**Immigration**—H1B Visas

MM —
H1B

**Irene Bueno**
04/21/2000 04:02:08 PM

Record Type: Record

To: Eric P. Liu/OPD/EOP@EOP
cc: Anna Richter/OPD/EOP@EOP
Subject: H1B - Registry Date & Parity - Question?

Please advise on the following and if you are okay with my recommneded approach, then I will folow up with Gene, Maria and Broderick.

I am preparing a response to a letter the President received from the Congressional Hispanic Caucus asking that he push to attach the registry date and parity legislation to H1B legislation. In addition, in a recent meeting with the staff of the Congressional sponsors of the Registry Date and Central American Parity legislation, staff indicated that while they are supportive of attaching these provisions to the H1B bill, the high tech industry has expressed concerns that attaching these provisions could slow down enactment of an H1B bill particularly since there seems to be sufficient votes in both the House and Senate for passage of an H1B bill without these provisions. To address the letter and these concerns, I think we should take the following action:

- The Administration has been fairly low key in our support for attaching these proposals to H1B legislation. I think that the Administration should take a more public stance to heighten the visibility of these issues and to lay the groundwork for attaching it to the H1B bill or some other legislative vehicle (stand alone bill, another immigration bill, budget, etc). The President's response to the CHC letter is one way to heighten our support for this approach. We should explore other ways to raise the level of awareness of this issue.

—OK, just make sure Gene is

- In addition, to address some Congressional members concerns with attaching the registry date and parity bill to the H1B bill and the possibility that we may not succeed in putting this legislation on H1B, the Administraton should work to build support for the registry date bill and parity bills **independent** of the H1B legislation by calling key members of Congress and meeting with key groups such as the Essential Worker Coalition that is made up of National Restaurant Association, Chamber, Hotel Association and faith groups. I will work with OPL to schedule such meetings.

Please advise if have concerns about this approach. Thanks.

**H-1B – ~~Priority~~ Key Issues** ***Draft 4/11/00, 12/50pm***

1. **H-1B Cap**

✗ *Set-asides for Master's or Higher Degree.* Include a set-aside within the cap for workers with a master's degree or higher. Phase-in the increase – 40% in 2001, 45% in 2002, and 50% in 2003.

Justification. Currently, approximately 40% of H-1B workers have a master's or higher degree. The set-aside should be increasingly targeted toward visas for higher skilled workers.

✗ *Set-asides for higher education.* ~~If included should be within cap (~~Retain existing set-aside within the cap either as 10,000 visas (fixed number) or 5% ~~or a percentage~~.

2. **Registry Date and NACARA Parity**

✗ Add the Administration's proposals on the registry date and NACARA parity to the bill.

3. **Fee Level & Distribution**

✗ Increase the fee level to $2,000 per petition.

Justification. Given the substantial increase in the cap, the requirement for an on-line application system, and the permanent extension of stay for H-1B workers due to the backlogs at INS and DOL, the fee should be increased to adequately fund administration and enforcement, as well as additional training and educational activities for U.S. workers. The $2,000 fee would apply to all H-1B applications. The current fee exemptions for colleges/universities and non-profits would be maintained.

✗ Revise the fee distribution so that 50% of the fees collected go to DoL training activities, 25% for educational activities, and 25% to INS and DoL administration and enforcement for all immigration programs.

Justification. The first and primary policy for increasing the availability of high-skilled workers must be focused on increasing the education and training of U.S. workers. This is what DoL does.

Also, additional funding is needed to administer and enforce ~~the employment-based immigration programs~~ H-1B program. In addition given ~~Given~~ the H-1B program is a feeder program for the permanent employment-based program and these programs are operated and enforced by the same staff and equipment, it is appropriate to allow the agencies to fund administrative and enforcement costs related to other employment-based programs with this fee. Without such funding, backlogs will dramatically increase and fraud will go undetected.

4. **Extension of Attestation Requirements and DOL Investigative Authority**

✗ Add a provision to extend these requirements through the length of any cap increase. Currently, the provisions sunset in October, 2001.

Justification. The Administration fought hard for increased protections for U.S. workers. These protections should be extended through the length of the cap increase.

## 5. Internet Recruitment

✗ Allow Internet recruitment to be an acceptable form of recruitment, but not the exclusive form of recruitment.

Justification. ~~Allowing Internet-only recruitment for H-1B would extend to the permanent employment-based immigration and other temporary worker programs, such as H-2A and H-2B. This basic worker protection, which in the case of H-1B's applies only to employers already reliant on H-1B workers, ensures an adequate test of the U.S. labor market prior to the admission of foreign workers. This is to give all U.S. workers, even those on "the other side" of the digital divide fair opportunity to seek these jobs. Finally, allowing internet-only recruitment leads to problems in other employment-related issues such as affirmative action and non-discrimination.~~

Employers filing a petition for permanent employment must take a number of steps to prove good faith recruitment of U.S. workers. H-2A, H-2B, H-1C, and H-1B dependent employers and willful violators of H-1B must also recruit U.S. workers. Allowing Internet-only recruitment would gut current worker protections by allowing an insufficient test of the U.S. labor market prior to seeking foreign workers. In addition, it would unfairly disadvantage those on "the other side" of the digital divide who seek equal opportunity to apply for these jobs.

THIS WAS PRODUCED BY SEN. KENNEDY'S STAFF

# Senator Edward M. Kennedy
# Concept paper on H-1B amendments to S. 2045 (Hatch/Abraham/Feinstein)

Any increase in the H-1B visa cap for high skill workers can only responsibly be done by 1.) prioritizing foreign workers with the highest professional credentials possible, 2.) by significantly expanding high skill training for American workers on whom high tech companies depend, and increasing the educational opportunities of U.S. students, the workers of tomorrow. Any short-term attempt to meet our workforce needs must be balanced with significantly more funding for worker training and education in order to realistically meet the long-term needs of our economy. **The proposal below would generate over $344 million each year and train over 47,000 workers, compared to $150 million raised in the Hatch bill which would serve less than 13,000 workers per year.** The Hatch bill does not come close to meeting the pressing need for higher skilled U.S. workers.

## GOAL ONE: MAINTAIN ADVANCED DEGREE CARVE-OUT WITHIN THE CAP

The H-1B debate should not focus solely on the number of visas available for foreign skilled workers, but should also emphasize employers' need for as many workers with the highest professional credentials as possible. Strong arguments can be made for expanding the number of H-1B visas needed to fill an unmet shortage for masters and doctoral level professionals who possess specialized skills that can not be easily and quickly produced domestically. Any increase in the visa cap should therefore be done in accordance with an increased proportion of foreign workers entering with a master's degree or higher, according to the structure below:

A. Raise the cap to 200,000 visas per year through FY 2002.

B. Eliminate all exemptions from the cap outlined in the Hatch bill.

C. Reserve 12,000 of the 200,000 H-1B visas for workers hired by educational institutions, non-profit organizations, and non-profit or governmental research organizations. Any visas remaining at the end of the third quarter of each fiscal year would become available to any worker with a master's degree or higher.

