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USCIS Office of Policy and Strategy
Attn: Ms. Laura Dawkins
Chief of the Regulatory Coordination Division
20 Massachusetts Avenue NW
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Re: Department of State and Department of Homeland Security joint Request for Information on Visa Modernization, DHS Docket No. USCIS-2014-00414
79 Fed. Reg. 78458 (Dec. 30, 2014)

Dear Sir or Madam:

We are writing in response to the Request for Information (or RFI) being undertaken pursuant to President Obama's November 21, 2014 Presidential Memorandum on modernizing and streamlining the U.S. immigrant and nonimmigrant visa system for the 21st Century. The Chamber is the world's largest business federation, representing the interests of more than three million businesses and organizations of every size, sector, and region. Employers appreciate the opportunity to participate in the executive branch efforts to reassess where the agencies should engage in notice and comment rulemaking or issue interpretive guidance when there are existing robust regulations in place. This is the job of the federal agencies and we have long thought that there is much the agencies could do operationally to make the employment-based immigration system work better for businesses.

The Request for Information specifically highlighted an executive branch interest in receiving "clear prioritization of which actions are most important and consequential." To that end, the Chamber joined 15 other associations in filing a joint comment highlighting top priorities that impact employers. That comment from 16 associations is attached here as part of the Chamber's response to the RFI. Some of these associations also are filing their own comment to provide more specifics or identify other priority concerns of their particular membership.

In addition to the six priorities identified in the joint comment enclosed below, the U.S. Chamber has one imperative to bring to the attention of the Departments of State and

Homeland Security in its visa modernization review: The failure of U.S. Citizenship and Immigration Services (USCIS) to give deference in H-1B and L-1 petition is extremely costly and an unnecessary source of uncertainty and burden. The Chamber has obtained input from companies and been able to assess economic impact of the USCIS failure to defer to the previously determined authority for the same petitioning employer to employ the same beneficiary worker to perform the same job duties. Since one of the RFI priorities is to obtain "estimates of the number of individuals affected, time saved, private and public costs saved, general economic benefit, or other impact metrics as appropriate," the Chamber is writing to advise the Administration of the economic necessity of adopting a deference policy to be followed by USCIS examiners in H-1B and L-1 adjudications.

DEFERENCE IN H-1B AND L-1 ADJUDICATIONS TO PREVIOUS DETERMINATION OF VALID H-1B OR L-1 STATUS FOR THE SAME EMPLOYER, SAME EMPLOYEE, SAME JOB

With respect to priorities that relate to USCIS processing of nonimmigrant petitions (question #3c in the RFI) and H-1B visa petitions for specialty occupation workers (question #3e in the RFI), a top priority for the Chamber is to have USCIS adopt a policy of binding deference in H-1B and L-1 visa petition adjudications absent material changes.

In response to anecdotal concerns expressed by employers regarding the administrative burden of responses to Requests for Evidence (or RFE) by USCIS for already well-documented petitions for extensions of H-1B and L-1 visa status, the Chamber undertook to gather data to document the extent to which RFEs are issued in extension petitions for H-1B and L-1 status and to estimate the annual cost burden imposed on employers by these requests.[1] The Chamber conducted an email survey and follow-up telephone interviews of human resource professionals, global mobility directors, legal counsel, and other staff in companies with experience in submitting initial petitions, extension petitions, and responses to Requests for Evidence and responding to requests for evidence in response to H and L visa petitions.

Respondents ranged from small to large in terms of company revenue, employment and numbers of H-1B or L-1 visa holders on staff. Cumulatively, respondents to the survey accounted for 3,792 of the total H-1B and L-1 visa extension petitions filed in the most recent 12 months. Information gleaned from the employer survey, combined with data published by the Department and data derived from other authoritative sources, provides a detailed picture of the incidence of extension requests in the universe of annual H-1B and L-1petitions and of the incidence of Requests for Evidence in relation to extension requests.

