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TECH STARTUPS SAY NEW PAY RULES FOR H-1B VISAS ARE UNAFFORDABLE

New restrictions intended to protect US workers curb access to pool of highly skilled foreign labor.

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New rules from the Trump administration restricting skilled foreign workers are unnerving US startup hubs, as founders and investors say the limitations will hamstring their ability to recruit top-tier talent to grow their businesses.

The changes to the H-1B visa program announced in October will make qualifying for the work visas much tougher and compel employers to pay foreign workers drastically higher wages.

Those rules hit especially hard for technology startups, whose founders and rank-and-file are often immigrants and which usually pay employees a lower salary but compensate with stock options. Many salaries under the new rules start at \$208,000, even for inexperienced workers.

"It's already expensive, it was already a high bar, and we are making it prohibitive," Kate Mitchell, co-founder of venture-capital firm Scale, said of the H1-B program.

The administration has said the rules are designed to ensure US workers get priority for jobs.

"For too long, foreign worker programs have been abused at the expense of American workers," a spokesperson for the Labor Department said. The new rules "will help put an end to these harms."

The H1-B rules are the latest in a string of immigration restrictions dating back to the travel ban against citizens from predominantly Muslim countries that Mr. Trump issued a week after his inauguration. The cumulative effect has left some tech startups weary of doing business here, founders say.

Some founders say they are shifting hiring and growth plans away from the US, establishing engineering hubs in Eastern Europe and sending new recruits from American universities who would require a US visa to work instead at satellite offices in Canada.

Nearly a third of all venture-backed startups are founded by immigrants, according to a 2016 report from the National Bureau of Economic Research. More than half of startups valued at \$1 billion or more have at least one immigrant founder, according to a 2018 paper from the National Foundation for American Policy, a nonpartisan think tank.

Several of the highest-valued venture-backed companies today, including payments company Stripe and stock-trading app Robinhood, have at least one immigrant founder and collectively thousands of employees.

Much of the high-tech industry has long wanted overhauls to the H-1B program so companies have an easier path to obtain visas in a competitive hiring environment. The administration says low-cost foreign workers are taking jobs from Americans.

The salary jump isn't the change US tech companies had in mind. Under the changes, an entry-level computer programmer in San Francisco would be required to receive a salary of \$111,946, compared with the previous wage requirement of \$78,125, according to Labor Department data.

For more than 18,000 jobs, including a number of common tech jobs such as a San Francisco-based software developer, the Labor Department has determined a salary floor of \$208,000 annually, regardless of skill. Many startups aren't able to bear these costs. Equity, bonuses and other types of compensation don't count toward the salary requirements, according to government rules.

"I just honestly don't see how we can hire other people who need H-1B sponsorship," said Marcie Black, co-founder and chief executive of Massachusetts-based medical technology startup Advanced Silicon Group, which builds sensors that could be used to improve the accuracy of rapid tests to detect diseases – crucial technology in a pandemic. That poses a problem: Roughly nine out of every 10 applicants for open positions at her startup aren't US citizens.

An analysis from the National Foundation for American Policy found the wages mandated under the new rule are significantly higher than current market wages.

A second set of rules set to take effect in December will narrow the types of degrees that could qualify an applicant and shorten the length of visas for certain contract workers. Ken Cuccinelli, the No. 2 official at the Department of Homeland Security, said he expects about one-third of H-1B visa applications would be rejected under the new restrictions.

Advocates of H-1B visa overhauls point to outsourcing companies that pay foreign workers below-market wages, a practice that has slowed under the Trump administration. The US rejected 21 percent of new applicants in 2019 compared with 6 percent in 2015, according to an analysis of government data. The Trump administration also reversed an Obama-era initiative to create a temporary pathway for foreign-born entrepreneurs to build startups in the US.

The US chapter of the Institute of Electrical and Electronics Engineers, a trade group for technical professionals, supports the higher salary mandates.

"If they are that talented, they should be paid more than average because that's what talented people get paid," said Russell Harrison, director of government relations for IEEE-USA. But he also wants to see changes that would make green cards more accessible to skilled foreign workers and entrepreneurs. Because recipients of H-1B visas need to be sponsored by an employer, startup founders have a more complicated path qualifying for them – green cards would make them less dependent on those employers.

Technology companies, trade groups, universities and health-care organizations have filed lawsuits against the new rules, arguing, among other things, that the administration circumvented the established rule-making process and didn't adequately weigh the effect of the changes on employers and existing visa holders. A preliminary ruling on at least one of the lawsuits could come as soon as mid-November. The future of the H-1B visa program also will be shaped by the outcome of presidential election Tuesday.

Jagadishwar Sirigiri received approval for three H-1B applicants to join his Massachusetts-based company just weeks before the new wage rules took effect. Bridge12 Technologies Inc., which Mr. Sirigiri founded 11 years ago and partially bootstrapped with his own money, builds advanced high-frequency microwave systems used by the Defense and Energy Departments and the National Institutes of Health, among other customers. Mr. Sirigiri said he is constantly struggling to find qualified workers.

He said he likely can't pay the higher salaries and will focus on hiring less-qualified US residents and training them on the job, and hope they stick around.

"As an entrepreneur I really don't understand how it's possible to make money at those insane wages," he said. "I have to run a business and balance the books."