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Immigration: Legislative Issues on Nonimmigrant Professional Specialty (H-1B) Workers

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Summary

The current economic prosperity is fueling a drive to increase the levels of employment-based immigration. The nation is enjoying its longest economic expansion, and the unemployment rate has remained below 5% since mid-1997. Both the Congress and the Federal Reserve Board have expressed concern that a scarcity of labor could curtail the pace of economic growth. A primary legislative response has been to increase the supply foreign temporary professional workers.

On October 3, 2000, both chambers of Congress passed the "American Competitiveness in the Twenty-first Century Act of 2000" (**S. 2045**) with bipartisan support, and President Clinton signed the new law (P.L. 106-313) on October 17. The new law raises the number of H-1B visas by 297,500 over 3 years, FY2000-FY2002. It also authorizes additional H-1B visas for FY1999 to compensate for the excess inadvertently approved that year. In addition, the law excludes from the new ceiling all H-1B nonimmigrants who work for universities and nonprofit research facilities. The bill also has provisions that facilitate the portability of H-1B status for those already here lawfully, eliminate the per-country ceilings for employment-based immigrants, and require a study of the "digital divide" on access to information technology. It makes changes in the use of the H-1B fees for education and training, notably earmarking a portion of DOL training funds for skills that are in information technology shortage areas and adding to the NSF portion a K-12 math, science and technology education grant program. Because S. 2045 originated in the Senate, it did not contain revenue provisions. Separate legislation to increase the H-1B fee from \$500 to \$1,000 (P.L. 106-311, **H.R. 5362**) passed the House on October 6, the Senate on October 10 and was signed by President Clinton on October 17.

Although Congress enacted legislation in 1998 to increase temporarily the number of nonimmigrant professional specialty visas, commonly known as H-1B visas, the new ceiling was reached months before FY1999 ended. In mid-March, INS announced that the FY2000 ceiling of 115,000 would once again be reached by June. Many in the business community, notably in the information technology area, urged that the ceiling be raised. At issue now is whether the increase of H-1B visas in P.L. 106-313 meets the future workforce needs of business.

Those opposing any further increases assert that there is no compelling evidence of a labor shortage in these professional areas that cannot be met by newly graduating students and retraining the existing U.S. work force. They argue further that the education of U.S. students and training of U.S. workers should be prioritized and that reliance on foreign workers would stymie those objectives.

Proponents of H-1B expansion say that the education of students and retraining of the current workforce is a long-term response, and they cannot wait to fill today's openings. Proponents argue that increases in the admission of H-1B workers are essential if the United States is to remain globally competitive and that employers should be free to hire the best people for the jobs.

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Immigration: Legislative Issues on Nonimmigrant Professional Specialty (H-1B) Workers

The current economic prosperity is fueling a drive to increase the levels of employment-based immigration. The nation is enjoying its longest economic expansion, and the unemployment rate has remained below 5% since mid-1997. Both the Congress and the Federal Reserve Board have expressed concern that a scarcity of labor could curtail the pace of economic growth. A primary legislative response has been to increase the supply foreign temporary professional workers.

Although Congress enacted legislation in 1998 to increase the number of visas for temporary foreign workers who have professional specialties, commonly known as H-1B visas, the new annual ceiling of 115,000 visas was reached months before FY1999 and FY2000 ended. Many in the business community, notably in the information technology area, once more urged that the ceiling be raised. Congress, again striving to balance the needs of U.S. employers with employment opportunities for U.S. residents, enacted legislation to raise the ceiling further and expand education and training programs (P.L. 106-313, S. 2045 and P.L. 106-311, H.R. 5362). At issue now is whether the increase of H-1B visas in P.L. 106-313 meets the future workforce needs of business.

Immigration Policy for Professional Workers

Temporary Foreign Workers. A nonimmigrant is an alien legally in the United States for a **specific purpose** and a **temporary period of time**. There are over 20 major nonimmigrant visa categories specified in the Immigration and Nationality Act, and they are commonly referred to by the letter that denotes their section in the statute. The major nonimmigrant category for temporary workers is the H visa. The largest classification of H visas is the H-1B workers in specialty occupations.¹ In 1998, the American Competitiveness and Workforce Improvement Act (Title IV of P.L. 105-277) increased the number of H-1B workers and addressed perceived abuses of the H-1B visa.

¹ The regulations define “specialty occupation” as requiring theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, law, accounting, business specialties, theology and the arts, and requiring the attainment of a bachelor’s degree or its equivalent as a minimum. Law and regulations also specify that fashion models deemed “prominent” may enter on H-1B visas.

