



Explainer: Trump's \$100,000 H-1B fee rule

By Sam Peak and Connor O'Brien

President Trump issued a shocking [proclamation](#) last Friday, attaching a \$100,000 fee to new H-1B applications in an attempt to boost wages for American workers.

The announcement sparked widespread confusion. Administration officials [contradicted](#) the text of the President's order, while cabinet agencies issued [guidance](#) that left key questions about the new policy [unanswered](#).

In this Q&A, we therefore clarify what is actually known about the policy and what remains unknown. We also describe the apparent motivations behind the rule, why it is a counterproductive policy, and alternatives that the administration should pursue instead.

Getting high-skilled immigration policy right is important to us. We have long been critical of the H-1B visa's glaring flaws. In January, we [proposed](#) a top-to-bottom overhaul that would both prioritize truly exceptional talent and end aspects of the program that are unfair to American workers and visa holders alike.

High-skilled immigration yields enormous benefits to American workers, businesses, and communities, but sloppy policies — even those with the intention of helping American workers — can easily throw those benefits away. Unfortunately, this is one of those policies.

What does the Trump Administration's H-1B fee rule do?

To explain, we first need to cover some quick background. The H-1B visa is available for workers in "specialty occupations" that typically require at least a four-year degree. The Department of Homeland Security (DHS) issues 85,000 H-1Bs to private sector workers each year, 20,000 of which are reserved for applicants with at least a master's degree. Workers on H-1B visas hold jobs in a range of occupations, from software engineering to surgery.

Employers file petitions for H-1Bs on behalf of the workers they'd like to hire. That process involves the Department of Labor (DOL) certifying the details of the petition before passing it along to DHS, which filters for eligible applicants and then grants the visas in a random lottery to qualifying applicants. Since there are typically so many more applicants than visas available, most applications lose the lottery.

What the new fee rule says is that a worker whose H-1B petition won the lottery and was approved after September 22nd could now face a \$100,000 fee upon entering the country.

The fee itself is structured as a travel ban that can be waived with a \$100,000 payment to DHS.

Though not in the text of the proclamation, DHS later said in [a statement](#) that the fee would not apply to H-1B renewals, which must be requested by employers after three years of an H-1B worker's employment. The proclamation also would not prevent current visa holders from traveling to and from the United States.

Finally, we should note that non-profit organizations who wish to hire H-1B workers are exempt from the lottery system. If their sponsored workers meet the visa's criteria, their petitions are approved, and these workers do not count towards the annual 85,000 visa cap. This is a critical pathway for universities and research labs hiring scientists, researchers, or professors. Based on what we know right now, they will also face the \$100,000 fee.

September 22nd? You're saying the fee rule has already kicked in?

Yep. It technically started applying within days of the proclamation.

In all the confusion, I could have sworn I heard that the Trump administration also wants to change the H-1B lottery itself. Does this rule do that?

No, this fee rule is separate from the proposed [H-1B lottery change](#), which would reconfigure the lottery so that those earning more relative to their professions are more likely to be selected.

Unlike the fee proclamation, which went into effect immediately, this lottery proposal requires a 30-day notice for the public to provide comments. DHS must then provide responses and revisions before the rule can go into effect.

We will have more to say about the changes to the H-1B lottery soon, but for now, we'll direct you to [research](#) from the Institute for Progress finding that these changes would do very little to prioritize high-earning applicants and would actually boost outsourcing companies' abuse of the program.

Okay, back to the fee rule: Other than H-1B workers up for renewal after three years, can anyone else get out of it? Any exemptions?

Yes. Based on what we know, the following groups will be exempt from the fee:

- Current H-1B holders
- Existing H-1B visa holders renewing their visa
- Applicants whose entry the administration believes to be in the “national interest”
- Doctors, presumably under the national interest exemption

Notably, the text of the proclamation also suggests that H-1B applicants who are adjusting from another visa status within the United States (such as international students or L-1 visa holders) are exempt from the fee.

And because the fee is administered through a travel ban, it doesn’t apply unless the applicant is outside the country.

Just to confirm — if an H-1B applicant has already made it inside U.S. borders, the fee doesn’t apply? Are there a lot of them?

That appears to be the case, and this would actually exempt [half](#) of new H-1B applicants. But the administration, while clarifying the other exemptions since the proclamation was signed, has yet to clarify this particular exemption.

Is there any other lingering confusion concerning who is subject to this new fee?

