

NATIONAL FOUNDATION FOR AMERICAN POLICY
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H-1B DENIAL RATES THROUGH THE
THIRD QUARTER OF FY 2020

EXECUTIVE SUMMARY

The Trump administration has continued to deny H-1B petitions for foreign-born scientists and engineers at high levels, although as in the third quarter of FY 2019 the denial rate decreased in the third quarter of FY 2020, according to an analysis by the National Foundation for American Policy (NFAP). The denial rate was lower for H-1B petitions adjudicated in the third quarter (April, May and June) of both years because those are primarily petitions selected in the annual lottery that U.S. Citizenship and Services (USCIS) considers easiest to approve, with other petitions delayed due to Requests for Evidence (RFEs) or other reasons. Analyzing data through the third quarter of FY 2020 finds nearly all top companies continue to be denied at higher rates than in the years before Donald Trump became president and instituted more restrictive H-1B policies. The denial rates are much higher for companies that provide services to other businesses, particularly information technology (IT) services.

The denial rate for new H-1B petitions for initial employment rose from 6% in FY 2015 to 21% through the third quarter of FY 2020. The analysis is based on data from the USCIS [H-1B Employer Data Hub](#). For reasons not explained, USCIS did not make available data for H-1B petitions for “continuing” employment in the second or third quarters of FY 2020. (Petitions are counted in the quarter and the fiscal year in which they are approved.)

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 follows an April 2019 NFAP [report](#), an August 2019 [study](#), an October 2019 NFAP [report](#), a February 2020 [study](#), a May 2020 [report](#) and an August 2020 [study](#).

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

FISCAL YEAR	DENIAL RATE
FY 2020*	21%
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 the third quarter of FY 2020. Percentages are rounded off. Data extracted and analyzed from USCIS H-1B Employer Data Hub.

*H-1B Denial Rates Through the Third Quarter of FY 2020***WHAT DOES THE THIRD QUARTER OF FY 2020 DATA SHOW?**

The denial rate for new H-1B petitions for initial employment rose from 6% in FY 2015 to 21% through the third quarter of FY 2020. This is in line with the 21% denial rate for H-1B petitions for initial employment in FY 2019 and the 24% denial rate in FY 2018.

In the third quarter of FY 2020, the denial rate for H-1B petitions for initial employment was 7%, similar to the denial rate of 10% in the third quarter of FY 2019. (See Table 2.) That is much lower than the denial rate in other quarters because the third quarter of a fiscal year (April, May and June) includes the first set of adjudications of H-1B “cap” cases – and in both FY 2019 and FY 2020, USCIS approved or denied those petitions that adjudicators decided on quickly (in April, May and June) and granted Requests for Evidence (RFEs) or held other applications for later in the fiscal year.

Table 2
Denial Rate By Quarters in FY 2019 and FY 2020: H-1B Petitions for Initial (New) Employment

<i>1st Quarter (FY 2020)</i>	<i>1st Quarter (FY 2019)</i>	<i>2nd Quarter (FY 2020)</i>	<i>2nd Quarter (FY 2019)</i>	<i>3rd Quarter (FY 2020)</i>	<i>3rd Quarter (FY 2019)</i>	<i>4th Quarter (FY 2020)</i>	<i>4th Quarter (FY 2019)</i>
30%	32%	27%	35%	7%	10%	n/a	15%

Source: USCIS, National Foundation for American Policy. Percentages are rounded off. Data extracted and analyzed from USCIS H-1B Employer Data Hub. Approvals and denials include petitions filed for individuals employed at universities and non-profit and government research institutes, which are exempt from numerical limits. Note: Fourth quarter of FY 2020 not available.

The percentage of completed cases with a Request for Evidence was 26.7% in the third quarter of FY 2019, compared to 60% in the first quarter of FY 2019. In a similar vein, 20.1% of the completed H-1B cases had a Request for Evidence in the third quarter of FY 2020, compared to 47.2% in the first quarter of FY 2020.¹ That helps explain the lower denial rate in the third quarter of FY 2020. It does not appear there was a change in adjudication standards.

TOP EMPLOYERS OF H-1B VISA HOLDERS

The recent top 25 employers of new H-1B visa holders continued to have higher denial rates through the first three quarters of FY 2020 than in FY 2015 (i.e., before the Trump administration). Overall, 24 of the top 25 employers of new H-1B professionals had higher denial rates for H-1B petitions for initial employment in FY 2020 (through the third quarter) than in FY 2015. (See Table 2.) Most had lower denial rates in third quarter of FY 2020 for the reasons

¹https://www.uscis.gov/sites/default/files/document/data/l129_Quarterly_Request_for_Evidence_FY2015_FY2020_Q3.pdf.

