



Report on H-1B Petitions

Fiscal Year 2011 Annual Report to Congress
October 1, 2010 – September 30, 2011



Homeland
Security

*U.S. Citizenship and
Immigration Services*



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Washington, DC 20528

**Homeland
Security**

Foreword

May 24, 2012

On behalf of the Department of Homeland Security, I am pleased to present the following “Report on H-1B Petitions” for Fiscal Year 2011, prepared by U.S. Citizenship and Immigration Services.

Pursuant to statutory requirements, this report is being provided to the following Members of Congress:

The Honorable Patrick J. Leahy
Chairman, Senate Judiciary Committee

The Honorable Charles Grassley
Ranking Member, Senate Judiciary Committee

The Honorable Lamar Smith
Chairman, House Judiciary Committee

The Honorable John Conyers, Jr.
Ranking Member, House Judiciary Committee

Inquiries relating to this report may be directed to me at (202) 447-5890.

Respectfully,

A handwritten signature in black ink, appearing to read "Nelson Peacock".

Nelson Peacock
Assistant Secretary for Legislative Affairs

Executive Summary

The American Competitiveness and Workforce Improvement Act of 1998 (ACWIA), Pub. L. No. 105-277, div, C, tit. IV, § 416(c), 112 Stat. 2681, imposes quarterly reporting requirements on U.S. Citizenship and Immigrations Services (USCIS) concerning the H-1B petition fees and fee exemptions.¹

To fulfill this requirement, USCIS submits the following report to cover the four quarters of Fiscal Year (FY) 2011, October 1, 2010 – September 30, 2011. The report provides information on:

- the number of aliens granted H-1B status;
- the number of employers requiring an additional ACWIA petition fee as reinstated by the H-1B Visa Reform Act of 2004 and those exempt from the nonimmigrant H-1B ACWIA petition fee; and
- the number of aliens issued visas or otherwise provided H-1B nonimmigrant status pursuant to petitions filed by institutions or organizations described in section 212(p)(1) of the Immigration and Nationality Act (INA).²

In addition to the above, this report also provides information on the number of employers required to submit the Fraud Prevention and Detection Fee.

In all parts of this report, quarterly and annual data for FY 2011 are presented.

The data contained in this report were extracted from a U.S. Citizenship and Immigration Services (USCIS) Service Center electronic data file in October 2011.

¹ Section 416(c)(2) of ACWIA imposes annual reporting requirements on U.S. Citizenship and Immigration Services (USCIS) concerning information on the countries of origin and occupations of, educational levels attained by, and compensation paid to, aliens who were issued H-1B visas or otherwise granted H-1B nonimmigrant status. This information is contained in USCIS's FY 2011 report to Congress, *Characteristics of H-1B Specialty Occupation Workers*.

² Information is also included in this report on those aliens in the United States who are granted a change of status to or extension of stay in the H-1B1 nonimmigrant classification under the United States-Chile or United States-Singapore Free Trade Agreements. This report does not include information on those aliens who are granted an H-1B1 nonimmigrant visa abroad as an employer is not required to file a petition with USCIS for those aliens.



Report on H-1B Petitions

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I. Legislative Requirement

Section 416(c)(2) of the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA), Pub. L. No. 105-277, div. C, tit. IV, § 416(c)(1), 112 Stat. 2681, includes the following requirement:

[T]he Attorney General³ shall notify, on a quarterly basis, the Committees on the Judiciary of the U.S. House of Representatives and the Senate of the numbers of aliens who were issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act during the preceding 3-month period.

Furthermore, section 416(c)(3) of ACWIA requires each report to “include the number of aliens who were issued visas or otherwise provided nonimmigrant status pursuant to petitions filed by institutions or organizations described in section 212(p)(1) of the Immigration and Nationality Act.”

³ As of March 1, 2003, in accordance with section 1517 of Title XV of the Homeland Security Act of 2002 (HSA), Pub. L. No. 107-296, 116 Stat. 2135, any reference to the Attorney General in a provision of the Immigration and Nationality Act describing functions which were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA “shall be deemed to refer to the Secretary” of Homeland Security. See 6 U.S.C. § 557 (2003) (codifying HSA, Title XV, § 1517).

