



**Testimony of Rick Judson**  
**2013 Chairman of the Board,**  
**National Association of Home Builders**

**Before the**  
**Senate Judiciary Committee**

**April 22, 2013**

**Hearing on**

**S.744**

**The Border Security, Economic Opportunity, and Immigration Modernization Act**

## **Introduction**

On behalf of the more than 140,000 members of the National Association of Home Builders (NAHB), I appreciate the opportunity to testify today. My name is Rick Judson, and I am a homebuilder and developer from Charlotte, North Carolina and NAHB's 2013 Chairman of the Board.

NAHB supports the goal of many of those in Congress to enact comprehensive immigration reform. A stable, just, and efficient immigration system will provide the certainty needed to grow our economy and increase competitiveness.

S.744 strikes a balance between a mandatory, nationwide, E-Verify program and the employer community's role in addressing illegal immigration. The legislation creates a fair, efficient, and workable system that gives employers clarity with regard to their duties and obligations. It also pre-empts the current patchwork of state laws, providing employers with a straightforward rulebook for compliance. Perhaps most importantly, S.744 honors the direct employer-employee relationship and the current "knowing" liability standard.

S.744 also includes a responsible solution to bringing the current undocumented population out of the shadows, and NAHB appreciates the work that has been done to create a new visa program for the low-skill sector within the *Border Security, Economic Opportunity, and Immigration Modernization Act*, S.744. However, to ensure the mistakes of the past are not repeated, improvements to the W Visa program, particularly for the residential construction industry, should be given due consideration through the legislative process.

NAHB welcomes a strong legislative debate on S.744, and I will direct my testimony today on recommended improvements to the W Visa program, the low-skill guest worker program contained in the legislation. By way of background, I will first provide information on the importance of foreign workers in the residential construction industry and current labor challenges.

## **Foreign Labor in Construction**

American and immigrant workers working alongside each other in the construction industry is not a new development. Throughout our nation's history, the immigrant community has played a vibrant and important role in the industry, often bringing their trade-related expertise and skills to enhance the quality of our work. We are proud to say that many immigrants who have come to America and joined our industry have been able to enhance their skills, create and grow their own businesses, and gain a foothold in the American middle class.

The home building industry, with the contribution of a substantial immigrant workforce, plays a critical role in sustaining the national economy and meeting the nation's housing needs. The inflow of foreign-born labor into construction is cyclical and coincides with overall housing activity. Their share was rising rapidly during the housing boom years when labor shortages were widespread and serious. However, even during the severe housing downturn and a period of high unemployment, the construction labor force continued to recruit new immigrants to replace, for example, native and foreign-born workers leaving the industry.

According to the 2011 American Community Survey, foreign-born workers account for 22% of the construction labor force. Particularly, immigrants are concentrated in some of the trades needed to build a home, such as carpenters, painters, drywall and ceiling tile installers, brick masons, and construction

laborers. These are trades that require less training and education,<sup>1</sup> but consistently register some of the highest labor shortages in NAHB surveys.

The distribution of immigrant construction workers is not even across the United States, with some states drawing more than a third of their construction workers from abroad. States that traditionally rely on foreign-born labor, but lost its significant share during the housing downturn – such as Arizona, California, Colorado, Florida, Nevada, and Georgia – are most likely to experience difficulties in filling out construction job vacancies once home building takes off.<sup>2</sup>

### **Worker Shortages in Residential Construction**

Few industries have struggled more during the Great Recession than the home building industry. The decline in home construction has been historic and unprecedented. Single-family housing production peaked in early 2006 at an annual rate of 1.8 million homes, but construction fell to 353,000 per year in early 2009, an 80% decline in activity. A normal year driven by underlying demographics should see 1.4 million single-family homes produced. When home building is operating at normal levels, there will be millions of additional jobs in home building and related trades.

The improvement in housing markets over the last year has been a welcome change for the economy.<sup>3</sup> NAHB is anticipating total housing starts of 970,000 this year and 1.18 million in 2014 as the market continues its gradual rebound.