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cited above. These are the top 25 companies with the most new H-1B petitions approved for initial employment in FY 2019.

Here is what the numbers show:

- 13 of the 25 top companies had H-1B denial rates for initial employment at least 9 percentage points higher in FY 2020 (through the third quarter) than in FY 2015. That included large technology companies Cisco and Uber.
- The highest denial rates continue to be for companies that provide information technology or other business services to American companies. The data indicate USCIS established a different standard for deciding cases for companies that provide information technology (IT) services. Immigration law does not have a different standard for adjudications based on the type of firm or the location where work will be performed.
- The denial rate for initial employment through the third quarter of FY 2020 when compared to FY 2015 increased by 14 percentage points or more for 10 major companies that provide IT services or other business consulting services.
- Denial rates for initial employment for H-1B petitions were generally between 1% and 5% in FY 2015 for the top employers of H-1B professionals, compared to denials rates that mostly ranged from 9% to as high as 56% through the first three quarters of FY 2020.
- In FY 2015, 16 of the 25 top companies had denial rates of 2% or lower for H-1B petitions for initial employment.

WILL THE IMPACT OF RESCINDING MEMOS BEGIN TO SHOW IN H-1B DATA?

On June 17, 2020, as part of [a settlement](#) with the business group ITServe Alliance, USCIS issued a [new policy memo](#) and withdrew a February 2018 [memo](#) on “Contracts and Itineraries Requirements for H-1B Petitions Involving Third-Party Worksites.” USCIS also rescinded the [“Neufeld” memo](#), issued on January 8, 2010. The Neufeld memo used a test to determine if an “employer-employee” relationship existed, including for work at customer sites by H-1B visa holders, that could be interpreted in a restrictive way.

The memos and their interpretation were blamed for much higher denial rates for H-1B petitions, particularly for IT services companies. If the rescission of the two memos has an impact on H-1B denials, it may begin to show in the data for the fourth quarter of FY 2020 and the first two quarters of FY 2021. USCIS withdrew the memos during the third week of June (i.e., near the end of the third quarter of FY 2020).

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Table 3
Denial Rates for H-1B Petitions for Initial Employment: FY 2015 vs. FY 2020

Employer	FY 2020 Denial Rate Initial Employment	FY 2015 Denial Rate Initial Employment	Change in Denial Rate in Percentage Points from FY 2015 to FY 2020
Amazon	7%	1%	+6
Google	1%	1%	+0
TCS	15%	6%	+9
Microsoft	3%	1%	+2
Deloitte	23%	18%	+5
Cognizant	48%	8%	+40
Facebook	1%	0%	+1
IBM	12%	3%	+9
Apple	4%	2%	+2
Intel	5%	1%	+4
Tech Mahindra	30%	4%	+26
Capgemini	30%	5%	+25
Larsen & Toubro	26%	2%	+24
Infosys	58%	2%	+56
Cisco	10%	1%	+9
Accenture	28%	4%	+24
Qualcomm	2%	0.4%	+2
Wipro	37%	7%	+30
PricewaterhouseCoopers	16%	1%	+15
Oracle	5%	1%	+4
Ernst & Young	14%	0.3%	+14
Uber	11%	2%	+9
Walmart	5%	3%	+2
JPMorgan Chase	2%	1%	+1
HCL America	34%	2%	+32

Source: USCIS, National Foundation for American Policy. *FY 2020 data through third quarter of FY 2020. Data extracted and analyzed from USCIS H-1B Employer Data Hub. Percentages are rounded off. Note: IBM and IBM Private India were combined, as were Amazon and Amazon Corporate, and Larsen & Toubro and L&T Technology Services. Employers listed by the number of new H-1B petitions approved in FY 2019.

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DEMAND FOR H-1B PROFESSIONALS AT LEAST 275,000 A YEAR

The low annual limit on new H-1B visas represents a significant restriction on the ability of employers to hire foreign nationals, particularly in high-demand technology specialties. The new electronic registration system, which did not require completing a full application, provided a sense of the actual demand for talent. In March 2020, 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. (See Table 4.) That does not include the demand that may arise during the year or employers discouraged from registering by the low odds of obtaining an approval.