D. Reserve out of the 188,000 H-1B visas the following percentages for workers with at least a master's degree:
   1.) 40% in FY 2000
   2.) 45% in FY 2001
   3.) 50% in FY 2002.

## GOAL TWO: EXPAND TRAINING FOR U.S. WORKERS

Any credible legislative proposal to increase the number of foreign high tech workers available to

American businesses must begin with the <u>expansion</u> of high skill training opportunities for American workers. Only when businesses address the shortage of high skill workers as a national problem with a national solution – rather than a company-by-company approach to worker training – will our workforce be able to meet the growing demand for high skills, and will our economy be able to prosper. **The proposal below will generate over $344 million each year compared to $150 million raised in the Hatch bill as amended.**

A. A significant increase in all H-1B funds collected is necessary to expand training and education program funding. This can be reasonably and fairly acquired through a tiered user fee system:

1.) $1,000 per visa for employers with 150 or fewer employees; and
2.) $2,000 per visa for employers with more than 150 employees.

Exceptions: "Job Shops" must pay $2,000 per visa petition. All petitions for visa extensions and changes of employer will pay $1,000. Educational institutions, and non-profit and government-related research organizations will remain exempt from all fees.

Immigrant families with very modest incomes were able to pay a $1,000 fee imposed to allow family members to obtain green cards. Certainly, high tech companies can afford to pay at least that as they enjoy record profits and, in the long-run, will surely benefit from the programs funded through this proposal.

B. A sufficient amount of funding for innovative, high tech worker training per se can only be obtained by directing at least 50% of all H-1B funds to the Department of Labor for high skill training grants.

**This proposal will allocate nearly $172 million for high skill training. Combined with matching resources from grant recipients, this would upgrade the skills of over 47,000 workers to help meet the nation's high tech skill needs. The formula in the Hatch bill would allocate a mere $54 million and train less than 13,000 workers.**

The distribution of all H-1B revenues is as follows:

| KENNEDY | | HATCH (as amended) | | |
|---|---|---|---|---|
| 50% Training | $172.3 | 36.2% Training | ~~$42.3~~ | 54.3 |
| 30% Scholarships | $103.4 | 30.7% Scholarships | ~~$36.1~~ | 46.1 |
| 9% Digital Divide | $ 33.0 | 25.8% K-12 Reform/Digital Divide | $38.7 | |
| 6% DOL process/ enforcement | $ 20.6 | 6% DOL process/enforcement | $ 6.75 | |
| 5% INS processing | $ 17.2 | 3% INS processing | $ 1.8 | |

| | | | |
|---|---|---|---|
| TOTAL | $344.7m | TOTAL ~~(100.2%)~~ (101.7%) | $149.45m |
| | | | |

C. A credible training program must support the new system called for in the bipartisan 1998 Workforce Investment Act, which is to be implemented nationwide by July 1, 2000. Priority will be given to any regional partnership that involves and directly benefits more than one small business (each consisting of 50 employees or less), or involves a labor management partnership. The extent and quality of collaboration among the partners will be considered as an important factor in the overall strength of a proposal.

Eligible applicant pools
75% of training dollars shall be available for training proposals submitted by regional workforce investment boards (WIBs) on behalf of a partnership with at least one business or business-related non-profit, and one educational institution, labor organization, or community organization. WIBs must designate the fiscal entities.

25% of training dollars shall be available for applications that propose national strategies, multi-area strategies, or rural area strategies that would otherwise face significant difficulty in applying for funds through the parameters set forth in the account noted above. Applicants need not be WIBs, but must represent a partnership of at least two business or business-related non-profit organizations. Other partners may include a WIB, educational institution, labor organization, or community organization.

High tech, IT and Biotechnology skills priority
In recognition of the fastest growing job categories and skill shortages, at least 80% of all funds must train employed and unemployed workers in skills that are in shortage in high technology, information technology and biotechnology industries.

The remaining 20% or less of funds shall be available to programs that train employed and unemployed workers in any H-1B-related skill shortage.

Training Outcomes
Preference will be given to training programs that demonstrate a priority, upon successful completion of a training course, to do the following: 1.) hire unemployed trainees (where applicable); 2.) increase the wages or salary of incumbent workers and promote them up career ladders (where applicable), and; 3.) provide skill certifications to trainees or link the training to industry-accepted occupational skill standards, certificates, or licensing requirements. All programs must articulate the level of skills that workers will be trained for and how attainment of those skills will be measured.

Target Population
All proposed training programs must make efforts to actively recruit and train those who

traditionally are under-represented in information technology occupations, such as minorities, women, low-wage workers, older workers, workers residing in Empowerment Zones/Enterprise Communities, and people with disabilities.

Matching Funds

Each grant recipient must demonstrate how their regional partnership will provide matching resources (cash and/or in-kind) equal to at least 50% of the total grant awarded so as to demonstrate the long-term sustainability of the training program after the grant expires.

## GOAL THREE: INCREASE OPPORTUNITIES FOR U.S. STUDENTS

More than ever, jobs require advanced degrees, especially in math, science, engineering, and computer sciences. We must encourage students, including minority students, to consider degrees in these fields. Scholarship opportunities must be significantly expanded for talented minority and low-income students whose families cannot afford today's tuition costs. Equally important, closing the digital divide must be a part of our effort to meet the growing demand for highly skilled workers. We must act now to provide low-income students with greater access to technology as we develop a workforce well-prepared to maintain America's competitive edge in the global market place. Educational opportunities for U.S. students by:

A. Substantially increasing the funds available through the National Science Foundation (NSF) to provide scholarships to low-income students pursuing degrees in math, science, and engineering.

**This proposal will allocate $103 million for scholarships for low-income** students **– three times the funding proposed in the Hatch bill as amended.**

B. Establishing an out-of-school technology education and career enrichment program to help close the digital divide by supporting innovative projects that will engage middle and high school low-income and minority youth in substantive out-of school activities in math, science, and engineering.

Under this proposal, intended to complement the existing NSF scholarship program, the NSF will make merit-based, competitive grants to partnership programs with an educational mission, including industry, middle and secondary schools, and professional associations. Preference will be given to grant applications that include non-Federal cash or in-kind matching funds.

