



**Privacy Impact Assessment Update  
for the**

# **H-1B Registration Final Rule**

**DHS/USCIS/PIA-034(a)**

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## Abstract

Department of Homeland Security (DHS), through the publication of a Final Rule, is amending regulations governing H-1B cap-subject petitions, including those that may be eligible for the advanced degree exemption. The Final Rule reverses the order by which U.S. Citizenship and Immigration Services (USCIS) selects H-1B petitions under the H-1B regular cap and the advanced degree exemption, and it introduces an electronic registration requirement for petitioners seeking to file H-1B cap-subject petitions. While the cap allocation amendment will go into effect and apply to FY2020 cap allocations, the electronic registration requirement is being suspended for FY 2020.

DHS will publish a notice in the Federal Register to announce when the registration requirement will first be implemented and will prepare a new comprehensive PIA to include the H-1B registration process, which will supersede the existing DHS/USCIS/PIA-034 H-1B Visa Cap Registration and its updates. This Privacy Impact Assessment (PIA) Update is being conducted because the H-1B Registration Final Rule alters existing practices related to the collection, maintenance, and use of personally identifiable information (PII) from petitioners seeking to file H-1B petitions with USCIS.

## Overview

On April 18, 2017, President Trump issued Executive Order (EO) 13788, “Presidential Executive Order on Buy American and Hire American”, instructing DHS to “propose new rules and issue new guidance, to supersede or revise previous rules and guidance if appropriate, to protect the interests of U.S. workers in the administration of our immigration system.”<sup>1</sup> The EO specifically mentioned the H-1B program and directed DHS and other agencies to “suggest reforms to help ensure that H-1B visas are awarded to the most-skilled or highest-paid petition beneficiaries.”

In 2011, DHS originally published a notice of proposed rulemaking (NPRM) titled, *Registration Requirement for Petitioners Seeking to File H-1B Petitions on Behalf of Aliens Subject to the Numerical Limitations* (2011 NPRM).<sup>2</sup> In the 2011 NPRM, DHS proposed to require employers seeking to petition for H-1B workers subject to the cap to first electronically register with USCIS during a designated registration period. USCIS also concurrently published DHS/USCIS/PIA-034 H-1B Visa Cap Registration to discuss the privacy impact of the proposed

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<sup>1</sup> Exec. Order No. 13788, 82 Fed. Reg. 18837 (Apr. 18, 2017), available at <https://www.whitehouse.gov/presidential-actions/presidential-executive-order-buy-american-hire-american/>.

<sup>2</sup> <https://www.govinfo.gov/content/pkg/FR-2011-03-03/html/2011-4731.htm>



amendments. DHS never finalized the rule due to other competing policy and regulatory priorities. Due to the passage of time, in 2018, DHS issued a new NPRM that withdrew and superseded the 2011 NPRM.<sup>3</sup> The November 30, 2018 NPRM proposed to require H-1B cap-subject petitioners to first electronically register with USCIS during a designated registration period, and also proposed to reverse the order by which USCIS selects H-1B petitions under the H-1B regular cap and the advanced degree exemption. Although the proposed amendments in the 2011 NPRM were never implemented, the privacy analysis as it relates to the H-1B registration process is still relevant to the regulatory amendments mandated in the H-1B Registration Final Rule.

USCIS is publishing this H-1B Registration Final Rule PIA Update to consider the potential privacy impacts associated with the regulatory changes that will be required by the publication of the H-1B Registration Final Rule on January 31, 2019. The Final Rule reverses the order by which USCIS selects H-1B petitions (or registrations once the registration process is implemented) under the H-1B regular cap and the advanced degree exemption, and it introduces an electronic registration requirement for petitioners seeking to file H-1B cap-subject petitions. The amendments require employers seeking to file H-1B petitions subject to the regular cap, including those who may be eligible for the advanced degree exemption, to first electronically register with USCIS during a designated registration period, unless the registration requirement is temporarily suspended.

