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The H-2B Visa and the Statutory Cap: In Brief

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Summary

The Immigration and Nationality Act (INA) of 1952, as amended, enumerates categories of aliens, known as nonimmigrants, who are admitted to the United States for a temporary period of time and a specific purpose. One of these nonimmigrant visa categories—known as the H-2B visa—is for temporary nonagricultural workers.

The H-2B visa allows for the temporary admission of foreign workers to the United States to perform nonagricultural labor or services of a temporary nature if unemployed U.S. workers are not available. Common H-2B occupations include landscape laborer, amusement park worker, and housekeeper.

The H-2B program is administered by the U.S. Department of Homeland Security's (DHS's) U.S. Citizenship and Immigration Services (USCIS) and the U.S. Department of Labor's (DOL's) Employment and Training Administration. DOL's Wage and Hour Division also has certain concurrent enforcement responsibilities. The H-2B program currently operates under regulations issued by DHS in 2008 on H-2B requirements, by DHS and DOL jointly in 2015 on H-2B employment, and by DHS and DOL jointly in 2015 on H-2B wages.

Bringing workers into the United States under the H-2B program is a multiagency process involving DOL, DHS, and the Department of State (DOS). A prospective H-2B employer must apply to DOL for labor certification. Approval of a labor certification application reflects a finding by DOL that there are not sufficient U.S. workers who are qualified and available to perform the work and that the employment of foreign workers will not adversely affect the wages and working conditions of U.S. workers who are similarly employed.

If granted labor certification, an employer can file a petition with DHS to bring in the approved number of H-2B workers. If the petition is approved, a foreign worker overseas who the employer wants to employ can go to a U.S. embassy or consulate to apply for an H-2B nonimmigrant visa from DOS. If the visa application is approved, the worker is issued a visa that he or she can use to apply for admission to the United States at a port of entry. H-2B workers can be accompanied by eligible spouses and children.

By law, the H-2B visa is subject to an annual numerical cap. Under the INA, the total number of aliens who may be issued H-2B visas or otherwise provided with H-2B nonimmigrant status in any fiscal year may not exceed 66,000. USCIS is responsible for implementing the H-2B cap, which it does at the petition receipt stage. Spouses and children accompanying H-2B workers are not counted against the H-2B cap. In addition, certain categories of H-2B workers are exempt from the cap. Among these categories are current H-2B workers who are seeking an extension of stay, a change of employer, or a change in the terms of their employment.

Employer demand for H-2B workers has varied over the years. In recent years, demand has exceeded supply, and special provisions have been enacted to make additional H-2B visas available. For FY2016, a temporary statutory provision exempted certain H-2B workers from the cap. It applied to H-2B workers who had been counted against the cap in any one of the three prior fiscal years and would be returning as H-2B workers in FY2016. For FY2017 and FY2018, a different type of H-2B cap-related provision authorized DHS to issue additional H-2B visas (above the cap) subject to specified conditions.

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Introduction

In February 2018, in the face of unprecedented employer demand for H-2B workers, a lottery was held for the first time in the history of the H-2B visa program to determine which employer petitions for H-2B workers would be processed.[1] A law subsequently enacted during the 115th Congress authorized the Department of Homeland Security (DHS) to make additional H-2B visas available for the remainder of FY2018 subject to certain conditions. Using that authority, DHS made up to 15,000 additional visas available. FY2018 is the third year in a row that the issuance of H-2B visas beyond the statutory cap has been allowed.

H-2B Nonagricultural Worker Visa

The Immigration and Nationality Act (INA) of 1952, as amended,[2] enumerates categories of aliens,[3] known as nonimmigrants, who are admitted to the United States for a temporary period of time and a specific purpose. Nonimmigrant visa categories are identified by letters and numbers, based on the sections of the INA that established them. Among the major nonimmigrant visa categories is the "H" category for temporary workers. Included in this category is the H-2B visa for temporary nonagricultural workers.[4]

The H-2B program allows for the temporary admission of foreign workers to the United States to perform nonagricultural labor or services of a temporary nature if unemployed U.S. workers are not available. H-2B workers perform a wide variety of jobs. Top H-2B occupations in recent years have included landscape laborer, groundskeeper, forest worker, amusement park worker, and housekeeper. By regulation, participation in the H-2B program is limited to designated countries.[5]

