

GAO



Report to the Ranking Minority Member, Subcommittee on Environment, Technology, and Standards, Committee on Science, House of Representatives

September 2003

H-1B FOREIGN WORKERS

Better Tracking Needed to Help Determine H-1B Program's Effects on U.S. Workforce



GAO

Accountability * Integrity * Reliability



Highlights of [GAO-03-883](#), a report to the Ranking Minority Member, Subcommittee on Environment, Technology, and Standards, Committee on Science, House of Representatives

H-1B FOREIGN WORKERS

Better Tracking Needed to Help Determine H-1B Program's Effects on U.S. Workforce

Why GAO Did This Study

The continuing use of H-1B visas, which allow employers to fill specialty occupations with highly skilled foreign workers, has been a contentious issue between U.S. workers and employers during the recent economic downturn. The H-1B program is of particular concern to these groups because employment has substantially decreased within information technology occupations, for which employers often requested H-1B workers. In light of these concerns, GAO sought to determine (1) what major occupational categories H-1B beneficiaries were approved to fill and what is known about H-1B petition approvals and U.S. citizen employment from 2000-2002; (2) what factors affect employers' decisions about the employment of H-1B workers and U.S. workers; and (3) what is known about H-1B workers' entries, departures, and changes in visa status.

What GAO Recommends

GAO recommends that the Secretary of Homeland Security (1) take actions to ensure that change of visa status data are entered into DHS's computer system and are integrated with entry and departure data and (2) issue regulations that address the extent to which unemployed H-1B workers are allowed to remain in the United States. DHS agreed with GAO's recommendations.

www.gao.gov/cgi-bin/getrpt?GAO-03-883.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Sigurd Nilsen at (202) 512-7215 or nilsens@gao.gov.

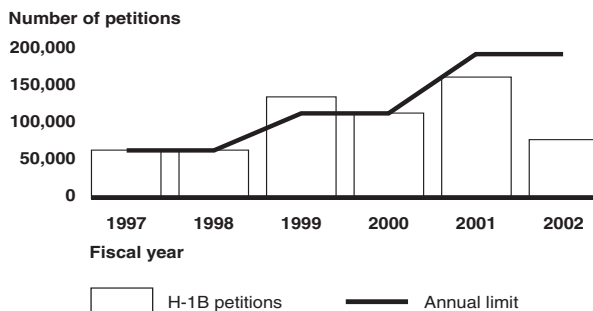
What GAO Found

H-1B beneficiaries were approved to fill a variety of positions in 2002, and the number of approved petitions (i.e., employer requests to hire H-1B beneficiaries) in certain occupations has generally declined along with the economic downturn, as have U.S. citizen employment levels in these occupations. In contrast with 2000, most H-1B beneficiaries in 2002 were approved to fill positions in fields not directly related to information technology, such as economics, accounting, and biology. Both the number of H-1B petition approvals and U.S. citizens employed in certain occupations, such as systems analysts and electrical engineers, decreased from 2001 to 2002.

GAO contacted 145 H-1B employers, and the majority of the 36 employers that agreed to speak with GAO said that they recruited, hired, and retained workers based on the skills needed, rather than the applicant's citizenship or visa status. Despite increases in unemployment, most employers said that finding workers with the skills needed in certain science-related occupations remains difficult. Although some employers acknowledged that H-1B workers might work for lower wages than their U.S. counterparts, the extent to which wage is a factor in employment decisions is unknown.

The Department of Homeland Security (DHS) has incomplete information on H-1B worker entries, departures, and changes in visa status. As a result, DHS is not able to provide key information needed to oversee the H-1B program and its effects on the U.S. workforce, including data on the number of H-1B workers in the United States at any time. GAO also found that DHS's ability to provide information on H-1B workers is limited because it has not issued consistent guidance or any regulations on the legal status of unemployed H-1B workers seeking new jobs. Allowing unemployed H-1B workers to remain in the United States may have implications for the labor force competition faced by U.S. workers. While DHS has long-term plans for providing better information on H-1B workers, policymakers in the interim need data to inform discussions on program changes.

H-1B Petitions Approved and Counted Toward the Annual Limit, Fiscal Years 1997-2002



Source: Bureau of Citizenship and Immigration Services.

Contents

Letter		1
	Results in Brief	3
	Background	6
	H-1B Beneficiaries Were Approved to Fill a Broad Range of Occupations, and as U.S. Citizen Employment Generally Declined with the Recent Economic Downturn, So Did the Number of H-1B Petition Approvals	11
	The Majority of Employers Interviewed Reported That Skills, Rather Than Immigration Status, Determine Employment Decisions, but the Extent to Which Wage Plays a Role Is Unknown	20
	Little Is Known about the Status of H-1B Workers, but New Systems Are Being Developed to Improve Tracking Information	27
	Conclusions	32
	Recommendations for Executive Action	33
	Agency Comments	33
Appendix I	Scope and Methodology	35
	CLAIMS 3 Data on H-1B Petition Approvals	35
	Current Population Survey Estimates	36
	Salary Comparisons	38
	Employers Selected for Interviews	39
	DHS Current and Planned Tracking Systems	40
Appendix II	Age Distribution and Salaries of H-1B Beneficiaries and U.S. Citizen Workers	42
Appendix III	Comments from the Department of Homeland Security	43
Appendix IV	GAO Contacts and Staff Acknowledgments	45
	GAO Contacts	45
	Staff Acknowledgments	45
Related GAO Products		46

Tables

Table 1: Top 10 Occupations H-1B Beneficiaries Were Approved to Fill, 2000, 2002	12
Table 2: Change in H-1B Petition Approvals and U.S. Citizen Employment for Selected Occupations, 2000-2001, 2001-2002	20
Table 3: Department of Labor H-1B Investigations, Violations Identified, and Back Wages Due	26
Table 4: Summary of Reportable Analyses	37
Table 5: Crosswalk from BCIS to CPS Codes	38
Table 6: Percentage Distribution of the Age of H-1B Beneficiaries Approved in 2002 and U.S. Citizen Workers in 2002	42
Table 7: Median Annual Salaries of H-1B Beneficiaries Approved in 2001 and U.S. Citizen Workers in 2001 in Selected Occupations, by Age and Education	42

Figures

Figure 1: H-1B Petitions Approved and Counted Toward the Annual Limit, Fiscal Years 1997 through 2002	8
Figure 2: Median Age of H-1B Beneficiaries Approved in 2002 and U.S. Citizen Workers in 2002 in Selected Occupations	14
Figure 3: Percentages of H-1B Beneficiaries Approved in 2002 and U.S. Citizen Workers in 2002 with Graduate Degrees by Selected Occupations	15
Figure 4: Median Annual Salaries of H-1B Beneficiaries Approved in 2001 and U.S. Citizen Workers in 2001 in Selected Occupations, by Age and Education	17
Figure 5: Countries of Birth for H-1B Petition Approvals, 2002	18
Figure 6: Total Initial and Continuing H-1B Petitions Approved Annually, Calendar Years 2000 through 2002	19
Figure 7: L-1 Visa Issuances, Fiscal Years 1998 through 2002	25

Abbreviations

AC21	American Competitiveness in the Twenty-First Century Act of 2000
BCIS	Bureau of Citizenship and Immigration Services
BLS	Bureau of Labor Statistics
CLAIMS 3	Computer Linked Application Information Management System 3
CLAIMS 3 LAN	Computer Linked Application Information Management System 3 Local Area Network
CPS	Current Population Survey
DHS	Department of Homeland Security
DMIA	Immigration and Naturalization Service Data Management Improvement Act
IIRIRA	Illegal Immigration Reform and Immigrant Responsibility Act
INS	Immigration and Naturalization Service
IT	information technology
LCA	Labor Condition Application
OES	Occupational Employment Statistics
NIIS	Non-Immigrant Information System
USA PATRIOT ACT	The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism
US-VISIT	U.S. Visitor and Immigrant Status Indicator Technology System
WHD	Wage and Hour Division

This is a work of the U.S. government and is not subject to copyright protection in the United States. It may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.



United States General Accounting Office
Washington, DC 20548

September 10, 2003

The Honorable Mark Udall
Ranking Minority Member
Subcommittee on Environment, Technology,
and Standards
Committee on Science
House of Representatives

Dear Mr. Udall:

The continuing use of H-1B visas, which allow employers to fill specialty occupations¹ with foreign workers, has been a contentious issue between U.S. workers and employers during the recent economic downturn. From March 2001 to March 2003, unemployment among highly educated individuals increased by about 400,000, resulting in 1.2 million of these individuals being unemployed. In particular, employment substantially decreased within information technology (IT) occupations, for which employers often requested H-1B workers. Critics of the H-1B program argue that enough U.S. workers are available to fill these highly skilled positions and that the use of foreign labor results in U.S. worker displacement. Proponents of the program argue that it has contributed to our nation's productivity in the booming economy of the 1990s and that the need for highly skilled foreign workers continues to exist for certain highly specialized occupations.

The H-1B program was established in 1990 to assist U.S. employers in temporarily (for up to 6 years) filling specialty occupations with highly skilled workers. In order to ensure that American workers are not adversely affected, employers are required to meet certain labor conditions, including paying H-1B workers wages comparable to those of U.S. workers in similar positions and locations. The Department of Labor's Wage and Hour Division (WHD) is responsible for ensuring that H-1B workers are actually working in the occupation listed in the employer's application and receiving the required wages.

¹A "specialty occupation" is defined as one requiring theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's degree or higher (or its equivalent) in the field of specialty.

Legislation creating the H-1B program limited the number of H-1B workers allowed to enter the country annually to 65,000. In response to employers' needs during times of greater economic growth, the limit was increased to 115,000 for fiscal years 1999 and 2000 and to 195,000 for fiscal years 2001 through 2003. This cap will revert to 65,000 in October 2003, unless legislation is enacted to raise the cap.

Because of your interest in the employment status of H-1B workers and their U.S. counterparts since the economic downturn, we sought to determine (1) what major occupational categories H-1B beneficiaries² were approved to fill and what is known about H-1B petition approvals and U.S. citizen employment from 2000-2002; (2) what factors affect employers' decisions about the employment of H-1B workers and U.S. workers; and (3) what is known about H-1B workers' entries, departures, and changes in visa status.

To answer the first question, we examined the Department of Homeland Security's (DHS) Bureau of Citizenship and Immigration Services' (BCIS)—formerly the Immigration and Naturalization Service (INS)³—2000-2002 H-1B petition approval data (i.e., data on approved employer requests to hire H-1B beneficiaries) for five key occupations: systems analysis and programming; electrical/electronic engineering; economics; accountants, auditors, and related occupations; and biological sciences. In addition, we analyzed 2000-2002 Current Population Survey (CPS) data on U.S. citizen employment in similar occupations. To obtain information about factors affecting employers' decisions, we conducted site visits and telephone interviews with 36 H-1B employers in 6 of the 12 states with the largest number of H-1B petitions filed by employers—California, Maryland, New Jersey, New York, Texas, and Virginia—selected for their geographic dispersion. Employers were selected to obtain a range in both the number of employer H-1B petition approvals and the occupations (IT-

²H-1B beneficiaries are foreign nationals with approved petitions for H-1B visas. We use "beneficiary" as opposed to "worker" to refer to these nonimmigrants, because individuals approved for H-1B visas may not actually become employed in the United States.

