April 14, 1998

H1-B REFORM OPTIONS

Background

- Senate committee has reported out an H-1B bill (Abraham-Hatch) that would raise the H-1B cap from 65,000 to 115,000, without including proposed reforms (recruitment, no lay-offs), expanded enforcement tools, or ensuring additional money for educating and training U.S. workers.

- This committee action explicitly rejected both reforms and additional money for education and training by defeating the Kennedy substitute on a bipartisan vote, even though the Kennedy substitute included only a modest fee ($250) on employers' H-1B applications.

- Given that demands to raise the H-1B cap are driven largely by the IT industry claiming significant shortages of qualified workers, the issue is whether an alternative proposal can be structured that would win the support of the IT industry while including both reforms and additional money for education and training.

A New Proposal

- The objective of the new proposal would be to give the IT industry a major concession -- creation of a new temporary worker H-1C visa category restricted to IT occupations -- in return for the IT industry accepting: (1) application of the no layoff and recruit/retain reforms to both the H-1B program and, in modified form, to the new H-1C program; (2) application fees imposed on all H-1B and H-1C applications ($250 or $500) to generate money for educating and training U.S. workers; and (3) higher education/experience requirements for the new H-1C visa category to focus the program on higher skilled jobs.

- In effect, the new proposal puts additional visas above the 65,000 H-1B cap into a new H-1C program for IT occupations as opposed to simply adding these visas to the H-1B program where the IT industry has to compete with other industries for available visas. In return, it asks for significant reform of the H-1B program as well as similar requirements for the new H-1C program.

- The significant differences between this proposal and the Kennedy proposal is that: (1) the additional visas are restricted to IT occupations; (2) the educational requirements for these visas are higher; and (3) the recruitment attestation would be more narrow in order to be more acceptable to industry.

- The new proposal would have the following features:

  -- the cap for the current H-1B program would remain unchanged but the program would be reformed by adding recruitment and no lay-off to the attestation process, as well as a shortened maximum length of stay under the H-1B visa to 3 years, expanding enforcement authority, and imposing an application fee of $250 or $500 to pay for education and training for U.S. workers;

-- a new H-1C visa category would be created for 3 years providing 25,000 visas for computer-related occupational categories as defined by BLS to include: (1) computer systems analysts and scientists; (2) operations and systems researchers and analysts; and (3) computer programmers;

-- the new program would involve an attestation process, including existing H-1B attestation requirements, the reforms to be applied to the H-1B program (recruitment and no lay-offs), expanded enforcement authority, and an application fee, except that the recruitment requirement would be narrowed in an effort to make it more acceptable to the IT industry;

-- the recruitment attestation for the H-1C program would differ from that included for the H-1B program by: (1) allowing employers to hire a foreign worker who is "better" qualified even though there are U.S. workers who meet the minimum qualifications for the job, but still requiring evidence that some U.S. workers have been hired into the occupational category; and possibly (2) eliminating the employer's need to show success in recruiting U.S. workers into the occupation by shifting the focus from a performance standard (success in finding U.S. workers using industry standards) to compliance with a set of specified procedures (see attached); and

?

-- finally, the H-1C category would have higher education/experience requirements in order to focus the category on foreign workers with higher skills -- a minimum of a masters degree or bachelors degree plus 5 years of specialized experience.

Pros

-- Consistent with preference stated by the President for tilting immigration policy to favor higher-skilled immigrants as opposed to lesser-skilled immigrants.

-- Also responds directly and narrowly to alleged industry needs for essential skills at the higher end as stated by industry representatives in congressional testimony.

-- Helps meet IT worker shortages in long-term by raising money through application fees to educate and train U.S. workers for IT jobs.

-- Helps better assure that all H-1B and H-1C visas go to employers facing real shortages by requiring recruitment and prohibiting lay-offs and including the enforcement authority needed to ensure that these requirements, as well as the existing H-1B requirements, are adhered to.

Cons

-- Establishes bad precedent for "special interests" wanting their own visa program.

-- Contrary to Administration and Commission on Immigration Reform calls to streamline and simplify the alphabet-soup of nonimmigrant visa categories.

-- Given the lack of enthusiasm for H-1B reforms, it may not be possible to find someone to introduce such a bill.

-- IT industry, as well as other industries using H-1B program, likely to adamantly oppose any reforms for either H-1B or H-1C visas, viewing them as unwarranted interference in how they operate their businesses.

-- IT industry likely to oppose proposed trade-off because it imposes significant barriers on additional visas that are not present in the bill reported out of committee in the Senate -- the increased fee, raising of educational requirements, and program reforms. IT employers would prefer to compete with other employers under a much higher cap rather deal with such barriers.

-- Any fee on visas likely to be viewed as a tax imposed on companies who cannot find qualified U.S. workers and therefore strongly opposed by both the IT industry and many in Congress. A similar proposal for a ~~for a~~ much higher fee on visas under the permanent employment-based immigration system was quickly abandoned by Congress in 1995.

-- Other industries currently using the H-1B program would strongly oppose an effective expansion of the program that was limited to IT-related occupations that still requires them to compete for H-1B visas with the IT industry under the 65,000 cap.

H-1B "Recruit and Retain" Possible Retreat Path

Starting Point – Senator Kennedy's bill, S. 1878, provides good language effecting a new H-1B attestation through which employers would indicate they are undertaking efforts to look first in the domestic U.S. labor market for qualified U.S. workers to meet their employment needs. Sen. Kennedy's language, which was fully acceptable to the Administration in the past, reads as follows:

If steps are effective, why do you need a nonimmigrant (?)

> *"The employer, prior to filing the application, has taken timely, significant and effective steps to recruit and retain sufficient United States workers in the specialty occupation in which the nonimmigrant whose services are being sought will be employed. Such steps include good faith recruitment in the United States using procedures that meet industry-wide standards offering compensation as required by subparagraph (A) and offering employment to any qualified United States worker applicant or such good faith recruitment must otherwise be unsuccessful."*
>
> *"The recruitment requirements of this subparagraph shall not apply to aliens with extraordinary ability, aliens who are outstanding professors and researchers, and certain multinational executives and managers described in section 203(b)(1)."*

First Fall-back – Use Senator Kennedy's language, but delete "*offering employment to any qualified United States worker applicant or*" and "*otherwise*" so this attestation would read as follows:

> *"The employer, prior to filing the application, has taken timely, significant and effective steps to recruit and retain sufficient United States workers in the specialty occupation in which the nonimmigrant whose services are being sought will be employed. Such steps include good faith recruitment in the United States using procedures that meet industry-wide standards offering compensation as required by subparagraph (A) and such good faith recruitment must be unsuccessful."*
>
> *"The recruitment requirements of this subparagraph shall not apply to aliens with extraordinary ability, aliens who are outstanding professors and researchers, and certain multinational executives and managers described in section 203(b)(1)."*

This language preserves several ideas in the Kennedy language:

- That the employer's domestic recruitment be "effective" – in other words, that it result in the hiring of at least some U.S. workers into the occupational category;

- That the recruitment procedures be based on "industry-wide standards" so as to rebut employers' contention that recruitment procedures would be government-imposed, excessively burdensome, bureaucratic, costly and unproductive;

- That the employer's recruitment efforts be shown to be unsuccessful – *i.e.*, not turning up a U.S. worker as well-qualified as the nonimmigrant that the employer wants to hire; and,

- That the recruitment attestation not apply whenever the worker meets the criteria for employment-based immigrants in the "Priority Worker" (EB-1) category.

At the same time, deleting the phrase from the current language accommodates employers' oft-stated concern that they not be precluded from hiring who they consider to be the "best" qualified (foreign) worker by being forced to hire (or later scrutinized for not hiring) a less or equally – though – qualified (U.S.) worker.

This is not the concern we want to address.

This is an important policy consideration – should our immigration policy allow U.S. employers to hire who they consider to be better-qualified foreign temporary workers into permanent, high-skilled jobs when qualified – though arguably somewhat less, or equally qualified – U.S. workers are available, interested applicants?

Second Fall-back – Starting with the modified Kennedy language (above), delete *"and such good faith recruitment must be unsuccessful"* and add language that defines the "timely, significant ... steps to recruit and retain" U.S. workers that employers must take.

This approach, which was used in the now-expired H-1A nonimmigrant nurses program, has the effect of shifting the focus of a recruitment/retention attestation from **a performance standard** – success in finding, or preference for, qualified U.S. workers while deferring to the industry to decide how to do so – to **procedural compliance**. In other words, an employer would be attesting that it had done certain specified things to test the U.S. labor market and retain/~~retain~~ qualified U.S. workers for employment in the occupational classification, rather than leaving the methods up to the employer to get them to attest to the success of these methods. Language could look like the following:

> *"The employer, prior to filing the application, has taken timely, significant and effective steps to recruit and retain sufficient United States workers in the specialty occupation in which the nonimmigrant whose services are being sought will be employed. Such steps shall include good faith recruitment in the United States using procedures that meet industry-wide standards offering compensation as required by subparagraph (A). In addition, such steps shall include at least two* [OR MORE?] *of the following:*
>
> *(1) Offering and paying wages which are at least 110 percent of the*

? Does this mean that employer must offer all who apply for this job to pay 110% of prevailing wage or those H1B workers would be paid 110%

prevailing wage for the occupational classification in the area of intended employment (plus the same benefits and other forms of compensation provided other workers similarly-employed by the employer);

(2) Providing meaningful monetary incentives (i.e., bonuses and training subsidies not included in the base compensation package) that encourage employees in the occupational classification to enhance their skills to meet the needs of the employer;

?

(3) Operating an employer-financed training program at the employer's facility or financing (or otherwise providing for) a training program elsewhere which provides the means for its employees in the occupational classification ~~to~~ enhance their skills to meet the needs of the employer;

?

Is this something that we can ask small business to do?

