

Alert | Immigration & Compliance



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USCIS Finalizes Wage Weighted H-1B Cap Selection Rule, Effective Feb. 27, 2026

USCIS has finalized a major restructuring of the H-1B cap selection process. In the upcoming FY 2027 H-1B cap season, the traditional random lottery will be replaced with a wage weighted selection system, giving candidates with higher DOL prevailing wage levels (Level I–IV) proportionally greater odds of selection.

The Department of Homeland Security (DHS) published the rule in the Federal Register on Dec. 29, 2025, with an effective date of Feb. 27, 2026. The FY 2027 H-1B cap registration period opens on March 4, 2026, and runs through March 19, 2026. USCIS should make the selections by March 31, 2026, and the FY 2027 H-1B cap petitions filing period will run from April 1, 2026, through June 30, 2026.

As such, employers will have a relatively short time period to enter their prospective H-1B employees into the drawing. Companies may wish to assess their affected employee population, prepare data for immediate entry once the registration period opens, and assemble all relevant documentation to enhance compliance and minimize the risk of adverse government action.

This GT Alert summarizes the key changes, risks, and shares employer considerations.

What Has Not Changed

- The statutory annual cap remains 65,000 + 20,000 for U.S. advanced degree exemptions.

- Employers must still prove specialty occupation eligibility, employer employee relationship, and all other petition level requirements—selection does not guarantee approval.

Key Change: Weighted Entries Based on OEWS Wage Level

Under the final rule, each unique beneficiary is entered into a single selection pool, but the number of entries assigned depends on whether the offered wage meets or exceeds U.S. Department of Labor (DOL) Occupational Employment and Wage Statistics (OEWS) Wage Levels I–IV for the applicable Standard Occupational Classification (SOC) code and area of intended employment:

- Level IV → 4 entries
- Level III → 3 entries
- Level II → 2 entries
- Level I → 1 entry

Per the final rule, weighting is driven by the OEWS wage level and not by the role's minimum requirements.

- Selection weighting uses the highest OEWS wage level that the offered wage meets or exceeds for the SOC and area of intended employment.
- If the offered wage is below the OWES Level I wage for the given location and SOC code, employers may still enter a candidate if acceptable alternative wage source would support the offered wage. All such candidates will be entered one time only.

Will the Minimum Requirements for the Offered Role Be Considered?

- At the selection weighting stage: No

The only variable for weighting is whether the offered wage meets/exceeds OEWS Level I–IV for the chosen SOC and area(s) of intended employment.

- At the petition filing stage: Yes

The offered wage level, SOC code, and area of intended employment indicated at the selection stage must match those reflected on the LCA when the employer files the actual cap H-1B petition for the selected individual.

NOTE:

Offering a salary that clears a higher OEWS Wage Level will yield more entries at the cap registration stage. If the minimum education/work experience requirements and job duties of the offered position support OEWS Level I/II wage only, but the company is willing to offer a wage equal to or exceeding Level III/IV, and the company wishes to claim Level III/IV at the selection stage to gain the candidate more entries into the drawing, the company may wish to:

- List the same offered wage, OEWS wage level, SOC code, and area of intended employment on the H-1B petition and LCA; and

- Prepare to argue that the company has waived the higher education/work experience requirements for the role out of business necessity (e.g. inability to fill the position with a qualified candidate at a lower wage) by providing historical record of recruitment for the same or similar roles in the area.

New Compliance Focus: “Process Integrity” 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.

- **What USCIS Will Scrutinize**

A. Wage Level Consistency

Employers must use the highest wage level that the offered wage meets or exceeds—and this same level must appear consistently in:

- The H-1B registration,
- The LCA, and
- The H-1B petition.

B. SOC Code Accuracy

The SOC code used at registration must truthfully reflect the job’s duties, complexity, and degree required specialty.

C. Worksite (Geography) Integrity

Because prevailing wage levels vary by location, USCIS will scrutinize:

- All listed worksites at registration,
- Whether the lowest applicable wage level among them was used, and
- Whether the same locations appear on the later LCA and petition.

Checklist for Consistency

- Same SOC code;
- Same wage level (or higher);
- Same worksite(s);
- Same job description;
- Same degree and skills requirements;
- Same offered salary (or higher); and
- Same internal business rationale documentation.

Employer Considerations

A. Finalize SOC, Worksite, and Wage-Level Documentation Before Registration

Employers may wish to prepare internal memoranda documenting:

- SOC selection;
- Worksite location(s); and
- Wage level rationale tied to OEWS factors (experience, supervision, complexity, and discretion).

B. Conduct a Pre-Registration Integrity Review

Implement an internal H-1B checklist verifying alignment across:

- Job description;
- SOC code;
- Wage level;
- Worksite(s); and
- LCA strategy.

C. Train Recruiters and Hiring Managers

Emphasize that changes to job location, duties, salary, or leveling after registration may jeopardize petition approval.

Conclusion

The wage weighted H-1B selection system represents the most significant structural change to the cap since 2020. Although the rule rewards employers offering higher wages aligned to more complex roles, it also imposes meaningful new compliance risks. The Process Integrity framework is now a formal regulatory tool USCIS will use to deny or revoke petitions that do not align with the facts presented at registration.

Employers may wish to begin preparing now for the FY 2027 cap season by building documentation systems that enhance SOC accuracy, wage level defensibility, and worksite consistency.

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