The focus of the analysis was to estimate the economic burden that USCIS's Requests for Evidence imposes on private employers. The term "request" is a euphemism:

[1] Ronald Bird, Ph.D., assisted with the regulatory economic analysis. Ronald Bird earned his Ph.D. in Economics from the University of North Carolina at Chapel Hill and is a Senior Economist for Regulatory Analysis in the Economic Policy division of the U.S. Chamber of Commerce.

The employer has no recourse except to respond in order to obtain consideration of the petition.

These requests are a paperwork burden imposed on employers in addition to the paperwork burden in connection with the standard petition form authorized by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. Both the Paperwork Reduction Act and the later Unfunded Mandates Act express Congress's concern that federal agencies should be cautious and economical in their demands for information that impose recordkeeping and reporting costs on private companies and individuals.

The time and expenditures by employers to respond to federal agency information demands such as these RFEs to support H-1B and L-1 visa extension petitions impose a potentially significant burden that economists characterize as an "opportunity cost." The premise is that we are only talking extension petitions involving the same employer, same employee, and same job already embedded in the terms and conditions of either H-1B, L-1A, or L-1B status held by the named beneficiary professional. In such a case, when responding to an unnecessary RFE the petitioning employer sacrifices the option of using labor time and other resources productively to produce valuable goods and services – and instead much redirect labor and resources to fulfill the information requirements of a government regulator. The opportunity cost in this case is comprised of two elements: (1) internal labor time redirected from alternative productive applications to fulfill the non-productive information requirements, and (2) expenditures to hire outside counsel or services to help to fulfill the non-productive information requirements.

In calculating opportunity cost we added two separate computations:

(1) the opportunity cost of internal labor time (which consists of the direct compensation (wages plus fringe benefits) of the direct labor time involved plus overhead expenses, general administrative expenses and foregone profit), plus

(2) the opportunity cost of expenditures to hire outside counsel or outside services to help to fulfill the agency's information requirement (which consists of the dollar amount expended plus the profit that could have been earned had that amount instead been available to invest in capital equipment, production materials, productive research for new product development, or simply invested to earn interest or dividends from external sources).

We did not calculate opportunity cost for USCIS. It should be noted, therefore, that the costs of the present USCIS "no deference" policy are understated in that government savings and government ability to focus more productively on other cases is not accounted for in our discussion.

Limited resources cannot do two things at once. More time and effort devoted to fulfilling regulatory information requirements in RFEs equals less time and effort to produce goods and services that consumers value. When the agency demanding information from private employers is unable to demonstrate a credible value for the

information requirement, then the transfer of resources from private sector production to paperwork to satisfy regulatory demands is a dead-weight economic loss to society. It is like imposing a tax without providing commensurate public service in return.

In response to our survey, employers reported data on 3,792 of the total H-1B and L-1 visa extension petitions filed in the most recent 12 months. For our survey purposes, "extension" petitions were those that were second or subsequent H-1B petitions by the same employer for the same employee or second or subsequent L-1 petitions by the same employer for the same employee or first L-1 extensions for individuals who already had a petition approval through the blanket L-1 process. These employers reported, on average, the following:

1. **58 percent of H-1B visa petitions filed annually are extensions for H-1B professionals currently working in valid H-1B status for the same petitioning employer.**
2. **39 percent of L-1 visa petitions (both L-1A and L-1B combined) filed annually are extensions for L-1 staff currently working in valid L-1 status for the same petitioning employer.**
3. **97 percent of H-1B or L-1 extensions are for the same employer, same employee, and the same job duties as the beneficiary worker's current terms and conditions of status.**
4. **For these largely "no-change" petitions for extension, Requests for Evidence were nevertheless issued in:**
    a. **11 percent of H-1B extension petition filings,**
    b. **18 percent of L-1A extension petition filings, and**
    c. **32 percent of L-1B extension petition filings.**
5. **Requests for Evidence were issued for these extension petitions despite the fact that the information in question had been previously approved and accepted by the Department in prior initial petitions in over 97% of the cases.**
6. **There is a 99 percent approval rate for H-1B and L-1 extension petitions receiving an RFE.**

Table 1 (below) shows the calculation of estimated total numbers of H-1B and L-1 extension petitions based on USCIS's reported totals of petitions filed in 2011, the latest year for which detailed data was publicly available, based on the proportions reported by survey respondents. Next, Table 1 shows the calculation of estimated extension petitions having no material change from the initial petition based on the 97 percent proportion reported by survey respondents. The final column of Table 1 shows the estimated number of requests for evidence for extension petitions with no material change, based on proportions reported by survey respondents for H-1B, L-1A and L-1B petitions.

