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AMERICAN COMPETITIVENESS IN THE TWENTY-FIRST
CENTURY ACT

APRIL 11, 2000.—Ordered to be printed

Mr. HATCH, from the Committee on the Judiciary,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany S. 2045]

The Committee on the Judiciary, to which was referred the bill (S. 2045) to amend the Immigration and Nationality Act with respect to H-1B nonimmigrant aliens, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

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I. PURPOSE

Senate bill 2045, the American Competitiveness in the 21st Century Act, is an important piece of legislation that builds on the American Competitiveness and Workforce Improvement Act, which

became law in 1998. That bill increased the annual ceiling for admission of H-1B nonimmigrants from 65,000, set in the 1990 Immigration Act, to 115,000 in fiscal year 1999 and fiscal year 2000, and 107,500 in fiscal year 2001. The bill also strengthened enforcement of the terms and conditions of H-1B visas and levied a \$500 per visa fee to fund training and scholarships for U.S. workers and students.

The rationale for the 1998 bill was explained at length in the Committee report filed with that legislation. In the Information Age, when skilled workers are at a premium, America faces a serious dilemma when employers find that they cannot grow, innovate, and compete in global markets without increased access to skilled personnel. That access, however, was being curbed by a cap on H-1B visas put in place almost a decade earlier, in 1990, when no one understood the scope of the information revolution that was about to hit.

The Committee also noted then that even apart from shortages in particular fields, in our increasingly global economy, highly skilled foreign workers are certain to be in a position to make unique contributions to the U.S. economy. A person from another country may simply be a uniquely talented individual with unique knowledge and skills. Such a person may also have specialized knowledge about a subject far more prominently studied abroad than in the United States. One prominent American producer of food products, for example, employs an expert on Chinese wheat in its research division, a topic regarding which no American is likely to be as well informed. Such a person may also be particularly qualified to help a company localize services or products to be sold abroad based on his or her native knowledge of the language or culture of the market where the services or products will be sold. Finally, the company may be building a global workforce (for example the employer has planned that the person will work in the United States to gain experience for a period of years before being sent to work overseas for the employer).

What was true in 1998 remains true today. In fact, in 1998, the error Congress made was in underestimating the workforce needs of the United States in the year 2000. Despite the increase in the H-1B ceiling in 1998, a tight labor market, increasing globalization and a burgeoning economy have combined to increase demand for skilled workers even beyond what was forecast at that time. As a result, the 1998 bill has proven to be insufficient to meet the current demand for skilled professionals. Even in the first year of the visa increase, the 1999 cap on H-1B visas was reached in June of last year, at the end of 9 months rather than 12. According to the INS, when pending applications are factored in, we have already hit the fiscal year 2000 cap even though we are only 6 months into the new fiscal year. Accordingly, without this legislation, U.S. employers will not be able to lawfully hire skilled foreign nationals in the United States on H-1B's for the remainder of fiscal year 2000. Moreover, without legislative action, the problem will worsen in each succeeding fiscal year as extensive backlogs develop.

Our employers' current inability to hire skilled personnel presents both a short-term and a long-term problem. The country needs to increase its access to skilled personnel immediately in

order to prevent current needs from going unfilled. To meet these needs over the long term, however, the American education system must produce more young people interested in, and qualified to enter, key fields, and we must increase our other training efforts, so that more Americans can be prepared to keep this country at the cutting edge and competitive in global markets.

S. 2045 addresses both aspects of this problem. In order to meet immediate needs, the bill raises the current ceiling on temporary visas to 195,000 for fiscal year 2000, fiscal year 2001, and fiscal year 2002. In addition, it provides for exemptions from the ceiling for graduate degree recipients from American universities and personnel at universities and research facilities to allow these educators and top graduates to remain in the country.

S. 2045 also addresses the long-term problem that too few U.S. students are entering and excelling in mathematics, computer science, engineering and related fields. It contains measures to encourage more young people to study mathematics, engineering and computer science and to train more Americans in these areas. Specifically, the bill extends the \$500 per visa fee originally authorized in the 1998 bill. This fee is assessed on each initial petition for H-1B status for an individual, on each initial application for extension of that individual's status, and on each petition required on account of a change of employer or concurrent employment. It funds scholarships for U.S. students and training for U.S. workers. Using the same assumptions on the rate of renewals, changes of employer and the like that the Committee and the administration relied on in estimating the impact of the 1998 legislation, the increase in visas should result in total funding for training, scholarships and administration of H-1B visas of approximately \$450 million over fiscal year 2000, fiscal year 2001, and fiscal year 2002. The Committee anticipates that this funding will allow for 40,000 scholarships to U.S. students, thereby helping them to choose these important fields.

II. LEGISLATIVE HISTORY

This legislation was introduced by Senator Hatch and is cosponsored by Senators Abraham, Gramm, Graham, Lieberman, Feinstein, Lott, Nickles, Mack, Specter, DeWine, Ashcroft, McConnell, Gorton, Hagel, Bennett, Grams, Brownback, Smith (OR), Warner, Helms, and Kohl.

Before the American Competitiveness Act was enacted in 1998, the Senate Judiciary Committee held a hearing on February 25, 1998, that demonstrated the need for that legislation. The Subcommittee on Immigration held a hearing on October 21, 1999, to update the information the Committee obtained in 1998. That hearing made clear that further legislation is necessary now.

At the October 21, 1999, hearing, national trade groups and leaders of small businesses alike made clear that additional highly skilled workers are urgently needed, will remain needed for the foreseeable future, and are not currently available within the United States. "As investment capital flows into start-ups and puts them on a fast growth track, the demand for workers will continue to far exceed the supply," testified Susan DeFife, CEO, womenCONNECT.com, a woman-owned company that is a leading

internet site for women in business. Unless the visa cap is raised, she explained “the options for tech companies [seeking to fill these positions] are not particularly attractive: we can limit our growth, but then we lose the ability to compete; we can ‘steal’ employees from other companies, which makes none of us stronger and forces us to constantly look over our shoulders; or, in the case of larger companies I know, move operations off-shore.”

The witnesses’ testimony also made clear that greater access to H-1B workers does not detract from but rather multiplies opportunities for American workers. Julie Holdren, president and CEO of the Virginia-based Olympus Group, which specializes in internet-based business intelligence solutions, testified that “For every H-1B worker I employ, I am able to hire ten more American workers. That’s the ironic part of this debate. The H-1B visa holders who are employed by me actually create many new job opportunities for domestic workers.” Her company employs over 70 people but has 30 jobs openings. In short, as Roberta Katz, CEO of the high-tech trade group TechNet, testified: “If the United States is to remain the world’s technology leader, it is essential that American companies continue to have access to the most highly skilled employees.”

All of the witnesses at the 1999 hearing, including Rob Atkinson of the Progressive Policy Institute, which is affiliated with the Democratic Leadership Council, agreed that while education and training are an important part of the solution, meeting the demand for skilled professionals through H-1B visas is also essential. S. 2045 embodies both approaches.

The bill was not referred to subcommittee but was considered directly by the full Committee on the Judiciary. It was marked up on March 9, 2000, and reported out of Committee with a favorable recommendation by a 16-to-2 vote.

III. DISCUSSION

A. Background

1. CURRENT LAW

a. General provisions governing H-1B visas

Current law allows employers seeking people with special skills on a temporary basis to hire them on H-1B visas. These visas are valid for 3 years, after which they can be renewed for an additional 3 years, thus allowing a maximum stay of 6 years. Persons admitted under these visas cannot stay permanently unless they are sponsored by an employer for a separate, permanent employment-based immigrant visa, for which there is a separate and lengthy approval process.

In order to qualify for an H-1B visa, an individual must be in a “specialty occupation.” According to the law:

The term “specialty occupation” means an occupation that requires—(A) theoretical and practical application of a body of highly specialized knowledge, and (B) attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Immigration and Nationality Act (“INA”) § 214(i)(1).

To qualify for an H-1B visa a nonimmigrant must have “full state licensure to practice in the occupation, if such licensure is required to practice in the occupation” or must possess “experience in the specialty equivalent to the completion of [a bachelor’s or higher degree], and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.” INA § 214(i)(2).¹

Until the 1990 Immigration Act, employers were allowed to hire individuals on what were then known as “H-1” visas without numerical limitations. In 1990, however, as part of a comprehensive package of immigration law reforms, the Immigration Act of 1990 capped these visas at 65,000, a number that the legislative history suggests was chosen arbitrarily in order to reassure critics of these visas that an unlimited supply of visas would not be available. “The [65,000] number was set without public hearings, is arbitrary, and was in no way arrived at by analyzing demand, labor shortages, business conditions, or skilled labor needed by firms to remain globally competitive,” according to Prof. Charles B. Keely of Georgetown University.

Even in 1990, there were contemporaneous expressions of concern that the 65,000 ceiling would eventually have an adverse impact on American companies’ and universities’ access to skilled personnel and hence on their potential growth. That prediction was not realized until 1997, however, when for the first time companies bumped up against the ceiling a month before the end of the fiscal year. The situation worsened in 1998, when the cap was reached in May. As a result, Congress acted in 1998 to raise the ceiling to a level that it thought, on the basis of then-current use and the rate at which use of the visas had been growing, should be adequate to accommodate demand for the next 3 years. Under current law, the United States may issue up to 115,000 H-1B visas annually for fiscal year 2000 and 107,500 for fiscal year 2001. In fiscal year 2002, the ceiling is scheduled to revert to 65,000, the level set in the 1990 act.

b. Labor condition application attestations and related enforcement provisions

(1) The prevailing / actual wage attestation

In order to obtain an H-1B visa, an employer must execute a Labor Condition Application (LCA) in which it attests that it will be paying individuals on H-1Bs the higher of the prevailing wage or actual wage paid to Americans in the same job with similar ex-

¹It should be noted that the language establishing the qualifications individuals must have to be eligible for H-1B visas is contained not only in the U.S. code but is also part of a commitment the United States made in the General Agreement on Trade in Services (GATS). The commitments set out in that agreement can be modified or withdrawn only after negotiations with other nations. Any unilateral change in that definition (education, licensing, etc.) that is more restrictive would accordingly be in violation of the United States’ international obligations. Unilaterally limiting or eliminating occupational categories from eligibility for H-1B visas would also violate GATS. A numerical limitation in Senate and House bill in 1998 on the maximum number of physical and occupational therapists who could be hired on H-1B visas was removed during negotiations with the Administration after the U.S. Trade Representative’s Office noted that such a provision would violate GATS. By the same token, unilaterally placing new restrictions on which employers could hire individuals on H-1B visas would also be in violation of America’s international obligations.

perience. This provision was included in the 1990 Immigration Act in order to assure that the hiring of H-1B workers would not have an adverse wage impact on Americans. Specifically, it requires that in order to obtain approval for employing an individual on an H-1B visa, an employer must file an application with the Secretary of Labor stating:

(A) The employer—

(i) is offering and will offer during the period of authorized employment to aliens admitted or provided status as a nonimmigrant described in section 101(a)(15)(H)(i)(b) wages that are at least—

(I) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question, or

(II) the prevailing wage level for the occupational classification in the area of employment, whichever is greater, based on the best information available at the time of filing the application, and

(ii) will provide working conditions for such a nonimmigrant that will not adversely affect the working conditions of workers similarly employed.

INA § 212(n)(1).

To assist in enforcing this requirement, an employer hiring a worker on an H-1B visa must provide notice of the hiring and salary level to employees' collective bargaining representative for the relevant occupational classification. If no such representative exists, notice is to be given to employees directly by posting the information in conspicuous locations at the place of employment. The law also establishes a complaint mechanism for individuals with information that these requirements are not being complied with. The Department of Labor is authorized to investigate these complaints and, if it finds them meritorious, to take appropriate action against violators, ranging from back pay to the H-1B to fines to debarment from use of employment visas. INA § 212(n)(1)–(2).

(2) Additional enforcement provisions in the 1998 act

In addition to raising the ceiling on H-1B visas for fiscal years 1999, 2000, and 2001, the 1998 American Competitiveness and Workforce Improvement Act addressed many concerns raised about perceived needs to increase enforcement of the terms and conditions attached to H-1B visas. These issues were addressed both in the original Senate bill, S. 1723, the American Competitiveness Act, which passed the Senate by a vote of 78 to 20 in May 1998, and in the final version of that legislation, arrived at through extensive negotiations between the House and Senate and between Congress and the administration.² At the conclusion of those negotiations, the American Competitiveness and Workforce Improve-

²These measures were adopted despite a very thin record that there were actually a significant number of employers misusing the visas. There have been 7 documented willful violations by employers using H-1B visas since 1990. In 1998, the Department of Labor refused to answer questions submitted to it by the Judiciary Committee following the Feb. 25, 1997, hearing that sought additional details on DOL's findings of H-1B violations.

ment Act passed by an overwhelming margin in the House and became law as part of the 1998 Omnibus Appropriations bill.

Detailed below are key enforcement provisions of the 1998 legislation related to H-1B visas:

Layoff protection for American workers. The bill provided *three types of layoff protection* for American workers; (1) Any employer who replaces a U.S. worker with an individual on an H-1B visa and wilfully underpays the H-1B visa holder is subject to debarment from all employment immigration programs for 3 years and a \$35,000 fine per violation. (2) A company that is H-1B dependent (see below) must attest that it will not lay off an American employee in the same job classification during the 90 days before or after the filing of a petition for an H-1B professional. (3) An H-1B dependent company acting as a contractor must attest that it similarly will not place an H-1B professional in *another company* to fill the same job held by a laid off American 90 days before or after the date of placement.