While the Final Rule will go into effect on April 1, 2019, DHS has announced the suspension of the registration requirement for the FY 2020 cap season in the final rule to allow sufficient time for the testing and vetting of the H-1B Registration Tool. DHS will publish a notice in the Federal Register to announce the implementation of the registration requirement in advance of the first cap season in which it will require employers to electronically register. DHS will complete a new comprehensive PIA prior to the implementation of the H-1B registration process which will supersede the 2011 PIA, this PIA, and any subsequent updates.

### **Background**

USCIS receives and adjudicates petitions and applications for certain immigration benefits, including petitions by U.S. employers seeking nonimmigrant worker status for aliens. More specifically, USCIS administers and adjudicates H-1B nonimmigrant petitions, which are filed by employers (hereinafter referred to as “petitioners”) seeking to employ foreign workers in specialty occupations that require theoretical or practical application of highly specialized knowledge and attainment of a bachelor’s or higher degree in the specialty. Typical H-1B occupations include architects, engineers, doctors, and college professors, among others.

Generally, petitioners seeking benefits for an alien (hereinafter referred to as “beneficiary”) under the H-1B nonimmigrant classification are subject to a congressionally-mandated annual

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<sup>3</sup> <https://www.federalregister.gov/documents/2018/12/03/2018-26106/registration-requirement-for-petitioners-seeking-to-file-h-1b-petitions-on-behalf-of-cap-subject>



numerical limit, commonly known as the H-1B cap. Congress set the current annual cap for the H-1B visa category at 65,000 (“regular cap”). Congress also provided an exemption for 20,000 new H-1B visas each fiscal year for foreign nationals who have earned a master’s or higher degree from a U.S. institution of higher education (commonly known as the “advanced degree exemption”).<sup>4</sup> Currently, in years in which a sufficient number of petitions needed to reach the regular cap and advanced degree exemption are received during the first five business days that H-1B cap-subject petitions may be filed, USCIS selects qualifying petitions towards the H-1B advanced degree exemption first. H-1B cap-subject petitions eligible for the advanced degree exemption, but not selected for the advanced degree exemption, are then included in the H-1B regular cap random selection process.

Under the Final Rule, in any year in which registration is required, USCIS will announce an initial registration period during which registrations for the upcoming fiscal year may be submitted. At the end of the annual initial registration period, if USCIS determines that it has received enough registrations as projected to reach the H-1B regular cap, USCIS will randomly select registrations submitted on behalf of all beneficiaries, including those eligible for the advanced degree exemption. USCIS will then select from the remaining registrations that may be eligible for the advanced degree exemption a sufficient number projected as needed to reach the advanced degree exemption. Petitioners with selected registrants will be notified of selection and the date by which the associated H-1B cap petition must be filed.

If, at the end of the annual initial registration period, USCIS determines that it has received fewer registrations than projected as needed to reach the H-1B regular cap, USCIS will:

- Notify all registrants that all registrations have been selected and they are eligible to file H-1B cap-subject petitions, on behalf of those beneficiaries that were named;
- Notify the selected registrants of the H-1B cap filing period and where to file the H-1B petition; and
- Continue to accept and select registrations, on a rolling basis, until a sufficient number of registrations have been received to meet the H-1B regular cap.

Once USCIS receives enough registrations as projected to reach the H-1B regular cap, USCIS will close the registration period for the regular cap and may randomly select enough electronic registrations from the final registration date to meet the regular cap. USCIS will continue to receive registrations that may be eligible for the advanced degree exemption until a sufficient number of petitions projected to reach the advanced degree exemption has been received. Unselected registrations will remain pending in the system for the rest of the applicable fiscal year in case USCIS needs to select additional registrations (e.g. if the petition filing rate for selected registrations is less than that projected). If USCIS determines that it needs to increase the number

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<sup>4</sup> See 8 U.S.C. § 1184(g)(1)(A) and (g)(5)(C). H-1B petitions may also be exempt from the H-1B regular cap on other bases. See 8 U.S.C. § 1184(g)(5)(A), (g)(5)(B), and (g)(7).



of registrations projected to meet the applicable numerical allocation, USCIS may re-open the registration period.

