

# **The H1-B Visa Program: A Primer on the Program and Its Impact on Jobs, Wages, and the Economy**

**By Allen E. Kaye**

Every year, U.S. employers seeking highly skilled foreign professionals submit their petitions on the first business day in April for the pool of H-1B visa numbers for which U.S. Citizenship and Immigration Services (USCIS) controls the allocation. With a statutory limit of 65,000 visa numbers available for new hires—and 20,000 additional visa numbers for foreign professionals who graduate with a master’s degree or doctorate from a U.S. university—in recent years demand for H-1B visa numbers has outstripped the supply and the cap has been reached quickly.

This fact sheet provides an overview of the H-1B visa category and petition process, addresses the myths perpetuated about the H-1B visa category, and highlights the key contributions H-1B workers make to the U.S. economy.

## **Overview of the H-1B Visa Category and the Petition Process**

### **What is the H-1B visa category?**

The H-1B is a temporary (nonimmigrant) visa category that allows employers to petition for highly educated foreign professionals to work in “specialty occupations” that require at least a bachelor’s degree or the equivalent. Jobs in fields such as mathematics, engineering, and technology often qualify. Typically, the initial duration of an H-1B visa classification is three years, which may be extended for a maximum of six years. Before the employer can file a petition with USCIS, the employer must take steps to ensure that hiring the foreign worker will not

harm U.S. workers.

- First, employers must attest, on a Labor Condition Application (LCA) certified by the Department of Labor (DOL), that employment of the H-1B worker will not adversely affect the wages and working conditions of similarly employed U.S. workers.
- Employers must also provide existing workers with notice of their intention to hire an H-1B worker.

Since the category was created in 1990, Congress has limited the number of H-1Bs made available each year. The current annual statutory cap is 65,000 visas, with 20,000 additional visas for foreign professionals who graduate with a master's degree or doctorate from a U.S. institution of higher learning .In recent years, the limit has been reached only a few days after the petition submission period began.

### **What is the annual H-1B visa “lottery”?**

Over the past several years, USCIS has received a greater number of petitions than there are visa numbers available because the annual cap for H-1B visas does not meet the current demand for high-skilled workers.

If the cap is hit during the first five business days, USCIS conducts a lottery to determine which employers' petitions for H-1B workers will be processed.

- From FY 2008 to FY 2019, the annual H-1B cap was reached within the first five business days on seven occasions
- Petitions are selected through a computer-generated random process in order to meet the cap of 65,000 for the general category and 20,000 for the advanced degree “cap

exemption.” USCIS first conducts the lottery for the 20,000 cap exemption category and any requests not selected are put back into the pool for the 65,000.

## **Understanding the Important Role that H-1B Workers Play in Our Economy**

In today’s labor market, foreign workers fill a critical need—particularly in the Science, Technology, Engineering, and Math (STEM) fields. Many opponents of the H-1B visa seek to pit native-born workers against their foreign-born colleagues. In reality, workers do not necessarily compete against each other for a fixed number of jobs.

The United States has created a dynamic and powerful economy, and foreign-born workers of all types and skills, from every corner of the globe, have joined with native-born workers to build it. Skilled immigrants’ contributions to the U.S. economy help create new jobs and new opportunities for economic expansion. Indeed, H-1B workers **positively** impact our economy and the employment opportunities of native-born workers.

### **How do H-1B visas impact wages?**

Despite suggestions to the contrary, the overwhelming evidence shows that H-1B workers **do not** drive down wages of native-born workers, with some studies showing a positive impact on wages overall.

- From the creation of the H-1B program in 1990 to 2010, H-1B-driven increases in STEM workers were associated with a significant increase in wages for college-educated, U.S.-born workers in 219 U.S. cities. A one percentage point increase in foreign STEM workers’ share of a city’s total

employment was associated with increases in wages of 7 to 8 percentage points paid to both STEM and non-STEM college-educated natives, while non-college educated workers saw an increase of 3 to 4 percentage points.

- From 2009 to 2011, wage growth for U.S.-born workers with at least a bachelor's degree was nominal, but wage growth for workers in occupations with large numbers of H-1B petitions was substantially higher. For example, in the Computer Systems Design and Related Services category, there has been a 5.5 percent wage growth since 1990 and a 7 percent wage growth since 2009. In comparison, wage growth across all industries has been 0.8 percent since 1990 and 1.6 percent since 2009.
- On average, H-1B workers earn higher wages than employed U.S.-born workers with bachelor's degrees: \$76,356 compared to \$67,301, including in areas like computer and information technology, engineering, healthcare, and post-secondary education. When comparing workers of the same age cohort and occupation, H-1B workers earn higher wages than their native-born counterparts. Specifically, in 17 out of 20 age cohort and occupation groups, wages for H-1B workers are higher than non-H-1B workers.
- The median salary of H-1B workers (as measured in 2016 dollars) rose from \$69,455 in FY 2007 to \$80,000 in FY 2016. The median salary of all computer and mathematical
- workers (foreign-born and native-born) grew from \$73,979 to \$75,036 during the same period.
- Factors such as gender, marital status, and ethnicity play a larger role than citizenship or immigration status for wages in the tech and finance industries—industries that use a large number of H-1B visas. A worker's geographic region

also accounts for significant differences in wages.

