



August 7, 2019

Kenneth T. Cuccinelli
Acting Director, U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue, NW
Washington, DC 20529

Dear Acting Director Cuccinelli:

Congratulations on being named Acting Director of U.S. Citizenship and Immigration Services. We look forward to working with you to promote sensible forward-thinking policies that foster innovation and global talent mobility in the workforce.

We are writing as part of our continued commitment to support USCIS in successfully implementing its H-1B pre-registration rule (84 Fed. Reg. 888 (Jan. 21, 2019) (“Final Rule”)) because it is critically important for employers to have a reliable and efficient system that allows them to access top global talent while confirming with certainty applicants’ identity and work authorization.

SHRM is generally aligned with the objectives of the rule and believe it can benefit many of our members and their businesses. However, the pre-registration program will only be worthwhile if HR professionals and employers are afforded the necessary lead time and resources to test and use the tool effectively. Therefore, we strongly support USCIS’s recognition in the Final Rule that the registration requirement must be suspended until after the agency *“can complete all requisite user testing of the new H-1B registration system and otherwise ensures the system and process are fully operable, and addresses concerns raised by commenters in response to the proposed rule.”* To that end, we recommend that USCIS announce whether it intends to use the pre-registration tool for the 2021 cap season no later than September 15, 2019 and that USCIS conduct extensive user engagement and testing well in advance of the 2021 cap season. We address each of our recommendations more fully below.

1. USCIS should announce *no later than September 15, 2019* Whether Pre-Registration Tool Will Be Implemented

In order to help our members prepare for the possibility of H-1B pre-registration for the 2021 cap season, we have engaged with a number of them across various industries who annually file H-1B petitions, seeking their thoughts on timing and manner of implementation of the program.

They have offered critical insights into the recruitment process and cycle for U.S. college graduates, noting that potential H-1B beneficiaries are incorporated in that cycle for college seniors and for Master's degree candidates nearing program completion for positions where employers experience critical skill shortages. For some employers, recruitment is on-going, while for others recruitment can begin as early as two years prior to graduation or more typically in the spring and summer before senior year. In all cases, most employers begin the process of preparing H-1B petitions between August and October, a full six to eight months ahead of time, to be ready for the filing season.

Absent certainty in the near future that the pre-registration tool will be implemented, employers will have no choice but to prepare paper applications for all of their filings, foregoing the estimated \$1.6 million annually in cost savings that had been forecast in the Final Rule. Rather, for the mutual benefits of the H-1B pre-registration program to be realized, employers' human resource departments need to know no later than September 15, 2019, whether the tool will be used for the FY 2021 H-1B cap season.

2. USCIS should provide opportunities soon for employer feedback on the pre-registration tool

As SHRM urged in its comments this past January, and as USCIS itself recognized, users, consisting of employers and law firms should be active participants in the testing and vetting process for the pre-registration tool. USCIS should – in our members' view – proactively engage them in user testing and solicit feedback from employers and law firms on several subjects, including, but not limited to:

- a. fields to be entered during pre-registration;
- b. user interface design;
- c. contingencies for system malfunction; and
- d. manner of notification upon selection

As importantly, once the portal is designed, it should be beta-tested by a variety of real-world users, including human resource professionals, employers, lawyers and law firm support staff. This is consistent with best IT practices, and time and again, has helped eliminate practical weaknesses that may be overlooked in the development process.

3. HR and employers need to be educated before implementation with an early rollout of petition materials and broad availability of training and educational tools

Once the design of the pre-registration tool is finalized to the satisfaction of USCIS and ready for user testing, all affected stakeholders should be given ample opportunity to see the electronic form and registration portal, and familiarize themselves with its technical specifications, well in advance of any registration period. In our experience, beta testing and demonstrations with end users contributed to the successful rollout of electronic filing for the LCA and PERM. USCIS should model its pre-registration technical rollout in a similar fashion.

We also urge USCIS to make both live and web-based training tools available to prospective users. The more experience and competence users have with the tool prior to its going live, the more likely that the tool will be seen as a success.

Finally, we ask that USCIS provide readily available avenues to ensure that users can ask questions, make suggestions, and seek assistance given that technical glitches and unforeseen problems may arise.

For over seventy years, SHRM has represented the interest of the people most impacted by these registrations—human resource professionals. Our research and policy provide a strong foundation for addressing issues that impact work, workers and the workplace. We extend those resources and best practices to you as we work our country's immigration and global talent issues. We look forward to a continued collaborative with you and USCIS.

Sincerely,

A handwritten signature in cursive script, reading "Emily M. Dickens".

Emily M. Dickens, J.D.
Corporate Secretary and Chief of Staff



U.S. Citizenship
and Immigration
Services

September 30, 2019

Ms. Emily M. Dickens, J.D.
Corporate Secretary and Chief of Staff
The Society for Human Resource Management
1800 Duke Street
Alexandria, Virginia 22314

Dear Ms. Dickens:

Thank you for your August 7, 2019 letter requesting a decision from U.S. Citizenship and Immigration Services (USCIS) regarding the use of electronic registration for the fiscal year (FY) 2021 H-1B cap filing season and asking about engagement opportunities for the H-1B registration tool.

With regard to electronic registration for FY 2021, USCIS intends to implement the registration process for the FY 2021 cap season, subject to continued testing of the system. As stated in the final rule, the Department of Homeland Security will 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 first implement the requirement.

As you mention in your letter, gathering feedback is an important part of our implementation process. USCIS has conducted an initial round of usability testing for the H-1B registration tool. We incorporated feedback from those sessions into redesigns of the tool. We conducted testing on the updated designs in early September. After completion of the current development phase, USCIS will conduct further outreach and training prior to the initial implementation of the registration system to allow the public the opportunity to familiarize themselves with the electronic registration process. USCIS will provide guidance on how to use the registration system and prepare registrations prior to opening the registration system for the initial registration period.

Thank you again for your letter and interest in the H-1B registration system.

Respectfully,

A handwritten signature in black ink, appearing to read "Ken Cuccinelli II".

Ken Cuccinelli II
Acting Director