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THE IMMIGRATION INNOVATION (I²) ACT OF 2013

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The Immigration Innovation Act of 2013—also known as The I-Squared Act (I²)—was introduced in the U.S. Senate on January 29, 2013, by Senators Orrin Hatch (R-Utah), Amy Klobuchar (D-Minn.), Marco Rubio (R-Fla.), and Chris Coons (D-Del.). The most significant changes the proposed legislation would make include significantly expanding the H-1B visa program—an employment-based temporary guest worker program for foreign workers with at least college degree; and exempting foreign graduates of U.S. universities with advanced degrees in the science, technology, engineering, and math (STEM) fields from annual statutory limits on employment-based permanent immigrant visas (also known as “green cards”). This fact sheet summarizes key changes in The I-Squared Act and contextualizes them within current labor market realities, and explains some of the weaknesses in the current and proposed legal frameworks for H-1B visas and STEM green cards.

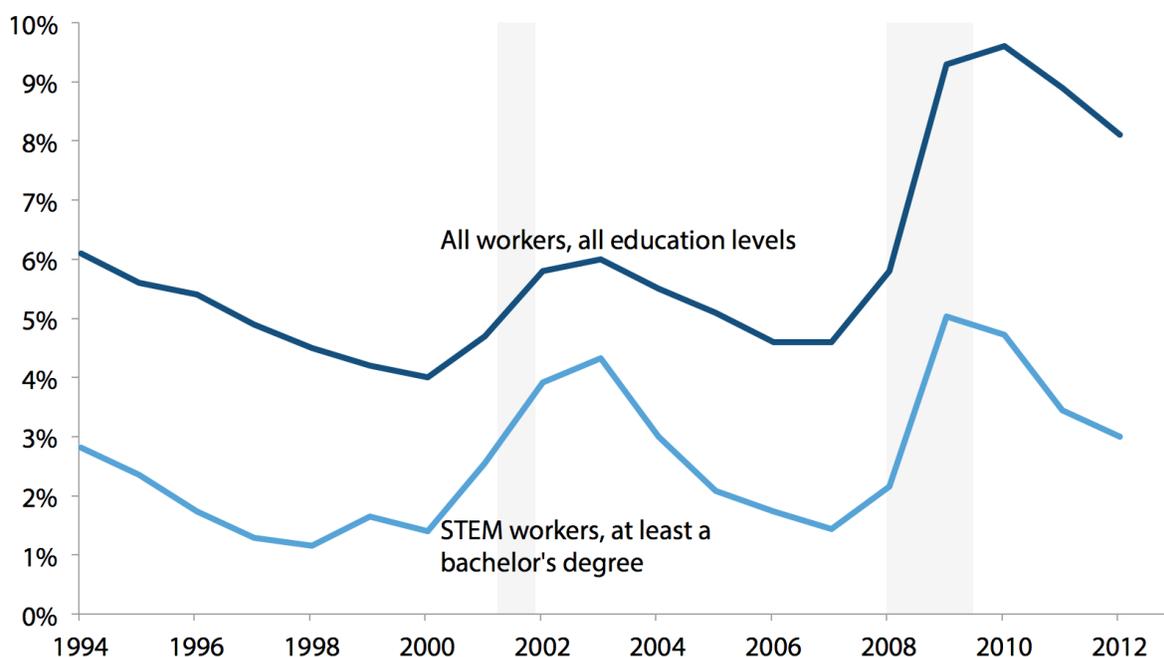
The bill would increase the H-1B visa quota

Under current law the H-1B visa quota is “capped” annually at 85,000; however, tens of thousands of H-1B visas granted every year are not counted under the cap, because of exemptions for research and nonprofit institutions.

- 135,530 H-1B visas were issued in 2012.¹
- Between 2007 and 2012, nearly 776,000 H-1B visas were issued, at an average of almost 130,000 per year.
- Although the federal government has no official estimate, some analysts have estimated that there are approximately 500,000 to 600,000 H-1B workers employed in the United States.²

FIGURE A

Unemployment rates for all workers, and workers in STEM occupations with at least a bachelor's degree, 1994–2012



Note: Estimates are for the civilian labor force age 25 and older with a bachelor's degree or higher. Shaded areas denote recessions.

