Immigration Reform Blueprint
FOR THE AMERICAN WORKER

A Report By FAIR’s Government Relations Department
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Introduction

America currently faces unprecedented challenges. The COVID-19 pandemic destroyed strong economic gains and created turmoil for millions of households as jobs disappeared and businesses closed. Fortunately, Congress and President Trump can alleviate some of this suffering by adjusting immigration policies to respond to these circumstances. Stopping illegal immigration by turning off the jobs magnet will save taxpayers billions of dollars a year and create new jobs. Implementing a merit-based system of legal immigration will raise wages for all Americans and spur innovation that benefits our country as a whole. Finally, reforming – and in some cases ending – guestworker programs will protect both blue- and white-collar workers from the adverse impact caused by cheap, foreign labor.

In this blueprint, the Federation for American Immigration Reform (FAIR) lays out reforms that put the interests of American workers ahead of big business and politics.

FAIR’s Three-Step Plan for Protecting American Workers

First – Require all employers to use E-Verify – this would deter illegal immigration more than any other enforcement program or policy change.

Second – Reduce overall legal immigration to a sensible level and transition to a new system that prioritizes skills and merit over family-ties.

Third – Completely overhaul or end guestworker programs that depress wages and rob American workers of job opportunities.
Illegal Immigration

Background
Illegal immigration into the United States not only jeopardizes public safety, it continues to pose serious economic challenges. Since 2016, the total illegal alien population in the United States has grown from 12.5 million to 14.3 million. Of that total, at least seven million are currently occupying jobs that should otherwise go to American workers.

This population is expanding thanks in part to a surge of sanctuary jurisdictions that shield illegal aliens from law enforcement and reward them with taxpayer supported public benefits. But an even larger driver is the nearly non-existent enforcement of federal laws prohibiting employers from hiring unauthorized workers.

Open-borders advocates claim that a massive illegal workforce is necessary because these workers will supposedly work jobs that Americans won’t. However, this is a thoroughly debunked myth. Illegal aliens do not do jobs Americans won’t do. Rather they accept wages that Americans reject. And the reason the wages are low is because the illegal alien labor supply continues. It’s a self-propagating cycle that needs to be broken.

Impact on American Workers
With millions of illegal aliens already in the U.S., and hundreds of thousands more unlawfully crossing the border or overstaying their temporary visas each year, every state is subject to the problems caused by unchecked illegal immigration.

Perhaps the most pressing consequence of uncontrolled immigration is the immediate toll it places upon the American worker, and by extension the U.S. economy.

The fact is this: Illegal immigration dramatically increases competition in the labor market, particularly for low-skilled jobs, and depresses wages by creating a class of workers, mostly illegal, who are willing to work for substandard wages.

Trump Administration Actions
As mentioned above, there is an overwhelming consensus that most illegal aliens come to the U.S. for economic reasons, making worksite raids a vital part of immigration enforcement. Under the Obama administration, U.S. Immigration and Customs
Enforcement (ICE) abandoned traditional worksite enforcement actions and largely refused to deport illegal workers. The Trump administration signaled that it would renew and expand worksite enforcement operations in order to guarantee a legal workforce, keep Americans safe, and restore the rule of law. To some extent, they have done so.

For example, in August of 2019, long before the COVID-19 pandemic began, ICE raided seven poultry processing plants across the state of Mississippi, run primarily by Koch Foods. In total, they arrested 680 illegal aliens and other visa violators who were supposedly working jobs that Americans refused. However, when Koch Foods held a job fair to replace their illegal workforce, hundreds of American citizens applied before noon on the first day. Stories like this are commonplace across the country.

If Americans were eager to take jobs formerly filled by illegal aliens during a historically strong economy, it only makes sense that the millions who are currently unemployed due to the ongoing pandemic would similarly be grateful for the chance to obtain gainful employment. Ensuring that employers are only hiring lawful workers would potentially give millions of Americans a shot at obtaining a job in these difficult economic times.