H-1B visas are essential because they generally are the only practical way for a high-skilled foreign national, including an international student, to work long-term in the United States. That is a major reason the visas are so much in demand. If Congress were to attempt to place an annual limit close to the actual demand for new H-1B visas, the 275,000 registrants for the lottery provides a sense of the overall demand for H-1B status.

**Table 4
H-1B Annual Limit and H-1B Registrations as Indicator of Demand**

H-1B Annual Limit for Companies	March 2020 Registrations for H-1B Petitions for FY 2021	Number of Registrations in Excess of Annual Limit in March/April 2020
85,000	275,000	+190,000

Source: National Foundation for American Policy, USCIS. The figure 275,000 was the approximate number of registrations reported by USCIS.

As expected, uncertain economic conditions caused a number of employers to decide not to submit full completed H-1B applications. That explains why USCIS needed a second drawing. Still, overall, science and technology occupations have been less negatively affected by the economic downturn due to the coronavirus pandemic. The types of businesses most directly affected – airlines, restaurants and hotels – employ relatively few H-1B visa holders, while the top companies employing H-1B visa holders have a significant technology component in their businesses.

*H-1B Denial Rates Through the Third Quarter of FY 2020***H-1B PETITIONS FOR CONTINUING EMPLOYMENT**

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. For reasons not explained on the H-1B Employer Data Hub website, USCIS did not make available data for H-1B petitions for “continuing” employment for the second or third quarters of FY 2020.

Table 5
Denial Rate: H-1B Petitions for Continuing Employment

FISCAL YEAR	DENIAL RATE
FY 2020*	10%
FY 2019	12%
FY 2018	12%
FY 2017	5%
FY 2016	4%
FY 2015	3%
FY 2014	3%
FY 2013	3%
FY 2012	3%
FY 2011	3%
FY 2010	5%
FY 2009	6%

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.

As a result of denials for continuing employment, many companies report being forced to dismiss long-term, experienced employees, including individuals waiting years for an employment-based green card, whose H-1B status ended because USCIS denied an application for an extension. In some cases, companies have transferred employees to another location. When that was not possible, employees were let go.

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.” The memo has likely been responsible for many of the denials in continuing employment cases, according to attorneys. “The previous policy instructed officers to give deference to the findings of a previously approved petition, as long as the key elements were unchanged and

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there was no evidence of a material error or fraud related to the prior determination,” noted a USCIS statement. “The updated policy guidance rescinds the previous policy.”²

Similar to cases for initial employment, among the most recent top 25 employers with the most approved H-1B petitions for continuing employment in FY 2019, 10 companies that provide information technology or other services to businesses had denial rates of 11% or higher for H-1B petitions for continuing employment in the first quarter of FY 2020. These companies showed a significant increase in denial rates compared to FY 2015 when denial rates for continuing employment were typically 3% or 4%. Product companies, which primarily employ H-1B visa holders in a single location, showed much smaller increases in their denial rates between FY 2015 and the first quarter of FY 2020.

Data for FY 2019 indicate less fluctuation per quarter in the denial rates for continuing employment than for H-1B petitions for initial employment. That is likely because the H-1B lottery selection process in April (now in March) for initial employment cases introduces a new element in the calendar not present in continuing employment cases, which are filed throughout the year.

Table 6
Denial Rate By Quarters in FY 2019: H-1B Petitions for Continuing Employment

FISCAL YEAR	APPROVALS	DENIALS	DENIAL RATE
1st Quarter (FY 2019)	43,268	9,706	18%
2nd Quarter (FY 2019)	65,127	7,545	10%
3rd Quarter (FY 2019)	76,764	7,474	9%
4th Quarter (FY 2019)	71,197	9,155	11%
OVERALL FY 2019	256,356	33,880	12%

Source: USCIS, National Foundation for American Policy. Percentages are rounded off. Data extracted and analyzed from USCIS H-1B Employer Data Hub. Approvals and denials include petitions filed for individuals employed at universities and non-profit and government research institutes, which are exempt from numerical limits.

² <https://www.uscis.gov/news/news-releases/uscis-updates-policy-ensure-petitioners-meet-burden-proof-nonimmigrant-worker-extension-petitions>.

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WHAT IS THE REAL H-1B DENIAL RATE FOR COMPANIES?

As high as the H-1B denial rates have been for companies during the Trump administration, in reality, the rates are even higher if one separates companies from universities and other nonprofits in the government data, according to an analysis by the National Foundation for American Policy. NFAP found the H-1B denial rate for initial employment for companies alone was about 2 to 3 percentage points higher for initial employment than for employers overall.