Recruitment Requirements on Dependent Employers. H-1B dependent companies must attest that they recruit according to industry-wide standards. Moreover, they must attest that the H-1B hiree was as qualified as, or more qualified than, any American job applicant. A U.S. citizen not hired can file a complaint with an arbitration panel, which can fine employers found to have violated this provision.

H-1B Dependent Companies. The legislation established new distinctions between types of employers. The legislation defined an employer as H-1B dependent and subject to the new recruitment and layoff attestations if its workforce consists of 15 percent or more H-1B visa holders. Smaller employers and start-ups are “non-dependent” if they have 25 employees and no more than 7 H-1B’s, or 26 to 50 employees with no more than 12 H-1B’s. Non H-1B dependent employers who are found to have committed willful violations in the prior 5 years are also subject to these new attestations.

Increased Enforcement and Penalties. The bill increased by five-fold—to \$5,000—fines for willful violators of the H-1B program and doubled the debarment period for such violations from 1 to 2 years. The bill gives the Department of Labor (DOL) authority to initiate “spot” investigations, without a complaint filed, of employers found to have committed prior willful violations. Upon the certification of the Secretary of Labor that DOL has received specific and credible evidence of willful and serious violations of the terms and conditions attached to H-1B visas, DOL also has the authority to investigate an employer without the filing of a specific complaint.

Whistle-blower Protection. The legislation made it a violation of the terms and conditions of obtaining an H-1B visa for an employer to retaliate against an employee for filing a complaint against an employer. This codified previous regulatory provisions.

Benching Explicitly Prohibited. The legislation clarified that it is a violation of the attestation set out in INA §212(n)(1)(A) for an employer to engage in the practice colloquially known as “benching,” under which an employer brings over an H-1B worker on the promise that the worker will be paid a certain wage, but then pays

the worker only a fraction of that wage because the employer does not have work for the H-1B worker to do.

Benefits and Eligibility for benefits. The new law clarified that it is a violation of the attestation set out in INA § 212(n)(1)(A) for an employer to fail to offer benefits and eligibility for benefits to workers on the same basis, and in accordance with the same criteria, as the employer offers benefits and eligibility to benefits to U.S. workers.

Penalties prohibited. The legislation prohibited employers from requiring H-1B workers to pay a penalty for leaving an employer's employ before a date agreed to between the employer and the worker.

For a more detailed explanation of the congressional intent of the provisions in the 1998 legislation, see Senator Abraham's floor statement of October 21, 1998.

(3) Education and training provisions for American workers in the 1998 act

The 1998 legislation also provided a mechanism whereby the hiring of individuals on H-1B visas would help address the long-term workforce needs of the United States. It assessed a \$500 fee per visa petition, a \$500 fee for the petition for the initial renewal of such a visa, and a \$500 fee for a petition on behalf of an individual being hired by a new or concurrent employer. This was estimated to raise approximately \$75 million a year to fund scholarships and training set out in the bill. The bill then split the proceeds from the fee between different mechanisms for educating Americans and training American workers. It provided 8,000 to 10,000 scholarships a year for low-income students in math, engineering, and computer science through the National Science Foundation, assistance to certain NSF programs targeted to K-12 education, and training for many thousands of Americans through the Job Training Partnership Act. The money was split as follows: 56.3 percent for training through the DOL under the Job Training Partnership Act; 28.2 percent for scholarships administered through the National Science Foundation (NSF); 4 percent for NSF grants for year-round K-12 academic enrichment; 4 percent for NSF grants for systemic reform activities in K-12; 1.5 percent for INS processing related to the fee; 3 percent for DOL visa processing and 3 percent for DOL enforcement.³

In sum, the 1998 legislation significantly enhanced enforcement by dramatically increasing penalties, increasing the authority of the Department of Labor to investigate potential violations, and establishing other new provisions aimed at protecting U.S. workers and H-1B visa holders. Moreover, today every time an individual is hired on an H-1B visa a \$500 fee goes to training U.S. workers and providing scholarships for U.S. students in science and technology. The new legislation extends the \$500 fee and the additional labor provisions through fiscal year 2002. The H-1B increase in the proposed legislation will add considerably to training and scholarships over a 3-year period.

³Enforcement funding is contingent on a certification by the DOL that it has met its statutory obligations for timely processing.

B. The Current Situation

Despite the increase in the H-1B ceiling to 115,000, in 1999, the visa supply was once again exhausted in June, well before the end of the fiscal year. This was partly due to the protracted negotiations over the 1998 legislation, resulting in the buildup of a large backlog, as well as to the administration's unwillingness to include provisions specifically designed to alleviate that backlog. It was also, however, due to an extraordinary growth in demand for these visas that surpassed the projections of even the strongest proponents of raising the ceiling on the visas, who had based their assessment of what was needed in large measure on prior experience. In 2000, INS announced on March 17 that no new applications will be accepted for H-1B visas as it believes it already has received a sufficient number to reach the 115,000 ceiling.

In a February 28, 2000 report, Manpower president and chief executive officer Jeffrey Joerres stated, "The personnel shortage continues to plague companies in all industries and geographic regions." Cato Institute economist Daniel Griswold wrote recently that "Americans are not earning specialized degrees fast enough to fill the 1.3 million high tech jobs the Labor Department estimates will be created during the next decade." (Mar. 16, 2000, Intellectualcapital.com)

In discussing the Midwest, Federal Reserve economist Richard E. Kraglic stated in 1998, "The region is not just running out of workers; it is running out of potential workers." This is having a negative impact on economic growth, says economist Diane Swonk at First Chicago NBD. The Hudson Institute estimates that the unaddressed shortage of skilled workers throughout the U.S. economy will result in a 5-percent drop in the growth rate of GDP. That translates into approximately \$200 billion in lost output, nearly \$1,000 for every American.

It is worth noting that critics who predicted in 1998 that widespread unemployment and extreme economic times would result if the proposed H-1B increase became law have been proved completely wrong. Instead, more studies and more individuals have reached the same conclusion that was embodied in the 1998 legislation:

- A 1999 study by Joint Venture: Silicon Valley found that a lack of skilled workers is costing Silicon Valley companies \$3 to \$4 billion a year.
- A 1999 study by the Computer Technology Industry Association concluded that a shortage of information technology professionals is costing the U.S. economy as a whole \$105 billion a year.
- A 1999 study for the Public Policy Institute of California contained findings by U.C.-Berkeley Prof. Annalee Saxenian that immigrants are a major source of job creation. Her research showed that Chinese and Indian immigrant entrepreneurs in northern California alone were responsible for employing 58,000 people, with annual sales of nearly \$17 billion.
- Laura D'Andrea Tyson, former chief economic adviser to President Clinton, wrote in *Business Week*: "Conditions in the information technology sector indicate that it's time to raise the cap

on H-1B visas yet again and to provide room for further increases as warranted. Silicon Valley's experience reveals that the results will be more jobs and higher incomes for both Americans and immigrant workers."

—Finally, in testimony before the Senate Banking Committee, Federal Reserve Chairman Alan Greenspan this year endorsed S. 2045 in response to a question from Senator Phil Gramm, and stated that "The benefits of bringing in people to do the work here, rather than doing the work elsewhere, to me, should be pretty self-evident."

C. The American Competitiveness in the 21st Century Act

The American Competitiveness in the 21st Century Act seeks to help the American economy in both the short and long run by a combination of temporary visa increases and training and education initiatives. A more detailed section-by-section description of the bill appears elsewhere in the committee report. However, below is a brief summary of the bill's contents:

Temporary Increase in Visa Allotment for Skilled Professionals. The bill increases the number of H-1B visas that may be issued by 80,000 for fiscal year 2000, 87,500 for fiscal year 2001, and 130,000 for fiscal year 2002, for a level of 195,000 a year.

Education and Training. Additional visas in the bill will generate more money for training and scholarships for U.S. workers and students through the \$500 per visa fee that originated in the 1998 legislation. Funding from this fee should raise approximately \$450 million total over 3 years, creating 40,000 scholarships, training thousands of individuals, and funding promising K-12 programs. The bill also authorizes funds for after-school technology programs in Boys and Girls Clubs.

Universities and Research Facilities. The bill exempts from the cap visas obtained by universities, research facilities, and those obtained on behalf of graduate degree recipients to help keep top graduates and educators in the country.

Enforcement. The bill maintains the increased fines, attestations, increased DOL investigative authority and other enforcement measures passed into law in 1998 and extends the provisions through fiscal year 2002. It mandates that fraudulently issued visas be returned to the pool of visas for that fiscal year.

Per Country Limit. The bill modifies the per country limit on employment-based immigrant visas to eliminate the discriminatory impact of the limit under current law.

Increased Portability of H-1B Status. The bill allows an H-1B visa holder to change employers at the time a new employer files the initial paperwork, rather than requiring the visa holder to wait for the new H-1B application to be approved.

Relief from Lengthy Adjudications. The bill addresses inordinate delays in labor certification and INS visa processing by allowing an individual on an H-1B visa on whose behalf an employer has taken steps to seek an immigrant visa to obtain an extension on that visa so the individual can stay in the United States until a decision is made on his or her case—rather than forcing the person to leave the country—if more than 1 year has elapsed from the date the employer filed the labor certification application or petition for adjust-

ment of status. If labor certification is required, an individual is only eligible for this extension if the DOL has already approved the labor certification application.

D. Responses to Concerns Raised and the Likely Consequences of a Failure to Act

1. THE IMPACT ON AMERICAN JOBS

Critics of H-1B visas claim that they result in taking away jobs from Americans and giving them to foreigners. In fact, however, failure to raise the H-1B ceiling is what will deprive Americans of jobs. This is because artificially limiting companies' ability to hire skilled foreign professionals will stymie our country's economic growth and thereby partially atrophy its creation of new jobs. It will also result in sending some of those jobs abroad. Thus, contrary to the claims of some critics of the H-1B program, American workers' interests are advanced, rather than impeded, by raising the H-1B cap.

A letter signed in 1998 by the CEO's of 14 of America's leading companies, including Microsoft's Bill Gates, Netscape's James Barksdale, and Texas Instruments' Thomas Engibous, expressed this point well:

Failure to increase the H-1B cap and the limits that will place on the ability of American companies to grow and innovate will also limit the growth of jobs available to American workers. * * * Failure to raise the H-1B cap will aid our foreign competitors by limiting the growth and innovation potential of U.S. companies while pushing talented people away from our shores. * * * [this] could mean a loss of America's high technology leadership in the world.

At both the Immigration Subcommittee hearing of October 21, 1999, and the Full Committee hearing 2 years ago, the testimony given strongly indicated that individuals on H-1B visas create many jobs in America. As noted above, at the October 1999 hearing, Julie Holdren, president and CEO of the Virginia-based Olympus Group, testified that for every H-1B worker she employs, she is able to hire 10 more American workers. Thus "[t]he H-1B visa holders [her company hires] actually create many new job opportunities for domestic workers." T.J. Rodgers, president and CEO of Cypress Semiconductor, testified to similar effect in February 1998: for every foreign-born engineer he can hire, he employs five more Americans in marketing, manufacturing, or related endeavors. At that same hearing, Kenneth M. Alvares, Human Resources CEO at Sun Microsystems, provided a particularly striking example of how this works. He testified that Anant Agrawal, born in India, entered the country on an H-1B visa. When he started working at Sun Microsystems the company employed fewer than 300 people. Combining his talents with those of another engineer, he developed SPARC, a powerful microprocessor that proved to be a dramatic innovation in chip design, according to Sun Microsystems. Today, Sun employs more than 23,000 people, the majority of whom do work related to Agrawal's innovation.

Moreover, failure to raise the cap on H-1B visas will almost certainly cause some U.S. companies to move some of their operations offshore. The Committee continues to believe that it is essential to avoid this danger by removing the artificial limits on companies' access to skilled personnel created if too few H-1B visas are available and resisting the call to impose excessive regulations on their use that would have the same effect.

Many of the concerns about H-1B visas revolve around the fear that individuals entering on H-1B visas will "take" a job from an American worker. This fear arises from the premise that there is a fixed number of jobs for which competition is a zero-sum game. But this premise is plainly flawed: Following passage of the 1990 act, the number of U.S. jobs has increased by more than 17 million, and the Internet, which was used by a few thousand specialists back in 1990, is now used by tens of millions and is a major source of jobs and innovation in America. Since 1960, the number of U.S. jobs has more than doubled from 65 million to over 135 million today. These figures simply demonstrate the general principle that labor markets have demonstrated time and time again: additional people entering the labor force, whether native-born students out of school, immigrants, or nonimmigrants, expand job opportunities and create other jobs through innovation, entrepreneurship, and money spent on consumer items like food, clothing, and housing, as pointed out in the 1986 Economic Report of the President.

Moreover, looking at the particular case of individuals on H-1B visas, there is no evidence that they are harming the job prospects of native-born Americans. According to National Science Foundation data, there is no correlation between the percentage of foreign-born employees in a field and the unemployment rate in that field. The data show that fields with a high percentage of foreign-born workers, such as computer science and engineering, have lower unemployment rates than fields with relatively few foreign-born workers, such as the geosciences and social sciences. And there is abundant evidence that the U.S. economy, its industries, and its universities, which are recognized as the best in the world, have all prospered as skilled foreign nationals and immigrants have worked side by side with native-born Americans.

2. IMPACT ON AMERICAN SALARIES

Critics have also suggested that raising the cap on H-1B visas will have a negative impact on salaries for Americans in the same occupations, and that, in fact, one reason employers may want to bring in H-1B workers is to economize on costs. But there are no data to support these concerns. In fact, National Science Foundation data show that the typical foreign-born scientist and engineer earns more, not less, than his or her native-born counterpart, according to the Wall Street Journal. The 1996 worldwide salary survey conducted by EE Times, a publication that covers the electrical engineering field, provides further evidence of this assertion. The survey included findings that:

American-born engineers earned a mean salary of \$66,000, fully \$1,400 below the total mean. Immigrants from India (\$74,400) and Hong Kong (\$76,800) pulled up

the averages for foreign-born engineers. Newcomers from China at \$65,800 only \$200 below the mean] lagged behind them. This illustrates a point made in earlier surveys * * * no evidence exists of immigrants dragging down overall salaries.

