

Service

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Department of Homeland Security Issues Final Rule on Weighted H-1B Registration Selection Process

The U.S. Department of Homeland Security (DHS) has announced a final rule that changes how H-1B cap-subject visa registrations, also known as the H-1B visa lottery, are selected. Starting with the fiscal year 2027 H-1B lottery in March 2026, U.S. Citizenship and Immigration Services (USCIS) will implement a weighted selection process. This new system gives preference to higher-skilled and higher-paid foreign workers but still provides opportunities for applicants at all wage levels. DHS states that this change is intended to better align the H-1B visa program with congressional intent.

Here is what employers need to know:

Weighted H-1B Visa Lottery:

Each H-1B registration will be entered into the selection pool based on the wage offered to the H-1B worker. The assigned weight is based on the most appropriate Occupational Employment and Wage Statistics (OEWS) wage level (I to IV) for the position found in the Office of Foreign Labor Certification (OFLC) database.

Each registration will enter the selection pool based on the following weighted manner:

- four times if the offered wage meets the Level IV OEWS wage.
- three times if the offered wage meets the Level III OEWS wage.

- two times if the offered wage meets the Level II OEWS wage.
- one time if the offered wage meets the Level I OEWS wage.

This will increase the odds of selection for foreign workers offered higher wages. However, the OEWS wage is based on the geographic location where the foreign worker will perform work and the occupation in which the offered position is most appropriately classified.

USCIS may deny new or amended H-1B petitions if it determines the employer is attempting to unfairly increase the chance of selection, for example, by lowering the offered wage on the H-1B petition after registration selection.

Unique Beneficiaries:

No matter how many H-1B visa applications different employers submit for a foreign worker, that individual will only be counted once in the lottery process.

If multiple registrations are submitted for the same beneficiary, the lowest wage level (based on the area of intended employment) will be used for weighting.

In the past, foreign workers could benefit from multiple registrations by having different employers and prospective employers file a registration on their behalf. This new rule eliminates this benefit.

The congressionally mandated annual H-1B cap remains at 65,000, with an additional 20,000 visas for individuals holding a U.S. master's degree or higher. A registration fee of \$215 is required for each registration entered this year. USCIS has yet to release the dates of the registration period, which occurs in March each year. Although the \$100,000 additional H-1B fee remains in effect, it is only applicable to individuals who are selected in the H-1B lottery and are either currently outside the United States or have not maintained lawful status within the country.

Husch Blackwell's Business Immigration and Global Mobility team offers a Resource Center with insights to help employers navigate the evolving immigration policy landscape.