

Update on FY2022 H-1B Electronic Registration Process: USCIS Announcement Imminent

AILA is closely monitoring the status of the announcement by USCIS of the FY2022 registration process for H-1B cap subject nonimmigrant visa petitions. We anticipate that the announcement will be published imminently.

Timing of the FY2022 H-1B Registration Period

USCIS is required by 8 CFR 214.2(h)(8)(iii)(A)(3) to establish an annual initial H-1B registration period that lasts a minimum of 14 calendar days and starts at least 14 calendar days before the earliest date on which H-1B cap-subject petitions may be filed for a particular fiscal year. Accordingly, the latest date that the agency could begin the registration process for FY2022 is March 18, 2021. USCIS is also required to announce the start and end dates of the initial registration period on its website at least 30 calendar days in advance of the start date of the registration process, which would require an announcement no later than February 16, 2021. By way of background, the H-1B registration process for FY2021 began on March 1, 2020, and concluded on March 20, 2020.

On January 8, 2021, the Department of Homeland Security (DHS) published a [final rule](#) that replaces the current random selection process by which USCIS selects H-1B registrations for filing of H-1B cap-subject petitions. The new system will select registrations based on the highest Occupational Employment Statistics (OES) prevailing wage level that the offered wage equals or exceeds for the relevant Standard Occupational Classification (SOC) code and area(s) of intended employment. The rule is currently scheduled to take effect on March 9, 2021.

On January 20, 2021, the Biden Administration issued a [memorandum](#) instructing all federal agencies to consider postponing the effective date of any rule that had been published in the Federal Register but had not yet taken effect for 60 days from the date of the memorandum, until March 20, 2021. The memorandum further provides that the agency may consider extending the effective date of the regulation for more than 60 days. In order to delay the effective date of any rule, the agency must issue a rule in the *Federal Register*.

Although the rule creating the wage-based H-1B selection system falls directly within the scope of this memorandum, USCIS has not yet published the required Federal Register notice postponing the effective date. Thus, the effective date of the rule currently remains March 9. As previously noted, the effective rule would need to be delayed beyond March 18 such that it would be impractical for USCIS to implement the wage-based selection process for the FY2022 initial registration period.

Implementation of the Wage Based Selection System

It should be noted that USCIS has taken preliminary steps within the past few days to incorporate questions pertaining to wage levels and SOC codes into both the [H-1B Registration Tool](#) and [Form I-129](#). Revised versions of both forms containing questions requesting wage level information have recently been submitted to the Office of Management and Budget (OMB) for review and approval. However, if the effective date of the rule is postponed for 60 days or longer and implementation

of the wage-based selection system is delayed, the additional wage-based questions and information will not be required for the FY2022 initial registration period.

AILA has requested that the Biden Administration delay implementation of the wage-based H-1B selection system so that it does not apply to the FY2022 registration process and that it notify stakeholders of all required registration procedures and deadlines as soon as possible so that they have sufficient time to prepare for the upcoming H-1B cap season. We are closely monitoring this situation and will provide further updates as soon as they are available.