

provide the Secretary of Health and Human Services with a certification that the State's proposed uses of the fund are consistent with (D).

“(G) ANNUAL REPORT.—The Secretary of Health and Human Services shall inform the States annually of the amount of funds available to each State under the Program.”

(c) CLERICAL AMENDMENT.—The table of contents Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting after the item relating to section 218 the following:

“Sec. 218A. Admission of Y nonimmigrants.”

**SEC. 403. GENERAL Y NONIMMIGRANT EMPLOYER OBLIGATIONS.**

(a) IN GENERAL.—Title II (8 U.S.C. 1201 et seq.) is amended by inserting after section 218A of the Immigration and Nationality Act, as added by section 402, the following:

**“SEC. 218B. GENERAL Y NONIMMIGRANT EMPLOYER OBLIGATIONS.**

“(a) GENERAL REQUIREMENTS.—Each employer who seeks to employ a Y nonimmigrant shall—

“(1) file in accordance with subsection (b) an application for labor certification of the position that the employer seeks to fill with a Y nonimmigrant that contains—

“(A) the attestation described in subsection (c);

“(B) a description of the nature and location of the work to be performed;

“(C) the anticipated period (expected beginning and ending dates) for which the workers will be needed; and

“(D) the number of job opportunities in which the employer seeks to employ the workers;

“(2) include with the application filed under paragraph (1) a copy of the job offer describing the wages and other terms and conditions of employment and the bona fide occupational qualifications that shall be possessed by a worker to be employed in the job opportunity in question; and

“(3) be required to pay, with respect to an application to employ a Y-1 worker—

“(A) an application processing fee for each alien, in an amount sufficient to recover the full cost to the Secretary of Labor of administrative and other expenses associated with adjudicating the application; and

“(B) a secondary fee, to be deposited in the Treasury in accordance with section 286(x), of—

“(i) \$500, in the case of an employer employing 25 employees or less;

“(ii) \$750, in the case of an employer employing between 26 and 150 employees;

“(iii) \$1000, in the case of an employer employing between 151 and 500 employees; or

“(iv) \$1,250, in the case of an employer employing more than 500 employees;

provided that an employer who provides a Y nonimmigrant health insurance coverage shall not be required to pay the impact fee.

“(b) REQUIRED PROCEDURE.—Except where the Secretary of Labor has determined that there is a shortage of United States workers in the occupation and area of intended employment to which the Y nonimmigrant is sought, each employer of Y nonimmigrants shall comply with the following requirements:

“(1) EFFORTS TO RECRUIT UNITED STATES WORKERS.—The employer involved shall recruit United States workers for the position for which labor certification is sought under this section, by—

“(A) Not later than 90 days before the date on which an application is filed under subsection (a)(1) submitting a copy of the job opportunity, including a description of the wages and other terms and conditions of employment and the minimum education, training, experience and other requirements

of the job, to the designated state agency and—

“(i) authorizing the designated state agency to post the job opportunity on the Internet website established under section 414 of [Title of bill], with local job banks, and with unemployment agencies and other labor referral and recruitment sources pertinent to the job involved; and

“(ii) authorizing the designated state agency to notify labor organizations in the State in which the job is located and, if applicable, the office of the local union which represents the employees in the same or substantially equivalent job classification of the job opportunity;

“(B) posting the availability of the job opportunity for which the employer is seeking a worker in conspicuous locations at the place of employment for all employees to see for a period of time beginning not later than 90 days before the date on which an application is filed under subsection (a)(1) and ending no earlier than 14 days before such filing date;

“(C) advertising the availability of the job opportunity for which the employer is seeking a worker in one of the three highest circulation publications in the labor market that is likely to be patronized by a potential worker for not fewer than 10 consecutive days during the period of time beginning not later than 90 days before the date on which an application is filed under subsection (a)(1) and ending no earlier than 14 days before such filing date; and

“(D) advertising the availability of the job opportunity in professional, trade, or ethnic publications that are likely to be patronized by a potential worker, as recommended by the designated state agency. The employer shall not be required to advertise in more than three such recommended publications.

