Julie A. Fernandes
01/26/98 12:18:54 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Laura Emmett/WHO/EOP
Subject: H1B visas

Elena,

H1B visas are temporary work visas for specialty workers. They allow generally highly skilled immigrants to work in this country for up to six years. Under current law, the annual number of H1B visas that can be issued by the INS is capped at 65,000.

Historically, we have not used the full complement of H1B visas. However, the cap was reached last August for the first time. Thus, the issue has been presented whether the Administration would support raising the cap to accomodate more temporary foreign high-skilled workers. The Administration has never taken a position on raising the cap, though we have often spoken of the need to place a strong emphasis on training American workers to meet the demands of the high tech industry.

Though the question of the H1B cap has not been squarely addressed, there have been some recent discussions of reforms to the temporary visa program. A couple of years ago, there was language in legislation that would consolidate the H1B and H2B programs (the H2B vias program is for temporary non-agricultural workers and are generally underutilized; approximately 30,000 of the 66,000 allotted are used every year). Such a consolidation would effect an increase in the number of available visas for H1B uses. According to the INS, at the time that this language was put forth, the Administration indicated that it was something that we could go along with. Also, the INS has given guidance to its adjudicators about how to best count the usage of H1B visas for purposes of determining whether the cap has been reached. Under this newer guidance, renewals of H1B visas are not counted as "new" visas for cap-counting purposes. Finally, the Department of Labor has advocated for a reduction in the length of stay for H1B visa-holders from an maximum of 6 years to a maximum of 3 years.

On January 12th of this year, Secretary Daley -- at a conference on the information-technology workforce shortage in the Silicon Valley -- stated in his remarks that the Administration was opposed to raising the cap on temporary visas for high-skilled workers. In an interview with the San Jose paper following his speech, he characterized the raising of the cap as "politically not feasible" and stressed that industry should concentrate on developing human capital within the U.S. According to the article, Silicon Valley business leaders have said that increasing the cap on visas for skilled high-tech immigrants has become one of their top legislative priorities this year.

The problem with over-use of H1B visas is related to a larger issue related to employment-based legal immigration programs. According to many sources, it takes the Department of Labor much too long (approximately two years in many cases) to do a labor certification, which is a prerequisite for an employment-based non-temporary visa. Thus, employers use the H1B as a way around that process. If Labor's certification process were more efficient, there would likely be less of a demand for these temporary visas. To that end, the CIR recommended that Labor no longer be charged with the responsbility to do labor certifications and some (including Carnegie Foundation) have recommended that the task be contracted out. This position, however, is very controversial and strongly opposed by folks at the Department of Labor.

Leg. Affairs has been unable to locate Abraham's draft legislation on raising the cap. I am trying to track it down.

Julie

Leanne A. Shimabukuro 01/08/98 05:43:29 PM

Record Type: Record

To: Laura Emmett/WHO/EOP

cc: Julie A. Fernandes/OPD/EOP

Subject: weekly

Immigration -- Skills of Immigrants: The attached U.S. News article discusses the issue of whether we should change our legal immigration system to strengthen preferences for skilled and well-educated prospective immigrants over those that are poorly educated and unskilled. The current immigration system is set up to favor keeping families intact. Thus, the vast number of legal immigrants are brought to this country through family-based visas, which do not take into account education or skill level. The article cites a Rand study proposal to create a point system of immigration which continues to give weight to immediate family reunification but would also give points for education, language skills, and work experience. The final report of the Commission on Immigration Reform also recommends a shift in priority toward higher skilled immigrants. Instead creating a point system, the Commission recommends revising skill-based admissions (approximately 100,000 visas) to favor highly-skilled and educated immigrants and eliminating altogether the category of unskilled workers. Though we think that these ideas are well worth exploring, it is unlikely that Congress will want to consider an overhaul of legal immigration this year. Efforts to reduce legal immigration levels were defeated during consideration of the 1996 illegal immigration law.

Julie A. Fernandes
01/20/98 07:33:50 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Laura Emmett/WHO/EOP, Leanne A. Shimabukuro/OPD/EOP
Subject: CNN and Immigration

Elena,

Last week in the Silicon Valley, in response to a question regarding Sen. Abraham's proposed legislation that would raise the number of H1B visas (temporary visas for "specialty workers" -- generally higher skilled), Commerce Secretary Daley made a comment that the Administration would oppose raising the annual number of these visas. Historically, we have not used the full number of H1B visas, but the cap (now at 65,000) was reached for the first time in FY 1997.

CNN has called John Frazier at Labor to ask whether someone from there would appear (unclear on what program) tomorrow to comment on this. Frazier is going to inform them that Labor has not seen the legislation, and cannot comment. We also put in a call to INS public affairs to alert them to this.

Julie

Barbara

H1B & H1B
Not an aff
was in leg.
commented on leg.
something we could
go along with

Julie - Please get me a copy of the legislation and a short memo telling me everything I need to know for next week's meeting.

Thanks.
Elena

H2A - temp. ag. workers
H2Bs -

Smarter about counting.

If people renewed visas, counted again.
Shouldn't be counted again (b/c bodies, not renewals)

INS guidance
pay attn if new or renewal for counting purposes
Annual cap → up to 6 yrs.

~~6~~ 2 - 3 yrs.
other things that DOL has done
① length of stay reduced from 6 - 3 yrs.
② other substantive reforms
re: temp workers category.

H2B -
temp. non-agricultural workers.

Briefing material
for Bob Bad

Hearing from 09/95
Reich detail re: H2B
+ INS testimony

LRM ID: IMS245 **SUBJECT:** LABOR Testimony on H-1B Nonimmigrant Employment Based Visa Program for Skilled Workers

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: Ingrid M. Schroeder Phone: 395-3883 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-3454

FROM: Feb 24, 1998 (Date)
LTC Tim Raezer (Name)
Dept of Defense (Agency)
(703) 697-1305 (Telephone)

The following is the response of our agency to your request for views on the above-captioned subject:

____ Concur
✓ No Objection, but we do have concerns which are attached.
____ No Comment We concur with placeholder language which
____ See proposed edits on pages ____ DPC/OSTP/OMB have agreed to
____ Other: ____ include in the testimony.
TJR
✓ FAX RETURN of 1 pages, attached to this response sheet

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL # of pages ▶

To Julie Fernandes	From Ingrid Schroeder
Dept./Agency DPC	Phone # 53883
Fax # 65581	Fax # 53109

NSN 7540-01-317-7368 5099-101 GENERAL SERVICES ADMINISTRATION

DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
WASHINGTON, D.C. 20301-1600

February 24, 1998

MEMORANDUM FOR INGRID SCHROEDER, LEGISLATIVE REFERENCE DIVISION, OFFICE OF MANAGEMENT AND BUDGET

FROM: S.T. BRICK, DIRECTOR, LEGISLATIVE REFERENCE SERVICE, DEPARTMENT OF DEFENSE

SUBJECT: LRM ID: IMS245, LABOR Testimony on H1B Nonimmigrant Employment Based Visa Program for Skilled Workers

In response to your request for views, the Department of Defense has concerns with the subject testimony. Federal research agencies should be involved during the development of the legislative proposals that this testimony portends and not be limited to coordinations with short deadlines on already-drafted proposals, as has happened in 1995-1996.

The Department supports what appears to be the overall intent of the Department of Labor's statement, to ensure that the H-1B nonimmigrant visa program is not misused to undercut protections for U.S. workers. The overall tenor of the testimony, however, underemphasizes the appropriate use of the H-1B program by the U.S. research enterprise to draw upon world-class scientific and engineering talent. For example, the second paragraph on page 7 of the testimony notes the need for use of the H-1B program for access to the "best and the brightest," but only to meet urgent and generally temporary business needs; the paragraph fails to capture the importance to the country of outstanding researchers that are available to us through the H-1B program, thereby helping the U.S. retain its technological edge for economic and military competitiveness.

It appears that this testimony will be followed by Administration legislative proposals, and those proposals are far more important than the testimony itself. We understand that a policy development effort already may be underway under the auspices of the Domestic Policy and National Economic Councils. It is critical to involve in any such effort the National Science and Technology Council (NSTC), so that legislation aimed at preventing abuses of the H-1B program does not also undermine legitimate uses of the program by the U.S. research enterprise. The NSTC's involvement is the best way to ensure that concerns of the major research agencies, such as those expressed in comments on this testimony that you received from the Department of Health and Human Services and the National Science Foundation, receive due consideration.

U.S. Department of Labor

Assistant Secretary for Policy
Washington, D.C. 20210

(1) e-mail This to me and Tom Kalil

(2) more recent version of testimony

MEMORANDUM FOR ELENA KAGAN

FROM: SETH HARRIS

DATE: FEBRUARY 9, 1998

SUBJECT: ATTACHED DRAFT OPTIONS MEMORANDUM REGARDING THE PROPOSED H-1B CAP INCREASE

Last Thursday, you asked the Labor and Commerce Departments to draft a memorandum setting forth options with respect to the proposal to increase the cap on H-1B visas. Specifically, you asked us to identify 2 or 3 "middle ground" options between an absolute "yes" or "no" to the proposed increase in the cap. We have had an intensive interagency process since that meeting, also involving the INS, the State Department, and Steve Warnath, which produced the attached draft memorandum.

Secretary Daley, Deputy Secretary Higgins, and senior staff from the INS and State have approved the memo.

The attached memorandum reflects consensus as to the statement, background, and discussion of the issue. We did not achieve consensus on a recommended option, although the agencies are not at opposite ends of the spectrum. The agencies' views are expressed in the memo.

USTR

As I have mentioned to Laura, the Office of the U.S. Trade Representative may have views on this issue since it has implications for our GATS obligations. Accordingly, you may want to contact USTR before sending a memo to the President. Joseph Papavitch would be a good senior-level person to speak with; Peter Collins is the best-informed staff level contact

I hope this is responsive to your assignment. Please let me know if you need any additional information or would like to discuss the memo.

Attachment
cc: Julie Fernandez
Distribution

February 6, 1998 6:00 pm

DISCUSSION DRAFT
February . 1998

MEMORANDUM FOR:

FROM:

SUBJECT: Options Relating to Skilled Temporary Foreign Workers

Issue

Existing law permits 65,000 H-1B visas each year for skilled temporary foreign workers. The computer and health care industries are primary users of the H-1B program. The annual 65,000 visa cap was met for the first time in FY 1997, and is likely to become a legislative issue in this session of Congress.

The information technology (IT) industry, along with Senator Abraham, Representative Zoe Lofgren, and other members of Congress, support either the removal of or a significant increase in the H-1B cap. Unions, other worker organizations, Senator Kennedy, Congressman Dingell, and other members of Congress are likely to oppose any increase.

This memo provides options on how to address the H-1B cap issue. Labor Department staff have had preliminary discussions with staff for Senators Abraham and Kennedy, organized labor, and representatives from the business community and believe that certain elements of the IT industry might be willing to forge a legislative agreement.

Background

Admin. reforms

Since 1993 the Administration has sought reforms of the H-1B program: requiring employers to "recruit and retain" U.S. workers before hiring foreign temporary workers, prohibiting laying off U.S. workers to replace them with foreign temporary workers, and reducing the maximum stay for H-1B workers from 6 to 3 years. These reforms, specifically allowed under the U.S. commitments made under the Uruguay Round Agreements, have not yet been enacted.