**This proposal increases the funding allocated to NSF school enrichment programs from a current level of $3 million to $33 million.**

# H-1B Target List

**EMK Staff List**

DeWine - Jeff

- Wellstone
- K Mikulski
- Reed, J. - Liberians
- Harkin (particularly given Grassley's interest)
- Hollings (he should be interested given his economy and dislike for high tech (Y2K))
- Byrd (job training) M

**Labor Targets**

- Wyden (to appease them given his H-2A actions)
- Lautenberg
- M Levin
- ~~Daschle~~
- K Conrad
- Dorgan
- K Edwards (big high tech community, BUT he also has a factory-based worker pool that needs retraining)
- Rockefeller (because of job training)
- Landrieu (not a big high tech base but job training should be of interest)
- Breaux (ditto) (LABOR WILL NOT TAKE)
- E Akaka
- E Inouye
- ✓ Kerry

**White House List**

- LIEBERMAN
- Dodd
- Lincoln
- Sarbanes (potential problem, he wants to send program $ to Dept. of Commerce)
- K Boxer (she's probably a long shot now; she was very interested)
  - Jane · send univs. to Boxer

**Republicans (we're working through Grassley, first)**

- Specter
- Collins
- Snowe
- Jeffords
- Stevens (unclear, but we'd like to know where he stands)
- Chafee (long shot)

Emergency Supplemental
NCLR - lead for other imm. amdts.

H1B

**Irene Bueno**
03/23/2000 04:23:07 PM

Record Type: Record

To: Eric P. Liu/OPD/EOP@EOP

cc: Anna Richter/OPD/EOP@EOP

Subject: h1b - quick update

Congressional Hispanic Caucus

FYI - I heard from Rep. Berman's staff that the Congressional Hispanic Caucus(CHC), Rep. Pelosi, Rep. Berman, Rep. Frank, and others met yesterday with the pro-H1B Democrats and urged them to add other immigration provisions to the H1B bill and there seemed to be agreement but the issue is what's the strategy. The business groups and in turn Republicans do not feel that they need to add these provisions since they have the votes and don't want to do anything to slow down the process. Rep. Berman's staff is arguing that if the additions are not made, they will slow the process because the CHC, Rep. Berman and others who don't like guestworkers programs or are pro-unions may slow it down if these other immigrant bills are not added. They could probably add the Black Caucus since they have an interest in the Parity bill that will help Haitians. They are also urging the WH to put some pressure to add these provisions. I heard that Gene met with Rep. Roybal-Allard today to discuss but have not heard a report on that meeting. Senator Kennedy is meeting with groups on a possible Senate strategy. Based on this update, I think we should strongly urge Congress to address these other immigration issues at the same time that we are doing something for H1B workers. We would have broad based support from members of the Democratic Caucus and would have a good chance of getting something. I will give you a report of the 5pm meeting with Gene on H1B.

---------------------- Forwarded by Irene Bueno/OPD/EOP on 03/23/2000 04:06 PM ---------------------------

The things to deal with:
(1) provisions immigration
(2) radio paper
(3) JZ
(4) Sen A - will back
(5) LS - to Susan
(6) get copy of final Sen Dem
(7) ?

**Anna Richter**
03/22/2000 01:55:29 PM

BR
(1) provisions
(2) what does BLG?
(3) donors
(4) ~~[illegible]~~ tour
(5) supp
(6) const. council
(7) JZ, [illegible]

Record Type: Record

To: Irene Bueno/OPD/EOP@EOP

cc:

Subject: h1b

---------------------- Forwarded by Anna Richter/OPD/EOP on 03/22/2000 01:55 PM ---------------------------

Jamie H. Ginott
03/22/2000 01:52:28 PM

Record Type: Record

6:30 mtg

**Irene Bueno**
03/21/2000 07:25:54 PM

Record Type: Record

To: Eric P. Liu/OPD/EOP@EOP

cc: Anna Richter/OPD/EOP@EOP
Subject: H1B meeting

Here's is some background for this meeting. I don't think that's you need to be at this meeting but depending on how the discussions go, I may ask you to weigh in with Gene on the Administration publicly supporting efforts to add other immigration priorities.

According to Brian Kennedy, this meeting is to assess where we are on H1B given Rep. Gephardt's support of the newest H1B bill introduced Reps. Dreier-Lofgren that bipartisan support. Attached for your info if internal guidance on H1B issues. OMB is preparing a side-by-side of all major H1B legislation that I will forward to you when I receive it.

(1) The main issue here is do we keep pushing our principles with the hope for some change - modest increase, target those with the highest skill levels, more funding for training and education and increases resources for fraud enforcement given the overwhelming vote in the Senate Judiciary Committee for the Hatch/Abraham bill (16-2) and apparent bipartisan support in the House. It seems that everyone is trying outdo each other on helping the high-tech industry. It appears that no one with the exception of Rep. Lamar Smith is pushing for lower increase.

DOL policy folks believe that increasing the numbers of temporary workers is a bad idea. They think that the cap is being increased without regard to demand and that these temporary workers do not have the same rights as regular workers- limited in their ability to change jobs, etc. DOL believes that these high tech workers should enter the country through the permanent labor program (also known as EB visa program). However the EB program has problems in that it is more cumbersome for employers and there is backlog in applications. In fact, DOL argues that H1B was increased b/c of the EB visa program backlog and because the H1b process is easier. DOL has raised this arguments at WH meetings but did not seem make much impact. Last week, we had a WH meeting with DOL and INS to find out about what they are doing to reform the EB program and to reduce the backlog. It sounds like they have a plan and there are some budget proposals pending but it would unlikely have an immediate impact on making this program more attractive to employers.

***I recommend that we keep pushing our principles to make the bill better and to improve the EB visa program.***

(2) The second issue relates to other immigration priorities. We have not made a final decision to publicly push our other immigration priorities including the registry date fix and parity legislation. The ~~parity~~ legislation has already been introduced and we are planning to submit the registry date fix legislation later this week. The Congressional Hispanic Caucus (CHC), Latino and immigration groups are pushing the Administration and Congressional leadership to push for these additional provisions in the context of H1B debate. Also, the CHC is meeting with Democrats on Wed. who are pushing for H1B legislation to urge them to include these additional provisions.

***I strongly recommend the Administration lead or at least support efforts to add other immigration priorities to the H1B bill.***

**H1-B GUIDANCE**
**March 9, 2000**

**Question:**

On March 9th, the Senate Judiciary Committee marked up S. 2045, the American Competitiveness in the 21st Century Act, sponsored by Hatch and Abraham, which significantly increases the H-1B cap. What is the Administration's position on this legislation?

**Answer:**

- The Administration has a strong commitment to policies that strengthen the global competitiveness of our businesses and the skills and education of our workers. We have a strong record of taking responsible steps to work with the business community to meet this need while protecting and promoting the interests of U.S. workers, and preparing the U.S. workforce to meet the labor needs of the twenty-first century.

- We continue to believe that the first and primary policy for increasing the availability of high skilled workers must be focused on increasing the education and training of U.S. workers. We recognize, however, that U.S. businesses sometimes need access to the international labor market to maintain and enhance our global competitiveness, particularly in high-growth new technology industries and particularly in tight labor markets.

