

“American Competitiveness in the Twenty-first Century Act of 2000” Summary

Disclaimer: The following information is a summary of the new H-1B legislation President Clinton signed into law on 17 October 2000. The information contained in this summary is our initial interpretation of the new legislation and is subject to change. ISS is providing this summary to our clients for informational purposes only, and the information contained in this summary should not be used as the basis of decisions regarding H-1B visas or Green Cards without first discussing the full scope of your situation with ISS.

On Tuesday, October 3, 2000, both the U.S. Senate and U.S. House of Representatives passed legislation significantly revising and expanding the availability of the H-1B Visa. Additionally this new legislation increased the H-1B “filing fee” to \$1110. President Clinton signed the new legislation into law on 17 October 2000.

The new legislation contains nine (9) new and distinct improvements to the current H-1B visa rules:

Click to be taken directly to the indicated section:

| Section | Click Here |
|------------------------------------------------------------------------------------------------------------------|---------------------------|
| Temporary Increase in Visa Allotments | Section 1 |
| Universities, Certain Research Facilities and Graduate Degree Recipients are not subject to the H-1B visa “Cap.” | Section 2 |
| Expansion of Per-Country Quotas for Employment-Based Green Card Applicants | Section 3 |
| Increased Portability of the H-1B Visa Status – Immediate Work Authorization. | Section 4 |
| H-1B Extensions Beyond 6 Years | Section 5 |
| Extension of Additional Requirements for H-1B Dependent Employers | Section 6 |
| Fee Requirements Extended and ACWIA fee increased to \$1000 | Section 7 |
| Recovery of Fraudulent Visas | Section 8 |
| NSF Study and Report on the “Digital Divide.” | Section 9 |

1. Temporary Increase in Visa Allotments.

- 195,000 H-1B visas will be available for fiscal year 2000 (increased from 115,000 visas)
- 195,000 H-1B visas will be available for fiscal year 2001 (increased from 107,500 visas)
- 195,000 H-1B visas will be available for fiscal year 2002 (increased from 65,000 visas)

2. Universities, Certain Research Facilities and Graduate Degree Recipients are not subject to the H-1B visa “Cap.”

- The H-1B visa allotment (or “Cap”) shall not apply to colleges and universities, or other institutions of higher education as defined in the Higher Education Act of 1965.
- The H-1B visa allotment (or “Cap”) shall not apply to nonprofit research organizations or governmental research organizations.

****Note:** Any person who receives an H-1B visa by virtue of the University or Research Facility exclusion, and who subsequently ceases to be employed by that “Cap Exempt” employer will be subject to the then current H-1B “Cap” for the first subsequent H-1B petition filed for that person by a non-exempt employer.

3. Expansion of Per-Country Quotas for Employment-Based Green Card Applicants

- Previously, Green Card issuance was limited on a per country basis, whereby applicants from any single country could receive only 7% of all available employment-based green cards in a given year.
- The new legislation will remove that limitation when the total number of available Green Cards exceeds the number of qualified applicants under the current per country 7% quota. In other words, any unused Green Card numbers in a given year will be made available to pending applicants without regard to the per 7% quota.
- This section also includes a one-time protection from the per country quota for current Green Card applicants by allowing any person who is the beneficiary of an employment-based green card petition and who otherwise would be subject to the per country quota, to apply for extension of his or her current nonimmigrant visa (H-1B or otherwise) until the person’s application for adjustment of status has been processed and a decision made.

4. Increased Portability of the H-1B Visa Status – Immediate Work Authorization.

- Any current H-1B holder may accept and begin employment with a new employer upon the filing of a new H-1B petition by that new employer. This new rule applies only to H-1B holders:
 - ✓ Who have been lawfully admitted into the United States
 - ✓ On whose behalf the employer has filed a non-frivolous H-1B petition prior to the expiration of the employee’s current H-1B status.
 - ✓ Who has not engaged in unauthorized employment before or during the pendency of the new H-1B petition.

5. H-1B Extensions Beyond 6 Years.

- An employer may file for the extension of a employee's H-1B status in one-year increments beyond the current 6-year maximum periods IF:
 - ✓ An employment-based Green Card petition (I-140) or Adjustment of Status application (I-485) has been filed

AND

- ✓ At least 365 or more days have elapsed since the filing of a labor certification application on the alien's behalf.

