



# Report on H-1B Petitions

Fiscal Year 2010 Annual Report  
October 1, 2009 – September 30, 2010

August 4, 2011



Homeland  
Security

*U.S. Citizenship and Immigration Services*



**Homeland  
Security**

**AUG 11 2011**

## Foreword

I am pleased to present the following "Report on H-1B Petitions for Fiscal Year 2010" prepared by U.S. Citizenship and Immigration Services. The report was compiled in response to a legislative requirement in the American Competitiveness and Workforce Improvement Act of 1998, Pub. L. No. 105-277, div. C, tit. IV § 416(c)(2), 112 Stat. 2681.

The report provides the number of persons issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (INA). It also provides 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 INA.

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

The Honorable Patrick 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  
Office of Legislative Affairs



## Executive Summary

The American Competitiveness and Workforce Improvement Act (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 fee and fee exemption.

To fulfill this requirement, U.S. Citizenship and Immigration Services submits the following report to cover the four quarters of Fiscal Year 2010, October 1, 2009 – September 30, 2010. 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 and those exempt from the nonimmigrant H-1B ACWIA petition fee; and the number of employers required to submit the Fraud Prevention and Detection Fee. In all parts of this report, quarterly and annual data for Fiscal Year 2010 are presented.

The data contained in this report are accurate as of October 2010.

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# I. Legislative Requirement

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

[T]he Attorney General<sup>1</sup> 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.”

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<sup>1</sup> 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 classification<sup>2</sup> 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 1997 and again in Fiscal Year 1998 as demand increased significantly in the burgeoning technology sector.

In October 1998, Congress enacted the American Competitiveness and Workforce Improvement Act (ACWIA), Pub. L. No. 105-277, div. C, tit. IV, 112 Stat. 2681. ACWIA temporarily increased the H-1B cap to 115,000 for Fiscal Years 1999 and 2000 and to 107,500 for Fiscal Year 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. Additionally, 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 these numerical limits. Starting in Fiscal Year 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, which made several changes to the H-1B program. See

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<sup>2</sup> The H-1B nonimmigrant classification is defined in section 101(a)(15)(H) of the INA 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 Attorney General that the intending employer has filed with the Secretary an application under section 212(n)(1), or 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) ...”

Pub. L. No. 108-447, div. J, tit. IV, 118 Stat. 2809. First, the H-1B Visa Reform Act reinstated the ACWIA fee which had sunset on October 1, 2003, and raised it from \$1,000 to \$1,500 per qualifying petition. The H-1B Visa Reform Act again exempted certain types of employers from payment of the fee altogether,<sup>3</sup> and also 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 for an alien or first-time extension filed with USCIS by an employer that had not previously obtained an extension for such alien after December 8, 2004, 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 classification<sup>4</sup> or by an employer seeking to change an alien's employer within those classifications. The Fraud Fee does not apply to petitions to extend or amend an alien's stay in H-1B or L classification filed by a current employer. The Fraud Fee applies to qualifying petitions filed with USCIS on or after March 8, 2005. Finally, the H-1B Visa Reform Act provided that the first 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 Fiscal Year 2010. This report 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 Fiscal Year 2010 are presented.

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<sup>3</sup> See Section 3.2 of this report for further information about organizations that are exempt from the ACWIA fee.

<sup>4</sup> 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 Report

#### Section 3.1 – Number of H-1B petitions filed by employers in Fiscal Year 2010 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, the petition data is the basis of this report.

Table 1 provides information on the number of H-1B petitions filed by employers in Fiscal Year 2010. 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. Additionally, 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. In the case of a petition to amend a previously approved petition, no corresponding request need be made to extend the authorized stay of the beneficiary. For example, an employer may file an amended petition notifying USCIS of a different location where the beneficiary will be employed or a material change in the beneficiary's job duties. Therefore, the total number of approved petitions may exceed the actual number of aliens who are provided nonimmigrant status as H-1B.

