

Published Changes to the H-1B Program Largely as Expected

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On January 31, 2019, the U.S. Department of Homeland Security [published its final rule](#) amending regulations governing H-1B visa petitions that are subject to the annual “cap” of 85,000 available visas. Importantly, this final rule does the following:

- **Reverses the order by which U.S. Citizenship and Immigration Services (USCIS) selects H-1B petitions under the H-1B regular cap and the advanced degree exemption, making it more likely that applicants with advanced degrees from U.S. universities will be selected.** As noted in the related announcement by the Department of Homeland Security on January 30, 2019:

“Effective April 1, USCIS will first select H-1B petitions (or registrations, once the registration requirement is implemented) submitted on behalf of all beneficiaries, including those that may be eligible for the advanced degree exemption. USCIS will then select from the remaining eligible petitions, a number projected to reach the advanced degree exemption. Changing the order in which USCIS counts these allocations will likely increase the number of petitions for beneficiaries with a master’s or higher degree from a U.S. institution of higher education to be selected under the H-1B numerical allocations. Specifically, the change will result in an estimated increase of up to 16% (or 5,340 workers) in the number of selected petitions for H-1B beneficiaries with a master’s degree or higher from a U.S. institution of higher education.”

- **Introduces an electronic registration requirement for petitioners—** although this requirement is suspended for the upcoming (FY2020) cap season, for which employers can submit petitions starting April 1, 2019. Starting in calendar year 2020 (for the FY 2021 cap season), employers will be required to register electronically. By suspending this requirement for the current H-1B cycle, USCIS is attempting to complete user testing and “seek[ing] to ensure that the system is secure, efficient for both stakeholders and USCIS, and the integrity of the H-1B program is maintained.” This move is meant to result in the least disruption to the effective processing of H-1B petitions in the current (upcoming) cycle.

Based on this change:

- Petitioner registrations that are selected will be eligible to file H-1B cap-subject petitions for those selected registrations during the associated filing period, requiring only an investment of time and costs necessary to file the associated H-1B petition(s).
- Conversely, petitioners with registrations that are not selected because of excess demand will no longer have to complete an entire H-1B cap-subject petition, also saving them time and money as compared to the current process.

- Petitioners will not be required to submit fees at the time of registration, but rather, at the time of petitioning for an H-1B visa for a beneficiary based on a selected registration.

A number of public comments were submitted expressing concern about how the government will maintain the integrity of the registration process. Our office will continue to monitor the development of the registration system and related processes, and update you as developments occur. Once implemented, USCIS has assured the public that it will announce the designated electronic registration period at least 30 days in advance for each fiscal year it is required.

These changes come in response to President Trump's [Buy American and Hire American Executive Order](#) issued April 18, 2017. The final rule published yesterday will be effective April 1, 2019—the first day of the filing period of FY2020 H-1B visas.

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