

**Text of
Division J, Title IV of the Consolidated Appropriations Act, 2005
(H.R. 4818)**

as passed by Congress and signed into law by the President
on December 8, 2004.

TITLE IV—VISA REFORM

SEC. 401. SHORT TITLE.

This title may be cited as the “L–1 Visa and H–1B Visa Reform Act”.

Subtitle A—L–1 Visa Reform

SEC. 411. SHORT TITLE.

This subtitle may be cited as the “L–1 Visa (Intracompany Transferee) Reform Act of 2004”.

SEC. 412. NONIMMIGRANT L–1 VISA CATEGORY.

(a) IN GENERAL.—Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)) is amended by adding at the end the following:

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“(F) An alien who will serve in a capacity involving specialized knowledge with respect to an employer for purposes of section 101(a)(15)(L) and will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent shall not be eligible for classification under section 101(a)(15)(L) if—

“(i) the alien will be controlled and supervised principally by such unaffiliated employer; or

“(ii) the placement of the alien at the worksite of the unaffiliated employer is essentially an arrangement to provide labor for hire for the unaffiliated employer, rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.”.

(b) APPLICABILITY.—The amendment made by subsection (a) shall apply to petitions filed on or after the effective date of this subtitle, whether for initial, extended, or amended classification.

SEC. 413. REQUIREMENT FOR PRIOR CONTINUOUS EMPLOYMENT FOR CERTAIN INTRACOMPANY TRANSFEREES.

(a) IN GENERAL.—Section 214(c)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)(A)) is amended by striking the last sentence (relating to reduction of the 1-year period of continuous employment abroad to 6 months).

(b) APPLICABILITY.—The amendment made by subsection (a) shall apply only to petitions for initial classification filed on or after the effective date of this subtitle.

SEC. 414. MAINTENANCE OF STATISTICS BY THE DEPARTMENT OF HOMELAND SECURITY.

(a) IN GENERAL.—The Department of Homeland Security shall maintain statistics regarding petitions filed, approved, extended, and amended with respect to nonimmigrants described in section 101(a)(15)(L) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(L)), including the number of such nonimmigrants who are classified on the basis of specialized knowledge and the number of nonimmigrants who are classified on the basis of specialized knowledge in order to work primarily at offsite locations.

(b) APPLICABILITY.—Subsection (a) shall apply to petitions filed on or after the effective date of this subtitle.

SEC. 415. INSPECTOR GENERAL REPORT ON L VISA PROGRAM.

Not later than 6 months after the date of enactment of this Act, the Inspector General of the Department of Homeland Security shall, consistent with the authority granted the Department under section 428 of the Homeland Security Act of 2002 (6 U.S.C. 236), examine and report to the Committees on the Judiciary of the House of Representatives and the Senate on the vulnerabilities and potential abuses in the visa program carried out under section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c)) with respect to nonimmigrants described in section 101(a)(15)(L) of such Act (8 U.S.C. 1101(a)(15)(L)).

SEC. 416. ESTABLISHMENT OF TASK FORCE.

(a) ESTABLISHMENT.—Not later than 6 months after the date of enactment of this Act, there shall be established an L Visa Interagency Task Force that consists of representatives from the Department of Homeland Security, the Department of Justice, and H. R. 4818—545

the Department of State. The Secretaries of each Department and each relevant bureau of the Department of Homeland Security shall appoint designees to the L Visa Interagency Task Force. The L Visa Interagency Task Force shall consult with other agencies deemed appropriate.

(b) REPORT.—Not later than 6 months after the submission of the report by the Inspector General of the Department of Homeland Security in accordance with section 6, the L Visa Interagency Task Force shall report to the Committees on the Judiciary of the House of Representatives and the Senate on the efforts to implement the recommendations set forth by the Inspector General's report. The L Visa Interagency Task Force shall note specific areas of agreement and disagreement, and make recommendations to Congress on the findings of the Task Force, including any suggestions for legislation. The Task Force shall also review other additional issues as may be raised by the Inspector General's report or by the Task Force's own deliberations regarding the policies

and purposes of the visa program relative to national goals and transnational commerce.