**Mandatory E-Verify: The Most Essential Immigration Reform**

E-Verify is an electronically-based system that allows employers to authenticate the legal work eligibility of prospective applicants, the same way a merchant verifies a credit card purchase. First created by Congress in 1996, the optional program has a 99.7 percent accuracy rate, is free, and usually takes less than five seconds to complete.

**Millions of U.S. citizens could find gainful employment if they did not have to compete against unauthorized workers who also undercut local wage rates.**

Due to the fact that E-Verify usage is not required by federal law, many states and localities have passed legislation requiring all or some employers in their jurisdictions to take advantage of the program and verify the work authorization of newly hired employees. Not all states have done so however, so making E-Verify mandatory nationwide would quickly open doors for many of America’s most disadvantaged workers who have been systematically shut out of the workforce by widespread illegal immigration.

Requiring that all businesses use E-Verify would end the supply of jobs filled by those who illegally cross our borders or overstay their visas in the hope of taking a job. The most effective and humane way to enforce the law is by convincing people that there is no benefit in breaking them. When we finally shut off the magnet that draws workers here, we’ll also shut off much of the flow, which protects the jobs and wages of our most vulnerable workers.

In order to do that, Congress needs to act and pass either the Legal Workforce Act (H.R. 250) or the Accountability Through Electronic Verification Act (S.556).
Legal Immigration

Background
For decades, massive flows of legal immigration disrupted what used to be a healthy balance between our nation’s supply of labor and the availability of jobs. Simply put, too many people - driven by too much immigration - are looking for too few jobs. This has resulted in periods of high unemployment and a long-term, downward spiral of wages.

The passage of the 1965 Immigration and Nationality Act (INA), put America’s legal immigration system on this path. Rather than prioritizing the admission of skilled immigrants who were likely to assimilate and succeed, the INA emphasized “family reunification.” This approach created a “chain” whereby a newly admitted immigrant would be entitled to sponsor their relatives, who in turn could sponsor their relatives, down the line.

In addition, the INA eliminated the firm annual cap on the number of green cards, which had previously kept immigrant numbers manageable in the years following World War II. As a result, the immigrant share of the U.S. population has nearly tripled (4.7 percent to 13.5 percent) since 1970.

In 2018, the United States granted around 1.1 million individuals lawful permanent resident status, nearly enough people to populate a major city the size of Dallas, Texas.

Impact on American Workers
If employers have virtually unlimited access to millions of newly arrived legal immigrants, existing U.S. workers are hurt. Immigrants take low-paying, entry-level jobs. And because those jobs represent a material improvement over their conditions back home, immigrants don’t agitate for higher wages or better working conditions and the result is downward pressure on wages for everyone. In the past when America had more restricted immigration, employers were forced to compete for workers by offering better wages, enhanced benefits and other incentives to attract labor. It was this sort of free market that created a solid middle class and allowed our nation to improve its standard of living. If employers have unlimited access to cheap immigrant labor, what incentives do they have to ever raise workers’ wages?
These are serious matters. America needs 150,000 jobs a month just to keep up with those entering the workforce. But in a senseless self-propagating cycle, we are adding to the population mostly by way of immigration. Plus, through the process of admitting millions of low-skilled legal immigrants each year, we are mathematically reducing our middle class and swelling the ranks of those living at or below the poverty level. The middle class is disappearing, resulting in more income inequality and more societal friction.

The American worker has a right to expect their government to protect their job from unfair competition and there is nothing more unfair than making Americans compete against unnecessary surpluses of labor imposed by a massive number of newly arriving immigrants each year. Lower levels of immigration will tighten the labor market and increase wages, while requiring skills for those who are admitted will lessen the chances that they will need government aid to enhance their potential success.

The RAISE Act: Trump’s Vision for the Future
After working closely with President Trump, Senators Tom Cotton (R-AR) and David Perdue (R-GA) introduced the Reforming American Immigration for a Strong Economy (RAISE) Act, which would replace our current outdated, dysfunctional, and unfair immigration system with one that serves American workers. The RAISE Act reduces overall levels of immigration and admits immigrants who have the education and skills to succeed in 21st century America.