This turnaround presents new labor challenges for the construction industry. The January and March 2013 NAHB/Wells Fargo Housing Market Index (HMI) surveys, which gauge sales conditions from builders across the country, indicate that labor shortages are quickly rising on home builders' list of most significant problems. 46 percent of the builders surveyed experienced delays in completing projects on time. 15 percent of respondents had to turn down some projects, and nine percent lost or cancelled sales as a result of recent labor shortages.<sup>4</sup>

Trades with a high concentration of immigrant workers also tend to have more vacancies and labor shortages. According to NAHB's HMI surveys, construction trades with the most consistent labor shortages are framing crews, carpenters and bricklayers. About 30 percent of surveyed builders were still

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<sup>1</sup>The construction industry relies heavily on labor that requires less training and education. 21 percent of construction workers do not have a high school diploma and an additional third of the construction labor force did not study beyond high school. Immigrants who arrive to the United States to work in the construction industry are more likely to be drawn into lower-skill trades since roughly half of them do not have a high school diploma and additional 27 percent did not study beyond high school. By comparison, only 13 percent of native born workers in the construction industry did not graduate from high school and more than half of them went to college. As a result, immigrants represent more than half of the lowest skill construction labor force, while their overall share in the construction labor force is 22 percent. For more detailed information, please see NAHB Economics, "Immigrant Workers in the Construction Labor Force" available at <http://www.nahb.org/generic.aspx?sectionID=734&genericContentID=200529&channelID=311>.

<sup>2</sup> To review a map detailing the regional differences, please *see id.*

<sup>3</sup> Construction activities have positive impacts by creating ongoing beneficial impacts in communities as new home purchasers pay taxes and buy goods and services in the community. For example, NAHB estimates the first-year economic impacts of building 100 typical single family homes include \$23.1 million in wage and net business income, \$8.9 million in federal, state and local taxes, and 305 jobs.

<sup>4</sup> NAHB Economics, "Evidence of Growing Labor Shortages in Home Building", available at <http://eyeonhousing.wordpress.com/2013/03/26/evidence-of-growing-labor-shortages-in-home-building/>.

reporting some shortages of labor in these trades in June 2012, even though the shortages were not nearly as severe as in the midst of the housing boom. Nine months later, in March 2013, reported labor shortages worsened across all trades, but particularly among framing crews and carpenters, with more than a half of respondents reporting shortages.

NAHB works diligently to address the continuing need for skilled labor within the nation's borders. In partnership with NAHB and Job Corps, the Home Building Institute (HBI) is a national leader for career training and job placement in the building industry. HBI's Job Corps training programs are national in scope but implemented locally, using proven models that can be customized to meet the workforce needs of communities across the United States. It prepares students with the skills and experience they need for successful careers through pre-apprenticeship training, job placement services, mentoring, certification programs, textbooks and curricula. With an 80 percent job placement rate for graduates, HBI Job Corps programs provide services for disadvantaged youth in 73 centers across the country.

Yet, NAHB believes strongly that the nation should implement a new market-based visa system that would allow more immigrants to legally enter the construction workforce each year. Despite our efforts to recruit and train American workers, our industry faces a very real impediment to full recovery if work is delayed or even cancelled due to worker shortages. A new, workable visa program would complement our skills training efforts within the nation's borders, and fill the labor gaps needed to meet the nation's housing needs.

#### **W Visa Program in S.744**

NAHB appreciates the work that has been done to construct a bold and innovative visa program for the low-skill sector that operates unlike any other across the world. The W Visa program contained in S.744 reflects a good-faith attempt on the part of the negotiators to address a serious matter that has been ignored for decades.

NAHB believes, however, that the negotiated product is unworkable for our industry. First and foremost, the program wrongly singles out the construction industry with a discriminating set of rules and stipulations that no other sector of the economy must follow. The distinct set of rules, including an arbitrary and meager cap, not only ignores, but rejects, the value of the housing industry to the nation's Gross Domestic Product (GDP).

Housing is a critical part of the economy, once equal to 18 percent of the nation's GDP. Our industry should be afforded the same opportunities as any other sector of the economy. Congress must reassess this critical flaw in the legislation.