In years in which the registration process is suspended (e.g. FY2020), USCIS will apply the new cap selection order to H-1B cap-petitions. USCIS will first select petitions submitted on behalf of all beneficiaries, including those that may be eligible for the advanced degree exemption. USCIS will then select from the remaining petitions a number projected to reach the advanced degree exemption.

### **H-1B Registration**

As described in the DHS/USCIS/PIA-034 H-1B Visa Cap Registration, USCIS plans to continue with the development and implementation of a similar H-1B Registration process including the development and deployment of an electronic tool.<sup>5</sup> The Final Rule requires all petitioners seeking to file an H-1B cap-subject petition to first electronically register, unless the registration requirement is suspended by USCIS. USCIS plans to implement a mandatory registration process and develop a tool to enable electronic registration and will publish a notice in the Federal Register in advance of the H-1B cap season in which the registration requirement will be implemented for the first time. Once the registration requirement is implemented, Petitioners will be required to initially register prospective beneficiaries instead of filing a full petition. Once a registration is selected under the regular cap or the advanced degree exemption, USCIS will issue a notice to the petitioner inviting the petitioner to file an H-1B petition during the designated petition filing period.

Through the H-1B registration electronic tool, petitioners will be able to register for the selection in advance of filing the full petition. USCIS plans to collect information about the H-1B petitioner, and prospective beneficiary, and if applicable, attorney/authorized representative. USCIS is seeking to collect the following:

The H-1B petitioner is an employer seeking to hire a beneficiary under the H-1B classification. The petitioner or the legal representative may complete the H-1B registration. Under this Final Rule, attorneys and accredited representative may submit registrations on behalf of the petitioner, upon completion of a Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative.<sup>6</sup> Information about the H-1B petitioner and/or its legal representative includes:

- Organization name
- Full name of contact person
- Title of contact person
- Email address

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<sup>5</sup> See DHS/USCIS/PIA-034 H-1B Visa Cap Registration, available at [www.dhs.gov/privacy](http://www.dhs.gov/privacy).

<sup>6</sup> <https://www.uscis.gov/g-28>



- Telephone number
- Mailing address (includes street address, city, state, province, and zip code)
- Employer Identification Number (EIN)
- Signature (including an attestation)

The H-1B beneficiary is the alien seeking H-1B classification. Information about the beneficiary includes his or her:

- Full name
- Date of birth
- Country of birth
- Country of citizenship
- Passport number
- Gender
- Category – regular cap or advanced degree exemption

At the end of the annual initial registration period, if USCIS determines that it has received enough registrations as projected to reach the H-1B regular cap, USCIS will randomly select registrations submitted on behalf of all beneficiaries, including those eligible for the advanced degree exemption. USCIS will then select from the remaining registrations that may be eligible for the advanced degree exemption a sufficient number projected as needed to reach the advanced degree exemption.

Petitioners with selected beneficiaries will be notified of selection and invited to file an H-1B petition during the designated petition filing period. Unselected registrations will remain pending in the system for the rest of the applicable fiscal year in case USCIS needs to select additional registrations (e.g. if the petition filing rate for selected registrations is less than that projected). Unselected registrations will be removed from the registration system at the end of the fiscal year. In any year in which USCIS does not receive a sufficient number of registrations to meet the cap projections, USCIS may re-open the registration period and select additional registrations toward the H-1B cap and the advanced degree exemption.

Once implemented, the H-1B registration electronic tool will not alter the process for processing and adjudicating H-1B petitions (i.e., Form I-129), which USCIS will continue to process and adjudicate as described in the Computer Linked Application Information Management System and Associated Systems (CLAIMS 3) PIA.<sup>7</sup>

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<sup>7</sup> See DHS/USCIS/PIA-016 Computer Linked Application Information Management System (CLAIMS 3) and Associated Systems, available at [www.dhs.gov/privacy](http://www.dhs.gov/privacy).



