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## 2022 IFPTE Issue Brief

117<sup>th</sup> Congress

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

### IFPTE 2022 Legislative Request:

- IFPTE urges Congress to support and pass *The H-1B and L-1 Visa Reform Act* (H.R.6993 and S.3770 in the 116<sup>th</sup> Congress).
- IFPTE calls for the creation of an independent commission to improve labor market tracking and to assess and manage future labor flows based on labor market shortages.<sup>1</sup>
- Congress should pass legislation that supports equitable opportunities in STEM education and STEM careers for all Americans, develops STEM talent within the U.S., anticipates the workforce needs of our economy, and provides workers with the skills that our economy needs.

**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. Employers' abuse of this work visa program suppresses wages, reduces job security, disincentivizes employers from recruiting workers already in the U.S., and binds 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 workers in specialty occupations that harms innovation and competitiveness. 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.

In conjunction with weak to nonexistent enforcement for employers paying below-median wage levels to H-1B workers, the H-1B visa allocation process creates a perverse incentive to game the system and ensure low wages by allocating visas by lottery. Employers of H-1B workers, including a handful of IT offshore outsourcing firms, have established a practice of flooding the application process with numerous petitions at lower wage levels in order to increase the chances of their petitions being selected.<sup>2</sup>

A recent Economic Policy Institute report, "[New Evidence of Widespread Wage Theft in the H-1B Visa Program](#)," analyzed a 2016 internal document from foreign IT staffing firm HCL Technologies that reveals an offshore-outsourcing business model that abuses the H-1B program to hire foreign guestworkers at wages below what U.S. workers are paid. The internal document describes how H-1B workers at the firm were vastly underpaid and reduced HCL's labor costs by at least \$95 million in just one year. HCL abuse of the H-1B program is not an outlier – it is an industry standard for offshore-outsourcing firms to pay H-1B workers below market wages and taken advantage of H-1B workers limited ability to seek fair wages. The offshore-outsourcing model has resulted in fissured workplaces in STEM fields and offshoring of work out of the U.S., while discouraging Americans from pursuing STEM careers. Our government's failure to remedy the flaws has created a

<sup>1</sup> 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*, 114<sup>th</sup> Congress, S. Rept. 114-45, (May 13, 2015)

<sup>2</sup> H. Park, "How Outsourcing Companies Are Gaming the Visa System," *New York Times*, (Nov. 11, 2015).

dysfunctional system of different wage and labor standards for workers in our economy and it hurts all workers.<sup>3</sup>

IFPTE members have first-hand experience on why reform of the H-1B program is desperately needed and how outsourcing firms have used the visa to displace workers and potentially offshore work. In 2020, some 200 IT workers, a part of EA/Local 1937, were facing losing their jobs to 3 IT contracting firms. While we were appalled that the employer circumvented the standard competitive process used in such outsourcing decisions, our union was further outraged when Local 1937 members reported training their replacements who were employed through the H-1B visa. While Local 1937 halted the outsourcing and was able to protect members' jobs by raising the issue to national prominence and pointing out the hypocrisy of outsourcing federal jobs meant to benefit and develop the Tennessee Valley, the episode demonstrates how IT outsourcing firms are using the H-1B visa program as part of a model to outsource, offshore, and in TVA's case privatize jobs while employing workers with lower wages who are captive to their H-1B sponsoring employers.

**Legislation to Enact Meaningful H-1B Reforms Has Existed in Congress for Years** – The Biden Administration should undertake rulemaking to raise H-1B wage levels to reflect actual prevailing wages, change the lottery allocation process to one that awards visas to employers paying the highest wages first, and limit outsourcing firms' use of H-1B visas. While regulatory and administrative actions will provide meaningful improvements in the H-1B visa program, Congress must change the law and reform the H-1B visa program through legislation.

For over a decade, the bipartisan *H-1B and L-1 Visa Reform Act* (H.R.6993 and S.3770 in the 116<sup>th</sup> 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 which, if enacted would prioritize 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. It also closes the loophole that allows employers that are H-1B dependent to legally replace workers in the U.S. so long as those H-1B workers are paid \$60,000 or more. 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), IFPTE believes *H-1B and L-1 Visa Reform Act* is the correct legislative approach to reforming high-skills guestworker visas. IFPTE also strongly advocates Congress pass legislation that establishes an independent commission to assess and manage future flows based on actual labor market need as a necessary legislative companion to the *H-1B and L-1 Visa Reform Act*.

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<sup>3</sup> R. Hira, D. Costa "[New Evidence of Widespread Wage Theft in the H-1B Visa Program](#)," *Economic Policy Institute*, (Dec 9, 2021).