



## Statement of the U.S. Chamber of Commerce

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**ON: "IMMIGRATION REFORMS NEEDED TO PROTECT SKILLED AMERICAN WORKERS"**

**TO: SENATE COMMITTEE ON THE JUDICIARY**

**DATE: MARCH 17, 2015**

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The Chamber's mission is to advance human progress through an economic, political and social system based on individual freedom, incentive, initiative, opportunity and responsibility.

The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America's free enterprise system.

More than 96% of Chamber member companies have fewer than 100 employees, and many of the nation's largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large.

Besides representing a cross-section of the American business community with respect to the number of employees, major classifications of American business—e.g., manufacturing, retailing, services, construction, wholesalers, and finance—are represented. The Chamber has membership in all 50 states.

The Chamber's international reach is substantial as well. We believe that global interdependence provides opportunities, not threats. In addition to the American Chambers of Commerce abroad, an increasing number of our members engage in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on issues are developed by Chamber members serving on committees, subcommittees, councils, and task forces. Nearly 1,900 businesspeople participate in this process.

Statement for the Hearing Record  
before United States Senate Committee on the Judiciary  
Tuesday, March 17, 2015

Hearing on  
Immigration Reforms Needed to Protect Skilled American Workers

Statement of  
U.S. Chamber of Commerce

On September 7, 2001, U.S. Chamber of Commerce President and CEO Tom Donohue testified before the Senate Immigration Subcommittee regarding immigration reform. The expectation of many in the Senate hearing room was that immigration legislation would soon be voted on in the Senate and quickly moved to the House. That timetable of course changed after September 11<sup>th</sup>, and properly so, while the Congress created a new Department of Homeland Security and the nation grappled with pressing national security concerns. But over the ensuing years the Congress has continued to be unable to pass commonsense immigration reform. There are many reasons and much finger-pointing.

Underpinning this gridlock are misconceptions about the role of immigrants in the United States. The Chamber addressed many of these misconceptions in its earlier publication [Immigration Myths and Facts](#), to provide a summary of the macroeconomic studies that rebut the contention that immigrants are a burden on federal, state, and local tax rolls and take away jobs from native-born Americans. In our more recent publication [Open for Business: Spurring Local Economic Growth by Welcoming Immigrants](#), we summarize some of the latest experiences of state and local governments, working with partners in the private sector, in recruiting immigrants into their communities to revitalize their economies. This revitalization in many communities recognizes both that immigrants create businesses as entrepreneurs and fill gaps in the local labor force, the former phenomenon addressed in an earlier study we completed, [Immigrant Entrepreneurs: Creating Jobs and Strengthening the Economy](#).

Most Americans and most members of Congress, of all political stripes, appreciate that immigration is a key aspect of our nation's heritage.<sup>1</sup> As a board member of an immigration restrictionist group has said, "Of course I admire and respect immigrants, as we all should because every American is either an immigrant or the descendent of ancestors who came here from somewhere else."<sup>2</sup> While there is near universal devotion to our nation's immigrant heritage, that is not enough to drive a problem-solving commitment on immigration; instead it just means that all are passionate about the subject.

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<sup>1</sup> Illustrating the point, from the conservative view: "Every one of us—whether it's us, or our parents, or our grandparents or our great-grandparents—we all are the children of those who fled oppression seeking freedom. I think that's the most fundamental DNA of what it means to be an American." (Sen. Ted Cruz – R-TX); "Immigration is a vital component that helped found our country and continues to make it great." (Sen. Mike Lee – R-UT); "America's freedoms and opportunities draw people from every nation." (Rep. Raúl Labrador – R-ID). And by way of example from the liberal perspective: "The United States is a proud nation of immigrants." (Rep. Luis Gutiérrez – D-IL); "The rich tapestry of our country came together through immigration." (Sen. Elizabeth Warren – D-MA).

<sup>2</sup> Professor Jan Ting, member of the board of the Center for Immigration Studies, an immigration restrictionist organization, testifying before the Senate's Immigration Subcommittee, December 10, 2014.

But it is time to move past passion, to problem solving. Members of Congress and the president are elected to work together to solve our country's problems – thus, not finalizing meaningful, passable pieces of legislation that can be signed into law to address the dysfunction of our immigration system should not be an option. This goal does not dictate any set legislative path. In the last Congress, the Senate passed a comprehensive bill but that is only one possible approach. Other routes can be taken, while being fully responsive to the reality that many aspects of reform are interlocking.

The Chamber supports immigration because immigrants have always been a key to the success of our economy. Thus, we will continue to champion commonsense immigration reform, of which skilled immigration – the topic of this hearing – is one key component.

Although our statement is lengthy, its major points can be summarized as follows:

- First, there is a clear need to develop and educate more U.S. workers in the STEM (Science, Technology, Engineering, Math hereafter referred to as “STEM”) fields. The Chamber and its members are undertaking many activities to meet this goal.
- Second, however, there currently are insufficient numbers of qualified and available American workers in the STEM fields which undermines the ability of U.S. employers to compete, and therefore remain viable in the global marketplace. In fact, studies demonstrate the beneficial impact of H-1B workers and skilled immigration (and immigration generally). Those who argue otherwise distort the data, confuse the types of STEM occupations for which employers are recruiting under the H-1B visa program, and fail to understand that unemployment rates vary widely depending on occupation and region, irrespective of the national unemployment rate
- Third, Congress has enacted labor market protections for the H-1B category, while balancing the need to ensure the government does not interfere in the hiring decisions of private employers. Perhaps the predicates for worker safeguards need to be updated, but a wholesale disruption is not needed in the balance between these safeguards and ensuring skilled jobs get filled here at home. And, enforcement regarding H-1B compliance has already been ramped up – under this Administration there are now over 15,000 site visits annually to H-1B employers to confirm compliance.
- Fourth, it cannot be seriously argued that our existing caps under the H-1B program or for permanent high skilled immigration are realistic in today's economy. These caps were set in 1990, and our economy has grown since then.
- Fifth, the bipartisan Immigration Innovation Act should be actively considered, because it would address the concerns of the business community while stepping up education and training in STEM.

