

H-1B Visa Program: Enforcement and Proposed Cap H-1B Lottery Changes

by Ieva Aubin and J. Mike Sevilla

Federal agencies are initiating new enforcement initiatives and proposed rulemaking aimed at examining and revising the current H-1B visa program.

New H-1B Enforcement Initiative

On September 19, 2025, the U.S. Department of Labor (DOL) announced the launch of Project Firewall - an enforcement initiative designed to ensure strict employer compliance with the H-1B visa program. This enforcement initiative will focus on investigating employers participating in the H-1B visa program to ensure compliance with H-1B regulations. Findings of employer violations may result in collection of back wages to impacted workers, civil money penalties, and/or barring an employer from the H-1B program. Information gathered from the investigations will be shared with relevant government agencies.

Proposed Changes to the H-1B Lottery

On September 24, 2025, the Department of Homeland Security (DHS) published proposed rulemaking to replace the H-1B lottery with a weighted selection process. This proposal would apply to H-1B petitions subject to the annual cap and petitions eligible for the advanced degree exemption.

In contrast with the current H-1B lottery where each registration in the lottery is treated equally, the proposed process establishes four weighted tiers of wage levels granting more chances to higher wage earners. Each wage level grants a beneficiary one additional entry into the lottery pool with the highest—Wage Level IV—granting a beneficiary 4 entries into the lottery pool. Despite beneficiaries having multiple entries, each unique beneficiary is counted only once towards the annual cap. This proposed weighted selection process would not alter the DOL prevailing wage requirements.

This proposed rulemaking is subject to the notice-and-comment period. Written comments on this proposed rulemaking are due October 24, 2025. Currently, it is unclear

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whether this proposed rulemaking will be finalized before the upcoming fiscal year 2027 H-1B cap lottery, which will open in March of 2026.

Analysis of the Proposed Rule Change

The proposed rulemaking published in the Federal Register details the weighted selection process stating,

“Registrations for unique beneficiaries or petitions would be assigned to the relevant Occupational Employment and Wage Statistics (OEWS) wage level and entered into the selection pool as follows: registrations for unique beneficiaries or petitions assigned wage level IV would be entered into the selection pool four times, those assigned wage level III would be entered into the selection pool three times, those assigned wage level II would be entered into the selection pool two times, and those assigned wage level I would be entered into the selection pool one time.”

Each unique beneficiary will only be counted once, regardless of the number of registrations or entries in the selection pool.

Employers will be required to indicate the highest wage level a beneficiary’s proffered wage would equal or exceed for the relevant Standard Occupational Classification (SOC) code. If the proffered wage is expressed as a range, employers must select the OEWS wage level based on the lowest amount in the proffered wage range. If there is no OEWS prevailing information on a proffered job, employers should follow DOL guidance on prevailing wage determinations.

Moreover, employers will need to provide the appropriate SOC code of the proffered position and the area of intended employment that served as the basis for the OEWS wage level. For employees who work in multiple locations, or in multiple positions if the employer is an agent, the employer must utilize the lowest wage level for each of the locations or positions. The employer would then list the location with the lowest wage level as the area of intended employment. DHS offered the following example stating,

“For example, if the beneficiary would work as a software developer (SOC code 15-1252) with a proffered wage of \$175,000 in both Sacramento, California, where such wage exceeds wage level IV, and San Francisco, California, where the highest level that such wage meets or exceeds would be wage level II, the registrant would select the “wage level II” box on the registration form and list San Francisco as the area of intended employment.”

Lastly, multiple employers filing for one beneficiary does not increase selection chances. DHS will direct USCIS to use a single OEWS level registration and to utilize the lowest OEWS wage level among multiple registrations. Therefore, a beneficiary that has both a

Level I registration and Level IV registration will be considered solely a Level I beneficiary for the purposes of the weighted selection.

Employer Considerations

The proposed rulemaking creates new headwinds in the H-1B process. If implemented employers should consider:

- The timing of the final rule implementation and whether this weighted process will be used for FY2027 roles.
- The worksite location of H-1B workers.
- Whether current H-1B workers can change their status to another visa classification (TN, O-1, L-1).
- Increase in competition among employers to avoid the Level I or Level II classification.
- Assessing budgets to consider increases in offered salaries to achieve Level IV classification.

Dorsey's immigration team is actively monitoring new developments and is available to advise corporate clients on individual and entity-based solutions.