

# PUBLICATION

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## H-1B Caps Hit for FY 2013: Other Options?

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**USCIS announced on April 5, 2013 that the cap on H-1B worker petitions for new workers has been reached for work start dates in the fiscal year ending September 30, 2014. Now a "lottery" of filings to date will ensue. Employers will need to find other options for cap-subject workers.**

April 1 was the first date on which employers could file H-1B petitions for allocations of limited slots for work that would start in the federal fiscal year beginning October 1, 2013. USCIS regulations require USCIS to collect H-1B petitions for at least five days before determining whether the cap has been reached. If so, USCIS applies a random selection from among the filings in the first five days.

USCIS announced on April 5, the last day of that initial window, that it has received enough petitions to use up the regular 65,000 annual allocation and the 20,000 slots reserved for workers who earned an advanced degree in the U.S. Now USCIS will randomly select the number of petitions it deems likely to need to adjudicate to approve the number of petitions to use up the caps (accounting for denials). Those employers whose petitions "win the lottery" will receive a receipt notice from USCIS.

Those employers whose petitions lose the lottery will receive a return of the petition papers and the filing fee check. Such H-1B-rejected workers who were in F-1 "optional practical training" that expires before October 1 will not enjoy the "cap gap" automatic extension that applies to those selected in the lottery. The workers whose petitions were not selected will need to evaluate other options and address status maintenance issues if in the U.S.