(4) Providing employer-financed career development programs that provide the means for the employer's non-professional employees to acquire and enhance their skills to meet the needs of the employer ~~and from which the employer regularly hires into the occupational classification subject of the application;~~

(5) Operating an employer-financed training program at the employer's facility or financing (or otherwise providing for) a training program elsewhere which provides the means for individuals not employed by the employer who are seeking employment and/or retraining in the occupational classification to acquire or enhance their skills to meet the needs of the employer from which the employer regularly hires into the occupational classification subject of the application;

(6) Recruiting by advertising for all job opening in the occupational classification through America's Job Bank, the Internet, in general circulation publications (e.g., newspapers and magazines) in the area of intended employment and other productive labor supply areas, in professional journals and magazines, in job fairs conducted by the industry and the employer, and through other such means as are typically used in the industry."

"The recruitment requirements of this subparagraph shall not apply to aliens with extraordinary ability, aliens who are outstanding professors and researchers, and certain multinational executives and managers described in section 203(b)(1)."

The temporary foreign nurses program provided that the list of steps included in the law was "not an exclusive list" – it allowed employers to commit to other steps of their own design, which they had to describe/explain – and it said that employers had to commit to taking two steps unless the employer "can demonstrate that taking a second step is not reasonable."

"Bottom-Line" (No Further Retreat) – At a minimum, the Administration should hold to its original proposal to add an element [check-the-box] requiring an employer-applicant to attest that it:

"has taken timely and significant steps designed to recruit and retain sufficient U.S. workers in the occupational classification subject of the application in which such nonimmigrant is intended to be employed in order to remove as quickly as possible the employer's dependence on nonimmigrant workers unless the cumulative number of workers included in application(s) filed by the employer in the previous three (3) years is no greater than:

(A) 10 workers, or

(B) 50 workers provided that the minimum qualification(s) for the job(s) subject of the application(s) is a master's degree (or equivalent) or higher."

To this language could be added the paragraph from the Kennedy bill exempting from the recruitment/retention attestation any employer applying to hire an H-1B worker that meets the EB-1 criteria (*"aliens with extraordinary ability, aliens who are outstanding professors and researchers, and certain multinational executives and managers described in section 203(b)(1)"*). Also, legislative language would have to be added (from the Kennedy bill) to define the term "U.S. worker," which was left to the Secretary's regulations in the Administration's original proposal, and the "*industry-wide standards*" concept could be added as well. This legislative language would:

- Not require employers' recruitment/retention efforts to be "effective" – in other words, employers could "go through the motions" of recruiting in the U.S. and, theoretically, never have to hire a U.S. worker into the occupation.

- Exempt from the recruitment/retention attestation any employer-applicant which is an occasional user of the H-1B program and less occasional users that use the H-1B program for higher-skilled jobs.

- With the addition of the Kennedy (EB-1) language, exempt from the recruitment/retention attestation employer-applicants whenever they use the H-1B program to hire the highest skilled workers.

However, keeping the Administration's language regarding the intent/purpose of the "timely and significant steps" – that is, "*in order to remove as quickly as possible the employer's dependence on nonimmigrant workers*" (taken directly from the H-1A nonimmigrant nurses law) – may be perceived/construed as at least implying that the employer's recruitment/retention efforts could be judged, over time, based on whether the nonimmigrant component of its workforce decreases.

NOTE: The Kennedy language "*in the specialty occupation in which the nonimmigrant whose services are being sought will be employed*" could be substituted for the Administration's language "*in the occupational classification subject of the application in which such nonimmigrant is intended to be employed*" without substantive effect.

→ Debra Bond OMB
Earl Gold OCIA
latest - hopefully satisfactory - version of Abraham Q/As re H-1B. 15 pages
Done? Frank Trace 4/9/98

(1)

Question: How many cases of willful (failure-to-pay) violations of the H-1B program has the DOL established for fiscal year 1997? What was the total number of visas involved in these willful violations in 1997? What is the percentage of visas involved in these willful violations as a percentage of the total number of H-1B visas issued in 1997?

Answer: The Department of Labor operates within the narrow constraint of investigating complaints from potentially aggrieved parties alleging violations of the H-1B requirements; the Department does not conduct random compliance inspections nor targeted investigations of likely violators. Initially, the Department was so constrained by regulation. When the Department promulgated new regulations which broadened its investigation authority, the change was challenged in a lawsuit. Although the regulation was not invalidated, the Department has continued to operate within the ~~pre-existing constraints.~~ ~~prior constraints.~~ constraints of the old regulation.

In addition, H-1B nonimmigrant workers – like other employment-based nonimmigrants – have significant incentives not to lodge complaints against their employers ~~(and seldom do)~~, even where violations – including serious violations – may be occurring. We believe this is so because the workers are entirely dependent on their employer to remain legally and work in the U.S., and, in many cases, eventually sponsor the worker for permanent residency. We believe that these factors account for the relatively low number of worker complaints received (in several nonimmigrant programs, not just H-1B) and the relatively large portion of complaints received from business competitors and other parties. Since the H-1B program was enacted, only 295 complaints alleging violations have been received by the Department of Labor even though a review by the Office of Inspector General found that ~~one-in-five~~ (19 percent) of H-1B workers "*were paid below the wage specified on the LCA* [employer's application], *when we could determine the actual wage paid.*"

Further, in its enforcement of the H-1B requirements, the Department exercises considerable discretion and caution in characterizing violations uncovered as willful depending not just on the actual nature of the violation (and the associated burden of proof), but in consideration of all the circumstances, including such matters as the prior compliance history of the employer, the explanation of the cause of the violations, the employer's willingness to remedy the violations and commitment to future compliance, and like factors. Another factor that is considered in cases where there are multiple violations is whether there are other potentially debarring violations – such as misrepresentation of a material fact in the employer's labor condition attestation – that mitigate against undertaking to prosecute a willful failure-to-pay violation if remedy can be obtained.

In this important context – and recognizing that there are cases involving potential willful (and non-willful) failure-to-pay violations under the H-1B program which arose in FY 1997 that remain open and under investigation – there were three (3) cases of willful failure-to-pay violations closed in FY 1997, each involving one employee, and representing a tiny percentage of H-1B admissions during that year.

However, for the reasons discussed above, it is the Department's view that the numbers and proportions of willful (and non-willful) failure-to-pay violations found under the H-1B program can not be interpreted as indicating the level of compliance among H-1B employers. There simply are no enforcement data that can be used with any degree of reliability which indicate whether or the extent to which H-1B employers comply with their obligations under the program, or ~~that~~ whether H-1B nonimmigrant employees are ~~or are not~~ victims of violations. However, as noted above, the Department of Labor's Inspector General, in its review of the H-1B program, found that 19 percent of H-1B workers were paid less than the wage level promised to be paid on the employer's application.

2

Question: **How many willful violations (failure-to-pay) has the DOL established in the H-1B program since FY 1991? What is the average number of such violations per year? What is the percentage of visas involved in these willful violations as a percentage of the total number of H-1B visas issued since FY 1991?**

Answer: In the same context and for the same reasons as discussed with respect to the first set of questions, since FY 1991, the Department's closed, complaint-based H-1B investigations have found eight (8) cases of willful failure-to-pay, which averages to about one-per-year and represents a tiny fraction of H-1B admissions. However, it must be restated that these data cannot be interpreted to indicate the level of compliance ~~(or violations)~~ in the H-1B program.

3

Question: What is the average underpayment of wages per employee involved in the cases of willful violations DOL found in 1997?

Answer: In the H-1B cases closed during FY 1997 that found willful failure-to-pay required wages, the average underpayment of wages per employee was $15,450.

4

Question: **How many cases on non-willful violations (failure-to-pay) has the DOL established in the H-1B program in FY 1997? What is the average underpayment of wages per employee involved in the cases of non-willful violations in 1997? What was the total number of visas involved in these non-willful violations in FY 1997? What is the percentage of visas involved in these non-willful violations as a percentage of the total number of H-1B visas issued in FY 1997? What is the average underpayment of wages per employee involved in these cases of non-willful violation?**

Answer: In FY 1997, there were ten (10) cases closed in which non-willful failure-to-pay the required wage was cited as a violation, involving 29 workers with an average underpayment of wages per worker of $3,257. Again, this represents a tiny portion of all H-1B workers admitted, but cannot be interpreted as a reliable indicator of the extent of compliance (or violations) in the H-1B program.

(5)

Question: Please list all of the cases documented by the Department of Labor since 1991 of American companies who laid off U.S. workers and replaced them with workers on H-1B visas who were paid lower wages than the U.S. workers they replaced. Please provide a table with a year-by-year tabulation of the number of such layoffs each year, from 1991 through 1998 to date. Please also indicate whether there was any enforcement action or settlement agreement involving any of the cases described above.

does not violate laws under the jurisdiction DOL

Answer: The Department has no such list (or related data) because – despite the Administration's continuing efforts for reform – it ~~remains entirely legal~~ for a U.S. employer to lay-off its U.S. workers and replace them with H-1B nonimmigrant workers. However, the Civil Rights Division of the Department of Justice enforces the antidiscrimination provisions of the Immigration and Nationality Act (8 U.S.C. Sec. 1324b) which prohibit employment discrimination against U.S. workers based on citizenship status. The Department of Justice filed suit against McDonnell Douglas in 1990 alleging that U.S. workers were refused employment in preference to workers on H-2B nonimmigrant visas. After Justice prevailed on the jurisdictional issue, U.S. v. McDonnell Douglas Corp., 2 OCAHO 351 (7/3/91), that such actions were covered by 8 U.S.C. Sec. 1324b, the case settled. More recently, an Administrative Law Judge (ALJ) held in Iron Workers Local 455, et al. v. Lake Construction & Development Corporation, OCAHO Case no. 95B00165 (9/12/97), that the refusal to hire U.S. workers in preference to seeking labor certification for a nonimmigrant worker was citizenship status discrimination in violation of 8 U.S.C. Sec. 1324b and ordered the payment of nearly $95,000 in back wages to six complainants.

