

The Center for Growth and Opportunity at Utah State University  
**Modernizing H-1B Requirements, Providing Flexibility in the  
F-1 Program, and Program Improvements Affecting Other  
Nonimmigrant Workers**

**Author:**

Abigail Houseal<sup>a</sup>

Josh T. Smith<sup>b</sup>

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<sup>a</sup> Abigail Houseal, Immigration Research Associate, The Center for Growth and Opportunity at Utah State University  
<sup>b</sup> Josh T. Smith, Immigration Policy Director, The Center for Growth and Opportunity at Utah State University

## Introduction

The Center for Growth and Opportunity at Utah State University (CGO) welcome the opportunity to respond to the Department of Homeland Security (DHS) and US Citizenship and Immigration Services (USCIS) Notice of Proposed Rulemaking (NPRM), published October 23, 2023, entitled “Modernizing H-1B Requirements, Providing Flexibility in the F-1 Program, and Program Improvements Affecting Other Nonimmigrant Workers.”<sup>1</sup> CGO submits this comment focusing on our unique research about the economic effects of immigration. We find that immigrants supplement the US economy in critical ways. Immigrants bring skills that are in shortage.

Overall, we find that the NPRM’s new beneficiary-centric approach is a positive change. However, some of the new language imposes overly broad restrictions that will make complying harder for businesses without adding protections for native workers.

In the first section, we discuss the current state of H-1B policy and the CGO’s immigration research. In the second section, we analyze the specific updates listed in the NPRM. Finally, we propose actions and recommendations for DHS, USCIS, and policymakers.

## The current state and research

The US labor market has a critical need for foreign workers. The H-1B visa extends temporary visa status to highly educated foreign professionals in “specialty occupations” that require at least a bachelor’s degree or equivalent alongside an employer’s petition. Typically in science, technology, engineering, and mathematics (STEM), H-1B visas have an initial classification of three years with the possibility of an extension for a maximum of six years.

The US labor market has a limited supply of workers in STEM fields. CGO’s research shows that immigration serves as a supplement to the US-born workforce. Immigration programs like the H-1B add high-skilled foreign workers who are in short supply. Economist Morgan Raux’s research, published by CGO, shows that when labor markets become more competitive, employers increase their demand for H-1B workers. This is most evident in computer-related occupations.<sup>2</sup> Raux shows that labor market tightness, not attempts to avoid paying higher wages, explains the importance of H-1B workers to the US tech industry and the entire economy. As a result, US immigration policies should seek to avoid restrictions and focus on streamlining this primary pathway for college-educated foreign workers in the United States.

In previous work, Raux examined how US employers use the H-1B visa program to find workers, especially within STEM fields.<sup>3</sup> Utilizing online job postings with applications for H-1B visas, the research finds that employers are 28 percent more likely to apply for an H-1B visa when job postings are available for longer periods. For the US’s long-term success, open immigration policies that give employers the most options need to be created and encouraged.

Another central finding of CGO’s research on immigration is that immigrants are well-paid for these skills. Omid Bagheri, an economist at Kent State University, showed that temporary work

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1 88 FR 72961, October 23, 2023, <https://www.federalregister.gov/documents/2023/10/23/2023-23381/modernizing-h-1b-requirements-providing-flexibility-in-the-f-1-program-and-program-improvements>.

2 Morgan Raux, “Recruitment Competition and Labor Demand for High-Skilled Foreign Workers,” Working Paper, The Center for Growth and Opportunity at Utah State University, November 2023, <https://www.thecgo.org/research/recruitment-competition-and-labor-demand-for-high-skilled-foreign-workers/>.

3 Morgan Raux. “Looking for the Best and Brightest,” The Center for Growth and Opportunity at Utah State University, August 27, 2020, <https://www.thecgo.org/research/looking-for-the-best-and-brightest/>.

visa holders earn, on average, about a 25 percent wage premium over college-educated natives.<sup>4</sup> This wage premium differs by industry and country of origin. The key finding is that immigrants are more expensive to hire than native workers. Notably, Bagheri’s research considers only wages. There are other expenses for hiring immigrants, such as visa compliance costs, that likely further increase the relative cost of hiring immigrants compared to natives.

