

What Employers Should Know For Next Round Of H-1B Filings

By **Eleanor Pelta and Whitney Lohr** (February 10, 2025, 11:59 AM EST)

Employers should begin assessing their H-1B needs for fiscal year 2026 and preparing for registration. On Feb. 5, U.S. Citizenship and Immigration Services announced that the fiscal year 2026 H-1B cap registration period will run from March 7 to March 24, and that it intends to communicate selections by March 31.

Employers should review the immigration status of their current and prospective foreign national employees, identifying any individuals for whom H-1B status might be beneficial, and noting USCIS' registration fee increase from \$10 to \$215 per beneficiary.

Individuals who may benefit from being in H-1B status include the following:

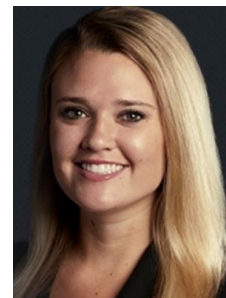
- Recent college and university graduates employed in F-1 optional training status;
- Candidates abroad who are subject to the annual H-1B cap;
- Candidates in another nonimmigrant status (e.g., L-1B) who are approaching the maximum limits of their status and would benefit from a change of status to H-1B;
- Candidates currently employed pursuant to an H-4 employment authorization document who wish to become independent of their spouse's H-1B status or who are concerned about continuity of the H-4 employment authorization document program;
- Candidates in another nonimmigrant status who work for a different employer and would require an H-1B visa to change jobs; and
- Candidates in TN, E or H-1B1 status for whom an employer is considering pursuing permanent residence.

USCIS is limited to a congressionally mandated quota of 65,000 cap-subject H-1B visas per fiscal year. By law, 6,800 of those visas are allocated as H-1B1 visas to nationals of Chile and Singapore. Meanwhile, 20,000 H-1B visas are available in a separate allotment for foreign nationals who hold a master's or other advanced degree from a U.S. institution of higher education.

Only those petitions filed on behalf of foreign nationals who have not previously been counted against



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the H-1B cap in the last six years are subject to the H-1B cap. In addition, H-1B petitions for foreign nationals employed by institutions of higher education, nonprofit research organizations or governmental research organizations are not subject to the cap.

Registration for Cap-Subject H-1B Petitions

Since 2020, USCIS has imposed a two-step process for the selection of H-1B cap-subject submissions, beginning with electronic preregistration. Under this system, petitioners seeking to file H-1B cap petitions, including those who may be eligible for the advanced degree exemption, must first electronically register with USCIS during a designated registration period. This year, the nonrefundable H-1B registration fee has increased to \$215 per beneficiary.

To complete the registration, petitioners will be asked to provide basic information, typically including the following:

- The employer's name, employer identification number and mailing address;
- The employer's authorized representative's name, job title and contact information;
- The beneficiary's full name, date of birth, country of birth, country of citizenship, gender and passport number;
- Whether the beneficiary has obtained a master's or higher degree from a U.S. institution of higher education; and
- The name of the employer's attorney or accredited representative, if applicable.

The initial registration period for the fiscal year 2026 H-1B cap will open at noon EST on March 7 and run through noon EST on March 24.

Random Beneficiary-Centric Selection Process

Once the registration period ends, if USCIS has received enough registrations to reach the cap, it will conduct a random selection process among the registrations received. USCIS received more than 470,000 eligible H-1B registrations during the fiscal year 2025 registration period.

Upon completion of the random selection process, USCIS will individually notify all employers with selected registrations, and only those with selected registrations will be eligible to file an H-1B petition for the fiscal year 2026 H-1B cap. This year, USCIS intends to notify these employers by March 31.

The unselected registrations will be kept on reserve for the applicable fiscal year. If USCIS determines that it needs to increase the number of registrations projected to meet the allocation and select additional registrations, the agency will choose from those on reserve.

Upon adoption of a final rule in January 2024, USCIS implemented a beneficiary-centric selection process aimed at reducing fraud and abuse and ensuring that each beneficiary receives an equal chance of selection.

Under the beneficiary-centric selection system, registration selection is based on each unique beneficiary identified in the registration pool as opposed to each registration. Each beneficiary is

entered in the selection process once, regardless of how many registrations were submitted on their behalf. Beneficiary-centric selection will continue in fiscal year 2026 and beyond.

Filing

Petitioners may file petitions only on behalf of H-1B beneficiaries whose registrations were selected. USCIS will likely announce a filing window of up to 90 days beginning on or around April 1.

If USCIS does not receive a sufficient number of H-1B cap petitions to meet the quota during the initial filing period, as occurred in prior years, a second random selection will be conducted. USCIS will randomly select from among the H-1B registrations that were filed during the March registration period but not selected. USCIS will notify selected employers and their immigration counsel of the results of a second random selection.

In early August 2024, USCIS completed a second random selection for the regular cap, and on Dec. 2, USCIS announced it had received enough petitions to meet the congressionally mandated 65,000 H-1B visa regular cap and the 20,000 H-1B visa master's cap for fiscal year 2025.

Submission of fiscal year 2026 H-1B petitions must be filed on a new edition of Form I-129, which was released on Jan. 17, 2025. USCIS will reject H-1B petitions prepared and submitted on earlier editions of Form I-129.

Actions to Take Now

Employers should begin assessing their fiscal year 2026 H-1B needs now — identifying current and potential foreign national employees for whom H-1B status might be beneficial — in preparation for the registration period. By preparing early, employers can collect and organize applicable data to ensure they are ready for this dynamic, multistep process.

Employers should also remain alert as to regulatory changes that took effect on Jan. 17, pursuant to a **final rule** issued by USCIS in December 2024. Among these changes were revisions to the regulatory definition of "specialty occupation," which forms the basis of H-1B eligibility; clarifications as to the evidentiary requirements for H-1B petitions; and the addition of timeline flexibility for F-1 status holders seeking a change to H-1B status.

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