Sec. 3718. SANCTIONS FOR COUNTRIES THAT DELAY OR PREVENT PREATRIATION OF THEIR NATIONALS. Sanctions for countries that delay or prevent repatriation.

Sec. 3719. GROSS VIOLATIONS OF HUMAN RIGHTS. Expands the existing inadmissibility ground for gross violations of human rights and includes reduced confidentiality protections for these visa applicants.

Title IV – Reforms to Nonimmigrant Visa Programs

Subtitle A—Employment-based Nonimmigrant Visas

Sec. 4101. MARKET-BASED H-1B VISA LIMITS.

- Creates a floor of 110,000 and ceiling of 180,000 for the H-1B cap.
    - 10,000 would be the numerical limit for the first fiscal year after enactment.
    - After that, the cap would be calculated by multiplying the allocation for the immediate past year by the High Skilled Demand Index (HSDI), but the total cap could not go up or down more than 10,000 in any given year.
    - The HSDI would be calculated by taking half of the difference between the number of H-1Bs petitioned for in the previous year minus the numerical limit, divided by the numerical limit, and adding half of the number of unemployed people in DOL's "management, professional and other" category in the previous year minus the average number of people unemployed divided by the average number of unemployed people in DOL's "management, professional and other" category.
    - If this amount cannot be exactly determined, a statistical extrapolation would be allowed.
- Changes the exemption from the H-1B numerical limits for graduates of U.S. master's degree or higher programs by: (1) limiting the exemption to STEM occupations; (2) the STEM occupations would include only those that are in the Department of Education Classification of Instructional Programs taxonomy within the groups for computer and information sciences and support, engineering, mathematics and statistics, and physical sciences; and (3) increasing the number exempted from 20,000 to 25,000.
- Requires DHS to timely publish on a website data that summarizes the adjudication of H-1B petitions during each fiscal year, and publish in the *Federal Register* the new numerical limitation for each fiscal year.
- This section would be effective the first day of the first fiscal year after enactment with respect to applications filed for that fiscal year.

Sec. 4102. EMPLOYMENT AUTHORIZATION FOR DEPENDENTS OF EMPLOYMENT-BASED NONIMMIGRANTS. Allows work authorization for spouses of H-1Bs if the spouse is a national of a country that allows reciprocal employment in similar situations.

Sec. 4103. ELIMINATING IMPEDIMENTS TO WORKER MOBILITY.

- Requires deference to prior H-1B and L adjudications absent material error, substantial changes in circumstances, or newly discovered material information.
- Provides a 60-day grace period for H-1Bs after termination of employment, during which time they would be considered in lawful status and could file for a change of status, extension of status, or adjustment of status.
- Allows visa revalidation within the U.S. for A, E, G, H, I, L, N, O, P, R, and W statuses.
- Permits DOS, in consultation with DHS, to waive interviews for low-risk nonimmigrant visa applicants where an interview would not add material benefit and would be unlikely to reveal negative information.

Sec. 4104. STEM EDUCATION AND TRAINING. Adds a $500 fee to the permanent labor certification process to be used for various specified programs for STEM education.

Subtitle B—H-1B Fraud and Abuse Protections

Chapter 1—H-1B Employer Application Requirements

Sec. 4211. MODIFICATION OF APPLICATION REQUIREMENTS.

- Requires that H-1B dependent employers pay a minimum of a Level 2 wage.
- Changes the system for DOL-provided prevailing wage determinations from 4 levels to 3 levels, and changes the way that each level is calculated. Instead of the current process by which wages are calculated by comparisons to wages within the same general zone of experience, education, and training, Level 1 would be the mean of the lowest ⅔ of all wages surveyed within the MSA, but not less than 80 percent of the mean of all wages. Level 2 would be the mean of all wages in the area. Level 3 would be the mean of the highest ⅔ of the wages surveyed in the area.
- Limits the comparable employers to be used for prevailing wage determinations to like entities for institutions of higher education, related or affiliated nonprofit entities, nonprofit research organizations, and government research organizations. Keeps the 4-level system for *nonprofit* institutions of higher education, related or affiliated nonprofit entities, nonprofit research organizations, and government research organizations.
- Specifies that if the position is covered by professional sports rules or regulations, then the prevailing wage is what is in those rules or regulations.
- Changes the required wage formulation for H-2Bs to be the greater of the prevailing wage or actual wage. The prevailing wage should be based on the "best information available at the time of filing," which would be considered the union or federal contract wage, or if there is not such a wage, Bureau of Labor Statistics data based on experience and level of supervision, or, if none of that is available, a private survey.
- Institutes a recruitment requirement for all H-1Bs comprised of posting the position before filing a labor condition application for 30 days on a DOL website to be designed for the purpose. The posting includes a detailed description of wage ranges, job requirements, and the process for applying for the job. Requires that the employer have offered the job to any U.S. worker applicant who is equally or better qualified than the H-1B. H-1B dependent employers would need to also recruit under industry-wide recruitment standards, and offer compensation at least as great as that offered to the H-1B.
- Adds a non-displacement provision for non-H-1B dependent employers, requiring that the employer attest that for 90 days before and after the LCA filing, it has not and will not displace a U.S. worker. This provision does not apply if the number of U.S. workers employed by the non-H-1B dependent employer in the same O*NET (or similar database) job zone has not decreased in the past year. For H-1B dependent employers, the look back/look forward period is 180 days, and they would not be eligible for the exception. This provision would apply to applications filed by non-H-1B dependent employers on or after the date the final regulations are promulgated to implement the provision. For H-1B dependent employers, the provision would apply "before" that time (meaning of "before" is not specified).
- Prohibits outplacement, outsourcing, leasing, or "otherwise contracting for services or placement of" H-1Bs by H-1B dependent employers. Non-H-1B dependent employers who outplace, etc., are required to pay a $500 fee.
- Defines an H-1B dependent employer as:
    - If 25 or fewer full-time equivalent employees (FTEs) in U.S., employs more than seven H-1Bs;
    - If 26–50 FTEs, more than 12 H-1Bs;
    - If 51 or more FTEs, 15 percent of them H-1Bs.