This is a very controversial issue. Industry advocates of raising the H-1B cap, such as the Information Technology Association of America and the American Electronics Association, say hundreds of thousands of jobs cannot be filled and that these vacancies are hurting U.S. competitiveness. These industry advocates argue that these worker shortages are reflected in rapidly rising wages documented by surveys undertaken by industry groups, and changes in industry behavior that are consistent with such shortages -- increased training, more active recruitment, and the creation of a variety of partnerships with all levels of education. Critics of raising the H-1B cap, such as the AFL-CIO, the Institute for Electrical and Electronic Engineers and the American Engineering Association, say industry: (1) drastically overstates any problem by equating job vacancy data with evidence of skill shortages; (2) continues to lay off tens of thousands of workers (e.g., AT&T recently announced large job lay-offs); (3) does not hire, retrain or retain mid-career IT professionals out of a preference for cheaper workers (e.g., 70-80 percent of highly-skilled IT professionals are 44 years of age or younger); (4) hires only a tiny fraction of job applicants; and (5) fails to tap reservoirs of talent available to fill these jobs by loosening its very specific recruitment requirements and providing more training.

Despite controversy over the magnitude of the problem, it is clear that IT employment is growing rapidly and that IT labor markets are tight. Accordingly, the Administration announced several specific steps to address IT labor market issues at the recent convocation in Berkeley, including: (1) a $6 million grant program to expand private-sector involvement in school-to-work programs focused on high-tech jobs; (2) a $3 million grant program to establish partnerships between employers and training providers to train dislocated workers for high tech jobs; and (3) a series of town-hall meetings where representatives of business, academia, state and local governments, and employee organizations can discuss IT workforce needs. Further, we are planning to look at other options for helping the IT industry, as well as other industries faced with increasingly tight labor markets, meet their workforce needs by better utilizing existing U.S. workers.

Discussion

Labor Markets and Skill Shortages

Demands to increase the H-1B cap arise from trade association surveys of job vacancies, stimulated by the IT industry assertion that the rapidly growing demand for workers has created widespread IT worker shortages in a tight national labor market. Tight labor markets, while potentially threatening wage-induced inflation, create incentives for employers and workers to behave in ways needed to achieve many of your top priorities: hiring welfare recipients, out-of-school youth, and workers dislocated by trade; providing greater opportunities for lifelong learning; and raising wages and reducing income inequality. Accordingly, care must be taken before turning to immigration to expand the supply of workers. This Administration has expounded the proposition that increased immigration should be the last -- not the first -- public policy response to skill shortages.

editorial

The existence of a tight labor market causes employers to raise wages, improve working conditions, and provide increased training to induce more workers to enter the labor market. The 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 -- young people, welfare recipients, displaced workers, and other disadvantaged groups.

Repeat

Labor markets are sometimes slow to respond to skills shortages. In these circumstances, it is often argued that foreign temporary workers are needed in the short-term to provide necessary skills while the labor market adjusts and provides U.S. workers with the requisite training.

Without needed foreign temporary workers, some argue that the IT industry may adjust to skills shortages in ways that do not serve the short-term or long-term priorities of the country, either by reducing job creation or by moving job overseas. Further, it is argued that IT industries are so critical to our competitive edge in an array of industries and services that disproportionate harm could come to the U.S. economy.

Why isn't this ¶ also in the conditional?

Even in such circumstances, however, the use of foreign temporary workers will interfere with labor market adjustments and makes achieving your other priorities more difficult. It dampens the market signals of increased wages, improved working conditions, and enhanced job security and growth potential so that fewer U.S. workers will be induced to acquire new skills, and fewer employers and institutions will be induced to provide more training and education.

<u>Current H-1B Program</u>

The existing H-1B program allows employers to import up to 65,000 temporary foreign workers each year. The visas last for up to six years. The foreign worker must have a 4-year degree or the equivalent in combined education and work experience. The employer must employ the foreign worker in a job requiring the minimum level of skills, agree to pay the prevailing wage, give notice to its workers of its use of foreign workers, and attest that there is no strike or lockout affecting the occupation.

As highlighted by a recent DOL Inspector General report, the existing program fails to provide adequate protections for both U.S. and temporary foreign workers. Weaknesses in the current program include: (1) no labor market test for U.S. workers; (2) no prohibition against laying off U.S. workers to replace them with temporary foreign workers; (3) no direct tie to skill shortages (some employers use this program to bring in physical therapists, auditors, accountants, and lawyers); (4) employers facing skill shortages are disadvantaged because they must compete on a first-come, first-served basis with other employers that do not face shortages; (5) nonimmigrant foreign workers are tied to one employer and vulnerable to exploitation; and (6) the Labor Department has inadequate resources for labor standards enforcement. (?)

The H-1B program seldom operates as a temporary worker program with workers coming to this country for a short duration and then returning to their homes. Instead, it operates often as a "probationary" employment program where employers bring workers to the United States and, if they perform well, sponsor them for permanent admission to this country. This linkage permits employers to hire foreign workers without first recruiting U.S. workers and then retaining the foreign workers by obtaining permanent immigration status for them. The result is that U.S. workers are never provided a genuine opportunity to compete for these jobs.

The Administration's proposed reforms, if accompanied by adequate <u>enforcement resources,</u> would address many of these problems. In addition, the proposed <u>requirement that employers recruit U.S. workers,</u> to the extent that it can be enforced, *would reduce pressure on the visa cap* by screening out employers who are not faced with skill shortages and have no interest in

the 3 mentioned above (?)

recruiting U.S. workers.

The IT Skill Shortage

Employment in high-skill IT occupations -- a major source of high-wage, high-benefit jobs -- has been growing by 10% a year and is expected to continue growing at a comparable rate through 2006. An industry association survey of job vacancies indicates that there is already a shortage of 350,000 workers in the IT industry. This conclusion, however, is not entirely accurate. The fact that there are 350,000 job openings at a point in time, as opposed to jobs that cannot be filled, **does not equate to a skill shortage**. Most industries and firms have job openings at any point in time reflecting worker turnover and employment growth. The IT industry, and any other industry with rapid employment growth and high worker turnover, will have large numbers of job openings even without experiencing any skill shortages.

① should have some sort of recruitment requirement for use of H1B visas. Help to link visas to shortages.

Wages growing substantially faster than average can be a reliable indicator of skill shortages, but the wage growth record for the IT industry is mixed. BLS wage trends for broad computer-related occupational categories show *average* wage growth between 1988 and 1997 for all categories, but with *above-average* growth in wages for 1996 and 1997 in the lower-skill computer-related categories, particularly programmers. At the same time, a variety of industry wage surveys show larger wage increases in 1996 and 1997 in more specialized, high-skill occupations. These wage data do not suggest acute skill shortages nationwide, but may be consistent with skill shortages occurring in specialized occupational areas and selected local areas.

Further, the IT labor market has begun to respond to these signals of increased demand. Enrollments in U.S. 4-year computer science programs, after falling over the previous decade, surged by 46% in 1996/1997. Moreover, two-thirds of persons in computer science or programming jobs have degrees outside of computer science and information science -- a substantial though less visible pool of labor supply. The IT industry also has begun to establish partnerships with community colleges and high schools to develop training programs for U.S. workers.

It is important to note that the H-1B program is not limited to the IT industry. Several other industries where there is no evidence of a skill shortage also use the program. For example, the second largest industry user of H-1B visas is physical and occupational therapy, a field where worker advocates claim that there is now a glut of workers.

Strategy

The Administration should push hard for its H-1B program reforms and condition our willingness to accommodate any increase in the cap on the extent to which the needed reforms are incorporated in law. The reforms we have sought will reduce pressure on the cap, better protect U.S. workers facing competition from temporary foreign workers, and more closely link use of the program to real, temporary skill shortages. Without these reforms, we need to keep the cap at

65,000 to provide some element of worker protection. If the Administration's reforms -- possibly excepting the reduction in allowable length of stay from 6 to 3 years -- can be accomplished, we would be better able to accommodate greater flexibility in the cap.

Options

Any policy response to the perceived IT skill shortage must include three parts: (1) increased efforts to expand access for Americans to get these jobs through improved information, job matching and education and training; (2) reform of the H-1B program; and (3) if 1 and 2 are done, then a temporary increase in the H-1B cap can be considered. The options presented below would require expanded enforcement resources (perhaps acquired through user fees) for the Labor Department and the INS to ensure that added protections for U.S. workers could be effectively implemented.

The preferences of the Agencies involved in this process with regard to specific options are all consistent with the strategy outlined above. DOL prefers options 2 or 3, but would not object to option 4 if this option is accompanied by increased efforts to expand access for U.S. workers to get IT jobs. The State Department and INS prefer option 4. The Commerce Department prefers option 4, but would support option 3.

Option 1: **Maintain cap at current level with no other change.**

Pros
- In a tight labor market, allows market to produce the incentives needed for achieving other Administration priorities.
- Maintains maximum incentive for IT industry to train U.S. workers.
- Confirms policy of not increasing immigration as first response to reports of skill shortages.
- Does not exacerbate existing problems with H-1B program.
- Strong opening position that is more likely to induce involved industries to bargain.
- Supported by unions and other worker representatives.

Cons
- No new immigration response to perceived IT skills shortages.
- Will be portrayed as hurting IT industry and U.S. economic growth.
- Does not provide a lever for enacting the Administration's proposed reforms.
- Strongly opposed by industry and some members of Congress.

Option 2: **Maintain cap at current level, *but seek passage of the Administration's reforms of the H-1B program.***

Pros and cons same as Option 1 except:

Pros

- Provides greater protections for U.S. workers by requiring recruitment and prohibiting layoffs.
- Indirectly addresses the "cap" issue and needs of IT employers facing actual skill shortages by screening out employers, not faced with such shortages, who do not meet reform requirements.

Cons

- Response to any IT shortages indirect as opposed to direct.

Option 3: **Maintain cap at current level, but seek passage of the Administration's reforms *and give administrative priority within 65,000 cap to industries experiencing skills shortages (or possibly provide for a set-aside).***

Pros

- Responds to the perceived needs of the IT industry and, therefore, may gain their support.
- Maximizes use of the 65,000 visas for shortage occupations.
- Consistent with position that immigration should not be principal public policy response to deal with reports of skill shortages.
- Does not increase number of workers bound to employer and potential exploitation.
- Provides greater protections for U.S. workers by requiring recruitment and prohibiting layoffs.

Cons

- May be difficult to administer given that it would require a mechanism to identify labor shortages.
- May face a challenge from some countries arguing it is not consistent with U.S.'s WTO obligations.
- Likely to be opposed by industries using the H-1B program but not experiencing skill shortages (e.g., physical and occupational therapy).

Option 4: **Raise cap to between 80,000 and 100,000 on temporary basis (with added visas to sunset after 2-3 years), enact Administration reforms, *and impose additional requirement on the temporary visas above 65,000 giving priority to industries experiencing skill shortages (possibly tie directly to IT occupations).***

target

Pros

- Visible response to skill shortages in all industries.
- Ties increase in cap more directly to skill shortages.
- Administration reforms provide greater protections for U.S. workers and screen out employers not faced with skill shortages, thereby reducing pressure on the cap.
- Restrictions on increased cap may be supported by some parts of IT industry.

