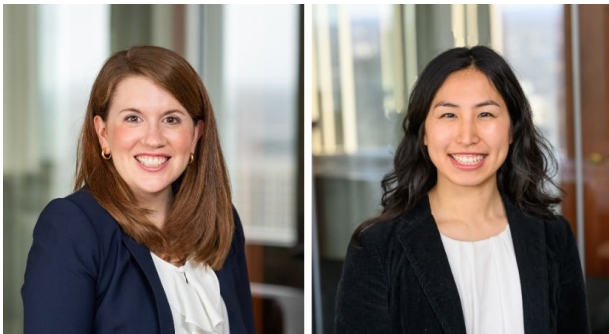


Immigration Alert

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Changes to Annual H-1B Lottery: Prioritization of Higher-Paid and Higher-Skilled Workers

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On December 29, 2025, the Department of Homeland Security (DHS) published a *Weighted Selection Process for Registrants and Petitioners Seeking to File Cap-Subject H-1B Petitions* in the Federal Register. These changes will favor the selection of higher-skilled and higher-paid workers in the annual H-1B lottery and will be effective prior to the 2026 H-1B lottery, the registration period for which is expected to open in March 2026. While this new prioritization may be challenged in court, DHS is in the process of amending the H-1B regulations to reflect these changes. Employers should prepare for the changes to take effect in the upcoming 2026 H-1B lottery.

The Changes

Historically, the selection process in the annual H-1B lottery was random. An employer would register its current or prospective employee in the regular H-1B CAP, which has a 65,000 annual quota. If the H-1B registrant was not selected for the regular H-1B CAP, and the H-1B registrant held a U.S.

advanced degree, that registrant would automatically be entered into the Master's H-1B CAP, which has a 20,000 annual quota.

Under the new rules, starting in the upcoming 2026 H-1B lottery (for FY 2027), each H-1B registrant will receive a number of lottery entries, for random selection, based on the applicable wage level of their offered salary. For example, an H-1B registrant with an offered salary at wage level II for the specific U.S. Department of Labor occupational classification that corresponds with their employment will be entered into the lottery for possible selection twice. There is a maximum of four wage levels for each Department of Labor occupational classification. If an H-1B registrant will work in multiple locations and the offered salary falls at different wage levels in the different locations, the H-1B registrant must select the lowest applicable wage level corresponding to the offered salary. Note, however, that each registrant will be counted only once for purposes of filling the relevant H-1B CAP quota.

The U.S. Department of Labor wage levels vary by occupational classification and the geographic region of the worksite(s). They can be searched [here](#). Wage level I typically corresponds to entry-level positions and thus, entry-level salaries. Wage levels II, III and IV correspond to higher-level positions that require progressively more professional experience. Due to the changes, employers should consider how the offered H-1B employment and corresponding salary will impact the likelihood of selection in the H-1B lottery.

The table below shows DHS's estimated probabilities of being selected in the H-1B CAP-subject lottery by wage level. Although it impacts the accuracy of these estimates, DHS has lumped both the regular and Master's H-1B CAPS together for this analysis. We include this table to illustrate that H-1B registrants with offered salaries at wage level I are less likely to be selected under these changes, while those with offered salaries at wage level IV are twice as likely to be selected. The actual probabilities of selection in the 2026 H-1B lottery (for FY 2027) will depend on other factors, such as the total

number of registrants. This total may be affected by other recent policy changes to the H-1B visa program, such as the \$100,000 fee requirement (information about which is [here](#)).

	Level I	Level II	Level III	Level IV	Total
(A) Estimated Number of Beneficiaries with Eligible Registration by Wage Level	89,911	177,216	37,928	15,657	320,711
(B) Probability of Being Selected to File H-1B Cap-Subject Petitions under Current Random Selection by Wage Level	29.59%	29.59%	29.59%	29.59%	
(C) Estimated Petition Receipts (Random Selection)	26,605	52,439	11,223	4,633	94,900
(D) Probability of Being Selected to File H-1B Cap-Subject Petitions under New Weighted Selection by Wage Level	15.29%	30.58%	45.87%	61.16%	
(E) Percentage Change in Probability of Being Selected to File H-1B Cap-Subject Petitions from Current to Weighted Selection System	-48.33%	3.35%	55.02%	106.69%	
(F) Estimated Petition Receipts (Weighted Selection)	15,330	55,089	16,243	8,239	94,900

Source: (A) USCIS analysis.
 (B) The probability of being selected under random selection is $29.59\% = (94,900 \div 320,711) \times 100\%$ regardless of different wage levels.
 (C) = (A) x (B)
 (D) The probability of being selected under weighted selection for level I is $15.29\% = (94,900 \div (89,911 \times 1 + 177,216 \times 2 + 37,928 \times 3 + 15,657 \times 4)) \times 100\%$. Level II, $30.58\% = (\text{probability of being selected for level I, } 15.29\%) \times 2$. Level III, $45.87\% = 15.29\% \times 3$. Level IV, $61.16\% = 15.29\% \times 4$.
 (E) Percentage Change in Probability for Level I = $(15.29 - 29.59) / 29.59 \times 100\% = -48.33\%$; for Level II, III, and IV follow the same calculation.
 (F) Because beneficiaries can be selected only once, DHS simulated the process of selecting registrations; multiplying petitions by selection probabilities ((A) x (D)) does not accurately reflect the selection process because once a person is selected, that person does not re-enter the pool of registrants and would overstate impacts. Since weighted probabilities without replacement are not tractable to compute explicitly, DHS used Monte Carlo simulation to estimate line F.

Table taken from the [full DHS Federal Register](#).

CONTACT

We will be monitoring these changes. If you would like guidance or have questions regarding the H-1B lottery process, please contact [Allison Ahern Fillo](#) or [Emily Tanji](#) in our [Immigration Law Practice](#).