

DRAFT BILL INTRODUCED BY REP. ZOE LOFGREN
SECTION-BY-SECTION SUMMARY AND ANALYSIS

SECTION 1. SHORT TITLE: “High-Skilled Integrity and Fairness Act of 2015”.

SECTION 2. NUMERICAL LIMITATION TO ANY SINGLE FOREIGN STATE

- Eliminates the “per country” cap for employment-based immigrant visas so that all workers are treated fairly.
 - Ends discrimination in allocation of employment-based visas so employers can hire the most skilled workers without regard to national origin.
 - Ensures that all employment-based immigrants are subject to the same wait times for visas.
- Raises the “per country” cap from 7% to 15% for family-sponsored immigrant visas.

SECTION 3. STRENGTHENING INTEGRITY IN THE H-1B PROGRAM BY REFORMING THE EXEMPT H-1B DEFINITION

- Re-sets the H-1B dependent employer wage exemption level at the 35th percentile above the median for the most recent national annual wage for Computer and Mathematical Occupations (Group 15-0000) as published in the Department of Labor Occupational Employment Statistics.¹
 - Dependent employers are those with more than 15% of their workforce in H-1B status, excluding workers who the employer has petitioned for permanent residence (green cards).
 - Unless dependent employers compensate their H-1B workers above the required wage level, they must make attestations regarding recruitment and non-displacement of U.S. workers.
 - The current level of \$60,000 was established in and has been unchanged since 1998.
- Eliminates the Master’s Degree exemption for dependent employers.

SECTION 4. TRANSPARENCY FOR AND PROHIBITING PENALTIES AGAINST FOREIGN HIGH-SKILLED WORKERS

- Provides for transparency for H-1B workers by requiring employers to provide immigration paperwork to the H-1B visa holder within three years of the date on which the petition was filed with the government. Provides for the withholding of information if it is confidential or sensitive business information.

¹ Per the Department of Labor May 2015 Occupational Employment and Wages (the most recent data available), this would be an annual wage of over \$130,000 (<http://www.bls.gov/oes/current/oes150000.htm>).

- Protects H-1B workers by prohibiting liquidated damages for H-1B workers who cease employment prior to a date agreed to by the nonimmigrant and the employer.

SECTION 5. ALLOCATION OF H-1B VISAS OR H-1B NONIMMIGRANT STATUS DURING A FISCAL YEAR

- Ensures that H-1B hiring is more closely tied to employer need by providing for 2 tranches of H-1B visas to be available during the fiscal year, rather than all visas becoming available on October 1 and employers having to project their workforce needs for 6 to 18 months in the future.

SECTION 6. MARKET-BASED H-1B VISA ALLOCATION

- Prioritizes allocation of H-1B visas, with preference first to employers that hire mainly U.S. workers and then to H-1B dependent employers, based on wages as follows:
 - 1) Employers paying prevailing wage level 4 at 200% of prevailing wage, then 150% of prevailing wage (including cash bonuses and similar compensation);
 - 2) Employers paying level 3 at 200% of prevailing wage, then 150% of prevailing wage (including cash bonuses and similar compensation);
 - 3) Employers paying level 2 at 200% of prevailing wage, then 150% of prevailing wage (including cash bonuses and similar compensation);
 - 4) Employers paying level 1 at 200% of prevailing wage, then 150% of prevailing wage (including cash bonuses and similar compensation);² and
 - 5) Any remaining petitions.
- H-1B workers for whom an employer has begun the green card process would not count as H-1Bs for the purposes of determining employer dependency.

SECTION 7. VISAS RESERVED FOR SMALL AND START-UP EMPLOYERS

- Sets aside 20% of the annual allocation of H-1B visas for small and start-up employers (those with 50 or fewer employees).

SECTION 8. REMOVING VISA HURDLES FOR STUDENTS AND OTHER TEMPORARY VISA HOLDERS.

- Builds a bridge from F-1 student status to Lawful Permanent Residence by:
 - Providing for “dual intent” for students, as well as O-1 (Extraordinary Ability) and free trade visa holders, so they are not denied visas solely on the basis that they might intend to immigrate to the United States;

² Per the Department of Labor Foreign Labor Certification Data Center, Online Wage Library, the Level 1 wage for a Computer Systems Analyst in the San Jose-Sunnyvale-Santa Clara MSA would be \$69,805, so 200% of the Level 1 prevailing wage would be \$139,610 (<http://www.flcdatcenter.com/OesQuickResults.aspx?area=41940&code=15-1121&year=16&source=1>).

- Permitting experience gained on the job with the employer to count for the purposes of labor certification; and
- Providing employment and travel authorization to those with approved employment-based petitions awaiting visa availability, so they have similar protections to those provided portability under the American Competitiveness in the 21st Century Act.

SECTION 9. REMOVING PAPERWORK BURDENS

- Streamlines H-1B filing requirements and reduces administrative costs by clarifying that an amended petition need not be filed with USCIS upon an employee worksite change, if the petitioner has already secured a valid, certified Labor Condition Application for the new place of employment.

SECTION 10. H-1B ENFORCEMENT AUTHORITY

- Provides a technical fix so that USCIS can pass along information regarding potential violations in H-1B filings to the Department of Labor to commence an investigation.