State of Immigration

In November, former Vice President Joe Biden defeated incumbent President Donald Trump in the election, marking a significant turning point for many areas of government policy, immigration included.

President-elect Biden's platform is decidedly more progressive than that carried out by the Trump administration over the past four years, which sought to place limits on immigration to the U.S. While Biden has promised to immediately reverse several Trump-era policies and rules, it remains to be seen how significantly immigration policy in the U.S. will evolve over the next four years, following a period of heightened scrutiny as well as rising anti-immigrant sentiment.

Between November 17 and December 12, 2020, Envoy Global surveyed 215 U.S. employers to learn how specific, Trump-era policy changes have affected immigration programs at their organizations, as well as their attitudes towards future immigration reforms, including specific proposals put forward by legislators.

Although certain immigration restrictions from the Trump administration are being challenged in court and others are yet to be fully implemented, the results of our survey found that many of the more than 400 policies and rules put in place between 2017 and 2020 have caused delays and increased costs for employers. More importantly, respondents indicated that these policies have directly led to an increase in offshoring and outsourcing, while only causing a limited increase in domestic hiring. Respondents also expressed that certain proposed policies together may have a significant impact on their ability to recruit foreign talent in the future.

The regulations introduced during the COVID-19 pandemic resulted in unprecedented changes to the foreign talent pipeline in the U.S. Between January and April 2020, the number of immigrant and non-immigrant visas issued to foreign nationals declined by a staggering **93.2%**[1] due to travel bans, country-wide lockdowns, consulate and embassy closures and restrictionist visa adjudication policies. In addition, the Trump administration has issued 48 policy changes that affected the immigration system since the start of the pandemic, citing an even more pressing need to protect American workers in the face of rising unemployment.

This assertion runs contrary to the demand for foreign talent expressed by those we surveyed. Nearly twice as many respondents surveyed (36%) said there are too few green cards available each year versus too many (18%); 39% said the number was just right. Likewise, 2.4 times as many respondents (41%) said there were too few H-1B visas available versus too many (17%), and 37% said the amount is correct.

These findings align with current data on the STEM skills gap in the U.S. Despite the ensuing economic distress in the wake of the COVID-19 pandemic, the unemployment rates for computer science and mathematical occupations remained at just 3.0% in December 2020[2], close to what they were before the pandemic's onset in March. Meanwhile, the more general unemployment rate peaked at 14.4% in April[3] and remained at 6.5% in December 2020.*

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[1]   American Immigration Council, "The Impact of COVID-19 on Noncitizens and Across the U.S. Immigration System." September 2020.

[2]   Bureau of Labor Statistics. "Labor Force Statistics From Current Population Survey." December 2020.

[3]   Bureau of Labor Statistics. "Labor Force Statistics From Current Population Survey." April 2020.

 * Data not subjected to seasonal adjustment process

Impact of Implemented Policies

In April 2017, the Trump Administration issued the "Buy American, Hire American" executive order, which aimed to fulfill the President's campaign promise to limit immigration in the interest of protecting American workers.

The result of the order was a number of new policies, rules and restrictions put in place by U.S. Citizenship & Immigration Services (USCIS), the Department of Homeland Security (DHS), the Department of Labor (DOL) and other federal agencies that respondents in our survey say impacted their organizations' immigration programs.

Requests For Evidence

Between 2017 and 2019, the issuance rate for Requests for Evidence (RFEs), which require employers to submit additional information for a visa petition and typically signal an increased risk of a denial, rose from 21% to 40.2%[4], reflecting the Trump administration's effort to reduce perceived abuse of the system by increasing scrutiny of employers and workers. The majority of survey respondents said that this increase has had a negative impact on their organization:

How have the increased rates of RFEs impacted your company's immigration program?	Total
RFEs have made the process more cumbersome because of the additional documentation required	45%
We have stopped sponsoring for certain roles	20%
We have withdrawn offers	29%
We have had to let people go	22%

Of the employers who said roles at their organization were impacted, this impact was felt across all levels of seniority:

What types of roles has the increased rate of RFEs impacted?	Total
Entry-level roles (1 year or less) at their organization were affected	62%
Mid-level roles (2-5 years of experience) were impacted	47%
Senior-level roles (6+ years of experience) were impacted	38%

4   U.S. Citizenship & Immigration Services. "Nonimmigrant Worker Petitions by Case Status and Request for Evidence (RFE) (Fiscal Year 2020, 3rd Quarter, Oct. 1, 2015 – Jun. 30, 2020)." August 2020.

