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Client Alert: New Wage-Weighted H-1B Cap Selection Process Effective February 27, 2026

On December 29, 2025, the Department of Homeland Security (DHS) published a final rule implementing a major restructuring of the H-1B cap selection process. Beginning with the Fiscal Year (FY) 2027 H-1B cap season, the traditional random lottery will be replaced with a wage-weighted selection system, giving candidates with higher Department of Labor (DOL) Occupational Employment and Wage Statistics (OEWS) wage levels greater odds of selection. The rule becomes effective February 27, 2026.

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Employers should be aware of the following critical deadlines:

- **March 4, 2026, at 12 noon ET:** Registration period opens.
- **March 19, 2026, at 12 noon ET:** Registration period closes.
- **By March 31, 2026:**S. Citizenship and Immigration Services (USCIS) will make selections and update the myUSCIS portal.
- **April 1 – June 30, 2026:** Initial H-1B cap-subject petition filing period for selected beneficiaries.

How the Weighted Selection System Will Work

Under the new rule, each beneficiary is entered into the lottery according to the highest OEWS wage level that the proffered wage exceeds up to four entries for the highest wage level. Higher wages are intended to lead to more opportunities for selection, increasing the likelihood of selection.

The number of lottery entries is determined as follows:

Wage Level	Number of Lottery Entries
Level I	One Entry
Level II or higher	Two Entries
Level III or higher	Three Entries
Level IV or higher	Four Entries

Important Distinction: Registration vs. LCA Wage Levels

The OEWS wage level determination used for lottery selection is not the same as the prevailing wage determination required for Labor Condition Applications (LCA). Nothing about the new rule alters the LCA process or its corresponding requirements. If a registration is selected, employers must still conduct a separate prevailing wage analysis as part of the LCA filing process.

Critical Rule: "Lowest Wins"

When a beneficiary may work at more than one worksite or when multiple employers submit registrations for the same beneficiary, the new rule requires that a registrant use the lowest of the available wage levels to reduce the occurrence of possible manipulation. This means:

- If multiple employers submit registrations for the same beneficiary, the beneficiary will be entered based on the lowest OEWS wage level submitted among those registrations.
- If the beneficiary will work at multiple worksites, the beneficiary will be entered into the lottery based on the lowest applicable wage level across all locations.

New H-1B Cap Registration Requirements

The new process also comes with additional requirements for the registration form. Employers are now required to ensure that the job offer is "bona fide" and that wage level determinations, Standard Occupational Classification (SOC) codes, and job details are accurate and fully supportable at the time of registration. More specifically, for each FY 2027 H-1B cap registration, employers are required to:

- Identify the SOC code for the H-1B eligible position;
- Specify the area(s) of intended employment (i.e., worksite locations);
- Attest to the offered wage;
- Determine the correct weighted wage level (I–IV) based on OEWS data;
- Maintain evidence supporting how the wage level was determined (i.e., printout from the DOL OFLC Wage Search website, etc.); and
- Provide complete beneficiary biographical information, including valid passport details

Process Integrity and Compliance Requirements

DHS recognizes that wage-level weighting introduces opportunities for misuse; therefore, the rule includes extensive process integrity provisions. USCIS now has explicit authority to deny or revoke petitions where registration information appears engineered to inflate selection odds and has explicitly stated it will compare information across the registration, LCA, and H-1B petition to detect any fraudulent manipulation.

If information on the registration and petition does not match, USCIS may reject or deny the petition. Discrepancies, misrepresentation, or fraud may trigger a Request for Evidence (RFE) or Notice of Intent to Deny (NOID) or lead to petition denial, revocation, and additional enforcement action.

Documentation and Verification Best Practices

Prepare Internal Documentation: Employers may wish to prepare internal memoranda documenting SOC selection, worksite location(s), and wage level rationale tied to OEWS factors, such as experience, supervision, complexity, and discretion.

- Conduct Pre-Registration Integrity Review: Implement an internal H-1B checklist verifying alignment across job description, SOC code, wage level, worksite(s), and LCA strategy.
- Train Recruiters and Hiring Managers: Emphasize that changes to job location, duties, salary, or leveling after registration may jeopardize petition approval.

What Has Not Changed

The statutory annual cap remains $65,000, plus $20,000 for U.S. advanced degree exemptions. Additionally, employers must still prove specialty occupation eligibility, employer-employee relationship, and all other petition-level requirements—selection does not guarantee approval. The USCIS filing fee also remains $215 per registration.

Conclusion

The wage-weighted H-1B selection system represents the most significant structural change since 2020. Although the rule rewards employers offering higher wages aligned to more complex roles, it also imposes meaningful new compliance risks. Given the significant changes, employers should immediately begin preparing by building documentation systems that enhance SOC accuracy, wage-level defensibility, and worksite consistency.

If you have any questions regarding the new H-1B weighted selection process or would like assistance preparing your FY 2027 registrations, please contact Shumaker's Immigration Team.

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