



Report on H-1B Petitions

Fiscal Year 2017 Annual Report to Congress
October 1, 2016 – September 30, 2017

April 9, 2018



Homeland
Security

*U.S. Citizenship and
Immigration Services*



**Homeland
Security**

Foreword

April 10, 2018

On behalf of the Department of Homeland Security, I am pleased to present the following “Report on H-1B Petitions” for Fiscal Year 2017, 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 Charles E. Grassley
Chairman, Senate Judiciary Committee

The Honorable Dianne Feinstein
Ranking Member, Senate Judiciary Committee

The Honorable Robert W. Goodlatte
Chairman, House Judiciary Committee

The Honorable Jerrold Nadler
Ranking Member, House Judiciary Committee

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

Sincerely,

A handwritten signature in blue ink that reads "David Wonnberg". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

David Wonnberg
Acting 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 Immigration 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) 2017, October 1, 2016 – September 30, 2017. The report provides information on:

- the number of H-1B petitions;
- 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 2017 are presented.

The data contained in this report was extracted by the USCIS Office of Performance and Quality in October 2017.

¹ Section 416(c)(2) of ACWIA imposes annual reporting requirements on 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' FY 2017 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)(1) 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. employers⁵ 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 technology sector.

In October 1998, the 105th 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 Fiscal Years 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, the 108th 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 of 2004* permanently reinstated the ACWIA fee which had sunset on October 1, 2003 and

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).

⁵ Agents, in addition to employers, may file an H-1B petition pursuant to 8 CFR 214.2(h)(2)(i)(F). All references to employers and any applicable fees discussed throughout this report also include agents.

raised it from \$1,000 to \$1,500 per qualifying petition. The *H-1B Visa Reform Act of 2004* did not alter the exemptions of certain types of employers from payment of the fee altogether,⁶ and lowered the fee to \$750 for employers who have no more than 25 full-time equivalent employees in the United States (including the number of employees employed by any affiliate or subsidiary of such employer). This fee applies to any initial H-1B petition filed on behalf of an alien by any employer or first extension request by the same employer for an alien filed after December 8, 2004, unless the petitioning organization is exempt from the fee.

On August 9, 2017, USCIS issued the policy memorandum, “Definition of “Affiliate” or “Subsidiary” for Purposes of Determining the H-1B ACWIA Fee.” The intent of this memorandum is to have consistency in collecting the ACWIA fee under the statutory definitions of “affiliate” and “subsidiary,” thereby ensuring that USCIS collects the higher fee where possible under the law and maximizes receipt of funds for the training of U.S. workers. This policy memorandum directly supports the “Buy American and Hire American” Executive Order, as its purpose is to “protect the interests of United States workers in the administration of our immigration system.”

The *H-1B Visa Reform Act of 2004* 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 classification⁷ or by an employer seeking to change an alien’s employer within those classifications. The Fraud Fee does not apply to petitions filed with USCIS 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 of 2004* 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. institution of higher education (as defined by 20 U.S.C. § 1001(a)) would be exempt from the numerical cap.

This report covers the four quarters of FY 2017 and is presented in three parts:

- Section 3.1 provides information on the number of H-1B petitions;
- 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 of 2004* 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 2017 are presented.

⁶ See Section 3.2 of this report for further information about organizations that are exempt from the ACWIA fee.

⁷ The L nonimmigrant classification is defined in section 101(a)(15)(L) of the INA as “subject to section 214(c)(2), an alien who, within 3 years preceding the time of his application for admission into the United States, has been employed continuously for 1 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 Report⁸

Section 3.1 – Number of H-1B Petitions Filed by Employers in Fiscal Year 2017 and the Number of H-1B Petitions Approved by 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 2017. 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 already 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.

⁸ 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 2014-FY 2017

	Fiscal Year	Oct to Dec	Jan to Mar	Apr to Jun	Jul to Sep	Total
Petitions Filed	2014	45,211	42,781	158,623	72,209	318,824
	2015	51,946	46,088	176,042	74,575	348,669
	2016	64,721	66,715	185,782	81,500	398,718
	2017	65,108	97,219	169,471	71,877	403,675
Petitions Approved⁹	2014	64,526	58,121	91,779	101,431	315,857
	2015	64,799	44,217	84,233	82,068	275,317
	2016	63,912	74,573	110,505	96,272	345,262
	2017	86,483	100,385	107,477	71,337	365,682

⁹ 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, in FY 2016, USCIS received 398,718 petitions and approved 345,262 petitions. Of the 345,262 petitions that were approved, 254,512 were received and approved in FY 2016, whereas 90,750 petitions were received prior to FY 2016, but ultimately approved in FY 2016.

