AMENDMENT TO H.R. 4760
OFFERED BY MR. ISSA OF CALIFORNIA

Add at the end of division A the following:

TITLE IV—PROTECT AND GROW
AMERICAN JOBS

SECTION 4101. SHORT TITLE.

This title may be cited as the “Protect and Grow American Jobs Act”.

SEC. 4102. PROHIBITION ON DISPLACEMENT OF UNITED STATES WORKERS.

Section 212(n)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)) is amended—

(1) in subparagraph (E)—

(A) in clause (i), by striking “within the period beginning 90 days before and ending 90 days after the date of filing of any visa petition supported by the application.” and inserting “during the period beginning 90 days before the date of filing of any visa petition supported by the application and ending on the last day of the employer’s employment of any alien as an H-1B nonimmigrant pursuant to such visa peti-
tion or any extension of such visa petition.”;

and

(B) in clause (ii), by striking the last sen-
tence; and

(2) by amending subparagraph (F) to read as
follows:

“(F)(i) Except as provided in clause (ii), in the
case of an application described in subparagraph
(E)(ii), the employer will not place the non-
immigrant with another employer (regardless of
whether or not such other employer is an H–1B-de-
dependent employer) where—

“(I) the nonimmigrant performs duties, in
whole or in part, at one or more worksites—

“(aa) owned, operated, or controlled
by such other employer; or

“(bb) physically located within, adja-
cent to, or in close proximity to, a worksite
described in item (aa) for the purpose of
avoiding the requirements of this subpara-
graph; and

“(II) there are indicia of an employment
relationship between the nonimmigrant and
such other employer.
“(ii) Clause (i) shall not apply if the employer—

“(I) has received written assurance from the other employer that, during the period beginning 90 days before the date of the placement of the nonimmigrant with the other employer and ending at the conclusion of such placement, the other employer—

“(aa) has not and does not intend to displace a United States worker employed by the other employer; and

“(bb) will inform the employer without delay if the other employer displaces a United States worker employed by the other employer during such period;

“(II) will, if it learns that the other employer has displaced a United States worker employed by the other employer during the period specified in subclause (I), without delay—

“(aa) inform the Secretary of such displacement;

“(bb) cease the placement with the other employer of the nonimmigrant and other H-1B nonimmigrants employed by the employer in jobs that are essentially
the equivalent of the job for which the H-1B nonimmigrant was sought (as described in paragraph (4)(B)); and

“(cc) cease the performance of any services for the benefit of the other employer by the nonimmigrant and other H-1B nonimmigrants employed by the employer in jobs that are essentially the equivalent of the job for which the H-1B nonimmigrant was sought (as described in paragraph (4)(B)); and

“(III) has received written assurance from the other employer that the other employer will provide the Secretary with such reasonable information as the Secretary may request to carry out investigations pursuant to subparagraphs (A) and (F) of paragraph (2) regarding the employer.”.

SEC. 4103. REQUIRED RECRUITMENT OF UNITED STATES WORKERS.

Section 212(n)(1)(G) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)(G)) is amended—

(1) in clause (i)—

(A) in subclause (I), by striking “and” at the end;
(B) in subclause (II), by striking the period at the end and inserting ‘‘; and’’; and

(C) by adding at the end the following:

“(III) has submitted with the application a report summarizing recruitment efforts made, including—

“(aa) the good faith steps taken to recruit United States workers under subclause (I);

“(bb) the number of United States workers who applied for the job;

“(cc) the number of such workers who were offered the job and, if so, whether the workers accepted the offers; and

“(dd) for each worker under item (bb) who was not offered the job, the reason why the job was not offered.”; and

(2) in clause (ii), by inserting “an exempt H-1B nonimmigrant or is” after “who is”.

SEC. 4104. REQUIRED WAGES.

Section 212(n)(1)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)(A)(i)) is amended—

(1) by striking ‘‘, or’’ at the end of subclause (I) and inserting a semicolon;
(2) by striking the comma at the end of subclause (II) and inserting “; or”;

(3) in the matter following subclause (II)—

(A) by striking “greater,” and inserting “greatest,”; and

(B) by striking “, and” at the end and inserting “; and”; and

(4) by inserting after subclause (II) the following:

“(III) the mean wage level for the occupational classification in the area of employment, but only in the case of an H-1B-dependent employer (as defined in paragraph (3)(A)) that places an H-1B non-immigrant with another employer in a situation described in subparagraph (F)(i)(I);”.

SEC. 4105. ENFORCEMENT.

(a) Failure to Meet Conditions.—Section 212(n)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)) is amended—

(1) in subparagraph (C)(iii), in the matter preceding subclause (I), by striking “within the period beginning 90 days before and ending 90 days after the date of filing of any visa petition supported by
the application—” and inserting “during the period beginning 90 days before the date of filing of any visa petition supported by the application and ending on the last day of the employer’s employment of any alien as an H-1B nonimmigrant pursuant to such visa petition or any extension of such visa petition, or during the period beginning 90 days before the date of the placement and ending at the conclusion of such placement, but only in the case of an H-1B-dependent employer (as defined in paragraph (3)(A)) that places an H-1B nonimmigrant with another employer in a situation described in paragraph (1)(F) and the H-1B-dependent employer has not complied with the requirements of paragraph (1)(F)(i)—”;

(2) in subparagraph (E)—

(A) by striking “a nonexempt” and inserting “an”; and

(B) by striking “(1); except that” and all that follows through the period at the end and inserting “(1).”; and

(3) in subparagraph (F)—

(A) by striking “(F)” and inserting “(F)(i)”;

(B) by striking the last sentence; and
(C) by adding at the end the following:

“(ii) The Secretary may—

“(I) on a case-by-case basis, subject an H-1B-dependent employer to random investigations; and

“(II) shall conduct investigations of at least 5 percent of H-1B-dependent employers annually.