Bringing workers into the United States under the H-2B program is a multiagency process involving the U.S. Department of Labor (DOL), DHS, and the Department of State (DOS). The program itself is administered by DHS's U.S. Citizenship and Immigration Services (USCIS) and DOL's Employment and Training Administration (ETA). DOL's Wage and Hour Division (WHD) also has certain concurrent enforcement responsibilities. The H-2B program currently operates under regulations issued by DHS in 2008 on H-2B requirements, DHS and DOL jointly in 2015 on H-2B employment, and DHS and DOL jointly in 2015 on H-2B wages.[6]

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[1] By contrast, lotteries have been regularly held under the separate H-1B visa for professional specialty workers. For information about the H-1B visa, see CRS Report R43735, *Temporary Professional, Managerial, and Skilled Foreign Workers: Policy and Trends*.

[2] Act of June 27, 1952, ch. 477, codified at 8 U.S.C. §1101 *et seq.* The INA is the basis of current immigration law.

[3] *Alien* is the term used in the INA to describe any person who is not a U.S. citizen or national.

[4] INA §101(a)(15)(H)(ii)(b), 8 U.S.C. §1101(a)(15)(H)(ii)(b).

[5] For 2018, nationals of 81 countries are eligible to participate in the H-2B program. For a list of these countries, see U.S. Department of Homeland Security, "Identification of Foreign Countries Whose Nationals Are Eligible To Participate in the H–2A and H–2B Nonimmigrant Worker Programs," 83 *Federal Register* 2646, January 18, 2018.

[6] U.S. Department of Homeland Security, "Changes to Requirements Affecting H-2B Nonimmigrants and Their Employers," 73 *Federal Register* 78104, December 19, 2008 (final rule); U.S. Department of Homeland Security and U.S. Department of Labor, Employment and Training Administration, "Temporary Non-Agricultural Employment of H–2B Aliens in the United States," 80 *Federal Register* 24042-24144, April 29, 2015 (interim final rule) (hereinafter cited as the 2015 DHS-DOL rule on H-2B employment); U.S. Department of Homeland Security and U.S. Department of Labor, Employment and Training Administration, "Wage Methodology for the Temporary Non-Agricultural Employment H–2B Program," 80 *Federal Register* 24146-24190, April 29, 2015 (final rule).

For work to qualify as temporary under the H-2B visa, the employer's need for the duties to be performed by the worker must "end in the near, definable future" and must be a one-time occurrence, a seasonal need, a peak load need, or an intermittent need.[7] The employer's need for workers generally must be for a period of one year or less, but in the case of a one-time occurrence, can be for up to three years.[8]

In order to bring H-2B workers into the United States, an employer must first receive labor certification from DOL. An interim final rule on H-2B employment that was issued jointly by DHS and DOL in April 2015 establishes a new registration requirement as a preliminary step in the labor certification process; once it is implemented, prospective H-2B employers would demonstrate their temporary need to DOL through this registration process before submitting a labor certification application. (As of the date of this report, however, DOL continues to make determinations about temporary need during the processing of labor certification applications.)[9]

At the same time that the employer submits the labor certification application to DOL, the employer must submit a job order to the state workforce agency (SWA) serving the area of intended employment. The job order is used to recruit U.S. workers. The employer also must conduct its own recruitment.

In order to grant labor certification to an employer, DOL must determine that (1) there are not sufficient U.S. workers who are qualified and available to perform the work, and (2) the employment of foreign workers will not adversely affect the wages and working conditions of U.S. workers who are similarly employed. To prevent an adverse effect on U.S. workers, H-2B employers must offer and provide required wages and benefits to H-2B workers and workers in "corresponding employment."[10] H-2B employers must pay their workers the highest of the prevailing wage rate or the federal, state, or local minimum wage. They must provide a "three-fourths guarantee"; that is, they must guarantee to offer workers employment for at least three-fourths of the contract period. H-2B employers also must pay worker visa fees and certain worker transportation costs. H-2B employers are not required to provide health insurance coverage.[11]

After receiving labor certification, a prospective H-2B employer can submit an application, known as a petition, to DHS to bring in foreign workers. If the petition is approved, foreign workers who are abroad can then go to a U.S. embassy or consulate to apply for H-2B nonimmigrant visas from DOS. If the visa applications are approved, the workers are issued visas that they can use to apply for admission to the United States at a port of entry. H-2B workers can be accompanied by eligible spouses and children, who are issued H-4 visas.