The EE Times survey stated that it found no evidence of exploitation. "Not a single one of the 137 non-U.S.-born engineers or managers earned under \$35,000. By contrast 28 American readers did."

Thus, what evidence we have suggests that American wages are not being undercut by H-1B workers, particularly in light of market forces and the role innovation plays in propelling the fields in question forward. There is also no evidence that companies maintain disparate wage scales for native-born and H-1B employees working side by side one another in the same occupations. In fact, provisions in current law governing the hiring of H-1B workers, which require employers to pay H-1B workers the higher of prevailing or actual wages and to provide them working conditions that do not adversely affect the working conditions of others similarly situated, forbid any such a practice. In addition to these requirements employers typically pay legal fees of \$3,000 or more to secure H-1B visas for needed employees. Moreover, the market would not tolerate exploitation, especially given the fierce competition for skilled workers. An H-1B employee who is not being treated fairly can easily be petitioned by another employer and switch to work for that employer. The Committee further facilitated this flexibility in S. 2045 by allowing an H-1B employee to change employers at the time a new employer files the initial paperwork, rather than requiring the employee to wait for the new H-1B application to be approved. Indeed, the Committee understands that such job changes are fairly common among H-1B workers, an assumption shared by the administration in 1998 in developing estimates of the funds the \$500 fee would produce. Finally, many H-1B's are foreign students recruited on U.S. college campuses in the same process through which companies hire native-born students. For example, Kenneth Alvares, vice president for Human Resources at Sun Microsystems, testified at the Committee's 1998 hearing that "of all the H-1B workers that Sun has hired, only a very small handful are actually recruited outside the United States and then brought into the country. The majority of H-1Bs that Sun hires are already in the U.S. having graduated from United States schools frequently at the top of their class." Hence it is unlikely, to say the least, that employers are creating different wage scales for these two groups of classmates.

As to the competition for graduates among companies and the pay scales themselves: Steven Levin of Texas Instruments testified in 1998 that the employment situation is so competitive that there are more companies recruiting at M.I.T. than there are graduates in high-tech fields annually. In his testimony, Levin also provided data on starting salaries for various fields that cast real doubt on the proposition that salaries in these areas are suffering from any kind of deflationary pressure. Although he noted that "starting salary * * * is heavily dependent on the education and work experience of each person offered employment" and that "the schools at-

tended and the grade point average of a person also influences the starting salary," Levin testified that the average starting salary for engineers with a bachelor's degree and summer work experience at Texas Instruments is \$46,800. Average starting salary is \$54,000 for a master's degree with summer work experience and \$76,200 for a Ph.D. with summer work experience. Kenneth Alvares stated that the starting salaries Sun Microsystems offers for recent college graduates is \$45,000 to \$55,000, though those with more experience could start at more than \$55,000. Microsoft testified to similar numbers. These levels, of course, do not take into account noncash benefits such as stock options, which, according to a February 28, 2000, article in InfoWorld, have become practically a standard component of any software engineer's employment package. Indeed, according to the same article, companies are even increasingly offering recruits stock portfolios with options in companies with which the employer conducts business, perks such as on-site drycleaning and corporate concierges, and even BMW's.

3. TRAINING AND EDUCATION

There is widespread agreement among Committee Members that efforts are necessary to educate more American young people for the jobs of tomorrow. Indeed, the Committee specifically addressed this issue by adopting two amendments. The Feinstein-Abraham amendment builds on the 1998 legislation to address that need (1) through a scholarship program included in the bill to help students major in engineering, mathematics, and computer science, (2) through funding for NSF educational programs directed at K-12 education, and (3) through provisions for training the unemployed and other workers. The Biden Amendment authorizes funds for grants to Boys and Girls clubs to fund computers and related expenses.

It is also important to understand, however, that American companies are doing a great deal to address these issues on their own. It was suggested during the 1998 debate that raising the cap on H-1B visas would have a negative effect on American companies' commitment to education and training; however, this has not proven true. In fact, the Committee has seen extraordinary initiatives from industry that indicate that concern was completely unfounded. Below is a sampling of the materials that have been brought to the Committee's attention. The sample is meant to be illustrative rather than an exhaustive description of employers' efforts.

In 1998, Intel's contributions to K-12 education totaled \$28,541,751. Contributions to higher education totaled \$62,632,634 and contributions to community organizations totaled \$8,848,742. Intel's science talent search results in \$1.25 million in scholarships and donations to schools to help support science and math programs. Intel will invest \$100 million in cash, equipment, curriculum development and program management to train teachers in the use of technology through the Intel Teach to the Future program. In this program, Microsoft will contribute \$344 million in software and program support. Also, leading manufacturers including Hewlett Packard and Premio have donated equipment.

In 1999, the Bill and Melinda Gates Foundation has given \$350 million to help student achievement and \$25 million to the Alliance for Education and Seattle public schools. In the past three years, Microsoft has also given more than \$173 million to help organizations provide technology access to underserved communities. In cooperation with Bill and Melinda Gates Foundation, Microsoft is also contributing \$200 million in software, matched by the Foundation's \$200 million to provide technology access to libraries. Microsoft has supported the training of more than 1 million teachers in the use of technology.

Hewlett Packard's Hands-On Science Program provides funding to elementary school districts working with Hewlett Packard sites to reform elementary science education. As of 1998, the Hands-On Science Program was supporting 60 schools. HP Science Partners are employee volunteers who help to implement the reforms by working with teachers, in classrooms and as advisors to the schools. Through an e-mail mentor program, these employees help 5th through 12th grade students relate their science and math curriculum to personal interests. In a recent initiative that received significant attention this year, Ford Motor Co. announced it will supply a computer, printer and internet access to its employees for a nominal fee. Thirty-seven percent of Ford's contributions went to various educational activities in 1998. Ford contributes to universities and colleges with a plan to increase contributions to 26 colleges and universities over the next 5 years. Ford has maintained a longterm commitment to contribute to historically African-American colleges and universities.

Texas Instruments states that education is its highest priority for corporate philanthropy and volunteerism. It has established a series of grants for universities totaling \$27 million. Texas Instruments supports preschool programs, mentoring for K-12 students, teacher training, scholarships for community college students, internships, support for university-based research and tuition reimbursement for employees. Texas Instruments has donated \$5 million to Southern Methodist University for an electrical engineering building. The corporation's continuing education program represents a \$100 million investment annually.

Netscape through AOL Foundation participates in the Interactive Education Initiative which makes 55 grants to institutions looking for ways to improve technology in education. They support the Rural Telecom Leadership Awards as well as the Digital Divide Initiative. Netscape regularly donates computers as well as sponsoring paid internships in their headquarters. Additionally, Jim Barksdale, the former president of Netscape, recently donated \$100 million to promote literacy in his home State of Mississippi.

In 1998, Kodak contributed \$11.2 million to not-for-profit organizations and programs devoted to education, health and human services and civic and community causes. Kodak is also a corporate sponsor of the JASON project, a year round scientific expedition designed to engage students in grades 4 to 9 in science and technology.

IBM has developed a variety of programs to help the community. Through their KidSmart Program, IBM donated over 1,000 "young explorers" computers to more than 400 nonprofit day care centers

and preschools. Through Project First (Fostering Instructional Reform through Service and Technology), IBM and Americorp have combined to train and supply technology coordinators to public schools. IBM also matches employees' gifts to universities, and employees can donate equipment to K-12 schools by paying only 20 percent of the retail value of the equipment.

The Corning Incorporated Foundation develops and administers projects in support of educational, cultural, community and selected national organizations. Corning has entered into a collaborative effort called Futures '97 with Local 1000 of the American Flint Glass Workers' Union. Futures '97 is designed to assist Corning's active and laid off hourly employees with career management training and education. Corning also runs a summer intern program to provide real life experience to students in technical programs.

Motorola established Motorola University as a way to help transform learning and teaching. The university establishes alliances with school systems, the private sector and not-for-profit organizations to improve the skill level of graduates entering the workforce.

Haliburton Co. sponsors the Haliburton Energy Institute which offers courses, seminars and workshops designed to keep students up to date with technology. Haliburton, through Kellogg Discover Engineering Committee, also sponsors National Engineers Week in which high school students participate in activities at their offices.

F. Amendments

1. THE KENNEDY AMENDMENT

Senator Kennedy offered an amendment at the markup that raised the H-1B visa cap to 145,000 a year for fiscal year 2000, fiscal year 2001, and fiscal year 2002. The amendment exempted from the cap those above a master's degree. It also guaranteed 50,000 visas within the 145,000 ceiling for master's degree recipients.

The Kennedy amendment also proposed to raise substantially fees paid by employers of H-1B visa holders. The amendment would have increased the current \$500 fee as follows: \$1,000 for employers with 150 or fewer employees; \$2,000 for those with 151 to 500 employees; and \$3,000 for those with 501 or more employees.

The amendment would have changed the current mix of training and education programs, including adding a new Digital Divide Program within the National Science Foundation.

The amendment would have instituted new labor requirements. H-1B-dependent employers would have to attest that they did not will not displace U.S. workers 6 months before or after the filing of a labor condition application. In addition, H-1B-dependent employers would have to attest they are making efforts to continually train and update existing skills of their workers and to promote them where possible. The amendment also authorized the Department of Labor to conduct a "random sample" and investigate compliance of employers for a report to Congress. It would also allow DOL to penalize noncomplying employers, thereby making it possible for the "report" to turn into a mechanism that supersedes the carefully negotiated current law prerequisites for investigations

and processes for enforcement designed to ensure fairness for all concerned.

While finding much to appreciate in the Kennedy amendment's recognition of the essential need to increase the H-1B visa cap, the Committee ultimately was compelled to reject the amendment for a number of reasons.

First, the visa increase in the amendment was inadequate. Senator Kennedy's amendment increases H-1B visas by only 30,000 this year and 37,500 next year, which simply is far less than current demand. Since the cap has been reached this year, employers must be using more than 15,000 visas a month. In other words, Senator Kennedy's amendment would have added fewer than 2 months worth of visas. This would have guaranteed that the Committee would have had to return to this issue again next year and raise the ceiling yet again.

Second, the proposed fee increases in the amendment were excessive. Prior to 1998, there were no additional fees for training or education associated with H-1B visas. In 1998, Senator Abraham and Senator Kennedy agreed in principle that the final version of the legislation would contain a fee of this type. The fee was set at \$250 per visa in a House-Senate agreement. Negotiations with the White House led to agreement on a \$500 fee to be assessed not only on initial visa petitions but on petitions for first extensions of visas and petitions for changes of employer or concurrent employment. Doubling that fee to \$1,000 for small businesses and raising it six-fold for others is excessive. The Committee recognizes the advantage of providing additional training and scholarships, and has accomplished this through the visa increase, which will more than double funds for these purposes over 3 years. However, it is worth noting that the Federal Government already spends \$7.1 billion on training programs, while companies spend tens of billions more on their own training of employees. In addition, increases in funding for these programs of the order of magnitude contemplated by Sen. Kennedy's amendment should be preceded by some experience to provide a gauge for how effectively they are working.

Third, the amendment sought to add labor provisions that are unnecessary and unwarranted given the extensive array of new enforcement provisions added through negotiations with the administration in 1998. The 1998 bill, as noted above, provided three types of layoff protection for American workers. One of these bars H-1B-dependent employers (those with more than 15 percent H-1B's in their workforce) from hiring an H-1B worker to replace a U.S. worker in the same job who was laid off 90 days before or after the filing of a visa petition. Senator Kennedy would have expanded that to 6 months before and after. This works a significant change in the provision. In its current form, the provision is designed to prevent a purposeful, planned layoff by a company laying off U.S. workers and bringing in foreign workers as replacements. But it strains credulity to believe an employer will lay off an American in the hope that 364 days later he is going to be able to replace the American with a foreign worker. Thus the effect of this proposed change would have been to turn the attestation from a mechanism designed to prevent deliberate replacement of a U.S. worker with an H-1B worker into a trap for the unwary employer who makes

changes to his workforce that are in no way connected to the hiring of an H-1B worker.

The Kennedy amendment also contained an attestation that H-1B-dependent employers train workers in a way satisfactory to the Federal Government. Again this appears excessive and the Committee believes puts us on a slippery slope where all employers are required to subject themselves to DOL auditors to determine whether they satisfy Government training standards. By definition extremely subjective standards will be involved in such a process and thereby will make it difficult for any employer to know if his or her company is in compliance.

The Kennedy amendment also would have authorized the Department of Labor to “conduct an ongoing survey on the level of compliance by employers with the provision and requirements of the H-1B visa program” and stated the Secretary of Labor could pursue “appropriate penalties” based on this “survey.” Whatever its limited intentions may have been, this provision would have authorized rolling, invasive ongoing investigations—without the need to show any cause—of potentially all employers that use H-1B visas, thereby overriding the carefully crafted compromises on these issues worked out in the 1998 legislation.

There have been few violations of H-1B visas, with only “seven” willful violations documented by DOL since 1990. Despite this low level of documented violations, Congress gave the DOL substantial new investigative authority that allows the DOL to investigate an employer outside the complaint process if it receives credible information of a possible violation and receives the approval of the Labor Secretary to investigate. No case has been made that that authority was inadequate, or that it has uncovered any heretofore undiscovered serious violations. To grant the DOL sweeping new authority far beyond that, regardless of the stated purpose of that authority, is not justified on the current record. The Committee also notes that recent complaints of outrageous behavior in connection with a San Antonio enforcement action conducted by INS with DOL cooperation outside the procedures set out in INA § 212(n), in which it is claimed that INS, with DOL cooperation, arrested and mistreated 40 Indian professionals, arrested their spouses, and mocked their religious beliefs, provide a reminder why we do not give carte blanche to Federal agencies.

