

Comments to the text of ‘Strengthening America’s Workforce Act’

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Updated January 20, 2020

Background

In the analysis below, we assess the proposed text of the ‘Strengthening America’s Workforce Act’ (hereafter, ‘SAWA’) both conceptually and with respect to specific wording, and also in comparison to a market-based visa (MBV) system.

Summary Findings

While SAWA commendably liberalizes workforce visas, the Act will expose US labor to politically unacceptable levels of competition. With uncapped visa issuance, the visa fee and the tax rate, at \$2,500 and 10% respectively, are set much too low. As a result, visa volumes will be too high and the pressure on US wages in certain sectors will be intense. In addition, although SAWA will end the black market in domestic labor and close the southwest border, it will do so by effectively deporting the undocumented immigrant community and replacing Latin American labor principally with even lower cost labor from East and South Asia, as well as from Africa. As such, SAWA will struggle to gain acceptance either on the right or the left and has a high risk of summary rejection similar to the fate of the Kushner Plan.

Overall, while the sentiment behind the initiative is admirable in many respects, it is too ambitious, both in mixing H1 and H2 visa types, and in attempting to be global in scope.

Overview

The Strengthening America’s Workforce Act seeks to introduce a new program to facilitate incremental work visas of both the H1 and H2 class to nonimmigrant workers (‘NIWs’). Visas will cost the greater of \$2,500 / year or 10% of a contractually offered annual wage. Visas are undifferentiated between H1 and H2 classes. Visa fees must ultimately be paid by the employer.

The number of visas is uncapped; however, to the extent the incremental demand is greater than approximately 500,000 incremental visas /year, the price of the visa will be adjusted pro rata up with the excess over the 500,000 limit, to a maximum of 100%, to be reduced to the original level when issued visas fall below the approximately 500,000 level.

Visas can be renewed annually, and after ten years can be renewed on a five year basis. The NIW visa provides no access to US social welfare programs, although it allows the bringing of spouses and minor children and presumably allows minors access to public education, school lunch programs, and healthcare – entitlements currently enjoyed by the unauthorized children of undocumented immigrants.

The Market Size

How big is the market for the NIW visa? If we limit the market to the emerging economies worldwide, then the gross addressable market is 6.4 billion persons. This, however, we have to adjust for income, age, workforce participation, location and propensity to migrate to the US. After these adjustments, we estimate the potential market at just under 50 million persons who could file applications in the first year of the program's operation.

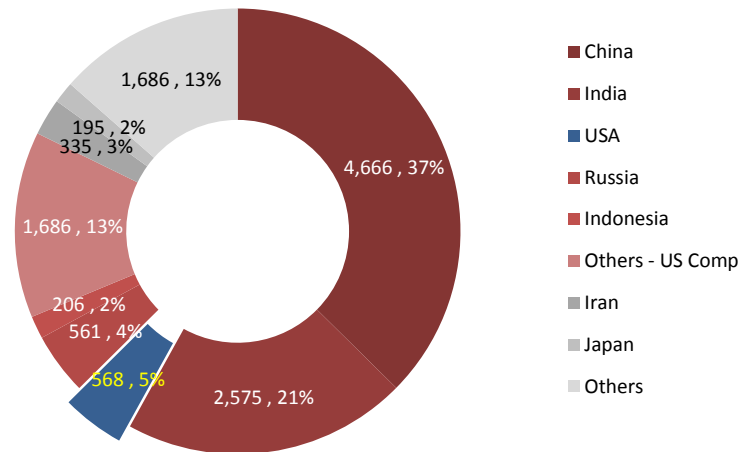
The key is getting a job offer. At present, the Bureau of Labor Statistics' JOLTS survey reports 7.3 million open positions in the US. Of this, we calculate approximately two million are in the unskilled, manual labor class suitable for non-English speaking migrants. Perhaps this many again would be available in jobs requiring English language and numeracy, but not advanced technical skills. The remainder would probably fall into the skilled class. The first year could see well over one million visa applications.

H1 Class

In year one, the number NIW visas in the H-1B class is likely to be multiples of 85,000 H-1Bs currently issued. Boeing Corporation, for example, out-sourced code writing to an Indian firm who paid programmers as little as \$9 / hour. These workers could be freely imported into the US under NIW rules. Assuming that they require \$20 / hour to make up for the higher cost of living in the US, their total cost to employers, including FICA and visa costs, would amount to less than \$50,000 / year. If the visa doubling provision kicked in, the cost would rise to only \$53,000. In other words, skilled Indian STEM professionals could be brought to the US in unlimited quantities at a cost of perhaps 60% of the comparable US wages. This would have the effect of putting STEM wages under continuous pressure throughout the country, in-sourcing the Asian competition which used to be out-sourced.

