

# interactive dialogue

The “**Keeping Up With Business Immigration Under the New Administration: Getting Ready for the H-1B Season FY 2019 and Beyond**” webinar will begin at 1:00 pm CT

To listen to the audio portion of the webinar, please dial 1-800-536-9136, access code: 9038709#.

- A sign-in sheet and materials were attached to the program reminder email sent Tuesday, January 30, 2018.
- To submit a question before or during the webinar, please use the chat pane on the left-hand side of your screen.
- A replay of this webinar will be available upon request.



# interactive dialogue

## Keeping Up With Business Immigration Under the New Administration: Getting Ready for the H-1B Season FY 2019 and Beyond

Ieva Aubin  
Mike Droke

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# a brave new format

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# Agenda

- **Overview of the H-1B Visa Program**
- **Understanding the H-1B Cap**
- **Qualifying for an H-1B**
- **Prevailing Wage & Specialty Occupation Issues**
- **“Buy American and Hire American” Executive Order & Recent H-1B Adjudication Trends**
- **What to Expect Next**

# Terms & Definitions

## U.S. Nationals:

- (A) U.S. citizens; or
- (B) Persons who, though not U.S. citizens, owe permanent allegiance to the U.S.

## Aliens:

- Immigrant
- Non-immigrant
- Undocumented



# H-1B: Overview

- **A non-immigrant (temporary) visa classification**
- **Allows a foreign national to be employed in the U.S. in a “specialty occupation”**
- **Initially granted for up to 3 years; six-year maximum stay (can extend under certain circumstances - AC21 Act)**
- **Requires a petition by the employer**
- **Employer-specific**
- **Allows “dual intent” - good choice for people intending to apply for permanent residence**

# H-1B Cap

- **65,000 new H-1Bs per fiscal year.**
- **Additional 20,000 for those with U.S. Master's degrees or higher.**
- **Cap does not apply to:**
  - extension of stay petitions
  - change of employer petitions
  - certain organizations are exempt from the cap (universities, non-profit research organizations, government research organizations, etc.)
- **Submission window period starts April 1 of each year for the fiscal year starting October 1 of the same year.**
- **This year, H-1B cases must be filed between April 2, 2018 and April 7, 2018 to be included in the lottery.**

# Who Are the Petitioners?

## Top 10 Occupations (FY 2017)

<b>Top 10 Occupations</b> (based on SOC Codes)	Computer Systems Analysts	248,839	22.6%
	Software Developers, Applications	177,285	16.1%
	Computer Occupations, All Other	102,363	9.3%
	Computer Programmers	102,008	9.2%
	Software Developers, System Software	64,248	5.8%
	Management Analysts	45,293	4.1%
	Accountants and Auditors	30,599	2.8%
	Electronics Engineers, Except Computer	30,126	2.7%
	Operations Research Analysts	25,510	2.3%
	Financial Analysts	17,221	1.6%

Source: Department of Labor



# Who Are the Petitioners?

## Top 10 Employers (FY 2017)

<b>Top 10 Employers</b>	Deloitte Consulting, LLP	93,838	8.5%
	Cognizant Technology Solutions, US Corp.	55,350	5.0%
	HCL America, Inc.	39,808	3.6%
	Apple, Inc.	27,274	2.5%
	Deloitte and Touche, LLP	24,994	2.3%
	Mphasis Corporation	21,963	2.0%
	Infosys Limited	20,578	1.9%
	Mindtree Limited	19,000	1.7%
	Capgemini America, Inc.	16,872	1.5%
	Wipro Limited	13,640	1.2%

Source: Department of Labor

# Where Are the Petitioners Located?

## Top 10 States (FY 2017)

<b>Top 10 States</b>	California	255,661	23.2%
	Texas	111,598	10.1%
	New York	85,709	7.8%
	New Jersey	64,210	5.8%
	Illinois	54,369	4.9%
	Pennsylvania	50,106	4.5%
	Washington	49,712	4.5%
	Florida	39,449	3.6%
	Massachusetts	37,457	3.4%
	Georgia	35,901	3.3%

Source: Department of Labor

# Who Are the Beneficiaries?

Trend of H1B Petitions Filed FY 2015 Through 2017: Beneficiary Country of Birth (Top Twenty)			
Country	Year		
	2015	2016	2017
India	269,677	300,902	247,927
China, People's Republic of	32,485	35,720	36,362
Philippines	4,147	3,704	3,161
South Korea	4,298	4,269	3,203
Canada	5,050	4,547	3,551
Taiwan	2,555	2,287	2,200
Mexico	2,462	2,315	2,239
United Kingdom	1,697	1,528	1,783
Pakistan	2,512	2,401	1,536
France	2,048	1,998	1,474
Brazil	2,111	1,992	1,517
Nepal	1,512	1,504	1,249
Japan	1,553	1,481	1,077
Turkey	1,711	1,709	1,177
Germany	1,164	1,006	1,127
Iran	1,230	1,152	1,332
Italy	1,894	1,639	918
Russia	1,275	1,154	948
Venezuela	1,247	1,208	873
Spain	1,110	1,094	861
All Other	27,114	25,739	21,592