2. THE FEINSTEIN-ABRAHAM AMENDMENT

This amendment modified the existing allocation of H-1B fee revenue so that 36.2 percent of the total H-1B fee revenue goes to workforce training and 30.7 percent of the total H-1B fee revenue goes to math, science, engineering and technology post-secondary scholarships for low-income and disadvantaged students. It allowed the National Science Foundation to renew the annual scholarship for up to 4 years and increased the minimum scholarship amount to \$3,125 (the Pell Grant amount). It dedicated an additional 25.8 percent of the total H-1B fee revenue to improving K-12 math and science education by directing it to the National Science Foundation for matching or direct grants to support private-public partnerships to help schools build, improve or expand math, science and information technology curricula. It folded the funds for the Sys-

temic Reform Grant Program under the 1998 legislation into the broader NSF direct and matching grant program. To ensure accountability and progress among the various H-1B grant recipients, it requires the National Science Foundation and Department of Labor to develop a tracking system to monitor the performance of programs receiving H-1B grant funding.

3. THE BIDEN AMENDMENT

This amendment authorized \$20,000,000 for grants to Boys and Girls Clubs across America to fund after-school technology programs for fiscal year 2001 through fiscal year 2006.

4. THE KYL AMENDMENT

This amendment would have transferred training programs under S. 2045 from the DOL to the Department of Commerce.

5. THE HATCH AMENDMENT

This technical amendment corrected a drafting error that limited the exemptions for universities, research institutes, and advanced degree recipients to fiscal year 2000.

F. Conclusion

We should continue to be concerned about the impact on America if the H-1B cap is not addressed. In 1998, Thomas Friedman of the New York Times wrote, "If U.S. companies are told to put up 'No Vacancy' signs, they are inevitably going to move more knowledge operations overseas, and that will spur more innovation, wealth creation, and jobs over there." He points out that many of those hired on H-1B visas are actually educated at American universities, noting that "the idea that we would educate all these foreign computer engineers in U.S. universities and then send them home to compete with us is nuts."

Demetrios G. Papademetriou, co-director of the International Migration Policy Program at the Carnegie Endowment for International Peace, wrote this year, "While we are again showing how not to have the right conversation about foreign-born high-tech workers, people who come into this country on H-1B visas, the rest of the developed world is waking up to the fact that America's cherry-picking of international tech talent amounts to an enormous competitive advantage, one that, if left unchallenged, could extend U.S. dominance in information technology indefinitely. Our competitors are doing something about it. Germany, Canada, the United Kingdom, and Australia, among others, have already entered the sweepstakes for hightech workers." A global competition for talented individuals is indeed taking place. The question is simple: Will America choose to remain a global leader in crucial academic, science and technology fields?

Since 1990, the American economy has prospered and American companies have become world leaders in numerous fields. Foreign-born talent has played an important role in that success. The Committee believes that the American system of openness works and that, in effect, barring talented individuals from working in the United States simply because those individuals were not born in

this country is not in keeping with the American tradition of welcoming to our shores people who can make a contribution to our economy and society.

IV. VOTE OF THE COMMITTEE

On March 9, 2000, with a quorum present, the Committee on the Judiciary considered S. 2045, the American Competitiveness in the 21st Century Act. Senator Kennedy offered an amendment in the nature of a substitute which was defeated by a 10-to-8 vote. An amendment offered by Senators Feinstein and Abraham to modify and expand the use of visa fees for education was approved by a 12-to-6 vote. A Kyl second degree amendment to the Feinstein/Abraham amendment that would provide training within the Department of Commerce was defeated by a voice vote. A Biden amendment to authorize grants to the Boys and Girls Clubs was approved by a voice vote with Senator Kyl noting his dissent. A Hatch technical amendment to correct a drafting error which limited the exemptions in the bill to 1 year was approved unanimously. A Feingold amendment dealing with the naturalization of Hmong veterans was withdrawn. A Leahy amendment to grant the Attorney General authority to cancel removal of veterans was withdrawn. A Torricelli amendment to adjust the status of certain persons who fled Syria was withdrawn.

RECORDED VOTES

Vote on Kennedy substitute amendment

YEAS (8)	NAYS (10)
Leahy (by proxy)	Hatch
Kennedy	Thurmond
Biden	Specter (by proxy)
Kohl (by proxy)	Kyl
Feingold	DeWine (by proxy)
Torricelli	Ashcroft (by proxy)
Schumer	Abraham
Grassley	Sessions (by proxy)
	Smith (by proxy)
	Feinstein

Vote on Feinstein-Abraham amendment to modify and expand the use of VISA fees for education

YEAS (12)	NAYS (6)
Hatch	Leahy (by proxy)
Thurmond	Kennedy
Specter (by proxy)	Feingold
Kyl	Torricelli
DeWine (by proxy)	Schumer (by proxy)
Ashcroft (by proxy)	
Abraham	
Sessions (by proxy)	
Smith (by proxy)	
Biden	
Kohl (by proxy)	
Feinstein	

Kyl second degree amendment to provide training within the department of commerce

Defeated by voice vote.

Biden amendment for authorization of the boys and girls clubs

Approved by voice vote with Senator Kyl noting his dissent.

Hatch technical amendment to correct a drafting error which limited the exemptions in the bill to 1 year

Approved unanimously.

MOTION TO REPORT S. 2045 FAVORABLY, WITH AMENDMENTS

YEAS (16)	NAYS (2)
Hatch	Kennedy
Thurmond	Feingold
Specter	
Kyl	
DeWine	
Ashcroft	
Abraham	
Sessions	
Smith	
Biden	
Kohl	
Feinstein	
Leahy	
Torricelli	
Schumer	

V. SECTION-BY-SECTION ANALYSIS

Section 1.—Short title: American Competitiveness in the 21st Century Act of 2000.

Section 2.—Temporary increase in visa allotments

In addition to the number of H-1B visas issued or individuals authorized H-1B status under current law, this section authorizes:

(A) 80,000 for fiscal year 2000.

(B) 87,500 for fiscal year 2001.

(C) 130,000 for fiscal year 2002.

This section has the effect of raising the cap to 195,000 for fiscal year 2000, 2001, and 2002.

Section 3.—Special rule for universities, research facilities, and graduate degree recipients

This section exempts from the numerical limitation (1) individuals who are employed or receive offers of employment from an institution of higher education, affiliated entity, nonprofit research organization or governmental research organization and (2) individuals who have a petition filed between 90 days before and 180 days after receiving a master's degree or higher from a U.S. institution of higher education. The principal reason for the first exemption is that by virtue of what they are doing, people working in universities are necessarily immediately contributing to educating Ameri-

cans. The more highly qualified educators in specialty occupation fields we have in this country, the more Americans we will have ready to take positions in these fields upon completion of their education. Additionally, U.S. universities are on a different hiring cycle from other employers. The H-1B cap has hit them hard because they often do not hire until the numbers have been used up; and because of the academic calendar, they cannot wait until October 1, the new fiscal year, to start a class.

Section 4.—Limitation on per-country ceiling with respect to employment-based immigrants

This section modifies per-country limits on employment-based visas to eliminate the discriminatory effects of those limits on nationals from certain Asian Pacific nations. Currently, in a given year, the annual limit of 140,000 employment visas is not being used, yet U.S. law prevents individuals born in particular countries from being able to join employers who want to sponsor them as permanent employees because those countries have reached their per-country limit. This amounts to preventing an employer from hiring or sponsoring someone permanently simply because he or she is Chinese or Indian, even though the individual meets all other legal criteria. This is inconsistent with the legitimate function of the per-country limit, which is to attempt to allocate visas among residents of different countries if there are not enough visas available for all qualified applicants. The bill would end this prohibition unless demand for visas indicates that the 140,000 limit will be hit, in which case the per-country principle would remain in place as an allocation mechanism. This would work as follows: if there are still unused employment-based immigrant visas available after the employment-based visas issuable during any calendar quarter have been issued according to the per-country limitations, those visas may then be issued without regard to the country of origin of the recipient. They may be issued, however, only to the limit of the total number of employment-based visas available for each category. This provision will have no adverse impact on family immigration levels in the foreseeable future, because the employment visa “spill-down” is triggered only if immediate relative numbers fall below a threshold that they are not expected to reach.

This section also affords transitional protection for individuals on H-1B visas with approved petitions for permanent employment visas but whom the per-country limit is preventing from obtaining a permanent resident visa to stay until such a visa becomes available. These immigrants would otherwise be forced to return home at the conclusion of their allotted time in H-1B status, disrupting projects and American workers. The provision enables these individuals to remain in H-1B status until they are able to receive an immigrant visa and adjust their status within the United States, thus limiting the disruption to American businesses.

Section 5.—Increased portability of H-1B status

This section allows an H-1B visa holder to change employers at the time a new employer files the initial paperwork, rather than having to wait for the new H-1B application to be approved. This responds to concerns raised about the potential for exploitation of

H-1B visa holders as a result of a specific employer's control over the employee's legal status.

Section 6.—Extension of authorized stay in cases of lengthy adjudications

This section addresses the inordinate delays in labor certification and INS visa processing by allowing an individual on an H-1B visa whose adjustment to permanent resident on the basis of employment has progressed far enough to stay in the United States until a final decision is made on his or her case. Individuals in these circumstances are currently being forced to leave the country and disrupt the projects they are working on simply on account of entirely unreasonable administrative delays. This section allows the Attorney General to extend in 1-year increments the H-1B visa of an individual in this category beyond the 6-year limitation period if the employer has filed on the individual's behalf either a petition for a permanent resident visa or an application for adjustment of status and more than 1 year has elapsed from the date the employer filed the labor certification application or petition for adjustment of status. If labor certification is required, an individual is only eligible for this extension if the DOL has already approved the labor certification application.

Section 7.—Extension of certain requirements and authorities through fiscal year 2002

Education and Training: This section extends the \$500 per visa fee, set to expire in fiscal year 2001, through fiscal year 2002.

Enforcement and DOL Investigative Authority: This section extends the authority for the nonpermanent additional labor requirements added by the 1998 law and set to expire in fiscal year 2001 through fiscal year 2002. It also extends the new authority of the Department of Labor to investigate possible H-1B violations without first having received a complaint through fiscal year 2002.

Section 8.—Recovery of visas used fraudulently

This section requires fraudulently issued H-1B visas to be put back into the pool of available visas so legitimate employers and visa holders can use them.

Section 9.—Study by national science foundation on “digital divide”

This section requires the National Science Foundation to conduct a study on the “digital divide” with a report to Congress no later than 18 months after enactment of the bill.

Section 10.—Modification of nonimmigrant petitioner account provisions

This section modifies the existing allocation of H-1B fee revenue so that 36.2 percent of the total H-1B fee revenue goes to workforce training and 30.7 percent of the total H-1B fee revenue goes to math, science, engineering and technology post-secondary scholarships for low-income and disadvantaged students. It allows the National Science Foundation to renew the annual scholarship for up to 4 years and increases the minimum scholarship amount to \$3,125 (the Pell Grant amount). It dedicates an additional 25.8 per-

cent of the total H-1B fee revenue to improving K-12 math and science education by directing it to the National Science Foundation for matching or direct Grants to support private-public partnerships to help schools build, improve or expand math, science and information technology curricula. It folds the funds for the Systemic Reform grant program under the 1998 legislation into the broader NSF direct and matching grant program. To ensure accountability and progress among the various H-1B grant recipients, it requires the National Science Foundation and Department of Labor to develop a tracking system to monitor the performance of programs receiving H-1B grant funding.

Section 11.—Kids 2000 crime prevention and computer education initiative

This section authorizes \$20,000,000 for grants to Boys and Girls Clubs across America to fund after-school technology programs for fiscal year 2001 through fiscal year 2006.

VI. COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 10, 2000.

Hon. ORRIN G. HATCH,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2045, the American Competitiveness in that Twenty-First Act of 2000.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Grabowicz (for federal costs), Theresa Gullo (for the state and local impact), and John Harris (for the private-sector impact).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

S. 2045—American Competitiveness in the Twenty-First Century Act of 2000

Summary: S. 2045 would increase the number of nonimmigrant (temporary) visas, known as H-1B visas, available for certain skilled foreign workers and make several other changes to current laws relating to the employment of skilled foreign workers. The bill also would change the formulas governing the allocation of H-1B visa fees collected by the Immigration and Naturalization Service (INS), which are spent under current law without further, appropriation for job training, scholarship, and administrative programs. It would direct the National Science Foundation (NSF) to conduct a study on access to advanced technology. Finally, S. 2045 would authorize the appropriation of \$20 million for each of fiscal years 2001 through 2006 for the Attorney General to make grants to the Boys and Girls Clubs of America to fund after-school technology programs.

Assuming appropriation of the necessary funds, CBO estimates that implementing S. 2045 would result in additional discretionary spending, over the 2000–2005 period, of \$101 million (\$20 million a year for the grants to Boys and Girls Clubs, and about \$1 million for the NSF study). In addition, we estimate that the bill would increase both offsetting receipts and direct spending of those receipts by about \$220 million over the 2000–2005 period. Because S. 2045 would affect direct spending, pay-as-you-go procedures would apply.

S. 2045 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the costs of complying with this mandate would be very small and would not exceed the threshold established in that act (\$55 million in 2000, adjusted annually for inflation).