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[7] 8 C.F.R. §214.2(h)(6)(ii)(B).

[8] In addition, under DOL regulations at 20 C.F.R. §655.6: "Except where the employer's need is based on a one-time occurrence, the [certifying officer] will deny a request for an H–2B Registration or an Application for Temporary Employment Certification where the employer has a need lasting more than 9 months."

[9] According to the supplementary information to the 2015 rule, a future "announcement in the Federal Register ... will provide the public with notice of when DOL will initiate the registration process." 2015 DHS-DOL rule on H-2B employment, p. 24052.

[10] "Corresponding employment" is defined in DOL regulations as "the employment of workers who are not H–2B workers by an employer that has a certified H–2B Application for Temporary Employment Certification when those workers are performing either substantially the same work included in the job order or substantially the same work performed by the H–2B workers," with exceptions for certain incumbent workers. 20 C.F.R. §655.5.

[11] H-2B workers, like nonimmigrants generally, are not eligible for federally funded public assistance, with the exception of Medicaid emergency services. See CRS Report RL33809, *Noncitizen Eligibility for Federal Public Assistance: Policy Overview*. Nonetheless, they may be eligible for coverage through a health insurance exchange. See CRS Report R43561, *Treatment of Noncitizens Under the Affordable Care Act*.

An alien's total period of stay as an H-2B worker may not exceed three consecutive years. An H-2B alien who has spent three years in the United States may not seek an extension of stay or be readmitted to the United States as an H-2B worker until he or she has been outside the country for at least three months.

The INA grants enforcement authority with respect to the H-2B program to DHS, but allows for the delegation of that authority to DOL.[12] DHS has delegated that authority to DOL, and now DOL's WHD has responsibility for enforcing compliance with the conditions of an H-2B petition and temporary labor certification.

Seafood Industry Staggered Entry Provision

As part of the labor certification process, prospective H-2B employers must accurately indicate the starting and ending dates of their period of need for H-2B workers. According to the supplementary information to the 2015 DHS-DOL interim final rule on H-2B employment: "An application with an accurate date of need will be more likely to attract qualified U.S. workers to fill those open positions, especially when the employer conducts recruitment closer to the actual date of need."[13] If within a season an employer has more than one date of need for workers to perform the same job, the employer must file a separate labor certification application for each date of need. The employer is not allowed to stagger the entry of H-2B workers based on one date of need.

There is an exception to this prohibition on the staggered entry of H-2B workers, however, that applies to employers in the seafood industry. First enacted as part of the Consolidated Appropriations Act, 2014,[14] and subsequently incorporated into the 2015 DHS-DOL interim final rule on H-2B employment,[15] this provision permits an employer with an approved H-2B petition to bring in the H-2B workers under that petition any time during the 120 days beginning on the employer's starting date of need. In order to bring in the workers between day 90 and day 120, though, the employer must conduct additional U.S. worker recruitment. This provision has been reenacted in appropriations laws for each year from FY2015 through FY2018.[16]

Numerical Limitations

The H-2B program is subject to an annual statutory numerical limit. Under the INA, as amended by the Immigration Act of 1990, the total number of aliens who may be issued H-2B visas or otherwise provided with H-2B nonimmigrant status in any fiscal year may not exceed 66,000.[17] Also, since FY2006 there has been a cap of 33,000 on the number of aliens subject to H-2B numerical limits who may enter the United States on an H-2B visa or be granted H-2B status during the first six months of a fiscal year.[18] This INA amendment, enacted as part of the REAL

[12] INA §214(c)(14), 8 U.S.C. §1184(c)(14).

[13] 2015 DHS-DOL rule on H-2B employment, p. 24060.

[14] P.L. 113-76, Div. H, Title I, §113.

[15] See 20 C.F.R. §655.15(f).

[16] P.L. 113-235, Div. G, Title I, §108; P.L. 114-113, Div. H, Title I, §111; P.L. 115-31, Div. H, Title I, §111; P.L. 115-141, Div. H, Title I, §111.

[17] INA §214(g)(1)(B), 8 U.S.C. §1184(g)(1)(B). The Immigration Act of 1990 is P.L. 101-649. Section 205(a) of that law established the H-2B cap of 66,000.

[18] INA §214(g)(10), 8 U.S.C. §1184(g)(10).