Source: USCIS

# Who Are the Beneficiaries?

Trend of H1B Petitions Filed FY 2007 Through 2017: Beneficiary Education Attainment			
Education	Year		
	2015	2016	2017
No Diploma	69	50	37
High School Graduate	188	145	97
Some College Credit (Less than 1 year)	33	28	16
One or More Years of College (No Degree)	285	252	173
Associates Degree	269	225	171
Bachelor's Degree	170,865	180,077	139,055
Master's Degree	159,828	180,961	165,830
Professional Degree	11,812	11,880	9,863
Doctorate Degree	25,188	25,602	20,589
Other (*)	315	129	276

Source: USCIS

# H-1B: Basic Eligibility Requirements

- The position must be a “**specialty occupation**” - require a Bachelor’s degree or higher in the specific specialty as a minimum for entry into the occupation in the United States; and
- Employee must have the required degree and any required licenses.

# New York CLE Code

**“We have some NY lawyers participating today. In accordance with NY CLE Rules, the New York Verification Code for this program is**

**”**

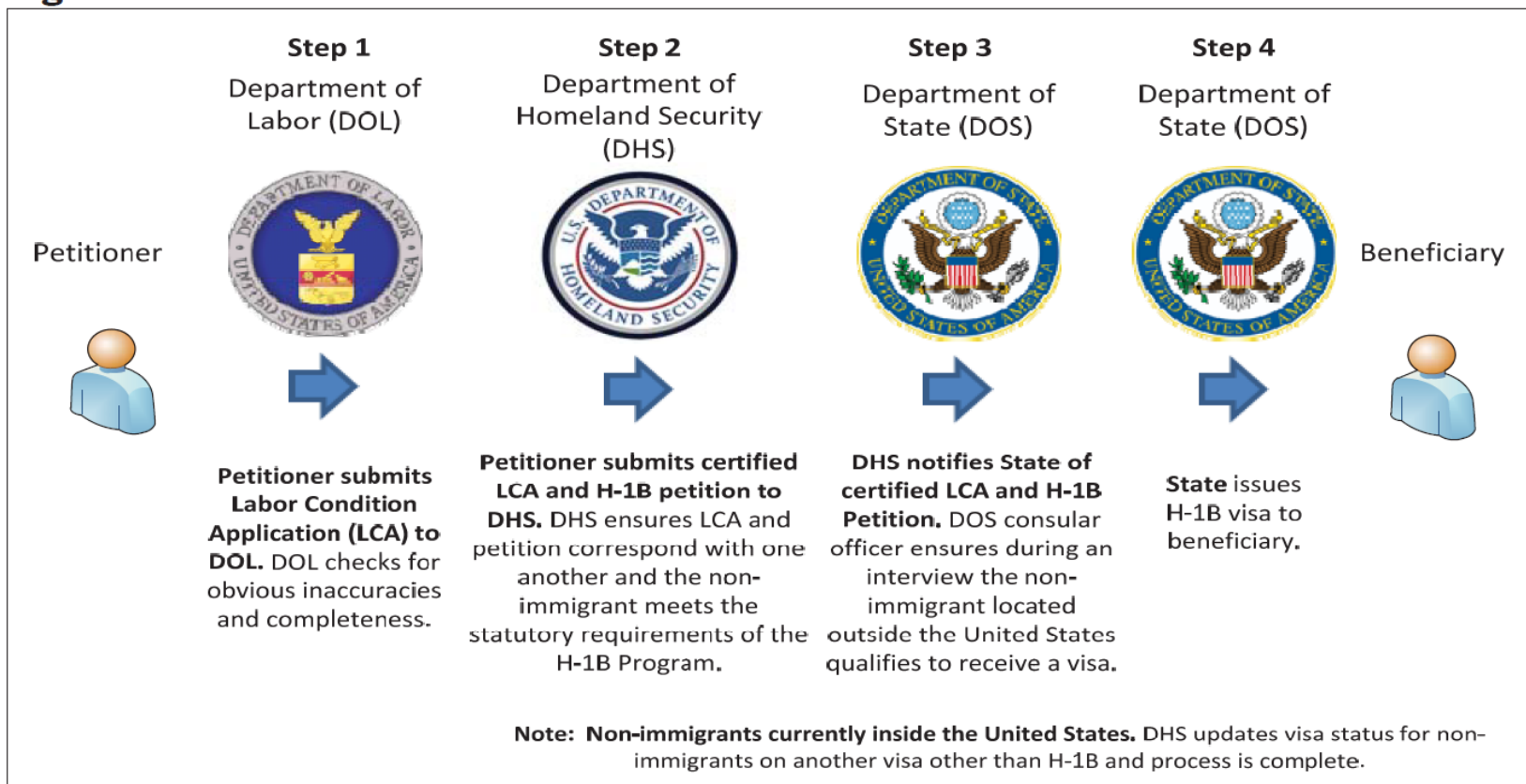
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# Petition Filing Process