Specifically, the bill ends chain migration by limiting family-based green card eligibility for the spouses and minor children of U.S. citizens and legal permanent residents. This reform alone will drastically reduce the flow of legal immigration into the United States from 1.1 million new legal permanent residents to 540,000 per year within a decade. Similar to the 1997 Bipartisan Jordan Commission’s recommendations, the RAISE Act also ends the visa lottery and caps annual refugee admissions to 50,000 – consistent with the 15-year average.

Additionally, the bill would distribute 140,000 merit-based green cards each year (consistent with current employment-based green card cap) to those who demonstrate merit using a point-based system. To demonstrate merit, the bill weighs factors that would best enable an immigrant to succeed and contribute to the U.S. economy, including highest degree obtained, English proficiency, and age.7

These much-needed changes will make immigration great again for not workers, but America as a whole.
H-1B: Skilled Workers

Background
The Immigration Act of 1990 introduced one of the most controversial temporary guestworker programs currently administered by our federal government, the H-1B visa. It is often referred to as the Science, Technology, Engineering, and Math (STEM) or high-tech visa, although in practice many granted these visas commonly have lower-level professional skills than their American counterparts. The Department of Labor summarizes its purpose:

*The H-1B program applies to employers seeking to hire nonimmigrant aliens as workers in specialty occupations… A specialty occupation is one that requires the application of a body of highly specialized knowledge and the attainment of at least a bachelor’s degree or its equivalent. The intent of the H-1B provisions is to help employers who cannot otherwise obtain needed business skills and abilities from the U.S. workforce by authorizing the temporary employment of qualified individuals who are not otherwise authorized to work in the United States.*

The H-1B visa is capped annually at 85,000. Roughly 20,000 visas within that group are set aside specifically for aliens with master’s degrees or higher. Yet incredibly, the federal government does not even know how many H-1B visa holders are residing in the U.S. at any given time. In September 2019, U.S. Citizenship and Immigration Services (USCIS) estimated there were 583,420, but many immigration experts found this number implausibly low, and instead suggested that it could be as high as 1 million.

The program is nominally a nonimmigrant program, meaning that the H-1B visa is not a pathway to citizenship or permanent residence in the United States. However, under dual-intent rules, H-1B holders can adjust their status and apply to become citizens. This has led to a growth in the “visa backlog” that primarily affects Indian and Chinese nationals applying for citizenship, due to our per-country caps that protect diversity within the legal immigration system.

Impact on American Workers
The primary issue with the H-1B visa program is its adverse effect on the opportunities and wages of skilled American workers competing against lower-paid H-1B aliens. Research from the Economic Policy Institute finds that employers frequently pay H-1B
workers significantly less than Americans performing the same roles. Their researchers found that “a majority of H-1B employers—including major U.S. tech firms—use the program to pay migrant workers well below market wages.”

All too often, tech companies would rather hire compliant, cheap, and temporary H-1B workers than hire an American long-term. H-1B workers are dependent on their employers for their legal status, thus they are not likely to complain about low pay or poor working conditions, particularly when they earn more in the U.S. than they could expect to earn back home. American workers, on the other hand, are not as likely to tolerate such conditions.

This creates perverse incentives for major companies to routinely hire H-1B workers at the expense of Americans. In egregious cases, American employers fired their American workers and forced them to train their foreign replacements. This infamously occurred at both Disney and within the University of California system.

**Trump Administration Actions**
The Trump administration has taken some action to correct glaring flaws in the H-1B system. On April 18, 2017 the president issued his “Buy American, Hire American” executive order which directed the attorney general and secretaries of State, Homeland Security, and Labor to “suggest reforms to help ensure that H-1B visas are awarded to the most-skilled or highest-paid petition beneficiaries.” In July 2020, the administration proposed changes to ensure that the H-1B program reflects its original purpose. These steps include:

- Distributing H-1B workers to certified positions order-ranked by offered salary, rather than by random lottery, thereby driving up the wages of both American workers and H-1B recipients.
- Changing the H-1B cap selection process to reward H-1B applicants who earned a master’s degree (or higher) from an American university.
- Working with the Justice Department to investigate employer fraud.
- Establishing an online method to report H-1B and H-2B visa fraud.
- Expanding the online employer portal that allows the public to easily see what companies are hiring and retaining H-1B workers.

