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Claims of labor shortages in H-2B industries don't hold up to scrutiny

President Biden should not expand a flawed temporary work visa program

Key takeaways:

- The Biden administration is now considering whether to increase the number of visas in the H-2B program—a temporary work visa program for lower-wage jobs intended for use when there are labor shortages—and is under significant pressure from business groups to roughly double the size of the program.
- The economy, however, is showing no signs of labor shortages in H-2B jobs. In fact, the opposite is true: The latest labor market data show very high unemployment rates in major H-2B industries as well as nearly 5 million unemployed workers in a host of occupations for which H-2B jobs are commonly approved.
- The H-2B program's current rules make it easy for employers to game the system when it comes to recruiting unemployed workers. And the program is flawed, rife with abuse, and in desperate need of reform, as numerous reports and investigations have proven, calling into question the credibility of the program.
- President Biden has the authority to direct the leadership at the Departments of Homeland Security and Labor to reject an increase the H-2B program in 2021, based on the fact that there are no labor shortages in H-2B industries that would justify such an increase. He should instead push for major reforms of the H-2B program that would ensure domestic recruitment efforts become legitimate and that migrant workers will be treated and paid fairly and have a path to citizenship.

The Biden administration will soon decide whether or not to increase the number of temporary work visas known as H-2B, and is being pressured to do so by a number of industries, setting up an early test of what President Biden's priorities will look like when it comes to employment-

based migration policies.

H-2B is one of the U.S.'s many temporary work visa programs, one that's intended to be used when employers face labor shortages in lower-wage jobs, with the most common occupations including landscaping, construction, forestry, seafood and meat processing, traveling carnivals, restaurants, and hospitality.

But the reality is that the latest labor market data show very high unemployment rates in major H-2B industries, as well as nearly 5 million unemployed workers in a host of occupations for which H-2B jobs are commonly approved. Despite this, business interests are lobbying to increase the number of H-2B visas as much as possible. At this moment, a request to increase the number of H-2B visas is odd, to say the least, considering the current state of the labor market in major H-2B industries, all of which are seeing high levels of unemployment and joblessness.

In addition, the H-2B visa program is flawed. H-2B—like other temporary work visas programs—is rife with abuse and in desperate need of reform, because it fails to ensure that migrant workers are paid fairly and treated with dignity. And the program's current rules make it easy for employers to game the system when it comes to recruiting unemployed workers, calling into question the credibility of the program.

This blog post assesses the evidence about labor shortages in H-2B industries, finding that an increase in the H-2B program is not warranted for fiscal year 2021.

But first, some background.

The H-2B program has an annual numerical limit of 66,000, but at the end of last year, Congress gave the executive branch the discretionary legal authority to roughly double the size of H-2B.

This occurred in December 2020, while the United States was in the midst of an economic crisis caused by the coronavirus pandemic and which still continues today—when members of Congress passed appropriations legislation to fund the government in fiscal year 2021 that was ultimately signed into law by President Trump. That appropriations law included, for the sixth year in a row, language giving the executive branch the legal authority to expand the H-2B program during the current fiscal year. The Democrats and Republicans in Congress who supported the appropriations language to expand H-2B failed to specify the level of increase they wanted for the H-2B program—passing the buck instead to the executive branch, by directing the Department of Homeland Security (DHS), in consultation with the Department of Labor (DOL), to determine how many additional H-2B workers are appropriate, if any.

This is not an ideal way to make immigration policy. The *New York Times* once made this exact point about H-2B in an editorial—arguing that the program is so problematic that Congress should not expand it with budget riders. Nevertheless, members of Congress presumably did this because employers and corporate lobbyists claimed—as they do every year—that 66,000 low-wage work visas were not enough to fulfill their demand for H-2B workers.

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Despite the historic levels of disruption and unemployment in H-2B industries, some news outlets like the *Wall Street Journal* have recently helped employers make their case by **printing** complaints about labor shortages—highlighting employers who said they were unable to find willing workers to hire. But the *Journal* failed to cite the available data showing what the unemployment rates are in the industries in question, some of which are double and triple the rates at the same time a year earlier, belying the veracity of the employers' claims.