Any employer wishing to bring in an H-1B nonimmigrant must attest in an application to the Department of Labor (DOL) that: the employer will pay the nonimmigrant the greater of the actual compensation paid other employees in the same job or the prevailing compensation for that occupation; the employer will provide working conditions for the nonimmigrant that do not cause the working conditions of the other employees to be adversely affected; and, there is no strike or lockout. The employer also must post at the workplace the application to hire nonimmigrants. Firms categorized as H-1B dependent (generally if at least 15% of the workforce are H-1B workers) must also attest that they have attempted to recruit U.S. workers and that they have not laid off U.S. workers 90 days prior to or after hiring any H-1B nonimmigrants.

DOL reviews the application for completeness and obvious inaccuracies. Only if a complaint subsequently is raised challenging the employer's application will DOL investigate. If DOL finds the employer failed to comply, the employer may be fined, may be denied the right to apply for additional H-1B workers, and may be subject to other penalties.

The prospective H-1B nonimmigrants must demonstrate to the Immigration and Naturalization Service (INS) that they have the requisite education and work experience for the posted positions. INS then approves the petition for the H-1B nonimmigrant (assuming other immigration requirements are satisfied) for periods up to 3 years. An alien can stay a maximum of 6 years on an H-1B visa. The employer must pay a \$500 fee for every H-1B nonimmigrant initially admitted, getting an extension, and changing employment or nonimmigrant status.² This fee then is allocated to DOL for job training and to the National Science Foundation for scholarships and grants.³ There is also a \$110 filing fee that goes to INS.

Permanent Employment-Based Immigration. Many people confuse H-1B nonimmigrants with permanent immigration that is employment-based.⁴ If an employer wishes to hire an alien to work on a permanent basis in the United States, the alien may petition to immigrate to the United States through one of the employment-based categories. The employer "sponsors" the prospective immigrant, and if the petition is successful, the alien becomes a legal permanent resident.⁵ Many H-1B nonimmigrants may have education, skills, and experience that are similar to the requirements for three of the five preference categories for employment-based

² Some employers such as institutions of higher education and nonprofit or governmental research organizations are exempt from the \$500 fee. *Federal Register*, v. 65, no. 40, February 29, 2000, p. 10678-10685.

³ For information on the programs funded by the fees, see the DOL website at [www.doleta.gov] and the NSF website at [www.nsf.gov].

⁴ The other potentially confusing category is the "O" nonimmigrant visa for persons who have extraordinary ability in the sciences, arts, education, business or athletics demonstrated by sustained national or international acclaim.

⁵ There are also per-country numerical limits. For more information, see: CRS Report 94-146, *Immigration: Numerical Limits on Permanent Admissions, FY1998-FY2000*, by Joyce C. Viallet.

immigration: priority workers — i.e., persons of extraordinary ability in the arts, sciences, education, business, or athletics, outstanding professors and researchers; and, certain multinational executives and managers (first preference); members of the professions holding advanced degrees or persons of exceptional ability (second preference); and, skilled workers with at least 2 years training and professionals with baccalaureate degrees (third preference).⁶

Employment-based immigrants applying through the second and third preferences must have job offers for positions in which the employers have obtained labor certification. The labor certification is intended to demonstrate that the immigrant is not taking jobs away from qualified U.S. workers, and many consider the labor certification process far more arduous than the attestation process used for H-1B nonimmigrants.⁷ More specifically, the employer who seeks to hire a prospective immigrant worker petitions INS and DOL on behalf of the alien. The prospective immigrant must demonstrate that he or she meets the qualifications for the particular job as well as the preference category. If DOL determines that a labor shortage exists in the occupation for which the petition is filed, labor certification will be issued. If there is not a labor shortage in the given occupation, the employer must submit evidence of extensive recruitment efforts in order to obtain certification.

While the demand for H-1B workers has been exceeding the limit, the number of immigrants who were admitted or adjusted under one of the employment-based preferences — 77,517 in FY1998 — remains considerably less than the statutory limit of 140,000. The first and second preferences fell far short of the approximately 40,000 available to each category, with 21,408 and 14,384 respectively. The third preference is at its lowest point in recent years, dropping to 34,317 in FY1998 from a high of 62,756 in FY1996. Although demand for employment-based immigration is low overall, two countries — India and China — have reached their per-country ceilings and are developing backlogs.

Trends in H-1B Admissions

INS data illustrate that the demand for H-1B visas continues to press against the statutory ceiling, even after Congress increased it. The 65,000 numerical limit on H-1B visas was reached for the first time prior to the end of FY1997, with visa numbers running out by September 1997 (**Figure 1**). The 65,000 ceiling for FY1998 was reached in May of that year, and — despite the statutory increase — the 115,000 ceiling for FY1999 was reached in June of last year. Pent-up demand is also emerging as a factor, as about 5,000 cases approved in FY1997 after the ceiling was hit were rolled over into FY1998. Over 19,000 cases approved in FY1998 after the ceiling was hit were rolled over to FY1999.