Under current law, employers wanting to recruit and employ H-1B nonimmigrant workers do not have to test the U.S. labor market to try to fill their employment needs with qualified, available, interested U.S. workers. And, U.S. employers wanting to recruit and hire H-1B nonimmigrant workers are ~~free to fire or lay-off~~ their U.S. workers to replace them with H-1B nonimmigrant workers that they hire directly or obtain through employee leasing or contract. This Administration has been trying to change this situation – without success – for nearly five years. ~~Because these~~ labor ~~reasonable, obvious and necessary requirements are not in current law, the Department has no authority nor reason to look into situations where U.S. workers have been displaced by H-1B nonimmigrants — nothing to enforce, no list.~~ The Department is aware, however, primarily through press reports, of several instances in which such lay-off and replacement have occurred. An example of a lay-off occurrence in the computer field involved a ~~Syntel, Inc., a Michigan~~ company with a workforce that, in 1995, was more than 80 percent H-1B nonimmigrants, in this case computer analysts from India. Among its business operations, ~~Syntel~~ contracts to provide computer personnel or services to other businesses. In its operations in New Jersey, ~~Syntel~~ the company contracted with ~~American International Group, Inc. (AIG)~~, a large insurance company, to provide computer services in the place of nearly 250 ~~AIG~~ employees, which ~~AIG~~ were laid off. In fact, ~~AIG's~~ laid-off U.S. workers were required to train their H-1B nonimmigrant replacements, ~~employees of Syntel~~, during their last few weeks on the

the company

not barred by labor laws from firing or laying off job. ~~Displacing laid-off U.S. workers was then and remains perfectly legal under the H-1B program.~~ This is simply wrong. The Department of Labor needs some statutory authority to deal with such situations in order to supplement and enhance the jurisdiction and efforts of the Department of Justice.

There is no labor law remedy for ~~the~~ displacement of U.S. workers laid off as a result of ~~the~~ H-1B program

6

Question: In your testimony, you stated that 26% of the people using H-1B visas are physical and occupational therapists. But the Senate Immigration Subcommittee has been advised by the Immigration and Naturalization Service that it cannot report on the number of individuals who actually are admitted or who receive H-1B visas annually by occupation. This information is not kept track of in INS computers.

(A) What is the basis for your claim that 25% of those entering are physical therapists?

Answer: I believe I stated, and I certainly meant to state, that 26 percent of the jobs certified by the Labor Department under the H-1B program are physical and occupational therapists. Although the INS does not keep track of H-1B petitions by occupation, the Labor Department does keep track of jobs certified (from approved employers' applications) by occupation. During Fiscal Year 1997, the Labor Department certified 103,097 H-1B job openings under the 3-digit occupational code "076 - Therapists." For all occupations, the Department certified just under 400,000 H-1B job openings in FY 1997; hence, the 25.9 percent figure cited for the number of therapists.

(B) The Senate Immigration Subcommittee has received information from the Department of Labor's Employment and Training Administration with regards to the difference between openings certified in the H-1B program and the number of workers who are actually admitted to the country. ETA stated "the number of openings certified bears little resemblance to the actual number of foreign workers admitted." Please explain to the Committee why the number of applications certified bears little resemblance to the number of workers admitted.

Answer: The number of H-1B job openings certified is not directly relevant to the number of H-1B workers actually admitted. The DOL certifies job openings encompassed in employer-filed labor condition applications (LCAs). There is nominal cost and minimal effort involved in filing an LCA, and there is no limit to the number of employer applications or H-1B job openings the Labor Department can approve/certify for H-1Bs in any year. Approval of H-1B petitions is done by INS, and issuance of the actual H-1B visas is done by the Department of State.

Employers often file a single LCA for multiple job openings and/or LCAs for various locations. This is particularly true where the employer-applicant is a job contractor, as is often the case in applications for therapists and computer professionals. Also, we know that a number of employers – job contractors in particular – file anticipatory LCAs for 50 or more workers in a particular geographic area or region. They may not currently have a contract to provide services in that area, but file the application in case the need should arise at some point in the future. For example, a job contractor filed a labor condition application for a large number of therapists to be employed – according to the employer – in "the State of Texas, see attached list." Attached to the application was a list of every city and county in the State of Texas.

(C) Please detail for the Committee for the most recent year available how many more labor condition applications are received as compared to the number of individuals actually admitted on H-1B visas. Please explain why these applications outnumber actual admissions and therefore are not a reliable indicator of how many people enter in particular occupations in any given year. Do postings and contracting play an important role in this?

Answer: In Fiscal Year 1997, the Labor Department received 180,739 LCAs from employers of which 162,363 were certified. The total number of job openings certified on the 162,363 approved LCAs was 398,324. As noted in the previous response, a number of employers - job contractors in particular - file a single LCA for multiple jobs and/or LCAs for various locations for which they may not ultimately seek admission of workers. The Labor Department does not have information on the number of actual H-1B admissions (visa issuance statistics are maintained by the Department of State).

(D) Does the Department of Labor know how many individuals actually entered the United States on H-1B visas as physical therapists, fashion models, or any other specific occupation in 1996 and 1997? If so, what is the exact count for these two years?

Answer: No. The Department of Labor does not have such information. The INS does not keep track of the occupations of individuals sought through H-1B petitions, nor does the Department of State maintain statistics on the occupation to be pursued by individuals to whom H-1B visas are issued (though State does track the number of such visas). So – as your earlier question notes – it is not known how many individuals actually enter the country on H-1B visas for any given occupation each year. INS approved H-1B petitions are valid for a maximum six years (if renewed after the initial maximum three-year period), and a maximum of 65,000 new visas can be issued annually. However, we do not know how many H-1B visa holders are currently in the country (of the theoretical 390,000 maximum), nor do we know their occupations.

7

Question: What is the chief source of complaints received by DOL regarding possible violations of the H-1B program?

Answer: The most common source of complaints alleging H-1B violations is from H-1B workers. However, for reasons explained in response to an earlier question, there are relatively few such complaints and - like in other nonimmigrant programs - a higher-than-usual portion of complaints received from other parties, including business competitors. Since the H-1B program was enacted, only 295 complaints alleging violations have been received by the Department of Labor even though a review by the Office of Inspector General found that ~~one-in-five (19 percent)~~ of H-1B workers "*were paid below the wage specified on the LCA* [employer's application], *when we could determine the actual wage paid.*"

8

Question: Please list all the potential sources from which complaints may be received by the Department of Labor for the H-1B program.

Answer: Under the law, a complaint may be entertained from a potentially aggrieved party. As a practical matter, this includes H-1B or U.S. workers (or their union), competing business, or other governmental agencies.

9

Question: Please provide evidence of documented cases to the Committee regarding the statement that an individual on an H-1B [visa] is unlikely to issue a complaint.

Answer: We do not have evidence documenting complaints that were not made alleging violations because H-1B workers face serious disincentives to file complaints against their employer and are unlikely to do so. This question appears to involve things that do not happen; it is, of course, difficult to empirically prove why something does not occur. However, there have been cases in our H-1B investigations where H-1B employees interviewed have expressed fear of deportation as a reason for their reluctance to cooperate or refusal to file a complaint alleging violations. Such occurrences are not documented for what should be obvious reasons.

As pointed out in an earlier answer, the disincentives faced by nonimmigrant workers – and not just H-1B workers – include the fact that they are entirely dependent on their employer to remain legally, and to continue to work, in the U.S. for the duration of their temporary admission, and to obtain extension of such temporary stay (as under the H-1B program) which must be sought by their employer. Further, if an H-1B worker has any ambition to prolong his/her stay in the U.S. beyond the allowable limit as a nonimmigrant (six years under the H-1B program), the individual is also dependent on the employer to "sponsor" them for change of status, including permanent residency. [About half of employment-based immigrants convert from H-1 status.] These are indeed powerful incentives not to do anything to "rock the boat" in the employment relationship, incentives that are not typically present in employment relationships based on "free" labor.

10

Question: Does the term "best and brightest" appear in the statute with regard to the H-1B program?

Answer: It does not. However, the predecessor to the H-1B program - the H-1 program[1] - allowed for the temporary entry of foreign workers "of distinguished merit and ability...." This clearly implied that the original intent of the program was to bring the "best and the brightest" from abroad, and not lower- or "journey-level" employees for which the H-1B program is commonly used as demonstrated by the wage distribution data on employers' H-1B applications. Further, the legislative history regarding the H-1B amendments to the Immigration Act of 1990 and the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 is rife with references to the "best and the brightest" by advocates of the amendments. In fact, a representative of the Microsoft Corporation in his testimony (on page 6) for the Committee's recent hearing referenced the "best and brightest" and a representative of the University of Michigan in his testimony (on page 5) referenced the "best academic talent in the world" as reasons for supporting S. 1723..

[1] The H-1B program initially arose as the remnant of the H-1 program when the H-1A temporary foreign nurses program was created in 1989.

11

Question: In the private sector, all other things being equal, would one expect that an employee with two years and one day experience be paid the same as an employee with 15 years experience?

Answer: It is seldom true that one ever finds "all other things being equal." But, in response to the hypothetical question, if all other things were indeed equal, one would commonly expect that an individual with greater experience relevant to a particular position would be placed in a job requiring greater skills and having greater autonomy, and, therefore, commanding higher wages. Certainly it is not true that all other things are equal when comparing a U.S. worker of less – or more – experience with an individual who may not legally work in the U.S. without authorization to enter (or, more commonly, remain) under conditions designed to prevent unfair competition with U.S. workers. Although an employer attests to provide certain wages and working conditions on its LCA, as discussed in previous responses, an H-1B employee has reasons to be reluctant to complain if violations or abuses should occur.

As stated, if all other things were indeed equal, one would commonly expect greater experience to be reflected in higher wages. Perhaps it is for this reason that some employers appear to prefer – and use the H-1B program – to hire and train inexperienced entry-level workers over hiring, or retaining and retraining more experienced workers who would earn higher wages.

12

Question: In the private sector, all other things being equal, would one expect that an employee who had a university grade point average of 4.0 to be paid the same as an employee who had a university grade point average of 2.5?

Answer: Again, it is seldom true that one ever finds "all other things being equal." But, in response to the hypothetical question, if all other things were indeed equal, one could expect a record of higher educational achievement in a particular discipline relevant to a particular job to be reflected in somewhat higher wages. And, again, it is certainly not true that all other things are equal when comparing a U.S. worker of less - or more - educational achievement with an individual who may not legally work in the U.S. without authorization to enter (or, more commonly remain, particularly in the case of foreign students) under conditions designed to prevent unfair competition with U.S. workers. Again, although the employer attests to wages and working conditions on the LCA, it is obvious (as discussed in previous responses) that an H-1B employee will be reluctant to complain if violations or abuses occur.