“(iii) The authority of the Secretary under this sub-paragraph shall not be construed to be subject to, or limited by, the requirements of subparagraph (A).”.

(b) Fee to Ensure Effective Enforcement of the H-1B Program.—

(1) Imposition of Fee.—Section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c)) is amended by adding at the end the following:

“(15)(A) In addition to any other fees authorized by law, the Secretary of Homeland Security shall impose a fee to ensure effective enforcement on an H-1B-dependent employer (as defined in section 212(n)(3)(A)) filing a petition under paragraph (1)—

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

“(ii) to obtain authorization for an alien having such status to change employers.

“(B) The initial amount of the fee imposed under subparagraph (A) shall be $495. The Secretary of Labor
periodically may recommend to the Secretary of Homeland Security that such fee be adjusted as necessary to ensure recovery of the full costs of carrying out the enforcement programs and activities described in section 212(n)(2)(F)(ii), and the Secretary of Homeland Security by rule (under section 553 of title 5, United States Code) may adjust the fee pursuant to such recommendation.

“(C) The fee imposed under subparagraph (A) shall only apply to principal aliens and not to the spouses or children who are accompanying or following to join such principal aliens.

“(D) Fees collected under this paragraph shall be deposited in the Treasury in accordance with section 286(w).”.

(2) ESTABLISHMENT OF ACCOUNT; USE OF FEES.—Section 286 of the Immigration and Nationality Act (8 U.S.C. 1356) is amended by adding at the end the following:

“(w) Fee to Ensure Effective Enforcement of the H-1B Program Account.—

“(1) IN GENERAL.—There is established in the general fund of the Treasury a separate account, which shall be known as the ‘Fee to Ensure Effective Enforcement of the H-1B Program Account’. Notwithstanding any other provision of law, there
shall be deposited as offsetting receipts into the ac-
account all fees collected under section 214(e)(15).

“(2) USE OF FEES.—Amounts deposited into
the Fee to Ensure Effective Enforcement of the H-
1B Program Account shall be available, to the ex-
tent and in such amounts as are provided in advance
in appropriations Acts, to the Secretary of Labor for
enforcement programs and activities described in
section 212(n)(2)(F)(ii).”.

SEC. 4106. H-1B DEPENDENT EMPLOYER DEFINED.

SEC. 4107. EXEMPT H–1B NONIMMIGRANT DEFINED.

Section 212(n)(3)(A)(iii)(II) of the Immigration and
Nationality Act (8 U.S.C. 1182(n)(3)(A)(iii)(II)) is
amended by striking “15” and inserting “20”.

Section 212(n)(3)(B) of the Immigration and Nation-
ality Act (8 U.S.C. 1182(n)(3)(B)) is amended—

(1) by amending clause (i) to read as follows:

“(i) the term ‘exempt H–1B nonimmigrant’
means an H–1B nonimmigrant who receives wages
(including cash bonuses and similar compensation)
at an annual rate equal to at least—

“(I) during the 1-year period beginning on
the date of the enactment of the Protect and
Grow American Jobs Act, the lesser of $90,000
and the mean wage level for the occupational
classification in the area of employment; and

“(II) after such 1-year period, the lesser
of—

“(aa) $135,000 (or any applicable ad-
justed amount under clause (iii)); and

“(bb) the greater of $90,000 (or any
applicable adjusted amount under clause
(iii)) and the mean wage level for the occu-
pational classification in the area of em-
ployment;”;

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

(3) by adding at the end the following:

“(iii) the dollar amounts described
clause (i)(II) (as of the last increase to
such amount) shall be increased, effective
for the third fiscal year that begins after
the date of the enactment of this clause
and for every third fiscal year thereafter,
by the percentage (if any) by which the
Consumer Price Index for the month of
June preceding the date on which such in-
crease takes effect exceeds the Consumer
Price Index for the same month of the third preceding calendar year.”.

SEC. 4108. REPORT ON H-1B-DEPENDENT EMPLOYERS.

(a) In General.—The Secretary of Labor and the Secretary of Homeland Security annually shall publish a joint report on the use of the H-1B program by employers that are H-1B-dependent employers. The report shall include information on the following:

(1) Each H-1B-dependent-employer that filed an application under section 212(n)(1) of such Act (8 U.S.C. 1182(n)(1)).

(2) The occupational classifications and required wages listed in such applications.

(3) The worksites at which the nonimmigrants sought in such applications were to be employed or placed.

(4) Each investigation conducted pursuant to section 212(n)(2)(A) of such Act (8 U.S.C. 1182(n)(2)(A)) regarding an H-1B-dependent employer and the outcomes of such investigations.

(5) Each investigation conducted pursuant to section 212(n)(2)(F)(ii) of such Act, as added by section 4105(a)(3) of this title, and the outcomes of such investigations.
(b) DEFINITION.—For purposes of subsection (a), the term “H-1B-dependent employer” has the meaning given such term in section 212(n)(3)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(A)).

SEC. 4109. EFFECTIVE DATE.

(a) IN GENERAL.—The amendments made by sections 4102 through 4107 of this title shall take effect on the date of the enactment of this Act and shall apply with respect to applications filed pursuant to section 212(n)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)) on or after such date.

(b) EXCEPTION.—The fee imposed under section 214(c)(15) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(15)), as added by section 4105(b) of this title, shall apply to petitions filed under section 214(c)(1) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(1)) on or after the date that is 90 days after the date of the enactment of this Act.