



Practice Pointer

Frequently Asked Questions Regarding the New Electronic H-1B Registration Process¹

(Updated on January 9, 2020)²

On December 6, 2019, USCIS announced that it will implement a requirement that employers seeking to file H-1B cap-subject petitions for fiscal year (FY) 2021, including those eligible for the advanced degree exemption, **must first electronically register and pay the associated \$10 H-1B registration fee** to determine if they may file an H-1B cap-subject petition.

DHS published a [notice in the Federal Register](#) on January 9, 2020 to formally announce implementation of the H-1B registration process. USCIS has indicated that it will conduct further outreach and training prior to the initial implementation of the registration system to allow the public the opportunity to familiarize themselves with the electronic registration process. USCIS has also indicated that it will provide guidance on how to use the registration system and prepare registrations before opening the registration system for the initial registration period.

The following practice pointer addresses some of members' most frequently asked questions regarding the electronic H-1B registration process based on information that is available to date. Please note that this document is based on information we knew as of **January 9, 2020**. Some of the advice provided here may change as more information is provided by USCIS and as members begin to experience the electronic registration tool. This document will be updated as more information becomes available.

Electronic Registration Process

1. On what website or platform will USCIS host the electronic H-1B registration process?

AILA anticipates that USCIS will use the [myUSCIS online portal](#) to house the electronic H-1B registration process, based on prior information received from USCIS during the beta-testing phase. The myUSCIS online portal currently permits online filings of forms such as Form I-90, N-400, N-600, and I-130, among others. Although the myUSCIS portal currently lists "H-1B Registration" on the list of forms that are available to file online, the myUSCIS portal does not yet permit H-1B registrations to be prepared or submitted.

On January 9, 2020, USCIS published a [notice in the Federal Register](#) which indicates that employers and authorized representatives may start setting up their registration accounts in

¹ Special thanks to AILA members Lucy Cheung, Susan Im, Ceridwen Koski, JJ Shepherd, and Michael Nowlan for their contributions to this practice pointer.

² The updates made to this document are reflected in [blue](#) font.

advance of the registration period opening. USCIS has indicated that it will post the date that employers and authorized representatives may start setting up accounts on the USCIS website at www.uscis.gov. USCIS has also indicated that it will provide step-by-step instructions on its website for creating an online account. USCIS did not affirmatively indicate that it will be using the MyUSCIS platform in this notice, so AILA will continue to monitor any developments in this area.

For more information on how to create a myUSCIS account, please see this [step-by-step guide](#) provided AILA's Practice & Professionalism Center.

2. Do lawyers need to create a MyUSCIS account for each client, or can she register one account to manage and file applications for all of her clients?

One attorney or accredited representative can have an account and should be able to manage one or more clients under that account.

3. Can an attorney submitting registrations through their online account be signed into from multiple computers/IP addresses at the same time?

There has not been clarification from USCIS yet on this point.

4. Can multiple accounts be created under one lawyer's name, in case of system malfunctions or an account getting locked out?

There has not been clarification on this point from USCIS at this time.

5. What information will be required for the electronic registration process?

The electronic registration form will request basic information about the prospective petitioning company or organization and employee. Based on [screen shots](#) and [information](#) regarding the electronic H-1B registration process that USCIS publicly released in November 2019, it appears that the following information will be required for the registration process:

REGISTRANT INFORMATION:

- Legal name of the prospective petitioning company or organization
- The Doing Business As names of the prospective petitioning company or organization, if applicable
- Employer identification number (EIN) of the prospective petitioning company or organization
- Primary U.S. office address of the prospective petitioning company or organization
- Legal name, title, and contact information (daytime phone number and email address) of the authorized signatory

BENEFICIARY INFORMATION:

- Beneficiary's legal name
- Beneficiary's gender
- Does the beneficiary have a master's or higher degree from a U.S. institution of higher education such that the beneficiary is eligible for the advanced degree exemption under INA 214(g)(5)(C) and requesting consideration under the advanced degree exemption?
- Beneficiary's date of birth
- Beneficiary's country of birth Beneficiary's country of citizenship
- Beneficiary's passport number

6. Will any information regarding the offered position need to be provided as part of the electronic H-1B registration process?

