

Blog Post

Changes Coming Soon to H-1B Work Visa Program?

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By [Rachel L. Perez](#)

Employers are facing a crackdown on the H-1B visa program with a long-awaited immigration reform in the pipeline. On November 30, 2018, Department of Homeland Security (DHS) announced a [notice of proposed rulemaking](#) that seeks to (1) increase the number of H-1B visa recipients who have master's degrees or higher from U.S. academic institutions; (2) ensure "a more meritorious selection" of H-1B visa beneficiaries; and (3) create a modernized online registration process for employers from which the lottery selection process would be conducted.

Employers are alerted that the [proposal](#) could result in an estimated increase of up to 16 percent (or 5,340 workers) in the number of selected H-1B visa recipients with a master's degree or higher from U.S. academic institutions. After the public comment period ends on January 2, 2019, the federal agency plans to have the changes in place by April 1, 2019.

The H-1B visa program allows U.S. employers to temporarily employ highly skilled foreign workers for a maximum of six years. Typically, after the six-year period ends, the H-1B worker must change to another temporary status, seek lawful permanent residence in the United States, or depart the United States.

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U.S. employers have come to rely on the H-1B visa program to the extent that demand for the visa repeatedly exceeds the supply. The increasing demand for H-1B workers has resulted in a randomized lottery selection process being carried out by the U.S. Citizenship and Immigration Services (USCIS) each year. For the past 5 years, USCIS has received more than 100,000 H-1B visa petitions in early April, during what is informally recognized as the H-1B “cap season.”

Federal regulations allocate 65,000 H-1B visas to be granted annually, with an additional 20,000 H-1B visas reserved exclusively for those holding a master’s degree or higher from a U.S. institution of higher education (known as the “advanced degree exemption”). Under the current lottery selection process, H-1B petitions subject to the 20,000 advanced degree exemption are selected first, followed by the 65,000 regular cap.

In an effort to implement the Administration’s “Buy American, Hire American” directive, the agency’s latest proposal aims to bring the best and brightest foreign workers to America by revamping the annual lottery selection process for H-1B hopefuls. The proposed rule would reverse the current selection order so that all H-1B visa petitions—including those eligible under the advanced degree exemption—are applied to the regular cap of 65,000 first. Subsequently, USCIS would then select from the remaining candidates to reach the 20,000 advanced degree cap.

Furthermore, the agency’s proposal would require employers to electronically register with USCIS during a designated registration period. The internet-based electronic H-1B registration process would start before April 1, in advance of the period during which H-1B petitions are accepted by USCIS. Thereafter, the employer would only submit the necessary Labor Condition Application (LCA) to the U.S. Department of Labor and file the corresponding H-1B petition with USCIS after they have been

notified of lottery selection. Any employer who fails to complete the online registration process would be rejected in the lottery for the applicable fiscal year.

According to DHS, the proposed reform is expected to increase the likelihood that H-1B workers with a master's degree or higher from U.S. institutions will be selected in the H-1B lottery. Consistent with the Buy American and Hire American Executive Order, the federal agency hopes this proposal will ensure that "H-1B visas are awarded to the most-skilled or highest-paid petition beneficiaries."

Importantly, shifting to electronic registration is anticipated to reduce the overall costs for H-1B employers by creating a more efficient and cost-effective H-1B cap petition process. According to DHS, the proposed process would equally help to reduce wait times for cap selection notifications by alleviating massive "administrative burdens" on USCIS created by the current paper-based petition selection process, including the physical receipt, processing, and storage of hundreds of thousands of paper-based registration requests.

Employers are invited to comment on the proposed rule before the policy changes take effect. The agency's proposal will not become law until the comment period officially ends on January 2, 2019. In light of this, such changes may not be in place before the FY 2020 filing period begins on April 1.

More information on the proposed rule is available in the Federal Register and can be accessed online [here](#).

Akerman LLP will continue to monitor this situation and report developments as they occur.

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