In this regard, it should be clearly pointed out that there is nothing in the H-1B program requirements that in any way prevent an employer from paying higher wages to employees - whether U.S. or H-1B workers - who have greater experience, or greater educational achievement. The only constraint is that an employer may not pay any H-1B nonimmigrant employee - whether average or truly outstanding - LESS than the wage paid to similarly-employed U.S. workers. If this were if allowed, it would clearly undercut the wages and working conditions of such U.S. workers.

Regional and Industry Special Skills Training Fund (RISST)

Draft Draft Draft Draft Draft Draft Draft

SUMMARY

The Regional and Industry Special Skills Training Fund (RISST) uses the resources generated by temporary industry need for foreign skilled workers to expedite the development of American workers for such jobs or similar jobs. The RISST often would be implemented by business/government Regional Skill Alliances, formed to support the development of training of current and new workers to meet specific near term or longer term occupational shortages. However, it is a broader concept than Regional Skill Alliances, including not just funding for the infrastructure supporting the Alliances but funding for training as well. RISST would supplement, not duplicate, existing resources in the Departments of Labor and Education and other Federal agencies, and in the States and localities. It would operate through the job training system that is at the center of the President's G.I. Bill for American Workers policy -- the Job Training Partnership Act (JTPA), and its successor job training reform legislation soon to be enacted.

BASIC PRINCIPLES

There is agreement within the NEC working group that we need to find a way to use effectively the resources generated by the H1-B fees to address the skill shortages which generated H1-B visa applications and/or other skill needs. The amount of money raised will vary unpredictably from year to year; it is apt to be no more than $100 million annually, and probably will be less than that. This is a very small addition to the tens of billions available now through Federal and State education and job training initiatives. The presence of very large base resources, plus the unpredictable year-to-year variations in the new resources, argues for three key administrative features that will enhance the effectiveness of the funds:

-- concentrating the resources in one program initiative, not several;

-- running the program through one agency; and,

-- building on an existing delivery system that can address quickly the varying local and regional needs.

Rationale for one program. The funding source is not large, we cannot predict its size accurately, and the amount will vary from year to year depending on industry need and interest in paying the fee. The activity will have to be able to phase up and down rapidly to meet changing needs, both geographic and occupational. Business needs one Federal agency point of contact if it is to have confidence in the proposal and the administrative processes. Multi-program structures are complex, inefficient, and rarely successful.

Rationale for one agency. All the arguments for "one program" apply equally with respect to the administering agency. In addition, multi-agency administration leads to confusion of goals and complexity of administration. Diffused responsibility threatens program success.

Rationale for building on JTPA: The President has been working for four years to obtain job training reform legislation based on the business-government-labor organization partnership of JTPA. He has supported publicly, and urged enactment of, pending JTPA reform bills in both Houses, each of which contains key elements of his policies. The JTPA infrastructure is the nation's primary mechanism for bringing business and government together to meet training needs and is the basis for the reform bills' structure. Support of an alternative structure (or one that goes around or ignores JTPA) at this time would be damaging for prospects for reform legislation and lead business to question the President's commitment to the system and reform.

While the vocational education reauthorization also is part of the pending reform bills, vocational education is not intimately connected to the JTPA system; indeed, assuring a governance structure that is independent of State and local government and JTPA has been a hallmark of the education interests' goals, supported by this Administration.

The current "Tech-Prep" program is a part of the State Vocational Education system. It does link business and State vocational education, but it does so through a formula grant to States that supports ongoing activities. It is not meant to respond to temporary shortages, such as the H1-B policy is meant to address. The Vocational Education system is primarily funded by the States, not the Federal government, and as such is not very responsive to Federal policy goals. Business input is far less direct than in JTPA and the pending job training legislation. Channeling funds through Tech-Prep would please the education system, but likely lead the business community to doubt the ability of that approach to meet its skill shortage needs. (The Administration is seeking $106 million for Tech-Prep in 1999.)

The various NSF program models all have serious limitations. NSF currently spends over $630 million annually on "education and human resources" programs. The great majority of these funds are for K-12 initiatives targeted to systemic reform including teacher training, improving science "literacy", and curriculum change. The ATE program is funded at about $33 million when both the postsecondary ($25 million) and K-12 ($8 million) segments are combined. It is part of the NSF's focus on improving undergraduate education through "strengthening the science and math grounding of...technicians for the advanced technology workplace". The limitation of this approach is that it is totally devoted to systemic issues, does not focus on local needs (largely funding instead models for replication), and does not include the flexibility to deal with short-term training needs/gaps.

THE RISST DESIGN

- A competitive grant in the Department of Labor financed by the H1-B fee which would be authorized under the JTPA's title IV, section 452, demonstration authority. This permits a "new program" but need not be seen as a new administrative structure, an objection the majority might advance to oppose the approach. We believe the JTPA already can carry out the RISST design under section 452. What is needed is an authority to use the fees.

- The Secretary of Labor, in consultation with other Departments (e.g., Commerce, Education), would make competitive grants to Regional Alliances, or local service delivery areas (if the problem does not cross SDA boundaries) that can demonstrate the greatest unmet demand for certain high-skill and/or high demand occupations.

- A Regional Alliance is a consortium of one or more SDAs, States, and business organizations (e.g., regional trade associations), with labor organization participation. The Alliance would develop the skill shortage analysis and the strategy for filling the shortages. It would provide the staff needed to work with PICs and public and private training organizations to ensure that all current resources are brought to bear on meeting the skill shortage problem before spending the scarce RISST dollars. Each Alliance would be formed around specific skill shortage(s), Federal dollars would phase down, and the Alliance would be dissolved as the shortage(s) abate. Where Regional Alliances are the vehicle for the RISST competitive grant and one does not exist, the Alliance could be funded as part of a planning grant under an application by the State or SDA to be followed by, or as a coincident part of, the application for training. (Regional Alliances are not costly -- usually less than $1 million per year -- about the size of a reasonable planning grant.)

- Criteria for the awards would be developed by the Secretary (in consultation as above). They would include requirements for the local Alliances and PICs (and their successors) to: 1) document the inability of firms in the area to find suitable workers, 2) show that they have used other Federal and State education and training resources (including Pells) in developing the proposal, and 3) show how the proposal would fill a gap in existing resource availability or training capability.

- Awards would be for a limited duration -- e.g., one or two years, with options for renewal depending on continuing need, success of the initial grant, and availability of funds. Limits would be put on the number of awards (e.g., 50 areas with the greatest need) and size of the awards.

COMPETITIVE ADVANTAGES OF RISST

There are several advantages to RISST that will not be addressed by a stand-alone regional skill alliances proposal or the NSF/ATE alternatives the NEC group has on the table.

- It is targeted to locally identified needs. Because the authority would be broad, the variety of proposals will depend on what business and State and local areas propose, not the restrictions of any existing program model. Today's need isn't tomorrow's need. This allows for addressing shifts in local need, and addressing short-term concerns. Over the long term, markets and systems will adjust to persistent longer term needs. The NSF/ATE approach of curriculum change and teacher training is a long-term adjustment model. So is Tech-Prep.

- It is <u>programmatically inclusive and flexible</u>. It does not dictate how services would be delivered. It encompasses the partnership approach embodied by strong business role in Regional Alliances, which neither NSF nor Tech-Prep can comfortably accept. This model could allow for training of incumbent workers where needed or training new workers. It also could help involve more low-income and minorities in training for better jobs. Training of incumbent workers is not something the NSF/ATE or Tech-Prep models will do.

- It <u>involves industry and labor</u>. The PICs are industry-led bodies and the basis for the President's G.I. Bill for America's Workers and the pending reform bills. If the need is for industry-driven efforts (as the PPI suggests), the PICs are the right conduit for those needs. A PPI criticism of the current job training system is that it's inflexible. To whatever extent that may be true, the RISST would not be inflexible, and should address that issue. Not least, the PICs also include representatives from organized labor, a key factor in the workforce training system who would be involved in developing the proposals.

I:\data\nec\H1B_RIST.wpd

4/19/98

The case for expanding the NSF Advanced Technical Education (ATE) Program 4/20/98

1. **The program is sufficiently flexible to respond to changing labor market needs.**

- It can support programs in a wide variety of technical fields – including information technology, semiconductor manufacturing, advanced manufacturing, biotechnology, telecommunications, environmental technology, etc. – virtually any career that requires a background in science, math, or engineering.

- It can support a wide variety of activities – including faculty development and development of curriculum that meets industry needs.

2. **The program helps stimulate partnerships between community colleges, 4-year colleges, school-to-work-efforts, industry, and organized labor.** These partnerships help address underinvestment in training by individual companies.

- The NorthEast Center for Telecommunications Technologies has participation from 5 4-year colleges, 14 community colleges, 14 high schools, IBM, Bell Atlantic, Time Warner, Texas Instruments, the Communication Workers of America, and the International Brotherhood of Electrical Workers.

- The Maricopa Advanced Technology Education Center (MATEC) is being operated by the Maricopa County Community College District, in partnership with ten semiconductor manufacturing/supporting industries, (including Intel, Motorola, and SEMATECH); two Tech Prep consortiums with 13 secondary school districts (60,000 students); Arizona State University, the nation's largest public university; three other Community College Districts (Arizona/Oregon); and Albuquerque Technical-Vocational Institute.

3. **Increased funding could allow NSF to fund a greater percentage of the requests that they get.**

- In FY96 – NSF received $186 million in proposals but was only able to provide $23.6 million in grants .

4. **Expanding funding for ATE would have significant regional and national impact.**

- NSF estimates that over three years, their FY96 grants will impact 648,000 students.

- Regional and national centers of excellence are developing skills standards that can be used elsewhere

5. **NSF has been making 3 year grants – which fits with expected stream of revenues.**

(1) using JTPA delivery system, rather than setting up a separate system.

[This was not precluded under our proposal]

Can w/tie the Secretary's discretionary $ under Title III ?