Cons

(1) require employers to recruit U.S. workers
(2) prohibit layoffs of U.S. workers to hire foreign workers
(3) Reduce maximum stay from 6 to 3 years

- May be difficult to administer given that it would require a mechanism ~~to identify~~ labor shortages as well as two separate tracking systems for the visas.
- Could discourage IT industry from training U.S. workers.
- Immigration response to deal with reports of skill shortages.
- Any increase likely to be opposed by unions and other worker representatives.
- Some employers may oppose the combination of Administration reforms and added restrictions on the increase in the cap.

even with reforms ?

Option 5: **Raise the cap to between 80,000 and 100,000 with no other changes.**

Pros
- Very visible response to alleged skill shortages in all industries.
- Strongly supported by industry and some members of Congress.

Cons
- Creates the wrong incentives for achieving other administration priorities, by significantly dampening incentives for industry to provide training.
- Immigration put forth as principal public policy response to deal with reports of skill shortages.
- Increases number of workers bound to employer and potential exploitation.
- May not deal effectively with IT or other skill shortages because of first-come, first-served visa allocations.
- Opposed by unions and other worker representatives.

U.S. Department of Labor

Assistant Secretary for Policy
Washington, D.C. 20210

MEMORANDUM FOR ELENA KAGAN

FROM: SETH HARRIS

DATE: FEBRUARY 9, 1998

SUBJECT: ATTACHED DRAFT OPTIONS MEMORANDUM REGARDING THE PROPOSED H-1B CAP INCREASE

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I hope this is responsive to your assignment. Please let me know if you need any additional information or would like to discuss the memo.

<u>Attachment</u>

cc: Julie Fernandez
Distribution

February 6, 1998 6:00 pm

DISCUSSION DRAFT
February , 1998

MEMORANDUM FOR:

FROM:

SUBJECT: Options Relating to Skilled Temporary Foreign Workers

Issue

Existing law permits 65,000 H-1B visas each year for skilled temporary foreign workers. The computer and health care industries are primary users of the H-1B program. The annual 65,000 visa cap was met for the first time in FY 1997, and is likely to become a legislative issue in this session of Congress.

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This memo provides options on how to address the H-1B cap issue. Labor Department staff have had preliminary discussions with staff for Senators Abraham and Kennedy, organized labor, and representatives from the business community and believe that certain elements of the IT industry might be willing to forge a legislative agreement.

Background

Since 1993 the Administration has sought reforms of the H-1B program: requiring employers to "recruit and retain" U.S. workers before hiring foreign temporary workers, prohibiting laying off U.S. workers to replace them with foreign temporary workers, and reducing the maximum stay for H-1B workers from 6 to 3 years. These reforms, specifically allowed under the U.S. commitments made under the Uruguay Round Agreements, have not yet been enacted.

This is a very controversial issue. Industry advocates of raising the H-1B cap, such as the Information Technology Association of America and the American Electronics Association, say hundreds of thousands of jobs cannot be filled and that these vacancies are hurting U.S. competitiveness. These industry advocates argue that these worker shortages are reflected in rapidly rising wages documented by surveys undertaken by industry groups, and changes in industry behavior that are consistent with such shortages -- increased training, more active recruitment, and the creation of a variety of partnerships with all levels of education. Critics of raising the H-1B cap, such as the AFL-CIO, the Institute for Electrical and Electronic Engineers and the American Engineering Association, say industry: (1) drastically overstates any problem by equating job vacancy data with evidence of skill shortages; (2) continues to lay off tens of thousands of workers (e.g., AT&T recently announced large job lay-offs); (3) does not hire, retrain or retain mid-career IT professionals out of a preference for cheaper workers (e.g., 70-80 percent of highly-skilled IT professionals are 44 years of age or younger); (4) hires only a tiny fraction of job applicants; and (5) fails to tap reservoirs of talent available to fill these jobs by loosening its very specific recruitment requirements and providing more training.

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Labor Markets and Skill Shortages

Demands to increase the H-1B cap arise from trade association surveys of job vacancies, stimulated by the IT industry assertion that the rapidly growing demand for workers has created widespread IT worker shortages in a tight national labor market. Tight labor markets, while potentially threatening wage-induced inflation, create incentives for employers and workers to behave in ways needed to achieve many of your top priorities: hiring welfare recipients, out-of-school youth, and workers dislocated by trade; providing greater opportunities for lifelong learning; and raising wages and reducing income inequality. Accordingly, care must be taken before turning to immigration to expand the supply of workers. This Administration has expounded the proposition that increased immigration should be the last -- not the first -- public policy response to skill shortages.

The existence of a tight labor market causes employers to raise wages, improve working conditions, and provide increased training to induce more workers to enter the labor market. The 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 -- young people, welfare recipients, displaced workers, and other disadvantaged groups.

Labor markets are sometimes slow to respond to skills shortages. In these circumstances, it is often argued that foreign temporary workers are needed in the short-term to provide necessary skills while the labor market adjusts and provides U.S. workers with the requisite training.

Without needed foreign temporary workers, some argue that the IT industry may adjust to skills shortages in ways that do not serve the short-term or long-term priorities of the country, either by reducing job creation or by moving job overseas. Further, it is argued that IT industries are so critical to our competitive edge in an array of industries and services that disproportionate harm could come to the U.S. economy.

Even in such circumstances, however, the use of foreign temporary workers will interfere with labor market adjustments and makes achieving your other priorities more difficult. It dampens the market signals of increased wages, improved working conditions, and enhanced job security and growth potential so that fewer U.S. workers will be induced to acquire new skills, and fewer employers and institutions will be induced to provide more training and education.

Current H-1B Program

The existing H-1B program allows employers to import up to 65,000 temporary foreign workers each year. The visas last for up to six years. The foreign worker must have a 4-year degree or the equivalent in combined education and work experience. The employer must employ the foreign worker in a job requiring the minimum level of skills, agree to pay the prevailing wage, give notice to its workers of its use of foreign workers, and attest that there is no strike or lockout affecting the occupation.

As highlighted by a recent DOL Inspector General report, the existing program fails to provide adequate protections for both U.S. and temporary foreign workers. Weaknesses in the current program include: (1) no labor market test for U.S. workers; (2) no prohibition against laying off U.S. workers to replace them with temporary foreign workers; (3) no direct tie to skill shortages (some employers use this program to bring in physical therapists, auditors, accountants, and lawyers); (4) employers facing skill shortages are disadvantaged because they must compete on a first-come, first-served basis with other employers that do not face shortages; (5) nonimmigrant foreign workers are tied to one employer and vulnerable to exploitation; and (6) the Labor Department has inadequate resources for labor standards enforcement.

The H-1B program seldom operates as a temporary worker program with workers coming to this country for a short duration and then returning to their homes. Instead, it operates often as a "probationary" employment program where employers bring workers to the United States and, if they perform well, sponsor them for permanent admission to this country. This linkage permits employers to hire foreign workers without first recruiting U.S. workers and then retaining the foreign workers by obtaining permanent immigration status for them. The result is that U.S. workers are never provided a genuine opportunity to compete for these jobs.

The Administration's proposed reforms, if accompanied by adequate enforcement resources, would address many of these problems. In addition, the proposed requirement that employers recruit U.S. workers, to the extent that it can be enforced, *would reduce pressure on the visa cap* by screening out employers who are not faced with skill shortages and have no interest in recruiting U.S. workers.

The IT Skill Shortage

Employment in high-skill IT occupations -- a major source of high-wage, high-benefit jobs -- has been growing by 10% a year and is expected to continue growing at a comparable rate through 2006. An industry association survey of job vacancies indicates that there is already a shortage of 350,000 workers in the IT industry. This conclusion, however, is not entirely accurate. The fact that there are 350,000 job openings at a point in time, as opposed to jobs that cannot be filled, **does not equate to a skill shortage**. Most industries and firms have job openings at any point in time reflecting worker turnover and employment growth. The IT industry, and any other industry with rapid employment growth and high worker turnover, will have large numbers of job openings even without experiencing any skill shortages.

Wages growing substantially faster than average can be a reliable indicator of skill shortages, but the wage growth record for the IT industry is mixed. BLS wage trends for broad computer-related occupational categories show *average* wage growth between 1988 and 1997 for all categories, but with *above-average* growth in wages for 1996 and 1997 in the lower-skill computer-related categories, particularly programmers. At the same time, a variety of industry wage surveys show larger wage increases in 1996 and 1997 in more specialized, high-skill occupations. These wage data do not suggest acute skill shortages nationwide, but may be consistent with skill shortages occurring in specialized occupational areas and selected local areas.

Further, the IT labor market has begun to respond to these signals of increased demand. Enrollments in U.S. 4-year computer science programs, after falling over the previous decade, surged by 46% in 1996/1997. Moreover, two-thirds of persons in computer science or programming jobs have degrees outside of computer science and information science -- a substantial though less visible pool of labor supply. The IT industry also has begun to establish partnerships with community colleges and high schools to develop training programs for U.S. workers.

It is important to note that the H-1B program is not limited to the IT industry. Several other industries where there is no evidence of a skill shortage also use the program. For example, the second largest industry user of H-1B visas is physical and occupational therapy, a field where worker advocates claim that there is now a glut of workers.

Strategy

The Administration should push hard for its H-1B program reforms and condition our willingness to accommodate any increase in the cap on the extent to which the needed reforms are incorporated in law. The reforms we have sought will reduce pressure on the cap, better protect U.S. workers facing competition from temporary foreign workers, and more closely link use of the program to real, temporary skill shortages. Without these reforms, we need to keep the cap at

65,000 to provide some element of worker protection. If the Administration's reforms -- possibly excepting the reduction in allowable length of stay from 6 to 3 years -- can be accomplished, we would be better able to accommodate greater flexibility in the cap.

Options

Any policy response to the perceived IT skill shortage must include three parts: (1) increased efforts to expand access for Americans to get these jobs through improved information, job matching and education and training; (2) reform of the H-1B program; and (3) if 1 and 2 are done, then a temporary increase in the H-1B cap can be considered. The options presented below would require expanded enforcement resources (perhaps acquired through user fees) for the Labor Department and the INS to ensure that added protections for U.S. workers could be effectively implemented.

The preferences of the Agencies involved in this process with regard to specific options are all consistent with the strategy outlined above. DOL prefers options 2 or 3, but would not object to option 4 if this option is accompanied by increased efforts to expand access for U.S. workers to get IT jobs . The State Department and INS prefer option 4. The Commerce Department prefers option 4, but would support option 3.

Option 1: **Maintain cap at current level with no other change.**

Pros
- In a tight labor market, allows market to produce the incentives needed for achieving other Administration priorities.
- Maintains maximum incentive for IT industry to train U.S. workers.
- Confirms policy of not increasing immigration as first response to reports of skill shortages.
- Does not exacerbate existing problems with H-1B program.
- Strong opening position that is more likely to induce involved industries to bargain.
- Supported by unions and other worker representatives.

