



# GMS Flash Alert

## Immigration

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## United States – Wage-Based H-1B Lottery Proposed

A proposed regulation published by the U.S. Department of Homeland Security aims to change the annual H-1B visa cap lottery system by weighting selection odds according to the wage offered to beneficiaries, as defined by the Department of Labor’s Occupational Employment and Wage Statistics (OEWS) four-level prevailing wage system.<sup>1</sup> The proposal is open for public comment for 30 days from its publication in the *Federal Register* on September 24, 2025.

### WHY THIS MATTERS

If implemented, this regulation would significantly alter the H-1B cap lottery by prioritizing beneficiaries who are offered higher wages, with the greatest odds for those at Level 4 of the OEWS wage structure. Employers seeking to sponsor foreign nationals for H-1B status may face increased competition for higher-skilled, higher-paid talent, while candidates offered entry-level (Level 1) wages could experience reduced selection chances.

The change could increase compliance complexity and administrative burden for human resources and immigration teams, requiring thorough wage-level evaluations and documentation for each H-1B registration and petition.

Organizations may also need to reconsider compensation strategies to remain competitive in securing visa slots for critical roles. Additionally, small businesses could experience disproportionate economic impact.

### Background

Previously, the H-1B cap lottery operated as a random computerized selection process for beneficiaries registered by employers, without consideration of offered wage levels. All eligible registrations had equal odds of selection, regardless of compensation or skill level. The proposed regulation introduces a weighted system based on wage tiers, representing a shift from the prior equal-opportunity approach.

# Key Highlights

## Weighted Selection System

Beneficiaries registered for the H-1B cap would be entered into the lottery pool multiple times based on the OEWS wage level:

Wage Level	Number of “entries” in selection pool for Cap Lottery
Level IV	4
Level III	3
Level II	2
Level I	1

Source: KPMG Law LLP-Canada

- This revised process would apply to registrations under both the regular cap (for bachelor's degree holders) and the advanced degree cap (for U.S. master's degree holders).
- Each unique beneficiary would be counted only once toward the overall numerical cap of 85,000, which includes 20,000 slots specifically reserved for individuals with U.S. advanced degrees.

## Lottery Registration Requirements in Brief

- Beneficiary Details: full name, date of birth, country of birth, passport information.
- Offered Position Details: job title, Standard Occupational Classification (SOC) Code, worksite location (aligned with OES wage data), offered wage.

## Compliance and Integrity Measures

USCIS may deny or revoke petitions if wage levels in the petition do not match those listed in the submitted registration, except in legitimate cases of work location changes deemed bona fide.

## Impacted Residents/Businesses

Candidates offered lower wage levels face reduced selection odds, while small businesses may bear increased economic impact.

## Timeline and Potential Legal Consequences

- The proposal is open for comment for 30 days after publication, with finalization and implementation possible by the FY 2027 H-1B cap season (March 2026).
- Legal challenges to the final rule may occur.

## KPMG LAW LLP INSIGHTS

### Steps to Consider

Organizations that may be impacted by the proposed regulation – if it is enacted in its current form – may wish to consider the following:

- Implementing robust documentation and accurate reporting of wage levels, occupational codes, and employment locations in both registration and petition stages;
- Engaging with industry groups or legal counsel to submit public comments during the DHS feedback period; and
- Monitoring ongoing developments and preparing for possible changes to H-1B cap strategy if the rule is finalized.

### What's Next?

The rule is currently a proposal and will not take effect until DHS reviews public comments and finalizes the regulation. If finalized, the weighted lottery system could be implemented for the FY 2027 H-1B cap season. Legal challenges are possible, and the ultimate trajectory will depend on outcomes of the rulemaking and any litigation.

If individuals who may be eligible for the H-1B lottery and/or their (potential) employers have any questions or concerns about the scope of the new proposed regulation, its potential impacts, and appropriate next steps, they should consult with their usual immigration adviser or a member of the immigration legal team with KPMG Law LLP in Canada (see the Contacts section).

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### FOOTNOTE:

1 Department of Homeland Security, Proposed Rule, "[Weighted Selection Process for Registrants and Petitioners Seeking To File Cap-Subject H-1B Petitions](#)," 8 CFR Part 214, [CIS No. 2820-25; DHS Docket No. USCIS-2025-0040], RIN 1615-AD01, *Federal Register* (online), published on 09/24/2025.

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## Contact Us

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*\* Please note the KPMG International member firm in the United States does not provide immigration or labour law services. However, KPMG Law LLP in Canada can assist clients with U.S. immigration matters.*

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