Because the fee is connected to the State Department’s travel ban authority, the \$100,000 fee can be thought of as a “toll” for H-1Bs entering the United States. People can avoid paying this toll by entering the country on a different visa and later switching to H-1B status. It’s unclear if they will need to pay the toll later if they choose to leave and then re-enter the country on the H-1B visa.

Wouldn’t it have made more sense for the Trump Administration to simply charge H-1Bs a fee instead of shoehorning this fee rule into a “travel ban?”

While that would have been a simpler policy, it also would have also created a myriad of legal complications for the administration.

Under [current law](#), DHS can only change immigration fees every couple of years through the biannual fee schedule. This fee authority is subject to many limitations. For example, before enacting the new fees, the administration would need to send out a notice to the public explaining the rule and its effects in detail. The public would then have at least 60 days to comment on the fee changes and DHS would need to respond to these comments before allowing the rule to go into effect.

Additionally, DHS's fee authority only allows the agency to charge the amount needed to recoup the costs of administering services. Under no reasonable assumptions does the cost of processing an H-1B application approach anything close to \$100,000.

By using the travel ban authority to extract fee revenue, the Trump Administration can bypass the notice and comment requirement. And because the travel ban authority says nothing about fee revenue, the administration likely believes it can issue this fee without the same limitations specified in the DHS fee authority. Even so, this lack of reference to any sort of fee in the travel ban authority will still make this proclamation subject to legal challenge.

Is that — or any other — legal challenge likely to be successful in undoing the rule?

There is simply no way to know at this point.

And what else do we still not know about the rule?

In addition to the unanswered questions concerning who may or may not be subject to paying the entry fee, the *process* of paying it also remains unclear. For example, does the employer pay or can the employee also foot the bill? Does the fee get submitted to a consular office abroad or can it be collected by U.S. Customs and Border Protection?

What's the point of this rule in the first place? Has the Trump Administration offered a justification for it?

The Trump administration's justification for the new fee falls into two categories.

First, the administration argues that too many scarce H-1B visas today are going to outsourcing or staffing firms who use them to hire lower-wage, middle-skill workers, crowding out higher-paid applicants with truly rare skills. This is indeed the principal flaw with the program as it's currently constructed, though it does *not* follow that such a steep fee is the best — or even a good — way to deal with that problem. More on why below.

Second, the administration argues that H-1B workers are depriving Americans of well-paying jobs in STEM fields, citing recent graduate unemployment estimates for computer science majors and a rising foreign-born share of STEM workers.

Curiously, the administration's top complaints with the program are that it both admits immigrants who make too little money and, somehow, simultaneously steals high-paying, good jobs from American workers.

Wait, but I have heard that the STEM and computer science labor markets are indeed terrible. Is that true? If so, isn't it at least possible that competition from H-1B workers is partly to blame?

Workers in STEM fields and graduates with STEM degrees earn [much higher incomes](#) than their peers in other fields, and their wages have steadily risen over the last two decades *even as the foreign-born share in those fields has increased*.

The average worker in a STEM occupation earned twice as much in wage and salary income in 2023 as the typical worker in a non-STEM occupation.

STEM majors even earn a premium for their degree when they work in jobs that the Bureau of Labor Statistics does not consider STEM occupations. (An engineering graduate who works in finance, for example.) Controlling for degree level, age, and hours worked, STEM graduates in non-STEM jobs earn [25 percent](#) more than their peers with degrees in other fields.

And contrary to some claims that many STEM graduates are stuck with degrees they do not use on a day-to-day basis, STEM graduates are [just as likely](#) to say that their most recent degree is related to their job as graduates from other fields.

Data on unemployment among recent computer science graduates published by the New York Federal Reserve, and cited by the White House as evidence that these graduates are struggling, is based on a minuscule sample size and is misleading, as we have [shown](#). While the unemployment rate for computer and information science graduates ticked up in 2023, the share of young CS graduates who are employed — a better measure of the labor market's strength — remained higher than the entire 2010s.

The national labor market has been softening over the last few years, but this is not specific to STEM, which is still a high-paying set of fields and degrees for American workers and students. That foreign workers are disproportionately working in well-paying STEM fields is a feature of our skilled immigration system — suggesting it is selecting for talented people with in-demand skills — not a bug.

Bottom line: if this fee rule stays in place, what is at stake?

The H-1B, while flawed, is still the primary tool through which the United States attracts and retains high-skilled talent. High-skilled immigration is an enormous strategic and economic advantage for the United States. Our openness to top talent makes Americans wealthier, more productive, more innovative, and stronger in areas of the economy relevant to our national security.

