

**U.S. Department of Homeland Security**  
**U.S. Citizenship and Immigration Services**



**Report on H-1B Petitions**

**Fiscal Year 2006, Annual Report**  
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**U.S. Citizenship  
and Immigration  
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105-277, Division C  
American Competitiveness and Workforce  
Improvement Act of 1998

## **Report on H-1B Petitions**

This report is mandated under section 416(c)(1) of the American Competitiveness and Workforce Improvement Act (ACWIA): "...the [Secretary of Homeland Security] 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, as described in section 416(c)(3), this report "...shall 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 (as added by section 415 of this title)."

In October 1998, enactment of ACWIA (Public Law 105-277, Division C) resulted in establishment of an H-1B Nonimmigrant Petitioner Fee account, administered by the Department of Labor and the National Science Foundation, to fund training and education programs for U.S. workers. Today, petitioning U.S. employers, unless explicitly exempt under INA section 212(p)(1)<sup>1</sup>, must pay a \$1,500 or \$750 fee (depending on the size of the petitioner's workforce) for each H-1B petition filed. ACWIA also 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.

On December 8, 2004, Congress passed the Omnibus Appropriations Act for FY 2005 (Public Law 108-447) which contained the H-1B Visa Reform Act. Among other things, the H-1B Visa Reform Act instituted a new \$500 Fraud Prevention and Detection Fee.

This report is presented in three parts, all of which present both quarterly and annual data for FY 2006:

- **Part I** provides information on the number of aliens granted H-1B status;
- **Part II** provides information on the number of employers requiring 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
- **Part III** provides information on the number of employers required to submit the Fraud Prevention and Detection Fee.

### **Background on the H-1B Classification**

Pursuant to section 214(c) of the INA, U.S. employers using the H-1B program are required to file a petition with the Attorney General (now the Secretary of the Department of Homeland Security) in 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.

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<sup>1</sup> These employers are institutions of higher education or a related or affiliated nonprofit entity and nonprofit or Governmental research organizations.

Congress created the H-1B nonimmigrant category in the Immigration and Nationality Act of 1990 (IMMACT '90), Pub. L. 101-649, 104 Stat. 5014 (November 29, 1990). Section 101(a)(15)(H)(1)(b) defines an alien seeking H-1B classification as:

an alien...who is coming temporarily to the United States to perform services...in a specialty occupation described in section [214(i)(1)] ..., 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)] ....

8 U.S.C. § 1101(h)(1)(b). Section 214(i) of the Immigration and Nationality Act (INA) defines a “specialty occupation” as “an occupation that requires (a) the theoretical and practical application of a body of highly specialized knowledge and (b) the attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.” 8 U.S.C. § 1184(i). Numerical limitations (commonly known as the “H-1B cap”) were also placed on the number of H-1B visas available per fiscal year. The cap, initially set at 65,000, 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. Congress increased the cap to 115,000 in FY 1999 and 2000 and to 195,000 in FY 2001-03, but has maintained it at 65,000 since FY 2004.

**Part I. The number of aliens provided status under section 101(a)(15)(H)(i)(b) of the INA.**

Table 1 provides information on the number of H-1B petitions filed by U.S. employers during Fiscal Year 2006. This table also provides information on the number of H-1B petitions approved by U.S. Citizenship and Immigration Services (USCIS) during this period. Please note that petitions filed in a particular quarter are not necessarily adjudicated in that same quarter.

Under the implementing regulations, obtaining authorization to employ an H-1B temporary worker is a multi-phase process involving the Department of Labor (DOL), USCIS, and the Department of State (DOS). Prior to filing the H-1B petition with USCIS, the U.S. employer must file a labor condition application (LCA) with the DOL. The LCA contains attestations by the employer with respect to wages and working conditions and must be certified by the DOL and then filed with the H-1B petition. See 8 CFR § 214.2(h)(4)(i)(B). Only after obtaining an approved LCA can the employer file an H-1B petition in behalf of the alien.

Through the H-1B petition, the employer must demonstrate that the position qualifies as a specialty occupation and that the alien meets certain minimum requirements. See 8 CFR § 214.2(h)(4)(iii)(A). In addition, the position must require and the alien must possess a degree (or its equivalent) in a specialty field; a general degree, absent specialized work experience, will not satisfy the statutory criteria for H-1B status. See 8 CFR § 214.2(h)(4)(iii)(C).

The H-1B petition may be approved for up to three years. Once the H-1B petition is approved, an alien abroad may apply for an H-1B nonimmigrant visa from the DOS at a U.S. embassy or consulate, or if visa-exempt (e.g., a Canadian citizen), may seek admission at a port of entry. If the alien is already in the United States in a valid nonimmigrant status and eligible to change or extend that status under INA sections 248 and 214, the petitioner may indicate the same on the Form I-129 filed with USCIS to seek classification as an H-1B nonimmigrant. Several employers may file a petition for the same alien, although for H-1B cap purposes such an alien will count only once against the cap. In the case of a petition to amend a previously approved petition, there may be no corresponding request 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 295,915 petitions filed in Fiscal Year 2006 and the 270,981 approved in Fiscal Year 2006, approximately 227,611 petitions were both filed and approved during Fiscal Year 2006. The remaining 43,370 petitions approved were filed in prior fiscal years.