³On March 1, 2003, immigration and citizenship services formerly provided by INS transferred over to the Department of Homeland Security under the Bureau of Citizenship and Immigration Services. For this report, we refer to BCIS or DHS, as appropriate, though the actions described might have taken place before the transition occurred.

related⁴ and non-IT-related) for which they requested H-1B workers. Seventy-five percent of the 145 employers we contacted chose not to discuss H-1B issues with us; consequently, our results may be affected by this self-selection. Most employers that agreed to speak with us used the H-1B program to fill engineering positions. We also interviewed associations representing U.S. and H-1B workers and associations representing employers. To report information available on H-1B workers' entries, departures, and changes in visa status, we examined DHS data and reports on planned tracking systems, and we interviewed DHS officials about their data systems and tracking procedures. We conducted our work between August 2002 and July 2003, in accordance with generally accepted government auditing standards. For more details on our scope and methodology, see appendix I.

Results in Brief

H-1B beneficiaries were approved to fill a wide variety of positions, and the number of H-1B petition approvals in certain occupations has generally declined along with the economic downturn, as have employment levels of U.S. citizen workers in these occupations. In contrast with 2000, most H-1B beneficiaries in 2002 were approved to fill positions in fields not directly related to IT, such as economics, accounting, and biology. In 2002, 40 percent of all H-1B beneficiaries were approved to fill IT-related occupations, such as systems analysis and electrical engineering, compared with 65 percent in 2000. We found that in most of the five occupations we examined (electrical/electronic engineers, systems analysts/programmers, biological/life scientists, economists, and accountants/auditors), H-1B beneficiaries with petitions approved in 2002 were younger and a higher percentage had an advanced degree than the population of U.S. citizen workers in 2002. In the three occupational groups (electrical/electronic engineers, systems analysts/programmers, and accountants/auditors) for which there were sufficient data to compare earnings, salaries listed on petitions for younger H-1B beneficiaries (18-30 years old) approved in 2001 who did not have advanced degrees were higher than salaries reported by U.S. citizen workers of the same age group and education level. However, salaries listed on petitions for older H-1B beneficiaries (31-50 years old) were either similar or lower than the salaries reported by their U.S. counterparts. Both the number of H-1B

⁴We include the following occupations in our reference to those that are IT-related: electrical/electronics engineering, systems analysis and programming, data communications and networks, computer system user support, computer system technical support, and other computer-related occupations.

petition approvals and U.S. citizens employed in four of the five occupations we examined decreased from 2001 to 2002. However, it is unclear whether this decrease in U.S. workers employed was paralleled by a decrease in H-1B beneficiaries employed in these occupations, because BCIS is unable to determine the actual number of H-1B beneficiaries who are employed in the United States.

The majority of the 36 employers that agreed to be interviewed said they recruited, hired, and retained workers based on the skills needed, rather than the applicant's citizenship or visa status. Among employers who said visa status was a factor in their decisions, several noted that they hired H-1B workers only when qualified U.S. workers were not available. Half of the 36 employers we interviewed reported that they did not go abroad to recruit workers for U.S. positions, but instead found U.S. citizen and H-1B workers through employee referrals, the Internet, and U.S. graduate schools. About two-thirds of employers said that most H-1B workers hired were already in the United States on foreign student visas or working for another employer on an H-1B visa when they were recruited. In discussing their recruiting efforts, many employers said that intense competition for IT-related workers in 1999 made it difficult to find qualified workers in the United States, but that the supply of workers has since increased while the demand for workers has decreased. However, most employers said that finding qualified workers in some engineering and other science-related professions remains difficult. Employers that laid off workers after the economic downturn told us that they made these decisions based on changes in business needs, regardless of employee citizenship or visa status. The majority of employers interviewed cited cost and lengthy petition processing times as major disadvantages to hiring H-1B workers; however, they said they would continue to use the H-1B program to find candidates with the skills needed. Some employers said that they hired H-1B workers in part because these workers would often accept lower salaries than similarly qualified U.S. workers; however, these employers said they never paid H-1B workers less than the required wage. Labor is responsible for, among other things, ensuring that employers do not violate H-1B wage agreements, and continues to find instances of employers not paying H-1B workers the wages required by law; however, the extent to which such violations occur is unknown and may be due in part to Labor's limited investigative authority.

Little information is available regarding H-1B workers' entries, departures, and changes in visa status due to the limitations of current DHS tracking systems, but new systems are being developed to provide better information. One reason DHS is unable to determine the number of H-1B

workers who are in the United States at a given time is because it maintains two separate tracking systems that do not share data. The Non-Immigrant Information System (NIIS) has data on entries and departures and the Computer Linked Application Information Management System 3 (CLAIMS 3) has data on changes in visa status. Data from both of these systems are needed to calculate the number of H-1B workers in the United States. In addition, while DHS collects information on change of visa status and jobs held, this information is not consistently entered into CLAIMS 3. Because these data are not consistently entered, it is not possible to determine the extent to which H-1B workers become permanent residents or remain in the United States on other employment-related visas to work in the same occupations. DHS has recognized the need for more comprehensive and reliable immigration data and is working to develop improved tracking systems. One system, the U.S. Visitor and Immigrant Status Indicator Technology System (US-VISIT), is intended to incorporate data managed by DHS as well as other agencies, such as the Department of State, in order to provide a foreign national's complete immigration history. DHS plans call for these histories to include details about entries, change of status, and departures that can be aggregated for reporting purposes. US-VISIT will be managed by DHS and is mandated to be fully implemented by December 2005. In addition to information systems issues, we also determined that DHS's ability to provide information on H-1B workers is limited because it has not issued consistent guidance or any regulations on the legal status of unemployed H-1B workers who remain in the United States while seeking new jobs. While BCIS has the authority to issue regulations and has been working to establish them, more than 2 years have passed since the agency began this work. With inconsistent guidance and without regulations, unemployed H-1B workers and their potential employers may be unsure about whether these workers can be hired for new positions without first having to leave the country. In addition, allowing unemployed H-1B workers to remain in the United States to seek new positions may have implications for public services, such as Unemployment Insurance, and the labor force competition faced by U.S. workers.

To provide better information on H-1B workers and their status changes, we recommend that DHS consistently enter change of status data in its computer systems and integrate these data with that for entry and departure. Furthermore, we recommend that BCIS issue regulations that address the extent to which unemployed H-1B workers are allowed to remain in the country while seeking other employment. In its written comments on a draft of this report, DHS agreed with our recommendations.

Background

The H-1 nonimmigrant category was created under the Immigration and Nationality Act of 1952 to assist U.S. employers needing workers temporarily. The Immigration Act of 1990 amended the law, by, among other things, creating the H-1B category for nonimmigrants⁵ who employers sought to work in specialty occupations and fashion modeling.⁶ Unlike most temporary worker visa categories, H-1B workers can intend to both work temporarily and to immigrate permanently at some future time. Employed H-1B workers may stay in the United States on an H-1B visa for up to 6 years.

Until 1990, there was no limit on the number of specialty occupation visas that could be granted to foreign nationals. Through the Immigration Act of 1990, Congress set a yearly cap of 65,000 on H-1B visas. In an effort to help employers access skilled foreign workers and compete internationally, the Congress passed the American Competitiveness and Workforce Improvement Act of 1998, which increased the limit to 115,000 for fiscal years 1999 and 2000. In 2000, Congress passed the American Competitiveness in the Twenty-First Century Act, which raised the limit to 195,000 for fiscal year 2001 and maintained that level through fiscal years 2002 and 2003. The limit is scheduled to revert back to 65,000 in fiscal year 2004.

In order to hire H-1B employees, employers must first file a Labor Condition Application (LCA) with Labor, attesting to the fact that the employer intends to comply with a number of required labor conditions designed to protect workers. On this application, an employer must state the number of workers requested, the occupation and location(s) in which they will work, and the wages they will receive. The employers must attest, among other things, that:

- the employment of H-1B workers will not adversely affect the working conditions of other workers similarly employed in the area;
- the H-1B workers will be paid wages that are no less than the higher of the actual wage level paid by the employer to all others with similar experience and qualifications for the specific employment or the

⁵Nonimmigrants are foreign nationals who come to the United States on a temporary basis and for a specific purpose, such as to attain education or to work.

⁶This report will focus solely on the specialty workers.

prevailing wage level for the occupational classification in the area of intended employment; and

- no strike, lockout, or work stoppage in the applicable occupational classification was underway at the time the application was prepared.

H-1B dependent employers (generally those with a workforce consisting of at least 15 percent H-1B workers) and willful violators (employers who have been found in violation of the conditions of an earlier LCA) are subject to additional requirements. These employers must also attest that:

- before filing an LCA, the employer will make a good faith effort to recruit U.S. workers for the position, offering wages at least as great as that required to be offered to the foreign national;
- the employer will not displace and did not displace any similarly employed U.S. workers within 90 days prior to or after the date of filing any H-1B visa petition; and
- before placing the H-1B employee with another employer, the current employer will inquire whether or not the other employer has displaced or intends to displace a similarly employed U.S. worker within 90 days before or after the new placement of the H-1B worker.

After Labor approves the LCA,⁷ an employer who wishes to hire an H-1B worker can file two types of petitions with BCIS to obtain approval.⁸ “Initial” petitions are those that are filed for a foreign national’s first-time employment in the United States and allow for the H-1B worker to stay in the United States for 3 years. With some exceptions, these petitions are counted against the annual cap on the number of H-1B petitions that may be approved.⁹ “Continuing” employment petitions are filed for: extensions of the initial petitions for another 3 years, the maximum period

⁷In September 2000, we reported that due to legal limitations, Labor’s review of the LCA is perfunctory and adds little assurance that labor conditions employers attest to actually exist. For more details, see U.S. General Accounting Office, *Better Controls Needed to Help Employers and Protect Workers*, GAO/HEHS-00-157 (Wash., D.C., Sept. 7, 2000).

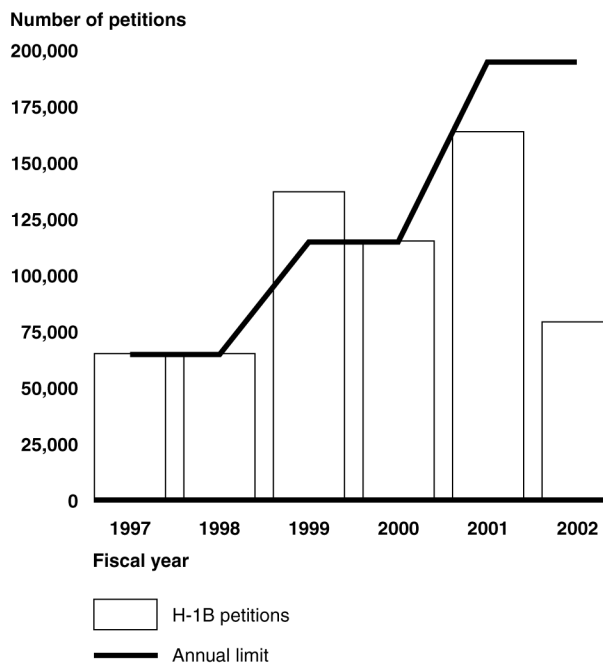
⁸Employers must pay a fee of \$1,000 for each H-1B petition, unless exempt under law. As of July 30, 2001, employers that wish to expedite the petition processing may pay an additional \$1,000 for “premium processing,” which will guarantee processing within 15 calendar days.

⁹H-1B petitions approved for initial employment with U.S. universities and nonprofit research organizations are not counted against the annual cap.

permissible under the law; sequential employment, which occurs, for example, when an H-1B worker changes employers within their 6-year time period; and concurrent employment, in which the H-1B worker intends to work simultaneously for a second or subsequent employer. Continuing petitions do not count against the cap.

In both fiscal years 2001 and 2002, the number of initial H-1B petitions approved that applied to the cap did not reach the annual limit of 195,000 (see fig. 1). In fiscal year 2001, 163,600 petitions were approved against the cap. The number of approved petitions decreased by more than 50 percent in one year, with 79,100 petitions approved against the cap in fiscal year 2002. This recent change contrasts with the trends from fiscal years 1997 through 2000, during which time the cap was lower and the number of petitions reached or exceeded the annual limit.¹⁰

Figure 1: H-1B Petitions Approved and Counted Toward the Annual Limit, Fiscal Years 1997 through 2002



Source: BCIS.