The Biden administration will soon decide whether to expand the H-2B program

On February 12, United States Citizenship and Immigration Services **announced** that the number of applicants for available H-2B visas had already surpassed the number available for fiscal year 2021, revealing that employer demand for H-2B was as high as ever despite the ongoing economic recession the United States is mired in.

The Biden administration is now considering whether or not to acquiesce to the demands of industry lobbyists on H-2B, and by how much. While the annual numerical limit for the H-2B program is 66,000, the fiscal 2020 congressional appropriations law gave DHS the legal authority to temporarily increase the annual limit of 66,000 visas by up to 63,500 additional visas. This would be a one-time increase for 2021, a vital year for recovery in pandemic-affected industries.

High unemployment rates in H-2B industries prove that claims of labor shortages are baseless

When it comes to determining labor shortages in the H-2B context, the H-2B **statute** sets a *national* standard for the protection of U.S. labor standards, clearly stating that H-2B workers can only be hired “if unemployed persons capable of performing such service or labor cannot be found in this country.” In order to determine whether there are “unemployed persons” in the United States capable of doing a job before an employer can hire an H-2B worker—in other words, to determine if a shortage exists—employers *should* be required to offer at least the national or local average wage for the occupation (whichever is higher), recruit U.S. workers nationwide, and offer to pay for housing and transportation for both U.S. and H-2B workers. Under the current H-2B recruitment and wage regulations, that's not the case, and the result is that DOL is approving H-2B jobs without taking into account the full context of the labor market for H-2B occupations.

Since the H-2B statute sets a national standard, it's appropriate to look to national-level data on unemployment in major H-2B occupations to determine if there are indicators of a shortage. In a nutshell, DOL's unemployment data from the Bureau of Labor Statistics (BLS) paints a disastrous picture of mass joblessness for most lower-wage jobs. The overall number of jobs is

still **9.5 million fewer** than a year ago, and the lowest-wage sectors in the economy **lost 8 million jobs** in 2020. Many of them were in major H-2B occupations and industries; what's occurring in those industries is exactly the opposite of a labor shortage.

But let's take a more targeted look at major H-2B occupations. **Table 1** lists the top 10 H-2B occupations in 2020, according to data from the DOL's Office of Foreign Labor Certification, along with the number of H-2B jobs certified in each occupation (the top 10 accounted for 82% of all certified H-2B jobs). The next columns show the unemployment rate for February 2021 in the broader industry that each occupation falls within, according to North American Industry Classification System (NAICS) codes. The following column shows the unemployment rate a year earlier, in February 2020, and the final column shows the percentage point change in the unemployment rate in each industry from February 2020 to February 2021.

TABLE 1

There is high unemployment in all top 10 H-2B jobs

Unemployment rates by industry and year-over-year increase, February 2020 and February 2021

H-2B rank	Occupation	H-2B jobs certified in 2020	Industry unemployment rate, Feb 2021	Industry unemployment rate, Feb 2020	Change in industry unemployment rate, Feb 2020 to Feb 2021
1	<i>Landscaping and Groundskeeping Workers</i>	73,948	13.5%	8.2%	+5.3
2	<i>Forest and Conservation Workers</i>	11,117	10.5%	11.0%	-0.5
3	<i>Meat, Poultry, and Fish Cutters and Trimmers</i>	11,059	5.4%	5.7%	-0.3
4	<i>Amusement and Recreation Attendants</i>	9,314	17.0%	4.7%	+12.3
5	<i>Maids and Housekeeping Cleaners</i>	9,256	16.5%	7.2%	+9.3
6	<i>Construction Laborers</i>	3,854	9.6%	5.5%	+4.1
7	<i>Waiters and Waitresses</i>	3,642	12.2%	5.7%	+6.5
8	<i>Cooks, Restaurant</i>	3,287	12.2%	5.7%	+6.5
9	<i>Laborers and Freight, Stock, and Material Movers, Hand</i>	3,057	8.9%	3.8%	+5.1
10	<i>Fast Food and Counter Workers</i>	2,510	12.2%	5.7%	+6.5
Total jobs certified in top 10 H-2B occupations in 2020		131,044			

