

How DHS' H-1B Proposal May Affect Hiring, Strategic Planning

By **Ian MacDonald** (October 14, 2025)

The U.S. Department of Homeland Security published a proposed rule on Sept. 24 that could significantly reshape the H-1B visa registration and selection process. If finalized, the system would alter how employers compete for H-1B visa petitions and create new employer compliance obligations.

Employers planning for the upcoming fiscal year 2027 cap season, which opens for registration in March 2026, should evaluate how these modifications may affect their hiring strategies, budgeting and workforce planning.



Ian MacDonald

From Random Lottery to Wage-Weighted Selection

Currently, when the demand for H-1B visas exceeds the annual quota of 85,000 visas, including the 65,000 regular cap and the 20,000 advanced-degree cap, beneficiaries are chosen through a random lottery, with each prospective H-1B worker receiving one lottery entry.

The proposed rule would replace this process with a wage-weighted lottery that increases the odds of selection for beneficiaries whose offered wages place them in higher U.S. Department of Labor wage levels under the appropriate standard occupational classification, or SOC, code.

Under the proposal, each beneficiary's number of lottery entries would be determined by comparing the offered wage against the DOL's Occupational Employment and Wage Statistics, or OEWS, for the specific occupation and location. Each job must first be classified under a SOC code, which is then mapped to a prevailing wage by geographic region.

Once this baseline is set, the role is assigned to one of four wage levels: Level I for entry-level positions requiring basic understanding and close supervision, Level II for positions requiring some experience and judgment, Level III for experienced roles requiring considerable independence and Level IV for fully competent positions requiring advanced knowledge.

The weighting system assigns additional entries based on these levels.

A beneficiary offered a wage that meets or exceeds the Level I threshold would receive one lottery entry. If the offered wage meets or exceeds the Level II threshold, the beneficiary would receive two entries. Wages at Level III qualify for three entries and those at Level IV result in four entries. As a result, a beneficiary in a position classified at Level IV has four times the chance of selection compared to one at Level I.

Importantly, this weighting is tied not simply to the salary dollar amount, but to whether the job duties and qualifications align with the higher wage level. A high salary attached to a role that still requires entry-level skills will not automatically elevate it into a higher classification.

The system also addresses cases where a beneficiary has multiple job offers. While more than one employer may submit a registration, the beneficiary would receive only a single entry in the lottery. That entry would be weighted according to the lowest wage level among all offers. This provision is designed to prevent employers from stacking higher-wage offers to artificially boost a beneficiary's selection odds.

In effect, the new framework would preserve randomness but tilt the odds in favor of beneficiaries whose roles are classified at higher wage levels under the DOL system, positions which DHS views as more aligned with the H-1B program's purpose of attracting highly skilled, well-compensated foreign professionals to fill critical labor market needs.

DHS Policy Goals

DHS has framed the proposal as part of a broader effort to align the H-1B program with labor market demand and program integrity goals. By giving priority to beneficiaries at higher wage levels, the agency aims to direct visas toward positions requiring advanced skills, discourage the use of H-1B workers for lower-wage roles and reinforce the program's role in addressing genuine labor shortages.

The rule also preserves eligibility at all wage levels, reflecting DHS' attempt to balance market integrity with broad access.

Employer Considerations

For employers, the effects of this shift may be significant. The rule would incentivize companies to provide higher compensation, potentially increasing labor costs across industries that rely heavily on H-1B workers.

Larger companies may be able to absorb these costs, but smaller businesses, nonprofits and regional employers may find it harder to consistently offer positions at Level III or IV within their local prevailing wage framework. Even though wage thresholds are location-specific, budget limitations and market pressures may leave these employers less competitive in the weighted lottery.

Entry-level hiring programs may be particularly affected. Some companies use the H-1B pathway to retain recent F-1 and J-1 graduates of U.S. universities, especially in STEM fields. Science, technology, engineering and math roles are often classified at Level I, which are likely to face substantially lower chances of selection for the beneficiaries under the proposed system.

Employers concerned with developing long-term talent pipelines may need to weigh how diminished access for early-career professionals affects recruitment and retention strategies.

Geography also matters. Employers in high-cost metropolitan markets may be able to easily meet Level III or IV thresholds, while those in rural or lower-cost areas may struggle to justify salaries at those levels within their own prevailing wage structures. As a result, national and multinational employers in major urban hubs may hold a competitive advantage, leaving regional employers with potentially fewer opportunities to access global talent.