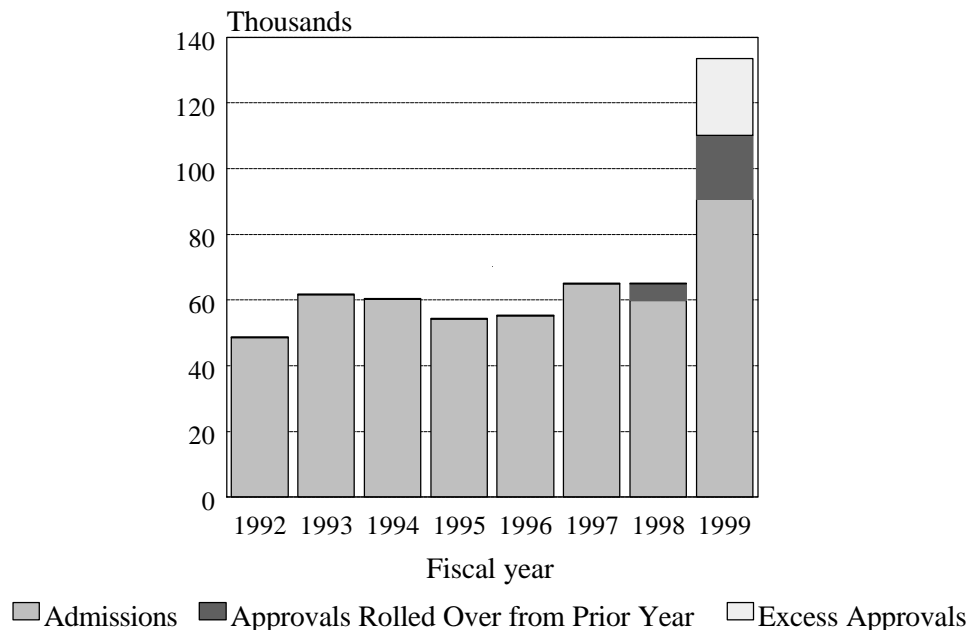
INS admitted last autumn that thousands of H-1B visas beyond the 115,000 ceiling were approved in FY1999, allegedly as a result of problems with the automated reporting system. INS hired KPMG Peat Marwick to audit and investigate how the problems occurred and how pervasive they may be. KPMG Peat Marwick

⁶ Third preference also includes 10,000 “other workers,” i.e., unskilled workers with occupations in which U.S. workers are in short supply.

⁷ Certain second preference immigrants who are deemed to be “in the national interest” are exempt from labor certification.

determined that between 21,888 and 23,3385 H-1B visas (depicted in **Figure 1**) were issued over the ceiling in FY1999. It is unclear at this time how these excess cases can and will be treated, especially in terms of the statutory ceiling. Meanwhile, in mid-March of this year INS announced the FY2000 ceiling of 115,000 would be reached by June.

Figure 1. H-1B Admissions by Fiscal Year

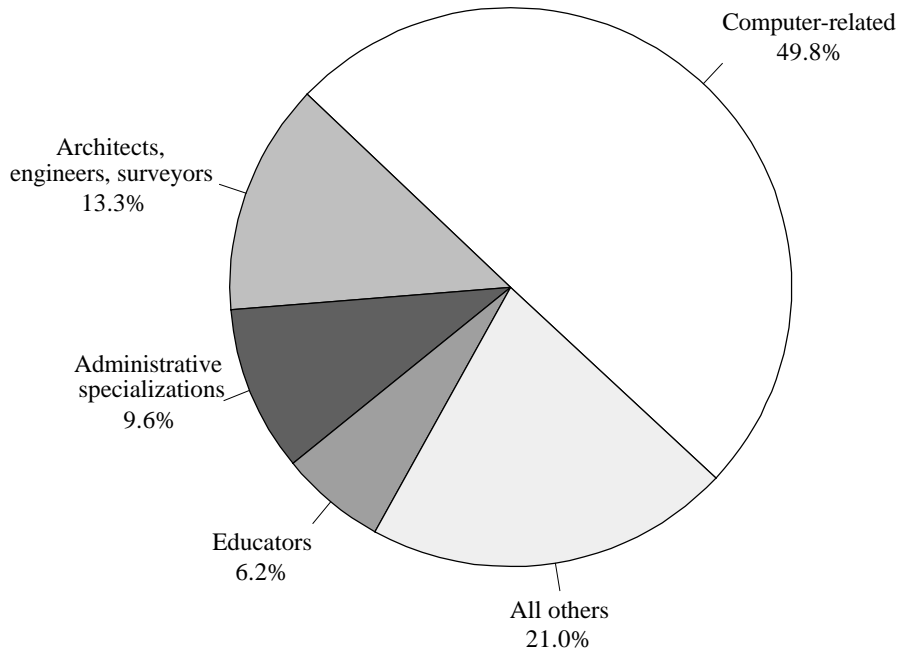


Source: CRS analysis of unpublished INS data.