SEC. 417. EFFECTIVE DATE.

This subtitle and the amendments made by this subtitle shall take effect 180 days after the date of enactment of this Act.

Subtitle B—H-1B Visa Reform

SEC. 421. SHORT TITLE.

This subtitle may be cited as the “H-1B Visa Reform Act of 2004”.

SEC. 422. TEMPORARY WORKER PROVISIONS.

(a) ATTESTATION REQUIREMENTS FOR H-1B WORKERS.—Section 212(n)(1)(E)(ii) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)(E)(ii)) is amended by striking “October 1, 2003,”.

(b) H-1B EMPLOYER PETITIONS.—Section 214(c)(9) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(9)) is amended—

(1) in subparagraph (A), by striking “October 1, 2003”;

(2) in subparagraph (B), by striking “\$1,000” and inserting “\$1,500”; and

(3) in subparagraph (B), by inserting before the period “except that the fee shall be half the amount for each such petition by any employer with not more than 25 full-time equivalent employees who are employed in the United States (determined by including any affiliate or subsidiary of such employer)”.

SEC. 423. H-1B PREVAILING WAGE LEVEL.

Section 212(p) of the Immigration and Nationality Act (8 U.S.C. 1182(p)) is amended by adding at the end the following:

“(3) The prevailing wage required to be paid pursuant to subsections (a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II) shall be 100 percent of the wage determined pursuant to those sections.

“(4) Where the Secretary of Labor uses, or makes available to employers, a governmental survey to determine the prevailing wage, such survey shall provide at least 4 levels of wages commensurate with experience, education, and the level of supervision.

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Where an existing government survey has only 2 levels, 2 intermediate levels may be created by dividing by 3, the difference between the 2 levels offered, adding the quotient thus obtained to the first level and subtracting that quotient from the second level.”.

SEC. 424. DEPARTMENT OF LABOR INVESTIGATIVE AUTHORITIES.

(a) SECRETARY OF LABOR INVESTIGATIVE AUTHORITY.—

(1) IN GENERAL.—Section 212(n)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)) is amended by inserting after subparagraph (F) the following:

“(G)(i) The Secretary of Labor may initiate an investigation

of any employer that employs nonimmigrants described in section 101(a)(15)(H)(i)(b) if the Secretary of Labor has reasonable cause to believe that the employer is not in compliance with this subsection. In the case of an investigation under this clause, the Secretary of Labor (or the acting Secretary in the case of the absence of disability of the Secretary of Labor) shall personally certify that reasonable cause exists and shall approve commencement of the investigation. The investigation may be initiated for reasons other than completeness and obvious inaccuracies by the employer in complying with this subsection.

“(ii) If the Secretary of Labor receives specific credible information from a source who is likely to have knowledge of an employer’s practices or employment conditions, or an employer’s compliance with the employer’s labor condition application under paragraph (1), and whose identity is known to the Secretary of Labor, and such information provides reasonable cause to believe that the employer has committed a willful failure to meet a condition of paragraph (1)(A), (1)(B), (1)(C), (1)(E), (1)(F), or (1)(G)(i)(I), has engaged in a pattern or practice of failures to meet such a condition, or has committed a substantial failure to meet such a condition that affects multiple employees, the Secretary of Labor may conduct an investigation into the alleged failure or failures. The Secretary of Labor may withhold the identity of the source from the employer, and the source’s identity shall not be subject to disclosure under section 552 of title 5, United States Code.