Source: Current Population Survey (CPS) public data series and unpublished analysis of CPS basic monthly microdata (1994–2011) from the Department of Commerce (DOC) Economics and Statistics Administration (ESA); EPI analysis of CPS basic monthly microdata, using Department of Commerce definition of STEM occupations (for 2012 only) (see DOC ESA report, STEM: Good Jobs Now and For the Future 8, http://www.esa.doc.gov/sites/default/files/reports/documents/stemfinaljuly14_1.pdf)

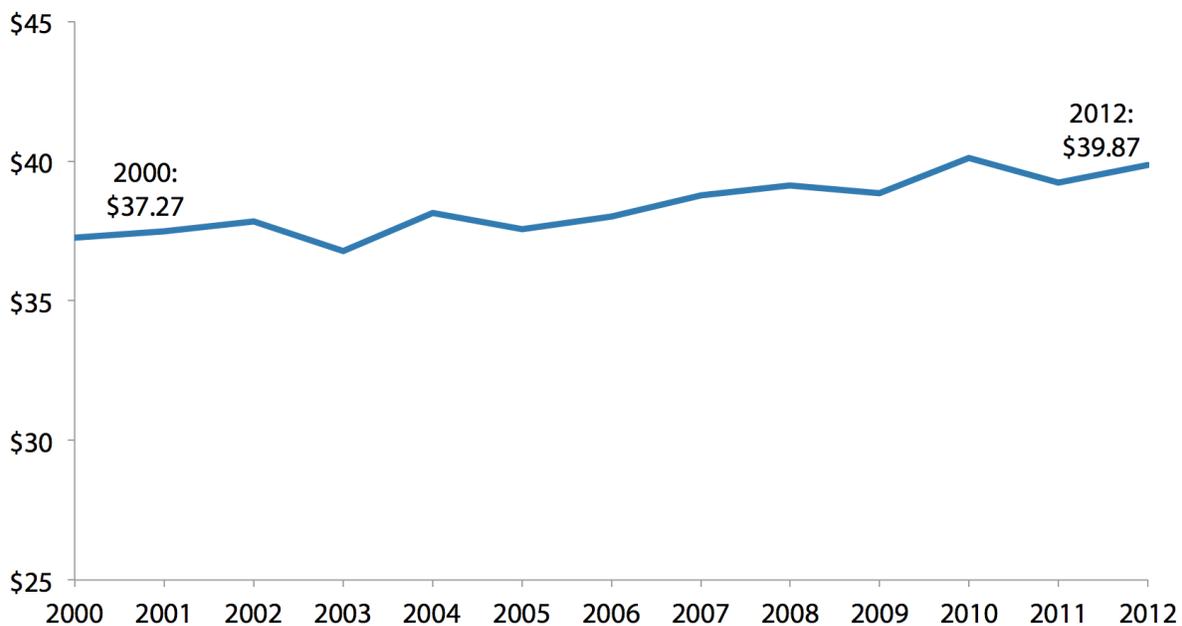
The I² bill increases the maximum limit to 300,000 H-1B visas for the private sector, plus an exemption for graduates of U.S. universities with advanced degrees. The bill also continues the exemption for research and nonprofit institutions. Under these terms, it is likely that over 400,000 H-1B visas would be granted per year. Because the H-1B visa is renewable for a total of six years, the bill could add more than 2 million new high-tech workers to an already unhealthy labor market.

Current unemployment rates and slow wage growth do not suggest a labor shortage in STEM occupations

The unemployment rate of college-educated workers across the broad spectrum of STEM occupations was 3 percent in 2012. While the unemployment rate for college-educated STEM workers has always been lower than the national unemployment rate, it remains more than double what it was before the start of the recession in 2007—1.4 percent. **Figure A** shows the unemployment rate for all workers and for college-educated STEM workers during the 1994–2012 period.

FIGURE B

Average hourly wage in computer and mathematical occupations, workers with at least a bachelor's degree, 2000—2012 (2012 dollars)



Source: EPI analysis of Current Population Survey basic monthly microdata

Workers in computer-related occupations made up approximately half of H-1B beneficiaries in 2011.³

- In 2007, before the recession began, the unemployment rate for workers in computer-related and mathematical occupations with at least a college degree was 1.9 percent. In 2012 it was 3 percent.⁴ The latest available data show the unemployment rate in January 2013 rose to 3.9 percent.⁵
- As **Figure B** shows, wages for workers in computer and math occupations with at least a college degree have been mostly flat since 2000, increasing 7.0 percent between 2000 and 2012 (an average of just over half a percent per year). In comparison, total economy productivity grew 23.1 percent over this period, more than three times as fast. In other words, wages for college-educated workers in computer and math occupations are far from even keeping up with economy-wide productivity growth, much less experiencing the strong growth that might indicate a labor shortage.

