

# Proposed H-1B Pre-Registration Rule for FY2020

R. Oliver Branch JD  
November 19, 2018

On October 17, 2018, as part of the US Department of Homeland Security's (**DHS**) "*Fall 2018 Unified Agenda of Regulatory and Deregulatory Actions and Regulatory Plan*," DHS has announced the upcoming publication of a proposed regulation requiring the pre-registration of employers seeking to file H-1B petitions on behalf of applications subject to the H-1B cap for the 2020 fiscal year. The proposed rule was sent to the Office of Management and Budget (**OMB**) on October 17, 2018 and is expected to be published in the Federal Register for public notice and comment by year's end.

The H-1B nonimmigrant visa category is one of the most popular and allows employers to petition for highly educated foreign professionals to work in "specialty occupations" that require at least a bachelor's degree or the equivalent. Over the past few decades, the H-1B has become integral to retaining foreign graduates of US colleges and universities, especially those with degrees in science, technology, engineering, and mathematics (STEM), including subjects in the fields of chemistry, computer and information technology science, engineering, geosciences, life sciences, mathematical sciences, physics and astronomy, social sciences (anthropology, economics, psychology and sociology), and STEM education and learning research.

The proposed rule, which DHS says could "result in better resource management and predictability for both US Citizenship and Immigration Services (**USCIS**) and petitioning H-1B employers," has not yet been published, but is expected to closely mirror the 2011 proposed rule on this topic. Although DHS believes the proposed rule could potentially result in reduced costs and time involved in petitioning for H-1B nonimmigrant workers, they also disclose that some additional costs may be incurred from the electronic registration process by some petitioners.

If, as expected, the newly proposed rule does closely mirror the 2011 proposed rule, employers seeking to petition for H-1B workers subject to the statutory cap would register electronically with USCIS, a process that would take an estimated 30 minutes to complete. Before the petition filing period begins, USCIS would select the number of registrations predicted to exhaust all available visas. Employers would then file petitions only for the selected registrations.

If this proposed registration system works correctly, it could save employers the effort and expense of filing H-1B petitions, as well as Labor Condition Applications, for workers who would be unable to obtain visas under the statutory cap.

In this regard, please stay tuned for additional developments as they roll out prior to the April 1, 2019 filing day for H-1B cap-subject nonimmigrant petitions.