

# Does H-1B surge mean cap should be raised?

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This week's record-setting avalanche of applications for H-1B visas is undeniable. Now in dispute: what caused it and what should happen next.

On Tuesday, the U.S. government announced that this year's limit on H-1B visas had already been reached after only one day, the first time in history the annual cap had been reached so quickly. Since 1990, American employers have relied on the visas to hire skilled foreign workers for up to six years, often in computer- or engineering-related jobs.

The reason for the surge matters: Congress is expected to hold hearings on raising the limit later this year, and will surely question why the quota was reached so instantly. Technology companies argue the surge is further proof that the quota must be increased, while opponents say there are enough Americans to do those jobs already.

High-tech companies say the visas are critical to filling voids in their workforces and have been lobbying for Congress to raise the cap, which currently stands at 65,000 (but climbs just above 100,000 when a number of exemptions are taken into account). Critics say the program has depressed U.S. wages and put qualified Americans out of jobs.

For lawyers who counsel clients on how to apply for H-1Bs, the record-high 150,000 applications reportedly received by U.S. Citizenship and Immigration Services by Monday afternoon--the first day it began accepting them--was a natural response to what they said is an ever-narrowing window in which visas remain available.

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For the fourth straight year, the cap was reached before the start of the next fiscal year. Two years ago, USCIS determined in early August that it had received enough applications to meet the cap for the next year's batch of the work permits. Last year, the agency had stopped accepting new applications by late May--less than two months after it opened the application window.

"Many people figured out that, if the pattern continued, the 'run out' day would be the first day that anyone could file--namely, April 2," said Crystal Williams, deputy director of programs for the American Immigration Lawyers Association.

Fear of missing out on the visas likely prompted many employers to "frontload" their applications rather than spreading them out over many weeks or months, said Peter

Roberts, co-head of the immigration practice at the Stamford, Conn.-based law firm McCarter & English.

"I know that was the advice to my clients: You can't run the risk of waiting and then not being able to employ this individual," said Roberts, whose firm mostly works with companies in the financial services and manufacturing industry.

Programmers Guild founder John Miano had a different take. The run on the visas is nothing short of "an organized campaign to exhaust the quota as quickly as possible," motivated by the hope that Congress will be persuaded that more visas are necessary, he said.

That's precisely the wrong approach, said Miano, whose group supports restrictions on H-1Bs in an effort to combat perceived displacement of American workers and depression of salaries.

"The fact that industry is now capable of putting through a staggering number of H-1B applications in just one day is the best illustration yet of why we need an H-1B quota," he said. "Industry has proved it will not be self-policing when it comes to H-1B numbers."

### Unemployment low in tech

High-tech industry advocates of additional H-1B visas said their companies are in a particularly tight spot because U.S. unemployment levels in the computer science and engineering fields are far lower than the nationwide average while the number of job openings is growing, leaving firms little choice but to recruit foreigners.

According to the Bureau of Labor Statistics figures cited by Oracle vice president Robert Hoffman, the unemployment rate in February 2007 was 2 percent for computer and mathematical occupations and 1.7 percent for architecture and engineering occupations. That's far below the 4.9 percent national rate, although it's about equal to the 1.9 percent rate for all "management, professional and related occupations." Meanwhile, the Department of Labor estimates that the number of new jobs created in math and computer science fields will have grown to about 100,000 by 2014.

"This tells us there is significant demand and a shrinking pool of qualified professionals," Hoffman said.

The employment rates present a serious challenge to American high-tech firms, particularly in combination with recent statistics showing that more than half of advanced degrees in engineering and technology at U.S. universities are awarded to foreigners, Hoffman said.

The timing of this year's shortage is particularly troubling because it occurred long before a new class of international university students received their U.S.-based degrees, said

Kara Calvert, director of government relations for the Information Technology Industry Council. ITIC's members include Apple, Dell, Cisco Systems, Intel and Microsoft.

"Our companies cannot submit applications for prospective recruits until they have a degree in hand, which means this new crop of talented individuals may be forced to return home after receiving their U.S. degrees," she said. "Even more troubling is the real possibility that these U.S.-educated workers may begin innovating for our (overseas) competitors."

It's misguided to say there's a connection between the state of the U.S. labor market and the surging demand for H-1B visas, argued Ron Hira, a Rochester Institute of Technology professor and former board member of IEEE-USA, which lobbies for checks on the visa system on behalf of American engineers.

"The argument they make is these U.S. workers just don't exist, but you can't conclude that based on H-1B demand," said Hira, who has also authored a book and reports criticizing the H-1B system. "H-1B demand is completely decoupled from the labor market because they don't have to look for U.S. workers."

Only H-1B dependent companies--that is, when more than 15 percent of their workforces are H-1B holders--are expected to certify that they aren't displacing qualified Americans, which means most companies can escape that requirement, Hira said. A new U.S. Senate bill would extend that requirement to all firms that employ foreigners through the visa program and attempts to give the Department of Labor more tools to enforce such rules.

Another reason why foreigners may be attractive to U.S. companies is that they are only required to pay them the "prevailing wage," which is often lower than the market wage, Hira said. The Senate bill would change the way "prevailing wage" is determined in a way designed to raise the minimum payout.

"We really don't know why there is so much demand for these H-1B workers," Hira said, "but there are good reasons why companies would prefer foreign workers over U.S. workers."