Notes: Top 10 H-2B occupations correspond to the following North American Industry Classification System (NAICS) codes: The industry associated with Landscaping and Groundskeeping Workers is Administrative and Support Services (NAICS 561). The industry associated with Forest and Conservation Workers is Agriculture, Forestry, Fishing, and Hunting (NAICS 11). The industry associated with Meat, Poultry, and Fish Cutters and Trimmers is Food Manufacturing (NAICS 311). The industry associated with Amusement and Recreation Attendants is Arts, Entertainment, and Recreation (NAICS 71). The industry associated with Maids and Housekeeping Cleaners is Accommodation (NAICS 721). The industry associated with Construction Laborers is Construction (NAICS 23). The industry associated with Waiters and Waitresses; Cooks, Restaurant; and Fast-Food and Counter Workers is Food Services and Drinking Places (NAICS 722). The industry associated with Laborers and Freight, Stock, and Material Movers, Hand is Transportation and Warehousing (NAICS 48-49).

Source: EPI analysis of fiscal year 2020 disclosure data on H-2B labor certifications from the **Office of Foreign Labor Certification's Performance Data**. Industry unemployment rates available from U.S. Bureau of Labor Statistics (BLS), *Industries at a Glance, Industries by Supersector and NAICS Code* (various NAICS codes), March 2021. Unemployment rates based on BLS analysis of Current Employment Statistics and Current Population Survey data.

Eight of the top 10 H-2B occupations are in an industry with a much higher unemployment rate than it had in the same month a year earlier. Seven of the industries have unemployment rates that are in the double digits; half of them have an unemployment rate of 12% or above.

The biggest H-2B occupation by far every year is Landscaping and Groundskeeping Workers. In February 2021, the unemployment rate for the broader industry it falls under, Administrative and Support Services (NAICS 561), was 13.5%. A year earlier it was 5.3 percentage points lower, at 8.2%. Unemployment in Construction (NAICS 23), which is the broader industry for Construction Laborers—the sixth-largest H-2B occupation—came close to doubling this February compared with last year, going from 5.5% to 9.6%.

People working in restaurants and cooking and serving food represent another major H-2B occupation group. For example, Waiters and Waitresses, Cooks, and Fast-Food and Counter Workers all appear in the list of top 10 H-2B jobs. Considering how many restaurants and bars have closed either temporarily or permanently, perhaps it's no surprise that, as Table 1 shows, the unemployment rate in the industry it falls under, Food Services and Drinking Places (NAICS 722), at 12.2% was more than double the unemployment rate at the same time last year.

The fourth-largest H-2B occupation is Amusement and Recreation Attendants, corresponding to the Arts, Entertainment, and Recreation industry (NAICS 71). These workers are typically employed at amusement parks and traveling fairs and carnivals. Since many carnivals and amusement parks were closed in 2020 due to the pandemic, the unemployment rate in the industry more than tripled from 4.7% in February 2020 to 17.0% in February 2021.

Another main H-2B job every year is Maids and Housekeeping Cleaners; in other words, largely persons cleaning and maintaining hotel rooms. The industry this occupation is associated with, Accommodation (NAICS 721), was decimated over the past year, with hundreds of thousands of workers losing their jobs, including **98% of the membership** of a major union. Table 1 shows that the unemployment rate in the accommodation industry was 16.5% in February 2021, compared with 7.2% a year earlier in January 2020. That's an increase of more than 9 percentage points year-over-year—more than double the unemployment rate a year earlier. Despite this reality, Maids and Housekeeping Cleaners was the fifth-largest H-2B occupation in 2020.

Only two of the top 10 H-2B occupations were in industries that did not have a higher unemployment rate in February 2021 than they did in February 2020, but neither saw a sharp drop in the unemployment rate. There were 11,100 H-2B jobs certified for Forest and Conservation Workers, which corresponds to the Agriculture, Forestry, Fishing, and Hunting industry (NAICS 11). The industry was at 11% unemployment in February 2020, dropping 0.5 percentage points to 10.5% in 2021. No one can reasonably argue that there's a labor shortage in an industry with double-digit national unemployment.

