

## USCIS Announces Rules for H-1B Lottery

February 11, 2021

### Key points:

- H-1B lottery will be open from March 9 until March 25, 2021.
- There will be no changes from last year's lottery rules.
- Priority for higher-paid H-1B applicants will not be implemented in 2021, but remains a possibility for future lotteries.

On February 8, 2021, the Department of Homeland Security (DHS) announced that the H-1B lottery will be conducted in the same way as last year, with a slight change in dates. The online lottery will open at noon ET on March 9 and will close at noon ET on March 25. The results of the lottery will be announced by March 31, and H-1B petitions will need to be filed with DHS between April 1 and June 30. United States Citizenship and Immigration Services (USCIS) will once again follow the [H-1B Electronic Registration Process](#), which we described in a [prior alert](#).

Towards the end of the Trump administration, on January 8, DHS issued a regulation prioritizing higher-paid employees in the H-1B lottery. This meant that the highest-paid H-1B beneficiaries would have been assured a spot in the lottery but the lowest-paid beneficiaries (often, in entry-level positions) would have had a very low chance of being selected in the lottery. The regulation was set to go into effect on March 9, 2021.

Shortly after assuming office, on February 8, the Biden administration issued a [rule](#) that delayed the earliest effective date of that change to December 31, 2021. The delay in the effective date means that the March 2021 H-1B selection process (which is the H-1B lottery for Fiscal Year 2022) will be based on current regulations. As such, 65,000 H-1B beneficiaries will be selected on a random basis. An additional 20,000 H-1B selections will be reserved for recipients of Master's degrees or higher from U.S. universities.

The delay in the effective date of the wage-based prioritization of H-1B beneficiaries means that the Biden administration may implement the regulation in 2022 or in later years. However, DHS announced that it would not only "modify and test its system, train staff, and conduct public outreach," but will also evaluate the Trump administration rule and its associated policies, "as is typical of agencies at the beginning of a new Administration." This means that the Biden administration may

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modify the rule before its effective date to meet its policy priorities in the implementation of the H-1B statute.

**Immigration Law and Policy** lawyers at Akin Gump are ready to assist you with H-1B lottery entries and H-1B petitions.

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