

## MEMORANDUM

**TO:** Carol Caruso  
**FROM:** Steven Abbott  
**DATE:** 4/22/09  
**RE:** Immigration Reform in the 111<sup>th</sup> Congress

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### **Background:**

The number of foreign-born people residing in the United States is at the highest level in U.S. history and has reached a proportion of the population of 12.6%. Of the 38 million foreign-born residents in the United States, approximately one third are naturalized citizens, one-third are legal permanent residents, and one-third are estimated to be unauthorized (illegal) residents. Some observers and policy experts maintain that the presence of an estimated 11 million unauthorized residents is evidence of flaws in the legal immigration system as well as failures of immigration control policies and practices.

There is a broad-based consensus that the U.S. immigration system is broken. This consensus erodes as soon as different reform proposals on the U.S. immigration system are debated. Substantial efforts to reform immigration law have failed in the recent past. Clearly the most contentious of these immigration issues centers on policies directed toward unauthorized aliens in the United States.

The fact that the economy is in a recession further complicates efforts to reform immigration law. Historically, international migration slows during economic crises; immigration to the United States was at its lowest levels during the Great Depression. While preliminary research suggests a slowing of migration, it remains unclear how the current economic recession will affect immigration to the United States. Whether Congress will act to alter immigration policies is at the center of the debate. Addressing these contentious policy reforms against the backdrop of economic crisis sharpens the social and business cleavages and may narrow the range of options.

### **Obama Administration Focus on Immigration Reform:**

During his time in the Senate, President Barack Obama supported comprehensive immigration reform legislation that included increased enforcement as well as a pathway to legal residence for certain unauthorized residents. Similar views have been expressed by the Secretary of Homeland Security Janet Napolitano. The Obama Administration has outlined its principles for comprehensive immigration reform as follows:

- Create Secure Borders: Protect the integrity of our borders. Support additional personnel, infrastructure and technology on the border and at our ports of entry.

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- **Improve Our Immigration System:** Fix the dysfunctional immigration bureaucracy and increase the number of legal immigrants to keep families together and meet the demand for jobs that employers cannot fill.
- **Remove Incentives to Enter Illegally:** Remove incentives to enter the country illegally by cracking down on employers who hire undocumented immigrants.
- **Bring People Out of the Shadows:** Support a system that allows undocumented immigrants who are in good standing to pay a fine, learn English, and go to the back of the line for the opportunity to become citizens.
- **Work with Mexico:** Promote economic development in Mexico to decrease illegal immigration.

The Obama Administration has reportedly stated that comprehensive immigration reform will be a top priority. The Administration has expressed a willingness to put forth a proposal, however it is usual that Congress first initiates reform proposals.

### **US Chamber Immigration Priorities:**

- Continue to push for comprehensive immigration reform that: increases security; has an earned pathway to legalization for undocumented workers already contributing to our economy, provided that they are law-abiding and prepared to embrace the obligations and values of our society; creates a carefully monitored guest or essential worker program to fill the growing gaps in America's workforce recognizing that, in some cases, permanent immigrants will be needed to fill these gaps; and refrains from unduly burdening employers with worker verification systems that are underfunded or unworkable.
- Urge Congress and the administration to address delays, backlogs, and disruptions in our immigration and border management systems that impede the movement of legitimate cargo and travelers across U.S. borders.
- Ensure the continuity and expansion of H-1B, L-1, and EB visas for professionals and highly valued workers.
- Lobby for reform to enable seasonal and small businesses to continue to use the H-2B temporary visa.

### **Labor Immigration Proposal:**

In the last few weeks the AFL-CIO and Change to Win released a framework for Comprehensive Immigration Reform:

- An independent commission to assess and manage future flows, based on labor market shortages that are determined on the basis of actual need

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- A secure and effective worker authorization mechanism
- Rational operational control of the border
- Adjustment of status for the current undocumented population
- Improvement, not expansion, of temporary worker programs, limited to temporary or seasonal, not permanent, jobs.