II. Background

The Immigration Act of 1990 established numerical limitations on the H-1B nonimmigrant classification⁴ to provide U.S. employers access to foreign skilled workers while ensuring worker protections. The numerical cap of 65,000 H-1B visas was reached for the first time in Fiscal Year (FY) 1997 and again in FY 1998 as demand increased significantly in the burgeoning technology sector.

In October 1998, Congress enacted the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA), Pub. L. No. 105-277, div. C, tit. IV, 112 Stat. 2681. ACWIA temporarily increased the H-1B cap to 115,000 for FY 1999 and FY 2000 and to 107,500 for FY 2001 while establishing an affirmative role for U.S. employers to assist with education and training efforts. Under ACWIA, an H-1B Nonimmigrant Petitioner Fee account was established to fund training and education programs administered by the Department of Labor and the National Science Foundation. Employers, unless explicitly exempt under the law, were required to pay a \$500 ACWIA fee for each H-1B worker sponsored. Employers who qualified as an institution or organization described in section 212(p)(1) of the Immigration and Nationality Act (INA) were exempted from payment of this fee. ACWIA imposed quarterly and annual reporting requirements on U.S. Citizenship and Immigration Services (USCIS) concerning the H-1B fee, fee exemption, and demographic H-1B worker data. The ACWIA fee of \$500 was initially scheduled to sunset on October 1, 2001.

The 106th Congress passed two bills that affected the H-1B program:

- A bill enacted as the untitled Public Law 106-311, 114 Stat. 1247 (Oct. 17, 2000); and
- The American Competitiveness in the Twenty-first Century Act of 2000 (AC21), Pub. L. No. 106-313, 114 Stat. 1251 (Oct. 17, 2000).

First, pursuant to Public Law 106-311, Congress raised the ACWIA fee from \$500 to \$1,000 while exempting additional types of employers beyond those described in INA § 212(p)(1) from payment of this fee and extending the applicability of the fee provision to qualifying petitions filed by employers through September 30, 2003. Second, AC21 temporarily raised the H-1B cap to 195,000 for FYs 2001, 2002 and 2003 while exempting certain H-1B workers from the numerical limits. Starting in FY 2004, the H-1B cap was reduced back to 65,000 per fiscal year.

On December 8, 2004, Congress passed the Omnibus Appropriations Act for FY 2005, which contained the H-1B Visa Reform Act of 2004, and made several changes to the H-1B program. See Pub. L. No. 108-447, div. J, tit. IV, 118 Stat. 2809. The H-1B Visa Reform Act permanently reinstated the ACWIA fee which had sunset on October 1, 2003, and raised it from \$1,000 to

⁴ The H-1B nonimmigrant classification is defined as “an alien ... who is coming temporarily to the United States to perform services ... in a specialty occupation described in section [214(i)(1)] or as a fashion model, who meets the requirements for the occupation specified in section [214(i)(2)] or, in the case of a fashion model, is of distinguished merit and ability, and with respect to whom the Secretary of Labor determines and certifies to the [Secretary of Homeland Security] that the intending employer has filed with the Secretary [of Labor] an application under section [212(n)(1)].” INA § 101(a)(15)(H)(i)(b). The H-1B1 classification is defined as an alien “who is entitled to enter the United States under and in pursuance of the provisions of an agreement listed in section [214(g)(8)(A)], who is engaged in a specialty occupation described in section [214(i)(3)], and with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed with the Secretary of Labor an attestation under section [212(t)(1)].” *Id.* § 101(a)(15)(H)(i)(b1).

\$1,500 per qualifying petition. The H-1B Visa Reform Act did not alter the exemptions of certain types of employers from payment of the fee altogether,⁵ and lowered the fee to \$750 for employers who have no more than 25 full-time equivalent employees in the United States (determined by including the number of employees employed by any affiliate or subsidiary of such employer). This fee applies to any initial H-1B petition by an employer or first extension request by the same employer filed after December 8, 2004 for an alien by any employer, unless the petitioning organization is exempt from the fee.

The H-1B Visa Reform Act also instituted a new Fraud Prevention and Detection Fee (Fraud Fee) of \$500 that must be submitted with a petition seeking an initial grant of H-1B or L nonimmigrant classification⁶ or by an employer seeking to change an alien's employer within those classifications. The Fraud Fee does not apply to petitions that extend or amend an alien's stay in H-1B or L classification filed by a current employer. Finally, the H-1B Visa Reform Act provided that up to 20,000 petitions filed on behalf of aliens who had earned a master's degree or higher from a U.S. secondary education institution would be exempt from the cap.

