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House Committee Unites to Clamp Down on Indian Firms' Use of H-1B Visas

The new rules would require that firms either pay workers more or prove they tried to recruit Americans

By Laura Meckler

WASHINGTON—Bipartisanship on the divisive issue of immigration is a rarity in Congress, but that is what happened when the House Judiciary Committee unanimously approved legislation making it harder for Indian outsourcing companies to bring high-skilled foreign workers to the U.S.

At the same time, the bill eases rules on some U.S. high-tech firms that use H-1B visas, putting political distance between Silicon Valley and Indian outsourcers as President Donald Trump condemns the program as rampant with abuse and a source of unfair competition to American workers.

The new rules apply only to companies that are heavy users of the program, or "H-1B dependent." Lawmakers changed the definition of "H-1B dependent" to make sure technology companies that hire hundreds of foreigners every year, such as Facebook Inc., weren't affected.

In turn, the House bill, the Protect and Grow American Jobs Act, has infuriated Indian outsourcing companies and the Indian government, according to someone who advises the government.

Nasscom, an information technology trade group in India, argues the measure "unfairly and arbitrarily" targets a handful of companies "while imposing no new requirement on the vast majority of companies that use the visas to do the … exact same things," according to a statement from the group's president, Rentala Chandrashekhar.

The new rules would require that firms either pay workers more–as much as $135,000 a year—or prove they tried to recruit Americans. The bill requires that no Americans are laid off by either the outsourcing firm or the clients that they serve for the entire length of the visa. It also authorizes Labor Department investigations and raises fees.

Scott Corley, who runs the pro-immigration Compete America coalition made up of technology companies, said the bill was a welcome step toward separating high-tech companies from outsourcers.

“We don’t want to be overly broad in applying rules that are meant to deal with one type of use but may have unintended consequences for another type of use that people agree with,” he said.

The legislation also would put Indian firms such as Infosys Ltd. and Tata Consulting Services Ltd. at a disadvantage against a handful of competitors, such as International Business Machines Corp. and Accenture Ltd., even though they also employ a large number of foreign workers and use a similar business model. That is because those companies have many divisions, which keeps the portion of their overall workforce using H-1B visas low and their firms from being defined as “dependent.”

Part of the measure’s sweep is that it reaches the U.S. clients of the Indian outsourcers. The U.S. Chamber of Commerce opposes the bill, saying it sets “dangerous precedents” regarding the government’s power to interfere with companies. The bill “proposes a shock to the system that could have negative economic repercussions in various industries,” the Chamber wrote in a letter.

The legislation was passed by the Judiciary Committee last month. It is unclear when it will be considered by the full House.

Each year, companies enter a lottery for 85,000 new H-1B visas, and demand far outstrips supply. In 2016, outsourcers won nearly one in four of the visas—and more in previous years.

The anger toward outsourcing firms stems from their business model, which often involves U.S. corporations laying off their own, better-paid employees and replacing them with outsourced foreign workers.

“We have a broken H-1B system,” Rep. Darrell Issa (R., Calif.), the bill’s chief sponsor, said in an interview. “It’s being gamed by people paying the bare minimum, taking too many visas that would otherwise go to a broader group of applicants who would pay more.”

Under existing rules, a company that has more than 15% of its workforce using H-1B visas is considered H-1B dependent and must show that it has tried to hire Americans, among other things. It can get out of those requirements by paying at least $60,000 a year, or the prevailing wage, to the foreign worker.

Mr. Issa raised the $60,000 threshold for avoiding the rules and added a host of other provisions to bring Democrats on board.

The California Republican also changed the definition of “H-1B dependent” to 20% of a company’s workforce from 15%. That mostly protects high-tech companies such as Facebook and Qualcomm Inc., which both have been H-1B dependent in recent years, according to Labor Department filings. The companies declined to comment.

Foreign Workers

Eight of the top 10 employers in 2016 that use the H-1B program were firms that offered outsourcing services. Number of new approved H-1B initial petitions by company, FY2016:

Cognizant*
3,946

Infosys*
2,376

Tata Consulting*
2,040

Accenture
1,889

IBM
1,608

Wipro*
1,474

Amazon
1,416

Tech Mahindra*
1,228

CapGemini*
1,164

Microsoft
1,145

*H-1B dependent companies-they have more than 15% of workforce on H-1Bs.
Source: **National Foundation for American Policy analysis of U.S. Citizenship and Immigration Services data**

The percentage of foreign workers is growing at companies like Facebook in part because the H-1B workers don't return home. Instead, companies sponsor them for green cards so that they can stay permanently.

But a long wait for green cards, particularly for people from India, means that workers are stuck in the H-1B status, and companies see its visa dependency rate climb.

Rep. Zoe Lofgren (D., Calif.), who usually opposes Republican immigration measures, helped write this one. She defended the H-1B program for companies that are using it as it was "originally created" but attacked the outsourcing model. Often, she said, Americans are replaced by foreign workers. "These outsourcing companies can do this because of deep and longstanding flaws in the H-1B program."

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