Cons
- No new immigration response to perceived IT skills shortages.
- Will be portrayed as hurting IT industry and U.S. economic growth.
- Does not provide a lever for enacting the Administration's proposed reforms.
- Strongly opposed by industry and some members of Congress.

Option 2: **Maintain cap at current level, *but seek passage of the Administration's reforms of the H-1B program.***

Pros and cons same as Option 1 except:

Pros

- Provides greater protections for U.S. workers by requiring recruitment and prohibiting layoffs.
- Indirectly addresses the "cap" issue and needs of IT employers facing actual skill shortages by screening out employers, not faced with such shortages, who do not meet reform requirements.

Cons

- Response to any IT shortages indirect as opposed to direct.

Option 3: **Maintain cap at current level, but seek passage of the Administration's reforms *and give administrative priority within 65,000 cap to industries experiencing skills shortages (or possibly provide for a set-aside).***

Pros

- Responds to the perceived needs of the IT industry and, therefore, may gain their support.
- Maximizes use of the 65,000 visas for shortage occupations.
- Consistent with position that immigration should not be principal public policy response to deal with reports of skill shortages.
- Does not increase number of workers bound to employer and potential exploitation.
- Provides greater protections for U.S. workers by requiring recruitment and prohibiting layoffs.

Cons

- May be difficult to administer given that it would require a mechanism to identify labor shortages.
- May face a challenge from some countries arguing it is not consistent with U.S.'s WTO obligations.
- Likely to be opposed by industries using the H-1B program but not experiencing skill shortages (*e.g.*, physical and occupational therapy).

Option 4: **Raise cap to between 80,000 and 100,000 on temporary basis (with added visas to sunset after 2-3 years), enact Administration reforms, *and impose additional requirement on the temporary visas above 65,000 giving priority to industries experiencing skill shortages (possibly tie directly to IT occupations).***

Pros

- Visible response to skill shortages in all industries.
- Ties increase in cap more directly to skill shortages.
- Administration reforms provide greater protections for U.S. workers and screen out employers not faced with skill shortages, thereby reducing pressure on the cap.
- Restrictions on increased cap may be supported by some parts of IT industry.

Cons

- May be difficult to administer given that it would require a mechanism to identify labor shortages as well as two separate tracking systems for the visas.
- Could discourage IT industry from training U.S. workers.
- Immigration response to deal with reports of skill shortages.
- Any increase likely to be opposed by unions and other worker representatives.
- Some employers may oppose the combination of Administration reforms and added restrictions on the increase in the cap.

Option 5: **Raise the cap to between 80,000 and 100,000 with no other changes.**

Pros

- Very visible response to alleged skill shortages in all industries.
- Strongly supported by industry and some members of Congress.

Cons

- Creates the wrong incentives for achieving other administration priorities, by significantly dampening incentives for industry to provide training.
- Immigration put forth as principal public policy response to deal with reports of skill shortages.
- Increases number of workers bound to employer and potential exploitation.
- May not deal effectively with IT or other skill shortages because of first-come, first-served visa allocations.
- Opposed by unions and other worker representatives.

INFORMATION

February 24, 1998

MEMORANDUM FOR THE PRESIDENT

FROM: GENE SPERLING, BRUCE REED

RE: ADMINISTRATION POLICY ON SKILLED TEMPORARY FOREIGN WORKERS

We are providing you with this informational memo on the "H1-B visa" issue because the *New York Times* recently ran a story (on it on the basis of a leaked internal Administration options memo), and because this is an important topic to Silicon Valley companies. You will be interacting with high-tech CEOs during your California trip later this week, and they may ask you about this issue. A suggested Q&A is attached.

Current U.S. law permits 65,000 H1-B visas each year for skilled temporary foreign workers. The computer and health care industries are the primary users of the H1-B program. The annual 65,000 visa cap was met for the first time in FY 1997. We expect to reach the limit again in May or June, several months before the end of the current fiscal year. Accordingly, the cap is likely to become a legislative issue in this session of Congress.

The information technology (IT) industry, along with Senator Abraham, Representative Zoe Lofgren, and other members of Congress, support either the removal of or a significant increase in the H1-B cap. Unions, other worker organizations, Senator Kennedy, Congressman Dingell, and other members of Congress are likely to oppose any increase.

A DPC/NEC working group with representatives from Labor, Commerce, State, and INS has started to meet to develop Administration policy on:

1. Steps we can take to work with industry and institutions of higher education to address the shortage of workers with IT skills;

2. Reforms of the H1-B program (e.g., a prohibition on laying off U.S. workers to replace them with foreign workers); and

3. Whether to increase the H1-B cap from its current level of 65,000.

We believe that our primary focus should be on partnering with industry to upgrade the skills of American workers, rather than on proposing an increase in the cap. For example, we successfully addressed concerns about the shortage of shipbuilder workers in Louisiana by bringing together industry, labor, and state and local elected officials. We ultimately determined that rather than a 10,000 worker shortage, the industry needed less than 1,000 temporary foreign workers.

As part of an overall package -- industry commitments to upgrade worker skills and reform of the H1-B visa system -- the interagency group is willing to consider an increase in the H1-B cap; indeed, at least one agency affirmatively supports increasing the cap in the context of a broader approach to the IT problem. However, we do not think that it makes any tactical sense to start with this as our publicly stated position.

Our next step is to meet with high-tech industry executives to develop an "action plan" that builds on a series of announcements that the Departments of Commerce, Education, and Labor made at a January 1998 conference in Berkeley, California. We hope that we can reach agreement with these executives on a comprehensive approach -- which may or may not include an increase in the H1-B cap -- to solve the IT labor shortage.

Q. Mr. President, will your Administration grant more visas to high-skilled foreign workers who are in demand by high-tech industries?

We have made no decision on this issue. In reviewing our options, my Administration's first priority will be to ensure that American workers have the skills they need to fill these jobs, and that they have priority over any foreign workers with similar training. The growing demand for workers with high-tech skills shows how critical my agenda for life-long learning is -- HOPE scholarships to open the doors of college, tax credits for employer investment in life-long learning, and making sure that all of our children are technologically literate.

Jonathan H. Schnur @ OVP
03/19/98 12:00:40 AM

Record Type: Record

To: Elena Kagan/OPD/EOP, Julie A. Fernandes/OPD/EOP

cc:
Subject: H1B

This is what we are putting in the VP's briefing memo for the AFL-CIO tomorrow on the H-1B issue. Ceci Rouse drafted it, I edited it a bit, and then ran it by her again.

If you think this isn't right, we will have a chance to brief the VP tomorrow on the road. You can leave me a message on my voice mail (6-5567) that I should call you to get recommendations on what else we should tell the VP, or
or how else you recommend he respond to an H1B question. We'll have a computer on the plane, and can rewrite if needed. Thanks! -- Jon Schnur

Q: What is the Administration's position on proposals to raise the cap on the number of H-1B visas granted as one strategy to alleviate the alleged shortage of skilled workers in the Information Technology Industry?

A: There is certainly a rising demand for skilled workers in many high-growth industries, like the information technology industry. Our first priority is to help U.S. workers get the skills they need to get these good jobs. That's why our balanced budget last year made the largest investment in higher education since the original GI bill -- with expansion of Pell Grants, extension of Section 127 (that excludes employer-paid tuition assistance from income tax), and more than $30 billion over five years for HOPE scholarships and lifetime learning tax credits.

That's also why it is critical that Congress pass the G.I. bill for workers this spring, and why we continue to very actively look for more ways to expand access to quality training, education, and lifelong learning. That's also why I am convening a summit on lifelong learning later this year to bring together leaders from labor, business, education, and government to find new strategies to help U.S. workers get the skills they need; I invite you to join me in planning this summit. *Investing in training and education is the critical strategy to power our economic growth and make sure that all of our people benefit from this growth.*

Our staff is looking very carefully at the arguments being made about the H-1B issue. Couldn't we bring you and industry and our people to the table to develop a package that could help U.S. workers and power our economy? For example, could we increase the cap as part of a comprehensive package that adhered to two principles: providing U.S. workers the necessary training to get good jobs and make sure the H-1B program protects the interests of U.S. workers? I would welcome your ideas about how to make a package like this work.

Background: There have been increasing reports of great needs for skilled workers in many sectors of the economy. While there are identified needs in fields ranging from truckers to welders in shipyards, the need has been expressed most vocally by the information technology industry for

IT workers. H-1B visas are one way by which companies can alleviate such short-term needs, allowing foreign workers in "specialty occupations" with a BA (or equivalent experience) to enter jobs requiring a BA. The visas are issued for a 3-year period, and almost always renewed for one additional 3-year period. There is an annual cap of 65,000 such visas, and a substantial percentage of those receiving these visas reman in the U.S. permanently . Last year was the first year that the 65,000 cap was reached; it is estimated that the cap will be reached by May ~~(or so)~~ of this year. There are growing calls from the IT industry in particular, to increase the H-1B visa cap.

Two bills could move through Congress next month addressing this issue -- one by Senator Abraham, to raise the cap permanently, and a second being drafted by Senator Kennedy to increase the cap temporarily. Both also contain placeholders for education or training components, and Kennedy's bill provides for reforms in the H1B program designed to protect American workers. Both are discussion bills at this point and could change considerably before getting marked up next month.

While there are estimates of large numbers of vacancies in the IT industry, there is some disagreement about the validity of these numbers and whether greater recruiting and training would enable U.S. workers to fill these jobs. The NEC, DPC, Commerce, and Labor strongly believe that we need to stress training of U.S. workers rather than simply lifting the H1-B caps.

While organized labor has not yet been a vocal participant in this debate, they generally do not support bringing in foreign workers to fill high-skilled, high-wage American jobs. At the same time, they would strongly support reform of the current H-1B program to prevent U.S. employers from laying off Americans to hire foreign workers and to require that employers attest to having attempted to recruit U.S. workers before hiring foreign workers; and they have traditionally been extremely supportive of any training initiatives. Also, Many of the possible H-1B reforms could generate disagreement and controversy among those interested in this issue.

The President was asked about this yesterday at the AFI-CIO meeting and gave an answer along the lines of the Q & A above. You will get a longer briefing memo on this issue next week.

AFL-CIO
H1B

AFL-CIO Executive Council
March 20, 1998
Statement

NO SHORTAGE OF HIGH-TECH WORKERS

Allegations of major shortages in information technology (I.T.) skills are greatly exaggerated and largely unsupported by objective economic measures. Alarmist claims that our nation faces an extreme shortage of highly-skilled and professional workers to serve its growing information technology-based industries rest on studies initiated and supported by the very employers who stand to gain the most from an oversupply of I.T. workers.

Without a doubt, the information technology industry is experiencing growing pains -- not unlike those endured by other new, evolving industries. But much of it is self-inflicted, created by short-sighted human resource policies and a lack of effective training and education programs.

But increases in the demand for workers should not be viewed as a crisis but as a challenge to the industry and as an opportunity for American workers to learn new skills and earn more money. Given the tools, American workers will rise to the challenge and meet the demand.