S. 2045 would impose private-sector mandates as defined by UMRA by extending, for one year, two requirements of certain employers of persons with H–1B visas. However, CBO estimates that the direct costs of those mandates would not exceed the annual threshold established in UMRA for private-sector mandates (\$109 million in 2000 dollars, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of S. 2045 is shown in Table 1. The costs of this legislation fall within budget functions 150 (international affairs), 250 (general science, space, and technology), 500 (education, employment, training, and social services) and 750 (administration of justice).

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF S. 2045, THE AMERICAN COMPETITIVENESS IN THE TWENTY-FIRST CENTURY ACT OF 2000

	By fiscal year, in millions of dollars—					
	2000	2001	2002	2003	2004	2005
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated authorization level	0	21	20	20	20	20
Estimated outlays	0	21	20	20	20	20
Net spending or visa fees under current law:						
Estimated budget authority	0	0	0	0	0	0
Estimated outlays	–39	–10	72	36	9	0
Proposed changes:						
INS administrative fees:						
Estimated budget authority	–11	–10	–14	0	0	0
Estimated outlays	–11	–10	–14	0	0	0
H–1B petitioner fees:						
Estimated budget authority	–45	–39	–86	0	0	0
Estimated outlays	–45	–39	–86	0	0	0
Department of State fees:						
Estimated budget authority	–5	–4	–6	0	0	0
Estimated outlays	–5	–4	–6	0	0	0
Total change in visa fee collections:						
Estimated budget authority	–61	–53	–106	0	0	0
Estimated outlays	–61	–53	–106	0	0	0
Additional spending from visa fees:						
Estimated budget authority	61	53	106	0	0	0
Estimated outlays	16	24	49	57	54	18
Net change in direct spending:						
Estimated budget authority	0	0	0	0	0	0
Estimated outlays	–45	–28	–57	57	54	18
Net direct spending under S. 2045:						
Estimated budget authority	0	0	0	0	0	0

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF S. 2045, THE AMERICAN COMPETITIVENESS IN THE TWENTY-FIRST CENTURY ACT OF 2000—Continued

	By fiscal year, in millions of dollars—					
	2000	2001	2002	2003	2004	2005
Estimated outlays	-84	-38	15	93	63	18

Basis of estimate

CBO estimates that implementing S. 2045 would cost about \$21 million in 2001 and about \$20 million a year for 2002 through 2005, assuming appropriation of the necessary funds. In addition, we estimate that enacting the bill would decrease direct spending for 2000, 2001, and 2002, and increase spending for 2003, 2004, and 2005. Over the 2000–2005 period, CBO estimates that net direct spending would decrease by \$1 million. For the purpose of this estimate, CBO assumes that S. 2045 will be enacted by June 1, 2000.

Spending Subject to Appropriation.—For the purposes of this estimate, CBO assumes that \$20 million authorized to be appropriated for the technology grants to the Boys and Girls Clubs will be appropriated at the start of each fiscal year over the 2001–2005 period, with spending expected to occur in the same year. (The bill would authorize an additional \$20 million for such grants in 2006.) CBO estimates that the NSF study would cost about \$1 million in fiscal year 2001, subject to the availability of appropriated funds.

Direct Spending.—S. 2045 would increase the number of non-immigrant visas available to certain skilled workers by about 100,000 in fiscal year 2000, by 87,500 in fiscal year 2001, and by 130,000 in fiscal year 2002. Table 2 shows the number of visas authorized by current law and the levels proposed under S. 2045. For 2000, the increase consists of a specified additional 80,000 visas plus an estimated addition of about 20,000 visas because section 3 of the bill would allow for certain exemptions from the cap on H-1B visas in that year.

TABLE 2.—NUMBER OF H-1B VISAS AUTHORIZED UNDER S. 2045

	2000	2001	2002
H-1B visas authorized under current law	115,000	107,000	65,000
Additional H-1B visas authorized under S. 2045	100,000	87,000	130,000
Total H-1B visas authorized under S. 2045	215,000	195,000	195,000

The administrative fee for these visas is \$110 each, and CBO estimates that all of the additional authorized visas would be issued. Thus, enacting the bill would increase fees collected by the INS by about \$11 million in fiscal year 2000, by \$10 million in 2001, and by \$14 million in 2002. We expect that the INS would spend the fees (without appropriation action), mostly in the year in which they are collected. Thus, enacting this portion of S. 2045 would result in a negligible net budgetary impact in each year.

In addition to the administrative fees collected under this bill, most employers of the affected workers must pay a petitioner fee of \$500 per worker hired by October 1, 2001. The bill would extend

the petitioner fee until October 1, 2002. Consequently, CBO estimates that the INS would collect additional petitioner fees of about \$45 million in fiscal year 2000, \$39 million in 2001, and \$86 million in 2002 (or a total of \$170 million over the three-year period). As under current law, these additional petitioner fees would be spent without further appropriation by the Department of Labor (DOL) to help train domestic workers for jobs in the technology sector, by NSF for certain scholarship and science education initiatives, and by DOL and INS for administrative expenses.

S. 2045 would change the formulas governing the allocation of petitioner fees among DOL, NSF, and INS. For purposes of this estimate, CBO assumes that the new formulas would take effect upon enactment, thereby changing the distribution of both the estimated \$170 million in new collections under the bill and the \$174 million expected to be collected under current law in 2000 and 2001. The formulas in S. 2045 would allocate 42.2 percent of the amounts collected to DOL for job training and administrative expenses, compared to 62.3 percent under current law. NSF would receive 59 percent of the fees for scholarships and other grants, versus 36.2 percent under current law. Finally, 1.5 percent of the funds would go to INS to help offset administrative costs. These new allocations total 102.7 percent of the fees, compared to 100 percent under current law. However, CBO assumes that spending would be limited by the amounts actually collected. Therefore, CBO estimates that new spending from petitioner fees authorized under S. 2045 would equal the \$170 million collected. (If spending were not limited by the amounts collected, CBO estimates that enacting the allocation formula authorized by S. 2045 would result in spending of \$10 million more than would be collected over the 2000–2005 period.)

This bill also would increase collections by the Department of State for H–1B visas; the fee for those visas is currently set at \$45 per person. CBO estimates that, on average, the State Department would collect and spend an additional \$5 million a year over the 2000–2002 period, and the net budgetary impact would be around \$1 million or less each year.

Individuals classified as nonimmigrants are ineligible for most federal public benefits, with a few exceptions that include emergency Medicaid services. Given that H–1B visa recipients are skilled workers admitted for employment, CBO expects that any increase in costs for these services would not be significant.

In addition to provisions concerning the H–1B nonimmigrant visas, S. 2045 also would affect immigrant (permanent) visas. Current law provides for a cap on the number of employment-related immigrant visas that can be granted to natives of any one country in a given year. The bill would remove this cap, which could result in a small increase in the number of visas granted, and thus could increase fees collected by the INS. We expect that additional fees would not exceed \$500,000 annually, most of which would be spent in the same year, resulting in a negligible net budgetary impact.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays that are subject to pay-as-you-go procedures are shown in

Table 3. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

TABLE 3.—ESTIMATED IMPACT OF S. 2045 ON DIRECT SPENDING AND RECEIPTS

	By fiscal year, in millions of dollars—										
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Changes in outlays	-45	-28	-57	57	54	18	0	0	0	0	0
Changes in receipts	Not applicable										

Estimated Impact on State, Local, and Tribal Governments: S. 2045 would extend for one year the requirement that employers, including state and local governments, pay the \$500 petitioner fee when they hire an H-1B visa holder. This requirement would be an intergovernmental mandate as defined in UMRA. While CBO is uncertain how to calculate the costs of such a mandate (as discussed below in the private-sector section), we estimate that costs to state and local governments would be very small and would not exceed the threshold established in UMRA (\$55 million in 2000, adjusted annually for inflation).

Estimated impact on the private sector: S. 2045 would impose private-sector mandates on employers that hire H-1B visa holders by extending for one year two existing mandates that would otherwise expire on October 1, 2001. The American Competitiveness and Workforce Improvement Act of 1998 prohibits any “H-1B-dependent” employer from hiring any H-1B visa holder within 90 days of firing another employee from a similar position. (An H-1B-dependent employer is a business where at least 15 percent of the employees are foreigners with H-1B visas.) The same act also requires that all employers that hire H-1B visa holders pay a \$500 fee to the government for each H-1B holder they hire.

CBO cannot determine whether these mandates would impose any costs on the private sector as defined in UMRA because the law is unclear about how to measure costs associated with extending an existing mandate that has not yet expired. The costs of the extension would be equal to the current cost of compliance if measured against the costs that would be incurred if current law remains in place and the mandate expires. Because there are very few H-1B-dependent employers, CBO expects that the cost of extending the prohibition on firing current employees would be low. The fee extension, which would affect all employers that hire H-1B holders, would be more costly. CBO estimates that the government would collect over \$50 million by extending the fee provision.

In contrast, UMRA may also be interpreted to mean that the costs would be measured against the current costs of complying with the mandate. In that case, the mandate would impose no additional costs on the private sector because the extension would not force employers to change their current behavior. In either case, CBO estimates that the total costs to the private sector would fall below the threshold established in UMRA (\$109 million in 2000, adjusted annually for inflation).

The employers affected by the extensions are among those most likely to benefit from the bill's other provisions, particularly the increase in the number of available H-1B visas.

Estimate prepared by: Federal costs: DOL: Christina Hawley Sadoti, State Department: Sunita D'Monte, INS: Mark Grabowicz, NSF: Kathy Gramp; impact on State, local, and tribal governments: Theresa Gullo; Impact on the Private Sector: John Harris.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

VII. REGULATORY IMPACT STATEMENT

Pursuant to paragraph 11(b), rule XXVI of the Standing Rules of the Senate, the Committee, after due consideration, concludes that Senate bill 2045 will not have direct regulatory impact.

VIII. ADDITIONAL VIEWS OF SENATORS LEAHY, KENNEDY,
BIDEN, FEINGOLD, TORRICELLI, AND SCHUMER

INTRODUCTION

The views contained here are considered “additional views” because they reflect the serious reservations held by many Members of the Judiciary Committee despite the fact that most minority Members voted in favor of S. 2045 as amended. Some Members voted for that bill to demonstrate a good-faith effort to address the immediate matters at hand while not completely agreeing with the Majority’s long-term approach to resolving the high skill shortage in our workforce, as presented in the views below.

Our Nation’s economy is experiencing a time of unprecedented growth and transition. This strong economic growth can, in large measure, be traced to the vibrant, competitive and fast-growing high-technology industry. Information technology, biotechnology and its associated manufacturers have created more new jobs than any other part of the economy. In fact, today the software industry’s contribution to the economy is greater than the contribution of any other manufacturing industry in America—an extraordinary achievement for an industry that is less than 30 years old.

The rapid growth of high technology has made it the Nation’s third largest employer, with over 4.8 million workers in high-tech related fields, working in jobs that pay 70 percent above average incomes. The Bureau of Labor Statistics projects that the number of core IT workers will grow to a staggering 2.6 million by 2006—an increase of 1.1 million from 1996.

With such rapid change, we find ourselves stretched thin to support these new businesses and the growth opportunities they present. The most cited constraint on future growth of the high-tech industry is clearly the shortage of people with the skills and technical background to take on jobs in the industry. A survey conducted by the Information Technology Association of America identified more than 346,000 unfilled IT positions. Several factors are contributing to this shortage, including an inaccurate, negative image of IT occupations as dry and overly demanding, the underrepresentation of women and other minorities in the IT workforce, and outdated academic curricula that often does not keep pace with industry needs.

All of us want to be responsive to our Nation’s need for high-tech workers. We know that unless we take steps now to address this growing workforce gap, America’s technological and economic leadership will be jeopardized.

We also agree with the majority’s view that we need to find both short- and long-term solutions to resolve this critical labor shortage. We disagree, however, that S. 2045 addresses both sides of this problem. S. 2045 places too much emphasis on increasing the

H-1B cap as the immediate and best solution to this workforce gap. Barely any importance is placed on finding long lasting solutions that will provide our workforce with the skills needed to benefit from this growth economy and help our companies continue to grow.

The H-1B visa cap should be increased, but in a way that better addresses the fundamental needs of the American economy. Simply raising the cap, without meaningfully addressing our long-term labor needs misses the point. We must place greater emphasis on education and training to satisfy the rapidly growing demand for skilled IT workers. The Kennedy amendment ensures that the H-1B program will contribute to solving the long-term IT skill shortage by strengthening training opportunities for U.S. workers and educational opportunities for U.S. students.

A MODEST INCREASE IN THE H-1B HIGH-TECH VISA CAP IS JUSTIFIED, BUT IT MUST BE TEMPORARY, REASONABLE AND SUFFICIENTLY TAILORED TO MEET EXISTING SHORT-TERM NEEDS

A modest increase in the H-1B high-tech visa cap is justified. But this increase must be temporary, reasonable and sufficiently tailored to meet existing short-term needs. The Kennedy amendment meets these requirements. Raising the annual cap to 145,000, an increase of 30,000 additional visas, plus an exemption for individuals with degrees higher than a masters—approximately 10,000 to 14,000 additional visas—provides the IT industry with a sufficient number of H-1B visas to meet the immediate, short-term labor shortages.

In contrast, S. 2045 proposes increasing the H-1B visa cap to 195,000. This number is not inherently unacceptable, but the bill would also exempt from the cap graduate degree recipients from American universities and persons employed by institutions of higher education, affiliated entities and nonprofit and government research institutions. Based on recent statistics provided by the Immigration and Naturalization Service, we estimate that these exemptions could result in as many as 40,000 additional H-1B visas being issued per year, raising the overall numbers of H-1B visas to 235,000 per year. This figure is well above the number of visas even the most ardent IT industry lobbyists claim are needed.