- The Administration stands ready to support a reasonable increase in the number of H-1B visas as long as it reflects a **balanced approach that protects and prepares the U.S. workforce**. This approach must include measures to more effectively target individuals at the highest skill levels, an increase in the current H-1B fee to provide funding for enhanced education and job training (including incumbent worker training), and increased resources for H-1B fraud enforcement.

- The Administration opposes S. 2045, the American Competitiveness in the Twenty-first Century Act, because we believe it fails to reflect this critical balance.

**BACKGROUND:**

The American Competitiveness and Workforce Improvement Act (ACWIA), which addresses the H-1B issue – the purported shortage of high skilled workers, was enacted in 1998. The H-1B issue put the Administration in a difficult position, caught between the considerable number of Democratic (and Republican) Members of Congress and worker advocates who argued that we should train Americans first, and representatives of industry (particularly high-tech industry) who argued that more H-1B visas were needed to fill gaps in the workforce that couldn't be filled with American workers. The Administration sought a middle-ground approach that would provide temporary relief for employers having difficulty finding skilled workers, while stressing that our policy should be based on the principle of training American workers first. Therefore, we negotiated a deal -- primarily with Senator Abraham – whereby we agreed to increase the caps for 3 years, in exchange for protections against abusive job shops and a $500 fee that we proposed to raise $250 million for regional training alliances, low income scholarships, and administration. ACWIA increased the H-1B visa cap from 65,000 a year to 115,000 in FYs 1999 and 2000, and 107,500 in FY 2001.

The H-1B issue is again beginning to gain some momentum. INS has recently announced that we are close to reaching the cap for this fiscal year. Of the 115,000 visas available, 67,000 have been issued and another 44,000 are pending. Senators Hatch and Abraham introduced legislation to significantly increase the number of H-1B Visas (from 115,000 to over 195,000). Senators Graham, Lieberman and Feinstein are cosponsors. The Hatch-Abraham bill was marked up in the Senate Judiciary Committee on March 9th. At the markup, Senator Kennedy offered a substitute amendment with a more modest increase in the cap. The Kennedy substitute was defeated by a vote of 8-10 (with Senator Grassley voting yes, and Senator Feinstein voting no). The underlying Hatch-Abraham bill passed by a vote of 16-2. Lamar Smith, the Chairman of the House Subcommittee on Immigration, recently introduced legislation to provide an additional 45,000 visas this year. Several other bills addressing the perceived shortage have also been introduced.[1] Legislation increasing the cap appears likely to pass this year. The legislation may include an increase in the visa fee, increased targeting to workers with the highest skills, strengthened H-1B fraud enforcement, and expanded job training provisions. Gene Sperling is leading a White House process on the issue.

[1] The New Workers for Economic Growth Act of 1999 (S. 1440, H.R. 2698, introduced by Senator Gramm and Representative Dreier, respectively), the Bringing Resources from Academia to the Industry of Our Nation Act (H.R. 2687, introduced by Representative Lofgren), the Helping Improve Technology Education and Competitiveness Act, "HITEC Act" (S. 1645, introduced by Senator Robb), the 21st Century Technology Resources and Commercial Leadership Act (S. 1804, introduced by Senator McCain), an H-1B scholarship payment bill (H.R. 3508, introduced by Representative Wu).

DRAFT

# Side by Side Analysis
# H-1B Legislation

03/23/00
4:34 PM

| | Current Law | S. 2045 Hatch/Abraham | H.R. 3814 Smith | H.R. 3983 Dreier/Lofgren |
|---|---|---|---|---|
| H-1B Cap | FY 1999 = 115,000<br>FY 2000 = 115,000<br>FY 2001 = 107,500<br>FY 2002 = 65,000<br>FY 2003 = 65,000<br>FY 2004 = 65,000 | FY 1999 = 115,000<br>FY 2000 = 115,000 + 80,000= 195,000<br>FY 2001 = 107,500 + 87,500= 195,000<br>FY 2002 = 65,000 + 130,000= 195,000<br>FY 2003 = 65,000<br>FY 2004 = 65,000<br><br>Additional visas provided that are not counted against the cap:<br>1. visas for institutions of higher education and other research organizations (est. 10,000 visas); and,<br>2. visas for nonimmigrants with master's or higher degree from a U.S. institution (est. 40,000). | FY 1999 = 115,000<br>FY 2000 = 115,000 + 45,000=160,000<br>FY 2001 = 107,500<br>FY 2002 = 65,000<br>FY 2003 = 65,000<br>FY 2004 = 65,000<br><br>The 45,000 additional visas provided in FY 2000 are contingent on the employer meeting certain requirements. For example, demonstrating that there was a net increase in total wages paid to U.S. workers during the previous tax year. | FY 1999 = 115,000 + approx. 20,000*<br>FY 2000 = 115,000<br>FY 2001 = 200,000<br>FY 2002 = 200,000<br>FY 2003 = 200,000<br>FY 2004 = 65,000<br><br>*Estimate of INS overage.<br><br>Within the '01, '02, and '03 caps:<br>1. 10,000 visas are set-aside for institutions of higher education and other research organizations; and,<br>2. 60,000 are set-aside for nonimmigrants with a master's or higher degree (or its equivalent). |
| Permanent Employment Visas | The annual permanent employment visa cap is 140,000 plus any unused family visas from the previous year. | | | |
| *Per country ceilings* | Visas are subject to a limit of 7% per country or 2% per dependent area. For example, the maximum number of visas available for India in a fiscal year is 9,800. In addition, the maximum number of visas issued in a quarter may not exceed 27% of the total available for the year. | Lifts the 7% per country/ 2% area limit in calendar quarters in which the number of visas available exceeds the number of qualified immigrants. | No such provision. | Lifts the 7% per country/ 2% area limit in calendar quarters in which the number of visas available exceeds the number of qualified immigrants. |
| *Limiting fall across for certain countries* | The INA provides special rules related to the per country/area limits. | Lifts special rules related to the per country/area limit. | No such provision. | Lifts special rules related to the per country/area limit. |

