NLWJC - Kagan

DPC - Box 032 - Folder 018

Immigration - H1B Visas [1]

lmmi-H1B

Peter A. Weissman

09/23/98 10:26:23 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc: See the distribution list at the bottom of this message
Subject: The H-1B Deal

To All:

As you know, we (finally!) reached an agreement with Sen. Abraham tonight. Attached are the agreed upon changes to the Abraham-Smith proposal. There is a chance that the bill will reach the House floor tomorrow (Thursday), but we're trying to get it moved to Friday to give us more time to look over legislative language.

-- Ceci

status.92

Message Sent To:

Gene B. Sperling/OPD/EOP
Sally Katzen/OPD/EOP
Elena Kagan/OPD/EOP
Barbara Chow/OMB/EOP
David W. Beier/OVP @ OVP
Maria Echaveste/WHO/EOP
Larry R. Matlack/OMB/EOP
Debra J. Bond/OMB/EOP
Karen Tramontano/WHO/EOP
Julie A. Fernandes/OPD/EOP

Message Copied To:

Melissa G. Green/OPD/EOP
Shannon Mason/OPD/EOP
Sandra Yamin/OMB/EOP
Leslie Bernstein/WHO/EOP
Marjorie Tarmey/WHO/EOP
Laura Emmett/WHO/EOP

September 23, 1998
Changes to Abraham-Smith Proposal

1. Requires a $500 fee for each nonimmigrant for which an application is filed or renewed. Fee to fund training provided under JTPA Title IV (approx. 65%) and a percentage for a NSF scholarship and mentoring programs for minority students (approx. 30%). In addition, a portion of these revenues would fund the administration of the H-1B visa program, including the cost of enforcement (approx. 5%).

2. Defines H-1B-dependent employers as:

   a. Employers with fewer than 25 employees and more than 7 H-1B workers; and

   b. Employers with 26-49 employees and more than 12 H-1B workers; and

   c. Employers with more than 50 workers where at least 15% of their workforce is H-1B.

3. The recruitment and no lay-off attestations applies to: (1) H-1B dependent employers; and (2) any employer who, within the previous 5 years, has been found to have willfully violated its obligations under this law.

4. H-1B dependent employers attests they will not place an H-1B worker with another employer, under certain employment circumstances, where the other employer has displaced or intends to displace a U.S. worker during the period beginning 90 days before and ending 90 days after the date the placement would begin.

5. DOL has the authority to investigate compliance either: (1) pursuant to a complaint by an aggrieved party; or (2) if the Secretary receives specific credible information, provides reasonable cause to believe that a willful violation, or pattern or practice of violations, or serious violations affecting multiple employees (or job applicants) may have occurred.

6. Appropriate sanctions for violations of "whistleblower" protections.

7. Closes loopholes in the attestations:

   a. Strikes the provision that "[n]othing in the [recruitment attestation] shall be construed to prohibit an employer from using selection standards normal or customary to the type of job involved." Substitute with "[n]othing in the [recruitment attestation] shall be construed to prohibit an employer from using legitimate selection criteria relevant to the job that are normal and customary to the type of job involved, provided that the criteria are not applied in a discriminatory manner." Plus report language that this provision is not intended to subvert the recruitment attestation.

   b. Clarifies that job contractors can be sanctioned for placing an H-1B worker with an

employer who subsequently lays off a U.S. worker within the 90 days following placement.

c. Does not exempt H-1B workers with at least a master's degree or the equivalent from calculations of the total number of H-1B employees; and does not exempt workers who earn at least $60,000.

d. Rather than defining lay-off based on termination for "cause or voluntary termination," adds "Nothing herein is intended to limit an employee's rights under collective bargaining agreements or other employment contracts."

8. Maintains status quo with regard to LCA approval and petition processes.

9. Makes more explicit that the definition of U.S. workers does not include other H-1B workers for purposes of this bill.

10. Includes a provision that prohibits unconscionable contracts (with civil fines).

11. Includes a "no benching" requirement that an H-1B nonimmigrant in "non-productive status" for reasons such as training, lack of license, lack of assigned work, or other such reason (not including when the employee is unavailable for work) be paid for a 40 hour week or a prorated portion of a 40 hour week during such time.

12. Increases the annual cap on H-1B visas to 115,000 in FY 1999, 115,000 in FY 2000, and 107,500 in FY 2001. After FY 2001, the visa cap returns to 65,000.

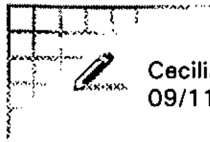
13. Eliminates the 7500 cap on the number of non-physician health care workers admitted under the H-1B program to make the bill consistent with our obligations under the GATS agreement.

14. Amends 212(n)(2)(C) (willful violations) to specify $5000 penalty and 2 year debarment. Amends the new penalty section for willful violations plus layoff to specify $35,000 penalty and 3 year debarment.

15. Permanently broadens the definition of prevailing and actual wages to include other forms of compensation and benefits.

16. Transfers administration of the arbitration process to the Attorney General.

Immig - H1B


Cecilia E. Rouse
09/11/98 07:52:18 PM

Record Type: Record

To: Gene B. Sperling/OPD/EOP, Sally Katzen/OPD/EOP, Elena Kagan/OPD/EOP, David W. Beier/OVP @ OVP

cc: Melissa G. Green/OPD/EOP, Shannon Mason/OPD/EOP, Julie A. Fernandes/OPD/EOP, Peter G. Jacoby/WHO/EOP

Subject: H-1B

According to Peter Jacoby Larry Stein will be calling to set up a conference call this weekend to discuss our strategy regarding H-1B. Today's Congress Daily reported that the Republicans plan to offer the Abraham/Smith proposal on the House floor next week with a few modifications that move in our direction (including a larger training fee and a provision against unconscionable contracts and "benching"). At the same time, Lee Otis from Abraham's staff contacted Peter J. with a (small) counter-offer in an effort to continue our discussions. We clearly need to decide our strategy over the next week.

Attached is our list of the 15 changes we wanted to see in the Abraham/Smith proposal. During the call Peter J and I will discuss which changes Abraham's staff have (tentatively) agreed to and their current offer.

-- Ceci

changes.73

July 30, 1998
Proposed Administration Revisions to H.R. 3736 (the July 29, 1998 version):

1. Require either a $500 fee for each position for which an application is filed or a $1,000 fee for each nonimmigrant. Fee to fund training provided under JTPA Title IV. In addition, a small portion of these revenues should fund the administration of the H-1B visa program, including the cost of arbitration.

2. Define H-1B-dependent employers as:

   a. For employers with fewer than 51 workers, that at least 20% of their workforce is H-1B; and

   b. For employers with more than 50 workers, that at least 10% of their workforce is H-1B.

3. The recruitment and no lay-off attestations apply to: (1) H-1B dependent employers; and (2) any employer who, within the previous 5 years, has been found to have willfully violated its obligations under this law.

4. H-1B dependent employers attest they will not place an H-1B worker with another employer, under certain employment circumstances, where the other employer has displaced or intends to displace a U.S. worker (as defined in paragraph (4)) during the period beginning 90 days before and ending 90 days after the date the placement would begin.

5. DOL would have the authority to investigate compliance either: (1) pursuant to a complaint by an aggrieved party; or (2) based on other credible evidence indicating possible violations.

6. Establish an arbitration process for disputes involving the laying-off of any U.S. worker who was replaced by an H-1B worker, even of a non-H-1B dependent employer. This arbitration process would be largely similar to that laid out in H.R. 3736 except that it would be administered by the Secretary of Labor. The arbitrator must base his or her decision on a "preponderance of the evidence."

7. Reference in the bill to "administrative remedies" includes the authority to require back pay, the hiring of an individual, or reinstatement.

8. There must be appropriate sanctions for violations of "whistleblower" protections.

9. Close loopholes in the attestations:

a. Strike the provision that "[n]othing in the [recruitment attestation] shall be construed to prohibit an employer from using selection standards normal or customary to the type of job involved."

b. Clarify that job contractors can be sanctioned for placing an H-1B worker with an employer who subsequently lays off a U.S. worker within the 90 days following placement.

c. Do not exempt H-1B workers with at least a master's degree or the equivalent from calculations of the total number of H-1B employees.

d. Define lay-off based on termination for "cause or voluntary termination," but exclude cases where there has been an offer of continuing employment.

10. Consolidate the LCA approval and petition processes within DOL, rather than within INS.

11. Broaden the definition of U.S. workers to include aliens authorized to be employed by this act or by the Attorney General.

12. Include a provision that prohibits unconscionable contracts.

13. Include a "no benching" requirement that an H-1B nonimmigrant in "non-productive status" for reasons such as training, lack of license, lack of assigned work, or other such reason (not including when the employee is unavailable for work) be paid for a 40 hour week or a prorated portion of a 40 hour week during such time.

14. Increase the annual cap on H-1B visas to 95,000 in FY 1998, 105,000 in FY 1999, and 115,000 in FY 2000. After FY 2000, the visa cap shall return to 65,000.

15. Eliminate the 7500 cap on the number of non-physician health care workers admitted under the H-1B program to make the bill consistent with our obligations under the GATS agreement.

10/1/98 H1B meeting

Positive:

3 yr program - decline in last yr

$500 fee per petition - about $100 m new $ in training

(1% - INS cut for fee processing)

Broadened enf auth for DOL - can initiate inves pursuant to other things than complaints

Cut down on abuses of prog - "benching" wkrs; unconscionable Ks

↑d penalties for willful violation - debar for 2 yrs

Prevailing wage attestation is strengthened.

Negative:

Attestations for lay-off + recruitment

apply to cos. w/ more than 15%

exempted from this: wkrs w/ master "or equivalent" in defining H1B dependent employer in early bill. Now - no such exemp. made ~~[illegible]~~ but protections don't apply for any wkrs. mkg more than 60,000 or having masters equivalent. So a H1B Er can hire someone mkg $60,000 - and not have any attestation requirements! (Bad faith on their part).

what does "equivalent" mean - up to us to define?

|| 78% now make less than $60,100 in wages

can say: foreign degree equiv.

do by reg; point toward in signing statement

Immig - H1B

Julie A. Fernandes
10/01/98 12:38:08 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Laura Emmett/WHO/EOP
Subject: H1B -- end of meeting

It was decided that Gene would call Abraham this afternoon to try to get him to agree (in a low temperature way) to remove the "$60K or masters (or equivalent)" exemption from the attestations. If unsuccessful, he will try to push for $80K and for defining "equivalent" to mean a foreign degree equivalent to a U.S. masters. If Abraham says no, we will go ahead with the bill, with the intent to clarify what "or equivalent" means in regulations. If Abraham makes a floor statement re: what he means by equivalent, we will ask a member to make a statement re: what we mean.

julie

Immig - H1B visas

▶ Julie A. Fernandes
09/23/98 08:17:17 PM
●●●●●●●●●●●●●●●●●

Record Type: Record

To: Elena Kagan/OPD/EOP, Bruce N. Reed/OPD/EOP

cc: Laura Emmett/WHO/EOP, Cathy R. Mays/OPD/EOP
Subject: H-1B -- deal

We have reached a deal with Abraham on the H-1B bill. The bill includes:

(1) a $500 fee for each visa (including a fee for renewals); money to be used by JTPA; minority scholarships; increased DOL enforcement.

(2) a recruitment and a no lay-off attestation for H-1B dependent employers (those with a workforce that is more than 15% H-1B; with an additional carve-out from some small businesses)

(3) a three year increase in the visas (FY99 = 115,000; FY 2000 = 115,000; FY 2001 = 107,500)

(4) changes the definition of the prevailing wage to include total compensation

(5) does not permit job shops to place H-1B workers with end-employers who have just laid off a comparable U.S. worker.

