

May 13, 2013

TO THE MEMBERS OF THE U.S. SENATE COMMITTEE ON THE JUDICIARY:

As you and your colleagues consider S. 744, the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013, we wanted to share our views on this critically important legislation, and provide several recommendations to ensure the many important reforms perform as intended. We represent thousands of employers that rely on highly skilled talent to innovate, design, manufacture, build, and grow allowing us to succeed in the global marketplace, and S. 744 represents the best opportunity in nearly 30 years to align U.S. immigration policy with the current and future direction of the U.S. economy.

We applaud the bipartisan sponsors of S. 744 for collaborating together over the past few months, resulting in a comprehensive bill that would truly modernize a broken and outdated immigration system. We strongly believe many reforms in S. 744 that impact high skilled immigration will enable employers of all sizes in every state to recruit and retain the world's best talent, as well as help reinvigorate U.S. business sectors ranging from energy and manufacturing to medicine and engineering. These reforms are investments in the US economy that support the future of economic growth.

Skilled immigration reform is long overdue. The U.S. economy is struggling to reach its full potential in large part because the demand for highly skilled professionals exceeds the supply; a knowledge gap which will only continue to grow. A recent national survey conducted by the Society for Human Resource Management found that two-thirds (66 percent) of organizations currently hiring full-time staff are having difficulty recruiting for specific jobs (up from 52 percent in 2011), with scientists, engineers, highly-skilled technicians, highly-skilled medical positions and managers and executives cited as among the most challenging positions to fill.

The green card reforms in S. 744 make significant steps toward fixing a system that has left many hard working employees in a state of limbo waiting for approvals and their employers struggling to keep valuable talent within their companies. The proposed system encourages foreign-born innovators and entrepreneurs stay in the U.S. permanently, which fuels job creation throughout our economy.

We also commend the sponsors of S. 744 for proposing important structural improvements to the H-1b visa program, including an increase in the base cap to 110,000 per year, and increasing the current exemption to 25,000 visas a year, while modifying it to apply to U.S. advanced degree holders in science, technology, engineering, and math (STEM). We also welcome the bill's focus on economic demands by including a mechanism that allows the base cap to adjust modestly in response to economic conditions. Demand for H-1b visas has fluctuated with the economy, which demonstrates that fundamentally H-1b usage serves to supplement, not supplant, our own very talented U.S. workforce.

The sponsors of S. 744 have also sought to enhance current law through new requirements and restrictions to ensure that skilled immigration programs work to complement and protect our U.S. workforce. However, as with any ambitious legislation that would create a new set of requirements for U.S. employers, it is essential to closely examine the new mechanisms proposed for the H-1b and L-1 visa programs and ensure that unintended consequences are anticipated and avoided. Essentially, it should enable U.S. employers to use these visa programs to complement and grow their permanent U.S. workforce, maximizing business and investment activity in the U.S. To ensure these and other underlying

immigration modernization goals are met, we urge your support of the following important improvements to the legislation:

Recruitment. The proposed recruitment requirements would force many employers to have each hiring decision subjected to government-imposed hiring standards, and face potential litigation. U.S. employers that are committed to recruiting and growing a predominantly domestic workforce should be given the flexibility to recruit based on best industry practices that serve the best interests of the U.S. economy, and to hire based on clear business interests to secure the most qualified candidates to work in the U.S.

Non-displacement. Our member companies agree with the fundamental principle embodied in current law that H-1B visas should not be used to displace U.S. workers. Non-displacement requirements should be strictly targeted to advance this principle. We are concerned that the non-displacement requirements in S. 744 would disrupt essential business efforts, such as acquisitions, investments in new lines of business, or research and development, particularly during times when other projects or divisions are being closed due to natural evolution of business operations.

We urge the Committee to support approaches that protect against the direct displacement of a U.S. worker due to the hiring of an H-1b worker, while preserving the ability of a U.S. employer to make strategic business decisions that allow for job growth in the U.S.

Outplacement. Many companies in the U.S. provide critical products and services directly at client sites here in the U.S., relying on skilled executives, project managers, and professionals with specialized knowledge that are based in the U.S., or transferred to the U.S. through an L-1 visa. We support the provisions in S. 744 that would ensure that placements of L-1 managers and those with specialized knowledge are under the supervision and control of the L-1 visa sponsor. While we also support the intent of the legislation to permit the placement of L-1 professionals at an affiliate, subsidiary, or parent entity, additional clarifying language is needed.

