One sentence can raise the salaries paid to H-1B workers.

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Current situation:

In 1998, Congress passed an immigration law stating that if a US entity's H-1B workforce is 15% of its total US workforce or greater, then as an “H-1B dependent” employer it is required to engage in Department of Labor (DOL)-monitored recruitment of US workers. Before they are permitted to sponsor further H-1B workers, these companies must also document that their hiring of H-1B workers will not displace Americans. Making this 26-year old statute work would make good on a Trump administration promise, as President Trump has said “I will end forever the use of the H-1B as a cheap labor program.”

Today, however, if a dependent entity’s H-1B workers are being paid at least $60,000 per year, they are “exempt H-1B dependent” employees meaning the entity *does not* need to comply with these stricter hiring and recruitment requirements. In 1998, $60,000 was a high salary, worth over $118,000 today. But now, it means that H-1B dependent companies are allowed to pay workers well below the average H-1B salary without engaging in the pre-recruitment requirements designed by Congress to protect American-born workers. In fact, two years ago, the average salary paid to an H-1B worker at a non-dependent company was 15% higher than at a dependent company. In FY 2022, 85% of all H-1B workers employed by H-1B dependent entities got paid more than $60,000, but less than the 2024 equivalent. This gap in domestic labor protections has allowed outsourcing firms to conduct wage arbitrage, creating an H-1B-eligible workforce in India paid low salaries to staff US companies. In 2022, the average salary paid to an H-1B worker at a non-dependent company in 2022 was 15% higher than at a dependent company.

Solution:

With one statutory sentence striking the $60,000 threshold, updating it to $120,000 and providing a provision which automatically increases the threshold over time (e.g., every other year based on the Consumer Price Index), or setting the salary exemption pegged to three times the national median income the Administration would *singlehandedly* change the use of the H-1B category. Congressional action that updates the $60,000 threshold would cause the protective regulations already on the books to become immediately effective, requiring no further legislative or agency action.

Most of the top 20 H-1B filers are the largest Indian outsourcing firms who also tend to be among the lowest paying employers. This simple change would greatly increase the cost and manpower required by these outsourcing firms to stay compliant with worker protection laws. In fact, it is likely that they would stop utilizing H-1B because of the cumbersome pre-recruitment requirements. They are large multinationals that would, instead, have IT consultants work from India or use L-1Bs when appropriate. Alternatively, if they choose to use H-1B and actually test the labor market, then US workers are protected and the salaries offered to the foreign workers would be significantly increased.

Budgetary Impacts:

This revision, while it can have significant budgetary impact, makes no new policy. It is simply implementing a policy Congress enacted into law 26 years ago.

- **Static effect on federal outlays:** The effect on government outlays is approximately zero because the number of people is unchanged and their eligibility for benefits is also unchanged, both on account of their immigration status and their income group.

- **Static effect on federal revenues:** Over a ten-year budget window, the proposed revision is expected to raise about $11.15-$12.42 billion in additional federal payroll taxes. In FY 2022, H-1B dependent employers filed initial I-129 petitions for 37,779 employees exempt on the basis of being paid at least $60,0000. If those employers were unable to continue to hire H-1Bs under the proposed revision and instead those H-1Bs were awarded to non-dependent companies, then the average wage for those visas would increase from $95,000 to $117,000, which would be associated with an increase of $2.03 billion in federal revenues over ten years with that cohort. Across all cohorts who arrive within the ten year window, the increase in federal revenue amounts to $11 billion. If instead H-1B dependent companies continued to hire but at the new minimum salary of $120,000, the increase in revenues would be about $2.26 billion for the initial cohort, or over $12 billion across all ten cohorts.