(6) increases penalties for violations (up to 3-year debarment and $35,000)

What we lost on the last round:

(1) DOJ administers the process for receiving a complaint from an individual that the employer failed to comply with the recruitment attestation (we wanted DOL to administer)

(2) DOL enhanced enforcement authority is temporary -- sunsets with the visa increase (we wanted it to be permanent)

Those are the highlights. You will see a draft of the SAP, plus a more detailed description of the bill, in the morning. The bill is scheduled to be the last thing that the House considers tomorrow.

julie

Immig - H1B

Kate P. Donovan
09/17/98 02:35:53 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:
Subject: NEED CLEARANCE: SAP: HR 3736 - WORKFORCE IMPROVEMENT AND PROTECTION ACT

Below is the draft SAP for HR 3736 - Workforce Improvement and Protection Act. The language in this SAP is nearly identical to the draft SAP that we cleared (but never released) when the House had expected to take up the H-1B visa bill before the August recess. Most of you had previously cleared the language and the position: **Senior Advisers veto recommendation.**

A WH press release was issued on 7/15/98 with the position: "If Congress sends the President a bill that increases the cap on H-1B visas but does not contain (1) a significant training component and (2) meaningful reform ... that ensures the employers recruit U.S. workers before applying for an H-1B worker and not lay off a U.S. worker in order the hire an H-1B worker, the President's senior advisers would recommend that he veto the bill.

The House plans to take up the bill tomorrow (Friday, 9/18) morning. Please review & provide comments/clearance by cob today. Thank you.

DRAFT -- NOT FOR RELEASE
September 17, 1998
(House)

H.R. 3736 - Workforce Improvement and Protection Act of 1998
(Smith (R) Texas and 3 cosponsors)

The Administration strongly opposes House passage of H.R. 3736, as amended by the rule for floor consideration. If the current version of H.R. 3736 were presented to the President, his senior advisors would recommend that he veto it.

This bill is intended to respond to a skills shortage in the information technology industry by increasing the annual cap on the number of temporary visas for foreign "specialty" workers under the H-1B visa program. Regrettably, H.R. 3736, as amended, emphasizes providing opportunities for foreign workers rather than providing opportunities for and protecting U.S. workers.

The Administration supports sound and balanced legislative efforts to address shortages of skilled workers within certain sectors of our economy. The most important way to increase the availability of skilled workers must be to improve the skills of U.S. workers and ensure that employers seek U.S. workers first. While it may be necessary in the short-term to increase the number of visas for temporary foreign workers, this must only be done in conjunction with additional efforts to

increase the skill level of U.S. workers, including through enhanced training programs, and meaningful reforms to the H-1B program.

Although this bill provides for certain employers to attest to compliance with requirements related to recruitment and layoffs, the attestations are too weak to adequately protect U.S. workers and far too many employers are exempt from their obligations. Moreover, the bill, as structured, will not generate sufficient funds for increased training opportunities for U.S. workers. Finally, rather than strengthening enforcement to prevent employer abuses of the H-1B program, H.R. 3736, as amended, undermines some of the program's important enforcement provisions.

The Administration wants to work with the Congress to develop a bill that addresses the growing demand for highly skilled workers, while effectively protecting and promoting the interests of U.S. workers and enhancing the international competitiveness of important U.S. industries in a manner consistent with our international obligations.

* * * * * * *

(Do Not Distribute Outside Executive Office of the President)

This Statement of Administration Policy was developed by the Legislative Reference Division (Schroeder), in consultation with the Departments of Labor (Taylor), Defense (Raezer), Education (Kristy), Justice (Jones), and State (Harrison), OSTP (Levinson), NSF (Eisenstadt), USTR (Collins), Chief of Staff (Tramontano, Echaveste), WHLA (Jacoby), NEC (Rouse), DPC (Fernandes), OIRA (Chenok), IAD (Farley), NSD (Fox), and HRD (Matlack).

The Departments of the Treasury and HHS did not respond to our request for views on this SAP.

OMB/LA Clearance:

The Senate passed a similar bill, S. 1723, on May 18, 1998, by a vote of 78-20. The House Judiciary Committee reported H.R. 3676 with an amendment in the nature of a substitute on July 29, 1998.

The House adopted a rule on July 30, 1998, providing that the version of H.R. 3736 that will be considered on the House floor will be the Smith amendment as printed in the Congressional Record on July 29th. This SAP comments on and describes the Smith amendment to H.R. 3736.

Administration Position to Date

On July 15, 1998, the White House issued a press statement stating that "[i]f the Congress sends the President a bill that increases the cap on H1-B visas but does not contain (1) a significant training component and (2) meaningful reform to the H1-B program that ensures

that employers recruit U.S. workers before applying for an H1-B worker and not lay off a U.S. worker in order to hire an H1-B worker, the President's senior advisors will recommend that he veto the bill."

On May 20, 1998, the Attorney General, Secretary of Labor, and Secretary of Commerce sent a joint letter to the House Judiciary Committee supporting provisions in H.R. 3736 that would link a temporary increase in the H1-B visa cap to the enactment of reforms (no lay-off provision, a requirement to recruit U.S. workers, and increased enforcement authority) in the program. Although the bill as reported contained such reforms, these reforms were weakened (i.e., the no layoff and recruitment provisions would only apply to "H1-B dependent" employers - see below for additional description) in the version of the bill to that will be considered on the House floor. The letter also raised concerns that the bill did not include any provisions to encourage additional training of U.S. workers funded through a modest H-1B application fee.

A SAP was sent to the Senate on May 11, 1998, stating that "[i]f S. 1723 were presented to the President, the Secretary of Labor would recommend that the bill be vetoed." The SAP opposed the bill because it did not include meaningful reforms to the program; the temporary increase in the H1-B visa cap was too large; and the bill undermines efforts to some of the program's important enforcement provisions.

On April 30, 1998, the DPC (Reed) and NEC (Sperling) sent a letter to the House Judiciary Immigration Subcommittee supporting provisions in H.R. 3736 that would link a temporary increase in the H1-B visa cap to the enactment of reforms (no lay-off provision, a requirement to recruit U.S. workers, and increased enforcement authority) in the program. The letter also stated that with the addition of meaningful training provisions and a modest reduction in the level of increase in the annual H1-B visa cap that the Administration could support the bill.

On April 2, 1998, Justice, Commerce, and Labor sent a joint letter to the Senate Judiciary Committee "strongly opposing" S. 1723.

In addition, the Department of Labor testified before the Senate Judiciary Committee on February 25, 1998, supporting reforms to the H1-B temporary visa program for skilled workers.

Provisions of H.R. 3736

The H1-B nonimmigrant worker visa program currently permits up to 65,000 skilled workers per year to enter the United States and work for up to three years. H.R. 3736 is intended to reform the H1-B visa program and alleviate a skills shortage in the high technology industry in the United States by adjusting the cap on H1-B visas.

Temporary Employment-Based Nonimmigrants. H.R. 3736 would temporarily increase the annual cap on H1-B visas as follows: (1) 85,000 in FY 1998; (2) 95,000 in FY 1999; (3) 105,000 in FY 2000; (4) 115,000 in FYs 2001 and 2002; and (5) 65,000 thereafter.

H.R. 3736 would limit the annual number of nonimmigrant nonphysician healthcare workers admitted to the United States, under the H1-B visa program, in FYs 1999-2002, to 7,500.

Attestations. H.R. 3736 would require employers that are "H1-B dependent" to provide certain attestations as part of their application for an H1-B worker. An H1-B dependent employer is defined as employing a workforce of at least 51 employees of which more than 15 percent are H1-B employees. H1-B employees that have at least a master's degree (or the equivalent) in a field related to their employment or earn at least $60,000 per year in wages and cash bonuses would not be counted for the purposes of determining if an employer is H1-B dependent.

H1-B dependent employers would be required to attest that prior to filing an application for an H1-B worker they have taken "good faith" steps to recruit a U.S. worker to fill the job vacancy. The recruitment steps must meet "industry-wide standards" and must include an offer of compensation that is at least as great as what would be offered to the H1-B employee.

In addition, an H1-B dependent employer must attest that hiring an H1-B worker did not and would not displace a U.S. worker for a 90-day period before and after the date that the visa petition was filed. A violation of this provision would only occur if a foreign worker is hired into a position which is "essentially the equivalent of the job" held by the displaced U.S. worker (this refers to responsibilities, location, qualifications, and experience). The expiration of a contract would not be considered a lay-off. In addition, job contractors could be sanctioned if they knowingly placed an H1-B worker with an employer who had just laid-off a U.S. worker or if it is a repeat violation.

Penalties. H.R. 3736 would impose penalties of not more than $1,000 per violation for employers who violate H1-B visa program requirements and these employers would be barred from the program for at least one year. Employers who "willfully" violate H1-B program requirements would also be subject to administrative and civil monetary penalties of not more than $5,000 per violation and would be barred from participating in the program for at least one year. In situations where a "willful" violation resulted in the displacement of a U.S. worker, the employer could be fined up to $25,000 per violation and be barred from participating in the program for at least two years.

H1-B workers who file a complaint against an employer, but who would otherwise be eligible to remain and work in the United States, would be permitted to seek other appropriate employment. The INS Commissioner may initiate binding arbitration with the Federal Mediation and Conciliation Service to resolve complaints filed by U.S. workers.

The bill would authorize the Secretary of Labor to perform, on a case-by-case basis, random inspections of employers who have previously been found to have willfully violated requirements of the H1-B visa program. Random inspections would be permitted for the five-year period following the employer's violation of the visa program.

Fees, Training, and Placement. H.R. 3736 would require the employer, upon approval of its application, to pay a fee of $250 per H1-B worker. This fee would only apply to application filed between October 1, 1998, and October 1, 2002. Half of the fee collected would be used by the Secretary of Education to assist States in providing grants to eligible students enrolled in a program studying math, computer science, or engineering. The other half of the fee would be used by the Secretary of Labor for a job training demonstration program.

Other provisions of H.R. 3736 would:

Set out specific guidance related to the computation of "prevailing wage" for certain higher education and Federal researchers and professional athletes and for the posting of job notices.

Require the Attorney General to provide reports to Congress: (1) quarterly on the number of aliens who were provided nonimmigrant status under the H1-B visa program during the previous quarter; and (2) annually on the occupations and compensation of aliens granted nonimmigrant status under the H1-B visa program during the previous fiscal year.

Require the National Science Foundation to submit a report to Congress, no later than October 1, 2000, assessing the labor market needs for workers with high technology skills.

Require the Library of Congress to enter into a contract to study age discrimination in the information technology field and report to Congress by October 1, 2000.

Grant special immigrant status to NATO civilian employees as granted to employees of other international organizations and diplomats.

Permit nonimmigrant workers admitted under the H1-B visa program to accept academic honorarium payments for services on behalf of an institution of higher education or other nonprofit entity.

Pay-As-You-Go Scoring

Per TCJS (Mertens), HRD (Bond), and BASD (Balis), H.R. 3736 is subject to the pay-as-you-go (PAYGO) requirement of OBRA because it increases direct spending and receipts. Preliminary scoring of H.R. 3736 indicates that the affect of the bill would be negligible (less than $500,000).

LEGISLATIVE REFERENCE DIVISION
September 17, 1998

Immi - H1B

Kate P. Donovan
09/17/98 02:35:53 PM

Record Type: Record

To: See the distribution list at the bottom of this message

cc:
Subject: NEED CLEARANCE: SAP: HR 3736 - WORKFORCE IMPROVEMENT AND PROTECTION ACT

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The Administration supports sound and balanced legislative efforts to address shortages of skilled workers within certain sectors of our economy. The most important way to increase the availability of skilled workers must be to improve the skills of U.S. workers and ensure that employers seek U.S. workers first. While it may be necessary in the short-term to increase the number of visas for temporary foreign workers, this must only be done in conjunction with additional efforts to

increase the skill level of U.S. workers, including through enhanced training programs, and meaningful reforms to the H-1B program.

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The Administration wants to work with the Congress to develop a bill that addresses the growing demand for highly skilled workers, while effectively protecting and promoting the interests of U.S. workers and enhancing the international competitiveness of important U.S. industries in a manner consistent with our international obligations.

* * * * * * *

(Do Not Distribute Outside Executive Office of the President)

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that employers recruit U.S. workers before applying for an H1-B worker and not lay off a U.S. worker in order to hire an H1-B worker, the President's senior advisors will recommend that he veto the bill."

On May 20, 1998, the Attorney General, Secretary of Labor, and Secretary of Commerce sent a joint letter to the House Judiciary Committee supporting provisions in H.R. 3736 that would link a temporary increase in the H1-B visa cap to the enactment of reforms (no lay-off provision, a requirement to recruit U.S. workers, and increased enforcement authority) in the program. Although the bill as reported contained such reforms, these reforms were weakened (i.e., the no layoff and recruitment provisions would only apply to "H1-B dependent" employers - see below for additional description) in the version of the bill to that will be considered on the House floor. The letter also raised concerns that the bill did not include any provisions to encourage additional training of U.S. workers funded through a modest H-1B application fee.