# Side by Side Analysis
# H-1B Legislation

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03/23/00
4:33 PM

| | Current Law | S. 2045 Hatch/Abraham | H.R. 3814 Smith | H.R. 3983 Dreier/Lofgren |
|---|---|---|---|---|
| *One-time Protection Under the Per Country Ceiling* | The maximum length of stay for an H-1B nonimmigrant is 6 years. | Allows an H-1B nonimmigrant to apply for an extension of stay (beyond the 6 year limit) until their application for a permanent employment visa has been processed. | No such provision. | Allows an H-1B nonimmigrant to apply for an extension of stay (beyond the 6 year limit) until their application for a permanent employment visa has been processed. |
| *Extension of Stay due to Lengthy Processing* | The maximum length of stay for an H-1B nonimmigrant is 6 years. | Provides an exemption from the 6 year limit to H-1B nonimmigrants who have had a labor condition application or a petition for permanent employment filed on their behalf for at least <u>one year</u>.<br><br>The AG shall extend the H-1B's status in one-year increments until a final decision is made. | No such provision. | Provides an exemption from the 6 year limit to H-1B nonimmigrants who have had a labor condition application or a petition for permanent employment filed on their behalf for at least <u>six months</u>.<br><br>The AG shall extend the H-1B's status in one-year increments until a final decision is made. |
| *Recapture Unused Permanent Employment Visas* | The annual permanent employment visa cap is 140,000 plus any unused family visas from the previous year. | No such provision. | No such provision. | Beginning in FY 2001, increases the permanent employment visa cap by the number of unused employment visas in FY 1999 (approx. 98,000) and FY 2000 (approx. 40,000 – 50,000). This number is reduced for fiscal years after 2001. |
| *Internet Recruitment* | Currently employers must take a number of steps to prove good faith recruitment of U.S. workers. (Subject to DOL regulations.) | No such provision. | No such provision. | Provides that DOL must accept Internet recruitment efforts and the use of the Internet as an exclusive recruitment tool when determining whether the employer has met the recruitment obligations. The employer must post on a web site designated by DOL (for example, America's Job Bank). |

# Side by Side Analysis
# H-1B Legislation

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| | Current Law | S. 2045 Hatch/Abraham | H.R. 3814 Smith | H.R. 3983 Dreier/Lofgren |
|---|---|---|---|---|
| *Application of Internet Based Technologies* | No such provision. | No such provision. | No such provision. | Requires, not later than one year after enactment, the AG and Secretary of Labor to establish an Internet web-based system that will permit access to on-line information about the status of a pending application. The AG and Secretary of Labor shall consult with the Technology Advisory Committee (established in the bill) during this effort. |
| **Additional H-1B Provisions** | | | | |
| *Increased Portability* | An H-1B nonimmigrant cannot move between employers unless the new employer has an approved petition. | Allows an H-1B nonimmigrant to accept employment with a new employer upon the filing of a new petition for the worker. The H-1B nonimmigrant can continue working while the petition is being processed. | No such provision. | No such provision. |
| *Extension of Attestation Requirements and DOL Investigative Authority* | Currently, dependent employers and willful violators (as defined by ACWIA) are subject to non-displacement and recruitment requirements. In addition, DOL has investigative authority in certain circumstances. | Extends these requirements until October 1, 2002. | No such provision. | No such provision. |
| *Recovery of Visas Used Fraudulently* | | Provides that visas shall be issued in the order in which petitions are filed. In addition, restores visa numbers that have been determined to have been fraudulently obtained. | No such provision. | No such provision. |

# Side by Side Analysis
# H-1B Legislation

DRAFT

03/23/00
4:33 PM

| | Current Law | S. 2045 Hatch/Abraham | H.R. 3814 Smith | H.R. 3983 Dreier/Lofgren |
|---|---|---|---|---|
| *W-2 Forms* | No such provision. | No such provision. | No such provision. | Requires employers to file H-1B nonimmigrant W-2 forms with DOL. Effective after October 1, 2000. |
| *H-1B Visa Count* | INS counts the number of visas based on petition approvals. | No such provision. | Requires the Secretary of State to maintain records on the number of visas issued. | No such provision. |
| *Anti-Fraud Provisions* | | No such provisions. | Requires the following:<br><br>(1) specialty workers and fashion models obtain status only via the H-1B program (no other visa);<br>(2) full-time employment (defined as not less than 35 hours per week);<br>(3) at least a bachelor's degree or higher in the specific occupation – clarifies that the term "or higher" includes a foreign equivalent degree – experience is no longer counted toward meeting the degree requirement (as is current practice);<br>(4) an anti-fraud fee of $100 (as described in the fee section below); and,<br>(5) that the employer meet additional requirements: the employer must either be a college/university, governmental agency, non-profit, or place of business that it licensed. In addition, the employer must either be a government entity or have aggregate gross assets of at least $5 million. | No such provisions. |

# Side by Side Analysis
# H-1B Legislation

DRAFT

03/23/00
4:36 PM

| | Current Law | S. 2045<br>Hatch/Abraham | H.R. 3814<br>Smith | H.R. 3983<br>Dreier/Lofgren |
|---|---|---|---|---|
| **H-1B Fee** | Imposes a $500 per petition fee on employers for: (1) an initial petition, (2) an extension of stay (first time), and (3) changing employers. Exempts colleges/universities and nonprofits from the fee. The fee sunsets on October 1, 2001. The fee is distributed as follows:<br><br>(1) Job training (DOL) – 56.3%;<br>(2) Low-income scholarships (NSF) – 28.2%;<br>(3) Additional NSF Uses – 8%;<br>(4) DOL Administration – 6%; and,<br>(5) INS Administration – 1.5%. | Extends the current fee for an additional year (expires October 1, 2002). Redistributes the H-1B fee revenue (as reported in Cmte):<br><br>(1) Job training (DOL) – 36.2%;<br>(2) Low-income scholarships (NSF) – 30.7%;<br>(3) K-12 Reform (NSF) – 23.3%;<br>(4) Digital Divide – 2.5%;<br>(5) DOL Administration – 6%; and,<br>(6) INS Administration – 1.5%.<br><br>[Produces an estimated $351 million in additional revenue.] | Increases the fee to $1,000. The fee still expires on October 1, 2001. Redistributes the H-1B fee revenue:<br><br>(1) Merit-based scholarships (NSF) -- 84.5%;<br>(2) Additional NSF Uses – 8%;<br>(3) DOL Administration – 6%; and,<br>(4) INS Administration – 1.5%.<br><br>[Produces an estimated $57 million in additional revenue.]<br><br>Creates a $250 expedited processing fee for eligible employers – the revenue is deposited into the Examinations Fee account (not the account with the H-1B fee revenue). [Estimated $6 million.]<br><br>Creates an anti-fraud fee of $100 – applied to petitions for new workers or petitions to change employers. The fees would be deposited into a separate account. Distributes the fee as follows:<br><br>(1) 20 % for DOJ anti-fraud activities;<br>(2) 20% for DOJ to remove deportable H-1B nonimmigrants;<br>(3) 40% for State anti-fraud activities;<br>(4) 20% for DOJ/State joint efforts.<br><br>[Estimated $14 million.] | Increases the fee to $1,000 as of October 1, 2000. It is unclear from the drafting how long the fee is in effect – presumably until 2003. The increased fee only applies to new applications; extensions of stay and change of employers pay $500 per petition. Redistributes the H-1B fee revenue:<br><br>(1) Job training (Commerce) – 25%;<br>(2) Low-income scholarships (NSF) – 15%;<br>(3) Loan forgiveness for teachers (Educ) – 33%;<br>(4) Upward Bound (Educ) – 17%;<br>(5) DOL Administration – 8%; and,<br>(6) INS Administration – 2%.<br><br>[Produces an estimated $640 million in additional revenue.] |
| **Miscellaneous Provision**<br><br>*NSF Study and Report* | Requires an NSF study to assess the labor market needs for workers with high technology skills over the next 10 years. | Requires NSF to study the divergence in access to high technology ("digital divide") and report on its findings within 18 months after enactment. | No such provision. | No such provision. |

Imm. - H1B

**Irene Bueno**
02/18/2000 08:06:16 PM

Record Type: Record

To: Eric P. Liu/OPD/EOP@EOP

cc: Anna Richter/OPD/EOP@EOP
Subject: H1B Meeting

I participated in the H1B meeting that Gene had this morning. Participants included: Maria, Barbara Chow, Karen T. (for part of the meeting), DOJ, INS and DOL. I will fax you handouts from the meeting. Let me know if you have any questions about with the summary below.

