

1 Purpose: To require all employers of H-2B nonimmigrants to use E-Verify, to exempt certain
2 disaster recovery jobs from the annual numerical limitation on H-2B nonimmigrant visas, and for
3 other purposes.

4
5
6 (no.) _____

7
8 (title)

9
10
11
12 Referred to the Committee on _____ and ordered to be
13 printed

14 Ordered to lie on the table and to be printed

15 **AMENDMENT INTENDED TO BE PROPOSED BY MR. TILLIS**

16 Viz:

17 At the appropriate place, insert the following:

18 Sec. __. (a) The numerical limitation set forth in section 214(g)(1)(B) of the Immigration and
19 Nationality Act (8 U.S.C. 1184(g)(1)(B)) shall not apply, with respect to petitions filed on or
20 after the date of the enactment of this Act in fiscal year 2019, 2020, 2021, or 2022, to individuals
21 granted visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(ii)(b) of
22 such Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)) for jobs that are certified for employment under
23 section 214.2(h)(6)(iii)(A) of title 8, Code of Federal Regulations, or subpart A of part 655 of
24 title 20, Code of Federal Regulations (or a successor provisions), to temporarily perform service
25 or labor that falls within Standard Occupational Classification Codes 37–0000 (Building and
26 Grounds Cleaning and Maintenance Occupations), 45–4000 (Forest, Conservation, and Logging
27 Workers), or 47–0000 (Construction and Extraction Occupations), if such service or labor—

28 (1) is performed in a State, territory, or possession for which a major disaster was
29 declared, during the period beginning on August 1, 2017, and ending on the date of the
30 enactment of this Act, pursuant to section 401 of the Robert T. Stafford Disaster Relief and
31 Emergency Assistance Act (42 U.S.C. 5170); and

32 (2) directly supports the reconstruction or restoration of physical property and
33 infrastructure or debris clean-up and removal related to such disaster.

34 (b)(1) Section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c)) is amended—

35 (A) in paragraph (13)—

36 (i) in subparagraph (B)—

37 (I) by striking “\$150” and inserting “\$350”; and

1 (II) by striking “\$350”, as inserted by subclause (I), and inserting “\$550”; and

2 (ii) by adding at the end the following:

3 “(C)(i) Notwithstanding section 553 of title 5, United States Code, the Secretary of Homeland
4 Security, by final rule or notice published in the Federal Register, shall adjust the amount of the
5 fee imposed under this paragraph every 2 years to reflect the change in the Consumer Price Index
6 for All Urban Consumers (CPI-U) published by the Bureau of Labor Statistics since such fee
7 was last adjusted.

8 “(ii) A fee adjustment under this subparagraph may not take effect earlier than the end of the
9 90-day period beginning on the date on which such adjustment has been published in the Federal
10 Register.

11 “(iii) In calculating each fee adjustment under this subparagraph, the amount of the fee shall
12 be rounded upward to the next \$0.25 increment.

13 “(iv) Fee adjustments made pursuant to this subparagraph shall not be subject to judicial
14 review.”; and

15 (B) in paragraph (14)—

16 (i) in the matter preceding clause (i), by inserting “, the Secretary” after “such
17 petition”;

18 (ii) in subparagraph (A), by striking clauses (i) and (ii) and inserting the following:

19 “(i) shall impose a civil monetary penalty against the employer in an amount equal to not
20 less than \$1,000 and not more than \$10,000 per violation, in addition to any other remedy
21 authorized by law;

22 “(ii) may impose such other administrative remedies against the employer as the
23 Secretary determines to be appropriate; and

24 “(iii) may deny petitions for aliens to be employed by the employer under paragraph (1)
25 or section 204 that are filed by the employer during a period of at least 1 year and not more
26 than 5 years since such failure or misrepresentation.”;

27 (iii) in subparagraph (B), by striking “subparagraph (A)(i)” and inserting
28 “subparagraph (A)”;

29 (iv) by redesignating subparagraph (D) as subparagraph (E); and

30 (v) by inserting after subparagraph (C) the following:

31 “(D)(i) The Secretary of Labor shall require that an employer, as a condition for obtaining an
32 approved temporary labor certification in support of a petition under paragraph (1) with respect
33 to a nonimmigrant described in section 101(a)(15)(H)(ii)(b), advertise the job for which such
34 nonimmigrant would be employed to workers in the United States using such online methods,
35 and containing such information, as the Secretary of Labor may require in regulations issued in
36 accordance with [section __ (b)(5) of the _____].

