

Proposed H-1B Cap Registration Fee Rule Cleared by OMB



Article By

[John F. Quill](#)

[Susan J. Cohen](#)

[Mintz](#)

[Immigration Law Blog](#)

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Friday, August 16, 2019

On August 12, 2019, the Office of Management and Budget (OMB) completed its review of a proposed Department of Homeland Security (DHS) regulation regarding a filing fee for H-1B cap registration. This is the next step in the regulatory process towards the USCIS proposal to implement an H-1B cap registration process for the FY2021 H-1B cap for the filing period likely to take place in March or April 2020.

The H-1B cap registration program is part of DHS' Spring 2019 regulatory agenda. As part of H-1B cap registration, USCIS issued a proposed regulation to collect a nominal fee for each H-1B cap registration submission (likely in the range of \$10 or \$20).

The proposed H-1B cap registration rule is expected to be published in the coming days. Once published, the public will be given an opportunity to comment on the proposed registration fee before the rule is finalized based on consideration of public comments.

Background

The H-1B “cap” or “quota” is a limitation on the number of “new” H-1B petitions that can be approved in a fiscal year. The current quota is 85,000, of which 20,000 are reserved for individuals who hold a United States master’s degree or higher degree.

Historically USCIS has accepted H-1B cap-subject petitions in the first five business days in April, six months before the start of the fiscal year. In each of the past several years, there have been far more petitions filed than available H-1B numbers. As a result, USCIS has performed a computer-generated lottery to determine which petitions would be selected.

H-1B Cap Registration Process

Earlier this year USCIS began the process of instituting a registration program that would completely change how cap-subject H-1B visa petition requests are submitted. Under the new system, petitioning employers will no longer submit a full H-1B petition with USCIS filing fees to USCIS. Instead, U.S. employers / petitioners will be required to submit a registration for each qualified H-1B visa beneficiary whom they wish to sponsor in the H-1B cap lottery. The registration will require a number of critical pieces of information about each H-1B beneficiary. If the number of registration submissions exceeds the 85,000 limit, USCIS will conduct a computer-generated lottery to determine which registrations to select.

For each selected registration, the employer / petitioner will then have a window of time to submit a full H-1B visa petition to USCIS. The submission period is expected to be at least 90 days.

Progress Towards Finalizing H-1B Cap Registration

USCIS issued a final regulation on January 31, 2019, which outlined the broad goals for H-1B cap registration, but it has delayed the implementation. Therefore, the new registration process has not yet gone into effect. The completion by OMB of its review is the next step in determining whether petitioning employers must pay a fee for each H-1B cap registration, and if so, the amount of the fee.

It is widely believed that USCIS will finalize the registration fee rule in order to implement the new system in time for the FY2021 H-1B cap for the filing period likely to begin in March or April 2020. To meet this goal, the agency must publish the proposed fee rule, provide for a notice and comment period, and then publish a final regulation regarding the registration fee prior to the next H-1B cap petition filing period.

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