## THE ECONOMIC IMPERATIVE: A MODERNIZED HIGH-SKILLED IMMIGRATION SYSTEM COUPLED WITH REFORMS TO DEVELOP AND PROTECT AMERICAN HIGH-SKILLED WORKERS

There has been sharp disagreement about the extent to which our nation can assimilate new skilled immigrants and the extent to which Congress should revise U.S. immigration laws to both reflect the realities of the global economy and protect our domestic workforce.

### A. EDUCATION AND TRAINING

Of course, first and foremost the United States must expand domestic sources of talent, and the Chamber, and our member companies and associations, is strongly committed to dedicating resources toward improving education and specifically promoting education and training for skilled positions in the science, technology, engineering, and math fields in the United States.<sup>3</sup> These are the very fields driving innovation and much job growth, and the fields where employers sponsor foreign-born high-skilled workers to be hired in the United States.

Many member companies and associations of the Chamber have their own education support programs in order to address skill gaps on their own.<sup>4</sup> For example, one large diversified manufacturing company has taken the following steps: While the company typically recruits only graduate students for its professional jobs, it also has created a program where it seeks out highly qualified candidates with undergraduate degrees who the company puts through a two-year corporate professional management program for recruited university graduates in the fields of engineering, manufacturing, finance, and other business specializations to expose participants to rotational assignments throughout the organization to develop both technical and management skills and create a diverse, knowledgeable global talent pool. Additionally, the company is a major contributor to U.S. colleges and universities and academic research projects.

The U.S. Chamber of Commerce Foundation has its own educational arm, the Center for Education and Workforce, which promotes the rigorous educational standards and effective job training systems needed to preserve the strength of America's greatest economic resource, its workforce. The Chamber Foundation's Center for Education and Workforce has released reports addressing what kind of business involvement it would take to truly make a difference in K-12 schooling. For example, *Partnership is a Two-Way Street: What it Takes for Business to Help Drive School Reform*,<sup>5</sup> *Business Education Partnership*,<sup>6</sup> and *Breaking Through: A Guide for Business Engagement in Education*<sup>7</sup> explain and analyze how business can function as a critical customer, a partner, or a policy advocate in primary and secondary education. Using examples in Texas, Tennessee, Massachusetts, and Oklahoma, among others, these reports show how the Center fosters businesses adopting important roles to step up to make a big difference in K-12 schooling. In each case, business leaders talked seriously and bluntly with educators. They recruited respected experts to lead the reform efforts. They built sustainable structures, brought top-level executives to

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<sup>3</sup> For example, the U.S. Chamber Foundation's Center for Education and Workforce does extensive work on getting more businesses, universities, and students to interface and coordinate on this important subject, and has developed checklists on the subject for employers, educational institutions, and potential workers receiving education and training [http://www.uschamberfoundation.org/sites/default/files/media-uploads/checklists\\_FINAL.pdf](http://www.uschamberfoundation.org/sites/default/files/media-uploads/checklists_FINAL.pdf).

<sup>4</sup> See the Compete America coalition website for a summary of what some of the nation's largest high tech companies are doing to support education and workforce development <http://www.competeamerica.org/workforce/american-workforce>.

<sup>5</sup> <http://bit.ly/1AsTOjG> (June 2011).

<sup>6</sup> <http://www.uschamberfoundation.org/sites/default/files/publication/edu/Business%20Education%20Partnership.pdf> (April 2013).

<sup>7</sup> <http://www.uschamberfoundation.org/publication/breaking-through-guide-business-engagement-education> (January 2014).

the table, and stayed engaged. They tackled tough questions, understood that some steps would be political and unpopular, and took the heat when there was pushback. The Foundation's Center also looks specifically at STEM education, such as its report on *The Case for Being Bold: A New Agenda for Business in Improving STEM Education*,<sup>8</sup> and often finds that STEM education issues arise as the focus of interest and conversation among participants in the Center's talent management activities.

Among its other ongoing work, the Chamber Foundation's Center for Education and Workforce conducts regional training for local and state chamber and business leaders, to create a leadership network in as many states as possible focused on the role business can play in improving education and workforce training. Also, the Center for Education and Workforce conducts an ongoing assessment of K-12 education in all 50 states and the District of Columbia through its annual *Leaders and Laggards*<sup>9</sup> report.

Recently, in response to a growing skills gap that threatens the ability of companies to grow and compete in today's economy, the Center for Education and Workforce released its *Managing the Talent Pipeline: A New Approach to Closing the Skills Gap*<sup>10</sup> report. Through this latest initiative, the Center is engaging employers and their partners across the country in developing a demand-driven approach to employer-led education and workforce partnerships. By extending lessons learned from innovations in supply chain management, this initiative calls for employers to play a new and expanded leadership role as "end-customers" of their education and workforce partnerships. From there, employers can proactively organize and manage talent supply chain partnerships with measures and incentives tied to performance. Benefits for employers include a reduced skills gap and a better prepared workforce as well as higher returns on education and workforce investments for policymakers. Over the next year, the Center will organize a network of leading practitioners and change agents that seek to accelerate talent supply chain practices in their communities all across America.