Green Card Policies

The Public Charge rule, first implemented nationwide in February 2020 and the subject of extensive litigation, requires employers filing green card petitions on behalf of foreign workers to submit evidence that the individual has not or will not rely on any government benefits such as Medicare, food stamps or housing vouchers. Although this rule has largely not discouraged employers from sponsoring foreign workers for green cards, it has made the process more cumbersome.

How has the Public Charge Rule impacted your sponsorship process?	Total
We are less likely to sponsor foreign nationals for roles at our organization	14%
We are less likely to sponsor foreign nationals, but it has been more expensive and time consuming	51%
Our foreign national employees are resistant to starting the green card process	12%
No change	20%
Not applicable	3%

Other green card policies instituted by the Trump administration, such as requiring green card applicants to appear for an in-person interview at a USCIS field office, have also created delays and increased costs for employers, with a large majority reporting some kind of negative impact from the requirement.

How has the in-person interview requirement for green card applicants impacted your immigration program?	Total
It has caused delays	59%
It has resulted in increased costs	47%
It has resulted in more denials	33%
No impact	13%
Not applicable	4%

In addition, in 2017 USCIS rescinded a long-standing policy instructing immigration officers to defer to previously approved applications when evaluating extension requests or new visa petitions, throwing previously approved visas into question whenever employers and foreign nationals filed to transfer and renew work visas or apply for a green card. As a result, employers and foreign workers alike are less willing to pursue permanent residence or even a visa transfer or amendment out of fear of government scrutiny, perpetuating uncertainty by keeping employees from putting down roots and raising retention concerns for the employer without the longer term work authorization.

Third Party Site Scrutiny

The Trump administration also repeatedly sought to heighten scrutiny of employers seeking to place H-1B employees at third-party worksites or client locations. USCIS began requiring detailed itineraries from employers and restricting the length of visas for such positions in 2017, with the practice becoming prevalent in 2019. After ceasing this practice in June 2020 following a lawsuit[5], DHS tried to reinstate it in October by issuing a new rule that would mandate one-year validity dates for H-1B cases where the worker was placed at a third-party site. This rule was struck down in early December.

While often thought of as explicitly targeting the IT companies most often associated with perceived H-1B program abuse, the wide majority of our respondents (84%), representing a more diverse cross section of employers, reported that these now-rescinded policies impacted their organization negatively:

What impact have limits to the length of visas for employees at third-party sites had on your business?	Total
We have consequently having a harder time filling roles	31%
We have passed the increased cost to our clients	27%
We have had to turn down business	22%
We have explicitly lost business as a result	19%

Against this backdrop, 35% said they were pursuing alternative sponsorship options, but 37% said they were now filling these roles outside the U.S.

COVID-19 Related Closures

Beginning in March, many U.S. Embassies and Consulates closed or limited operations, and just 4% of respondents said these closures had no impact on hiring or business operations.

How have COVID-related closures of government offices and consulates impacted your business?	Total
We have had to delay work	46%
We have withdrawn offers	30%
We have explicitly lost business	20%
We have had to hire locally in-country instead	37%
We have outsourced jobs to 3rd parties	33%
We have moved jobs outside of the U.S.	10%
We have created an entity outside of the U.S.	23%
We have lost job candidates	31%
No impact	4%

5   *ITServe Alliance v. L. Francis Cissna.*

The Trump administration's temporary ban on new J-1 intern visas, as well as the restrictions on F-1 visas being issued to students whose U.S. universities and colleges chose to suspend in-person classes had immediate consequences for employers who employed directly from those populations and, perhaps more alarmingly, may disrupt talent acquisition in future years due to the overall reduction in the number of foreign-born university graduates with degrees in STEM fields.