- However, nonprofit institutions of higher education, nonprofit research organizations, and employers primarily engaged in the healthcare business who are petitioning on behalf of a physician, nurse, physical therapist, or a "substantially equivalent healthcare occupation" are not considered to be H-1B dependent regardless of the number of H-1B employees.
- Also, in determining the number of H-1B employees for the dependent calculation, "intending immigrants" need not be counted as an H-1B. An "intending immigrant" is defined for these purposes as someone who intends to live and work permanently in the U.S. as demonstrated by an approved labor certification, or a labor certification application pending for longer than one year, that was filed by an employer that, during the year before filing the labor certification, has filed an immigrant visa petition for 90 percent of those for whom a labor certification application has been filed. Labor certification applications pending for more than one year are treated for this calculation as if the employer filed an immigrant petition.
- For all calculations of H-1Bs and Ls throughout the bill, intending immigrants are not counted as employees admitted as H-1B or L nonimmigrants.

Sec. 4212. REQUIREMENTS FOR ADMISSION OF NONIMMIGRANT NURSES IN HEALTH PROFESSIONAL SHORTAGE AREAS. Reduces H-1C nurses quota from 500 to 300 and applies portability to H-1Cs.

Sec. 4213. NEW APPLICATION REQUIREMENTS.

- Prohibits advertising that a position is open only to H-1Bs (or potential H-1Bs) or F-1 OPT holders, or that H-1Bs or F-1 OPTs will receive preference in hiring, or having solely recruited H-1Bs or F-1 OPTs.
- Employers (other than an educational or research employer) that employ 50 or more employees in the U.S. may not have more than 75 percent of the employees be H-1B or L-1 in fiscal 2015; 65 percent in fiscal 2016, and 50 percent in fiscal 2016. Intending immigrants as defined in section 4211 do not count as H-1B or L-1 for these purposes.
- Requires all H-1B employers to submit an annual report to DHS that includes W-2 tax forms for each H-1B employed during the previous year.

Sec. 4214. APPLICATION REVIEW REQUIREMENTS.

- Changes the standard of review by DOL of labor condition applications from reviewing "for completeness" to reviewing "for completeness and evidence of fraud or misrepresentation of material fact," and changes the circumstances in which DOL would not have to certify within the required period to an application that "presents evidence of fraud or misrepresentation of material fact, or is obviously inaccurate."
- Changes the timeframe in which DOL is required to certify an LCA from 7 to 14 days.
- Authorizes a DOL investigation if a review of the LCA identifies evidence of fraud or misrepresentation of a material fact.
- Allows the filing of an I-129 H-1B petition before receiving a certified LCA, but requires that USCIS cannot approve the petition until it receives that certified application.

Chapter 2—Investigation and Disposition of Complaints Against H-1B Employers

Sec. 4221. GENERAL MODIFICATION OF PROCEDURES THROUGH THE DEPARTMENT OF LABOR.

- Changes the statute of limitations on complaints by aggrieved parties about LCA violations from 12 months to 24 months.
- Removes the "reasonable cause" requirement for DOL to investigate a complaint, and instead just says that "the Secretary may initiate an investigation."
- Allows DOL to conduct "voluntary surveys" of the degree to which employers comply with LCA requirements.
- Requires DOL to conduct annual compliance audits of each employer with more than 100 employees if more than 15 percent of the employees are H-1Bs, and requires a publicly available executive summary of the audits.

Sec. 4222. INVESTIGATION, WORKING CONDITIONS, AND PENALTIES.

- Increases fines for failure to meet LCA conditions or misrepresentations on the LCA from $1,000 to $2,000, and adds employer liability "to any employee harmed by such violations" for lost wages and benefits.
- Increases fines for willful failure to meet LCA conditions from $5,000 to $10,000, and adds employer liability "to any employee harmed by such violations" for lost wages and benefits.
- Changes the look back/look forward period for willful failures in the course of which a U.S. worker was displaced from 90 to 180 days, and changes "may" impose administrative remedies to "shall." Also, adds employer liability "to any employee harmed by such violations" for lost wages and benefits.
- Adds to the prohibited whistleblower provisions taking or threatening to take personnel action against the employee, and adds employer liability to an H-1B employee for lost wages and benefits.
- Adds the failure to offer benefits on the same basis as U.S. workers as a violation subject to a $2,000 fine, and increases the fine for requiring a penalty for ceasing employment before a certain time from $1,000 to $2,000.

Sec. 4223. INITIATION OF INVESTIGATIONS.