Table 1.
Estimated Number of Requests for Evidence in Extension Cases with No Material Change

Petition Type	Total Petitions	Extension proportion	Estimated extension cases	No material change proportion	Extensions with no material change	Request for Evidence Rate	Requests for Evidence
H-1B	257,538	0.58	149,372	0.97	144,891	0.11	15,938
L-1A	19,602	0.39	7,645	0.97	7,415	0.18	1,335
L-1B	14,246	0.39	5,556	0.97	5,389	0.32	1,725
Totals			162,573		157,696		18,997

Table 1 shows there are an estimated 18,997 requests for evidence annually for extension petitions despite the fact that there had been no material change in the petition information that had previously been accepted on the associated initial petition.

Each of the 18,997 annual Requests for Evidence identified above in extension cases creates a cost burden on the employer. Time and money are expended to respond. Respondents reported that the resource requirements for response to Requests for Evidence varied significantly based on the extent of the information asked, but there is a typical RFE in that most RFEs are based solely on "templates" utilized by USCIS, almost without regard to the petitioning documents filed by the employer. Resource requirements included internal staff time for a human resource professional serving as case manager, administrative/clerical services, the manager of the business unit in which the visa holder works, and time of the subject visa-holding employee. In addition, the more extensive requirement cases typically required the use of outside counsel or service providers. In addition to providing expertise not available through in-house staff, outside service providers also provided, in some cases, a substitute for costly internal case management resources.

Table 2.
Resources required to respond to requests for evidence in extension cases of no material change

Resource Type	Least burdensome case	Typical case	High burden case
HR case manager hours	4	1	1
Admin/clerical hours	1	1	2
Business unit manager hours	2	3	4
Affected worker hours	2	3	4
Outside counsel/services fees (0 to $5,000, average $2164)	0	$2,164	$5,000

Table 2 (above) summarizes the range of resource requirements for RFE response on extension petitions found by analysis of survey responses. The distribution of survey responses suggests that about 80% of cases fall into the typical case category and equal proportions fall into the high and least burden categories.

Table 3 shows the estimated cost components and total cost burden borne by employers to respond to a single request for evidence. Detail and totals are provided for the three burden levels identified from survey responses: least, typical and high. Survey responses were clustered around the typical case values, and the least and high cases were each associated with about 10% of cases.

Table 3.
Estimated cost per Request for Evidence Case

	Hourly Opportunity Cost Amounts	**Least burden case**	**Typical case**	**High burden case**
HR case manager	$124	$496	$124	$123.95
HR admin/clerical	$62	$62	$62	$123.80
Business unit manager	$155	$310	$465	$620
Affected worker	$81	$161	$242	$322
Outside counsel (0 to $5,000, weighted average $2164)	Not applicable	$0	$2,164	$5,000
Total		$1,028	$3,056	$6,189

The "hourly opportunity cost of staff time" amounts shown in Table 3 are based on estimates of employee hourly compensation cost published by the Bureau of Labor Statistics (BLS) in October 2014 for occupational categories – management ($62.39), professional ($49.58), administrative support ($24.76) – and the composite compensation for all employees ($32.20).[2] The "all" employees composite was used for the time of the affected H or L visa employee. The professional compensation amount ($49.58) was used for the HR case manager and the management compensation amount ($62.39) was used for the employee's business unit manager. Compensation includes wages plus non-wage ("fringe") benefits such as insurance, retirement savings contributions by the employer, payroll taxes for Social Security and unemployment insurance, paid leave and similar items. In each case the reported BLS compensation amount was multiplied by 2.5 to obtain a "fully loaded" time cost, including overhead cost (e.g., office space, equipment, utilities), general administrative/support costs (e.g., accounting and payroll processing, executive management and computer network administration) and lost profit associated with productive labor being redirected from normal productive work to regulatory compliance non-productive work.