Although these proposed actions will likely face court challenges, they are the most aggressive moves taken yet by a presidential administration to tackle H-1B fraud and American worker displacement.

In the midst of the COVID-19 pandemic and its effect on our nation’s economy, President Trump took bold steps to protect the jobs of American workers by pausing guestworker admissions and protecting American jobs in the midst of a historical unemployment crisis. In light of the news that the Tennessee Valley Authority (TVA) was prepared to fire scores of American workers and potentially hire H-1Bs, the president also took action in August 2020 by requiring federal agencies to hire American workers in favor of foreigners, such as H-1B guestworkers.
Needed Reforms

- **End dual-intent.** This would be a significant undertaking, but it is required to restore the legitimacy of this tarnished program. H-1B is a guestworker program for temporary visitors – it is not a pathway to citizenship, nor should it be.

- **Prevent employers from paying H-1B workers less than Americans in the same roles.** USCIS took steps to do this by trying to rank-order the selection process by the highest wages. However, there is still much to be done. The Labor Department must adjust wage levels to ensure that guestworkers are indeed highly-skilled and not undercutting American workers.

- **Require employers to truly demonstrate that they actively sought to recruited American workers and offered positions to qualified ones before turning to H-1B.** The program was meant to address labor shortages, not increase the pool of candidates so employers can identify who will work for the least amount of money.

- **Implement more effective enforcement mechanisms.** Current program compliance is driven almost entirely by whistleblowers who put their careers on the line. While the Trump administration made whistleblowing easier, the government must ramp up random audits, investigations, and dole out significant punishments to abusers of the system.

- **The administration can prevent H-1B workers from establishing a false sense of permanent residence in the United States by further preventing H-4 visa holders (the spouse or dependent of an H-1B) from working in the U.S.** This sends the message that the H-1B visa is not and never will be a pathway to citizenship or permanent residence.
H-2A: Unskilled Agricultural Workers

Background
The United States has a long history of using agricultural guestworkers. During World War II, Congress established the Bracero program that placed Mexican farmhands in American fields. This program did not end until almost 20 years later, in 1964. By that point, nearly 4.6 million Mexicans worked as farmhands.

Congress ended the Bracero program but replaced it with the H-2 guestworker visa in the Immigration and Nationality Act of 1952. This catch-all category included all temporary unskilled workers. The Immigration Reform and Control Act of 1986 (IRCA) further divided the H-2 program into the H-2A program for uncapped agricultural workers and the cap-restricted H-2B program for all other non-skilled workers.

In FY 2019, farm employers petitioned the Department of Labor for just over 288,000 positions. The Department certified 276,811 of those, meaning that employers had just over a 96 percent chance of getting the guestworkers they requested. Despite that and the fact that the H-2A program is annually uncapped, the American farm lobby continues to complain about the program and farmers often bypass it entirely in favor of simply hiring illegal aliens.

Impact on American Workers
Agriculture is a unique industry in which foreign-born workers do actually outnumber American workers, primarily because the utilization of H-2A workers (and illegal aliens) pushes down wages and discourages Americans from taking those jobs.

Further, lobbying by big agriculture continuously calls for the H-2A visa to cover more and more industries that otherwise would belong to the visa-capped H-2B visa. One such example of this is farm construction, which journalists from In These Times magazine highlighted in a story bemoaning the use of H-2A visas for work that had nothing to do with seasonal agricultural work. As more and more industries fall under the umbrella of the H-2A due to creative lobbying from their powerful trade groups, fewer Americans will find work in these industries.

