

Senator Grassley's questions to witnesses regarding the hearing on "The Border Security, Economic Opportunity, and Immigration Modernization Act, S.744" on April 22, 2013

Responses from Professor Ron Hira

1. At the April 22, 2013 hearing, we heard many perspectives on comprehensive immigration reform. Was there any testimony offered by other witnesses that you found problematic, and how would you respond to it? Do you have any additional comments on issues that were discussed at the hearing?

A key issue not addressed in the hearing was the number of legal permanent residents who will be cleared from backlogs, as well as future flows of greencards. While I believe that the US economy and American labor market can absorb somewhat higher levels of greencards without adversely impacting American workers, the numbers in this bill may be high enough to create significant negative impacts for American workers. **Many of the skilled greencard provisions are uncapped and bypass the labor certification process, so there is no way to predict, nor control, the future dynamics of those seeking greencards.**

There are very low standards, a STEM degree and work in a related field, required to gain one of these greencards. So, we can easily predict that the program will be so attractive that large numbers of ordinary skilled workers will soon begin to crowd out American workers and students in those fields.

This key issue was not addressed in any of the hearings on this bill yet it might have the most lasting and largest impact on the American labor market.

The skilled greencard provisions in the bill should be modified to significantly raise the standards, institute a labor certification, and the program should be capped.

2. As you know, Department of Homeland Security Secretary Janet Napolitano testified before the Judiciary Committee on April 23, 2013. Much of her testimony focused on the issue of border security and the discretion that the proposed bill gives to the DHS Secretary. Do you agree with Secretary Napolitano's assessment that this legislation should be enacted largely as it is currently written? What do you believe comprehensive immigration reform must include so that it avoids the problems that followed the 1986 reform?

Improve the H-1B, L-1, OPT safeguards, and place better standards on the greencard provisions.

3. Do you believe that the bill as written appropriately addresses the economic needs of the country through the immigration system?

I don't believe that the bill addresses the economic needs in high-skilled labor markets, especially for STEM fields. With respect temporary work visas, the bill does not raise the wage floors for

H-1Bs high enough - H-1Bs can still be paid 20% below the average wages of Americans. And it doesn't create wage floors for either the L-1 or the OPT visas.

With respect to legal permanent residence, the bill eliminates labor certification for all STEM graduate students and eliminates the cap on their numbers. This will create perverse incentives in the market. Employers will be tempted to replace their older incumbent workers with cheaper fresh graduates, fueling age discrimination. And universities will be placed in a conflict of interest by becoming the sole gatekeeper for issuing greencards. **Universities will essentially be able to sell greencards to foreign students.** Given that Masters degrees are short in duration, and have little oversight from outside bodies, this provision will make it inexpensive for foreigners to purchase greencards. We will see a flood of foreign student applications, which will crowd out American students from the STEM fields. Those foreign students will in turn flood the labor market in the STEM fields, depressing wages, and further steering American students from studying these fields.

All significant studies find that there are no systemic shortages in the STEM labor markets, and therefore there is no justification for such a provision. The most recent labor market study by Salzman, Lowell, and Kuehn (SLK) uses wage data as well as supply of graduates to show that there is no systemic shortage of STEM workers

It can be found here: <http://www.epi.org/publication/bp359-guestworkers-high-skill-labor-market-analysis/>

SLK find:

“Our examination of the IT labor market, guestworker flows, and the STEM education pipeline finds consistent and clear trends suggesting that *the United States has more than a sufficient supply of workers available to work in STEM occupations:*

- The flow of U.S. students (citizens and permanent residents) into STEM fields has been strong over the past decade, and the number of U.S. graduates with STEM majors appears to be responsive to changes in employment levels and wages.
- For every two students that U.S. colleges graduate with STEM degrees, only one is hired into a STEM job.
- In computer and information science and in engineering, U.S. colleges graduate 50 percent more students than are hired into those fields each year; of the computer science graduates not entering the IT workforce, 32 percent say it is because IT jobs are unavailable, and 53 percent say they found better job opportunities outside of IT occupations. These responses suggest that the supply of graduates is substantially larger than the demand for them in industry.

Analyzing new data, drawing on a number of our prior analyses, and reviewing other studies of wages and employment in the STEM and IT industries, we find that industry trends are strikingly consistent:

- Over the past decade IT employment has gradually increased, but it only recovered to its 2000–2001 peak level by the end of the decade.
- Wages have remained flat, with real wages hovering around their late 1990s levels.

We also find that, while there were strong increases in the number of computer science graduates and entrants from other fields that supply the IT industry during the late 1990s, after the dot-com bubble burst in 2001 a declining number of both guestworkers and U.S. students entered the IT pipeline. But since then, the number of IT college graduates has recovered modestly, while the number of guestworkers has increased sharply, suggesting a fundamental change in this labor market.