**Table 1. Number of H-1B Petitions Filed and/or Approved  
by Quarter: FY 2002-FY 2006**

	<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</b>	<b>2002</b>	<b>53,888</b>	<b>51,905</b>	<b>53,429</b>	<b>55,968</b>	<b>215,190</b>
	<b>2003</b>	<b>50,633</b>	<b>52,722</b>	<b>61,302</b>	<b>66,373</b>	<b>231,030</b>
	<b>2004</b>	<b>69,835</b>	<b>64,022</b>	<b>74,823</b>	<b>103,520</b>	<b>312,200</b>
	<b>2005</b>	<b>41,020</b>	<b>41,847</b>	<b>98,831</b>	<b>84,776</b>	<b>266,474</b>
	<b>2006</b>	<b>48,678</b>	<b>50,445</b>	<b>132,655</b>	<b>64,137</b>	<b>295,915</b>
<b>Petitions Approved*</b>	<b>2002</b>	<b>62,212</b>	<b>51,363</b>	<b>34,003</b>	<b>49,959</b>	<b>197,537</b>
	<b>2003</b>	<b>47,867</b>	<b>50,648</b>	<b>57,514</b>	<b>61,311</b>	<b>217,340</b>
	<b>2004</b>	<b>60,279</b>	<b>67,850</b>	<b>71,284</b>	<b>88,005</b>	<b>287,418</b>
	<b>2005</b>	<b>58,141</b>	<b>60,614</b>	<b>71,200</b>	<b>77,176</b>	<b>267,131</b>
	<b>2006</b>	<b>57,487</b>	<b>53,896</b>	<b>67,843</b>	<b>91,755</b>	<b>270,981</b>

\* Regardless of when filed.

**Part II. The number of aliens provided nonimmigrant status pursuant to petitions filed by institutions or organizations described in section 212(p)(1) of the INA.**

The ACWIA added section 214(c)(9)(A) of the INA to require that the Attorney General impose a fee on an employer filing a petition to grant an alien initial status as an H-1B; to extend the nonimmigrant stay of an alien as an H-1B (unless the employer previously has obtained an extension for such alien); or to 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 set to sunset on September 30, 2001.

With the passage of Public Law 106-311, the fee was increased from \$500 to \$1,000, effective on December 18, 2000, and set to sunset on September 30, 2003. Public Law 106-311 also amended section 214(c)(9)(A) of the INA specifying which employers are exempt from the fee by adding additional types of employers<sup>2</sup> that would be exempt from the ACWIA fee.

The H-1B Visa Reform Act, enacted as part of the Omnibus Appropriation Act of FY 2005, reinstated the ACWIA fee, which had sunset on October 1, 2003, and raised it from \$1,000 to \$1,500 per qualifying petition, except for certain employers. Specifically, certain types of employers are exempt from the fee altogether, and employers who have not more than 25 full-time equivalent employees employed in the United States (determined by including the number of employees employed by any affiliate or subsidiary of such employer) only have to pay a fee of \$750. Any H-1B petition filed with USCIS after December 8, 2004, must include the appropriate ACWIA fee. The H-1B Visa Reform Act also instituted a new Fraud Prevention and Detection Fee of \$500 which must be paid by employers seeking an initial grant of H-1B or L (Intra-company Transferee) nonimmigrant classification, or by a petitioner seeking to change an alien's employer within those classifications. The new 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. This fee applies to any qualifying petition filed with USCIS on or after March 8, 2005.

This report includes the number of petitions approved for H-1B workers pursuant to petitions filed by employers designated by Congress as exempt from the fee. Those employers are:

- ◆ Institutions of higher education defined in section 101(a) of the Higher Education Act of 1965;
- ◆ 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;
- ◆ Non-profit research organizations and Government research organizations;
- ◆ Non-profit or tax exempt organizations;

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<sup>2</sup> The additional employers exempted were primary and secondary educational institutions and non-profit entities engaged in established curriculum related clinical training of students registered at any exempted educational institution.

- ◆ Petitioners filing a second or subsequent request for an extension of stay for a particular alien;
- ◆ Petitioners filing an amended petition without a request to extend the nonimmigrant stay of the alien beneficiary;
- ◆ Petitioners filing a petition to correct a USCIS error;
- ◆ Primary or secondary education institutions; or
- ◆ Non-profit entities engaging in established curriculum-related clinical training of students registered at any such institution.

Table 2 shows the number of petitions that were filed in Fiscal Year 2006 and the number exempted from the fee. Table 3 shows the same information for all petitions approved in Fiscal Year 2006, regardless of when filed. Approximately 227,611 petitions are included in both tables, indicating the petitions were filed and approved during Fiscal Year 2006. As explained in Part I, the total number of approved petitions may exceed the actual number of aliens who are provided nonimmigrant status as H-1B since a single alien may be the beneficiary of multiple petitions.