37 “(ii) Beginning on October 1, 2019, the online methods required under clause (i) shall include
38 an online job registry through which—

39 “(I) employers post, on a nationwide basis, jobs described in the application for the

1 temporary labor certification; and

2 “(II) United States workers may apply for such jobs.

3 “(iii) The Secretary of Labor shall use fees collected from employers who post jobs on the
4 online job registry referred to in clause (ii) to operate and maintain such registry. The Secretary
5 of Labor may not require employers to utilize any other means to advertise for, or notify of, the
6 job opening other than the online registry.

7 “(iv) The Secretary of Labor—

8 “(I) shall conduct a biennial review of the adequacy of the amount of the fees established
9 in the regulations required under [section __ (b)(5)(B) of the _____], in accordance with
10 section 902(a)(8) of title 31, United States Code; and

11 “(II) shall adjust the amount of such fees, if necessary, in the Secretary’s sole and
12 unreviewable discretion, to ensure the recovery of full costs of operating and maintaining
13 the online job registry.”.

14 (2)(A) Except as provided in subparagraph (B), the amendments made by paragraph (1) shall
15 take effect on the date of the enactment of this Act.

16 (B) The amendment made by paragraph (1)(A)(i)(II) shall take effect on October 1, 2019.

17 (3) Section 214(c)(14) of the Immigration and Nationality Act, as amended by paragraph
18 (1)(B), shall apply to the failure to comply with the regulations, the terms of labor market
19 determinations, and any other requirements promulgated by the Secretary of Labor and the
20 Secretary of Homeland Security on or after the date of the enactment of this Act.

21 (4) Section 214(c)(14)(D) of the Immigration and Nationality Act, as added by paragraph
22 (1)(B)(v), shall apply to applications filed with the Secretary of Labor for temporary labor
23 certification in support of a petition under section 214(c)(1) of such Act (8 U.S.C. 1184(c)(1))
24 with respect to a nonimmigrant described in section 101(a)(15)(H)(ii)(b) of such Act (8 U.S.C.
25 1101(a)(15)(H)(ii)(b)) with a start date of employment on or after October 1, 2019.

26 (5) Notwithstanding section 553 of title 5, United States Code, the Secretary of Labor shall
27 issue interim final regulations not later than 180 days after the date of the enactment of this
28 Act—

29 (A) to implement section 214(c)(14)(D) of the Immigration and Nationality Act, as added
30 by paragraph (1)(B)(v); and

31 (B) to establish fees for employers required to post a job on the online job registry
32 referred to in section 214(c)(14)(D)(ii) of such Act at an amount that the Secretary
33 determines is necessary to ensure recovery of the full costs incurred by the Department of
34 Labor in operating and maintaining such registry.

35 (c)(1) Section 214(g) of the Immigration and Nationality Act (8 U.S.C. 1184(g)) is amended—

36 (A) in paragraph (1)—

37 (i) in the matter preceding subparagraph (A), by striking “year (beginning with fiscal
38 year 1992)—” and inserting “year—”;

39 (ii) in subparagraph (A), by striking “exceed—” and all that follows through the end
40 of clause (vii) and inserting “exceed 65,000; and”;

1 (iii) in subparagraph (B), by striking “66,000.” and inserting “132,000 in fiscal year
2 2019 and in each succeeding fiscal year.”;

3 (B) by redesignating paragraph (11) as paragraph (18); and

4 (C) by inserting after paragraph (10) the following:

5 “(11) A petition filed by an employer under subsection (c)(1) to initially grant an alien
6 nonimmigrant status under section 101(a)(15)(H)(ii)(b), or to extend or change such status, may
7 be approved only for nationals of countries that the Secretary of Homeland Security, in
8 consultation with the Secretary of State, in the Secretary of Homeland Security’s sole and
9 unreviewable discretion, has designated as a participating country in a notice published in the
10 Federal Register, after considering—