No information regarding the offered position will be required to be provided to USCIS as part of the electronic registration process, such as the job title or the minimum job requirements. Nevertheless, some members indicate that they plan to evaluate the offered position and the credentials of the beneficiary in advance of submitting an electronic registration to ensure that the registration submitted is bona fide and non-frivolous.

7. Will an attestation be required as part of the electronic registration process?

Yes, according to the [screen shots](#) of the H-1B registration tool that USCIS publicly released in November 2019, it appears that at the time of submitting the electronic registration, the authorized signatory will be required to certify, under penalty of perjury, that they have reviewed the registration and that all of the information contained in the registration is complete, true and correct and that the authorized signatory, or the organization on whose behalf the registration is being submitted, intend to file an H-1B on behalf of the beneficiary named in the registration is the beneficiary is selected.

8. Will a Labor Condition Application (LCA) be required as part of the electronic registration process?

An LCA is not required to be completed prior to the electronic registration process. Some practitioners, however, plan to prepare and submit LCAs for beneficiaries in advance of the electronic registration process, as a certified LCA must be included with the H-1B petition filing. You may wish to strategize with your client whether or not to file LCAs for your H-1B cap-subject beneficiaries *in advance* of the registration process in order to be able to more quickly file the H-1B petition upon selection versus *after* the beneficiary's registration is selected in order to maximize the time on the LCA.

9. May attorneys or law firms submit electronic registrations on behalf of clients?

Attorneys may submit registrations on behalf of clients provided they have a Form G-28 submitted for each client. AILA anticipates that the process for electronically submitting Form G-28 for purposes of this electronic registration process will mirror the process by which Form G-28s are currently submitted to USCIS for electronic filings via the [myUSCIS portal](#), such as for

electronically filed Form I-90s. The method for submitting Form G-28 for the electronic registration process may involve a two-factor authorization process.

A practice pointer on how to electronically submit a Form G-28 through the myUSCIS portal is forthcoming from AILA.

10. On what date will the registration process open?

USCIS has [announced](#) that the initial registration period will start March 1, 2020.

11. How long will the initial registration filing window remain open?

The initial registration period will open on March 1. USCIS intends to close the initial registration period on March 20, 2020 and will announce the actual end date on its website based on the number of registrations that it has received.

All registrations submitted during the initial registration period will be included in the lottery if USCIS determines it has received more than enough registrations to meet the numerical limitations, regardless of whether a registration was submitted on March 1 or March 19. However, given that this is the first year the electronic registration system will be used, it is recommended not to wait until the last minute to submit a registration.

12. Is there an option to draft the registration earlier than the submission date for attorney or client review?

It is unclear whether USCIS will allow access to the electronic registration system in advance of the initial registration period, which opens on March 1, 2020. USCIS has stated that it will allow employers and authorized representatives to set up their registration accounts in advance of the registration period opening and will post that date on its website. AILA will monitor this issue and update this practice pointer as soon as more information becomes available.

13. May I edit a registration *after* it has been submitted?

During the registration period, USCIS will permit users to review and edit registrations as many times as needed *before* the registration is submitted. After a registration has been submitted, it appears that USCIS will not permit a registration to be edited. It appears, however, that a registration may be deleted, and then re-drafted and re-submitted prior to the close of the registration period.

14. Once we submit a registration, what if we later want to add more beneficiaries and we're still within the initial registration period? Will that be permitted?

During the registration period, USCIS will permit registrants to continue to submit registrations for additional beneficiaries as needed.

- 15. If an employer submits multiple beneficiaries, let's say ten names, per registration, and later identifies that the employer needs to withdraw one of those ten names, would the system force the employer to withdraw all ten names that had been submitted in that registration, thereby requiring the employer to resubmit the nine names that it did not desire to withdraw from the registration system?**

There is currently no guidance on this question. It appears that USCIS will assign each individual beneficiary with his or her own registration number, which could allow for each beneficiary to be handled separately after submission of a registration. AILA will monitor this issue and update this practice pointer as soon as more information becomes available.

Registration Fee Payment

- 16. Will there be a registration fee required?**

Yes. USCIS will require a \$10 non-refundable fee for each registration submitted.