## Reason for the PIA Update

DHS published a Final Rule amending regulations governing H-1B cap-subject petitions, including those that may be eligible for the advanced degree exemption. The Final Rule reverses the order by which USCIS selects H-1B petitions under the H-1B regular cap and the advanced degree exemption, and it introduces an electronic registration requirement for petitioners seeking to file H-1B cap-subject petitions to enter a lottery. USCIS is concurrently publishing this H-1B Registration Final Rule PIA update to discuss the amended regulation and its privacy impact on the collection of information.

USCIS will be suspending the H-1B electronic registration requirement for the FY 2020 cap season to complete user testing and ensure the system and processes are fully functional. Once the registration requirement is implemented, petitioners seeking to file H-1B cap-subject petitions, including those that may be eligible for the advanced degree exemption, will be required to first electronically register with USCIS during a designated registration period. Only those petitioners with registrations that are selected will be eligible to file an H-1B cap-subject petition.

USCIS will publish a new comprehensive PIA for the H-1B Registration process to evaluate the collection, use and maintenance of registration information. As mentioned above, USCIS is suspending the registration requirement for the FY2020 cap season to complete all requisite user testing of the new H-1B Registration Tool and otherwise ensure the system and process are operable. During FY2020, USCIS will implement the new selection process based on the petitions filed during the designated filing period and pursuant to the alternative procedures codified in the Final Rule. DHS plans to publish a notice in the Federal Register to announce the initial implementation of the H-1B registration process in advance of the cap season in which it will implement the requirement. Prior to implementation of the H-1B registration process and tool, USCIS will conduct outreach to ensure petitioners understand how to access and use the system. Through these notices, USCIS provides transparency about the amended H-1B regulations by informing petitioners about how USCIS will use the data.

## Privacy Impact Analysis

In each of the below sections consider how the system has changed and what impact it has on the below fair information principles. In some cases there may be no changes and indicate as such.

### Authorities and Other Requirements

The statutory authority is section 101(a)(15)(H)(i)(b) and 214(c)(1) of the Immigration and Nationality Act (Act); 8 U.S.C. 1101(a)(15)(H)(i)(b) and 1184(c)(1); and the regulatory authority is 8 CFR 214.2 (h)(2)(i)(A).



The collection, use, and maintenance of information is covered under the Benefit Information System (BIS) System of Records Notice.<sup>8</sup>

A system security plan has not yet been completed. USCIS is suspending the registration requirement for the fiscal year 2020 cap season to complete all requisite user testing of the new H-1B Registration Tool and otherwise ensure the system and process are operable. USCIS will appropriately update the system security plan prior to the deployment of the H-1B Registration Tool. USCIS will also publish a PIA for the H-1B Registration Tool to evaluate the collection, use and maintenance of registration information prior to the deployment of the tool.

USCIS is planning to develop a records retention schedule and will ensure the records retention schedule is approved by the National Archives and Records Administration (NARA) prior to the destruction of any records.

The H-1B Registration Tool is subject to Paperwork Reduction Act (PRA) requirements and is undergoing the clearance process. USCIS will officially obtain Office of Management and Budget (OMB) Control Number and expiration date prior to the deployment of the tool.

### **Characterization of the Information**

H-1B Registration Final Rule introduces an electronic registration requirement for petitioners seeking to file H-1B cap-subject petitions, but does not expand the collection of information outlined in DHS/USCIS/PIA-034 H-1B Visa Cap Registration. Once implemented, the H-1B Registration Tool will allow petitioners and/or their legal representatives to register for the H-1B cap selection process rather than submitting full petitions for USCIS to administer the cap selection process. USCIS plans to collect information about the H-1B petitioner, legal representative, and prospective beneficiary. The H-1B registration requirement and process, once implemented, supports the data minimization Fair Information Practice Principle because USCIS will no longer receive, handle, and return large numbers of petitions that are currently rejected because of excess demand (unselected petitions), except in those instances when the registration requirement is suspended. As indicated above, the H-1B registration process is suspended for FY2020.