¹⁰Due to problems with computerized tracking systems, in fiscal year 1999, BCIS approved a larger number of petitions than authorized by the annual limit.

DHS is responsible for managing the entry and departure of nonimmigrants, including H-1B workers. To enhance DHS's ability in this regard, legislation was enacted that required the agency to develop an automated entry/exit control system. Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 required that this system collect departure records from every foreign national leaving the United States and match it with arrival records. The act also required that the system have the capability to assist DHS officials in identifying nonimmigrants who have been in the United States beyond their authorized period of stay. The Immigration and Naturalization Service Data Management Improvement Act of 2000 (DMIA) replaced section 110 of IIRIRA in its entirety. The DMIA, among other things, required that the entry/exit system integrate arrival and departure information on foreign nationals required under IIRIRA and contained in the Department of Justice (now DHS) and Department of State databases. DMIA also required that this system be fully implemented by December 31, 2005. Subsequent legislation required that the entry/exit control system must be capable of interfacing with other law enforcement agencies' systems.¹¹

In 2001, Congress passed legislation that allowed H-1B workers "visa portability" – the ability to change employers during their stay once the new employer files an H-1B petition on their behalf. According to the law, the petition for new employment must have been filed before the end of the worker's period of authorized stay. DHS has the authority to issue regulations that further specify how visa portability will be administered.

In March 2001, when the economy began to decline, U.S. employment declined as well, with 1.4 million jobs lost during the year. The unemployment rate rose to 5.8 percent at the end of 2001 and hovered between 5.5 and 6 percent throughout 2002. Although downturns tend to affect sectors throughout the economy, existing research indicates that job loss from 2001-2002 was particularly severe in IT manufacturing, a sub-sector in which many H-1B workers were employed.

Concerns that the H-1B program might have unfairly impacted U.S. workers during the recent economic downturn have prompted labor

¹¹See, e.g., the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001. Pub. L. No. 107-56, 115 Stat. 272. For more information about legislation related to the entry/exit system capabilities, see U.S. General Accounting Office, *Information Technology: Homeland Security Needs to Improve Entry Exit System Expenditure Planning*, [GAO-03-563](#) (Washington, D.C.: June 9, 2003).

groups to raise questions about the use of the H-1B program. Associations representing U.S. workers that we spoke with believe that employers abuse the program by laying off U.S. workers while retaining and hiring H-1B workers at lower wages. Such practices, according to employee associations, had the effect of displacing U.S. workers during the economic downturn. Labor representatives argue that some employers force H-1B workers to work for lower wages than U.S. citizen workers, knowing that continued employment is the only legal way for H-1B workers to remain in the United States. One advocate for H-1B workers said that some employers dangle the possibility of sponsorship for permanent residency in front of H-1B workers as a reward for extra work. These representatives believe that visa portability options do not actually give H-1B workers more freedom to move around in the labor market, arguing that H-1B workers are still dependent on their employers to legally remain in the United States. On the other hand, associations representing employers argue that H-1B workers were not treated differently than U.S. workers during the economic downturn, and that use of the H-1B program by employers has decreased substantially. They also argue that the real challenge to U.S. workers occurs when companies rely on workers overseas where the work can be done at a lower cost.

H-1B Beneficiaries Were Approved to Fill a Broad Range of Occupations, and as U.S. Citizen Employment Generally Declined with the Recent Economic Downturn, So Did the Number of H-1B Petition Approvals

H-1B beneficiaries were approved to fill a wide variety of occupations, and the number of H-1B petition approvals in certain occupations has generally declined with the economic downturn, along with the employment levels of U.S. citizen workers in these occupations. In contrast with patterns in 2000, most H-1B beneficiaries in 2002 were approved for positions that were not related to IT. Moreover, a comparison of H-1B beneficiaries and U.S. citizen workers in five occupations (electrical/electronic engineers, systems analysts/programmers, biological/life scientists, economists, and accountants/auditors) revealed that, in most of these occupations, H-1B beneficiaries in 2002 were younger and a higher percentage had a graduate or professional degree.¹² In the three occupational groups for which there were sufficient data to compare salaries (electrical/electronic engineers, systems analysts/programmers, and accountants/auditors), salaries listed on petitions for younger H-1B beneficiaries (18-30 years old) approved in 2001 who did not have advanced degrees were higher than salaries reported by U.S. citizen workers of the same age group and education level; however, salaries listed on petitions for older H-1B beneficiaries (31-50 years old) were either similar or lower than the salaries reported by their U.S. counterparts. Both the number of H-1B petition approvals and U.S. citizens employed in certain occupations decreased from 2001 to 2002.¹³

H-1B Beneficiaries Were Approved to Fill a Wide Array of Highly Skilled Positions in 2002

In 2002, H-1B beneficiaries were approved to fill over 100 occupations, but IT occupations were no longer the majority of approved occupations, as they were in 2000 (see table 1). A large proportion of approved petitions were for fields unrelated to IT, such as university education, economics, and medicine. However, IT-related occupations still constituted 40 percent of all petitions approved in 2002 for H-1B beneficiaries, most prominently, in systems analysis and programming (31 percent). Nine percent were in electrical/electronic engineering and other IT-related fields. In 2000, the pattern was different: 65 percent of all approved petitions were for IT-related positions.

¹²Data limitations precluded a direct comparison of the characteristics and salaries of H-1B workers and U.S. citizen workers. See appendix I for more details.

¹³Because BCIS is unable to determine the actual number of H-1B workers who come to the United States once their petition is approved and because of uncertainty about what year beneficiaries begin working after approval, we cannot assess trends in H-1B employment, only in petition approvals.

Table 1: Top 10 Occupations H-1B Beneficiaries Were Approved to Fill, 2000, 2002

2000		2002	
Occupation	Percent of total	Occupation	Percent of total
Systems analysis and programming ^a	54	Systems analysis and programming ^a	31
Electrical/electronic engineering ^a	5	College and university education	8
Computer-related, other ^a	4	Accountants, auditors, and related occupations	5
College and university education	3	Electrical/electronic engineering ^a	4
Accountants, auditors, and related occupations	3	Computer-related, other ^a	3
Architecture, other	3	Biological sciences	3
Economics	2	Physicians and surgeons	3
Mechanical engineering	2	Miscellaneous managers and officials, other	3
Physicians and surgeons	2	Economics	3
Miscellaneous professional, technical, and managerial	2	Miscellaneous professional, technical, and managerial	2
All other IT-related occupations ^a	2	All other IT-related occupations ^a	2
All other occupations	19	All other occupations	34
Total approvals	100	Total approvals	100

Source: GAO analysis of BCIS data.

Note: The percent totals for the occupations above do not sum to 100 percent due to rounding.

^aIT-related occupations.

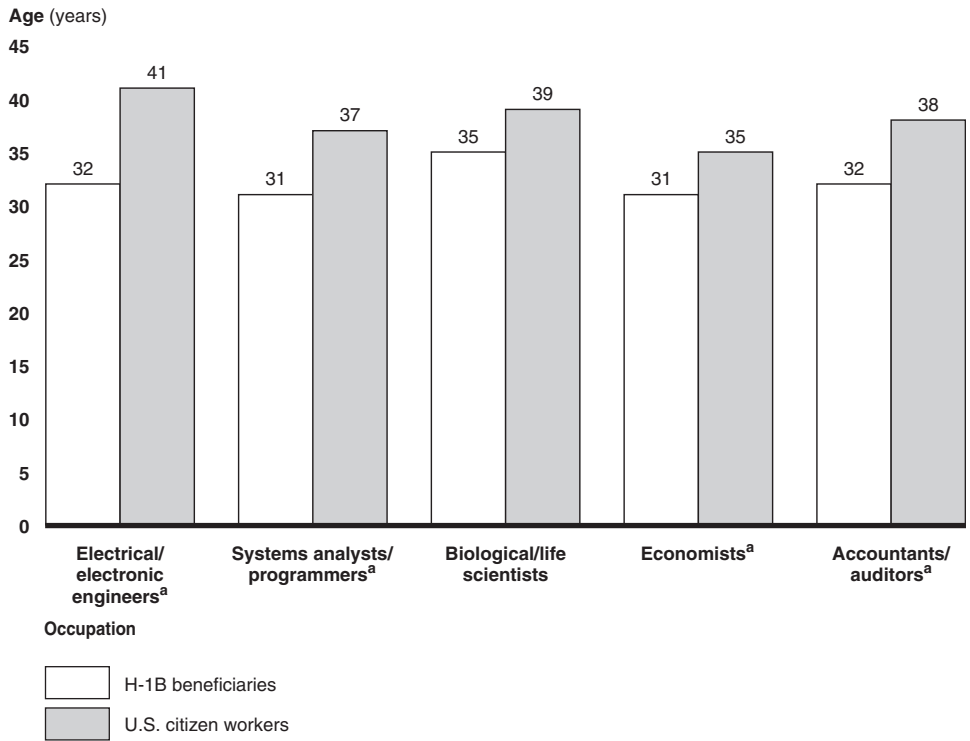
In 2002, H-1B Beneficiaries Approved to Fill Selected Occupations Were Younger and a Higher Percentage Had Advanced Degrees than U.S. Citizen Workers

In most of the five occupations we examined (electrical/electronic engineers, systems analysts/programmers, biological/life scientists, economists, and accountants/auditors), H-1B beneficiaries with petitions approved in 2002 were younger and a higher percentage had an advanced degree than the population of U.S. citizen workers in 2002. H-1B beneficiaries with petitions approved in 2002 were younger than U.S. citizen workers in four of the five occupations: electrical/electronic engineers, systems analysts/programmers, economists, and

accountants/auditors (see fig. 2).¹⁴ For example, the median age of H-1B beneficiaries approved for accountant/auditor positions was 32, which was substantially younger than the median age of 38 for U.S. citizen accountants/auditors. The largest difference between the median ages, about 9 years, was for U.S. citizens and H-1B beneficiaries approved for electrical/electronic engineer positions. We found no significant difference in the median ages of H-1B beneficiaries and U.S. citizens in biological/life scientist positions.

¹⁴For a more detailed breakout of the age distribution of H-1B beneficiaries approved in 2002 and U.S. citizens in 2002, see appendix 2, table 6.

Figure 2: Median Age of H-1B Beneficiaries Approved in 2002 and U.S. Citizen Workers in 2002 in Selected Occupations



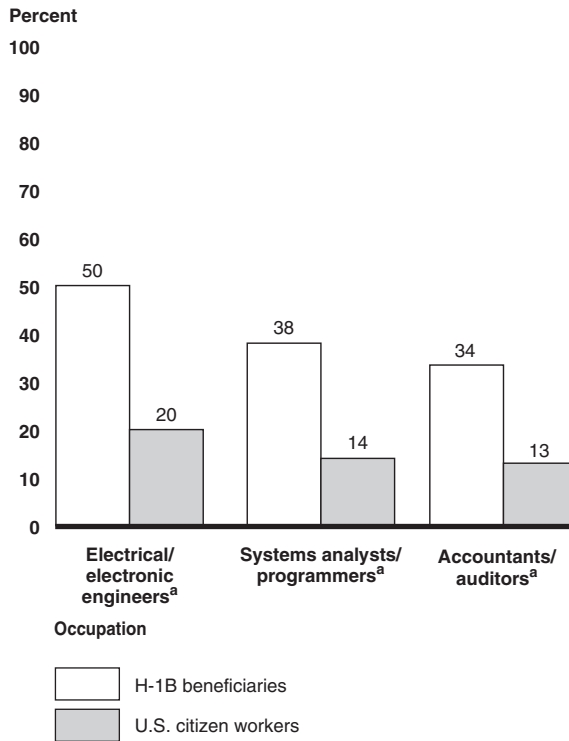
Source: GAO analysis of BCIS and CPS data.

