

DHS Issues Final Rule Implementing Weighted H-1B Visa Cap Selection Process

On Dec. 29, 2025, the U.S. Department of Homeland Security (DHS) published a [final rule](#) in the Federal Register that significantly amends regulations governing the process by which the U.S. Citizenship and Immigration Services (USCIS) selects H-1B registrations. The final rule implements a weighted selection process that generally favors the allocation of H-1B visas to higher-skilled and higher-paid foreign workers while maintaining the opportunity for employers to secure H-1B workers at all wage levels. The rule takes effect on **Feb. 27, 2026**.

Background

The current H-1B visa program allows U.S. employers to hire foreign workers in specialty occupations requiring highly specialized knowledge. Each year, the USCIS allocates 65,000 slots for regular H-1B registrations and 20,000 slots for individuals with a U.S. master's degree or higher. Employers apply by submitting an electronic registration for each candidate they sponsor. The USCIS conducts a random lottery if the number of registrations exceeds the limited H-1B quota.

The final rule follows the recent [presidential proclamation](#), signed on Sept. 19, 2025, establishing the \$100,000 entry fee for each H-1B visa recipient starting Sept. 21, 2025.

Key Highlights

The final rule replaces the lottery system with a weighted system that prioritizes higher-paying jobs, while still awarding H-1B visas at different wage levels. The rule identifies four wage bands based on the highest Occupational Employment and Wage Statistics wage level for the relevant Standard Occupation Classification (SOC) code and area of intended employment as follows:

- Level I—Candidates would be entered into the selection pool one time;
- Level II—Candidates would be entered into the selection pool two times;
- Level III—Candidates would be entered into the selection pool three times; and
- Level IV—Candidates would be entered into the selection pool four times;

Candidates would only be eligible to be selected one time, regardless of the number of entries, through a random, computer-generated selection process.

The final rule will be in place for the fiscal year (FY) 2027 H-1B cap registration season.

Employer Takeaway

The final rule is one of the most consequential changes to the H-1B visa program in recent years. Employers should review wage structures for any anticipated H-1B candidates. They should also ensure accurate SOC code and wage level determinations and that job descriptions align with occupational codes. Employers and business groups are currently challenging the \$100,000 H-1B fee. It is likely that the final rule will face similar legal challenges. Employers should monitor the situation for updates.

This Legal Update is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice. © 2026 Zywave, Inc. All rights reserved.