Of the 192,990 petitions approved in Fiscal Year 2010, approximately 171,754 were both filed and approved during Fiscal Year 2010. The remaining 21,236 were filed prior to Fiscal Year 2010.



**Table 1. Number of H-1B Petitions Filed and Number Approved  
by Quarter: FY 2008-FY 2010**

	<b>Fiscal Year</b>	<b>Oct to Dec</b>	<b>Jan to Mar</b>	<b>Apr to Jun</b>	<b>Jul to Sep</b>	<b>Total</b>
<b>Petitions Filed<sup>5</sup></b>	<b>2008</b>	<b>41,852</b>	<b>44,486</b>	<b>150,942</b>	<b>51,484</b>	<b>288,764</b>
	<b>2009</b>	<b>36,669</b>	<b>37,291</b>	<b>121,782</b>	<b>50,905</b>	<b>246,647</b>
	<b>2010</b>	<b>50,790</b>	<b>34,313</b>	<b>88,501</b>	<b>74,013</b>	<b>247,617</b>
<b>Petitions Approved<sup>6</sup></b>	<b>2008</b>	<b>52,975</b>	<b>32,766</b>	<b>104,797</b>	<b>85,714</b>	<b>276,252</b>
	<b>2009</b>	<b>35,812</b>	<b>36,883</b>	<b>69,699</b>	<b>71,877</b>	<b>214,271</b>
	<b>2010</b>	<b>50,048</b>	<b>33,584</b>	<b>54,071</b>	<b>55,287</b>	<b>192,990</b>

<sup>5</sup> Approximately 63,000 H-1B petitions were submitted but not filed (i.e., the petition and fee were not accepted) in April 2008 because they were not selected in the lottery. These Fiscal Year 2008 petitions were excluded from this table.

<sup>6</sup> 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, 171,754 petitions were both received and approved in Fiscal Year 2010, whereas 21,236 petitions were received prior to Fiscal Year 2010, but were approved in Fiscal Year 2010.

## 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; extend the H-1B nonimmigrant stay of an alien (unless the employer previously has obtained an extension for such alien); or obtain authorization for an alien having such 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, 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 States<sup>7</sup> only must pay a \$750 ACWIA fee. The H-1B Visa Reform Act again exempted employers described in section 214(c)(9)(A) of the INA from the ACWIA fee. Additionally, section 214(c)(9)(A) exempts payment of the ACWIA fee in certain administrative 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 such institution;
- ◆ Non-profit research organizations and Government research organizations;
- ◆ Primary or secondary education institutions;

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<sup>7</sup>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 to correct a USCIS error.

Table 2 shows the number of petitions that were filed in Fiscal Year 2010 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 2010**

For Fiscal Year 2010	Oct 2009 to Dec 2009	Jan 2010 to Mar 2010	Apr 2010 to Jun 2010	Jul 2010 to Sep 2010	FY 2010
<b>TOTAL PETITIONS FILED</b>	50,790	34,313	88,501	74,013	247,617
Without any fee exemptions	34,669	18,122	63,154	53,687	169,632
With at least one exemption	16,121	16,191	25,347	20,326	77,985
<b>REASONS FOR ADDITIONAL FEE</b>					
Employer of no more than 25 full-time equivalent employees	8,773	3,153	12,140	10,478	34,544
Employer of at least 25 full-time equivalent employees	25,894	14,968	51,012	43,209	135,083
Number of full-time equivalent employees unknown	2	1	2	0	5
<b>REASONS FOR EXEMPTION</b>					
Employer is an institution of higher education	4,666	4,337	8,458	6,190	23,651
Employer is an organization or entity related to, or affiliated with an institution of higher education	2,191	2,976	6,757	3,032	14,956
Employer is a non-profit research organization or a government research organization	1,437	1,467	2,177	1,755	6,836
Employer is filing a second (or subsequent) extension of stay for an H-1B nonimmigrant	8,345	8,765	11,120	10,576	38,806
Employer is filing an amended petition without an extension of stay for an H-1B nonimmigrant	1,675	1,250	1,228	1,261	5,414
Employer is filing a petition in order to correct a USCIS error	35	31	28	29	123
Employer is a primary or secondary education institution	1,126	954	2,427	1,828	6,335
Employer is a non-profit entity engaged in clinical training	2,020	2,285	5,169	2,621	12,095



