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Bureaucratic High-Tech Visas

The Gang of Eight bill needlessly complicates skilled immigration.

One good argument for immigration reform is to create more visas for the world's best and brightest to stay in America. So it's disappointing that the Senate Gang of Eight bill creates more visas for talented workers but then makes them harder to use with new government rules and wage fixing.

This is the provision for H-1B and L-1 visas, which companies use to bring high-skilled employees to the U.S. The Gang of Eight proposal that will be debated in the Judiciary Committee starting Thursday expands the annual H-1B visa quota over several years to as high as 180,000 (plus 25,000 graduate-degree exemptions) from a paltry 65,000 today (plus 20,000 exemptions). This is much needed given that the current quota this year was oversubscribed in a week.

The bill also creates a new and separate green-card exemption for foreigners who get graduate degrees from U.S. universities in the sciences, technology, math and engineering. Any such foreign graduate who is sponsored by a U.S. company could receive a green card for residency to work in the U.S. This is the bill's single best provision and will add enormously to the talent pool to keep America competitive.

The bad news is that the proposal is so loaded with new bureaucratic red tape that many companies may decide they don't want to use H-1B or L-1 visas. The Gang of Eight proposal in its current form "is likely to harm the ability of both startups and established companies to grow and innovate in the United States," says Stuart Anderson, an immigration expert who runs the **National Foundation for American Policy**.

For example, the bill requires that companies that want to utilize an H-1B visa advertise for 30 days for a U.S. worker and then attest under threat of legal penalty that no "equally qualified" American could be found to do the work. Under the bill, the Department of Labor would be able to determine whether the person the company hires meets the "equally qualified" standard. Up to two years after the fact, an employer could be punished if some grandee at Labor decides it made the wrong hires.

The bill also requires that H-1B visa holders be paid higher wages than Americans, "in some cases about \$10,000 to \$18,000 more," says Mr. Anderson. This would raise costs across a company's entire workforce regardless of what the labor market dictates because companies don't like to have two-tier wage levels for comparable work. If companies can't afford to pay these extra wages, they'll simply hire those employees overseas or not at all. This defeats the purpose of the H-1B visa expansion.

The proposal also bollixes up the process for L-1 visas, which employers use to transfer employees inside a company. The bill imposes a new requirement that if a company wants to transfer an employee temporarily to the site of a client firm, that client must attest that the L-1 transfer did not and will not displace an employee for 90 days before or after the transfer. Few if any clients will take on such legal liability, so this is a poison pill for using L-1 visas.

That is precisely the point of these and other new rules, which were demanded by Senator Dick Durbin. The Illinois Democrat was the spear carrier for the AFL-CIO in the Senate negotiations, and Big Labor's main policy goals in immigration reform are limiting the number of new nonunion workers and giving the Labor Department new power to influence hiring and wages.

High-tech companies are lobbying quietly to improve these skilled-visa provisions, but neither business nor Republicans have fought hard enough. The Democratic political priority is legalizing the 11 million or so illegal immigrants who are already in the U.S., and business and the GOP shouldn't have to agree to that and to Big Labor's wish list. More visas unencumbered by bureaucracy for both high- and low-skilled workers should be the main Republican priority.

On H-1Bs and L-1 visas, the best solution is to swap the Gang of Eight proposal for the bipartisan I-Squared bill that has about 25 co-sponsors, including Minnesota Democrat Amy Klobuchar and Florida Republican and Gang of Eight member Marco Rubio. Republican Senator Orrin Hatch will try in committee to amend the Durbin provisions along the I-Squared lines, which would have an annual H-1B floor of 115,000 that would rise or fall with demand and without red tape.

The business community should make clear that its support for the entire bill cannot be assumed if Mr. Hatch's effort fails. The new graduate-school, green-card exemption combined with current H-1B law would be far preferable to Mr. Durbin's jerry-rigged version. Silicon Valley ought to wake up and understand that it's in the process of getting rolled by Big Labor on its main immigration priority.