

National Foundation for American Policy

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New Research: High H-1B Denial Rates and Low Annual Limits Are Indicators of Current Restrictions on H-1B Visas

Trump Administration May Impose New Restrictions on Foreign-Born Scientists and Engineers

Arlington, Va. – The Trump administration is considering new restrictions on H-1B visas for foreign-born scientists and engineers at the same time its policies already have produced record-high H-1B denial rates and while highly restrictive numerical limits remain under U.S. law. Denial rates for new H-1B petitions for initial employment rose from 6% in FY 2015 to 30% in the first quarter of FY 2020, according to a [new analysis](#) by the National Foundation for American Policy (NFAP).

The 30% denial rate for initial employment is primarily for cases selected in the H-1B lottery held in April 2019 and not adjudicated until after October 1, 2019, which is the start of the first quarter of FY 2020. The denial rate for initial employment was 21% in FY 2019 and 24% in FY 2018.

All the recent top 25 employers of new H-1B visa holders had higher denial rates for H-1B petitions for initial employment in the first quarter of FY 2020 than in FY 2015. Even large technology companies, such as Apple, had much higher denial rates in the first quarter of FY 2020 than in FY 2015 (before the Trump administration).

The report, “H-1B Denial Rates and Numerical Limits as Indicators of Current Restrictions,” can be found at <https://nfap.com/>.

H-1B petitions for “initial” employment are primarily for new employment, typically a case that would count against the H-1B annual limit. H-1B petitions for “continuing” employment are usually extensions for existing employees at the same company or an H-1B visa holder changing to a new employer. This analysis of H-1B data is the fifth in a series and follows an April 2019 NFAP [report](#), an August 2019 [study](#), an October 2019 NFAP [report](#) and a February 2020 [study](#). The analysis is based on data from the USCIS [H-1B Employer Data Hub](#).

The Trump administration may propose new immigration restrictions, potentially as part of a review initiated by an April 22, 2020, [presidential proclamation](#). Analysis shows the administration has already imposed many restrictions on employers and foreign nationals in H-1B status and low annual limits under current law block up to 190,000 foreign-born scientists and engineers a year from working in the United States.

“The Trump administration may try to achieve its goal of further restricting the ability of employers to hire high-skilled foreign nationals, even though the president has stated he supports ‘merit-based’ immigration and H-1B visa holders are the most highly educated foreign-born individuals admitted to the United States,” said NFAP Executive Director Stuart Anderson, who served as executive associate commissioner for policy and planning and counselor to the Commissioner of the INS in the George W. Bush administration

The annual limit under the law for companies is, in effect, 85,000, which includes a 65,000-annual limit and a 20,000 exemption from the limit for individuals with a U.S. advanced degree. The 85,000 new H-1B petitions allowed each year come to only 0.05% of the U.S. labor force of approximately 165 million. For 18 consecutive years (since FY 2004) the annual supply of new H-1B visas for employers has been exhausted.

Even without other policy changes, the low annual limit represents a significant restriction on the ability of employers to hire foreign nationals, particularly in high-demand technology specialties. An indicator of the actual demand for talent came in March 2020, when U.S. Citizenship and Immigration Services (USCIS) received registrations from employers for approximately 275,000 individuals to be eligible for the annual H-1B lottery – more than 3 times the 85,000-annual limit, a gap in demand of 190,000. The sectors most directly hit by the economic downturn – airlines, restaurants and hotels – employ relatively few H-1B visa holders. The top companies employing H-1B visa holders have a significant technology component in their businesses.

Since H-1B temporary visas are the primary way America retains talented people born abroad who are not admitted as refugees or family-sponsored immigrants, one can expect demand for the visas to continue. At U.S. universities, only approximately [20% of the full-time graduate students](#) in computer science and electrical engineering are U.S. students.

Among the findings in this analysis:

- The 30% denial rate for H-1B petitions for initial employment in the first quarter of FY 2020 is similar to the denial rate of 32% in the first quarter of FY 2019 and 35% in the second quarter of FY 2019, indicating this is a “new normal” of high denial rates compared to the 6% H-1B denial rate for such petitions in FY 2015. High denial rates should not be expected in a properly functioning immigration system, since, given the time and expense, employers generally only file cases for individuals they believe qualify for H-1B status.
- As in earlier fiscal years, the highest denials rates are for companies that provide information technology or other business services to American companies. The data indicate USCIS has established a different standard for deciding cases for companies that provide information technology (IT) services. Immigration law does not establish a different standard for adjudications based on the type of firm or the location work will be performed.
- The denial rate for initial employment in the first quarter of FY 2020 when compared to FY 2015 increased by 20 percentage points or more for 12 major companies that provide IT services or other business consulting services. Many of these and other companies hit by high denial rates are U.S. companies.
- The different standard for adjudications compared to recent years, as well as among different types of companies, has taken place without Congress changing the law or USCIS issuing new regulations. That has resulted in legal trouble for the Trump administration. Several court cases have been decided against U.S. Citizenship and Immigration Services.
- On March 10, 2020, U.S. District Judge Rosemary M. Collyer ruled that key U.S. Citizenship and Immigration Services memos and policies were unlawful, including those that have resulted in higher H-1B denial rates for companies that provide business services. In [ITServe Alliance v. L. Francis Cissna](#), the judge focused on USCIS policies interpreting an employer-employee relationship and an itinerary rule/short term approvals of H-1B petitions. Other judges have ruled against USCIS for narrow interpretations of what qualifies as an H-1B “specialty occupation.”
- The denial rate for H-1B petitions for “continuing” employment (primarily for existing employees) was 10% in the first quarter of FY 2020, compared to denying only 3% of H-1B petitions for continuing employment in FY 2015 (and only 5% as recently as FY 2017).

In both FY 2018 and FY 2019, USCIS adjudicators denied 12% of H-1B petitions for continuing employment.

- A significant reason for the increase in denials for continuing employment is that in October 2017, the new USCIS director issued a [memo](#) on “Rescission of Guidance Regarding Deference to Prior Determinations of Eligibility in the Adjudication of Petitions for Extension of Nonimmigrant Status.” Many companies report being compelled to dismiss long-term, experienced employees, including individuals waiting years for an employment-based green card, whose H-1B status ended due to H-1B denials.

During its review, the administration should consider that many restrictions currently exist on H-1B visas, such as current salary requirements that mandate an H-1B professional be paid the same or higher than comparable U.S. workers as well as the low annual limits on new H-1B petitions. The administration may also wish to consider research that shows scientists and engineers in H-1B status boost employment and growth, including productivity.

A [study](#) by economists Giovanni Peri, Kevin Shih, Chad Sparber and Angie Marek Zeitlin examined the last recession and found denying the entry of H-1B visa holders due to the H-1B annual limits impeded job growth for U.S.-born professionals. “The number of jobs for U.S.-born workers in computer-related industries would have grown at least 55% faster between 2005-2006 and 2009-2010, if not for the denial of so many applications in the recent H-1B visa lotteries,” the economists concluded.

The economists also [examined productivity](#) and concluded, “When we aggregate at the national level, inflows of foreign STEM [science, technology, engineering and math] workers explain *between 30% and 50% of the aggregate productivity growth* that took place in the United States between 1990 and 2010.” They also found H-1B professionals were associated with higher wages for college-educated natives.

[Research](#) by Britta Glennon, an assistant professor at the Wharton School of Business at the University of Pennsylvania, found new restrictions on H-1B visas are likely to push jobs out of the United States, concluding, “[A]ny policies that are motivated by concerns about the loss of native jobs should consider that policies aimed at reducing immigration have the unintended consequence of encouraging firms to offshore jobs abroad.”

Table 1
Denial Rate for H-1B Petitions for Initial (New) Employment

FISCAL YEAR	DENIAL RATE
FY 2020	30%
FY 2019	21%
FY 2018	24%
FY 2017	13%
FY 2016	10%
FY 2015	6%
FY 2014	8%
FY 2013	7%
FY 2012	5%
FY 2011	7%
FY 2010	8%
FY 2009	15%

Source: USCIS, National Foundation for American Policy. *FY 2020 data through first quarter of FY 2020. Percentages are rounded off. Data extracted and analyzed from USCIS H-1B Employer Data Hub.

About the National Foundation for American Policy

Established in 2003, the National Foundation for American Policy (NFAP) is a 501(c)(3) non-profit, non-partisan public policy research organization based in Arlington, Virginia focusing on trade, immigration and related issues. The Advisory Board members include Columbia University economist Jagdish Bhagwati, Ohio University economist Richard Vedder, Cornell Law School professor Stephen W. Yale-Loehr and former INS Commissioner James W. Ziglar. Over the past 24 months, NFAP's research has been written about in the *Wall Street Journal*, the *New York Times*, the *Washington Post*, and other major media outlets. The organization's reports can be found at www.nfap.com. Twitter: [@NFAPResearch](https://twitter.com/NFAPResearch)

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