The current situation simply does not warrant a major overhaul of U.S. immigration law. The Clinton Administration must resist pressures to greatly expand the flow of "guest" workers by lifting immigration limits in the so-called H-1(b) visa category. Removing H-1(b) limits which already allow for 65,000 highly-skilled and professional people to enter annually is uncalled for.

The Administration should bring together employers, educators and labor to develop education and training programs to enhance the skills of U.S. workers to meet the industry's employment needs. Since the industry relies heavily on a contingent workforce of temporaries, part-timers and contractors, it faces unique training and education problems as each firm lacks the necessary incentives to make crucial investments in their workforce. Increasing the availability of foreign guest workers will only exacerbate this situation by allowing the industry to continue to ignore its responsibilities.

The industry must do more to retain and retrain experienced workers. The involvement of women and people of color as engineers, computer system analysts, and in other technological roles has lagged significantly. And it must do more to encourage their participation in the I.T. professions.

So that our nation may take advantage of the opportunities created by a rising demand for I.T. skills, the AFL-CIO recommends:

1. Expanded training, apprenticeship, education and retraining programs to improve the high-tech skills of U.S. workers.

2. Increased recruitment of women and people of color into I.T. jobs.

3. Greater efforts at retraining and hiring older, experienced I.T. workers;

4. Improved pay and working conditions and a reduction in contingent employment.

5. An in-depth investigation by Congress of long-term I.T. employment needs.

The AFL-CIO further calls for reform of the H-1(b) immigration program to prevent abuses by employers that reduce job opportunities for U.S. workers. Specifically, the AFL-CIO seeks changes that:

1. Prevent employers from recruiting guest workers to replace laid-off "or otherwise displaced" U.S. workers.

2. Require that prospective employers demonstrate they have made a bona fide attempt to recruit U.S. workers.

3. Limit the H-1(b) visa to three years, a period of time which should be sufficient to provide an employer with temporary help until U.S.-based workers are trained and recruited or a short-term project is completed.

We believe that these reforms in the H-1(b) program will assist employers who truly need to supplement their workforce with talented and energetic guest workers to address short-term needs, and will do much to stop abuses by other employers who use these workers to undercut the economic position of workers in the United States. Immigration has, and will continue to be, a source of richness for our economy and our culture; we must not let the shortsighted human resource practices of the information technology industry turn the H1-B program into one in which working people are the losers.

###

MARCH 23, 1998

NOTE TO: JULIE FERNANDEZ
ELENA KAGAN
CECILIA ROUSE

FROM: SETH HARRIS
219-6181

SEE THE ATTACHED

4 PAGES INCLUDING COVER PAGE

UNITED STATES DEPARTMENT OF LABOR
OFFICE OF
THE ASSISTANT SECRETARY FOR POLICY

3/23

To: Gary
Ruth
Ray Uhalde
John Fraser
Earl Gohl
Geri Palast

Fr: Seth Harris

This is the AFL-CIO's resolution on the H-1B issue.

A cornerstone of President Clinton's economic strategy to strengthen the economy and ensure that every American can reap its rewards is investing in education and training. For more than five years, President Clinton has worked to widen the circle of opportunity and create a high-skilled workforce through HOPE Scholarship Tax Credits, the Lifetime Learning Tax Credit, the expansion of Pell Grants, a more than doubling of dislocated worker training funds, a new student-loan program that allows people to pay back their loans as a share of their income, and providing additional incentives to businesses to provide training for their workers. And to train American workers for the 21st century, President Clinton believes we need a job-training system for the 21st century. That is why he is working with Congress to pass the G.I. Bill for America's Workers this spring.

In line with this approach, ~~An issue that has received a lot of attention recently involves the shortage of trained workers in the information technology (IT) industry.~~ The Clinton Administration believes that the first response to increasing the availability of ~~IT~~ trained workers must be increasing the skills of American workers and helping the labor market work better~~, so there is a supply of skilled workers where there is a demand for skilled employees.~~ While it may be necessary ~~— at least~~ in the short-term — to increase the number of visas for temporary foreign workers (under the H1-B program), this must only be done in conjunction with doing more to raise the skill level of American workers.

in the Information Technology (IT) industry

In addition, the Administration believes that any temporary increase in the program should be limited to the minimum amount necessary, as demonstrated by empirical evidence. And expanding the number of visas, even temporarily, must be accompanied by needed improvements in the H1-B program. Since 1993, this Administration has sought reforms of the H1-B program, including requiring employers to "recruit and retain" U.S. workers before hiring temporary foreign workers, prohibiting lay-offs of U.S. workers to replace them with foreign temporary workers, and reducing the maximum stay for H1-B workers from 6 to 3 years. These reforms, if enacted, would help target H1-B usage to industries and employers that are exhibiting genuine labor shortages.

Senator Kennedy's [bill/approach to this issue] addresses both the short-term and long-term implications of the apparent skills shortage we are now experiencing. ~~And~~ We believe that his bill is the appropriate vehicle to put American workers first and address the labor market needs of our rapidly changing economy.

Sally / Julie / Tom O.

Looks good.

Elena

THE WHITE HOUSE
WASHINGTON

From the Office of:

The Domestic Policy Council

Elena Kagan
Deputy Assistant to the President
for Domestic Policy

TO: Julie Fernandes

FAX: 65581

PHONE:

PAGES: 2

MESSAGE:

Please call (202) 456-5584 if there are any problems with the transmission.

Administration Position on Kennedy/Feinstein Bill on H-1B Visas

The Clinton Administration is still reviewing the Kennedy/Feinstein proposal. However, the Administration believes that the first response to increasing the availability of trained workers in the information technology (IT) industry must be raising the skills of American workers, and helping the labor market work better to match employers with Amer workers who are ready and willing to fill these jobs. While it may be necessary in the short-term to increase the number of visas for temporary foreign workers (under the H1-B program), this must be done only in conjunction with additional efforts by the IT industry to increase the skill level of American workers and needed improvements in the H1-B program. Since 1993, this Administration has sought reforms of the H1-B program, including requiring employers to "recruit and retain" U.S. workers before hiring temporary foreign workers, prohibiting lay-offs of U.S. workers to replace them with foreign temporary workers, and strengthening enforcement authority. These reforms, if enacted, would help target H1-B usage to industries and employers that are exhibiting genuine labor shortages.

2/78

no Pres. statement
Q&A consistent w/this

Is user fee GATT legal (?)

both the WH Counsel and GATT to get answer.

Gene: wants a principle mtg. on Tuesday

Talked to JP / this statement or nothing

Question & Answer on Immigration: H1B visas
March 26, 1998

Q: This morning Senators Kennedy and Feinstein held a press conference outlining a proposal to increase the cap on temporary visas for foreign workers (H-1B visas). Does the Administration support their proposal?

A: We are still reviewing the Kennedy/Feinstein proposal. We have heard a lot recently about the shortage of trained workers in the information technology (IT) industry. We believe that the first response to increasing the availability of IT workers must be increasing the skills of American workers and helping the labor market work better so there is a supply of skilled workers where there is a demand for skilled employees. While it may be necessary in the short-term to increase the number of visas for temporary foreign workers (under the H1B program), this must be done only in conjunction with additional efforts by the IT industry to increase the skill level of American workers and with needed improvements in the H1-B program. Key components of that strategy are our HOPE scholarships, the Lifetime Learning Tuition Credit, and the expansion of Pell Grants. It is also critical that Congress pass the G.I. Bill for America's Workers this spring.

Any temporary increase in the H1B visa program should be limited to the minimum amount necessary. Also, expanding the number of visas, even temporarily, must be accompanied by needed improvements to the H1B program. Since 1993, this Administration has sought reforms of the H1B visa program, including requiring employers to "recruit and retain" U.S. workers before hiring temporary foreign workers, prohibiting lay-offs of U.S. workers to replace them with foreign temporary workers, and reducing the maximum stay for H1B workers from 6 to 3 years. These reforms, if enacted, would help target H1B usage to industries and employers that are exhibiting genuine labor shortages.

Q: Does the Administration support Senator Abraham's bill, "The American Competitiveness Act," that also increases the number of H-1B visas?

A: Regrettably the Abraham bill emphasizes providing opportunities for foreign workers rather than providing for and protecting U.S. workers. For example, the bill's increase in the number of H-1B visas is permanent. Second, the bill does not require that employers "recruit and retain" U.S. workers before hiring temporary foreign workers and it does not prohibit employers from laying-off U.S. workers in order to replace them with foreign temporary workers.

THE WHITE HOUSE
WASHINGTON

From the Office of:

The Domestic Policy Council

Elena Kagan
Deputy Assistant to the President
for Domestic Policy

TO: Julie Fernandes

FAX: 65581

PHONE:

PAGES: 3

MESSAGE: * For your review

who else should
review this?

Please call (202) 456-5584 if there are any problems with the transmission.

COVER SHEET

FAX

To: Elena Kagan - Attn: Laura
Fax #: (202) 456-2878
Subject:
Date: 3/18/98
Pages:

COMMENTS:

From the desk of...

Seth D. Harris
Deputy Assistant Secretary for Policy
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

(202) 219-6181
Fax: (202) 219-9216 or (202) 219-6924

2P

3/18-Noon

DRAFT STATEMENT

The President strongly supports the principles Senator Feinstein and Senator Kennedy set forth to address the rapidly growing demand for skilled workers in certain parts of the information technology sector. The Administration agrees that a measured, short-term response --- taking as its top priority finding, placing, educating, and training U.S. workers --- will assure U.S. workers good jobs at rising wages, secure a supply of home-grown skilled workers for the IT industry and other high-tech employers, and minimize long-term risks to our immigration system.

this is a long-term solution

As Senators Feinstein and Kennedy have stated:

- *Our first priority must be to help U.S. workers get the skills they need to satisfy employers' rising demand for skilled workers.* There have already been substantial increases in the number of students pursuing degrees in computer science over the past two years, but there is more that can be done to accelerate normal labor market responses: passage of the G.I. Bill for America's Workers, approval of the President's proposal to dramatically increase funding for training dislocated workers, broadening employer involvement in School-to-Work opportunities, and tapping into America's Job Bank/America's Talent Bank, as well as new initiatives such as expanded scholarship and loan opportunities.

- *The H-1B foreign temporary worker program must be fixed, not simply expanded.* The program that permits 65,000 foreign temp workers into the U.S. each year is fundamentally flawed. Current law does not require employers to recruit or retain U.S. workers before hiring foreign temp workers. Even worse, it permits employers to lay off U.S. workers in order to hire foreign temps. Only new legislation can fix these problems.

- *Any expansion of the H-1B program must be modest and strictly time-limited.* Tight labor markets cause employers to raise wages, improve working conditions, and provide more worker training, and workers to seek more and better skills and climb up the career ladder. Introducing more foreign workers into the workforce can dampen labor market signals and hold down wages and working conditions. Any increase in the H-1B cap should only fill an immediate, critical need while the labor market adjusts.

- *Any expansion of "temporary" foreign worker programs must take into account long-term immigration consequences.* We should recognize that temporary "nonimmigrant" workers frequently remain in the U.S. permanently. By expanding the H-1B program in the short-term, there could be substantial pressure on Congress to increase the number of permanent immigrants admitted to the U.S. in future years and high-tech job opportunities for U.S. workers could be threatened in the long term.