^aAge differences between H-1B beneficiaries and U.S. citizen workers are significant at the 95-percent confidence level.

In the three occupational groups (electrical/electronic engineers, systems analysts/programmers, and accountants/auditors) for which there were sufficient data to compare education levels, a higher percentage of H-1B beneficiaries with petitions approved in 2002 had earned a graduate or professional degree than U.S. citizen workers (see fig. 3). For example, 50 percent of H-1B beneficiaries approved to fill electrical/electronic engineer positions had graduate degrees, compared with 20 percent of U.S. citizen electrical/electronic engineers.¹⁵ Insufficient data precluded us from analyzing the education levels of U.S. citizen biological/life scientists and economists.

¹⁵H-1B workers are required to have a bachelor’s degree or its equivalent in order to meet the qualifications of their visa status. No advanced degree is required.

Figure 3: Percentages of H-1B Beneficiaries Approved in 2002 and U.S. Citizen Workers in 2002 with Graduate Degrees by Selected Occupations



Source: GAO analysis of BCIS and CPS data.

Note: Figure 3 does not include information on education for biological/life scientists and economists because the CPS sample sizes were too small to analyze.

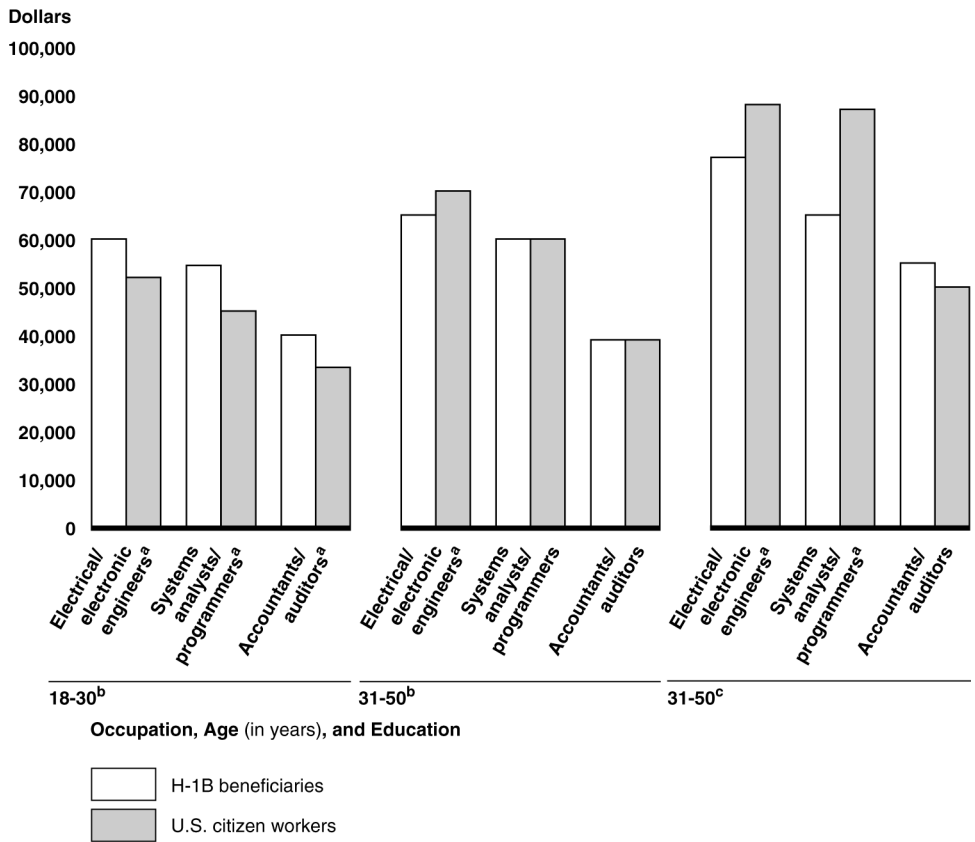
^aEducational attainment differences between H-1B beneficiaries and U.S. citizen workers are significant at the 95-percent confidence level.

The salaries of H-1B beneficiaries and U.S. citizen workers differed from each other when examined in relation to their education levels and age.¹⁶ In the three occupational groups (electrical/electronic engineers, systems analysts/programmers, and accountants/auditors) where there were sufficient data to compare salaries by age and education level, in 2001, salaries listed on petitions for H-1B beneficiaries were higher (by about \$7,000 - \$10,000) than salaries reported by U.S. citizen workers, for those who were 18-30 years of age and did not have graduate degrees (see fig. 4). In contrast, salaries listed on petitions for H-1B beneficiaries approved for

¹⁶We used age as a proxy for experience, which is a factor that can affect earnings. Age was presented in two categories to maximize data available for estimation.

either electrical/electronic engineer or systems analyst/programmer positions who were 31-50 years of age and had graduate degrees were lower (by about \$11,000 - \$22,000) than salaries reported by U.S. citizens with the same characteristics. In addition, salaries listed on petitions for H-1B beneficiaries approved for electrical/electronic engineer positions who were 31-50 years old and did not have graduate degrees were lower (by about \$5,000) than salaries reported by their U.S. counterparts. There were no significant differences between the annual salaries of 31-50 year-olds in all other cases shown in figure 4. Insufficient data precluded us from making determinations about the relationship of age and education to the salaries of H-1B beneficiaries and U.S. citizens who were 18-30 year-olds with graduate degrees, or those who were in economist or biological/life scientist positions. (See table 7 in app. II for more details.) In addition to the factors we examined, a number of other factors can affect earnings, such as years of experience and geographic location. However, BCIS does not collect data on years of experience or geographic location for H-1B beneficiaries.

Figure 4: Median Annual Salaries of H-1B Beneficiaries Approved in 2001 and U.S. Citizen Workers in 2001 in Selected Occupations, by Age and Education



Source: GAO analysis of BCIS and CPS data.

Note: Figure 4 does not include information on salaries for persons age 18 to 30 with graduate degrees or for economists and biological/life scientists because the CPS sample sizes were too small to analyze.

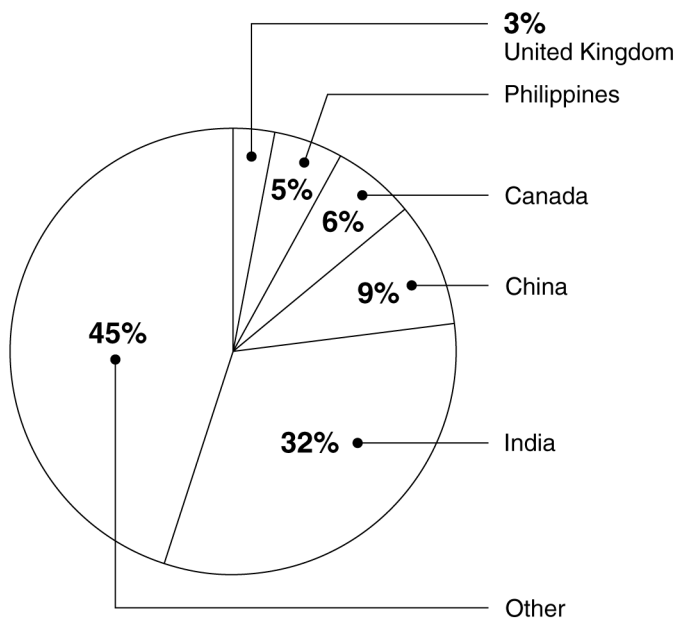
^aThe differences in salaries between H-1B beneficiaries and U.S. citizen workers are statistically significant at the 95-percent confidence level.

^bIndicates those with bachelor's degrees, or less education.

^cIndicates those with graduate degrees.

Almost one-third of H-1B beneficiaries with petitions approved in 2002 were born in India, with the second highest percentage of H-1B beneficiaries born in China, followed by Canada, the Philippines, and the United Kingdom (see fig. 5). The remaining 45 percent of H-1B beneficiaries represented an array of roughly 200 other countries.

Figure 5: Countries of Birth for H-1B Petition Approvals, 2002

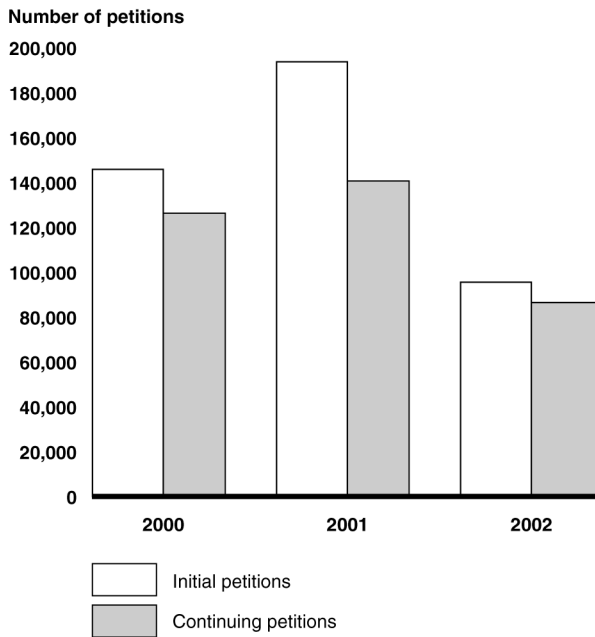


Source: GAO analysis of BCIS data.

H-1B Petition Approvals and U.S. Citizen Employment in Selected Occupations Declined from 2001 to 2002

After reaching a high level in 2001, the number of H-1B petition approvals has recently declined substantially. The numbers of both initial and continuing petitions approved increased from 2000 to 2001 and declined well below 2000 levels in 2002, as shown in figure 6. The decline in petition approvals for systems analysis/programming positions constituted 70 percent of the decline in the total number of petition approvals from 2001 to 2002. For each of the 3 years, a larger number of initial petitions were approved than continuing petitions.

Figure 6: Total Initial and Continuing H-1B Petitions Approved Annually, Calendar Years 2000 through 2002



Source: GAO analysis of BCIS data.

From 2000 to 2001, the estimated numbers of H-1B petition approvals and U.S. citizens employed in most of the five occupations we examined increased significantly (see table 2). For example, the number of petitions approved in biological sciences positions increased by 1,685 to 5,454, and employment for U.S. citizen biological/life scientists increased by 14,448 to 59,511. However, as U.S. citizen employment declined from 2001 to 2002, so did the number of H-1B petition approvals (see table 2). In particular, H-1B petition approvals and U.S. citizen employment decreased in IT occupations. For example, the number of H-1B petition approvals for systems analysis/programming positions dropped by 106,671 to 56,184, and the estimated number of U.S. citizen systems analysts/programmers employed decreased by 147,005 to 1,577,427.¹⁷

¹⁷From 2000-2002, about 4 to 6 percent of all H-1B petitions adjudicated were denied, according to BCIS.

Table 2: Change in H-1B Petition Approvals and U.S. Citizen Employment for Selected Occupations, 2000-2001, 2001-2002

Occupation	Change from 2000-2001		Change from 2001-2002	
	H-1B petition approvals	U.S citizen employment estimates	H-1B petition approvals	U.S citizen employment estimates
Electrical/electronic engineers	2,840	16,868	-8,426	-54,031
Systems analysts/programmers	17,513	-62,852	-106,671	-147,005
Biological/life scientists	1,685	14,448	-233	-10,840
Economists	1,534	-8,700	-1,467	-7,868
Accountants/auditors	3,677	15,099	-3,082	5,701

Source: GAO analysis of BCIS and CPS data.