[2] http://www.bls.gov/ncs/ect/sp/ecsuptc32.pdf.

The 2.5 load factor was derived from published federal government data showing fully loaded labor rates for the relevant occupations in 2014/2015 federal General Services Administration government-wide procurement contracts under the Alliant program.[3] The data reflect the government-approved hourly labor rates charged for various types of skilled, administrative, professional and management occupations services by 58 private information technology and management services companies on current contracts applied across the spectrum of Federal agencies.[4] These fully loaded labor rates include wages, fringe benefits, overhead, general and administrative expenses and profit. These fully loaded labor services hourly rates were compared to the comparable occupations for which BLS publishes employer cost of employee compensation data (wages plus fringe benefits only). On average the difference between the BLS compensation-only hourly amounts and the fully loaded amounts paid by the government for such labor under these contracts revealed a markup factor of 2.5 times the basic compensation amount reported by BLS. This was the factor that was used to adjust the underlying BLS data to the amounts used in the calculations shown as "hourly opportunity cost" in Table 3.

Table 4 (below) shows the annual total compliance cost for response to requests for evidence regarding H and L visa extension petitions having no material change from the facts accepted on the associated initial petition. The total costs are calculated by multiplication of the number of requests for evidence for each visa extension petition category by the typical case total compliance cost of $3,046 (80% of the cases), $1,028 cost for the least burdensome extension (10% of the cases), and $6,189 cost for the most burdensome cases (10% of the cases), as shown in Table 3.

Table 4.
Annual Total Costs of Compliance with Requests for Evidence in Cases of Extension Petitions with No Material Change

		Cost per RFE $1,028.70	Cost per RFE $3,056.35	Cost per RFE $6,189.75
Petition Type	**RFEs for Extensions**	**Compliance cost based on low burden case**	**Compliance cost based on typical case**	**Compliance cost based on high burden case**
H-1B	15,938	$16,902,492	$48,712,096	$101,703,314
L-1A	1,335	$1,415,553	$4,079,551	$8,517,470
L-1B	1,725	$1,828,927	$5,270,870	$11,004,761
Total national annual burden	18,997	$20,146,972	$58,062,517	$121,225,546

[3] http://www.gsa.gov/portal/content/103877. See Excel spreadsheet link on this page entitled "Loaded hourly pricing for work done on contractor site."
[4] Reference to pricing on information technology services contracts was deemed to be appropriate because the subject H-1B and L-1B visas petitions are frequently filed by IT industry firms.

Our survey results suggest that 99 percent of Requests for Evidence in cases of petitions for extension where there is no material change compared to the initially accepted petition result in the extension petition being approved. An approval rate in these RFE extension cases of 97 percent was the lowest proportion reported: Some respondents reported 98% but the vast majority reported 99 percent or 100 percent approval in H-1B and L-1 extension filings that received RFEs. In only one percent of cases does the Request for Evidence reveal something that results in a denial: Of an estimated 18,997 cases of no material change extension petitions with Requests for Evidence only about 190 result in a difference in outcome.

In short, an annual cost of $58 million dollars is imposed on employers by this process which makes a difference in the outcome in only one percent of cases.

USCIS is imposing a burden on the U.S. economy by requiring this expenditure of resources that could have been alternatively used in a productive way. In effect, USCIS is requiring a private expenditure of $305,635 to inform each of the 190 decisions where the petition is denied. If deference were given to petitions for extension where there is no material change in the petition information and requests from evidence omitted in these cases, perhaps a few petitions will be granted that would otherwise have been denied.

By maintaining its practice of frequent Requests for Evidence, USCIS is essentially saying that the cost to the government and to society to granting a petition that it should have denied is greater than $305,635 per instance. To justify continuance of its present policy, USCIS should demonstrate what adverse consequence constitutes such high cost to weed out so few cases: what is the harm of missing a potential denial or what is the benefit of catching one that might have gotten away without the Request for Evidence? Might there be a more efficient approach that USCIS could use to identify petitions that should be denied than the broad dragnet approach currently employed?