The list of benefits that high-skilled immigrants yield for the United States is long:

- Immigrants patent at far higher rates than native-born Americans; roughly [30 percent](#) of American inventors since 2000 are immigrants.
- Immigrants are [80 percent more likely](#) to start a business than native-born Americans, and have founded or co-founded [55 percent](#) of all “unicorn” startups valued at \$1 billion or more.
- High-skilled immigrants make up an [outsized share](#) of highly educated workers and inventors in industries of strategic importance.
- Immigrants or their children have founded juggernaut companies like SpaceX, Google, and NVIDIA.
- Immigrants have been at the center of some of America’s most important scientific and technological achievements, from the Manhattan Project to the Apollo program.

Our ability to attract, integrate, and retain some of the world’s most talented workers, researchers, and entrepreneurs is a unique advantage for the United States not available to our adversaries or rivals at scale. But it is an advantage we can throw away, if we choose.

You’ve referenced the H-1B program’s flaws a few times. Its critics allege that employers exploit it to undercut American workers with cheap labor. Are they right?

Despite the benefits that the program brings, the H-1B program still contains some deep flaws. Every year, between one-third and half of visas go to outsourcing or staffing firms for middle-skill IT workers, as [a recent Bloomberg investigation](#) highlighted. This use of the visa is genuine wage arbitrage, and candidates sponsored by such companies earn less than applicants sponsored by traditional employers.

When employers utilize these staffing firms to have H-1B workers perform labor, the contracting structure of these arrangements [insulates them](#) from regulations that aim to prevent the displacement of American workers.

In the infamous case where Disney fired its IT staff and replaced them with H-1B workers, lawsuits from the former employees were ultimately dismissed because Disney didn’t directly hire their H-1B replacements. Instead, they utilized the services of H-1Bs employed by the staffing firm, HCL America. Because Disney didn’t technically hire these H-1B workers after firing their U.S. employees, they circumvented the protections designed to help American workers. Any sensible H-1B reform would destroy this business model by reallocating visas to top talent with high salaries instead of middle-skill IT workers.

But despite these glaring problems posed by the IT staffing firms, the talent recruited by other employers through the H-1B program still tends to be highly compensated people employed in lucrative fields. In 2025, the median base salary for all approved H-1B petitions [was \\$120,000](#) (not including stock compensation and other benefits). On average, college graduates on work visas earn [roughly 26 percent](#) more than similarly employed natives.

In key fields like engineering and computer science, H-1Bs earn at least 50 percent more than their U.S. colleagues. We can raise average salaries for visa holders even further by designing the system to explicitly accept the highest-paid applicants and shutting out the IT outsourcing firms. Doing so would raise the typical salary for a new H-1B by [more than 40 percent](#).

If H-1Bs are for skilled, high-earning people, why am I seeing charts claiming that H-1Bs are going to cooks and cashiers?

Occasionally, critics of the H-1B program who are unfamiliar with the visa's application process purport to show applicants for low-wage jobs in retail or food service. This data comes from the Department of Labor's Labor Condition Application (LCA), which certifies basic facts about the job, like whether it meets prevailing wage standards for the occupation. It does not filter applicants for their eligibility for the H-1B program. People will often pull [this data](#) and find that there are employers who petitioned for cooks, cashiers, baristas, and other professions making extremely low wages who get "certified" by DOL.

DOL, however, is not the agency ultimately responsible for approving or denying H-1B petitions and plays a relatively minor role in the whole petitioning process. DOL does not discern whether H-1B applicants are in "specialty occupations," a requirement for applicants for the visa. That is the job of DHS.

Jobs eligible for the H-1B are those requiring specialized knowledge and at least a bachelor's degree. The low-wage jobs that appear in LCA data simply aren't eligible for the program, and DHS swiftly throws out those applications. Even most Registered Nurse positions are [ineligible](#), since people can enter this field without completing a four-year college degree. After filtering out these ineligible applications, DHS conducts the lottery, of which only [20 percent](#) of applicants win each year.

DHS issues an [annual report](#) on workers awarded H-1B visas, including a breakdown by occupation. You will not find in those reports cashiers, cooks, or any of the other low-wage service jobs that appear in LCA data. They are not eligible for the H-1B.

What do we know about the contributions and effects of H-1Bs on the economy?

The H-1B lottery is a terribly designed policy. But one small silver lining is that its randomness makes it easy for economists to study the program's effects on workers, firms, and communities by providing a natural experiment.

