

Why GAO Did This Study

Congress created the H-1B program in 1990 to enable U.S. employers to hire temporary, foreign workers in specialty occupations. The law capped the number of H-1B visas issued per fiscal year at 65,000. Since then, the cap has fluctuated with legislative changes. Congress asked GAO to assess the impact of the cap on the ability of domestic companies to innovate, while ensuring that U.S. workers are not disadvantaged. In response, GAO examined what is known about (1) employer demand for H-1B workers; (2) how the cap affects employer costs and decisions to move operations overseas; (3) H-1B worker characteristics and the potential impact of raising the cap; and (4) how well requirements of the H-1B program protect U.S. workers. GAO analyzed data from 4 federal agencies; interviewed agency officials, experts, and H-1B employers; and reviewed agency documents and literature.

What GAO Recommends

This report offers several matters for congressional consideration, including that Congress re-examine key H-1B program provisions and make appropriate changes as needed. GAO also recommends that the Departments of Homeland Security and Labor take steps to improve efficiency, flexibility, and monitoring of the H-1B program. Homeland Security disagreed with two recommendations and one matter, citing logistical and other challenges; however, we believe such challenges can be overcome. Labor did not respond to our recommendations.

View [GAO-11-26](#) or key components. For more information, contact Andrew Sherrill at (202)512-7215 or sherrilla@gao.gov.

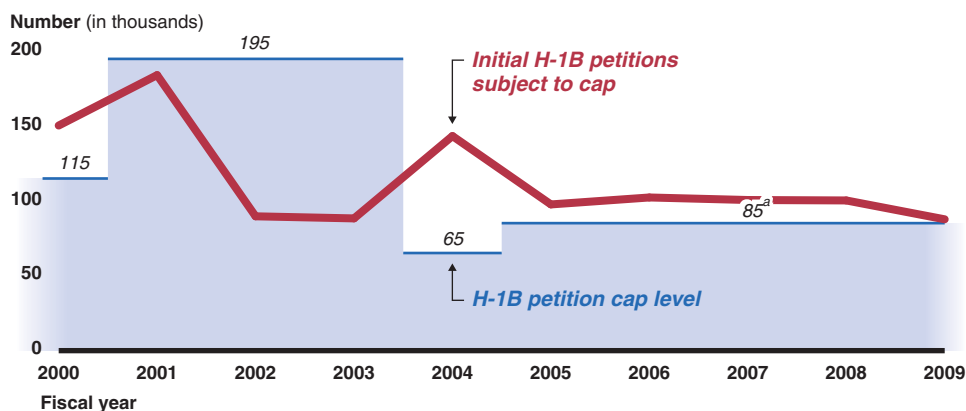
H-1B VISA PROGRAM

Reforms Are Needed to Minimize the Risks and Costs of Current Program

What GAO Found

In most years, demand for new H-1B workers exceeded the cap: From 2000 to 2009, demand for new H-1B workers tended to exceed the cap, as measured by the numbers of initial petitions submitted by employers who are subject to the cap (see fig. 1). There is no way to precisely determine the level of any unmet demand among employers, since they tend to stop submitting (and the Department of Homeland Security stops tracking) petitions once the cap is reached each year. When we consider all initial petitions, including those from universities and research institutions that are not subject to the cap, we find that demand for new H-1B workers is largely driven by a small number of employers. Over the decade, over 14 percent of all initial petitions were submitted by cap-exempt employers, and only a few employers (fewer than 1 percent) garnered over one-quarter of all H-1B approvals.

Figure 1: Number of Initial Petitions for New H-1B Workers Submitted by Employers Subject to the Cap



Source: GAO analysis of Department of Homeland Security CLAIMS 3 data on initial petitions.

^aIncludes 20,000 visas allocated to workers graduating from U.S. master's programs or higher.

Most interviewed companies said the H-1B cap and program created costs, but were not factors in their decisions to move R&D overseas:

The 34 H-1B employers GAO interviewed reported that the cap has created some additional costs, though the cap's impact depended on the size and maturity of the company. For example, in years when visas were denied by the cap, most large firms reported finding other (sometimes more costly) ways to hire their preferred job candidates. On the other hand, small firms were more likely to fill their positions with different candidates, which they said resulted in delays and sometimes economic losses, particularly for firms in rapidly changing technology fields. Interviewed employers also cited costs due to the H-1B lottery process employed when the cap is reached—noting that it does not allow them to prioritize their candidates if they have submitted more than one petition or to make timely hires in response to business needs. On the other hand, most employers told us that the global

marketplace and access to skilled labor drive their decisions on whether to move R&D and other activities overseas, not the H-1B cap.