Yes, if displaced workers (not incumbent)

facsimile
TRANSMITTAL

to: Julie Fernandez
fax #: 456-5581
re: h-1b testimony
date: April 20, 1998
pages: 3, including this cover sheet.

Attached is a description of the survey that documents the explosion in CS undergraduate enrollments in 1996 and 1997. There is no breakdown of ethnicity of new students but the ethnicity breakdown of CS and CE bachelors would indicate that nearly all of these new undergraduates are not foreign. Table 6 shows that only 10% of CS and CE bachelor degrees are awarded to foreign students, while 50-60% of the masters degrees go to foreign students.

From the desk of...

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1996-1997 CRA Taulbee Survey

Undergrad Enrollments Keep Booming, Grad Enrollments Holding Their Own

By Dexter Kozen and Stu Zweben, Co-chairs, CRA Taulbee Survey

This article and the accompanying tables present the results of the 27th annual CRA Taulbee Survey[1] of Ph.D. granting departments of computer science (CS) and computer engineering (CE) in the United States and Canada. This survey is conducted annually by CRA for the purpose of documenting trends in student enrollment, employment, and faculty salaries. Information is gathered during the fall and early winter. Responses received by January 22 are included in the tables.

Information on degree production and enrollment applies to the previous academic year (1996-1997). Information on faculty salaries applies to the current academic year (1997-1998). Faculty salaries are those effective January 1, 1998. Readers should keep in mind that survey results are from Ph.D. granting departments only.

This article reviews the most significant results of the survey, with particular attention to those that differ markedly from last year or that appear to indicate long-term trends.

This year we received responses[2] from 129 (bachelors) 133 (masters and Ph.D) departments regarding production; 129 (bachelors), 133 (masters), and 135 (Ph.D.) departments regarding enrollment; 135 departments regarding faculty growth; and 130 departments regarding salary data (this includes US CS, US CE, and Canadian) for a response rate of over 80%. We thank all respondents for their timely completion of the questionnaire.

Degree Production (Tables 1–6)

There were a total of 894 Ph.D. degrees awarded in 1997 by the 131 responding departments. This is down from 915 last year and continues a slight but steady downward trend from the peak of 1,113 in 1992. The prediction from last year's survey that 1,110 Ph.D's would be awarded in 1997 was again overly optimistic, but this year the discrepancy was even greater than normal. The forecast for next year is a continued decline, perhaps as much as 8%. However, new enrollment in Ph.D. programs is up significantly for the second straight year (see the section on enrollments, Table 9) and there was a 14% increase over last year in the number of students passing the qualifying exam, so a long-term upswing in Ph.D. production is likely if programs can retain their newly enrolled students.

Table 4 gives the areas of specialization and types of first appointments for last year's Ph.D. recipients. The expanded format introduced last year was kept, with 10 areas of specialization instead of the previous 6 and further breakdown according to the type of position in Ph.D. granting departments. There was significant improvement in the percentage of unknown areas of specialization, dropping to 19.0% from 21.3% last year.

The number of bachelor's degrees awarded in 1997 by 131 responding departments was 8,063, off 4.1% from the 8,411 produced by 128 departments in 1996, but still significantly higher than the 7,561 awarded in 1995. The number of master's degrees, which was essentially flat between 1995 and 1996 with 130 departments reporting, rose about 4.3% in 1997 with 131 departments reporting.

The gender and ethnicity statistics for bachelor's and master's degree recipients remained fairly static with the exception of master's degrees awarded to Native Americans or Alaskan natives, which dropped precipitously from 45 to 4. However, the percentage of master's degrees awarded to women (among degree recipients of known gender) rose from 20.4% in 1996 to 22.7% in 1997. For Ph.D. recipients, the combined gender and ethnicity statistics were not reported this year because of the difficulty in collecting the data, but gender and ethnicity were reported separately (Tables 2 and 3). There was an alarming drop in the number of Ph.D. degrees awarded to Native Americans (from 5 in 1996 to 0 in 1997), African Americans (from 11 in 1996 to 6 in 1997), and Hispanics (from 27 in 1996 to 8 in 1997). The percentage of Ph.D. degrees awarded to women showed a modest rise from 12% in 1996 to 14% in 1997.

Student Enrollment (Tables 9–11)

The big news is the continued explosion in undergraduate enrollments for the second straight year (Table 9). Still reeling from last year's 40% increase over the previous year, academic departments were hit with another 39% jump in 1997. This will undoubtedly translate to a significant rise in the number of bachelor's degrees awarded starting next year. Meanwhile, many departments are finding their resources stretched to the limit as they struggle to cope with overflowing classrooms. At Cornell, more than a quarter of those freshmen engineers expressing a preference listed computer science as their major of choice (more than any other engineering major) and by 1999, the number of graduating computer science majors will have more than doubled since 1995. At Ohio State, the number of premajors (those who haven't yet completed all the requirements to formally be admitted to a major) in computer science jumped 35% over last year. As a percentage of undergraduate engineering students, computer scientists have risen to 19.5%, up from 15.8% last year and 10.9% the year before.

Enrollments also increased at the graduate level, but somewhat less dramatically. From 1995 to 1996, new enrollment in Ph.D. programs rose sharply by about 26%. In 1997 the trend continued with 1,440 Ph.D. students enrolled, a rise of 7% over 1996, with 131 departments reporting in 1997 versus 130 in 1996. Master's degree enrollments remained relatively static.

The percentage of women enrolled in Ph.D. programs increased slightly from 16.2% in 1996 to 17.0% in 1997. But the major demographic change is in ethnicity of students in the Ph.D. programs.

Continued on Page 6

Table 1. Ph.D. Production by Ranking

	Ph.D.s Produced	Average per Dept.	Ph.D.s Next Year	Average per Dept.	Passed Qualifier	Average per Dept.
US CS Ranked 1-12	207	17.3	237	19.8	186	15.5
US CS Ranked 13-24	111	11.1	117	11.7	124	12.4
US CS Ranked 25-36	102	9.3	110	10.0	92	8.4
US CS Other	343*	4.4	426+	5.5	484	6.2
Canadian CS	89@	12.7	93-	13.3	81	11.6
US CE	41#	6.8	54&	9.0	35	5.8
Total	893**	7.2	1,037	8.4	1,002	8.1

Table 1

- * Includes 29 CE degrees granted by these CS departments
- @ Includes 6 CE degrees granted by these Canadian departments
- # Includes 10 CS degrees granted by these CE departments
- \+ Includes 39 CE degrees granted by these CS departments
- \- Includes 10 CE degrees granted by these Canadian departments
- & Includes 14 CS degrees granted by these CE departments

Table 2. Gender of Ph.D. Recipients

	CS		CE		CS & CE	
Male	699	(85%)	64	(90%)	763	(85%)
Female	122	(15%)	7	(10%)	129	(14%)
Total	823**		71		894	

Table 3. Ethnicity of Ph.D. Recipients

	CS		CE		CS & CE	
Nonresident Alien	298	(36%)	27	(38%)	325	(36%)
African American, Non-Hispanic	5	(1%)	1	(1%)	6	(1%)
Native American or Alaskan Native	0	(0%)	0	(0%)	0	(0%)
Asian or Pacific Islander	99	(12%)	8	(11%)	107	(12%)
Hispanic	7	(1%)	1	(1%)	8	(1%)
White, Non-Hispanic	365	(44%)	23	(32%)	388	(43%)
Other/Not Listed	22	(3%)	11	(0%)	33	(4%)
Subtotal	796	(97%)	71	(100%)	867	(97%)
Ethnicity Unknown	27	(3%)	0	(0%)	27	(3%)
Total	823	(100%)	71	(100%)	894	(100%)

Footnotes

[1] The title of the survey honors the late Orrin E. Taulbee of the University of Pittsburgh, who conducted these surveys for the Computer Science Board from 1970 until 1984.

[2] In some instances, departments only answered selective questions within a table or a section. Therefore, for individual fields within tables the response rate may vary ± 3.

***Totals do not match:* The reader may find that totals from certain tables do not equal each other, even though theoretically they should. These discrepancies stem from inconsistencies in the way departments answered different questions. We tried to minimize this by calling departments that provided inconsistent answers.

Footnote Continued on Page 7

1996-1997 CRA Taulbee Survey

Table 4. Employment of New Ph.D. Recipients by Specialty

New Ph.D's in Ph.D.-Granting Depts.	Artificial Intelligence/ Robotics	Hardware/Architecture	Numerical Analysis/ Scientific Computing	Programming Languages/ Compilers	OS/Networks	Software Engineering	Theory/Algorithms	Graphics/ Human Interfaces	Databases/ Information Systems	Other/Unknown	Total
Tenure-Track	23	6	1	16	20	6	17	11	9	2	111
Researchers	11	1	5	4	3	4	5	6	6	4	49
Postdocs	18	5	7	6	1	2	11	1	1	3	55
Instructors	7	1	0	1	2	1	0	1	0	9	22
New Ph.D's, Other Categories											
Other CS/CE Dept.	8	0	2	4	2	0	7	1	5	1	28
Non-CS/CE Dept.	2	1	0	1	0	3	0	3	3	1	14
Industry	57	42	19	37	81	33	37	25	41	50	422
Government	3	2	0	3	4	3	1	3	1	7	27
Self-Employed	6	0	0	0	1	1	2	1	0	4	15
Employed Abroad	7	3	2	2	2	4	5	2	7	9	43
Unemployed	0	1	1	3	0	0	1	1	1	0	8
Other/Unknown	5	0	3	2	1	3	3	1	2	80	100
Total	145	62	40	79	117	60	89	56	76	170	894

Table 5. Gender of Bachelor's and Master's Recipients

	Bachelor's			Master's		
	CS	CE	Total	CS	CE	Total
Male	5,284 (75%)	786 (74%)	6,070 (75%)	2,870 (76%)	498 (74%)	3,368 (76%)
Female	1,141 (16%)	124 (12%)	1,265 (16%)	819 (22%)	172 (16%)	991 (22%)
Unknown	577	151	728	84	-	84
Total	7,002	1,061	8,063	3,773	670	4,443

