

## **NEW H-1B "CAP" REGISTRATION & PETITION FILING PROCESS**

### **Synopsis**

All H-1B cap hopefuls must first file an H-1B "cap registration" during a two week window in March. Each registration is tied to a specific employer and employee. USCIS will execute the H-1B lottery at the end of March from among all of the registrations submitted.

Registrants who are selected in the lottery can then file their full petitions during a 90 day window (starting in April). There may be one or more additional filing windows later in the year depending on the number of full petitions filed. However, we cannot predict whether there will be additional selection periods. Further, please visit our website at <http://www.tewary.com/f1toh1.htm> for a discussion on the "cap-gap" rules, which can affect F-1/OPT students applying for a change to H-1B status.

**The registration procedure will be very different in 2026.** Registrations must include beneficiary information **plus** the SOC code, OES wage level, and area of employment for the offered position. During the random selection process, each beneficiary gets a number of "lottery tickets" corresponding to the Wage Level (I-IV) that will be used on their full petition (assuming the registration is picked). Previously, employers could submit cap registrations with minimal detail and without fully analyzing wage level, job duties, worksite location, or the relevance of the beneficiary's education/experience to the job duties. Under the new rule, these factors must be carefully evaluated before registration.

### **Questions and Answers – Basic Information**

#### **How did the H-1B cap lottery change in December 2025?**

In December 2025, USCIS changed how H-1B cap registrations are selected. While the lottery remains beneficiary-centric, selection odds are now weighted based on the wage level offered for the position.

#### **How does the new wage-based lottery work?**

Each registration receives a number of "lottery tickets" based on the offered OES wage level:

- Level IV wages: 4 tickets

- Level III wages: 3 tickets
- Level II wages: 2 tickets
- Level I wages: 1 ticket

Higher wages increase, but do not guarantee, the chance of selection.

**Does this rule eliminate lower-wage H-1B candidates?**

No. Unlike a prior proposal blocked by the courts, this rule does not exclude Level I or II wage positions. Instead, it reduces their odds compared to higher-wage positions.

**When does the new rule take effect?**

The rule will apply to the March 2026 H-1B cap registration period and all future cap seasons (unless changed by a new regulation or overturned in court).

**What information must be included in an H-1B registration now?**

Registrations must include the same information as in prior years, plus the SOC code, OES wage level, and area of employment for the offered position. The wage level directly affects lottery selection odds.

**What happens if multiple employers register the same beneficiary?**

If more than one employer files a registration for the same individual, USCIS will assign the beneficiary the lowest wage level listed across all filings for lottery purposes.

**How is this different from past H-1B cap seasons?**

Previously, employers could submit cap registrations with minimal detail and without fully analyzing wage level, job duties, or worksite location, or the relevance of the beneficiary's education/experience to the job duties. Under the new rule, these factors must be carefully evaluated before registration.

**Does this affect job titles, education, or experience requirements?**

Yes. Because wage level determinations depend on job duties, required education, experience, and location, employers must ensure that the offered position is accurately classified and properly supported in the registration's SOC code and wage level.

**Will the \$100,000 fee apply?**

The \$100,000 H-1B fee must be paid for all H-1B petitions that are approved under

consular processing. Employers should keep this in mind when filing registrations. To avoid this fee, most employers are focusing their H-1B cap hiring on candidates who are in the USA or have some way to get to the USA during the filing window (April-June).

### **Questions and Answers – Enforcement Concerns**

#### **If my H-1B cap petition is approved under Wage Level 2, 3 or 4, do I need to keep getting paid at that wage level going forward?**

A petitioner and any related entities should avoid lowering the wage level on any subsequent H-1B filings for a cap beneficiary. If a petitioner or a related entity files an amended or subsequent H-1B petition to reduce the proffered wage after benefiting from a higher wage level during registration, USCIS might deny the petition under 8 CFR § 214.2(h)(10)(iii).

#### **Why is lowering the wage level after selection risky?**

USCIS views lowering the wage after selection as a potential attempt to “unfairly increase the odds of selection” in the lottery. The agency may determine that the employer used a higher wage level strategically to gain an advantage and then attempted to walk it back after selection.

#### **Does this restriction apply to related companies as well?**

Yes. USCIS will examine filings submitted by the petitioner and any related entities. Employers cannot avoid scrutiny by shifting the beneficiary to an affiliated company or filing through a related entity with a lower wage level.

#### **What happens if USCIS finds inconsistencies between the registration and the petition?**

USCIS may compare the H-1B registration, the petition, and any later amendments to assess differences in job duties, SOC code, worksite location, and wage level. If USCIS concludes that changes were made to game the lottery system, it may deny or revoke the petition. USCIS conducts routine site visits so all job details specified on a petition should be accurate.

#### **Can USCIS revoke an approved H-1B petition after approval?**

Yes. If USCIS later discovers that the petitioner is violating the terms and conditions of the petition—such as employing the worker in a role that does not match the SOC code, job description, location, or wage listed in the petition or LCA—USCIS may revoke the approval after issuing notice.

**Can the full petition mention a different worksite address than the one specified on the cap registration?**

In limited circumstances, USCIS may allow a change in the area of intended employment between registration and petition filing. However, the employer must show that the change is consistent with a "bona fide job offer" that existed at the time of registration. This term is not well defined, so we recommend that the worksite remain the same on both the registration and the full petition.

**Can two companies file H-1B cap registrations for the same person?**

No, if both companies are offering the same job. For instance, if the employee will work at a client site as a contractor, through a middle vendor, then the employer, the client, and the vendor would all be deemed to be offering the same job, so only one of them can file a cap registration. Also, related entities cannot file for the same person unless each has a "legitimate business need" based on a completely different position/role. This has been addressed in prior USCIS policy, including *Matter of S-Inc., Adopted Decision 2018-02*. Employers must be able to show that job details and wages are driven by real business requirements, not immigration strategy.

**What are the consequences of attempting to game the H-1B lottery system?**

If USCIS determines that a petitioner engaged in fraud or misrepresentation, consequences may include denial or revocation of petitions, referral to federal law enforcement, and potential long-term impacts on the employer's ability to sponsor foreign workers.

**What is the bottom line/best practice for employers under the new rule?**

Employers and related entities should ensure that the job offer, wage level, location, and duties listed at registration are accurate and sustainable through filing and employment. Wage levels must not be lowered in later filings for a cap-selected beneficiary without careful legal review.



### **H-1B Cap Timeline**