Another focus of the Center for Education and Workforce is higher education, recognizing that the U.S. higher education system has long been one of the country's crown jewels and that with the right leadership and policy choices, it will remain so. For example, in *Transforming Higher Education through Greater Innovation and Smarter Regulation*,<sup>11</sup> the Center looks at how academic programs and institutions must be transformed to serve the changing educational needs of a knowledge economy. Increasing international competition, a decline in government funding, changing demographics, and an increasingly mobile population are just some of the factors threatening the status quo. If innovation in higher education is discouraged through funding that fails to reward quality and outcomes, or simply thwarted by complacency within traditional intuitions, then the U.S. might lose its edge to faster moving international competitors.

## **B. ENSURING JOBS IN THE UNITED STATES REQUIRING HIGH-SKILLED PROFESSIONALS ARE FILLED**

At the heart of skilled immigration reform should be recognition that without sufficient numbers of highly skilled, highly educated workers to fill the technology-related jobs growing in the U.S. economy, the U.S. risks its leadership as the global leader in innovation. Globalization of

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<sup>8</sup> <http://www.uschamberfoundation.org/publication/STEM> (April 2011).

<sup>9</sup> <http://www.uschamberfoundation.org/sites/default/files/Leaders%20%26%20Laggards%202014.pdf> (September 2014).

<sup>10</sup> <http://www.uschamberfoundation.org/sites/default/files/Managing%20the%20Talent%20Pipeline.pdf> (November 2014).

<sup>11</sup> <http://bit.ly/18PYad9> (May 2011).

the workforce, especially in the science and engineering fields, is expanding, not contracting. The multi-disciplinary dynamics of geography, education and mobility mean that much high-skilled work can be located and performed beyond the borders of where the employer's business is based, due not only to increasing numbers of individuals with science and engineering skills in developing nations but also because of increasing international mobility. The result is a trend where talented people cross borders in search of interesting and lucrative work, employers recruit and move people internationally, and businesses invest and capitalize research and development beyond national borders.<sup>12</sup> In other words, as reiterated by the Federal Reserve Bank of Dallas, since U.S. companies can often employ their workers here or overseas "the U.S. has a lot to gain from rewriting U.S. immigration policy to focus more on high-skilled and employment-based immigration."<sup>13</sup>

### H-1B Program for High-Skilled Professionals

Science, Technology, Engineering, and Math (STEM) jobs are some of the occupations predicted by the Bureau of Labor Statistics to continue to be fastest growing through 2022.<sup>14</sup> STEM jobs include a broad-range of positions requiring quantitative skills, but in the immigration policy context STEM jobs refers particularly to jobs requiring a Bachelor's degree or above primarily, although not exclusively, in a physical, life, or computer science field or in engineering. It is not surprising, therefore, that STEM professionals holding positions requiring a Bachelors or higher are the beneficiaries of the majority of H-1B visa petitions.<sup>15</sup>

Naturally, there is wide agreement that the first focus should be on developing a pipeline of American workers qualified to fill such STEM jobs.<sup>16</sup> But leaving jobs unfilled doesn't help businesses trying to create and retain jobs in the U.S. economy. Labor market experts interpret a job opening of longer than a month as an indicator that qualified candidates are hard to find. Such an interpretation of vacancy survey data is empirically grounded in both historical and many contemporary labor market surveys from private firms and state governments. In fact, in 2013 researchers found that "H-1B occupations in STEM fields are particularly difficult to fill: 43 percent of new vacancies for STEM occupations with H-1B requests go unfilled after a month."<sup>17</sup>

Increasing H-1B numbers to ensure these types of jobs are filled itself helps American workers since wages for American workers increase at least 7 percent for every 1 percent increase

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<sup>12</sup> National Science Foundation, "Science and Engineering Indicators 2014" <http://www.nsf.gov/statistics/seind14/index.cfm/chapter-3/c3h.htm>. The majority, 84.1 percent, of research and development (R&D) by U.S. multi-national companies is still performed in the U.S., with most non-U.S. R&D by these companies being performed in Europe although there is an increasing share by these companies' Asian affiliates (Chapter 4 conclusions on R&D). But countries with the most significant growth in the last 20 years in researchers – defined by NSF as workers engaged in the creation and development of new knowledge, products, and processes – have been China and South Korea (Chapter 3 conclusions on Global Workforce).

<sup>13</sup> Pia Orrenius and Madeline Zavodny, "From Brawn to Brains: How Immigration Works for America," 2010 Annual Report (Federal Reserve Bank of Dallas, 2010) at p.14.

<sup>14</sup> See, the employment projections for 2012-2022 by the Bureau of Labor Statistics [www.bls.gov/news.release/pdf/ecopro.pdf](http://www.bls.gov/news.release/pdf/ecopro.pdf).

<sup>15</sup> The H-1B visa category is reserved for jobs requiring a Bachelor's degree or above and is primarily used to hire foreign STEM professionals. See USCIS Characteristics of H-1B Specialty Occupation Workers for FY2012 (latest report available) <http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/H-1B/h1b-fy-12-characteristics.pdf>, Tables 8A, 8B, 9A, and 9B.