- 17. What method will USCIS accept payment of the \$10 registration fee?**

USCIS will solicit payment of the registration fee using the [Pay.gov portal](https://www.pay.gov). The registration system will permit payments to be made from a bank account (checking or savings), a credit card, or debit card. No Automated Clearing House (ACH) fee will be charged. The registration fee cannot be made using cash, a certified bank check, or money order. Employers will not need to create a pay.gov account to pay the fee, instead they will just need to provide basic payment details.

- 18. If an employer is registering multiple beneficiaries, can the employer pay for all of their registrations at one time?**

Yes. The registration system will allow for batch payments to pay the fee for multiple registrations submitted simultaneously. Corporate and payment information will only need to be entered one time for each batch of registrations. However, the corporate and payment information will not carry over between each subsequent batch of registrations.

- 19. Who can pay for the \$10 registration fee (e.g. the employer, the legal representative)? Will beneficiaries be allowed to pay the \$10 registration fee?**

Registrants and Form G-28 representatives will be able to pay the registration fee via the Pay.gov portal. In the registration fee final rule, it is noted that “the fee paid for the registration is a responsibility of the petitioning employer, not the foreign worker.”³

Registration Selection Process

- 20. When will USCIS run the H-1B lottery?**

³ 84 FR 60307 (Nov. 8, 2019); *see also* 20 CFR 655.731(c)(9), (10) and (11), which indicates that H-1B attorney fees and filing fees are considered to be business expenses.

The lottery should be run no later than March. 31. In the January 9, 2020 Federal Register notice, USCIS stated that it “intends to notify registrants with selected registrations from the initial registration period no later than March 31, 2020.”

21. How will USCIS notify attorneys and employers of selection in the lottery?

The January 9, 2019 Federal Register notice states that USCIS will send notices electronically to all registrants with selected registrations that they are eligible to file an H-1B cap-subject petition on behalf of the individual named in the notice within the filing period indicated on the notice. The notification will be added to the registration accounts. The account holder who submitted the selected registration will receive notification via email or text message stating that an action has been added to their account, and they will have to log in to their account to see the full notice. USCIS indicates that it intends to notify registrants with selected registrations no later than March 31, 2020.

22. How will the wait list be implemented?

If USCIS receives more than enough registrations than needed to meet the regular H-1B cap and advanced degree exemption, all registrations that were **not** selected in the lottery will remain on reserve for the applicable fiscal year. If USCIS needs to select more registrants to meet the regular cap and/or the advanced degree exemption, USCIS would select from among the registrations that are on reserve a sufficient number to meet the cap or advanced degree exemption, or re-open the registration period if additional registrations are needed to meet the new projected amount.

It is unknown how reserved registrations will be selected, including whether masters’ cases will be prioritized. AILA will monitor this issue and update this practice pointer as soon as more information becomes available.

23. Will there be a notice provided to registrants who are on a "waitlist"?

USCIS has not provided guidance on this, but we believe that USCIS will provide a notification regarding the status of each registration directly on the H-1B electronic platform, which AILA anticipates will be run on the myUSCIS portal.

H-1B Petition Filing Period

24. When will selected registrants be able to begin filing petitions?

Selected registrants should be able to begin filing petitions beginning April 1 (if a business day). Per the preamble to the Registration Requirement Final Rule at 84 Fed. Reg. 910, USCIS stated “petitioners filing a petition based on a selection from the initial registration period may file such petitions on April 1 (if a business day) or the first business day thereafter, as is allowable under current regulations.”

25. Once a registration has been selected, how long will the petitioner have to submit a complete H-1B petition to USCIS?

USCIS will include the filing period in the notice of selection, but petitioners will have at least 90 days from the date of a registration selection to submit a complete H-1B petition to USCIS. Petitions will be adjudicated in the order in which they are received. Note: USCIS will select enough registrations necessary to meet the applicable numerical limitations; therefore, as long as a petition is properly filed during the petition filing window it will be adjudicated.

26. Will petitioners be able to premium process H-1B cap subject petitions?

USCIS has not yet announced whether premium processing will be available for these petitions. Typically, USCIS does not make a decision as to the availability of premium processing until shortly before the cap filing season.

27. The regulations seem to indicate that cases that are not filed will be flagged for fraud, but is there a mechanism to deal with situation where cases aren't filed for legitimate reasons?