Characteristics of Recent H-1B Nonimmigrants⁸

Until recently, the only data available on the occupations filled by H-1B nonimmigrants were the labor attestation applications filed by prospective employers. These data were imperfect because they included multiple openings and did not reflect actual H-1B admissions. According to the DOL data on approved attestations, therapists — mostly physical therapists, but also some occupational therapists, speech therapists, and related occupations — comprised over half (53.5%) of those approved in FY1995. The number of attestations approved for therapists fell to one-quarter

⁸ Unless referenced as DOL data or otherwise noted, the analysis presented in this section of the report is based on all FY2000 H-1B petitions approved by INS as of February 29, 2000. See: *Characteristics of Specialty Occupation Workers (H-1B): October 1999 to February 2000*, U.S. Immigration and Naturalization Service, June 2000.

Figure 2. Leading Occupations of Newly Arriving H-1B Workers

(25.9%) in FY1997. In FY1996 computer-related occupations became the largest category and continue to lead in job openings approved by DOL for H-1Bs, going from 25.6% in FY1995, to 41.5% in FY1996, to 44.4% of the openings approved in FY1997. The most recent DOL data (from October 1998 through May 1999) have systems analysts, programmers, and other computer-related occupations comprising 51% of all openings approved.⁹

Source: CRS analysis of INS data from *Characteristics of Specialty Occupation Workers (H-1B): October 1999 to February 2000*, (June 2000).

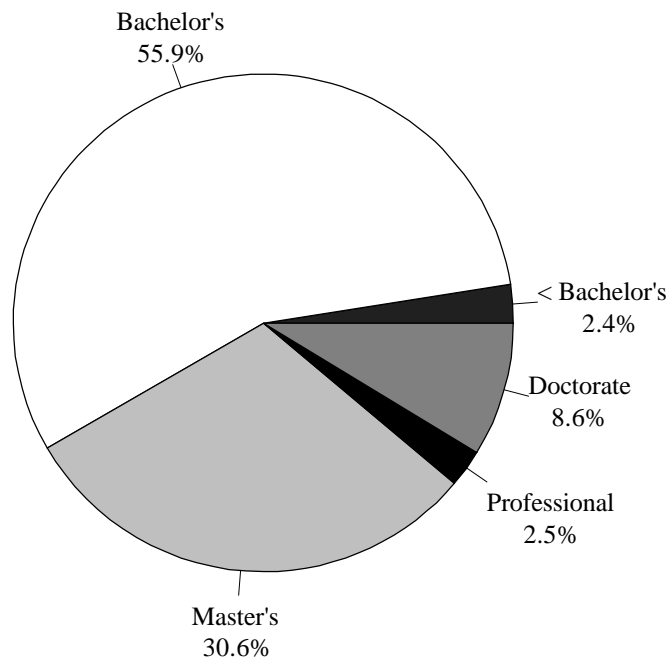
According to INS data covering the period October 1999 through February 2000, almost half (49.8%) of H-1B new arrivals, i.e., those who came in under the numerical cap, are employed in computer-related fields. Architects, engineers and surveyors follow with 13.3% of the newly approved H-1B petitions. Administrative specializations (9.6%) and educators (6.2%) round out the occupations with notable numbers of H-1B nonimmigrants.

To obtain H-1B visas, nonimmigrants must demonstrate they have highly specialized knowledge in fields of human endeavor requiring the attainment of a bachelor's degree or its equivalent as a minimum. As **Figure 3** depicts, the most common degree attained by most H-1B new arrivals is a bachelor's degree or its

⁹ For a fuller analysis of these DOL data and their limitations, see: CRS Report for Congress 98-462, *Immigration and Information Technology Jobs: The Issue of Temporary Foreign Workers*, by Ruth Ellen Wasem and Linda Levine.

equivalent (55.9%). Just under one-third (30.6%) have earned master's degrees. Another 11.1% have either professional degrees or doctorates. Many of those with less than a bachelor's degree are presumed to be the "prominent" fashion models who also are admitted as H-1B nonimmigrants.