“(iii) The Secretary of Labor shall establish a procedure for any person desiring to provide to the Secretary of Labor information described in clause (ii) that may be used, in whole or in part, as the basis for the commencement of an investigation described in such clause, to provide the information in writing on a form developed and provided by the Secretary of Labor and completed by or on behalf of the person. The person may not be an officer or employee of the Department of Labor, unless the information satisfies the requirement of clause (iv)(II) (although an officer or employee of the Department of Labor may complete the form on behalf of the person).

“(iv) Any investigation initiated or approved by the Secretary of Labor under clause (ii) shall be based on information that satisfies the requirements of such clause and that—

“(I) originates from a source other than an officer or employee of the Department of Labor; or

“(II) was lawfully obtained by the Secretary of Labor in the course of lawfully conducting another Department of Labor investigation under this Act of any other Act.

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“(v) The receipt by the Secretary of Labor of information submitted

by an employer to the Attorney General or the Secretary of Labor for purposes of securing the employment of a nonimmigrant described in section 101(a)(15)(H)(i)(b) shall not be considered a receipt of information for purposes of clause (ii).

“(vi) No investigation described in clause (ii) (or hearing described in clause (viii) based on such investigation) may be conducted with respect to information about a failure to meet a condition described in clause (ii), unless the Secretary of Labor receives the information not later than 12 months after the date of the alleged failure.

“(vii) The Secretary of Labor shall provide notice to an employer with respect to whom there is reasonable cause to initiate an investigation described in clauses (i) or (ii), prior to the commencement of an investigation under such clauses, of the intent to conduct an investigation. The notice shall be provided in such a manner, and shall contain sufficient detail, to permit the employer to respond to the allegations before an investigation is commenced. The Secretary of Labor is not required to comply with this clause if the Secretary of Labor determines that to do so would interfere with an effort by the Secretary of Labor to secure compliance by the employer with the requirements of this subsection. There shall be no judicial review of a determination by the Secretary of Labor under this clause.

“(viii) An investigation under clauses (i) or (ii) may be conducted for a period of up to 60 days. If the Secretary of Labor determines after such an investigation that a reasonable basis exists to make a finding that the employer has committed a willful failure to meet a condition of paragraph (1)(A), (1)(B), (1)(C), (1)(E), (1)(F), or (1)(G)(i)(I), has engaged in a pattern or practice of failures to meet such a condition, or has committed a substantial failure to meet such a condition that affects multiple employees, the Secretary of Labor shall provide for notice of such determination to the interested parties and an opportunity for a hearing in accordance with section 556 of title 5, United States Code, within 120 days after the date of the determination. If such a hearing is requested, the Secretary of Labor shall make a finding concerning the matter by not later than 120 days after the date of the hearing.”.

(2) RETROACTIVE.—The amendment made by paragraph (1) shall take effect as if enacted on October 1, 2003.

(b) GOOD FAITH COMPLIANCE OR CONFORMITY.—Section 212(n)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)) is amended—

(1) by redesignating subparagraph (H) as subparagraph (I); and

(2) by inserting after subparagraph (G), as added by subsection (a)(1), the following:

“(H)(i) Except as provided in clauses (ii) and (iii), a person or entity is considered to have complied with the requirements of this subsection, notwithstanding a technical or procedural failure to meet such requirements, if there was a good faith attempt to comply with the requirements.

“(ii) Clause (i) shall not apply if—

“(I) the Department of Labor (or another enforcement agency) has explained to the person or entity the basis for the failure;

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“(II) the person or entity has been provided a period of not less than 10 business days (beginning after the date of the explanation) within which to correct the failure; and

“(III) the person or entity has not corrected the failure voluntarily within such period.

“(iii) A person or entity that, in the course of an investigation, is found to have violated the prevailing wage requirements set forth in paragraph (1)(A), shall not be assessed fines or other penalties for such violation if the person or entity can establish that the manner in which the prevailing wage was calculated was consistent with recognized industry standards and practices.

“(iv) Clauses (i) and (iii) shall not apply to a person or entity that has engaged in or is engaging in a pattern or practice of willful violations of this subsection.”.