In a policy context, these findings may not be surprising. One interpretation is that existing protections for native workers in US immigration law are effective. H-1B workers are subject to wage requirements, and companies must prove that visa holders are paid the same as other workers in the industry. But in any interpretation, CGO’s research shows that immigrants on H-1B visas contribute valuable and rare skills that enable US companies to succeed and compete in a global marketplace.

CGO’s research matches the work of others in the immigration policy space. The economic contributions of H-1B visa holders complement US workers and fill employment gaps. According to the American Immigration Council, the presence of immigrant workers creates new opportunities for native-born workers by (1) providing different skill sets, (2) investing in the US economy, (3) incentivizing professional expansion for US businesses overseas, (4) creating new business opportunities, and (5) developing new ideas and innovations to fuel economic growth.<sup>5</sup>

On the whole, research is clear that additional H-1B visas would benefit the US economy.<sup>6</sup> Of course, such changes are outside the scope of this proposed rulemaking and would require Congressional action. But the need is evident. The current allotment of visa numbers available is consistently reached before each year ends. For example, the fiscal year 2024 cap was met in fewer than 90 days since applications opened. USCIS announced that applications met the 2024 H-1B cap as of December 13, 2023.<sup>7</sup>

H-1B reforms, such as those mentioned in the NPRM, need to make these programs stronger and help ensure immigrant entrepreneurs have an efficient, legal path to contribute to economic growth in the US. In its current state, the visa is far from perfect and has experienced misuse.<sup>8</sup> Additional safeguards have been discussed before.<sup>9</sup> An ideal set of rules protects American workers while providing US employers access to valuable talent.

## The changes

According to DHS, the updates to the regulations can be divided into the following categories:

1. streamlining eligibility requirements;
2. improving program efficiency;

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4 Omid Bagheri. “Are College Graduate Immigrants on Work Visa Cheaper Than Natives?” *Journal of Labor Research* 44, no. 3, December 1, 2023: 228–60. <https://doi.org/10.1007/s12122-023-09349-2>. Note: The CGO’s working paper version is freely available here: <https://www.thecgo.org/research/are-college-graduate-immigrants-on-work-visas-cheaper-than-natives/>.

5 American Immigration Council. “The H-1B Program and Its Impact on the U.S. Economy,” August 18, 2023. <https://www.americanimmigrationcouncil.org/research/h1b-visa-program-fact-sheet>.

6 Josh T. Smith, “Competing for People.” *The Center for Growth and Opportunity at Utah State University*, May 25, 2021. <https://www.thecgo.org/benchmark/competing-for-people/>.

7 U.S. Citizenship and Immigration Services. “USCIS Reaches Fiscal Year 2024 H-1B Cap,” December 13, 2023. <https://www.uscis.gov/newsroom/alerts/uscis-reaches-fiscal-year-2024-h-1b-cap>.

8 Sarah Pierce, “Broad and Blunt, the Trump Administration’s H-1B Changes Miss the Opportunity for Real Reform,” *Migration Policy Institute*, October 13, 2020. <https://www.migrationpolicy.org/news/trump-h1b-changes-miss-opportunity-real-reform>.

9 Reforming the H1B Visa System: A Conversation with Congressman Darrell Issa. *The Atlantic Council*, 2017, <https://www.atlanticcouncil.org/commentary/event-recap/reforming-the-h1b-visa-system-a-conversation-with-congressman-darrell-issa/>.

3. providing greater benefits and flexibilities for employers and workers;
4. and strengthening integrity measures.<sup>10</sup>

While the proposed regulation aims to provide more flexibility, integrity, and efficiency, its proposals around specialty occupations will create challenges for generalized degrees and beneficiaries in the queue. This will have no benefit to the native-born but will create additional compliance costs for US companies.

