U. S. Department of Justice

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Office of the Assistant Attorney General

Washington, D.C. 20530

November 28, 1995

The Honorable Alan Simpson
Chairman
Subcommittee on Immigration
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Simpson:

This letter presents the views of the Administration concerning S. 1394, the "Immigration Reform Act of 1995," scheduled to be marked up by the Immigration Subcommittee. As you know, the Administration strongly supports reform of the current immigration law that affects both illegal and legal immigration. The Administration endorses a framework of legal immigration reform that respects our immigration tradition while achieving a moderate reduction in overall admission numbers to promote economic opportunities for all Americans.

The Administration seeks legal immigration reform that promotes family reunification, protects U.S. workers from unfair competition while providing employers with appropriate access to international labor markets to promote our global competitiveness, and enhances the value of naturalization to encourage full participation in the national community.

We have outlined our positions on the individual provisions in S. 1394 in the following section-by-section discussion.

TITLE I - IMMIGRANTS

SECTION 101 narrows the "immediate relatives" classification by limiting the eligibility of parents of U.S. citizens to immigrate. A "qualifying parent" is defined as a parent who is at least 65 years of age and the majority of whose sons and daughters normally reside in the U.S. as nationals or lawful permanent residents. This section further conditions admission of these parents on a showing that the son or daughter has purchased for their parent a health insurance policy, including long-term care.

The term "immediate relative" applies only to parents of U.S. citizens. The term "qualifying parent," however, makes no reference to U.S. citizen sons and daughters, but rather refers to a parent with sons and daughters who are nationals of the United States or legal permanent residents. Although U.S. citizens are necessarily U.S. nationals, it would be preferable if the term "qualifying parent" also referred to U.S. citizen sons and daughters.

The Administration believes that the value of family reunification to our communities and nation relies on more complete family units than this bill contemplates. It includes U.S. citizens' parents. In many U.S. citizen families, immigrant parents can provide essential household support which promotes economic well-being and mobility. Such reunified families often make the difference between a family that needs public assistance and one that is self-sufficient. Therefore, the Administration opposes the health insurance mandate on parents and limiting entry to parents who have a majority of children who normally reside in the United States. The Administration strongly believes in protecting against the misuse of public assistance programs, but it also seeks to strengthen families and provide them with the means to become productive.

Also, requiring the Department of State to establish how many children an applicant parent may have, where those children reside and their immigration status poses problems with respect to access to proof. Consular officers have no way of verifying the number of non-U.S. national children an applicant may have.

Similar to H.R. 2202, section 101(b) of this bill would require each immigrant parent of a U.S. citizen or the petitioning son or daughter to obtain, prior to the immigrant's admission to the U.S., health insurance that is at least comparable to Medicare parts A and B, and long-term care insurance that is at least comparable to Medicaid's long-term care benefits. The immigrant would be required to demonstrate to consular officials and to the Attorney General that he or she would maintain such coverage throughout the period of residence in the United States.

Unlike the House bill, S. 1394 would require that the petitioning son or daughter agree to provide such health insurance coverage as part of a legally enforceable affidavit of support; establish civil monetary penalties if the sponsor fails to provide the agreed coverage; define judicial remedies available to enforce the requirement; and allow an exemption from the requirement for sponsors whose financial circumstances change such that providing insurance would reduce the sponsor's total family income to below the Federal poverty level.

The Administration believes this section would impose a mandate upon purchasers of health insurance that, absent a corresponding mandate that insurers offer such coverage on an equitable basis, would set standards that are virtually impossible to meet and, thereby, render this family reunification category largely meaningless. Private health insurance policies comparable to Medicare plus the long-term care benefits of Medicaid, as required by this section, are often unavailable, especially within a reasonable price range. Private long-term care policies in particular generally contain far more limited benefits than Medicaid, and thus cannot be considered comparable.

In addition, insurers often require medical examinations and tests before they will offer individual acute care or long-term care policies, and are unlikely to accept tests performed outside the United States. This section would require a demonstration of health insurance coverage prior to entry into the United States. This section would also necessitate reliance upon State insurance departments to determine the acceptability of individual policies, to monitor and to enforce continued coverage, and to convey this information to consular officials worldwide, with no additional resources provided in this bill to fund this additional administrative burden on the States.

The long-term care insurance requirement is especially problematic. The long-term care insurance industry is in its infancy. Availability, type and quality of benefits, consumer safeguards, and regulation by State insurance departments all vary widely. It is not known whether current premiums will provide sufficient revenue to pay promised benefits many years in the future.

In addition to our other concerns, we believe the insurance mandate's costs would effectively allow only wealthy American families to reunite with their immigrant parents. For everyone but the wealthy, the cost of the required health insurance products would be prohibitively expensive. Our preliminary estimates indicate that, for parents age 65 and over, premiums for Medicare comparable to acute care coverage plus minimally acceptable long-term care policy would average between $7,000 and $13,000 per person per year. Immigration laws should serve to strengthen U.S. citizen families. This section, however unintentionally, erects an unnecessary barrier to U.S. citizens being reunited with their parents.

SECTION 102 allots no more than 85,000 visas to the spouses and minor children of lawful permanent residents and eliminates or greatly narrows the other family-sponsored preference classifications in current law -- i.e., unmarried adult sons and daughters of citizens (1st preference), married sons and daughters of citizens (3rd preference), unmarried adult sons and daughters of permanent residents (2B), and brothers and sisters of adult citizens (4th preference).

The Administration supports retention of the current preference for spouses and minor children of lawful permanent residents. The Administration estimates that new demand for spouses or children of lawful permanent residents will remain about 85,000 per year for the next five or so years. We recommend allocating 100,000 visas for spouses and children of lawful permanent residents to accommodate anticipated demand and provide any remaining visas (100,000 minus the estimated 85,000 per year) to help reduce more quickly the comparatively small number of relatives in the second preference backlog who are not sponsored by a legalized alien (roughly 20 percent of the current second preference backlog).

The Administration also strongly supports retention of the first and third preferences at current admission levels. As discussed in Commissioner Meissner's testimony before the Subcommittee on September 14, 1995, this is consistent with protecting the interests of U.S. citizens, and can be accomplished within a framework that lowers the overall level of legal immigration and reduces the second preference backlog.

The Administration's underlying policy objective of a moderate reduction in overall admission numbers necessitates the suspension of visas for future fourth preference applicants until subsequent review by Congress as contemplated under Section 115. During the subsequent review, Congress should decide whether future immigration and economic trends allow any room under the overall ceiling for new fourth preference admissions consistent with the framework, priorities and principles we have outlined.