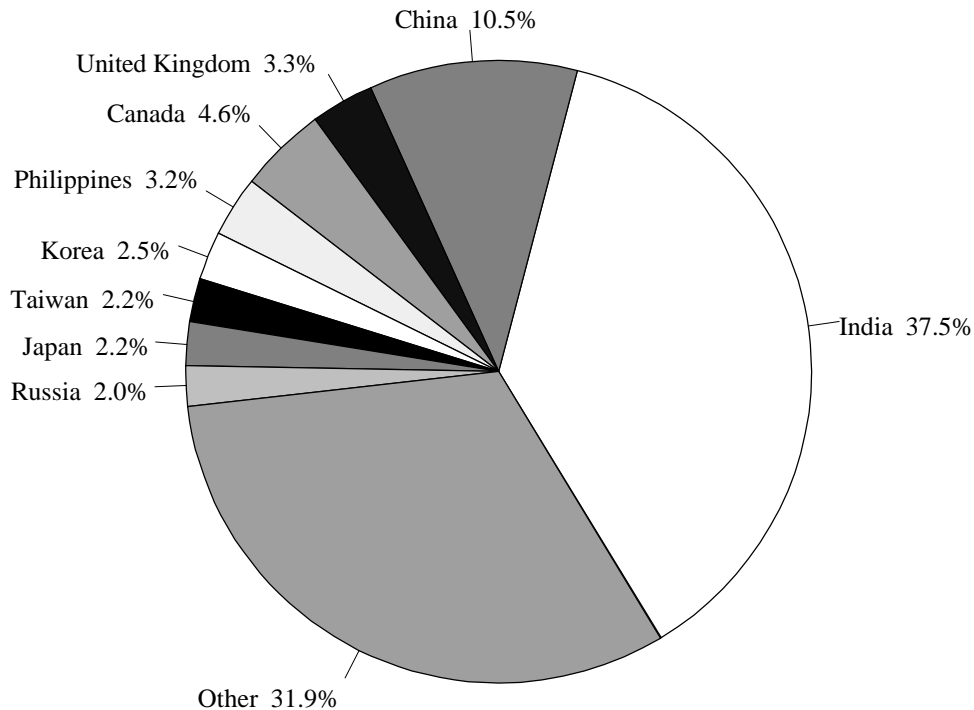
Figure 3. Educational Attainment of Newly Arriving H-1B Workers



Source: CRS analysis of INS data from *Characteristics of Specialty Occupation Workers (H-1B): October 1999 to February 2000*, (June 2000).

India is the leading country of origin for H-1B workers, comprising 37.5% of all of the new arrivals (**Figure 4**). Data previously released by INS further estimate that nearly 74% of all of the systems analysts and programmers are from India. In terms of overall H-1B new arrivals, China follows at a distant second with 10.5%, and Canada is third (4.6%). Countries hovering between 2-4% are the United Kingdom, Philippines, Korea, Taiwan, Russia, and Japan.

The median annual salary of the newly arriving H-1B nonimmigrants is \$47,000. Half of all H-1Bs who came in under the numerical cap from October 1999 through February 2000 have median annual salaries ranging from \$38,000 to \$59,000. Fashion models have the highest reported median salary – \$130,000 annually. Although few H-1B nonimmigrants are admitted in law and jurisprudence occupations, they have the second highest median salary of \$78,000. H-1B nonimmigrants in computer-related occupations and in architecture, engineering and surveying occupations have median annual salaries of \$50,000.

Figure 4. Country of Origin of Newly Arriving H-1B Workers

Source: CRS analysis of INS data from *Characteristics of Specialty Occupation Workers (H-1B): October 1999 to February 2000*, (June 2000).

American Competitiveness and Workforce Improvement Act¹⁰

Enacted as the 105th Congress drew to a close, Title IV of the FY1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (P.L. 105-277) raised the H-1B ceiling by 142,500 over 3 years and contained provisions aimed at correcting some of the perceived abuses. Most importantly, the 1998 law added new attestation requirements for recruitment and lay-off protections, but only requires them of firms that are “H-1B dependent” (generally at least 15% of the workforce are H-1Bs). All firms now have to offer H-1Bs *benefits* as well as wages comparable to their U.S. workers. Education and training for U.S. workers was to be funded by a \$500 fee paid by the employer for each H-1B worker hired. The ceiling set by the new law was 115,000 in both FY1999 and FY2000, 107,500 in FY2001, and would revert back to 65,000 in FY2002.

The House (H.R. 3736) and the Senate (S. 1723) had offered proposals to raise the H-1B ceiling for the next few years, though each bill approached the increase differently. Each bill would have added whistle blower protections for individuals

¹⁰ For a full account, see: CRS Report 98-531, *Immigration: Nonimmigrant H-1B Specialty Worker Issues and Legislation*, by Ruth Ellen Wasem, November 2, 1998.

who report violations of the H-1B program and would have increased the penalties for willful violations of the H-1B program. Many considered the provisions aimed at protecting U.S. workers as the most controversial in H.R. 3736 as it was reported by the House Judiciary Committee. While S. 1723 as passed by the Senate did add provisions penalizing firms that lay off U.S. workers and replace them with H-1B workers if the firms have violated other attestation requirements, amendments that would have required prospective H-1B employers to attest that they were not laying off U.S. workers and that they tried to recruit U.S. workers failed on the Senate floor. H.R. 3736 as reported included lay-off protection and recruiting requirement provisions similar to those that the Senate rejected. On the other hand, S. 1723 included language that would have expanded the education and training of U.S. students and workers in the math, science, engineering and information technology fields.

