



**CONGRESSIONAL BUDGET OFFICE
ESTIMATE OF COSTS
OF PRIVATE-SECTOR MANDATES**

June 21, 2000

**H.R. 4227
Technology Worker Temporary Relief Act**

As ordered reported by the House Committee on the Judiciary on May 17, 2000

SUMMARY

H.R. 4227 would create several new private-sector mandates for businesses that hire H-1B visa holders. H-1B workers are skilled foreign workers admitted temporarily to the United States to work for domestic employers. Those mandates include new restrictions on H-1B holders' salaries and working conditions, new processing and noncompliance fees, and new reporting requirements. CBO estimates that the costs of those mandates would exceed the annual threshold established in the Unfunded Mandates Reform Act (UMRA) for the private sector (\$109 million in 2000, adjusted annually for inflation) for each of the first five years following enactment. The bill would, however, benefit such businesses by easing current legal limits on the number of H-1B visas that may be issued.

PRIVATE-SECTOR MANDATES CONTAINED IN BILL

H.R. 4227 would require all employers of H-1B visa holders to observe new restrictions on H-1B holders' salaries and working conditions, to pay new processing and noncompliance fees, and to comply with new reporting requirements. The bill would also extend a current mandate on "H-1B-dependent" employers.

Several provisions in H.R. 4227 would modify the conditions under which businesses may legally hire H-1B visa holders. First, the bill would require employers to hire H-1B holders on a full-time basis only. H-1B employees would have to work for at least 35 hours per week. Second, the bill would require employers to pay all new H-1B employees wages of at least \$40,000 per year (excluding certain education and research workers). Businesses

seeking H-1B visa holders for positions in physical therapy would be required to hire persons with at least master's (or equivalent) degrees or state licenses.

Other provisions in H.R. 4227 would require employers to pay two new fees for each petition to hire an H-1B visa holder that they submit to the Immigration and Naturalization Service (INS). Employers of current H-1B visa holders who wished to extend their stay and employers who hire H-1B visa holders currently employed by other businesses would also be required to pay those fees. The bill would create a new \$200 processing fee and a new \$100 compliance fee for each petition.

H.R. 4227 would also require all employers of H-1B visa holders to make certain notices and certifications to the federal government. The bill would require businesses with less than \$250,000 in assets to provide the government with documentation of their business activities when petitioning for permission to hire H-1B visa holders. In addition, H.R. 4227 would require all employers to provide the Department of Labor with a copy of their H-1B employees' W-2 tax forms and with certain employee personal and employment data.

The bill would extend a current mandate for "H-1B-dependent" employers. (An H-1B-dependent employer is a business where at least 15 percent of the employees have H-1B visas.) The American Competitiveness and Workforce Improvement Act of 1998 prohibits any H-1B-dependent employer from hiring any H-1B visa holder within 90 days of firing a non-H-1B employee from a similar position. That mandate is scheduled to expire on October 1, 2001, but H.R. 4227 would extend the mandate for an additional year.

ESTIMATED DIRECT COST TO THE PRIVATE SECTOR

CBO estimates that the total costs to the private sector of complying with the various mandates in H.R. 4227 would exceed the annual threshold established in UMRA for the private sector (\$109 million in 2000, adjusted annually for inflation) for each of the first five years following enactment. The most costly mandates would be the wage requirement and the new fees.

Based on data on recent recipients of H-1B visas provided by the INS, CBO estimates that employers would have to spend over \$200 million per year in order to comply with the requirement to pay all H-1B visa holders wages of at least \$40,000 per year. This estimate accounts for only those H-1B visas that would be issued under the current statutory caps. CBO estimates that private-sector employers would have to pay over \$40 million per year beginning in 2001 because of the new processing and noncompliance fees.

