

PLAN NOW: Critical Changes to the H-1B Lottery Process for Fiscal Year 2021

January 16, 2020

On January 31, 2019, U.S. Citizenship and Immigration Services (USCIS) issued a final rule making significant changes to the H-1B CAP lottery process. This rule added an electronic registration requirement for employers seeking to submit H-1B CAP-subject petitions for their employees. Although this final rule became effective on April 1, 2019, DHS did not publish notice in the Federal Register until January 9, 2020, formally announcing implementation of the new H-1B CAP lottery process. The new H-1B CAP lottery process involves a new H-1B electronic registration process, a \$10 registration filing fee per registration, and a new registration filing timeframe. This new electronic registration process will be implemented this fiscal year (2021), as we begin preparing H-1B CAP petitions utilizing this new system.

A summary of the changes to the H-1B CAP filing process is as follows:

- Employers must create an online registration account with USCIS to register the employer's company information, and each beneficiary for whom the employer will sponsor, in advance of the registration period opening. USCIS will assign each employee with his or her own registration number.
- USCIS will require a \$10 non-refundable fee for each beneficiary registration submitted, with payment available only through <https://www.pay.gov/public/home>.
- Employers must provide the beneficiary's legal name, gender, date of birth, country of birth and citizenship, and passport number for each beneficiary for whom the employer will sponsor, and must state whether the beneficiary has a master's degree or higher from a U.S. institution of higher education, such that the beneficiary is eligible for the advanced degree exemption.
- At the time of submission of the electronic registration, the employer's authorized signatory will be required to certify, under penalty of perjury, as to the accuracy and truthfulness of the information provided in the registration, and that the employer intends to file an H-1B petition on behalf of the beneficiary named in the registration if the beneficiary registration is selected.
- The initial registration period will open on **March 1, 2020 and close on March 20, 2020**; USCIS will announce the actual end date on its website based on the number of registrations that it has received.
- USCIS will notify employers with selected registrations **no later than March 31, 2020**, by email or text message. USCIS will send notices electronically to all employers with selected registrations that they are able to file an H-1B CAP-subject petition on behalf of the individual named in the notice, in accordance with the filing period stated on the notice.
- If USCIS receives more than enough registrations to meet the regular and advanced degree H-1B CAP allotment, all registrations that were not selected in the lottery will remain on a wait list. USCIS will select from those registrations that are on the wait list to meet the numerical allotment.
- Employers with selected registrations may begin filing H-1B CAP petitions **on April 1, 2020**, and will be given **at least 90 days from the date of a registration selection** to file the H-1B CAP petition. USCIS will adjudicate petitions **in the order in which they are received** (i.e. first in, first out).
- USCIS will not consider a cap-subject H-1B petition to be properly filed unless it is based on a valid, selected registration for the same employee and the appropriate fiscal year, unless the registration requirement is

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suspended.

- Attorneys may submit registrations on behalf of employers provided a Form G-28 is submitted on behalf of the employer.
- A Labor Condition Application (LCA) is not required to be completed prior to the electronic registration process, but if the beneficiary's registration is selected, the employer must include a certified LCA with the H-1B petition filing.
- Employers requesting F-1 change of status on behalf of a beneficiary who requires "cap-gap" protections, must file the H-1B CAP petition **BEFORE the employee's optional practical training (OPT) expires**, irrespective of the 90 day filing timeframe allotted to file the H-1B CAP petition upon receiving notification of the registration selection.
- USCIS has not yet announced whether premium processing will be available for H-1B CAP petitions.

It is important to note that the list above is a non-exhaustive summary of the changes to the new H-1B CAP electronic registration process. USCIS will post step-by-step instructions on how to complete the registration process, along with key dates and timelines, on its website as the initial registration period nears.

As 2020 is the first year under which USCIS will implement this new process, we anticipate there will be unexpected glitches with the new system. Therefore, it is extremely important that employers notify Miller Canfield immediately if they wish to file any H-1B CAP petitions. **Miller Canfield must conduct a complete and thorough evaluation of the employee's eligibility for H-1B CAP sponsorship, as well as register the employer under the new electronic registration process, prior to the opening of the initial registration period on March 1, 2020.**

Changes to the H-1B CAP registration process are ongoing, and we will continue to provide updates as they become available.