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2020 IFPTE Issue Brief

116th Congress

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

IFPTE 2020 Legislative Request:

- Congress should reform our high-skills temporary worker visa programs to create incentives to address high-skilled worker shortages, require employers to prove that they have made a good-faith effort to recruit workers already in the U.S., to protect our current STEM workforce from a race-to-the-bottom on wages and labor standards, strengthen labor rights for guestworkers, and give guest workers greater mobility in the labor market. To this end, IFPTE urges your support for *The H-1B and L-1 Visa Reform Act*.
- IFPTE calls for 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 support reforms that restrict employers' ability to fire U.S. workers in favor of H-1B workers, which drives 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, reducing job security, disincentivizing employers from recruiting workers already in the U.S., crowding out higher-skilled immigrant workers in favor of workers with entry-level wages and skills, and binding the H-1B worker to their H-1B-sponsoring employer. From its inception through present day, the policy justification for the H-1B program has been a purported shortage of skilled high-tech workers that harms innovation and competitiveness. 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.

While some economists and policy analysts have long held that the absence of rapidly rising wages was proof that there no skills gap, a growing body of evidence from academic research now shows that during periods of high unemployment, employers raised skill requirements, hired high-skilled workers, but paid them at lower wages.² Further, the H-1B program contains loopholes which employers use to circumvent the requirement to pay H-1B workers a

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; For legislative language, see U.S. Senate Proposed legislation: S. 1269, Trade Facilitation and Trade Enforcement Act of 2015, Section 913. Improved collection and use of labor market information, 114th Congress, S. Rept. 114-45, 05/13/2015

² "Guest Worker Programs and the STEM Workforce," Department for Professional Employees Fact Sheet, 2015; M. O'Brien, "WonkBlog: The Skills Gap is Fixed, Because There Was No Skills Gap" *Washington Post*, 01/14/2019

prevailing 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.³

Reform of the H-1B program is desperately needed. In December 2019, AT&T laid off around 3,000 workers and outsourced their jobs to firms such as IBM, Tech Mahindra, and Accenture, firms that are among the top 10 employers requesting H-1b visas. AT&T is far from alone, as other recent high-profile instances in American workers training lower-wage H-1B workers include Disney World, Southern Cal Edison, and University of California-San Francisco.⁴

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 *Immigration Innovation Act* or “*I-Squared*” 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 program by changing who is counted under the cap, weakened the already inadequate prevailing wage reporting requirements, and failed to adequately increase H-1B wages. Other legislative proposals have attempted to address critiques for the H-1B program by increasing the minimum salary threshold for H-1B workers. These partial reforms miss the mark of meaningful reform as they fail to remove incentives for employers to recruit H-1B workers at lower wages and fail to protect H-1B workers from exploitation and retaliation.

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, denial rates, and disclosure requirements on certain categories of H-1B petitions. The Trump administration has also implemented changes that increase the number of H-1B workers with advanced degrees from U.S. institutions. But employers continue petition for more H-1B workers, continue to misuse H-1B visas, and argue for expansion. The Trump Administration’s measures 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*, H.R.1303 and S.180 in the 115th Congress, has been a meaningful starting point for reform 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 prioritizes awarding H-1B visas to employers seeking workers at the highest salaries, limits outsourcing firms from dominating H-1B hiring, prohibits companies from replacing U.S. workers with H-1B workers, requires employers to attest to recruiting qualified U.S. workers and authorizes the DOL to randomly audit those attestations, 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 Richard Durbin (D-IL) and Charles Grassley (R-IA), and Rep. Bill Pascrell (D-NJ) in previous Congresses, IFPTE believes *H-1B and L-1 Visa Reform Act* is the correct legislative approach to reforming high-skills guestworker visas.

³ R. Hira, “New Data Show How Firms Like Infosys and Tata Abuse the H-1B,” *EPI Working Economics Blog*, 2/19/2015

⁴ S. Knight, “U.S. Companies are Forcing Workers to Train Their Own Foreign Replacements,” *Axios*, 12/29/2019; P. Thibodeau, “Southern California Edison Workers, ‘Beyond Furious’ Over H-1B Replacements,” *Computerworld*, 2/4/2015