- **Dynamic effect on federal revenues:** In a dynamic score, the effect on federal revenues would be more positive still, given that higher salary requirements would generate greater selection for STEM workers who, the Congressional Budget Office (CBO) recognizes, increase innovation-related productivity. In FY 2022, the STEM share among initial H-1B petitions for H-1B dependent employers was 7.9% compared to 16.0% for non-dependent employers.[1] If the proposed rule increases the STEM share accordingly among the 37,779 "exempt" employees on the basis of being paid $60,000, that implies an increase of over 3,000 STEM workers admitted per year or about 31,000 over the ten year window. Scaling this with the per-STEM worker contribution to total factor productivity (TFP) growth estimated by CBO, this would increase TFP growth by perhaps 0.7 basis points, which in a dynamic model would generate a modest but non-trivial increase in revenue.

Required Action:

Below is a summary of the technical details necessary to jumpstart this impactful policy effort.

Legislation Previously Enacted:

The American Competitiveness and Workforce Improvement Act of 1998 (ACWIA), is Title IV of the FY 1999 Omnibus Consolidated and Emergency Appropriations for FY 1999, Public Law No. 105–277 (October 21,1998). Sec. 412(b) of ACWIA created a new sec. 212(n)(3) of the Immigration and Nationality Act (INA) on "H-1B dependent" employers including sec. 212(n)(3)(B)(i) that establishes that foreign-born professional employees of an H-1B

[1] USCIS identifies the following DOT codes as STEM: accountant, auditor (014), architect (020), aerospace engineer (031), chemical engineer (035), civil engineer (037), electrical/electronic engineer (039), industrial engineer (041), mechanical engineer (043), engineer (047 and 049), mathematician (050), physical scientist (060), life and environmental scientist (070), health care practitioner (101), registered nurse (110), dietician, pharmacist (111), physical therapist (115), science technician (150), health technician (150), health service (450).

dependent employer can only be sponsored for status if the employer completes DOL-monitored recruitment and satisfies non-displacement obligations, except when the H-1B worker is a high earner, with over $60,000 salary, or highly educated, with a masters or above.

The Legislative Fix:

INA 212(n)(3)(B) For purposes of this subsection –

(i) The term 'exempt H-1B nonimmigrant' means an H-1B nonimmigrant who –

(I) Receives wages (including cash bonuses or similar compensation) at an annual rate equal to at least ~~$60,000~~ **$120,000 adjusted every three years for inflation [or three times the national median wage in the previous year]**; or

(II) Has attained a master's or higher degree (or its equivalent) in a specialty related to the intended employment;

The Agency Action Fix by Notice and Comment Rulemaking at DOL:

20 CFR 655.737(b) For purposes of this subsection –

(1) Receives wages (including cash bonuses and similar compensation) at an annual rate equal to at least $**120**~~60~~,000**, adjusted every three years for inflation [or three times the national median wage in the previous year]**; or
(2) Has attained a master's or higher degree (or its equivalent) in a specialty related to the intended employment.[2]

Implementing Regulations:

With this fix, an enforcement mechanism already is on the books in the form of implementing regulations for the legislation that would apply to H-1B dependent employers. The Department of Labor engaged in notice and comment rulemaking to promulgate detailed regulations implementing the obligations Congress enacted in 1998 to protect U.S. workers from employers who are relying H-1B workers for their business model. Congress had determined that such protections were unnecessary if the H-1B workers were highly compensated, determined in 1998 to be at annual salary of $60,000. But, H-1B dependent employers do not have to comply with these regulations and have not had to do so for years, because they are exempt from all aspects of the enforcement mechanisms if they pay H-1B workers the long-outdated figure of $60,000.

20 CFR 655.736 - On H-1B dependent employers

20 CFR 655.737 - On which H-1B workers are exempt from the non-displacement and recruitment obligations

20 CFR 655.738 - On non-displacement obligations by H-1B dependent employers

20 CFR 655.739 On recruitment obligations by H-1B dependent employers

[2] It may be desirable to strike the master's or equivalent exemption but there is no argument this can be done without congressional action. Moreover, data show few H1B petitions filed by dependent firms for beneficiaries with either US master's or foreign degrees equivalent to a US master's.