- Allows DOL to initiate an investigation of an H-1B, eliminating the requirement for reasonable cause to initiate, and eliminating the requirement for certification of reasonable cause.
- Deletes the requirement that the Secretary of Labor know the identity of a tipster, and allows investigation of any LCA compliance issue.
- Allows DOL employees to file complaints regarding LCAs.

Changes the statute of limitations within which to file a complaint from 12 months to 24 months from the date of the incident in question.

Sec. 4224. INFORMATION SHARING.

- Deletes the provision forgiving technical or procedural errors for employers acting in good faith.
- Adds a requirement that USCIS provide information to DOL if materials submitted to USCIS indicate non-compliance with the LCA.

Chapter 3—Other Protections

Sec. 4231. POSTING AVAILABLE POSITIONS THROUGH THE DEPARTMENT OF LABOR. Requires establishment of DOL website for H-1B recruitment posting within 90 days of enactment. Requires that employers start using the site 30 days after DOL places a *Federal Register* notice saying when it will be operational.

Sec. 4232. H-1B GOVERNMENT AUTHORITY AND REQUIREMENTS.

- Requires employers to provide to the beneficiary of the LCA, within 30 days after filing the LCA, a copy of the original of all applications and petitions filed by the employer with DOL or DHS for that beneficiary. The employer can redact financial or proprietary information.
- Requires the Comptroller General to prepare a report, one year after enactment, analyzing DOL's job classification and wage determination systems.

Sec. 4233. REQUIREMENTS FOR INFORMATION FOR H-1B AND L NONIMMIGRANTS. The office issuing an H-1B or L visa or status must provide a brochure to the nonimmigrant outlining the employer's obligations and the employee's rights, and include agency contact information.

Sec. 4234. FILING FEE FOR H-1B DEPENDENT EMPLOYERS. Requires H-1B dependent employers with 50 or more employees, during fiscal years 2015–2024, to pay an extra $5,000 in fees if 30 to 50 percent of its employees are H-1B or L-1B specialized knowledge, and an extra $10,000 if 50 to 75 percent are H-1B or L-1B specialized knowledge. Nonprofit institutions of higher learning and nonprofit research organizations are exempt. Intending immigrants as defined in section 4211 are not counted as H-1B or L employees.

Sec. 4235. PROVIDING PREMIUM PROCESSING OF EMPLOYMENT-BASED VISA PETITIONS. Requires DHS to establish and collect a premium processing fee for employment-based immigrant petitions and administrative appeals on employment-based immigrant petitions.

Sec. 4236. TECHNICAL CORRECTION. Re-designates the second subsection 212(t) as subsection 212(u).

Sec. 4237. APPLICATION. Makes the provisions of Subtitle B applicable to applications filed on or after the date of enactment, unless otherwise specified.

Subtitle C—L Visa Fraud and Abuse Protections

Sec. 4301. PROHIBITION ON OUTPLACEMENT OF L NONIMMIGRANTS. Prohibits outplacement, outsourcing, leasing, or otherwise contracting for services of an L-1 unless the other employer is a related entity of the petitioner; the L-1 would not be controlled or supervised principally by the other employer; the placement is not essentially a labor for hire arrangement; and the other employer attests that it has not displaced and will not displace a U.S. worker for 90 days before or after the date of filing.

Sec. 4302. L EMPLOYER PETITION REQUIREMENTS FOR EMPLOYMENT AT NEW OFFICES.

- Permits the approval of an L-1 to work in a new office if the nonimmigrant has not been the beneficiary of two or more new office petitions during the immediately preceding two years and the employer has an adequate business plan, sufficient premises, and the financial ability to start doing business immediately upon approval of the petition.

- Extension of the approval period depends upon evidence of compliance with the business plan, that the employer has been doing business at the new office, and other evidence of eligibility for the status.
- Allows extensions at the Secretary's discretion of new office petitions in circumstances where not all the requirements have been met if the employer has been doing business at the new office through regular, systematic, and continuous provision of goods and services for six months prior to the filing of the extension petition, and the failure to satisfy any requirements was directly caused by extraordinary circumstances.

Sec. 4303. COOPERATION WITH SECRETARY OF STATE. Requires DHS to work cooperatively with DOS to verify the existence or continued existence of a company or office in the U.S. or abroad.

Sec. 4304. LIMITATION ON EMPLOYMENT OF L NONIMMIGRANTS.

- For employers of 50 or more employees in the U.S., prohibits employment of more than a combined total of H-1B and L-1B specialized knowledge nonimmigrants beyond 75 percent of the total number of employees in FY 2015, 65 percent in FY 2016, and 50 percent in each year after FY 2016.
- Nonprofit institutions of higher education and nonprofit research organizations are exempt from this prohibition. Intending immigrants as defined in section 4211 are not counted as H-1B or L employees.

Sec. 4305. FILING FEE FOR L NONIMMIGRANTS.

- Requires employers with 50 or more employees, during FY 2015–2024, to pay an extra $5,000 in fees if 30 to 50 percent of its employees are H-1B or L-1B specialized knowledge, and an extra $10,000 if 50 to 75 percent are H-1B or L-1B specialized knowledge.
- Nonprofit institutions of higher learning and nonprofit research organizations are exempt.
- Intending immigrants as defined in section 4211 are not counted as H-1B or L employees.

Sec. 4306. INVESTIGATIONS AND DISPOSITION OF COMPLAINTS AGAINST L NONIMMIGRANT EMPLOYERS.