One metric by which to assess the impact of this kind of liberalization is the distribution of STEM degrees around the world. The US issues more than half a million STEM degrees every year. However, this is a fraction of the world's total. China and India issue twelve times as many. In all, some twelve million STEM degrees are conferred annually. Of these, about 10 million are in countries materially below the US income level. Thus, opening the market to international STEM graduates would have the effect of exposing US STEM graduates to competition seventeen times the size of the domestic market, while limiting protection to a thin 10% – roughly \$4,000 – wage differential and the limits of the imagination of company management in articulating a compelling need for foreign graduates, almost all of whom would covet the opportunity to work in the US.

Recent Graduates in STEM Subjects (Thousands)



Source: [The Human Capital Report 2016; WEF](#)

Household Help Sector

The maid, nanny and cook market could prove large indeed. In India, household help could be obtained for \$0.50 / hour. In Bangladesh, it costs \$0.13 / hour. An American home owner who provides room and board could have a maid or cook for less than \$400 / month, including the visa fee. (No one will ever know how much the home owner actually pays their live-in help.) This could be a market of perhaps 5-10 million incremental migrants and has the potential to re-cast large swaths of the household sector and re-define American culture.

Offer Shops

The limiting factor for the 50 million migrants willing to move to the US will be the availability of a job offer. Put another way, SAWA does not provide a means for a migrant to enter the US speculatively to look for a job. Given that tens of millions of people will be shopping for a solution to this problem, no doubt 'job offer factories' will spring up, with South and East Asian entrepreneurs looming large. These will act as the successor organizations to the Mexican cartels. They will sponsor migrants for fees ranging \$3,000 - \$20,000 – as they do now – for which they will issue a job offer. The migrant, upon accepting the offer, will stay a minimum period of time with their employer of record to try their luck in the US market. That is, such visas will almost certainly have a speculative component of those who want to come to the US but lack the connections for a formal offer. As they do today, these migrants will pay cash to intermediaries for access to the US market, which they hope will convert into a legitimate offer of work over time.

Refugees and Asylum Seekers

These offer shops will also sell visas as an alternative means to access the US for asylum seekers and other refugees. SAWA permits the bringing of spouses and children, allowing entire families to emigrate to the US. For \$2,500, for example, a Sudanese refugee family could enter the US, thereby avoiding the

risk of death, torture, imprisonment and starvation for all involved. Paradoxically, while the current asylum crisis encourages economic migrants to pose as refugees, the effect is likely to be just the opposite in many cases in an NIW system. Those living in war-torn and famine-struck regions like Sudan and Somalia will have every incentive to obtain a work offer from the US, and an industry will spring up to serve this need. Once here, refugees will stay, with papers or without, with work or without. At a minimum, their children will attend public school and be fed (in sanctuary cities, if nowhere else) and migrant parents will bid in their labor at rock bottom wages to the black market, if that is required to cling to their position in the US. Whatever risks and hardships they may have to endure in the US will be infinitely better than delivering their families to harm in their home countries.

However laudable opening the US to such refugees may be, it will have the effect of internalizing to the US material issues associated with dislocated regions, most particularly, north and sub-Saharan Africa and the Middle East. Put another way, the NIW will have the effect of redirecting some refugee flows from Europe to the US.

Mexicans and Central Americans

The impact of SAWA on both the resident Hispanic undocumented community and migrants coming over the southwest border will ultimately prove catastrophic.

Undocumented residents and illegal migrants are excluded from participation in SAWA under Title 8 Sec 1182. Therefore, they will be prohibited from legally competing with incoming migrants.

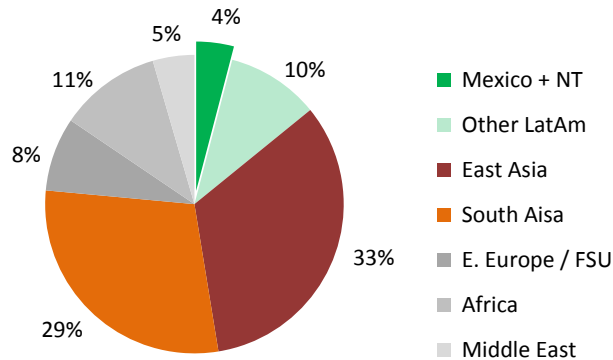
Second, although we tend to consider Mexicans and Central Americans to be poor, they are in fact closer to middle income countries. For purposes of comparison, the table below shows hourly wages in dollar terms for unskilled labor in selected countries:

Mexico (north)	\$2.50
Honduras	\$1.00
India	\$0.50
Bangladesh	\$0.13

Northern Mexico's unskilled wages are more than twice those of Central America, a key factor explaining why undocumented Central Americans have been steadily replacing Mexicans in the US for the last decade. (At a wage of about \$3.30 / hour for unskilled labor, the incentive to come across the border illegally is largely extinguished.)