**Table 3. Number of H-1B Petitions Approved  
by Quarter and Reason of Exemption from ACWIA Fee: FY 2010**

<b>For Fiscal Year 2010</b>	<b>Oct 2009 to Dec 2009</b>	<b>Jan 2010 to Mar 2010</b>	<b>Apr 2010 to Jun 2010</b>	<b>Jul 2010 to Sep 2010</b>	<b>FY 2010</b>
<b>TOTAL PETITIONS APPROVED</b>	50,048	33,584	54,071	55,287	192,990
Without any fee exemptions	34,194	19,551	34,998	41,499	130,242
With at least one exemption	15,854	14,033	19,073	13,788	62,748
<b>REASONS FOR ADDITIONAL FEE</b>					
Employer of no more than 25 full-time equivalent employees	7,850	4,192	5,553	7,912	25,507
Employer of at least 25 full-time equivalent employees	26,344	15,359	29,445	33,587	104,735
Number of full-time equivalent employees unknown	0	0	0	0	0
<b>REASONS FOR EXEMPTION</b>					
Employer is an institution of higher education	4,799	3,809	6,062	4,924	19,594
Employer is an organization or entity related to, or affiliated with an institution of higher education	2,424	2,163	4,969	2,984	12,540
Employer is a non-profit research organization or a government research organization	1,433	1,335	1,661	1,376	5,805
Employer is filing a second (or subsequent) extension of stay for an H-1B nonimmigrant	8,105	7,470	8,607	5,848	30,030
Employer is filing an amended petition without an extension of stay for an H-1B nonimmigrant	1,375	1,331	1,046	625	4,377
Employer is filing a petition in order to correct a USCIS error	40	26	21	19	106
Employer is a primary or secondary education institution	1,256	837	1,511	1,327	4,931
Employer is a non-profit entity engaged in clinical training	2,105	1,828	3,722	2,453	10,108

### 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 also imposed an additional fee of \$500 (“Fraud Prevention and Detection Fee” or “Fraud Fee”) for certain H 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 Fiscal Year 2010 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 2010**

<b>For Fiscal Year 2010</b>	<b>Oct 2009 to Dec 2009</b>	<b>Jan 2010 to Mar 2010</b>	<b>Apr 2010 to Jun 2010</b>	<b>Jul 2010 to Sep 2010</b>	<b>FY 2010</b>
<b>TOTAL PETITIONS FILED</b>	31,694	13,439	55,871	41,452	142,456
<b>REASONS FOR FRAUD FEE</b>					
New employment (including new employer filing H-1B extension)	24,603	6,212	45,818	31,481	108,114
New concurrent employment	245	201	267	287	1,000
Change of employer	6,846	7,026	9,786	9,684	33,342

**Table 5. Number of H-1B Petitions Approved Requiring  
Fraud Prevention and Detection Fee: FY 2010**

<b>For Fiscal Year 2010:</b>	<b>Oct 2009 to Dec 2009</b>	<b>Jan 2010 to Mar 2010</b>	<b>Apr 2010 to Jun 2010</b>	<b>Jul 2010 to Sep 2010</b>	<b>FY 2010</b>
<b>TOTAL PETITIONS APPROVED</b>	27,600	16,296	31,653	36,221	111,770
<b>REASONS FOR FRAUD FEE</b>					
New employment (including new employer filing H-1B extension)	21,009	9,906	23,574	28,989	83,478
New concurrent employment	215	201	172	153	741
Change of employer	6,376	6,189	7,907	7,079	27,551