The other occupation that did not see an increase in the industry unemployment rate—remaining virtually the same—was Meat, Poultry, and Fish Cutters and Trimmers, which corresponds to the Food Manufacturing industry (NAICS 311). Unemployment in Food Manufacturing decreased by 0.3 percentage points, from 5.7% to 5.4%. Some might argue that this decrease was evidence of a labor shortage, but the recent historical unemployment data reveals otherwise. The annual unemployment rate for Food Manufacturing averaged 4.8%

during the three years preceding the pandemic (2017–2019). The average unemployment rate in February during those three years was an identical 4.8%. While it's true that the labor market in Food Manufacturing was much tighter in February 2021 than in the other top H-2B industries, it was still more than half a percentage point higher than the average rate in 2017–2019.

There are at least 1.7 million additional people looking for work in H-2B occupations compared with the same month last year

An additional source of data gives us a sense of the number of workers who are unemployed in H-2B occupations and industries. **Table 2** is adapted from **Table A-30** in BLS's monthly Employment Situation Summary. It lists six broad occupations that cover some of the narrower occupations for which H-2B jobs are commonly approved, but one of the hardest-hit industries, hospitality, is not included. In just those six occupations, there were nearly 4.6 million unemployed workers in February 2021, compared with 2.8 million in January 2020, one year earlier. That means there were over 1.7 million *additional* unemployed people looking for work in just those six occupations than there were at the same time last year.

As noted above, the biggest H-2B occupation by far every year is Landscaping and Groundskeeping workers. In 2020, nearly 74,000 H-2B landscaping jobs were certified. Table 2 shows that the number of unemployed workers in the corresponding occupation of Building and Grounds Cleaning and Maintenance Occupations increased by 58% during the past year; nearly 630,000 are now looking for work.

The highly elevated unemployment rates and the large increase in the number of unemployed workers in H-2B occupations provides ample evidence to debunk the business community's claim that the United States is experiencing national-level labor shortages in H-2B jobs.

TABLE 2

There are nearly 4.6 million unemployed workers in six major H-2B occupations

Unemployed workers in selected H-2B occupations, February 2020 and February 2021

Occupation	Number of unemployed (in thousands)	
	Feb 2021	Feb 2020
<i>Total, all occupations, 16 years and over</i>	10,486	6,218
<i>Food preparation and serving related occupations</i>	1,041	518
<i>Building and grounds cleaning and maintenance occupations</i>	628	397
<i>Farming, fishing, and forestry occupations</i>	141	183
<i>Construction and extraction occupations</i>	1,003	604
<i>Production occupations</i>	579	448
<i>Transportation and material moving occupations</i>	1,166	682
<i>Total unemployed workers in selected H-2B occupations</i>	4,558	2,832

Notes: Numbers are in thousands. Updated population controls are introduced annually with the release of January data. Dash indicates no data or data that do not meet publication criteria (values not shown where base is less than 75,000). Effective with January 2020 data, occupations reflect the introduction of the 2018 Census occupational classification system, derived from the 2018 Standard Occupational Classification (SOC). No historical data have been revised. Data for 2020 are not strictly comparable with earlier years.

Source: Adapted from U.S. Department of Labor, “[Table A-30. Unemployed Persons by Occupation and Sex](#),” Labor Force Statistics from the Current Population Survey. Household data, not seasonally adjusted, March 5, 2021.

The recruitment requirements in the H-2B program are clearly inadequate

The H-2B statute, on paper, requires that employers first search for unemployed U.S. workers before hiring H-2B workers. But in practice, employers are able to get around lax requirements for recruiting unemployed workers.

Employers can use tricks to bypass the local workforce, for example, by the way they advertise H-2B jobs, as an investigative [report](#) from the *Washington Post* found. There’s also this [Buzzfeed News report](#), which found that employers will sometimes require “unusually stringent requirements” for local workers, including drug tests and unreasonable education and experience requirements. While in the past year virtually all of the recruitment for H-2B has moved online to a new DOL job portal, a number of questions remain about its effectiveness.