## **The proposed specialty occupation rules are unnecessary and ambiguous**

The new language will not streamline eligibility requirements, but instead make the process more restrictive.<sup>11</sup> Adding “specialty occupation” incentivizes USCIS to issue requests for evidence and makes generalized degrees likely not specific enough to qualify. There is no requirement in the Immigration and Nationality Act matching this new definition. As the immigration lawyer Cyrus Mehta explains, “The inclusion of the required specialized studies being “directly related” to the position does not faithfully interpret the Immigration and Nationality Act I (“INA”).”<sup>12</sup> Under the proposal, any bachelor’s degree or generic degrees like “engineering” or “business” will not be applicable. Alternatively, if more than one degree is listed then a petitioner must show their expertise for each occupation position. These are distinctions that those applying for an H-1B are best suited to make. A general degree may hide someone’s unique practical experience.<sup>13</sup> Paper credentials are valuable, but they are far from the only way to qualify someone for a role or an H-1B.

Next, it’s unclear how this new restriction adds meaningful or efficient protections for native workers. Employers have already demonstrated that there are no native workers with the relevant skills as part of their labor condition application (LCA). Because of this, rules allowing only certain degrees require additional work for employers without any benefit to natives. If DHS and USCIS are interested in protecting American workers, LCA rules and regulations are a more promising opportunity. However, as CGO’s research demonstrates, likely, these existing rules are already working effectively.

## **The beneficiary-centric approach is an improvement**

While many of the updates do not acknowledge the red tape currently in place in H-1B legislation, the proposed changes aim to efficiently modernize program integrity, visa caps, and employer-employee relationships.

Most notably, the changes in favor of “program integrity” will select registrations by unique beneficiaries using distinct passport numbers to prohibit multiple registrations for the same individual. This is a direct response to previous events in which employers and beneficiaries colluded to

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10 Department of Homeland Security. “DHS Issues Proposed Rule to Modernize the H-1B Specialty Occupation Worker Program,” October 20, 2023. <https://www.uscis.gov/newsroom/news-releases/dhs-issues-proposed-rule-to-modernize-the-h-1b-specialty-occupation-worker-program>.

11 The Presidents’ Alliance on Higher Education and Immigration makes similar suggestions in their comment: USCIS-2023-0005-1098.

12 Cyrus Mehta, “While the Proposed H-1B Rules Have Many Positive Features, They May Also Result in Requests for Evidence and Denials.” The Insightful Immigration Blog (blog), October 23, 2023. <https://blog.cyrusmehta.com/2023/10/while-the-proposed-h-1b-rules-have-many-positive-features-they-may-also-result-in-requests-for-evidence-and-denials.html>.

13 See labor economist Mark Regets’ quotation in the National Foundation for American Policy comment for more on this (USCIS-2023-0005-1068).

submit numerous petitions per person.<sup>14</sup> Approximately 96,000 individuals were responsible for more than 408,000 registrations—a 147% increase in multiple registrations by a single applicant.<sup>15</sup> As other commentators have noted, USCIS should also consider how to handle stateless individuals or those without a passport.<sup>16</sup> Given that this will not be in practice until fiscal year 2025, USCIS has time to create a pathway for these applicants.

By making the selection process beneficiary-centric instead of employer-centric, it gives the applicants bargaining power through competition between businesses over an individual. It is also an improvement to allow H-1B applicants to “hold controlling interest in the petitioning entity,” whether as a founder of a startup or other avenues, with the requirement of two or more concurrent employers and a modified residency of a year and a half.<sup>17</sup>

These rules may still be too restrictive for startups, however. A longer period and fewer renewals will improve the regulatory environment for startups. The startup advocacy nonprofit Engine points out in their comments that the International Entrepreneur Parole (IEP) pathway allows 30 months.<sup>18</sup> The IEP is a better model to follow. A longer timeline will promote economic success for startups and competition in the marketplace as a whole.