We tried to focus on the policy aspects of this issue rather than on politics and tactics. On the policy side, there seemed to be agreement that we need to propose something that addresses the immediate shortage on workers. We did not come to any conclusions and will continue the discussions. In addition, others will have some quiet meetings with Congressional members, unions and industry in which we will listen to their suggestions.

INS has estimated that the cap of 115k for FY2000 will probably be reached by the end of this month or beginning of March. In the last three months, the average number of applications has been 20k compared to 11k last year at the same time. INS believes that applications have been on the rise b/c of the concern that the cap will be reached soon. Therefore, we are looking at a possibility that no visa would be issued for 6 months until the next fiscal year begins if legislation is not enacted. We reviewed some of the data that INS has compiled that I will send to you. Then we started to discuss some policy options.

Here are policy ideas that were raised:

**Slight increase in H1B cap -** Senator Kennedy is drafting an alternative that would include a slight increase in the cap - 20k per year. We discussed using this increase for a targeted group such as IT workers or people with master degrees and higher. My sense is that Gene didn't really want to explore that yet and wanted to think more about the T visa idea (see below) and touch base with Karen T. about her discussions with the unions.

**T - visa program** - is a new program proposed by Rep. Lofgren and Sen. Robb. Under this proposal, T visas would be an uncapped program for individuals with high degrees such as bachelors (Lofgren) or a master's degree or PHD (Robb). INS provided information that indicates that between 5/98 - 7/99, that among the H1B workers:

Bachelor's degree 76,400 or 56.8% of all H1B workers
Masters Degree 41,300 or 30.7%
Doctorate degree 10,300 or 7.6%

I think everyone thought this was generally okay but there were two major problems. First, industry may not think that this goes far enough. Second, it's not a good idea to create an uncapped program - could be a major loophole, encourage people to get higher degrees to qualify, and these new foreign graduates could flood the market.

*Possible compromise* - I think a possible compromise could be a T visa program that has a cap and requires a higher degree like a master degree and have some worker protections.

**Employer Based Visa program** - Labor made a strong argument that we should encourage that employer request these workers through the permanent employment program, the Employer Based Visa Program (EB) and proposing expanding the EB visa program rather than relying on the temporary H1B guestworker program for several reasons. First, it's bad policy to use temporary guestworkers to fill these labor shortages that may exist for sometime b/c H1B workers don't have the same freedoms and rights as EB visa workers and they end up becoming permanent immigrant eventually anyway. Second, visas under the EB program go unused. Third, this seems to be consistent with the unions position against expanding guestworker programs. The arguments against this proposal are: there is a backlog of EB visa applications; the process is cumbersome and H1b program was created to get around the EB process; even if we said we would improve the process - INS has little credibility; and suggesting a change to this program we could open up and threaten other immigration issues. I think that there is some interest in improving the current EB program through administrative means but that putting the expansion of this program as our main proposal would not be helpful.

*Possible Compromise* - improve the EB visa process through administrative means and discuss further with DOL this idea b/c I think that there are some good policies reasons to move away employers from guestworker programs whether in its the High tech or farmworker context .

**Major Increase in Fees** - Gene suggested increasing this fee from to as high as $3,500 but not final decisions. These fees could go to training and education programs, etc

**Training, Education Programs** - were not discussed but just raised as issue that we need to address.

**Next Steps** - Meetings, conversations with the groups and Hill will continue and we will have another meeting to discuss policy.

Gene's handout

# H-1B VARIABLES

## I. NUMBER OF VISAS AVAILABLE

- Under current law, the H-1B cap for FY2000 is 115,000
- Number of Years (Current law provides for 3-year visas, which can be renewed for another 3-year period)
- Path – An increase could be phased-in (e.g., 115,000, 135,000, 150,000), or phased-out (150,00, 135,000, 65,000).

## II. EDUCATIONAL ATTAINMENT

- Bachelors degree
- Masters degree
- PHD
- Education Equivalent
- Degrees from U.S. Schools Only or Any School

## III. WAGES/COMPENSATION

- Amount of Money
- Wages vs. Compensation

## IV. FEE

- Amount of increase
- Smaller fee for small businesses
- Does the fee apply to all visas?
- Does the fee apply to extensions?

## V. USE OF FEE REVENUE

- Job Training (Regional Skills Alliances)
- National Science Foundation Scholarships
- Digital Divide
- Fraud Enforcement
- Administration
- Other

# Background and Summaries of Major H-1B Related Bills

## Background:

*American Competitiveness and Workforce Improvement Act of 1998*
The American Competitiveness and Workforce Improvement Act (ACWIA), which addresses the H-1B issue – the purported shortage of high skilled workers, was enacted in 1998. The H-1B issue put the Administration in a difficult position, caught between the considerable number of Democratic (and Republican) Members of Congress and worker advocates who argued that we should train Americans first, and representatives of industry (particularly high-tech industry) who argued that more H-1B visas were needed to fill gaps in the workforce that couldn't be filled with American workers. The Administration sought a middle-ground approach that would provide temporary relief for employers having difficulty finding skilled workers, while stressing that our policy should be based on the principle of training American workers first. Therefore, we negotiated a deal -- primarily with Senator Abraham – whereby we agreed to increase the caps for 3 years, in exchange for protections against abusive job shops and a $500 fee that we proposed to raise $250 million for regional training alliances, low income scholarships, and administration. ACWIA increased the H-1B visa cap from 65,000 a year to 115,000 in FYs 1999 and 2000, and 107,500 in FY 2001.

## Legislation Introduced:

The issue is once again beginning to gain some momentum. Several bills addressing the perceived shortage have been introduced including: The New Workers for Economic Growth Act of 1999 (S. 1440, H.R. 2698, introduced by Senator Gramm and Representative Dreier, respectively), the Bringing Resources from Academia to the Industry of Our Nation Act (H.R. 2687, introduced by Representative Lofgren), the Helping Improve Technology Education and Competitiveness Act, "HITEC Act" (S. 1645, introduced by Senator Robb), the 21st Century Technology Resources and Commercial Leadership Act (S. 1804, introduced by Senator McCain), an H-1B scholarship payment bill (H.R. 3508, introduced by Representative Wu), and a soon to be introduced Hatch-Abraham bill.

