

AAU Association of American Universities
NASULGC National Association of State Universities and Land-Grant Colleges

June 6, 2007

Dear Senator:

On behalf of the Association of American Universities and the National Association of State Universities and Land-Grant Colleges, we write to express serious concerns about the potential impact of immigration reform legislation under consideration in the Senate, S. 1348. We believe that, if not amended or removed from the bill, a number of provisions, taken together, would force dramatic alterations in how America's colleges and universities seek to attract teaching and research talent from abroad. As a result, the legislation would seriously weaken our ability to compete with institutions in other countries that are working harder all the time to retain their own talent and attract the best talent from others.

We would like to emphasize that our comments do not address most of the broad issues contained in this legislation, or the need for comprehensive legislation. Immigration reform is an issue of critical importance to our entire society, including the academic community, and we appreciate the difficulties of tackling such a complex and sensitive issue.

As you consider this legislation, however, it is important to remember that America's higher education system is inextricably linked to our nation's continuing ability to innovate and compete. One of the reasons for our competitive success has been our ability to attract the best students and faculty from overseas. We hope that you will correct the problems in this bill to ensure that the United States remains the destination of choice for those around the world who are eager to come to the U.S. to learn, teach, conduct research, and contribute to our nation's competitive and scientific future.

We would like to highlight the issues in the legislation that will have the most direct impact on this nation's colleges and universities as educational institutions, employers, and knowledge generators.

Positive Developments

We appreciate the creation of a new "F-4" visa category for graduate students pursuing a number of academic disciplines related to science, technology, engineering, and mathematics (STEM). We believe that the elimination of the "foreign residency" requirement for these graduate students makes sense and is a long overdue recognition of the positive impact of international students and their talents on our society.

Another positive step taken in the legislation is the ability of "undocumented" students who meet certain criteria to gain "documented" status through their inclusion in the proposed "Z" visa category.

Clarification Needed

While we applaud the elimination of the "foreign residency" requirement described above, we ask that you provide clarification on the "nonimmigrant intent" requirement for F-4 visa holders. Although the bill under consideration would not require students to demonstrate that they maintain a foreign residence, it does *not* eliminate the requirement that they demonstrate they are entering the U.S. "temporarily and solely for the purpose of study." Without clarification, one could interpret the current language as eliminating a requirement that these visa applicants prove that they have a foreign residence they have no intention of abandoning. However, these very same students would have to prove that they have no intention of remaining in the U.S. following the completion of their studies.

It makes little sense to create a new visa category for these valuable students and remove one hurdle in the visa process, only to leave another just as high in its place. We respectfully ask that the Senate clarify language on this new category to demonstrate that this is, in fact, not the goal or intent of this provision. The new F-4 category must be unambiguous in eliminating the need to prove non-immigrant intent as a prerequisite for obtaining the new international student status.

This ambiguity on immigrant intent can be corrected by including the new F-4 category in the categories of visas that do not require proof of non-immigrant intent, which currently include the H-1B category. Retaining the ambiguity may ultimately lead to unintended and negative consequences for all involved.

Provisions of Concern

The following are provisions in the legislation that could have unintended, negative consequences for America's higher education enterprise and on our nation's competitiveness.

- H-1B Provisions

We have serious concerns about the elimination of the exception to proving non-immigrant intent—the so-called “dual-intent” provision—for H-1B visa applicants. U.S. colleges and universities use the H-1B visa to recruit and hire the exceptional researchers, faculty, scholars, or other talented personnel from around the world. While the majority of the hires come here initially on a relatively short-term basis, a number of them ultimately are sponsored by universities for permanent residency. In an era in which every sector of our society is in competition with its counterparts in other parts of the world, including higher education, we believe that the removal of the dual-intent provision for H-1B visa applicants will be a detriment to higher education and the nation as a whole.

“Dual intent” is important for another practical and critical reason. Frequent international travel is a reality in today's world, including academia. Without “dual intent,” an H-1B scholar or researcher could be unnecessarily confined to the U.S. while a green card is being processed because going abroad for professional conferences and attempting to return here would convey “dual intent,” thus leading to the denial of the H-1B.

In addition, we are troubled by the bill language that would subject non-H-1B dependent employers, including colleges and universities, to the same rules and regulations currently placed on H-1B dependent employers and willful violators of the H-1B program. Higher education institutions have been trustworthy participants in the H-1B program, and these provisions would unnecessarily delay and stifle cutting-edge research projects and other academic activities. For example, because of this change, an entire university, with its many colleges and departments, would be forced to act as a single employer with respect to recruitment and hiring. Practically speaking, this would prohibit a university from hiring a prominent physicist in the physics department if, during the calendar year, it had displaced an American in the political science department. These two activities are completely unrelated. This prohibition is unreasonable and unworkable.

Also, the legislation, as written, would force all H-1Bs to have at least baccalaureate degrees in the specific fields in which they are employed. While many H-1B visa holders have at least baccalaureate degrees in the specialty fields for which they are hired, there are a few who do not. In fact, some of these individuals have degrees in related fields and still others become recognized as experts through years of experience. We believe that this requirement, by barring thoroughly qualified people, would unnecessarily restrict the flow and exchange of ideas and stifle innovation.

Another matter of concern is the proposed elimination of access to the H-1B program for foreign medical residents and fellows. The medical education system of the United States is the envy of the world, and it trains many foreign medical residents who hope to learn from and contribute to it. By forcing all such individuals to use only the J-1 visa, the legislation would impose additional barriers, removing flexibility from a system that currently functions well.

- Point-based Green Card System

The compromise legislation proposes to drastically alter the green card system. We are pleased that the legislation recognizes the importance of high-skilled and highly educated immigrants to our nation. As generators of new knowledge, our research universities have an interest in the nation attracting the world's best minds and talents.

However, there is some uncertainty about the potential impact of the proposed shift to a new "merit-based" point system for green cards. As the legislative process moves forward, we hope that a number of potential concerns will be addressed, including:

- Will colleges and universities have access to the individuals they need, even if those individuals may not have a sufficient number of points under the new system?
- In the new point system, could "self-sponsored" individuals take precedence over employer-sponsored individuals in obtaining green cards? The legislation includes language that would effectively prevent colleges and universities from directly petitioning the government to employ faculty, scholars, and other personnel through the green card process. We hope that colleges and universities will continue to have access to the talented employees they need.

We certainly hope that the Senate will proceed cautiously as it transforms the green card process to ensure that negative, unintended consequences are avoided.

Conclusion

We fully recognize the historic nature of the task which you are undertaking. The higher education community believes that immigration has contributed incalculably to our nation's global leadership, in part because of its impact on our education and research enterprises. We respectfully request that S. 1348 be amended to ensure that the flow of talent to America's universities is not cut off. In this regard, we look forward to working with all members of the Senate and your staff throughout the remainder of this process.

Sincerely,



Peter McPherson
President
National Association of State Universities
and Land Grant Colleges



Robert M. Berdahl
President
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