This report covers the four quarters of FY 2011 and is presented in three parts:

- Section 3.1 provides information on the number of aliens granted H-1B status;
- Section 3.2 provides information on the number of employers requiring an additional ACWIA petition fee as reinstated by the H-1B Visa Reform Act and those exempt from the nonimmigrant H-1B ACWIA petition fee; and
- Section 3.3 provides information on the number of employers required to submit the Fraud Fee.

In all parts of this report, quarterly and annual data for FY 2011 are presented.

⁵ See Section 3.2 of this report for further information about organizations that are exempt from the ACWIA fee.

⁶ The L-1 nonimmigrant classification is defined in section 101(a)(15)(L) of the INA as "an alien who, within 3 years preceding the time of his application for admission into the United States, has been employed continuously for one year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof and who seeks to enter the United States temporarily in order to continue to render his services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge" Other than being another classification subject to this fee, the L classification has no bearing on the information presented in this report.

III. Data Report⁷

Section 3.1 – Number of H-1B petitions filed by employers in Fiscal Year 2011 and the number of H-1B petitions approved by the USCIS during this period.

Pursuant to section 214(c) of the INA, a U.S. employer using the H-1B program is required to file a petition with the Secretary of Homeland Security on behalf of an alien worker (the beneficiary). The petition must be approved before a visa is granted or an alien is provided nonimmigrant status. Accordingly, petition data is the basis of this report.

Table 1 provides information on the number of H-1B petitions filed by employers in FY 2011. This table also provides information on the number of H-1B petitions approved by USCIS during this period. Petitions filed in a particular quarter are not necessarily adjudicated in that same quarter.

A U.S. employer files the petition with USCIS to sponsor an alien worker as an H-1B nonimmigrant. This petition may be filed to sponsor an alien for an initial period of H-1B employment or to extend the authorized stay of an alien as an H-1B nonimmigrant. Several employers may file a petition for the same alien; however, for H-1B cap purposes such an alien will only be counted once. An employer may file a petition to sponsor an alien who currently has status as an H-1B nonimmigrant working for another employer or to amend a previously approved petition. Therefore, the total number of approved petitions may exceed the actual number of aliens who are provided nonimmigrant status as H-1B.

Of the 269,653 petitions approved in FY 2011, approximately 207,915 were both filed and approved during FY 2011. The remaining 61,738 were filed prior to FY 2011.

⁷ Sections 3.1 and 3.2 of this data report include information on those aliens in the United States who are granted a change of status to or extension of stay in the H-1B1 nonimmigrant classification under the United States-Chile or United States-Singapore Free Trade Agreements. It does not provide information on those aliens who are granted an H-1B1 nonimmigrant visa abroad as an employer is not required to file a petition with USCIS for those aliens. Section 3.3 does not account for aliens in the United States who are granted a change of status to or extension of stay in the H-1B1 nonimmigrant classification, however, because the Fraud Prevention and Detection Fee is not required for petitions seeking H-1B1 nonimmigrant status on behalf of an alien.

**Table 1. Number of H-1B Petitions Filed and Number Approved
by Quarter: FY 2009-FY 2011**

	Fiscal Year	Oct to Dec	Jan to Mar	Apr to Jun	Jul to Sep	Total
Petitions Filed	2009	36,669	37,291	121,782	50,905	246,647
	2010	50,790	34,313	88,501	74,013	247,617
	2011	55,781	44,995	86,716	80,162	267,654
Petitions Approved⁸	2009	35,812	36,883	69,699	71,877	214,271
	2010	50,048	33,584	54,071	55,287	192,990
	2011	72,389	64,206	63,705	69,353	269,653

⁸ These figures represent all approved petitions during the respective fiscal year, irrespective of whether the petition was filed in the same or in a previous fiscal year. To illustrate, 207,915 petitions were both received and approved in Fiscal Year 2011, whereas 61,738 petitions were received prior to Fiscal Year 2011 but were approved in Fiscal Year 2011.

Section 3.2 – Number of aliens provided nonimmigrant status pursuant to petitions filed by institutions or organizations described in section 212(p)(1) of the INA.