Our review of the data finds that *guestworkers make up a large and increasing portion of the IT labor market:*

- The flow of guestworkers has increased over the past decade and continues to rise (the rate of increase dropped briefly with the economic collapse of 2008, but the flow of guestworkers has since continued its rapid upward pace).
- The annual inflows of guestworkers amount to one-third to one-half the number of all new IT job holders.

It could appear to casual observers that the striking increase in guestworkers might be a response to increased labor demand in the IT field. But employment and wage levels in IT jobs have been weak, trends that are *not* consistent with strong demand. The data also show that there are multiple routes into IT employment, most of which do not require a STEM degree:

- Only about a third of the IT workforce has an IT-related college degree.
- 36 percent of IT workers do not hold a college degree at all.
- Only 24 percent of IT workers have a four-year computer science or math degree.

The data also strongly suggest that *there is a robust supply of domestic workers available for the IT industry:*

- The number of domestic STEM graduates has grown strongly, and many of these graduates could qualify for IT jobs.
- The annual number of computer science graduates doubled between 1998 and 2004, and is currently over 50 percent higher than its 1998 level.”

4. Some people have suggested that the bill should focus more on family-based immigration. What is your view of the right balance between merit-based and family-based immigration?

I believe that this is a value judgment. There are merits to both sides of the argument.

5. In your opinion, does this bill treat American workers fairly?

American workers and students will face more unfair competition from lower cost guestworkers, dramatically higher numbers of STEM greencard holders, and the increased outsourcing of jobs overseas. There are some positive elements in this bill, but on balance it will make the STEM labor market more unattractive for American workers and students.

6. Are there sufficient safeguards for American and foreign workers in the bill?

No. Firms will still be able to pay below-market wages for guestworkers. And American workers will not be given a first and legitimate shot at these jobs.

7. Given the testimony of Brad Smith, do you have any further thoughts on why the business community opposes the Grassley/Durbin “good faith effort” requirement, which is a simple and straight forward measure that would provide qualified people at home with a chance at high skilled, high paying jobs?

During the hearing, Mr. Smith claimed that Microsoft was doing the kinds of recruitment efforts contained in Grassley/Durbin. The company would simply be asked to attest that they are doing what he claims Microsoft already does. It doesn't make logical sense why he would oppose it.

There is plenty of evidence to show that many firms, including many that are non-dependent, are not conducting the good-faith recruitment that Microsoft claims to be doing. This is why all firms should be required to meet these standards to ensure that American workers are given a true first shot at the jobs.

8. During the hearing, Brad Smith of Microsoft claimed that there are severe and systemic shortages of STEM workers. Do you agree with this claim?

The Salzman, Lowell, and Kuehn paper as well as a recent paper by EPI's Daniel Costa show that this is simply untrue. **Microsoft's Brad Smith is making elementary, but significant, mistakes in the ways in which he is interpreting the BLS data. He is making apples to oranges comparisons.**

Costa's paper addresses Microsoft's misinterpretations in detail

(<http://www.epi.org/publication/pm195-stem-labor-shortages-microsoft-report-distorts/>)

I will highlight two of these mistakes.

First, Brad Smith claims that the BLS projects 120,000 openings for workers with Bachelors in Computer Science. This is based on the false assumption that the only workers who do, and could, fill Computer Occupations have a BS in Computer Science. As Costa finds, “less than one-fourth to less than one-half of workers in computing occupations have a computer science degree.” This finding, which is based on NSF data, has been true for many years. The National

Academies had a similar finding in its landmark 2000 study, “Building a Workforce for the Information Economy.” In it the authors found that there is no tight coupling between Information Technology occupations and specific fields of education. The upshot is that most IT workers do not have a Computer Science degree, and most do not need one now or in the future. Also, to be clear, the BLS would never sign on to the claim that Brad Smith is making.

Second, Brad Smith claims that a 3.2% unemployment rate for Computer Occupations is below the full employment unemployment rate. This is also false. We would expect 1.5%-2% unemployment rates to be an indicator that these occupations could be close to full employment. But to make this determination, one needs to look at other labor market indicators including the employment level growth and changes in wages. In fact, Salzman finds that for IT,

- Wages have remained flat, with real wages hovering around their late 1990s levels.

There are always spot shortages in certain sub-specialties and emerging fields where significant technological disruptions have occurred. But to be clear that no one has found systemic and broad-based shortages in STEM or IT occupations. In some STEM fields, like the Life Sciences, there are large surpluses of workers.

Employers do not have to demonstrate a shortage before hiring an H-1B, L-1 or OPT worker.

9. It is clear that the top firms using the H-1B visa program are taking about 50% of the available visas each year. Can you explain how outsourcing firms work and how they are taking work offshore?

