

JANUARY 31, 2019



## USCIS finalizes changes to H-1B lottery

By Jason Gerrol

By notice dated January 31, 2019, the Department of Homeland Security (DHS), and U.S. Citizenship and Immigration Services (USCIS) in particular, issued its final rule changing the process by which H-1B cap subject petitions are selected each fiscal year.

Consistent with the [proposed changes](#) USCIS announced on December 3, 2018, the final rule (1) adds a pre-registration process to the H-1B lottery, and (2) reverses the order by which H-1B petitions are selected in the lottery thereby increasing the total number of petitions selected for H-1B beneficiaries possessing a master's degree or higher from a U.S. college or university.

Importantly, USCIS will only implement the reversed selection process for the Fiscal Year (FY) 2020 H-1B cap filing season (April 2019). In order to make sure the registration system has been properly tested, the final rule's pre-registration requirement is being suspended until at least the FY 2021 H-1B cap filing season (April 2020). Employers will therefore need to [plan on preparing full H-1B petitions](#) for the upcoming FY 2020 H-1B cap filing season, as done in year's past.

### Why is USCIS reversing the order by which H-1Bs are selected?

USCIS has historically conducted their random lottery by first selecting 20,000 H-1B petitions under the master's H-1B cap (or "exemption"), and then selecting an additional 65,000 H-1B petitions from the regular H-1B cap and any petitions not selected in the initial master's H-1B cap selection.

The final rule reverses that order and, beginning with the FY 2020 H-1B lottery, USCIS will first select 65,000 H-1B petitions from the entire pool of regular H-1B cap and master's H-1B cap petitions. A second selection process will then select 20,000 additional H-1B petitions from the master's H-1B cap alone.

By reversing the order, USCIS believes a higher number of H-1B beneficiaries possessing a master's degree or higher from a U.S. college or university will be selected in comparison to years past. Specifically, USCIS calculates the reversal will result in a 16% increase in such beneficiaries, which USCIS believes is consistent with President Trump's [Buy American and Hire American executive order](#), which directed the agency to "suggest reforms to help ensure that H-1B visas are awarded to the most-skilled or highest-paid petition beneficiaries."

## **What is the pre-registration process for new H-1Bs?**

The pre-registration process will not be implemented for the FY 2020 H-1B filing season. Once implemented, likely in time for the FY 2021 H-1B season (i.e., April 2020), employers will no longer prepare and file a complete H-1B petition for selection in the lottery. Rather, employers will electronically register with USCIS during a designated registration period. Employers will be provided with at least 30 days' advance notice of the registration period, which will then remain open for at least 14 calendar days.

There is no fee associated with the registration, although the final rule does indicate a fee may be imposed at a later time. An employer's registration will include various information, such as employer's name, attorney of record (if applicable), beneficiary's name and whether the beneficiary obtained a master's or higher degree from a U.S. college or university, but detailed job information will not be needed at the time of registration.

USCIS will then select the numerical quota of 85,000 new H-1Bs from the registrations, and if selected by USCIS, the final rule provides employers with at least 90 days to prepare and file the full H-1B petition and filing fees with USCIS for adjudication.

USCIS believes adding a pre-registration requirement will not only result in cost savings to employers by avoiding the need to prepare and file a full H-1B petition that may ultimately not be selected in the lottery, but create a much more efficient and orderly H-1B filing process.

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