- Authorizes DHS to investigate L-1 employers for violations of the new requirements regarding L-1s where it has received specific, credible information from a source likely to have knowledge of the employer's practices within 24 months after the date of the alleged failure to comply. Identity of the source may be withheld from the employer.
- No judicial review of a determination under this section.
- If DHS determines after investigation that a reasonable basis exists to find a failure to comply, then the employer may request a hearing, and DHS is required to make a finding on the matter no more than 120 days after the hearing.
- DHS may conduct surveys of the degree to which employers comply with the new L-1 requirements, and shall conduct annual compliance audits of each employer with more than 100 employees in the U.S. if more than 15 percent of their employees are L-1s.

Sec. 4307. PENALTIES.

- Directs DHS to impose appropriate administrative remedies, including civil monetary penalties of up to $2,000 per violation and debarment for at least one year for misrepresentation of a material fact or failure to meet a condition regarding outplacement of L-1s, new office provisions, or non-

retaliation. If the failure is found to be willful, monetary penalties up to $10,000 and debarment for at least two years may be imposed.

- The employer is liable to the employees harmed by the violation for lost wages and benefits.

Sec. 4308. PROHIBITION ON RETALIATION AGAINST L NONIMMIGRANTS. Prohibits L-1 petitioners from taking negative personnel action or otherwise retaliating against an employee, former employee, or job applicant who has disclosed information that he or she reasonably believes shows a violation of L-1 rules or cooperates with an investigation.

Sec. 4309. REPORTS ON L NONIMMIGRANTS. Requires an annual report to the Judiciary Committees of the Senate and House on data related to L-1 petitions.

Sec. 4310. APPLICATION. The new L-1 provisions apply to applications filed on or after the date of enactment.

Sec. 4311. REPORT ON L BLANKET PETITION PROCESS. Requires DHS to report to Senate and House Committees on Judiciary and Homeland Security on the efficiency and reliability of the process for reviewing the use of L-1 blanket petitions, including safeguards against fraud and abuse.

Subtitle D—Other Nonimmigrant Visas

Sec. 4401. NONIMMIGRANT VISAS FOR STUDENTS. Amends §101(a)(15)(F) to authorize dual intent for F-1 aliens who are pursuing bachelor's or graduate degrees, and makes conforming amendments to §214(b) and §214(h). Additional accreditation requirements for colleges, universities, and language schools are added to §101(a)(52) and §214(m). Institutions where an individual with certain criminal convictions or immigration offenses is in an ownership or management role are ineligible for authorization to accept F-1 students.

Sec. 4402. CLASSIFICATION FOR SPECIALTY OCCUPATION WORKERS FROM FREE TRADE COUNTRIES. Amends §101(a)(15)(E) to add bilateral investment treaties and free trade agreements along with treaties of commerce and navigation. Allows specialty occupation workers to enter the United States pursuant to a free trade agreement, as long as Department of Labor wage and related attestations are met. Imposes a limit of 5,000 per fiscal year for each country.

Sec. 4403. E-VISA REFORM. Amends §101(a)(15)(E)(iii) with regard to employees who are nationals of the Republic of Ireland to require they have at least a high school education or within five years, at least two years of work experience in an occupation requiring two years of training and experience. Amends §212(d)(3)(A) to permit DHS to waive certain grounds of inadmissibility for immigration violations committed before enactment of this act without the need for a State Department recommendation.

Sec. 4404. OTHER CHANGES TO NONIMMIGRANT VISAS. Extends §214(n) portability to O-1 visa holders upon filing by a prospective employer of a new petition. Consultation requirement under §214(c)(3) for O-1 aliens in motion pictures or television may be waived where the consultation is less than three years old and is favorable or raised no objection.

Sec. 4405. TREATMENT OF NONIMMIGRANTS DURING ADJUDICATION OF APPLICATION. Adds §214(u), which provides that the period of stay and employment authorization of (A), (E), (G), (H), (I), (J), (L), (O), (P), (Q), (R), and NAFTA nonimmigrants for whom petitions to extend have been timely filed is extended until the petition or application is adjudicated.

Sec. 4406. NONIMMIGRANT ELEMENTARY AND SECONDARY STUDENTS. Amends §214(m)(1)(B) to remove the one-year aggregate limit on admission for F-1 elementary and secondary students.

Subtitle E—JOLT Act

Sec. 4501. SHORT TITLES. "Jobs Originated Through Launching Travel Act of 2013," or the "JOLT Act of 2013."

Sec. 4502. PREMIUM PROCESSING. Provides for a fee-based nonimmigrant visa premium processing pilot program.

Sec. 4503. ENCOURAGING CANADIAN TOURISM TO THE UNITED STATES. Adds §214(v) "Canadian Retirees." – Provides for admission for up to 240 days under §101(a)(15)(B) to an alien who:

- Is a Canadian citizen;
- Is over the age of 55;
- Has a residence in Canada;
- Owns or rents a U.S. residence;
- Is not inadmissible under §212;
- Is not deportable under §237;
- Does not intend to work in the U.S.; and
- Will not seek public assistance.

Admits Canadian tourists for 240 days in a 365-day period beginning with the date of admission; departures during that time period will not toll the 240-day limit. A spouse may be admitted if the spouse meets the same requirements, other than home ownership.