A SAP was sent to the Senate on May 11, 1998, stating that "[i]f S. 1723 were presented to the President, the Secretary of Labor would recommend that the bill be vetoed." The SAP opposed the bill because it did not include meaningful reforms to the program; the temporary increase in the H1-B visa cap was too large; and the bill undermines efforts to some of the program's important enforcement provisions.

On April 30, 1998, the DPC (Reed) and NEC (Sperling) sent a letter to the House Judiciary Immigration Subcommittee supporting provisions in H.R. 3736 that would link a temporary increase in the H1-B visa cap to the enactment of reforms (no lay-off provision, a requirement to recruit U.S. workers, and increased enforcement authority) in the program. The letter also stated that with the addition of meaningful training provisions and a modest reduction in the level of increase in the annual H1-B visa cap that the Administration could support the bill.

On April 2, 1998, Justice, Commerce, and Labor sent a joint letter to the Senate Judiciary Committee "strongly opposing" S. 1723.

In addition, the Department of Labor testified before the Senate Judiciary Committee on February 25, 1998, supporting reforms to the H1-B temporary visa program for skilled workers.

Provisions of H.R. 3736

The H1-B nonimmigrant worker visa program currently permits up to 65,000 skilled workers per year to enter the United States and work for up to three years. H.R. 3736 is intended to reform the H1-B visa program and alleviate a skills shortage in the high technology industry in the United States by adjusting the cap on H1-B visas.

Temporary Employment-Based Nonimmigrants. H.R. 3736 would temporarily increase the annual cap on H1-B visas as follows: (1) 85,000 in FY 1998; (2) 95,000 in FY 1999; (3) 105,000 in FY 2000; (4) 115,000 in FYs 2001 and 2002; and (5) 65,000 thereafter.

H.R. 3736 would limit the annual number of nonimmigrant nonphysician healthcare workers admitted to the United States, under the H1-B visa program, in FYs 1999-2002, to 7,500.

Attestations. H.R. 3736 would require employers that are "H1-B dependent" to provide certain attestations as part of their application for an H1-B worker. An H1-B dependent employer is defined as employing a workforce of at least 51 employees of which more than 15 percent are H1-B employees. H1-B employees that have at least a master's degree (or the equivalent) in a field related to their employment or earn at least $60,000 per year in wages and cash bonuses would not be counted for the purposes of determining if an employer is H1-B dependent.

H1-B dependent employers would be required to attest that prior to filing an application for an H1-B worker they have taken "good faith" steps to recruit a U.S. worker to fill the job vacancy. The recruitment steps must meet "industry-wide standards" and must include an offer of compensation that is at least as great as what would be offered to the H1-B employee.

In addition, an H1-B dependent employer must attest that hiring an H1-B worker did not and would not displace a U.S. worker for a 90-day period before and after the date that the visa petition was filed. A violation of this provision would only occur if a foreign worker is hired into a position which is "essentially the equivalent of the job" held by the displaced U.S. worker (this refers to responsibilities, location, qualifications, and experience). The expiration of a contract would not be considered a lay-off. In addition, job contractors could be sanctioned if they knowingly placed an H1-B worker with an employer who had just laid-off a U.S. worker or if it is a repeat violation.

Penalties. H.R. 3736 would impose penalties of not more than $1,000 per violation for employers who violate H1-B visa program requirements and these employers would be barred from the program for at least one year. Employers who "willfully" violate H1-B program requirements would also be subject to administrative and civil monetary penalties of not more than $5,000 per violation and would be barred from participating in the program for at least one year. In situations where a "willful" violation resulted in the displacement of a U.S. worker, the employer could be fined up to $25,000 per violation and be barred from participating in the program for at least two years.

H1-B workers who file a complaint against an employer, but who would otherwise be eligible to remain and work in the United States, would be permitted to seek other appropriate employment. The INS Commissioner may initiate binding arbitration with the Federal Mediation and Conciliation Service to resolve complaints filed by U.S. workers.

The bill would authorize the Secretary of Labor to perform, on a case-by-case basis, random inspections of employers who have previously been found to have willfully violated requirements of the H1-B visa program. Random inspections would be permitted for the five-year period following the employer's violation of the visa program.

Fees, Training, and Placement. H.R. 3736 would require the employer, upon approval of its application, to pay a fee of $250 per H1-B worker. This fee would only apply to application filed between October 1, 1998, and October 1, 2002. Half of the fee collected would be used by the Secretary of Education to assist States in providing grants to eligible students enrolled in a program studying math, computer science, or engineering. The other half of the fee would be used by the Secretary of Labor for a job training demonstration program.

Other provisions of H.R. 3736 would:

Set out specific guidance related to the computation of "prevailing wage" for certain higher education and Federal researchers and professional athletes and for the posting of job notices.

Require the Attorney General to provide reports to Congress: (1) quarterly on the number of aliens who were provided nonimmigrant status under the H1-B visa program during the previous quarter; and (2) annually on the occupations and compensation of aliens granted nonimmigrant status under the H1-B visa program during the previous fiscal year.

Require the National Science Foundation to submit a report to Congress, no later than October 1, 2000, assessing the labor market needs for workers with high technology skills.

Require the Library of Congress to enter into a contract to study age discrimination in the information technology field and report to Congress by October 1, 2000.

Grant special immigrant status to NATO civilian employees as granted to employees of other international organizations and diplomats.

Permit nonimmigrant workers admitted under the H1-B visa program to accept academic honorarium payments for services on behalf of an institution of higher education or other nonprofit entity.

Pay-As-You-Go Scoring

Per TCJS (Mertens), HRD (Bond), and BASD (Balis), H.R. 3736 is subject to the pay-as-you-go (PAYGO) requirement of OBRA because it increases direct spending and receipts. Preliminary scoring of H.R. 3736 indicates that the affect of the bill would be negligible (less than $500,000).

LEGISLATIVE REFERENCE DIVISION
September 17, 1998

Message Sent To:

Elena Kagan/OPD/EOP
Julie A. Fernandes/OPD/EOP
Laura Emmett/WHO/EOP
Bruce N. Reed/OPD/EOP
Rahm I. Emanuel/WHO/EOP
Michelle Crisci/WHO/EOP
Karen Tramontano/WHO/EOP
Maria Echaveste/WHO/EOP
Kevin S. Moran/WHO/EOP
Peter G. Jacoby/WHO/EOP
Jessica L. Gibson/WHO/EOP
Charles M. Brain/WHO/EOP
Dario J. Gomez/WHO/EOP
Cecilia E. Rouse/OPD/EOP
Melissa G. Green/OPD/EOP
Gene B. Sperling/OPD/EOP
Sally Katzen/OPD/EOP
Shannon Mason/OPD/EOP
Elizabeth Gore/OMB/EOP
Barbara Chow/OMB/EOP
Sandra Yamin/OMB/EOP
Michelle Peterson/WHO/EOP

Immig - H1B
and
Immig - structural reform

Julie A. Fernandes
09/09/98 05:44:40 PM

Record Type: Record

To: Peter G. Jacoby/WHO/EOP, Elena Kagan/OPD/EOP

cc: Steven M. Mertens/OMB/EOP, Michael Deich/OMB/EOP, Laura Emmett/WHO/EOP, Cecilia E. Rouse/OPD/EOP

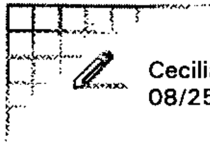
Subject: H1B and INS reform

Peter/Elena:

According to Steve M., Doris told Michael Deich that Abraham would be willing to strongly support our efforts to remove INS reform from CJS if we give him something on H1B. We need to consider, I suppose, whether we want the INS reform discussion to be part of what we are doing on H1B. I am both unsure what Abraham is giving by supporting our INS reform efforts (he already has made statements that this should be done by authorizers (him) and not through the appropriations process) and what else we can give up in the H1B negotiation (we have already made lots of concessions to Abraham and the business community). I have mentioned this to Ceci for her to solicit Gene's input, as well.

julie

Immig - H1B



Cecilia E. Rouse
08/25/98 06:36:41 PM

Record Type: Record

To: Gene B. Sperling/OPD/EOP, Sally Katzen/OPD/EOP, Elena Kagan/OPD/EOP

cc: Melissa G. Green/OPD/EOP, Shannon Mason/OPD/EOP, Laura Emmett/WHO/EOP, Julie A. Fernandes/OPD/EOP

Subject: H-1B memo for the VP

Gene, Sally, and Elena:

Attached is a draft of the memo for the VP in preparation for his trip to Silicon Valley and his meeting with Morty Barr and Co. David Beier had originally asked for the memo this evening, but has given us a "reprieve" until tomorrow. This memo has also been reviewed (and worked over!) by Julie and Peter J.

-- Ceci

aug25.1

August 25, 1998

DRAFT MEMORANDUM FOR THE VICE-PRESIDENT

FROM: GENE SPERLING
~~ELENA KAGAN~~ BRUCE REED

SUBJECT: STATUS OF H-1B LEGISLATION

Background

H-1B visas are temporary work visas that allow "highly skilled" immigrants (with a BA or equivalent) to work in this country for up to six years. Under current law, the number of H-1B visas is capped at 65,000 per year. During the last fiscal year, this cap was reached for the first time. This fiscal year the cap was reached in early May; as a result, no more visas can be issued until October 1. The information technology (IT) industry strongly supports raising the annual cap to address what it maintains is a shortage of U.S. workers with IT skills. Others, including the Department of Labor and organized labor, challenge the industry's conclusions about a shortage and are concerned that the current H-1B program does not target its use to employers who are experiencing skills shortages.

Until last month there were two legislative vehicles for increasing the cap on the number of H-1B visas. On May 18, the Senate passed (78-20) an industry-backed bill sponsored by Senator Abraham (R-MI) that increases the cap on H1-B visas for three years and includes an authorization for additional scholarships. This bill does not, however, require companies to recruit or retain U.S. workers prior to hiring H-1B visa holders. In the House, late last spring, the Judiciary Committee approved (23-7) a bill sponsored by Rep. Lamar Smith (R-TX). The Smith bill also increases the cap for three years but differs sharply from the Abraham bill by including meaningful protections for U.S. workers. The Smith bill, however, failed to include any training component for U.S. workers.

Soon after the House committee vote, House Majority Leader Armey told Rep. Smith that he would not bring Smith's bill to the House floor unless Rep. Smith worked out a compromise with Sen. Abraham that pleased the high tech business community. Consequently, in mid-July Rep. Smith and Sen. Abraham produced a compromise bill (the Abraham/Smith proposal) which includes weak and limited protections for U.S. workers and a small training provision. In part due to a senior advisors veto threat, the compromise measure failed to gain sufficient support in the House prior to the August recess and Republican leaders decided to postpone House floor consideration until September.

Administration Position

The Administration has consistently supported sound and balanced legislative efforts to address shortages of skilled workers within certain sectors of our economy. Our position has been that the most important way to widen the availability of skilled workers must be to improve

the skills of U.S. workers and ensure that employers seek U.S. workers first. We have agreed that it may be necessary in the short-term to increase the number of visas for temporary foreign workers, but that this must only be done in conjunction with additional efforts to increase the skill level of U.S. workers (funded through a modest H-1B application fee paid by employers) and meaningful reforms to the H-1B program to protect U.S. workers. These reforms would require employers to attest to having attempted to recruit U.S. workers before applying for an H-1B worker and to having not laid off a U.S. worker in order to hire an H-1B worker.

This position dictated our strong opposition to the bill sponsored by Senator Abraham because his bill emphasizes providing opportunities for foreign workers rather than providing opportunities for and protecting U.S. workers. Senator Abraham's bill did not include either a recruitment or a no lay-off attestation and weakened existing enforcement authority of the Department of Labor. In contrast, the Administration stated in a letter to Rep. Hyde that it would support Rep. Lamar Smith's bill, because it included meaningful reforms to the H-1B program, if it were modified to include a significant training provision.

In response to the Abraham/Smith proposal, the Administration made a statement to the press (on August 1) that if the proposal were presented to the President his senior advisors would recommend that he veto it because the reforms are too weak to adequately protect U.S. workers (largely because far too many employers would be exempt from the attestations) and the bill, as structured, would not generate sufficient funds for increased training opportunities for U.S. workers.

