



## U.S. Citizenship and Immigration Services

# H-1B Fiscal Year (FY) 2011 Cap Season

*NOTE: Information about the H-2B cap count has been moved and can now be found at [www.uscis.gov/h-2b\\_count](http://www.uscis.gov/h-2b_count)*

## The H-1B Program

U.S. businesses use the H-1B program to employ foreign workers in specialty occupations that require theoretical or technical expertise in specialized fields, such as scientists, engineers, or computer programmers.

For more information about the H-1B program, see the link to the left under temporary workers for H-1B Specialty Occupations, DOD Cooperative Research and Development Project Workers, and Fashion Models.

## How USCIS Determines if an H-1B Petition is Subject to the FY 2011 Cap

We use the information provided in Part C of the H-1B Data Collection and Filing Fee Exemption Supplement (Form I-129, pages 14 through 15) to determine whether a petition is subject to the 65,000 H-1B numerical limitation (the “cap”). Some petitions are exempt from the cap under the advanced degree exemption provided to the first 20,000 petitions filed for a beneficiary who has obtained a U.S. master’s degree or higher.

## FY 2011 H-1B Cap Count

Cap Type	Cap Amount	Cap Eligible Petitions	Petition Target	Date of Last Count
H-1B Regular Cap	65,000	36,600		9/3/2010
H-1B Master’s Exemption	20,000	13,400		9/3/2010

## Cap Eligible Petitions

This is the number of petitions that USCIS has accepted for this particular type of cap. It

includes cases that have been approved or are still pending. It does not include petitions that have been denied.

## Petition Target

This is the number of petitions that USCIS projects it will need for the cap to be met.

## Cap Amounts

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 Department of Defense (DOD) Cooperative Research Project Workers Count

Regulations allow for no more than 100 aliens to be admitted as an H-1B nonimmigrant performing services related to a DOD cooperative research and development project or coproduction project in the United States at any one time. See 8 CFR 214.2(h)(8)(B). As of June 15, 2010, the count for this category of H-1B nonimmigrants is 5.

## When to File an FY 2011 H-1B Cap-Subject Petition

We began accepting H-1B petitions on April 1, 2010 that are subject to the FY 2011 cap. Petitions subject to the FY 2011 cap must request a start date on or after October 1, 2010, the first day of the fiscal year. You may file an H-1B petition no more than 6-months in advance of the requested start date.

Note: If you request a start date for a FY 2011 cap-subject H-1B petition that is prior to Oct. 1, 2010, your petition will be rejected.

### How to Ensure USCIS Considers Your H-1B Cap-Subject Petition Properly Filed

Please comply with the following to ensure that your petition is properly filed:

- Complete all sections of the Form I-129 petition, including the H Classification Supplement to Form I-129 (pages 8 and 9 of Form I-129) and the H-1B Data Collection and Filing Fee Exemption Supplement (pages 13 through 15).
  - Original signatures, preferably in blue ink, are required on each form.
- Include a signed check or money order with the correct fee amount.
- Ensure that all required documentation and evidence is submitted with the petition at the time of filing.

Note: It is your responsibility to ensure that Form I-129 is completed accurately. Failure to complete Form I-129 with the correct information and provide the required fees or documentation may result in the rejection or denial of the H-1B petition.

Additionally, be sure to file the petition at the correct USCIS Service Center. We will reject all H-1B petitions filed at the wrong location. See section below on “Where to Mail Your H-1B Cap-Subject Petition.”

## **Additional Documents Required With Your Petition**

### *Labor Condition Application (LCA)*

You must submit a Department of Labor (DOL) certified LCA (Form ETA 9035) at the time of filing your petition. A copy of the LCA is acceptable.

Note: USCIS encourages petitioners to keep DOL LCA processing times in mind when preparing the H-1B petition and plan accordingly. If the LCA certified by DOL is for multiple positions, provide the name and USCIS case receipt number of any alien who has previously utilized it.

Petitioners should ensure that they have signed the LCA prior to it being submitted.

Please see Department of Labor’s Office of Foreign Labor Certification website for further information on the LCA process.

### *Evidence of Beneficiary’s Educational Background*

You must submit evidence of the beneficiary’s educational degree at the time of filing. If all of the requirements for the degree have been met, but the degree has not yet been awarded, the following alternate evidence may be submitted:

- A copy of the beneficiary’s final transcript; or
- A letter from the Registrar confirming that all of the degree requirements have been met (if the educational institution does not have a Registrar, such letter must be signed by the person in charge of the educational records where the degree will be awarded).