ACWIA added section 214(c)(9)(A) of the INA to require that the Attorney General impose a fee on an employer:

- initially filing a petition to grant an alien nonimmigrant status in the H-1B classification;
- extending the H-1B nonimmigrant stay of an alien (unless the employer previously has obtained an extension for such alien); or
- obtaining authorization for an alien in H-1B status to change employers.

The ACWIA provisions exempted certain types of employers described in section 212(p)(1) of the INA from the payment of this fee. The fee, effective December 1, 1998, was initially scheduled to sunset on September 30, 2001.

With the passage of Public Law 106-311, the fee was increased from \$500 to \$1,000, effective December 18, 2000, with a sunset on September 30, 2003. Public Law 106-311 also amended section 214(c)(9)(A) of the INA by specifying certain employers that are exempt from the ACWIA fee beyond those employers described under section 212(p)(1) of the INA. The H-1B Visa Reform Act of 2004, enacted as part of the Omnibus Appropriation Act of FY 2005, reinstated the ACWIA fee and raised it from \$1,000 to \$1,500 per qualifying petition filed with USCIS after December 8, 2004; however, employers who have no more than 25 full-time equivalent employees who are employed in the United States⁹ must pay a \$750 ACWIA fee. The H-1B Visa Reform Act of 2004 again exempted employers described in section 214(c)(9)(A) of the INA from the ACWIA fee. Section 214(c)(9)(A) exempts payment of the ACWIA fee in certain instances, as summarized below.

Due to the passage of Public Law 106-311, this report exceeds the original reporting mandate: it covers all employers exempt from the fee as described in section 214(c)(9)(A), not only those described in section 212(p). Specifically, these exemptions apply to employers that are:

- Institutions of higher education defined in section 101(a) of the Higher Education Act of 1965, 20 U.S.C. § 1001(a);
- Non-profit organizations or entities related to or affiliated with an institution of higher education as defined in section 101(a) of the Higher Education Act of 1965, 20 U.S.C. § 1001(a);
- Non-profit entities engaging in established curriculum-related clinical training of students registered at any institution defined in section 101(a) of the Higher Education Act of 1965, 20 U.S.C. § 1001(a);
- Nonprofit research organizations and Government research organizations; or
- Primary or secondary education institutions;

⁹ The number of employees who are employed in the U.S. includes the number of employees employed by any affiliate or subsidiary of such employer.

- Filing a second or subsequent request for an extension of stay for a particular alien;
- Filing an amended petition without a request to extend the nonimmigrant stay of the alien beneficiary; or
- Filing a petition solely to correct a USCIS error.

Table 2 shows the number of petitions that were filed in FY 2011 that required submission of the ACWIA fee as well as those petitions exempt from that fee. Table 3 shows the same information for all petitions approved during the same period regardless of when filed.

**Table 2. Number of H-1B Petitions Filed by Quarter
and Reason for ACWIA Fee or Exemption from Fee: FY 2011**

For Fiscal Year 2011	Oct 2010 to Dec 2010	Jan 2011 to Mar 2011	Apr 2011 to Jun 2011	Jul 2011 to Sep 2011	FY 2011
TOTAL PETITIONS FILED	55,781	44,995	86,716	80,162	267,654
Without any fee exemptions	41,692	29,520	61,822	59,609	192,643
With at least one exemption	14,089	15,475	24,894	20,553	75,011
SIZE OF EMPLOYERS SUBJECT TO ADDITIONAL FEE					
Employer of no more than 25 full-time equivalent employees	9,280	6,017	11,244	11,085	37,626
Employer of 26 or more full-time equivalent employees	32,410	23,503	50,577	48,521	155,011
Number of full-time equivalent employees unknown ¹⁰	2	0	1	3	6
REASONS FOR EXEMPTION					
Employer is an institution of higher education	4,289	4,472	7,845	5,634	22,240
Employer is a nonprofit organization or entity related to, or affiliated with an institution of higher education	1,813	2,603	6,040	2,824	13,280
Employer is a non-profit research organization or a government research organization	1,429	1,456	2,083	1,649	6,617
Employer is filing a second (or subsequent) extension of stay for an H-1B nonimmigrant	7,316	8,262	11,787	11,105	38,470
Employer is filing an amended petition without an extension of stay for an H-1B nonimmigrant	1,217	1,131	1,399	1,725	5,472
Employer is filing a petition in order to correct a USCIS error	22	42	43	22	129
Employer is a primary or secondary education institution	866	1,210	1,797	1,508	5,381
Employer is a nonprofit entity engaged in clinical training	1,797	2,337	5,294	2,635	12,063

¹⁰ Unknown values may have occurred as a result of data entry errors or improper electronic transfer from a USCIS Service Center electronic data file.