“(2) EFFORTS TO EMPLOY UNITED STATES WORKERS.—An employer that seeks to employ a Y nonimmigrant shall first offer the job with, at a minimum, the same wages, benefits, and working conditions, to any eligible United States worker who applies, is qualified for the job and is available at the time of need.

“(3) DEFINITION.—For purposes of this subsection, ‘designated state agency’ shall mean the state agency designated to perform the functions in this subsection in the area of employment in the State in which the employer is located.

“(c) APPLICATION.—An application under this section for labor certification of a position that an employer seeks to fill with a Y nonimmigrant shall be filed with the Secretary of Labor and shall include an attestation by the employer of the following:

“(1) with respect to an application for labor certification of a position that an employer seeks to fill with a Y-1 or Y-2B nonimmigrant—

“(A) PROTECTION OF UNITED STATES WORKERS.—The employment of a Y nonimmigrant—

“(i) will not adversely affect the wages and working conditions of workers in the United States similarly employed; and

“(ii) did not and will not cause the separation from employment of a United States worker employed by the employer within the 180-day period beginning 90 days before the date on which the petition is filed.

“(B) WAGES.—

“(i) IN GENERAL.—The Y nonimmigrant worker will be paid not less than the greater of—

“(I) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question; or

“(II) the prevailing competitive wage level for the occupational classification in the

area of employment, taking into account experience and skill levels of employees.

“(ii) CALCULATION.—The wage levels under subparagraph (A) shall be calculated based on the best information available at the time of the filing of the application.

“(iii) PREVAILING COMPETITIVE WAGE LEVEL.—For purposes of subclause (i)(II), the prevailing competitive wage level shall be determined as follows:

“(I) If the job opportunity is covered by a collective bargaining agreement between a union and the employer, the prevailing competitive wage shall be the wage rate set forth in the collective bargaining agreement.

“(II) If the job opportunity is not covered by such an agreement and it is not on a project that is covered by a wage determination under a provision of subchapter IV of chapter 31 of title 40, United States Code, or the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), the prevailing competitive wage level shall be the appropriate statutory wage.

“(III)(aa) If the job opportunity is not covered by such an agreement and it is not on a project covered by a wage determination under a provision of subchapter IV of chapter 31 of title 40, United States Code, or the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), the prevailing competitive wage level shall be based on published wage data for the occupation from the Bureau of Labor Statistics, including the Occupational Employment Statistics survey, Current Employment Statistics data, National Compensation Survey, and Occupational Employment Projections program. If the Bureau of Labor Statistics does not have wage data applicable to such occupation, the employer may base the prevailing competitive wage level on data from another wage survey approved by the state workforce agency under regulations promulgated by the Secretary of Labor.

“(bb) Such regulations shall require, among other things, that such surveys are statistically valid and recently conducted.

“(D) LABOR DISPUTE.—There is not a strike, lockout, or work stoppage in the course of a labor dispute in the occupation at the place of employment at which the Y nonimmigrant will be employed. If such strike, lockout, or work stoppage occurs following submission of the application, the employer will provide notification in accordance with regulations promulgated by the Secretary of Labor.

“(E) PROVISION OF INSURANCE.—If the position for which the Y nonimmigrant is sought is not covered by the State workers' compensation law, the employer will provide, at no cost to the Y nonimmigrant, insurance covering injury and disease arising out of, and in the course of, the worker's employment, which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment.

“(F) NOTICE TO EMPLOYEES.—

“(i) IN GENERAL.—The employer has provided notice of the filing of the application to the bargaining representative of the employer's employees in the occupational classification and area of employment for which the Y nonimmigrant is sought.

“(ii) NO BARGAINING REPRESENTATIVE.—If there is no such bargaining representative, the employer has—

“(I) posted a notice of the filing of the application in a conspicuous location at the place or places of employment for which the Y nonimmigrant is sought; or

“(II) electronically disseminated such a notice to the employer's employees in the occupational classification for which the Y nonimmigrant is sought.

“(G) RECRUITMENT.—Except where the Secretary of Labor has determined that there is