ID Act of 2005, effectively divided the annual H-2B cap of 66,000 into two semiannual caps of 33,000, respectively covering work in the first and second halves of the fiscal year.[19]

Certain categories of H-2B workers are exempt from the cap, including the following:

- current H-2B workers seeking an extension of stay, change of employer, or change in the terms of employment;
- H-2B workers previously counted toward the cap in the same fiscal year;
- fish roe processors, fish roe technicians, and/or supervisors of fish roe processing;[20] and
- H-2B workers performing labor in the U.S. territories of the Commonwealth of the Northern Mariana Islands (CNMI) and/or Guam until December 31, 2019.

As noted, spouses and children who are accompanying H-2B workers are issued H-4 visas and, as such, are not counted against the H-2B cap.

Special H-2B Cap-Related Provisions

Since FY2005, laws have been enacted to provide for the issuance of H-2B visas, or the granting of H-2B status, beyond the statutory cap several times. These laws have included two different types of provisions.

Returning Worker Exemption

The INA was amended during the 109th Congress to add a provision establishing a temporary exemption from the H-2B statutory cap for certain returning H-2B workers. The provision, initially in effect for FY2005 and FY2006, exempted from the cap returning H-2B workers who had been counted against the cap in any one of the three prior fiscal years.[21] This H-2B returning worker provision was subsequently extended for FY2007,[22] and expired at the end of that fiscal year.[23] An H-2B returning worker exemption of the same type was reinstated for FY2016.[24] Bills have been introduced in the 115th Congress to enact temporary or permanent H-2B returning worker exemptions from the statutory cap.[25]

FY2017 and FY2018 Provisions

For FY2017 and FY2018, a different type of H-2B cap-related provision was enacted. For each of these years, laws enacted in the 115th Congress authorized DHS to make additional H-2B visas available beyond the statutory cap after consultation with DOL and "upon the determination that

[19] The REAL ID Act of 2005 is Division B of P.L. 109-13. The provision establishing the 33,000 semiannual cap is Div. B, Title IV, §405.

[20] P.L. 108-287, Title X, Chap. 4, §14006.

[21] P.L. 109-13, Div. B, Title IV.

[22] P.L. 109-364, Div. A, Title X, §1074.

[23] For a discussion of legislative efforts to reenact an H-2B returning worker exemption in the 110th Congress, see archived CRS Report RL34204, *Immigration Legislation and Issues in the 110th Congress* (available to congressional clients upon request).

[24] P.L. 114-113, Div. F, Title V, §565.

[25] There are a variety of proposals. See, for example, H.R. 1941, H.R. 2004, H.R. 4207, and S. 792, as introduced in the 115th Congress.

the needs of American businesses cannot be satisfied" with qualified U.S. workers. Under the provision, the number of additional aliens who could receive H-2B visas each year was limited to "not more than the highest number of H–2B nonimmigrants who participated in the H–2B returning worker program in any fiscal year in which returning workers were exempt from such numerical limitation."[26]

In July 2017, DHS and DOL jointly published a final rule to implement the FY2017 provision.[27] The rule temporarily amended DHS regulations on the H-2B visa to state that for FY2017, DHS "has authorized up to an additional 15,000 aliens who may receive H–2B nonimmigrant visas."[28] The statutory definition of the maximum authorized number (i.e., "the highest number of H–2B nonimmigrants who participated in the H–2B returning worker program in any fiscal year") can be interpreted in different ways, as DHS acknowledged in the supplementary information to the rule. However, the agency determined that 64,716 was the most appropriate maximum number of additional H-2B visas authorized under the special FY2017 provision, this being "the number of beneficiaries covered by H–2B returning worker petitions that were approved for FY 2007."[29] The supplementary information included the following explanation for limiting the FY2017 numerical increase to 15,000:

> Most recently, in FY 2016, 18,090 returning workers were approved for H–2B petitions, despite Congress having reauthorized the returning worker program with more than three-quarters of the fiscal year remaining. Of those 18,090 workers authorized for admission, 13,382 were admitted into the United States or otherwise acquired H–2B status.... [T]he Secretary, in consideration of the statute's reference to returning workers, determined that it would be appropriate to use these recent figures as a basis for the maximum numerical limitation under section 543. This rule therefore authorizes up to 15,000 additional H–2B visas (rounded up from 13,382) for FY 2017.[30]

In addition, in implementing the statutory provision, DHS decided to limit eligibility for the additional H-2B workers to certain U.S. businesses. Under the FY2017 rule, the prospective H-2B employer must submit to DHS, along with the H-2B petition, a new attestation form

> evidencing that without the ability to employ all of the H–2B workers requested on the petition ... its business is likely to suffer irreparable harm (that is, permanent and severe financial loss).[31]

In May 2018, DHS and DOL jointly published a final rule to implement the FY2018 provision.[32] The FY2018 rule, which is similar to the FY2017 rule, temporarily amends DHS H-2B regulations to state that for FY2018, DHS has authorized the issuance of up to 15,000 additional

[26] P.L. 115-31, Div. F, Title V, §543; P.L. 115-141, Div. M, Title II, §205.

