

DHS Finalizes Weighted H 1B Selection System for FY 2027 Registration Season Effective February 27, 2026

January 13, 2026

The U.S. Department of Homeland Security (DHS) published a final rule establishing a weighted, wage-level-based selection process for H-1B cap registrations. This change will apply to the FY 2027 H-1B cap registration period, which is likely to begin in March 2026. The rule is intended to prioritize higher-skilled and higher-paid foreign workers, giving those workers with higher-offered wages a better chance of selection.

KEY CHANGE

The key change that stems from this final rule is how U.S. Citizenship and Immigration Services (USCIS) will select H-1B CAP registrations. Rather than selecting beneficiary-centric registrations randomly as has been done in the past, USCIS will now select registrations based on the wage-level that the wage offered to the beneficiary meets or exceeds under the Department of Labor's (DOL) Occupational Employment and Wage Statistics (OEWS) database. This database provides four prevailing wage levels for each occupation based on its place of employment (by county). For example, the level 1 prevailing wage under the OEWS for a Mechanical Engineer in the Metropolitan Detroit area, as of January 2026, is \$77,792, whereas the level 4 prevailing wage is \$125,362.

Under this new process, beneficiaries whose offered wage meets or exceeds the Level 4 prevailing wage for their occupation and place of intended employment will be entered into the selection pool four times, those whose wage meets or exceeds Level 3 will be entered into the selection pool three times, those whose wage meets or exceeds Level 2 will be entered into the selection pool two times, and those whose wage meets or exceeds Level 1 will be entered into the selection pool only one time. Each unique beneficiary will only be counted once toward the numerical allocation projections, no matter how many registrations were submitted for that beneficiary or how many times the beneficiary is entered in the selection pool.

If a registration is selected in the lottery, the employer is eligible to file an H-1B petition on behalf of the beneficiary. USCIS will require that the petition and accompanying labor condition application align with the data submitted in the H-1B CAP registration, including SOC code, area of intended employment, and wage level. Multiple employers may register the same beneficiary. If selected, each employer that submitted a registration may file an H-1B petition on behalf of that beneficiary. The beneficiary would then be required to choose the employer for which he or she intends to work.

This new process gives beneficiaries with higher wages a better chance of being selected. It also decreases the chances of selection for entry level professionals, whose offered wages only meet the Level 1 prevailing wage for their occupation. This change will require employers to submit additional information at the H-1B CAP registration stage, including the Standard Occupational Classification Code (SOC) that aligns to the beneficiary's position, the area of intended employment, and the prevailing wage level that the beneficiary's salary meets or exceeds

EFFECTIVE DATE

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The final rule becomes effective February 27, 2026, and will apply to the FY 2027 H-1B CAP registration period, likely to begin in March 2026.

RECOMMENDED EMPLOYER ACTION STEPS

Employers should begin preparing for the H-1B CAP registration period now. With this change, employers should strategize earlier, confirming the job titles, SOC Codes, and places of employment for potential candidates in order to analyze the candidate's chance of selection in the H-1B lottery.

Employers should also be mindful of the new \$100,000 H-1B fee announced via Presidential Proclamation in September 2025. This fee applies to new H-1B petitions for beneficiaries selected in the lottery that request consular notification or port-of-entry notification. It should not be found to apply to beneficiaries already in the United States requesting a change of status, such as F-1 students requesting a change of status to H-1B. Litigation challenging this fee is ongoing.

We will continue to provide further information as additional details are released regarding the implementation of this rule. If you have any questions on how this change may impact your company or your employees as we approach the H-1B CAP registration season, please contact a member of the Miller Canfield Immigration team at Immigration@millercanfield.com.