**S. 744: Border Security, Economic Opportunity,
and Immigration Modernization Act**

**Requested Improvements and Concerns**

The Association of Public and Land-grant Universities (APLU) strongly supports comprehensive immigration reform.  Fixing our broken immigration system is not only an economic imperative for our nation but also for the social wellbeing of our nation’s citizens and aspiring citizens alike.  Similarly, our nation’s universities have much to gain from comprehensive immigration reform as employers, educators, and institutions interested in the success of students following graduation.

The Senate Gang of Eight has crafted a bill which includes most of the priorities institutions of higher education seek in a comprehensive immigration reform bill. APLU is grateful for the work of the bipartisan group and looks forward to continuing to work with the Hill to improve the bill.  Below are further improvements APLU would like to see.

**H-1B Skilled Worker Dependent Employer Definition –** The Hatch-Schumer 2nd degree amendment creates a new category (H-1B skilled worker dependent employer) of employers subject to additional burdens and scrutiny to access the H-1B program. Unfortunately, universities were not exempted from the definition and as presently drafted the bill could significantly impair the ability of some universities to use H-1B visas to bring top researchers and faculty to U.S. universities. The provision defines “H-1B skilled worker dependent employers” as employers with at least 15 percent of full-time employees within Occupational Information Network Database Job Zone 4 and Job Zone 5 positions on H-1B visas. These are high-skilled only positions.

APLU understands it was not the intent of the Gang of Eight to include universities within the definition. We are told there is a “tentative agreement” to exempt universities and we strongly support such an exemption. An amendment has been submitted, although not yet offered, by Senator Schumer that would favorably resolve the issue.

**Public Universities Treated as H-1B Skilled Worker Dependent Employers –** The Hatch-Schumer 2nd degree amendment compromise on H-1B visas contains a provision on displaced workers of “worksites owned, operated, or controlled by a Federal, State, or local government entity that directs and controls the work of the H-1B worker.” If these criteria are met, the employer must attest that a comparable U.S. worker was not displaced within 90 days of the visa petition – that is neither 90 days before nor 90 days after the visa petition. While universities do not engage in the practice of dismissing U.S. workers to replace them with H-1B employees, the provision is unmanageable as hiring needs for universities are not always predictable. For example, a layoff can occur from a research grant expiring and a new position created from the acquisition of a new grant within 90 days.

Lawmakers have traditionally recognized the national benefit of allowing universities to bring the “best and brightest” educators and researchers to U.S. universities. This language is troubling and a significant departure from how universities are typically treated in H-1B provisions. Public universities would now be part of a suspect class such as H-1B skilled worker dependent employers, and thereby subject to additional burdens. Furthermore, the provision would only apply to colleges and universities which are public.

APLU supports an exemption for institutions of higher education from the additional displacement requirement. We are told there is a “tentative agreement” among the Gang of Eight to exempt universities and we strongly support such an exemption. An amendment has been submitted, although not yet offered, by Senator Schumer that would favorably resolve the issue.

**H-1B Visas and Recruitment Requirements –** The Hatch-Schumer 2nd degree amendment treats universities and corporations similarly as H-1B sponsors despite differences in how universities and corporations use the visas. The recruitment and attestation requirements of the amendment require sponsors to take “good faith steps” to recruit United States workers for the position being filled, including advertising the position on a website maintained by the Department of Labor. Universities in many cases do not conduct job searches for vacant positions in which an H-1B will be used. This is because universities are well aware of the top researchers and educators in the world and are targeting specific individuals, not a broad classification of individuals qualified for a position. As drafted, the provisions seem to require universities to conduct job searches even when a university is seeking to hire a foreign researcher or educator the university knows to be of unique quality. It is not clear if the Department of Labor or Homeland Security would implement rules defining “good faith steps.”

APLU supports inserting language that would instruct the agencies to consider the unique needs of universities when targeting specific international researchers and educators when defining “good faith steps.”