We look forward to working with Senator Feinstein and Senator Kennedy, and other interested parties, on their forthcoming legislation.

H.R. 3736 -- Workforce Improvement and Protection Act of 1998
(Smith (R) Texas)

The Administration believes that the first response for increasing the availability of skilled workers must be increasing the skills of U.S. workers and helping the labor market work better to match employers with U.S. workers. Therefore, additional efforts to increase the skill level of U.S. workers and needed improvements to the H-1B program are necessary prerequisites for the Administration to support any short-term increase in the number of H-1B visas available for temporary foreign workers. Because H.R. 3736, as amended, the "Workforce Improvement and Protection Act of 1998," is consistent with these objectives, we ~~strongly~~ support it.

H.R. 3736, as amended, links a temporary increase in the H-1B visa cap to the enactment of meaningful reforms to the H-1B visa program. H.R. 3736 would help ensure that U.S. workers do not lose their jobs to temporary foreign workers and that employers who rely on the H-1B program have made serious efforts to recruit U.S. workers for open positions. The bill eliminates the financial incentive to hire foreign workers by requiring -- for the first time ever -- that the prevailing wage include "total compensation" (including benefits, stock options, pensions, etc.). Moreover, H.R. 3736 expands enforcement authority, increases resources targeted to enforcement, and strengthens penalties to help prevent employer abuses of the H-1B program.

In addition, H. R. 3736, as amended, provides for additional training opportunities for U.S. workers that are funded through a significant H-1B application fee paid by employers. Training is a vital component of our strategy to address the long-term demand for highly skilled U.S. workers and to enhance the international competitiveness of important U.S. industries. An effective training strategy will also work to reduce the demand for H-1B visas.

The Administration believes that the reforms included in H.R. 3736, as amended, would substantially improve the current H-1B program and that the additional training opportunities funded by an application fee will help provide U.S. workers with the skills they need to compete in the new economy.

EK/SK

e-mail

Q&A
H-1B Visa Deal

Q: We understand that last night you reached a deal with Senator Abraham on H-1B legislation. What does it look like?

A: From the beginning, our position has been clear: in order for the President to sign a bill that increases the cap on H-1B visas, it must contain both a significant training component and meaningful reform to the H-1B program. The Abraham bill, as amended, meets these objectives.

The bill addresses the need for skilled workers by increasing the cap on H-1B visas significantly over the next three years , while including reforms to the H-1B program that will help ensure that U.S. workers do not lost their jobs to temporary foreign workers and that employers who rely on the H-1B program have made serious efforts to recruit U.S. workers. The bill eliminates the financial incentive to hire foreign workers by requiring -- for the first time ever -- that the prevailing wage include "total compensation" (including benefits, stock options, pensions, etc.). Moreover, H.R. 3736 expands enforcement authority, increases resources targeted to enforcement, and strengthens penalties to help prevent employer abuses of the H-1B program.

In addition, the bill provides for additional training opportunities for U.S. workers that are funded through a $500 application fee paid by employers. The money generated by this fee will be used to fund scholarships for low-income students in math, engineering, and computer science, and training for many thousands of Americans through the Jobs Partnership Act.

We believe that the reforms included in H.R. 3736, as amended, will substantially improve the current H-1B program and that the additional training opportunities funded by an application fee will help provide U.S. workers with the skills they need to compete in the new economy.

Q: What was your role in creating this compromise?

A: Over the last several months, we have had discussions with various members of Congress, including Senator Abraham, to ensure that efforts to increase the H-1B visa cap would be coupled with additional training and protections for U.S. workers. We are pleased that those efforts have been successful and urge Congress to pass this legislation.

From: Ingrid M. Schroeder on 09/24/98 09:28:06 AM

Record Type: Record

To: Julie A. Fernandes/OPD/EOP

cc:
Subject: HR 3736 - draft SAP

Julie-
I made a few changes to put this more in SAPese. I don't think I changed the content at all. I will show this to Jukes and see what he says - keep me posted.

Ingrid

H.R. 3736 --Workforce Improvement and Protection Act of 1998
(Smith (R) Texas)

The first response for increasing the availability of skilled workers must be increasing the skills of U.S. workers and helping the labor market work better to match employers with U.S. workers. Additional efforts to increase the skill level of U.S. workers and needed improvements to the H-1B program are necessary prerequisites for the Administration to support any short-term increase in the number of H-1B visas available for temporary foreign workers. ~~Therefore,~~ The Administration ~~strongly~~ supports House passage of ~~the compromise version of H.R.~~ 3736 because it is consistent with these objectives. (Stet)

The compromise version of H.R. 3736 links a temporary increase in the H-1B visa cap to the enactment of meaningful reforms to the H-1B visa program. H.R. 3736 would help ensure that U.S. workers do not lose their jobs to temporary foreign workers and that employers who rely on the H-1B program have made serious efforts to recruit U.S. workers for open positions. The bill eliminates the financial incentive to hire foreign workers by requiring --for the first time ever --that the prevailing wage include "total compensation" (including benefits, stock options, pensions, etc.). Moreover, H.R. 3736 expands enforcement authority, increases resources targeted to enforcement, and strengthens penalties to help prevent employer abuses of the H-1B program.

In addition, the compromise version of H. R. 3736, provides for additional training opportunities for U.S. workers that are funded through a significant H-1B application fee paid by employers. Training is a vital component of the Administration's strategy to address the long-term demand for highly skilled U.S. workers and to enhance the international competitiveness of important U.S. industries. An effective training strategy will also work to reduce the demand for

H-1B visas.

The Administration supports the reforms included in the compromise version of H.R. 3736 because they would substantially improve the current H-1B program and the additional training opportunities funded by an application fee will help provide U.S. workers with the skills they need to compete in the new economy.

H.R. 3736 -- Workforce Improvement and Protection Act of 1998
(Smith (R) Texas)

The Administration believes that the first response for increasing the availability of skilled workers must be increasing the skills of U.S. workers and helping the labor market work better to match employers with U.S. workers. Therefore, additional efforts to increase the skill level of U.S. workers and needed improvements to the H-1B program are necessary prerequisites for the Administration to support any short-term increase in the number of H-1B visas available for temporary foreign workers. Because H.R. 3736, as amended, the "Workforce Improvement and Protection Act of 1998," is consistent with these objectives, we support it.

H.R. 3736, as amended, links a temporary increase in the H-1B visa cap to the enactment of meaningful reforms to the H-1B visa program. H.R. 3736 would help ensure that U.S. workers do not lose their jobs to temporary foreign workers and that employers who rely on the H-1B program have made serious efforts to recruit U.S. workers for open positions. The bill eliminates the financial incentive to hire foreign workers by requiring -- for the first time ever -- that the prevailing wage include "total compensation" (including benefits, stock options, pensions, etc.). Moreover, H.R. 3736 expands enforcement authority, increases resources targeted to enforcement, and strengthens penalties to help prevent employer abuses of the H-1B program.

In addition, H. R. 3736, as amended, provides for additional training opportunities for U.S. workers that are funded through a significant H-1B application fee paid by employers. Training is a vital component of our strategy to address the long-term demand for highly skilled U.S. workers and to enhance the international competitiveness of important U.S. industries. An effective training strategy will also work to reduce the demand for H-1B visas.

The Administration believes that the reforms included in H.R. 3736, as amended, would substantially improve the current H-1B program and that the additional training opportunities funded by an application fee will help provide U.S. workers with the skills they need to compete in the new economy.

Question & Answer on H-1B visas
August 5, 1998

Q: Why has the Administration not embraced the Republican compromise on H-1B legislation?

A: Although the Republican agreement provides for certain employers to attest to recruitment and lay-off provisions, the attestations are too weak to adequately protect U.S. workers and far too many employers are exempt from their obligations. Moreover, the bill, as structured, will not generate sufficient funds for increased training opportunities for U.S. workers. Finally, rather than strengthening enforcement to prevent employer abuses, this bill undermines some of the program's important enforcement provisions.

Q: Some Republicans and hi-tech executives claim that the Administration keeps moving the bar on what it would consider an acceptable bill. What has been going on?

A: Our position on this issue is unchanged: in order for the President to sign a bill that increases the cap on H-1B visas, it must also contain (1) a significant training component, and (2) meaningful reform to the H-1B program that ensures that employers recruit U.S. workers before applying for an H-1B worker and not lay-off a U.S. worker in order to hire an H-1B worker.

The reforms in the current Republican bill are weak and exempt too many employers to be meaningful. Also, because the bill exempts many employers who hire H-1B workers from paying the application fee, it would not generate sufficient training funds.

Q: The House leadership has indicated that they will bring the bill to the floor tomorrow. Will the President veto it?

A: If this bill is presented to the President, his senior advisors will recommend that he veto it. Unfortunately, the Republican compromise provides for a large increase in the cap, without also providing adequate protections for U.S. workers. We want to work with Congress to develop a bill that addresses the growing demand for highly skilled workers, while effectively protecting and promoting the interests of U.S. workers and enhancing the international competitiveness of important U.S. industries.

Question & Answer on H-1B visas
July 24, 1998

Q: We understand that the Republicans have reached a compromise on H-1B legislation. Is the Administration going to support this?

A: We have not seen any new legislation and would need to look at the details of their proposal before commenting on whether we will support it.

On the substance, our position has been clear: in order for the President to sign a bill that increases the cap on H-1B visas, it must contain both a significant training component and meaningful reform to the H-1B program that ensures that employers recruit U.S. workers before applying for an H-1B worker and not lay-off a U.S. worker in order to hire an H-1B worker.

Q: Was the Administration a player in the creation of this compromise?

A: Over the last several months, we have had discussions with various members of Congress to ensure that efforts to increase the H-1B visa cap are coupled with additional training and protections for U.S. workers.

Question & Answer on H-1B visas
July 21, 1998

Q: What is the Administration's position regarding the call by industry to increase the number of temporary visas available for highly skilled foreign workers?

A: The Administration believes that the most important way to widen the availability of skilled workers must be to improve the skills of U.S. workers and ensure that employers seek U.S. workers first. That is why the Administration has tried to encourage the private and the public sectors to undertake new efforts to train our workers, and has sought to improve the temporary visa program to ensure that U.S. workers do not lose their jobs to temporary foreign workers and that qualified U.S. workers have the opportunity to fill a job before a temporary foreign worker is hired. These reforms would target the visa program's use to employers experiencing genuine skills shortages.

With commitments to increased training and reforms to the H-1B visa program, we would support a short-term increase in the number of visas available for temporary foreign workers.

If Congress sends the President a bill that increases the cap on H-1B visas but does not contain (1) a significant training component, and (2) meaningful reform to the H-1B program that ensures that employers recruit U.S. workers before applying for an H-1B worker and not lay-off a U.S. worker in order to hire an H-1B worker, the President's senior advisors will recommend that he veto the bill.

Q: Are you involved in any of the negotiations that are taking place on the Hill?

A: We are working with the Congress to achieve a reasonable, balanced bill that provides for increased training and that protects U.S. workers while respecting the good faith business judgments of employers.

