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***2021 IFPTE Issue Brief*** ***117th Congress***

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

**IFPTE 2021 Legislative Request:**

- Congress needs to reform our high-skills guestworker visa programs in order to ensure it incentivizes strong labor and wage standards for workers in the U.S. and guestworkers alike, holds employers to recruiting workers in the U.S. before petitioning for high-skilled guestworkers, protects our current STEM workforce from a race-to-the-bottom on wages and labor standards, and ensure labor rights and labor mobility for guestworkers. To this end, IFPTE urges Congress to support the *The H-1B and L-1 Visa Reform Act.*

- IFPTE calls for the creation of an independent commission that would improve labor market tracking and to assess and manage future labor flows based on labor market shortages.[1]

- Congress should oppose any efforts to expand the H-1B program since the widespread abuse of the H-1B program is crowding out employers' ability to use the visa program to meet legitimate needs in high specialty occupations.

**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 guestworker 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. 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.

Further, the H-1B program contains loopholes which employers use to circumvent the requirement to pay H-1B workers 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. While the Department of Labor sets four prevailing wage levels that correspond to four skill levels for each occupation, it has set these wages well below median wages. For 2019, 60% of all H-1B visas were awarded at the two lowest possible wage levels, [2]

[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, (May 13, 2015)

[2] R. Hira, "New Data Show How Firms Like Infosys and Tata Abuse the H-1B," *EPI Working Economics Blog*, 2/19/2015; D. Costa and R. Hira, "H-1B Visas and Prevailing Wage Levels," *Economic Policy Institute*, (May 4, 2020).

In conjunction with the below-median wage levels, the H-1B visa allocation process creates a perverse incentive to game the system and ensure low wages. Each year, the cap-subject H-1B vias – meaning the annual 65,000 visa allotment for specialty occupation workers plus 20,000 for workers who have earned a U.S. advanced degree – is awarded by a random lottery process until the cap is filled. Employers, especially 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.[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 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. In other recent high-profile instances, American workers lost their jobs due to IT outsourcing firms and trained the H-1B workers replacing them at AT&T, Disney World, Southern Cal Edison, and University of California-San Francisco.[4]

**Legislation to Enact Meaningful Reforms Has Existed in Congress for Years:**

As the 117th Congress begins, the Department of Labor and the Department of Homeland Security are reviewing three pending regulations that seek to raise H-1B wage levels closer to actual prevailing wages, change the lottery allocation process to one that awards high wages first, and clarify and limit outsourcing firm's use of H-1Bs. While regulatory and administrative actions may provide some meaningful improvements in the H-1B visa program, these rules and actions are all but guaranteed to be challenged in federal court by employer groups. Ultimately, 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 116th 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.*

[3] H. Park, "How Outsourcing Companies Are Gaming the Visa System," *New York Times,* (Nov. 11, 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*, (Feb 3, 2015).