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2022 IFPTE Issue Brief

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Congress Should Reform the H-1B Visa Program So That it Works for All Workers

IFPTE 2022 Legislative Requests:

- Support for and passage of the bipartisan *H-1B and L-1 Visa Reform Act* (S.3720 in the 117th Congress and S.3770/ H.R.6993 in the 116th Congress), sponsored by Sen. Richard Durbin (D-IL) and Sen. Chuck Grassley (R-IA) and Rep. Bill Pascrell (D-NJ 9).
- Congressional support for modernizing the workforce labor market information system so that workers, employers, students, educators, government entities, and educational institutions can make informed decisions about career pathways, training and education, and skills needed in the labor market based on timely, accessible, and objective data.

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 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 more effective approach would be to enact the Department of Labor Workforce Information Advisory Council's recommendations for building a labor market information system that can serve as a public resource for determining worker, jobs, and skills shortages.¹

The H-1B Visa Program Hurts All Workers – In conjunction with weak to nonexistent enforcement for employers paying below-median wage levels to H-1B workers, the H-1B visa program's lottery allocation process creates a perverse incentive to game the system and ensure low wages. Nearly half of all H-1B petitions are approved for just 30 companies. These companies are able to secure a high number of H-1B approvals because of the established practice of flooding the application process with numerous petitions at lower wage levels in order to increase the chances of their petitions being selected. In recent years, about half of those top 30 H-1B employers are offshore-outsourcing IT firms that place their H-1B employees at a secondary employer and profit from labor cost savings by moving work to lower wage countries.²

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

¹ With the passage of the Workforce Innovation and Opportunity Act of 2014, Congress directed the Secretary of Labor to develop a workforce and labor market information system with public information for all labor market participants; See: Workforce Information Advisory Council, "[Recommendations to Improve the Nation's Workforce and Labor Market Information System](#), [PDF]" 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, (May 13, 2015)

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

that reveals how a lucrative offshore-outsourcing business model that abuses the H-1B program to hire foreign workers 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 these flaws has created a dysfunctional system of different wage and labor standards for workers in our economy and it hurts all workers.³

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 offshore work. In 2020, over 200 IT workers, a part of the TVA Engineering Association-IFPTE Local 1937, were facing losing their jobs to three offshore-outsourcing IT contracting firms. Soon after TVA IT workers were given layoff notification, they were instructed to train their replacements, the vast majority of whom were employed at the outsourcing firms through the H-1B visa. A well-documented practice in the offshore-outsourcing business mode, IT workers that are being displaced are tasked with “transferring knowledge” to H-1B workers so that offshore-outsourcing firms can identify work to be moved overseas with and leave the smallest footprint possible in the U.S.

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. Further, the offshore-outsourcing firms were employing h-1B workers to solve a specialty-skills shortage or meet a worker shortage, but rather misusing the H-1B visa program to support a lucrative business model that displaces American workers.

Legislation to Enact Meaningful H-1B Reforms Has Existed in Congress for Years – Repairing the structural flaws, the rampant misuse, and lack of enforcement in the H-1B visa program requires both legislation and administrative actions. 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 prevent outsourcing firms from hiring and placing H-1B employers at secondary employers. Regulatory and administrative actions will provide meaningful improvements in the H-1B visa program, but it is no substitute for Congress reforming the H-1B visa program through legislation.

For over a decade, the bipartisan *H-1B and L-1 Visa Reform* has been meaningful legislation that reforms and addresses many of the substantial shortcomings of and the harm caused by the H-1B and L-1 programs. Sponsored by Senators Richard Durbin (D-IL) and Charles Grassley (R-IA), and Rep. Bill Pascrell (D-NJ), IFPTE has long endorsed this legislation which tackles several problematic aspects of the H-1B visa program.

If enacted, H-1B visas would be allocated would be prioritized by education the highest salary level first. Outsourcing firms would be prohibited from displacing American workers and paying H-1B workers' wages that are below the prevailing wage at secondary employer sites, firms with more than 50 employees would not be able to apply for more H-1B workers if more than 50% of their workforce was on H-1B or L-1 work visas, employers would be required to attest to recruiting qualified U.S. workers and DOL would have authorization to randomly audit those attestations, and DOL would have more resources for enforcement. The legislation also closes the loophole that allows employers that are H-1B dependent to legally layoff workers in the U.S. and replace them with H-1B workers 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.

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