Q: In May, the House Judiciary Committee approved legislation that increases the number of H-1B visas for temporary foreign workers. What is the Administration's position regarding this legislation?

A: We are pleased that Representative Smith's bill is consistent with one of our primary objectives, insofar as it links a temporary increase in the H-1B cap to the enactment of meaningful reforms to the H-1B visa program. The bill would help ensure that U.S. workers would not lose their jobs to a temporary foreign worker and that employers have made serious efforts to recruit U.S. workers for open positions so that qualified U.S. workers would have the opportunity to fill a job before a temporary foreign worker is hired. These reforms will effectively target H-1B visas to industries experiencing skill shortages.

Unfortunately, the bill does not contain any provision for additional training opportunities for U.S. workers. Training is a vital component of the Administration's strategy to address the long-term demand for highly skilled U.S. workers and to enhance the international competitiveness of important U.S. industries.

The Administration would be pleased to support this bill if it included a meaningful training provision.

Q: What is the Administration's position regarding Senator Abraham's bill?

A: The Administration strongly opposes Senator Abraham's bill. The bill provides no meaningful reform of the H-1B program and does not include an application fee to generate revenues to fund additional training.

Background

H-1B visas are temporary work visas that allow "highly skilled" immigrants (with a BA or equivalent) to work in this country for up to six years. Under current law, the number of H-1B visas is capped at 65,000 per year. Last year, this cap was reached for the first time. The information technology (IT) industry strongly supports raising the annual cap to address what they maintain is a shortage of U.S. workers with IT skills. Others, including the Department of Labor, challenge the industry's conclusions about a shortage and are concerned that the current H-1B program does not target its use to employers who are experiencing skills shortages.

Though the Administration has never before squarely addressed the issue of the cap, we have consistently emphasized training and re-training U.S. workers to enable them to move into jobs within the high-tech industry. Also, since 1993 we have sought reforms to the H-1B program that would target their use to industries with genuine short-term skill shortages.

On May 11, 1998, we sent a Statement of Administration Policy to the Senate that strongly opposed Senator Abraham's bill and that stated that the Secretary of Labor would recommend a veto. On May 18, the Senate passed the Abraham bill by a vote of 78-20. Two amendments offered by Sen. Kennedy that would require that firms attest to having attempted to recruit and retain U.S. workers and that they have not laid-off U.S. workers before filing for an H-1B worker were defeated.

On May 20, 1998, the Administration sent a letter (signed by Reno, Daley, and Herman) to Representative Hyde supporting Representative Lamar Smith's bill (which includes significant reforms to the H-1B program) if it is modified to include meaningful training provisions and a more modest increase in the cap. Smith's bill was overwhelmingly voted out of committee by a vote of 23-7.

Question & Answer on H-1B visas
July 15, 1998

Q: **What is the Administration's position regarding the call by industry to increase the number of temporary visas available for highly skilled foreign workers?**

A: The Administration believes that the first step in increasing the availability of skilled workers for industry must be increasing the skills of U.S. workers and helping the labor market work better to match employers with U.S. workers. Therefore, substantial additional efforts to increase the skill level of U.S. workers and needed improvements in the H-1B visa program to protect U.S. workers by targeting the program's use to employers experiencing genuine skills shortages are necessary prerequisites for the Administration to support any short-term increase in the number of H-1B visas available for temporary foreign workers.

Q: **In May, the House Judiciary Committee approved legislation that increases the number of H-1B visas for temporary foreign workers. What is the Administration's position regarding this legislation?**

A: We are pleased that Representative Smith's bill is consistent with one of our primary objectives, insofar as it links a temporary increase in the H-1B cap to the enactment of meaningful reforms to the H-1B visa program. The bill would help ensure that U.S. workers would not lose their jobs to a temporary foreign worker and that employers have made serious efforts to recruit U.S. workers for open positions so that qualified U.S. workers would have the opportunity to fill a job before a temporary foreign worker is hired. These reforms will effectively target H-1B visas to industries experiencing skill shortages.

Unfortunately, the bill does not contain any provision for additional training opportunities for U.S. workers. Training is a vital component of the Administration's strategy to address the long-term demand for highly skilled U.S. workers and to enhance the international competitiveness of important U.S. industries.

The Administration would be pleased to support this bill if it included meaningful training provisions and a modest reduction in the level of increase in the annual H-1B visa cap.

Q: **What is the Administration's position regarding Senator Abraham's bill?**

A: The Administration strongly opposes Senator Abraham's bill. The bill includes a large increase in the annual number of visas for temporary foreign workers (up to 115,000) and provides <u>no</u> meaningful reform to the H-1B program.

Background

H-1B visas are temporary work visas that allow "highly skilled" immigrants (with a BA or equivalent) to work in this country for up to six years. Under current law, the number of H-1B visas is capped at 65,000 per year. Last year, this cap was reached for the first time. The information technology (IT) industry strongly supports raising the annual cap to address what they maintain is a shortage of U.S. workers with IT skills. Others, including the Department of Labor, challenge the industry's conclusions about a shortage and are concerned that the current H-1B program does not target its use to employers who are experiencing skills shortages.

Though the Administration has never before squarely addressed the issue of the cap, we have consistently emphasized training and re-training U.S. workers to enable them to move into jobs within the high-tech industry. Also, since 1993 we have sought reforms to the H-1B program that would target their use to industries with genuine short-term skill shortages.

On May 11, 1998, we sent a Statement of Administration Policy to the Senate that strongly opposed Senator Abraham's bill and that stated that the Secretary of Labor would recommend a veto. On May 18, the Senate passed the Abraham bill by a vote of 78-20. Two amendments offered by Sen. Kennedy that would require that firms attest to having attempted to recruit and retain U.S. workers and that they have not laid-off U.S. workers before filing for an H-1B worker were defeated.

On May 20, 1998, the Administration sent a letter (signed by Reno, Daley, and Herman) to Representative Hyde supporting Representative Lamar Smith's bill (which includes significant reforms to the H-1B program) if it is modified to include meaningful training provisions and a more modest increase in the cap. Smith's bill was overwhelmingly voted out of committee by a vote of 23-7.

Question & Answer on Immigration: H-1B visas
May 1, 1998

Q: What is your position regarding the call by industry to increase the number of temporary visas available for highly skilled foreign workers?

A: I believe that the first step in increasing the availability of skilled workers for industry must be increasing the skills of U.S. workers and helping the labor market work better to match employers with U.S. workers. Therefore, substantial additional efforts by industry to increase the skill level of U.S. workers and needed improvements in the H-1B visa program to protect U.S. workers by targeting the program's use to employers experiencing genuine skills shortages are necessary prerequisites for me to support any short-term increase in the number of H-1B visas available for temporary foreign workers.

Q: Yesterday the House Judiciary Subcommittee on Immigration approved legislation that increases the number of H-1B visas for temporary foreign workers. What is your position regarding this legislation?

A: I am pleased that Representatives Smith's bill is consistent with one of my primary objectives, insofar as it links a temporary increase in the H-1B cap to the enactment of meaningful reforms to the H-1B visa program. The bill would help ensure that U.S. workers would not lose their jobs to a temporary foreign worker and that qualified U.S. workers would have the opportunity to fill a job before a temporary foreign worker is hired. Moreover, the bill modestly expands enforcement authority to help prevent employer abuses of the H-1B program. These reforms will effectively target H-1B visas to industries experiencing skill shortages.

Unfortunately, the bill does not contain any provision for additional training opportunities for U.S. workers. Training is a vital component of my strategy to address the long-term demand for highly skilled U.S. workers and to enhance the international competitiveness of important U.S. industries. I am also concerned that the increase in the annual number of H-1B visas reflected in this bill is too large, although I agree that the increase should be temporary.

I would be pleased to support this bill if it included meaningful training provisions and a modest reduction in the level of increase in the annual H-1B visa cap.

Q: What is your position regarding Senator Abraham's bill?

A: Senator Abraham's bill includes a large increase in the annual number of visas and provides no meaningful reform of the H-1B program. I would be happy to work with members of the Senate to develop a bill that is more consistent with the Administration's principles.

Background

H-1B visas are temporary work visas that allow "highly skilled" immigrants (with a BA or equivalent) to work in this country for up to six years. Under current law, the number of H-1B visas is capped at 65,000 per year. Last year, this cap was reached for the first time. The information technology (IT) industry strongly supports raising the annual cap to address what they maintain is a shortage of U.S. workers with IT skills. Others, including the Department of Labor, challenge the industry's conclusions about a shortage and are concerned that the current H-1B program does not target its use to employers who are experiencing skills shortages.

Though the Administration has never before squarely addressed the issue of the cap, we have consistently emphasized training and re-training U.S. workers to enable them to move into jobs within the high-tech industry. Also, since 1993 we have sought reforms to the H-1B program that would target their use to industries with genuine short-term skill shortages.

On April 2, 1998, the Administration (Secretaries Daley and Herman and Attorney General Reno) sent a letter to Congress that opposed Senator Abraham's bill (that provided for a large, temporary increase in the cap and the expansion of an existing scholarship program for low-income students, but did not provide meaningful reform of the H-1B program) and endorsed the approach advocated by Senator Kennedy (that would effect a temporary increase in the cap, but also included reform to the H-1B program and increased training for U.S. workers). On April 30, 1998, the Administration sent a letter to Congress supporting Representative Lamar Smith's bill, if it is modified to include meaningful training provisions and a more modest increase in the cap.

April 20, 1998

MEMORANDUM

TO: Cecilia Rouse
Julia Fernandez

FROM: Eric Biel
Kelly Carnes
Michael Daum
Kent Hughes

SUBJECT: Comments on proposed the recruit and retain and no layoff provisions for the

reform of the H-1B visa program.

Since 1993 the Administration has sought to add specific protections for American workers to the H-1B program:

Recruit and retain: The reform proposal would require the employer to meet industry wide standards in terms of recruit and retrain U.S. workers before turning to a temporary non-immigrant under the H-1B visa program.

Layoffs: In addition, the employer cannot layoff and replace an American who has skills and experience that are "substantially equivalent" to the overseas recruit.

In past Administration testimony, we have stressed that adding these protections will not slow the process of applying for an H-1B visa. As envisioned by the Administration, the employer would simply have to check two additional boxes on the application form "attesting" to the fact that the employer had not laid off an American and had taken steps to recruit and retain American workers.

It is the next step that raises more complicated questions. What is a reasonable time within which to restrict layoffs and how do we define employer in the economic context of multi-national firms with multiple lines of business? In our view, the greatest challenge arises from the need to define and measure comparable skills and occupations. How fungible is one specialty or one individual for another? What process will we establish to define occupations? What proof will we ask of business in terms of choosing the overseas recruit over the American worker? Where formal credentials and years of experience are roughly comparable, how much weight will we give to past judgments on the quality of one's work or softer factors such as the ability to work on teams?

Defining Occupations: What do we mean by specialty occupation? How do we make the concept clear for purposes of implementation and enforcement?