There are three principal ways in which the outsourcing firms utilize these visas:

First, they can bring in cheaper workers into the US to serve clients. They are able to bill out at lower rates to because the cost of their labor is less than hiring American workers.

Second, the firms use the H-1B or L-1 visa program to bring in guestworkers who shadow American workers, learning the American worker’s job. This is called knowledge transfer –an American worker teaches the foreign guestworker to take over their job. The American worker is then laid off and the guestworker may either remain in the US or take the work with him back to his home country.

Third, the H-1B or L-1 guestworker acts as a liaison to an offshore team.

In all of these cases, American workers could have and should have kept or gotten the job. Instead, they got to guestworkers.

10. Will the bill eliminate the use of the H1-B visa for outsourcing?

No, unfortunately, the bill falls short in this respect. Many firms, like IBM and Accenture, which use the program for outsourcing in the same ways that Infosys do, will simply pick up the work that Infosys might lose as a result of the bill's curbs on outsourcing.

But American workers won't be the beneficiaries. The work will continue to go to guestworkers, but they will be working for IBM or Accenture instead of Infosys. This is still extremely harmful to American workers and to the American economy.

Also, the greencard loophole in the bill is very significant. It enables firms to get below the 50-50 rule as well as even H-1B dependency. This loophole will surely be exploited by outsourcing firms in order to avoid any of the more stringent requirements for heavy H-1B users.

11. How does it impact the use of the L-1 visa and OPT for outsourcing?

The bill does very little to curb the use of the L-1 visa program to facilitate outsourcing. Eight of the top L-1 employers from 2008 (the most recent data that is public) are using it to offshore jobs. These are mostly the same firms that exploit the H-1B loopholes to use it to offshore jobs.

12. Could you explain your concerns about the L-1 and OPT visas?

Both are work visas and neither has a cap nor any protections for US and foreign workers alike. OPT workers have been found by analysts to be paid at a steep discount to equivalent American workers. The OPT extension allows workers to stay 29 months in a very wide variety of disciplines. Some analysts have found that OPT workers are being paid at 40% discounts over American workers. There is almost no transparency in either program and no one knows, including the government, the wages and working conditions being offered these workers.

No other country operates its intra-company transfer visas this way. The UK government sets a high wage floor for intra-company transfers and the Canadian government requires that they be paid average wages.

13. Do you have any suggestions for improving the law so that companies based in the United States have a shot at the visas available each year?

Raise the wage floors and demand by firms seeking cheaper labor will use far fewer of the visas. This is the best way in which to meet the needs of these firms. Where real needs can be shown the visa program should be used. Right now, the program is being dominated by firms using it for cheaper workers. This is crowding out the legitimate use of the program.

Industry has offered a false choice by claiming that the only way to bring in the best and brightest is by allowing firms to bring in much larger numbers of cheaper indentured workers.

14. Can you elaborate on any other provisions in the bill that 1) protect American workers and 2) ensure that companies are not abusing the program?

The outplacement clause for the H-1B program is very important to curb abuse. Non-dependent firms should also be prohibited from outplacement.

Another key provision that should be added to the bill is a regular audit for all firms. Right now, the bill includes audits only for H-1B Dependent firms. The H-1B program has been so rife with abuse that it needs much more oversight to ensure compliance. To date compliance has relied on whistleblowers to come forward. Relying on whistleblowers is the worst possible choice in designing accountability into any program.

15. Why do you believe that allowing greencard applications (intending immigrant) to reduce the H-1B counts is not good policy?

This is a very significant loophole that has little justification. If news reports are correct, this was placed in at the behest of Facebook and outsourcing firm Cognizant.

In the case of Facebook, the company received 305 H-1Bs in FY12. The company applied for 73 greencards for its H-1B workers in FY12. Of those greencard applications, 58 were for wages at the current Level I or Level II. It is questionable why it is so critical for Congress to enable Facebook to pay lower wages when it is H-1B Dependent.

This provision may save Facebook money by allowing it to pay lower wages to its H-1B workers, but it comes at a very high cost to American workers.

Many firms are likely to take advantage of the greencard loophole, and the biggest beneficiaries will be the outsourcing firms. There is nothing stopping Infosys or Cognizant from applying for greencards for all of its H-1B and L-1 workers. Given that there is likely to be a backlog for EB-3 visas, they could have workers tethered to them for many years at below-market wages. Further, companies like IBM and Accenture, which are likely close to the H-1B Dependent threshold of 15%, will be able to avoid the additional safeguards.

Industry insiders like Neeraj Gupta believe that this will result in the outsourcing firms viewing the greencard application simply as an additional cost of doing business, which will be more than offset by the lower fees and lower wages they will be able to pay.

Companies would begin to sponsor workers for greencards not because they want them to stay permanently, but instead to exploit the temporary worker programs. This is a perverse use of a precious asset, greencards.