May 31, 2013

TO THE MEMBERS OF THE UNITED STATES SENATE:

The NAM and the U.S. Chamber of Commerce, who together represent about 3 million of the nation's employers, believe in the success of the U.S. economy, the power of American ingenuity, and the integral role of immigration reform in ensuring both. Our organizations firmly believe that the health of our economy and vitality of our country is driven by our people – they have always been our greatest resource and will continue to be so as long as we can secure much needed immigration reform.

We applaud the Senate Judiciary Committee for its thoughtful consideration of S. 744, which our organizations hope will serve as an important step toward ensuring the restructuring of our immigration system, as needed for a vigorous economy and society for the 21st century. We support a solution that addresses the many facets of immigration reform, including a means, under strict criteria, for people to come out of the shadows who are currently undocumented, without creating a permanent underclass of people who do not have the opportunity to become citizens.

The Committee's additions and modifications to S. 744 addressed a broad array of concerns while working towards the meaningful reform necessary to fix a broken system. In that spirit, Senators Hatch and Schumer agreed to, and the committee passed, a set of amendments that modify certain provisions in the base text relating to the hire of high-skilled foreign workers. The legislation as modified by the Hatch-Schumer amendments protects U.S. workers by imposing new requirements on all employers that hire H-1B professionals and protects H-1B workers by expanding portability for each foreign professional working in the H-1B classification. Moreover, the Hatch-Schumer amendments ensure the H-1B cap floats between no less than 115,000 and no more than 180,000 based on market-based indicators.

Contrary to the suggestions of some, the Hatch-Schumer amendments do not gut new, additional requirements in S. 744 that ensure employers recruit for jobs in the open marketplace and prioritize the hiring of Americans, do not create any loopholes permitting employers to replace American workers with lower-paid H-1B workers, and do not increase the H-1B numerical limits beyond 180,000.

Under S. 744 as amended by the Senate Judiciary Committee, each and every H-1B employer must:

1. Document good faith steps to recruit U.S. workers in the occupations where an H-1B professional worker might be sponsored, in accordance with industry standards,

2. Advertise every job to be filled by an H-1B worker on a new Department of Labor website,

3. Prove there is no preference for foreign workers in hiring practices, by showing that less than 15% of each employer's professional workforce are temporary H-1B visa holders,

4. Pay foreign workers at least the same wages and benefits provided to Americans in the marketplace, as confirmed by BLS data – eliminating any incentive to prefer foreign workers over U.S. workers,

5. Be subjected to greatly expanded investigatory and audit authority of the Department of Labor which allows government investigation of any H-1B employer at any time (without a showing of reasonable cause),

6. Attest that no H-1B is being hired with the intent to displace an American, and

7. Be subjected to a 180-day window barring layoffs or displacement of Americans when hiring H-1Bs work on government contracts or as schoolteachers.

What the Hatch-Schumer amendments avoid is the scenario where each of the approximately 27,000 employers annually that sponsor an H-1B worker is subject to a mandate to document and justify to the government on a position-by-position basis each and every hiring decision. Such bureaucratic and open-ended oversight is virtually unworkable for most American job creators and many of the nation's companies that are household names we know and respect.

Protection of the foreign H-1B worker is also addressed by the Hatch-Schumer amendments. Under S. 744 as amended by the Senate Judiciary Committee, each and every H-1B employee is able to:

1. Leave the H-1B sponsoring employer and be allowed up to 60 days to look for a new job and new H-1B sponsoring employer (as compared to current law that provides no grace period),

2. Retain the place in line for green card sponsorship, even if the H-1B employee chooses to leave the initially sponsoring employer and regardless of whether the employer later withdraws sponsorship (as compared to current law where it is clear that the employer controls the green card process),

3. Have access to official confirmation of the terms and conditions of status and petitions filed by sponsoring employers, including green card sponsorship (as compared to current law where neither a government agency or the sponsoring employer is required to provide documentation to the beneficiary employee), and

4. File early for adjustment of status to green card once all labor market tests and immigrant classification petitions are approved, in those situations where numbers are unavailable for final approval due to backlogs, permitting a sponsored worker to confirm documentary eligibility for final approval and secure unrestricted work authorization while waiting for final issuance of lawful permanent resident status (no such proviso under current law).

The Hatch-Schumer amendments, while retaining the fixed 180,000 cap for new H-1B approvals each year that was found in S. 744, also institute a new mechanism for adjusting the cap between a new floor of 115,000 and the 180,000 cap: availability of a one-time annual adjustment to H-1B numbers in those years where the cap would otherwise be less than 180,000 and professional unemployment is at less than 4.5%, if the cap is met early. The cap adjustment is on a sliding scale, but only applies once each year and only if the cap is met early in the fiscal year. In those years where the cap is met very early, within the first six weeks when petitions can be filed for the following fiscal year, then the cap will go up as much as 20,000, although never in excess of 180,000.

Our organizations represent employers and our number one priority is job creation across our country. We want to continue to grow and succeed in the United States and will always look primarily toward American workers to achieve that goal. However, we also need to be able to attract and retain talented foreign-born individuals to supplement our innovation and growth if and when sufficient numbers of American workers are not qualified and available for unfilled positions. The Hatch-Schumer amendments voted out of the Judiciary Committee position American employers to be able to do just that. For that reason, we ask for your support in retaining the Hatch-Schumer amendments in S. 744.

We need to make sure immigration reform works and it will not work if employers cannot hire the people necessary for success. We look forward to working with you to support immigration reform.

Respectfully,

National Association of Manufacturers

U.S. Chamber of Commerce