For brothers and sisters of United States citizens who have already applied and are waiting in the backlog, we want to work with Congress to develop a way to verify the number of visa petitioners currently in the backlog and to reach agreement on an appropriate grandfathering process that is consistent with our overall framework, priorities and principles.

Immigration law has long recognized the fundamental importance of reducing the backlog of family reunification immigrants who are waiting for visas, particularly close family members of United States citizens. These United States citizens have submitted petitions and paid fees to the United States to allow their close family members to immigrate, and the federal government has approved these petitions. The United States citizens who have applied on behalf of their family members have "played by the rules" and have chosen to wait, in some cases nearly two decades, in order to be legally reunited with their family.

SECTION 103 changes the employment-based preference classifications, eliminating the unskilled worker category and reorganizing the remaining employment-based preferences into two categories: those subject to the labor certification requirements and those who are exempt. It eliminates the five existing employment-based preference classifications and substitutes the following classifications that do not require labor certification: aliens with extraordinary ability, certain multinational executives and managers, investors, and special immigrants. Professionals with advanced degrees, professionals with baccalaureate degrees, and certain skilled workers with five years experience outside of the United States would still require labor certification. This section also specifies that the last three classifications would face two additional requirements: first, they would be required to pass an English proficiency test; second, their lawful permanent resident status would be conditional for two years.

This section allocates 90,000 visas for employment-based preferences which are to be allocated in the order listed above with each successive category eligible only for the number of visas not used by the previous category. The "professionals with advanced degrees" and "professionals with baccalaureate degrees" categories each inherit one half of the "fall down" from the preceding categories that are exempt from labor certification requirements. This "fall down" scheme does not apply to the special immigrant category, which is limited to 5,000. This section would also remove the existing authority for the Attorney General to waive the requirement of a job offer for advanced degree holders.

The Administration supports the exclusion of unskilled immigrants from the employment-based immigration system and the repeal of the diversity visa category of admission. We also support the general structure of the employment-based immigrant preferences contained in the bill. The bill generally does not dictate admission ceilings for each of the preference categories and thereby retains desirable flexibility to accommodate future changes in demand. In this regard, we question the necessity and value of allocating visa numbers between the categories including "members of the professions holding advanced degrees" and "professionals with baccalaureate degrees."

The Administration also has several concerns about the elimination of the category of "outstanding professors and researchers" and the impact it would have on research universities, colleges, the National Institutes of Health (NIH) and recipients of NIH funding. It is the only category specifically targeted to scientists and academics. If the majority of researchers are classified as individuals with "extraordinary ability," they would be given immigration preference, and at current levels of employment-based immigration, the impact on research institutions would be minimal. However, if significant numbers of researchers were classified as "aliens who are members of the professions holding advanced degrees," they would receive lower immigration priority using the proposed formula, and the negative impact on research institutions could be significant. Therefore, the Administration supports retaining the first preference treatment of "outstanding professors and researchers" as under current law.

The Administration believes that most of the changes in minimum qualifications and experience required of employment-based immigrants who would be subject to labor certification are positive. However, the new minimum qualification of English language proficiency for certified workers is, notably, is not required of employment-based immigrants who would <u>not</u> be subject to labor certification, including multinational executive and managers, investors, and "special" immigrants. The Administration believes that this is an unnecessary measure in managing employment-based immigration and, where it is a bona fide occupational requirement, is a requirement which would best be left to the employer; thus, since the requirement is unnecessary, it should be dropped from the bill.

The Administration opposes the provision that requires three years of work experience outside the United States. Rather than focusing on the number of years of work experience required, the Administration suggests more narrowly tailoring any new restrictions to address the use of work experience of all kinds in a nonimmigrant status that can lead to adjustment of status and employment -- a back door to legal immigration. This could include disallowing any work experience gained with the petitioning employer (to break the misuse of the work experience connection), and certainly any experience gained if the prospective immigrant resided and worked illegally in the United States, including as a visa overstayer. We would be pleased to work with the Subcommittee staff to develop other ways to address the essential objective of this proposed requirement that would better conform to the reasonable needs of American workers, employers, and employment-based immigrants.

Section 103 includes the concept of "conditional status" applicable to all employment-based immigrants who are subject to labor certification. The Administration supports the goal of ending abuse of the employment-based immigration categories, but must restate its strong belief that this new scheme raises grave concerns. We urge the Subcommittee to reconsider its proposal. The Administration is concerned that the proposal would bind the immigrant to an employer for two years, creating the potential for exploitation in the workplace.

Under current law, employment-based immigrants gain lawful permanent resident status on entry (or adjustment of status) and all the rights attendant to such status, including freedom of movement in the labor market. "Conditional" status would bind the immigrant to the employer, and at the end of the two-year period the immigrant would have to petition for removal of "conditional" status and obtain the cooperation of the employer to appear for a personal interview to demonstrate that the worker had remained employed by the employer and had continued to receive the required wage during the prior two year period. This requirement could easily foster a great, and entirely avoidable, potential for workplace exploitation.

If one assumes that obtaining lawful permanent resident status is a primary motivation for employment-based immigrants, this "conditional" status gives the employer tremendous power over the worker -- extending beyond any period of employment in nonimmigrant status during which the worker is also bound to the specific employer (but, in some cases at least, is better protected under the law).

The bill acknowledges the possibility of such exploitation by providing for waiver of the two-year employment requirement as in the case of an "unfair labor practice that was causing or threatening to cause significant injury to the alien." This standard is very difficult to apply, and the bill seems to overlook the problem of how such unfair practices would ever be identified if there are no involved parties with any interest in preventing or exposing possible exploitation, with the possible exception of any similarly-employed U.S. workers who might somehow become aware of the situation. At the same time, the troubled employment relationship would either continue while the issue is contested, investigated, and adjudicated, or would -- more likely -- be terminated by the employer, leaving the worker without a means of support, at least temporarily. In addition, it seems grossly unfair to punish an immigrant worker for the employer's violation of the wage requirement, particularly when the employer suffers no penalty except for the eventual loss of the immigrant worker and, presumably, its contribution to the training fund.

For all these reasons, the Administration opposes the creation of "conditional" status for employment-based immigrants. Because employment-based immigrants are frequently not paid the wage promised in the labor certification, and often actually are employed in a lesser capacity than described in the certification application, we believe that these problems should be effectively addressed through the enforcement mechanism discussed below.