### *A Duplicate Copy of the H-1B Petition*

You must submit a duplicate copy of your H-1B petition at the time of filing only if the beneficiary will be seeking nonimmigrant visa issuance abroad. USCIS will not make a second copy if one is not provided.

You may also choose to submit a duplicate copy of the petition if the beneficiary is requesting a change of status to H-1B or an extension of stay in case the beneficiary later decides to seek visa issuance abroad or the H-1B petition is approved but the beneficiary’s concurrent change of status or extension of stay request is denied.

Review the Department of State website to make sure that the consulate indicated on Form I-129 is able to process the beneficiary’s nonimmigrant visa application and for any other consulate-specific special instructions.

## **Where to Mail Your H-1B Cap-Subject Petition**

You must file your petition at the correct Service Center depending on your jurisdiction. We have established specific mailing addresses for purposes of identification and processing of H-1B cap-subject cases.

To determine which jurisdiction you are in, see the link to the right for H-1B filing locations.

Note: A separate mailing address has been established for certain types of educational or nonprofit organizations which file H-1B petitions on behalf of beneficiaries that are not counted against the H-1B numerical limitations.

Please read the filing instructions very carefully. If you file your petition incorrectly, we will reject it. Rejected petitions will not retain a filing date.

## Required Fees

There are different fees depending on the type of H-1B petition you are submitting. Please refer to Fee Exemption and/or Determination (page 14 of Form I-129) for detailed instructions on fees.

The following fees may be required with a cap-subject petition:

Base filing fee:

- \$320

**American Competitiveness and Workforce Improvement Act of 1998 (ACWIA) fee** (see H-1B Data Collection and Filing Fee Exemption Supplement, Part B):

- \$750 for employers with 1 to 25 full-time equivalent employees, unless exempt
- \$1,500 for employers with 26 or more full-time equivalent employees, unless exempt

### Fraud Prevention and Detection fee

- \$500 to be submitted with the initial H-1B petition filed on behalf of each beneficiary by a petitioner (does not apply to Chile/Singapore H-1B1 petitions)

### Premium Processing fee

- \$1,000 for employers seeking Premium Processing Service

**Checks:** Make checks payable to the Department of Homeland Security or U.S. Citizenship and Immigration Services, dated within the last 6-months, and include the proper guarantee amount and signature.

**Money Orders:** Money orders must be properly endorsed.

### Non-payable Checks or Other Financial Instruments

USCIS will reject all applications or petitions submitted with the incorrect filing fee. Rejected petitions and petitions in which the check or other financial instrument used to pay the filing

fee is returned as non-payable will not retain a filing date. See 8 CFR 103.2(a)(7)(i).

While petitioners are generally provided the opportunity to correct a fee deficiency, pursuant to the regulations, the filing date is not established until and unless the fee deficiency has been corrected. H-1B cap-subject petitions with non-payable fees will be given a new filing date the day the fee deficiency has been corrected, as long as the cap has not been met. If the new filing date is after the cap has been met, the petition will be rejected.

## Premium Processing Service

H-1B petitions are eligible for the Premium Processing Service. Petitioners may choose to file a Request for Premium Processing Service (Form I-907) to have their petition adjudicated within 15 calendar days. To request premium processing submit

- the Form I-907 and
- the filing fee of \$1,000 (this fee is in addition to the required base filing and other applicable fees and cannot be waived).

You can file the Form I-907 and corresponding fee

- at the same time as Form I-129 or
- at any time after you file Form I-129 while it is still pending.

If filed after the Form I-129, be sure to include the receipt number (e.g., EAC 10 123 51234) of the Form I-129 in the pertinent section of Form I-907.

Please see the link to the right for more information concerning the Premium Processing program.

## Organizing your H-1B package

Clearly label all H-1B cap cases, preferably in red ink, on the top margin of Form I-129. Use the following codes

- Regular Cap (65,000 regular cap cases, not including Chile/Singapore cap cases)
- C/S Cap (Chile/Singapore H-1B1s)
- U.S. Master's (20,000 exemption for beneficiaries with U.S. master's or higher degrees)

A separate check for each applicable filing fee (Form I-129, Premium Processing, Fraud Fee, and/or ACWIA fee) is preferred. Applicable fees should be stapled to the bottom right corner of the top document.

