

USCIS Announces H-1B Lottery Process Unchanged

Article By:

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H-1B lottery deadlines are fast approaching, and two questions have been plaguing employers:

1. When does the registration window open/close?
2. Will the registration process be the same as last year?

With only weeks to go, USCIS has announced that this year's electronic registration and lottery process will be the same as it was last year. This confirms that changes proposed to make the lottery based on wage levels for H-1B positions will not move forward for this year's H-1B selection process.

The [*Modification of Registration Requirement for Petitioners Seeking to File Cap-Subject H-1B Petitions*](#) rule (Modification Rule) that would have prioritized cases based on wage level is under further review, and its effective date has been postponed until at least December 31, 2021. [USCIS announced that it needs more time](#) to test, develop, and implement the necessary modifications.

Under the Modification Rule, instead of a random selection, [USCIS would select and rank cases](#) based on wage level – starting with Level IV and working down. Because no quotas were set on wage levels, the new rule would increase the selection rate of Level III and Level IV cases. Indeed, most of those case would probably be selected. This would give employers more certainty when petitioning for higher paid workers. On the other hand, employers hiring entry-level workers will have more difficulties. Concerns about this and the effect on the economy were raised by companies and organizations during the initial comment period for the Modification Rule.

It is also not clear whether the Modification Rule, as currently written, will be implemented for next year's H-1B lottery. [USCIS noted](#), "During the delay, while [it] works through the issues associated with implementation, DHS leadership will also evaluate the [Modification Rule] and its associated policies, as is typical of agencies at the beginning of a new Administration."

Stay tuned for updates when USCIS confirms the actual registration period (expected to be the first three weeks of March). Jackson Lewis attorneys will provide updates as they become available. In the meantime, please reach out to your Jackson Lewis attorney with any questions about next steps, including how to strategize and determine which employees should be entered into the lottery.

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