CBO cannot estimate costs for the remaining mandates because there is very little available information regarding employers of H-1B visa holders. CBO expects, however, that the cost of the mandates that would require employers to make certain notices and disclosures to the federal government would be relatively small in relation to the costs of the other mandates. In the case of the W-2 and business activities mandates, businesses would not need to expend significant amounts of effort to gather and present the information required for those disclosures. CBO cannot estimate the cost of the mandate on employers that hire H-1B visa holders for positions in physical therapy because published INS data are not sufficiently detailed. Although UMRA is unclear about how to measure costs associated with extending an existing mandate that has not yet expired, CBO expects that the cost of extending the prohibition on firing current employees would be low because, according to government sources, there are very few H-1B-dependent employers.

BASIS OF ESTIMATE

CBO's estimates for the costs of the private-sector mandates in H.R. 4227 are based primarily on data collected and published by the INS. Those data come from employers' petitions for permission to hire such workers. Those petitions contain, among other things, wage or salary information and the type of work that the H-1B visa holder would perform. Data on personal characteristics, including information on H-1B visa holders' academic and professional backgrounds, comes from the H-1B visa holders themselves, who are required to demonstrate their qualifications before they may be hired. Data on employers of H-1B visa holders are scarce. Employers make attestations that they meet eligibility requirements for participation in the H-1B program to the Department of Labor, but those attestations contain very little information about employers other than their names.

To estimate the direct cost of the mandate requiring employers to pay H-1B visa holders at least \$40,000 per year, CBO first used information collected by the INS concerning H-1B visas issued from October 1999 to February 2000. The INS data contains information about salary distributions and the number of visas issued for each of nearly twenty broadly defined occupations. CBO used those data to estimate for each occupation the proportion of individuals earning less than \$40,000 and the average amount by which those individuals' earnings fall short of \$40,000.

Next, CBO used the current statutory caps to estimate the number of H-1B visa holders in the United States for whom the mandate would apply for years 2001 through 2005. Last revised in 1998, the number of H-1B visas that may be issued for each year currently stand at 107,500 for 2001 and 65,000 for each subsequent year. Because H-1B visas are valid for

three years, the number of H-1B visa holders for whom the mandate would apply would be 107,500 in 2001, but 172,500 in 2002, 237,500 in 2003, and 195,000 in 2004 and 2005.

Based on those figures and the INS data, CBO estimates that the number of H-1B visa holders earning less than \$40,000 would be roughly 25,000 in 2001, 41,000 in 2002, 56,000 in 2003, and 46,000 in 2004 and 2005. Further, CBO estimates that the amount that employers would have to spend to pay those workers at least \$40,000 per year would be approximately \$210 million in 2001, increasing to roughly \$470 million in 2003 before falling back to about \$390 million for the next two years.

These estimates are subject to a number of limitations. First, they are based on limited salary data for a single six-month period in which the INS issued 74,000 H-1B visas. Second, the estimates depend heavily on the estimated proportion of H-1B workers earning less than \$40,000 and their estimated average earnings for each occupation. Third, CBO attempted to account for the bill's exemption for H-1B workers employed by colleges and universities, but limitations in the data made such accommodation difficult. Different sample periods and different assumptions would produce different results. CBO's estimates also do not take into account the adjustments that employers could make in response to the mandate. Many employers could choose to change their hiring practices or increase H-1B employees' wages relative to other compensation while leaving total compensation largely unchanged.

CBO's estimates for the costs of the new processing and compliance fees are based on data relating to the number of H-1B visas issued between October of 1999 and February of 2000. Estimates for the numbers of H-1B visa holders who extend their stays in the United States and who switch employers are also based on recent historical data. A more complete discussion of the collections from the two fees may be found in CBO's federal cost estimate for H.R. 4227 issued on June 12, 2000.

PREVIOUS CBO ESTIMATE

On April 10, 2000, CBO issued an estimate for S. 2045, the American Competitiveness in the Twenty-First Century Act of 2000, as ordered reported by the Senate Committee on the Judiciary on March 9, 2000. That bill would extend two existing private-sector mandates on employers of H-1B visa holders. The only mandate found in both bills is the extension of the requirement that prevents H-1B-dependent employers from firing current employees within 90 days of hiring an H-1B visa holder.

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