6. Extension of Additional Requirements for H-1B Dependent Employers.

- Current law requires that "H-1B Dependent" employers comply with certain additional attestation requirements. These attestation requirements are extended through October 1, 2002.
 - a. H-1B Dependent Employer: Current regulations state that an employer is "H-1B Dependent" if a certain number or percentage of its employees are in H-1B status. An employer is considered to be "H-1B Dependent" if it falls within any of the following criteria:
 - ✓ An employer with 51 or more full-time equivalent employees, of which at least 15% is made up of employees in H-1B status;
 - ✓ An employer with 26-50 full-time equivalent employees, of which 13 or more employees are in H-1B status;
 - ✓ An employer with 25 or fewer full-time equivalent employees, of which 8 or more employees are in H-1B status.
 - b. Attestations: If an employer is considered to be "H-1B Dependent" it must make the following attestations, for each H-1B petition:
 - ✓ The employer has not "displaced" a U.S. worker during the 90 days immediately preceding the filing of the H-1B petition and will not "displace" a U.S. worker during the 90 days immediately following the filing of the H-1B petition.
 - ✓ The employer has taken "good faith steps" to recruit U.S. workers for the job for which H-1B workers are sought.
 - ✓ The employer has offered the job to any U.S. worker who has applied and is equally or better qualified for the job than the H-1B worker the employer wants to hire.

7. Fee Requirements Extended and ACWIA fee increased to \$1000.

- Under current law, most employers filing a H-1B petition for a new employee must pay the normal INS filing fee of \$110, plus an additional fee of \$500 that is designated to be allocated for the training and improvement of the U.S. workforce. The collection of this additional \$500 fee would have expired on October 1, 2001 under current law, but is extended under the new legislation until October 1, 2002.
- On October 9th the Senate passed a bill increasing the H-1B education and training fee to \$1000. The House passed the same bill last Friday. Along with the fee increase, the measure broadens the

- categories of employers who are exempt from the fee to include elementary and secondary schools and "a nonprofit entity which engages in established curriculum-related clinical training of students
- registered at any" higher education institution. The bill will now go to the President, who is expected to sign this measure, along with the H-1B cap increase bill sent to him last week. This increase in the fee
- will take effect 2 months after the President signs the bill.

What does this new fee increase bill do?

Under the new bill all new H-1B petitions will be subject to an additional \$500 filing fee. This will raise the filing fee from the current amount of \$610 to the new amount of \$1,110.

When does it go into effect?

The increased fee will be collected beginning 2 months after President Clinton signs the bill into law. President Clinton signed the bill on 17 October 2000 and therefore we expect it to go into effect on 17 December 2000.

Remember, any H-1B petitions filed at the INS prior to the end of the 2-month period will not have to pay the increased fee. Due to the large number of cases we anticipate filing, you cannot assume that cases received in our office after 30 November 2000 will be submitted before the deadline. We do not know precisely what rules the INS will use to determine when a case is officially "filed". The INS may define "filing" to be when they assign a receipt number (usually a week or two after it is submitted to the Service Center). Therefore, **IT PAYS TO FILE NOW!**

Does every employer have to pay this new fee?

No. As with the old filing fee, some employers were exempt from a \$500 portion. The following is a list of those exempt employers:

- Colleges, Universities and other post secondary schools defined as institutions of higher education as defined by the Higher Education Act of 1965.
- Nonprofit organizations affiliated with an institution of higher education.
- Certain nonprofit research organizations or governmental research organizations.

NEW EXCLUSIONS under the new bill include:

- Primary or secondary education institutions.
- Nonprofit institutions which engages in curriculum-related clinical training of students registered at any such institution of higher education.

8. Recovery of Fraudulent Visas.

- If it is found that an H-1B visa was issued based upon fraud or willful misrepresentation of a material fact, and any such visa is revoked, then one number shall be restored to the annual allotment ("Cap") for the fiscal year in which the petition is revoked.

9. NSF Study and Report on the “Digital Divide.”

- A final provision of the new legislation provides for a study to be conducted by the National Science Foundation on the divergence in access to high technology in the United States, which report shall be
- submitted to Congress within 18 months after enactment of the new legislation.