USCIS has an obligation to use the public's resources that are entrusted to its command efficiently and effectively. This obligation extends not only to the use and justification of user fees that are represented in the USCIS budget, but also to the private time and resources that USCIS commands through the adjudication process of Requests for Evidence. This power to command private resources should be used with care, but the high costs compared to small results that our analysis reveals suggests that USCIS is using its power carelessly. Such carelessness is a betrayal of the public trust.

To ensure these costs are avoided while also ensuring consistency and timeliness in decision-making, USCIS should issue guidance – and simultaneously publish a rule proposing that this guidance be codified as binding on all USCIS adjudicators – that establishes a regulatory obligation to approve H-1B, L-1A, and L-1B visa petition extensions of stay involving the same employer and same employee except in those instances where (A) there was a material error with regard to the previous petition approval; (B) a substantial change in circumstances has taken place; or (C) new material information has been discovered that adversely impacts the eligibility of the employer or the nonimmigrant.

In conjunction with a new binding deference policy, a revised Form I-129 should be published requiring the petitioning employer to attest under penalty of perjury whether or not there has not been any substantial change in an extension filing. The agency's ability to identify material error regarding a previous case or to discover new material information could be driven by USCIS's ongoing site visits in the Administrative Site Visit and Verification Program (ASVVP) or other existing investigatory tools.

Thank you for your consideration of these comments. Please do not hesitate to contact us if the Chamber may be of further assistance in this matter.

Sincerely,

Randel K. Johnson
Senior Vice President
Labor, Immigration and
Employee Benefits

Amy M. Nice
Executive Director
Immigration Policy

Enclosure: U.S. Chamber's comment as part of joint comment of 16 associations identifying top priorities in visa modernization impacting employers

January 29, 2015

Laura Dawkins,
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U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue, NW
Washington, DC 20529

Re: Docket No. USCIS-2014-0014, Notice of Request for Information

Thank you for the opportunity to submit comments to USCIS-2014-0014: Notice of Request for Information. The undersigned associations, representing small and large businesses from all sectors of the economy across the country, have significant interest in ensuring the U.S. immigration system functions in a manner that allows for maximization of growth and innovation. To provide the widespread corrections to the system necessary for employers to have stability in the coming years, there is no substitute for congressional action and this is reflected in the limited scope of the Request for Information (RFI). Therefore, we jointly submit the following responses regarding agency activities that might, in combination, provide a more reliable and functional immigration system until broader congressional action is achieved.

The responses outlined below are not in order of priority of importance to the employer community, but rather in the order of format presented in the RFI.

Legal immigration system streamlining – Questions #2, 3b, 3c, 3e, 5, 12

Question #2

When considering nonimmigrant visa processing at the consular posts of the Department of State, it should be a priority for businesses to be able to learn the "real reason" for visa denials relating to valued employees, customers and business associates. Nonimmigrant visa denials are most often based solely on a 214(b) refusal (referring to §214(b) of the Immigration and Nationality Act, 8 U.S.C. 1182(b)), meaning that the consular officer concluded the applicant did not generally meet his burden to prove he was complying with the terms of a nonimmigrant classification and, therefore, could not document his intent to return home. Excluding refusals under 221(g) (INA §221(g), 8 U.S.C. 1201(g)) – since 89 percent of these "soft" refusals are overcome (221(g) denials are for lack of initial proper documents) – the Department of State's data shows that about 93 percent of nonimmigrant visa denials are grounded in 214(b). In effect, 214(b) operates as a catch-all category that allows a consular officer to deny a nonimmigrant visa without ever having to identify the deficiency in the applicant's case.

We believe that the Department can and should study ways in which it could provide better transparency for the administrative review of consular visa decisions and strike a better balance between security, efficiency, and fairness.

Question #3b

With regard to policies relating to employment-based immigrant visa petitions, one critical policy that should be a top priority is U.S. Citizenship and Immigration Services (USCIS) recognition of dual intent for F-1 visa students. The higher education system in the United States is a magnet that attracts top students from around the world; a substantial portion of those students study in the science, technology, engineering, and math (STEM) fields where there are documented labor shortages and low-employment rates in the United States.