11 “(A) the fraud rate relating to—

12 “(i) petitions filed under subsection (c)(1) with respect to the initial admission of
13 nationals of such country as nonimmigrants under section 101(a)(15)(H)(ii)(b);

14 “(ii) petitions filed under subsection (c)(1)—

15 “(I) to extend the stay of nationals of such country who have been admitted as
16 nonimmigrants under section 101(a)(15)(H)(ii)(b); or

17 “(II) to change the nonimmigrant classification of nationals of such country to
18 nonimmigrants under section 101(a)(15)(H)(ii)(b); and

19 “(iii) visa applications for nonimmigrants described in section 101(a)(15)(H)(ii)(b)
20 by nationals of such country;

21 “(B) the denial rate of visa applications for nonimmigrants described in section
22 101(a)(15)(H)(ii)(b) by nationals of such country;

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

25 “(D) the number of nationals of the country who were admitted to the United States, or
26 otherwise provided nonimmigrant status, under section 101(a)(15)(H)(ii)(b) and who were
27 reported by their employers as—

28 “(i) failing to report to work before the later of—

29 “(I) 5 work days after the employment start date listed on the petition; or

30 “(II) 5 work days after the date on which the worker is admitted into the United
31 States pursuant to the petition; or

32 “(ii) not reporting for work for a period of 5 consecutive work days without the
33 consent of the employer;

34 “(E) the number of final and unexecuted orders of removal against citizens, subjects,
35 nationals, and residents of the country; and

36 “(F) other factors that serve the interests of the United States, including factors relating to
37 the implementation, administration, and enforcement of immigration laws.

38 “(12) A country may not be designated as a participating country under paragraph (11) if the

1 government of such country denies or unreasonably delays the repatriation of aliens who—

2 “(A) are subject to a final order of removal; and

3 “(B) are citizens, subjects, nationals, or residents of such country.

4 “(13) Each notice published under paragraph (11) shall include, for each participating country,
5 the statistics referenced in subparagraphs (A) through (E) of such paragraph, if available, for the
6 immediately preceding fiscal year.

7 “(14) A national of a country that has not been designated as a participating country under
8 paragraph (11) may be a beneficiary of an approved petition under subsection (c)(1) with respect
9 to nonimmigrants described in section 101(a)(15)(H)(ii)(b) upon the request of a petitioner or
10 potential petitioner, if the Secretary of Homeland Security, in the Secretary’s sole and
11 unreviewable discretion, determines that it is in the interests of the United States for such alien to
12 be a beneficiary of such petition after considering—

13 “(A) evidence from the petitioner demonstrating that a worker with the required skills is
14 not available from a participating country;

15 “(B) evidence that the beneficiary has previously been admitted to the United States
16 under section 101(a)(15)(H)(ii)(b);

17 “(C) the potential for abuse, fraud, or other harm to the integrity of the visa program
18 under such section through the admission of a beneficiary from a country that is not a
19 participating country; and

20 “(D) other factors that serve the interests of the United States, including factors relating
21 to the implementation, administration, and enforcement of immigration laws.

22 “(15) Any designation of a participating country under paragraph (11) shall be effective during
23 the 1-year period beginning on the date on which such designation is published in the Federal
24 Register.

25 “(16) The Secretary of Homeland Security shall retain the authority under subsection (a)(1) to
26 prescribe conditions for the admission of any alien as a nonimmigrant, in accordance with this
27 subsection.

28 “(17)(A) Not later than 3 work days after any event described in subparagraph (B), an
29 employer of a nonimmigrant described in section 101(a)(15)(H)(ii)(b) shall electronically notify
30 the Secretary of Homeland Security, in the manner prescribed by the Secretary, of such event.

31 “(B) An event described in this subparagraph occurs when—

32 “(i) a nonimmigrant described in section 101(a)(15)(H)(ii)(b) fails to report to work
33 within—

34 “(I) 5 work days after the employment start date listed on the petition under
35 subsection (c) to import the nonimmigrant; or

36 “(II) 5 work days after the date on which the worker is admitted into the United
37 States pursuant to such petition;

38 “(ii) the labor or services for which a nonimmigrant described in section
39 101(a)(15)(H)(ii)(b) was hired is completed more than 30 days earlier than the employment
40 end date listed on the petition under subsection (c) to import the nonimmigrant;

1 “(iii) the employment of a nonimmigrant described in section 101(a)(15)(H)(ii)(b) is
2 terminated before the nonimmigrant completed the labor or services for which the
3 nonimmigrant was hired; or

4 “(iv) a nonimmigrant described in section 101(a)(15)(H)(ii)(b) has not reported for work
5 for a period of 5 consecutive work days without the consent of the employer.

