

Potential Changes to H-1B Cap Lottery System

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In accordance with President Trump's "Buy American/Hire American" executive order, CIS may soon propose a rule to change the current procedures for the H-1B cap lottery process. It is expected in 2019 that the number of H-1B filings will far surpass the numerical limit again, so these proposed changes could affect how U.S. employers look at H-1B cap filings.

Three potential changes include:

- Switching the order in which the Regular Cap and Master's Degree Cap are selected-the change would have the Regular Cap lottery process go first
- Requiring companies to preregister for H-1B cap lottery filings
- Giving higher priority and weight to H-1B filings for individuals with higher degrees and higher wages.

So are these proposed changes a good thing or bad thing?

On the surface I think some of these proposed changes are flawed. For example, wages throughout the country are different, and smaller companies in smaller cities should not be penalized in the H-1B lottery process. The H-1B program is not intended for only larger companies in larger cities.

Also, changing the order of the lotteries adversely affects Bachelor's degree H-1B filings. The H-1B program was not intended for those only with a Master's degree or higher, and Bachelor's degree individuals should not be penalized.

On the positive side, a well organized preregistration system could make the overall process more efficient and eliminate the need for employers to file full H-1B submissions that will not be accepted under a lottery system. A poorly run registration system, however, could make an already stressful and cumbersome H-1B cap lottery system even more challenging for employers.

From a legal standpoint, I am not in favor of USCIS trying to change the rules of the H-1B program without congressional review and approval. Over the past two administrations, I think it has become too easy for executive orders and internal policy changes to circumvent the important role of congress to set our immigration laws. This results in inconsistent application of the laws when the laws themselves have not changed.

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