(c) SECRETARY OF LABOR REPORT.—Not later than January 31 of each year, the Secretary of Labor shall report to the Committees on the Judiciary of the Senate and the House of Representatives on the investigations undertaken based on—

(1) the authorities described in clauses (i) and (ii) of section 212(n)(2)(G) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)(G)(i) and (ii)); and

(2) the expenditures by the Secretary of Labor described in section 286(v)(2)(D) of the Immigration and Nationality Act (8 U.S.C. 1356(v)(2)(D)).

SEC. 425. EXEMPTION OF CERTAIN ALIENS FROM NUMERICAL LIMITATIONS

ON H-1B NONIMMIGRANTS.

(a) IN GENERAL.—Section 214(g)(5) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(5)) is amended—

(1) in the matter preceding subparagraph (A), by striking “is employed (or has received an offer of employment) at”;

(2) in subparagraph (A)—

(A) by inserting “is employed (or has received an offer of employment) at” before “an institution”; and

(B) by striking “or” at the end;

(3) in subparagraph (B)—

(A) by inserting “is employed (or has received an offer of employment) at” before “a nonprofit”; and

(B) by striking the period and inserting “; or”; and

(4) by adding at the end the following:

“(C) has earned a master’s or higher degree from a United States institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)), until the number of aliens who are exempted from such numerical limitation during such year exceeds 20,000.”.

(b) STATISTICS.—Beginning on the date of enactment of this Act, the Secretary of Homeland Security shall maintain statistical information on the country of origin and occupation of, educational level maintained by, and compensation paid to, each alien who is issued a visa or otherwise provided nonimmigrant status and is exempt under section 214(g)(5) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(5)) for each fiscal year. The statistical information shall be included in the annual report to Congress under section 416(c) of the American Competitiveness and Workforce Improvement Act of 1998 (Public Law 105–277; 112 Stat. 2681–655).

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SEC. 426. FRAUD PREVENTION AND DETECTION FEE.

(a) 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:

“(12)(A) In addition to any other fees authorized by law, the Secretary of Homeland Security shall impose a fraud prevention and detection fee on an employer filing a petition under paragraph (1)—

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

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

“(B) In addition to any other fees authorized by law, the Secretary of State shall impose a fraud prevention and detection fee on an alien filing an application abroad for a visa authorizing admission to the United States as a nonimmigrant described in section 101(a)(15)(L), if the alien is covered under a blanket petition described in paragraph (2)(A).

“(C) The amount of the fee imposed under subparagraph (A) or (B) shall be \$500.

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

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

(b) 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:

“(v) H–1B AND L FRAUD PREVENTION AND DETECTION ACCOUNT.—

“(1) IN GENERAL.—There is established in the general fund of the Treasury a separate account, which shall be known as the ‘H–1B and L Fraud Prevention and Detection Account’. Notwithstanding any other provision of law, there shall be deposited as offsetting receipts into the account all fees collected under section 214(c)(12).

“(2) USE OF FEES TO COMBAT FRAUD.—

“(A) SECRETARY OF STATE.—One-third of the amounts deposited into the H–1B and L Fraud Prevention and Detection Account shall remain available to the Secretary of State until expended for programs and activities at United States embassies and consulates abroad—

“(i) to increase the number diplomatic security personnel assigned exclusively to the function of preventing and detecting fraud by applicants for visas described in subparagraph (H)(i) or (L) of section 101(a)(15);

“(ii) otherwise to prevent and detect such fraud pursuant to the terms of a memorandum of understanding or other cooperative agreement between the Secretary of State and the Secretary of Homeland Security; and

“(iii) upon request by the Secretary of Homeland Security, to assist such Secretary in carrying out the fraud prevention and detection programs and activities described in subparagraph (B).

