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2019 IFPTE Issue Brief ***116th Congress***

Congress Should Reform the H-1B Program, Not Expand It

IFPTE 2019 Legislative Request:

- Congress should reform the H-1B visa program to make sure that it creates incentives for employers to use labor market mechanisms to address high-skilled worker shortages, requires that employers prove that they have made a good-faith effort to recruit workers already in the U.S., protects our current STEM workforce from a race-to-the-bottom on wages and labor standards, gives guestworkers mobility and labor rights, and works to the benefit of U.S. workers, H-1B workers, and employers. To this end, IFPTE urges your support for *The H-1B and L-1 Visa Reform Act.*

- IFPTE supports the creation of an independent commission that would improve labor market tracking, as recommended by DOL's Workforce Information Advisory Council, and assess and manage future labor flows based on labor market shortages supported by data.[1]

- Congress should oppose legislation that expands the H-1B program and reject proposals that would have no impact on employers' ability to fire U.S. workers in favor of H-1B workers, and to drive down wages and labor standards.

Fallacy of the High-Skills Labor Shortage Claim:

The design flaws in the H-1B program have shifted bargaining power in favor of employers and to the disadvantage of both U.S. workers and H-1B workers by suppressing wages and reducing job security. From its inception through present day, the policy justification for the H-1B program has been a purported shortage of skilled high-tech workers. On its face, this argument is highly dubious, given that the purported shortage has persisted unabated for almost 30 years. If the U.S. labor market does in fact have such a shortage, then the H-1B program has demonstrably failed to address it.

A 2015 Department for Professional Employees (DPE) policy brief found no shortage of STEM workers here in the U.S. Instead, DPE concluded that "labor market indicators, including the supply of relevant workers and changes in wages, do not demonstrate a shortage of STEM workers."[2] Further, the "specialty occupations" and "highly skilled" qualifications that determine H-1B worker eligibility are loosely defined to include almost any white-collar job that requires a bachelor's degree, which includes about one-third of the U.S. workforce.[3] Finally, the H-1B program contains loopholes which employers use to circumvent the requirement to pay H-1B workers a prevailing

[1] Workforce Information Advisory Council, "Recommendations to Improve the Nation's Workforce and Labor Market Information System," WIAC Recommendations Submitted to DOL Secretary Alexander Acosta, January 2018
[2] "Guest Worker Programs and the STEM Workforce," Department for Professional Employees Fact Sheet, 2015
[3] R. Hira and B. Gopalaswamy, "Reforming US' High-Skilled Guestworker Program," *Atlantic Council*, January 2019

wage. Some H-1B employers have been shown to save 36% to 41% on labor costs, or about $40,000 to $45,000 annually per H-1B worker.[4]

There is little doubt that reform of the program is desperately needed. For example, in 2015 Disney World laid off 250 IT workers and replaced them with H-1B workers. In order to receive their severance pay and have a chance of being rehired elsewhere by Disney, the workers were forced to train their replacements, and as one worker said, "to make sure they were doing my job correctly.[5] Southern Cal Edison replaced 500 of their workers with H-1B visa holders in 2015 as well, and other employers have done the same.[6]

Misguided Efforts in Congress Have Proposed Expanding the H-1B Visa Program:
In the 115th Congress, some lawmakers continued to offer legislation to increase U.S. companies access to cheap foreign labor at the expense of U.S. workers instead of reforming the current H-1B and L-1 visa programs. In particular, S. 2344, the so-called *Immigration Innovation Act* or "*I-Squared*", sponsored by now-retired Senators Orrin Hatch (R-UT) and Jeff Flake (R-AZ), sought to increase the annual number of H-1B visa statutory cap from 65,000 to as much as 195,000, while allowing employers to continue paying guestworkers below-market wages and containing no meaningful requirement for employers to recruit U.S. workers nor prohibitions on replacing U.S. workers with H-1B workers. Though the recent House version of *I-Squared*, H.R. 6794, did not include the steep H-1B cap increases called for in the Senate version, it still would have expanded the H-1B by changing who is counted under the cap, weakened the already inadequate prevailing wage reporting requirements, and failed to adequately increase H-1B wages.

Another bill introduced in the previous Congress by now retired Rep. Darrell Issa (R-CA) HR 107, the *Protect and Grow American Jobs Act* (HR 170), sought to address the many problems plaguing the H-1B program by requiring H-1B-dependent employers to pay H-1B visa holders at least $100,000 a year, versus the current $60,000 minimum salary requirement. IFPTE contends that raising the minimum salary threshold for H-1B-dependent employers does not reform the H-1B program nor does it create incentives for employers to recruit U.S. workers and protect H-1B workers from exploitation and retaliation.

IFPTE-Endorsed Legislation to Enact Meaningful Reforms Has Existed in Congress for Years:
Under President Trump, U.S. Customs and Immigration Service and the DOL have increased scrutiny, enforcement, and disclosure requirements on certain categories of H-1B petitions. The Trump administration has also proposed a rule that may increase the number of H-1B workers with advanced degrees from U.S. institutions and additional rules are expected in the upcoming year. However, these steps fall far short of the meaningful H-1B reforms that IFPTE endorses.

For over a decade, the bipartisan *H-1B and L-1 Visa Reform Act* has been a meaningful starting point and addresses many of the substantial shortcomings of and the harm caused by the H-1B and L-1 programs. IFPTE has long endorsed this legislation, numbered H.R. 1303 and S.180 in the last Congress, which prohibits companies from replacing U.S. workers with H-1B and L-1 guest workers, requires employers to attest to recruiting qualified U.S. workers and authorizes the DOL to randomly audit those attestations, prioritizes awarding H-1B visas to employers seeking workers at the highest salaries, limits outsourcing firms from dominating H-1B hiring, and generates more resources for DOL enforcement. The legislation adds key provisions missing from the L-1 visa program, including a median prevailing wage requirement, "specialized knowledge" eligibility requirements, penalties for L-1 employers who violate the provisions of the law, and protections for L-1 workers who report employer violations. Sponsored by Senators Durbin (D-IL) and Grassley (R-IA), and Rep. Pascrell (D-NJ) in previous Congresses, IFPTE believes this is the correct legislative approach.

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[4] R. Hira, "New Data Show How Firms Like Infosys and Tata Abuse the H-1B," *EPI Working Economics Blog*, 2/19/2015
[5] J. Preston, "Pink Slips at Disney, But First Training Foreign Replacements," *New York Times*, 6/3/2015
[6] P. Thibodeau, "Southern California Edison workers, "beyond furious" over H-1B replacements," *Computerworld*, 2/4/2015