The recruitment requirements for H-2B remain minimal, enforcement is lax, and therefore employers can still easily game the system with impunity. That’s likely part of the explanation for how, in early 2021—despite the fact that unemployment in many of the top H-2B industries ranges from roughly 10% to 17%—DOL has certified many more H-2B jobs than the number of visas available under the annual cap.

The H-2B statute's national standard for the protection of U.S. labor standards during times of high unemployment means employers *should be* required to recruit nationwide for available U.S. workers and offer to pay for housing and transportation for both U.S. and H-2B workers willing to do the job. For example, if someone from Puerto Rico—a region with high unemployment—wants to work at a resort on Mackinac Island in Michigan, which has a small labor pool, or someone from Duluth, Minnesota, wants to work in a donut shop at the Outer Banks in North Carolina, employers should have to offer them free housing and transportation before being allowed to hire an H-2B worker. Otherwise, employers haven't effectively recruited nationwide. Under the current H-2B rules—where employers don't have to offer to pay for transportation and housing—the absurd result is that employers are able to use H-2B, a program intended for use during times of labor shortages, despite mountains of evidence showing extraordinarily high levels of unemployment in H-2B jobs.

The H-2B program does not protect the rights of migrant workers

One of the most important things to know about the H-2B program is that workers employed through it do not have equal rights. Most reasonable people can agree that migrant workers make vital contributions to the U.S. economy, and hiring them to fill labor shortages is a valid use of immigration policy, as many developed nations allow and facilitate. But it should go without saying that the workers who are hired in those instances deserve equal rights, fair pay, protections from retaliation, and a path to permanent residence and citizenship. Sadly, the H-2B program does not meet any of these standards.

Instead, the H-2B program empowers employers to legally exert an unusual amount of control over migrant workers, who often **arrive indebted** to the labor recruiters who connect them to jobs in the United States. H-2B workers are, in effect, captive, because their visa status is controlled by their employer. This means that if an H-2B worker isn't paid the wage they were promised or is forced to work in an unsafe workplace, the worker has a major disincentive to speak up or go to the authorities. Complaining can result in getting fired, which leads to becoming undocumented and possibly deported. It also means not being able to earn back the money that was invested in order to get the temporary job.

These problems, which are inherent in the H-2B program, are well-documented. There are numerous cases of **litigation**, **media reports**, **government audits**, and **studies** revealing how migrants employed through the H-2B program arrive in the United States with massive debt, are often exploited and robbed by employers, and even become victims of human trafficking. The H-2B's legal framework that leads to vulnerable H-2B workers ends up **degrading wages** and working conditions for all workers in major H-2B occupations.

The vulnerabilities of H-2B workers have been **especially on display during the pandemic**. For example, the Trump administration enacted emergency rules to allow employers to make it easier to hire H-2B workers and extend their visas if they were already in the United States. It was at least a tacit acknowledgement that H-2B workers were in so-called essential occupations and doing important work. However, the Trump administration failed to take any corresponding emergency measures to protect H-2B workers, including from employers who might act negligently or recklessly when it came to protecting the health of their

H-2B employees. The result was, for example, **reports** about H-2B workers being fired in retaliation for going to the hospital for a COVID-19 test and to seek medical care, and their employers threatening to report them to immigration authorities for doing so.

Instead of increasing the H-2B cap, President Biden should push for major structural reforms

President Biden has the authority to direct the leadership at DHS and DOL to simply say “no” to expanding the H-2B program in 2021, based on the fact that there are no labor shortages in H-2B industries that would justify such an increase.

Indeed, the available evidence shows unemployment in H-2B industries is much higher than normal. The Biden administration could use this moment instead to direct DOL to do more to assist employers in finding some of the 4.6 million unemployed workers who are seeking jobs in H-2B industries. President Biden should also send a message to the business community that a major reform of the H-2B program is long overdue and needs to move forward now, more than ever, so domestic recruitment efforts become legitimate and so migrant workers will be treated and paid fairly. The Seasonal Worker Solidarity Act, an H-2B reform bill **proposed** by Rep. Joaquin Castro (D-Texas), would do exactly that, by revamping the H-2B recruitment system and providing migrant workers with new protections, higher wages, and a path to citizenship.