### Preferred order of documents at time of submission

- Form I-907 (if filing for Premium Processing Service)
- Form G-28 (if represented by an attorney or accredited representative)
- Form I-129, Petition for a Nonimmigrant Worker
- H Classification Supplement to Form I-129
- H-1B Data Collection and Filing Fee Exemption Supplement
- All supporting documentation to establish eligibility

- Provide a Table of Contents for supporting documentation
  - Tab items as listed in Table of Contents
  - Arrival-Departure Record (Form I-94) if the beneficiary is in the U.S.
  - SEVIS Form I-20 if the beneficiary is a current or former F-1 student or F-2 dependent
  - SEVIS Form DS-2019 if the beneficiary is a current or former J-1 or J-2
  - Form I-566 if the beneficiary is a current A or G nonimmigrant
  - DOL certified LCA, Form ETA 9035
  - Employer/attorney/representative letter(s)
  - Other supporting documentation.
- Duplicate copy of the petition, if necessary. Clearly identify the duplicate copy of the petition as “COPY”, so that it is not mistaken for a duplicate filing.

## How to mail multiple petitions together

If multiple petitions will be included in the same courier service or Post Office package, please place individual petitions into separate envelopes within the package. Individual petition envelopes should be marked with the following labels to reference the type of petition

- Master’s Premium
- Master’s
- Regular Premium
- Regular
- Chile/Singapore

## Filing Tips: Form G-28, Notice of Entry of Appearance as Attorney or Representative

- Use if the petitioner will be represented by an attorney or other accredited representative
- Complete all sections of the form accurately
- Include the printed name and signature of the representative, preferably in blue ink
- Include the original signature of the petitioner, preferably in blue ink

## Form I-129, Petition for a Nonimmigrant Worker

- Complete all sections of the form accurately.
- Ensure that the petition is properly signed. Please see the Related Links section for more information on properly signing the petition.
- Ensure the beneficiary’s name is spelled properly and that his/her date of birth is displayed in the proper format (mm/dd/yyyy). Also, review that the country of birth/citizenship and the I-94 number (if applicable) is accurate.
- If the beneficiary will ultimately be seeking issuance of a visa at a consular office abroad, include a copy of the petition and supporting documentation should be included with the filing. For cases where the beneficiary will be seeking a change of status or extension of stay in the United States, you may provide a copy is suggested, but it is not required.
- If the beneficiary is seeking an extension or change of status, the petition should include evidence (e.g. Form I-94 or Form I-797 approval notice) to establish that the beneficiary will have maintained a valid nonimmigrant status through the employment start date

- being requested.
- Provide a copy of the beneficiary's valid passport.

## **H Classification Supplement to Form I-129 (pages 8 and 9 of Form I-129)**

- Complete all sections of the form accurately.
- In listing previous periods of stay in H/L classification (question 3), include the actual nonimmigrant classification held (e.g. H-1B or L-1).
- Petitioner must sign the form, preferably in blue ink.

## **H-1B Data Collection and Filing Fee Supplement form (pages 13 through 15 of Form I-129)**

- Complete all sections of the form accurately.
- Enclose page 13 of the Form I-129 (with a revision date of March 11, 2009 or later) and answer question 1d in Part A if you are using a version of Form I-129 with a revision date prior to March 11, 2009.
- Be sure to answer appropriately in Part A, question 5 and Part C, question 7 if the beneficiary has earned a master's degree or higher from a U.S. educational institution.
- Part C, question 6 is not relevant if the petition does not involve a change of employer. Thus, please answer "no" or provide an "N/A" in the margin of the form to the left of the question.
- Petitioner must sign the form, preferably in blue ink.

## **Form I-907, Request for Premium Processing**

- Complete all sections of the form accurately with original signatures. We will now only accept the 8/10/09 edition of Form I-907.
- The representative should sign in both Parts 3 and 4 of the Form I-907 if there is a valid Form G-28 with the filing. Otherwise, the petitioner's signature is required. Preferably, the signature(s) should be in blue ink.
- Include a copy of the Form I-129 receipt notice along with the Form I-907 when Form I-907 is filed after the filing of Form I-129.

This page can be found at [http://www.uscis.gov/h-1b\\_count](http://www.uscis.gov/h-1b_count)

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