The bill states that the wage requirement that must be maintained during the period of such conditional status is "105 percent of the prevailing compensation for individuals in such employment (including wages, benefits, and all other compensation)." It is unclear in the bill whether this is contemplated to be an obligation fixed at the time of application, or one which reflects changes in prevailing compensation which occur during the two-year period. If the former, this could adversely affect similarly-employed U.S. workers. Further, we strongly believe that the employer's wage obligation -- with or without "conditional" status -- should include consideration of the wage level that the employer actually pays similarly-employed workers (in addition to the prevailing wage level) so that such workers' wages cannot be undercut if they exceed the prevailing wage. (In this regard, it appears that the bill's references to the employer's wage obligation during "conditional" status -- on page 20, ref. 212(a)(5)(A)(ii), and on page 24, ref. 212(n)(1)(A) -- are inconsistent.)

The Administration recommends that Congress clarify the meaning of several phrases and terms used in this section that are problematic for adjudication of visas. For example, the phrase "potential for extraordinary achievement" is vague and difficult to establish during adjudication of the visa request. We suggest that the language could simply require the documentation listed later in the paragraph (p. 9, line 13).

The Administration supports inclusion of a definition of multinational company as a way to reduce fraud. We believe, however, that the threshold numbers in S. 1394 are too low to have much impact. We also note that the term "substantially common ownership" (p. 12, line 4) is vague and would be hard to use in adjudication.

The Administration also believes that it is not necessary to eliminate the "targeted area" provision in the employment creation category. This provision was enacted in order to facilitate job creation and investment in rural areas of high unemployment, areas which had difficulty competing for domestic investment dollars and where jobs for American workers are needed most. It provides an alternate means to attract job creating investment dollars into local communities and recognizes that smaller infusions of investment capital are necessary in order to promote job creation in rural America and depressed inner cities.

SECTION 104 establishes new labor certification systems which would replace the current system. Both of the new labor certification systems proposed (discussed further below) would require the employer applicant to pay a fee which would provide a market-based mechanism to encourage employers to look first to the U.S. -- rather than the international -- labor market to meet their employment needs. The fee would also serve, over time, to increase the supply and competitiveness of U.S. workers with the requisite skills to meet these needs. Employers would be required to pay a fee equal to 25 percent of the value of the prospective immigrant's annual compensation into a private fund certified by the Secretary of Labor as dedicated to the goal of increasing U.S. worker competitiveness.

This section provides that, as one alternative, the employer also certify that it attempted to recruit a United States citizen or lawful permanent resident for the job offering compensation of at least 105 percent of the prevailing compensation for such employment. The section further provides that, as the second alternative system, if the Secretary of Labor determines that a national labor shortage exists with respect to an occupational classification, certification for petitions for that classification shall be deemed to have been issued. Conversely, if the Secretary of Labor determines that a labor surplus exists with respect to an occupational classification, petitions for that classification may not be issued. Any person may petition the Secretary of Labor for a surplus or shortage determination.

The Administration strongly supports reform that relies on market-based mechanisms. The Administration endorses the training fee, and the training fund which would be built from these fees, as the principal mechanism for ensuring that U.S. employers undertake appropriate efforts to first recruit, retain and retrain U.S. workers to meet their employment needs.

Employment-based immigration to fill skill shortages, as well as the temporary admission of skilled foreign workers, is sometimes unavoidable. But the Administration firmly believes that hiring foreign over domestic workers should be the rare exception, not the rule. And we believe that such exceptions should become even rarer, and more tightly targeted on gaps in the domestic labor market than is generally the case under current law. If employers must turn to foreign labor, this is a symptom signaling defects in the Nation's skill-building system. Our system for giving access to global labor markets should be structured to remedy such defects, not acquiesce to them. Our immigration system should progressively diminish, not merely perpetuate, firms' dependence on the skills of foreign workers.

Our primary public policy response to skills mismatches due to changing technologies and economic restructuring must be to prepare the U.S. workforce to meet new demands. Importing needed skills should usually be a short-term response to meet urgent needs while we actively adjust to quickly changing circumstances. In this larger context, the Administration supports a shift towards an immigration system which relies more on market-type incentives to discourage employers from abandoning the domestic workforce in favor of foreign labor while, at the same time, making it less necessary for them to do so. A fee levied on employers sponsoring skill-based immigrants, with the proceeds dedicated to building the skills and enhancing the competitiveness of U.S. workers, forges an admirably direct and efficient link between the problem of skill shortages and the only valid long-term solution -- investment in the U.S. workforce.

Requiring employers to make a meaningful contribution to the training of U.S. workers as a prerequisite to gaining access to a foreign worker -- so that skill-based immigration will become ever less necessary over time -- makes sound public policy sense. Our immigration policy must provide real incentives for business to commit to American workers and develop the domestic workforce for the high-skill jobs and high-performance workplaces of the future while at the same time providing a safety valve of access to foreign labor markets to meet skill demands that the U.S. workforce cannot supply in sufficient quantity or with sufficient speed.

The bill sets the required fee at "25 percent of the value of the annual compensation (including wages, benefits, and all other compensation) to be paid to the alien whose services are being sought." An employer's financial contribution to the fund (the fee) must create a real incentive for employers to look first to the domestic labor market to recruit, retain, and retrain U.S. workers. In addition to creating an incentive to develop U.S. workers, the fee contribution should create a disincentive for employers seeking lower-skilled immigrant workers. We have examined the wage distribution of immigrant workers subject of labor certification in fiscal years 1993 and 1994; the large majority of immigrant workers in those years were to earn between $15,000 and $50,000. We have already pointed out to the Subcommittee that if the amount of the fee that an employer must pay equates proportionately to the value of the compensation package it will provide the immigrant employee, this builds in incentives to keep these compensation costs as low as possible, creating the potential for abuses as well as undermining the wages and benefits offered similarly-employed U.S. workers. In addition, it creates an incentive for employers to seek lower-skilled, lower-paid immigrant workers, which works against the basic thrust of our employment-based immigration policy. On the other hand, a flat dollar amount fee allows employers of higher-skilled, higher-paid workers to pay a comparatively small fee that would have less effect in creating the proper incentives/disincentives.