No one would disagree that the persons contemplated by these exemptions are clearly the types of professionals our universities and our industries need. However, exempting all of them from the H-1B visa cap results in a significant increase in the admission of persons with relatively less specialized skills.

While many Members of the Committee would have preferred to have more reliable evidence before supporting such a large increase in the cap, many voted to proceed with the Majority's 195,000 cap since the potential needs of our economy are of such importance and such evidence is in progress. For example, the bill that we passed in 1998 directed the National Academy of Sciences (NAS) to study the issue of worker shortages in the information technology industry and allegations of age discrimination in the industry. NAS has not yet completed this report. The 1998 legislation also directed the INS to report information on H-1B workers, their employers and occupations by October 2000. The INS has not yet

completed its report. The results of these reports should soon demonstrate more precisely the particular needs of the IT industry and U.S. workforce for future legislation.

In the meantime, we believe that the H-1B debate should not focus solely on the number of visas available for foreign skilled workers, but should also emphasize employers' need for as many workers with the highest professional credentials as possible. Strong arguments can be made for expanding the number of H-1B visas needed to fill an unmet shortage for masters and doctoral level professionals who possess specialized skills that cannot be easily and quickly produced domestically. Any increase in the visa cap should therefore be done with an increased proportion of foreign workers entering with a master's degree or higher. The Kennedy amendment promotes this goal by reserving within the cap an increasing number of H-1B visas for petitioners with at least a master's degree. In fiscal year 2000, 45,000 H-1B visas are reserved; the number increases to 50,000 in fiscal year 2001, and 55,000 in fiscal year 2002.

The exemption for individuals with doctoral degrees addresses the special concerns of the universities and research institutions as well as high-tech companies. In the last few years, as a result of their unique hiring cycle, these institutions have been unable to secure the foreign nationals they need as qualified professors and researchers. Our universities, and our country as a whole, benefit from the admission of these exceptionally talented individuals. They represent the best the world has to offer. We welcome these accomplished individuals and the unique skills they will bring to strengthen and diversify our economy.

The vast majority of the foreign nationals hired by these institutions have Ph.D.'s, earned either in the U.S. or at one of the premier universities abroad. S. 2045 provides a limited exemption for Ph.D.'s. The Kennedy amendment proposes an unencumbered exemption for these exceptionally gifted foreign nationals and ensures their admission.

WE MUST ENSURE THAT U.S. WORKERS ARE NOT HARMED BY OUR IMMIGRATION POLICIES

In considering a new high-tech immigration bill, we must ensure that U.S. workers are not harmed by our immigration policies. We should not bring in temporary foreign workers to do jobs that U.S. workers could fill. We should also not bring in so many temporary foreign workers that the wages and benefits of U.S. workers become artificially depressed. We know that the IT industry has a current need for additional workers, but we also know that many U.S. workers want good paying high-technology jobs. We understand that not every American worker can step in and perform these tasks—some of them need skills training so they can move from low-paying service sector jobs into better paying information technology jobs. But others are laid off IT workers or recent college graduates who can assume those positions immediately.

We are experiencing the longest period of economic growth and prosperity in our Nation's history and an unemployment rate just over 4 percent, the lowest level in 30 years. The information technology industry, like many other industries today, must contend

with a tight job market during these times of low unemployment. We are concerned that data from the Bureau of Labor Statistics show that real median weekly high-technology wages were actually less in 1998 than in 1995, while wages for other managers and professionals rose during that same time. We must ensure that the ready supply of H-1B workers in the information technology industry is not keeping wages and benefits artificially low.

Although many new jobs are created in the IT industry each year, we also know that thousands of IT workers were laid off in 1999. For example 5,180 workers lost their jobs at Electronic Data Systems, 2,150 at Compaq, and 3,000 at NEC-Packard Bell. We also know that some IT companies classify their workers as independent contractors or temporary workers rather than as employees in part to avoid paying them benefits. According to a February 8, 1999, article in "Computerworld" magazine, U.S. Census Bureau data show that the unemployment rate for IT workers over age 40 is more than five times that of other unemployed workers. An IEEE-USA survey of its membership, completed in December 1998, found that each year of age above 45 adds 3 weeks to the duration of unemployment experienced by electrical engineers.

As we address the needs of the IT industry, we must strive to first place those laid off workers in new jobs and to enforce our labor and employment laws so that the current IT workforce gets the pay, benefits, and working conditions to which they are entitled.

We must also do more to increase the number of women and minorities in the IT workforce. The number of women entering the IT field has dramatically decreased since the mid 1980's. The number of persons from most minority groups is also very low.

EXPANDING JOB TRAINING FOR U.S. WORKERS IS CRITICAL AND PROVIDES US WITH THE ONLY LONG-TERM SOLUTION TO THIS LABOR SHORTAGE

A temporary influx of foreign workers and students may be needed in the short-term to help meet the demands by U.S. firms for high skilled workers. But we cannot count on foreign sources of labor as a long-term solution since the supply of foreign workers is limited. In their 1999 book, "The Supply of Information Technology Workers in the United States," Peter Freeman and William Aspray report that other countries are experiencing their own IT labor shortages and "placing pressures on or providing incentives to their indigenous IT workforce to stay at home or return home." They warn that countries like Canada, The Netherlands, the United Kingdom, Israel, and Belgium will be competing with the United States for IT workers from countries like India that have an IT worker surplus. This warning is echoed in the March 7, 2000, New York Times article "High-Tech Firms Warn EU Leaders of IT Skills Gap," which quotes large IT companies like Microsoft as saying that the "IT skills gap in the EU is large and growing," and the "demand for IT professionals will outstrip supply by 13 percent by 2003." Faced with this crisis, the article reports that these IT companies have asked EU leaders to take urgent steps, such as promoting education and training in the new information technologies.

These recent articles support our contention that any legislation increasing these visas should substantially invest in improved job training for U.S. workers and better education for U.S. students. We must give the U.S. workers the skills they need to qualify for these jobs. And as a nation, we have an obligation to invest in our students, the workers of tomorrow. Expanding the number of H-1B visas is *no* substitute for fully developing the potential of our domestic workforce. An educated workforce has become the most valuable resource in the modern economy. Expanding job training for U.S. workers and educational opportunities for U.S. students is critical and provide us with the only long-term solution to this labor shortage.

Many high-tech companies are investing significant resources in education, and to a limited extent, in training programs. The majority lists many commendable examples of high-tech companies that have contributed considerable resources to improve our communities around the country. In carefully reviewing these examples, however, we notice that the focus of their contributions are in education, not worker training. And as would be expected, the companies devoting funds for these initiatives are the largest and richest IT companies—Microsoft, Intel, Texas Instruments, Hewlett Packard, and Netscape.

According to the “2000 ASTD (American Society for Training and Development) State of the Industry Report,” total employer training costs equaled 2 percent of total payroll costs in 1998. But, according to the National Association of Manufacturers, many companies spend less than 1 percent of their payroll on training, and many others have no retraining programs to provide incumbent workers with new or updated skills. Small firms often do not have the resources to provide their workers with the training they need to keep pace with the rapid changes in industry.

Only when businesses address the shortage of highly skilled workers as a national problem with a national solution—rather than a company-by-company approach to worker training—will our workforce be able to meet the growing demand for high skills, and will our economy be able to continue to prosper.

As such, any credible legislative proposal to increase the number of high-tech workers available to American businesses must begin with the expansion of career training opportunities for American workers. Our Nation’s long-term economic vitality depends on the creation of effective, accessible, and accountable job training initiatives that are open to all our citizens. The importance of highly developed employment skills has never been greater—for the continued growth of our economy and for individual workers seeking secure, well paying jobs.

There are very few investments we can make that would produce a better return for our Nation’s economy than investing in worker training. Despite the overwhelming evidence, we have been slow to increase the level of funding for training programs. The only portion of the workforce system that has received a substantial increase is the dislocated worker program. However, participation in that program is limited to workers who have been discharged by an employer and are currently unemployed. That is only one small segment of the workforce, of which only 9 percent

are served by public job training programs. We need to create high-tech training opportunities on a large scale for those who currently hold relatively low paying jobs and wish to obtain new skills to enhance their employability and their earning potential.

Because many more jobs require advanced skills, the gap in earnings between skilled and unskilled workers has steadily widened over the last decade. The impact of increased education on earnings is very pronounced among workers with less than a college degree. In the 1990's, the rate of real growth in the average income of a worker with an associate's degree from a community college increased 2½ times the rate of income growth for a high school dropout. Even relatively brief periods of training in high-tech workforce skills can make a very real difference for both the worker and his or her employer.

When we expanded the number of H-1B visas in 1998, we created a modest training initiative funded by visa fees. The Kennedy amendment proposes to substantially expand and strengthen that program to provide state-of-the-art high-tech training for large numbers of workers. It is one of the best ways to keep the economic expansion going and to extend the current prosperity well into the new century. The information technology industry has been a major catalyst for the recent growth in the U.S. economy, and well trained workers are essential to keep the trend going.

To help meet this need, the Information Technology Training Initiative will provide a significant level of new financial support for regional workforce boards in areas with substantial high-tech skill shortages. It would be awarded by competitive grants based on innovative high-tech training proposals developed by workforce boards in partnership with one or more area employers, and one or more unions, community organizations, or higher educational institutions. The financial resources for this initiative would come from higher H-1B visa petition fees on an increased number of visas, and matching partnership resources. This will allow us to expand the funding provided through the H-1B program for training, resulting in over \$250 million each year. This program will serve 50,000 workers each year—both those who are currently employed and are seeking to enhance their skills, as well as those who are currently unemployed.

At least 80 percent of the funds generated by this program will be reserved for training in the high-tech skills required by the information technology and biotechnology industries, including software and communications services, telecommunications, systems installation and integration, computers and communications hardware, health care technology, biotechnology, biomedical research and manufacturing and innovative services. These are the skills most in demand by those companies which are fueling our economic growth. We need to concentrate our limited resources on preparing workers for these positions.

Training grants will be targeted at those areas which can demonstrate a substantial unmet need for workers with these skills. This program is designed to encourage broad community participation in the training initiatives with the regional Workforce Investment Boards. We are looking for active participation by high-tech companies and trade associations representing small, high-tech-ori-

ented businesses, labor unions representing high-tech workers, and community organizations and educational institutions involved in developing and overseeing these training programs. In order to maximize the number of workers receiving training, workforce boards and other participants are being asked to contribute a 50 percent local match of the Federal grant in either dollars or services.

These programs will be expected to demonstrate concrete results—trainees placed in high-tech jobs, wage increases and promotions for incumbent workers who have upgraded their skills, and attainment of performance levels required by occupational skill standards.

S. 2045 will shut the door to training for thousands of American workers. Instead of expanding existing H-1B training opportunities for American adults, the Feinstein-Abraham amendment to S. 2045 cuts the percentage of H-1B fee revenues that goes to worker training from 56.3 percent to 36.2 percent. As a result of this cut, the dollar amount spent on training remains the same—a mere \$54 million that would train approximately 16,000 workers.

In contrast, the Kennedy amendment would provide \$167 million to train more than 50,000 workers. The majority states in this report that we must increase our training efforts “so that more Americans can be prepared to keep this country at the cutting edge and competitive in global markets.” But how can anyone believe that S. 2045 would accomplish this goal when it dramatically expands the H-1B program while doing nothing to increase the amount of money going to train U.S. workers?

EDUCATIONAL OPPORTUNITIES FOR U.S. STUDENTS MUST BE INCREASED

As we enter the 21st century, careers increasingly require advanced degrees, especially in math, sciences, engineering, and computer sciences. According to “21st Century Skills for 21st Century Jobs,” a report published last January by the U.S. Department of Commerce, U.S. Department of Education, U.S. Department of Labor, and the National Institute for Literacy and Small Business Administration, 8 of the 10 fastest growing jobs of the next decade will require college education or moderate- to long-term training. The three fastest growing jobs are in the IT industry—database administrators, computer engineers, and systems analysts.

We must encourage students, including minority students, to consider degrees in math, sciences, computers, and engineering. Today, the number of students graduating from American universities with engineering degrees is at a 17-year low. We need to change this disturbing trend. Scholarship opportunities must be meaningfully expanded for talented minority and low-income students whose families cannot afford today’s high college tuition costs. With increased opportunities for scholarships, students completing 2-year degrees will be provided with incentives to continue their education and obtain 4-year degrees.

Building on the foundation established by the 1998 high-tech bill, the Kennedy amendment would substantially increase the funds available through the National Science Foundation (NSF) to provide scholarships to low-income students pursuing degrees in math,

science, and engineering. This year, the NSF received approximately \$20 million toward low-income scholarships. With the proposed increase in the H-1B petition fees, the Kennedy amendment would generate over \$100 million in scholarships—increasing the current total fivefold and resulting in more than 25,000 scholarships.

In contrast, S. 2045, as modified by the Feinstein-Abraham amendment, would only provide \$46 million for low-income scholarships. With funding at this level, less than 15,000 scholarships would be awarded. If we are truly committed to finding long term and long lasting solutions to the IT workforce shortages, we must be prepared to make a more substantial investment in education.

A recent report on undergraduate education, issued by the NSF, stated that financial concerns can intrude upon, and significantly hamper, a student's learning experience. Low-income students are often compelled to finance their college education by working long hours in jobs that leave them little time for laboratories and other demands of a strenuous curriculum in math, science, engineering, or computer science. The availability of scholarships for low-income students significantly enhances their academic performance and graduation rates.