The H-1B Registration Tool will collect the following information:

The H-1B petitioner is an employer seeking to hire a beneficiary under the H-1B classification. The petitioner or the petitioner's agent may complete the H-1B Cap Registration. Under this Final Rule, attorneys and accredited representative may submit registrations on behalf of the petitioner, upon completion of a Form G-28, *Notice of Entry of Appearance as Attorney or Accredited Representative*.

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<sup>8</sup> DHS/USCIS-007 Benefits Information System, 81 FR 72069 (Oc. 19, 2016).





Information about the H-1B petitioner and/or its legal representative includes:

- Organization name
- Full name of contact person
- Title of contact person
- Email address
- Telephone number
- Mailing address (includes street address, city, state, province, and zip code)
- Employer Identification Number (EIN)
- Signature (including an attestation)

The H-1B beneficiary is the individual seeking H-1B classification. Information about the beneficiary includes his or her:

- Full name
- Date of birth
- Country of birth
- Country of citizenship
- Passport number
- Gender
- Category – regular cap or advanced degree exemption

The H-1B registration requirement and the H-1B Registration Tool will not be in place for FY2020 because the requirement will be suspended for that FY. DHS will publish a notice in the Federal Register in advance of the H-1B cap season in which the registration requirement will first be implemented. During FY2020, USCIS will implement the new cap allocation based on the petitions filed during the designated filing period and pursuant to the alternative procedures codified in the Final Rule.

Once implemented, the H-1B Registration Final Rule will not alter the process for processing and adjudicating H-1B petitions (i.e., Form I-129), which USCIS will continue to process and adjudicate as normal. Once deployed, the H-1B Registration Tool will be dependent on the accuracy and quality of information provided by the H-1B petitioner and legal representative. Most of the information is collected directly from the petitioner and is assumed to be accurate. Prior to their official submission to the agency, the petitioner and legal representative will be provided an opportunity to review and correct data entries. There are no additional risks to the characterization of information.

### **Uses of the Information**

There are no new uses of this information resulting from the H-1B Registration Final Rule. USCIS plans to use the H-1B Cap Registration information to administer the H-1B cap selection



process, once the H-1B registration process is implemented. The collected information will also be used by USCIS to generate notifications to the petitioner indicating whether the petitioner is eligible to file a Form I-129 to request H-1B classification for the registered beneficiary. There are no additional risks to the uses of information.

### **Notice**

USCIS is providing notice of the amended H-1B regulations through the publication of the Final Rule, this PIA update, and other outreach materials published on the USCIS website or in the Federal Register. Prior to the launch of the H-1B Registration Tool, USCIS plans to publish a separate PIA for the H-1B registration process and tool. Additionally, the H-1B Registration Tool will include a Privacy Notice to individuals about the collection, USCIS' authority to collect information, the purposes of data collection, routine uses of the information, the fact that the provision of the requested data is voluntary and the consequences of declining to provide the requested information to USCIS. USCIS provides transparency about the amended H-1B regulations by informing petitioners about how USCIS will use the data. Therefore, there are no additional risks to notice.

**Privacy Risk:** Petitioners submit beneficiary information for the random selection without the data subject's knowledge or consent.

**Mitigation:** Petitioners who choose to participate in the registration process file a registration for each prospective H-1B beneficiary they seek to hire. This process will allow petitioners to register on behalf of the prospective beneficiary for consideration of available H-1B cap numbers. USCIS will not collect information directly from the beneficiary, but will rely on the petitioner or designated user to provide information. This presents the risk of petitioners submitting beneficiary information for the random lottery without the data subject's knowledge or consent. In an effort to minimize this risk, USCIS will provide notice to the public through the USCIS website, the applicable NPRM, SORN, and this PIA. These notices are aimed to inform the public of the new H-1B registration process.

