

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

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Samantha Deshommes
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue, NW
Washington, D.C. 20529

By electronic submission: www.regulations.gov

RE: Registration Fee Requirement for Petitioners Seeking to File H-1B Petitions on Behalf of Cap-Subject Aliens
84 Fed. Reg. 46460 (September 4, 2019)
RIN 1615-AC36

Dear Chief Deshommes:

The U.S. Chamber of Commerce submits the following comments regarding the Notice of Proposed Rulemaking entitled *Registration Fee Requirement for Petitioners Seeking to File H-1B Petitions on Behalf of Cap-Subject Aliens*, 84 Fed. Reg. 46460 (September 4, 2019) (hereinafter referred to as “NPRM,” or “proposal”).

Chamber members that depend on the H-1B program to meet their workforce needs remain concerned about the lack of a definitive decision from U.S. Citizenship and Immigration Services (hereinafter referred to as “USCIS”) to implement the new H-1B registration requirement, to which this proposed \$10 fee will be attached. The Chamber acknowledges that the agency intends for the registration system to be operational before H-1B cap-subject petitions will need to be submitted for the Fiscal Year 2021 H-1B allocation starting in April 2020, but without a final decision and proper notice being provided to stakeholders at this point in time, businesses across a host of industries are left to guess as to how to prepare for the endeavor of hiring potential H-1B workers in the near future.

The Chamber and many other trade associations had hoped the decision to implement the H-1B registration system would have [been finalized by now](#). Given that employers still do not have certainty regarding whether they will have to utilize the H-1B registration system for next year’s H-1B cap season, we reiterate our request that USCIS publicize its decision on whether it will implement the H-1B registration system as soon as possible. As such, we ask that the agency make this decision no later than November 1, 2019.

We appreciate that USCIS continues to conduct testing on the H-1B registration system's operation and the success of those tests directly influences the agency's ability to implement this system. We understand conducting these tests is a time-consuming process and that it would be irrational for the agency to announce that they will move forward with implementing a new system before the agency has the confidence that it can accomplish the rollout of a new system effectively and efficiently. However, businesses across a host of industries that rely upon the H-1B program to meet their workforce needs have begun to make long-term personnel planning decisions regarding the employment of foreign nationals. Employers must grapple with this uncertainty and many companies are engaging in the same preparations they have for cap-subject H-1B workers they hope to obtain next year. They simply cannot risk a situation where they are unprepared for changing regulatory requirements they will have to comply with.

Many companies have already begun making their operational decisions regarding the selection of potential employees that will need to be sponsored for a cap-subject H-1B visa in the coming year. These processes that became common business practices that have evolved before the H-1B Registration rule's promulgation include extensive recruitment efforts both abroad and domestically at U.S. college and university campuses. To that end, companies in several industries have begun the decision-making process regarding which candidates are the most desirable new hires; as such, these businesses are already engaged in the preparation of various supporting documents for the cap-subject H-1B petitions that they intend to file next year for these job candidates. This new registration process was envisioned to generate a significant amount of savings for company resources, particularly if they were not approved for the ability to petition for an H-1B worker. If they didn't receive an approved registration, the company could avoid the need to expend a significant amount of resources compiling all of the documents for complete cap-subject H-1B petition.

However, without the certainty that this registration system will be operational by the H-1B cap season next April, companies have no choice but to expend those resources in order to be prepared to obtain the workers they will need to sustain and expand their domestic operations. In other words, the agency can help companies of all sizes avoid serious misallocations of scarce resources if they inform the public that this registration program will be operational by next year. If USCIS decides to implement this registration period and makes this announcement sometime next year, companies will have undergone much of the costly processes entailed in recruiting, interviewing, and selecting potential H-1B employees because they were put in a position where they couldn't take the chance in assuming that the registration program would be suspended for FY21. Assuming USCIS will implement the registration requirement upon H-1B employers for the coming cap season, the longer USCIS takes to make this announcement, the more costly this transition will be for American companies.

The brunt of these changes, should they be announced shortly before the cap season begins in April 2020, will likely be most harmful to the interests of smaller employers who have less overall resources to deal with new regulatory requirements in a short period of time. These businesses will have been unable to forego the need to do all the preparations that would need to be performed in the event this registration program is not in place due to the agency's late announcement that this requirement is moving forward. Moreover, having to adjust to the new registration requirements will pose greater burdens for smaller companies that have a single HR

employee, as opposed to an entire HR department. As such, it is critically important that USCIS informs the regulated community that it will move forward with full implementation of the H-1B registration requirement as soon as practicable.

Other concerns that have been conveyed to us by many companies focus on the lack of specificity as to how the \$10 fee will be collected by the federal government. The NPRM's section governing the Paperwork Reduction Act mentions that all H-1B registration fees will be collected through the portal established on the *pay.gov* website. The supporting documentation that USCIS made available in the NPRM's docket folder on the *regulations.gov* website appears to indicate that employers utilizing the H-1B registration system to begin the process of petitioning for cap-subject H-1B workers will be allowed to pay with either a debit/credit card or they can choose to make withdrawals from a checking/savings account utilizing an Automated Clearinghouse (ACH) method of payment. To that end, the supporting documentation seems to show that an employer undergoing the registration will be able to submit registration applications for multiple beneficiaries at one time and therefore be able to "batch" the payment of fees for multiple beneficiaries at a single time. However, the preamble text of the NPRM does not describe any of these circumstances and many employers are left trying to figure out how they will make these payments by deducing what the agency meant in the PRA section of the NPRM. We hope that as USCIS moves to finalize this proposal, the agency takes the opportunity to clearly lay out how employers will have to use the H-1B registration's system payment mechanism will operate.

Some common questions that companies have been brought to our attention about this NPRM include the following:

- Regarding ACH payments for registration fees from checking/savings accounts, will there be an ACH processing fee associated with using this method of payment?
 - o If so, is the agency incorporating those costs into how it factored the \$10/registration fee such that it will be covered by the \$10 fee, or will this be in addition to the \$10 fee? If the processing fee is separate from the \$10 registration fee, how much will these processing fees add onto the \$10 fee?
- Will employers be able to "batch" payments for multiple registration applications on behalf of several potential H-1B beneficiaries. Given the Supporting Documents tend to suggest that, does the agency envision its payment system capping the amount of beneficiaries that can be "batched" for simultaneous payment at any given time?
- USCIS stated in its final H-1B Registration Rule that employers would not be required to enter their corporate information for each potential beneficiary.¹ Will employers be able to file the information regarding the corporation, the authorized employee of the corporation, and the payment method/information used to pay the fees one-time throughout this process, and if so, how?

In our view, these questions, and others that may arise as more information on how USCIS intends to incorporate this registration fee into the registration program's structure, will likely be answered in a satisfactory manner if USCIS engages in more direct outreach with interested stakeholders. The more that American businesses can directly engage with USCIS and provide feedback on how the program will operate is critical to ensuring that the H-1B

¹ 84 Fed. Reg. 888, 899 (Jan. 31, 2019).

registration program's rollout is successful. As the agency continues testing the functionality of its registration system and the ability to pay the fees associated with the registration process, we hope that the agency continues its effort to obtain direct feedback from businesses that rely upon the H-1B program to meet their workforce needs.

We appreciate the opportunity to comment on this proposal. Thank you for considering our views.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan Baselice', written in a cursive style.

Jonathan Baselice
Executive Director, Immigration Policy
U.S. Chamber of Commerce