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Trump's H-1B work visa plan cuts employers' costs, not criticism

By Patrick Thibodeau

President Trump's effort to restrict H-1B work visas has taken a rare turn. His administration is cutting the cost of filing for a visa and is making it easier for a firm to file for a visa. It's doing this with an electronic registration system.

This new registration system, which will begin in the 2021 fiscal year, means an employer will be able to register a visa candidate in a visa lottery "without submitting a completed [visa] package," said Shanon Stevenson, an immigration attorney at Fisher Phillips. This new process is "going to save employers time and money because they're not going to have to submit an H-1B petition for someone who isn't selected in the lottery," she said.

The administration's registration plan will help HR departments save "a lot of wasted time and effort," said Becki Young, an immigration attorney at Grossman Young & Hammond. Companies today now put together thousands of visa petitions "which never even get looked at," she said.

The electronic registration system is not the only change the White House is making to the H-1B work visa. It is also reordering the visa lottery system to favor people who have earned a U.S. master's or higher degree, a change that will take effect for this year's H-1B work visa lottery. But this change is more in line with Trump's efforts to restrict visa use. In its recently published rule change, the administration said it may help raise the wages of H-1B workers.

Both H-1B work visa rule changes are eyed warily by industry supporters of the visa and its critics as well. But there is general agreement the electronic registration system will reduce visa filing costs for businesses.

The visas are distributed on Oct. 1, the start of the 2020 fiscal year.

H-1B work visa remains a paper-based system

The system today works like this: Each year on April 1, businesses submit a thick package of H-1B visa, paperwork. Businesses can easily spend $5,000 on visa fees and outside legal costs to prepare an H-1B work visa petition. The fees themselves can account than half of that amount.

The U.S. has been receiving roughly three visa petitions for every H-1B visa available under the combined 85,000 annual visa cap. The government returns the visa fees to employers whose petitions aren't selected in the lottery, but the visa preparation costs are lost. With the electronic registration, employers will be asked to provide a relatively small amount of information for the lottery. If the petition is selected, the employer then files a paper-based visa application.

This year, the U.S. has decided to set aside 20,000 H-1B work visas to holders of U.S. master's degrees and above. The Trump administration will then run the lottery for 65,000 H-1B holders before filling the 20,000 allotment. The administration believes reserving 20,000 H1-B visas for the highest U.S. educated applicants will result in an increase of up to 16% (or 5,340) H-1B beneficiaries with a master's degree or higher from a U.S. university.

The administration also said that the increase in advanced degree holders will help raise the wages of H-1B workers, who can be paid less than U.S. workers under prevailing wage rules.

White House rule changes not enough, critics say

But the administration's changes will have little impact on how the [H-1B program operates](#). That was the warning issued by the International Federation of Professional and Technical Engineers, an AFL-CIO group, in a response last month to the White House's proposed H-1B work visa rules.

"The design flaws in the H-1B program have shifted bargaining power in favor of employers and to the disadvantage of both U.S. workers and H-1B beneficiaries, by [suppressing wages](#) and reducing job security," wrote Paul Shearon, president of the engineering group.

The White House's plan to favor people with master's degrees, "does bias the system to some degree toward the kinds of people who are graduating in the United States as opposed to the people who were being sent from abroad," former U.S. Rep. Bruce Morrison (D-Conn.), who chaired the House Immigration Subcommittee, and authored the Immigration Act of 1990, which created the H-1B program, said.

In an interview, Morrison, now a critic of the program, said the new White House rules will change little about how the visa program operates. The Trump administration is limited by the immigration law in what it can do. The problem requires legislation, he said.

"A real solution to the problem requires promoting green cards [permanent residency] rather than H-1Bs," Morrison said. "The rest of this is sort of deck chairs on the Titanic."
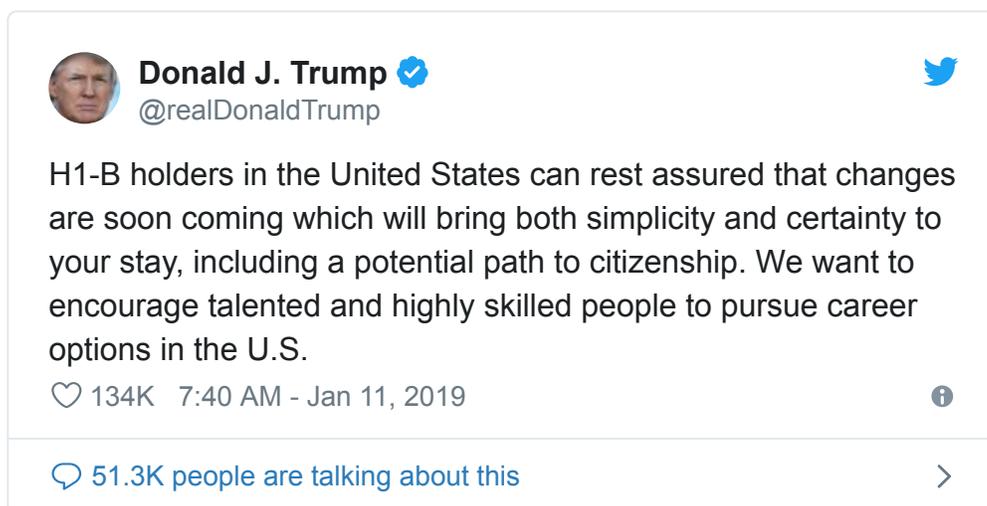
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Industry groups unhappy

Industry groups oppose the master's degree plan and argue that an advanced degree doesn't make someone a better job candidate.

Critics also say the rule doesn't meet the spirit of an earlier [Trump executive order](#), ensuring that H-1B visas "are awarded to the most-skilled or highest paid petition beneficiaries."

"Having a master's degree from a U.S. university is not a perfectly reliable indicator that the beneficiary is the most-skilled or going to be the highest paid," wrote Todd Schulte, who heads FWD.us, an industry lobbying group, in comments submitted last month about the proposed rule.

"Simply retaining more U.S. masters at the expense of other potential beneficiaries will make an already incredibly risky lottery process all the more difficult for someone like a Ph.D. holder from McGill or Cambridge, or a Stanford graduate with a bachelor's and five years of work experience, who might actually end up being the 'most-skilled and highest paid' beneficiaries," Schulte said.

06 Feb 2019

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