**Table 2. Number of H-1B Petitions Filed by Quarter  
and Reason for Fee or Exemption from Fee: FY 2006**

For Fiscal Year 2006:	Oct 2005 to Dec 2005	Jan 2006 to Mar 2006	Apr 2006 to Jun 2006	Jul 2006 to Sep 2006	FY 2006
<b>TOTAL PETITIONS FILED</b>	48,678	50,445	132,655	64,137	295,915
Without any fee exemptions	29,281	28,309	107,657	36,495	201,742
With at least one exemption	19,397	22,136	24,998	27,642	94,173
<b>REASONS FOR ADDITIONAL FEE</b>					
Employer of not more than 25 full-time equivalent employees	7,888	7,140	29,201	9,201	53,430
Employer of more than 25 full-time equivalent employees	21,388	21,167	78,453	27,293	148,301
Number of full-time equivalent employees unknown	5	2	3	1	11
<b>REASON FOR EXEMPTION</b>					
Employer is an institution of higher education.	5,524	6,075	8,134	7,970	27,703
Employer is an organization or entity related to, or affiliated with an institution of higher education	2,543	3,375	5,750	4,090	15,758
Employer is a nonprofit research organization or a government research organization	1,581	1,883	2,150	1,944	7,558
Employer is filing a second (or higher) extension of stay for an H-1B nonimmigrant	11,162	12,878	10,884	15,594	50,518
Employer is filing an amended petition without an extension of stay for an H-1B nonimmigrant	1,313	1,169	1,136	1,512	5,130
Employer is filing a petition in order to correct a USCIS error	65	62	125	71	323
Employer is a primary or secondary education institution	842	1,084	2,758	2,174	6,858
Employer is a non-profit entity engaged in clinical training	2,142	2,649	3,995	3,133	11,919



**Table 3. Number of H-1B Petitions Approved  
by Quarter and Reason of Exemption from Fee: FY 2006**

For Fiscal Year 2006:	Oct 2005 to Dec 2005	Jan 2006 to Mar 2006	Apr 2006 to Jun 2006	Jul 2006 to Sep 2006	FY 2006
<b>TOTAL PETITIONS APPROVED</b>	57,487	53,896	67,843	91,755	270,981
Without any fee exemptions	42,343	31,902	44,345	65,358	183,948
With at least one exemption	15,144	21,994	23,498	26,397	87,033
<b>REASONS FOR ADDITIONAL FEE</b>					
Employer of not more than 25 full-time equivalent employees	11,843	8,387	10,964	16,431	47,625
Employer of more than 25 full-time equivalent employees	30,299	23,376	33,280	48,867	135,822
Number of full-time equivalent employees unknown	201	139	101	60	501
<b>REASON FOR EXEMPTION</b>					
Employer is an institution of higher education.	4,911	5,314	7,472	8,709	26,406
Employer is an organization or entity related to, or affiliated with an institution of higher education	2,295	2,734	4,783	4,723	14,535
Employer is a nonprofit research organization or a government research organization	1,401	1,687	1,934	2,055	7,077
Employer is filing a second (or higher) extension of stay for an H-1B nonimmigrant	7,655	13,630	11,511	13,112	45,908
Employer is filing an amended petition without an extension of stay for an H-1B nonimmigrant	877	1,432	968	1,265	4,542
Employer is filing a petition in order to correct a USCIS error	48	47	60	51	206
Employer is a primary or secondary education institution	996	906	1,606	2,486	5,994
Employer is a non-profit entity engaged in clinical training	1,899	2,157	3,674	3,594	11,324

**Part III. Number of petitioners required to submit fraud prevention and detection fee pursuant to the H-1B Reform Act of 2004.**

The H-1B Visa Reform Act of 2004 also imposed an additional fee of \$500 (“Fraud Prevention and Detection 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 petitions that were filed in Fiscal Year 2006 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 2006**

For Fiscal Year 2006:	Oct 2005 to Dec 2005	Jan 2006 to Mar 2006	Apr 2006 to Jun 2006	Jul 2006 to Sep 2006	FY 2006
<b>TOTAL PETITIONS FILED</b>	24,592	21,288	106,728	30,836	183,444
<b>REASONS FOR FRAUD FEE</b>					
New employment (including new employer filing H-1B extension)	14,513	11,183	95,912	18,377	139,985
New concurrent employment	324	291	266	330	1,211
Change of employer	9,755	9,814	10,550	12,129	42,248

**Table 5. Number of H-1B Petitions Approved Requiring Fraud Prevention and Detection Fee: FY 2006**

For Fiscal Year 2006:	Oct 2005 to Dec 2005	Jan 2006 to Mar 2006	Apr 2006 to Jun 2006	Jul 2006 to Sep 2006	FY 2006
<b>TOTAL PETITIONS APPROVED</b>	40,156	24,366	40,621	62,035	167,178
<b>REASONS FOR FRAUD FEE</b>					
New employment (including new employer filing H-1B extension)	32,755	13,200	30,608	50,329	126,892
New concurrent employment	258	319	290	286	1,153
Change of employer	7,143	10,847	9,723	11,420	39,133