Soon after the release of this statement to the press, we put forth a list of proposed changes (see attached). We made clear that if the proposal were modified consistent with these suggestions, we would support it. This list includes significant compromises on our part; e.g., (1) we would agree to exempt firms that have a small percentage of H-1B workers (such as Microsoft, Intel, and HP) from having to attest to recruiting U.S. workers before hiring an H-1B worker; and (2) we would agree that the H-1B reforms will sunset with the increase in the cap. In addition, we have shown flexibility on the exact structure of a provision to protect U.S. workers from being laid-off and replaced with H-1B workers (although we have insisted that the provision be meaningful). These compromises have generated some opposition from organized labor and their Congressional supporters.

Since releasing our list of proposed changes, we have been engaged in serious discussions with members of Congress (including Senator Abraham and Representative Lofgren), and representatives from the business community (such as Jerry Jasinowski of NAM and Wade Randlett of Technet) and organized labor (such as the AFL-CIO) in an attempt to reach a compromise that would include a more substantial training provision and stronger protections for U.S. workers. We are hopeful that a compromise can be reached before the end of the Congressional session.

Industry's Position

The business community has generally not opposed the Administration's requirement that

any H-1B legislation must include a significant training provision. It has, however, argued that the reforms would generate unnecessary and intrusive federal regulations. As a result, the community supports the Abraham/Smith proposal because it increases the cap on the number of visas for five years and would exempt a large percentage of companies from the worker protections.

In addition, in response to the Administration's opposition to the Abraham/Smith proposal, some within the business community have accused us of "raising the bar" on what needs to be included in an acceptable bill and of attempting to block efforts to increase the cap. In fact, our position has not changed: in order for the President to sign a bill that increases the cap, it must also contain both a significant training provision and meaningful reform to the H-1B program. The Abraham/Smith proposal does not meet that standard.

Organized Labor's Position

Organized labor does not oppose an increase in the cap, as long as this increase is accompanied by strong worker protections and a meaningful training provision. Thus, they opposed the Abraham bill in the Senate and generally supported the Smith bill in the House (if it were modified to include a training provision). Organized labor opposes the Abraham/Smith proposal because the worker protections would only apply to a small number of companies, the training component is relatively small, and the H-1B reforms would sunset with the increase in the cap.

Talking Points -- H-1B Legislation
August 25, 1998

- The Administration has consistently supported sound and balanced legislative efforts to address shortages of skilled workers within certain sectors of our economy. Therefore, we support attempts to increase the number of H-1B visas as part of a larger package that includes both additional training for U.S. workers and meaningful reform of the H-1B program that both protects U.S. workers and respects the good faith business judgments of employers.

- I believe that the most important way to widen the availability of skilled workers must be to improve the skills of U.S. workers and ensure that employers seek U.S. workers first. While it may be necessary in the short-term to increase the number of visas for temporary foreign workers, this must only be done in conjunction with additional efforts to increase the skill level of U.S. workers and meaningful reforms to the H-1B program.

- Our goal is to help ensure that qualified U.S. workers have the opportunity to fill a job before a temporary foreign worker is hired and that U.S. workers not lose their jobs to temporary foreign workers. A substantial training component would help U.S. workers obtain the skills needed to fill these jobs and the kinds of reforms that we have advocated (like those included in the Smith bill) would effectively target H-1B visas to industries experiencing skill shortages.

- Although the agreement reached by the Republicans last month includes a training provision and limited protections for U.S. workers, it falls short in several respects. The training provision would not generate sufficient funds and the protections included some big loopholes that would have made it difficult to tackle abuses in the program.

- We have laid out specific suggestions for ways to improve the Abraham/Smith proposal that, if made, would cause us to give this proposal our full support. We have had a series of discussions with the bill's sponsors in an attempt to reach an agreement. Our suggested changes generally increase the funding for training and strengthen the protections for U.S. workers in an attempt to achieve a reasonable, balanced bill that both protects U.S. workers and respects the good faith business judgments of employers.

Q&A -- H-1B Legislation
August 25, 1998

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

A: Although the Republican agreement includes a training provision and limited protections for U.S. workers, it fell short in several respects. The training provision would not generate sufficient funds and the protections included some big loopholes that would have made it difficult to tackle abuses in the program.

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

A: Our position on this issue is unchanged: For the President to sign a bill that increases the cap on H-1B visas, it must contain both a significant training component and meaningful reform to the H-1B program to ensure that American companies do not lay-off U.S. workers and replace them with foreign workers.

The Republican agreement that was unveiled last month fell short in several respects. It watered down the training provisions and created some big loopholes that would have made it difficult to tackle abuses in the program.

We have laid out a very specific path to how to get our support on the legislation and have had a series of discussions with the bill's sponsors in an attempt to reach an agreement. Our suggested changes generally increase the funding for training and strengthen the protections for U.S. workers in an attempt to achieve a reasonable, balanced bill that both protects U.S. workers and respects the good faith business judgments of employers.

Q: Would the President veto the Abraham/Smith compromise?

A: If the Congress passes the Abraham/Smith proposal in its current form, the President's senior advisors will recommend that he veto it. While the President is willing to sign a bill that raises the cap on H-1B visas, he also wants to make sure that we protect and provide training for U.S. workers. We want to work with the Congress to develop a balanced bill that addresses the growing demand for highly skilled workers.

July 30, 1998
Proposed Administration Revisions to H.R. 3736 (the July 29, 1998 version):

1. Require either a $500 fee for each position for which an application is filed or a $1,000 fee for each nonimmigrant. Fee to fund training provided under JTPA Title IV. In addition, a small portion of these revenues should fund the administration of the H-1B visa program, including the cost of arbitration.

2. Define H-1B-dependent employers as:

    a. For employers with fewer than 51 workers, that at least 20% of their workforce is H-1B; and

    b. For employers with more than 50 workers, that at least 10% of their workforce is H-1B.

3. The recruitment and no lay-off attestations apply to: (1) H-1B dependent employers; and (2) any employer who, within the previous 5 years, has been found to have willfully violated its obligations under this law.

4. H-1B dependent employers attest they will not place an H-1B worker with another employer, under certain employment circumstances, where the other employer has displaced or intends to displace a U.S. worker (as defined in paragraph (4)) during the period beginning 90 days before and ending 90 days after the date the placement would begin.

5. DOL would have the authority to investigate compliance either: (1) pursuant to a complaint by an aggrieved party; or (2) based on other credible evidence indicating possible violations.

6. Establish an arbitration process for disputes involving the laying-off of any U.S. worker who was replaced by an H-1B worker, even of a non-H-1B dependent employer. This arbitration process would be largely similar to that laid out in H.R. 3736 except that it would be administered by the Secretary of Labor. The arbitrator must base his or her decision on a "preponderance of the evidence."

7. Reference in the bill to "administrative remedies" includes the authority to require back pay, the hiring of an individual, or reinstatement.

8. There must be appropriate sanctions for violations of "whistleblower" protections.

9. Close loopholes in the attestations:

    a. Strike the provision that "[n]othing in the [recruitment attestation] shall be construed to prohibit an employer from using selection standards normal or

customary to the type of job involved."

b. Clarify that job contractors can be sanctioned for placing an H-1B worker with an employer who subsequently lays off a U.S. worker within the 90 days following placement.

c. Do not exempt H-1B workers with at least a master's degree or the equivalent from calculations of the total number of H-1B employees.

d. Define lay-off based on termination for "cause or voluntary termination," but exclude cases where there has been an offer of continuing employment.

10. Consolidate the LCA approval and petition processes within DOL, rather than within INS.

11. Broaden the definition of U.S. workers to include aliens authorized to be employed by this act or by the Attorney General.

12. Include a provision that prohibits unconscionable contracts.

13. Include a "no benching" requirement that an H-1B nonimmigrant in "non-productive status" for reasons such as training, lack of license, lack of assigned work, or other such reason (not including when the employee is unavailable for work) be paid for a 40 hour week or a prorated portion of a 40 hour week during such time.

14. Increase the annual cap on H-1B visas to 95,000 in FY 1998, 105,000 in FY 1999, and 115,000 in FY 2000. After FY 2000, the visa cap shall return to 65,000.

15. Eliminate the 7500 cap on the number of non-physician health care workers admitted under the H-1B program to make the bill consistent with our obligations under the GATS agreement.

Immig - H1B

August 26, 1998

MEMORANDUM FOR THE VICE-PRESIDENT

FROM: GENE SPERLING
BRUCE REED
CECILIA ROUSE

SUBJECT: STATUS OF H-1B LEGISLATION

Background

H-1B visas are temporary work visas that allow "highly skilled" immigrants (with a BA or equivalent) to work in this country for up to six years. Under current law, the number of H-1B visas is capped at 65,000 per year. During the last fiscal year, this cap was reached for the first time. This fiscal year the cap was reached in early May; as a result, no more visas can be issued until October 1. The information technology (IT) industry strongly supports raising the annual cap to address what it maintains is a shortage of U.S. workers with IT skills. Others, including the Department of Labor and organized labor, challenge the industry's conclusions about a shortage and are concerned that the current H-1B program does not target its use to employers who are experiencing skills shortages.

Until last month there were two legislative vehicles for increasing the cap on the number of H-1B visas. On May 18, the Senate passed (78-20) an industry-backed bill sponsored by Senator Abraham (R-MI) that increases the cap on H1-B visas for three years and includes an authorization for additional scholarships. This bill does not, however, require companies to recruit or retain U.S. workers prior to hiring H-1B visa holders. In the House, late last spring, the Judiciary Committee approved (23-7) a bill sponsored by Representative Lamar Smith (R-TX). The Smith bill also increases the cap for three years but differs sharply from the Abraham bill by including meaningful protections for U.S. workers. The Smith bill, however, failed to include any training component for U.S. workers.

Soon after the House committee vote, House Majority Leader Armey told Rep. Smith that he would not bring Smith's bill to the House floor unless Rep. Smith worked out a compromise with Sen. Abraham that pleased the high tech business community. Consequently, in mid-July Rep. Smith and Sen. Abraham produced a compromise bill (the Abraham/Smith proposal) which includes weak and limited protections for U.S. workers and a small training provision. In part due to a senior advisors veto threat, the compromise measure failed to gain sufficient support in the House prior to the August recess and Republican leaders decided to postpone House floor consideration until September.

Administration Position

We agree that it may be necessary in the short-term to increase the number of visas for temporary foreign workers, but this must <u>only</u> be done in conjunction with additional efforts to

increase the skill level of U.S. workers (funded through a modest H-1B application fee paid by employers) and meaningful reforms to the H-1B program to protect U.S. workers. This is because it has been a core Clinton/Gore priority that the most important way to widen the availability of skilled workers must be to improve the skills of U.S. workers. We are also committed to ensuring that employers seek U.S. workers first. The reforms to the H-1B program that we have advocated would help target usage of the H-1B program to employers facing genuine skills shortages by requiring employers to attest to having attempted to recruit U.S. workers before applying for an H-1B worker and to having not laid off a U.S. worker in order to hire an H-1B worker.

Despite our efforts to work with members of the business community and Congress to craft a bill consistent with our principles, and in the face of our strong opposition, the Senate passed the bill sponsored by Senator Abraham that did not include either a recruitment or a no lay-off attestation and that weakened existing enforcement authority of the Department of Labor. In contrast, the Administration stated in a letter to Rep. Hyde that it would support Rep. Lamar Smith's bill, because it included meaningful reforms to the H-1B program, if it were modified to include a significant training provision.

While we met with both Sen. Abraham and Rep. Smith independently on several occasions early this summer, they finalized their compromise proposal without incorporating most of our suggestions. The Abraham/Smith proposal is better than the Abraham bill because it includes a small application fee to fund training and requires firms that have a high percentage of H-1B workers (typically "job shops" that contract workers to other firms) to attest to having attempted to recruit U.S. workers before hiring an H-1B worker and to having not laid off a U.S. worker in order to hire an H-1B worker. Unfortunately, the reforms are too weak to adequately protect U.S. workers (largely because far too many employers would be exempt from both attestations) and the bill, as structured, would not generate sufficient funds for increased training opportunities for U.S. workers.

