




 Entire Site Just this section
[Permanent](#)
[Resident
\(Green Card\)](#)
[Citizenship](#)
[Visit the U.S.](#)
[Employment
Authorization](#)
[Employer
Information](#)
[Adoption](#)
[Humanitarian
Benefits](#)
["How Do I?"](#)
[Customer
Guides](#)
[Field Offices](#)
[Immigration](#)
[Overseas
Offices](#)
[Application](#)
[Support](#)
[Centers](#)
[Immigration](#)
[Medical](#)
[Examinations](#)
[Finding Legal
Advice](#)
[Genealogy](#)
[2010 H-1B](#)
[Petition](#)
[Season](#)
[Home](#) > [Services & Benefits](#) > [Employer Information](#) [Printer Friendly](#)

Cap Count for H-1B and H-2B Workers for Fiscal Year 2010

Please see the information relating to H-1B Program Changes for FY 2010 in the Related Links section of this page.

What is a "Cap"

The word "Cap" used in this Update refers to annual numerical limitations set by Congress on certain nonimmigrant visa classifications, e.g., H-1B and H-2B. Caps control the number of workers that can be issued a visa in a given fiscal year to enter the United States pursuant to a particular nonimmigrant classification. Caps also control the number of aliens already in the United States that may be authorized to change status to a cap-subject classification.

H-1B

The H-1B visa program is used by some U.S. employers to employ foreign workers in specialty occupations that require theoretical or technical expertise in a specialized field and a bachelor's degree or its equivalent. Typical H-1B occupations include architects, engineers, computer programmers, accountants, doctors and college professors. The H-1B visa program also includes certain fashion models of distinguished merit and ability and up to 100 persons who will performing services of an exceptional nature in connection with Department of Defense (DOD) research and development projects or coproduction projects. The current annual cap on the H-1B category is 65,000. Not all H-1B nonimmigrants are subject to this annual cap. Please note that up to 6,800 visas may be set aside from the cap of 65,000 during each fiscal year for the H-1B1 program under the terms of the legislation implementing the U.S.-Chile and U.S.-Singapore Free Trade Agreements. Unused numbers in this pool are made available for H-1B use for the next fiscal year.

H-1B Employer Exemptions

H-1B nonimmigrants who are employed, or who have received an offer of employment, by institutions of higher education or a related or affiliated nonprofit entity, as well as those employed, or who will be employed, by a nonprofit research organization or a governmental research organization are exempt from the cap.

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H-1B Advanced Degree Exemption

The H-1B Visa Reform Act of 2004 makes available 20,000 new H-1B visas for foreign workers with a Master's or higher level degree from a U.S. academic institution. For each fiscal year, 20,000 beneficiaries of H-1B petitions on behalf of persons who hold such credentials are statutorily exempted from the cap.

Duplicate H-1B Petitions Filed Requesting Fiscal Year 2010 Employment

USCIS will deny or revoke all petitions filed by an employer for the same H-1B worker if more than one filing is discovered. If multiple petitions are discovered, whether one or more such petitions are approved, USCIS will data enter all those duplicative petitions, retain all fees, and either deny the petitions or, if a petition was approved, revoke the petition. The petitions will not be returned to the petitioner.

As of April 13, 2009, approximately 43,000 H-1B cap-subject petitions and approximately 20,000 petitions qualifying for the advanced degree cap exemption had been filed. USCIS will continue to accept both cap-subject petitions and advanced degree petitions until a sufficient number of H-1B petitions have been received to reach the statutory limits, taking into account the fact that some of these petitions may be denied, revoked, or withdrawn.

H-1B1

An H-1B1 is a national of Chile or Singapore coming to the United States to work temporarily in a specialty occupation. The law defines an H-1B1 specialty occupation as a position that requires theoretical and practical application of a body of specialized knowledge. The beneficiary must have a bachelor's degree or higher (or equivalent) in the specific specialty. The combined statutory limit is 6,800 per year. The cap for H-1B1 for FY2010 has not been reached as of the date of this Update.

H-2B

The H-2B visa category allows U.S. employers in industries with peak load, seasonal or intermittent needs to augment their existing labor force with temporary workers. The H-2B visa category also allows U.S. employers to augment their existing labor force when necessary due to a one-time occurrence which necessitates a temporary increase in workers. Typically, H-2B workers fill labor needs in occupational areas such as construction, health care, landscaping, lumber, manufacturing, food service/processing, and resort/hospitality services.

The Save Our Small and Seasonal Businesses Act of 2005 (SOS Act) divided the annual numerical limitations of 66,000 into two halves. As of FY 2010, an H-2B petition may not be filed more than 120 days before the

date of the actual need for the H-2B worker's labor/services identified on the labor certification. As a result, USCIS normally begins receiving H-2B petitions with employment start dates in October and June.

What is the H-2B numerical limit set by Congress?

The H-2B numerical limit set by Congress per fiscal year is 66,000. Generally, an H-2B worker who extends his/her stay in H-2B status will not be counted again against the numerical limit. An alien who changes nonimmigrant status to H-2B is counted against the annual H-2B cap.

As USCIS begins receiving H-2B petitions, the below chart will be regularly updated.

Cap Type	Cap Amount	Beneficiaries Approved	Beneficiaries Pending	Beneficiaries Target ¹	Total	Date of Last Count
H-2B 1st Half	33,000	-----	-----	-----	-----	-----
H-2B 2nd Half	33,000 ²	-----	-----	-----	-----	-----
Total H-2B Per FY	66,000 ³	-----	-----	-----	-----	-----

¹ Refers to the estimated numbers of beneficiary applications needed to reach a cap, with an allowance for withdrawals, denials and revocations.

² A shortfall in the 1st half would be made up in the 2nd half.

³ Visas issued plus beneficiaries changing status already in the United States.

H-3

The H-3 nonimmigrant visa category is for aliens who are coming temporarily to the U.S. to receive training (other than graduate medical education or training) that is not available in their home countries. The training may be provided by a business entity, academic, or vocational institute. The H-3 nonimmigrant visa category also includes aliens who are coming temporarily to the U.S. to participate in a special education training program for children with physical, mental, or emotional disabilities. There is a limit of 50 visas per fiscal year allocated to H-3 aliens participating in special education training programs. As of **March 30, 2009**, three of these H-3 visas had been approved with a start date in FY 2009.

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