In addition, the legislation should clarify that an employer's training fee be a genuine incentive; that is employers should not be able to satisfy the fee requirement by pointing to existing training that they may fund. The training fee provides a weak incentive, or no incentive at all, to invest in U.S. workers if employers can simply reduce its value by counting existing expenditures for training and education to satisfy their fee requirement. Further, as contemplated by the bill, employers must be expressly prohibited from shifting the cost of the fee to the immigrant worker, either directly or indirectly. Such a provision will restrain, although not entirely block, employers that want to exploit immigrant workers or "game" the training fee requirement. The Administration supports the mechanisms contained in the bill to prevent and penalize such cost-shifting, although reimbursement to the worker should be made either by the fund or by the employer as appropriate to the circumstances. In addition, in order to assure that employers do not recover the cost of the fee by reducing wages -- and as an appropriate safeguard of the wages and working conditions of similarly-employed U.S. workers -- employers of immigrant workers must be required to pay the immigrant worker the higher of 105 percent of the local prevailing wage or the actual wage paid to similarly-employed U.S. workers. These provisions are currently absent from the bill and the Administration urges that they be incorporated.

With respect to the structure of the training fund itself, the bill refers to a "private fund certified by the Secretary of Labor as dedicated to the goal of increasing the competitiveness of [U.S.] workers ... and reducing the dependence of employers on new foreign workers, by making grants for education or training, or for other purposes consistent with such goal." The Administration is concerned about the use and structure of the training fund. At present the bill is unclear about how the fund would accomplish its stated goals and how it would be managed. The Administration would like to work with the Committee to develop a criteria for the use of fund monies that achieves the goals of the bill and a workable fund structure that provides the accountability that the public expects.

Also, due to the uncertainty of the Federal government's employment and training structure, the Administration would like flexibility in assigning the responsibility of managing the criteria for the use of the fund. Thus, the Administration would like the reference to the Secretary of Labor in this instance changed to the "the Secretary of Labor and other departments as designated by the President."

Also, the bill suggests that this would be a single fund, but the Subcommittee Chairman's introductory statement creates some ambiguity in this regard by stating that, "... fees would be paid into private, industry-specific funds, which would use the money to finance training or education programs or in other ways to reduce the industry's dependence on foreign workers." The Administration would like the Committee to consider the benefits of a single, consolidated, national training fund.

Under such a structure, use of the training fund's resources would be more easily audited because all disbursements would be made from a single source. The training fund's resources could also be used more flexibly and strategically -- training fund resources could be directed to meet a broad range of training needs rather than the needs defined by particular employers (e.g., basic skills training vs. occupation- or employer-specific training). In any case, the scope and content of the certification process as contemplated by the bill should be left to regulations; the issues involved in the certification criteria are simply too complicated to address in legislation. Also, greater flexibility will ensure that the goals of the training fund are achieved over time as the best means to regulate the fund and to adjust certification standards accordingly become apparent.

Consistent with this framework, a nexus between the disbursement of the training fee's proceeds and the labor shortage being addressed by the immigrant workers is needed. However, it is important to take a broad view of the problems that cause domestic skills shortages. Accordingly, the Administration believes that the bill should encourage, but not require, the use of the funds generated by the fee for training for the occupation in which the immigrant workers will be employed; broader use, including basic skills training -- but excluding anything that does not directly involve human resource development -- should be permitted.

The training fee requirement in the bill should not preclude the assessment of additional fees to cover the cost of administering and enforcing the requirements of this immigration program. In these stringent budgetary times, it would be best if taxpayers do not have to foot the bill for the cost of providing the benefits received by employers and immigrants who use this system. The assessment of user fees to cover these costs should be expressly authorized.

As previously noted, the training fee/fund is a common component of the two new labor certification systems established by the bill. One of these systems supplements the training fee with a labor shortage/surplus determination system. The Administration opposes an employment-based immigrant admission system based on labor shortage/surplus determinations.

Under this system, if the Secretary of Labor found and declared that a national labor shortage exists in an occupational classification, certification for that occupation "shall be deemed to have been issued" provided that the training fee has been paid. On the other hand, if the Secretary found and declared that a national labor surplus exists in an occupational classification, certification could not be issued for that occupation.

This system parallels one used under the current labor certification system (though somewhat more ambiguously). Nonetheless, the Administration has -- as we have expressed on numerous occasions, including the Subcommittee hearing -- serious concerns about the technical feasibility of this approach which may make it unworkable. Based on our experience with a parallel "labor market information" pilot program a few years ago, while simple in concept, this approach is terribly complex and difficult in execution given its essential dependency on labor market information which is insufficient for this purpose. While the bill contemplates that such labor shortage/surplus findings would be based on evidence presented by parties seeking to establish the existence of national occupational shortages/surpluses, the very best data available has -- in our view -- already proven ill-suited and not sufficiently up-to-date nor sensitive to circumstances in the localities where immigrant workers are actually being sought. Development of current labor market information on a locality basis would be prohibitively costly. Also, a complete exclusion rule tends to be a much blunter tool than is necessary to redress the abuses with which we should be concerned.

The other new labor certification system created under Section 104 of the bill would replace the current system with one which requires the Secretary of Labor to certify that, in addition to making its training fee contribution, the prospective employer has attempted to recruit a U.S. worker for the job in which the immigrant would be employed. Recruitment procedures must meet industry-wide standards and offer a total compensation package equal in value to at least 105 percent of the prevailing compensation package for such employment.

The bill would require the Secretary to certify that the prospective employer had attempted to recruit "a" U.S. worker -- in the singular -- for the job. Certainly the bill must intend that the employer recruit in the domestic labor market, and not tolerate a situation where, for example, an employer recruited only one U.S. worker who lives in Wyoming for the job in Texas, and told the U.S. worker that she would have to pay her moving expenses to get there. This should be made explicit. Further, the bill should clearly indicate that the employer's domestic recruitment would have to be <u>unsuccessful</u>. The bill does not clearly say this and, in our view, it is too critical a question to leave to speculation or legislative history. In this regard, it would also be useful if the bill clarified the intended standards against which such unsuccessful recruitment would be measured to address the currently common practice of employers "tailoring" job descriptions to suit only the immigrant worker, thereby assuring that the domestic recruitment will be unsuccessful.

In its recruitment an employer would be required to offer "105 percent of the prevailing compensation for individuals in such employment (including wages, benefits, and all other compensation)." We agree that no loophole should be allowed which would permit undercutting U.S. workers' working conditions (and reduce the incentives/disincentives created by the training fee) by depriving immigrant workers of benefits that are typically provided. Yet the inherent difficulty of determining prevailing compensation packages for various occupations should <u>not</u> be underestimated. We have explored the availability of reliable, up-to-date information regarding total compensation by occupation and area and found very little. Further, the development of such information can be extremely costly and burdensome, and the legislation is too vague to provide guidance. To remedy this problem (which does not occur in the context of the fee obligation) but still serve the goals stated above, we strongly recommend that the bill be revised -- wherever a "prevailing wage" payment or recruitment obligation is set forth -- to invoke 105 percent of the locally prevailing **wage** plus the same benefits and additional compensation provided to similarly-employed workers by the employer.

