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H-1B Rule Finalized With Minor Changes to This Year's Lottery

Immigration Legal Update

Today, the Department of Homeland Security posted its final rule amending the H-1B cap regulations. The rule notes two main revisions to the current H-1B cap program: 1) a reversal in the order by which U.S. Citizenship and Immigration Services (USCIS) selects cap-subject petitions for review; and 2) a postponed electronic registration requirement for employers filing the petitions. The changes may be summarized as follows:

1. In April of 2019, Fiscal Year 2020 H-1B petitions in the Bachelor's and U.S. Master's cap categories will all be placed in the regular lottery for 65,000 H-1B spots. After those 65,000 petitions are selected for review, USCIS will execute the second lottery for the 20,000 additional H-1Bs allotted only to employees with a U.S. Master's Degree or higher.
2. In early 2020, employers who wish to file Fiscal Year 2021 H-1B petitions will be required to pre-register for an H-1B number instead of having to file an entire petition in April. USCIS will select the 85,000 H-1B numbers from the pre-registrations and only those employers will be able to submit a petition on April 1, 2020.

The reversal in order of the lotteries for the regular cap and Master's cap is expected to result in an increase of up to 16 percent of Master's Degree petitions being selected for review. The pre-registration — which was proposed for early 2019 and has been postponed until early 2020 — will decrease the number of petitions received by USCIS as well as the time required to prepare petitions that are not receipted in a cap lottery.

This announcement has very little impact on the preparation and filing process for Fiscal Year 2020 cap cases, which many employers are preparing now.