The Majority of Employers Interviewed Reported That Skills, Rather Than Immigration Status, Determine Employment Decisions, but the Extent to Which Wage Plays a Role Is Unknown

All 36 employers that we interviewed said they made hiring and layoff decisions about workers by selecting and retaining candidates with the skill sets needed for the job, and the majority (19) of employers said that they did not treat H-1B workers differently when making these decisions. Most of the employers who said immigration status was a factor in their decisions noted that they hired H-1B workers only when qualified U.S. workers were not available. Despite increases in unemployment among highly skilled U.S. workers, about two-thirds of employers said that finding workers with the skills needed in certain engineering and other science-related occupations remains difficult. Employers who laid off workers said that these decisions were based on whether the employee had the skills that the business needed for the future. While employers cited disadvantages to the H-1B program, such as cost and lengthy petition processing times, they said they would continue to use the program to meet skill needs. Some employers said that they hired H-1B workers in part because these workers would often accept lower salaries than similarly qualified U.S. workers; however, these employers said they never paid H-1B workers less than the required wage. Labor is responsible for enforcing H-1B wage agreements and has continued to find instances of employers paying H-1B workers less than the wages required by law, but the full extent to which such violations occur is unknown.

Most of the information in this section is based on our interviews with employers of H-1B workers. We contacted 145 employers to discuss issues related to the H-1B program, and 36, or 25 percent, of the employers agreed to speak with us. Therefore, our results may be affected by this

self-selection and cannot be viewed as representative of all H-1B employers.

The Majority of Employers Said They Recruited and Hired Workers Based on Skill Needs, Regardless of Visa Status

All employers interviewed said that finding qualified workers with the needed skill sets was the main factor in recruiting and hiring candidates, and the majority (19) of the 36 employers said that H-1B candidates were not treated differently in the recruiting and hiring process. Several employers mentioned that they were looking for experienced workers and that qualified candidates often had a minimum of 2 to 3 years of relevant work experience. These employers said their need to remain competitive prevented them from spending time to train workers who did not have the necessary skills. In addition to the need for technical skills and experience, employers that hired for consulting positions—in which workers are sent to different job locations or relocated frequently—said that flexibility was an important consideration in hiring decisions. These employers said that H-1B workers, having moved to the United States from another country, were very flexible in moving within the United States.

Many employers told us that immigration status was a factor in their decision-making when they looked for candidates with experience in particular skill sets. Most of these employers said that they looked at available U.S. workers before considering applicants that required H-1B visa sponsorship and that they hired H-1B workers only when there were no qualified U.S. workers available. One company that hired H-1B workers primarily for product development engineering said that company policy states that H-1B workers can only be hired after managers conduct rigorous and unsuccessful searches for qualified U.S. candidates. Other companies told us that because of the costs of processing and legal fees, they hired candidates requiring H-1B sponsorship as a last resort.

Six employers cited the cost of U.S. labor as another factor in employment decisions. While these employers said that they never paid H-1B workers salaries below the prevailing wage, they did acknowledge that H-1B workers were often prepared to work for less money than U.S. workers. These employers said that they could not compete with the large salaries offered to U.S. workers by the major IT and pharmaceutical companies. These employers also told us that they had to recruit overseas because U.S. workers either demanded salaries that were too high or were already employed with other companies. A number of employers interviewed acknowledged that some H-1B workers coming directly from other countries might initially have accepted an offer with lower pay, but that it would have been unwise for employers to pay these workers less than

their U.S. counterparts because they would soon leave for a higher wage offered by a different employer.

Half of the employers we interviewed said they did not recruit overseas for U.S. positions, but instead recruited workers through a variety of methods, including employee referrals, the Internet, and outreach at U.S. graduate schools. These employers said that they used the same methods to recruit H-1B candidates and U.S. workers. Employee referrals and job boards on the Internet were the most commonly cited recruiting methods. Several employers noted that many H-1B workers were hired through referrals by other workers already employed by their companies. In addition, about two-thirds of employers said that most H-1B workers hired were already in the United States attending graduate schools on student visas or working for another employer on an H-1B visa.

Many of the employers interviewed said that they recruited overseas for U.S. positions before the recent economic downturn because they could not find enough qualified U.S. workers. However, most of these employers said they have not recruited overseas for these positions since the downturn. One employer cited the anticipation of Year 2000 computer problems as a major factor in recruiting overseas, claiming the company needed workers who were skilled in programming older mainframe systems, whereas available U.S. workers were experienced in more advanced technologies. Many of the employers interviewed reported that there is a greater supply of workers for certain IT positions (e.g., systems analysts and programmers) since the economic downturn, but also said they have substantially reduced their hiring since the economic downturn and have cut back on their use of the H-1B program.

Of the 36 employers we interviewed, about two-thirds said that despite the increase in the number of unemployed workers since the economic downturn, finding qualified workers in some engineering and other science-related occupations remains difficult. These employers told us that they look for superior candidates or those who are in fields with a smaller pool of qualified candidates, such as chemists. One Internet company said that it is difficult to hire the most productive workers because such top performers are unlikely to be looking for work. Four employers said they were looking for candidates with unique skills. For example, one employer told us that foreign workers who helped develop products overseas were the most qualified to help introduce those products to the U.S. market.

Employers Interviewed Said They Released Workers Based on Business Needs, Regardless of Visa Status

Thirty of the 36 employers interviewed experienced layoffs, and all 30 said that the layoffs were based on whether the employees had the skill sets that the business would need in the future, regardless of their immigration status. Seven of these 30 employers also added that employee performance was a major consideration in layoff decisions. Several companies said that layoffs were due to positions being eliminated or decisions to close offices in certain locations. However, some companies said that if they were eliminating a product line or regional office, employees—whether H-1B workers or U.S. citizens—would be transferred to another division or product line if their skills were needed. All 30 employers said that H-1B status was not a factor in these decisions, and 19 of these employers reported that they had laid off H-1B workers. According to a few employers, H-1B workers were often the last to be released because they frequently work in research and development positions that create new products or other areas of the business that generate revenue. Details about the number of workers laid off by employers were not publicly available, and most employers declined to share this information with us.

Labor associations argue that U.S. workers are being displaced by H-1B workers whom employers view as a more affordable source of labor. These groups cited anecdotal accounts of employers laying off U.S. workers and then retaining or hiring H-1B workers for the same positions or outsourcing the work to companies using foreign labor. In the case of H-1B dependent employers, the law prohibits companies from hiring H-1B workers when it has the effect of displacing similarly employed U.S. workers in the workforce. Although Labor has found no instances of such illegal displacement by H-1B dependent employers, a few cases are currently under investigation.

Most Employers Cited Cost and Lengthy Petition Processing Time as Major Disadvantages of the H-1B Program, but Said They Will Continue to Use the Program to Find the Skills Needed

Nearly all employers interviewed said that the length of time required to process petitions is a major disadvantage of the H-1B program. About half of these employers said that hiring an H-1B worker could take from 2 to 6 months, but that they often pay an additional \$1,000 fee for premium processing, which substantially reduces processing time. In addition, most employers interviewed said that the combination of processing fees and legal fees made the program very costly, with costs cited ranging from \$2,500 to \$8,000 to hire an H-1B worker.

Citing their need to fill permanent positions, some employers noted that the main disadvantage of the H-1B program is its temporary provision of labor. These employers said they experience a substantial loss of

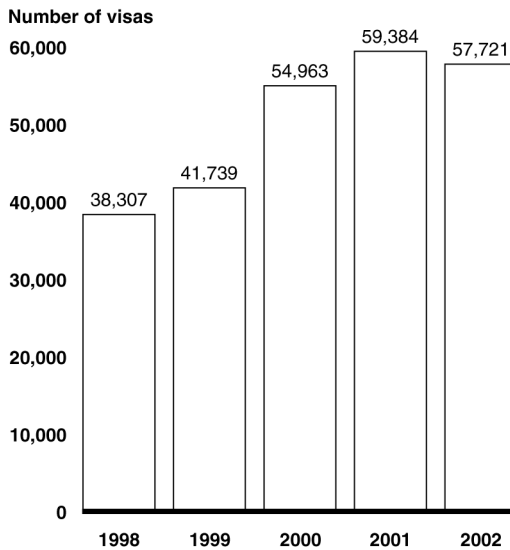
intellectual capital when an H-1B visa has expired and a foreign national is forced to leave the United States. Nearly all employers interviewed said that in order to retain these foreign workers, they often sponsored H-1B workers for permanent residency either as part of their initial employment offer or after a certain period of employment. Some of these employers said that the fees associated with applications for permanent residency can raise the cost of hiring an H-1B worker substantially, with a few citing costs as high as \$10,000 to \$15,000. A few companies said that if their H-1B workers were unable to obtain permanent residency, they would send them to one of their foreign offices for a year and then bring them back to the United States on new H-1B visas.

Despite the disadvantages of the H-1B program cited, 31 of the 36 employers interviewed said they would continue to use the program in the future to meet skill needs. These employers believe that once the economy recovers it will be difficult to find enough qualified U.S. workers, and that the H-1B program gives them the opportunity to access a larger pool of workers. Of the 24 employers that commented on the H-1B cap, 16 said they were concerned that a limit of 65,000 would create processing backlogs at BCIS when the economy improves, and feared that they would have to wait several months longer to hire H-1B workers, as was the case when the cap was reached in 2000.

While employers said that they would continue to use the H-1B program, a few employers mentioned that they are seeking additional visa options for bringing highly skilled workers to the United States. For example, in recent years, employers have increasingly turned to the L-1 visa, an intracompany transfer visa that can be used by companies to bring their foreign professional workers to the United States on a temporary basis (see fig. 7).¹⁸ L-1 visas do not have an annual cap and are not subject to prevailing wage laws. Department of State statistics show that the use of L-1 visas has increased substantially since fiscal year 1998. The number of L-1 visas issued in fiscal year 1998 was 38,307 and rose to 41,739 in fiscal year 1999, peaked in fiscal year 2001 at 59,384, and decreased slightly in fiscal year 2002 to 57,721. Eight companies noted that the process to obtain an L-1 visa was less cumbersome than the H-1B visa process, and a few said that they planned to increase use of the L-1 visa in the future.

¹⁸L-1 visas can be issued to intracompany transferees who work for an international firm or corporation in executive and managerial positions or have specialized product knowledge. L-1 visa holders can stay in the United States for up to 5 or 7 years, depending on the type of services provided.

Figure 7: L-1 Visa Issuances, Fiscal Years 1998 through 2002



Source: Department of State, Bureau of Consular Affairs.

In addition to using other visas, some employers said that they are now considering outsourcing work or moving their own operations offshore to remain competitive. A few employers said that if they cannot find enough highly skilled workers within the United States, they would start operating overseas. One offshore IT services company said its competitive advantage comes from offering U.S. clients IT services in India, which can significantly reduce costs. According to a temporary staffing agency, some companies are increasingly using contract or temporary staff as a way of cutting labor costs and avoiding the bad publicity associated with layoffs.

The Extent to Which Wage Is a Factor in Employment Decisions Is Unknown

While a number of employers acknowledged that some H-1B workers might accept lower salaries than U.S. workers, the extent to which wage is a factor in employment decisions is unknown. Labor's Wage and Hour Division (WHD), which is responsible for ensuring that H-1B workers are receiving legally required wages, has continued to find instances of program abuse. As shown in table 3, the number of investigations in which violations were found doubled from fiscal year 2000 to 2002, and the amount of back wages owed to H-1B workers by employers increased from \$1.6 million in fiscal year 2000 to \$4.2 million in fiscal year 2002. These violations were largely due to employers bringing H-1B workers into

the United States to work, but not paying them any wages until jobs are available,¹⁹ according to WHD officials. This dramatic increase in violations and back wages owed to H-1B workers may be due to the increase in the number of H-1B workers who have entered the country over the years and does not necessarily indicate an increase in the percentage of H-1B workers affected by wage violations.

