

118TH CONGRESS  
2D SESSION

# H. R. 7262

To amend the Immigration and Nationality Act to base the numerical limitations for H-2B nonimmigrants on economic need, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 6, 2024

Ms. SLOTKIN (for herself and Mr. BERGMAN) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Immigration and Nationality Act to base the numerical limitations for H-2B nonimmigrants on economic need, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as “Closing the Workforce Gap  
5 Act of 2024”.

1 **SEC. 2. NUMERICAL LIMITATIONS FOR H-2B NON-**  
2 **IMMIGRANTS BASED ON ECONOMIC NEED.**

3 (a) **IN GENERAL.**—Section 214(g) of the Immigra-  
4 tion and Nationality Act (8 U.S.C. 1184(g)) is amended—

5 (1) by amending paragraph (1)(B) to read as  
6 follows:

7 “(B) except as provided in subsection (s),  
8 under section 101(a)(15)(H)(ii)(b) may not ex-  
9 ceed the number of petitions approved under  
10 subsection (c) for the previous fiscal year with  
11 respect to nonimmigrants described in section  
12 101(a)(15)(H)(ii)(b).”; and

13 (2) in paragraph (10), by striking “33,000”  
14 and inserting “half of the number described in para-  
15 graph (1)(B)”.

16 (b) **EXEMPTION FROM NUMERICAL LIMITATION FOR**  
17 **RURAL AND SEASONAL LOCATION WORKERS.**—Section  
18 214 of the Immigration and Nationality Act (8 U.S.C.  
19 1184) is amended by adding at the end the following:

20 “(s) **EXEMPTION FROM NUMERICAL LIMITATION**  
21 **FOR H-2B RURAL AND SEASONAL LOCATION WORK-**  
22 **ERS.**—

23 “(1) **EXEMPTION FROM NUMERICAL LIMITA-**  
24 **TION.**—The numerical limitation under subsection  
25 (g)(1)(B) shall not apply to nonimmigrants de-

1 scribed in section 101(a)(15)(H)(ii)(b) who work for  
2 an employer in a rural and seasonal location.

3 “(2) DOCUMENTATION FOR EXEMPTION.—Any  
4 employer seeking an exemption under paragraph (1)  
5 shall submit the relevant documentation to the Sec-  
6 retary of Labor during the labor certification ap-  
7 proval process.

8 “(3) VERIFICATION.—In any labor certification  
9 that the Secretary of Labor issues to such employer,  
10 the Secretary shall verify to the Department of  
11 Homeland Security the number of cap-exempt posi-  
12 tions to which the employer is entitled.

13 “(4) DEFINITION.—In this subsection, the term  
14 ‘rural and seasonal location’ means an area that—

15 “(A) is not within a metropolitan statis-  
16 tical area, as designated by the Office of Man-  
17 agement and Budget, or within the outer  
18 boundary of any city or town having a popu-  
19 lation of 20,000 or more people according to  
20 the most recent decennial census of the United  
21 States; and

22 “(B) has a population on January 1 or  
23 July 1 that is at least 50 percent higher than  
24 the number of residents who continuously live  
25 in the area.”.

1 (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall take effect on the first day of the first  
3 fiscal year that begins after the date of enactment of this  
4 Act.

5 **SEC. 3. INCREASED SANCTIONS FOR WILLFUL MISREPRE-**  
6 **SENTATION OR FAILURE TO MEET THE RE-**  
7 **QUIREMENTS FOR PETITIONING FOR AN H-2B**  
8 **WORKER.**

9 Section 214 of the Immigration and Nationality Act  
10 (8 U.S.C. 1184) is amended—

11 (1) in subsection (c)(13)(B), by striking  
12 “\$150” and inserting “\$350”; and

13 (2) in subsection (c)(14)(A)(i), by striking  
14 “may, in addition to any other remedy authorized by  
15 law, impose such administrative remedies (including  
16 civil monetary penalties in an amount not to exceed  
17 \$10,000 per violation)” and inserting “shall impose  
18 civil monetary penalties in an amount of not less  
19 than \$1,000 but not to exceed \$10,000 per violation,  
20 in addition to any other remedy authorized by law,  
21 and may impose such other administrative rem-  
22 edies”.