But note that wages in India are only half those of Central America, and those in Bangladesh are only 1/8th of those of Honduras. And English is widely spoken in Bangladesh. This would perhaps not matter if populations were of similar size, but our analysis suggests that, allowing for relative population size, geographic location, income differences and propensity to migrate, two-thirds of visas issued under SAWA are likely to go to South and East Asia, versus only 4% which go to Mexico and the Northern Triangle countries.

**Strengthening America's Workforce Act
Prospective Share of Visas Issued by Region**



Source: Princeton Policy analysis based on IMF data

Legal migrants under NIW would ostensibly be protected by minimum wage and health and safety laws. Notwithstanding, history is replete with stories of migrant exploitation, including withheld wages, demands for uncompensated overtime work, and poor working conditions. Markets have a tendency to assert themselves regardless of legislative intent. Circumventing laws could be as easy as making employees rebate a share of their wages to their employer.

We can compare the economics of an Indian NIW under SAWA to a Mexican laborer. The Mexican's relocation wage is about \$6.50 / hour. A comparable Indian's relocation wage – with a valid NIW visa – is \$4.25 / hour. For a Bangladeshi, it is \$3.35 / hour. Thus, a legal Bangladeshi would be willing to accept half the wage of a comparable Mexican. For the millions of Mexicans who have lived in the US more than a decade – and whose budgets have expanded proportionately – the differential will be even more extreme.

SAWA will achieve over a decade what fifty years of enforcement policy could not: deporting millions of undocumented immigrants. If employers can hire unlimited quantities of legal migrants from countries with wage levels a fraction of Latin America, unauthorized Hispanics will be squeezed out of the country for lack of employment.

Even a doubling of the \$2,500 fee to \$5,000 does not fundamentally change the picture, with legal South Asians still willing to work at 75-85% of the Mexican relocation wage before considering that South Asians often speak English.

Fiscal Burden

By allowing in spouses and children of NIW migrants, the US would be assuming the associated costs of these children, much as it does today with illegal immigrants. These cost taxpayers approximately \$15,000 per year in education, feeding and health costs per child, the current national average, and \$25,000 / year in the high-cost coastal states.

We could further assume 1.3 children per NIW visa holder and approximately 500,000 incremental visas are issued every year. In Year 1, after offsetting visa fees, FICA and income taxes from visa holders, the net taxpayer burden for NIW children would amount to \$4 bn, rising to \$50 bn dollars in Year 8. This is quite a sum of money, much of it carried by local taxpayers in the form of property taxes.

This fiscal burden has nothing to do with the merits of migrants, and everything to do with the progressive nature of the taxation system in the US. Taxes from the well-to-do pay for services consumed by lower income groups. Incoming migrants will by and large fall into the lower income groups, or at least lower income tax brackets.

End Illegal Immigration

SAWA will end illegal immigration, close the southwest border, and materially deport undocumented immigrants. With an unlimited supply of low cost legal labor, employers over time will migrate to NIWs to fill their employment needs. This will have the effect of closing the southwest border – migrants will have little to gain coming across undocumented when employers can hire cheap documented labor. When they do this, sources of employment will progressively dry up for unauthorized residents, and the great majority will be forced out of the US, most to their countries of origin. From the conservative perspective, this would be a positive, with the caveat that the current undocumented population would be replaced by a much greater number of migrants from even poorer countries.

Drain the Emerging Countries' Brains

By materially opening the US labor market to citizens of foreign countries, and by implementing a program which emphasizes cost-based competition, the US will become a magnet for some of the most talented and accomplished people the emerging economies produce. While SAWA's proposed degree of openness is unlikely to be tolerated by the US public, were it, the US would capture an amazing share of the world's talent and set itself up for yet another golden age built by the hands of immigrants.

Economic Analysis

As we have stated before, a price-based visa system will not work properly unless the US government claims the entire excess migration premium (EMP), that is, the difference between the US prevailing wage and the wage the migrant requires to come to the US, absorb higher US living costs, and a premium to make it worth his while to leave home.

