



# How 'Hire American' may do more harm than good to our economy

BY RAJIV KHANNA, OPINION CONTRIBUTOR - 04/19/17 06:40 PM EDT

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This week, the White House issued an [executive order](#) targeting the H-1B visa program. These visas are available for jobs that require specific college level or professional level education. The executive order appears to address the perception that H-1B visas are being used to recruit a low-skilled workforce that is being paid below the median wages.

In trying to create a quick fix to perceived problems, this executive order can cause much more harm than good. Indubitably, we need modernization of the H-1B program and concomitant simplification and streamlining of overly complex regulations and dilatory procedures. But to act without deliberation and input from stakeholders would be disastrous.

The executive order purports to target H-1B program by elevating wages and employment of U.S. workers. While the objectives are laudable, whether or not H-1B workers actually create jobs instead of taking them is still an open question. Specifically, the executive order states that its goals are to create higher wages and employment rates for U.S. workers and to rigorously enforce the laws.

The executive order directs the Department of State, the Attorney General, the Department of Labor, and the Department of Homeland Security to propose new rules, issue new guidance. It also suggest reforms to help ensure that H-1B visas are awarded to the most-skilled or highest-paid petition beneficiaries.

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The formulation of “most skilled” or “highest paid” ignores the fact that H-1B visas are used by U.S. universities for researchers and professors, schools for teachers, medically underserved areas for physicians, and several other such professions. Additionally, the “most skilled” standard ignores the needs of those industries where mid-level professional jobs are difficult to fill because of lack of qualified workers or of workers willing to take on short-term projects that require relocation or moving from project to project.

Further, blind victimization of consulting companies ignores raw facts. Take for instance the position of “management analyst.” According to DOL data, this job is expected to grow by 14 percent in 10 years, but “job opportunities are expected to be best for those who have a graduate degree or a certification, specialized expertise, fluency in a foreign language, or a talent for sales and public relations.” Many variables like these are being ignored in the formulaic recitation proposed by the executive order. This would place U.S. companies at substantial competitive disadvantage.

The agencies must further consider key elements from a 2014 U.S. Citizenship and Immigration report: 72 percent of H-1B petitions approved that year were for workers between the ages of 25 and 34, while 45 percent of H-1B petitions approved in 2014 were for workers with a bachelor's degree, 43 percent had a master's degree, 8 percent had a doctorate, and 4 percent were for workers with a professional degree. About 65 percent of H-1B petitions approved in FY 2014 were for workers in computer related occupations. The median salary of beneficiaries of approved H-1B petitions was \$75,000.

To characterize H-1B workers as low skilled or low paid without appropriate, impartial study is likely to be highly detrimental to our national interest. There are, broadly speaking, three types of agency actions that are implicated under the executive order.

### Substantive rules

Existing substantive rules cannot be rescinded or amended without mandated procedures including inviting input from all interested parties. The rulemaking process would require the agencies to carefully review all available or required data. These rules currently provide the most assurance of continuity to U.S. businesses.

### Interpretive rules

Unlike rules that are substantive, interpretive are much easier to amend or repeal. As the Congressional Research Service points out “[a] new President can also immediately direct the heads of executive branch agencies to withdraw discretionary directives and guidance documents that were issued by an executive agency.” The CRS notes that it would be easy to repeal or amend “agency policy statements, interpretive rules, guidance documents, letters ... not issued pursuant to the notice and comment rulemaking procedures.”

Such abrupt and ill-advised changes in policy are by far the biggest danger. Legally, these changes may be minor, but they seriously affect the stakeholders. Several policy actions taken by agencies over the last decade have had deep and sudden impact on a large number of stakeholders.

### Suggesting reforms

The executive order requires the agencies to suggest reforms. Agencies must ensure proper consideration and assessment of input from stakeholders. Overarching protection against action without

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consideration is available because many of the H-1B provisions are mandated by statute and cannot be changed without legislative action.

Even if change in key policies and immediate harm to the H-1B framework and to the employers is unlikely, the risk of imminent harm is itself a deterrent. This year the number of H-1B filings declined for the first time in five years. Reportedly, the number of foreign students applying to American universities has also declined.

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