### **Immigration Issues of Concern to Businesses:**

- **Temporary Worker Visas (H-1B, H-2B)**

Some business people express concern that a scarcity of labor in certain sectors may hamper economic growth at a time when encouraging economic growth is paramount. A leading legislative response to skills mismatches is to increase the supply of temporary foreign workers. While the demand for more skilled and highly-trained foreign workers gets much of the attention (ie, lifting the ceiling on H-1B visas or set-asides of visas for foreign graduates of U.S. universities). There is also pressure to increase unskilled temporary foreign workers, commonly referred to as migrant workers. Those opposing increases in temporary workers assert that there is no compelling evidence of labor shortages and cite the growing rate of unemployment. Opponents argue that continuing temporary foreign workers programs during an economic recession would have a deleterious effect on salaries, compensation, and working conditions of U.S. workers. Most recently, some are suggesting that temporary foreign workers visas should be scaled back or placed in moratorium during the economic recession.

- **Employment Verification**

All employers are required to participate in a paper-based employment eligibility verification system in which they examine documents presented by every new hire to verify the person's identity and work eligibility. Employers also may opt to participate in an electronic employment eligibility verification program, known as E-Verify, which checks the new hires' employment authorization through Social Security Administration and, if necessary, DHS databases. Employer organizations have long complained that E-Verify is too costly and poses practical and technical problems. Other critics maintain its expansion would make applying for jobs a hassle for all U.S. citizens and would effectively deny some law-abiding individuals the ability to work. According to DHS, however, E-Verify immediately verifies almost everyone who is authorized to work in the United States. DHS further reports that only about 0.5% of legal workers receive a tentative non-confirmation and, as a result, need to correct their records. The authorizing legislation for the optional E-Verify program was temporarily extended in March 2009 by the Omnibus Appropriations Act, 2009 (P.L.

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111-8) and is now scheduled to terminate on September 30, 2009. Whether to extend, revise and possibly require all employers to conduct electronic employment eligibility verification of all new hires or all of their employees will continue to be an issue in the 111th Congress.

- **Worksite Enforcement**

For two decades it has been unlawful for an employer to knowingly hire, recruit or refer for a fee, or continue to employ an alien who is not authorized to be so employed. The large and growing number of unauthorized aliens in the US led many to criticize the adequacy of the current worksite enforcement measures. In response, highly visible worksite raids by the DHS Immigration and Customs Enforcement (ICE) bureau during 2007-2008 have sparked praise among some and alarm among others. Critics of the ICE worksite raids assert that the government is targeting low wage foreign workers rather than the employers who hire them. Former DHS Secretary Michael Chertoff argued, however, that cases against supervisors and employers often depend on proving knowledge and intent, making it more difficult to build a criminal case against an employer. Efforts to strengthen worksite enforcement, however, are sometimes met by fears that more stringent penalties may inadvertently foster discrimination against legal workers with foreign appearances. Most recently, DHS Secretary Janet Napolitano has called for a thorough review, specifically requesting ICE agents to apply more scrutiny to the selection and investigation of worksite raids, which might be signaling a policy shift.

### **COMMENTARY:**

The issue of temporary workers is always being discussed on Capitol Hill. There is general consensus between business and labor groups that a market based solution needs to be applied to the amount of temporary worker visas rather than an arbitrary cap set by Congress. The US Chamber does take issue with the Labor Coalitions proposal for an Independent Commission to determine what the market needs are because they don't believe a Commission would have the proper sector knowledge to make a market determination. Additionally Labor groups take issue with a guest worker program because they believe that it creates a "sub working class" that will create depressed wages along with a loss of Benefits.

There have yet to be any major immigration proposals unveiled in the 111<sup>th</sup> Congress. The last major attempt, spear headed by Sens. McCain and Kennedy, was eventually foiled mainly over a proposed guest worker program and a path to legalization of currently undocumented aliens. Considering Sen. Kennedy's current health and him having a greater to desire to reform healthcare it is unclear as to whether he will take up the mantle again.

Congressional Democrats have indicated that they are waiting for the Obama Administration to submit a proposal for immigration, and one is expected to be released within the next month. It was originally expected that immigration policy would be pushed back further into the term of the new administration, but with the escalating

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violence in Mexico the Administration has expressed a desire to tackle the issue soon. It is still unclear as to what Congressional action will take place once a proposal is unveiled by the Administration because of the massive issues Congress is already undertaking (ie, economic recession, healthcare, climate change, transportation, etc.)