Limitations in agency data and systems hinder tracking the cap and H-1B workers over time: The total number of H-1B workers in the U.S. at any one time—and information about the length of their stay—is unknown, because (1) data systems among the various agencies that process such individuals are not linked so individuals cannot be readily tracked, and (2) H-1B workers are not assigned a unique identifier that would allow for tracking them over time—particularly if and when their visa status changes. Although information on the total H-1B workforce is lacking, data on approved petitions show that, since 2000, most people that were approved to be H-1B workers were born in China or India, were hired for technology positions, and increasingly held advanced degrees. System limitations also hinder the Department of Homeland Security from knowing precisely when and whether the annual cap has been reached each year, although this problem might be remedied through the agency’s data-modernization plan. Finally, data limitations, along with complex economic relationships, hinder our ability to estimate the potential impact raising the cap would have on U.S. worker wages and employment.

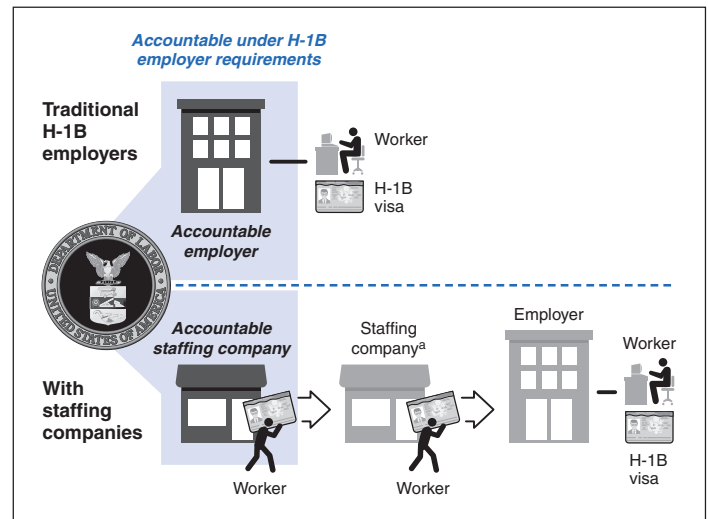
Restricted agency oversight and statutory changes weaken protections for U.S. workers: Elements of the H-1B program that could serve as worker protections—such as the requirement to pay prevailing wages, the visa’s temporary status, and the cap itself—are weakened by several factors. First, program oversight is fragmented and restricted. For example, the Department of Labor’s review of H-1B applications from employers is cursory and limited by law to only looking for missing information and obvious inaccuracies. Yet a recent Department of Homeland Security study reported that 21 percent of the H-1B petitions they examined involved fraud or technical violations.

Second, the H-1B program lacks a legal provision for holding employers accountable to program requirements when they obtain H-1B workers through a staffing company (see fig. 2). Officials from the Department of Labor’s investigative office reported receiving the bulk of their complaints from H-1B workers contracted by staffing companies.

Third, statutory changes made to the H-1B program have, in combination and in effect, increased the pool of H-1B workers beyond the cap and lowered the bar for eligibility. Specifically, these changes have increased the available exemptions to the cap; offered unlimited extensions on the visa while holders apply for

permanent residency; and broadened the job and skill categories for eligibility. Regarding the latter, over 50 percent of employers requesting H-1B workers between June 2009 and July 2010 categorized their prospective H-1B workers as receiving entry-level wages, although we cannot tell whether this trend reflects lower skill levels or other factors.

Figure 2: Limited Accountability for Employers Hiring H-1B Workers through Staffing Companies



Source: GAO review of Department of Labor information.

^aIn some cases there may be more than one staffing company involved in placing the H-1B worker.

Taken together, the multifaceted challenges identified in this report show that the H-1B program, as currently structured, may not be used to its full potential and may be detrimental in some cases. Although executive agencies overseeing the program can take steps to improve tracking, administration, and enforcement, the data we present raise difficult policy questions about key program provisions that are beyond the jurisdiction of these agencies. Such questions include the adequacy of the qualifications of foreign workers the U.S. admits through the program, the appropriateness of H-1B hiring by staffing companies, and the role of the program with respect to permanent residency. The H-1B program presents a difficult challenge in balancing the need for high-skilled foreign labor with sufficient protections for U.S. workers. As Congress considers immigration reform in consultation with diverse stakeholders and experts, and the Department of Homeland Security moves forward with its modernization efforts, this is an opportune time for Congress to re-examine key provisions of the H-1B program.