



GMS Flash Alert

Immigration Edition

2019-018 | February 1, 2019



United States – DHS Finalizes H-1B Cap Regulation

The Department of Homeland Security (DHS) has now finalized and posted for [public inspection](#) the final rule governing changes to the H-1B cap selection process. The rule was published in the *Federal Register* on January 31, 2019 and will be effective April 1, 2019.¹ (For prior coverage, see GMS [Flash Alert 2018-159](#), December 11, 2018.)

This final rule reverses the order by which U.S. Citizenship and Immigration Services (USCIS) selects H-1B petitions under the H-1B regular cap and the advanced degree exemption. Following consideration of public comments received, DHS has elected to postpone implementation of the electronic registration requirement for petitioners seeking to file H-1B cap-subject petitions.

WHY THIS MATTERS

- The change is expected to increase the number of beneficiaries with a master's or higher degree to be selected for an H-1B cap number.
- Employers can anticipate new administrative steps upon implementation of the H-1B Cap electronic registration system in FY 2021.

Background

The H-1B visa program allows U.S. companies to temporarily employ foreign workers in specialty occupations.² Each year, USCIS issues at least 65,000 H-1B visas under the H-1B regular cap and another 20,000 visas for those holding advanced degrees from a U.S. higher education institution. In prior H-1B cap cycles, USCIS would first run the advanced-degree lottery to select individuals against the U.S. master's degree exemption. Any unselected advanced-degree H-1B Cap applicants would then enter the H-1B regular cap lottery pool. Effective April 1, 2019, USCIS will now

© 2019 KPMG Law LLP, a tax and immigration law firm affiliated with KPMG LLP, each of which is a Canadian limited liability partnership. KPMG LLP is a Canadian limited liability partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved. Printed in the U.S.A. NDPPS 530159

reverse the selection order so as to count all applicants, including those eligible for the advanced degree exemption, towards the projected number required to reach the H-1B regular cap first. U.S. advanced-degree holders who are not selected in the regular cap would then be selected towards the advanced degree exemption.

This reversed selection order will likely increase the number of beneficiaries with a U.S. master's degree or higher to be selected in the cap lottery. USCIS estimates that the number of H-1B beneficiaries with advanced degrees selected will increase by up to 16 percent (or 5,340 workers).³

This prioritization of U.S. advanced degree holders is in line with President Trump's 2017 [Buy American and Hire American Executive Order](#), which targeted the H-1B program and directed DHS and other agencies to "suggest reforms to help ensure that H-1B visas are awarded to the most-skilled or highest-paid petition beneficiaries."

USCIS has postponed the electronic registration requirement for the FY 2020 cap season to complete user testing and ensure the system and process are fully functional.⁴ Once implemented, petitioners seeking to file H-1B cap petitions will be required to first register electronically during a designated period. USCIS will announce the start of the electronic registration period at least 30 days prior to the commencement of the registration period for each fiscal year. The registration period will last at least 14 calendar days and will start at least 14 calendar days before the earliest date on which an H-1B cap-subject petition may be filed each fiscal year. For each selected registration, the petitioner may proceed with completing and filing an H-1B cap petition during the relevant filing period of at least 90 days.

KPMG NOTE

Employers should now identify individuals requiring an H-1B visa sponsorship and finalize job offers to these applicants. Employers should then provide completed job descriptions for these individuals to their immigration counsel so that Labor Condition Applications (LCA)s may be prepared in a timely manner.

KPMG Law LLP in Canada will continue to monitor the situation, and will endeavor to keep GMS *Flash Alert* readers informed as developments occur.

FOOTNOTES:

1 See "[Registration Requirement for Petitioners Seeking To File H-1B Petitions on Behalf of Cap-Subject Aliens](#)," in the *Federal Register* (online) of January 31, 2019.

2 For a brief background of the [H-1B program](#), see our December 11, 2018 [report](#).

3 See on the USCIS Web site "[DHS Announces Final Rule for a More Effective and Efficient H-1B Visa Program](#)."

4 Ibid.

* * * *

Contact us

For additional information or assistance, please contact your local GMS or People Services professional* or one of the following professionals with the KPMG International member firm in Canada:



Mira Khalid
Associate/Attorney,
U.S. Immigration
KPMG Law LLP – Tax + Immigration,
Canada
Tel. +1-416-943-7830
mirakhalid@kpmglaw.ca



Asha Sairah George
Manager/Attorney
U.S. Immigration
KPMG Law LLP – Tax + Immigration,
Canada
Tel. +1-416-943-7816
ashasairahgeorge@kpmg.ca

** Please note that KPMG LLP (U.S.) does not provide any immigration services. However, KPMG Law LLP in Canada can assist clients with U.S. immigration matters.*

The information contained in this newsletter was submitted by the KPMG International member firm in Canada.

© 2019 KPMG Law LLP, a tax and immigration law firm affiliated with KPMG LLP, each of which is a Canadian limited liability partnership. KPMG LLP is a Canadian limited liability partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

www.kpmg.com

kpmg.com/socialmedia



© 2019 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved. Printed in the U.S.A. NDPPS 530159

The KPMG name and logo are registered trademarks or trademarks of KPMG International.

The KPMG logo and name are trademarks of KPMG International. KPMG International is a Swiss cooperative that serves as a coordinating entity for a network of independent member firms. KPMG International provides no audit or other client services. Such services are provided solely by member firms in their respective geographic areas. KPMG International and its member firms are legally distinct and separate entities. They are not and nothing contained herein shall be construed to place these entities in the relationship of parents, subsidiaries, agents, partners, or joint venturers. No member firm has any authority (actual, apparent, implied or otherwise) to obligate or bind KPMG International or any member firm in any manner whatsoever. The information contained in herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

Flash Alert is a GMS publication of KPMG LLP's Washington National Tax practice. To view this publication or recent prior issues online, please click [here](#). To learn more about our GMS practice, please visit us on the Internet: click [here](#) or go to <http://www.kpmg.com>.