H-1B program flaws unaddressed by the proposed bill include: not requiring recruitment of U.S. workers, artificially low wages for H-1B workers, and benefits accruing mainly to offshore outsourcing companies

The I² legislation does not create a labor market test requiring H-1B employers to demonstrate that there are no U.S. workers available. In other words, there is no requirement that a labor shortage exists before an employer can hire an H-1B guest worker.

TABLE 1

Examples of second-quarter fiscal 2012 H-1B certified Labor Condition Applications (LCA)

| LCA Case# | Employer | Standard Occupational Classification | Occupation | Job title | Wage rate (annual) | No. of workers | Work location |
|--------------------|----------------------|--------------------------------------|----------------------------------|----------------------|--------------------|----------------|---------------|
| I-200-12060-950735 | Accenture | 15-1799 | Computer occupations, all other* | Computer specialist | \$17,950 | 5 | Findlay, Ohio |
| I-200-11312-917389 | Cognizant Technology | 15-1121 | Computer systems analysts | Systems analyst Jc65 | \$23,795 | 25 | Salem, Va. |

Source: U.S. Department of Labor, Office of Foreign Labor Certification, "Case Disclosure Data," available at <http://www.foreignlaborcert.doleta.gov/quarterlydata.cfm> (last visited Feb. 25, 2013)

- Under current law, most H-1B employers are not required to advertise job openings or recruit U.S. workers before hiring an H-1B for an open position.
- Employers can legally replace qualified and available U.S. workers with H-1B workers. Reported examples of this have occurred at major companies.⁶

The I² legislation does not fix the H-1B program's flawed 4-tier prevailing wage structure.⁷

- According to GAO analysis of data from the U.S. Department of Labor, 54 percent of H-1B visas are certified at the Level 1 wage and 29 percent are certified at Level 2 wage. Both the Level 1 and Level 2 wage are below the local average wage for the occupation (the 50th percentile wage).⁸ That means that 83 percent of H-1B visas are certified below the local average wage in the occupation.
- Some H-1B jobs are certified at little more than the minimum wage, as shown in **Table 1**.

The biggest beneficiaries of the H-1B program are offshore outsourcing firms,⁹ whose business model is designed to shift high-skilled work and jobs overseas.

- Ron Hira, an associate professor of public policy at the Rochester Institute of Technology, recently reported: "In 2012, the 10 employers receiving the largest number of H-1B visas were all in the business of outsourcing and offshoring high-tech American jobs."¹⁰
- Increasing the H-1B cap will mostly benefit the offshore outsourcing firms.

Miscellaneous H-1B issues in the I² bill

The I² legislation authorizes employment for the spouses and dependents of H-1B guest workers (on H-4 visas). This would add hundreds of thousands of workers to the labor market without a requirement to demonstrate labor market need and without any prevailing wage requirements.

The bill includes a provision to increase H-1B portability by allowing H-1B workers to remain lawfully present in the United States for 60 days if they become unemployed, in order to give them time to find a new sponsoring employer. Although this benefits and helps protect H-1B workers, in practice it is unlikely to substantially impact H-1B worker mobility.

- Under existing law, once a new employer petitions for a currently employed H-1B worker, the H-1B worker can leave his or her current employer to work at the new job while awaiting approval of the new employer's petition.
- However, the difficult job market and uncertainty about visa approval can make switching employers particularly difficult for H-1B workers, and there are no public data on the number of H-1B workers who switch employers every year.

The bill would exempt STEM graduate degree holders from employment-based immigrant visa quotas at a time when employment growth is modest

Employment growth for workers with advanced degrees (master's degrees and Ph.D.s) across the STEM occupations has not been strong, as illustrated in **Figure C**.

- Between 2000 and 2007 (the last full business cycle), employment for STEM workers with advanced degrees grew at an average of 45,174 jobs per year.
- Between 2007 and 2011 (during the Great Recession and its aftermath), employment for STEM workers with advanced degrees grew at an average of 35,693 jobs per year.

The most recent data from the National Science Foundation (NSF)¹¹ suggests there are more U.S. citizen and legal permanent residents graduating with advanced degrees in STEM every year than the total average annual increase in employment of STEM workers possessing an advanced degree.