Table 6. Ethnicity of Bachelor's and Master's Recipients

	Bachelor's			Master's		
	CS	CE	Total	CS	CE	Total
Nonresident Alien	400	71	471 (6%)	1,585	313	1,898 (43%)
African American, Non-Hispanic	123	34	157 (2%)	44	4	48 (1%)
Native American or Alaskan Native	9	4	13 (-%)	4	0	4 (-%)
Asian or Pacific Islander	936	159	1,095 (14%)	442	76	518 (12%)
Hispanic	146	34	180 (2%)	56	10	66 (2%)
White, Non-Hispanic	3,145	586	373 (46%)	1,186	147	1,333 (31%)
Other/Not Listed	56	5	61 (1%)	96	10	106 (2%)
Subtotal	4,815	893	5,708 (71%)	3,413	560	3,973 (89%)
Ethnicity Unknown	2187	168	2,355 (29%)	360	110	470 (11%)
Total	7,002	1,061	8,063 (100%)	3,773	670	4,443 (100%)

Table 7. Bachelor's Degree Candidates for 1996-97

	CS	CE	CS & CE
US CS Ranked 1-12	1,335 (17%)	48 (4%)	1,383 (15%)
US CS Ranked 13-24	754 (9%)	194 (17%)	948 (10%)
US CS Ranked 25-36	482 (6%)	36 (3%)	518 (6%)
US CS Other	3,882 (47%)	691 (61%)	4,573 (49%)
Canadian CS	1,622 (20%)	50 (4%)	1,672 (18%)
US CE	40 (1%)	124 (11%)	164 (2%)
Total	8,115 (100%)	1,143 (100%)	9,258 (100%)

Table 8. Master's Degree Candidates for 1996-97

	CS	CE	CS & CE
US CS Ranked 1-12	554 (14%)	65 (10%)	619 (13%)
US CS Ranked 13-24	446 (11%)	3 (1%)	449 (10%)
US CS Ranked 25-36	348 (9%)	0 (0%)	348 (8%)
US CS Other	2,249 (57%)	166 (26%)	2,415 (52%)
Canadian CS	285 (7%)	50 (7%)	335 (7%)
US CE	83 (2%)	365 (56%)	448 (10%)
Total	3,965 (100%)	488 (100%)	4,614 (100%)

Table 9. New Students in Fall 1997

	Bachelor's Full Time			Dept Average	Master's Full Time			Dept Average	Ph.D. Full Time			Dept Average
	CS	CE	Total		CS	CE	Total		New Admit	MS to Ph.D	Total	
US CS Ranked 1-12	2,244	63	2307	192.3	345	48	393	32.8	267	14	281	23.4
US CS Ranked 13-24	1,379	469	1848	184.8	437	5	442	40.2	189	22	211	21.1
US CS Ranked 25-36	841	0	841	84.1	194	0	194	17.6	188	7	195	17.7
US CS Other	9,233	1,450	10,683	138.7	1,697	128	1,825	23.1	558	85	643	8.2
Canadian CS	3,462	144	3,606	240.4	299	26	325	21.7	68	18	86	3.7
US CE	102	416	518	74	56	175	231	33	22	2	24	3.4
Total	17,261	2,542	19,803		3,028	382	3,410		1,292	148	1,440	

Continued on Page 6

→ Julie Fernandez DPC
Ingrid Shroeder OMB

Hope this does it.
Witness list attached.
JF. 4/20/98

STATEMENT OF JOHN R. FRASER
DEPUTY WAGE AND HOUR ADMINISTRATOR
EMPLOYMENT STANDARDS ADMINISTRATION
U.S. DEPARTMENT OF LABOR
BEFORE THE
SUBCOMMITTEE ON IMMIGRATION AND CLAIMS
OF THE HOUSE JUDICIARY COMMITTEE

April 21, 1998

Mr. Chairman and Members of the Subcommittee:

We appreciate this opportunity to share the views of the Administration on whether this country's important high-technology industry should be afforded increased access to temporary foreign workers to meet its growing demand for highly skilled workers. In doing so, I want to again call your attention to the need to train U.S. workers first in order to provide them with the opportunity to acquire the skills needed to compete in our rapidly changing economy, and to the pressing need for reform of the H-1B nonimmigrant visa program.

Our information technology (IT) industry is essential to our continuing strong economic growth and wider prosperity. Our interest in the industry's strength is evidenced by our participation in a recent convocation in Berkeley that assessed IT work force needs. Further, as you know from Administration proposals advanced since 1993, we believe that the H-1B program needs fundamental reform. I would like to commend the Subcommittee for its interest in these issues.

We believe the issue of whether to increase the IT industry's access to temporary foreign workers should be evaluated within the framework of the following three questions:

(1) Is there a shortage of skilled U.S. workers to fill jobs in the IT industry and meet

future workforce needs?

(2) What would be the consequences of raising the annual H-1B cap?

(3) Does the current H-1B program need to be reformed in order to provide industry appropriate access to temporary foreign workers while protecting the job opportunities, wages and working conditions of U.S. workers?

I will address each of these in turn.

Tight Labor Markets and IT Skills Shortages

Proponents of increasing the annual cap on H-1B visas argue that this increase is necessary for the IT industry to be able to overcome an acute shortage of skilled U.S. workers. While there is no dispute that there is strong growth in demand for workers in the IT industry, it is much less clear what may be the magnitude of any shortage of skilled U.S. workers to meet this demand, or whether the domestic labor market will be able – as it has over the last decade – to satisfy projected job growth.

U.S. employment has been growing rapidly, labor markets are increasingly tight, and they are likely to remain so. Though this is true for the nation as a whole, IT labor markets appear to be particularly affected. Employment opportunities for computer systems analysts, engineers, and scientists have been growing by 10 percent a year — well above the growth of comparable occupations — and are expected to continue growing at a comparable rate through 2006. The Bureau of Labor Statistics (BLS) predicts that the U.S. will require more than 1.3 million new workers in IT core occupations between 1996 and 2006 to fill job openings projected to occur due to growth and the need to replace workers who leave the labor force or transfer to other occupations.

The IT skills shortage issue is somewhat controversial. Some industry advocates assert that there exist more than three hundred thousand unfilled jobs within the IT industry, and that these vacancies are raising business costs and hurting U.S. competitiveness. Industry points to a number of other factors to substantiate their assertion of an IT skills shortage – large numbers of want ads, hiring bonuses, aggressive recruiting, and high turnover of IT specialists within the industry.

On the other hand, critics argue that the IT industry: (1) overstates the problem by producing inflated job vacancy data and equating it to skills shortages; (2) continues to lay off tens of thousands of workers (e.g., Intel, Netscape, Cypress Semiconductor and Silicon Graphics recently announced large lay-offs); and (3) fails to tap reservoirs of available talent by insisting on unnecessarily specific job requirements and not providing more training to develop incumbent workers' skills.

One point of contention is the confusion between equating job vacancies and actual skills shortages. While an industry association-sponsored survey indicates that there may be as many as 350,000 job vacancies in the IT industry, as you will hear, the General Accounting Office (GAO) has concluded that this does not necessarily signal an acute shortage of skilled workers. In fact, most industries and firms (particularly those with rapid employment growth and high worker turnover) will have large numbers of job openings that may not indicate skills shortages.

While higher than average wage growth can be a reliable indicator of skill shortages, the wage growth record for the IT industry is mixed. Though BLS wage trends for broad computer-related categories show only average wage growth between 1988 and 1997 for all categories, it only shows above-average wage growth in 1996 and 1997 and only in the lower-skill computer-related categories, such as programmers. At the same time, a variety of industry wage surveys show larger wage increases in 1996 and 1997 in specialized, high-skill occupations.

The Subcommittee should also take into consideration other factors that bear on the question of the scope and duration of any labor shortage in the IT industry:

- The current "Year 2000" problem is now occupying thousands of IT workers but only for the short-term;
- New technologies are being introduced that are creating more efficient ways to produce software, store and retrieve data, speed up computations, and generally improve the productivity of the IT work force;
- The number of computer science enrollments has risen significantly in the last two years (and nearly three-quarters of all IT workers got their education in other disciplines).

Consequences of Raising the H-1B Visa Cap

We strongly urge that any decision to raise the H-1B visa cap carefully consider the possible adverse impact of such a move on the normal process by which labor markets adjust to a growing demand for workers. The labor market should be permitted to adjust to this increased demand without introducing unnecessary factors which could delay, if not prevent, these normal market adjustments. Indeed, the IT labor market has already begun to respond to the signals of increased demand. A survey of U.S. Ph.D. departments of computer science and computer engineering showed bachelor-level enrollments were up 46 percent in 1996, and another 39 percent in 1997 -- nearly doubling over the two year period.

It is also important to remember that tight labor markets are good for U.S. workers. A tight labor market causes employers to raise wages, improve working conditions, and provide increased training to enable currently employed workers to keep pace with technology. An increased demand for trained workers induces educational and job training institutions to teach new skills. With more opportunities for training, workers acquire skills needed to obtain better, higher-paying and more secure jobs, thereby creating open jobs and career ladders for those just entering or reentering the labor market (e.g., young people, minorities, displaced workers, welfare recipients and other disadvantaged groups). Therefore, tight labor markets create incentives for employers and workers to react in ways needed to achieve many of the Nation's top priorities: raising wages; providing greater opportunities for lifelong learning; and moving welfare recipients, out-of-school youth, and dislocated workers into jobs.

However, while tight labor markets are good for U.S. workers, labor markets can sometimes be slow to respond to skills shortages. In these circumstances, it is often argued that temporary foreign workers are needed in the short-term to provide necessary skills while the labor market adjusts to provide U.S. workers with the requisite training. Without needed foreign temporary workers, industries experiencing skill shortages may adjust in ways that do not serve the short-term or long-term priorities of the country, either by reducing job creation or by moving jobs overseas. Further, because the IT sector is so critical to our global competitive edge, the U.S. economy could suffer disproportionate harm if skill shortages do become acute.

Because the expanded use of foreign temporary workers may interfere with labor market adjustments and may make achieving our other priorities more difficult, we must make sure that any increase in the annual number of foreign temporary workers is done with care to ensure that the use of these foreign temporary workers does not interfere with healthy adjustments in the labor market.

