

National Foundation for American Policy

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New Research: H-1B Denial Rates Now Below Pre-Trump Levels

Trump Policies Were “Aberration” Declared Unlawful By Judges

Arlington, Va. – The Trump administration’s losses in federal court returned H-1B denial rates for employers in FY 2021 to pre-Trump levels, according to a [new analysis](#) by the National Foundation for American Policy (NFAP). Judges declared the Trump administration’s actions to be unlawful, forcing changes in restrictive immigration policies that resulted in the denial rate for new H-1B petitions for initial employment in FY 2021 to drop to 4%, far lower than the denial rate of 24% in FY 2018, 21% in FY 2019 and 13% in FY 2020. The Trump administration managed to carry out what judges determined to be unlawful policies for nearly four years, and the policies imposed significant costs on employers, visa holders and the U.S. economy, likely contributing to more work and talent moving to other countries.

“The 4% denial rate in FY 2021 for new H-1B petitions was similar to the rate before Donald Trump took office, meaning the Trump years were an aberration due to imposing restrictive policies that courts found to be unlawful,” said Stuart Anderson, executive director of the National Foundation for American Policy.

H-1B petitions for “initial” employment are primarily for new employment, typically for companies a case that would count against the H-1B annual limit. NFAP closely tracks H-1B petitions and denial rates. 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.

The study, “H-1B Petitions and Denial Rates in FY 2021,” can be found at <https://nfap.com/>. The NFAP analysis is based on data from the U.S. Citizenship and Immigration Services (USCIS) [H-1B Employer Data Hub](#).

The increase in H-1B denials began in Donald Trump’s first year in office (2017) and the decline in the denial rate started in his last year (2020), affecting the fourth quarter of FY 2020 and later FY 2021. The impact of the court decisions and a legal settlement became evident in the final months of the Trump administration. The denial rate for new H-1B petitions for initial employment was 1.5% in the fourth quarter of FY 2020 (July 1 to Sept. 30, 2020), much lower than the denial rate of 21% through the first three quarters of FY 2020. The Biden administration has complied with court decisions and [a 2020 legal settlement](#) with the business group ITServe Alliance, as evidenced by the low denial rate in FY 2021. (FY 2021 began on October 1, 2020, while Donald Trump was still president.)

H-1B temporary visas are important because they generally represent the only practical way for a high-skilled foreign national, including an international student, to work long-term in the United States and have an opportunity to become an employment-based immigrant and a U.S. citizen. Many [founders of billion-dollar companies](#) and [individuals responsible for the vaccines](#) and medical care that has saved the lives of Americans during the pandemic have used H-1B visas and employment-based green cards.

The findings in the analysis include:

- The denial rate for H-1B petitions for initial employment was 4% in FY 2021, the lowest known level since data on H-1B denial rates became available. During the Trump administration, the denial rate for H-1B petitions for initial employment was much higher at 13% in FY 2017, 24% in FY 2018, 21% in FY 2019 and 13% in FY 2020. (Note: The denial rate in FY 2020 would have been higher if not for a legal settlement prior to the fourth quarter of FY 2020.) Between FY 2010 and FY 2015, the denial rate for H-1B petitions for initial employment ranged between 5% and 8%.
- NFAP found the denial rates in FY 2021 and FY 2015 to be similar for employers. For several companies, particularly those that provide information technology (IT) services or other business services to U.S. companies, the denial rate for H-1B petitions for initial employment was far lower in FY 2021 than in FY 2020.
- The denial rate for H-1B petitions for continuing employment was 2% in FY 2021, much lower than the 12% denial rate in FY 2018 and FY 2019 and the lowest level since data on H-1B denial rates became available. 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. The denial rate for H-1B petitions for continuing employment was 7% in FY 2020, but would have been higher if not for the impact in the fourth quarter of the court decisions and the legal settlement. In recent history, the 7% denial rate was still high compared to the 3% denial rate for H-1B petitions for continuing employment each year between FY 2011 and FY 2015.
- Much of the increase in denials for continuing employment during the Trump administration was due to an October 2017 [memo](#) that instructed adjudicators to no longer “give deference to the findings of a previously approved petition.” Many extensions of H-1B status were reviewed under a new, more restrictive standard based on policies that judges later determined to be unlawful. Employers and attorneys have credited USCIS Director Ur Jaddou and the Biden administration for rescinding the October 2017 memo.
- Amazon had the most approved H-1B petitions for initial employment in FY 2021 with 6,182. Amazon also had the most new H-1B petitions approved in FY 2020. Infosys had the second most H-1B petitions in FY 2021 approved for initial employment (5,256), followed by TCS (3,063), Wipro (2,121) Cognizant (1,481), Google (1,453), IBM (1,402), HCL America (1,299) and Microsoft (1,240).
- Processing issues likely inflated the number of approved H-1B petitions for the top employers. In the U.S. Citizenship and Immigration Services (USCIS) data, H-1B petitions are counted in the fiscal year they are approved, *not* in the cap year the H-1B visa holder begins to work. NFAP determined approximately 18,000 more petitions were approved for initial employment in FY 2021 compared to FY 2020, possibly due to USCIS processing issues in FY 2020 caused by the pandemic and the higher denial rate in 2020. Another caveat to the numbers is that, according to attorneys, in FY 2019 and FY 2020 during the Trump administration, USCIS held or delayed H-1B applications for many IT services companies, which would have inflated the number of approved H-1B petitions for those companies in FY 2021.
- The top employers of approved H-1B petitions in FY 2021 were also among the fastest-growing employers of U.S. workers, providing clear evidence that companies that employ H-1B visa holders also seek out and employ U.S. workers in significant numbers. The information on the significant hiring of U.S. workers by employers of H-1B professionals helps demonstrate the fallacies of the zero-sum argument about high-skilled foreign

nationals “taking” American jobs, particularly since economists have found hiring high-skilled personnel complements other high-skilled jobs as well as other types of employment at a company and in the economy.

- As of December 6, 2021, there were more than 1.5 million job vacancy postings in computer occupations in the United States, according to a National Foundation for American Policy analysis of EMSI data, and only about 56,000 new H-1B petitions annually are used by employers and H-1B employees in computer jobs, according to USCIS data. That means even if one incorrectly assumes there are a fixed number of jobs, there are *close to 30 times* more available jobs in computer occupations than H-1B visa holders who fill such positions annually.
- At U.S. universities, only approximately 25% of the full-time graduate students in electrical engineering and computer and information sciences are U.S. students.

Although the Trump administration’s legal losses and the ITServe Alliance settlement are most responsible for the lower H-1B denial rate in FY 2021, employers and attorneys give the Biden administration credit for adopting a more measured approach to business immigration. In 2017, the Trump administration moved aggressively against high-skilled immigration from almost the start of Donald Trump’s term. The “Buy American and Hire American” executive order was the first significant action, followed by a series of memos and directions to USCIS adjudicators that made it much more difficult for employers to gain approval for H-1B petitions. Courts ruled a number of these policies unlawful, including efforts to restrict who qualified for an H-1B visa. In April 2020, a presidential proclamation blocked the entry of employment-based immigrants and nearly all categories of immigrants. A June 2020 proclamation suspended the entry of H-1B visa holders and others. (A court blocked implementation of the June proclamation for many employers.)

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

FISCAL YEAR	DENIAL RATE
FY 2021	4%
FY 2020	13%
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. Percentages are rounded off. Data extracted and analyzed from USCIS H-1B Employer Data Hub.

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. That high percentage of rejections prior to adjudication indicates how restrictive current policies are

toward high-skilled foreign nationals in America, particularly compared to other countries with which the United States competes for talent, including international students. Restrictive policies toward employment-based green cards are also a significant problem.

The report updates earlier work, including NFAP reports on H-1B petitions approved in [FY 2019](#) and [FY 2020](#).

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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