### **How do H-1B workers impact U.S. employment rates?**

Research shows that H-1B workers complement U.S. workers, fill employment gaps in many STEM occupations, and expand job opportunities for all. The United States faces challenges in meeting the growing needs of an expanding knowledge-based innovation economy. Arguments that highly skilled, temporary foreign workers are freezing out native-born workers are rebutted by the best available empirical evidence.

- Unemployment rates are low for occupations that use large numbers of H-1B visas .For example, many STEM occupations have very low unemployment compared to the overall national unemployment rate. These low unemployment rates signal a demand for labor that exceeds the supply.

Source: Bureau of Labor Statistics and Current Population Survey.

- Research indicates that an increase in H-1B visas could create an estimated 1.3 million new jobs and add around \$158 billion to Gross Domestic Product in the United States by 2045.
- Conversely, research shows that the United States has missed out on the opportunity to create new jobs by limiting the number of H-1B visas to 65,000 per year. For example, estimates show that, had the U.S. government not rejected 178,000 H-1B visa petitions in computer related fields in the 2007 and 2008 visa lotteries, U.S. metropolitan areas could have created as many as 231,224 tech jobs for U.S.-born workers in the two years that followed.

### **Are the economic benefits of H-1B visas limited to Silicon**

## Valley or the tech sector?

Simply put, no. H-1B visas bolster innovation in the U.S. economy across America's heartland far beyond the technology firms in Silicon Valley. Although much research explores H-1Bs from a national perspective, there is a "geography of demand" across the United States, meaning that demand for workers in particular geographic areas often outweighs the supply of qualified workers in those areas. Moreover, although the use of H-1B visas in the high-tech industry garners substantial public attention, high-skilled immigrants play other crucial roles in the U.S. economy.

- 106 metropolitan areas across the United States had at least 250 requests for H-1B workers in 2010-2011. Demand for high-skilled workers is generally higher in metro areas where innovation industries flourish.

For example, H-1B demand is high in places like Columbus, IN; Durham-Chapel Hill, NC; Trenton-Ewing, NJ; Bloomington-Normal, IL; Ann Arbor, MI; Peoria, IL; Boulder, CO; and Fayetteville-Springdale-Rogers, AR.

- Although the presence of research universities accounts for H-1B demand in some of these places, private industry accounts for the intensity of demand in other areas. HTC Global, Wal-Mart, Merrill Lynch, Educational Testing Service, Caterpillar Inc., Credit Suisse, JPMorgan Chase & Co., Bank of America, Wells Fargo Bank, and the Mayo Clinic have been top H-1B employers.
- Nearly two-thirds of requests for H-1B workers are for STEM occupations. There is also high demand for workers in healthcare, business, finance, and life sciences industries.
- From FY 2010-2016, the largest numbers of H-1B recipients

were in the New York City metropolitan area (247,900 H-1B visa petition approvals, or 29 percent of all H-1B visa petition approvals in the country), followed by Dallas (74,000), Washington, DC (64,800), and Boston (38,300).

However, the highest concentration of H-1B workers was in College Station, Texas (32 H-1B approvals per 100 workers). San Jose, California—home of Silicon Valley—was a distant second (two approvals per 100 workers).

Thanks to the American Immigration Council for allowing us to use this material .

---

Based on an April 4 letter from USCIS to Senator Grassley, USCIS plans to propose a regulation "to revise the definition of specialty occupation, consistent with INA § 214(i), to increase focus on obtaining the best and the brightest foreign nationals via the H-1B program, and to revise the definition of employment and employer-employee relationship to better protect U.S. workers and wages. In addition, DHS will propose additional requirements designed to ensure employers pay appropriate wages to H-1B visa holders."

Gear up for a huge fight!

For your information

Allen E. Kaye  
of Counsel  
Pollack, Pollack, Isaac & DeCicco, LLP  
225 Broadway  
3<sup>rd</sup> Floor  
New York, NY 1007  
212-964-5858 or  
212-233-8100  
[AllenEKaye5858@gmail.com](mailto:AllenEKaye5858@gmail.com)  
Immigration & Naturalization Law