



GMS Flash Alert

Immigration Edition

2023-071 | March 30, 2023



United States – FY 2024 H-1B Cap Lottery Developments; Petition Filing from April 1

On March 27, 2023, the United States Citizenship and Immigration Services (USCIS) announced that the agency has completed the initial electronic registration selection process for the H-1B cap lottery for fiscal year (FY) 2024.¹ Employers with valid, selected registrations may begin filing H-1B cap-subject petitions on behalf of beneficiaries with USCIS starting on April 1, 2023.² The filing period will be open for at least 90 days.

WHY THIS MATTERS

With the USCIS' announcement concluding the initial selection of H-1B registrations for this fiscal year, employers are encouraged to work closely with immigration counsel to timely file H-1B-cap-subject petitions with the USCIS for the selected registrations during the filing period. Employers should also consider using the USCIS premium processing service to expedite adjudication for petitions requiring notice of urgent approval. This would include any H-1B cap applicants who face the possibility of losing work authorization due to lengthy USCIS adjudication times as experienced in previous H-1B cap cycles.

For those not selected in the initial selection process, employers are also encouraged to work with immigration counsel to identify alternatives for such employees who will exhaust their status in the United States prior to the next H-1B cap registration and filing periods.

Background

Each year, 85,000 new H-1B visas are issued – referred to as “the H-1B cap.” Within the H-1B cap, 20,000 H-1B visas are reserved for individuals holding a Master’s degree or higher from a qualifying U.S. university at the time of filing. Employers register for the H-1B lottery by completing a short online form with information about the company and the prospective H-1B candidate.

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The H-1B lottery is conducted once the electronic registrations are submitted during the initial registration period and only those with selected registrations will be eligible to file complete H-1B-cap-subject petitions with the USCIS.

This year, the initial registration period for the H-1B cap opened on March 1, 2023 and ended on March 20, 2023 (due to errors with the registration system). (For prior coverage, see [GMS Flash Alert 2023-027](#), February 1, 2023.)

The USCIS then completed its selection process on March 27, 2023. Registrants' online accounts should reflect one of the following updates for each registration:

- **Submitted:** The registration was submitted, but not selected in the selection process USCIS completed on March 27, 2023. The registration remains eligible for subsequent selections for the fiscal year.
- **Selected:** Selected in the H-1B cap lottery and, so, an H-1B cap petition can be filed during the filing period.
- **Denied:** Multiple registrations were submitted on behalf of the same registrant for the same beneficiary, and as such, the registration was denied.
- **Invalidated-Failed Payment:** Registration submitted but the payment method failed.

FY 2024 H-1B Cap Petition Filing Period

USCIS has announced that the filing period for selected H-1B cap registrations will run from April 1, 2023, for a minimum of 90 days.³ Only petitioners with selected registrations may file H-1B-cap-subject petitions for FY 2024, and only for the beneficiary named in the applicable selected registration notice.

Pre-paid Mailer Suspension and Receipt Notice Delays

The USCIS also announced on March 27, 2023, that it will not use pre-paid mailers to send out any communication or final notices for FY 2024 cap-subject H-1B petitions.

The agency further addressed the delays in petitioners' and/or their legal representatives' receipt of Form I-797, *Notice of Action*, specifically noting that due to increased filing volumes typically seen during H-1B cap filing periods, there are instances where a petition is timely and properly filed, but issuance of the Form I-797 is delayed. The agency advised that petitioners should not submit a second petition if they have delivery service confirmation of their properly-filed H-1B cap application. The USCIS will consider the submission of a second petition as if the petitioner were submitting a duplicate petition, which will result in a denial or revocation of both submitted applications. Instead, the USCIS notes that if more than 30 days have passed since the confirmation of delivery without receipt of Form I-797, petitioners may contact the USCIS contact center.

For more information on the H-1B cap, USCIS has dedicated a [H-1B Cap Season webpage](#).⁴

KPMG INSIGHTS

If employers need assistance identifying and assembling the necessary documents for an H-1B petition, making related applications (e.g., Labor Condition Application), understanding the fees, record retention leading practices, and/or understanding H-1B compliance requirements, they are encouraged to work closely with their qualified immigration counsel or a member of the Immigration team with KPMG Law LLP in Canada (see the Contact Us section below).

KPMG Law LLP in Canada is tracking this matter closely. We will endeavor to keep readers of *GMS Flash Alert* posted on any important developments as and when they occur.

FOOTNOTES:

- 1 See United States Citizenship and Immigration Services, "[FY 2024 H-1B Cap Season Updates](#)" (March 27, 2023).
- 2 Id.
- 3 Id.
- 4 See the USCIS webpage "[H-1B Cap Season](#)".

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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:



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

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