We received a copy of the final Abraham/Smith proposal less than 24 hours prior to when we were told it was to be introduced on the House floor. Given the problems with the proposal and the lack of opportunity to negotiate further, we made a statement to the press that if the proposal were presented to the President his senior advisors would recommend that he veto it. In an effort to show our willingness to continue to work to improve the bill, that same day we put forth a list of proposed changes (see attached) and made clear that if the proposal were modified consistent with these changes, we would support it. This list included significant compromises on our part: e.g., (1) we would agree to apply the recruitment attestation only to firms that have a high percentage of H-1B workers (this would exempt companies such as Microsoft, Intel, and HP from this attestation); and (2) we would agree that the H-1B reforms sunset with the increase in the cap. These compromises have generated some opposition from organized labor and their Congressional supporters.

Since releasing our list of proposed changes, we have been engaged in serious discussions with members of Congress (including Sen. Abraham and Rep. Lofgren), and representatives from the business community (such as Jerry Jasinowski of NAM and Wade Randlett of Technet)

and organized labor (such as the AFL-CIO) in an attempt to reach a compromise that would include a more substantial training provision and stronger protections for U.S. workers. In these discussions, we have shown flexibility on the exact structure of a provision to protect U.S. workers from being laid-off and replaced with H-1B workers, but we continue to push for a meaningful provision that would protect all U.S. workers. We are hopeful that a compromise can be reached before the end of the Congressional session.

Industry's Position

The business community has generally not opposed the Administration's requirement that any H-1B legislation must include a significant training provision. It has, however, argued that the reforms would generate unnecessary and intrusive federal regulations. As a result, the community supports the Abraham/Smith proposal because it increases the cap on the number of visas for five years and would exempt a large percentage of companies from the worker protections.

In addition, while some within the business community described our list of changes to the Abraham/Smith proposal as "good faith and reasonable," others accused us of "raising the bar" on what needs to be included in an acceptable bill and of attempting to block efforts to increase the cap. In fact, our position has not changed: in order for the President to sign a bill that increases the cap, it must also contain both a significant training provision and meaningful reform to the H-1B program. The Abraham/Smith proposal does not meet that standard.

Organized Labor's Position

Organized labor does not oppose an increase in the cap, as long as this increase is accompanied by strong worker protections and a meaningful training provision. Thus, it opposes the Abraham bill in the Senate and generally supports the Smith bill in the House (if it were modified to include a training provision). Organized labor opposes the Abraham/Smith proposal because the worker protections would only apply to a small number of companies, the training component is relatively small, and the H-1B reforms would sunset with the increase in the cap. Not surprisingly, its main concerns with our list of changes to the Abraham/Smith proposal are that (1) we would agree to apply the recruitment attestation only to firms that have a high percentage of H-1B workers (the concern is that this would exempt an unknown, and potentially large, number of firms from this worker protection); and (2) we would agree that the H-1B reforms sunset with the increase in the cap.

Talking Points -- H-1B Legislation
August 26, 1998

- We support attempts to increase the number of H-1B visas as part of a larger package that includes both additional training for U.S. workers and meaningful reform of the H-1B program that both protects U.S. workers and respects the good faith business judgments of employers.

- We want to pass a bill to increase the cap. At the same time, our goal is to help ensure that qualified U.S. workers have the opportunity to fill a job before a temporary foreign worker is hired and that U.S. workers not lose their jobs to temporary foreign workers. A substantial training component would help U.S. workers obtain the skills needed to fill these jobs and the kinds of reforms that we have advocated (like those included in the Smith bill) would effectively target H-1B visas to industries experiencing skill shortages.

- We agree that the reforms should be targeted at companies that are dependent on H-1B workers (primarily the "job shops"), but we also believe that all U.S. workers should have some additional level of protection against being laid-off so that the employer can hire an H-1B worker. We believe that these reforms should not be overly intrusive for employers.

- Although the agreement reached by the Republicans last month includes a training provision and limited protections for U.S. workers, it falls short in several respects. The training provision would not generate sufficient funds and the protections included some big loopholes that would make it difficult to tackle abuses in the program.

- We have laid out specific suggestions for ways to improve the Abraham/Smith proposal that, if made, would cause us to give this proposal our full support. We have had a series of discussions with the bill's sponsors in an attempt to reach an agreement. Our suggested changes generally increase the funding for training and strengthen the protections for U.S. workers in an attempt to achieve a reasonable, balanced bill that both protects U.S. workers and respects the good faith business judgments of employers.

Q&A -- H-1B Legislation
August 26, 1998

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

A: Although the Republican agreement includes a training provision and limited protections for U.S. workers, it fell short in several respects. The training provision would not generate sufficient funds and the protections included some big loopholes that would have made it difficult to tackle abuses in the program.

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

A: Our position on this issue is unchanged: For the President to sign a bill that increases the cap on H-1B visas, it must contain both a significant training component and meaningful reform to the H-1B program to ensure that American companies do not lay-off U.S. workers and replace them with foreign workers.

The Republican agreement that was unveiled last month fell short in several respects. It watered down the training provisions and created some big loopholes that would have made it difficult to tackle abuses in the program.

We have laid out a very specific path to how to get our support on the legislation and have had a series of discussions with the bill's sponsors in an attempt to reach an agreement. Our suggested changes generally increase the funding for training and strengthen the protections for U.S. workers in an attempt to achieve a reasonable, balanced bill that both protects U.S. workers and respects the good faith business judgments of employers.

Q: Would the President veto the Abraham/Smith compromise?

A: If the Congress passes the Abraham/Smith proposal in its current form, the President's senior advisors will recommend that he veto it. While the President is willing to sign a bill that raises the cap on H-1B visas, he also wants to make sure that we protect and provide training for U.S. workers. We want to work with the Congress to develop a balanced bill that addresses the growing demand for highly skilled workers.

July 30, 1998
Proposed Administration Revisions to H.R. 3736 (the July 29, 1998 version):

1. Require either a $500 fee for each position for which an application is filed or a $1,000 fee for each nonimmigrant. Fee to fund training provided under JTPA Title IV. In addition, a small portion of these revenues should fund the administration of the H-1B visa program, including the cost of arbitration.

2. Define H-1B-dependent employers as:

   a. For employers with fewer than 51 workers, that at least 20% of their workforce is H-1B; and

   b. For employers with more than 50 workers, that at least 10% of their workforce is H-1B.

3. The recruitment and no lay-off attestations apply to: (1) H-1B dependent employers; and (2) any employer who, within the previous 5 years, has been found to have willfully violated its obligations under this law.

4. H-1B dependent employers attest they will not place an H-1B worker with another employer, under certain employment circumstances, where the other employer has displaced or intends to displace a U.S. worker (as defined in paragraph (4)) during the period beginning 90 days before and ending 90 days after the date the placement would begin.

5. DOL would have the authority to investigate compliance either: (1) pursuant to a complaint by an aggrieved party; or (2) based on other credible evidence indicating possible violations.

6. Establish an arbitration process for disputes involving the laying-off of any U.S. worker who was replaced by an H-1B worker, even of a non-H-1B dependent employer. This arbitration process would be largely similar to that laid out in H.R. 3736 except that it would be administered by the Secretary of Labor. The arbitrator must base his or her decision on a "preponderance of the evidence."

7. Reference in the bill to "administrative remedies" includes the authority to require back pay, the hiring of an individual, or reinstatement.

8. There must be appropriate sanctions for violations of "whistleblower" protections.

9. Close loopholes in the attestations:

   a. Strike the provision that "[n]othing in the [recruitment attestation] shall be construed to prohibit an employer from using selection standards normal or

customary to the type of job involved."

b. Clarify that job contractors can be sanctioned for placing an H-1B worker with an employer who subsequently lays off a U.S. worker within the 90 days following placement.

c. Do not exempt H-1B workers with at least a master's degree or the equivalent from calculations of the total number of H-1B employees.

d. Define lay-off based on termination for "cause or voluntary termination," but exclude cases where there has been an offer of continuing employment.

10. Consolidate the LCA approval and petition processes within DOL, rather than within INS.

11. Broaden the definition of U.S. workers to include aliens authorized to be employed by this act or by the Attorney General.

12. Include a provision that prohibits unconscionable contracts.

13. Include a "no benching" requirement that an H-1B nonimmigrant in "non-productive status" for reasons such as training, lack of license, lack of assigned work, or other such reason (not including when the employee is unavailable for work) be paid for a 40 hour week or a prorated portion of a 40 hour week during such time.

14. Increase the annual cap on H-1B visas to 95,000 in FY 1998, 105,000 in FY 1999, and 115,000 in FY 2000. After FY 2000, the visa cap shall return to 65,000.

15. Eliminate the 7500 cap on the number of non-physician health care workers admitted under the H-1B program to make the bill consistent with our obligations under the GATS agreement.

Immig - H1B

Julie A. Fernandes
08/06/98 03:11:45 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Laura Emmett/WHO/EOP
Subject: DRAFT H1B SAP

Elena,
Though it is still unclear whether the Republicans will bring their H-1B to the floor tomorrow, we wanted to be prepared with a SAP just in case. Attached is a draft of a veto SAP.

According to Peter, it is still possible that we can reach a deal with Abraham on a better bill. However, if they introduce the current version, we would likely want to send this up.

julie
---------------------- Forwarded by Julie A. Fernandes/OPD/EOP on 08/06/98 03:25 PM ---------------------------

From: Ingrid M. Schroeder on 08/06/98 03:06:49 PM

Record Type: Record

To: Julie A. Fernandes/OPD/EOP

cc:
Subject: DRAFT H1B SAP

DRAFT -- NOT FOR RELEASE
August 6, 1998
(House)

H.R. 3736 - Workforce Improvement and Protection Act of 1998
(Smith (R) Texas and 3 cosponsors)

The Administration strongly opposes House passage of H.R. 3736, the "Workforce Improvement and Protection Act of 1998," as amended. If this bill is presented to the President, his senior advisors will recommend that he veto it.

This bill is intended to respond to a skills shortage in the information technology industry by increasing the annual cap on the number of temporary visas for foreign "specialty" workers under the H-1B program. Regrettably, H.R. 3736, as amended, emphasizes providing opportunities for foreign workers rather than providing opportunities for and protecting U.S. workers.

The Administration supports sound and balanced legislative efforts to address

shortages of skilled workers within certain sectors of our economy. The most important way to increase the availability of skilled workers must be to improve the skills of U.S. workers and ensure that employers seek U.S. workers first. While it may be necessary in the short-term to increase the number of visas for temporary foreign workers, this must only be done in conjunction with additional efforts to increase the skill level of U.S. workers, including through enhanced training programs, and meaningful reforms to the H-1B program.

Although this bill provides for certain employers to attest to recruitment and lay-off provisions, the attestations are too weak to adequately protect U.S. workers and far too many employers are exempt from their obligations. Moreover, the bill, as structured, will not generate sufficient funds for increased training opportunities for U.S. workers. Finally, rather than strengthening enforcement to prevent employer abuses of the H-1B program, H.R. 3736, as amended, undermines some of the program's important enforcement provisions.

The Administration wants to work with the Congress to develop a bill that addresses the growing demand for highly skilled workers, while effectively protecting and promoting the interests of U.S. workers and enhancing the international competitiveness of important U.S. industries in a manner consistent with our international obligations.

* * * * * * *

Immig - H1B

LRM ID: IMS398 **SUBJECT:** REVISED Statement of Administration Policy on HR3736 Workforce Improvement and Protection Act of 1998

RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

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

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

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

FROM: ______________________ (Date)

______________________ (Name)

______________________ (Agency)

______________________ (Telephone)

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

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _________

_____ Other: ______________________

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

DRAFT -- NOT FOR RELEASE
August 5, 1998
(House)

H.R. 3736 - Workforce Improvement and Protection Act of 1998
(Smith (R) Texas and 3 cosponsors)

The Administration strongly opposes House passage H.R. 3736, the "Workforce Improvement and Protection Act of 1998," as amended. If this bill is presented to the President, his senior advisors will recommend that he veto it.

This bill is intended to respond to a skills shortage in the information technology industry by increasing the annual cap on the number of temporary visas for foreign "specialty" workers under the H-1B program. Regrettably, H.R. 3736, as amended, emphasizes providing opportunities for foreign workers rather than providing opportunities for and protecting U.S. workers.

The Administration supports sound and balanced legislative efforts to address shortages of skilled workers within certain sectors of our economy. The most important way to increase the availability of skilled workers must be to improve the skills of U.S. workers and ensure that employers seek U.S. workers first. While it may be necessary in the short-term to increase the number of visas for temporary foreign workers, this must only be done in conjunction with additional efforts to increase the skill level of U.S. workers and meaningful reforms to the H-1B program.