Overall, these changes help employers and employees have open negotiations about job openings. It also prevents abuse of the rules that disadvantage those applying in good faith. However, DHS and USCIS should consider making the visa renewal requirements less demanding to improve the regulatory environment for startups.

## **Extension and transition of OPT to H-1B is an improvement**

Another positive proposed change is the extension of the H-1B and F-1B cap gap. While the cap refers to the limit of H-1B holders, the gap indicates the period between the two statuses. The NPRM shifts the cap gap from September 30 to April 1 of the following year to allow Optional Practical Training (OPT) students to continue their status beyond September 30 if their petition is not approved by October 1st. This allows for a direct transition from OPT to H-1B. Further, cap exemptions will be extended for nonprofits and university research departments with research as a “fundamental activity.” This extends to people who work for such organizations, even if not directly employed.<sup>19</sup>

## **Contractor changes are improvements for US companies and visa recipients**

These are useful simplifications of application processes for H-1B users. Under the proposal, applicants will no longer need to demonstrate an employer and employee relationship, which had

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14 Andrew Kreighbaum, “H-1B Speciality Occupation Visa Cap Reached for Fiscal Year 2024,” Bloomberg Law, 2023, <https://news.bloomberglaw.com/daily-labor-report/h-1b-specialty-occupation-visa-cap-reached-for-fiscal-year-2024>.

15 Michelle Hackman, “Companies Are Colluding to Cheat H-1B Visa Lottery, U.S. Says,” The Wall Street Journal, April 28, 2023, <https://www.wsj.com/articles/u-s-says-some-companies-cheat-h-1b-lottery-driving-record-applications-1a3e4fd>; Brad Smith, “Safeguarding the integrity of the annual H-1B lottery,” Microsoft, <https://www.uscis.gov/sites/default/files/document/foia/H-1BCap-Smith.pdf>.

16 See the joint comment of American Immigration Lawyers Association and the American Immigration Council (USCIS-2023-0005-1068).

17 “AILA and Partners Send Letter to DHS on the H-1B Registration and Lottery Process,” June 1, 2023, <https://www.aila.org/library/letter-to-dhs-on-the-h-1b-registration-and-lottery>.

18 See their full comment here: USCIS-2023-0005-1099.

19 The Federation of American Societies for Experimental Biology makes similar recommendations in their own comment (USCIS-2023-0005-0967).

previously been a prominent reason for visa application denial by USCIS. This further applies to contractors, who can now list their third-party job as the relevant one for “specialty occupation” determination. To streamline the visa process, DHS proposes that USCIS adjudicators will be required to defer to prior rulings for an employment-based non-immigrant visa petition for the “same parties and underlying facts.” Separately, Congress should consider making changes to H-1Bs, like those suggested by Representative Darrell Issa, to add additional protections for Americans.<sup>20</sup> These concerns about contractors, however, are outside the scope of the current rulemaking.

## **Next steps and conclusion**

Our research is clear that immigrants provide rare and valuable skills to the US labor market. Immigrants are not cheap labor, nor are they taking jobs that would otherwise go to Americans. Given this, policymakers at all levels should use their platforms and public roles to recognize and encourage a streamlined process of the H-1B system for skilled, foreign talent that contributes to economic growth. The current US labor market has a too-limited supply of high-skilled foreign workers where native workers are unavailable. As a result, US immigration policies should seek to avoid unnecessary restrictions and focus on streamlining this primary pathway for college-educated foreign workers.

To meet the goal of USCIS and DHS to modernize and improve the efficiency of the H-1B program, the changes need to avoid adding restrictive language and overreach and instead allow efficient and optimal pathways for skilled foreign talent to come to the United States.

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<sup>20</sup> Sarah Pierce, “Broad and Blunt, the Trump Administration’s H-1B Changes Miss the Opportunity for Real Reform.” Migration Policy Institute, October 13, 2020. <https://www.migrationpolicy.org/news/trump-h1b-changes-miss-opportunity-real-reform>.