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“(B) SECRETARY OF HOMELAND SECURITY.—One-third of the amounts deposited into the H–1B and L Fraud Prevention and Detection Account shall remain available to the Secretary of Homeland Security until expended for programs and activities to prevent and detect fraud with respect to petitions under paragraph (1) or (2)(A) of section 214(c) to grant an alien nonimmigrant status described in subparagraph (H)(i) or (L) of section 101(a)(15).

“(C) SECRETARY OF LABOR.—One-third of the amounts deposited into the H–1B and L Fraud Prevention and Detection Account shall remain available to the Secretary of Labor until expended for enforcement programs and

activities described in section 212(n).

“(D) CONSULTATION.—The Secretary of State, the Secretary of Homeland Security, and the Secretary of Labor shall consult one another with respect to the use of the funds in the H–1B and L Fraud Prevention and Detection Account.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act, and the fees imposed under such amendments shall apply to petitions under section 214(c) of the Immigration and Nationality Act, and applications for nonimmigrant visas under section 222 of such Act, filed on or after the date that is 90 days after the date of the enactment of this Act.

SEC. 427. CHANGE OF FEE FORMULA.

Section 286(s) of the Immigration and Nationality Act (8 U.S.C. 1356(s)) is amended—

(1) in paragraph (2), by striking “55 percent” and inserting “50 percent”;

(2) in paragraph (3), by striking “22 percent” and inserting “30 percent”;

(3) in paragraph (4)(A), by striking “15 percent” and inserting “10 percent”;

(4) in paragraph (5)—

(A) by striking “4 percent” and inserting “5 percent”;

and

(B) by striking “Attorney General” each place that term appears and inserting “Secretary of Homeland Security”;

and

(5) in paragraph (6), by striking “Beginning with fiscal year 2000,” and all that follows through “within a 7-day period.” and inserting “Beginning with fiscal year 2000, 5 percent of the amounts deposited into the H–1B Nonimmigrant Petitioner Account shall remain available to the Secretary of Labor until expended for decreasing the processing time for applications under section 212(n)(1).”.

SEC. 428. GRANTS FOR JOB TRAINING FOR EMPLOYMENT IN HIGH GROWTH INDUSTRIES.

Section 414(c) of the American Competitiveness and Workforce Improvement Act of 1998 (112 Stat. 2681–653) is amended to read as follows:

“(c) JOB TRAINING GRANTS.—

“(1) IN GENERAL.—The Secretary of Labor shall use funds available under section 286(s)(2) of the Immigration and Nationality Act (8 U.S.C. 1356(s)(2)) to award grants to eligible H. R. 4818—551

entities to provide job training and related activities for workers

to assist them in obtaining or upgrading employment in industries and economic sectors identified pursuant to paragraph (4) that are projected to experience significant growth and ensure that job training and related activities funded by such grants are coordinated with the public workforce investment system.

“(2) USE OF FUNDS.—

“(A) TRAINING PROVIDED.—Funds under this subsection may be used to provide job training services and related activities that are designed to assist workers (including unemployed and employed workers) in gaining the skills and competencies needed to obtain or upgrade career ladder employment positions in the industries and economic sectors identified pursuant to paragraph (4).

“(B) ENHANCED TRAINING PROGRAMS AND INFORMATION.

—In order to facilitate the provision of job training services described in subparagraph (A), funds under this subsection may be used to assist in the development and implementation of model activities such as developing appropriate curricula to build core competencies and train workers, identifying and disseminating career and skill information, and increasing the integration of community and technical college activities with activities of businesses and the public workforce investment system to meet the training needs for the industries and economic sectors identified pursuant to paragraph (4).

“(3) ELIGIBLE ENTITIES.—Grants under this subsection may be awarded to partnerships of private and public sector entities, which may include—

“(A) businesses or business-related nonprofit organizations, such as trade associations;

“(B) education and training providers, including community colleges and other community-based organizations; and

“(C) entities involved in administering the workforce investment system established under title I of the Workforce Investment Act of 1998, and economic development agencies.