[27] U.S. Department of Homeland Security and U.S. Department of Labor, Employment and Training Administration, "Exercise of Time-Limited Authority To Increase the Fiscal Year 2017 Numerical Limitation for the H–2B Temporary Nonagricultural Worker Program," 82 *Federal Register* 32987, July 19, 2017 (temporary final rule).

[28] See 8 C.F.R. §214.2 (h)(6)(x)(A) (effective July 19, 2017, through September 30, 2017) in ibid., p. 32998. In the supplementary information to the FY2017 rule, DHS explained that the statutory provision applied only to H-2B workers entering the United States on visas and not to aliens in the United States who were seeking a change of status to H-2B status. Ibid., p. 32989 (footnote 11).

[29] Ibid., p. 32988 (footnote 4).

[30] Ibid., p. 32990.

[31] See 8 C.F.R. §214.2 (h)(6)(x)(B)(2) (effective July 19, 2017, through September 30, 2017) in ibid., p. 32998.

[32] U.S. Department of Homeland Security and U.S. Department of Labor, Employment and Training Administration, "Exercise of Time-Limited Authority To Increase the Fiscal Year 2018 Numerical Limitation for the H–2B Temporary Nonagricultural Worker Program," 83 *Federal Register* 24905, May 31, 2018 (temporary final rule).

H–2B visas.[33] In supplementary information to the FY2018 rule, DHS explained the decision to authorize up to 15,000 additional visas even though all 15,000 additional visas authorized in FY2017 were not used.

> Out of a maximum of 15,000 supplemental H–2B visas for FY 2017, a total of 12,294 beneficiaries were approved for H–2B classification.... [T]he Secretary has determined that it is appropriate to authorize 15,000 additional visas again, as employers will have a longer period in which to submit their petitions due to the earlier publication date of this rule, thereby allowing for the possibility of more petitions being filed this fiscal year than in FY 2017.[34]

The FY2018 rule also includes the same language as the FY2017 rule requiring an employer to submit an attestation along with the H-2B petition evidencing that without the ability to employ all the requested H–2B workers the employer's business will likely to suffer irreparable harm.

Implementation of the Cap

DHS's USCIS is responsible for implementing numerical limits on temporary worker visas (including the H-2B visa), which it does at the petition receipt stage. Under DHS regulations:

> When calculating the numerical limitations ... USCIS will make numbers available to petitions in the order in which the petitions are filed. USCIS will make projections of the number of petitions necessary to achieve the numerical limit of approvals, taking into account historical data related to approvals, denials, revocations, and other relevant factors. USCIS will monitor the number of petitions (including the number of beneficiaries requested when necessary) received and will notify the public of the date that USCIS has received the necessary number of petitions (the "final receipt date").... If the final receipt date is any of the first five business days on which petitions subject to the applicable numerical limit may be received (i.e., if the numerical limit is reached on any one of the first five business days that filings can be made), USCIS will randomly apply all of the numbers among the petitions received on any of those five business days.[35]

In one recent fiscal year, the final receipt date announced by USCIS ended up being too early. For FY2015, USCIS announced on April 2, 2015, that March 26, 2015, was the final receipt date for new H-2B petitions. The agency had accepted about 3,900 H-2B petitions for FY2015 through March 26, 2015, which it believed was sufficient to reach the annual 66,000 cap. In early June 2015, however, USCIS announced that it would reopen the H-2B cap for the second half of FY2015 and accept additional petitions for new H-2B workers. It offered the following public explanation:

> USCIS continues to work in collaboration with DOS to monitor the issuance of H-2B visas and has determined that as of June 5, 2015, DOS received fewer than the expected number of requests for H-2B visas. A recent analysis of DOS H-2B visa issuance and USCIS petition data reveals that the number of actual H-2B visas issued by DOS is substantially

[33] See temporary 8 C.F.R. §214.2 (h)(6)(x)(A) (effective May 31, 2018, through September 30, 2018) in ibid., p. 24917. In the supplementary information to the FY2018 rule, DHS explained that the statutory provision applied only to H-2B workers entering the United States on visas and not to aliens in the United States who were seeking a change of status to H-2B status. Ibid., p. 24908 (footnote 14).