Our analysis suggests the EMP for unskilled Mexicans is about \$3.50 / hour, or about \$7,200 / year. In the case of H1 visas, we calculate the value around \$17 / hour or \$35,000 - \$40,000 / year, representing an 85% tax rate on the Relocation Wage (an effective 45% tax rate on gross wages). These numbers are well in excess of those proposed in SAWA, and it is the failure to impose these levels, in the absence of a hard cap, which leaves the incumbent US labor – whether legal or undocumented – so highly exposed to competitive sources of labor supply close to twenty times the size of the respective US domestic market.

Comparing SAWA to an MBV System

We designed the MBV system specifically to avoid the pitfalls of SAWA. Specifically:

- The number of participating countries is limited to four: Mexico and the Northern Triangle. This has the effect of allowing the program to deal only with H2 class visas, and only in reasonably homogenous – and from the US perspective — manageable countries
- We deliberately excluded China, India, *et al* because they are too large for the US to easily digest and because they represent a heterogeneous source of H1 and H2 visas
- The MBV system is geared to solve near-term pressing problems, notably closing the southwest border and ending the black market in domestic labor. While SAWA will also achieve this goal, it is not a stated intention, and will probably take a longer period of time.
- MBVs are not geared to deport anyone, and therefore can find acceptance from Senators Collins and Murkowski and on to the left. SAWA promises social trauma to key Democratic constituencies and will fail with the left for that reason.
- The market sets the visa price in the MBV system, thereby solving the excess migration premium (EMP) issue which bedevils the SAWA approach.
- The MBV system is migrant-driven, not employer-driven. By putting the migrant in the driver's seat, we avoid the problem of 'offer shops' and the need to demonstrate compelling need for foreign workers. In our system, we do not care whether the migrant works or not. It's \$20 / day either way. They are welcome to come and stay and/or work – at their own discretion – as long as they want whenever they want for whomever they want: It's \$20 / day.
- MBVs are not an unlimited system. They are a price-managed system, but within that, the visa volumes can be set anywhere one likes on a daily basis. In the worst of cases, visa numbers are set too low and the black market reappears to an extent, but control over visa issuance in aggregate numbers (but not in designation of specific individuals) is always maintained. The lack of this provision will undermine SAWA, even as a hard cap would introduce other problems.
- MBVs do not vastly increase the number of foreigners in the country. True, as many as 500,000 visas would be needed one-time to cover the transition to a legal market, but otherwise market expansion would likely be held to around 200,000 visas per year, not much more than under business-as-usual circumstances.
- MBVs can be run as a profit center. The revenues per visa are much higher, and MBVs actively discourage the bringing of children. This problem can be finessed because the affected markets are relatively close – Mexico to Central America — which allows workers to go home seasonally. SAWA looks to be a major fiscal cost center.
- SAWA does not gain control over governance in participating countries. An MBV system does, because it deals specifically with the governance issues of Mexico and the Northern Triangle.
- MBVs will open material business opportunities for US companies in participating countries. SAWA lacks related language.

Overall, although an MBV program is more market-driven than SAWA, in practical terms, it has many of the virtues and very few of the weaknesses of SAWA, and was designed specifically to meet stakeholder needs across the ideological spectrum.

**Comments to the proposed text of ‘Strengthening America’s Workforce Act’,
Version dated July 15, 2019 (8:09 p.m.) by Princeton Policy Advisors, version 1.3**

Below are our specific comments related to the text of the proposed Act.

VALID JOB OFFER.—The term ‘*valid job offer*’ means a genuine offer of full-time employment from an employer in the United States with an employer-provided health insurance plan and at an agreed upon legal wage specified in the offer in accordance with state or federal law.

(E) if a principal applicant under section 101(a)(15)(W)(i), presents clear and compelling evidence of a valid job offer from an employer in the United States.

Are only employers with health plans allowed to hire under this program? Do they have to offer, and does the migrant have to accept, the employer’s health insurance as a condition of the program? Or does the employer just have to have health plans for some employees? What if the applicant does not want the employer’s health plan?

Does the migrant have to accept the offer of employment, or only receive an offer?

Does the DHS have to approve the work contract? Or does the employer just have to disclose the wage? What is ‘compelling evidence’? Can a green card holder from India offer his migrant cousin a ‘consulting and marketing position serving the distinct social and cultural needs of the Indian community in the US Northeast’?

H1 and H2 visa background checks appear to be different today. Because the dollar values involved are small, H2 background checks are cursory and appear to come down to whether the employer is on the approved list. By contrast, H1 background checks can take several months, are quite expensive, and involve detailed explanations about the role of the employee and the why no American can fill that role. Which test will NIW visas use?

“(B) AT WILL EMPLOYMENT.—A workforce nonimmigrant, or an employer of such a nonimmigrant, may terminate employment at any time for any lawful reason.