Table 3: Department of Labor H-1B Investigations, Violations Identified, and Back Wages Due

Fiscal year	Investigations finalized	Number of investigations showing violation	Investigations showing a violation as a percentage of total investigations finalized	Investigations where back wages found due	Amount of back wages found due	Number of employees due back wages
2000	58	51	88%	49	\$1,629,173	339
2001	60	54	90%	48	\$1,335,147	198
2002	134	112	84%	94	\$4,211,209	580
2003 (thru 3-03)	71	62	87%	56	\$2,126,881	478

Source: Department of Labor, Wage and Hour Division.

The extent to which violations of the H-1B program take place is unknown and may be due in part to WHD’s limited investigative authority. WHD can initiate H-1B-related investigations only under limited circumstances. WHD may investigate (1) when a complaint is filed by an aggrieved person or organization, such as an H-1B worker, a U.S. worker, or the employee bargaining representative; (2) on a random basis, employers, who, within the previous 5 years, have been found to have committed a willful failure to meet LCA work conditions; and (3) if it receives specific credible information from a reliable source (other than the complainant) that the employer has failed to meet certain specified work conditions. According to WHD officials, H-1B workers may be reluctant to complain, given their dependency upon their employers for continued residency in the United States. In 2000, we suggested that the Congress consider broadening Labor’s enforcement authority to improve its ability to conduct investigations under the H-1B program. In response, Labor concurred with our suggestion, indicating that it has long urged that the Congress reconsider and expand the narrow limits on its enforcement authority.²⁰

¹⁹Even if not yet working, employers must pay H-1B workers the required wage beginning 30 days after their arrival in the United States.

²⁰GAO/HEHS-00-157.

Little Is Known about the Status of H-1B Workers, but New Systems Are Being Developed to Improve Tracking Information

Little is known about the status of H-1B workers due to the limitations of current DHS tracking systems, but new systems to provide more comprehensive information are being developed. One reason DHS is unable to determine the number of H-1B workers who are in the United States at a given time is because it has two separate tracking systems that do not share data. The Non-Immigrant Information System (NIIS) has data on entries and departures of H-1B workers and the Computer Linked Application Information Management System 3 (CLAIMS 3) has data on changes in visa status, but data from both of these systems are needed to calculate the number of H-1B workers in the United States. In addition, while DHS collects information on departures, change of visa status, and occupations performed under a new status, this information is not consistently collected and entered into current systems. DHS has recognized the need for more comprehensive immigration data and is working to develop improved tracking systems. One system, known as the U.S. Visitor and Immigrant Status Indicator Technology System (US-VISIT), is intended to incorporate data managed by DHS as well as other agencies to provide a foreign national's complete immigration history. System plans also provide for capabilities to generate aggregated reports on foreign nationals. In addition to information systems issues, we also determined that DHS's ability to provide information on H-1B workers is limited because it has not issued consistent guidance or any regulations on the legal status of unemployed H-1B workers who remain in the United States while seeking new jobs. The lack of clear guidance or any regulations on this issue has resulted in uncertainty among H-1B workers and employers about the appropriate actions needed for being in compliance with the law.

DHS Has Incomplete Information on H-1B Worker Entries, Departures, and Changes of Visa Status

DHS cannot account for all the H-1B worker entries, departures, and changes of visa status using its current tracking systems, because NIIS and CLAIMS 3 data are not integrated, and data for certain fields in each of these systems are not consistently collected and entered. As a result, DHS is not able to provide some key information needed to oversee the H-1B program and assess its effects on the U.S. workforce. This includes information on the number of H-1B workers in the United States at any time, the extent to which these workers become unemployed, the extent to which H-1B workers become long-term members of the labor force through other immigration statuses, and the occupations they fill as permanent members of the labor force.

We found that obtaining better arrival and departure information on H-1B workers requires integration of change of status data from CLAIMS 3 with

data from NIIS, and that such integration has proven to be challenging. Currently, if a foreign national enters the United States under a student visa and later becomes an H-1B worker, NIIS will not have a record that indicates this person is an H-1B worker, unless the person exits and re-enters the United States under the H-1B visa.²¹ In 2001, DHS officials attempted to obtain better information on the number of nonimmigrants in the United States and their current statuses by matching CLAIMS 3 and NIIS data using automated formulas, but found that about 60 percent of the records between these two systems still needed to be matched manually. This was mainly because the two systems do not have unique identifiers for matching records. While DHS is examining ways to improve its ability to match these records through formulas or by creating unique identifiers, arrival and departure data continue to be separated from change of status data.

Although data integration could improve information on H-1B workers, DHS may continue to face challenges accounting for all departures because these data are not consistently collected. While NIIS is supposed to maintain departure records for H-1B workers, along with other nonimmigrants,²² data from fiscal years 1998 through 2000 indicate that departure information for foreign nationals is missing in about 20 percent of the cases.²³ DHS cannot account for all H-1B worker departures because some nonimmigrants, especially those departing through land borders, do not submit departure forms when leaving the United States. The United States has an agreement with Canada that allows Canadian immigration officials to collect departure forms and submit them to DHS. However, Canadian officials are not required to collect these forms and, therefore, some nonimmigrant departures from the United States through Canada are not recorded. DHS also does not have immigration officials at some departure areas along the Mexican border, thereby relying on nonimmigrants to voluntarily deposit departure forms in collection boxes.

²¹We found that about 42 percent of workers approved for H-1B visas in 1999 were already in the United States when their visas were approved. See [GAO/HEHS-00-157](#) for more information.

²²DHS obtains the information in NIIS from Form I-94, the Arrival/Departure Record, which nonimmigrants must submit to DHS when entering and leaving the United States. Nonimmigrants with visas that allow them to leave and re-enter freely, such as H-1B workers, will have completed multiple I-94 forms and have multiple arrival/departure records.

²³DHS became aware of missing departure records when attempting to estimate the number of nonimmigrants who overstayed their allowed period of stay.

DHS officials also told us that airlines do not consistently collect and/or return departure forms to DHS. In addition, some H-1B workers become permanent residents and, therefore, are no longer required to submit departure forms when exiting the country, leaving NIIS with no record of their departures from the United States.

Moreover, DHS does not consistently enter change of status and occupation data into CLAIMS 3. As a result, it is not possible to determine either the number of H-1B workers who remained a part of the U.S. workforce by becoming permanent residents or other employment-related visa holders and the types of jobs they performed. About 50 percent of electronic records on permanent residents do not include data on residents' prior visa status, according to a DHS official. Also, in fiscal years 2000 and 2001, about 20 to 25 percent of electronic records on permanent residents who were known to have been H-1B workers did not contain information on their occupations. In the data sets used to determine the number of nonimmigrants, such as H-1B workers, who changed to other employment-related visa statuses, the prior status data was missing in 30 percent of the cases. In addition, BCIS officials told us that occupation data for H-1B workers who changed to other employment-related visa statuses was often missing, but they were unable to tell us the extent to which this occurred. Although no formal studies have been conducted to determine why these data are missing, DHS officials believe that this is primarily due to contractors not entering prior visa status and occupation information into CLAIMS 3. One official said that some data contractors may not enter this information because CLAIMS 3 will accept records if the prior visa status and occupations fields are left blank. These data could also be missing because individuals without a prior status or occupation may leave these fields blank on their applications. These individuals, such as spouses of permanent residents, may be coming directly from a foreign country without having previously entered the United States under a nonimmigrant visa.

DHS also maintains information in CLAIMS 3 that could indicate whether an H-1B worker is no longer employed and possibly no longer in H-1B status, but the agency has faced challenges with collecting this information. When H-1B workers become unemployed before their visas expire, employers are required to submit a letter to DHS stating that these

workers are no longer employed with them.²⁴ DHS uses this information to revoke the H-1B petitions, and this is indicated in CLAIMS 3. However, agency officials do not believe that all employers are submitting these letters, because DHS officials believe they have not received an equal number of subsequent employment petitions as notices that the H-1B worker is no longer with a former employer. Agency officials said that they are not able to better ensure the collection of these letters because they do not have the resources to proactively monitor employers. In addition, since the agency is not currently concerned about reaching the H-1B worker cap on petitions, a 6-month to a year lag time exists for entering data about revoked petitions.

DHS Is Developing New Data Systems to Obtain More Comprehensive Tracking Information

DHS recognizes the need for a more integrated system to track information on foreign nationals and is currently developing systems to meet this need. DHS is mandated to develop an information system that will integrate arrival and departure information on foreign nationals from databases within DHS and across other government agencies, such as the Department of State and law enforcement agencies. DHS is currently working with State to develop this system, known as US-VISIT, which is mandated by Congress to be fully implemented by December 2005. DHS plans call for US-VISIT to have the capability to generate a single comprehensive record of an individual's entire immigration history, from the initial request to enter the United States (e.g., H-1B worker petitions) through departure and any re-entry. DHS's plans also call for individual records in US-VISIT to be updated almost immediately as users of the different component databases update their records. For example, if a DHS official updates a nonimmigrant's record to reflect that a person has changed visa status, that person's US-VISIT record should reflect this change almost immediately. Moreover, DHS plans for US-VISIT to be able to generate statistical reports on nonimmigrants. As required by law, these reports will include the number of nonimmigrants, including H-1B workers, who have entered, exited, and remained in the United States.

²⁴Employers are not required to report the reasons why H-1B workers are no longer working for them, and when DHS receives information on causes of unemployment, DHS officials do not have to input this information into CLAIMS 3.

DHS Has Not Clarified the Status of Unemployed H-1B Workers through Guidance or Regulations

In addition to information systems issues, DHS's ability to provide information on the status of the H-1B population is constrained because it has not issued consistent guidance or any regulations for implementing the visa portability provision of the American Competitiveness in the Twenty-First Century Act of 2000 (AC21). This has resulted in uncertainty about the extent to which unemployed H-1B workers can legally remain in the United States while seeking new jobs. Regulations have been in development for over 2 years, and interim guidance has not clarified this issue. For example, 1999 guidance stated that unemployed H-1B workers are out of status and should leave the United States or seek a change in status. However, in 2001, DHS issued guidance stating that AC21's visa portability provisions appear to include unemployed individuals and that it expected to issue regulations addressing their status.²⁵

Currently, BCIS officials are addressing this issue on a case-by-case basis,²⁶ and decisions have been inconsistent, according to a few employers. These employers told us that in some cases, H-1B workers who were unemployed for more than 3 months were required to exit and re-enter the United States before beginning work with a new employer because they were considered out of legal status. Yet, overall, BCIS officials have not offered these employers clear directions about allowable timeframes for H-1B workers to be unemployed and remain in the country. This lack of clear guidance or any regulations can contribute to uncertainties in the circumstances facing these workers. Moreover, employers told us that this situation makes planning a worker's starting date for a new job difficult. In addition, if employers pay for the cost of re-entry, this process can impose an unexpected cost of hiring an unemployed H-1B worker.

The agency has been working to develop regulations related to visa portability since October 2000, but internal debates have prevented regulations from being issued sooner, according to a BCIS official. For example, the agency official told us that BCIS is concerned about immigration enforcement issues that may arise by allowing unemployed H-

²⁵A 2001 BCIS memorandum stated that the agency plans to address the legal status of unemployed H-1B workers in their regulations related to visa portability. Specifically, the memorandum stated that the agency expects to allow "some reasonable period of time such as 60 days" for an H-1B worker to be unemployed before being considered out of legal status.

²⁶Under certain circumstances, BCIS officials are permitted by regulation to grant visa extensions or authorize classification changes to nonimmigrants, such as H-1B workers, who are no longer in status at the time a petition is filed.