One high-quality [study](#) finds that when firms in a given city win more H-1B applications through the lottery, those firms become more productive on average, and wages rise for native-born workers in that city. [Another](#) finds that regions that win more H-1B visas experience a jump in entrepreneurship, while low-skilled H-2B arrivals produce no such effect.

For promising, VC-backed startups, winning the H-1B lottery [increases](#) the odds of receiving additional financing and of eventually going public. The H-1B visa's contributions to startup success are especially important given that young firms are a [primary driver](#) of net U.S. job growth.

We could go on. We recommend [this review](#) of the evidence on high-skilled immigration's effects on innovation, which are large despite the program's obvious problems.

Put it all together for me: Based on what we know, what are the likely economic effects of the rule?

The fee will almost certainly reduce the number of H-1B applications, dramatically raising the price for companies wanting to hire candidates currently residing outside the United States.

However, unless the fee is somehow also applied to applicants changing their status from another visa type within the United States, the 85,000 visas made available each year will likely all be used. But if those petitions are also subject to the fee, some visas may ultimately go unused.

Employers will seek routes around the cap, first sponsoring workers for other visas before bringing them to the United States and sponsoring them for H-1Bs. Outsourcing companies, purportedly a target of the new fee, may be well-positioned to take advantage, sponsoring candidates for L-1 or other visa types and then subsequently sponsoring them for an H-1B that is not subject to the fee. This rule could also favor those who enter as international students and adjust to H-1B after graduating (though [poorly-designed](#) changes to the H-1B lottery could easily cancel out any advantage to international students from the fee).

Such workarounds would be less valuable if the administration ultimately decides to apply the fee to individuals who enter on some other visa category, change to H-1B while inside the country, and then seek re-entry after traveling abroad. This penalty on travel would be a major inconvenience that could encourage employers to [offshore](#) their talent and operations abroad.

Finally, it's worth noting how the fee could hurt American scientific research. Non-profit research labs and universities, exempt from the annual 85,000 visa cap, do not appear exempt from the \$100,000 fee. This will undercut our ability to recruit top scientists, researchers, and professors from around the world. For those adjusting stateside from another visa, unresolved questions around travel may mean that some researchers who get around the fee initially may not be able to travel abroad to talks or conferences.

That's an awful lot of downsides. Granting that the proposed fee is a bad idea, what is a better way to fix the flaws in the H-1B?

The H-1B has two fundamental problems, neither of which is addressed by the fee.

First, the random lottery advantages outsourcing companies hiring lower-skilled workers over innovative firms that have identified top talent to sponsor. The outsourcing companies don't need to win a visa for any *particular* applicant. They just need to win enough visas to fill jobs, so they flood the system with applications. In contrast, for a company identifying a rare talent, low lottery odds mean the H-1B will most likely not allow them to hire that person, regardless of their salary. The enormous amount of uncertainty embedded in the H-1B process works far better for the business models of firms hiring lower-paid, more replaceable talent.

The second problem is H-1Bs face frictions when changing jobs or getting a promotion. Employers are on the hook for thousands of dollars in legal costs to hire someone on an H-1B changing jobs, and they are restricted to employment in a set of "specialty occupations." Native workers are not subject to these restrictions, which probably allows employers to modestly underpay visa holders compared to what they would earn in their absence. These restrictions often raise allegations of "indentured servitude." That's not accurate — depending on the year, between 10 and 15 percent of H-1Bs change employers annually. That's below the roughly [25 percent](#) share of the overall workforce that changes jobs in a given year and a sign of the effect these frictions have, even if the harshest critiques of the program are exaggerated.

Both of these problems can be solved. The H-1B system should prioritize applicants according to salary (with modest boosts for younger applicants). This would provide firms with the certainty that if they offer a sufficiently high salary, they will have little trouble getting a visa for star talent. Such an approach would significantly raise the pay of the average H-1B awardee and destroy the business model of H-1B outsourcing companies overnight. At the same time, we should reduce barriers to job-to-job mobility, removing arbitrary restrictions on visa holders' occupation, location, and ability to change employers in search of better pay or conditions. The system should set a high bar for incoming talent, but set out a smooth process for those who exceed it. See Chapter 4 of our [January report](#) for more details on how it would work.

What's next?

For now, the fee is technically in place, but we don't yet know how the administration is enforcing it. We are also still waiting for the administration to clarify possible exemptions. Finally, we expect the proclamation to face immediate legal challenges, which may ultimately result in the fee being ruled illegal.

We are still assessing the effects of the administration's new H-1B weighted lottery rule proposed this week. We will have more analysis on that proposal soon.