Sec. 4504. RETIREE VISA. Adds §101(a)(15)(y) for an alien who:

- Uses $500,000 in cash to purchase one or more residences at an amount in excess of 100 percent of the assessed value for each;
- Maintains ownership of residential property valued in excess of $500,000 during the entire period the alien is in the U.S.;
- Resides more than 180 days in a residence in the U.S. worth at least $250,000.

Adds §214(w) to permit the issuance of a visa, which may be renewed after three years, to an alien who:

- Has purchased a residence that meets the requirements of §101(a)(15)(y);
- Is at least 55 years of age and has health insurance;
- Is not inadmissible under §212;
- Will not seek public assistance;
- Will not work, other than to manage a residential property worth at least $500,000; and
- Will reside in the U.S. in a residence worth more than $250,000.

The spouse and children of a retiree alien may be admitted.

Sec. 4505. INCENTIVES FOR FOREIGN VISITORS VISITING THE UNITED STATES DURING LOW PEAK SEASONS. Directs the State Department to publish on a monthly basis historical data on visa appointment availability at each visa issuing post to allow applicants to identify times of low demand, when wait times may be shorter.

Sec. 4506. VISA WAIVER PROGRAM ENHANCED SECURITY AND REFORM. Allows the DHS Secretary, in consultation with the Secretary of State, to designate any country as part of the visa waiver program, so long as the country provides machine-readable passports and the visa refusal rate and overstay rate for nationals of that country were both under 3 percent in the previous fiscal year. The DHS Secretary, in consultation with the Secretary of State, also has the authority to waive the 3 percent threshold requirements if the country:

- Meets all of the other requirements;
- Presents a low security risk;
- Has a general downward trend in visa refusal rates;
- Participates in counterterrorism efforts with the U.S.; and
- Has a visa refusal rate of less than 10 percent.

Also allows the DHS Secretary to designate a visa waiver designated country into a period of probationary status, after which time that country can be removed from the visa waiver program.

Sec. 4507. EXPEDITING ENTRY FOR PRIORITY VISITORS. Amends 8 USC §1365b)(k)(4) to expand enrollment in registered traveler programs to include eligible employees of international organizations.

Sec. 4508. VISA PROCESSING.

- Requires visa issuing posts to conduct visa interviews expeditiously;
- Establishes a goal that 80 percent of visa applicants will be interviewed within three weeks of the submission of the visa application;
- Directs exploration of expansion of visa processing in China and Brazil with the goal of maintaining visa interview wait times under 15 days on a consistent, year-round basis, taking into account spikes in demand and the protection of U.S. citizens.

Subtitle F – Reforms to the H-2B Visa Program

Sec. 4601. EXTENSION OF RETURNING WORKER EXEMPTION TO H-2B NUMERICAL LIMITATION. This section makes certain reforms to the H-2B program including:

- Exempt returning workers from the cap through 2018.
- Require that the wages paid to H-2B employers be:
    - the actual wage level paid by the employer to other employees with similar experience and qualifications for such position; or
        - the prevailing wage level for the occupational classification of the position in the geographic area of the employment, based on the best information available as of the time of filing the application.
- Adds ski instructors to those who can use the P visa.

Sec. 4602. OTHER REQUIREMNTS FOR H-2B EMPLOYERS. Other requirements for H-2B Employers:

- Employer must certify and attest that the employer did not displace and will not displace a U.S. worker employed in the same metropolitan statistical area (MSA) where such nonimmigrant will be hired within 90 days before the start date and ending on the end date for which the employer is seeking the services as specified on an application for labor certification.
- Requires the employer to pay incoming and outgoing transportation costs for the H-2B worker, including reasonable subsistence costs during the period of travel.

- States that "a fee related to the hiring of an H-2B nonimmigrant required to be paid by an employer under this Act shall be paid by the employer and may not be deducted from the wages or other compensation paid to an H-2B nonimmigrant."
- Creates a $500 Labor Certification Fee.
- Creates a temporary 90-day nonimmigrant visa for executives and managers to oversee operations of their related companies; creates a temporary 180-day nonimmigrant visa for employees of multinational corporations to observe operations of their related company and to participate in select activities.
- Clarifies rules on accepting academic honoraria for B visa visitors.

Sec. 4603. NONIMMIGRANTS PARTICIPATING IN RELIEF OPERATIONS. Creates a category under the B visa for those coming to provide relief during federal or state disasters for not more than 90 days, so long as the foreign worker has been employed in a foreign country by one employer for at least one year before entering the U.S. and such worker must not receive income from a U.S. source.

Sec. 4604. NONIMMIGRANTS PERFORMING MAINTENANCE ON COMMON CARRIERS. Nonimmigrants performing maintenance on common carriers. Creates category under the B visa for workers with specialized knowledge to work on airplanes, ships, and railways if the machinery was made outside of the U.S. They may be admitted for not more than 90 days, as long as they have been employed in a foreign country by one employer for at least one year before entering the U.S. They must not receive income from a U.S. source.

Subtitle G – W Nonimmigrant Visa

Sec. 4701. BUREAU OF IMMIGRATION AND LABOR MARKET RESEARCH. Establishes the Bureau of Immigration and Labor Market Research (Bureau).