- **Prepare and submit a Labor Conditions Application (“LCA”) with DOL**
  - **May need to verify Federal Employer Verification Number (FEIN) first**
- **Prepare and submit Form I-129 petition and supporting documentation to the USCIS**
- **May need to respond to Request for Evidence before a decision is issued**

# Government Agencies Involved

**Figure 1. H-1B Visa Issuance Process**



Source: DHS Office of Inspector General (OIG) analysis of CFR and program information.



# LCA: OFLC Wage Library

[FLC Wage Results](#) [New Quick Search](#) [New Search Wizard](#)

You selected the All Industries database for 7/2017 - 6/2018.

Your search returned the following: [Print Format](#)

**Area Code:** 42644  
**Area Title:** Seattle-Bellevue-Everett, WA Metropolitan Division  
**OES/SOC Code:** 15-1132  
**OES/SOC Title:** Software Developers, Applications  
**GeoLevel:** 1  
**Level 1 Wage:** \$44.73 hour - \$93,038 year  
**Level 2 Wage:** \$54.11 hour - \$112,549 year  
**Level 3 Wage:** \$63.50 hour - \$132,080 year  
**Level 4 Wage:** \$72.88 hour - \$151,590 year  
**Mean Wage (H-2B):** \$63.50 hour - \$132,080 year

This wage applies to the following O\*Net occupations:

## **15-1132.00 Software Developers, Applications**

Develop, create, and modify general computer applications software or specialized utility programs. Analyze user needs and develop software solutions. Design software or customize software for client use with the aim of optimizing operational efficiency. May analyze and design databases within an application area, working individually or coordinating database development as part of a team. May supervise computer programmers.

[O\\*Net™ JobZone: 4](#)

[Education & Training Code: No Level Set](#)

# Recent Developments

- **Buy American and Hire American Executive Order**
- **Increase in Requests for Evidence**
  - **Level I and Level II Wage Scrutiny**
  - **Specialty Occupation & Degree Requirements**
  - **Beneficiaries' Qualifications**
  - **Employer-Employee Relationship Scrutiny**
- **Elimination of a longstanding policy of deference in non-immigrant extension petitions**
- **USCIS Computer Programmer Policy Memorandum**
- **Extreme vetting and enhanced scrutiny of travelers**

# What to Expect Next?

- **USCIS confirmed that it is not anticipating any procedural changes for the FY2019 H-1B cap season**
- **Potential temporary suspension of premium processing for cap H-1Bs**
- **Increased scrutiny of H-1B petitions**
- **Increase in audit investigations and unannounced worksite visits**

# How to Best Prepare

- **Act early**
- **Avoid RFEs by carefully reviewing the position description, offered wage and beneficiary's qualifications**
- **Maintain good compliance practices: I-9 and LCA public access files**
- **Ensure that foreign workers travelling internationally carry complete paperwork**

# Components of a Complete H-1B petition

- **Signed Form G-28**
- **Completed and signed Form I-129 and supplements**
- **Certified Labor Condition Application**
- **Company Letter of Support**
  - Detailing the type of business, the specialty nature of the occupation and how the beneficiary meets those requirements
- **Depending on the type of employer, documentation regarding the petitioning employer**
- **Evidence showing that the alien has the required qualifications:**
  - Copy of the degree
  - Copy of foreign degree and equivalency evaluation report
  - Education and experience equivalency evaluation report
  - Copy of any required license
- **Beneficiary's immigration documents**
  - Visa stamps
  - I-94 cards
  - Copies of passports
- **Form I-539 (for any dependents) and copies of dependents' immigration documents, if applicable**
- **Required fees**

# Who wants more credit? CLE credit, that is.

Complete the sign in sheet included in the reminder email (sent yesterday) and return to [hubble.michelle@dorsey.com](mailto:hubble.michelle@dorsey.com).

We will send CLE Certificates to those who return the form.

# How do I learn more?

## interactive dialogue

The next webinar will focus on  
**Succession Planning**

Please look for an invitation with  
additional details and plan to join us.

# Questions?



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