

H1B Updates: Cap H1B Electronic Registration Opens, Trump Era Wage Level Selection Process Delayed

February 10, 2021

The H1B cap registration period for this fiscal year FY 2022 will open at noon EST on March 9, 2021 and will close at noon EST on March 25, 2021. Similar to last year, all H1B cap registrations will cost \$10 per registration and must be submitted online during the open registration period. Following the open registration period, USCIS will conduct a random selection of applications and will notify those selected by March 31, 2021.

As in past years, the H1B quota remains 85,000, and USCIS will use a random computerized lottery to select the registrations. USCIS will conduct two random lotteries to select enough beneficiaries to meet the 85,000 annual cap. First a selection of registrants to meet the regular cap of 65,000 and the second to include U.S. advanced-degree holders who were not chosen in the first lottery, to meet the advanced-degree cap exemption of 20,000. Beginning April 1, 2021 thru June 30, 2021, employers can submit petitions for any selected registrant.

The employer registration accounts are not yet enabled for this fiscal year however your Proskauer representative is closely monitoring all announcements in this regard.

While it appears that employer accounts created last year can continue to be used for this year's registration period, we await formal guidance on the account creation to proceed.

What you can do right now:

Though cap registration will not open until March 9, employers should work with their Proskauer representative to identify H-1B cap needs and gather beneficiary data as soon as possible. For each beneficiary, the employer must provide the following:

- full legal name;

- gender;
- date of birth;
- country of birth;
- country of citizenship;
- passport number; and
- Whether the beneficiary is eligible for the U.S. advanced-degree cap at the time an H-1B cap petition is filed.

DHS Delays H1B Cap Wage Level Selection Process

It was announced that the [implementation of a Trump Administration regulation](#) that would have allocated H-1B cap numbers to beneficiaries paid the highest wage level for their position and geographic area, has been delayed.

The Department of Homeland Security will delay the effective date of its H-1B cap allocation rule to December 31, 2021 in order to provide more time for development, testing, training and public outreach. The wage level selection process was to take effect on March 9, 2021, and would have replaced the U.S. Citizenship and Immigration Services (USCIS) random, computerized H-1B cap lottery with a system based on the Department of Labor's Occupational Employment Statistics (OES) four-level wage system. It would give priority in the H-1B selection process to foreign nationals whose offered salary falls in the highest wage level for their occupation and geographic area.

The H-1B cap wage allocation rule is currently scheduled to take effect on December 31, 2021. As of now, we do not have any indication as to whether the new administration plans any changes with reference to the regulation as currently written. Once implemented, we will conduct further review and evaluation of its implications.