As noted, the bill does not indicate that prevailing wage determinations would be made for the area where the immigrant will be employed. This deficiency, which we have previously pointed out, will create undesirable and probably unintended consequences. For example, employers in major metropolitan areas -- where wage rates and benefits tend to be higher -- could be encouraged to use the system due to their advantage of being able to recruit by offering compensation packages that meet the 105 percent test -- against a nationally prevailing standard -- but which might well be less than they actually pay their U.S. workers in those locations. On the other hand, employers in lower wage areas of the country could be discouraged from using the program because they would be seriously disadvantaged by being required to recruit offering a compensation package which satisfies the test but which actually represents much more than 105 percent of what they pay similarly-employed U.S. workers in their location. However, requiring determination of prevailing compensation for an occupation only on a locality basis could be extremely resource intensive, so we again urge that the bill afford the flexibility to require determination of the prevailing wage on a local, State-wide, regional or national basis depending on the availability of reliable, up-to-date data for various occupations and industries. The Administration in still in the process of reviewing this requirement and may have additional comments.

In the Administration's view, this alternative labor certification system does not adequately protect U.S. workers from unfair competition with immigrant workers. In this regard, the Administration strongly urges that, beyond requiring unsuccessful recruitment in the domestic labor market, additional labor protections be built into the system. Most important, if employers are trying to find foreign workers to fill labor shortages caused by a breakdown in the U.S. skill development system, there can be no legitimate justification for laying off U.S. workers or using immigrant workers as strike breakers. Accordingly, the new labor certification system should include an unambiguous requirement that employers must not have laid off or otherwise displaced U.S. workers in the occupation in which the immigrant will be employed, and must not be the subject of a strike or lockout involving that occupation.

Given the serious problems with the bill's "conditional" status concept (as discussed above) and the need to assure that the obligations of participation in the program are fully complied with by the employer, the Administration believes strongly that the bill needs to provide appropriate enforcement powers to the Department of Labor. Such enforcement powers are important not only as a safeguard for workers' rights; they also insure that the market mechanism created by the training fee/fund functions properly. For example, an employer that can avoid paying the required wage or shift costs to the immigrant worker with impunity will have defeated the market-based incentive to recruit, retain, and retrain U.S. workers. In order to ensure that the requirements of the new labor certification admission process are observed, the Labor Department must have the ability to seek out and identify employers that violate the law, assure that U.S. and immigrant workers are protected or made whole, and impose substantial penalties that will deter future violations and promote compliance. Thus, the legislation should vest the Labor Department with additional enforcement powers -- including subpoena authority, the right to seek injunctive relief, the right to initiate investigations, and whistleblower protections -- and require remedies for employer violations that include "making whole" workers injured by the violation -- e.g., reinstatement of wrongfully laid off workers -- as well as substantial penalties for violations. These specific provisions must be included in the legislation as some cannot be created by regulation or administrative action.

With respect to the bill's new labor certification process -- as amended to reflect the concerns and recommendations provided herein -- consideration has been given by the Department of Labor as to how it can best assure that employers comply with the recruitment requirement, the other requirements relating to the fee (e.g., prevailing wage, no cost shifting), and the labor protective provisions discussed above while providing timely customer service. The Department currently adjudicates employers' labor certification applications on a case-by-case basis to verify compliance with existing requirements before an immigrant worker's admission is approved. Everyone agrees, however, that the existing process is slow and costly for employers and results in U.S. workers being hired for the relevant jobs in only a small proportion of cases as a result of the existing recruitment requirement -- although about one-third of certification applications are denied and some portion of those jobs may be filled by U.S. workers. The existing process does, however, serve as a deterrent to some employers filing applications on behalf of immigrant workers. The Administration supports changing requirements for labor certification as significant mechanisms to create job opportunities for U.S. workers.

SECTION 105, unlike H.R. 2202, modifies the special immigrant classifications by adding a new category for certain disabled sons and daughters of United States citizens and lawful permanent residents. This section imposes insurance requirements upon the parent sponsor of such disabled immigrant sons and daughters similar to the insurance requirements imposed in section 101 upon son and daughter sponsors of elderly immigrant parents.

The Administration objects to this section for reasons similar to those described in section 101 regarding elderly immigrant parents. In addition, this requirement is even more impractical than the insurance requirement for elderly parents. Private individual health insurance policies are even less likely to be available or affordable to the severely disabled.

This section also appears to offer a benefit which could, as a practical matter, only be met by a parent whose employer offers health insurance coverage that would extend to an adult son or daughter without pre-existing condition limits or exclusions. Very few parents are likely to have such coverage. While we note the exemption for changes in the sponsor's financial circumstances, this exemption would not cover changes in the sponsor's employment status or changes the sponsor's employer makes in health insurance coverage. It is also unclear who would be held responsible regarding health insurance coverage for a disabled son or daughter if the parent dies first, as would frequently be the case.

SECTION 106 would modify the effect of an approved immigrant visa petition by providing that the approval of an immigrant classification petition does not relieve the alien of the burden of proving to a consular officer that he has established eligibility to receive an immigrant visa in all respects. This section further provides that the denial of an immigrant visa by a consular officer, notwithstanding the presence of an approved petition, is non-reviewable.

Although the Administration supports efforts to prevent the issuance of visas based on the presentation of fraudulent immigrant visa petitions, section 106, as currently drafted, contains numerous ambiguities and does not appear to achieve that result. For example, under section 212 of the INA, the mere presentation of a fraudulent visa petition does not automatically constitute a basis for denying a visa. Section 106 appears to reiterate the existing authority of consular officers to deny visas, rather than conferring additional authorities. At the same time, it raises questions as to what is meant by "appropriate action" in cases where a petition is returned to the INS. Would the INS be required to revoke the petition upon its "return to the Attorney General"? If so, would the revocation be subject to review? We would be happy to work with the Subcommittee to clarify this section.

SECTION 107 would establish limitations and conditions on judicial review of agency actions relating to petitions for a visa or adjustment of status. The Administration believes these limitations and conditions on judicial review should include both immigrant and nonimmigrant visa decisions. The Administration also believes that, because the petitioner seeking relief under this section may be a U.S. citizen, the venue should lie in the district in which the petitioner resides. The requirement that the venue for these matters lies only in the U.S. District Court for the District of Columbia may also overburden this court, which in any case, does not have a particular history or expertise in immigration matters over the other federal courts.

