

International Student Resource Center

Provisions and Possible Impacts of the DHS Final Rule Establishing a New Weighted H-1B Lottery System

International Student Resource Center

Summary – Provisions and Possible Impacts of the DHS Final Rule Establishing a New Weighted H-1B Lottery System

24 December 2025

DHS announced a final rule, “Weighted Selection Process for Registrants and Petitioners Seeking to File Cap-Subject H-1B Petitions” which will take effect 60 days from the date of publication in the Federal Register, 29 December 2025. The effective date is February 27 2026, in time for the H-1B cap lottery registration season which kicks off in early spring 2026.

The new rule establishes a weighted selection process for H-1B cap-subject petitions. This will replace the former random lottery system. This new system is designed to favor the allocation of H-1B cap-subject visas to higher-skilled and higher-paid foreign workers.

Key Provisions and Changes

- **Weighted Lottery System**: The random lottery is replaced by a weighted system where employers' registrations for unique beneficiaries are entered into the selection pool a number of times based on the corresponding wage level. The wage levels are determined by the Department of Labor's Occupational Employment and Wage Statistics (OEWS)
    - Level IV (highest wage/skill) receives four entries.
    - Level III receives three entries.
    - Level II receives two entries.
    - Level I (lowest wage/skill) receives one entry.
- **Required Information**: Petitioners are now required to provide the correct OEWS wage level, the Standard Occupational Classification (SOC) code, and the area of intended employment during the initial H-1B registration process.
- **Beneficiary-Centric Model**: The rule retains the existing beneficiary-centric selection process, meaning each unique beneficiary is only counted once toward

the numerical cap, regardless of how many registrations are submitted on their behalf.

- **Effective Date**: The final rule is effective in time for the Fiscal Year (FY) 2027 registration season. The rule will likely be published on 29 December 2025, with an effective date of 60 days from publication 27 February 2026 .

Impact

The new H-1B selection process has several implications across different industries. The weighted selection process is expected to benefit some industries while potentially posing challenges for others, particularly those that rely heavily on entry-level, lower-paid H-1B workers. According to an analysis by the National Foundation for American Policy, under the new rule, the probability of USCIS selecting an individual at Level IV for a H-1B visa in the cap lottery would increase by 107% but fall by 48% for individuals at Level I. The probability of USCIS selecting an individual at Level III for an H-1B visa would increase by 55% and by 3% for individuals at Level II.

Industries Positively or Minimally Impacted

- Higher-skilled sectors: Industries with positions in cutting-edge areas like Artificial Intelligence (AI), cybersecurity, semiconductor design, and advanced manufacturing are more likely to attract and retain top global talent due to the preference for higher wages.
- **Academic Institutions/Research: Occupations such as professors and doctors are expected to be less affected by this rule because they typically are sponsored by H-1B cap-exempt employers, and therefore are exempt from the H-1B lottery altogether, or may leverage alternative immigration pathways (e.g., J-1 visas; O-1 visas)**
- Companies offering competitive wages: Employers that value a beneficiary's unique qualities and offer higher wages for positions requiring higher skill levels will have a greater chance of selection.

Industries / People Likely Impacted by the new rule

- International students graduating from U.S. schools seeking employment visa sponsorships with for-profit (H-1B cap-subject) employers through the H-1B

category. Many new graduates may be offered positions only at the Level 1 or possibly the Level 2 wage rate, and will be disadvantaged by this rule.

- IT/Outsourcing firms: This rule will make it harder for IT or outsourcing firms to secure H-1B workers at the lowest wage levels.
- Startups and small businesses: Some commenters argued the rule would harm startups and small businesses which often cannot compete with the high salaries offered by larger corporations.
- Industries relying on entry-level talent: Sectors that rely on recent graduates or early-career professionals, who typically start at lower wage levels, may face challenges. The probability of selection for level I wage applicants is expected to decrease significantly.

Legal Challenges: It is anticipated that the legality of the final rule will be challenged in court.

Important considerations for international students navigating this new weighted selection process:

- Understand your wage level and explore all options, including alternative visa categories, such as the O-1A or J-1 Research Scholar, depending on your role and credentials.