DHS has not indicated the exact process through which fraudulent cases will be addressed or any method of redress. However, in the preamble to the H-1B registration final rule, DHS notes that cases that demonstrate a pattern and practice of potential abuse of the registration system will involve a case-by-case review of the facts involved, including any mitigating facts or circumstance. It further notes that registrants that have been found to engage in a pattern and practice of submitting registrations for which they do not file a petition following selection could be subject to monetary fines or criminal penalties pursuant to 18 U.S.C. 1001(a)(3) for making false statements and misrepresentations to the government.

28. If a registrant is selected and has a bona fide reason for a delay in filing past the 90 day, what mechanism can be used to communicate the reasons for the delay?

The preamble to the H-1B registration final rule indicates that “After ... selection, petitioners will be notified by USCIS of the exact amount of time allowed for filing the petition, which will in all cases be at least 90 days, but may be longer at the discretion of USCIS.”⁴

It is not clear at this time whether or not and to what extent there will be a formal mechanism for requesting longer than the minimum 90 day filing period. USCIS has not officially indicated that it will consider *nunc pro tunc* requests along with a late petition filing.

29. If a company has multiple entities (e.g., subsidiary, affiliate, and parent), can each entity submit a registration if they have a Federal Employer Identification Number (FEIN)?

The answer to this question is the same for a normal paper form H-1B and online registration. As long as there is a legitimate business need for each petition/petitioner and there are two real and

⁴ 84 Fed. Reg. 888 (Jan. 31, 2019) at page 910.

separate job opportunities, then each entity can submit a registration for the same beneficiary. Each petitioner must be able to establish the legitimate business need. If not, the petitioner will risk having the approvals for all the cap-subject petitions filed by “related entities” for the same beneficiary denied or revoked.⁵

30. Will there be a paper filing registration option or is this H-1B registration lottery process exclusively online?

Based on the information provided by USCIS to date, registrations must be submitted electronically. Paper filed registrations will not be accepted through the postal service or otherwise.

F-1 Student Issues

31. What effect will the H-1B cap registration process have on H-1B petitions for beneficiaries who are seeking cap-gap protection?

H-1B cap-gap benefits only attach upon filing the H-1B cap petition, not upon filing the H-1B electronic registration. Therefore, only those individuals selected through the H-1B registration process and who have an H-1B cap petition requesting an October 1 start date timely-filed on their behalf will have their duration of status, and any applicable employment authorization, automatically extended until October 1, unless the petition has been rejected, denied, revoked or withdrawn prior to that date.

32. Is a beneficiary required to have completed the qualifying degree requirement at the time of electronic registration or at the time of filing the H-1B petition?

USCIS states multiple times in the preamble to the H-1B registration final rule that establishing eligibility is not a requirement for registration and that it is simply an “antecedent procedural requirement to properly file the petition.”⁶ This would also be consistent with 8 CFR 103.2(b)(1) which requires that eligibility must be established at the time of filing the benefit request.

However, the answer to this question is not as clear in regards to qualifying for the masters’ cap exemption, as a question on the electronic registration form (as reflected in the [screen shots](#) published in November 2019 by USCIS) asks “[d]oes the beneficiary have a master’s or higher degree from a U.S. institution of higher education such that the beneficiary is eligible for the advanced degree exemption under INA 214(g)(5)(C) and requesting consideration under the advanced degree exemption?” This question is phrased in the present tense, indicating that eligibility for the advanced degree exemption may need to be established at the time of registration. AILA flagged this discrepancy in its comment to USCIS on the H-1B registration tool on November 8, 2019, and to date it has not been addressed. AILA will monitor this issue and update this practice pointer as soon as more information becomes available.

⁵ See PM-602-0169 by USCIS posted on March 23, 2018 relating to 8 CFR 214.2(h)(2)(i)(G) addressing the adopted AAO decision in *Matter of S-Inc.*

⁶ See 84 Fed. Reg. 888 (Jan. 31, 2019) at page 900, 903, 907.

Technical Issues

33. If we encounter technical issues with completing and submitting the registration form online, who can we contact to address the issue?

USCIS has not yet addressed this issue. AILA will engage with USCIS to clarify ways in which stakeholders can flag technical issues for USCIS that may arise when completing and submitting the electronic registration.