SECTIONS 108 AND 109 contain conforming amendments and repeals and transition provisions, respectively.

SECTION 111 establishes a worldwide numerical limitation on family-sponsored immigration of 85,000, plus any visas authorized for backlog reduction under section 114 (2nd preference). The Administration strongly supports its own framework for legal immigration reform as set out in Commissioner Meissner's September 14 testimony before the Subcommittee. The administration's framework lowers the level of legal immigration while providing stronger support for family reunification principles.

SECTION 112 establishes a worldwide numerical limitation on employment-based immigration of 90,000 per year. The Administration testified before the Subcommittee that we support an admission level of 100,000, which represents a substantial reduction from current law (140,000) but which allows U.S. employers to hire the employees they need to remain competitive in the global market. While we appreciate that the somewhat lower level in S. 1394 could help tighten certain labor markets and encourage employer efforts to invest in developing the domestic labor market to meet future skill demands, it may be too low in the short term.

SECTION 113 changes current law on per-country limits, providing that the level of family-sponsored and employment based immigrants may not exceed 20,000 for non-contiguous foreign states, 40,000 for contiguous foreign states, or 5,000 for dependent areas. This limit would be reduced for a country in any fiscal year by the number of immediate relatives above 20,000 (or 40,000 for contiguous countries and 5,000 for dependent areas) admitted during the prior year. Immigrant visas made available to spouses and minor children of lawful permanent residents for backlog reduction are exempt from the per country limit.

The Administration has reservations about changing the nation's policy of equity among all countries, including our contiguous neighbors. Per country ceilings may also create problems because of the increasing number of naturalizations and their resulting impact on immediate relative petitions. We hope to work with the Subcommittee to explore the full potential impact of these and other changes in levels of admissions.

SECTION 114 creates a special "transition" program to reduce the backlog of spouses and minor children of lawful permanent residents, calling for 150,000 visas in the first year and the lesser of 150,000 or the difference between the total level of family-sponsored immigration (including immediate relatives) for the prior fiscal year and the same numbers for fiscal year 1995. These visas are to be made available first to relatives of aliens who did not become lawful permanent residents due to IRCA's legalization programs. If the Subcommittee is not fully aware of the INS' increasing capacity and commitment to backlog reduction through naturalization we invite and urge the Subcommittee to provide the INS with the opportunity to brief the Subcommittee.

The Administration strongly favors relying on its naturalization initiative to reduce the backlog of spouses and minor children of lawful permanent residents, rather than creating a special program.. We estimate that 80 percent of the backlog consists of relatives of aliens who became lawful permanent residents through IRCA's legalization programs. With this Administration's commitment to improve the naturalization process, these aliens have an opportunity to step forward affirmatively to become U.S. citizens. Upon taking that step, they may petition for their spouse and minor children as immediate relatives of a U.S. citizen. The 20 percent of the backlog who are not relatives of legalized aliens should have preference for visas in this category.

SECTION 115 calls for Congress to review the annual numerical limitations on family-sponsored and employment-based immigrant classifications after the present backlog of spouses and minor children of permanent resident aliens has declined to 10,000 or 5 years after enactment, whichever comes later. It also creates special procedural rules for consideration of such legislation. The Administration supports congressional review of immigration levels after 5 years. We do not believe, however, that the decline in second preference backlog numbers to 10,000 is a valuable triggering mechanism for review. We urge the Subcommittee to consider the Administration's legal immigration reform proposal that maintains the integrity of the family preference categories and does not require a substantial overhaul of the system because of special transitory attention given to the second preference backlog.

TITLE II - NONIMMIGRANTS

The Administration agrees with the general objective of the nonimmigrant program changes in S. 1394 to address abuses in the program and provide adequate protections to U.S. workers. However, there are a number of provisions that require additional review with regard to their consistency with U.S. trade agreement commitments.

Sections 201-203 of the bill, for example, propose changes to various visa categories -- including H-1B and L -- for which the United States has undertaken international obligations under the World Trade Organization's (WTO) General Agreement on Trade in Services (GATS) and the North American Free Trade Agreement (NAFTA).

SECTION 201 changes the H and L immigrant classifications to eliminate the "dual intent" standard which was implemented through the Immigration Act of 1990, and to limit the maximum length of stay of L, H-1B and H-2B nonimmigrants to three years. The Administration strongly supports the limitation on length of stay in the H visa programs as comporting with the "temporary" nature of these nonimmigrant visa categories. As a result, H-2B visa holders are currently subject and will remain subject to recertification by regulation on at least an annual basis.

SECTION 202 makes important changes to the H-1B nonimmigrant visa category which allows the admission (or adjustment) of foreign "professionals" to be employed in "specialty occupations" (as well as fashion models of distinguished merit and ability). As you know, the Administration has long and vigorously urged amendment of the H-1B admission criteria, consistent with our GATS and NAFTA commitments, to effectively address real abuses in the program and assure adequate protection for U.S. workers.

The bill's amendments to the H-1B program would require an employer seeking to employ such nonimmigrants to pay a fee into the training fund to increase the competitiveness of U.S. workers and reduce dependency on new foreign workers. In addition, such an employer would be required to attest that:

- it will pay a total compensation package that is the higher of the package paid similarly-employed U.S. workers or 105 percent of the prevailing compensation for the occupation;

- during certain periods it has not or will not lay off U.S. workers in the occupation unless it pays the nonimmigrant workers a higher compensation package than was paid to the laid off U.S. workers;

- it has attempted to recruit a U.S. worker for the job using industry-standard recruitment procedures and offering the higher of the actual or prevailing compensation package; and,

- it has and will take timely, significant and effective steps to recruit and retain U.S. workers to reduce its dependence as quickly as reasonably possible on foreign workers.

Further, "job contractors" seeking to use the program would be precluded from placing H-1B nonimmigrant employees at worksites of customers which had not also attested to complying with the H-1B criteria. In addition, the bill would change the minimum qualifications of H-1B workers to include "2 years experience in the specialty outside of the United States after obtaining the most recently received bachelor's or higher degree," and it would establish new guidelines for prevailing wage determinations applicable under the program.

The Administration appreciates and generally supports the objectives of these amendments. We fully support the provision on job contractors contained in the bill. This provision is a significant improvement over the comparable provision in H.R. 2202 and will improve protections for U.S. workers. The Administration is still in the process of reviewing this requirement and may have additional comments. We must point out, however, that the H-1B program amendments raise a variety of technical and international agreement issues that need to be examined carefully.

