

H-1B Lottery to Take Place a Month Earlier This Year

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Key Points

- New DHS regulation mandates use of an electronic H-1B registration system.
- Registration system will be open for only 20 days.
- Employers who win H-1B lottery but then do not file H-1B petitions may be penalized.

Summary

The Department of Homeland Security (DHS) has finalized new rules for the H-1B lottery process to be inaugurated in 2020. As we described in a prior [alert](#), DHS had proposed a regulation that would require employers to register online during a designated registration period to enter the H-1B visa lottery. This is a departure from the long-standing system of collecting complete H-1B petitions from employers and then selecting the winners of the lottery.

Background

An H-1B lottery has become necessary because, every year since 2013, employers have filed more H-1B petitions than there are H-1B visas available under the law (85,000 per year, of which 20,000 are reserved for beneficiaries who hold a master's degree or higher from a U.S. university). In an effort to reduce the volume of unnecessary filings and continue its transition to online filings, DHS has created the new online registration system. Initially having delayed the rollout of the system by a year, DHS has announced that it has completed a successful pilot testing phase and will implement the system in 2020.

Registration Process

Prior to the H-1B lottery, employers or their agents (including attorneys) will need to register in the DHS system and create an online account. Online registration for the H-1B lottery will be the only way to be considered for an H-1B visa that is subject to the cap of 85,000 per year, so the use of the online registration is mandatory. (Note that institutions of higher education and certain research nonprofit organizations are exempt from the H-1B cap.)

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The H-1B registration period will begin on March 1, 2020, exactly a month earlier than the regular H-1B filing period in years past. DHS plans to close the registration period on March 20, 2020. Each H-1B registration must be accompanied by a fee of \$10, payable with a credit card or from a bank account. The rule specifically says that the lottery registration fee is the responsibility of the employer, so the employer cannot pass it on to the beneficiary of the prospective H-1B petition.

Only limited information will be required for the H-1B registration:

- Employer's name, Employer Identification Number and address.
- Authorized signatory's name, title and contact information.
- Beneficiary's name, gender, date of birth, country of birth, country of citizenship and passport number.
- Whether the beneficiary has obtained a master's degree or higher from a U.S. university.

DHS will conduct the H-1B lottery between March 21 and March 31, 2020, and will notify the winners no later than March 31, 2020. The employers selected in the lottery will then be required to file complete H-1B petitions during the 90 days starting on April 1, 2020. Employers may not substitute beneficiaries for selected H-1B registrations. If approved, H-1B visas will have an effective date of October 1, 2020.

Conclusion

It is imperative to submit H-1B registrations in the beginning of the registration period rather than toward its end in case any technical problems arise with the new registration system. It is also essential to have the prospective H-1B petition carefully evaluated prior to the registration period because DHS plans to penalize employers that submit an H-1B registration, win the lottery, but then decide not to submit the actual H-1B petition. Akin Gump lawyers in the [Immigration Law and Policy](#) practice can help evaluate a potential H-1B case and enter it into the H-1B registration for the upcoming lottery.

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