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

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The U.S. Department of Homeland Security (DHS) has issued a final rule, Weighted Selection Process for Registrants and Petitioners Seeking to File Cap-Subject H-1B Petitions, that significantly reshapes how H-1B cap-subject registrations are conducted from a random selection process to a weighted selection process that prioritizes higher-wage, higher-skilled H-1B beneficiaries while preserving access to the program across all wage levels. This rule is scheduled to take effect on February 27, 2026, in time for the FY 2027 H-1B registration season and represents one of the most consequential changes to the H-1B cap selection framework in recent years.

From Random Lottery to Weighted Selection

Under the current system, USCIS conducts a beneficiary-centric random selection where each unique beneficiary has an equal chance of selection, regardless of the wage level offered or the role's seniority level. The final rule retains the beneficiary-centric model but layers in a wage-based weighting mechanism. Each registration for a unique beneficiary will be entered into the selection pool multiple times based on the highest Occupational Employment and Wage Statistics (OEWS) wage level for the relevant Standard Occupational Classification (SOC) code and area of intended employment, up to the point where the offered wage equals or exceeds that level. Beneficiaries would be entered into the selection pool as follows:

- Wage Level IV: 4 times
- Wage Level III: 3 times
- Wage Level II: 2 times
- Wage Level I: 1 time

Each beneficiary is still counted only once toward the numerical cap, but higher-wage roles will have a statistically greater likelihood of selection.

To support the weighted selection process and guard against manipulation, the final rule introduces several new compliance requirements:

Electronic Registration Stage

Registrants must now provide (in addition to the other requested data

points):

- The SOC code for the proffered position
- The area of intended employment
- The highest OEWS wage level offered that equals or exceeds

Petition Stage

Petitioners filing after selection must submit:

- Evidence supporting the wage level indicated at registration
- Confirmation that the SOC code, wage level, and job location are consistent with the Labor Condition Application (LCA)

USCIS is also granted enhanced authority to deny or revoke petitions where it determines that changes to wages, job duties, or locations were made to unfairly increase the odds of selection.

DHS Rationale and Policy Objectives

DHS emphasizes that the H-1B program was created to help US employers fill highly skilled positions and to enhance US competitiveness in the global economy. “The existing random selection process of H-1B registrations was exploited and abused by US employers who were primarily seeking to import foreign workers at lower wages than they would pay American workers,” said US Citizenship and Immigration Services spokesman Matthew Tragesser.

What Employers Should Do Now

With this rule finalized, employers should review wage structures for anticipated H-1B roles and should anticipate that many of their H-1B cap lottery candidates may ask follow-up questions about their wages. With the recently implemented Project Firewall, an H-1B enforcement initiative, employers should work closely with their legal team to ensure accurate SOC code and wage level determinations and properly align job descriptions with occupational codes and compensation strategies early on. The shift from a purely random lottery to a weighted selection framework marks a fundamental change in H-1B strategy. Early planning and careful compliance will be essential for employers seeking to remain competitive under the new system.

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