Section 3.2 – Number of H-1B 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, made the fee permanent, 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 States (including the number of employees employed by any affiliate or subsidiary of such employer) 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)(1). 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);
- nonprofit organizations 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);
- nonprofit 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;
- primary or secondary education institutions;
- 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 2017 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 2017

For Fiscal Year 2017	Oct 2016 to Dec 2016	Jan 2017 to Mar 2017	Apr 2017 to Jun 2017	Jul 2017 to Sep 2017	FY 2017
TOTAL PETITIONS FILED	65,108	97,219	169,471	71,877	403,675
Without any fee exemptions	32,016	51,715	134,278	47,783	265,792
With at least one exemption	33,092	45,504	35,193	24,094	137,883
SIZE OF EMPLOYERS SUBJECT TO ADDITIONAL FEE					
Employer of no more than 25 full-time equivalent employees	3,198	4,862	25,328	2,808	36,196
Employer of 26 or more full-time equivalent employees	28,794	46,691	108,875	23,485	207,845
Number of full-time equivalent employees unknown ¹⁰	24	162	75	16	277
REASONS FOR EXEMPTION¹¹					
Employer is an institution of higher education	3,706	7,750	3,599	2,724	17,779
Employer is a nonprofit organization or entity related to, or affiliated with an institution of higher education	1,714	4,226	2,329	1,311	9,580
Employer is a nonprofit research organization or a government research organization	1,295	2,361	952	746	5,354
Employer is filing a second (or subsequent) extension of stay for an H-1B nonimmigrant	15,614	21,873	17,587	12,604	67,678
Employer is filing an amended petition without an extension of stay for an H-1B nonimmigrant	12,525	12,288	12,186	7,759	44,758
Employer is filing a petition in order to correct a USCIS error	13	17	21	27	78
Employer is a primary or secondary education institution	302	765	741	454	2,262
Employer is a nonprofit entity engaged in clinical training	1,605	4,041	2,058	1,120	8,824

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.

¹¹ A petition may be counted in multiple rows if the employer indicates that the petition is exempt from the fee for multiple reasons.

Table 3. Number of H-1B Petitions Approved by Quarter and Reason of Exemption from ACWIA Fee: FY 2017

For Fiscal Year 2017	Oct 2016 to Dec 2016	Jan 2017 to Mar 2017	Apr 2017 to Jun 2017	Jul 2017 to Sep 2017	FY 2017
TOTAL PETITIONS APPROVED	86,483	100,385	107,477	71,337	365,682
Without any fee exemptions	52,287	47,505	64,289	46,540	210,621
With at least one exemption	34,196	52,880	43,188	24,797	155,061
SIZE OF EMPLOYERS SUBJECT TO ADDITIONAL FEE					
Employer of no more than 25 full-time equivalent employees	7,181	5,627	4,860	5,105	22,773
Employer of 26 or more full-time equivalent employees	44,984	41,861	59,224	40,685	186,754
Number of full-time equivalent employees unknown ¹²	122	17	205	2	346
REASONS FOR EXEMPTION¹³					
Employer is an institution of higher education	3,893	6,143	5,972	3,612	19,620
Employer is a nonprofit organization or entity related to, or affiliated with an institution of higher education	2,100	2,599	4,011	1,939	10,649
Employer is a nonprofit research organization or a government research organization	1,319	1,851	1,590	945	5,705
Employer is filing a second (or subsequent) extension of stay for an H-1B nonimmigrant	16,393	21,062	18,055	14,263	69,773
Employer is filing an amended petition without an extension of stay for an H-1B nonimmigrant	12,425	23,936	16,222	5,413	57,996
Employer is filing a petition in order to correct a USCIS error	18	19	15	10	62
Employer is a primary or secondary education institution	474	562	792	632	2,460
Employer is a nonprofit entity engaged in clinical training	1,841	2,859	3,427	1,700	9,827

¹² Unknown values may have occurred as a result of data entry errors or improper electronic transfer from a USCIS Service Center electronic data file.

¹³ A petition may be counted in multiple rows if the employer indicates that the petition is exempt from the fee for multiple reasons.

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 2017 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 2017

For Fiscal Year 2017	Oct 2016 to Dec 2016	Jan 2017 to Mar 2017	Apr 2017 to Jun 2017	Jul 2017 to Sep 2017	FY 2017
TOTAL PETITIONS FILED WITH FEE	22,000	30,388	114,622	20,692	187,702
REASONS FOR FRAUD FEE					
New employment (including new employer filing H-1B extension)	6,066	11,266	100,368	4,805	122,505
New concurrent employment	211	204	236	222	873
Change of employer	15,723	18,918	14,018	15,665	64,324

Table 5. Number of H-1B Petitions Approved Requiring Fraud Prevention and Detection Fee: FY 2017

For Fiscal Year 2017	Oct 2016 to Dec 2016	Jan 2017 to Mar 2017	Apr 2017 to Jun 2017	Jul 2017 to Sep 2017	FY 2017
TOTAL PETITIONS APPROVED WITH FEE	37,965	28,913	46,213	32,947	146,038
REASONS FOR FRAUD FEE					
New employment (including new employer filing H-1B extension)	22,364	12,240	34,111	24,962	93,677
New concurrent employment	190	328	288	177	983
Change of employer	15,411	16,345	11,814	7,808	51,378