- "Shortage occupation" is determined by the commissioner of the Bureau (commissioner) and may be either nationwide or be in an MSA (MSAs are designated by the director of the OMB).
- "Zone 1 occupation" means an occupation that requires little or no preparation on the Occupational Information Network database. Zone 2 requires some preparation and Zone 3 requires medium preparation.
- The Bureau will be an independent statistical agency housed at USCIS and headed by a commissioner who will be appointed by the President and Senate confirmed.
- Among the duties of the Bureau are:
    - creating a methodology to determine the annual change to the cap for W nonimmigrants and use that methodology to set annual numbers of W visas that will be available;
    - supplementing the recruitment methods employers use to attract W nonimmigrants;
    - devising and publishing a methodology to designate shortage occupations by job zone;
    - conduct a survey every three months of the unemployment rate of construction workers and the impact on such workers; and
    - study and report to Congress on employment-based and immigrant and nonimmigrant visa programs and make annual recommendations to improve such programs.
- The Commissioner shall establish a methodology to designate shortage occupations and the methodology will allow an employer to ask the Commissioner if a particular occupation in a particular area is a shortage occupation.
- The employees of the Bureau shall have the expertise to identify U.S. labor shortages in the U.S. and make recommendations to the Commissioner on the impact of immigrant and nonimmigrant aliens on U.S. labor markets.
- At the request of the Commissioner, the Secretary of Commerce, the Director of the Bureau of the Census, the Secretary of Labor, and the Commissioner of the Bureau of Labor Statistics shall provide data to the Commissioner, conduct appropriate surveys, and assist the Commissioner in preparing recommendations.

- $20 million is appropriated from the Treasury to establish the Bureau.

- Fees collected from those employers participating in this program shall also be used to establish and fund the Bureau, as well as other fees that may be created related to the hiring of alien workers.

Sec. 4702. NONIMMIGRANT CLASSIFICATION FOR W NONIMMIGRANTS.

- Creates a new "W" nonimmigrant classification for aliens having a foreign residence who will come to the U.S. temporarily to perform services or labor for a registered employer in a registered position. The spouse and children of the W visa holder will be allowed to join and will be given work authorization for the same period of admission.

Sec. 4703. ADMISSION OF W NONIMMIGRANT WORKERS.

- "Certified" alien means an alien that the Secretary of State has certified as eligible to be a W visa holder if hired by a registered employer for a registered position.
- For purposes of determining the number of employees or U. S. workers employed by an employer, a single entity (as defined in the Internal Revenue Code) shall be treated as one employer.
- "Small business" means employers with 25 or fewer full-time equivalent employees.
- "U.S. worker" (USW) means employed or seeking employment and national of the U.S., lawful permanent resident, an RPI, or any other alien authorized to work in the U.S. with no limitation as to the alien's employer.
- To be eligible for certification an alien:
    - must not be inadmissible;
    - has to pass a criminal background check;
    - must agree to accept only registered positions in the U.S. and meet any other criteria as established by the Secretary; and
    - must report to initial employment no later than 14 days after first admitted to the U.S.
- A certified alien may be granted W nonimmigrant status for an initial period of three years and may renew his or her status for additional three-year periods.
- A W visa holder may not be unemployed for more than 60 consecutive days and must depart the U.S. if he or she is unable to obtain employment.
- W visa holders can travel outside the U.S. and be readmitted to the U.S., but cannot be readmitted for longer than the initial period of admission.
- To be registered, employer must submit an application to the Secretary with documentation showing it is a bona fide employer with the estimated number of W nonimmigrants it will seek to employ each year, anticipated dates of employment, and a description of the type of work to be performed.
- The Secretary may refer an employer's application to FDNS if there is evidence of fraud.
- No employer may be approved if the Secretary determines after notice and hearing, that the employer has:
    - knowingly misrepresented a material fact;
    - knowingly made a fraudulent statement;
    - knowingly failed to comply with the terms of such attestations;
    - failed to cooperate in the audit process;
    - has been convicted of a trafficking offense;
    - has within two years prior to date of application:
        - committed a hazardous occupation violation resulting in injury or death under the child labor provisions
        - been assessed a civil money penalty for any repeated or willful violation of the minimum wage provisions
        - been assessed a civil money penalty for any repeated or willful violation of the overtime provisions other than a repeated violation that is self-reported