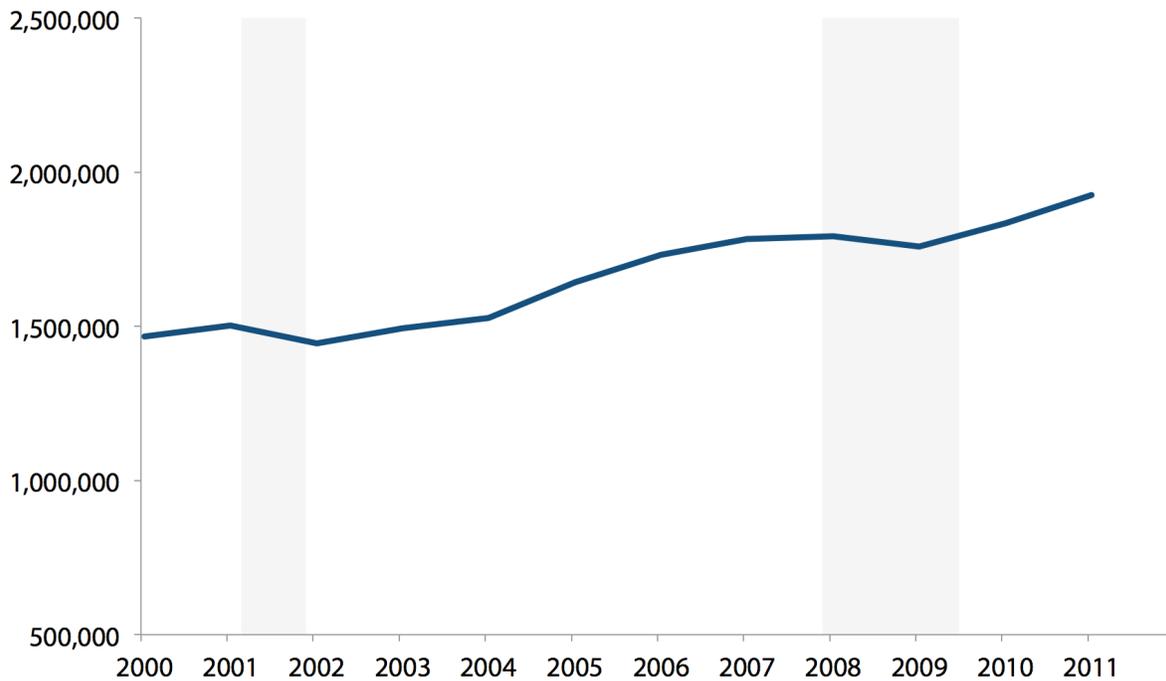
- In 2009, approximately 28,000 U.S. citizens and legal permanent residents graduated with a Ph.D. in science or engineering.
- In 2009, 98,500 U.S. citizens and legal permanent residents graduated with master's degrees in science and engineering fields. (These data suggest approximately a third of master's degree recipients continue their education in a Ph.D. program and do not immediately enter the labor market.)
- These NSF data show that approximately 100,000 U.S. workers with advanced degrees are able to enter the science and engineering workforce every year.

STEM green card recipients are not required to have a job offer in a STEM occupation

The I² bill does not include a requirement that a potential STEM green card beneficiary have a job offer in a STEM field or occupation. While the potential beneficiary must have an offer of employment from a U.S. employer, the job can be in any field or occupation—as long as the beneficiary has been awarded a master's degree or a Ph.D. in a qualifying STEM field of study from a qualifying university.

FIGURE C

STEM employment, graduate degree holders, 2000–2011



Note: Shaded areas denote recessions.

Source: Department of Commerce Economics and Statistics Administration’s unpublished calculations using merged outgoing rotation Current Population Survey public use microdata files

The bill’s requirements for qualifying universities and STEM fields of study are lax

The list of eligible STEM fields of study is broad, and many have high corresponding occupational unemployment rates (for example, psychology).¹² (See the Department of Homeland Security’s STEM Designated Degree Program list at: <http://www.ice.gov/doclib/sevis/pdf/stem-list.pdf>)

Under the I² Act, a potential STEM green card beneficiary may have attended almost any nonprofit degree-granting university in the United States, not just an elite subset of the top research universities.

- University eligibility is defined at Section 101(a) of the Higher Education Act.¹³ Virtually all accredited nonprofit universities are eligible.
- Permitting applicants with master’s degrees from less prestigious universities to qualify for STEM green cards would give lower-tier universities an incentive to adopt the business model of visa or diploma “mills,” similar to that adopted by some for-profit universities.¹⁴
- All qualifying universities would have a financial incentive to create new master’s degree programs and increase enrollment of foreign master’s students in qualifying STEM fields, in order to reap the potential profits of foreign students who pay the full or even higher out-of-state tuition rates. Increased enrollments and universities’ prefer-

ence for foreign students could crowd out U.S. students and discourage them from pursuing an education in a STEM field.

