

COUNCIL *on* FOREIGN RELATIONS

U.S. Temporary Foreign Worker Visa Programs

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July 7, 2020

Foreign workers have been an essential but contentious feature of the U.S. economic landscape for generations. Since the United States launched its first migrant labor program, during World War I, Washington has struggled to balance the shifting needs of industry with the concerns of the domestic labor force. Meanwhile, the temporary worker debate has been complicated by high levels of undocumented immigration and deficiencies in the U.S. government's tracking of visas.

U.S. temporary foreign worker programs, sometimes referred to as guest worker programs, have more than doubled in size in recent decades: more than nine hundred thousand visas were granted in 2019 [PDF], up from some four hundred thousand in 1994. The H1B, H2A, H2B, and H4 visas, the largest of these programs, have been the subject of some of the most heated debate. The Donald J. Trump administration has promised to reform these programs in line with its Buy American and Hire American agenda, but its proposals to overhaul the country's immigration system have faced strong opposition in Congress. Meanwhile, amid the 2020 pandemic of a new coronavirus disease, COVID-19, Trump halted most foreign worker visa programs.

What are the largest foreign worker visa programs?

The United States issued more than 615,000 visas for the H1B, H2A, H2B, and H4 visa programs in 2019, but the total number of workers participating in these programs at any one time is unknown because the various federal data systems that process visas are not linked. This includes H1B workers who have received visa extensions while awaiting permanent residency status, a process that can take more than a decade.

How did the temporary worker programs start?

The earliest U.S. temporary worker programs were established amid severe labor shortages during World War I and World War II to draw in agricultural laborers primarily from Mexico. It wasn't until 1952, however, that lawmakers attempted to regulate these programs, consolidating them in the comprehensive Immigration and Nationality Act (INA) passed that year. The INA introduced both the H2 visa and the precursor to the H1B, which was formally established in 1990; a visa category for spouses and children was created in 1970 as an amendment to the INA.

How have they changed in recent administrations?

Changes to major aspects of the programs, such as numerical caps and wage requirements, must receive congressional approval, but presidents have the authority to unilaterally change some

regulations and can determine how federal officials implement them. “A lot of the latitude an administration has is in how carefully the requirements are enforced,” says Hiroshi Motomura, a law professor at the University of California, Los Angeles.

President Bill Clinton signed legislation significantly increasing the H1B cap for the years 1999–2001 in response to pressure from technology companies and strengthened enforcement of the program, placing additional requirements on employers with high proportions of H1B workers, known as H1B-dependent employers, and penalizing those who falsified information.

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President George W. Bush reduced [PDF] the H1B program’s numerical cap in 2004 to today’s limit. In 2008, he loosened oversight of the H2A program’s labor certification process, which had formerly been supervised by federal and state officials, by allowing employers to merely attest to complying with the program’s requirements.

President Barack Obama reverted to a more supervised process in 2010, and in 2015 he began allowing some H4-visa holders to work to ease economic burdens on H1B families. Between 2016 and 2019, at least fifteen thousand H2B visas were granted on top of the annual cap as unemployment dropped to its lowest level in decades, spurring high demand for seasonal workers.

What is the process for getting a temporary work visa?

Several executive branch agencies are involved in reviewing and approving petitions for temporary work visas, including the Department of Homeland Security (DHS), the Department of Labor (DOL), and the Department of State. Employers must obtain certification from the DOL and are required to show that there are no qualified or available U.S. workers for the open positions (oversight of this process varies by program). They then file a nonimmigrant worker petition with U.S. Citizenship and Immigration Services, a branch of DHS, on behalf of prospective workers.

Once approved, workers apply to their local U.S. embassy or consulate for a visa. Consular officers interview visa applicants to determine whether they qualify. Applicants for most of these visa categories typically must provide evidence they plan to return to their country of origin. H1B visas have in recent years been distributed based on a lottery as the number of applications has overwhelmingly exceeded the numerical cap; an H2B lottery was held for the first time in 2018. DHS officials still have the ability to deny visa holders at ports of entry on grounds related to health, crime, or security.

What is the debate over these programs?

