

GAO: H-1B Program Falling Short

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In a report released last week, the Government Accountability Office (GAO) concluded that the H-1B guest worker program – which proponents claim is for “high-skilled” workers – may not be serving its purpose and, in fact, “may be detrimental in some cases.” (*H-1B Visa Program: Reforms are Needed to Minimize the Risks and Costs of Current Program*, [GAO-11-26](#), January 2011) The GAO called on Congress to reform the current H-1B Visa program to help protect American workers and close loopholes.

The H-1B Visa program, which was authorized by Congress in 1990, allows U.S. employers to hire foreign workers for “specialty occupations.” ([Immigration and Nationality Act, S 101\(a\)\(15\)\(H\)](#)) Originally, federal law capped the number of H-1B visas at 65,000 per year. (GAO-11-26 at 1) However, the cap has changed throughout the years in response to legislation passed by Congress. It reached a high of 195,000 in the years 2001-2003; in 2004, the cap was returned to 65,000, and the following year an additional 20,000 visas were reserved for individuals with advanced degrees from U.S. universities. (GAO-11-26 at 13) Today the cap remains at 65,000 visas per year, with additional 20,000 H-1B visas available for individuals with advanced degrees from U.S. universities. In addition, universities, research institutions, and K-12 public schools seeking to hire foreign workers are not subject to the cap. Exemptions play a large role in expanding the H-1B Visa program. In Fiscal Year 2009, for example, a total of 214,271 H-1B applications were approved. ([United States Citizenship and Immigration Services](#), April 15, 2010)

In its report, the GAO found that changes to the H-1B visa program over time have diluted protections for American workers. For example, before 1990, H-1B guest workers were not allowed to apply for green cards. However, now H-1B holders are allowed to apply for green cards and are allowed to remain in the U.S. for an unlimited period of time while their application is pending. This has increased the number of H-1B guest workers in the U.S. significantly beyond what was originally intended, though DHS cannot say with any precision how many H-1B workers are currently in the U.S. (GAO-11-26 at 30)

The GAO also noted that Congress had lowered the skill level required in order to receive an H-1B visa. Before 1990, an H-1B applicant had to be “of distinguished merit and ability,” coming to the U.S. to “perform temporary service of an exceptional nature requiring such merit and ability.” Now, H-1B applicants need only be coming to the U.S. to perform services in a “specialty occupation” and have obtained a bachelor’s degree in the specific specialty. This change has expanded the pool of applicants significantly and reduced their overall skill level. In fact, despite the fact that businesses generally refer to the H-1B visa as a visa for high-skilled or “high-tech” workers, the GAO reported that 40 percent of H-1B guest workers only had a bachelor’s degree and over half are receiving entry level wages. (See also [United States Citizenship and Immigration Services](#), September 2008)

GAO also found that restricted agency oversight and statutory changes had weakened protections for American workers. For, example, although there are requirements and guidelines for H-1B programs in place, the Department of Labor only does a cursory review of applications. In fact, Homeland Security recently found that 21 percent of the H-1B petitions they examined involved fraud or technical violations. (See also [United States](#)

[Citizenship and Immigration Services](#), September 2008) In addition, GAO found that while the bulk of complaints regarding abuse of the H-1B program are with respect to staffing companies – which apply for a disproportionate share of H-1B visas in order to place those workers in other companies – the government engaged in poor oversight of such firms. (GAO-11-26)

Regarding whether the H-1B program hurts the wages of U.S. workers, the GAO's findings were inconclusive, though it did find a "significant difference" between the earnings of several groups of H-1B and U.S. workers, evidence that H-1B workers may be having a negative impact on the prevailing wage in those occupations. (GAO-11-26 at 42) The GAO's survey of wages of H-1B workers and U.S. workers did not find significant differences. However, the GAO itself noted that because the government does not keep adequate data on the program, it "could not account for all factors that might affect salary levels." For example, the GAO explained that comparing the salaries of certain professions alone could not account for differences in age or skill level, which are key factors in wage levels. (GAO-11-26 at 41)

Among its many conclusions, the GAO specifically recommended that Congress reconsider the qualifications required for H-1B visas, exemptions from the cap, the appropriateness of allowing staffing companies to hire H-1B workers, the level of the cap, and allowing H-1B guest workers to apply for green cards.