We could look to the current Standard Occupational Classification (SOC) which includes some 500 occupations or we could turn to the new SOC, currently in the final stages of development, that will include some 800 occupations. The Administration's intent is to have the SOCs used by all parts of the government, including the military. Although the SOCs do provide some detail, a single category can cover a wide range of specific skills. For instance, the proposed SOCs do put physicians and podiatrists in different categories, but surgeons are all lumped together – whether the specialty is sports medicine or cardiology. (sample page attached)

There are much more detailed definitions. The 1990 Census of Population and Housing (CPH) used some thirty thousand individual job tittles – many drawn from the equally numerous Dictionary of Occupational Titles. The 1990 CPH does put individuals in specialty occupations – generally indicated greater responsibility or training. For instance an aerospace engineer is a "specialty occupation" while a health technologist would classified as in a "support occupation". But even here, the specific term "computer scientist" covers a multitude of virtues. (sample page attached)

not wedded to the idea of CPH defined "specialty occupations."

The Policy Conundrum: At present, we are proposing a change without being able to clearly define how we would go about enforcing the new requirements. In our view, the business and university communities are likely to be very skeptical of our ability to make reasonable judgments about their individual hiring decisions. There is some risk that in seeking to achieve our shared goal of protecting American workers, we will end with no reforms at all..

Would Commerce endorse the Abraham (?) language? If not how far can we go beyond that.

In our view, it is better to take a first step that involves much brighter lines. We continue to propose creating a new, temporary H-1C visa category for more highly skilled people who hold Masters or Ph.D.s in science, mathematics or engineering for any H-1Bs beyond the current 65,000. In addition we would propose applying a similar higher educational standard to set priorities in terms of granting the base number of 65,000 H-1Bs.

we can't

In terms of requiring efforts to **recruit and retain**, we propose that the employer could satisfy the requirement by indicating that three of following steps had been taken:

- posted the opening on the DOL Jobs Bank
- advertised on the internet
- used local and or national want ads
- relied on job fairs
- advertised in relevant professional journals
- contacted appropriate university departments
- contacted major employers including the armed forces

how is this more specific than using industry-wide standards

In term of preventing **layoff** and **replacement**, we suggest a similar brighter line approach that in addition to the recruit and retain provisions would require a prospective employer to look within the current and former pool of company employees. We would expect the employer to take three of the following steps:

- posting the job on the intranet
- posting the job in the company newspaper
- contacting the union or the local chapter of the relevant professional society
- notifying any technically professional employees who have left the company (for whatever reason) during the year preceding the filing of an H-1B application.

Our proposed "safe harbor" approach to the "recruit and retain" and the "no layoff" proposals has several distinct advantages. It creates some clear incentives for industry to do more in terms of both their own employees and the American workforce. It is relatively easy to explain and administer. However, the "safe harbor" approach does not prevent a company from taking the prescribed steps and still laying off Americans or failing to hire the Americans who respond to the recruiting effort.

In addition to supporting expanded investigatory powers for the Secretary of Labor, we would favor an electronic "complaint" box at the DOL which could trigger investigations of situations where American workers feel that they were either not hired or were actually laid off in favor of an H-1B recipient. If the volume of complaints and subsequent investigations revealed widespread violation of the spirit of the law, we should revisit the question and revise the requirements for individual employers.

LRM ID: IMS319 SUBJECT: Statement of Administration Policy on S1723 American Competitiveness Act

RESPONSE TO LEGISLATIVE REFERRAL MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or

(2) sending us a memo or letter

Please include the LRM number shown above, and the subject shown below.

TO: Ingrid M. Schroeder Phone: 395-3883 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-3454

FROM: 5/8/98 (Date)
Steve Escobar (Name)
Dept. of Commerce (Agency)
482-2725 (Telephone)

To: Julie Fernandes

The following is the response of our agency to your request for views on the above-captioned subject:

___ Concur

___ No Objection

___ No Comment

✓ See proposed edits on pages 1, 2

___ Other: ___

___ FAX RETURN of ___ pages, attached to this response sheet

HHS/NIH

NIH has reviewed the draft Statement of Administration Policy (SAP) on S. 1723, the American Competitiveness Act, introduced by Senator Spencer Abraham (R-MI), and has the following comments:

- The draft SAP states that the Secretary of Labor would recommend that the bill be vetoed. As we noted in our comments of April 7 on this version of S. 1723, NIH was pleased that S. 1723 addresses issues of long-standing concern that were not addressed in the previous version. These issues also have not been addressed by the Department of Labor (DOL) in their rulemaking process, nor are they addressed in H.R. 3736, Rep. Lamar Smith's "Workforce Improvement and Protection Act of 1998." Our issues are reiterated below:

- This SAP implies that there are no legitimate circumstances in which foreign workers should be employed in the U.S., thus ignoring the role of international collaboration in the conduct of biomedical research. NIH, along with the other science agencies and the Office of Science and Technology Policy, have repeatedly noted this issue to DOL through formal comment and at meetings over the past several years.

- DOL has expressed appropriate concern about the general impact of foreign workers on U.S. workers. In this regard, DOL also has been concerned about provisions favorable to foreign workers in certain circumstances, either through legislation or rulemaking, being inappropriately extended to additional groups or circumstances. It is our opinion that S. 1723 would allow international research collaborations to continue without inviting broad interpretation and extension of provisions to groups, circumstances, or job categories for which it is not intended.

- NIH had previously expressed concern about the definition of "laid-off" in earlier proposed legislation, in which legislation would require that American workers could not be laid off in order to hire foreign workers. S. 1723 addresses our concern that "laid-off" not be construed to include circumstances where scientists or researchers leave an institution at the normal termination of a grant or contract or circumstances in which scientists or researchers leave a post or position at the end of their pre-determined post-doctoral training period.

- NIH had repeatedly expressed to concern to DOL that legislative and rulemaking attempts to provide relief from the "Hathaway" ruling did not adequately include Federal agencies and Federally Funded Research and Development Centers (which includes the NIH facility at Frederick, MD) along with colleges and universities. (This relief would allow covered organizations to determine prevailing wage, and thus the wage to be paid to foreign scientists, using only like organizations rather than including the private sector in the determination. Such practice results in a wage determination much higher than the salaries paid to U.S. counterparts working in the same organization.) S.1723 addresses this concern by identifying "institution[s] of higher education," "related or affiliated nonprofit entity," and "nonprofit or Federal research institute or agency" as organizations that "shall only take into account employees at such institutions, entities, and agencies" in determining prevailing wage.

- Previous versions of proposed immigration reform legislation had reduced the visa period from six to three years; the Department of Labor had supported this reduction in visa period. NIH was concerned that, because of the long-term nature of scientific research, three years would not allow the completion of research projects and the research process would be disrupted. S.1723 does not contain such a provision.

Thank you for the opportunity to review this draft Statement of Administration Policy. As our comments indicate, NIH has broad concerns with the general tone and message of the draft SAP. The nature of these concerns makes it impossible to suggest specific edits to the draft. We hope our comments are useful.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

LEGISLATIVE REFERENCE DIVISION

ECONOMICS, SCIENCE, AND GENERAL GOVERNMENT BRANCH

TO:

Julie Fernandes

FROM: INGRID SCHROEDER
phone: (202) 395-3883
FAX: (202) 395-3109

DATE: 5/8/98

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COMMENTS:

HHS and NSF comments on S.1723 SAP

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NATIONAL SCIENCE FOUNDATION
4201 Wilson Boulevard
Arlington, VA 22230
(703) 306-1060

Office of the
General Counsel

MEMORANDUM

TO: Ingrid M. Schroeder, Legislative Analyst, OMB

FROM: Anita Eisenstadt, Assistant General Counsel ARE

DATE: May 8, 1998

SUBJECT: LRM #IMS319; SAP on S.1723

Thank you for the opportunity to comment on the SAP on S. 1723, the American Competitiveness Act. As the SAP correctly notes, the Act is intended to respond to a reported shortage of highly skilled workers in key industries. However, the H1-B visa program has a broader impact than simply providing skilled workers for industry. It is also important for the Nation's science and engineering research enterprise by (1) allowing academic institutions and other nonprofit research organizations to enhance their staffs with international visitors in temporary, limited term appointments, and (2) enabling international collaborative research programs to have members of cooperating teams working together in the U.S. for short periods. In its failure to address these aspects of H-1B activity, the SAP threatens serious damage to the U.S. science and engineering enterprise.

In many respects, the provisions of the Abraham bill better address the needs and modes of operation of the scientific and engineering enterprise than either the Smith bill or the language used in the SAP. Accordingly, NSF does not agree with many of the reasons cited in the SAP for Administration opposition to the bill. For example, the SAP states in the fourth paragraph that H1-Bs should only be allowed for the purpose of meeting labor market skills shortages. In addition, it states in the third paragraph that employers should only be allowed to obtain an H1-B if they cannot recruit a U.S. worker for the position. As we have stated previously, the recruit and retain requirement is inappropriate for international collaborative research projects. H1-Bs should remain a viable non-immigrant visa vehicle for this important national interest.

lay-offs and rules for prevailing wage determination. The bill would restore the pre-Hathaway practice of determining prevailing wages for universities, non-profit research institutions and Federal agencies. As NSF has previously noted, the Department of Labor final rule on Hathaway is too narrow in scope because it excludes non-profit research institutes, for-profit FFRDCs, excludes many Federal agencies, and places onerous requirements on other Federal agencies.

S.1723's definition of lay-off is a significant improvement over the definition contained in the Smith bill. While NSF supports lay-off protection for U.S. workers, the lay-off definition in the Smith bill is too broad in scope and could preclude most employers from every using the H-1B visa program. The lay-off definition in the Smith bill included expiration of temporary appointments, completion of post-doctorate studies, discontinued Federal funding of a grant, contract, or cooperative agreement, as well as dismissal for poor job performance or poor attendance. The term "dismissal for cause" only covers terminations for employee misconduct. S.1723's definition of lay-off more fairly and accurately describes this term while still providing a remedy for abuse of the system.

The SAP states that a five-year raise in the H-1B cap is too long. In view of the increasing globalization of science and business, NSF believes that five years is more appropriate than the three years proposed in the Smith bill.

For the above reasons, NSF suggests restructuring the SAP. One possible approach would be to commence with a paragraph indicating that the bill is a temporary fix to what appears to be a long-term problem; if improperly abused, the temporary fix could exacerbate the long term situation. Then the SAP could emphasize the importance in increasing skills of American workers. The SAP could then suggest the H1-B application fee and its use to fund competitive programs to accomplish this. The SAP could then state that we simultaneously must do what we can to ensure that the increase of H1-B visa does not limit opportunities for U.S. workers. Finally, the SAP could describe the recommended changes to the H1-B program.

NSF recommends that the Administration SAP as well as overall policy on reforms to the H1-B program preserve the legitimate uses of the program by the scientific research enterprise. Recommended changes to the H1-B program should reflect a balance between additional burdens placed on employers and the need for U.S. worker protection, based upon likelihood of abuse and adverse impact on U.S. workers. To date, there has not been strong evidence to establish that the existing program has negative impacts. The Abraham bill provides for further study of this issue.

Finally, NSF notes that the SAP veto language could seriously impact the scientific research community. If there is no bill raising the H1-B cap for this fiscal year, universities and other research institutions will experience severe disruption in their recruitment and hiring for the fall academic year.

If you have any questions, please feel free to call me at (703) 306-1060.