<sup>16</sup> See, e.g., Title IV of the Immigration Innovation Act (S. 153).

<sup>17</sup> Jonathan T. Rothwell and Neil G. Ruiz "H-1B Visas and the STEM Shortage: A Research Brief" ([http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2262872](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2262872), May 2013) at p.3. When Brookings researchers looked at job openings data for the 100 largest metropolitan areas, they concluded that H-1B STEM job vacancies are harder-to-fill than other job openings as evidenced by the fact that STEM occupations with H-1B requests had 7 percent more vacancies left unfilled for more than one month than other jobs (43 percent of H-1B STEM jobs as compared to 36 percent of other job openings were unfilled for more than one month).



in H-1B numbers.<sup>18</sup> Economists also estimate that if the H-1B program was expanded, employment will increase by 227,000 jobs in the first year after such expansion and will continue to expand with a net increase of 1.3 million jobs over the first 30 years after H-1B program expansion. Using the same modeling, the Gross Domestic Product is estimated to expand by \$22 billion if the H-1B program is expanded, with more than \$158 billion expansion over 30 years. Employment and gross state product is estimated to increase for all states and in each of the first 30 years as a result of H-1B program expansion.<sup>19</sup>

Nevertheless, some advocates argue for the position that there is no shortfall of native-born Americans for open positions in the natural sciences, engineering, and computer science and thus no need for foreign-born high-skilled H-1B workers.<sup>20</sup> Three critical facts, among several others, belie this approach.

First, this argument ignores the fact that over 35 percent of positions classified as STEM jobs in the United States economy are those that require less than a Bachelor's degree (none of which can be filled by H-1B workers who must have a university degree and work in a job requiring such a degree), while immigration reform efforts target occupations filled by individuals with a Bachelor's and above, including the approximately 20 percent of STEM jobs that require a master's degree or higher.<sup>21</sup>

Second, this approach misreads much of the data on unemployment for "STEM" degree holders and "STEM" degree holders finding employment in non-STEM jobs. STEM is a term often used to include the social sciences – and, yes, there are very different employment outcomes for Americans with degrees in anthropology as compared to engineering. And, individuals who use their quantitative skills and STEM degree to work in business or finance or as a physician are counted as STEM grads working outside of STEM – even though they are employed in high paying jobs.<sup>22</sup>

Third, employment growth in positions requiring graduate level STEM training is exploding, far out-pacing the American STEM training pipeline of native-born students. During the period between the 2002-2003 academic year and the 2011-2012 academic year, 23 percent of graduate degrees earned by foreign students were in the core STEM fields of life and physical sciences, engineering, computer science, and math compared to 2 percent of graduate degrees earned by U.S.

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<sup>18</sup> Giovanni Peri, Kevin Shih, and Chad Sparber, "Foreign STEM Workers and Native Wages and Employment in U.S. Cities" (National Bureau of Economic Research (NBER) Working Paper No. 20093, May 2014).

<sup>19</sup> Frederick R. Treyz, Corey Stottlemeyer, and Rod Motamedi, "Key Components of Immigration Reform: An Analysis of the Economic Effects" (Regional Economic Models, Inc., July 2013 <http://www.remi.com/immigration-report>).

<sup>20</sup> For example, see the comments of Jesse Jackson and the AFL-CIO. "We need to get rid of H-1B workers. There are Americans who can do that work." Jesse Jackson speaking in Silicon Valley in December 2014 <http://fortune.com/2014/12/20/jesse-jackson-talks-diversity-in-silicon-valley/>. "The continued employer demand for more [H-1B] guest worker visas says more about what is wrong with our economy than about the most urgent problems with our immigration system." AFL-CIO Legislative Alert letter sent to Senators about high skilled immigration reform (in opposition to the Immigration Innovation Act, S. 153), January 20, 2015.

<sup>21</sup> For breakdown of STEM jobs by educational requirement (below Bachelors, Bachelors, Masters and above) look to data from BLS and the American Community Survey from the Census Bureau, e.g., David Neumark, Hans P. Johnson, Marisol Cuellar Mejia, "Future Skill Shortages in the U.S. Economy?" (National Bureau of Economic Research (NBER) Working Paper No. 17213, July 2011), Tables 4 and 5.

<sup>22</sup> See, e.g., National Science Foundation annual report, "Science and Engineering Indicators 2014" <http://www.nsf.gov/statistics/seind14/index.cfm/chapter-3/c3h.htm> (Figures on Occupational Classifications, Figure 3-11), showing that STEM occupations include social sciences, physical sciences, life sciences (except medicine), engineering, and computer and mathematical sciences, and do not include individuals with training in those fields working in other occupations. See also, Senate Joint Economic Committee (April 2012) [http://www.jec.senate.gov/public/index.cfm?a=Files.Serve&File\\_id=6aaa7e1f-9586-47be-82e7-326f47658320](http://www.jec.senate.gov/public/index.cfm?a=Files.Serve&File_id=6aaa7e1f-9586-47be-82e7-326f47658320) ("We do not include medical sciences in our definition of STEM.")



citizens and green card holders.<sup>23</sup> Currently, the number of American students pursuing STEM fields is growing at less than one percent per year, and by 2018 there will be more than 230,000 advanced degree STEM jobs that will not be filled.<sup>24</sup>

### Green Card<sup>25</sup> Policy for Skilled Immigrants

Among other deficiencies, current green card law leads to unfairly different per-country outcomes and also fails to prioritize foreign-born students trained in the United States if those students are offered jobs for which there are insufficient numbers of qualified and available U.S. workers.