The reliance on unlimited guestworker programs and illegal aliens prevents American agriculture from developing and adopting labor-saving automation technology that reduces the need for foreign labor. This mechanization would lower the cost of
produce for American consumers, provide more innovation opportunities for American STEM workers, and ensure that American farming is fully taking advantage of 21st century technology rather than antiquated harvesting practices.

Finally, the H-2A program represents a significant public health crisis as the United States continues to battle the COVID-19 pandemic. H-2A workers are not subject to health screenings before entering the U.S. and live and work in close proximity to each other and their supervisors, exacerbating the threat of a virus breakout.

**Trump Administration Actions**

Unfortunately, the president has taken no action to reduce the agriculture industry’s reliance on cheap farmworkers. Even Trump’s COVID-19 executive orders temporarily pausing guestworker admissions excluded the H-2A program, bowing to pressure from the powerful farm lobbyists and their allies in the president’s own Department of Agriculture.

**Needed Reforms**

The H-2A program is a program with no real purpose in a 21st century economy and should be ended. It prevents American farms from adopting labor-saving technology already widely used by farmers throughout Europe and Asia. Worse, it exploits the farmworkers who sign up for the program and exposes them to horrific working conditions by unscrupulous employers who take advantage of them. Congress and the President must work together to end this exploitative program and develop creative ways to encourage the adoption of 21st century farming technology.
H-2B: Unskilled Non-Agricultural Workers

Background
Like the H-2A, the H-2B program originated from the Immigration and Nationality Act of 1952. Congress capped the H-2B program at 66,000 workers per year. Under the Trump administration, Congress routinely gives the secretary of the Department of Homeland Security the ability to arbitrarily raise the cap through hidden language in annual spending bills. In 2020, acting secretary Chad Wolf raised the cap by 35,000.22

Impact on American Workers
Like H-1B workers, employers frequently hire H-2B workers at wages significantly lower than Americans in the same fields. Both the Economic Policy Institute23 and the Center for Immigration Studies24 found that H-2B workers routinely earn less than Americans. In some cases, H-2B workers earned 18 to 23 percent less than Americans in the same roles.

The H-2B supposedly works as a seasonal program, typically for jobs at hotels, resorts or seasonal seafood processing although the majority of workers are landscapers working on jobsites in Texas and Florida – where landscaping is not a seasonal industry. Instead of hiring full-time Americans to work in these roles, employers routinely abuse the H-2B program to save money. Subsequently, employers whose needs are truly seasonal (such as fish cutters, etc.) actually lose out on capped H-2B workers, defeating the purpose of the program to match seasonal labor with businesses.

The H-2B program displaces large swaths of Americans willing to take advantage of entry-level, seasonal jobs such as students on summer break or those who have recently lost their jobs and urgently need stop-gap employment. Moreover, recovered addicts, former inmates, and the homeless often struggle for employment and these jobs would represent valuable first steps to self-sufficiency. The H-2B program (coupled with the presence of unskilled illegal aliens) depresses wages and reduces opportunities for fellow citizens who benefit most from a tight labor market – and for whom employment brings about immeasurable societal benefits.25

Trump Administration Actions
The Administration has failed to take significant steps to reduce the negative effects of the H-2B program, and, in fact, has often exacerbated them. Before he became president, Donald Trump often employed H-2B workers at his various properties and
spoke favorably of the H-2B program at a campaign event in Michigan during the 2016 cycle. Each of the president’s DHS secretaries chose to raise the H-2B visa cap until DHS acting secretary Chad Wolf, reacting to pressure from blue collar workers and immigration reform groups like FAIR, decided to reverse a decision to do so this past April. The administration’s most successful action against the H-2B program, however, was the cessation of guestworker admissions during the COVID-19 crisis.