[34] Ibid., p. 24908.

[35] 8 C.F. R. §214.2(h)(8)(ii)(B). For a discussion of USCIS implementation of the H-2B cap over the years, see U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, *H-2B Usage and Recommendations*, Fiscal Year 2016 Report to Congress, July 22, 2016, https://www.dhs.gov/sites/default/files/publications/U.S.%20Citizenship%20and%20Immigration%20Services%20-%20H-2B%20Usage%20and%20Recommendations.pdf.

> less than the number of H-2B beneficiaries seeking consular notification listed on cap-subject H-2B petitions approved by USCIS. In light of this new information, USCIS has determined that there are still available H-2B visa numbers remaining for the second half of the FY15 cap.[36]

Following a brief reopening, USCIS announced that June 11, 2015, was the final receipt date for new H-2B worker petitions for FY2015.

FY2018 Cap

The last sentence in the regulatory provision above describes a random selection process (lottery) that must be used if the final receipt date occurs within the first five days of accepting petitions subject to a numerical limit. The first such lottery was held under the H-2B program for petitions filed by employers seeking to hire H-2B workers during the second half of FY2018, which began on April 1, 2018.

In accordance with H-2B regulations, January 1, 2018, was the first date that employers could submit H-2B temporary labor certifications to DOL requesting a work start date of April 1, 2018. On January 1, 2018, DOL received about 4,498 applications requesting an April 1, 2018, start date; those applications covered 81,008 workers. In response, DOL announced a process change. It indicated in a *Federal Register* notice that it would not begin releasing certified H–2B applications, which employers need in order to petition USCIS for H-2B workers (see "H-2B Nonagricultural Worker Visa"), until February 20, 2018, and on that date, it would issue such certified applications in order of receipt.[37] DOL offered the following explanation for adopting this procedure:

> This process change will allow employers who filed promptly on January 1, 2018, sufficient time to meet regulatory requirements, including the recruitment and hiring of qualified and available U.S. workers, thus preserving the sequential order of filing that took place on January 1, 2018, to the extent possible.[38]

On March 1, 2018, USCIS announced that in the first five business days of accepting H-2B petitions for the second half of FY2018, it had received petitions requesting about 47,000 H-2B workers subject to the statutory cap. It further reported that it had conducted a lottery on February 28, 2018, to randomly select a sufficient number of these petitions to meet the statutory cap.[39]

As discussed, on May 31, 2018, USCIS published a final rule authorizing the issuance of up to 15,000 additional H–2B visas for FY2018 (see "FY2017 and FY2018 Provisions"). In the first five business days of accepting petitions under this supplemental cap, USCIS received petitions for more beneficiaries than the number of H-2B visas available. As a result, it conducted a second

[36] U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, "USCIS to Reopen H-2B Cap for the Second Half of Fiscal Year 2015," news alert, June 15, 2015, http://www.uscis.gov/news/alerts/uscis-reopen-h-2b-cap-second-half-fiscal-year-2015.

[37] U.S. Department of Labor, Employment and Training Administration, "Labor Certification Process for the Temporary Employment of Aliens in Non-Agricultural Employment in the United States," 83 *Federal Register* 3189, January 23, 2018.

[38] Ibid., p. 3190.