1B workers to remain in the United States. Labor officials said that they were concerned about how unemployed H-1B workers in the United States might impact government programs for the unemployed if, for example, unemployed H-1B workers attempted to collect Unemployment Insurance. In addition, a U.S. labor representative said that another implication of allowing unemployed H-1B workers to remain in the United States is that they will be competing with unemployed U.S. workers for highly skilled positions.

Conclusions

Much of the information policymakers need to effectively oversee the H-1B program is not available because of limitations of DHS's current tracking systems. Without this information, policymakers cannot determine whether this program is meeting the need for highly skilled temporary workers in the current economic climate and how to adjust policies that may affect workforce conditions over time, such as the H-1B visa cap, accordingly. Examples of needed information include the total number of H-1B workers in the United States at a given time and the numbers of H-1B workers employed in various occupations, the extent to which H-1B workers become long-term members of the labor force through permanent residency or other immigration statuses, and the occupations they fill as long-term members of the labor force. Such information could also assist policymakers in better determining program effects on workforce conditions such as wages and the proportion of jobs filled by H-1B workers. While DHS has long-term plans for providing better information on H-1B workers, policymakers in the interim need data to inform discussions of program changes.

Employers also have expressed concern about how BCIS determines the legal status of unemployed H-1B workers. BCIS determines on a case-by-case basis whether an unemployed H-1B worker is allowed to stay in the United States while looking for another job. However, H-1B workers and employers are unsure about whether these workers can be hired for new positions without first having to exit and re-enter the country, which would be required if the workers' legal immigration status was determined to have expired. While this issue is no doubt a concern for H-1B workers who have become unemployed, it is also a growing concern to employers who may wish to hire these workers.

Recommendations for Executive Action

To provide better information on H-1B workers and their status changes, we recommend that the Secretary of DHS take actions to ensure that information on prior visa status and occupations for permanent residents and other employment-related visa holders is consistently entered into their current tracking systems, and that such information becomes integrated with entry and departure information when planned tracking systems are complete.

In order to improve program management, we also recommend that the Secretary of DHS issue regulations that address the extent to which unemployed H-1B workers are allowed to remain in the United States while seeking other employment.

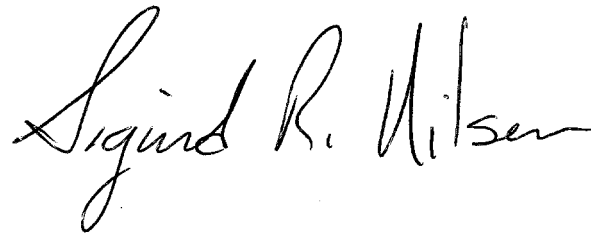
Agency Comments

We provided a draft of this report to DHS and Labor for their review. DHS concurred with our recommendations and acknowledged the need for an improved tracking system to link information related to H-1B nonimmigrants among the State Department, Labor, and DHS. DHS also said that it is in the planning stages to make changes to CLAIMS 3, which will ensure that information on prior visa status and occupations for permanent residents and other employment-related visa holders is consistently entered. In addition, DHS said that issuing regulations is a priority and that the final rule for implementing the law authorizing visa portability for H-1B workers is undergoing revisions based on intra-agency comments. DHS's comments are reprinted in appendix III. Labor had no formal comments. DHS and Labor also provided technical comments that we incorporated as appropriate.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from its issue date. At that time, we will send copies of this report to the Secretary of Homeland Security, the Secretary of Labor, appropriate congressional committees, and other interested parties. In addition, the report will be available at no charge on GAO's Web site at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-7215. Other contacts and staff acknowledgments are listed in appendix IV.

Sincerely yours,

A handwritten signature in black ink that reads "Sigurd R. Nilsen". The signature is written in a cursive style with a large initial 'S' and a long horizontal stroke at the end.

Sigurd R. Nilsen
Director, Education, Workforce,
and Income Security Issues

Appendix I: Scope and Methodology

To obtain information on the occupations H-1B beneficiaries were approved to fill and demographic information and wage characteristics for H-1B beneficiaries and U.S. citizens, we examined the Bureau of Citizenship and Immigration Services' (BCIS) 2000-2002 H-1B petition approval data for five key occupations: systems analysis and programming; electrical/electronic engineering; economics; accountants, auditors, and related occupations; and biological sciences. In addition, we examined 2000-2002 Current Population Survey (CPS) data on U.S. citizen employment in similar occupations.¹

CLAIMS 3 Data on H-1B Petition Approvals

To obtain information on the occupations H-1B beneficiaries were approved to fill, we examined 2000-2002 H-1B petition approval data from BCIS's Computer Linked Application Information Management System Local Area Network (CLAIMS 3 LAN).² These data provided a variety of information on the H-1B beneficiaries in each year, such as the age, education level, and annual salary expected for each beneficiary at the time the petition was filed.³ However, neither the CLAIMS 3 LAN data nor BCIS itself can provide information on how many H-1B beneficiaries approved for employment in a year are actually working in the United States in any particular year. The CLAIMS 3 LAN data may be informative about H-1B petitions approved in a given year and about some characteristics of those beneficiaries. However, these characteristics may not be indicative of the characteristics of all H-1B workers in a given year. For example:

- Of the H-1B beneficiaries approved in 2001, we do not know the proportion that began work in 2001. Some may not have started work until 2002; others may not have started work at all.
- An individual H-1B worker could be represented in multiple petitions filed by different employers in the same year.

¹We selected these occupations because they were among the top 10 occupations filled by H-1B workers and were likely to have been affected by the economic downturn. In making comparisons between the occupations of H-1B beneficiaries and U.S. citizens, we used the CPS occupational codes. See table 5 for a description of the crosswalk used to compare occupations from the BCIS database and the CPS.

²We assessed the reliability of the CLAIMS 3 LAN data through interviews with agency officials, electronic data testing, and review of related documentation.

³Annual salary is based on full-time employment for 12 months, even if the beneficiary actually worked for fewer than 12 months.

-
- We do not know the proportion of H-1B workers in 2001 who obtained their H-1B petition approvals in 2001, 2000, 1999, or 1998.
 - Characteristics of H-1B beneficiaries approved in 2001 and working in 2001 may differ from characteristics of the H-1B workforce working in 2001 who received their approval in 1998-2000. For example, H-1B workers approved in 1998-2000 could, on average, be older in 2001 than those workers approved in 2001.

Because of these uncertainties, we do not know how well the characteristics of the H-1B beneficiaries in any year would approximate the characteristics of the population of H-1B workers actually employed in that year.

Current Population Survey Estimates

To obtain demographic information for U.S. citizens working in the five occupations we examined, we used the monthly CPS from 2002. The CPS is a monthly survey of about 50,000 households that is conducted by the Bureau of the Census for the Bureau of Labor Statistics (BLS). The CPS provides a comprehensive body of information on the employment and unemployment experience of the nation's population. A more complete description of the survey, including sample design, estimation, and other methodology can be found in the CPS documentation prepared by Census and BLS.⁴

We used the 2002 CPS data to produce estimates of longest held job in the previous year, highest degree attained, citizenship, and age. We used the March 2002 Supplement of the Current Population Survey for all estimates of median wages of U.S. citizens working for private employers. This March Supplement (the Annual Demographic Supplement)⁵ is specifically designed to estimate family characteristics, including income from all sources and occupation and industry classification of the job held longest during the previous year. It is conducted during the month of March each year because it is believed that since March is the month before the deadline for filing federal income tax returns, respondents would be more

⁴See Technical Paper 63RV: Current Population Survey—Design and Methodology, issued March 2002. Electronic version available at <http://www.census.gov/prod/2002pubs/tp63rv.pdf>.

⁵We used the March 2002 Supplement data on income on U.S. citizens for median salary estimates, for the most recent year measured—2001.

likely to report income more accurately than at any other point during the year.⁶

Sampling Error

Because the CPS is a probability sample based on random selections, the sample is only one of a large number of samples that might have been drawn. Since each sample could have provided different estimates, confidence in the precision of the particular sample’s results is expressed as a 95-percent confidence interval (e.g., plus or minus 4 percentage points). This is the interval that would contain the actual population value for 95 percent of the samples that could have been drawn. As a result, we are 95-percent confident that each of the confidence intervals in this report will include the true values in the study population. We use the CPS general variance methodology to estimate this sampling error and report it as confidence intervals. Percentage estimates we produce from the CPS data have 95-percent confidence intervals of +/- 10 percentage points or less. Estimates other than percentages have 95-percent confidence intervals of no more than +/- 10 percent of the estimate itself. Consistent with the CPS documentation guidelines, we do not produce annual estimates from the monthly CPS data files for populations of less than 35,000, or estimates based on the March Supplement data for populations of less than 75,000. The blank cells in table 4 identify the estimates that we do not produce because they are for small populations.

Table 4: Summary of Reportable Analyses

	Electrical/electronic engineers	Systems analysts/programmers	Biological/life scientists	Economists	Accountants/auditors
Age	X	X	X	X	X
Educational attainment	X	X			X
Median annual salary	X	X			X

Source: GAO analysis of CPS data.

Note: ‘X’ indicates that we could report findings.

We compared CPS estimates of the number of U.S. citizen workers, age distribution, and highest degree attained to comparable categories of H-1B beneficiary approvals for the five occupation categories we examined.

⁶See Technical Paper 63RV, page 11-4.

While we attempted to produce CPS estimates of U.S. citizens for a population that would be similar to H-1B workers, we could only make comparisons to H-1B beneficiaries with petitions approved in a particular year.

In order to compare the H-1B beneficiary occupations to CPS U.S. workforce occupations, we combined some occupational categories in the CPS to better match those of the BCIS data, as shown in table 5.

Table 5: Crosswalk from BCIS to CPS Codes

BCIS codes	BCIS occupational title	CPS codes	CPS occupational title
030	Systems analysis and programming	064, 229	Computer systems analysts, computer programmers
003	Electrical/electronic engineering	055	Electrical and electronic engineers
160	Accountants, auditors, and related	023	Accountants and auditors
050	Economics	166	Economists
041	Biological sciences	078	Biological and life scientists

Source: Monthly Current Population Survey, 2002, and BCIS.

In order to verify our estimates of the numbers of U.S. citizens in the key occupations and their average annual salaries, we compared the March Supplement employment statistics for 2001 to those reported in the Occupational Employment Statistics (OES) 2001 survey. We did not use the OES for our analysis because the survey collects data from employers and does not provide information about individual workers, such as age and education.

Salary Comparisons

We compared the CPS median salary estimates for 2001 to median salary figures reported for the 2001 H-1B beneficiaries for several occupations, and for four age by education categories. For two of the occupations (biological/life scientists and economists), we did not produce CPS estimates due to insufficient data (see table 7). Although several of the comparisons we were able to make did show a statistically significant difference between the CLAIMS 3 H-1B beneficiary median salary and the “comparable” CPS estimate, it is difficult to interpret this result in terms of actual H-1B workers in 2001. There are several limitations that lead to uncertainty in the interpretation of these results:

- Although reporting problems are an issue with any measure of income, we have additional concerns about the validity of the H-1B beneficiary salaries, because the frequency distributions of the salaries of H-1B beneficiaries in the five key occupations showed that employers reported a number of very low and very high salaries for the “annual rate of pay” on the petition application. We had no basis for determining whether the high and low salaries were data entry errors, estimated payments for an employment period of more or less than a year, or were very high or low for some other reason.
- The measures of median annual salaries for U.S. citizens could include bonuses, but the median annual salaries listed on H-1B beneficiary petition approvals most likely do not. Neither median salary includes noncash benefits such as health insurance or pensions.
- CPS salary reported in March 2002 was for the longest held position actually worked in 2001, and reported by the worker himself (or a knowledgeable member of the household). In contrast, salaries reported in the CLAIMS 3 database for H-1B beneficiaries are provided by the employer requesting the petition approval in possibly 2000 or 2001 for an H-1B beneficiary likely beginning work in 2001 or 2002.
- The 2001 H-1B workforce includes not only a portion of those H-1B beneficiaries approved in 2001, but also those approved in prior years and beginning to work in the United States in 1999, 2000, or 2001. In 2001, the more experienced H-1B workers may have salary patterns that differ from new recipients in 2001.
- The definition of education level used to create our four age categories by education level cells is somewhat different for the H-1B beneficiaries as compared to the CPS U.S. workforce estimates. H-1B beneficiary status requires the attainment of a bachelor’s degree or higher (or its equivalent) in the field of specialty. In contrast, the education level recorded in the CPS is the highest degree attained – not necessarily related to any particular occupation.

