

JANUARY 9, 2025 | PUBLICATION

## Client Alert: DHS Issues Final Rule on H-1B Modernization Effective January 17, 2025

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Some exciting new changes are happening for the H-1B visa program starting January 17, 2025. United States Citizenship and Immigration Services (USCIS) has published a final rule implementing significant changes to the H-1B nonimmigrant visa category. These welcomed modifications to the H-1B program allow for streamlined approval times, increased eligibility for entrepreneurs and startups, and expansion of organizations eligible for cap-exemption. Some key takeaways include:

#### **Greater Flexibility for Definition and Criteria Required under “Specialty Occupation.”**

The Department of Homeland Security (DHS) revised the regulatory definition and criteria for “Specialty Occupation,” including a clarification that petitioners no longer need to show that a bachelor’s degree is “always” the minimum, just “normally” the minimum requirement.

#### **Expanded Definition of “Employment” to Now Include Entrepreneurs, Startups and Owners.**

The modernized rule eliminates the need for an employer-employee relationship, which previously significantly limited both business owners and entrepreneurs from taking advantage of H-1B visas. This expansion allows for entrepreneurs to obtain H-1B visas through petitions filed by their own start-ups and further allows the beneficiaries to perform non-specialty occupation work (investment pitches, contract negotiating, etc.) if specialty occupation duties remain the majority focus. This is an incredible opportunity for foreign startups to take advantage of the H-1B lottery by self-petitioning.

#### **H-1B Cap Exemption Modifications and Expansions for Nonprofits.**

Nonprofit research organizations or governmental research organizations can now show research is a “fundamental activity” to qualify for cap exemption, rather than showing that research is what they “primarily engage” in or is their “primary mission.” The new definition also expands worked performed “at” a qualifying institution to include work performed via telework, remotely, or off-site.

Under the new rule, nonprofits no longer need to show they have been approved for IRS tax-exempt status for research or educational purposes. They are only required to evidence their exemption under 501(c)(3), (c)(4), or (c)(6).

## **H-1B Site Visits.**

The rule expanded authority and compliance requirements for H-1B site inspections. Under the new rule, USCIS is authorized to conduct site visits at the petitioner's worksite, neutral locations, and other places where the H-1B work will be performed, including third-party customer locations and the H-1B holder's home (if working remotely). If USCIS is unable to verify facts on site visits, the agency is authorized to deny or revoke H1-B petitions. This expansion highlights the importance of compliance procedures and policies and maintaining a sophisticated company prevention plan for any USCIS audits or site visits.

## **Longer "Cap-Gap" for F-1 Students Changing Status to H-1B.**

The rule increases flexibility for F-1 visa holders, extending the cap-gap protection period from October 1 to as late as April 1 of the fiscal year for which the petition was filed, or the start date of the H-1B petition, if approved, whichever date is earlier. The prior regulations only allowed for September 30 prior to the start of the fiscal year, limiting petitioning employer start dates.

## **What can Employers do to Prepare?**

Reach out to the Shumaker Immigration Team to prepare for H-1B registration deadlines and schedule a comprehensive review of compliance policies and procedures. We expect the H-1B FY2026 registration to begin in March 2025.

Our team is equipped to prepare your company for all immigration needs, including drafting compliance policies, presenting staff and employee training sessions, and performing internal audits to eliminate risk.

## **What Can Entrepreneurs and Startups do to Prepare?**

Reach out to the Shumaker Immigration Team to request a comprehensive evaluation for eligibility. If H-1B eligibility exists, we will guide you through the filing process. If not eligible, we will evaluate other visa category eligibility and/or prepare you for future immigration needs.

If you have any questions, please reach out to a member of Shumaker's [Immigration](#) team.