H1B. Criticisms of the program are many and varied. Depending on the critic, the H1B program is too large, too small, too inflexible, poorly monitored, or overly regulated. Many corporate executives say the H1B program is necessary to make up for a shortage of qualified domestic applicants, particularly for those with advanced technical degrees. They say the government should expand and streamline the program, doing away with the current lottery system. On the other hand, U.S. labor groups allege that some businesses take advantage of the H1B program because they can get away with paying foreign workers less. All companies must attest they will

comply with rules regarding wages and working conditions, but only H1B-dependent employers under certain circumstances must attest to having first sought out qualified American workers.

H2A and H2B. Some experts claim the red tape involved in temporary worker immigration leads to an inefficient system that spurs employers to hire from a massive pool of unauthorized immigrants [PDF], many of whom are just as willing to avoid the required fees and paperwork. The agricultural worker program has no numerical cap, but it provided visas to only about two hundred thousand workers in 2019, a small portion of the roughly 1.2 million hired farmworkers in the country. The U.S. Department of Agriculture estimates that in recent years around half of farmworkers were undocumented, binding this issue to the broader debate over immigration enforcement. “When it’s more difficult to come into the United States to work legally, all things being equal, more people enter to work illegally or overstay their visas,” says Alex Nowrasteh of the libertarian-leaning Cato Institute. Despite the problems plaguing these programs, cutting them entirely would increase undocumented immigration, he says.

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Some lawmakers and advocacy groups say the government agencies managing these programs do not go far enough to ensure that foreign workers are not displacing domestic workers. Others stress they fail to protect foreign workers from exploitation. Current rules and fee requirements make it difficult for temporary workers to change employers, which, advocates say, prevents them from negotiating for fair wages and improved working conditions. One of the biggest problems the system has is that the legislation behind these programs is inflexible, says the Urban Institute’s Audrey Singer. “By the time we develop and pass these bills into law, they become outdated,” Singer says.

What reforms has the Trump administration sought?

President Trump said during the 2016 campaign that he would seek to reduce both legal and illegal immigration and implement a “merit-based” immigration system, though he has failed to gain the support in Congress necessary to make such policy changes. In 2017, Trump issued an executive order directing federal agencies to evaluate immigration policies in order to protect U.S. workers and crack down on fraud. He requested that agencies suggest reforms to the H1B program to ensure that visas are awarded to the most-skilled or highest-paid applicants. The administration has twice temporarily suspended fast-track processing for H1Bs, and the number of denials of H1B applications more than doubled in 2018 from the year before. In 2019, however, denials dropped sharply, bringing the approval rating up to 98 percent.

In May 2019, Trump unveiled a plan to overhaul the country’s immigration system that echoed his campaign promises, aiming to shift from visa lotteries and family reunification to a points-based system that would consider factors such as age and English proficiency. But the proposal has failed to gain any traction in Congress.

What other reforms have been proposed?

Recent H1B bills have included proposals to raise the numerical cap, impose additional requirements on companies planning to pay H1B workers less than \$100,000, and reduce fraud

and abuse. A bipartisan bill introduced in 2020 aims to prioritize U.S.-educated H1B applicants and close loopholes that have allowed the replacement of American workers with H1B and other visa holders.

Proposed reforms to the H2 programs have focused on streamlining their administration to shorten the labor certification and application process from up to two months to just days. Some have proposed overhauling or entirely replacing the programs; Senator Dianne Feinstein (D-CA) has pushed for an agricultural worker program focused not only on admitting new workers but also on identifying undocumented workers in the country and granting them legal status. A Republican-sponsored bill introduced in 2017 would have allowed state governments to craft their own temporary worker programs. Some proposals for H2A reforms have sought to allow employers to hire temporary workers for year-round, rather than just seasonal, labor needs. Other proposals have sought to broaden the scope of the types of labor authorized under the H2 programs and the groups exempted from the H2B numerical cap.

How has the COVID-19 pandemic affected these programs?

The pandemic and resulting shutdowns have disrupted most temporary foreign worker programs. In March, the State Department halted routine visa services at U.S. embassies and consulates, including for H1Bs. However, officials continued to process H2 visas, even easing restrictions on these programs to ensure a steady supply of migrant farmworkers and avoid domestic food shortages.

In June, Trump issued a proclamation suspending almost all new temporary work visas until at least the end of 2020, citing the need to protect American jobs amid skyrocketing unemployment. (Some coronavirus researchers and seasonal farmworkers are excluded from the order.) Business leaders who rely on workers from overseas have objected to the move, while many economists argue that turning away skilled workers will undermine the country's economic recovery.