6 “(C) An employer described in subparagraph (A) shall—

7 “(i) retain evidence of each notification made by the employer under such subparagraph;
8 and

9 “(ii) make such evidence available for inspection by the Secretary of Homeland Security
10 during the 1-year period beginning on the date of such notification.

11 “(D) The Secretary of Homeland Security shall impose a civil monetary penalty equal to not
12 less than \$500 and not more than \$1,000 per violation, as the Secretary determines to be
13 appropriate, for each instance in which the employer cannot demonstrate that the employer has
14 complied with the notification requirements under this paragraph.

15 “(E) If the Secretary of Homeland Security determines, in the Secretary’s sole and
16 unreviewable discretion, that an employer has violated, without good cause, the notification
17 requirements under this paragraph—

18 “(i) the Secretary shall provide the employer with written notice of such violation;

19 “(ii) the Secretary shall notify the appropriate law enforcement agency; and

20 “(iii) the employer shall be given 30 days to reply to such notice before the Secretary
21 provides the employer with a written notice of the imposition of a penalty under
22 subparagraph (D).

23 “(F) If an employer does not pay a penalty imposed under subparagraph (D) on or before the
24 date that is 10 days after the date on which the employer receives the written notice under
25 subparagraph (E)(i), until the employer pays the penalty in full—

26 “(i) the Secretary of Homeland Security shall not accept, on behalf of the employer—

27 “(I) a petition under subsection (c) to import a nonimmigrant described in section
28 101(a)(15)(H)(ii)(b); or

29 “(II) a classification petition under section 204(a)(1)(F);

30 “(ii) the employer may not continue to employ nonimmigrants described in section
31 101(a)(15)(H)(ii)(b); and

32 “(iii) the restrictions imposed under this section may not be subject to judicial review.”.

33 (2) The amendments made by paragraph (1) shall take effect on the date of the enactment of
34 this Act.

35 (d) The amendments made by this section may not be construed to limit or modify any other
36 authority provided or exercised under—

37 (1) section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c)); or

38 (2) any other law governing the authority of the Secretary of Homeland Security, the

1 Secretary of Labor, the Secretary of State, or any other officer or employee of the Federal
2 Government.

3 (e) Out of any money in the Treasury not otherwise appropriated, there is appropriated for
4 fiscal year 2019, [\$ ____], which shall remain available for the Department of Labor through
5 [September 30, 20 __], to design, build, and commence operating the online job registry
6 described in section 214(c)(14)(D) of the Immigration and Nationality Act, as added by
7 subsection (b)(1)(B)(v).

8 (f) Not later than 2 years after the date of the enactment of this Act, and biennially thereafter,
9 the Secretary of Labor shall—

10 (1) complete a study of the economic factors affecting the need for H–2B workers in the
11 United States workforce; and

12 (2) submit a report to Congress that includes a recommendation, based on the results of
13 the study completed under paragraph (1), on whether the numerical limitation set forth in
14 section 214(g)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(1)(B))
15 should be increased or decreased.

16 Sec. __. (a) Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)) is
17 amended—

18 (1) in paragraph (15)(H), by striking “or (ii)(a) having a residence in a foreign country”
19 and all that follows through “seasonal nature, or” and inserting the following: “(ii)(a) who
20 has a residence in a foreign country that the alien has no intention of abandoning and is
21 coming temporarily to the United States to perform agricultural labor or services (as defined
22 by the Secretary of Labor, by regulation), of a temporary or seasonal nature, including
23 agricultural labor (as defined in section 3121(g) of the Internal Revenue Act of 1986),
24 agriculture (as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C.
25 203(f)), the pressing of apples for cider on a farm, fish cutting and trimming, and may
26 include labor or services relating to forestry- and conservation-related services, services
27 relating primarily to the cultivation, installation, and establishment of horticultural
28 commodities (without regard to commodity source or location), labor as a year-round
29 equine worker, labor as a year-round livestock worker (including as a dairy or poultry
30 worker), labor in aquaculture, and the processing of wild seafood; or”;