    - has within the two years prior to the date of application received a citation for a willful violation or repeated serious violation involving injury or death:
        - of section 5 of OSHA;
        - of any standard or rule related to section 6 of OSHA; or
        - of a plan approved under section 18 of OSHA.
- Length of ineligibility for employer to become a registered employer will be determined by the Secretary, but no more than three years. However, an employer that has been convicted of any offense involving human trafficking shall be permanently ineligible.
- Term of registration: the Secretary shall approve applications to become registered employers for a term of three years renewable for additional three-year periods. The employer will pay fee (amount to be determined) for the application and renewals.
- Each registered employer shall submit to the Secretary an annual report that demonstrates that the employer has provided the wages and working conditions that the registered employer agreed to provide its employees.
- Registered positions: each registered employer shall submit to the Secretary an application to designate a position for which the employer is seeking a W nonimmigrant as a registered position. Each application will describe each such position and include an attestation of the following:
    - the number of employees of the employer;
    - the occupational category, as classified by the Secretary of Labor, for which the registered position is sought;
    - whether the occupation is a shortage occupation;
    - the wages to be paid:
        - will be either the actual wage paid by the employer to other employees with similar experience and qualification, or
        - the prevailing wage level for the occupational classification in the geographic area/MSA of the employment, whichever is higher.
    - the working conditions will not adversely affect the working conditions of other workers employed in similar positions;
    - that the employer has carried out the required recruiting activities and there is no qualified USW who has applied for the position;
    - that there is not a strike, lockout, or work stoppage in the area where the W nonimmigrant will be employed;
    - that the employer has not laid off and will not lay off a USW during the period beginning 90 days before and ending 90 days after the date the employer designates the registered position for which the W visa holder is sought unless the employer has notified such USW of the position and documented the legitimate reasons that such USW is not qualified or available for the position.
- In determining the prevailing wage, look to a controlling collective bargaining agreement or federal contract wage. If neither exists, then look at the wage level commensurate with the experience required for the job based on Bureau of Labor Statistics data or if such data is not available, a legitimate private survey of wages paid for such position.
- The Secretary shall provide each registered employer whose application is approved with a permit. The approval of a registered position is for a term that begins on the date of such approval and ends the earlier of either the date the employer's status as a registered employer is terminated or three years after the date of such approval or upon proper termination of the registered position by the employer.
- Recruitment of USW: a registered position may not be registered unless the registered employer:
    - advertises the position for 30 days, including the wage, range, location, and proposed start date on the Internet website maintained by the Secretary of Labor, and with the workforce agency of the state where the position will be located; and
    - carries out not less than three of the additional recruiting activities described in this section or any other recruitment activities determined to be appropriate as added by the Commissioner. Such activities include but are not limited to:
        - advertising at job fairs

        - advertising on employer's external website
        - advertising on job search websites
        - advertising/posting at vocational, tech schools, community colleges, high schools, or other similar institutions
        - posting with trade associations
        - using search firms
        - advertising through recruitment programs with placement offices at vocational schools, etc.
        - advertising with local libraries, journals, or newspapers
        - other listed activities as outlined in the bill
- An occupation is an eligible occupation if it is a Zone 1, 2 or 3 and not an excluded occupation as defined in this section.
- An occupation may be ineligible to be considered as a registered position if it requires a bachelor's degree or higher or is an occupation that requires the W nonimmigrant to perform work as a computer operator, programmer, or repairer. The Secretary of Labor shall publish the eligible occupations an on-going basis on a publically available website.
- If a W nonimmigrant terminates employment, such employer may fill the vacancy by hiring a certified alien, a W nonimmigrant, a USW, or an alien who has filed a petition for a visa.
- A registered position shall be approved by the Secretary for three years. A registered position shall continue to be a registered position at the end of three years if the W nonimmigrant hired for such position has a pending petition for immigrant status filed by the registered employer. Such registered positions will terminate either on the date the petition is approved or denied or on the date of the W employee's termination of employment with the registered employer.
- A registered employer will pay an additional fee for each approved registered position measured by a specific formula that considers the size of the business and the proportion of non U.S. workers in the registered employee positions. These fees will be used to fund the operations of the new Bureau.
    - $1,750 for the registered position if for a small business and more than 50 percent and less than 75 percent of the employees are not USWs
    - $3,500 for the registered position if for a small business and more than 75 percent of the employees are not USWs
    - $3,500 for the registered position if not a small business and more than 15 percent and less than 30 percent of the employees are not USWs
- An employer may not be required to pay other fees it is a small business.
- No registered positions will be approved for employers who are not small businesses and where 30 percent or more of the employees are not USWs.
- No W nonimmigrants may be hired for an eligible occupation in an MSA that has an unemployment rate of more than 8.5 percent unless the Commissioner identifies the occupation as a shortage occupation or the Secretary approves the position under the special allocation provisions.
- Beginning April 1, 2015, unless the Secretary delays the start date, the cap for W visas will be split into two six-month segments in a year. The annual cap on the maximum number of registered positions that may be approved each year are limited for the first four years: 20,000 for the first year; 35,000 the second year; 55,000 the third year, and 75,000 the fourth year.
- For each year after the fourth year, the annual cap will be calculated according to a complicated statistical formula that takes the following four factors into consideration:
    - the rate of change in the number of new job openings in the economy;
    - the inverse rate of change in the number of unemployed USWs;
    - the percentage change the Bureau recommends the annual cap should increase or decrease; and
    - the percentage difference between the number of W-visas requested in the prior fiscal year compared to the cap in the prior fiscal year.
- In addition to the number of registered positions made available for a given year, the Secretary may make available an additional number of registered positions for shortage occupations in a particular geographical area.