We must also be cognizant that raising the H-1B cap may subvert the protection of U.S. workers that is one of the key principles underlying this Administration's strong support of legal immigration. Raising the H-1B cap will almost certainly increase permanent employment-based legal immigration and, perhaps, illegal immigration. Nearly half of those who become permanent employment-based immigrants convert from H-visa nonimmigrant status. Rather than filling a temporary labor shortage, conversion fills permanent jobs that will then not be available to U.S. workers and students who we want to be able and prepared to fill high-tech jobs in our economy.

The Department of Labor has heard from many concerned individuals and groups on the issue of the adverse impact on U.S. workers of raising the annual cap on H-1B visas. I would like to request that copies of the many letters we have received from these people be included in the record of today's hearing.

The Administration believes that our first response to meeting the workforce needs of the IT industry should be to provide the needed skills to U.S. workers to qualify them for IT jobs. The Administration already has taken significant steps to increase our capacity to enhance workforce skills. The President continues to pursue comprehensive reform of the Nation's employment and training system by working with Congress to enact the principles embodied in his GI Bill proposal. Moreover, in the historic balanced budget agreement of last summer, the President insisted on and achieved the largest increase in 30 years in the Federal investment to expand the skills of American workers, including:

- the largest Pell Grant increase in two decades;
- Hope Scholarships to make the first two years of post-secondary education universally available;
- the Lifelong Learning Tax Credit for the last 2 years of college and continuing adult education and training to upgrade worker skills;
- a major increase in employment and training resources, including increases for dislocated workers and disadvantaged adults and youth; and
- a $3 billion program to help long-term welfare recipients secure lasting, unsubsidized employment.

Further, the Administration announced several new initiatives at the recent Berkeley Convocation to help address the growing demand for IT workers:

- A Labor Department Technology Demonstration project to test innovative ways of establishing partnerships between local workforce development systems, employers, training providers and others to train dislocated workers in needed high tech skills;
- The expansion and integration of America's Job Bank and America's Talent Bank to allow employers and workers to list and access job openings and worker resumes in one integrated system; and
- The convening of four town hall meetings by the Commerce Department to discuss IT workforce needs, identify innovative practices, and showcase successful models.

In addition, last week President Clinton and Secretary Herman announced that grants totaling $1.6 million are being provided to projects in four states to continue highly successful programs to train dislocated workers for high paying jobs in information technology.

Finally, with the Technology Literacy Challenge and related educational programs, the Administration has put strong emphasis on effective use of educational technology to strengthen our nation's schools and school-to-work transition. Linking elementary/secondary schools, institutions of higher education, and business can produce the knowledge, know-how, and skills our nation's businesses and young people need in IT. This creates opportunities for business and America's students alike.

We believe that there is more that can be done to move U.S. workers into high technology jobs, and we welcome the discussions that may be sparked by this hearing. We are committed to continuing a dialogue with the major stakeholders on this critical workforce issue — government, industry, workers, and education and training institutions — to better define the workforce needs of the IT industry and develop appropriate solutions to meet these needs domestically through commitments from each of the stakeholders.

In sum, Mr. Chairman, our assessment of the likely effects of raising the H-1B cap reconfirms our strong conviction that our primary public policy response to skills mismatches due to changing technologies and economic restructuring must be to prepare the U.S. workforce to meet new demands. Yet we recognize that short-term demands for skills may require that we develop a balanced, short-term response to meet urgent needs while we actively adjust to rapidly changing circumstances. However, increased numbers of temporary foreign workers should be the last — not the first — public policy response to skills shortages.

Given this broader context, let me now turn to the third of the issues I listed — the pressing need for reform of the H-1B nonimmigrant program.

H-1B Nonimmigrant Program Must be Reformed

The H-1B visa program allows the admission of up to 65,000 workers each year (to stay for as long as six years), to meet short-term, high-skills employment needs in the domestic labor market. Temporary visa programs, like H-1B, are intended to allow employers who are faced with a domestic skills shortage to have access to temporary foreign workers with the requisite skills while the domestic labor market makes appropriate adjustments.

However, there exist serious structural flaws in the current H-1B program. These flaws are documented in a May 1996 report by the Department's Inspector General (IG). I would ask the Subcommittee to accept the IG's full report in the record of today's hearing.

The IG found that, despite the legislative intent:

> ". . . the [H-1B] program does not always meet urgent, short-term demand for highly-skilled, unique individuals who are not available in the domestic work force. Instead, it serves as a probationary try-out employment program for illegal aliens, foreign students, and foreign visitors to determine if they will be sponsored for permanent status."

The IG also found that "some [H-1B] employers use alien labor to reduce payroll costs either by paying less than the prevailing wage to their own alien employees or treating these aliens as independent contractors, thereby avoiding related payroll and administrative costs." It found, in addition, that "other [H-1B] employers are 'job shops' whose business is to provide H-1B alien contract labor to other employers." The IG concluded that the H-1B program does little to protect the jobs or wages of U.S. workers and it recommended eliminating the current program and establishing a new program to fulfill Congress' intent.

Employers obtain H-1B workers by simply filing a labor condition application (LCA) with the Department affirming that they have complied with four requirements:

- that the higher of the local prevailing rate or the wage paid to the employer's similarly-employed workers will be paid to the foreign workers;
- that no strike or lockout exists involving the occupation;
- that notification has been provided to U.S. workers or their union; and
- that the employment of H-1B nonimmigrants will not adversely affect the working conditions of U.S. workers similarly employed.

By law, the Labor Department can do no more than review these attestations for completeness and obvious inaccuracies -- to determine whether an employer checked all of the boxes, made no flagrant errors, and signed the attestation -- and must do so within 7 days of receipt.

Because current law does not require any test for the availability of qualified U.S. workers in the domestic labor market, many of the visas under the current cap of 65,000 can be used by employers to hire foreign workers for purposes other than meeting a skills shortage. In addition, current law does not require a U.S. employer to promise not to lay off U.S. workers and replace them with H-1B workers as a condition for gaining access to these foreign temporary workers, and it allows employers to retain H-1B workers for up to 6 years to fill a "temporary" need. We simply do not believe this is right.

In 1993 the Administration asked the Congress to amend the H-1B nonimmigrant program to address these structural problems. Unfortunately for many U.S. businesses and workers, these amendments have not been enacted. The amendments requested in 1993 were carefully designed to ensure continued business access to needed high-skill workers in the international labor market while decreasing the H-1B program's susceptibility to misuse to the detriment of U.S. workers and the businesses that employ them. Briefly stated, the amendments would require employers which seek access to temporary foreign "professional" workers to also attest that:

- they have taken timely and significant steps to recruit and retain U.S. workers in these occupations; and
- they have not laid off or otherwise displaced U.S. workers in the occupations for which they seek nonimmigrant workers in the periods immediately preceding and following their seeking such workers.

Enactment of these reforms will help employers actually facing skills shortages, including those in the IT industry, obtain needed workers through the H-1B program. Under existing law, employers facing skills shortages must compete for available visas (up to the cap of 65,000) on a first-come, first-served basis with other employers that do not face such shortages. Thus, enactment of the proposed amendments would reduce pressure on the visa cap by screening out employers that are not faced with skills shortages and have no interest in recruiting U.S. workers.

If the Administration's reforms are not implemented, as the Inspector General has pointed out, the Labor Department will not be able to ensure that the intended purposes of the program are actually served. The H-1B program exists to ensure that U.S. employers can meet short-term labor needs by limited access to the international labor market. Under current law, the government cannot ensure that employers use the H-1B program for its intended purpose, and that purpose only.

Conclusion

Mr. Chairman, let me conclude by restating that the growing workforce needs of the IT industry can only be met — and the strength and growth of the industry secured in the long run — if we take the steps needed to fully develop and utilize the skills of U.S. workers. Increased reliance on temporary foreign workers should, at most, only be a small part of the solution and must be viewed as a minor complement to the development of the U.S. workforce. Further, let me repeat that reform of the H-1B program is essential to eliminating abuses under the program and providing appropriate protections for U.S. workers. Enactment of these reforms would effectively allocate a greater share of H-1B visas to employers facing actual skills shortages.

I appreciate the interest shown by the Subcommittee and staff in our views, and your thoughtful consideration of them. The Department looks forward to continuing to work closely and cooperatively with you and your staff on these issues.

Mr. Chairman, that concludes my prepared statement. I would be happy to respond to any questions.

WITNESS LIST

COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON IMMIGRATION AND CLAIMS

Date: April 21, 1998

Time: 9:30 A.M.

Room: 2237 Rayburn

Re: Hearing on Immigration and America's Workforce for the 21st Century

Witnesses

Panel I

John Fraser
Acting Administrator
Wage and Hour Division
Employment Standards Administration
U.S. Department of Labor

Carlotta Joyner
Director
Education and Employment Issues
Health, Education, and Human Services Division
U.S. General Accounting Office

Panel II

Harris Miller
President
Information Technology Association of America

Dr. Norman Matloff
Department of Computer Science
University of California at Davis

Daniel Sullivan
Senior Vice President for Human Resources
QUALCOMM

William Payson
The Senior Staff

Darryl Hatano
Vice President for International Trade and Government Affairs
Semiconductor Industry Association

Peggy Taylor
Director
Department of Legislation
AFL-CIO

Dr. Richard Lariviere
Vice President of International Programs
University of Texas at Austin

Panel III

Dr. George Borjas
John F. Kennedy School of Government
Harvard University

Dr. Georges Vernez
The RAND Corporation

Alan Reynolds
The Hudson Institute

STATEMENT OF JOHN R. FRASER
DEPUTY WAGE AND HOUR ADMINISTRATOR
EMPLOYMENT STANDARDS ADMINISTRATION
U.S. DEPARTMENT OF LABOR
BEFORE THE
SUBCOMMITTEE ON IMMIGRATION AND CLAIMS
OF THE HOUSE JUDICIARY COMMITTEE

April 21, 1998

Mr. Chairman and Members of the Subcommittee:

We appreciate this opportunity to share the views of the Administration on whether this country's important high-technology industry should be afforded increased access to temporary foreign workers to meet its growing demand for highly skilled workers. In doing so, I want to again call your attention to the need to train U.S. workers first in order to provide them with the opportunity to acquire the skills needed to compete in our rapidly changing economy, and to the pressing need for reform of the H-1B nonimmigrant visa program.