The Feinstein-Abraham amendment raises the level of scholarship awards available to individual students from \$2,500 per year to \$3,125 (the Pell Grant amount). This increased amount is still significantly below the average tuition and fee levels of most baccalaureate and graduate programs. Both NSF and CRS have indicated that higher scholarship amounts are needed to effectively assist low-income students. The Kennedy amendment deletes the cap on individual scholarship awards, enabling the NSF, based on their unique expertise and proven track record, to set the amount of the individual awards.

The fact that American students lack the degrees to compete for good jobs in the IT industry is a distressing aspect of our educational system. Our schools must keep pace with these demands. We must do all we can to improve K-12 education, and from an early age, instill the skills needed in the new millennium. But this must be done on a much larger scale than the well-intentioned but modest K-12 systemic reform programs proposed by the Feinstein-Abraham amendment. Reforms of this magnitude would require billions of dollars, and are presently being discussed in the reauthorization for the Elementary and Secondary Education Act. Although the Feinstein-Abraham amendment includes some interesting ideas, for example, the "technology fellows," Congress should hesitate to create new programs—however credible they may inherently be—through the H-1B legislation. Instead of taking away \$38 million from high-skill adult training, we should boost what the H-1B user fees already support: worker training, scholarships, and after-school programs to bridge the digital divide.

The information age presents an era of new possibilities for the entire Nation. It is one of the greatest periods of innovation and change in history. But millions of Americans, particularly those at lower income levels, risk being left behind because of lack of access to technology. Closing the digital divide must therefore be an important part of our long-term approach to meeting the growing de-

mand for highly skilled, technology trained workers. If we commit now to providing low-income students with greater access to technology, and expose them to the challenges and excitement of math, science, and engineering, we can build a technologically fluent workforce prepared to maintain America's competitive edge in the global marketplace.

Unfortunately, S. 2045 misses the mark on the digital divide by calling for an NSF study on the issue. Considering that the Department of Commerce is scheduled to release its third report on the digital divide this fall, the last thing we need is another study.

The bill fails to offer any concrete proposals to address existing disparities. In fact, with the Feinstein-Abraham amendment, S. 2045 would reduce the funding allocated to the NSF school enrichment program from 4 percent to 2.5 percent, resulting in only \$3 million in fee revenues.

By contrast, the Kennedy amendment includes a digital divide component designed to help strengthen the pipeline of young people prepared to enter college and the workforce with the skills necessary to compete for technology-related jobs. The proposal is a substantive out-of-school math, science, and engineering enrichment program targeted toward low income, middle and high school students. Through merit-based, competitive grants, the NSF will fund public/private partnership programs that provide these young people with meaningful training and exposure to careers in math, science, and engineering. The Kennedy amendment allocates 9 percent of the H-1B user fees to fund this program, resulting in \$30 million in revenues.

The NSF grants offer technology companies the flexibility to start new partnerships with schools, local community groups, or professional societies or expand upon existing programs that have proven successful. An out-of-school enrichment program that focuses on math, science, and engineering is an ideal complement to the college scholarship program. We should all support this important and effective approach to closing the digital divide by opening the door to careers in math, science, and engineering.

AT A TIME WHEN THE IT INDUSTRY IS EXPERIENCING SO MUCH ECONOMIC GROWTH AND RECORD PROFITS, THE INDUSTRY CAN AFFORD TO PAY A HIGHER FEE IN ORDER TO INVEST IN TECHNOLOGY SKILL UPGRADES AND EDUCATION

The current H-1B visa petition fee stands at \$500, and S. 2045 provides no increase in that fee. As a result the increase in the visa cap would only raise \$150 million. This is insufficient to provide the necessary education and training to support our Nation's economic expansion and future prosperity. This goal can only be accomplished when we put additional funds on the table for training and education.

The Kennedy amendment offers a three-tiered fee structure, depending on the total number of employees in each company. Employers with 150 or fewer employees would pay a \$1,000 fee, those with 151 to 500 employees would pay \$2,000, and employers with over 500 employees would pay \$3,000. "Job shops," which are defined as H-1B dependent companies, would also pay \$3,000. We es-

timate that the Kennedy amendment would raise \$333 million for U.S. workers and students.

The majority calls this fee increase “excessive.” They express concern that doubling the fee for some small businesses and raising it to \$3,000 for others will cause these companies to suffer financial hardship. At a time when the IT industry is experiencing rapid economic growth and record profits, there is no reason why even the smallest of businesses should not pay a slightly higher fee in order to invest in technology skill upgrades and education. The majority points out that H-1B employers typically pay legal fees of \$3,000 or more to secure needed employees. There is anecdotal evidence that both small and large IT companies offer sizable signing bonuses and even new automobiles to recruit new employees. Weekly news articles describe how record profits by IT companies are producing hundreds of new millionaires. Given these circumstances, requiring these companies to pay higher fees to help fund long-term and long-lasting solutions to their own labor shortages is surely not excessive and will not result in any credible financial hardship.

Furthermore, the majority should remember that immigrant families with very modest incomes must pay a \$1,000 fee to obtain green cards here in the United States. Certainly, multi-million dollar companies can afford to pay at least as much for these visas.

**WE SHOULD EXPAND THE WORKFORCE TRAINING PROGRAM
ESTABLISHED BY THE 1998 LEGISLATION, NOT DISMANTLE IT**

The majority did not discuss the Kyl amendment, which if successful, would have transferred from the Department of Labor to the Department of Commerce responsibility for the employment training program established by the 1998 legislation. We are concerned that this type of initiative was prompted by inaccurate assumptions and misperceptions and therefore believe that this issue merits further discussion.

In 1998, Congress overwhelmingly passed the Workforce Investment Act establishing a new, innovative framework for employment training programs. It was the product of several years of effort with extensive input from all of the key constituencies involved in job training. It provides an effective and modern program structure for workforce training which will go into effect in most States this summer. We are concerned that initiatives like the Kyl amendment would circumvent the new workforce system before it even goes into effect. To do so would be a serious mistake.

What is needed now are additional resources. Congress has not provided resources sufficient to meet the dramatically expanding demand for worker training and retraining, especially the need of those who are already employed to upgrade their skills. The revenue collected from the H-1B visa user fees can be the source of significant new resources allowing us to train thousands of additional workers each year in high-tech skills through the workforce investment boards. We should not be designing a new training structure that bypasses everything we have so recently put in place. We should not be reinventing the training wheel when all that is needed is additional fuel to turn it.

Others urging that responsibility for workforce training be shifted to the Department of Commerce contend that the Department of Labor was slow in implementing the training grant program established by the 1998 act and the money has not been put to good use. We believe that these criticisms are unwarranted.

Any new competitive grants program requires a significant amount of time to consult with interested groups, draft and redraft rules and parameters for competition and clear all language with OMB. This would require several months for any agency. Having some or all of the future training funds delivered through the Department of Commerce would take at least as long to set up, and perhaps longer since the Department has no history of competing-out grants of this nature.

The Department of Labor announced the first round of training grant awards on February 10, 2000, awarding nine grants for a total of \$12.4 million, eight of which went to high-tech initiatives. Below is a description of the recent grant recipients:

Hamden County, MA (\$1.5 million)

The Information Telecommunication Technologies Workforce Development Project will upgrade the technical skills of 210 employed and unemployed workers for highly skilled jobs in the IT industry. Partners include Coghlin Electrical Contractors, Systems Software Support, Inc., RCN Javanet, Telitcom Development Corp., and two area community colleges.

NOVA PIC, Sunnyvale, CA (\$1.3 million)

Participants will be provided with the appropriate training for occupational skills training. Partners include Silicon Valley Network, Sun Microsystems, and Cisco.

Pima County, Tuscon, AZ (\$1.5 million)

The grant will build on a high-tech/high-wage project that has been underway since 1998. Participants will be trained in health, IT, electronics, accounting, and management. Partners include the University of Arizona and employers from the targeted occupations.

Chicago, IL (\$1.5 million)

The purpose of the project is to prepare incumbent workers for more skilled positions within their companies. Partners include DePaul University, City College of Chicago, Xpedior, Integration, uBID, Inc., and Catalyst Consulting Group.

Seattle-King County, WA (\$1.5 million)

The project will prepare workers to design, implement and manage the computer-based enterprises that will drive commerce and education into the new century. Partners include the University of Washington, the Washington Software Alliance (1,400 members) and three area community colleges.

Bridgeport, CT (\$1.5 million)

This project will create new career paths to high-skill jobs by creating Certified Skills Centers where the trainees will receive on-the-job training in those areas. Partners include Pepperidge Farm,

Pitney Bowes, SACIA, and the Norwalk Community-Technical College.

Philadelphia, PA (\$563,057)

This project will address the needs of area employers for nurses at all levels and especially for RN's and LPN's. Partners include Temple University Healthcare Systems, Medical College of Pennsylvania, AFSCME, and 60 area hospitals.

New Hampshire (\$1.5 million)

The project will implement job training that will enable companies to obtain and retain skilled workers in the State. It will develop a technical skills feeder pattern for high-tech firms. Partners include the New Hampshire Technical College System, the Manufacturing Extension Partnership, the University of New Hampshire, and the Software Association of New Hampshire.

Prince George's County, MD (\$1.5 million)

The project will provide a multi-regional program to recruit, assess, train, and place participants in the IT fields. Partners include CWA, Cisco Systems, Lucent Technologies, AT&T, Bell Atlantic, US West, and Pac Bell.

Now that the first round of grant awards is completed, and a system is in place, future rounds will move more rapidly. In fact, the Department of Labor announced on March 29, 2000, that it is making \$40 million available for a second round of awards. Proposals for this round will be due in June 2000 and awards made in August 2000. The third round of competition is scheduled for September 2000, with awards being announced in November 2000.

The majority's criticism of the Department of Labor survey proposed in the Kennedy amendment is also unwarranted. The Kennedy provision simply proposes that the Department of Labor conduct an ongoing survey of the level of compliance by employers with the provisions and requirements of the H-1B program. The results of this survey would be reported to Congress in biennial reports. Using statistically reliable random sampling, only a small number of employers would be surveyed. There is nothing invasive about this survey, nor does it override the provisions contained in the 1998 legislation. In fact, the use of a compliance survey would facilitate the ability of the Department of Labor to effectively assess whether employers were adhering to the provisions included in the 1998 legislation to protect both U.S. and foreign workers were being adhered to. The need to assess wage compliance provisions in particular is emphasized in the Office of Inspector General's 1996 report on the Department of Labor's Foreign Certification Programs, which found in their sampling that wage abuse was a common problem.

National compliance surveys are frequently relied upon by the Department of Labor. Traditional enforcement data, such as what would result from the Department of Labor's current investigative authority, can provide an unrepresentative view of overall compliance because the data is primarily based on complaint information. Statistically sound investigation-based compliance surveys, on the

other hand, provide a more realistic measure of compliance in the targeted industry.

WE REJECT THE VIEW THAT THE ONLY PRO-IMMIGRANT AGENDA
THIS SESSION IS AN H-1B AGENDA

We express our deep regret that this Committee and this Congress have failed to consider the many other immigration bills and issues of utmost importance to immigrants living and working in this country. As the National Council of La Raza and other groups point out in letters that Judiciary Committee Members received recently, "these are issues that have reached a crisis level and need immediate legislative attention." Unfortunately, unlike the H-1B issue, these other equally important issues have been ignored by most Members of Congress.

Last year, a broad coalition of immigrant and faith-based groups launched the "Fix '96" campaign to repeal the harsh and excessive provisions in the 1996 immigration and welfare laws and restore balance and fairness. All of the issues raised in this campaign remain outstanding. A number of bills have been introduced proposing solutions to these problems; other bills are near introduction. However, the GOP has neither taken action on nor, for the most part, supported any of these bills which are as critical to U.S. immigrants in our workforce as H-1B visas are to the information technology industry. These issues include parity legislation for Central Americans and Haitians, restoring protections to asylum seekers, restoring due process in detention and deportation policy, and restoring public benefits to legal immigrants and protections to battered immigrant women and children.

We echo the sentiments of the immigrant groups—that other equally important immigration bills must be considered this session. We urge our colleagues to give equal attention to these other immigration issues that affect so many immigrant families in our workforce.

CONCLUSION

We are committed to meeting the needs of our high-tech industry. But this cannot be accomplished without a long-term commitment to expand job training for U.S. workers and educational opportunities to U.S. students. We believe the Kennedy amendment substitute comes far closer to achieving both of these goals than the Committee bill.

PATRICK J. LEAHY.
EDWARD M. KENNEDY.
JOSEPH R. BIDEN, Jr.
RUSSELL D. FEINGOLD.
ROBERT G. TORRICELLI.
CHARLES E. SCHUMER.

IX. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 2045, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matters is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

* * * * *

TITLE 8—ALIENS AND NATIONALITY

Chapter Section
1. General Provisions [Repealed or Omitted] 1

* * * * *

CHAPTER 12—IMMIGRATION AND NATIONALITY

SUBCHAPTER 1—GENERAL PROVISIONS

* * * * *

SUBCHAPTER II—IMMIGRATION

PART I—SELECTION SYSTEM

1151. Worldwide level of immigration.

* * * * *

§ 1152. Numerical limitations on individual foreign states

(a) PER COUNTRY LEVEL.—

(1) NONDISCRIMINATION.—

(A) Except * * *

* * * * *

(2) PER COUNTRY LEVELS FOR FAMILY-SPONSORED AND EMPLOYMENT-BASED IMMIGRANTS.—Subject to [paragraphs (3) and (4)], paragraphs (3), (4), and (5), the total number of immigrants visas made available to natives of any single foreign state or dependent area under subsections (a) and (b) of section 1153 of this title in any fiscal year may not exceed 7 percent (in the case of a single foreign state) or 2 percent (in the case of dependent area) of the total number of such visas made available under such subsections in that fiscal year.