23 **SEC. 4. WORKPLACE SAFETY.**

24 (a) WORKSITE SAFETY AND COMPLIANCE PLAN.—  
25 If an employer is seeking to employ an H-2B worker pur-

1 suant to this Act and the Immigration and Nationality  
2 Act (8 U.S.C. 1101 et seq.), the employer shall maintain  
3 an effective worksite safety and compliance plan to ensure  
4 safety and reduce workplace illnesses, injuries and fatali-  
5 ties. Such plan shall—

6 (1) be in writing in English and, to the extent  
7 necessary, any language common to a significant  
8 portion of the workers if they are not fluent in  
9 English; and

10 (2) be posted at a conspicuous location at the  
11 worksite and provided to employees prior to the com-  
12 mencement of labor or services.

13 (b) CONTENTS OF PLAN.—The Secretary of Labor  
14 shall establish by regulation the minimum requirements  
15 for the plan described in subsection (a). Such plan shall  
16 include measures to—

17 (1) protect against sexual harassment and vio-  
18 lence, resolve complaints involving harassment or vi-  
19 olence, and protect against retaliation against work-  
20 ers reporting harassment or violence; and

21 (2) contain other provisions necessary for en-  
22 suring workplace safety.

1 **SEC. 5. FOREIGN LABOR RECRUITING; PROHIBITION ON**  
2 **FEES.**

3 (a) FOREIGN LABOR RECRUITING.—If an employer  
4 has engaged any foreign labor contractor or recruiter (or  
5 any agent of such a foreign labor contractor or recruiter)  
6 in the recruitment of H–2B workers, the employer shall  
7 disclose the identity and geographic location of such per-  
8 son or entity to the Secretary of Labor in accordance with  
9 the regulations of the Secretary.

10 (b) PROHIBITION AGAINST EMPLOYEES PAYING  
11 FEES.—Neither the employer nor its agents shall seek or  
12 receive payment of any kind from any worker for any ac-  
13 tivity related to the H–2B petition process, including pay-  
14 ment of the employer’s attorneys’ fees, application fees,  
15 or recruitment costs. An employer and its agents may re-  
16 ceive reimbursement for costs that are the responsibility,  
17 and primarily for the benefit, of the worker, such as gov-  
18 ernment-required passport fees.

19 (c) THIRD-PARTY CONTRACTS.—The employer shall  
20 contractually forbid any foreign labor contractor or re-  
21 cruter (or any agent of a foreign labor contractor or re-  
22 cruter) who the employer engages, either directly or indi-  
23 rectly, in the recruitment of H–2B workers to seek or re-  
24 ceive payments or other compensation from prospective  
25 employees. Upon learning that a foreign labor contractor  
26 or recruiter has collected such payments, the employer

1 shall terminate any contracts with the foreign labor con-  
2 tractor or recruiter.

3 **SEC. 6. PROGRAM INTEGRITY MEASURES.**

4 (a) ENFORCEMENT AUTHORITY.—With respect to  
5 the H–2B program, the Secretary of Labor is authorized  
6 to take such actions against employers, including imposing  
7 appropriate penalties and seeking monetary and injunctive  
8 relief and specific performance of contractual obligations,  
9 as may be necessary to ensure compliance with—

10 (1) the requirements of this Act and the Immi-  
11 gration and Nationality Act (8 U.S.C. 1101 et seq.);  
12 and

13 (2) the applicable terms and conditions of em-  
14 ployment.