31 (2) by adding at the end the following:

32 “(53) The term ‘forestry- and conservation-related services’ includes tree planting, timber
33 harvesting, logging operations, brush clearing, vegetation management, herbicide application, the
34 maintenance of rights of way (including for roads, trails, and utilities, regardless of whether such
35 right-of-way is on forested land), and the harvesting of pine straw.”.

36 (b) In the case of individuals who are eligible for admission as a nonimmigrant under section
37 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)), but
38 choose to be admitted under section 101(a)(15)(H)(ii)(a) of such Act based on temporarily
39 performing forestry- and conservation-related services (as defined in section 101(a)(53) of such
40 Act, as added by subsection (a)) or services related primarily to the cultivation, installation, and
41 establishment of horticultural commodities, such services—

42 (1) notwithstanding paragraph (1) of section 3121(b) of the Internal Revenue Code of

1 1986 or any other provision of law, shall be treated as employment for purposes of such
2 section; and

3 (2) shall not be treated as employment for purposes of section 210(a) of the Social
4 Security Act (42 U.S.C. 410(a)).

5 Sec. __. (a) In this section—

6 (1) the term “E-Verify program” means the employment eligibility verification program
7 described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility
8 Act of 1996 (8 U.S.C. 1324a note); and

9 (2) the term “H-2B worker” means a nonimmigrant described in section
10 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (8 U.S.C.
11 1101(a)(15)(H)(ii)(b)).

12 (b)(1) Not later than 1 year after the date of the enactment of this Act, all employers who hire
13 H-2B workers shall attest that they are a participant in good standing in the E-Verify program,
14 as determined by the Secretary of Homeland Security, with respect to all its hiring sites.

15 (2) Not later than 3 years after the date of the enactment of this Act, all employers of H-2B
16 workers shall certify to the Secretary of Homeland Security that the employer has reverified,
17 through the E-Verify program, that all of the employer’s employees who were hired on or after
18 October 1, 2012, are authorized to work in the United States. Such reverification may be
19 accomplished by resubmitting the information required and contained on each employee’s Form
20 I-9.

21 (3) During the period beginning on the date on which an employer submits the certification
22 required under paragraph (2) and ending on the date that is 3 years after the date of the enactment
23 of this Act, for each employee of such employer who is dismissed as a result of the failure to
24 reverify his or her employment authorization through E-Verify, such employer may exempt 1
25 H-2B worker from the numerical limitation set forth in section 214(g)(1)(B) of the Immigration
26 and Nationality Act, as amended by section _ (c)(1)(A)(iii).

27 (4) Nothing in this subsection may be construed to limit the authority of the Secretary of
28 Homeland Security to conduct an audit to verify the employment authorization of the employees
29 of an employer who were hired before October 1, 2012.

30 (c)(1) An employer described in subsection (b) that fails to remain a participant in good
31 standing in the E-Verify program, or to reverify workers who were hired on or after October 1,
32 2012, shall be ineligible to employ any H-2B workers until such failure has been corrected.

33 (2) If the Secretary of Homeland Security determines that an employer has knowingly or
34 willfully violated any requirement relating to the hiring of H-2B workers, including participation
35 in the E-Verify program, the Secretary shall prohibit such employer from employing H-2B
36 workers for up to 2 years.

37 (3) If the Secretary of Homeland Security determines that an employer has, on 3 or more
38 occasions, knowingly or willfully violated any requirement relating to the hiring of H-2B
39 workers, including participation in the E-Verify program, the Secretary shall permanently
40 prohibit such employer from employing H-2B workers.

41 (4) Nothing in this subsection may be construed to modify or limit any authority of the

1 Secretary of Homeland Security or the Secretary of Labor under section 214(c)(14)(A) of the
2 Immigration Act, as amended by section (b)(4), or under any other law.