Although this bill provides for certain employers to attest to recruitment and lay-off provisions, the attestations are too weak to adequately protect U.S. workers and far too many employers are exempt from their obligations. Moreover, the bill, as structured, will not generate sufficient funds for increased training opportunities for U.S. workers. Finally, rather than strengthening enforcement to prevent employer abuses of the H-1B program, H.R. 3736, as amended, undermines some of the program's important enforcement provisions.

The Administration wants to work with the Congress to develop a bill that addresses the growing demand for highly skilled workers, while effectively protecting and promoting the interests of U.S. workers and enhancing the international competitiveness of important U.S. industries.

* * * * * * *

Message Sent To: ______________________________

Immig - H1B

Julie A. Fernandes
08/04/98 08:41:16 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP

cc: Cathy R. Mays/OPD/EOP, Laura Emmett/WHO/EOP
Subject: H1B -- update

Bruce/Elena:
Yesterday, Peter and Ceci met with Abraham's staff to discuss our proposed changes to his bill. There continue to be several points of disagreement, essentially about who is covered by the attestations (Abraham's bill has huge exemptions) and what triggers a DOL investigation.
It looks like Gingrich has decided to introduce Abraham's bill (which hasn't changed at all) on the House floor on Thursday. Peter recommends that we send our veto letter if the bill goes to the floor. Gene is less sure and wants to decide that tomorrow. Given that, Gene is likely to bring this up tomorrow morning.

julie

Immig - H1B

DRAFT -- NOT FOR RELEASE
July 30, 1998
(House)

H.R. 3736 - Workforce Improvement and Protection Act of 1998
(Smith (R) Texas and 3 cosponsors)

The Administration strongly opposes House passage of H.R. 3736, the "Workforce Improvement and Protection Act of 1998," as amended. If this bill is presented to the President, his senior advisors will recommend that he veto it.

This bill is intended to respond to a skills shortage in the information technology industry by increasing the annual cap on the number of temporary visas for foreign "specialty" workers under the H-1B program. Regrettably, H.R. 3736, as amended, emphasizes providing opportunities for foreign workers rather than providing opportunities for and protecting U.S. workers.

The Administration supports sound and balanced legislative efforts to address shortages of skilled workers within certain sectors of our economy. The most important way to increase the availability of skilled workers must be to improve the skills of U.S. workers and ensure that employers seek U.S. workers first. While it may be necessary in the short-term to increase the number of visas for temporary foreign workers, this must only be done in conjunction with additional efforts to increase the skill level of U.S. workers and meaningful reforms to the H-1B program.

Although this bill provides for certain employers to attest to recruitment and lay-off provisions, the attestations are too weak to adequately protect U.S. workers and far too many employers are exempt from their obligations. Moreover, the bill, as structured, will not generate sufficient funds for increased training opportunities for U.S. workers. Finally, rather than strengthening enforcement to prevent employer abuses of the H-1B program, H.R. 3736, as amended, undermines some of the program's important enforcement provisions.

The Administration wants to work with the Congress to develop a bill that addresses the growing demand for highly skilled workers, while effectively protecting and promoting the interests of U.S. workers and enhancing the international competitiveness of important U.S. industries.

* * * * * * *

Message Sent To: ______________________________

Immig - H1B visas

DRAFT -- NOT FOR RELEASE

July 30, 1998
(House)

H.R. 3736 - Workforce Improvement and Protection Act of 1998
(Smith (R) Texas and 3 cosponsors)

The Administration strongly opposes House passage of H.R. 3736, the "Workforce Improvement and Protection Act of 1998," as amended. If this bill is presented to the President, his senior advisors will recommend that he veto it. ↳ see attached amendment in the nature of a substitute

This bill is intended to respond to a skills shortage in the information technology industry by increasing the annual cap on the number of temporary visas for foreign "specialty" workers under the H-1B program. Regrettably, H.R. 3736, as amended, emphasizes providing opportunities for foreign workers rather than providing opportunities for and protecting U.S. workers.

The Administration supports sound and balanced legislative efforts to address shortages of skilled workers within certain sectors of our economy. The most important way to increase the availability of skilled workers must be to improve the skills of U.S. workers and ensure that employers seek U.S. workers first. While it may be necessary in the short-term to increase the number of visas for temporary foreign workers, this must only be done in conjunction with additional efforts to increase the skill level of U.S. workers and meaningful reforms to the H-1B program.

Although this bill provides for certain employers to attest to recruitment and lay-off provisions, the attestations are too weak to adequately protect U.S. workers and far too many employers are exempt from their obligations. Moreover, the bill, as structured, will not generate sufficient funds for increased training opportunities for U.S. workers. Finally, rather than strengthening enforcement to prevent employer abuses of the H-1B program, H.R. 3736, as amended, undermines some of the program's important enforcement provisions.

The Administration wants to work with the Congress to develop a bill that addresses the growing demand for highly skilled workers, while effectively protecting and promoting the interests of U.S. workers and enhancing the international competitiveness of important U.S. industries.

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Immig - H1B

Julie A. Fernandes
07/30/98 12:41:06 PM
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Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP

cc: Cathy R. Mays/OPD/EOP, Laura Emmett/WHO/EOP
Subject: H1B -- veto threat

According to NEC, a decision was made to issue a veto threat on the legislation. Peter's plan is to issue a general veto letter (that is low on specifics) and simultaneously issue a letter from Gene that outlines what a good bill would look like. According to Peter, the House is issuing a rule at 3pm that will allow this to go to the floor. Though it is still likely that this won't go to the floor until tomorrow, Peter wants us to be prepared to issue both the SAP and the letter today.

NEC is drafting the Gene letter, which we can review.

julie

Immis - H1B

Julie A. Fernandes
07/30/98 08:57:26 AM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP

cc: Laura Emmett/WHO/EOP, Cathy R. Mays/OPD/EOP
Subject: H1B legislation -- to the floor

Bruce/Elena:
Late last night, we got a copy of the final version of the Rep. compromise on H-1B legislation. According to Peter, thought the Reps. initially intended for this to be introduced on the House floor today, it now looks like it will go tomorrow. **Gene is going to try to arrange a principals meeting today to discuss what the Admin.'s reaction to this bill should be.**

We sat down with Labor last night to do an analysis of the bill. It is very similar to the draft version -- in some ways better, in some ways a little worse. In the better category, it does not include the provision to allow for the use of private wage surveys, even in the face of DOL determinations that they are no good. In the worse category, it now exempts all employers that employer fewer than 50 workers from the attestations. DOL is going to report back to us on what percentage of employers and current H-1B employers this would exempt.

The bill, like the draft, exempts from the H-1B calculation (both for purposes of having to attest and in calculating the % H-1B of the population) all employees who earn more than $60K in wages and bonuses and all workers with a MA or equivalent.

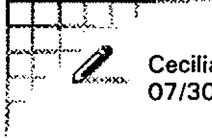
The lay-off language is quite narrow (limited to displacement from the "essentially equivalent job," defined as: a job with the same responsibilities, held by a U.S. worker with substantially equivalent qualifications and experience, and in located in the same area of employment.). This, though, is not that different from the Kennedy language on lay-off and appears to cover most lay-off cases that we have heard about.

Disputes over whether a U.S. worker was not offered an employment opportunity b/c of a preference for an H-1B worker would be first made to the INS commissioner. She would then refer the matter to an arbitrator (paid for by INS) who would made a finding and send back an opinion. The commissioner could then accept, modify, or reverse the determination and the whole thing could be appealed to the U.S. Court of Appeals. Other enforcement (lay-off and whether the recruitment was generally adequate) is done by DOL investigation pursuant to a complaint.

Finally, this bill, like the draft, transfers authority to review the Labor Conditions Application (LCA) to the AG.

julie

Immig - H1B



Cecilia E. Rouse
07/30/98 02:08:08 AM

Record Type: Record

To: Melissa G. Green/OPD/EOP

cc: Peter G. Jacoby/WHO/EOP
Subject: DRAFT H-1B Assessment

Melissa,

Here is a DRAFT (that no one has read...it's 2:15am) of the components of the Smith/Abraham compromise on H-1B. Please do not circulate it as there will undoubtedly be a few changes before we send it out. Nevertheless, if Gene wants to see a copy before we're finished working on it, please send him this.

In the meantime, we need to schedule a Principals meeting on this ASAP! There was talk of this reaching the House floor as early as Thurs. While Friday is looking more likely, stranger things have happened and we absolutely must know our position on this today (Thurs). Gene is completely on top of the situation (although the last time I talked to him (around midnight), we did not have the actual language). You should talk to him about the Principals meeting (or how else he wants to have a high-level discussion of what our position will be).

I'll call in the morning.

-- Ceci

deal.730

July 30, 1998

The Smith/Abraham Bill on H-1B Legislation

The following outlines the general framework for the bill that the House plans to bring to the floor shortly.

Size of Increase

85,000 (FY1998); 95,000 (FY1999); 105,000 (FY2000); 115,000 (FY2001); and 115,000 (FY2002).

Under the H-1B program, the number of visas going to health care workers would be capped at 7500. [*Comment: We believe that this would conflict with our GATS agreement.*]

Training

There would be a $250 training fee for each nonimmigrant (although institutions of higher education, non-profit research institutions, and Federal research agencies are exempt). This fee would sunset when the cap returns to 65,000.

The revenues from this fee would be equally divided between the SSIG grant program and JTPA Title IV.

Attestations

- Both attestations would only apply to H-1B dependent employers with more than 50 workers. H-1B dependent would be defined as:

  > 15% of the total workforce but excluding H-1Bs with either a master's degree (or the equivalent) or higher, or with cash compensation (wages plus cash bonuses) of at least $60,000.

  In addition, H-1B dependent employers would not need to attest if the H-1B has either a master's degree (or the equivalent) or higher, or would earn cash compensation (wages plus cash bonuses) of at least $60,000.

  [*Comment: The exemption of employees who have the "equivalent" of a master's degree further broadens this exemption. After three years of work experience, an H-1B employee with a BA degree would likely be considered "equivalent" to an employee with a MA, and thus would no longer be counted as an H-1B employee for any purpose.*]

- The recruitment language is:

  "The employer, prior to filing the application, has taken, good faith steps to recruit, in the

United States using procedures that meet industry-wide standards and offering compensation that is at least as great as that required to be offered to H-1B nonimmigrants, U.S. workers for the job for which the nonimmigrant or nonimmigrants is or are sought; and has offered the job to any U.S. worker who applies and is equally or better qualified for the job for which the nonimmigrant or nonimmigrants is or are sought."

In addition, there is a provision that "Nothing in the [recruitment attestation] shall be construed to prohibit an employer from using selection standards normal or customary to the type of job involved." [*Comment: We're looking into whether this substantially narrows or weakens the recruitment attestation.*]

- The essential components of the no-layoff language are:

  - would apply to lay-offs that occur 90 days before and after the date of filing the visa petition;

  - a violation would occur if the employer lays off a U.S. worker from a job that is "essentially the equivalent of the job" for which the nonimmigrant is sought. However, "A job shall not be considered to be essentially equivalent of another job unless it involves essentially the same responsibilities, was held by a U.S. worker with substantially equivalent qualifications and experience, and is located in the same area of employment as the other job." [*Comment: This requires matching on job, location, and qualifications.*]

  - the ending of a contract would NOT be considered a lay-off for purposes of the attestation;

  - there would be language that would sanction the job contractor that placed an H-1B worker with an employer who had just laid-off a U.S. worker.

    However, the job contractor cannot be held responsible for placing an H-1B is laid-off unless they "knew or had reason to know of such displacement at the time of the placement of the H-1B worker" or "has been subject to a sanction under this provision based upon a previous placement" of an H-1B worker. [*Comment: This means that almost by definition, violations could not involve displacement after a placement by the job contractor.*]

- The attestations would sunset when the cap returns to 65,000.

Enforcement

- A worker could complain about a violation of the recruitment attestation to the INS who

upon making a reasonable cause determination could refer the case to an independent arbitration board. INS would pay the cost for the arbitrator. Once the arbitrator makes a determination they give their decision to the Commissioner and she can either agree, modify, or overturn the decision. The Commissioner's decision can be appealed to the U.S. Court of Appeals. The burden of proof is on the worker and the standard of proof is "clear and convincing" evidence.

- DOL could still investigate pursuant to a complaint by an "aggrieved" party on the no lay-off attestation and the "recruitment" component of the recruitment attestation.

