

# View: Republicans attempt another shot at H-1B and OPT

## Synopsis

According to the U.S. Bureau of Labor Statistics, the number of job openings has increased to a record 11.0 million. The 27 million small businesses, responsible for almost 50% of the GDP, are the most severely affected. They cannot find workers. A Bill like this would destroy them.



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Like many [immigration](#) bills introduced by the Republicans, the latest introduced in the House of Representatives, the American Tech Workforce Act of 2021, is no more than an attempt to redress a wrong that has never been impartially studied, far less established.

At the heart of the Bill is the perception articulated by its Republican author: "Big Tech is setting aside some of the most lucrative and valuable career opportunities in America and giving them exclusively to foreign guest workers. They're cutting out Americans to save a few bucks." There is no evidence for these assertions. Further, if the target of the Bill is "Big Tech" (notoriously not a friend of the Republicans), why are there no exemptions for small businesses and for businesses that are not related to technology - health care, for instance?

The author of the Bill, Representative Jim Banks, notes that his "bill is part of a Republican Study Committee initiative to hold [Big Tech](#) accountable." The link in this sentence brings up an "issue page" dominated by the Republican call to end the censorship. There is little doubt the Bill is designed to punish the technology industry for imposing control over statements that range from misleading, half true, all the way through to horrendous lies. That these controls are found objectionable by the Republicans only, and a president of the nation from their party is banned from social media, bears witness to the quality of their rhetoric.

The American Tech Workforce Act (in its four, ill-thought-out sections) purports to tilt the playing field in favor of the American workforce. Is this just a Bill without a just cause? Let us examine the data.

The current rate of U.S. unemployment in the Professional, Scientific, and Technical Services is 2.4%. A rate of 4-5% is considered full employment by most economists. Inflation is at 6.8%, the highest level in almost 40 years, and the Federal Reserve Board has acknowledged that it is partly being fueled by a lack of workers. CNBC has noted: "Economists say many people retired and fewer immigrants coming into the U.S. are two factors behind the labor shortage." According to the U.S. Bureau of Labor Statistics, the number of job openings has increased to a record 11.0 million. The 27 million small businesses, responsible for almost 50% of the GDP, are the most severely affected. They cannot find workers. A Bill like this would destroy them.

*The Bill after making several "findings" without any study and at least one of which is actively misleading:*

- Creates a wage floor for [H-1B](#) visas set at the higher of the annual wage last paid to an American worker "who did identical or similar work" in the past two years or \$110,000 (adjusted for inflation). I note that the phrase "similar work" is especially vague as are many of the existing H-1B regulations creating penalties without particularization of conduct. The Bill is also silent on how to establish the wages for any newly created jobs.
- Note also that the U.S. Department of Labor had to back off its attempted salary flimflam started under the Trump administration, but ultimately withdrawn in litigation. The flaws in DOL's attempts were many as pointed out in a successful lawsuit against the DOL, including that the regulation: "arbitrarily and capriciously requires employers to pay entry-level H-1B employees as if they had master's degrees, even though a bachelor's degree or equivalent is the minimum qualification for H-1B classification; irrationally sets the minimum salary for "entry-level" employees in an occupation as the 35th percentile of wages received in that occupation, meaning that "entry level" H-1B employees must in fact be paid more than 35% of workers; bases a key aspect of its reasoning on a district court case that had been explicitly overruled by the Ninth Circuit by the time the Rule was issued; and fails to meaningfully respond to comments that demonstrated, with empirical data, that the DOL Rule's wage levels are actually a complete mismatch with the "prevailing wage" they are nominally supposed to approximate..." It is quite obvious that the Bill has been assembled with little understanding of the issues, and even lesser deliberation.
- Eliminates all types of Optional Practical Training programs for foreign students. The [OPT](#) program too has been the subject of extensive litigation and held up by the courts. Since the Bill can find no rational support for a key

educational program that provides work opportunity, it notes instead that the “Optional Practical Training program functions as a tax break for employers who do not employ Americans, and actively incentivizes such.” If that indeed is the reason, a minor revision in the tax regulations should fix that problem.

- Limits the ability of end clients (of all sizes, small or big business) to contract with third-party companies by limiting the maximum validity period of the H-1B to 1 year.
- Eligible H-1B applications are awarded based on the highest bidder. There is no description of what this bidding process would compare as baseline wages, nor is there any exception for small businesses.

Looking at this Bill, one is left with the clear conviction that this is just a cartoonish Bill to harvest votes, looking for a cause that has not been shown to exist in the empirical world.

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