- The Secretary has the authority to make additional registered positions available for a specific registered employer if the annual cap for registered positions has been reached and none remain available for allocation.
- The Secretary may also make additional positions available if that registered employer is located in an MSA that has an unemployment rate greater than 8.5 percent or if the registered employer has carried out no less than seven of the described recruiting activities and posts the position for no less than 30- days on the Secretary of Labor's Internet website and with the state workforce agency where the position will be located.
    - A W visa holder hired to perform an eligible occupation pursuant to a special allocation of registered positions may not be paid less than the greater amount of either the level 4 wage set in the Foreign Labor Certification Data Center Online Wage Library or the mean of the highest two-thirds of wages surveyed for such occupation in that MSA.
    - A registered position made available for a year under this paragraph shall require the deduction of a visa number available under the regular W-visa cap in the subsequent year or the earliest possible year for which a visa becomes available again under the cap.
- In no case shall the number of W visas issued exceed the number of registered positions.
- Allocations of registered positions are tightly regulated and depend on factors such type of occupation and whether a registered employer is a small business or not.
- No more than 33 percent of the registered positions available per year may be granted to perform work in a construction occupation and may not exceed 15,000 per year or 7,500 for any six-month period.
- A registered employer may not hire a certified alien for a registered position to perform work in a construction occupation if the unemployment rate for construction occupations in the corresponding occupational job zone was more than 8.5 percent.
- A W visa holder may terminate employment for any reason and seek and accept employment with another registered employer in any other registered position within the terms and conditions of the W visa.
- A registered employer who has applied for a registered position in a shortage occupation may promote the W visa holder to a registered position in an occupation that is not a shortage occupation if such employee has been employed with that employer for no less than 12 months. Such a promotion will not increase the number of registered positions for that employer.
- A registered employer may not place, outsource, lease, or otherwise contract for the services or placement of a W visa employee with another employer if more than 15 percent of the employees of the registered employer are W employees.
- A W visa holder must not be denied any right or any remedy under federal, state, or local labor or employment law that would be applicable to a USW.
- A W visa holder is prohibited from being treated as an independent contractor under any federal or state law and no person including an employer or labor contractor may treat the W as an independent contractor. However, registered employers who operate as independent contractors may hire a W visa holder.
- A fee related to the hiring of a W visa holders required to be paid by an employer under this Act shall be paid by the employer and may not be deducted from the wages or other compensation paid to a W visa holder.
- The employer is not responsible for the W visa holder's cost of round-trip transportation from a certified alien's home to the location of the registered position and the cost of obtaining a foreign passport.
- It is unlawful for an employer of a W visa holder to intimidate, threaten, discharge, or in any other manner discriminate against an employee or former employee because he or she discloses information to the employer or any other person that the he or she reasonably believes demonstrates a violation of this section or cooperates or seeks to cooperate in an investigation concerning compliance with this section.
- The Secretary shall establish a process for the receipt, investigation, and disposition of complaints with respect to the failure of a registered employer to meet a condition of this section or the lay-off or non-hiring of a USW.

- Complaint process: the Secretary shall promulgate regulations for the receipt, investigation, and disposition of complaints by an aggrieved W visa holder. No investigation or hearing shall be conducted on a complaint concerning a violation unless the complaint was filed within six months of the violation.
- After notice and hearing, if the Secretary finds a violation of this subsection, the Secretary may impose administrative remedies and penalties including back wages, benefits, and civil monetary penalties. The Secretary may also impose a civil penalty for a violation of this subsection, including a fine of up to $2,000 per affected worker for the first violation and up to $4,000 for each subsequent violation. If the violation is found to be willful, the fine can be up to $5,000 per affected worker. If the violation is found to be willful and a USW was harmed, a fine up to $25,000 per violation per affected worker may be assessed. The Secretary may also impose a civil penalty for knowingly failing to comply with the terms of representations made in petitions, applications, certifications, or attestations under this section, or with labor recruiters of up to $4,000 per affected worker. After the third offense of a failure to comply the fine can go up to $5,000.
- Anyone who misrepresents the number of full-time employees or the number of employees who are USWs for the purpose of reducing a fee or avoiding the cap shall be fined up to $25,000 or imprisoned for not more than one year or both.
- USCIS will implement a new electronic monitoring similar to Student and Exchange Visitor Information System to monitor the W visa holder and their movement from job to job.

Subtitle H – Investing in New Venture, Entrepreneurial Startups, and Technologies

Sec. 4801. NONIMMIGRANT INVEST VISAS. Creates INVEST nonimmigrant category ("X" visa) by amending §101(a)(15) to add (x) for "qualified entrepreneur" who, in the three years before application:

- Has had venture capital or other investors devote $100,000 to the alien's business; or
- The alien's business has resulted in the creation of no fewer than three jobs and generated $250,000 in annual revenue.

Extensions of three years may be authorized, and a waiver of the performance requirements is permitted in consultation with the Commerce Department.

Sec. 4802. INVEST IMMIGRANT VISA. Creates a new §203(b)(6) (EB-6) immigrant investor visa, capped at 10,000 per year, for "qualified entrepreneur" aliens, defined as an alien:

- With a significant ownership in a U.S. business;
- Who is employed as a senior executive in the business; and
- Who had a significant role in the founding or early-stage growth of the enterprise.

The alien must have resided in the U.S. for at least two years in lawful status; in the three years prior to filing:

- Have a significant ownership in a business that has created at least five jobs and has received $500,000 in venture capital or other investments; or
- Has created five jobs and generated $750,000 in annual revenues in the two years prior to filing.

Relaxed job creation, investment attraction, and revenue generation requirements are afforded an alien with an advanced STEM degree.

Sec. 4803. ADMINISTRATION AND OVERSIGHT.

- Not later than 16 months after the date of the enactment of this Act, the Secretary, in consultation with the Secretary of Commerce, the Administrator of the Small Business Administration, and other relevant agencies shall promulgate regulations to carry out this subtitle.

- The Secretary has certain authority to adjust certain dollar amounts in this section related to the immigrant investor program.
- If the Secretary does not make adjustments, automatic adjustments based on the CPI will take effect on January 1, 2016.
- The Secretary is given unreviewable discretion to deny or revoke a petition covered in this subtitle if the petition is deemed to be contrary to the national interest of the U.S. or for other good cause.

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