“(4) HIGH GROWTH INDUSTRIES AND ECONOMIC SECTORS.—

For purposes of this subsection, the Secretary of Labor, in consultation with State workforce investment boards, shall identify industries and economic sectors that are projected to experience significant growth, taking into account appropriate factors, such as the industries and sectors that—

“(A) are projected to add substantial numbers of new jobs to the economy;

“(B) are being transformed by technology and innovation requiring new skill sets for workers;

“(C) are new and emerging businesses that are projected to grow; or

“(D) have a significant impact on the economy overall or on the growth of other industries and economic sectors.

“(5) **EQUITABLE DISTRIBUTION.**—In awarding grants under this subsection, the Secretary of Labor shall ensure an equitable distribution of such grants across geographically diverse areas.

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“(6) **LEVERAGING OF RESOURCES AND AUTHORITY TO REQUIRE MATCH.**—

“(A) **LEVERAGING OF RESOURCES.**—In awarding grants under this subsection, the Secretary of Labor shall take into account, in addition to other factors the Secretary determines are appropriate—

“(i) the extent to which resources other than the funds provided under this subsection will be made available by the eligible entities applying for grants to support the activities carried out under this subsection; and

“(ii) the ability of such entities to continue to carry out and expand such activities after the expiration of the grants.

“(B) **AUTHORITY TO REQUIRE MATCH.**—The Secretary of Labor may require the provision of specified levels of a matching share of cash or noncash resources from resources other than the funds provided under this subsection for projects funded under this subsection.

“(7) **PERFORMANCE ACCOUNTABILITY.**—The Secretary of Labor shall require grantees to report on the employment outcomes obtained by workers receiving training under this subsection using indicators of performance that are consistent with other indicators used for employment and training programs administered by the Secretary, such as entry into employment, retention in employment, and increases in earnings. The Secretary of Labor may also require grantees to participate in evaluations of projects carried out under this subsection.’’.

SEC. 429. NATIONAL SCIENCE FOUNDATION LOW-INCOME SCHOLARSHIP PROGRAM.

(a) **EXPANSION OF ELIGIBILITY.**—Section 414(d)(2)(A)(iii) of the American Competitiveness and Workforce Improvement Act of 1998 (42 U.S.C. 1869c(d)(2)(A)(iii)) is amended by striking “or computer science.” and inserting “computer science, or other technology and science programs designated by the Director.’’.

(b) INCREASE IN AWARD AMOUNT.—Section 414(d)(3) of the American Competitiveness and Workforce Improvement Act of 1998 (42 U.S.C. 1869c(d)(3)) is amended by striking “\$3,125 per year” and inserting “\$10,000 per year”.

(c) FUNDS.—Section 414(d)(4) of the American Competitiveness and Workforce Improvement Act of 1998 (42 U.S.C. 1869c(d)(4)) is amended by adding at the end the following: “The Director may use no more than 50 percent of such funds for undergraduate programs for curriculum development, professional and workforce development, and to advance technological education. Funds for these other programs may be used for purposes other than scholarships.”.

(d) PUBLICATION OF ELIGIBLE PROGRAMS.—Section 414(d) of the American Competitiveness and Workforce Improvement Act of 1998 (42 U.S.C. 1869c(d)) is amended by adding at the end the following:

“(5) FEDERAL REGISTER.—Not later than 60 days after the date of enactment of the L–1 Visa and H–1B Visa Reform Act, the Director shall publish in the Federal Register a list of eligible programs of study.”.

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SEC. 430. EFFECTIVE DATES.

(a) IN GENERAL.—Except as provided in subsection (b), this subtitle and the amendments made by this subtitle shall take effect 90 days after the date of enactment of this Act.

(b) EXCEPTIONS.—The amendments made by sections 422(b), 426(a), and 427 shall take effect upon the date of enactment of this Act.