15 (b) COMPLAINT PROCESS.—

16 (1) PROCESS.—With respect to the H–2B pro-  
17 gram, the Secretary of Labor shall establish a proce-  
18 ss for the receipt, investigation, and disposition of  
19 complaints alleging failure of an employer to comply  
20 with—

21 (A) the requirements of this Act and the  
22 Immigration and Nationality Act (8 U.S.C.  
23 1101 et seq.); and

24 (B) the applicable terms and conditions of  
25 employment.

1           (2) FILING.—Any aggrieved person or organiza-  
2           tion, including a bargaining representative, may file  
3           a complaint referred to in paragraph (1) not later  
4           than 2 years after the date of the conduct that is  
5           the subject of the complaint.

6           (3) COMPLAINT NOT EXCLUSIVE.—A complaint  
7           filed under this subsection is not an exclusive rem-  
8           edy and the filing of such a complaint does not  
9           waive any rights or remedies of the aggrieved party  
10          under this law or other laws.

11          (4) DECISION AND REMEDIES.—If the Sec-  
12          retary of Labor finds, after notice and opportunity  
13          for a hearing, that the employer failed to comply  
14          with the requirements of this Act, the Immigration  
15          and Nationality Act (8 U.S.C. 1101 et seq.), or the  
16          terms and conditions of employment, the Secretary  
17          of Labor shall require payment of unpaid wages, un-  
18          paid benefits, damages, and civil money penalties.  
19          The Secretary is also authorized to impose other ad-  
20          ministrative remedies, including disqualification of  
21          the employer from utilizing the H-2B program for  
22          a period of up to 5 years in the event of willful or  
23          multiple material violations. The Secretary is au-  
24          thorized to permanently disqualify an employer from



1 utilizing the H-2B program upon a subsequent find-  
2 ing involving willful or multiple material violations.

3 (5) DISPOSITION OF PENALTIES.—To the ex-  
4 tent provided in advance in appropriations Acts, civil  
5 penalties collected under this subsection shall be  
6 used by the Secretary of Labor for the administra-  
7 tion and enforcement of the provisions of this sec-  
8 tion.

9 (6) STATUTORY CONSTRUCTION.—Nothing in  
10 this subsection may be construed as limiting the au-  
11 thority of the Secretary of Labor to conduct an in-  
12 vestigation in the absence of a complaint.

13 (7) RETALIATION PROHIBITED.—It is a viola-  
14 tion of this subsection for any person to intimidate,  
15 threaten, restrain, coerce, blacklist, discharge, or in  
16 any other manner discriminate against, or to cause  
17 any person to intimidate, threaten, restrain, coerce,  
18 blacklist, or in any manner discriminate against, an  
19 employee, including a former employee or an appli-  
20 cant for employment, because the employee—

21 (A) has disclosed information to the em-  
22 ployer, or to any other person, that the em-  
23 ployee reasonably believes evidences a violation  
24 of the immigration laws relating to the H-2B

1 program, or any rule or regulation relating to  
2 such program;

3 (B) has filed a complaint concerning the  
4 employer's compliance with the immigration  
5 laws relating to the H-2B program, or any rule  
6 or regulation relating to such program;

7 (C) cooperates or seeks to cooperate in an  
8 investigation or other proceeding concerning the  
9 employer's compliance with the immigration  
10 laws relating to the H-2B program, or any rule  
11 or regulation relating to such program; or

12 (D) has taken steps to exercise or assert  
13 any right or protection under the provisions of  
14 this section, or any rule or regulation pertaining  
15 to this section, or any other relevant Federal,  
16 State, or local law.

17 (c) INTERAGENCY COMMUNICATION.—The Secretary  
18 of Labor, in consultation with the Secretary of Homeland  
19 Security, Secretary of State and the Equal Employment  
20 Opportunity Commission, shall establish mechanisms by  
21 which the agencies and their components share informa-  
22 tion, including by public electronic means, regarding com-  
23 plaints, studies, investigations, findings and remedies re-  
24 garding compliance by employers with the requirements

1 of the H-2B program and other employment-related laws  
2 and regulations.

