

Alert | Immigration & Compliance



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Preparing for the FY2021 H-1B Cap Season

Recruiters and managers should be prepared to answer questions about the new **H-1B cap registration process**. With this seemingly easier process, which initially requires only a \$10 registration fee and minimal information, companies should consider the following:

- **One registration per beneficiary per company:** Duplicate registrations are **prohibited**. If a company submits more than one registration per beneficiary, **all** registrations filed by that company for that beneficiary will be considered invalid.
- **Companies should not wait for selection results to file a Labor Condition Application (LCA):** To avoid potential case processing delays due to Department of Labor system overload, the LCA should be filed as soon as possible.
- **Heavy demand expected, chances of being selected in H-1B lottery will likely be lower:** Last fiscal year the USCIS received approximately 200,000 H-1B petitions for 85,000 available visa numbers. Under previous rules, employers had to prepare the entire petition and front over \$3,000 in USCIS filing fees. The new H-1B registration and lottery process requires a \$10 registration fee and minimal information, therefore making it easier to attempt to obtain an H-1B visa.
 - Consider filing an H-1B cap case for potential hires and current employees in other nonimmigrant visa status (e.g., Trade NAFTA (TN), L-1B), especially for those whose final nonimmigrant time in the United States maxes out in the next three years.
 - Determine whether other visa options exist for employees who need sponsorship.

- **H-1B cap-gap benefits attach upon filing of the H-1B cap petition:** Cap gap does not attach upon filing the registration.
- **USCIS registration account:** Work with counsel to create an account and establish who at the company controls and has access to the company's account.

Registration / Lottery Overview

- Initial registration period: **March 1 – March 20, 2020.**
 - \$10 government registration fee. Case feasibility and preparation of LCA will entail legal fees.
- USCIS to select registrants no later than **March 31, 2020.**
 - Random selection process on electronic registrations.
 - Selected? Employer has **90-day window** to complete and file the H-1B petition on behalf of the beneficiary.
- Considerations:
 - **Oct. 1, 2020**, is the earliest start date.
 - Beneficiary must possess at least a bachelor's degree or the equivalent by the time of **filing the H-1B petition**, not registration.

Information Required to Initiate an FY2021 H-1B Cap Case

- Proposed job description, including minimum requirements.
- Proposed work location (complete address).
- Proposed salary.
- Applicant's CV and immigration documents.
- Company information: legal name, EIN, company address, and authorized signatory's name/title/contact info.

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Authors

This GT Alert was prepared by **Anna H. Morzy** and **Katherine M. Rozmus**. Questions about this information can be directed to:

- **Anna H. Morzy** | +1 312.456.1026 | morzya@gtlaw.com
- **Katherine M. Rozmus** | +1 312.456.1043 | rozmusk@gtlaw.com
- Or your **Greenberg Traurig** attorney

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