Yet when those students complete their degrees, our out-of-step immigration system often forces them to return to their home country. A foreign graduate of a U.S. university may pursue Optional Practical Training (OPT) after graduation, but that program's duration is limited to 12 months (29 months in the case of a STEM graduate). It may not be extended even if the foreign student continues to pursue a full course of study. And, at no time may the foreign student's U.S. employer sponsor him for a green card. Those administrative restrictions prevent many foreign graduates from transitioning into the U.S. workforce and obtaining green cards that will allow them to stay permanently in the U.S. and further contribute to the American economy.

During his 2012 State of the Union address, President Obama rightly said it "doesn't make sense" that "we send [these graduates] home to invent new products and create new jobs somewhere else."

We therefore reiterate our view that the Department of Homeland Security should, without delay, clarify that those F-1 visa students may pursue permanent resident status. The government has taken the position that, if a student is sponsored for a green card, he or she violates the terms of the F-1 visa. This interpretation is contrary to how the government interprets nonimmigrant intent for other visa classifications (e.g. O-1 visa). The government should issue policy guidance that clarifies that the pursuit of a green card by an F-1 student, including one engaged in OPT, does not in and of itself violate the terms of F-1 visa status. This change does not require rulemaking and could be made immediately.

Question #3c and 3e

With respect to priorities that relate to USCIS processing of nonimmigrant petitions (question #3c) and H-1B visa petitions for specialty occupation workers (question #3e), we would identify as a priority that USCIS adopt a policy of binding deference. A significant hurdle has evolved in H-1B and L-1 visa petition adjudications where USCIS adjudicators issue extensive numbers of burdensome Requests for Evidence (RFE) when the employer has filed a petition on behalf of a nonimmigrant worker who already holds the status in question for that same employer, performing the same duties. The U.S. Chamber of Commerce has gathered data from its members regarding the frequency with which RFEs are issued on extension requests for petitions by the same employer, on behalf of the same employee, for performance of the same job, and data on how company resources are used to respond to RFEs, as well as the final result of such extension requests subject to RFE. The Chamber's analysis found that over 99 percent of H-1B and L-1 visa petition extension requests having received RFEs are approved but that the cost paid by employers in internal resource time and outside counsel fees to comply with the unnecessary RFEs is between $20.1 million $121.1 million annually.

To ensure these costs are avoided while also ensuring consistency and timeliness in decision-making, USCIS should issue guidance – and simultaneously publish a rule proposing that this guidance be codified as binding on all USCIS adjudicators – that establishes a regulatory obligation to approve H-1B, L-1A, and L-1B visa petition extensions of stay involving the same employer and same employee except in those instances where (A) there was a material error with regard to the previous petition approval; (B) a substantial change in circumstances has taken place; or (C) new material information has been discovered that adversely impacts the eligibility of the employer or the nonimmigrant. The employer could be asked to attest under penalty of perjury that there has not been any substantial change. The

agency's ability to identify a material error regarding a previous case or to discover new material information could be driven by USCIS's ongoing site visits in the Administrative Site Visit and Verification Program (ASVVP) or other existing investigatory tools.

Question #5

With regard to the Adjustment of Status process at USCIS, the agency needs to allow immigrants, whose employers have received final approval of a Labor Certification and Immigrant Visa Petition, to file Adjustments of Status as long as all allocated visa numbers in the same preference category have not already been issued for the current fiscal year. While an immediately available green card number is required under §245 of the Immigration and Nationality Act (INA), the Department of State and USCIS has flexibility to define when a visa number is available to better ensure that the government allocates all available visas within the fiscal year. This change would be a tremendous improvement for eligible individuals who could concurrently file for employment authorization and travel documents.

We understand that this policy would affect about 410,000 people currently waiting in the green card backlog. Those individuals would not get permanent residence any faster, but would be able to get the other benefits of having filed an adjustment of status application – namely, they would have more freedom to change jobs and accept promotions without the fear that they might have to start the green card process over.