3 **SEC. 7. PROGRAM ELIGIBILITY.**

4 (a) IN GENERAL.—A petition filed by an employer  
5 under subsection (c)(1) initially to grant an alien non-  
6 immigrant status under section 101(a)(15)(H)(ii)(b) of  
7 the Immigration and Nationality Act (8 U.S.C.  
8 1101(a)(15)(H)(ii)(b)), or to extend or change to such sta-  
9 tus, may be approved only for nationals of countries that  
10 the Secretary of Homeland Security has designated as  
11 participating countries, with the concurrence of the Sec-  
12 retary of State, in a notice published in the Federal Reg-  
13 ister, taking into account for each such country factors,  
14 including—

15 (1) the fraud rate relating to petitions under  
16 section 101(a)(15)(H)(ii) of such Act (8 U.S.C.  
17 1101(a)(15)(H)(ii)) filed for by nationals of the  
18 country and visa applications under such section  
19 filed by nationals of the country;

20 (2) the denial rate of visa applications under  
21 such section 101(a)(15)(H)(ii) filed by nationals of  
22 the country;

23 (3) the overstay rate of nationals of the country  
24 who were admitted to the United States under such  
25 section 101(a)(15)(H)(ii);

1           (4) the number of nationals of the country who  
2           were admitted to the United States under such sec-  
3           tion 101(a)(15)(H)(ii) and who were reported by  
4           their employers to—

5                   (A) have failed to report to work within 5  
6                   workdays of the employment start date on the  
7                   petition or within 5 workdays of the date on  
8                   which the worker is admitted into the United  
9                   States pursuant to the petition, whichever is  
10                  later; or

11                   (B) have not reported for work for a pe-  
12                   riod of 5 consecutive workdays without the con-  
13                   sent of the employer;

14           (5) the number of final and unexecuted orders  
15           of removal against citizens, subjects, nationals, and  
16           residents of the country; and

17           (6) such other factors as may serve the United  
18           States interest.

19           (b) LIMITATION.—A country may not be included on  
20           the list described in subsection (a) if the country denies  
21           or unreasonably delays the repatriation of aliens who are  
22           subject to a final order of removal and who are citizens,  
23           subjects, nationals, or residents of that country.

24           (c) STATISTICS.—The Secretary of Homeland Secu-  
25           rity shall include in the notice described in subsection (a),

1 for each country included in the list of participating coun-  
2 tries, the statistics referenced in paragraphs (1) through  
3 (5) of that subsection, if available, for the immediately  
4 preceding fiscal year.

5 (d) NATIONAL FROM A COUNTRY NOT ON THE  
6 LIST.—A national from a country not on the list described  
7 in subsection (a) may be a beneficiary of an approved peti-  
8 tion under such section 101(a)(15)(H)(ii) upon the re-  
9 quest of a petitioner or potential petitioner, if the Sec-  
10 retary of Homeland Security, in his sole and unreviewable  
11 discretion, determines that it is in the United States inter-  
12 est for that alien to be a beneficiary of such petition. De-  
13 termination of such a United States interest will take into  
14 account factors, including but not limited to—

15 (1) evidence from the petitioner demonstrating  
16 that a worker with the required skills is not available  
17 from among foreign workers from a country cur-  
18 rently on the list described in subsection (a);

19 (2) evidence that the beneficiary has been ad-  
20 mitted to the United States previously in status  
21 under such section 101(a)(15)(H)(ii);

22 (3) the potential for abuse, fraud, or other  
23 harm to the integrity of the visa program under  
24 such section 101(a)(15)(H)(ii) through the potential

1 admission of a beneficiary from a country not cur-  
2 rently on the list; and

3 (4) such other factors as may serve the United  
4 States interest.

5 (e) DURATION.—Once published, any designation of  
6 participating countries pursuant to subsection (a) shall be  
7 effective for one year after the date of publication in the  
8 Federal Register and shall be without effect at the end  
9 of that one-year period.