The Administration would strongly urge that the amendments it had previously proposed -- particularly with respect to the displacement of U.S. workers -- be substituted for those in the bill. The H-1B program amendments we requested in 1993 were carefully designed to assure continued business access to needed high-skill workers in the international labor market while adequately protecting U.S. workers and the businesses which employ them. These amendments are targeted especially to those employers who seek to obtain relatively low-skilled "professional" workers. Specifically, in nearly all situations it is entirely unreasonable that an employer in this country -- as a matter of public policy -- not only does not have to test the domestic labor market for the availability of qualified U.S. workers before gaining access to foreign workers, but is actually able to lay off U.S. workers to replace them with temporary foreign workers in their own employ or through contract. This is exactly what is happening now; our public policy tolerates it, perhaps encourages it, and our policy must change.

One of the changes contained in S. 1394 would require employers filing H-1B applications to attest that they have not laid off workers with substantially equivalent qualifications and experience in the specific employment for which an H-1B nonimmigrant is being sought during limited time periods <u>unless</u> the employer pays an actual wage to each nonimmigrant that is at least 105 percent of the mean of the last compensation package received by the laid off U.S. workers. As noted, this proposed change takes a small step towards one of the modifications in the H-1B program which the Administration previously requested -- to prevent U.S. workers from being laid off or otherwise displaced by nonimmigrants -- but it is not as purposeful as the change the Administration had requested. The bill does not prohibit an employer from laying off U.S. workers to replace them with nonimmigrant workers during certain time periods, it merely provides a modest disincentive to doing so. That does not go far enough. In essence, the bill would permit an employer to buy a license to lay off U.S. workers by paying a premium wage to temporary foreign workers. The bill should contain a clear and unambiguous prohibition on such lay-offs of U.S. workers.

A second amendment we proposed in 1993 would impose a requirement that employers of H-1B workers attest that they have and are taking timely and significant steps to recruit and retain U.S. workers in the jobs in which they seek to employ H-1B nonimmigrants. The "recruitment of United States workers" provision in the bill should be incorporated within the "steps to end dependence on foreign workers" provision, and it is quite important that, if "significant step[s] reasonably designed to recruit and retain" U.S. workers are to be included in the bill, they should be both new actions by the employer and meaningful.

With respect to the technical problems in these amendments, one example occurs in the bill's lay-off disincentive provision where -- presumably based on an earlier version of H.R. 2202 -- reference is made to "protected individuals (within the meaning of 274B(a)(3)." This reference would exclude from protection lawful permanent residents who had not applied for citizenship within six months of the date they first become eligible. This is inappropriate in the context in S. 1394, though it is not in the context of the anti-discrimination provision of 274B; it has been corrected in H.R. 2202 and needs to be corrected here. Further, we cannot discern the intended purpose or effect of the proposed amendment to section 212(n)(2) on page 62 of the bill. This section also lacks corresponding amendments to the program's penalty provisions reflecting the addition of the new attestation elements.

The Administration may have additional comments on section 202(d) of the bill.

SECTION 203 makes changes to the L visa criteria including limiting the availability of the visa to employees of "multinational firms" as defined in section 103(a)(1)(B)(ii), and increasing the length of time an employee must be employed by a multinational firm outside the U.S. prior to application. Although the Administration supports the goal of reducing fraud, these particular provisions require further review with regard to their consistency with U.S. international obligations.

SECTION 204 changes the B, F, J, and M nonimmigrant classifications to limit the duration of admission for student visa holders to the proposed period of study or participation in the sponsoring exchange program. It also excludes from eligibility under the F classification persons studying English for six months or less and persons attending public elementary or secondary schools.

The Administration suggests amending the language in Section 204 (a)(2) as follows: "(2) a nonimmigrant under section 101(a) (15) (J) shall be admitted for the length of time necessary to complete the nonimmigrant's exchange program, but in no event shall such admission exceed the maximum duration of stay permitted by regulations promulgated by the Director of the United States Information Agency."

The amendments in sections 204 (b)(2)(A)(ii) and (B) would prevent a nonimmigrant student from obtaining a student visa in order to attend a public elementary or secondary school, although that student could obtain a student visa to attend a private elementary or secondary school. Nonimmigrant students other than those who entered the U.S. on a student visa, or who are here temporarily for business or pleasure, could still apply to attend public elementary or secondary schools. We have strong concerns about drawing distinctions among elementary and secondary students solely on the basis of whether they are attending a public or private school -- a distinction that does not appear to take into account the fact that some public school districts charge nonresident fees to students from outside the district. The schools that these students seek to attend must agree to report on the withdrawal of nonimmigrant students before the visas can be granted, thereby essentially agreeing to the students' attendance, and if the public schools are willing to enroll these students, their student visas should not be denied. We would like to work with the Subcommittee to address this issue.

SECTION 205 establishes a pilot program to collect information from colleges and universities, establish an electronic tracking system of nonimmigrant foreign students, and make this information available to selected U.S. embassies and consulates. The information would include whether an alien is enrolled or has been accepted for enrollment, the alien's current U.S. address, whether the alien is studying full-time or part-time, and whether he or she is making normal progress toward the degree. The pilot would be funded by processing fees assessed by the Department of State and the Attorney General.

The Administration is currently working on an improved tracking system through the INS' Student Controls Task Force and believes that this approach is better than the one proposed in this bill. INS does not need to know when a student is placed on academic probation. The INS needs to know only when the student is still a full-time student, whether the student has interrupted his/her education, ceased attendance, or otherwise violated student status. Currently, these institutions are required to report only the withdrawal of students with student visas so this provision would increase the reporting burden on institutions. The Administration would like to work with the Subcommittee staff to develop appropriate language to support implementation of a revised, efficient tracking system.

Currently, the bill requires, in subsection (f) (on page 70) a report on the feasibility of expanding the program to cover the nationals of all countries, but then, subsection (g) (same page), requires that, not later than six months after the submission of the report, expansion of the pilot program to cover the nationals of all countries must begin and be completed within one year after submission of the report.

The bill also should clarify that the fee it proposes is in addition to the fee currently collected for normal processing which goes to the Exams Fee Account. There should be clearer definition of the appropriate distribution and collectors of the fee. The Department of State should collect the money and the proceeds should be divided between the Department of State and the Immigration and Naturalization Service based on the costs which they respectively incur.

The bill currently does not specify that a fee will be collected for processing the J visa, and we oppose such a fee because it would adversely impact that group of J visitors that can least afford an additional fee, i.e. students. We are especially concerned about the impact the processing fee would have on government-funded programs, unless they are exempted. Government sponsored exchange programs would, in all likelihood, absorb this fee and thereby incur increased programming costs. However, for USIA to participate in the pilot program, incorporating the J visa exchange visitors, would require additional appropriations.