How have recent changes to visas impacting students and interns impacted your business?	Total
No impact	26%
We have had immediate difficulty filling roles	30%
We are anticipating an eventual negative impact to our university talent pipeline	35%
Not applicable	9%

Current Concerns

New H-1B Visa Restrictions

In November 2020, the Trump administration released two final rules that placed new restrictions on the H-1B visa program. The first from DHS narrowed the definition of a specialty occupation and created stricter degree requirements for sponsored roles. The second, from the DOL, raised the required wages for sponsored roles. Although a district court struck down both rules in early December, additional litigation is expected.

Employers in our survey expressed concern that more rigorous educational requirements for H-1B applicants would create disruptions to sponsorship, with 34% of respondents reporting that the new requirements would require more time or cost to document.

While 37% said they would have to look for ways to fill the roles domestically, employers also looked at other solutions:

How do you think changes to the education requirements for specialty occupations will impact H-1B sponsorship at your company?	Total
We would look for alternate routes to sponsor their foreign nationals	24%
We were considering opening an office or offices outside the U.S. in countries with more favorable immigration policies	25%
We would need to consider moving the jobs overseas	14%

Although the new prevailing wage levels were proposed ostensibly to ensure that employers were less likely to sponsor foreign nationals for jobs where U.S. workers could be employed instead, survey respondents indicated that the proposal would not necessarily serve its intended purpose:

How do you expect proposed changes to the prevailing wage levels for H-1B visas to impact your business?	Total
The new prevailing wage levels were already in line with current wages for sponsored employees, or that they'd be willing to raise wages in order to meet the new standards.	60%
The increased salaries would lead them to sponsor fewer foreign nationals for roles at their organization.	40%
We would sponsor less and would instead either move those positions overseas, outsource them, or eliminate them altogether.	46%

The H-4 EAD Program

A number of times over the last four years, the Trump administration has also expressed an interest in repealing the H-4 Employment Authorization Documentation (EAD) program, which provides work authorization to spouses and dependents of H-1B visa holders. The majority (58%) of employers in our survey said that repealing this program would have some form of negative impact, both impeding their ability to find the talent they needed, while also creating financial and personal obstacles for their currently employed H-1B workers.

What impact would a possible repeal of the H-4 visa have on your business?	Total
We employ H-4 visa holders, and replacing them would be difficult	22%
We employ H-4 visa holders, but would not have difficulty replacing them if necessary	23%
Our H-1B employees would be unable to afford to stay and work in the U.S. without their H-4 spouse's additional income	21%
Our H-1B employees would be unwilling to stay in the U.S. if their spouse was unable to work on an H-4 visa	16%
We do not employ H-4 visa holders	11%
Not sure	7%

Looking Ahead

Employers in our survey largely indicated that major restrictionist changes to the immigration system made over the past four years were disruptive and costly to their businesses. On the other hand, they expressed support for broader immigration reforms that would make sponsorship easier and bring transparency to the immigration system.

Wage-base Selection Process

Moving forward, legislators and other stakeholders have called for large-scale changes to the H-1B program and other employment-based immigration processes. Most recently, DHS proposed a potential new selection process for H-1B visas that would specifically prioritize petitions for higher-paid roles in lieu of the random lottery that has been used since the program's inception. The majority of respondents in our survey (59%) said that such a change would impact their organization's sponsor-ship process positively, as their salaries were on the higher end for sponsored roles. However, other employers have expressed concern that such a system would make it challenging—if not impossible—for entry-level employees, or those in less profitable industries, to secure work authorization.

How do you expect the recent proposal to change the H-1B lottery to a wage-based selection system to impact your company's sponsorship process?	Total
Positively, as the roles we sponsor are on the higher end of the salary range	59%
Negatively, as we feel we will be less likely to have our applications accepted given the salaries for the role	24%
Not applicable	7%
Not sure	10%

Points-Based Immigration System

The United Kingdom released this year the details behind its new points-based immigration system, which encourages high-skilled, employment-based immigration. Many have called for the U.S. to enact a similar model, for which employers in our survey were largely in favor. Sixty percent said their business would prefer the U.S. move to this model in lieu of the current quota system.