### **Data Retention by the project**

This update does not impact the retention of data as a result of the H-1B Registration Final Rule. Prior to the deployment of the H-1B Registration Tool, USCIS will be working with the National Archives and Records Administration (NARA) to develop a records retention schedule to cover the information collected as part of the H-1B Registration Final Rule. USCIS plans to establish a retention schedule that requires USCIS to retain the data for the least amount of time as possible necessary for USCIS to perform the selection process; therefore, there are no additional risks.

**Privacy Risk:** There is privacy risk that H-1B registration information will be retained longer than required because there is no retention schedule in place for the information.



**Mitigation:** This risk is not mitigated. No information will be collected until the H-1B registration process launches. USCIS is planning to develop a records retention schedule for the H-1B registration information and will ensure the records retention schedule is approved by NARA prior to the destruction of any records. Until USCIS completes a NARA-approved retention schedule, USCIS will maintain all non-scheduled records indefinitely. All data will be protected from unauthorized disclosure and access by using appropriate technical, physical, and administrative controls.

### **Information Sharing**

There are no new information sharing initiatives resulting from the H-1B Registration Final Rule. USCIS does not plan to routinely share case specific H-1B Cap Registration information with external organizations. USCIS may, however, share H-1B registration information outside of USCIS for law enforcement, investigation, and litigation purposes or for corrective action.

**Privacy Risk:** There is a risk of misuse, unauthorized access to, or disclosure of, H-1B information.

**Mitigation:** This risk is mitigated. USCIS does not intend to routinely share any specific H-1B registration information with external entities. Registrations suspected of misuse, abuse, or fraud will be sent to the Fraud Detection and National Security Directorate (FDNS) for administrative purposes.<sup>9</sup> Information may be shared outside of USCIS for law enforcement, investigation, and litigation purposes or for corrective action. USCIS plans to provide notice to the petitioner and its legal representative, through an attestation and Privacy Notice, that information may be shared outside of USCIS for registrations suspected of misuse, abuse, or fraud. Any disclosure outside of DHS must be compatible with the purpose for which the information was originally collected and only authorized external personnel with a need-to-know may have access to the registration information.

### **Redress**

This update does not impact how access, redress, and correction may be sought through USCIS. USCIS continues to provide individuals with access to their information through a Privacy Act or Freedom of Information Act (FOIA) request. Individuals not covered by the Privacy Act or Judicial Redress Act (JRA) still may obtain access to records consistent with FOIA unless disclosure is prohibited by law or if the agency reasonably foresees that disclosure would harm an interest protected by an exemption. U.S. citizens and Lawful Permanent Residents may also file a Privacy Act request to access their information. If an individual would like to file a Privacy Act or FOIA request to view his or her USCIS record, the request can be mailed to the following address:

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<sup>9</sup> See DHS/USCIS/PIA-013-01 Fraud Detection and National Security Directorate, *available at* [www.dhs.gov/privacy](http://www.dhs.gov/privacy).



National Records Center  
Freedom of Information Act/Privacy Act Program  
P. O. Box 648010  
Lee's Summit, MO 64064-8010

Persons not covered by the Privacy Act or JRA are not able to amend their records through FOIA. Should a non-U.S. person find inaccurate information in his or her record received through FOIA, he or she may visit a local USCIS Field Office to identify and amend inaccurate records with evidence.

### **Auditing and Accountability**

USCIS ensures that practices stated in this PIA comply with internal federal, DHS, and USCIS policies, including the USCIS privacy policies, standard operating procedures, orientation and training, rules of behavior, and auditing and accountability procedures.

## **Responsible Official**

Donald K. Hawkins  
Privacy Officer  
U.S. Citizenship and Immigration Services  
Department of Homeland Security

## **Approval Signature**

Original signed copy on file with the DHS Privacy Office.

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Philip S. Kaplan  
Chief Privacy Officer  
Department of Homeland Security