



GMS Flash Alert

Immigration Edition

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United States - Administration Proposes Changes to Selection System for H-1B Visas

On November 30, 2018, the U.S. Department of Homeland Security (DHS) announced a new proposed rule seeking to make significant changes to the H-1B visa program.¹ The proposed regulation was published for public feedback on December 3, 2018.

Under the new rule, United States Citizenship and Immigration Services (USCIS) proposes to amend the way it selects petitions in the H-1B cap lottery.

USCIS also seeks to implement a new process whereby prospective H-1B employers would register electronically during a designated period and USCIS would then conduct a computer-generated random selection process from this pool of timely filed electronic registrants.²

The new rule has been published in the *Federal Register*, employers and other members of the public will have 30 days to submit comments. Public comments must be received on or before January 2, 2019.

WHY THIS MATTERS

- The change is expected to increase the number of beneficiaries with a master's or higher degree to be selected for an H-1B cap number.
 - The changes to the process could mean new, additional administrative steps on the part of employers and immigration attorneys.
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Background

The H-1B program allows companies in the United States to temporarily employ foreign workers in specialty occupations requiring a bachelors or higher degree, or its equivalent. Annually, USCIS selects at least 65,000 H-1B visas under the H-1B regular cap and reserves another 20,000 visas for those holding advanced degrees from U.S. higher education institutions. When USCIS determines that it has received a sufficient number of H-1B petitions to reach the congressionally-mandated H-1B cap, a computer-generated random selection process, or lottery, is used to select the petitions that are counted towards the H-1B cap.

Proposed Changes

Advanced-Degree Prioritization

- Currently, the advanced-degree lottery is run first and any advanced-degree H-1B cap applicants who have not been selected then enter the H-1B regular cap lottery pool. USCIS plans to change this order of the cap selection lotteries. The proposed rule would reverse the selection order so as to count all registrations towards the projected number required to reach the H-1B regular cap first. Once a sufficient number of registrations or petitions have been selected, USCIS would then select registrations for individuals holding a U.S. advanced degree towards the advanced-degree lottery.
- With this new regulation, any registration for an advanced-degree applicant that is not selected in the regular lottery would be placed into a second lottery, with the goal of maximizing the number of advanced-degree graduates selected against the overall H-1B quota.

Online Registration

- Under the revised H-1B program, employers will need to file a short online form providing basic information about the employing entity and the prospective foreign employee (level of education), in order to register for the lottery. This form may also request information related to the offered position and other data requested by USCIS.
- Employers will register for each foreign beneficiary separately. Each employer may not submit more than one registration per foreign beneficiary.
- The registration period would take place at least 14 calendar days before the H-1B cap filing season opening day and last for at least 14 calendar days. USCIS proposes to give at least 30 calendar days' notice of the registration period for a given fiscal year.

KPMG NOTE

The proposed online registration is a significant undertaking by USCIS and not certain to be implemented by the upcoming FY 2020 H-1B cap season.

Filing Period

- Under the new registration process, full H-1B petitions and supporting evidence will only need to be filed for registrations that are selected in the lottery. Employers will not be allowed to substitute beneficiaries on registrations selected in the lottery.

- If cases are selected, employers will be notified and required to submit their cap petitions within a specific time period of at least 60 days. USCIS may set multiple filing periods so that not all petitions are submitted within the same timeframe.
- USCIS proposes to hold any unselected H-1B registrations so that additional cases can be filed if the annual quota is not reached.

KPMG NOTE

USCIS intends to implement these proposed changes in time for the fiscal year 2020 cap season, which will begin on April 1, 2019. However, it is possible it will postpone the electronic registration requirement to the following H-1B cap cycle if it cannot execute the online system in time. In the event USCIS is able to implement the new H-1B cap program changes for the upcoming FY 2020 cap season, employers should begin identifying individuals requiring an H-1B visa so that they may be timely registered for the H-1B cap lottery.

Employers should expect that USCIS will perform data analysis on the information provided in the online registration tool to uncover patterns of fraud or abuse. Employers could be subject to heightened scrutiny and enforcement actions if USCIS perceives such patterns.

We at KPMG Law LLP in Canada are tracking this matter closely and will keep readers posted of any further developments.

FOOTNOTES:

1 See "[DHS Proposes Merit-Based Rule for More Effective and Efficient H-1B Visa Program](#)," on the USCIS site.

2 See "[Registration Requirement for Petitioners Seeking To File H-1B Petitions on Behalf of Cap-Subject Aliens](#)," published in the *Federal Register* (online).

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