A professional worker born in India with a U.S. master's degree must wait nearly a decade for a green card to be available after a sponsoring employer documents that U.S. workers are not available in sufficient numbers.<sup>26</sup> During the many-year wait, this worker cannot be promoted until green card processing is completed. This cumbersome system is not fair to the immigrants, or the employers who want to treat these individuals as the high potential contributors they were hired to be. When there is an enormous disparity in demand among sending countries, maintaining an equal per-country share can result in much longer waits for certain nationalities, and thus when the U.S. selects immigrants based on their skill sets Congress should reconsider whether any per-country caps apply.

Foreign students completing degrees here in the United States are especially likely to be successful Lawful Permanent Residents (LPRs) in that they speak English and have already developed familiarity with our culture, business and research practices, and entrepreneurial spirit through their training and research at America's universities. Creating green card categories targeted to allow these individuals to remain should be a priority, if they have a job offer for which there are insufficient numbers of Americans to fill or can show funding for their own business. Analysis in a longitudinal study of new immigrants that tracked immigrants for several years<sup>27</sup> strongly reinforced the finding that where highly skilled immigrants received their education—in the United States versus abroad—made a big difference in how they fared in the U.S. labor market, with U.S. educated immigrants being employed and employed in their field at much higher rates than other immigrants.<sup>28</sup>

### L-1 Program for Intracompany Transfers

Some visa programs do not carry numerical caps. For over forty years, for example, a cornerstone of business operations for those that do business both in the United States and abroad

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<sup>23</sup> “Science, Technology, Engineering, and Mathematics Education: Assessing the Relationship between Education and the Workforce” (GAO-14-374, General Accountability Office, May 2014) at p. 11. <http://www.gao.gov/assets/670/663079.pdf>.

<sup>24</sup> See, e.g., McKinsey Global Institute, “An Economy that Works: Job Creation and America's Future,” (June 2011) [http://www.mckinsey.com/Insights/MGI/Research/Labor\\_Markets/An\\_economy\\_that\\_works\\_for\\_U.S.\\_job\\_creation](http://www.mckinsey.com/Insights/MGI/Research/Labor_Markets/An_economy_that_works_for_U.S._job_creation).

<sup>25</sup> Lawful Permanent Resident (LPR) status is evidenced by a Permanent Resident card, commonly called a “green card.”

<sup>26</sup> The Visa Bulletin identifies visa availability for green cards and is issued monthly by the Department of State's Immigrant Visa Control and Reporting Division <http://travel.state.gov/content/visas/english/law-and-policy/bulletin.html> (see Second Preference Employment-Based availability for the example of a native of India with a U.S. graduate degree).

<sup>27</sup> A “New Immigrant Study” was conducted in 2003 by RAND, Princeton, Yale and New York University tracking extensive information for newly minted LPRs <http://nis.princeton.edu/project.html> resulting in over 40 publications, technical reports, and working papers, most of which are linked on the NIS-Princeton website <http://nis.princeton.edu/papers.html>.

<sup>28</sup> See, “Uneven Progress: The Employment Pathways of Skilled Immigrants in the United States” (Migration Policy Institute, October 2008), at Figure 3 (p.27) and Figure 4 (p.29) <http://www.migrationpolicy.org/research/uneven-progress-employment-pathways-skilled-immigrants-united-states>.

has been the ability to transfer managers, executives, and specialized knowledge personnel across national boundaries in order to harmonize operations, expand markets, service clients, and share knowledge. Such transfers are for skilled personnel only, and are accomplished through L-1A visas for managers and executives and L-1B visas for specialized knowledge employees. Specialized knowledge may be best summarized as an advanced expertise about something a company values in its ability to do business. L-1B visas for specialized knowledge staff are an important tool in allowing companies to manage their workforce and intracompany talent pool without regard to borders.

Controversy has sometimes surrounded the use of the L-1 program and especially the L-1B category, but appropriate use of the L-1B classification by careful and responsible employers plays a direct role in supporting job creation and job retention in the United States, as well as expanding advanced manufacturing, increasing exports, and encouraging foreign direct investment.

No intracompany transfer visa should be approved without eligibility under the controlling statute and regulations. Likewise, when visas for key staff already employed within an organization are inexplicably delayed or denied, it appears that agency resources are being spent inappropriately. Such delays or denials do not enhance compliance or enforcement and do nothing except disrupt carefully-laid business plans and create significant costs to the company and the American economy. The L-1 visa program should not be dismantled or restricted. A strong economy that can continue to grow, innovate, and create jobs is in our nation's interest, and in the 21st century economy, intracompany transfers are an inherent part of promoting job growth and innovation here in the United States.

### **C. PROTECTING THE INTEGRITY OF THE SKILLED IMMIGRATION SYSTEM**

Congress has embedded safeguards into U.S. immigration law to protect U.S. workers in a variety of ways when it comes to both temporary worker programs and the grant of Lawful Permanent Resident (LPR) status.<sup>29</sup> The Chamber has vocally supported reforms in the past that ensure American workers are not being displaced, that wages paid to foreign-born workers are the greater of actual internal wages paid to an employer's similar American workers or prevailing wages in the area of employment for similar workers, and that proper recruitment practices are in place. What the U.S. Chamber will not support are broad-brush changes in the name of "reform" that make the skilled immigration system impossible to use by employers engaging in regular and ongoing on-campus recruitment at American universities and competitive recruitment of American workers.