**Needed Reforms**

- **Review the prevailing wage estimates.** Wages paid to H-2B workers should never be lower than they are for American workers.
- **Eliminate industries from eligibility.** Landscapers and custodial groups do not need a guestworker program when there are businesses that are legitimately operating on a seasonal basis in need of labor. The Department of Labor needs to review what categories of industries truly need labor, and trim eligibility for the program accordingly.
- **Increase fees to support worksite enforcement.** USCIS must raise fees associated with the H-2B program so that employers choosing to hire foreign guestworkers instead of Americans can support the worksite enforcement work of the Department of Labor and the Department of Homeland Security. Both DOL and DHS need to investigate each and every allegation of fraud and abuse within the program.
- **Deny cap increases.** Congress set the H-2B cap at 66,000 for reason. Abandoning their duty to legislate properly, they continue to allow the DHS secretary the discretionary authority to artificially raise the cap. President Trump must instruct the DHS secretary to keep the cap fixed at 66,000 and challenge Congress to come up with a legislative solution if they believe the program is not working.
- **Protect guestworkers from employer abuse.** Prosecute allegations of employer mistreatment of guestworkers and enforce financial and criminal penalties against negligent employers.
L-1: Intracompany Transfer

Background
The L-1 visa allows companies overseas to transfer employees to work temporarily in an American office for a period between three months and seven years. It functions almost identically to the H-1B in scope and purpose, and companies routinely use the L-1 as a substitute for the H-1B visa. Unlike the H-1B, the L-1 has no numerical limitations. The visa has no labor certification requirement to ensure recipients are paid the prevailing wage and that they are not brought in to replace laid off American workers.

Impact on American Workers
Immigration experts agree that companies continue exploiting the L-1 as a substitute to the H-1B visa program. Dan Costa with the Economic Policy Institute argues that “there is no requirement that employers pay L-1s the prevailing wage for the specific job they will fill, which allows employers to pay far below the market rate. This practice takes advantage of the foreign worker and hurts U.S. workers by pushing down wages for everyone employed in similar occupations.”

Phil Margarine is a former senior systems analyst whose employer fired him in order to hire an L-1 worker from India. Margarine told the Florida Sun-Sentinel that “I didn't lose my job because I wasn't doing it well; I didn't lose my job because the company was losing money. They got rid of me because they could put a guy in my seat who was less experienced and a whole lot cheaper.”

The effects on the American worker are obvious from these and other stories: companies use the L-1 to pay foreign workers significantly less and save money, instead of hiring Americans. Each of the concerns with the H-1B visas remains applicable to the L-1.

Trump Administration Actions
Although the Trump administration included the L-1 visa in its guestworker admission pause during the COVID-19 crisis, it has otherwise done little to change the L-1 visa. This is unfortunate, given that there is bipartisan agreement that the L-1 is a problematic program. Senators Chuck Grassley (R-Iowa) and Dick Durbin (D-Ill.) introduced the H-1B and L-1 Visa Reform Act, which they argue will prioritize American workers and restore fairness in visa programs for skilled foreign workers.
Needed Reforms

- **Institute a numerical cap.** The L-1 cannot remain uncapped while the H-1B has a visa cap. This is a common sense solution. Although a numerical cap requires congressional authorization, the president and his team could issue a *de facto* cap by instructing the State Department, DHS, and DOL to work together to limit the number of L-1 visas entering the country during a given fiscal year.

- **Require a labor certification requirement.** L-1 applications do not undergo even the basic limited scrutiny that H-1B, H-2B, and even H-2A applications require. Although this process needs a substantial upgrade, there is no reason that L-1 guestworkers should not face the scrutiny of the certification process.

- **Limit the companies that can use L-1 workers.** Large, multinational companies have few legitimate reasons to need L-1 intracompany transfer workers. Limit the use of L-1 visas only to small companies truly starting a new business in the United States who actually need managers and specialized workers.