Pre-conference discussions between Senate and House Republicans late in July 1998 yielded a compromise on key points of difference, but it did not address all the Clinton Administration's concerns regarding the education and training of U.S. workers and reform of the existing program. After a presidential veto threat of the Republican compromise, Republicans began working out a compromise with the White House, and this language passed as the substitute when H.R. 3736 came to the House floor on September 24, 1998. The House-passed language was then folded into P.L. 105-277.

Legislation in the 106th Congress

On October 3, 2000, both chambers of Congress passed the "American Competitiveness in the Twenty-first Century Act of 2000" (**S. 2045**) with bipartisan support, and President Clinton signed the new law (P.L. 106-313) on October 17. The Senate had debated the legislation for several days, though much of the debate centered on procedural issues – specifically whether amendments that would legalize certain aliens (mostly Central Americans and Liberians) would be permitted.¹¹ The House passed S. 2045 under a suspension of the rules shortly after the Senate passed it.

The language that passed was a substitute version offered by Judiciary Committee Chairman Orrin Hatch with bipartisan support. It includes many of the same features as the version of the bill reported earlier by the Senate Judiciary Committee.¹² It raises the number of H-1B visas by 297,500 over 3 years, FY2000-FY2002. Specifically, it adds 80,000 new H-1B visas for FY2000, 87,500 visas for FY2001, and 130,000 visas for FY2002. It also authorizes additional H-1B visas for FY1999 to compensate for the excess inadvertently approved that year. In addition, P.L. 106-313 excludes from the new ceiling all H-1B nonimmigrants who work for universities and nonprofit research facilities. A provision that would have exempted H-1B nonimmigrants with at least a master's degree from the numerical limits was

¹¹ For a fuller discussion and legislative tracking of these immigration issues, see: *Immigration Legislation in the 106th Congress*, CRS IB10044, coordinated by Ruth Wasem.

¹² The Judiciary Committee report (S.Rept. 106-260) was filed on April 11, 2000.

dropped from the final bill. The new law also makes a major change in the law governing the permanent admission of immigrants by eliminating the per-country ceilings for employment-based immigrants. It also has provisions that facilitate the portability of H-1B status for those already here lawfully and requires a study of the “digital divide” on access to information technology.

The new law makes changes in the use of the H-1B fees for education and training, notably earmarking a portion of DOL training funds for skills that are in information technology shortage areas and adding to the NSF portion a K-12 math, science and technology education grant program. Because S. 2045 originated in the Senate, it did not contain revenue provisions. Separate legislation to increase the H-1B fee from \$500 to \$1,000 (P.L. 106-311, **H.R. 5362**) passed the House on October 6, the Senate on October 10, and was signed by President Clinton on October 17. The conference agreement on the FY2001 Commerce, Justice, State appropriations bill (H.R. 4942, H.Rept. 106-1005) includes a provision that would authorize another H-1B fee that employers would pay for expedited servicing of the petitions.¹³

Prior to passage of S. 2045, the House Judiciary Committee had been taking a somewhat different approach to the H-1B issue. After mark-up considerations for several days, the House Judiciary Committee had ordered Chairman Lamar Smith’s bill, the “Technology Worker Temporary Relief Act” (**H.R. 4227**), reported with amendments on May 17, 2000. H.R. 4227 would have eliminated the numerical limit on H-1B visas for FY2000 and would have allowed for temporary increases (i.e., enabling employers to hire H-1B workers outside of the numerical ceilings) in FY2001 and FY2002 if certain conditions were met. These conditions included demonstrating that there was a net increase from the previous year in the median wages (including cash bonuses and similar compensation) paid to the U.S. workers on the payroll. H.R. 4227 also would have revised the requirements employers of H-1B workers must meet, notably adding a \$40,000 minimum salary and new reporting requirements. Like S. 2045, universities, elementary and secondary schools, and nonprofit research facilities would have been exempt from most of these new requirements. H.R. 4227 would have required all H-1B employers to file W-2 forms and add anti-fraud provisions (including the requirement that the H-1B have full-time employment) funded by a \$100 fee. An additional \$200 processing fee would also have been collected and allocated to INS and DOL to expedite the processing of H-1B petitions and attestations. Like S. 2045, H.R. 4227 included provisions that would facilitate the portability of H-1B status for those already here lawfully. The bill also would have instructed the U.S. General Accounting Office (GAO) to study the recruitment measures – particularly among under-represented groups – and training efforts undertaken by employers. The House Judiciary Committee issued the bill report (H.Rept. 106-692) on June 23.