When Congress created in 1990 the Labor Condition Application, the idea was to impose, for the first time, an obligation on H-1B employers to attest to wages and working conditions for H-1B professionals, in a public record subject to scrutiny. Prior to 1990, H-1B employers had no labor market protection obligations. In 1990, Congress was looking to balance this new mandate and obligation for employers with clarity that the government would not be interfering in an employer's hiring decisions. Over the last 25 years, a variety of changes have been made to recalibrate how much government oversight, by either the agencies or Congress, is necessary to ensure employers do in fact pay appropriate wages, give notice of its H-1B filings, and offer the same terms and conditions to H-1B workers as Americans. For example, in 1998 Congress passed legislation requiring separate regulation of dependent employers. The prerequisite for the new

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<sup>29</sup> With regard to high-skilled immigrants see, e.g., §§212(a)(5), 212(n), 212(p) of the Immigration and Nationality Act.

duties was that the sponsored H-1B worker not be a highly compensated or highly educated individual compared to the H-1B pool generally – at the time Congress determined this would be individuals earning more than \$60,000 annually or in possession of a master’s degree or above. While the predicates to the intended obligations established by this legislation might need to be modernized, the agencies have already promulgated detailed provisions that, if applicable, lay out firm parameters for recruitment, layoff, and secondary displacement responsibilities.

In 2008, as various Senators have repeatedly pointed out, U.S. Citizenship and Immigration Services (USCIS) issued a compliance assessment report regarding the H-1B category.<sup>30</sup> This 2008 assessment from USCIS, following on the heels of the 2007 initial introduction of “Durbin-Grassley” anti-fraud legislation,<sup>31</sup> identifies various indicators of possible H-1B abuse, and has been acted upon. In fact, many of the concerns identified by Senators Durbin and Grassley have been the subject of changed agency procedures and agency enforcement since the legislation was initially presented for consideration in the Senate. USCIS’s Fraud Detection and National Security (FDNS) directorate, for example, has increased from under 10 staff to over 900 auditors that now conducts over 15,000 annual site visits on H-1B employers to address the issues that certain Senators set up as the problem with the H-1B program. In each and every H-1B site visit, FDNS asks about LCA (Labor Condition Application) compliance. The site visits are conducted randomly, without notice, and thus no employer can prepare. This administrative review occurs for all large users of the H-1B program, both dependent and non-dependent.

#### **D. OUTDATED AND FIXED NUMERICAL LIMITATIONS**

In an embarrassing display of dysfunction, instead of fostering the job creation and retention that occurs by ensuring high-skilled jobs filled, the H-1B caps ensure that U.S. employers large and small are unable to fill their needs with the appropriate individuals. In the first 5 business days of April 2014 all of the 85,000 H-1B visa numbers for foreign professional hires for the government’s entire fiscal year 2015 were assigned,<sup>32</sup> 6 months before the start of the fiscal year. This meant that as of April 2014 no other business could hire a single new H-1B professional until October 1, 2015 (when the government’s next fiscal year begins). The same dynamic occurred in April 2013, as well as April 2008 and April 2009, and is expected to happen in April 2015. In every year since 1997 the H-1B cap has been met prior to the end of the fiscal year – except the three-year period where the cap was set at 195,000, when H-1B numbers utilized were 163,600, 79,100, and 78,000, showing that employers filed based on market needs and that the 85,000 figure is generally too low except when the market is slumping.<sup>33</sup> And, in nine of the years since 1997, the cap was met prior to the beginning of the fiscal year, including four years when the cap was met in the first week that petitions could be filed.<sup>34</sup>

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<sup>30</sup> U.S. Citizenship and Immigration Services, “H-1B Benefit Fraud & Compliance Assessment” <http://bit.ly/18PQ703> (September 2008).

<sup>31</sup> S. 1035 in the 110<sup>th</sup> Congress. First introduced in 2007 this legislation has been reintroduced in every Congress since then.

<sup>32</sup> See USCIS, April 7, 2014 <http://www.uscis.gov/news/uscis-reaches-fy-2015-h-1b-cap>. There is a 65,000 cap in general plus 20,000 for individuals who have earned a U.S. graduate degree.

<sup>33</sup> Demand for the H-1B program is not driven by the cap, instead demand for this program is based on employer new hiring needs and inability to find qualified American workers in sufficient numbers. See, e.g., Jill H. Wilson, “Immigration Facts: Temporary Foreign Workers” (Brookings Institution, June 2013) <http://www.brookings.edu/research/reports/2013/06/18-temporary-workers-wilson>, and Stuart Anderson, “H-1B Visas Essential to Attracting and Retaining Talent in America” (National Foundation for American Policy, May 2013) <http://www.nfap.com/pdf/NFAP%20Policy%20Brief%20H-1B%20Visas%20May%202013.pdf>, at p. 6-7.

<sup>34</sup> See, summary assembled of H-1B cap dates FY92-FY15 based on USCIS data [http://immigration.uschamber.com/uploads/sites/400/U.S.CC\\_USCIS\\_H1B\\_petition\\_data\\_and\\_cap\\_dates\\_FY92\\_FY15.pdf](http://immigration.uschamber.com/uploads/sites/400/U.S.CC_USCIS_H1B_petition_data_and_cap_dates_FY92_FY15.pdf).