**Definition of STEM** – The legislation defines STEM through the Department of Education’s Classification of Instructional Programs taxonomy within the summary groups of computer and information sciences, engineering, mathematics and statistics, biological and biomedical sciences, and physical sciences. The bill introduced before mark-up did not include biological sciences but was expanded through the manager’s amendment.

While the addition of biological sciences is a positive development, APLU supports the use of the established Department of Homeland Security (DHS) STEM list. The DHS list includes all of the fields currently included in S. 744 as well as many other critical fields, particularly in the agricultural and natural resource sciences. Furthermore, amending the DHS list in the future would not require an act of Congress. The list can be adjusted based on the fluctuating needs of our nation’s economy without requiring passage of a new law.

**STEM Labor Certification Fee –** APLU strongly supports immigration fees which fund STEM education programs. However, imposing such fees on universities is self-defeating as it is giving to education with one hand and taking with the other. This is precisely why universities are exempted from the H-1B American Competitiveness and Workforce Improvement Act fee, also referred to as the Education and Training Fee.

The bill includes a new $1000 fee associated with labor certification for green cards to fund STEM education programs with no exemption for universities to pay the fee. A survey conducted by APLU of its member institutions revealed that on most campuses, fees associated with green card petitions are paid by the individual department sponsoring the employee. Therefore, if the $1000 fee is imposed on universities as presently drafted, STEM departments would be disproportionately negatively impacted. These are the very departments that are contributing to the mission the fee is supposed to support.

APLU supports an exemption from the STEM education fees for universities.

**University Classifications for Green Cards -** Under the bill, advanced degree graduates in STEM fields and all doctoral graduates of universities with Carnegie classifications of either “very high” or “high” level of research activity have expedited access to green cards. This is often referred to as “stapling” a green card to diplomas. While APLU is very supportive of the “stapling” concept, we are concerned that by restricting the institutions to only “very high” or “high,” graduates of many appropriate universities would be left out.

**Unresolved Audit Findings and Grant Eligibility –** Grassley amendment number 24, which passed in the Senate Judiciary Committee, overreaches in an attempt enhance accountability in the use of federal grants. The amendment would make organizations with an “unresolved audit finding” ineligible for Department of Homeland Security and National Science Foundation grants within the bill. The measure is extremely punitive for what is simply an “unresolved” and not final issue. Furthermore, if one grant was misused by a department on a university campus, perhaps even unknowingly, the entire university would be ineligible for unrelated grants. Should not an accommodation be made for universities that are acting in good faith to resolve the “unresolved audit finding” but are being delayed by bureaucracy within the respective agency?

APLU supports eliminating the provision from the bill.

**Tax Policy in Immigration Bill –** Grassley amendment number 24 also makes institutions ineligible for grants if the nonprofit organization “holds money in offshore accounts for the purpose of avoiding paying the tax described in section 511(a) of the IRS Code of 1986.

**Overly-Burdensome Disclosure Requirements –** Also in Grassley amendment 24, nonprofit organizations (public universities not included) receiving grants from the bill that use a rebuttable presumption of reasonableness for the compensation of its officers must disclose the process for determining compensation, names of individuals involved in reviewing and approving, and comparability data used. These requirements are more akin to an audit than simple disclosures and could apply to foundations affiliated with public universities, such as alumni foundations.

**Unnecessary Background Checks on School Officials –** Grassley amendment number 69 includes a provision requiring designated school officials (DSOs) to submit to federal background checks by the Department of Homeland Security every three years at the expense of the university. DSOs advise international students and update the Student and Exchange Visitor Information System on the status of international students studying at U.S. universities. DSOs exercise no law enforcement or national security functions necessitating a federal background check. In addition to the costs imposed on universities, the measure would place in jeopardy the ability of DSOs to perform their jobs if the federal government is delayed in completing the background checks, as is currently often the case for such checks.

APLU supports granting the Secretary of Homeland Security the authority to waive the background check requirement if the Secretary determines sufficient internal controls exist by the employer.