Sanctions

It would contain three levels of sanctions: The first level (with the lowest fine) is if there is a "failure" or a "substantial failure" to meet one of the attestations. The second level is if the violation was willful. The third level is if the violation is willful and involved the no lay-off attestation.

Authority

- DOL would have the authority to enforce the law (including making the prevailing wage determination).

- Transfers determination of the labor condition applications (LCA) to the INS. [*Comment: This transfer would complicate enforcement of the prevailing wage attestation. The INS does not have the expertise to determine if there are "obvious inaccuracies" on the prevailing wage attestation. Thus, they would either not be able to adequately perform this review, or would need to set up a mechanism whereby they consult with the DOL. Efficiency argues for consolidation of this function within the DOL, thus eliminating the INS from the determination.*]

Immig-H1B visas

Julie A. Fernandes
07/09/98 12:29:25 PM
●●●●●●●●●●●●●●●●●

Record Type: Record

To: Elena Kagan/OPD/EOP, Bruce N. Reed/OPD/EOP, Sally Katzen/OPD/EOP, Cecilia E. Rouse/OPD/EOP

cc: Laura Emmett/WHO/EOP, Cathy R. Mays/OPD/EOP, Shannon Mason/OPD/EOP
Subject: H1B

I just heard from Watt's staffer (Tina Hone) and the DOL that Abraham is announcing a deal with industry next week. Industry was supposed to meet with Smith today or tomorrow, and has called off the meeting. Neither Tina nor Labor had any idea what this deal looks like, except that it contains something that says "attestation" but is very weak. According to Tina, George Fishman (Smith's staffer) is going to call us to ask for a veto statement.

Julie

Immig - H1B visas

Julie A. Fernandes
07/09/98 07:00:00 PM

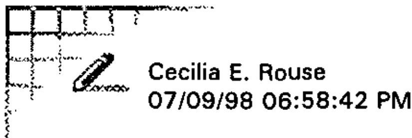
Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP

cc: Cathy R. Mays/OPD/EOP, Laura Emmett/WHO/EOP
Subject: H-1B and Washington Post

FYI.

---------------------- Forwarded by Julie A. Fernandes/OPD/EOP on 07/09/98 07:20 PM ---------------------------


Cecilia E. Rouse
07/09/98 06:58:42 PM

Record Type: Record

To: Sally Katzen/OPD/EOP, Jake Siewert/OPD/EOP, Julie A. Fernandes/OPD/EOP, Gene B. Sperling/OPD/EOP

cc: Melissa G. Green/OPD/EOP, Shannon Mason/OPD/EOP
Subject: H-1B and Washington Post

We may have a press opportunity for Gene. Bill Branigan of the Washington Post is writing a story on H-1B from the worker's perspective. He talked to John Frasier at DOL (who administers the program) largely to get some factual information on what's legal. (The workers complain about being "put on the bench" (that is hired and then they sit around because there is no work and they only get paid a minimal amount of money during that time), about hefty breach of contract fees (upwards of $10,000), and having to work 60-80 hours/week without receiving overtime.

Most importantly, in the course of the conversation Branigan said, "I've heard that the Administration is softening its position on the reforms. Is this true?" Frasier gave the party line but this may be an opportunity for Gene to reinforce that the Administration has NOT changed its position.

(In addition, Branigan asked, "Is it true that employers don't have to advertise for the jobs into which they hire the H-1B workers?" Frasier responded, "Yes, that's why we're seeking the "recruitment" attestation.)

DOL believes that Branigan is writing today and tomorrow, but is not sure when exactly the story would run. They are looking into it.

-- Ceci

Immig - H1B visas

Julie A. Fernandes
07/08/98 01:19:48 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP

cc: Cathy R. Mays/OPD/EOP, Elena Kagan/OPD/EOP, Laura Emmett/WHO/EOP
Subject: H1B -- question

This afternoon, Sally is holding a meeting to decide whether the Administration should release a statement of some kind that says that senior advisors would recommend a veto of a bill that increases the H1B cap without strong reforms and some kind of training component. As you remember, when the Abraham bill went to the Senate floor, we sent a statement that the Secretary of Labor would recommend a veto (b/c no decent reforms and no fee for training). On the House side, we have supported Smith's bill and, when it reached the full Judiciary committee, sent a letter stating that the Administration would strongly oppose any amendments to weaken the reforms. In that letter, we also stated that the bill would receive our strong support if it included a training provision and a modest reduction in the increase.

Last night, Gene had a conversation with the head of the National Association of Manufacturers and got the sense that a strong statement by the Administration of our prerequisites for supporting a bill would be helpful (i.e., if business knows that we are serious about vetoing a bill that doesn't have decent reforms or training, they will be more likely to put pressure on the Republicans to present us with a bill that includes both -- they continue to want a bill).

The question for us is would we recommend a veto of a bill that didn't include training **or** decent reforms. If the answer remains "yes", should we issue such a statement? Of course, we will not know exactly what the bill will look like, but it would be useful to be able to say that with no training component **or** no decent reforms, we would recommend a veto (that either one, on its own, wouldn't be enough). What do you think?

julie

Immig - HB visas

ADMINISTRATION STATEMENT ON CONGRESSIONAL CONSIDERATION OF LEGISLATION TO INCREASE THE NUMBER OF H-1B VISAS

The Administration supports sound and balanced legislative efforts to address shortages of skilled workers within certain sectors of our economy. We believe that the most important response for increasing the availability of skilled workers must be increasing the skills of U.S. workers and ensuring that employers seek U.S. workers first. Thus, while it may be necessary in the short-term to increase the number of visas for temporary foreign workers, this must only be done in conjunction with additional efforts to increase the skill level of U.S. workers and meaningful reforms to the H-1B program. We look forward to working with the Congress to achieve a sound and balanced bill that both protects U.S. workers and respects the good faith business judgements of employers.

If the President is presented with a bill that increases the cap on H-1B visas, but does not contain a significant training component and meaningful reforms that require employers to recruit U.S. workers before applying for an H-1B worker and to not lay-off a U.S. worker in order to hire an H-1B worker, the President's senior advisors will recommend that he veto the bill.

Immig - H1B visas

Julie A. Fernandes
06/25/98 01:52:21 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Laura Emmett/WHO/EOP
Subject: H1B -- leg. update

Elena,
As you know, yesterday Abraham, Smith, Armey, Phil Graham and Hyde met to discuss how to resolve the conflict between the House and Sen. Reps. on H1B legislation. Peter had some preliminary discussions with Smith's staffer (George Fishman) earlier this week and outlined a few options for compromise that we could agree to (these were agreed to after discussions with Labor, OMB and Commerce). These options included (1) the reforms being implemented for a period of years, to be evaluated at the end to determine whether to continue with them (a bit looser than a straight pilot); (2) having the recruit and retain attestation only apply to positions that pay < $75K (according to DOL, only 7% of computer programmers are paid >$75K; calls industry's bluff re: their shortage of really highly skilled and desirable workers); and (3) excluding truly casual users from the recruit and retain attestation (those who have hired fewer than 10 H1Bs over the last three years). According to Smith's staffer, there has been no movement between the two sides. However, they are meeting again this afternoon at 5pm.

I would like to propose to him that the recruit and retain attestation only apply to employers whose workforce is more than 5% H1B (including the requested H1B workers). The theory here is that an employer with a 95% U.S. workforce is likely doing a sufficient job of recruitment and thus should not be scrutinized on this by DOL. However, we anticipate (based on some preliminary discussions with DOL) that they may not agree to pitch this. Sally may want to pull together a quick meeting this afternoon (with DOL, OMB, Commerce and us) to try to get this resolved before the Reps. meet again.

julie

Immig - H1B visas

Julie A. Fernandes
06/25/98 03:46:02 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Laura Emmett/WHO/EOP
Subject: H1B -- update

Elena,
The group (us, NEC, Commerce, Labor, OMB) decided to offer to Smith:

If the company has hired fewer than 20 H1B employees over the prior 3 years OR if the position pays < $60K, the company is exempt from the recruit and retain attestation.

If no bites, will offer:

If <3% of the company's total domestic workforce is H1B, it is exempt from the recruit and retain attestation.

We'll see (the Reps. are meeting again at 5pm today).

julie

Immig - H1B visas

Julie A. Fernandes
06/09/98 10:24:29 AM

Record Type: Record

To: Elena Kagan/OPD/EOP

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

Elena,
Last Friday, Armey met with Smith and Hyde re: the H-1B bill. Armey conceded that Smith had the votes to pass his bill, but said that he (Armey) would not bring it to the floor unless/until Smith strikes a deal with business on the reforms. According to Peter, Smith is not in a hurry to do this, but may be looking at Kennedy's more narrow lay-off language as a place to go. It is unclear whether Smith wants to do this at all -- he may prefer no bill (thus no visa increase) to a bill that is too weak. Armey also indicated that he prefers Smith's bill to Abraham's bill.

Peter gave Smith our proposed language (as a possible compromise). Peter also thinks that it is important for us to strengthen the perception that we would veto a bad bill.

As of yesterday, the Smith bill was not scheduled to go to the floor this week, so it looks like next week at the earliest.

Julie

Immig - H1B visas

Julie A. Fernandes
05/18/98 07:35:18 PM
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Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP

cc: Laura Emmett/WHO/EOP, Cathy R. Mays/OPD/EOP
Subject: H1B visas -- Senate update

Bruce/Elena:
The Senate just voted in favor of the Abraham bill 78-20. Both Kennedy amendments (recruitment and no-lay off attestations) were defeated. A manager's amendment that included a training provision that authorized demonstration programs that sound like Regional Skills Alliances, funded through Title IV of JTPA, was also accepted.
The House Judiciary Committee is marking up the Smith bill Wednesday morning. Our letter is in circulation and includes a recommended veto from the Secretary of Labor if the bill's reforms are weakened or if the bill is not modified to include a training provision.

Julie

Immig - H1B visas

The Honorable Henry J. Hyde
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Hyde:

Today, your Committee will mark-up H.R. 3736, the "Workforce Improvement and Protection Act of 1998" which is intended to address the growing demand for skilled workers in the information technology (IT) industry. H.R. 3736 enacts a temporary increase in the annual cap on the number of visas for temporary foreign "specialty" workers under the H-1B program, while also effecting reforms to the H-1B program that would help target usage of H-1B visas to industries and employers that are actually experiencing skill shortages.

The Administration believes that the first response for increasing the availability of skilled workers for industry must be increasing the skills of U.S. workers and helping the labor market work better to match employers with U.S. workers. Therefore, additional efforts to increase the skill level of U.S. workers and needed improvements to the H-1B program are necessary prerequisites for the Administration to support any short-term increase in the number of H-1B visas available for temporary foreign workers. Modifications to the H-1B program that appropriately protect U.S. workers are fully consistent with the Administration's longstanding support for legal immigration.

We are pleased that H.R. 3736 as reported from the Immigration and Claims Subcommittee is consistent with one of our primary objectives, insofar as it links a temporary increase in the H-1B cap to the enactment of meaningful reforms to the H-1B visa program. H.R. 3736 would help ensure that U.S. workers do not lose their jobs to temporary foreign workers and that employers have made serious efforts to recruit U.S. workers for open positions so that qualified U.S. workers have the opportunity to fill a job before a temporary foreign worker is hired. Moreover, H.R. 3736 expands enforcement authority to help prevent employer abuses of the H-1B program. These reforms will effectively target H-1B visas to industries experiencing skill shortages.

Unfortunately, H.R. 3736 does not contain any provision to encourage additional training of U.S. workers. Training is a vital component of our strategy to address the long-term demand for highly skilled U.S. workers and to enhance the international competitiveness of important U.S. industries. An effective training strategy would also work to reduce the demand for H-1B visas. The Administration strongly supports amending H.R. 3736 to provide for additional training opportunities for U.S. workers and believes that this training should be funded through a modest H-1B application fee paid by employers.

The Administration is also concerned that the increase in the annual number of H-1B visas reflected in this bill is too large, although we agree that the increase should last for only

three years. In addition, the Administration is concerned that provisions in the bill that would impose occupation-based restrictions on the first 65,000 H-1B visas may be viewed by our trading partners as inconsistent with our international trade obligations.