**Below are brief summaries of the bills:**

***The New Workers for Economic Growth Act of 1999 (S. 1440, H.R. 2698)***
- Increases the H-1B cap to 200,000 for FY 2000, FY 2001 and FY 2002.
- No cap applies to individuals with a masters degree or higher (or equivalent) who receive wages (including cash bonuses and similar compensation) at an annual rate equal to at least $60,000.
- No cap applies to individuals who have a bachelor's degree or higher (or equivalent) and are employed at an institution of Higher Education.

- Eliminates the earnings penalty on senior citizens that continue to work after reaching retirement age.
- Eliminates attestation requirements for institutions of higher education.

Note: As a result of the inclusion of the earnings penalty provision, the Senate bill was referred to the Senate Finance Committee. Senator Gramm sits on the Finance Committee. The Judiciary Committee had jurisdiction over ACWIA. The House bill was jointly referred to Ways and Means and Judiciary.

***Bringing Resources from Academia to the Industry of Our Nation Act (H.R. 2687)***

**Highlights of the "BRAIN Act" or Lofgren T Visa Proposal:**

- Available to foreign students who receive a bachelors degree or higher from an American Institution of Higher Education.
- Employers would file applications with the Justice Department, with payment of an initial fee of $1,000 (the adjustment fee would be $500).
- Employers would have to pay T Visa workers an annual compensation package equal to or in excess of $60,000 a year.
- The fee would be used for a High Tech Education Trust Fund to be used by the National Science Foundation to provide grants for K-12 mathematics, science and computer science programs.
- The program is a temporary 5-year program.
- The program is uncapped (there is no limit on the number of T Visas that would be available).
- The proposal includes annual reporting requirements and Department of Justice enforcement.

Note: There are 18 cosponsors of H.R. 2687 including Representative Conyers, Judiciary Committee Ranking Member, and Representative Jackson-Lee, the Subcommittee Ranking Member. The fact that both Representative Conyers and Representative Jackson-Lee cosponsored the bill is a clear indication that Democrats on the Judiciary Committee are looking for a positive alternative to the strategy of just opposing another increase in the cap.

***The Helping Improve Technology Education and Competitiveness Act, "HITEC Act" (S. 1645)***

**The HITEC Act is a modified version of the Lofgren bill. The HITEC Act establishes a five-year pilot program that:**

- Provides T-visas to foreign students at U.S. colleges who are recipients of masters degrees or Ph. D's.

- Includes labor protections (similar to the attestations required for H-1B dependant employers).
- Includes a $1,000 fee (double the current H-1B fee).
- Creates a fee funded High-Tech Education Fund, administered by the Department of Commerce. The Fund would provide resources for competitive grants for elementary and secondary school programs in mathematics, science and technology.
- The program is uncapped (there is no limit on the number of T visas that would be available). Senator Schumer, Senator Kerry, Senator Leahy, Senator Johnson and Senator Lieberman are cosponsors of Senator Robb's bill.

### *21st Century Technology Resources and Commercial Leadership Act (S. 1804)*

**The McCain proposal would:**

- Establish a grant program, run by the Department of Commerce, to strengthen the scientific, mathematical, engineering, and technology resources of the U.S.
- Uncap the current H-1B program from FYs 2000 – 2006 (there would be no limit on the number of H-1B visas that would be available).
- Establish visa issuance preference for graduates of U.S. institutions.
- Maintain the current fee but change the distribution – of the 56.3% currently going to DOL for training – 51.3% would go to Commerce for grants, and 5% would go to DOL for training.

*Note:* There are no cosponsors. The bill was referred to the Senate Commerce, Science, and Transportation Committee.

### *Representative Wu's H-1B Scholarship Payment Bill (H.R. 3508)*

**The Wu proposal would:**

- Provide an additional 65,000 H-1B visas where:
  - The employee has attained a masters degree or higher at a U.S. institution of higher education; and
  - The employer makes a contribution to a college or university in an amount equivalent to the Pell grant maximum (currently $3,300).
- The institution receiving the scholarship money shall award the full amount of each individual contribution to one student enrolled in a full time course of study at the institution.
- Representative Davis and Representative Stark are original cosponsors of the Wu proposal.

***The Hatch-Abraham bill (S. 2045, The American Competitiveness in the 21st Century Act of 2000):***

- Increases the cap to 195,000 (an increase of 80,000 over the FY2000 cap level) for FY2000, FY2001 and FY2002.
- Exempts university professors and federal government and nonprofit research organizations from the cap.
- Exempts foreign nationals who obtain a masters or higher at a U.S university from the cap.
- Waives the per country limitation for permanent employment visas (if not all of the visas are claimed).
- Provides an extension of stay for H-1B visa holders while their permanent visa applications are pending, and/or while they are waiting on a permanent employment visa to become available.
- Allows H-1B employees to move more freely between employers.
- Included among the 19 cosponsors of the bill are three Democrats – Lieberman, Graham and Feinstein.

Imm - H1B

**Irene Bueno**
02/17/2000 10:54:41 AM

Record Type: Record

To: Eric P. Liu/OPD/EOP@EOP

cc: Anna Richter/OPD/EOP@EOP
Subject: H1B Meeting and Update

Gene has scheduled a small meeting for this Friday, 9:30-10:30 am to discuss H1B legislation, strategy next steps, etc. We have been invited to attend this meeting (Anna - I spoke to Jaime). Here's a quick update on this issue. Please let me know if you would like to discuss.

- **Meetings on the Hill** - NEC (Brian Kennedy) and WH Leg Affairs - They met with Gephardt, Daschle and have been speaking with Kennedy's staff. The bottom line is that they believe that we cannot just oppose legislation and that we need to develop an alternative. Kennedy is working on alternative. We also met with Rep. Sheila Jackson Lee who is also looking for an alternative and is considering proposing legislation to help displaced workers get training for these H1B jobs.

- **NEC held an staff level interagency meeting** earlier this week to discuss the pending H1B legislation. Agencies attending the meeting included- Labor, Commerce, Treasury, Education, CEA. Due to miscommunication by INS, INS did not attend the meeting. Commerce anticipates that there will be 200k new jobs will per year , 3/4 of which those jobs will require 4 year degrees. The number of American students majoring in computer field is increasing and there is some concern that if H1B workers have these jobs then, American graduates will not have jobs. While we can figure out what our supply of these jobs will be, it 's difficult to estimate because we don't know what the future demand will be for these jobs.
The next steps are to:
- draft comments on the Hatch/Abraham legislation
- work on alternative
- continue to provide technical assistance to Kennedy and others who are trying to develop an alternative.
- Labor will get more numbers on the projected job growth rate
- Education will get numbers on the number of undergraduate who are getting computer science degrees.