3 Sec. __. (a)(1) In this section, the term “Compliant Seasonal Employer” means an employer
4 that—

5 (A) has been the recipient of an approved petition for the employment of individuals
6 admitted under section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (8
7 U.S.C. 1101(a)(15)(H)(ii)(b));

8 (B) has employed individuals described in subparagraph (A) during not fewer than 3 of
9 the most recent 5 fiscal years; and

10 (C) is in compliance with the requirements set forth in paragraph (2).

11 (2) An employer is in compliance with the requirements set forth in this paragraph if the
12 Secretary of Homeland Security—

13 (A) determines that such employer has not substantially violated any program
14 requirements; or

15 (B) waives, for good cause, any substantial violations of program requirements that
16 would otherwise prohibit the employer from being classified as a Compliant Seasonal
17 Employer.

18 (b)(1) The Secretary of Homeland Security, after appropriate consultation with the Secretary
19 of Labor and appropriate employers, shall develop, through notice and comment rulemaking, a
20 process to provide priority processing of petitions submitted by Compliant Seasonal Employers
21 for individuals to be admitted under section 101(a)(15)(H)(ii)(b) of the Immigration and
22 Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)).

23 (2) In developing the process described in paragraph (1), the Secretary shall ensure that—

24 (A) all such petitions are submitted to the Secretary not later than 45 days before the first
25 day of the quarter during which the requested beneficiaries are expected to begin their
26 employment with the employer; and

27 (B) all decisions to approve or deny a petition are made not later than 15 days before the
28 first date of employment specified in the petition.

29 (c) For fiscal year 2020, and every fiscal year thereafter, of the visas authorized under section
30 214(g)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(1)(B)), the Secretary of
31 Homeland Security shall issue—

32 (1) not more than 14 percent to aliens whose employment is scheduled to begin during
33 the first quarter of the fiscal year;

34 (2) not more than 45 percent (plus any visas authorized, but not issued, under paragraph
35 (1)) to aliens whose employment is scheduled to begin during the second quarter of the
36 fiscal year;

37 (3) not more than 39 percent (plus any visas authorized, but not issued, under paragraphs
38 (1) and (2)) to aliens whose employment is scheduled to begin during the third quarter of
39 the fiscal year; and

40 (4) not more than 2 percent (plus any visas authorized, but not issued, under paragraph

1 (1), (2), and (3)) to aliens whose employment is scheduled to begin during the fourth quarter
2 of the fiscal year.

3 (d) Not later than 2 years of the date of the enactment of this Act, and every 2 years thereafter,
4 the Secretary of Homeland Security, in the Secretary's sole and unreviewable discretion, after
5 consultation with the Secretary of Labor, shall—

6 (1) compare the quarterly allocation of visas under subsection (c) to the actual need for
7 H-2B workers in each quarter; and

8 (2) adjust the quarterly allocation of such visas accordingly.

9 (e)(1) Subject to paragraph (2), in each calendar quarter subject to the visa allocation set forth
10 in subsection (c), if the number of visas requested by Compliant Seasonal Employers exceeds the
11 number of visas available for such employers, the Secretary shall ensure that each Compliant
12 Seasonal Employer's petition that meets the standards for approval is approved for a minimum
13 number of visas, which calculated in accordance with paragraph (2).

14 (2) Not fewer than 15 percent of visas available in each calendar quarter shall be made
15 available to employers that did not receive an approved petition in 3 of the previous 5 years in
16 which they submitted a petition. If the number of requested visas by such employers exceeds the
17 number of visas available in that quarter, the Secretary shall ensure that each employer's petition
18 that meets the standards for approval is approved for a minimum number of visas, which shall be
19 calculated based on the ratio between the number of visas requested and the number of visas
20 available.

21 (f) If the number of visas approved in any quarter for employers described in paragraph (1) or
22 (2) of subsection (e) is fewer than the number of visas allocated for such employers for that
23 quarter, any excess visas available for that type of employer—

24 (1) shall first be allocated to the other type of employer in that quarter; and

25 (2) if any excess visas remain after the allocation under paragraph (1), such visas
26 (including excess visas from prior quarters in that fiscal year) shall be added to the number
27 of visas available for the next quarter of the fiscal year and allocated in accordance with
28 subsection (e).