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Endnotes

1. U.S. Department of State, “Nonimmigrant Visa Statistics,” available at http://www.travel.state.gov/visa/statistics/nivstats/nivstats_4582.html (last visited Feb. 25, 2013).
2. See e.g., Michael Teitelbaum, *America’s Immigration System: Opportunities for Legal Immigration and Enforcement of Laws against Illegal Immigration*, Testimony Before the Committee on the Judiciary, U.S. House of Representatives 8 (Feb. 5, 2013), <http://judiciary.house.gov/hearings/113th/02052013/Teitelbaum%2002052013.pdf>.
3. U.S. Citizenship and Immigration Services (USCIS), U.S. Department of Homeland Security (DHS), *Characteristics of H-1B Specialty Occupation Workers: Fiscal Year 2011 Annual Report to Congress October 1, 2010–September 30, 2011* 12 (Mar. 12, 2012), <http://www.uscis.gov/USCIS/Resources/Reports%20and%20Studies/H-1B/h1b-fy-11-characteristics.pdf>.
4. EPI analysis of Current Population Survey basic monthly microdata.
5. U.S. Department of Labor, Labor Force Statistics from the Current Population Survey, “Table A-30. Unemployed persons by occupation and sex,” available at <http://www.bls.gov/web/empsit/cpseea30.htm> (last visited Feb. 25, 2013).
6. See e.g., Kevin Fogarty, *Pfizer Accused of Using U.S. Workers to Train Foreign Replacements*, eWeek (Nov. 5, 2008), <http://www.eweek.com/c/a/IT-Management/Pfizer-Accused-of-Using-US-Workers-to-Train-Foreign-Replacements/>; David Lazarus, *BofA: Train Your Replacement, or No Severance Pay for You*, SF Gate (June 9, 2006), <http://www.sfgate.com/business/article/BofA-Train-your-replacement-or-no-severance-pay-2517604.php>.
7. See e.g., Ron Hira, *The H-1B and L-1 Visa Programs: Out of Control*, Economic Policy Institute (Oct. 14, 2010). However, proposed legislation by Senators Dick Durbin (D-Ill.) and Charles Grassley (R-Iowa) would improve the prevailing wage structure. See e.g., Patrick Thibodeau, *Grassley, Durbin Plan to Renew H-1B Fight in Senate*, Computerworld (Mar. 31, 2009), http://www.computerworld.com/s/article/9130842/Grassley_Durbin_plan_to_renew_H_1B_fight_in_Senate.
8. U.S. Government Accountability Office (GAO), *H-1B Visa Program: Reforms Are Needed to Minimize the Risks and Costs of Current Program* 58 (Jan. 2011), <http://www.gao.gov/assets/320/314501.pdf>.
9. Patrick Thibodeau, *The Data Shows: Top H-1B Users are Offshore Outsourcers*, Computerworld (Feb. 14, 2013), http://www.computerworld.com/s/article/9236732/The_data_shows_Top_H_1B_users_are_offshore_outsourcers.
10. Ron Hira, *Top 10 Users of H-1B Guest Worker Program are All Offshore Outsourcing Firms*, Working Economics blog, Economic Policy Institute (Feb. 14, 2013), <http://www.epi.org/blog/top-10-h1b-guestworker-offshore-outsourcing/>.
11. National Science Foundation (NSF), *Science and Engineering Indicators, 2012*, “Table 2-26, Earned Master’s Degrees, by Citizenship, Field, and Race/ethnicity: 2000–09” and “Table 2-28, Earned Doctoral Degrees, by Citizenship, Field, and Race/ethnicity: 2000–09,” available at <http://www.nsf.gov/statistics/seind12/appendix.htm> (last visited Feb. 25, 2013).
12. See e.g., Lynn O’Shaughnessy, *25 College Majors with the Highest Unemployment Rates*, Moneywatch, CBS News (Nov. 16, 2011), http://www.cbsnews.com/8301-505145_162-57325132/25-college-majors-with-the-highest-unemployment-rates/.

13. 20 U.S.C. § 1001 – *General definition of institution of higher education*, Legal Information Institute (LII), Cornell University Law School, *available at* <http://www.law.cornell.edu/uscode/text/20/1001> (last visited Feb. 25, 2013).

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