Other components of the W Visa are not without concern. The 8.5% unemployment trigger is perhaps the most concerning component of the program. Immigrant workers fill jobs that are currently going unfilled because the majority of Americans are over-qualified and are unwilling to take these jobs. Putting an unemployment trigger in the program ignores the simple fact that immigrant workers and native-born workers sometimes perform jobs that are interdependent.

The inclusion of a commission in the program is yet another misstep. Under the program, the commission will play a role in determining the annual cap after year four of the program's existence, in addition to declaring shortage occupations. However, only the marketplace can best make these determinations. The most accurate way to measure whether immigrant workers are needed is for employers to try, and either succeed or fail, to hire U.S. workers.

Additionally, an expensive and undersized program allows only sophisticated and well-funded businesses to navigate the complex program. With high fees in the underlying program, as well as under the safety valve mechanism, employers with worker shortages will be faced with the decision to either delay or cancel a project, or pass along unexpected costs to the consumer.<sup>5</sup>

In the W Visa program, big business wins. There simply is no room for a small business, let alone a start-up company, to compete. For the American housing industry, this is a very significant concern.

The NAHB membership is dominated by small businesses, which construct approximately 80% of the new homes built in the United States, including both single-family and multifamily homes. Residential construction is, for the most part, comprised of private sector firms. Accordingly, only three to four percent of the industry is unionized.

For NAHB's members, the concept of prevailing wages is unfamiliar, and most would be deterred from the complex requirements under the program. NAHB appreciates that the W Visa's prevailing wage requirements are a step forward from the wage requirements in the current H-2B program. However, including a complex wage scale in the program will deter private small business firms from taking advantage of the program. Employees in similarly situated positions should be paid actual wages. Employers will already have to pay fees for self-registration and any positions needed, and those fees alone should satisfy the employer's financial obligations.

Another component of the W Visa program that should be addressed is the requirement that the employer attest that he or she has not or will not lay off a U.S. worker during the period beginning 90 days prior to and ending 90 days after the date the employer designates the registered position. This inflexible rule ought to be eliminated. Construction is project-based, and employers must be given flexibility if a project is cancelled or delayed due to conditions outside of the employer's control.

Another concern is the inclusion of complete portability. A registered employer faces the stark reality that a W visa holder, on the first day of work, has the option of immediate portability to quit and work somewhere else. One positive aspect of the program allows the employer to hire another similarly situated employee in the system free of charge. However, whether another worker is available to quickly replace the loss of time and resources is a serious concern. This concern is even more pronounced for the construction industry, considering the meager 15,000 visa cap. NAHB believes that employers should have some assurances that after navigating a confusing and expensive process, the visa holder will actually have to show up to work for the employer who sponsored the worker.

## **Conclusion**

NAHB commends the authors of S.744 for their resolve in taking meaningful steps towards comprehensive immigration reform. We also express gratitude to Chairman Leahy and Ranking Member Grassley for holding this important hearing today.

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<sup>5</sup> The rising cost of inputs drives up the cost of construction, which in turn, drives up the price of a new home. The impact is of particular concern in the affordable housing sector where relatively small price increases can have an immediate impact on low- to moderate-income home buyers who are more susceptible to being priced out of the market. A 2012 priced-out analysis done by NAHB illustrates the number of households priced out of the market for a median priced new home due to a \$1,000 price increase. Nationally, this price difference means that when a median new home price increases from \$225,000 to \$226,000, 232,447 households can no longer afford that home. See NAHB Economics, "Households Priced-Out by Higher House Prices and Interest Rates", *available at* <http://www.nahb.org/generic.aspx?sectionID=784&genericContentID=40372>.

Congress should not ignore the importance of the housing industry to the nation during this critical juncture for housing and the economy. Tackling comprehensive immigration reform is an enormous task that requires a bold vision. Given the significant role that foreign workers play in the housing industry, Congress needs to take a long-term, holistic approach to comprehensive immigration reform.

NAHB stands ready to work with the Senate Judiciary Committee to achieve such reforms and provide much-needed stability for this critical sector of the economy.

Thank you for your attention to our concerns.