It should be emphasized that caps on green cards and temporary worker programs with caps have fixed numerical limits set in 1990. These 1990 numerical limits fail to recognize that demand for immigrant staff fluctuates with the condition of the U.S. economy—rising when times are good and falling when they are bad. The caps, meanwhile, are held at a constant. This should change.

Furthermore, U.S. temporary worker program numerical limits fail to recognize that there is global competition across much of the economy. American companies are in a global competition for human talent and human capital. Take heavy equipment manufacturing, for example. In the 1980s, leading American manufacturers of heavy equipment had little or no Chinese competition but today have competition from dozens of Chinese manufacturers producing equipment specifically for the Asian markets. Significantly, while such U.S. manufacturers typically pursue the great majority of their research and development (R&D) efforts in the United States, most of heavy equipment sales globally are now outside the United States. Without access to sufficient numbers of H-1B visas, these American companies cannot complement their hires of American engineers with the foreign-born engineers selected, most commonly through regular on-campus recruiting activities at American universities. This story plays out across the U.S. economy, in businesses large and small and across sectors and industries looking to hire highly skilled professionals.

Perhaps most critically, the unchanging limits on temporary worker programs provide no space to be responsive to changing needs in various sectors. Whatever the unemployment rate for the United States as a whole at any given time, the demand for specific kinds of workers in various sectors of the economy and in various locales can be high.<sup>35</sup> For instance, today there are remarkably low unemployment rates for native-born American citizens in certain jobs that do not require a college education,<sup>36</sup> such as Social and Human Service Assistants (2.9 percent unemployment), Phlebotomists (1.4 percent unemployment), Valve Repairers (3.0% unemployment), and Industrial Machinery Mechanics (2.8% unemployment), as well as some very low unemployment rates for certain highly skilled professionals like Electrical and Electronic Engineers (1.2% unemployment), Financial Analysts (2.2% unemployment), Computer Programmers (2.4% unemployment), Software Developers (2.9% unemployment), and Accountants (3.0% unemployment).<sup>37</sup> These data compare to national unemployment of 5.6% as of January 2015.<sup>38</sup> Under these circumstances, the U.S. economy would benefit from channels of legal immigration that are flexible enough to respond to employer demand to immediately hire individuals in particular occupations at a particular time and place. Temporary worker programs, if constructed correctly, provide just the sort of flexibility that is required in many industries.<sup>39</sup>

Immigrants are one solution to insufficient numbers of qualified and available American workers that will inevitably exist at any given time in different sectors of an economy as diverse as

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<sup>35</sup> Darrell M. West, “The Paradox of Worker Shortages at a Time of High National Unemployment” (Brookings Institution, April 2013) [http://www.brookings.edu/~media/research/files/papers/2013/04/10%20worker%20shortage%20immigration%20west/west\\_paradox%20of%20worker%20shortages.pdf#page=2](http://www.brookings.edu/~media/research/files/papers/2013/04/10%20worker%20shortage%20immigration%20west/west_paradox%20of%20worker%20shortages.pdf#page=2) at p.2.

<sup>36</sup> Such positions that do not require a college education would not be eligible for H-1B classification, and in fact would have no existing visa category through which legal sponsorship in a temporary worker program would be possible absent a showing that the position is seasonal or a one-time, peakload, or intermittent need (which would then qualify for the position for the H-2B program).

<sup>37</sup> Compiled as of January 12, 2015 from Current Population Survey, a project of the Bureau of Labor Statistics and the Census Bureau. The data set is pooled monthly CPS samples for 12 months --December 2013 through November 2014. Observations were weighted using the BLS composite monthly weight variable. Monthly weights were divided by 12, so totals are estimates of average monthly employment over the year.

<sup>38</sup> Id.

<sup>39</sup> Alexander Nowrasteh, “How to Make Guestworker Visas Work” (Cato Institute, 2013) [http://object.cato.org/sites/cato.org/files/pubs/pdf/pa719\\_1.pdf](http://object.cato.org/sites/cato.org/files/pubs/pdf/pa719_1.pdf).

our country's. However, less than 7 percent<sup>40</sup> of the approximately 1 million new lawful permanent residents (green card holders) we welcome each year are workers, selected based on their skill sets and jobs they will perform in the United States.<sup>41</sup>

Meanwhile, fixed numerical limits established in 1990 have resulted in green card backlogs exponentially expanding in the last decade for employment-based immigrants. In June 2004, immigrant visas for advanced degree professionals born in India or China, for example, were current and available, once all prerequisite labor market tests and immigrant petitioning processing requirements were completed for employment-based immigrants (the employer must first obtain approval of a Labor Certification request and I-140 Immigrant Visa Petition), whereas in January 2015 at the start of this Congress there was a ten year wait for advanced degree professionals born in India and a wait of just under five years for advance degree professionals that are China natives.<sup>42</sup>

Relative to our population, we admit lawful permanent residents annually totaling about .0034 of our population (one-third of one percent). Meanwhile, Canada annually admits new legal immigrants today equating to about .0075 of its total population (three-quarters of one percent), while Australia's annual legal immigration pool is about .0056 (a little more than one-half of one percent) of its population. There is no need to match the experiences of Australia and Canada, that have very different needs and much smaller economies than the United States, but a very small, incremental, and guided increase in skilled immigration should be considered. In Canada, a country with 10% of our population, twice the number of skilled employment-related immigrants gains entry each year to reside permanently there as compared to the United States.