The Administration believes that the reforms included in H.R. 3736 would substantially improve the current H-1B program. With the addition of a meaningful training provision, a modest reduction in the level of increase in the annual H-1B visa cap, and provided that the bill is consistent with U.S. international trade obligations, H.R. 3736 would garner the Administration's strong support. However, if amendments are adopted that substantially weaken the reform or enforcement provisions of H.R. 3736 or if meaningful provisions for increasing the skill levels of U.S. workers are not adopted, the Secretary of Labor would recommend that the President veto this legislation.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

ALEXIS HERMAN
Secretary of Labor

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

May 11, 1998
(Senate)

STATEMENT OF ADMINISTRATION POLICY

(THIS STATEMENT HAS BEEN COORDINATED BY OMB WITH THE CONCERNED AGENCIES.)

S. 1723 - American Competitiveness Act
(Abraham (R) Michigan and 15 cosponsors)

S.1723, "The American Competitiveness Act," is intended to respond to a reported skills shortage in the information technology industry by increasing the annual cap on the number of temporary visas for foreign "specialty" workers under the H-1B program. For the reasons outlined below, the Administration strongly opposes Senate passage of S. 1723. If S. 1723 were presented to the President, the Secretary of Labor would recommend that the bill be vetoed.

Regrettably, S.1723 emphasizes providing opportunities for foreign workers rather than providing opportunities for and protecting U.S. workers. The bill's temporary increase in the annual number of H-1B visas is too large (up to 115,000) and lasts too long (5 years). In addition, the bill does not help ensure that U.S. workers do not lose their jobs to temporary foreign workers. Nor does the bill ensure that employers have made serious efforts to recruit U.S. workers for open positions so that qualified U.S. workers have the opportunity to fill a job before a temporary foreign worker is hired. Moreover, rather than strengthening program requirements and enforcement to prevent employer abuses of the H-1B program, S.1723 undermines some of the program's important enforcement provisions.

Since 1993 the Administration has sought reforms of the H-1B program, including: (1) requiring employers to make bona fide efforts to recruit and retain U.S. workers before hiring temporary foreign workers; and (2) prohibiting lay-offs of U.S. workers to replace them with foreign temporary workers. These reforms, if enacted, would help target H-1B usage to industries and employers that are experiencing skill shortages.

Also, the Administration believes that the first response for increasing the availability of skilled workers for industry must be increasing the skills of U.S. workers and helping the labor market work better to match employers with U.S. workers. S.1723 includes an authorization for a scholarship fund and a small fund to train dislocated workers, but it provides no funding for these programs. The Administration believes that increased training opportunities for U.S. workers should be funded, in part, through a modest H-1B application fee paid by employers. In addition, the Administration has called upon the private sector to establish training programs and partnerships with educational institutions to give U.S. workers the skills needed for these jobs. It also has urged industry to reach out to dislocated workers as well as segments of the labor force underrepresented in high skilled jobs. The Administration is eager to work with industry to help create these programs and partnerships.

Additional efforts to increase the skill level of U.S. workers and needed improvements in the H-1B program are necessary prerequisites for the Administration to support any short-term increase in the number of H-1B visas available for temporary foreign workers. The Administration wants to work with the Congress to develop a bill that addresses the growing demand for highly skilled workers, while effectively protecting and promoting the interests of U.S. workers and enhancing the international competitiveness of important U.S. industries.

Pay-As-You-Go Scoring

S. 1723 would increase direct spending and receipts; therefore it is subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act (OBRA) of 1990. The bill does not contain provisions to fully offset the increased direct spending. OMB's preliminary scoring estimates that this bill would increase direct spending by $1 million annually during FYs 1999-2003.

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Immig - H1B visas

▶ Julie A. Fernandes
05/13/98 12:40:08 PM
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Record Type: Record

To: Elena Kagan/OPD/EOP

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

Elena,
The following is an update of where we are on H1B legislation:

1. Senate

The SAP that included a Secy of Labor recommended veto went up late on Monday. We still do not know if the bill is going to the Senate floor today. As of noon today, there was no time agreement.

Kennedy is planning to offer two amendments: (1) a recruit and retain attestation (that looks good, though we have been told that he may offer to exempt universities from this requirement); (2) a no lay-off attestation (that is weak -- i.e., protects against lay-offs in a specific job at a specific place of employment and defines "lay-off" to not include the expiration of a grant, contract, or other agreement -- but the best that Kennedy thinks he can get in the Senate). Kennedy's whistle-blower amendment (protection from retaliation) was accepted.

Abraham's bill authorizes $50 million for the SSIG program, but Reed is offering an amendment to remove the SSIG program from the bill. Wellstone is offering a training amendment that authorizes the Secy of Labor to provide grants under part D of Title IV of the JTPA "for the purpose of providing training and related activites to assist in preparing workers for employment in industries with technology skills" to PICs (or their successors, which could include Regional Skills Alliances). He intends to use the colloquy to speak about wanting an application fee to fund training.

2. House

The House Judiciary Committee mark-up has been postponed until next week (Tues. or Wed.). Peter now advises that our letter to Hyde should include a statement that if the Committee significantly weakens the bill's reforms, the Secy of Labor (and possibly the AG) would recommend a veto. Before we make the final decision on this, we likely want to factor in to our analysis the outcome of the Sen. vote (whether the Kennedy reforms make it into the bill and whether a bill that includes those reforms would be o.k. with us).

That's it for now.

Julie

Immig - H1B visas

Question & Answer on Immigration: H-1B visas
May 20, 1998

Q: According to the INS, the annual cap on H-1B visas has been reached. What is your position regarding the call by industry to increase the number of temporary visas available for highly skilled foreign workers?

A: The Administration believes that the first step in increasing the availability of skilled workers for industry must be increasing the skills of U.S. workers and helping the labor market work better to match employers with U.S. workers. That is why the Administration has tried to encourage the private and the public sector to undertake new efforts to train our workers.

However, we also need to improve the temporary visa program to ensure that U.S. workers do not lose their jobs to temporary foreign workers and that qualified U.S. workers have the opportunity to fill a job before a temporary foreign worker is hired. These reforms would target the visa program's use to employers experiencing genuine skills shortages.

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

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

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

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

The Administration would be pleased to support this bill if it included a meaningful training provision and a more modest increase in the annual cap.

Q: What is your position regarding Senator Abraham's bill that was passed by the Senate on Monday?

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

Background

On April 2, 1998, the Administration (Secretaries Daley and Herman and Attorney General Reno) sent a letter to Congress that opposed Senator Abraham's bill and endorsed the approach advocated by Senator Kennedy (that would effect a temporary increase in the cap, but also included reform to the H-1B program and increased training for U.S. workers). On May 11, 1998, we sent a Statement of Administration Policy to the Senate that strongly opposed Senator Abraham's bill and stated that the Secretary of Labor would recommend a veto.

On April 30, 1998, the Administration sent a letter to the House Judiciary Subcommittee on Immigration supporting Representative Lamar Smith's bill if it is modified to include a meaningful training provision and a more modest increase in the cap. This bill is scheduled to be marked-up by the full Judiciary Committee on May 20th.

Immig - H1B visas

Julie A. Fernandes
05/20/98 06:25:11 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP

cc: Laura Emmett/WHO/EOP, Cathy R. Mays/OPD/EOP
Subject: H-1B update

Bruce/Elena:
The House Judiciary Committee today voted out the Smith bill, including the H-1B reforms that we like. No amendments were offered to weaken the reforms. We sent a letter endorsing the bill and strongly opposing a weakening of the reforms. Peter secured a "Dear Collegue" letter from Gephardt, Bonior and others saying the same.

Lofgren and Pease will offer a training amendment on the floor. This was determined by them to be the fastest way to get the amendment and keep the bill moving (bypassing other committees that might have jurisdiction over the training and application fee components).

The final vote was 23 to 4 (with Bryant, Rogan, Cannon and Rothman voting against).

We do not yet know when the bill will hit the House floor.

Julie

Immig - H1B veto

Julie A. Fernandes
05/14/98 02:18:50 PM

Record Type: Record

To: Elena Kagan/OPD/EOP

cc: Laura Emmett/WHO/EOP
Subject: H-1B -- Hyde letter

Elena,
As you know, the House Judiciary Committee mark-up is now scheduled for next week (Tues. or Wed.). Peter now recommends that the letter to Chariman Hyde include a veto threat. The attached revised version of the letter contains a veto threat and a statement of Administration support for legal immigration (consistent with a request by the AG). I have bolded these two portions of the letter for your review. Thanks.

Julie

HYDE.E

The Honorable Henry J. Hyde
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Hyde:

Today, your Committee will mark-up H.R. 3736, the "Workforce Improvement and Protection Act of 1998" which is intended to address the growing demand for skilled workers in the information technology (IT) industry. H.R. 3736 enacts a temporary increase in the annual cap on the number of visas for temporary foreign "specialty" workers under the H-1B program, while also effecting reforms to the H-1B program that would help target usage of H-1B visas to industries and employers that are actually experiencing skill shortages.

The Administration believes that the first response for increasing the availability of skilled workers for industry must be increasing the skills of U.S. workers and helping the labor market work better to match employers with U.S. workers. Therefore, additional efforts to increase the skill level of U.S. workers and needed improvements to the H-1B program are necessary prerequisites for the Administration to support any short-term increase in the number of H-1B visas available for temporary foreign workers. **Modifications to the H-1B program that appropriately protect U.S. workers are fully consistent with the Administration's longstanding support for legal immigration.** *(the AG requested this language to combat the view that our restriction on use of the H-1B program was an anti-immigrant signal)*

We are pleased that H.R. 3736 as reported from the Immigration and Claims Subcommittee is consistent with one of our primary objectives, insofar as it links a temporary increase in the H-1B cap to the enactment of meaningful reforms to the H-1B visa program. H.R. 3736 would help ensure that U.S. workers do not lose their jobs to temporary foreign workers and that employers have made serious efforts to recruit U.S. workers for open positions so that qualified U.S. workers have the opportunity to fill a job before a temporary foreign worker is hired. Moreover, H.R. 3736 expands enforcement authority to help prevent employer abuses of the H-1B program. These reforms will effectively target H-1B visas to industries experiencing skill shortages.

Unfortunately, H.R. 3736 does not contain any provision to encourage additional training of U.S. workers. Training is a vital component of our strategy to address the long-term demand for highly skilled U.S. workers and to enhance the international competitiveness of important U.S. industries. An effective training strategy would also work to reduce the demand for H-1B visas. The Administration strongly supports amending H.R. 3736 to provide for additional training opportunities for U.S. workers and believes that this training should be funded, in part, through a modest H-1B application fee paid by employers.

The Administration is also concerned that the increase in the annual number of H-1B

visas reflected in this bill is too large, although we agree that the increase should last for only three years. In addition, the Administration does not support provisions in the bill that would impose occupation-based restrictions on the first 65,000 H-1B visas.

The Administration believes that the reforms included in H.R. 3736 would substantially improve the current H-1B program. With the addition of a meaningful training provision, a modest reduction in the level of increase in the annual H-1B visa cap, and modifications to make the bill consistent with U.S. international trade obligations, H.R. 3736 would garner the Administration's strong support. **However, if amendments are adopted that substantially weaken the reform or enforcement provisions of H.R. 3736 or if meaningful provisions for increasing the skill levels of U.S. workers are not adopted, the Secretary of Labor and the Attorney General would recommend that the President veto this legislation.**

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

JANET RENO
Attorney General

ALEXIS HERMAN
Secretary of Labor

Immig - H1B visas

—— DRAFT 5/26/98 DRAFT ——

The Honorable

Dear ______:

I understand that concerns have been raised about how prospective employers of temporary nonimmigrant "professional" workers, admitted under H-1B visas, could comply - and understand their compliance obligations - if the new attestation elements included in H.R. 3736 become effective 30 days after the date of enactment. These concerns arise because on this early effective date the Department of Labor could not yet have published implementing regulations, through notice-and-comment rulemaking, further defining the compliance requirements relating to the new attestations.

As we have conveyed in staff-level conversations, it is our view that the appropriate solution to this problem would be to either: (1) make the new attestation elements in H.R. 3736 effective at a later date, such as 180 days after enactment, to afford the time needed for notice-and-comment rulemaking; or (2) make the new attestation elements effective upon completion of the Department's rulemaking process. Since the latter course introduces some uncertainty in the effective date, because the duration of a rulemaking process can be affected by a variety of factors, we would suggest that you can best address the concerns expressed if the bill were modified to make the attestation elements effective 180 days after enactment.

Thank you for soliciting our views in this matter.

Sincerely,