**Table 3. Number of H-1B Petitions Approved
by Quarter and Reason of Exemption from ACWIA Fee: FY 2011**

For Fiscal Year 2011	Oct 2010 to Dec 2010	Jan 2011 to Mar 2011	Apr 2011 to Jun 2011	Jul 2011 to Sep 2011	FY 2011
TOTAL PETITIONS APPROVED	72,389	64,206	63,705	69,353	269,653
Without any fee exemptions	52,113	44,364	44,375	48,803	189,655
With at least one exemption	20,276	19,842	19,330	20,550	79,998
SIZE OF EMPLOYERS SUBJECT TO ADDITIONAL FEE					
Employer of no more than 25 full-time equivalent employees	10,171	8,983	6,845	8,722	34,721
Employer of 26 or more full-time equivalent employees	49,941	35,381	37,530	40,081	154,933
Number of full-time equivalent employees unknown ¹¹	1	0	0	0	1
REASONS FOR EXEMPTION					
Employer is an institution of higher education	6,652	5,436	6,068	6,653	24,809
Employer is a nonprofit organization or entity related to, or affiliated with an institution of higher education	3,226	2,609	4,491	4,220	14,546
Employer is a non-profit research organization or a government research organization	1,866	1,784	1,624	1,815	7,089
Employer is filing a second (or subsequent) extension of stay for an H-1B nonimmigrant	10,620	11,265	9,117	9,986	40,988
Employer is filing an amended petition without an extension of stay for an H-1B nonimmigrant	1,309	1,662	1,147	1,253	5,371
Employer is filing a petition in order to correct a USCIS error	21	40	36	27	124
Employer is a primary or secondary education institution	1,584	1,317	1,453	1,450	5,804
Employer is a nonprofit entity engaged in clinical training	2,951	2,538	4,015	3,717	13,221

¹¹ Unknown values may have occurred as a result of data entry errors or improper electronic transfer from a USCIS Service Center electronic data file.

Section 3.3 – Fraud Prevention and Detection Fee pursuant to the H-1B Visa Reform Act of 2004.

The H-1B Visa Reform Act of 2004 imposed an additional fee of \$500 (“Fraud Prevention and Detection Fee” or “Fraud Fee”) for certain H-1B or L petitions. A U.S. employer seeking initial approval of H-1B or L nonimmigrant status for a beneficiary, or seeking approval to employ an H-1B or L nonimmigrant currently working for another U.S. employer, must submit this additional \$500 fee.

Table 4 shows the number of H-1B petitions filed in FY 2011 that required submission of the Fraud Prevention and Detection Fee. Table 5 shows the same information for all petitions approved during the same period regardless of when filed.

Table 4. Number of H-1B Petitions Filed Requiring Fraud Prevention and Detection Fee: FY 2011

For Fiscal Year 2011	Oct 2010 to Dec 2010	Jan 2011 to Mar 2011	Apr 2011 to Jun 2011	Jul 2011 to Sep 2011	FY 2011
TOTAL PETITIONS FILED	55,781	44,995	86,716	80,162	267,654
REASONS FOR FRAUD FEE					
New employment (including new employer filing H-1B extension)	30,271	15,075	39,887	36,167	121,346
New concurrent employment	221	183	261	266	931
Change of employer	8,049	8,925	11,880	11,538	40,392

**Table 5. Number of H-1B Petitions Approved Requiring
Fraud Prevention and Detection Fee: FY 2011**

For Fiscal Year 2011:	Oct 2010 to Dec 2010	Jan 2011 to Mar 2011	Apr 2011 to Jun 2011	Jul 2011 to Sep 2011	FY 2011
TOTAL PETITIONS APPROVED	72,389	64,206	63,705	69,353	269,653
REASONS FOR FRAUD FEE					
New employment (including new employer filing H-1B extension)	32,534	25,157	28,018	28,338	114,047
New concurrent employment	254	310	197	217	978
Change of employer	9,213	10,431	10,242	10,590	40,476