Is this a condition of employment? Can workers under this program have no other termination conditions? No fixed term contracts, no arbitration? If the migrant has to have an offer of full employment – is this only upon gaining the visa, or necessary to maintain the validity of the visa? – does this suggest an asymmetric situation, ie, the employer can fire the worker anytime, but the employee loses legal status if they quit at will?

“(B) EMPLOYER REPAYMENT.— Each week that a workforce nonimmigrant is employed, the employer shall pay to such nonimmigrant, in addition to the wages in the valid job offer, an amount equal to the amount described in paragraph (4) divided by 52.

Consider text modification: “Each ~~week~~ [pay period] that a workforce nonimmigrant is employed, the employer shall pay to such nonimmigrant, in addition to the wages in the valid job offer, an

amount equal to the amount described in paragraph (4) ~~divided by 52~~ [multiplied by the number of days in the pay period divided by 360, but on an annual basis in no case more than sum[s] paid by the nonimmigrant as determined in paragraph (4). This payment shall constitute a repayment of advances paid by the nonimmigrant and not taxable income.”

Most companies pay twice monthly or every two weeks. They would ordinarily want to pay on their own pay schedule. Further, the liability to the employer is the maximum of the visa fee for a given year.

“(2) WORKFORCE NONIMMIGRANT STATUS APPLICATION — “(A) IN GENERAL — An alien who is not inadmissible or deportable, whether inside or outside the United States, may submit an application to the Secretary for status as a work-force nonimmigrant.

Consider change to “An alien who is not inadmissible or deportable under Title 8 Sec 1182, including subsection (6), any alien present in the United States without being admitted or having falsely represented himself or herself to be a citizen of the United States for any purpose or benefit, may submit an application...”

“(ii) the spouse of an alien described in clause (i) and the children of such alien who are under the age of 21 on the date of the application for admission, if accompanying or following to join the alien.”

The clause appears to say that a migrant can bring their spouse and children. It appears the US government can collect \$2500 from a migrant whose children will cost, in the State of New Jersey for example, \$25,000 in public school tuition, school lunches and healthcare.

WORKFORCE DEVELOPMENT TRUST FUND.—The term ‘Workforce Development Trust Fund’ means the account in the Treasury of the United States described in section 24 101(a)(53)

By our calculations, SAWA would generate \$1.6 bn in revenues in the first full year, rising to \$13 bn in Year 8. Is this all for workforce development? Assuming our calculations are correct, the Federal government spends \$8.7 bn on workforce and related education. How do visa fees relate to that?

<https://www.nationalskillscoalition.org/federal-policy/body/FY2020-Presidential-Budget-Request-comparison-chart.pdf>

https://my.vanderbilt.edu/carolynheinrich/files/2016/06/Workforce-Development_Heinrich-June-2016.pdf

(C) NOTIFICATION.—The Secretary shall establish an electronic system for employers and employees to record the employment and termination of employment of a workforce non-immigrant.

Could this be simple email, or a brand new suite of national, enterprise level software which will take a long time to implement? And if it is the latter, is the roll out of the program contingent upon the software being installed and operational?

“(ii) the number calculated in the prior fiscal year times the percentage increase or decrease in the Gross Domestic Product of the United States in the prior fiscal year...”

Real or nominal GDP? Real would be about 2% increase per year, nominal would be around 4.5% increase per year.

(c) USE OF FUNDS.— (1) STATE ALLOCATIONS.— During each fiscal year, the Secretary of Education shall allocate the funds in the Workforce Development Trust Fund received in the prior fiscal year to each State (as defined in section 101(a)(36) ...

Does this constitute an increase in workforce funds, or merely an alternative source of funding, ie, the level of spending will remain largely unchanged, but the source of funds will migrate to the Workforce Development Trust Fund and away from general tax revenues?

“(C) ENFORCEMENT OF LIMITATION.—In any fiscal year in which the number of aliens admitted for the first time to the United States as workforce nonimmigrants in the prior fiscal year exceeded the number calculated under sub-paragraphs (A) or (B) in that year, the amount required under paragraph (4)(A)(i) shall increase by the percentage that the number of aliens exceeded the number calculated under such subparagraph up to 100 percent of such amount until such year as the number of aliens admitted in a fiscal year is below the number described in such subparagraphs.”.

This should be clarified that 500,000 additional visas can be issued every year, and not just one time. The visa value should also be clarified as being increased only over the base year and not compounded year after year.

Also needs to be clear about whether all visas will increase in cost, or only new visas issues. For example, if one hired a farm worker under an assumption of a \$2,500 cost, and that doubled to \$5,000 the following year for the same worker, both the worker and the employer would be unhappy.