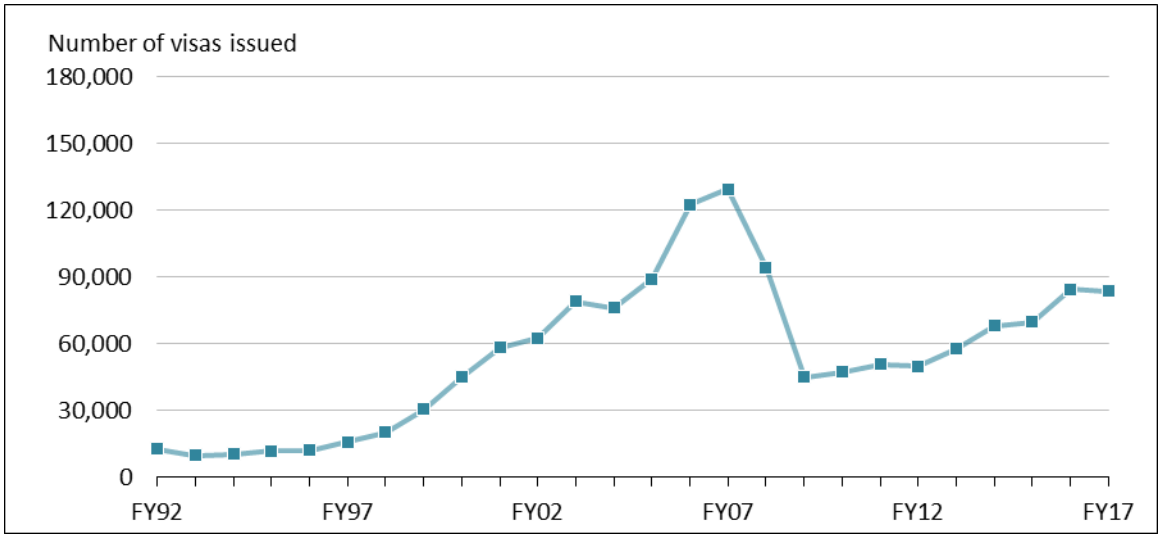
[39] U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, "USCIS Completes Random Selection Process for H-2B Visa Cap for Second Half of FY 2018," news release, March 1, 2018, https://www.uscis.gov/news/news-releases/uscis-completes-random-selection-process-h-2b-visa-cap-second-half-fy-2018-0.

FY2018 H-2B lottery on June 7, 2018, to randomly select a sufficient number of petitions to meet the supplemental cap.[40]

H-2B Visa Issuances

Figure 1 provides data on H-2B visa issuances from FY1992 through FY2017. These data offer one way to measure the growth of the H-2B program over the years. As explained above, the visa application and issuance process occurs after DOL has granted labor certification and DHS has approved the visa petition.

Figure 1. H-2B Visas Issued, FY1992-FY2017



Source: CRS presentation of data from U.S. Department of State, Bureau of Consular Affairs.

As illustrated in **Figure 1**, the number of H-2B visas issued generally increased from FY1992 until FY2007, when H-2B visa issuances reached a highpoint of 129,547 (see the **Appendix** for yearly visa issuance data). H-2B visa issuances fell after FY2007 with the start of the economic recession, but, as shown in **Figure 1**, they have generally been increasing since FY2009.

In FY2005, FY2006, FY2007, FY2016, and FY2017, as discussed, temporary provisions established exceptions to the statutory annual cap of 66,000. In some other years in which visa issuances surpassed 66,000, it seems reasonable to assume that the H-2B cap was exceeded given the magnitude of the numbers.[41]

Conclusion

With employer demand for H-2B visas exceeding supply, H-2B admissions and the statutory cap are once again receiving attention. While previous Congresses considered broad immigration reform bills that included proposals for new temporary worker programs to address any perceived shortfalls in the supply of foreign workers, any legislative efforts to address the numerical

[40] U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, "USCIS Completes Lottery for Temporary Increase in FY 2018 H-2B Cap," news alert, updated June 11, 2018, https://www.uscis.gov/news/alerts/uscis-completes-lottery-temporary-increase-fy-2018-h-2b-cap.

[41] It should be noted, however, that for various reasons not all visas issued during a fiscal year necessarily count against that year's cap or, in some cases, any year's cap.

limitations on nonagricultural guest workers in the near term seem likely to be focused on the existing H-2B program.

Appendix. H-2B Visa Issuances

Table A-1. Number of H-2B Visas Issued, FY1992-FY2017

Fiscal Year	H-2B Visas Issued
1992	12,552
1993	9,691
1994	10,400
1995	11,737
1996	12,200
1997	15,706
1998	20,192
1999	30,642
2000	45,037
2001	58,215
2002	62,591
2003	78,955
2004	76,169
2005	89,135
2006	122,541
2007	129,547
2008	94,304
2009	44,847
2010	47,403
2011	50,826
2012	50,009
2013	57,600
2014	68,102
2015	69,684
2016	84,627
2017	83,600

Source: CRS presentation of data from U.S. Department of State, Bureau of Consular Affairs.

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