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The $100,000 question: Navigating the new H-1B lottery system

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The opening of the FY2027 H-1B cap season in early March marked the beginning of a fundamentally different H-1B program, to apply for visas for foreign professionals in specialized occupations.

Effective February 2026, the government issued a final rule replacing the decades-old random lottery with a wage-weighted selection system that gives higher-paid positions up to four times the chance of selection. Combined with a new $100,000 supplemental filing fee and enhanced integrity measures, the rule transforms the H-1B from a random-chance system into one that explicitly favors higher-compensated workers.

Staffing and IT consulting firms face the most severe impact. Organizations that filed high volumes of registrations at Level I and II wages now face reduced selection odds under the wage-weighted system. Further, staffing companies, which have historically submitted tens of thousands of H-1B lottery registrations for their existing employees abroad, will dramatically decrease the number of registrations they submit as a result of the $100,000 super fee for consular H-1Bs.

Previously, every properly submitted H-1B registration had an equal (roughly 30%) probability of selection, regardless of wage, skill, or experience. The new system assigns each candidate a number of lottery entries corresponding to the Department of Labor (DOL) Occupational Employment and Wage Statistics (OEWS) wage level of the offered position. This prioritizes higher-wage positions by tying the probability of selection to the offered salary:

Level IV wage allows for four entries with estimated 61% selection probability; Level III — three entries with estimated 45%; Level II — two entries with estimated 30%; and Level I — one entry with estimated 15%.

Within the total annual cap of 85,000 H-1Bs a random selection still occurs, but from an enlarged pool in which higher-wage registrations appear more frequently. The wage level is determined by the highest OEWS tier that the offered salary equals or exceeds for the specific occupation (SOC code) in the location of intended employment.

Critical anti-manipulation provisions require employers to use the lowest applicable wage level when a position involves multiple worksites. Moreover, if multiple employers register the same person at different wage levels, USCIS assigns the lowest level to the person — preventing employers from submitting inflated high-wage registrations alongside legitimate lower-wage ones. This means additional registrations can actually harm a person's chances.

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An H-1B cap registration must include the SOC code, area of intended employment, and the highest OEWS wage level that the offered salary equals or exceeds. Petitions filed after selection must match the registration's SOC code, location, and evidence they meet the wage level. Denials or revocations can be expected where the petition's wage, occupation code, or location is inconsistent with the registration and appears engineered to increase selection odds.

Employers should be further cautious about raising salaries for foreign nationals to inflate selection odds insofar as it disadvantages American employees, as this could result in a discrimination lawsuit. They should also recognize that guaranteed bonuses used to increase wage levels must be guaranteed for each H-1B employment, and that such bonuses must be guaranteed to all employees in the same occupation.

The new framework will be most advantageous to companies in big tech, finance, healthcare, and engineering industries typically paying high wages even to entry-level positions. Outsourcing firms, startups, nonprofits, and rural employers placing the majority of their registrations at Levels I and II will face structural disadvantage as they cannot compete on wages with high tech/social media companies and Wall Street financial firms, but often need highly specialized talent, forcing talent to remain abroad or seek alternative U.S. work authorization options.

The economics of employer-sponsored immigration is further reshaped by President Trump's September 2025 proclamation imposing a one-time $100,000 fee on certain new H-1B petitions. The super fee applies to new H-1B petitions filed for individuals outside the United States who do not hold valid H-1B visas, and for those in the United States requesting consular notification, port-of-entry notification, or pre-flight inspection.

The fee does not apply to petitions requesting change of status for beneficiaries in valid status in the U.S., extensions (including change of employer), or amendments with the same employer.

Employers can submit a national interest exception request to the government explaining why they should not be required to pay the $100,000 fee; however, such a request carries a high "extraordinarily rare circumstances" threshold and entails lengthy processing times with minimal transparency.

The new wage-weighted selection process and the imposition of super fee have different implications for various stakeholders. The vast majority of first-time H-1B petitions are shielded from the fee as they are filed for graduates of U.S. colleges and universities who change status domestically (the typical F-1 to H-1B pathway). But for employers recruiting talent from abroad, including universities, healthcare systems, and nonprofit research institutions, the fee has effectively shut down consular-track H-1B sponsorship.

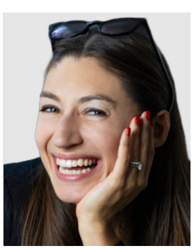
Hiring overseas talent becomes also cost-prohibitive for most small-to-mid-sized companies, largely shifting the entire H-1B pool toward candidates physically present in the U.S. Major tech companies, financial firms, and large healthcare systems are best positioned to offer Levels III and IV wages and hire candidates already in the U.S.

Small businesses confront a mixed picture. Those offering competitive wages may actually benefit from reduced competition against high-volume, low-wage registrations. But startups hiring entry-level talent face significantly diminished lottery odds, and the $100,000 fee for consular processing cases is often prohibitive.

For workers, the system now rewards those commanding higher compensation while disadvantaging positions at Level I wage. The counterintuitive dynamic around multiple registrations — where additional employers filing at lower wage levels can reduce a beneficiary's selection chance — requires careful coordination and proactive counseling.

The wage-weighted lottery combined with the $100,000 fee collectively transform the H-1B into a higher cost, higher skill pathway. The practical effect is a program that at large increasingly serves well-capitalized employers and experienced professionals — a shift that aligns with the administration's stated priorities, but raises concerns about excluding talented early-career workers, disadvantaging smaller employers, and using wage as an imperfect proxy for the skill and innovation potential.

About the authors



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