The House Committee on Education and the Workforce considered the education and training provisions of the H-1B statute and marked up legislation introduced by their chairman William Goodling (**H.R. 4402**) on May 10, 2000. As reported on May 25, 2000 (H.Rept. 106-642), H.R. 4402 would have directed the

¹³ For background and legislative tracking on INS appropriations, see: CRS Report RS20618, *Immigration and Naturalization Service’s FY2001 Budget*, by William Krouse.

Secretary of Labor to use 75% of the funding she receives from the H-1B education and training fee account to provide training in the skilled shortage occupations related to specialty occupations (as defined under INA's H-1B provisions). The bill would have transferred 25% of the funds from the fee account to the Department of Education to augment a student loan forgiveness program for teachers of mathematics, science, and reading.

Representatives David Dreier and Zoe Lofgren introduced **H.R. 3983**, which would have added an additional 362,500 over FY2001-FY2003. Specifically, it would have raised the ceiling by 200,000 for 3 years and would have set aside 60,000 visas annually through FY2003 for persons with master's degrees. It would have required employers to file W-2 forms with DOL for each H-1B worker employed. Like P.L. 106-313, H.R. 3983 would have eliminated the per-country ceilings for permanent employment-based admissions. It would have enabled employers to use Internet recruiting to meet labor market recruitment requirements and would have established an Internet web-based tracking system for immigration-related petitions. Like P.L. 106-311, this bill would have increased the \$500 fee for education and training to \$1,000, and it would have modified the scholarship and training program requirements, including the addition of student loan forgiveness in special cases.

Congresswoman Sheila Jackson-Lee, the ranking member of the House Judiciary Immigration and Claims Subcommittee, introduced **H.R. 4200**, which would have set the ceiling at 225,000 annually for FY2001-FY2003, with the condition that it would have fallen back to 115,000 if the U.S. unemployment rate exceeds 5% and 65,000 if the unemployment rate exceeds 6%. H.R. 4200 would have allocated 40% of the H-1B visas in FY2000 to nonimmigrants who have at least attained master's degrees and would have increased that allocation to 50% in FY2001 and 60% in FY2002 (with 10,000 set aside each year for persons with Ph.D. degrees). The bill also provided additional visas retroactively for those inadvertently issued in excess of the FY1999 ceiling. It would have added a sliding fee scale based upon the size of the firm seeking H-1B workers and would have revised the uses of the fees collected for education and training programs, including programs for children. Among other provisions, it further would have modified the attestation requirements of employers seeking to hire H-1B workers.

House Judiciary Immigration and Claims Subcommittee Chairman Lamar Smith had previously introduced **H.R. 3814**, which would have added 45,000 H-1B visas for FY2000 if the employer met certain conditions. It would also have raised the fee to \$1,000 for scholarships and training, with most of the revenue going to merit-based scholarships for students. H. R. 3814 also included provisions for expedited processing of H-1B petitions funded by a \$250 fee and would have added anti-fraud provisions (including the requirement that the H-1B have full-time employment) funded by a \$100 fee. It would have given the Secretary of State responsibility for maintaining records on H-1B nonimmigrants.

Other bills pertaining to the H-1B issues were introduced. The "New Workers for Economic Growth Act" (**S. 1440/H.R. 2698**) introduced by Senator Phil Gramm and Congressman Dave Dreier would have raised the ceiling of H-1B admissions to 200,000 annually FY2000-FY2002. Those H-1B nonimmigrants who have at least a master's degree and earn at least \$60,000 would not have counted toward the

ceiling. Those who have at least a bachelor's degree and are employed by an institution of higher education would have been exempted from the attestation requirements as well as the ceiling. Senator John McCain introduced **S. 1804**, which, among other initiatives, would have eliminated the H-1B ceiling through FY2006. Congressman David Wu introduced **H.R. 3508**, which would have increased the ceiling by 65,000 annually through 2002 for those with master's or Ph.D. degrees, provided the employers establish scholarship funds.