10 **SEC. 8. H-2B EMPLOYER NOTIFICATION REQUIREMENT.**

11 (a) IN GENERAL.—An employer of one or more H-  
12 2B workers shall, within three business days, make elec-  
13 tronic notification, in the manner prescribed by the Sec-  
14 retary of Homeland Security, of the following events:

15 (1) Such a worker fails to report to work within  
16 5 workdays of the employment start date on the pe-  
17 tition or within 5 workdays of the date on which the  
18 worker is admitted into the United States pursuant  
19 to the petition, whichever is later.

20 (2) The labor or services for which such a work-  
21 er was hired is completed more than 30 days earlier  
22 than the employment end date stated on the peti-  
23 tion.

1           (3) The employment of such a worker is termi-  
2           nated prior to the completion of labor or services for  
3           which he or she was hired.

4           (4) Such a worker has not reported for work  
5           for a period of 5 consecutive workdays without the  
6           consent of the employer.

7           (b) EVIDENCE.—An employer shall retain evidence of  
8           a notification described in subsection (a) and make it  
9           available for inspection by officers of the Department of  
10          Homeland Security for a 1-year period beginning on the  
11          date of the notification.

12          (c) PENALTY.—The Secretary shall impose civil mon-  
13          etary penalties, in an amount not less than \$500 per viola-  
14          tion and not to exceed \$1,000 per violation, as the Sec-  
15          retary determines to be appropriate, for each instance  
16          where the employer cannot demonstrate that it has com-  
17          plied with the notification requirements, unless, in the  
18          case of an untimely notification, the employer dem-  
19          onstrates with such notification that good cause existed  
20          for the untimely notification, and the Secretary of Home-  
21          land Security, in the Secretary's discretion, waives such  
22          penalty.

23          (d) PROCESS.—If the Secretary has determined that  
24          an employer has violated the notification requirements in  
25          subsection (a), the employer shall be given written notice

1 and 30 days to reply before being given written notice of  
2 the assessment of the penalty.

3 (e) FAILURE TO PAY PENALTY.—If a penalty de-  
4 scribed in subsection (c) is not paid within 10 days of as-  
5 sessment, no nonimmigrant or immigrant petition may be  
6 processed for that employer, nor may that employer con-  
7 tinue to employ nonimmigrants, until such penalty is paid.

8 **SEC. 9. DEFINITIONS.**

9 For purposes of this Act:

10 (1) The term “H–2B”, when used with respect  
11 to a worker or other individual, refers an alien ad-  
12 mitted or provided status as a nonimmigrant de-  
13 scribed in section 101(a)(15)H(ii)(b) of the Immi-  
14 gration and Nationality Act (8 U.S.C.  
15 1101(a)(15)(H)(ii)(b)). Such term, when used with  
16 respect to a petition, procedure, process, program, or  
17 visa, refers to a petition, procedure, process, pro-  
18 gram, or visa related to admission or provision of  
19 status under such section.

20 (2) The term “job order” means the document  
21 containing the material terms and conditions of em-  
22 ployment, including obligations and assurances re-  
23 quired under this Act or any other law.

24 (3) The term “United States worker” means  
25 any employee who is—



1           (A) a national of the United States (as de-  
2           fined in section 101(a)(22) of the Immigration  
3           and Nationality Act (8 U.S.C. 1101(a)(22))); or  
4           (B) an alien lawfully admitted for perma-  
5           nent residence, is admitted as a refugee under  
6           section 207 of such Act (8 U.S.C. 1157), is  
7           granted asylum under section 208 of such Act  
8           (8 U.S.C. 1158), or is an immigrant otherwise  
9           authorized by the immigration laws (as defined  
10          in section 101(a)(17) of such Act (8 U.S.C.  
11          1101(a)(17))) or the Secretary of Homeland  
12          Security to be employed.

○