In addition to primary visa holders, dependents of those immigrants who file for an adjustment of status would be able to receive interim work authorization and travel documents. While we understand that the administration is finalizing a work authorization process for certain spouses holding H-4 status, this could allow broader opportunities for work authorization – for spouses in other categories, as well as children who are of a legal age to work. This provides tremendous relief to individuals who might be hesitant to pursue green cards or even remain in the U.S. workforce should their dependents be unable to work.

Question #12

As associations representing employers with decades of experience using private independent wage surveys to make compensation determinations for thousands of positions across companies of every industry and geography in this country, we doubt that O*Net can be sufficiently changed in a cost-effective manner to avoid the need for access to private surveys. Thus, a priority in this area is to protect access to private independent wage surveys. To be available to an employer, an independent wage survey should have to meet certain standards but the Department of Labor (DOL) should be required to approve use of any survey that meets such criteria. Independent surveys, unlike the Occupational Employment Statistics data used

under the DOL formula at O*Net, collect and analyze actual salary figures (as opposed to compensation bands), as well as information on the actual skill and responsibility levels of employees being paid at particular wage levels. They are more accurate and are incentivized by existing market pressures to remain so.

One common proposal is to eliminate the so-called "level one" wage in O*Net. We strongly oppose this change. The U.S. Chamber of Commerce has gathered data from its members regarding the frequency with which the use of O*Net data would necessitate employers paying wages that exceed what today is paid to Americans doing those same jobs if the leveling in O*Net is changed to eliminate level one. The results show that for less-experienced workers, eliminating level one in O*Net would require employers to pay foreign born workers on visas more than Americans doing those same jobs approximately 55 percent of the time. Even for fully-qualified professionals being paid at the top level, the U.S. Chamber data suggests that eliminating level one in O*Net would exceed what today is paid to similarly situated Americans approximately 43 percent of the time.

This degree of imprecision shows starkly that wage levels created by Congress for O*Net are not the best mechanism for wage comparison, even though it is based on OES data which is itself accurate for the purposes for which it is collected. The OES survey does not collect data identifying compensation levels based on education, experience, and supervision, despite the mandate in §212(p) of the INA to provide such data. As the Bureau of Labor Statistics (BLS) has itself explained, "no BLS program publishes occupational wage data by level." *The Relevance of Occupational Wage Leveling (BLS)*[5]

Ensuring all immigrant visa numbers are used – Question #15

We believe that the State Department has authority to use in the current fiscal year preference immigrant visa numbers that were not issued to preference immigrants in prior fiscal years.

Through various provisions of the INA, Congress has crafted provisions to ensure immigrant visa numbers (green card numbers) that are allocated by Congress get used, and get used fairly. Congress provided for immigrant visa numbers for green card status to spill up and down among the preferences (§202(e) of the INA) and fall across between the employment-based and family-based preference categories (§201(c)(3)(C)) and §202(d)(2)(C) of the INA), to be cross-charged to the country of birth of an immigrant's immediate family instead of the immigrant himself (§202(b) of the INA), and to allocate some numbers without regard to per-

[5] http://www.bls.gov/opub/mlr/cwc/the-relevance-of-occupational-wage-leveling.pdf.

country caps (§202(a)(5) and §202(a)(4)(A) of the INA). Despite this system, over 200,000 allocated immigrant visas for preference immigrants have been allowed to go unused by USCIS and the Department of State since 1992.

For the business community, the increasing importance of ensuring employment-based immigrant visa numbers are utilized is tied to the extent to which the green card backlog has grown exponentially in the last decade. For example, with regard to Employment-Based Second Preference immigrants: in June 2004 advanced degree professionals born in India and China found that visa numbers were "current" and available once prerequisite Labor Certification and Immigrant Visa Petition processing was completed, but today India natives have a ten year backlog while China natives have a five year backlog.

Modernizing IT Infrastructure – Questions #17 and 18

We believe the Department of Homeland Security (DHS) and the Department of State (State) must continue and accelerate the acquisition and deployment of electronic systems and applications to modernize the immigration processing IT infrastructure and provide both immigrant and non-immigrant customers and government employees with capabilities that will allow a better customer experience, enable more efficient processing, and provide greater transparency in the process.