The "Bringing Resources from Academia to the Industry of Our Nation Act" (**H.R. 2687**), introduced by Congresswoman Zoe Lofgren, would have created a new nonimmigrant visa category, referred to as "T" visas, for foreign students who have graduated from U.S. institutions with bachelor's degrees in mathematics, science or engineering and who are obtaining jobs earning at least \$60,000. The "Helping Improve Technology Education and Competitiveness Act" (**S. 1645**), introduced by Senator Charles Robb, also would have created a "T" nonimmigrant visa category for foreign students who have graduated from U.S. institutions with bachelor's degrees in mathematics, science, or engineering and who are obtaining jobs paying at least \$60,000. More stringent than H.R. 2687, S.1645 included provisions aimed at protecting U.S. workers that are comparable to the provisions governing the H-1B visa.

Issues of Debate

Congress continues to strive to balance the needs of U.S. employers with employment opportunities for U.S. residents. Proponents argue that further increases in the admission of H-1B workers are essential if the United States is to remain globally competitive and that employers should be free to hire the best people for the jobs. They say that the education of students and retraining of the current workforce is a long-term approach, and they cannot wait to fill today's openings. Some point out that many mathematics, computer science, and engineering graduates of U.S. colleges and universities are foreign students and that we should keep that talent here. Others assert that H-1B workers create jobs, either by ultimately starting their own information technology firms or by providing a workforce sufficient for firms to remain in the United States. Proponents of the increase also cite media accounts of information technology workers from India who prefer to work for companies in India and warn that the work will move abroad if action to increase H-1B visas is not taken.¹⁴

Those opposing any further increases – temporary or permanent – assert that there is no compelling evidence of a labor shortage in these professional areas that cannot be met by newly graduating students and by retraining the existing U.S. work force. They argue that the education of U.S. students and training of U.S. workers should be prioritized. Opponents also maintain that salaries and compensation would be rising if there is a labor shortage and if employers wanted to attract qualified U.S. workers. Some allege that employers prefer H-1B workers because they are less demanding in terms of wages and working conditions and that an industry's

¹⁴ Pamela Constable, "India's brain drain eases off," Washington Post, Sept. 14, 2000.

dependence on temporary foreign workers may inadvertently lead the brightest U.S. students to seek positions in fields offering more stable and lucrative careers.¹⁵

Alternatively, some maintain that the H-1B ceiling is arbitrary and would not be necessary if more stringent protections for U.S. workers were enacted. They argue the question is not “how many” but “under what conditions.” Some would strengthen the anti-fraud provisions and would broaden the recruitment requirements and layoff protections enacted in 1998 for “H-1B dependent” employers to all employers hiring H-1B workers.¹⁶ Others would reform the labor attestation and certification process and would make the labor market tests for nonimmigrant temporary workers comparable to those for immigrants applying for one of the permanent employment-based admissions categories.

GAO recently drafted a report that recommended more controls to protect workers, to prevent abuses, and to streamline services in the issuing of H-1B visas. GAO concluded that the DOL has limited authority to question information on the labor attestation form and to initiate enforcement activities. GAO also concluded that INS’s handling of H-1B petitions had potential for abuses.¹⁷

In addition to the issues directly related to the H-1B visa, the H-1B legislation had been caught up in other immigration issues that complicated efforts to bring the bill to the floor during the 106th Congress. Some Members tried to offer amendments to the H-1B bills that would revise other parts of the INA. These amendments covered a range of immigration issues, such as allowing aliens in the U.S. from certain nations to adjust to legal status as was done for Nicaraguans and Cubans in 1997 (known as “NACARA parity”), amending INA section 249 to advance the registry date to 1986 so that aliens living in the U.S. as of that date can legalize their status, and revising the H-2A visa provisions in INA to increase the availability of foreign agricultural workers.¹⁸ “NACARA parity,” advancement of the registry date, and reinstatement of 245(i) were included in the “Latino and Immigrant Fairness” amendment that the Senate Democrats tried unsuccessfully to bring to a vote during the floor consideration of S. 2045 on September 27.

¹⁵ CRS Report RL30140, *An Information Technology Labor Shortage? Legislation in the 106th Congress*, by Linda Levine; and CRS Report 98-462, *Immigration and Information Technology Jobs: The Issue of Temporary Foreign Workers*, by Ruth Ellen Wasem and Linda Levine.

¹⁶ According to the testimony of Jacquelyn Williams-Bridgers, Inspector General of the U.S. Department of State, “(F)raud involving the H-1 visa program often involves large scale and complex operations.” U.S. House of Representatives, Committee on the Judiciary, Subcommittee on Immigration and Claims, *Oversight Hearing on Nonimmigrant Visa Fraud*, May 5, 1999.

¹⁷ U.S. General Accounting Office, *H-1B Foreign Workers: Better Controls Needed to Help Employers and Protect Workers*, GAO/HEHS-00-157, Sept. 2000.

¹⁸ For a fuller discussion and legislative tracking of these immigration issues, see: CRS Report RL30780, *Immigration Legalization and Status Adjustment Legislation* by Ruth Ellen Wasem.