We also recommend modifying the language of the clause referring to J visas in (h) at line 5 to read "...or as a condition of their continued designation as an exchange visitor program by the Director of the United States Information Agency under section 101 (a) (15) (J) of such Act."

TITLE III - EFFECTIVE DATE

<u>SECTION 301</u> establishes that the effective date of the Act is October 1, 1996, unless otherwise provided.

Mr. Chairman, we appreciate the continued support of this Committee for the inititatives taken by this Administration on urgent immigration matters. We want to continue to work with you on bipartisan immigration improvements legislation that is in the national interest. We look forward to working with you to address all of these issues.

The Office of Management and Budget has advised that there is no objection to the subcommission of this letter from the standpoint of the Administration's program.

Sincerely,

Andrew Fois (97)

Andrew Fois
Assistant Attorney General

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

THE DIRECTOR

March 20, 1996

The Honorable Orrin Hatch
Chairman
Senate Judiciary Committee
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On behalf of the Administration, I would like to express our strong support for three of the amendments that may be offered during the Senate Judiciary Committee mark-up of Title II of S. 1394, the Immigration Reform Act of 1995.

We understand that an amendment will be offered to limit the application of deeming rules to programs that currently "deem" an immigrant's income to include the income of his or her sponsor (AFDC, Food Stamps, and SSI). The Administration supports this amendment. As currently drafted, S. 1394 would broaden the application of deeming rules to all means-tested programs. This would include Medicaid, the Maternal and Child Health Services programs, the School Lunch program, student financial assistance programs for postsecondary education and scores of other Federal programs. The Administration opposes deeming under the Medicaid program. Broadening the scope of deeming could endanger the public health and safety by precluding immigrants in need of health care from receiving assistance. In addition, this provision would significantly complicate the administration of programs that do not currently deem, especially those programs run by local charities and non-profit organizations.

The Administration also supports an amendment that would limit the application period of deeming rules until the sponsored immigrant becomes a naturalized U.S. citizen. Under S. 1394, future immigrants would be subject to deeming -- even after attaining citizenship -- until they have worked 40 qualifying quarters. Thus, a sponsored immigrant would be subject to deeming for a minimum of 10 years, or potentially 5 to 7 years after becoming a U.S. citizen. A sponsored immigrant who did not fulfill the 40 quarters requirement would be subject to deeming forever. Deeming beyond citizenship would treat naturalized citizens differently from natural born citizens, creating two classes of citizens. It would be a mistake to relegate naturalized U.S. citizens -- who have demonstrated their commitment to our country by undergoing the naturalization process -- to a kind of second class citizenship status. Furthermore, the Department of Justice has serious concerns about the constitutionality of this provision as applied to naturalized citizens.

In addition, the Administration supports an amendment that would make the binding affidavit of support legally binding only until the sponsored immigrant becomes a naturalized U.S. citizen. Under the proposed legislation, the affidavit of support would be legally binding for a period of 40 qualifying quarters. This section would hold a sponsor legally liable to support a sponsored immigrant, even after the immigrant has become a U.S. citizen. While the Administration supports making the current affidavit of support legally binding, we oppose an affidavit of support which would be binding after the immigrant has naturalized. We have been advised by the Department of Justice that there may be constitutional concerns related to this section as well.

We strongly urge you and other members of the Committee to support these amendments.

Sincerely,

Alice M. Rivlin

Alice M. Rivlin
Director

Identical letters sent to The Honorable Joseph Biden, The Honorable Thomas Daschle, and The Honorable Robert Dole.

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

THE DIRECTOR

April 30, 1996

The Honorable Thomas A. Daschle
United States Senate
Washington, D.C. 20510

Dear Mr. Leader:

I am writing to express the Administration's strong support for several amendments that we expect to see offered during the Senate debate on S. 1664, the "Immigration Control and Financial Responsibility Act of 1996."

First, we support an amendment to limit the "deeming" provisions in S. 1664 to the programs that now deem legal immigrants' income to include a portion of their sponsors' income. Under current law, the deeming rules apply only to the Aid to Families with Dependent Children, Food Stamp, and Supplemental Security Income programs. S. 1664 would unwisely broaden the deeming rules to all Federal means-tested programs; specifically, the Administration opposes applying the rules to scores of Federal programs, including Medicaid, emergency medical services within Medicaid, child protection programs, child nutrition programs, and financial assistance programs for postsecondary education. Broadening the scope of deeming rules could endanger public health and safety by leaving many immigrants without vital services, and it would complicate the administration of programs that do not currently deem.

Also under S. 1644, legal immigrants could no longer receive benefits for which undocumented immigrants are eligible, such as Medicaid's emergency medical services and child nutrition programs. At a minimum, we urge the Senate to clarify this important matter by listing the specific programs for which deeming would be required. In doing so, the Senate should limit these programs to major cash and cash-like assistance programs, where restricting access to benefits for sponsored immigrants makes sense.

Second, the new verification and deeming requirements of S. 1664 would impose a significant administrative burden on State and local entities. The Administration supports an amendment to suspend such requirements when administrative costs exceeds savings. The Administration has placed a high priority on streamlining Federal regulations and finding ways to increase State and local flexibility, and we believe Congress should use great caution before imposing new requirements on State and local government. In fact, the Congressional Budget Office verified our concerns, estimating that S. 1664 exceeds the $50 million threshold for intergovernmental mandates.

Finally, the Senate should amend S. 1664's "public charge" provision. The bill defines an immigrant as a public charge, subject to deportation after receiving certain benefits for any 12 months in the first five years after entry. Public charge rules are necessary to regulate the use of major benefit programs, and limit the ability of immigrants likely to depend on public assistance to naturalize. But the bill provides no time limit for the public charge status and covers an unduly broad category of assistance programs.

An immigrant could receive many Federal benefits and services -- e.g., subsidized child care, and transportation services for the disabled and elderly -- without his or her knowledge. The Administration supports an amendment to apply the public charge provision only to a specific list of programs -- again, the major cash and cash-like assistance programs. Similarly, Congress should place a time limit on the public charge provision. We should not prevent hard-working immigrants who have contributed to our country for decades from becoming citizens because they received assistance, perhaps unknowingly, many years before.

We strongly urge other members of the Senate to join you in supporting these amendments.

Sincerely,

Alice M. Rivlin

Alice M. Rivlin
Director

IDENTICAL LETTER SENT TO THE HONORABLE ROBERT J. DOLE