Compliance and Fraud Prevention

The proposal would expand administrative and compliance responsibilities by elevating the importance of determinations employers already make during the H-1B process.

Employers are already required to determine the appropriate SOC code, establish a prevailing wage for the worksite location and maintain supporting documentation such as prevailing wage surveys and actual wage data in a Public Access File. Under the proposed rule, however, these determinations take on added significance, as wage levels would directly influence lottery selection odds and may be subject to heightened scrutiny.

For multilocation roles, the lowest applicable wage level would control, adding another layer of complexity.

Critically, employers must also ensure that the SOC codes they select align with occupations that require at least a bachelor's-level education. This requirement not only drives the wage-level classification but also aligns with the H-1B program's statutory criteria that the role qualify as a specialty occupation. Choosing SOC codes that do not reflect degree-level requirements may undermine both the registration and the underlying petition.

DHS has paired the weighted lottery with enhanced fraud-prevention measures. U.S. Citizenship and Immigration Services would expand verification processes, cross-reference employer information with other government databases, and scrutinize petitions that appear inconsistent with company size or business needs.

Employers inflating wages or misclassifying SOC codes to secure extra lottery entries for a beneficiary may face denials, revocations or suspension from the H-1B program.

Strategic and Workforce Planning

For employers, the cumulative effect of the proposed rule is a need to rethink both immediate filing strategies and long-term workforce planning. In the near term, employers may wish to budget not only for higher wages to improve beneficiaries' lottery odds, but also for increased administrative and legal costs tied to compliance.

Finance and human resources teams may need to work together to model the potential impact of offering Level III or IV wages versus maintaining existing compensation structures. These budget conversations will likely need to extend beyond the immigration team, since changes to salary bands for H-1B candidates may reverberate across broader employee pay structures and legal issues.

From a workforce perspective, employers may need to assess which roles and corresponding duties and responsibilities truly merit the wage increases that might improve selection chances. Employers may also want to consider alternative strategies for positions unlikely to be competitive under the new weighting system.

Larger employers with operations across multiple U.S. locations may also evaluate where to place new H-1B workers for registration purposes because prevailing wages are determined by the metropolitan statistical area. Assigning a beneficiary to a lower-cost location may make it more feasible to meet or exceed the Level IV wage threshold without dramatically increasing overall compensation costs.

That said, this strategy requires careful alignment with actual business needs and

compliance obligations. Employers must ensure that the listed worksite truly reflects where the employee would perform services, both at the registration and petition stages. If an employee would work at multiple locations, the lowest applicable prevailing wage will apply.

Misalignment between the registered worksite and the real one might create compliance risks during audits or site visits.

Employers with flexible or remote work policies may also consider how to establish a primary location in metropolitan areas where prevailing wage thresholds are lower. However, employers should ensure that remote work arrangements are genuine and supported by appropriate documentation.

Longer-term, employers may wish to explore alternative talent pathways, including reliance on other visa categories such as TN for Canadian and Mexican professionals, O-1 for individuals of extraordinary ability or L-1 for intracompany transferees, as well as earlier green card sponsorship and remote work arrangements outside the U.S.

Each of these options comes with operational and compliance trade-offs that must be carefully evaluated.

Strategic planning should also account for potentially heightened government scrutiny. Because USCIS is expected to closely monitor wage-level determinations and SOC classifications, and may scrutinize whether a listed worksite reflects an employee's actual employment location, employers must be prepared to defend their choices in audits or site visits.

This may require proactive documentation, robust internal processes, and collaboration between legal, HR and business units.

Finally, employers should consider how the weighted lottery may reshape early-career hiring. Companies that rely on entry-level international graduates may find diminished success under the new framework, forcing them to reconsider recruitment pipelines and long-term talent development strategies. For some, this may mean shifting resources toward retaining mid- to senior-level talent, while for others, it may involve rebalancing recruitment pools.

Conclusion

The proposed wage-weighted lottery would represent a notable shift from a random allocation system to one that explicitly rewards beneficiaries in positions classified at higher DOL wage levels.

DHS is taking steps to strengthen program integrity and better align visa allocation with labor market demand. For employers, however, the rule might increase labor and compliance costs, limit access to entry-level international talent and raise strategic questions about compensation, geography and long-term workforce planning.

Ian R. Macdonald is a shareholder and co-chair of the international employment, immigration and workforce strategies group at Greenberg Traurig LLP.

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