* * * * *

(4) SPECIAL RULES FOR SPOUSES AND CHILDREN OF LAWFUL PERMANENT RESIDENT ALIENS.—

(A) 75 PERCENT OF 2ND PREFERENCE SET-ASIDE FOR SPOUSES AND CHILDREN NOT SUBJECT TO PER COUNTRY LIMITATION.—

(i) IN GENERAL.—Of the * * *

* * * * *

(D) LIMITING PASS DOWN FOR CERTAIN COUNTRIES SUBJECT TO SUBSECTION (e).—In the case * * *

(5) RULES FOR EMPLOYMENT-BASED IMMIGRANTS.—

(A) EMPLOYMENT-BASED IMMIGRANTS NOT SUBJECT TO PER COUNTRY LIMITATION IF ADDITIONAL VISAS AVAILABLE.—If the total number of visas available under paragraph (1), (2), (3), (4), or (5) of section 203(b) for a calendar quarter exceeds the number of qualified immigrants who may otherwise be issued such visas, the visas made available under that paragraph shall be issued without regard to the numerical limitation under paragraph (2) of this subsection during the remainder of the calendar quarter.

(B) LIMITING FALL ACROSS FOR CERTAIN COUNTRIES SUBJECT TO SUBSECTION (e).—In the case of a foreign state or dependent area to which subsection (e) applies, if the total number of visas issued under section 203(b) exceeds the maximum number of visas that may be made available to immigrants of the state or area under section 203(b) consistent with subsection (e) (determined without regard to this paragraph), in applying subsection (e) all visas shall be deemed to have been required for the classes of aliens specified in section 203(b).

* * * * *

(e) SPECIAL RULES FOR COUNTRIES AT CEILING.—If it is * * *

(1) the ratio of the visa numbers made available under section 1153(a) of this title to the visa numbers made available under section 1153(b) of this title is equal to the ratio of the worldwide level of immigration under section 1151(c) of this title to such level under section 1151(d) of this title;

* * * * *

(3) [the proportion of the visa numbers] except as provided in subsection (a)(5), the proportion of the visa numbers made available under each of paragraphs (1) through (5) of section 1153(b) of this title is equal to the ratio of the total number of visas made available under the respective paragraph to the total number of visas made available under section 1153(b) of this title.

* * * * *

PART II—ADMISSION QUALIFICATIONS FOR ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

1181. Admission to immigration into the United States.

* * * * *

§ 1181. Inadmissible aliens

(a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.— Except. * * *

* * * * *

(n) LABOR CONDITION APPLICATION.—

(1) No alien may be admitted or provided status as an H-1B nonimmigrant in an occupational classification unless the employer has filed with the Secretary of Labor an application stating the following:

(A) The employer—

* * * * *

(E)(i) In the case of an application described in clause (ii), the employer did not displace and will not displace a United States worker (as defined in paragraph (4)) employed by the employer within the period beginning 90 days before and ending 90 days after the date of filing of any visa petition supported by the application.

(ii) An application described in this clause is an application filed on or after the date final regulations are first promulgated to carry out this subparagraph, and before [October 1, 2001] October 1, 2002, by an H-1B-dependent employer (as defined in paragraph (3)) or by an employer that has been found, on or after October 21, 1998, under paragraph (2)(C), or (5) to have committed a willful failure or misrepresentation during the 5-year period preceding the filing of the application. An application is not described in this clause if the only H-1B nonimmigrants sought in the application are exempt H-1B nonimmigrants.

* * * * *

§ 1184. Admission of nonimmigrants

(a) REGULATIONS.—

(1) The admission * * *

* * * * *

(c) PETITION OF IMPORTING EMPLOYER; INVOLVEMENT OF DEPARTMENTS OF LABOR AND AGRICULTURE.—

(1) The question of * * *

* * * * *

(9)(A) The attorney general shall impose a fee on an employer (excluding an employer described in subparagraph (A) or (B) of section 1182(p)(1) of this title) filing (on or after December 1, 1998, and before [October 1, 2001] October 1, 2002) a petition under paragraph (1).

* * * * *

(g) TEMPORARY WORKERS AND TRAINEES; LIMITATION ON NUMBERS.—

(1) The total number of aliens who may be issued visas or otherwise provided nonimmigrant status during any fiscal year (beginning with fiscal year 1992)—

* * * * *

【(3) Aliens who are subject to the numerical limitations of paragraph (1) shall be issued visas (or otherwise provided nonimmigrant status) in the order in which petitions are filed for such visas or status.】

(3) Aliens who are subject to the numerical limitations of paragraph (1) shall be issued visas (or otherwise provided nonimmigrant status) in the order in which petitions are filed for such visas or status. If an alien who was issued a visa or otherwise provided nonimmigrant status and counted against the numerical limitations of paragraph (1) is found to have been issued such visa or otherwise provided such status by fraud or willfully misrepresenting a material fact and such visa or nonimmigrant status is revoked, then one number shall be restored to the total number of aliens who may be issued visas or otherwise provided such status under the numerical limitations of paragraph (1) in the fiscal year in which the petition is revoked, regardless of the fiscal year in which the petition was approved.

(4) In the case of a nonimmigrant described in section 1101(a)(15)(H)(i)(b) of this title, the period of authorized admission as such a nonimmigrant may not exceed 6 years.

(5) *The numerical limitations contained in paragraph (1)(A) shall not apply to any nonimmigrant alien issued a visa or otherwise provided status under section 101(a)(15)(H)(i)(b)—*

(A) who is employed (or has received an offer of employment) at—

(i) an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))), or a related or affiliated nonprofit entity; or

(ii) a nonprofit research organization or a governmental research organization; or

(B) for whom a petition is filed not more than 90 days before or not more than 180 days after the nonimmigrant has attained a master's degree or higher degree from an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))).

(6) *Any alien who ceases to be employed by an employer described in paragraph (5)(A) shall, if employed a nonimmigrant alien described in section 101(a)(15)(H)(i)(b), be counted toward the numerical limitations contained in paragraph (1)(A) the first time the alien is employed by an employer other than one described in paragraph (5)(A).*

* * * * *

(l)¹ NONIMMIGRANT ELEMENTARY AND SECONDARY SCHOOL STUDENTS.—

¹ So in original. Two subsecs. (l) have been enacted.

(1) an alien may not be accorded status as a nonimmigrant under section 1101(a)(15)(F)(i) of this title in order to pursue a course of study—

* * * * *

(2) An alien who obtains the status of a nonimmigrant under section 1101(a)(15)(F)(i) of this title in order to pursue a course of study at a private elementary or secondary school or in a language training program that is not publicly funded shall be considered to have violated such status, and the alien' visa under section 1101(a)(15)(F) of this title shall be void, if the alien terminates or abandons such course of study at such a school and undertakes a course of study at a public elementary school, in a publicly funded adult education program, in a publicly funded adult education language training program, or at a public secondary school (unless the requirements of paragraph (1)(B) are met).

(m)(1) A nonimmigrant alien described in paragraph (2) who was previously issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) is authorized to accept new employment upon the filing by the prospective employer of a new petition on behalf of such nonimmigrant as provided under subsection (a). Employment authorization shall continue for such alien until the new petition is adjudicated. If the new petition is denied, employment authorization shall cease.

(2) A nonimmigrant alien described in this paragraph is a nonimmigrant alien—

(A) who has been lawfully admitted into the United States;

(B) on whose behalf an employer has filed a nonfrivolous application for new employment or extension of status before the date of expiration of the period of stay authorized by the Attorney General; and

(C) who has not been employed without authorization in the United States before or during the pendency of such petition for new employment.

* * * * *

PART IX—MISCELLANEOUS

1351. Nonimmigrant visa fees.

* * * * *

§ 1356. Disposition of monies collected under the provisions of this subchapter

(a) DETENTION, TRANSPORTATION, HOSPITALIZATION, AND ALL OTHER EXPENSES OF DETAINED ALIENS; EXPENSES OF LANDING STATIONS.—All moneys * * *

* * * * *

(s) H-1B NONIMMIGRANT PETITIONER ACCOUNT.—

(1) IN GENERAL.—There is established in the general fund of the Treasury a separate account, which shall be known as the “H-1B Nonimmigrant Petitioner Account”. Notwithstanding any other section of this title, there shall be deposited as off-

setting receipts into the account all fees collected under section 1184(c)(9) of this title.

(2) USE OF FEES FOR JOB TRAINING.—~~【56.3 percent】~~ *36.2 percent* of amounts deposited into the H-1B Nonimmigrant Petitioner Account shall remain available to the Secretary of Labor until expended for demonstration programs and projects described in section 414(c) of the American Competitiveness and Workforce Improvement Act of 1998.

(3) USE OF FEES FOR LOW-INCOME SCHOLARSHIP PROGRAM.—~~【28.2 percent】~~ *30.7 percent* of the amounts deposited into the H-1B Nonimmigrant Petitioner Account shall remain available to the Director of the National Science Foundation until expended for scholarships described in section 414(d) of the American Competitiveness and Workforce Improvement Act of 1998 for low-income students enrolled in a program of study leading to a degree in mathematics, engineering, or computer science.

(4) ADDITIONAL NSF USES.—

(A) GRANTS FOR MATHEMATICS, ENGINEERING, OR SCIENCE ENRICHMENT COURSES.—~~【4 percent】~~ *2.5 percent* of the amounts deposited into the H-1B Nonimmigrant Petitioner Account shall remain available to the Director of the National Science Foundation until expended to make merit-reviewed grants, under section 3(a)(1) of the National Science Foundation Act of 1950 (42 U.S.C. 1862(a)(1)), for programs that provide opportunities for enrollment in year-round academic enrichment courses in mathematics, engineering, or science.

~~【(B) SYSTEMIC REFORM ACTIVITIES.—4 percent of the amounts deposited into the H-1B Nonimmigrant Petitioner Account shall remain available to the Director of the National Science Foundation until expended to carry out systemic reform activities administered by the National Science Foundation under section 3(a)(1) of the National Science Foundation Act of 1950 (42 U.S.C. 1862(a)(1)).】~~

(B) NATIONAL SCIENCE FOUNDATION COMPETITIVE GRANT PROGRAM FOR K-12 MATH, SCIENCE AND TECHNOLOGY EDUCATION.—(i) 25.8 percent of the amounts deposited into the H-1B Nonimmigrant Petitioner Account shall remain available to the Director of the National Science Foundation until expended to carry out a direct and/or matching grant program to support private-public partnerships in K-12 education.

(ii) TYPES OF PROGRAMS COVERED.—The Director shall award grants to such programs, including, those which support the development and implementation of standards-based instructional materials models and related student assessments that enable K-12 students to acquire an understanding of science, mathematics, and technology, as well as to develop critical thinking skills; provide systemic improvement in training K-12 teachers and education for students in science, mathematics, and technology; stimulate system-wide K-12 reform of science, mathematics, and technology in rural, economically disadvantaged regions of the

United States; provide externships and other opportunities for students to increase their appreciation and understanding of science, mathematics, engineering, and technology; involve partnerships of industry, educational institutions, and community organizations to address the educational needs of disadvantaged communities; and college preparatory support to expose and prepare students for careers in science, mathematics, engineering, and technology.

* * * * *

PUBLIC LAW 105-277

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DIVISION C—OTHER MATTERS

* * * * *

TITLE IV—AMERICAN COMPETITIVENESS AND WORKFORCE IMPROVEMENT ACT

SEC. 401. SHORT TITLE; TABLE OF CONTENTS; AMENDMENTS TO IMMIGRATION AND NATIONALITY ACT.

* * * * *

SEC. 413. CHANGES IN ENFORCEMENT AND PENALTIES.

(a) **INCREASED ENFORCEMENT AND PENALTIES.**—Section 212(n)(2)(C) (8 U.S.C. 1182(n)(2)(C)) is amended to read as follows:

* * * * *

(e) **ADDITIONAL INVESTIGATIVE AUTHORITY.**—

(1) **IN GENERAL.**—Section 212(n)(2) (8 U.S.C. 1182(n)(2)), as amended by subsection (d), is further amended by adding at the end the following:

* * * * *

(2) **SUNSET.**—The amendment made by paragraph (1) shall cease to be effective on **September 30, 2001** *September 30, 2002*.

* * * * *

SEC. 414. COLLECTION AND USE OF H-1B NONIMMIGRANT FEES FOR SCHOLARSHIPS FOR LOW-INCOME MATH, ENGINEERING, AND COMPUTER SCIENCE STUDENTS AND JOB TRAINING OF UNITED STATES WORKERS.

(a) **IMPOSITION OF FEE.**—Section 214(c) (8 U.S.C. 1184(c)) is amended by adding at the end the following:

* * * * *

(d) **LOW-INCOME SCHOLARSHIP PROGRAM.**—

(1) **ESTABLISHMENT.**—The Director of the National Science Foundation (referred to in this subsection as the “Director”) shall award scholarships to low-income individuals to enable such individuals to pursue associate, undergraduate, or grad-

uate level degrees in mathematics, engineering, or computer science.

* * * * *

(3) LIMITATION.—The amount of a scholarship awarded under this subsection shall be determined by the Director, except that the Director shall not award a scholarship in an amount exceeding ~~【\$2,500 per year.】~~ \$3,125 per year. *The Director may renew scholarships for up to 4 years.*

* * * * *

(e) The Secretary of the Department of Labor and the Director of the National Science Foundation shall—

(1) track and monitor the performance of programs receiving H-1B Nonimmigrant Fee grant money; and

(2) not later than one year after the date of enactment of this subsection, submit a report to the Committees on the Judiciary of the House of Representatives and the Senate—

(A) the tracking system to monitor the performance of programs receiving H-1B grant funding; and

(B) the number of individuals who have completed training and have entered the high-skill workforce through these programs.

* * * * *