- **Create a wage floor for L-1 employees.** The Durbin-Grassley legislation suggests creating a wage floor for L-1 employees, ensuring that companies only use the L-1 process for high-skilled and highly-compensated employees. This action drives wages up and prevents employers from firing American employees in order to hire cheaper L-1 replacements.
J-1: Exchange Visitors

**Background**
The State Department operates the J-1 exchange visitor program, which distributes over 350,000 visas to foreigners “who intend to participate in an approved program for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, receiving training, or to receive graduate medical education or training.” However, not every J-1 works while they are in the United States, although many do. Often, they work as au pairs or in jobs roughly equivalent to those normally filled by high school and college students during the summer.

In practice, employers hire J-1 workers to do jobs that are analogous to the work performed by H-2B workers.

**Impact on American Workers**
The J-1 program does not require that employers go through the labor certification requirement. The J-1 program is also uncapped in stark contrast to the H-2B program. Because there are no wage protections for the J-1, employers inevitably pay J-1 workers significantly less than Americans performing the same roles. Like the H-2B, J-1s are simply cheaper than Americans. Through the guise of an exchange program, the State Department is supporting the suppression of American wages.

**Trump Administration Actions**
Trump’s executive order limiting nonimmigrant visas during the COVID-19 crisis included halting the issuance of J-1 visas temporarily. Other than that, the administration has done absolutely nothing to stop this oft-abused program from harming American workers. Additionally, the Trump administration has done nothing to address the well-documented abuses of J-1 visitors by their employers.

**Needed Reforms**
- **Require labor certification through DOL.** If J-1 exchange visitors are working in the United States, their employers must certify them through the Department of Labor.
- **Institute a numerical cap** for the same reasons as the L-1 program.
- **Enhance oversight** through worksite enforcement, ensuring that J-1 employers are not abusing, mistreating, and exploiting their foreign workers.
• **Demand a full audit and review by the State Department.** The program has grown wildly out of control from its original purpose of enhancing international cultural exchange to an uncapped visa program. The visa is overdue for a thorough review by the State Department to determine if it still serves its goals and our national interest. If it does not, the State Department must take steps to correct it.
Optional Practical Training
The OPT program allows foreign students to work temporarily in the United States after they graduate from American universities. Incredibly, employers who hire these students under OPT are not liable for their payroll taxes. This means that a company such as Amazon or AT&T can hire a full-time foreign worker for significantly less than an American graduate. Moreover, then, when the worker’s OPT expires, businesses rarely extend an offer of full employment and simply proceed to hire another recent graduate at a high discount. American college graduates do not benefit from such a program, especially in the middle of an unprecedented economic crisis.

Even worse, the OPT program is not congressionally mandated. The George W. Bush administration created a flawed version of the program at the behest of Microsoft and the Obama administration expanded it. The solution here is simple: President Trump must help American college students and recent graduates by directing DHS to end the program.

H-4 Work Authorization
In 2015, the Obama administration approved a federal regulation allowing H-4 visa holders – spouses of H-1B visa holders – to receive a work permit without congressional approval. Specifically, the rule says that spouses who have already begun the process of seeking legal permanent resident status through employment, or those who received an extension beyond their six-year limit of stay in the country, are eligible for work authorization.

At the time, the Obama administration showed little concern for unemployed Americans, acknowledging that the intent of H-4 regulation was to make it more attractive for foreign workers to come and stay in the United States.

Not only was the regulation reprehensible, but it rested on shaky legal footing. In 2001, Congress explicitly laid out in statute that the Secretary could provide work authorizations to certain spouses of foreign workers. Congress gave work authorizations to spouses of L1 (intercompany transfers) and E (treaty traders/investors) visa holders. Congress did not, at that time, give spouses of H-1B visa holders the permission to work. It could have, but it didn’t. Therefore, the solution here is also simple: President Trump must act in accordance with the law and what is in the best interest of American workers and rescind the H-4 work authorization program.
Endnotes

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33 Ananya Bhattacharya, “Spouses of H-1B workers can’t let their guard down just yet,” Quartz India, 12 November 2019.
FAIR’s mission is to examine immigration trends and effects, to educate the American people on the impacts of sustained high-volume immigration, and to discern, put forward, and advocate immigration policies that will best serve American environmental, societal, and economic interests tofay and into the future.

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