- **Possible Alternatives** - We also discuss some possible alternatives that we could develop:
  - Kennedy alternative
    - would increase the H1B cap by 20k and within the 20k there would be carve out for individuals with high skills
    - Major increase in fees for companies requesting these workers
    - Expand current training programs

  - Another Alternative - DOL suggested this proposal and we still fleshing this out.
    - increase H1B cap by a small number (such as 20k)
    - we could limit the kinds of jobs can be considered for H1B visas. Now it can be chefs, or anyone who has some specialized skills. We could propose to limit the increased cap for IT workers - for example.
    - expand the Permanent employment program for high skilled workers. This program is referred to as EB visas program. The current cap is 140k but the

cap is never reached for two reasons - it is more cumbersome to request these workers under this program and because they are "permanent" workers as opposed to H1B "temporary workers", they have the freedom to leave their jobs and work elsewhere. We could propose to simplify the process for requesting these workers and it would also address the unions opposition to expanding temporary/guestworkers.

- Increase in the fee.

Please let me know if you would like to discuss. Thanks.

updated 2/15/00

**Background and Summaries of Major H-1B related bills**

**Background:**

**American Competitiveness and Workforce Improvement Act of 1998**

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**Legislation Introduced**

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- Establish visa issuance preference for graduates of U.S. institutions.
- Maintain the current fee but change the distribution – of the 56.3% currently going to DOL for training – 51.3% would go to Commerce for grants, and 5% would go to DOL for training.

Note: There are no cosponsors. The bill was referred to the Senate Commerce, Science, and Transportation Committee.

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The Wu proposal would:

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  - The employer makes a contribution to a college or university in an amount equivalent to the Pell grant maximum (currently $3,300).
- The institution receiving the scholarship money shall award the full amount of each individual contribution to one student enrolled in a full time course of study at the institution.

Representative Davis and Representative Stark are original cosponsors of the Wu proposal.

**The Hatch-Abraham bill** reportedly will:

- Increase the cap to 195,000 (an increase of 80,000 over the FY2000 cap level) for FY2000, FY2001 and FY2002;
- Exempt university professors and federal government and nonprofit research organizations from the cap;
- Exempt foreign nationals who obtain a masters or higher at a U.S university from the cap.;
- Waive the per country limitation for permanent employment visas (if not all of the visas are claimed);

- Provide an extension of stay for H-1B visa holders while their permanent visa applications are pending, and/or while they are waiting on a permanent employment visa to become available; and
- Allow H-1B employees to move more freely between employers.

Apparently, the bill will not propose an increase in the H-1B visa fees, but will retain attestation and training provisions from existing law.

Immigration —
H1B Visas

September 22, 1999

**H1B BACKGOUND AND ISSUES**

**Background**

The H1B category was created in 1990 as a temporary visa category for non-immigrant workers that includes occupations that require a bachelors degree to higher. Typical H1B occupations include architect, engineers, computer programmers, accounts, doctors and college professors. Initially, the maximum period of admission is for three years, which may be extended for an additional three years. While H1B visas are temporary many adjust their status to permanent residency.

Until 1998, the cap for H1B visas had been 65,000 and historically, the cap has not been reached. Last year, **Congress passed the American Competitiveness Workforce Improvement Act of 1998 (ACWIA)** that temporarily raises the number of H1B visas annually from 65,000 to 115,000 for FY 1999 and FY 2000 and 105,500 for FY 2001, requires a new H1B worker fee of $500 paid by employers to fund training and education programs for US workers, and some other worker protections. Furthermore, ACWIA mandates that the INS collects data on H1B visas beginning October 1, 1999. The Administration opposed efforts to increase the cap and later supported the efforts provided that the legislation includes some worker protection and education and training funds.

This year the 115,000 capped was reached in June 1999. The cap was reached early in FY 99 due to a backlog from FY 1998 while the legislation was being debated.

**H1B Regulation** – DOL issued proposed regulations to implement ACWIA that Abraham, Graham and others have opposed as going beyond ACWIA. DOL is been working with OMB, and NEC to resolve issues but unclear when these regulations will be published.

**H1B Fraud** – Rep. Lamar Smith suggests that eliminating the fraud in the H1B program would reduce the need for higher caps. While we acknowledge there is fraud in the system, we do not think that this would necessarily mute the calls from the high tech industry to increase the caps. We are coordinating an effort between State, INS and DOL to develop and implement an anti-fraud strategy.

**Players**

**Administration** – opposes efforts to increase the cap at this time for the following reasons. The cap was just doubled last year and we need to learn more about the need for these high tech workers. Immigration should be the last answer; we need to provide training to American workers.

**High tech industry** – argue that they need foreign workers because they can not fill positions. Training and education programs currently exist but does American workers are enrolling in these programs.

**Labor Unions** – opposed the efforts to increase the caps last year and oppose all current efforts to increase the caps. They argue that wages of high tech workers are not improving and that worker, particularly older workers have been laid off. Generally, unions support liberal immigration policy but not on this issue. They would like the Administration to be more vocal in opposing efforts to increase the caps. As for the argument that American workers are not enrolling in training programs, unions argue that the wages for these jobs are not enticingly high enough and American workers would rather go into engineering that pays better and there is more job security.

**Immigrant Groups** - the American Immigration Lawyers Association support raising the caps. The other groups are not vocal but I suspect they are supportive.

## Pending Legislation

Senator Gramm (R-TX) and Rep. Drier (R-CA) have introduced legislation to raise the cap for H1B workers to 200,000.

Representative Lofgren (D-CA) with the cosponsor of key Democrats on House Judiciary Committee has introduced legislation to create five year pilot program for special technical occupations or "T" visas to employ international/foreign students educated in the US provided the job has an annual compensation package of at least $60,000. This visa category would be uncapped. F-1 full-time students and J-1 exchange students visa holder who at least have bachelors degree would be eligible. Ninety-seven percent of application fees and civil money penalties collected will be dedicated to a K-12 education fund.

Senator Robb (D-VA) is planning to introduce a modified version of the Lofgren bill that is only available to foreign students who have at least a master or doctoral degrees and includes more labor protections and incentives for high tech industry to be involved in improving public schools. Robb is trying to work with Daschle, Kennedy and other key Democrats to get support for legislation. Democrats do not want to appear they are opposing legislation with nothing to offer as an alternative. Karen T. mentioned that she is getting calls from Senate Democrats in support of raising the caps.

Senator McCain is also considering introducing legislation to raise the cap to 175,000/year and give the Secretary of Labor the authority to raise it higher if necessary.

## Outlook

The FY 1999 cap was reached earlier this year. Beginning October 1, 1999, 115,000 visas will be available. It is expected that 30,000 visas are already allocated to carry over applications from FY 1999. Since visas will be available in two weeks, there may be less urgency to push for legislation this year. Indeed, on 9/20 Gramm indicated that he did not expect any legislation to pass this year. However, if this cap is reached again early next year, then we may need to revisit it.