

National Foundation for American Policy

August 30, 2021

Contact: Stuart Anderson, 703-351-5042, press@nfap.com

New Research: H-1B Denial Rates Stay Lower in FY 2021 Following Trump’s Legal Setbacks

The Trump Administration’s Legal Losses Returned H-1B Denial Rates Close to Earlier Levels; Low Annual Limit Acts as Primary Restriction on H-1B Visas

Arlington, Va. – Due to the Trump administration’s losses in federal court, denial rates for H-1B petitions were much lower during the first two quarters of FY 2021 (most of which took place during the Trump administration) than during the same period in FY 2020, according to [an analysis](#) by the National Foundation for American Policy (NFAP), a nonpartisan policy research organization. Judicial decisions that found the Trump administration’s actions to be unlawful and a legal settlement forced Trump officials to change restrictive immigration policies and resulted in dramatic improvements in H-1B denial rates for companies beginning in the fourth quarter of FY 2020. The denial rate for new H-1B petitions for initial employment was 7.1% through the first two quarters of FY 2021 (which is from October 1, 2020, to March 31, 2021), compared to a denial rate for initial employment of 28.6% through the first two quarters of FY 2020 (before policies changed).

The study, “H-1B Denial Rates Through the Second Quarter of FY 2021,” 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. The NFAP analysis is based on data from the U.S. Citizenship and Immigration Services (USCIS) [H-1B Employer Data Hub](#). In the fourth quarter of FY 2020, the denial rate for new H-1B petitions for initial employment was 1.5%, much lower than the denial rate of 21% through the first three quarters of FY 2020.

Table 1
Denial Rate for H-1B Petitions for Initial (New) Employment: FY 2021 vs. FY 2020

Fiscal Year	Approvals	Denials	Denial Rate
FY 2021 (First Two Quarters)	39,501	3,040	7.1%
FY 2020 (First Two Quarters)	38,150	15,341	28.6%

Source: USCIS, National Foundation for American Policy. Data extracted and analyzed from USCIS H-1B Employer Data Hub.

The Trump administration's policies resulted in high denial rates for H-1B petitions for initial employment of 24% in FY 2018, 21% in FY 2019 and 13% in FY 2020, compared to 6% in FY 2015. The FY 2020 denial rate would have been much higher without the court rulings that led to low denial rates in the fourth quarter of FY 2020. In retrospect, the Trump administration managed to carry out what judges determined to be unlawful policies for nearly four years, illustrating the limitations of relying on the court system to prevent restrictive immigration policies.

The Trump administration attempted to make its H-1B policies lawful through an interim final rule on H-1B visas issued in October 2020, but that rule was vacated for violating the Administrative Procedure Act. Company and university personnel said the regulation would have made it nearly impossible to employ H-1B visa holders.

H-1B policy changes have been costly for employers. In 2015, USCIS began a policy that required employers to file amended petitions whenever they received a new labor condition application (LCA) from the Department of Labor. USCIS used an Administrative Appeals Office (precedent decision on a petition filed by Simeio Solutions to bind adjudicators to the new policy. An NFAP analysis estimates the USCIS policy has cost employers approximately \$600 million a year, or more than \$3 billion, in legal and filing files since 2015.

The denial rate for H-1B petitions for "continuing" employment (primarily for existing employees) was 3% in the first two quarters of FY 2021, compared to 7% in FY 2020 and as high as 12% in FY 2018 and FY 2019. USCIS denied only 3% of H-1B petitions for continuing employment in FY 2015 (and only 5% as recently as FY 2017).

The denial rates discussed in the report are separate from the large number of H-1B registrations rejected each year because of the low numerical limit under U.S. immigration law. In March 2021, employers [filed 308,613 H-1B registrations](#) for cap selection for FY 2022, but only 85,000 H-1B petitions could be chosen under the law, which means over 72% of H-1B registrations for high-skilled foreign nationals were rejected even before an adjudicator evaluated the application.

Absent significant changes in government policies, high denial rates are unusual since employers would be unlikely to apply for H-1B petitions for individuals who do not qualify given the time and expense.

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)

2111 Wilson Blvd., Suite 700, Arlington, VA 22201
phone: (703) 351-5042 fax: (703) 351-9292 www.nfap.com