

Global Immigration alert

September 2025

United States

DHS proposes weighted selection process for H-1B Lottery

Executive summary

On 24 September 2025, the Department of Homeland Security (DHS) published a proposed rule to amend the H-1B visa cap-subject selection process. Currently, U.S. Citizenship and Immigration Services (USCIS) conducts a random lottery to select registrations when the number of registrations submitted exceeds the statutory cap. The proposed rule introduces a weighted selection process, designed to favor higher-paid workers while still preserving opportunities for all wage levels. The stated intention is for the H-1B program to “better serve the Congressional intent” for the program, which is to enable employers to temporarily fill roles in highly skilled occupations without undermining wages for U.S. workers.

Background and analysis

The H-1B program allows employers to sponsor foreign nationals in “specialty occupation” positions. Each year, 65,000 visas are available under the statutory cap, with an additional 20,000 set aside for workers holding advanced degrees awarded by institutions of higher education in the U.S. Because the demand often far exceeds the number of available visas, USCIS has conducted an annual lottery to select registrations.

Since the fiscal year 2021 H-1B cap season, the lottery has been based on electronic pre-registrations. For the most recent cap season, DHS introduced a “beneficiary-centric” process limiting each beneficiary to a single entry in the lottery while permitting multiple employers to submit a registration on behalf of a single beneficiary.

The proposed wage-based selection process, which would apply to both the regular and advanced degree H-1B caps,

would operate in conjunction with this existing beneficiary-centric process. When submitting the registration, the prospective petitioner would be required to identify the highest of the four (4) Occupational Employment and Wage Statistics (OEWS) wage levels that the beneficiary's offered wage would equal or exceed. This would be required even if the prospective petitioner plans to rely on an alternative wage survey rather than the OEWS when preparing the H-1B petition.

USCIS would then assign each unique beneficiary to the identified wage level and enter them into the selection pool as follows:

- Level IV workers would be entered four times into the lottery.
- Level III workers would be entered three times.
- Level II workers would be entered twice.
- Level I workers would be entered once.

Each beneficiary would only be entered into the lottery once, regardless of how many registrations are submitted. If a beneficiary has multiple registrations submitted by different employers on their behalf, USCIS would assign the lowest wage level associated with a registration to the beneficiary.

What this means

According to DHS analysis, the proposed rule would alter the balance of selection probabilities in the H-1B lottery. This means employers offering higher wages would have proportionally greater chances of selection. Employers who rely on lower-wage or entry-level positions may see reduced chances under the new system, though opportunities would remain.

For foreign national workers, individuals in senior roles or those with higher levels of compensation would have an increased likelihood of selection under the proposed system. By contrast, entry-level professionals and recent graduates would continue to have an opportunity for selection, although at a comparatively reduced rate relative to the current lottery process.

The proposed rule may also have implications for employer workforce planning. Organizations may need to evaluate their compensation structures and job classifications in advance of future filings to assess the potential impact on their H-1B programs. DHS also emphasizes the accuracy of reported wage levels and related attestations will be critical, as errors or omissions could give rise to compliance concerns.

Comments on the proposed rule must be submitted by 24 October 2025.

We will continue to monitor and share future developments. For additional information, or if you wish to discuss this further, please contact your EY Law LLP professional or Mehlman Jacobs LLP professional.

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