In light of these limitations, caution should be used in interpreting differences found in comparing CPS 2001 median salary estimates and 2001 H-1B beneficiary salaries.

Employers Selected for Interviews

To obtain information about the factors affecting employer decisions about the employment of H-1B workers, we conducted site visits and telephone interviews with 36 H-1B employers in 6 of the 12 states with the

largest number of H-1B petitioners—California, Maryland, New Jersey, New York, Texas, and Virginia—selected for their geographic dispersion. Employers were selected based on their number of H-1B petition approvals and occupations for which they requested H-1B workers in fiscal year 2000. Specifically, we selected a variety of large (100 or more H-1B workers), medium (30-99 H-1B workers), and small (29 or fewer H-1B workers) employers to participate in the study. To obtain a range of occupations for which employers hired H-1B workers, we also selected employers based on whether they hired H-1B workers for either IT-related or non-IT-related positions, such as those in accounting or life sciences. We used fiscal year 2000 BCIS data to select employers because we wanted to capture any changes in H-1B worker staff since the economic downturn.

Through interviews with these employers, we collected qualitative information on the factors affecting employers' decisions in recruiting, hiring, and laying off both H-1B workers and U.S. citizen employees. Employer participation in this study was voluntary. We contacted 145 employers, and 25 percent, or 36, of these employers chose to participate; consequently, our results may be biased by this self-selection. In order to provide a broader perspective, we interviewed associations representing highly skilled workers and associations representing employers to obtain their views on how employers make decisions about their U.S. and H-1B workers. We also interviewed Labor WHD officials about the agency's enforcement authority and employer violations of the H-1B program requirements.

DHS Current and Planned Tracking Systems

To obtain information available on H-1B workers' entries, departures, and changes in visa status, we examined DHS data from current tracking systems. However, we determined that these data had limitations that precluded them from meeting our reliability standards. As a result, we did not include them in our report. For example, we obtained data from DHS on the total arrivals and departures of H-1B workers for fiscal year 2000 and the number of permanent residents who reported previously being H-1B workers immediately before changing status in fiscal years 2000 and 2001. According to DHS officials, these were the most recent automated data available. We also obtained data on the number of H-1B workers who changed from H-1B to other employment-related visa statuses from January 1, 2000 to December 31, 2002. In addition, we spoke with DHS officials about the limitations of these data, data on the occupations of employment-related visa holders, and current tracking systems.

We also obtained and reviewed reports on DHS's planned tracking systems. Among the documents we reviewed were the concept of operations for US-VISIT (formerly known as the entry/exit system), a report on system requirements for US-VISIT, the Data Management and Improvement Act Task Force's first annual report, and a report on the case management system that is planned to replace CLAIMS 3. We also interviewed DHS officials who are developing the new systems to learn more about the planned system capabilities.

Appendix II: Age Distribution and Salaries of H-1B Beneficiaries and U.S. Citizen Workers

Tables 6 and 7 provide information on the age distribution and salaries of H-1B beneficiaries and U.S. citizen workers.

Table 6: Percentage Distribution of the Age of H-1B Beneficiaries Approved in 2002 and U.S. Citizen Workers in 2002

Age (years)	Electrical/electronic engineers		Systems analysts/programmers		Biologists		Economists		Accountants/auditors	
	H-1B	U.S.	H-1B	U.S.	H-1B	U.S.	H-1B	U.S.	H-1B	U.S.
20-24	2	5	2	6	1	4	6	15	4	7
25-29	27	11	37	17	12	20	34	16	30	16
30-34	33	12	39	19	34	14	31	17	31	17
35-40	22	21	16	19	37	17	16	15	19	18
41+	16	52	6	39	16	45	13	37	17	42

Source: GAO analysis of Bureau of Citizenship and Immigration Services and Current Population Survey data.

Table 7: Median Annual Salaries of H-1B Beneficiaries Approved in 2001 and U.S. Citizen Workers in 2001 in Selected Occupations, by Age and Education

Occupation	Educational attainment	Age	U.S. citizen median salary	H-1B beneficiary median salary	Statistical significance
Electrical/electronic engineers	Less than graduate degree	18-30	\$52,000	\$60,000	H-1B higher
	Less than graduate degree	31-50	\$70,000	\$65,000	H-1B lower
	Graduate degree	18-30	^a	\$66,500	^a
	Graduate degree	31-50	\$88,000	\$77,000	H-1B lower
Systems analysts/programmers	Less than graduate degree	18-30	\$45,000	\$54,500	H-1B higher
	Less than graduate degree	31-50	\$60,000	\$60,000	No difference
	Graduate degree	18-30	^a	\$59,500	^a
	Graduate degree	31-50	\$87,000	\$65,000	H-1B lower
Accountants/auditors	Less than graduate degree	18-30	\$33,280	\$40,000	H-1B higher
	Less than graduate degree	31-50	\$39,014	\$39,000	No difference
	Graduate degree	18-30	^a	\$46,500	^a
	Graduate degree	31-50	\$50,000	\$55,000	No difference

Source: GAO analysis of Bureau of Citizenship and Immigration Services and Current Population Survey data.

^aIndicates that there were insufficient observations to make a determination.

Appendix III: Comments from the Department of Homeland Security

U.S. Department of Homeland Security

AUG 26 2002

Mr. Sigurd Nilsen
Director, Education, Workforce and
Income Security Team
U.S. General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Nilsen:

We have received the General Accounting Office draft report GAO-03-883, entitled *H-1B Foreign Workers: Better Tracking Needed to Help Determine H-1B Program's Effects on U.S. Workforce*. We appreciate the opportunity to comment on the report.

The Department of Homeland Security (DHS) generally concurs with the report recommendations and acknowledges the need for an improved tracking system to link information related to H-1B non-immigrants between the Department of Labor (DOL), DHS, and the Department of State (DOS). All three Departments are involved in the processing and tracking of H-1B non-immigrants. The DOL certifies an employer's Labor Condition Application, which may include the employer's acknowledgement of certain responsibilities and benefits to be provided to the H-1B non-immigrant. The DHS adjudicates the petition submitted by the employer for the foreign worker. In many instances the foreign worker is outside of the United States and must be issued a visa by DOS based on the approved petition. However, DOS may choose not to issue the visa and send the approved petition back to DHS for revocation.

DHS is in the planning stages to make changes to the Computer Linked Application Information Management System 3 (CLAIMS 3), which will ensure that information on prior visa status and occupations for permanent residents and employment-related visa holders is consistently entered. There is also an on-going project to develop an interface between CLAIMS 3 and the United States Visitor and Immigrant Status Indicator Technology. When this interface is fully implemented, it will have the capability to track the arrival and departure of H-1B visa holders.

To improve program management, issuing regulations is a priority of U.S. Citizenship and Immigration Services under the direction of DHS. The final rule for implementing the portability provision of the American Competitiveness in the Twenty-First Century Act of 2000 is undergoing revisions based on intra-agency comments. While GAO correctly noted that the Act was enacted almost 2 years ago, the rule combines four additional pieces of H-1B legislation, including the most recent H-1B legislation enacted in November of 2002.

Specific comments on the report are as follows:

Washington, D. C. 20528

Mr. Sigurd Nilsen
Page 2

- The DHS currently has a Systems Change Request 2679 for employment related visas that would require adjudication officers to resolve the visa class (class requested) on the I-129, Petition for a Nonimmigrant Worker, if it is different from the class granted at point of adjudication.
- The DHS also has a Systems Change Request 3280 that validates I-129W, Petition for a Nonimmigrant Worker Filing Fee, information when the petition is for an extension of stay. In addition, the change will allow the system to ensure the current status is H-1B. The occupation field is a mandatory field in CLAIMS 3 if the petition is H-1B, however, for other employment-related visas, the system does not capture this information.
- The current class for the non-immigrant change of status is not a mandatory requirement in CLAIMS 3.
- The current status and occupation fields for permanent residents are already in CLAIMS 3, however, they are not a mandatory requirement.

Thank you again for the opportunity to respond to the draft report. If you have any questions, please contact Anna Dixon, DHS Audit Liaison, at (202) 772-9580.

Sincerely,



Pamela J. Turner
Assistant Secretary for Legislative Affairs

Appendix IV: GAO Contacts and Staff Acknowledgments

GAO Contacts

Andrew Sherrill (202) 512-7252
Mary Abdella (202) 512-5878

Staff Acknowledgments

In addition to the above contacts, Danielle Giese and Emily Leventhal made significant contributions to this report. Also, Shana Wallace assisted in the study design and analysis; Mark Ramage assisted in the statistical analysis; Julian Klazkin provided legal support; and Patrick DiBattista assisted in the message and report development.

Related GAO Products

Information Technology: Homeland Security Needs to Improve Entry Exit System Expenditure Planning. [GAO-03-563](#). Washington, D.C.: June 9, 2003.

High-Skill Training: Grants from H-1B Visa Fees Meet Specific Workforce Needs, but at Varying Skill Levels. [GAO-02-881](#). Washington D.C.: September 20, 2002.

Immigration Benefits: Several Factors Impede Timeliness of Applications Processing. [GAO-01-488](#). Washington, D.C.: May 4, 2001.

H-1B Foreign Workers: Better Controls Needed to Help Employers and Protect Workers. [GAO/HEHS-00-157](#). Washington, D.C.: September 7, 2000.

Immigration and the Labor Market: Nonimmigrant Alien Workers in the United States. [GAO/PEMD-92-17](#). Washington, D.C.: April 28, 1992.

GAO's Mission

The General Accounting Office, the audit, evaluation and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through the Internet. GAO's Web site (www.gao.gov) contains abstracts and full-text files of current reports and testimony and an expanding archive of older products. The Web site features a search engine to help you locate documents using key words and phrases. You can print these documents in their entirety, including charts and other graphics.

Each day, GAO issues a list of newly released reports, testimony, and correspondence. GAO posts this list, known as "Today's Reports," on its Web site daily. The list contains links to the full-text document files. To have GAO e-mail this list to you every afternoon, go to www.gao.gov and select "Subscribe to e-mail alerts" under the "Order GAO Products" heading.

Order by Mail or Phone

The first copy of each printed report is free. Additional copies are \$2 each. A check or money order should be made out to the Superintendent of Documents. GAO also accepts VISA and Mastercard. Orders for 100 or more copies mailed to a single address are discounted 25 percent. Orders should be sent to:

U.S. General Accounting Office
441 G Street NW, Room LM
Washington, D.C. 20548

To order by Phone: Voice: (202) 512-6000
 TDD: (202) 512-2537
 Fax: (202) 512-6061

To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Web site: www.gao.gov/fraudnet/fraudnet.htm

E-mail: fraudnet@gao.gov

Automated answering system: (800) 424-5454 or (202) 512-7470

Public Affairs

Jeff Nelligan, Managing Director, NelliganJ@gao.gov (202) 512-4800
U.S. General Accounting Office, 441 G Street NW, Room 7149
Washington, D.C. 20548