**Table 7
Denial Rate Companies vs. All Employers: H-1B Petitions for Initial Employment**

Fiscal Year	H-1B Denial Rate (Initial Employment) – <i>Only Companies</i>	H-1B Denial Rate (Initial Employment) – <i>All Employers (including universities and nonprofit and govt. research institutes)</i>	Difference in Percentage Points
FY 2020	32.3%	29.6%	+2.7
FY 2019	23.4%	21.1%	+2.3
FY 2018	27.5%	24.3%	+3.2
FY 2017	14.7%	13.1%	+1.6
FY 2016	10.7%	9.7%	+1.0
FY 2015	6.8%	6.4%	+0.4
FY 2014	8.1%	7.5%	+0.6
FY 2013	7.2%	6.8%	+0.4
FY 2012	5.0%	5.0%	+0.0

Source: National Foundation for American Policy; USCIS.

If one eliminates the employers that are exempt from the H-1B cap, i.e., universities and nonprofit and governmental research institutes, it becomes apparent the H-1B denial rate has been even higher in recent years:

- In FY 2019, the H-1B denial rate for initial employment was 23.4% for companies vs. 21.1% for all employers, a difference of 2.3 percentage points.
- In FY 2018, the H-1B denial rate for initial employment was 27.5% for companies vs. 24.3% for all employers, a difference of 3.2 percentage points.
- In FY 2020 (through the first quarter), the H-1B denial rate for initial employment was 32.3% for companies vs. 29.6% for all employers, a difference of 2.7 percentage points.

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- The H-1B denial rate for initial employment in FY 2019 was 4.7% for employers in education, health and at nonprofit/governmental research institutes, compared to 23.4% for companies. In FY 2018, it was 5.9% vs. 27.5% for companies. That explains why the company-only denial rate is higher than the overall rate once one excludes universities, etc. from the calculations.

The difference was small or even non-existent for companies and other types of employers during the pre-Trump years for the H-B denial rate for initial employment. In FY 2013 and FY 2015, the difference was only 0.4 percentage points between companies and employers overall (including employers in education, health and at nonprofit/governmental research institutes). In FY 2012, there was no difference in the denial rate.

The difference is much narrower between companies and all employers for the denial rate for continuing employment, a 0.6 percentage point difference existed in FY 2019 and FY 2018.

CONCLUSION

Denial rates for H-1B petitions remain at much higher levels than in the years before Donald Trump became president. These increased denial rates are the result of administration policies. In 2020, the Trump administration attempted to make policies even more restrictive on high-skilled immigration, though the courts have rebuffed imposing new H-1B regulations and blocked a proclamation to suspend the entry of H-1B visa holders and other workers. Employers are left waiting to see how the Biden administration addresses high-skilled immigration.

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Table 8
NEW H-1B PETITIONS ISSUED AGAINST THE H-1B CAP BY FISCAL YEAR

<u>Year</u>	<u>CAP*</u>	<u>#Issued</u>	<u>#Unused</u>
1992	65,000	48,600	16,400
1993	65,000	61,600	3,400
1994	65,000	60,300	4,700
1995	65,000	54,200	10,800
1996	65,000	55,100	9,900
1997	65,000	65,000	0
1998	65,000	65,000	0
1999	115,000	115,000	0
2000	115,000	115,000	0
2001	195,000	163,600	31,400
2002	195,000	79,100	115,900
2003	195,000	78,000	117,000
2004	65,000	65,000	0
2005	65,000	65,000	0
2006	65,000	65,000	0
2007	65,000	65,000	0
2008	65,000	65,000	0
2009	65,000	65,000	0
2010	65,000	65,000	0
2011	65,000	65,000	0
2012	65,000	65,000	0
2013	65,000	65,000	0
2014	65,000	65,000	0
2015	65,000	65,000	0
2016	65,000	65,000	0
2017	65,000	65,000	0
2018	65,000	65,000	0
2019	65,000	65,000	0
2020	65,000	65,000	0
2021	65,000	65,000	0

Source: Dept. of Homeland Security; National Foundation for American Policy. *Does not include exemptions from cap.

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Established in 2003, the National Foundation for American Policy (NFAP) is a 501(c)(3) nonprofit, nonpartisan public policy research organization based in Arlington, Virginia, focusing on trade, immigration and related issues. Advisory Board members include Columbia University economist Jagdish Bhagwati, Cornell Law School professor Stephen W. Yale-Loehr, Ohio University economist Richard Vedder and former INS Commissioner James 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.
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