Continuing to single-mindedly hold out a specific, never fluctuating number of immigrants, set in 1990, as the centerpiece of our immigration policy will not position our country to gain access to the human capital our nation needs in a changing and global economy. Since 1990, the U.S. economy has expanded. Gross Domestic Product for the country is 2.8 times larger today than in 1990 (\$16.768 trillion as compared to \$5.979 trillion). The population of the United States is 1.3 times as large (316 million people now as compared to 250 million in 1990). Similarly, the Gross Domestic Product per capita has expanded 2.2 times since 1990 (GDP per person is now \$53,259 each year as compared to \$23,934 annually in 1990). Total immigrant numbers do not need to double to satisfy economic needs, but they can expand slightly, in a targeted way.

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<sup>40</sup> Often the total number of "employment-based" immigrants (lawful permanent residents or LPRs), selected on skills, and economic-based immigrants, like investors and special immigrants, are combined and identified as totaling about 15-16 percent of the annual green cards issued, but this includes spouses and minor children (as well as investors, special immigrant juveniles, former NATO employees and various others in the special immigrant category). Each year only about 6 percent to 7 percent of new LPRs are actual workers, coming to the U.S. because of their skills and the jobs they will perform in the United States.

<sup>41</sup> See DHS Office of Immigration Statistics, Statistical Yearbook, Table 7 <http://www.dhs.gov/yearbook-immigration-statistics-2013-lawful-permanent-residents>. Based on the Table 7 data, a breakdown was assembled by the U.S. Chamber showing how many workers, dependents, and the other categories of individuals were issued green cards in the most recent fiscal year for which data is available – highlighting the paltry allocation for workers needed by employers in the economy [http://immigration.uschamber.com/uploads/sites/400/U.S.CC\\_DHS\\_LPR\\_FY13.pdf](http://immigration.uschamber.com/uploads/sites/400/U.S.CC_DHS_LPR_FY13.pdf).

<sup>42</sup> For a table explaining the changing landscape regarding employment-based (worker) green card backlogs, go to [http://immigration.uschamber.com/uploads/sites/400/U.S.CC\\_DOS\\_historical\\_green\\_card\\_cut\\_off\\_dates.pdf](http://immigration.uschamber.com/uploads/sites/400/U.S.CC_DOS_historical_green_card_cut_off_dates.pdf). This table compares green card availability for Second Preference advanced degree holders and Third Preference professionals in 2004 (when policy discussions were underway that led to the crafting of immigration bills for the 105<sup>th</sup> Congress), 2007 (when the Senate vote for cloture failed on consideration of a broad immigration reform bill in the 107<sup>th</sup>), 2013 (when bipartisan development of what became S. 744 was underway in the 113<sup>th</sup>), and in 2015 (the beginning of the 114<sup>th</sup> Congress).

## IMMIGRATION INNOVATION ACT (I-SQUARED)

One piece of legislation that attempts to update and modernize U.S. immigration law provisions on both numerical limits for skilled immigration and the funding of education and training efforts appropriately concentrated on skilled employment is the Immigration Innovation Act (S. 153). This legislation would directly address the needs of the business community to create and retain jobs in the United States for Americans. By having the ability to fill some positions with highly skilled foreign talent in those circumstances where sufficient numbers of qualified U.S. workers are not available, Americans are not harmed and instead are helped. This bill would also make a significant investment in expanding the pipeline of American workers by imposing new fees on employers who sponsor foreign workers for H-1B status or for employer-sponsored permanent resident status to be used in educating and training U.S. workers in targeted programs for the high-skilled occupations being filled by foreign-born workers.

The Chamber strongly supports the Immigration Innovation Act because it would tackle several critical issues that must be addressed as part of immigration reform. Perhaps most importantly, this bill would provide more H-1B and green card numbers for high skilled professionals – but it would also undertake to resolve a number of related questions. For example, this legislation would deal with existing backlogs for employment-based immigrants, ensure that foreign professionals have worker mobility, and establish for the first time that the H-1B visa cap increases and decreases determined by market-based factors.

This legislation would transform the high skilled immigration system in our country, and we thank the co-sponsors, Senators Ayotte, Blumenthal, Coons, Flake, Gardner, Hatch, Heller, Klobuchar, McCain, McCaskill and Rubio, for working together on a bipartisan basis to address these vital issues.

## CONCLUSION

As this Committee is undoubtedly aware, the Chamber has long advocated for workable visa programs for skilled immigrants, and other key features of an effective immigration system, each of which play a role in the vitality of our country.

As conservative, pro-growth economists have said “immigration reform is a great economic policy opportunity.”<sup>43</sup> The Chamber stands ready to work with members of Congress on both sides of the aisle who likewise believe that moving forward with responsible reforms to our immigration system is an opportunity to improve our economy,<sup>44</sup> and join those answering a resounding “yes” when asked “is immigration good for America?”<sup>45</sup>

Thank you for permitting the Chamber to share its views.

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<sup>43</sup> Former CBO Director Douglas Holtz-Eakin, quoted in The Atlantic (March 6, 2015) <http://theatlantic.com/1wecFm8>.

<sup>44</sup> There are also many reasons to believe that immigration reform, properly structured, will improve the national security of our country.

<sup>45</sup> See, e.g., compendium of articles in “Is Immigration Good for America?” (Cato Institute report, February 2012) <http://www.cato.org/cato-journal/winter-2012>.