Our information technology (IT) industry is essential to our continuing strong economic growth and wider prosperity. Our interest in the industry's strength is evidenced by our participation in a recent convocation in Berkeley that assessed IT work force needs. Further, as you know from Administration proposals advanced since 1993, we believe that the H-1B program needs fundamental reform. I would like to commend the Subcommittee for its interest in these issues.

We believe the issue of whether to increase the IT industry's access to temporary foreign workers should be evaluated within the framework of the following three questions:

(1) Is there a shortage of skilled U.S. workers to fill jobs in the IT industry and meet

future workforce needs?

(2) What would be the consequences of raising the annual H-1B cap?

(3) Does the current H-1B program need to be reformed in order to provide industry appropriate access to temporary foreign workers while protecting the job opportunities, wages and working conditions of U.S. workers?

I will address each of these in turn.

Tight Labor Markets and IT Skills Shortages

Proponents of increasing the annual cap on H-1B visas argue that this increase is necessary for the IT industry to be able to overcome an acute shortage of skilled U.S. workers. While there is no dispute that there is strong growth in demand for workers in the IT industry, it is much less clear what may be the magnitude of any shortage of skilled U.S. workers to meet this demand, or whether the domestic labor market will be able - as it has over the last decade - to satisfy projected job growth.

U.S. employment has been growing rapidly, labor markets are increasingly tight, and they are likely to remain so. Though this is true for the nation as a whole, IT labor markets appear to be particularly affected. Employment opportunities for computer systems analysts, engineers, and scientists have been growing by 10 percent a year — well above the growth of comparable occupations — and are expected to continue growing at a comparable rate through 2006. The Bureau of Labor Statistics (BLS) predicts that the U.S. will require more than 1.3 million new workers in IT core occupations between 1996 and 2006 to fill job openings projected to occur due to growth and the need to replace workers who leave the labor force or transfer to other occupations.

The IT skills shortage issue is somewhat controversial. Some industry advocates assert that there exist more than three hundred thousand unfilled jobs within the IT industry, and that these vacancies are raising business costs and hurting U.S. competitiveness. Industry points to a number of other factors to substantiate their assertion of an IT skills shortage – large numbers of want ads, hiring bonuses, aggressive recruiting, and high turnover of IT specialists within the industry.

On the other hand, critics argue that the IT industry: (1) overstates the problem by producing inflated job vacancy data and equating it to skills shortages; (2) continues to lay off tens of thousands of workers (e.g., Intel, Netscape, Cypress Semiconductor and Silicon Graphics recently announced large lay-offs); and (3) fails to tap reservoirs of available talent by insisting on unnecessarily specific job requirements and not providing more training to develop incumbent workers' skills.

One point of contention is the confusion between equating job vacancies and actual skills shortages. While an industry association-sponsored survey indicates that there may be as many as 350,000 job vacancies in the IT industry, as you will hear, the General Accounting Office (GAO) has concluded that this does not necessarily signal an acute shortage of skilled workers. In fact, most industries and firms (particularly those with rapid employment growth and high worker turnover) will have large numbers of job openings that may not indicate skills shortages.

While higher than average wage growth can be a reliable indicator of skill shortages, the wage growth record for the IT industry is mixed. Though BLS wage trends for broad computer-related categories show only average wage growth between 1988 and 1997 for all categories, it only shows above-average wage growth in 1996 and 1997 and only in the lower-skill computer-related categories, such as programmers. At the same time, a variety of industry wage surveys show larger wage increases in 1996 and 1997 in specialized, high-skill occupations.

The Subcommittee should also take into consideration other factors that bear on the question of the scope and duration of any labor shortage in the IT industry:

- The current "Year 2000" problem is now occupying thousands of IT workers but only for the short-term;
- New technologies are being introduced that are creating more efficient ways to produce software, store and retrieve data, speed up computations, and generally improve the productivity of the IT work force;
- The number of computer science enrollments has risen significantly in the last two years (and nearly three-quarters of all IT workers got their education in other disciplines).

Consequences of Raising the H-1B Visa Cap

We strongly urge that any decision to raise the H-1B visa cap carefully consider the possible adverse impact of such a move on the normal process by which labor markets adjust to a growing demand for workers. The labor market should be permitted to adjust to this increased demand without introducing unnecessary factors which could delay, if not prevent, these normal market adjustments. Indeed, the IT labor market has already begun to respond to the signals of increased demand. A survey of U.S. Ph.D. departments of computer science and computer engineering showed bachelor-level enrollments were up 46 percent in 1996, and another 39 percent in 1997 -- nearly doubling over the two year period.

It is also important to remember that tight labor markets are good for U.S. workers. A tight labor market causes employers to raise wages, improve working conditions, and provide increased training to enable currently employed workers to keep pace with technology. An increased demand for trained workers induces educational and job training institutions to teach new skills. With more opportunities for training, workers acquire skills needed to obtain better, higher-paying and more secure jobs, thereby creating open jobs and career ladders for those just entering or reentering the labor market (e.g., young people, minorities, displaced workers, welfare recipients and other disadvantaged groups). Therefore, tight labor markets create incentives for employers and workers to react in ways needed to achieve many of the Nation's top priorities: raising wages; providing greater opportunities for lifelong learning; and moving welfare recipients, out-of-school youth, and dislocated workers into jobs.

However, while tight labor markets are good for U.S. workers, labor markets can sometimes be slow to respond to skills shortages. In these circumstances, it is often argued that temporary foreign workers are needed in the short-term to provide necessary skills while the labor market adjusts to provide U.S. workers with the requisite training. Without needed foreign temporary workers, industries experiencing skill shortages may adjust in ways that do not serve the short-term or long-term priorities of the country, either by reducing job creation or by moving jobs overseas. Further, because the IT sector is so critical to our global competitive edge, the U.S. economy could suffer disproportionate harm if skill shortages do become acute.

Because the expanded use of foreign temporary workers may interfere with labor market adjustments and may make achieving our other priorities more difficult, we must make sure that any increase in the annual number of foreign temporary workers is done with care to ensure that the use of these foreign temporary workers does not interfere with healthy adjustments in the labor market.

We must also be cognizant that raising the H-1B cap may subvert the protection of U.S. workers that is one of the key principles underlying this Administration's strong support of legal immigration. Raising the H-1B cap will almost certainly increase permanent employment-based legal immigration and, perhaps, illegal immigration. Nearly half of those who become permanent employment-based immigrants convert from H-visa nonimmigrant status. Rather than filling a temporary labor shortage, conversion fills permanent jobs that will then not be available to U.S. workers and students who we want to be able and prepared to fill high-tech jobs in our economy.

The Department of Labor has heard from many concerned individuals and groups on the issue of the adverse impact on U.S. workers of raising the annual cap on H-1B visas. I would like to request that copies of the many letters we have received from these people be included in the record of today's hearing.

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In sum, Mr. Chairman, our assessment of the likely effects of raising the H-1B cap reconfirms our strong conviction that our primary public policy response to skills mismatches due to changing technologies and economic restructuring must be to prepare the U.S. workforce to meet new demands. Yet we recognize that short-term demands for skills may require that we develop a balanced, short-term response to meet urgent needs while we actively adjust to rapidly changing circumstances. However, increased numbers of temporary foreign workers should be the last — not the first — public policy response to skills shortages.

Given this broader context, let me now turn to the third of the issues I listed — the pressing need for reform of the H-1B nonimmigrant program.

H-1B Nonimmigrant Program Must be Reformed

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However, there exist serious structural flaws in the current H-1B program. These flaws are documented in a May 1996 report by the Department's Inspector General (IG). I would ask the Subcommittee to accept the IG's full report in the record of today's hearing.

The IG found that, despite the legislative intent:

> ". . . the [H-1B] program does not always meet urgent, short-term demand for highly-skilled, unique individuals who are not available in the domestic work force. Instead, it serves as a probationary try-out employment program for illegal aliens, foreign students, and foreign visitors to determine if they will be sponsored for permanent status."

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- they have taken timely and significant steps to recruit and retain U.S. workers in these occupations; and
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Conclusion

Mr. Chairman, let me conclude by restating that the growing workforce needs of the IT industry can only be met — and the strength and growth of the industry secured in the long run — if we take the steps needed to fully develop and utilize the skills of U.S. workers. Increased reliance on temporary foreign workers should, at most, only be a small part of the solution and must be viewed as a minor complement to the development of the U.S. workforce. Further, let me repeat that reform of the H-1B program is essential to eliminating abuses under the program and providing appropriate protections for U.S. workers. Enactment of these reforms would effectively allocate a greater share of H-1B visas to employers facing actual skills shortages.

I appreciate the interest shown by the Subcommittee and staff in our views, and your thoughtful consideration of them. The Department looks forward to continuing to work closely and cooperatively with you and your staff on these issues.

Mr. Chairman, that concludes my prepared statement. I would be happy to respond to any questions.

UNITED STATES DEPARTMENT OF LABOR

FACSIMILE TRANSMISSION

OFFICE OF CONGRESSIONAL AND INTERGOVERNMENTAL AFFAIRS

200 Constitution Avenue,
N.W.
Room S-1325
Washington, DC 20210

Confirmation:
202/219-6141

April 21, 1998/8:57am

TO: JULIE

DEPARTMENT/COMPANY:

FACSIMILE NUMBER: 456-5581

FROM: EARL GOHL

NUMBER OF PAGES INCLUDING COVER: 13

FACSIMILE REPLIES:	CONGRESSIONAL AFFAIRS	202/219-5120
	INTERGOVERNMENTAL AFFAIRS	202/219-5736
	IMMEDIATE OFFICE OF THE ASSISTANT SECRETARY	202/219-5288

MESSAGE: Attached is the statement of John Fraser before the Subcommittee on Immigration and Claims of the House Judiciary Committee.