Employers pointed to the following positives of such a system:

What do you view as the top 3 potential positives of the U.S. switching to a points-based Immigration system?	Total
Increased transparency by having clearly defined selection criteria	51%
Greater flexibility in the system to meet changing demands in the U.S.	43%
More fairness for applicants by eliminating some biases and perceived randomness	42%

On the other hand, 32% of respondents thought that a points-based system might actually be more difficult to adjust to changes in demand, while 31% thought that it might be skewed to overlook undervalued and difficult-to-measure qualities like ability and attitude. Other potential negatives that employers cited were:

What do you view as the top 3 potential negatives of the U.S. switching to a points-based Immigration system?	Total
Data privacy concerns due to the amount of information the government would need to collect to assign a score	29%
The possibility that a points-based system could be seen as counter to the country's history of welcoming all	33%
A greater risk for abuse by employers than that of the current system	31%

The "Heartland" Visa

Throughout the course of the 2020 Presidential Election, multiple candidates discussed the creation of a place-based visa that incentivizes employers and talent to bring business, jobs and skills to non-coastal or rural areas looking to boost economic growth. Most recently, President-elect Joe Biden included the creation of such a visa in his immigration platform, which also includes an expansion of current quotas for nonimmigrant visas and green cards.

Employers in our survey expressed support for this type of visa, with 67% of respondents saying that they could foresee their organization using it. It is worth noting that only 10% of our respondents were actually located in the Midwest themselves.

If a "Heartland Visa" were to be introduced, is it something you could foresee your organization using?	Total
Yes	67%
No	14%
Not sure	16%
Not applicable	3%

Conclusion

While overall unemployment remains high at 6.5% due to the continued implications of COVID-19, it is far lower in math and science occupations at 3.0%. The shortage of STEM talent coupled with a more restrictive immigration system over the last four years has employers looking to alternative options to fill these roles at their organizations, including outsourcing, use of remote workers outside of the U.S. or utilizing foreign offices where talent can be more easily placed. The new impact could be hundreds of thousands of high-skilled jobs moving away from the U.S.

To ensure U.S. competitiveness, many employers view foreign talent as critical. Employers are still largely in favor of reform to the U.S. immigration system, despite the organizational difficulties created by changes in policy. Specifically, they support a system that would make it easier secure work authorizations for skilled foreign talent and bring more clarity and transparency to the immigration process. Employers are also interested and willing to try a new points-based immigration system or a regional-based visa type to help bridge the skills gap.

It's been a tumultuous four years in the immigration landscape, and under President-elect Biden, there will likely be further reform. While there have been discussions regarding comprehensive immigration legislation, specifics for what a bill or bills would look like are unknown at this point. However, following the shift in power giving democrats control over both the Senate and House of Representatives, legislation may have a smoother path forward. In the interim, corporations will continue to look for ways to employ skilled foreign nationals inside the U.S. but may resort to hiring them outside the country if future policy proves too onerous.

Survey Methodology

The national survey was conducted online by Envoy Global from November 17 to December 12, 2020 and included 215 employees with direct experience managing the immigration process at their companies. Each respondent is a U.S. resident, 21+ in age and involved in hiring decisions at their company. Their companies have experience in either the visa or green card application process and they are familiar with the process of sourcing foreign talent. Questions covered internal and external global immigration processes and challenges.

About Envoy Global

Founded in 1998, Envoy is a global immigration services provider offering the only immigration management platform that makes it seamless for companies to hire and manage an international workforce. We combine access to top legal talent with proprietary technology to bring efficiency and transparency to the immigration process for employers and employees. Through our platform and services, we empower companies to acquire the best talent regardless of where they live, manage their entire global workforce and enable employees to take advantage of business opportunities around the globe. Envoy serves over 1,000 customers ranging from fast-growth startups to Fortune 50 corporations.