First, DHS needs to migrate from a paper-based system to an electronic system that enables automation of application submission and forms processing to reduce and prevent delays and backlogs. Such a migration would also reduce applicant mistakes in their application submissions, providing faster and less costly processing of applications.

Second, DHS and the Department of State need to invest in systems and infrastructure to aid in the authentication and verification of the identity of individuals and to improve fraud detection. DHS should also include use of multifactor authentication or biometrics to protect applicant data, verify identity, and reduce fraud.

Third, we support the integration of electronic documents evidencing employment authorization into E-Verify, such as the I-9. E-Verify must also be enhanced to add effective automated authentication of identity to prevent identity fraud. Investing in these tools will provide the most significant improvements to the user experience and drive cost-efficiencies for the government. By creating mobile access, web-based tools, and approved third-party providers to enhance and automate, these processes would modernize the immigration processing IT infrastructure, increase transparency and situational awareness, improve enforcement, facilitate commerce, and allow employers to hire with additional certainty.

Additional topics

Although the subjects set forth in these comments are of particular importance to employers, it is also necessary to highlight other administrative actions that are critical to the success of employment-based immigration. Finalizing the proposed rule to provide work authorization for certain H-4 visa holders would allow for increased stability for many families whose spouses do not have the right to work for, in some cases, up to ten years, even though the employer has completed all steps to sponsor the principal H-1B worker for permanent resident status. Employers also would like the long-promised guidance on L-1B visas to provide more consistent adjudications. These two issues are long-term concerns of which the administration has been attempting to address for more than three years. Just as this RFI addresses these as outside the scope of the current request, employers also consider these to be issues of significant importance that are already being considered outside of the scope of the Executive Actions, forming a parallel track to the other possible administrative changes outlined in this document, and completed in a similar time frame.

In addition, employers are encouraged by efforts to streamline the permanent labor certification program (PERM) process at the Department of Labor to better reflect real-world recruitment realities and work at USCIS to modify the work authorization period provided under OPT to better align with the real-world opportunities employers want to provide to graduates of U.S. universities.

Although not specifically mentioned in the RFI, it is necessary for the Administration to provide guidance to the employer community regarding employment of persons who may request work authorizations as a result of the Deferred Action for Parent Accountability (DAPA) Program and the expansion of the Deferred Action for Childhood Arrivals (DACA) Program, including consideration of a "good faith" presumption for updating employment information for DACA/DAPA participants. An update of verification documents or an application for new documents under the President's initiatives should not alone be a trigger for investigation or create concern for federal contractors.

Conclusion

While congressional action is necessary to update the Nation's broken immigration laws, limited actions may be taken to improve the immigration system through the normal regulatory process of interpreting and finalizing regulations. The undersigned associations, representing a broad swath of the nation's employers, ask that the Administration consider:

- Providing a clear understanding of the basis for visa denials,
- Deference to previously adjudicated cases in future decisions,

- Allowing students being educated in the United States to apply for permanent resident status,
- Use of previously allocated green cards by Congress to be utilized to their potential,
- Ensuring that there is access to private wage surveys in prevailing wage determinations and no elimination of level-one wages in O*Net, and
- Accelerated investment in improvement of the IT infrastructure.

In addition, we seek significant changes to the immigration system that need to be accomplished outside the scope and priority of the RFI, but in a parallel timeframe, such as work authorization for certain H-4 spouses and the long-promised L-1 guidance. We also look to a streamlining of the PERM process, the update of OPT, and a clear, fair method of addressing employers' concerns as DACA/DAPA participants present new work authorization papers. Again, thank you for the opportunity to respond to this Request for Information. We look forward to working with you in the future.

Sincerely,

American Immigration Lawyers Association
Business Roundtable
Compete America Coalition
Council for Global Immigration
FWD.us
HR Policy Association
Information Technology Industry Council
National Association of Home Builders
National Association of Manufacturers
National Venture Capital Association
Partnership for a New American Economy
Society for Human Resource Management
Semiconductor Industry Association
Silicon Valley Leadership Group
TechNet
U.S. Chamber of Commerce