The broad-based non-displacement attestation requirement for the client would have the practical and unintended effect of denying many U.S. companies in fields such as financial services, health care and energy direct access to essential and specialized technology services in the U.S. Many U.S. employers may have to resort to pursuing these services outside the U.S., pushing jobs and growth opportunities to other countries. For these reasons, we urge the Committee to adopt the approach in S. 744 for H-1b outplacements made by non-dependent companies, which would impose an additional \$500 fee. We recommend that the funds from this fee be deposited in the STEM Education and Training Account created in S. 744.

H-1b Cap Escalator. One of the deficiencies of the current H-1b system is that the annual allotment does not adjust to reflect changing economic demand. The current general H-1b cap is at the same level as it was in 1990, when the economy was one-third the size it is today, and nowhere near as dependent on a technologically educated workforce. As noted above, we welcome the increase in the base cap and the inclusion of a market adjustment mechanism in S. 744.

The adjustment mechanism's formula – an index that factors in the number of H-1b applications from the previous year with changes in the unemployment rate – may not accurately reflect actual demand for skilled workers. For example, the index would factor in an increase in the unemployment rate for skilled workers even when the higher unemployment rate remains below what is considered full

employment in the economy, and thus prevent a true market-driven increase in H-1b visas. We urge the Committee to adopt the mechanism included in the bipartisan Immigration Innovation (I-Squared) Act (S. 169), which simply links an increase in the annual allotment of H-1b visas based on how quickly the cap is reached in that same year.

Spousal Work Authorization. We strongly support the provision in S. 744 that would allow the spouses of H-1b professionals to work in the U.S. Lifting the current prohibition on spousal work would provide financial flexibility for families, improved recruitment and retention capabilities for U.S. employers, and additional talent for the U.S. economy, particularly since spouses of H-1b workers tend to be well educated and highly skilled individuals.

We urge the Committee to support lifting the restriction that would only allow work authorizations for spouses from countries that provide reciprocal treatment to the spouses of American workers residing in those countries. Such a blanket restriction effectively punishes talented individuals for the actions of their home country's government. We suggest giving the State Department the discretion to impose such a restriction. Doing so would give the United States an important diplomatic tool that would help achieve reciprocal spousal work agreements with other countries.

The recommended improvements outlined above do not represent fundamental policy changes in S. 744. Rather, these recommendations are designed to fully advance and achieve modernization in our immigration system, avoid unintended consequences that would work against economic growth, and ensure the H-1b visa and green card system maximizes job-creating innovation and opportunity embraced in the United States.

We look forward to working with you and the Committee to advance the Border Security, Economic Opportunity, and Immigration Modernization Act through the Senate Judiciary Committee, as well as the U.S. Senate, in the months ahead. An immigration system that enables the knowledge economy of the U.S. to grow and achieve its full potential is in our national interest, and through continued bipartisan collaboration, we can finally achieve this vital goal.

Very respectfully yours,

National Organizations

Alliance of Business Immigration Lawyers
American Council of Engineering Companies
American Council on International Personnel
American Immigration Lawyers Association
ASCL
BSA | The Software Alliance
College and University Professional Association for Human Resources
Compete America
CompTIA
Consumer Electronics Association
Financial Services Roundtable
HR Policy Association
Information Technology Industry Council
The Internet Association

Motor & Equipment Manufacturers Association
National Association of Manufacturers
National Black Chamber
National Foreign Trade Council
Partnership for a New American Economy
Semiconductor Industry Association
Society for Human Resource Management
TechAmerica
TechNet
U.S. Chamber of Commerce

State and Local Organizations

Arizona Chamber of Commerce
Arizona Technology Council
Bay Area Council
Cedar City (UT) Chamber of Commerce
Chamber of Commerce Southern New Jersey
Colorado Technology Association
Connecticut Technology Council
Davis (CA) Chamber of Commerce
Greater Bakersfield Chamber of Commerce
Greater Reading Chamber of Commerce & Industry
Illinois Technology Association
Kansas Chamber of Commerce
Massachusetts Technology Leadership Council
Minnesota High Tech Association
Myrtle Beach Area Chamber of Commerce
New Hampshire Technology Council
New Jersey Technology Council
New York Technology Council
North Carolina Technology Association
Northeast Ohio Software Association
Northern Virginia Technology Council
Orange County Technology Alliance
Oxnard (CA) Chamber of Commerce
Rhode Island Tech Collective
Schuykill Chamber of Commerce
Silicon Valley Leadership Group
Tampa Bay Technology Forum
Technology Association of Georgia
Technology Association of Oregon
Washington Technology Industry Association
Winona (MN) Area Chamber of Commerce